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1981 Supplement
Volume 2

Corporations
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West's Texas Statutes and Codes

SUPERSEDED

1981 Supplement

to

Compact Edition

Volume 2

Codes and Indexes

Revised Civil Statutes

Topical Index

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WEST PUBLISHING CO.

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PREFACE

This 1981 Supplement to West's Texas Statutes and Codes, Compact Edition, includes the text of all the general and permanent laws of the State of Texas enacted at the Regular Session of the 64th Legislature (1975), the Regular and First Called Sessions of the 65th Legislature (1977), the Second Called Session of the 65th Legislature (1978), the Regular Session of the 66th Legislature (1979), the Regular and First Called Sessions of the 67th Legislature (1981) and the text of changes in the Texas Constitution as adopted by the people at the Elections held on April 22, 1975, November 8, 1977, November 7, 1978, November 6, 1979, November 4, 1980, and November 3, 1981.

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

New Codes

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

Agriculture Code, enacted by Acts 1981, 67th Leg., ch. 388;

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

Human Resources Code, enacted by Acts 1979, 66th Leg., ch. 842;

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

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

Tax Code, enacted by Acts 1979, 66th Leg., ch. 841, and Acts 1981, 67th Leg., ch. 389.

Disposition Tables, providing a means of tracing repealed subject matter into the new Codes, and detailed descriptive word Indexes, facilitating the search for specific provisions therein, are included following the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

PREFACE

In order that the user might have all of the statutes relating to taxation in one convenient location, the material supplementing Title 122, Taxation, and Title 122A, Taxation—General, which appear following the Probate Code in the Compact Edition, are to be found immediately following the Tax Code in Volume 1 of this Supplement.

In addition, included is the complete text of Title 110B of the Civil Statutes, Public Retirement Systems, enacted by Acts 1981, 67th Leg., ch. 453. Title 110B was also adopted as part of the Legislative Council's statutory revision program. A Disposition Table providing a means of tracing repealed subject matter into new Title 110B is included following the text of Title 110B.

Special Law Tables

Special laws pertaining to education and water, enacted or amended in 1975, 1977, 1979, and 1981, are tabulated following the Education and Water Codes.

Indexes

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

THE PUBLISHER

April, 1982

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EFFECTIVE DATES

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

Year	Session	Adjournment Date	Effective Date
1945	Regular	June 5, 1945	September 4, 1945
1947	Regular	June 6, 1947	September 5, 1947
1949	Regular	June 6, 1949	September 5, 1949
1951	Regular	June 8, 1951	September 7, 1951
1953	Regular	May 27, 1953	August 26, 1953
1954	1st C.S.	May 13, 1954	August 12, 1954
1955	Regular	June 7, 1955	September 6, 1955
1957	Regular	May 23, 1957	August 22, 1957
1957	1st C.S.	November 12, 1957	February 11, 1958
1957	2nd C.S.	December 3, 1957	March, 4, 1958
1959	Regular	May 12, 1959	August 11, 1959
1959	1st C.S.	June 16, 1959	September 15, 1959
1959	2nd C.S.	July 16, 1959	October 15, 1959
1959	3rd C.S.	August 6, 1959	November 5, 1959
1961	Regular	May 29, 1961	August 28, 1961
1961	1st C.S.	August 8, 1961	November 7, 1961
1961	2nd C.S.	August 14, 1961	November 13, 1961
1962	3rd C.S.	February 1, 1962	May 3, 1962
1963	Regular	May 24, 1963	August 23, 1963
1965	Regular	May 31, 1965	August 30, 1965
1966	1st C.S.	February 23, 1966	*
1967	Regular	May 29, 1967	August 28, 1967
1968	1st C.S.	July 3, 1968	*
1969	Regular	June 2, 1969	September 1, 1969
1969	1st C.S.	August 26, 1969	*
1969	2nd C.S.	September 9, 1969	December 9, 1969
1971	Regular	May 31, 1971	August 30, 1971
1971	1st C.S.	June 4, 1971	September 3, 1971
1972	2nd C.S.	March 30, 1972	June 29, 1972
1972	3rd C.S.	July 7, 1972	*
1972	4th C.S.	October 17, 1972	January 16, 1973
1973	Regular	May 28, 1973	August 27, 1973
1973	1st C.S.	December 20, 1973	*
1975	Regular	June 2, 1975	September 1, 1975
1977	Regular	May 30, 1977	August 29, 1977
1977	1st C.S.	July 21, 1977	*
1978	2nd C.S.	August 8, 1978	November 7, 1978
1979	Regular	May 28, 1979	August 27, 1979
1981	Regular	June 1, 1981	August 31, 1981
1981	1st C.S.	August 11, 1981	November 10, 1981

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

*

CITE THIS BOOK

Thus:

West's Texas Const. Art. ——, § ——
West's Texas Agriculture Code, § ——
West's Texas Alcoholic Beverage Code, § ——
West's Texas Business and Commerce Code, § ——
West's Texas Education Code, § ——
West's Texas Family Code, § ——
West's Texas Human Resources Code, § ——
West's Texas Natural Resources Code, § ——
West's Texas Parks and Wildlife Code, § ——
West's Texas Penal Code, § ——
West's Texas Code of Criminal Procedure, Art. ——
West's Texas Tax Code, § ——
West's Texas Taxation—General, Art. ——
West's Texas Water Code, § ——
West's Texas Business Corporation Act, Art. ——
West's Texas Election Code, Art. ——
West's Texas Insurance Code, Art. ——
West's Texas Probate Code, § ——
West's Texas Civil Statutes, Art. ——
West's Texas Civil Statutes Title 110B, § ——

*

TEXAS BUSINESS CORPORATION ACT

PART TWELVE

Article
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12.02. Definitions.
12.03. Applicability.
12.11. Articles of Incorporation.
12.12. Formation of a Close Corporation.
12.13. Adoption of Close Corporation Status.
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PART ONE

Art. 1.02. Definitions

A. As used in this Act, unless the context otherwise requires, the term:

[See Compact Edition, Volume 2 for text of 1 to 18]

(19) "Conspicuous" or "conspicuously", when prescribed for information appearing on a certificate for shares or other securities, means the location of such information or use of type of sufficient size, color, or character that a reasonable person against whom such information may operate should notice it. For example, a printed or typed statement in capitals, or boldface or underlined type, or in type that is larger than or that contrasts in color with that used for other statements on the same certificate, is "conspicuous."

B. Part Twelve of this Act provides definitions of terms used in the Texas Close Corporation Law. [Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 3113, ch. 818, § 2, eff. Aug. 31, 1981.]

PART TWO

Art. 2.01. Purposes

A. Except as hereinafter in this Article excluded herefrom, corporations for profit may be organized under this Act for any lawful purpose or purposes. Corporations for the purpose of operating non-profit institutions, including but not limited to those devoted to charitable, benevolent, religious, patriotic, civic, cultural, missionary, educational, scientific, social, fraternal, athletic, or aesthetic purposes, may not adopt or be organized under this Act.

B. No corporation may adopt this Act or be organized under this Act or obtain authority to transact business in this State under this Act:

(1) If any one or more of its purposes for the transaction of business in this State is expressly prohibited by any law of this State.

(2) If any one or more of its purposes for the transaction of business in this State is to engage in any activity which cannot lawfully be engaged in without first obtaining a license under the authority of the laws of this State to engage in such activity and such a license cannot lawfully be granted to a corporation.

(3) If among its purposes for the transaction of business in this State, there is included, however worded, a combination of the two businesses listed in either of the following:

(a) The business of raising cattle and owning land therefor, and the business of operating stockyards and of slaughtering, refrigerating, canning, curing or packing meat. Owning and operating feed lots and feeding cattle shall not be considered as engaging in "the business of raising cattle and owning land therefor" within the purview of this paragraph of this subsection.

(b) The business of engaging in the petroleum oil producing business in this State and the business of engaging directly in the oil pipe line business in this State: provided, however, that a corporation engaged in the oil producing business in this State which owns or operates private pipe lines in and about its refineries, fields or stations or which owns stock of corporations engaged in the oil pipe line business shall not be deemed to be engaging directly in the oil pipe line business in this State; and provided that any corporation, or group of corporations acting in partnership or other combination with other corporations, engaged as a common carrier in the pipe line business for transporting oil, oil products, gas, carbon dioxide, salt brine, fuller's earth, sand, clay, liquefied minerals or other mineral solutions, shall have all of the rights and powers conferred by Sections 111.019 through 111.022, Natural Resources Code.

(4) If any one or more of its purposes is to operate any of the following:

(a) Banks, (b) trust companies, (c) building and loan associations or companies, (d) insurance companies of every type and character that operate under the insurance laws of this State, and corporate attorneys in fact for reciprocal or inter-insurance exchanges, (e) railroad companies, (f) cemetery companies, (g) cooperatives or limited cooperative associations, (h) labor unions, (i) abstract and title insurance companies whose purposes are provided for and whose powers are prescribed by Chapter 9 of the Insurance Code of this State.

[Amended by Acts 1977, 65th Leg., p. 2690, ch. 871, art. II, § 3, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 2489, ch. 650, § 1, eff. Aug. 31, 1981.]

Art. 2.02. General Powers

A. Subject to the provisions of Sections B and C of this Article, each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation. Notwithstanding the articles of incorporation, the period of duration for any corporation incorporated before September 6, 1955, is perpetual if all fees and franchise taxes have been paid as provided by law.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed on, affixed to, or in any manner reproduced upon, instruments of any nature required to be executed by its proper officers.

(4) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated, as the purposes of the corporation shall require.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money to, and otherwise assist, its employees, but not to its officers and directors.

(7) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

(8) When permitted by the other provisions of this Act, to purchase or otherwise acquire its own bonds, debentures, or other evidences of its indebtedness or obligations, and, to purchase or otherwise acquire its own shares, and to redeem or purchase shares made redeemable by the provisions of its articles of incorporation.

(9) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(10) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(11) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act, within or without this State.

(12) To elect or appoint officers and agents of the corporation for such period of time as the corporation may determine, and define their duties and fix their compensation.

(13) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(14) To make donations for the public welfare or for charitable, scientific, or educational purposes.

(15) To transact any lawful business which the board of directors shall find will be in aid of government policy.

(16) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in performance of duty, but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of shareholders, or otherwise.

A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or

arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Article.

(17) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, and other incentive plans for all of, or class, or classes of its officers and employees, or its officers or its employees.

(18) To be an organizer, partner, member, associate, or manager of any partnership, joint venture, or other enterprise, and to the extent permitted in any other jurisdiction to be an incorporator of any other corporation of any type or kind.

(19) To cease its corporate activities and terminate its existence by voluntary dissolution.

(20) Whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

[See Compact Edition, Volume 2 for text of B and C]

[Amended by Acts 1979, 66th Leg., p. 175, ch. 96, § 2, eff. May 2, 1979.]

Art. 2.10. Change of Registered Office or Registered Agent

[See Compact Edition, Volume 2 for text of A]

B. The statement required by this article shall be executed by the corporation by its president or a vice president, and verified by him. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when the appropriate filing fee is paid as prescribed by law:

(1) Endorse on the original and the copy the word, "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

[See Compact Edition, Volume 2 for text of C]

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in triplicate (the original and two copies of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and both copies the word "filed" and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return one copy to such resigning registered agent.

(4) Return one copy to the corporation at the last known address of the corporation as shown in such written notice.

[Amended by Acts 1979, 66th Leg., p. 222, ch. 120, § 23, eff. May 9, 1979; Acts 1981, 67th Leg., p. 838, ch. 297, § 12, eff. Aug. 31, 1981.]

Art. 2.10-1. Change of Address of Registered Agent

[See Compact Edition, Volume 2 for text of A]

B. The statement required by this article shall be signed and verified by the registered agent, or, if said agent is a corporation, by the president or vice-president of such corporate agent. The original and two copies of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall:

(1) Endorse on the original and both copies the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return one copy to such registered agent.

(4) Return one copy to the corporation at the last known address of the principal place of business of the corporation as shown in such statement.

[See Compact Edition, Volume 2 for text of C]

[Amended by Acts 1979, 66th Leg., p. 223, ch. 120, § 24, eff. May 9, 1979.]

Art. 2.13. Issuance of Shares of Preferred or Special Classes in Series

[See Compact Edition, Volume 2 for text of A to D]

E. Such statement shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing such statement. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when the appropriate filing fee is paid as prescribed by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

[See Compact Edition, Volume 2 for text of F]

[Amended by Acts 1979, 66th Leg., p. 223, ch. 120, § 25, eff. May 9, 1979; Acts 1981, 67th Leg., p. 838, ch. 297, § 13, eff. Aug. 31, 1981.]

Art. 2.19. Certificates Representing Shares

[See Compact Edition, Volume 2 for text of A]

B. In the event a corporation is authorized to issue shares of more than one class, each certificate representing shares issued by such corporation (1) shall conspicuously set forth on the face or back of the certificate a full statement of (a) all of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, (b) if the corporation is authorized to issue shares of any preferred or special class in series, the variations in the relative rights and preferences of the shares of each such series to the extent they have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series; or (2) shall conspicuously state on the face or back of the certificate that (a) such a statement is set forth in the articles of incorporation on file in the office of the Secretary of State and (b) the corporation will furnish a copy of such statement to the record holder of the certificate without charge on written request to the corporation at its principal place of business or registered office. In the event a corporation has by its articles of incorporation limited or denied the preemptive right of shareholders to acquire unissued or treasury shares of the corporation, each certificate representing shares issued by such corporation (1) shall conspicuously set forth on the face or back of the certificate a full statement of the limitation or denial of preemptive rights contained in the articles of incorporation, or (2) shall conspicuously state on the face or back of the certificate that (a) such a statement is set forth in the articles of incorporation on file in the office of the Secretary of State and (b) the corporation will furnish a copy of such statement to the record holder of the certificate without charge on request to the corporation at its principal place of business or registered office.

[See Compact Edition, Volume 2 for text of C to E]

F. Repealed by Acts 1975, 64th Leg., p. 322, ch. 134, § 22, eff. Sept. 1, 1975.

G. In the event any restriction on the transfer, or registration of the transfer, of shares shall be imposed or agreed to by the corporation, as permitted by this Act, each certificate representing shares so restricted (1) shall conspicuously set forth a full or summary statement of the restriction on the face of the certificate, or (2) shall set forth such statement on the back of the certificate and conspicuously refer to the same on the face of the certificate, or (3) shall conspicuously state on the face or back of the certificate that such a restriction exists pursuant to a specified document and (a) that the corporation will furnish to the record holder of the certificate without charge upon written request to the corporation at its principal place of business or registered office a copy of the specified document, or (b) if such document is one required or permitted to be and has been filed under this Act, that such specified document is on file in the office of the Secretary of State and contains a full statement of such restriction. Unless such document was on file in the office of the Secretary of State at the time of the request, a corporation which fails within a reasonable time to furnish the record holder of a certificate upon such request and without charge a copy of the specified document shall not be permitted thereafter to enforce its rights under the restriction imposed on the shares represented by such certificate.

H. Repealed by Acts 1975, 64th Leg., p. 322, ch. 134, § 22, eff. Sept. 1, 1975.

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, §§ 2, 3 and 22, Sept. 1, 1975.]

Art. 2.22. Transfer of Shares and Other Securities and Restrictions on Transfer

[See Compact Edition, Volume 2 for text of A and B]

C. Any restriction on the transfer or registration of transfer of a security of a corporation, if reasonable and noted conspicuously on the security may be enforced against the holder of the restricted security or any successor or transferee of the holder including an executor, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the security, a restriction, even though otherwise enforceable, is ineffective except against a person with actual knowledge of the restriction.

D. In particular and without limiting the general power granted in Sections B and C of this Article to impose reasonable restrictions, a restriction on the transfer or registration of transfer of securities of a corporation shall be valid if it reasonably:

(1) Obligates the holders of the restricted securities to offer to the corporation or to any other holders of securities of the corporation or to any other person or to any combination of the foregoing, a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or

(2) Obligates the corporation to the extent permitted by this Act or any holder of securities of the corporation or any other person, or any combination of the foregoing, to purchase the

securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; or

(3) Requires the corporation or the holders of any class of securities of the corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities for the purpose of preventing violations of federal or state laws; or

(4) Prohibits the transfer of the restricted securities to designated persons or classes of persons, and such designation is not manifestly unreasonable; or

(5) Maintains the status of the corporation as an electing small business corporation under Subchapter S of the United States Internal Revenue Code[2] or as a close corporation under Part Twelve of this Act.

E. A corporation that has adopted a bylaw, or is a party to an agreement, restricting the transfer of its shares or other securities may file such bylaw or agreement as a matter of public record with the Secretary of State, as follows:

(1) The corporation shall file a copy of the bylaw or agreement in the office of the Secretary of State together with an attached statement setting forth:

(a) the name of the corporation;

(b) that the copy of the bylaw or agreement is a true and correct copy of the same; and

(c) that such filing has been duly authorized by the board of directors or, in the case of a close corporation that, in conformance with Part Twelve of this Act, is managed in some other manner pursuant to a shareholders' agreement, by the shareholders or by the persons empowered by the agreement to manage its business and affairs.

(2) Such statement shall be executed by the corporation by its president or a vice-president and verified by the officer signing such statement. The original and a copy of the statement shall be delivered to the Secretary of State with copies of such bylaw or agreement restricting the transfer of shares or other securities attached thereto. If the Secretary of State finds that such statement conforms to law and the appropriate filing fee has been paid as prescribed by law, he shall:

(a) endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) return the copy to the corporation or its representative.

(3) After the filing of such statement by the Secretary of State, the bylaw or agreement restricting the transfer of shares or other securities shall become a matter of public record and the fact of such filing shall be stated on any certificate representing the shares or other securities so restricted if required by Section G, Article 2.19, of this Act.

F. A corporation that is a party to an agreement restricting the transfer of its shares or other securities may make such agreement part of its articles of incorporation without restating the provisions of such agreement therein by complying with the provisions of Part Four of this Act for amendment of the articles of incorporation. If such agreement shall alter any provision of the original or amended articles of incorporation, the articles of amendment shall identify by reference or description the altered provision. If such agreement is to be an addition to the original or amended articles of incorporation, the articles of amendment shall state that fact. The articles of amendment shall have attached thereto a copy of the agreement restricting the transfer of shares or other securities, and shall state that the attached copy of such agreement is a true and correct copy of the same and that its inclusion as part of the articles of incorporation has been duly authorized in the manner required by this Act to amend the articles of incorporation.

[Amended by Acts 1975, 64th Leg., p. 306, ch. 134, §§ 4 and 5, Sept. 1, 1975; Acts 1979, 66th Leg., p. 223, ch. 120, § 26, eff. May 9, 1979; Acts 1981, 67th Leg., p. 838, ch. 297, § 14, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3113, ch. 818, § 3, eff. Aug. 31, 1981.]

[2] 26 U.S.C.A. § 1371 et seq.

Arts. 2.30–1 to 2.30–5. Repealed by Acts 1981, 67th Leg., p. 3118, ch. 818, § 9, eff. Aug. 31, 1981

Prior to repeal, arts. 2.30–1 to 2.30–3 were amended by Acts 1975, 64th Leg., p. 308, ch. 134, §§ 6 to 9.

See, now, art. 12.01 et seq.

Art. 2.36. Executive and Other Committees

A. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees, each of which, to the extent provided in such resolution or in the articles of incorporation or in the bylaws of the corporation, shall have and may exercise all of the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, approving a plan of merger or consolidation, recommending to the shareholders the sale, lease, or exchange of all or substantially all of the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, amending, altering, or repealing the bylaws of the corporation or adopting new bylaws for the corporation, filling vacancies in the board of directors or any such committee, electing or remov-

ing officers or members of any such committee, fixing the compensation of any member of such committee, or altering or repealing any resolution of the board of directors which by its terms provides that it shall not be so amendable or repealable; and, unless such resolution, the articles of incorporation, or the bylaws of the corporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of shares of the corporation. The designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

[Amended by Acts 1975, 64th Leg., p. 316, ch. 134, § 13, eff. Sept. 1, 1975.]

Art. 2.42. Officers

A. The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two (2) or more offices may be held by the same person.

[See Compact Edition, Volume 2 for text of B]

[Amended by Acts 1981, 67th Leg., p. 3114, ch. 818, § 4, eff. Aug. 31, 1981.]

Art. 2.43. Removal of Officers

A. Any officer or agent or member of a committee elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent or member of a committee shall not of itself create contract rights.

[Amended by Acts 1975, 64th Leg., p. 314, ch. 134, § 10, eff. Sept. 1, 1975.]

PART THREE

Art. 3.01. Incorporators

A. Any natural person of the age of eighteen (18) years or more, or any partnership, corporation, association, trust, or estate (without regard to place of residence, domicile, or organization) may act as an incorporator of a corporation by signing and verifying the articles of incorporation for such corporation and by delivering the original and a copy of the articles of incorporation to the Secretary of State.

[Amended by Acts 1975, 64th Leg., p. 315, ch. 134, § 11, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 224, ch. 120, § 27, eff. May 9, 1979.]

Art. 3.02. Articles of Incorporation

A. The articles of incorporation shall set forth:

(1) The name of the corporation;

(2) The period of duration, which may be perpetual;

(3) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Act;

(4) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that such shares are to be without par value;

(5) If the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights in respect of the shares of each class;

(6) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(7) A statement that the corporation will not commence business until it has received for the issuance of shares consideration of the value of a stated sum which shall be at least One Thousand Dollars ($1,000.00), consisting of money, labor done, or property actually received;

(8) Any provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation;

(9) If a corporation elects to become a close corporation in conformance with Part Twelve of this Act, any provision (a) required or permitted by this Act to be stated in the articles of incorporation of a close corporation, but not in the articles of incorporation of an ordinary corporation, (b) contained in a shareholders' agreement in conformance with Part Twelve of this Act which the incorporators elect to set forth in articles of incorporation, or (c) that makes a shareholders' agreement in conformance with Part Twelve of this Act part of the articles of incorporation of a close corporation in the manner prescribed in Section F, Article 2.22 of this Act, but any such provision, other than the statement required by Section A, Article 12.11 of this Act, shall be preceded by a statement

that the provision shall be subject to the corporation remaining a close corporation in conformance with Part Twelve of this Act;

(10) Any provision, not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation;

(11) The street address of its initial registered office and the name of its initial registered agent at such address;

(12) The number of directors constituting the initial board of directors and the names and addresses of the person or persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify, or, in the case of a close corporation that, in conformance with Part Twelve of this Act, is to be managed in some other manner pursuant to a shareholders' agreement by the shareholders or by the persons empowered by the agreement to manage its business and affairs, the names and addresses of the person or persons who, pursuant to the shareholders' agreement, will perform the functions of the initial board of directors provided for by this Act;

(13) The name and address of each incorporator.

[See Compact Edition, Volume 2 for text of B]

[Amended by Acts 1975, 64th Leg., p. 315, ch. 134, § 12, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 3114, ch. 818, § 5, eff. Aug. 31, 1981.]

Art. 3.03. Filing of Articles of Incorporation

A. The original and a copy of the articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of incorporation conform to law, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of incorporation to which he shall affix the copy.

B. The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the Secretary of State, shall be delivered to the incorporators or their representatives.

[Amended by Acts 1979, 66th Leg., p. 224, ch. 120, § 28, eff. May 9, 1979.]

PART FOUR

Art. 4.01. Right to Amend Articles of Incorporation

[See Compact Edition, Volume 2 for text of A]

B. In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time so as:

(1) To change its corporate name.

(2) To change its period of duration.

(3) To change, enlarge, or diminish its corporate purposes.

(4) To increase or decrease the aggregate number of shares of any class which the corporation has authority to issue.

(5) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.

(6) To exchange, classify, or reclassify all or any part of its shares, whether issued or unissued or to cancel all or any part of its outstanding shares.

(7) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and relative rights in respect of all or any part of its shares, whether issued or unissued.

(8) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.

(9) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.

(10) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

(11) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.

(12) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(13) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares

and fix and determine the relative rights and preferences of the shares of any series so established.

(14) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(15) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(16) To limit, deny, or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized.

(17) To become a consuming-assets corporation as defined and governed by this Act.

(18) To include any provisions required or permitted by this Act to be included in the articles of incorporation of a close corporation in conformance with Part Twelve of this Act in connection with an election to become a close corporation, or to delete any such provisions in connection with a termination of a corporation's status as a close corporation.

(19) To restrict the transfer of its shares of any class or series, or the transfer of any other securities.

C. Repealed by Acts 1975, 64th Leg., p. 322, ch. 134, § 22, eff. Sept. 1, 1975.

[Amended by Acts 1975, 64th Leg., p. 316, ch. 134, §§ 14, 22, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 3115, ch. 818, § 6, eff. Aug. 31, 1981.]

Art. 4.03. Class Voting on Amendments

[See Compact Edition, Volume 2 for text of A]

B. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(1) Increase or decrease the aggregate number of authorized shares of such class.

(2) Increase or decrease the par value of the shares of such class.

(3) Effect an exchange, reclassification, or cancellation of all or part of the shares of such class.

(4) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

(5) Change the designations, preferences, limitations, or relative rights of the shares of such class.

(6) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.

(7) Create a new class of shares having rights and preferences equal, prior, or superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences equal, prior, or superior to the shares of such class, or increase the rights and preferences of any class having rights or preferences later or inferior to the shares of such class in such a manner as to become equal, prior, or superior to the shares of such class.

(8) In case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series.

(9) Limit or deny the existing preemptive rights of the shares of such class.

(10) Cancel or otherwise affect dividends on the shares of such class which had accrued but had not been declared.

(11) Include in or delete from the articles of incorporation any provisions required or permitted to be included in the articles of incorporation of a close corporation in conformance with Part Twelve of this Act.

[See Compact Edition, Volume 2 for text of C]

[Amended by Acts 1975, 64th Leg., p. 318, ch. 134, § 15, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 3117, ch. 818, § 7, eff. Aug. 31, 1981.]

Art. 4.04. Articles of Amendment

A. The articles of amendment shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles. If no shares have been issued, however, and the articles of amendment are adopted by the board of directors, the articles of amendment may be executed by a majority of the directors and verified by them.

B. The articles of amendment shall set forth:

(1) The name of the corporation.

(2) If the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read. If the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added.

(3) The date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued.

(4) The number of shares outstanding, and the number of shares entitled to vote on the amendment, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(5) The number of shares voted for and against the amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the amendment, respectively, or if no shares have been issued a statement to that effect.

(6) If the amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.

(7) If the amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by the amendment.

[Amended by Acts 1979, 66th Leg., p. 224, ch. 120, § 29, eff. May 9, 1979; Acts 1981, 67th Leg., p. 839, ch. 297, § 15, eff. Aug. 31, 1981.]

Art. 4.05. Filing of Articles of Amendment

A. The original and a copy of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed" and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of amendment to which he shall affix the copy.

B. The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

[Amended by Acts 1979, 66th Leg., p. 225, ch. 120, § 30, eff. May 9, 1979; Acts 1981, 67th Leg., p. 840, ch. 297, § 16, eff. Aug. 31, 1981.]

Art. 4.07. Restated Articles of Incorporation

[See Compact Edition, Volume 2 for text of A to C]

D. Such restated articles of incorporation shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and shall be verified by one of the officers signing such articles. The original and a copy of the restated articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the restated articles of incorporation conform to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a restated certificate of incorporation to which he shall affix the copy.

E. The restated certificate of incorporation, together with the copy of the restated articles of incorporation affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

[See Compact Edition, Volume 2 for text of F]

[Amended by Acts 1979, 66th Leg., p. 225, ch. 120, § 31, eff. May 9, 1979; Acts 1981, 67th Leg., p. 840, ch. 297, § 17, eff. Aug. 31, 1981.]

Art. 4.09. Restrictions on Redemption or Purchase of Redeemable Shares

A. Irrespective of any provisions in the articles of incorporation of a corporation respecting the purchase or redemption of redeemable shares, shares shall be redeemable only if they have a liquidation preference, and no redemption or purchase of redeemable shares shall be made by a corporation:

(1) At a price exceeding the redemptive price thereof.

(2) When there is a reasonable ground for believing that such redemption or purchase will render the corporation unable to satisfy its debts and liabilities when they fall due.

(3) Which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon voluntary dissolution.

(4) Which would involve paying any shareholder more than the stated capital represented by the shares redeemed, unless the excess shall be paid out of a surplus of the corporation.

[Amended by Acts 1975, 64th Leg., p. 318, ch. 134, § 16, eff. Sept. 1, 1975.]

Art. 4.10. Reduction of Stated Capital by Redemption or Purchase of Redeemable Shares

[See Compact Edition, Volume 2 for text of A]

B. The statement of cancellation shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

(1) The name of the corporation.

(2) The number of redeemable shares cancelled through the redemption or purchase, itemized by classes and series.

(3) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

(4) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

(5) If the articles of incorporation provide that the cancelled shares shall not be reissued, then the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation.

C. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

[See Compact Edition, Volume 2 for text of D and E]

[Amended by Acts 1979, 66th Leg., p. 226, ch. 120, § 32, eff. May 9, 1979; Acts 1981, 67th Leg., p. 840, ch. 297, § 18, eff. Aug. 31, 1981.]

Art. 4.11. Cancellation of Treasury Shares

[See Compact Edition, Volume 2 for text of A]

B. The statement of cancellation shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, shall be verified by one of the officers signing such statement, and shall set forth:

(1) The name of the corporation.

(2) A statement that a resolution has been duly adopted by the board of directors authorizing the cancellation, the date of adoption of such resolution, and a summary of its contents, including a statement of the number of treasury shares to be cancelled, itemized by classes and series, and the amount of stated capital represented by the shares to be cancelled.

(3) The aggregate number of shares, itemized by classes and series and par value, if any, which are to retain the status of issued shares after the cancellation becomes effective.

(4) The amount, expressed in dollars, which is to constitute the stated capital of the corporation after the cancellation becomes effective.

C. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

[See Compact Edition, Volume 2 for text of D and E]

[Amended by Acts 1979, 66th Leg., p. 226, ch. 120, § 33, eff. May 9, 1979; Acts 1981, 67th Leg., p. 840, ch. 297, § 19, eff. Aug. 31, 1981.]

Art. 4.12. Reduction of Stated Capital Without Amendment of Articles and Without Cancellation of Shares

[See Compact Edition, Volume 2 for text of A]

B. When a reduction of the stated capital of a corporation has been approved as provided in this Article, a statement shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

(1) The name of the corporation.

(2) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption.

(3) The number of shares outstanding, and the number of shares entitled to vote on the resolution.

(4) The number of shares voted for and against such reduction, respectively.

(5) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

C. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the Corporation or its representative.

[See Compact Edition, Volume 2 for text of D]

E. No reduction of stated capital shall be made under the provisions of this Article which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of voluntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of voluntary liquidation.

[Amended by Acts 1975, 64th Leg., p. 319, ch. 134, § 17, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 227, ch. 120, § 34, eff. May 9, 1979; Acts 1981, 67th Leg., p. 841, ch. 297, § 20, eff. Aug. 31, 1981.]

Art. 4.14. Amendment of Articles of Incorporation in Reorganization Proceedings

[See Compact Edition, Volume 2 for text of A and B]

C. Amendments to the articles of incorporation pursuant to this Article shall be made in the following manner:

(1) Articles of amendment approved by decree or order of such court shall be executed and verified by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(2) The original and a copy of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when the appropriate filing fee is paid as prescribed by law:

(a) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(b) File the original in his office.

(c) Issue a certificate of amendment to which he shall affix the copy.

(3) The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the Secretary of State, shall be returned to the corporation or its representative.

[See Compact Edition, Volume 2 for text of D]

[Amended by Acts 1979, 66th Leg., p. 227, ch. 120, § 35, eff. May 9, 1979; Acts 1981, 67th Leg., p. 841, ch. 297, § 21, eff. Aug. 31, 1981.]

PART FIVE

Art. 5.04. Articles of Merger or Consolidation of Domestic Corporations

A. Upon the required approval by the shareholders of two or more corporations of a plan of merger or consolidation, articles of merger or articles of consolidation shall be executed by each corporation by its president or a vice president and by its secretary or an assistant secretary, verified by one of the officers of each corporation signing such articles, and shall set forth:

(1) The plan of merger or the plan of consolidation.

(2) As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

(3) As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

B. The original and a copy of the articles of merger or articles of consolidation shall be delivered to the Secretary of State. If the Secretary of State finds that such articles conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of merger or a certificate of consolidation to which he shall affix the copy.

C. The certificate of merger or certificate of consolidation, together with the copy of the articles of merger or articles of consolidation affixed thereto by the Secretary of State, shall be delivered to the surviving or new corporation, as the case may be, or its representative.

[Amended by Acts 1979, 66th Leg., p. 228, ch. 120, § 36, eff. May 9, 1979.]

Art. 5.07. Merger or Consolidation of Domestic and Foreign Corporations

[See Compact Edition, Volume 2 for text of A]

B. Such merger or consolidation shall be carried out in the following manner:

(1) Each domestic corporation shall comply with the provisions of this Act with respect to merger or consolidation, as the case may be, of domestic corporations, except that if the surviving or new corporation is to be a foreign corporation, the plan of merger or consolidation shall specify the state under whose laws such surviving or new corporation is to be governed and the address, including street and number, if any, of the registered or principal office of such surviving or new corporation in the state under whose laws it is to be governed; provided that no domestic corporation shall be merged or consolidated with a foreign corporation unless and until a resolution authorizing such merger or consolidation shall be adopted upon the affirmative vote of the holders of at least two-thirds of the outstanding shares of the domestic corporation cast at a meeting called and conducted in the same manner as provided by Article 5.03 of this Act.

(2) If the surviving or new corporation, as the case may be, is a foreign corporation, it shall comply with the provisions of this Act with respect to foreign corporations if it is to transact business in this State, and in every case it shall file with the Secretary of State of this State:

(a) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which was a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation.

(b) An irrevocable appointment of the Secretary of State of this State as its agent to accept service of process in any such proceeding.

(c) An agreement that it will promptly pay to the dissenting shareholders of any domestic corporation the amount, if any, to which they shall be entitled under the provisions of this Act with respect to the rights of dissenting shareholders.

(3) Upon compliance by each domestic and foreign corporation which is a party to the merger or consolidation with the provisions of this Act with respect to merger or consolidation, and upon issuance by the Secretary of State of this State of the certificate of merger or the certificate of consolidation provided for in this Act, the merger or consolidation shall be effected in this State.

[See Compact Edition, Volume 2 for text of C]

[Amended by Acts 1981, 67th Leg., p. 841, ch. 297, § 22, eff. Aug. 31, 1981.]

Art. 5.10. Disposition of Assets Requiring Special Authorization of Shareholders

[See Compact Edition, Volume 2 for text of A]

B. A disposition of all, or substantially all, of the property and assets of a corporation requiring the special authorization of the shareholders of the corporation under Section A of this article:

(1) is not considered to be a merger or consolidation pursuant to this Act or otherwise; and

(2) except as otherwise expressly provided by another statute, does not make the acquiring corporation responsible or liable for any liability or obligation of the selling corporation that the acquiring corporation did not expressly assume.

[Amended by Acts 1979, 66th Leg., p. 422, ch. 194, § 1, eff. May 17, 1979.]

Art. 5.16. Merger of Subsidiary or Subsidiaries into Parent Corporation

[See Compact Edition, Volume 2 for text of A]

Execution of Articles; Contents

B. The articles of merger shall be executed by the parent corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

(1) The name of the parent corporation, and the name or names of the subsidiary corporations and the respective jurisdiction under which each such corporation is organized.

(2) The number of outstanding shares of each class of each subsidiary corporation and the number of such shares of each class owned by the parent corporation.

(3) A copy of the resolution adopted by the board of directors of the parent corporation to so merge and the date of the adoption thereof. If the parent corporation does not own all the outstanding shares of each class of each subsidiary corporation party to the merger, the resolution shall state the terms and conditions of the merger, including the securities, cash or other property to be used, paid or delivered by the surviving corporation upon surrender of each share of the subsidiary corporation or corporations not owned by the parent corporation.

(4) If the surviving corporation is a foreign corporation, the address, including street number if any, of its registered or principal office in the jurisdiction under whose laws it is governed. It shall comply also with the provisions of Article 5.07B(3) of this Act.

Delivery to secretary of state; duties

C. The original and a copy of the articles of merger shall be delivered to the Secretary of State. If the Secretary of State finds that such articles conform to law, he shall, when all fees and franchise taxes have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of merger to which he shall affix the copy and deliver them to the surviving corporation or its representative.

[See Compact Edition, Volume 2 for text of D]

Remedy of minority shareholders

E. In the event all of the shares of a subsidiary domestic corporation party to a merger effected under this Article are not owned by the parent corporation immediately prior to the merger, the surviving corporation shall, within ten (10) days after the effective date of the merger, mail to each shareholder of record of such subsidiary domestic corporation a copy of the articles of merger and notify him that the merger has become effective. In case any such shareholder elects to demand payment for his shares, the following procedure shall be followed:

(1) Such shareholder shall within twenty (20) days after the mailing of the notice and copy of

the articles of merger make written demand on the surviving corporation, domestic or foreign, for payment of the fair value of his shares. The fair value of such shares shall be the value thereof as of the day before the effective date of the merger, excluding any appreciation or depreciation in anticipation of such proposed act. Such demand shall state the number and class of the shares owned by the dissenting shareholder and the fair value of such shares as estimated by him. Any shareholder failing to make demand within the twenty (20) day period shall be bound by such corporate action.

(2) Within ten (10) days after receipt by the surviving corporation of a demand for payment of the fair value of his shares made by such dissenting shareholder in accordance with Subsection (1) hereof, such corporation shall deliver or mail to such dissenting shareholder a written notice which shall either set out that the corporation accepts the amount claimed in such demand and agrees to pay such amount within ninety (90) days after the date on which such corporate action was effected, upon the surrender of the share certificates duly endorsed, or shall contain an estimate by the corporation of the fair value of such shares, together with an offer to pay the amount of such estimate within ninety (90) days after the date on which such corporation action was effected, upon receipt of notice within sixty (60) days after such date from such shareholder that he agrees to accept such amount upon the surrender of the share certificates duly endorsed.

(3) If, within sixty (60) days after the date on which such corporate action was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving corporation, payment therefor shall be made within ninety (90) days after the date on which such corporate action was effected, upon surrender of his certificate or certificates representing such shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

(4) If, within such period of sixty (60) days after the date on which such corporate action was effected, the shareholder and the surviving corporation do not so agree, then the dissenting shareholder or the corporation may, within sixty (60) days after the expiration of the sixty (60) day period, file a petition in any court of competent jurisdiction in the county in which the principal office of the corporation is located, asking for a finding and determination of the fair value of such shares as provided in Section B of Article 5.12 of this Act and thereupon the parties shall have the rights and duties and follow the procedure set forth in Sections B to D inclusive of Article 5.12 and set forth in Article 5.13.

(5) In the absence of fraud in the transaction, the remedy provided by this Article to a shareholder objecting to such corporate action is the exclusive remedy for the recovery of the value of his shares or money damages to such shareholder with respect to such corporate action; and if the surviving corporation complies with the requirements of this Article, any such shareholder who fails to comply with the requirements of this Article shall not be entitled to bring suit for the recovery of the value of his shares or money damages to such shareholder with respect to such corporate action.

[See Compact Edition, Volume 2 for text of F]

[Amended by Acts 1979, 66th Leg., p. 228, ch. 120, § 37, eff. May 9, 1979; Acts 1979, 66th Leg., p. 423, ch. 194, § 2, eff. May 17, 1979.]

PART SIX

Art. 6.01. Voluntary Dissolution by Incorporators or Directors

A. A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators or its directors at any time in the following manner:

(1) Articles of dissolution shall be executed by a majority of the incorporators or directors, and verified by them, and shall set forth:

(a) The name of the corporation.

(b) The date of issuance of its certificate of incorporation.

(c) That none of its shares has been issued.

(d) That the corporation has not commenced business.

(e) That the amount, if any, actually paid on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(f) That no debts of the corporation remain unpaid.

(g) That a majority of the incorporators or directors elect that the corporation be dissolved.

(2) The original and a copy of the articles of dissolution shall be delivered to the Secretary of State, along with a certificate from the Comptroller of Public Accounts that all franchise taxes have been paid. If the Secretary of State finds that the articles of dissolution conform to law, he shall, when the appropriate filing fee is paid as required by law:

(a) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(b) File the original in his office.

(c) Issue a certificate of dissolution, to which he shall affix the copy.

(3) The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be delivered to the incorporators, the directors, or their representatives. Upon the issuance of such certificate of dissolution by the Secretary of State, the existence of the corporation shall cease.

[Amended by Acts 1975, 64th Leg., p. 319, ch. 134, § 18, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 229, ch. 120, § 38, eff. May 9, 1979; Acts 1981, 67th Leg., p. 842, ch. 297, § 23, eff. Aug. 31, 1981.]

Art. 6.06. Articles of Dissolution

A. If voluntary dissolution proceedings have not been revoked, then, when all liabilities and obligations of the corporation have been paid or discharged, or adequate provision has been made therefor, or in case its property and assets are not sufficient to satisfy and discharge all the corporation's liabilities and obligations, then when all the property and assets have been applied so far as they will go to the just and equitable payment of the corporation's liabilities and obligations, and all of the remaining property and assets of the corporation have been distributed to its shareholders according to their respective rights and interest, articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(1) The name of the corporation.

(2) The names and respective addresses of its officers.

(3) The names and respective addresses of its directors.

(4) That all debts, obligations and liabilities of the corporation have been paid or discharged or that adequate provision has been made therefor, or, in case the corporation's property and assets were not sufficient to satisfy and discharge all its liabilities and obligations, that all property and assets have been applied so far as they would go to the payment thereof in a just and equitable manner and that no property or assets remained available for distribution among its shareholders.

(5) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests or that no property remained for distribution to shareholders after applying it as far as it would go to the just and equitable payment of the liabilities and obligations of the corporation.

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

(7) If the corporation elected to dissolve by written consent of all shareholders:

(a) A copy of the written consent to dissolve, and a statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

(8) If the corporation elected to dissolve by act of the corporation:

(a) A copy of the resolution to dissolve, and a statement that such resolution was adopted by the shareholders of the corporation and the date of the adoption thereof.

(b) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

(c) The number of shares voted for and against such resolution respectively and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution respectively.

[Amended by Acts 1979, 66th Leg., p. 229, ch. 120, § 39, eff. May 9, 1979.]

Art. 6.07. Filing Articles of Dissolution

A. The original and a copy of such articles of dissolution shall be delivered to the Secretary of State, along with a certificate from the Comptroller of Public Accounts that all franchise taxes have been paid. If the Secretary of State finds that such articles of dissolution conform to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of dissolution to which he shall affix the copy.

B. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be delivered to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided by the laws of this State.

[Amended by Acts 1979, 66th Leg., p. 230, ch. 120, § 40, eff. May 9, 1979; Acts 1981, 67th Leg., p. 843, ch. 297, § 24, eff. Aug. 31, 1981.]

PART SEVEN

Art. 7.01. Involuntary Dissolution

[See Compact Edition, Volume 2 for text of A]

B. A corporation may be dissolved involuntarily by order of the Secretary of State when it is estab-

lished that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise taxes or penalties prescribed by law when the same have become due and payable;

(2) The corporation has failed to maintain a registered agent in this state as required by law; or

(3) The corporation has failed to pay the filing fee for the corporation's articles of incorporation or the initial franchise tax deposit, or the fee or tax was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No corporation shall be involuntarily dissolved under Subsection (1) or (2) of Section B hereof unless the Secretary of State, or other state agency with which such report, fees, taxes, or penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such involuntary dissolution to correct the neglect, omission or delinquency.

(2) When a corporation is involuntarily dissolved under Subsection (3) of Section B of this article, the Secretary of State shall give the corporation notice of the dissolution by regular mail addressed to its registered office, its principal place of business, the last known address of one of its officers or directors, or any other known place of business of the corporation.

[See Compact Edition, Volume 2 for text of D to G]

[Amended by Acts 1981, 67th Leg., p. 843, ch. 297, § 25, eff. Aug. 31, 1981.]

PART EIGHT

Art. 8.02. Powers of Foreign Corporation

A. A foreign corporation which shall have received a certificate of authority under this Act shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, as to all matters affecting the transaction of intrastate business in this State, it and its officers and directors shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character and its officers and directors.

[Amended by Acts 1975, 64th Leg., p. 320, ch. 134, § 19, eff. Sept. 1, 1975.]

Art. 8.03. Corporate Name of Foreign Corporation

A. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) Shall contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of one (1) of such words, or such corporation shall, for use in this state, add at the end of its name one (1) of such words or an abbreviation thereof.

(2) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or of any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved or registered in the manner provided in this Act; provided that a name may be similar if written consent is obtained from the existing corporation having the name deemed to be similar or the person, or corporation, for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State. A certificate of authority shall be issued as provided in this Act to any foreign corporation having a name the same as, deceptively similar to, or, if no consent is given, similar to the name of any domestic corporation existing under the laws of this state or of any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved or registered in accordance with this Act, provided such foreign corporation qualifies and does business under a name that meets the requirements of this article. The foreign corporation shall set forth in the application for a certificate of authority the name under which it is qualifying and shall file an assumed name certificate in accordance with Chapter 36, Business & Commerce Code, as amended.

[Amended by Acts 1981, 67th Leg., p. 843, ch. 297, § 26, eff. Aug. 31, 1981.]

Art. 8.05. Application for Certificate of Authority

A. In order to procure a certificate of authority to transact business in this State, a foreign corporation shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the State or country under the laws of which it is incorporated.

(2) If the name of the corporation does not contain the word "corporation," "company," "incorporated," or "limited," and does not contain an abbreviation of one (1) of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this State; if the corporation is required to qualify under a name other than its corporate

name, then the name under which the corporation is to be qualified.

(3) The date of incorporation and the period of duration of the corporation.

(4) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(5) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address.

(6) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this State and a statement that it is authorized to pursue such purpose or purposes in the state or country under the laws of which it is incorporated.

(7) The names and respective addresses of the directors and officers of the corporation.

(8) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(9) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(10) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this Act.

(11) A statement that consideration of the value of at least One Thousand Dollars ($1,000) has been paid for the issuance of shares.

B. Such application shall be made on forms promulgated by the Secretary of State and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.

[Amended by Acts 1975, 64th Leg., p. 320, ch. 134, § 20, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 231, ch. 120, § 41, eff. May 9, 1979; Acts 1981, 67th Leg., p. 844, ch. 297, § 27, eff. Aug. 31, 1981.]

Art. 8.06. Filing of Application for Certificate of Authority

A. The original and a copy of the application of the corporation for a certificate of authority shall be delivered to the Secretary of State, together with a certificate issued by an authorized officer of the jurisdiction of the corporation's incorporation evidencing its corporate existence. If the certificate is in a language other than English, a translation of the certificate, under the oath of the translator, must be attached to the certificate. The certificate must be dated after the 91st day preceding the date on which the application is filed. If the Secretary of State finds that the application conforms to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File in his office the original and the certificate evidencing corporate existence.

(3) Issue a certificate of authority to transact business in this State to which he shall affix the copy.

B. The certificate of authority, together with the copy of the application affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

[Amended by Acts 1979, 66th Leg., p. 231, ch. 120, § 42, eff. May 9, 1979; Acts 1981, 67th Leg., p. 845, ch. 297, § 28, eff. Aug. 31, 1981.]

Art. 8.09. Change of Registered Office or Registered Agent of Foreign Corporation

[See Compact Edition, Volume 2 for text of A]

B. Such statement shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

[See Compact Edition, Volume 2 for text of C]

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in triplicate (the original and two copies), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof.

Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and both copies the word "filed" and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return one copy to such resigning registered agent.

(4) Return one copy to the corporation at the last known address of the corporation as shown in such written notice.

[Amended by Acts 1979, 66th Leg., p. 231, ch. 120, § 43, eff. May 9, 1979.]

Arts. 8.11, 8.12. Repealed by Acts 1981, 67th Leg., p. 848, ch. 297, § 36, eff. Aug. 31, 1981

Art. 8.13. Amended Certificate of Authority

A. If a foreign corporation authorized to transact business in this State shall change its corporate name, or if such corporation desires to pursue in this State purposes other than, or in addition to, those authorized by its existing certificate of authority, it shall procure an amended certificate of authority by making application therefor to the Secretary of State.

B. To change any statement on an original application for a certificate of authority a foreign corporation shall file with the Secretary of State an application for an amended certificate of authority setting forth the change.

C. An application for an amended certificate of authority submitted because of a name change must be accompanied by a certificate from the proper filing officer in the jurisdiction of incorporation evidencing the name change.

D. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of the application and a copy of it with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

[Amended by Acts 1979, 66th Leg., p. 232, ch. 120, § 44, eff. May 9, 1979; Acts 1981, 67th Leg., p. 845, ch. 297, § 29, eff. Aug. 31, 1981.]

Art. 8.15. Filing of Application for Withdrawal

A. The original and a copy of such application for withdrawal shall be delivered to the Secretary of State. If the Secretary of State finds that such application conforms to the provisions of this Act, he shall, when all fees and franchise taxes have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of withdrawal to which he shall affix the copy.

B. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this State shall cease.

[Amended by Acts 1979, 66th Leg., p. 232, ch. 120, § 45, eff. May 9, 1979.]

Art. 8.14. Withdrawal or Termination of Foreign Corporation

A. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) That the corporation is not transacting business in this state;

(3) That the corporation surrenders its authority to transact business in this state;

(4) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the Secretary of State;

(5) A post office address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him;

(6) A statement that all sums due, or accrued, to this state have been paid, or that adequate provision has been made for the payment thereof;

(7) A statement that all known creditors or claimants have been paid or provided for and that the corporation is not involved in or threatened with litigation in any court in this state.

B. The application for withdrawal may be made on forms promulgated by the Secretary of State and shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the application.

C. When the existence of a foreign corporation terminates because of dissolution, merger, or otherwise, a certificate from the proper officer in the jurisdiction of the corporation's incorporation evidencing the termination shall be filed with the Secretary of State.

[Amended by Acts 1981, 67th Leg., p. 846, ch. 297, § 30, eff. Aug. 31, 1981.]

Art. 8.16. Revocation of Certificate of Authority

[See Compact Edition, Volume 2 for text of A]

B. The certificate of authority of a foreign corporation to transact business in this state may be revoked by order of the Secretary of State when it is established that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise taxes, or penalties prescribed by law when the same have become due any payable; or

(2) The corporation has failed to maintain a registered agent in this state as required by law; or

(3) The corporation has changed its corporate name and has failed to file with the Secretary of State within thirty days after such change of name became effective, an application for an amended certificate of authority, or that the corporation has changed its corporate name and that the newly adopted name is not available for use in this state; or

(4) The corporation has failed to pay the filing fee for the corporation's certificate of authority or the initial franchise tax deposit, or the fee or tax was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No foreign corporation shall have its certificate of authority to transact business in this state revoked under Subsection (1), (2), or (3) of Section B hereof unless the Secretary of State, or other state agency to which such report, taxes, fees, penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such revocation to correct the neglect, omission or delinquency.

(2) When the certificate of authority of a foreign corporation to transact business in this state is revoked under Subsection (4) of Section B of this article, the Secretary of State shall give the corporation notice of the revocation by regular mail addressed to its registered office, its principal place of business, the last known address of one of its officers or directors, or any other known place of business of the corporation.

[See Compact Edition, Volume 2 for text of D to G]

[Amended by Acts 1981, 67th Leg., p. 846, ch. 297, § 31, eff. Aug. 31, 1981.]

PART NINE

Art. 9.08. Greater or Lesser Voting Requirements for Certain Corporate Actions

[See Compact Edition, Volume 2 for text of A]

B. If pursuant to Section A of this article, any provision of the articles of incorporation requires the vote or concurrence of the holders of a greater number of shares, or of any class or series of the shares, than is required by this Act, that provision of the articles of incorporation may not be amended or modified directly or indirectly by any vote or concurrence less than the greater number unless otherwise provided in the articles of incorporation.

[Amended by Acts 1981, 67th Leg., p. 3117, ch. 818, § 8, eff. Aug. 31, 1981.]

PART TEN

Art. 10.01. Filing and Filing Fees

A. The Secretary of State is authorized and required to collect for the use of the State the following fees:

(1) Filing articles of incorporation of a domestic corporation and issuing a certificate of incorporation, One Hundred Dollars ($100.00).

(2) Filing articles of amendment of a domestic corporation and issuing a certificate of amendment, One Hundred Dollars ($100.00).

(3) Filing articles of merger or consolidation, whether the surviving or new corporation be a domestic or foreign corporation, Two Hundred Dollars ($200.00).

(4) Filing an application of a foreign corporation for a certificate of authority to transact business in this State and issuing such a certificate of authority, Five Hundred Dollars ($500.00).

(5) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this State and issuing such an amended certificate of authority, One Hundred Dollars ($100.00).

(6) Filing restated articles of incorporation of a domestic corporation, Two Hundred Dollars ($200.00).

(7) Filing application for reservation of corporate name and issuing certificate therefor, Ten Dollars ($10.00).

(8) Filing notice of transfer of reserved corporate name and issuing a certificate therefor, Ten Dollars ($10.00).

(9) Filing application for registration of corporate name and issuing a certificate therefor, Fifty Dollars ($50.00).

(10) Filing application for renewal of registration of corporate name and issuing a certificate therefor, Fifty Dollars ($50.00).

(11) Filing statement of change of registered office or registered agent, or both, Ten Dollars ($10.00).

(12) Filing statement of change of address of registered agent, Ten Dollars ($10.00).

(13) Filing statement of resolution establishing series of shares, Ten Dollars ($10.00).

(14) Filing statement of cancellation of redeemable shares, Ten Dollars ($10.00).

(15) Filing statement of cancellation of re-acquired shares, Ten Dollars ($10.00).

(16) Filing statement of reduction of stated capital, Ten Dollars ($10.00).

(17) Filing articles of dissolution and issuing certificate therefor, Ten Dollars ($10.00).

(18) Filing application for withdrawal and issuing certificate therefor, Ten Dollars ($10.00).

(19) Filing certificate from home state that foreign corporation is no longer in existence in said state, Ten Dollars ($10.00).

(20) Maintaining a record of service of any process, notice or demand upon the Secretary of State as agent for foreign and domestic corporations and for any foreign association, joint stock company, partnership, or nonresident natural person, Ten Dollars ($10.00).

(21) Filing a bylaw or agreement restricting transfer of shares or securities other than as an amendment to the articles of incorporation, Ten Dollars ($10.00).

(22) Filing any instrument pursuant to this Act not expressly provided for above, Ten Dollars ($10.00).

B. Except as otherwise expressly provided in this Act, any instrument to be filed pursuant to this Act shall be executed by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such instrument, and the original and a copy of the instrument shall be delivered to the Secretary of State with copies attached thereto of any document incorporated by reference in or otherwise made a part of such instrument, or to be filed by means of such instrument. If the Secretary of State finds that such instrument conforms to law, he shall, when all franchise taxes and fees have been paid as prescribed by law:

(a) endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof;

(b) file the original in his office;

(c) issue any certificate required by this Act relating to the subject matter of the filed instrument; and

(d) return the copy, affixed to any certificate required to be issued by the Secretary of State, to the corporation or its representative.

[Amended by Acts 1975, 64th Leg., p. 321, ch. 134, § 21, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 232, ch. 120, § 46, eff. May 9, 1979; Acts 1981, 67th Leg., p. 847, ch. 297, § 32, eff. Aug. 31, 1981.]

PART TWELVE

Art. 12.01. Short Title

Citation

A. This part may be cited as the "Texas Close Corporation Law."

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.02. Definitions

In General

A. In this part, unless the context otherwise requires:

(1) "Close corporation" means a domestic corporation formed in conformance with the requirements of this part.

(2) "Ordinary corporation" means a domestic corporation that is not a close corporation.

(3) "Shareholders' agreement" means a written agreement regulating any aspect of the business and affairs of a close corporation or the relations among its shareholders that has been executed in conformance with Article 12.33 of this Act.

(4) "Close corporation provision" means a provision in the articles of incorporation of a close corporation or in a shareholders' agreement.

Cross-Reference

B. Article 12.51 of this Act provides definitions of terms that pertain to judicial proceedings concerning a close corporation.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.03. Applicability

Part Twelve

A. This part applies only to a close corporation.

Other Parts

B. To the extent not inconsistent with this part, all other parts of this Act apply to a close corporation.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

[Articles 12.04 to 12.10 reserved for expansion]

Art. 12.11. Articles of Incorporation

In General

A. In addition to any provision required or permitted to be set forth in the articles by Article 3.02 of this Act the articles of incorporation of a close corporation, whether original, amended, or restated, must include the following statement: "This corporation is a close corporation."

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.12. Formation of a Close Corporation

In General

A. A close corporation shall be formed in conformance with Part Three and Article 12.11 of this Act.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.13. Adoption of Close Corporation Status

By Amendment of Articles of Incorporation

A. An ordinary corporation may become a close corporation by amending its articles of incorporation in conformance with Part Four and Article 12.11 of this Act. An amendment adopting close corporation status must be approved by the affirmative vote of the holders of all the outstanding shares of each class, whether or not entitled to vote on the amendment by the articles of incorporation of the ordinary corporation.

Through Merger or Consolidation

B. A surviving or new corporation resulting from a merger or consolidation in conformance with Part Five of this Act may become a close corporation if as part of the plan of merger or consolidation its articles of incorporation conform with Article 12.11 of this Act. Any plan of merger or consolidation adopting close corporation status must be approved by the affirmative vote of the holders of all the outstanding shares, and of each class of shares, of each corporation that is party to the merger or consolidation, whether or not entitled to vote on the plan by the articles of incorporation of the corporation.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.14. Existing Close Corporation

In General

A. If an existing corporation that elected to become a close corporation in conformance with former Article 2.30–1 of this Act has not terminated that status before the effective date of this part:

(1) the corporation is considered to be a close corporation under this part;

(2) a provision in its articles of incorporation authorized by Section G or H of former Article 2.30–1 of this Act or by former Article 2.30–5 of this Act continues to be valid and enforceable so long as its status as a close corporation has not been terminated;

(3) an agreement among its shareholders in conformance with former Article 2.30–2 of this Act is considered to be a shareholders' agreement, if the agreement conforms with Articles 12.32 through 12.37 of this Act; and

(4) any certificate representing its shares issued or delivered after the effective date of this part, whether in connection with an original issue of shares, a transfer of shares, or otherwise, must conform with Article 12.39 of this Act.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

[Articles 12.15 to 12.20 reserved for expansion]

Art. 12.21. Termination of Close Corporation Status

In General

A. A close corporation terminates its status as a close corporation:

(1) on filing a statement of termination in conformance with Article 12.22 of this Act;

(2) by amending its articles of incorporation in conformance with Part Four of this Act to delete from its articles the statement that it is a close corporation;

(3) through a merger or consolidation in conformance with Part Five of this Act unless the plan of merger or consolidation provides that the surviving or new corporation will continue as or become a close corporation and the plan has been approved by the affirmative vote or consent of the holders of all the outstanding shares, and of each class of shares, of the close corporation, whether or not entitled to vote on the plan by the articles of incorporation; or

(4) when termination is decreed in a judicial proceeding to enforce a close corporation provision providing for the termination.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.22. Statement of Termination; Filing; Notice

In General

A. If a close corporation provision specifies a time or event, whether or not identifiable by persons dealing with the close corporation, that will terminate close corporation status, the termination becomes effective on the occurrence of the specified time or event and the filing of a statement of termination of close corporation status in conformance with this article.

Execution, Delivery and Form

B. Promptly after the time or event specified in a close corporation provision for termination of close corporation status has occurred, a statement of termination of close corporation status shall be executed on behalf of the close corporation by its president or a vice-president and by its secretary or an assistant secretary and shall be verified by one of the officers signing the statement. A copy of the applicable close corporation provision must be included in or attached to the statement. The original and a copy of the statement and the inclusion or attachment shall be delivered to the Secretary of State. The statement must set forth:

(1) the name of the corporation;

(2) a statement that the corporation has terminated its status as a close corporation in accordance with the included or attached close corporation provision; and

(3) the time or event that caused the termination and, in the case of an event, the approximate date of the event.

Filing

C. If the Secretary of State finds that the statement of termination of close corporation status conforms to law, the Secretary of State shall, when all fees and franchise taxes have been paid as required by law:

(1) endorse on the original and the copy the word "Filed" and the month, day, and year of the filing of the statement;

(2) file the original in the office of the Secretary of State; and

(3) return the copy to the corporation or its representative.

Effect of Filing

D. On the filing of the statement of termination of close corporation status, the articles of incorporation of the close corporation are considered to be amended to delete from the articles the statement that it is a close corporation and the corporation's status as a close corporation terminates.

Notice to Shareholders

E. On receipt of the filed copy of the statement of termination from the Secretary of State as provided by Section C of this article, the corporation shall deliver a copy of the statement to each shareholder of the corporation, either personally or by mail. If mailed, the copy is considered to be delivered when deposited in the United States mail, postage prepaid, addressed to the shareholder at his address as it appears on the stock transfer books of the corporation. Failure to deliver the notice does not affect the validity of termination of close corporation status.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.23. Effect of Termination of Close Corporation Status

In General

A. A close corporation that terminates its status as a close corporation and becomes an ordinary corporation is subject to the provisions of this Act as if it had not elected close corporation status under this part.

Effect on Shareholders' Agreement

B. The effect of termination of close corporation status on a shareholders' agreement is governed by Section E, Article 12.36 of this Act.

Reinstatement of Governance by Board of Directors

C. If, at the time termination of close corporation status has become effective, the close corporation's business and affairs have been managed other than by a board of directors, as permitted by Article 12.31 of this Act, governance by a board of directors is instituted or reinstated:

(1) if a shareholders' agreement so provides, in the manner stated therein or by the persons named in the agreement to serve as the interim board of directors; or

(2) regardless of whether or not a shareholders' agreement contains a governing provision if all the parties to the agreement so agree, by a shareholders' meeting, to elect a board of directors.

Shareholders' Meeting

D. A shareholders' meeting required by Section C of this article shall be promptly called after termination of close corporation status has become effective. If a meeting is not called before the 31st day after the day on which termination becomes effective, any shareholder, whether or not entitled to call a shareholders' meeting or vote at such a meeting, has the power to call the meeting on the notice required by Article 2.25 of this Act. At the meeting there shall be elected the number of directors specified in the articles of incorporation or bylaws, or in the absence of such a specification, three directors.

Term of Service

E. The directors succeeding to the management of the corporation as provided in Section C of this article shall serve until the next annual meeting of shareholders and until their successors shall have been elected and qualified. Until directors are elected, the shareholders of the corporation shall act as the board of directors and the business and affairs of the corporation shall be conducted in conformance with Article 12.37 of this Act.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

[Articles 12.24 to 12.30 reserved for expansion]

Art. 12.31. Governance of Close Corporation Affairs

Management

A. A close corporation shall be managed:

(1) by a board of directors in the same manner an ordinary corporation is managed by its board of directors under this Act; or

(2) in the manner provided for in its articles of incorporation or in a shareholders' agreement.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.32. Shareholders' Agreement—In General

Close Corporation Provisions

A. All shareholders of a close corporation may make one or more shareholders' agreements. The business and affairs of a close corporation or the relations among the shareholders that may be regulated by a shareholders' agreement include without limitation:

(1) management of the business and affairs of the close corporation with or without a board of directors, by its shareholders, or in whole or part by one or more of its shareholders or by one or more persons not shareholders;

(2) buy-sell, first option, first refusal, or similar arrangements with respect to the close corporation's shares or other securities, and restrictions on their transfer, including restrictions beyond those permitted to be imposed by Article 2.22 of this Act;

(3) declaration and payment of dividends and other distributions, whether or not in proportion to ownership of shares, in amounts permitted by this Act or the manner in which profits or losses shall be apportioned;

(4) restrictions on the rights of a transferee of shares or assignee to participate in the management or administration of the close corporation's business and affairs during the term of the shareholders' agreement;

(5) rights of one or more shareholders to dissolve the close corporation at will or on the occurrence of a specified event or contingency in which case the dissolution of the close corporation shall proceed as if all of its shareholders had consented in writing to dissolution of the close corporation as provided by Article 6.02 of this Act;

(6) exercise or division of voting power either in general or in regard to specified matters by or among the shareholders of the close corporation or other persons, including without limitation:

(a) voting agreements and voting trusts that need not conform with Article 2.30 of this Act;

(b) requiring the vote or consent of the holders of a greater or lesser number of shares than is otherwise required by this Act or other law, including any action for termination of close corporation status;

(c) granting one or some other specified number of votes for each shareholder; and

(d) permitting any action for which this Act requires approval by the vote of the board of directors or by a vote of the shareholders of an ordinary corporation or by both, to be taken without such a vote, in the manner provided in the shareholders' agreement;

(7) terms and conditions of employment of any shareholder, director, officer, or other employee of the close corporation, regardless of the length of the period of employment;

(8) the natural persons who shall be directors, if any, and officers of the close corporation;

(9) arbitration of issues about which the shareholders may become deadlocked in voting or about which the directors or those empowered to manage the close corporation may become deadlocked and the shareholders are unable to break the deadlock;

(10) termination of close corporation status, including any right of dissent or other rights that shareholders who object to the termination may be granted;

(11) qualifications of persons who are or are not entitled to be shareholders of the close corporation;

(12) amendments to or termination of the shareholders' agreement; and

(13) any provision required or permitted by this Act to be set forth in the bylaws.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.33. Shareholders' Agreements — Procedures Required

Execution

A. A shareholders' agreement shall be executed:

(1) in the case of an existing close corporation, by each person who is then a shareholder, whether or not the shareholder has voting power;

(2) in the case of an existing ordinary corporation that pursuant to the agreement will adopt close corporation status in conformance with Article 12.13 of this Act, by each person who is then a shareholder, whether or not the shareholder has voting power; or

(3) in the case of a close corporation that is being formed in conformance with Article 12.12 of this Act, by each person who either is a subscriber to its shares or by the shareholders' agreement agrees to become a holder of its shares.

Amendment of Agreement

B. Unless otherwise provided in a shareholders' agreement, an amendment to the shareholders' agreement may be adopted only by the written consent of each person who would be required to execute the shareholders' agreement if it were being executed originally at the time of adoption of the amendment, whether or not the person has voting power in the close corporation.

Delivery of Shareholders' Agreement

C. The close corporation shall deliver a complete copy of any shareholders' agreement to each person who is bound by the shareholders' agreement and who is or will become a shareholder in the close

corporation as provided in Section A of this article when a certificate or certificates representing shares in the close corporation are delivered to the person. The close corporation shall also deliver a complete copy of any shareholders' agreement to each person to whom a certificate representing shares is issued and who has not received a complete copy of the agreement. Failure to deliver a complete copy of a shareholders' agreement as required by this section does not affect the validity or enforceability of the shareholders' agreement.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.34. Statement of Operation as a Close Corporation

In General

A. If on or after the formation of a close corporation or adoption of close corporation status, a close corporation begins to conduct its business and affairs pursuant to a shareholders' agreement that has become effective, the close corporation shall promptly execute and file a statement of operation as a close corporation with the Secretary of State.

Execution and Delivery

B. A statement of operation as a close corporation shall be executed on behalf of the close corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing the statement. The close corporation shall deliver the original and a copy of the statement to the Secretary of State. The statement must set forth:

(1) the name of the close corporation;

(2) a statement that the close corporation is being operated and its business and affairs are being conducted under the terms of a shareholders' agreement made pursuant to the Texas Close Corporation Law; and

(3) the date when the operation of the corporation began.

Filing

C. If the Secretary of State finds that the statement of operation as a close corporation conforms to law, the Secretary of State shall, when all fees and franchise taxes have been paid as required by law:

(1) endorse on the original and the copy the word "Filed" and the month, day, and year of the filing of the statement;

(2) file the original in the office of the Secretary of State; and

(3) return the copy to the close corporation or its representative.

Effect of Filing

D. On the filing of the statement of operation as a close corporation, the fact that the close corporation is being operated and its business and affairs are being conducted under the terms of a shareholders' agreement becomes a matter of public record.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.35. Validity and Enforceability of Shareholders' Agreement

In General

A. A shareholders' agreement, if executed in conformance with Article 12.33 of this Act, is valid and enforceable in accordance with its terms notwithstanding the elimination of a board of directors, notwithstanding any restriction imposed on the discretion or powers of the board of directors or those empowered to manage the close corporation, and notwithstanding that the effect of the shareholders' agreement is to treat the business and affairs of the close corporation as if it were a partnership or in a manner that would otherwise be appropriate only among partners.

Enforcement

B. The close corporation, any of its shareholders, or any person who is a party to a shareholders' agreement may initiate a proceeding to enforce the shareholders' agreement in conformance with Article 12.52 of this Act.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.36. Binding Effect of Shareholders' Agreement

Persons Bound

A. A shareholders' agreement, if executed in conformance with Article 12.33 of this Act, is considered to be an agreement among all the shareholders of the close corporation and is binding and enforceable in accordance with its terms on all shareholders of the close corporation regardless of whether a particular shareholder acquired shares in the close corporation by purchase, gift, bequest, or otherwise, or whether the shareholder had actual knowledge of the existence of the shareholders' agreement at the time of acquiring shares. A transferee or assignee of shares of a close corporation with respect to which there is a shareholders' agreement is bound by the shareholders' agreement for all purposes whether or not the transferee or assignee executed or was aware of the agreement.

Delivery of Copy to Transferee

B. Before the transfer of any shares of a close corporation as to which there is a shareholders' agreement, the transferor shall deliver a complete copy of the shareholders' agreement to the transferee. If the transferor fails to do so:

(1) the validity and enforceability of the shareholders' agreement against all shareholders of the corporation, including the transferee, is not affected;

(2) the right, title, or interest of the transferee in the shares transferred is not adversely affected; and

(3) the transferee is entitled to obtain on demand a complete copy of the shareholders' agreement from the transferor or from the close corporation at the expense of the transferor.

Effect of Statement on Share Certificate and Delivery of Shareholders' Agreement

C. If the certificates representing shares of a close corporation contain the statements required by Section A, Article 12.39 of this Act, and a complete copy of each shareholders' agreement has been delivered as required by Section C, Article 12.33 of this Act, each holder, transferee, or other person claiming an interest in the shares of the close corporation is conclusively presumed to have knowledge of any close corporation provision in effect at the time of the transfer.

When Party No Longer Bound

D. A person ceases to be a party to, and bound by, a shareholders' agreement, notwithstanding the person's signature to the agreement, when the person ceases to be a shareholder of the close corporation unless the person's attempted cessation as a shareholder was in violation of Section B of this article or the shareholders' agreement or unless the shareholders' agreement provides to the contrary. Cessation as a party to a shareholders' agreement or as a shareholder does not relieve a person of any liability the person may have incurred for breach of the shareholders' agreement.

Termination of Agreement

E. A shareholders' agreement terminates when the close corporation terminates its status as a close corporation except that if the shareholders' agreement so provides, the agreement or any provision of the agreement continues to be valid and enforceable to the extent permitted for an ordinary corporation by this Act or other law.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.37. Responsibility of Shareholders for Managerial Acts

In General

A. This article applies only to a close corporation whose business and affairs, pursuant to a shareholders' agreement, are managed in whole or in part by its shareholders or any other person or persons rather than solely by a board of directors.

Shareholders Deemed Directors

B. Whenever the context of this Act requires, the shareholders of the close corporation are considered to be directors of the close corporation for purposes of applying any provision of this Act other than with respect to the election and removal of directors. Any requirement that an instrument filed with any governmental agency contain a statement that a specified action has been taken by the board of directors is satisfied by a statement that the corporation is a close corporation having no board of directors and that the action was approved by the shareholders of the close corporation, or by the persons empowered to manage the business and affairs of the close corporation, pursuant to a shareholders' agreement.

Liabilities

C. The shareholders of the close corporation are subject to the liabilities imposed on directors by this Act or other law for any managerial acts or omissions, relating to any aspect of the business and affairs of the close corporation, taken by the shareholders or by any other persons empowered to manage the business and affairs of the close corporation pursuant to a shareholders' agreement if the action is required by this Act or other law to be taken by the board of directors.

Mode of Taking Action

D. Any action that this Act requires or permits to be taken by the board of directors of an ordinary corporation shall be taken, if required, or may be taken, if permitted, by action of the shareholders of the close corporation at a meeting of the shareholders or in the manner permitted by a shareholders' agreement, this article, or this Act, without a meeting. Unless otherwise provided in the articles of incorporation of the close corporation or a shareholders' agreement, such an action is binding on the close corporation if taken on the basis of:

(1) the affirmative vote of the holders of a majority of all outstanding shares entitled to vote on the action; or

(2) consent by all the shareholders of the close corporation, which may be proven by:

(a) the full knowledge of the action by all the shareholders and their failure to object to the action in a timely manner;

(b) a consent in writing to the action in conformance with Article 9.10 of this Act or any other writing executed by or on behalf of all the shareholders reasonably evidencing the consent; or

(c) any other means reasonably evidencing the consent.

Limitation of Liability

E. A shareholder of a close corporation is not liable by virtue of a shareholders' vote or shareholder action without a vote unless the shareholder had the right to vote or consent to the action. A shareholder of a close corporation, whether with or without right to vote or consent, is not liable for any action taken by the shareholders, or by the persons empowered to manage the business and affairs of the close corporation pursuant to a shareholders' agreement if the shareholder dissents from, and has not voted for or consented to, the action. The dissent may be proven by:

(1) an entry in the minutes of the meeting of shareholders;

(2) a written dissent filed with the person acting as secretary of the meeting before the adjournment of the meeting;

(3) a written dissent sent by registered mail to the secretary of the close corporation promptly after the meeting or after a consent in writing was obtained from the other shareholders; or

(4) any other means reasonably evidencing the dissent.

Lack of Formalities; Treatment as Partnership

F. Neither the failure of a close corporation to observe usual formalities or requirements prescribed for an ordinary corporation by this Act relating to the exercise of corporate powers or the management of a corporation's business and affairs nor the performance of a shareholders' agreement that treats the close corporation as if it were a partnership or in a manner that otherwise is appropriate only among partners:

(1) shall be a factor in determining whether to impose personal liability on the shareholders for the close corporation's obligations by disregarding the separate entity of the close corporation or otherwise;

(2) is grounds for invalidating an otherwise valid shareholders' agreement; or

(3) shall affect the status of the close corporation as a corporation under this Act or in law.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.38. Other Agreements Among Shareholders Permitted

In General

A. Articles 12.31 through 12.37 of this Act do not prohibit or impair any other agreement among two or more shareholders of an ordinary corporation permitted by this Act or by other law.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.39. Close Corporation Share Certificates

Required Statements

A. In addition to any matter required or permitted to be stated on a certificate representing shares by this Act or other law, each certificate representing shares issued by a close corporation must state conspicuously on its face or the back: "These shares are issued by a close corporation as defined by the Texas Business Corporation Act. Under that Act, a shareholders' agreement may provide for management of a close corporation by the shareholders or in other ways different from an ordinary corporation. This may subject the holder of this certificate to certain obligations and liabilities not otherwise imposed on shareholders of an ordinary corporation. On any sale or transfer of these shares, the transferor is obligated to deliver to the transferee a complete copy of any shareholders' agreement.

Failure to Contain Statements

B. Notwithstanding any provision of this Act, including Article 2.19, to the contrary, the status of a corporation as a close corporation is not affected by the failure of any share certificate to contain the statements required by Section A of this article.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

[Articles 12.40 to 12.50 reserved for expansion]

Art. 12.51. Judicial Proceedings Relating to a Close Corporation

Definitions

A. As used in this article and the succeeding articles of this part, unless the context otherwise requires:

(1) "Court of competent jurisdiction" means a district court in the county in which the close corporation has its principal office.

(2) "Provisional director" means a person appointed by a court of competent jurisdiction in conformance with Article 12.53 of this Act.

(3) "Custodian" means a person appointed by a court of competent jurisdiction in conformance with Article 12.54 of this Act.

(4) "Shareholder" means any person who is a record or beneficial owner of shares in a close corporation, including any person holding a beneficial interest in the shares under an inter vivos, testamentary, or voting trust, or any person who is the personal representative, as that term is defined in the Texas Probate Code, of a record or beneficial owner.

Proceedings Authorized

B. In addition to any other judicial proceeding pertaining to an ordinary corporation provided for in this Act or by law, a proceeding may be brought in a court of competent jurisdiction by a close corporation or a shareholder to:

(1) enforce a close corporation provision;

(2) appoint a provisional director; or

(3) appoint a custodian.

Notice; Intervention

C. Notice of the commencement of a proceeding must be given in the manner prescribed by this Act or other law and otherwise in a manner consistent with due process of law as directed by the court, to the close corporation, if not a plaintiff, and to each shareholder that is not a plaintiff. The close corporation or any shareholder may intervene in the proceeding.

Proceeding Nonexclusive

D. Except as otherwise provided in Section E of this article, the right of the close corporation or a shareholder to commence a proceeding permitted by Section B of this article is in addition to any other right or remedy the plaintiff may have under this Act or other law.

Unavailability of Proceeding

E. A shareholder may not commence a proceeding before any nonjudicial remedy in a close corporation provision, such as arbitration, for resolution of the issues that are in dispute has been exhausted unless the shareholder proves that the close corporation, the shareholders as a whole, or the shareholder will suffer irreparable harm before the nonjudicial remedy is exhausted. A shareholder may not commence a proceeding to seek damages or other monetary relief if the shareholder has the right to dissent from any proposed action and to receive the fair value of his shares under this Act or a shareholders' agreement.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.52. Judicial Proceedings to Enforce Close Corporation Provision

In General

A. A court of competent jurisdiction, in a judicial proceeding brought under this article, shall enforce a close corporation provision without regard to whether or not there is an adequate remedy at law. The enforcement may be by injunction, specific performance, or other relief that the court determines is fair and equitable under the circumstances, including without limitation:

(1) damages instead of or in addition to specific enforcement;

(2) appointment of a provisional director or custodian;

(3) appointment of a receiver for specific assets of the close corporation in conformance with Article 7.04 of this Act;

(4) appointment of a receiver to rehabilitate the close corporation in conformance with Article 7.05 of this Act;

(5) subject to Section B of this article, liquidation of the assets and business and involuntary dissolution of the close corporation and appointment of a receiver to effect the liquidation in conformance with Article 7.06 of this Act; and

(6) termination of close corporation status, but termination may not be decreed unless the court determines that all other remedies in law or in equity, including appointment of a provisional director, custodian, or other type of receiver, are inadequate and that the size of the close corporation, the nature of its business, the number of its shareholders, or their relationship to one another or other similar factors make it wholly impractical to continue close corporation status.

Liquidation; Involuntary Dissolution; Receivership

B. Except where a shareholder seeking relief had the right to dissolve the close corporation under a shareholders' agreement, liquidation, involuntary dissolution, and receivership may not be decreed unless the court determines that all other remedies in law or in equity, including appointment of a provisional director, custodian, or other type of receiver, are inadequate.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.53. Judicial Proceeding to Appoint Provisional Director for Close Corporation

In General

A. A court of competent jurisdiction, in a proceeding brought under this article, shall appoint a provisional director for a close corporation on proof that the directors or the persons empowered to manage the business and affairs of the close corporation pursuant to a shareholders' agreement are so divided respecting the management of its affairs that the votes or consents required to take action on behalf of the close corporation cannot be obtained with the consequence that its business and affairs can no longer be conducted to the general advantage of the shareholders.

Status of Provisional Director

B. The appointment of a provisional director is subject to the following provisions:

(1) a provisional director must be an impartial person who is not a shareholder, a party to a shareholders' agreement, a person empowered to manage the close corporation pursuant to a shareholders' agreement, or a creditor of the close corporation or of any of its subsidiaries or affiliates and whose further qualifications, if any, are determined by the court;

(2) a provisional director has all the rights and powers of an elected director of the close corporation, or the rights and powers of vote or consent of a shareholder or other persons who have been empowered to manage the business and affairs of the close corporation pursuant to a shareholders' agreement (with the voting power provided by order of the court), including the right to notice of, and to vote at, meetings of directors or shareholders, as the case may be;

(3) a provisional director shall serve until removed by order of the court or by a vote of a majority of the directors or the holders of a majority of the shares having voting power, as the case may be, or if a close corporation provision requires the concurrence of a greater or different majority for action by the directors or the shareholders, as the case may be, then by that majority; and

(4) the compensation of a provisional director shall be determined by an agreement between the provisional director and the close corporation subject to the approval of the court, which may fix the compensation in the absence of an agreement or in the event of a disagreement between the provisional director and the close corporation.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

Art. 12.54. Judicial Proceeding to Appoint Custodian for Close Corporation

In General

A. A court of competent jurisdiction in a judicial proceeding brought under this article shall appoint a custodian for a close corporation on proof that:

(1) at any meeting held for the election of directors, the shareholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired on qualification of their successors;

(2) the business of the close corporation is suffering or is threatened with irreparable injury because the directors, or the shareholders or the persons empowered to manage the business and affairs of the close corporation pursuant to a shareholders' agreement or otherwise, are so divided respecting the management of the affairs of the close corporation that the required vote or consent to take action on behalf of the close corporation cannot be obtained and any remedy with respect to the deadlock in a close corporation provision has failed; or

(3) the plaintiff or intervenor has the right to dissolve the close corporation under a shareholders' agreement as permitted by Article 12.32 of this Act.

Status of Custodian

B. To be eligible to serve as a custodian, a person must comply with all the qualifications required of a receiver under Article 7.07 of this Act. A person who qualifies as a custodian has all of the powers and duties and the title of a receiver appointed under Articles 7.05 through 7.07 of this Act but the authority of the custodian is to continue the business of the close corporation and not to liquidate its affairs and distribute its assets, except when the court otherwise orders or as provided by Subsection A(3) of this article. If the condition necessitating the appointment of a custodian is remedied, other than by liquidation or dissolution, the custodianship is to be terminated immediately and the management of the close corporation shall be restored to the directors or to the shareholders of the close corporation or to the persons empowered to manage the business and affairs of the close corporation pursuant to a shareholders' agreement, as the case may be.

[Added by Acts 1981, 67th Leg., p. 3102, ch. 818, § 1, eff. Aug. 31, 1981.]

TITLE 32

CORPORATIONS

CHAPTER ONE. TEXAS MISCELLANEOUS CORPORATION LAWS ACT

PART TWO

Article
1302–2.09A. Alternative Rate.
1302–2.10. Corporations Discounting with Federal Intermediate Credit Bank; Interest Rate.

PART SEVEN

1302–7.01. Procedure to Correct Inaccurate or Defective Instrument.
1302–7.02. Articles of Correction.
1302–7.03. Filing Articles of Correction.
1302–7.04. Effect of Certificate of Correction.
1302–7.05. Fee.

PART TWO

Art. 1302–2.02. Notice by Firm

A. Whenever any banking, mercantile or other business firm desires to become incorporated without a change of firm name, such firm shall, in addition to the notice of dissolution required at Common Law, give notice of such intention to become incorporated for at least four (4) consecutive weeks in some newspaper published in the county in which such firm has its principal business office, if there be a newspaper in such county; and, if not, then in some newspaper published in some adjoining county; provided, however, that such notice shall only be published one (1) day in each week during the said four (4) weeks. Until such notice has been so published for the full period above-named, no change shall take place in the liability of such firm or the members thereof to those dealing with the firm or its members. It shall be a defense that a claimant had actual notice or knowledge of such incorporation.

[Amended by Acts 1977, 65th Leg., p. 201, ch. 100, § 1, eff. May 4, 1977.]

Art. 1302–2.06. Consideration for Indebtedness; Guaranties

A. No corporation, domestic or foreign, doing business in this state shall create any indebtedness whatever except for money paid, labor done, which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received, reasonably worth at least the sum at which it was taken by the corporation, subject to the provisions of Sections B and C of this Article. In the absence of fraud in the transaction, the judgment of the Board of Directors or the shareholders, as the case may be, as to the value of the consideration received for any such indebtedness shall be conclusive.

B. Notwithstanding Section A of this Article, any corporation, domestic or foreign, doing business in this state shall have the power and authority to make a guaranty if the guaranty reasonably may be expected to benefit, directly or indirectly, the guarantor corporation. For purposes of this section and Section C of this Article, "guaranty" means a guaranty, mortgage, pledge, security agreement, or other agreement making the guarantor corporation or its assets responsible respecting the contracts, securities, or other obligations of any person (including, but not limited to, any domestic or foreign corporation, partnership, association, joint venture, or trust, but excluding any officer or director of such guarantor corporation). The decision of the Board of Directors that the guaranty may reasonably be expected to benefit, directly or indirectly, the guarantor corporation shall be binding upon the guarantor corporation, and no guaranty made by a corporation in accordance with the provisions of this Section B shall be invalid or unenforceable as against such corporation, unless such guaranty is sought to be enforced by a person who participated in a fraud on the guarantor corporation resulting in the making of the guaranty or by a person who had notice of such fraud before he acquired his rights under the guaranty. Nothing herein contained shall prevent a suit (1) prior to the making of a guaranty by a corporation, by a shareholder in a representative suit against the guarantor corporation, to enjoin the making of such guaranty on the ground that such guaranty could not reasonably be expected to benefit, directly or indirectly, the guarantor corporation, or (2) after the making of a guaranty by a corporation, by the guarantor corporation, whether acting directly or through a receiver, trustee, or other legal representative or through a shareholder in a representative suit, against the directors who voted for or assented to the making of such guaranty for damages or other appropriate relief on the ground that such guaranty could not reasonably have been expected to benefit, directly or indirectly, the guarantor corporation, but such directors shall be entitled to assert any defenses which they may have under law.

C. In addition to the power and authority granted in Section B of this Article, any domestic or foreign corporation doing business in the state has the power and authority to make a guaranty re-

specting any subsidiary, parent, or affiliated corporation if the action is approved by the Board of Directors of the guarantor corporation. For the purposes of this section only:

(1) "subsidiary corporation" means a corporation, 100 percent of whose outstanding shares are owned at the time of the action:

(a) by the guarantor corporation itself;

(b) by one or more of the guarantor corporation's subsidiary corporations; or

(c) by the guarantor corporation and one or more of its subsidiary corporations;

(2) "parent corporation" means a corporation that at the time of the action owns 100 percent of the outstanding shares of the guarantor corporation:

(a) by itself;

(b) through one or more of its subsidiary corporations; or

(c) with one or more of its subsidiary corporations; and

(3) "affiliated corporation" means a corporation, 100 percent of whose outstanding shares are owned at the time of the action:

(a) by the parent corporation of the guarantor corporation;

(b) by one or more of the parent corporation's subsidiary corporations; or

(c) by the parent corporation and one or more of its subsidiary corporations.

D. Nothing in Section B or C of this Article is intended or shall be construed to limit or deny to any corporation, domestic or foreign, the right or power to do or perform any act which it is or may be empowered or authorized to do or perform under any other laws of the State of Texas now in force or hereafter enacted. Provided, however, Sections B and C of this Article shall not apply to nor enlarge the powers of any corporation, domestic or foreign, that does business pursuant to any provision of the Insurance Code of Texas, whether licensed in Texas or not, nor shall those sections allow or permit any corporation, not licensed under the Insurance Code of Texas, to engage in any character, type, class, or kind of fidelity, surety, or guaranty business or transaction subject to regulation under the Insurance Code.

[Amended by Acts 1977, 65th Leg., p. 1162, ch. 442, § 1, eff. Aug. 29, 1977.]

Art. 1302–2.10. Corporations Discounting with Federal Intermediate Credit Bank; Interest Rate

An agricultural credit corporation organized or operating under the laws of this state and discounting loans with any federal intermediate credit bank, in making loans to its borrowers or discounting notes of the borrowers of an agricultural credit corporation, may charge the borrower interest at a rate not to exceed three percent per annum plus the rate of discount established and promulgated by the Federal Intermediate Credit Banks.

[Added by Acts 1977, 65th Leg., p. 2068, ch. 820, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1167, ch. 566, § 1, eff. Aug. 27, 1979.]

Art. 1302–2.09A. Alternative Rate

Notwithstanding the provisions of Article 2.09 of this Act, any corporation, domestic or foreign, including but not limited to any charitable or religious corporation, may agree to and stipulate for any rate of interest that does not exceed a rate authorized by Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069—1.04, Vernon's Texas Civil Statutes).

[Added by Acts 1981, 67th Leg., p. 271, ch. 111, § 1, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 Act adding this article provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

PART THREE

Art. 1302–3.04. Repealed by Acts 1981, 67th Leg., p. 848, ch. 297, § 34, eff. Aug. 31, 1981

PART FOUR [REPEALED]

Arts. 1302–4.01 to 1302–4.07. Repealed by Acts 1981, 67th Leg., p. 848, ch. 297, § 34, eff. Aug. 31, 1981

Prior to repeal, arts. 1302–4.01 and 1302–4.02 were amended by Acts 1977, 65th Leg., p. 838, ch. 313, §§ 2, 3.

PART SEVEN

Art. 1302–7.01. Procedure to Correct Inaccurate or Defective Instrument

Whenever any instrument authorized to be filed with the Secretary of State under any statute to which this Act applies has been filed and is an inaccurate record of the corporate action referred to in the instrument, contains an inaccurate or erroneous statement, or was defectively or erroneously executed, sealed, acknowledged, or verified, the instrument may be corrected by articles of correction. Articles of correction must be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and must be verified by one of the officers signing the articles.

[Added by Acts 1981, 67th Leg., p. 831, ch. 297, § 1, eff. Aug. 31, 1981.]

Art. 1302–7.02. Articles of Correction

The articles of correction shall:

(1) set forth the name of the corporation;

(2) identify the instrument to be corrected by description and the date of its filing with the Secretary of State;

(3) identify the inaccuracy, error, or defect to be corrected; and

(4) set forth a statement in corrected form of the portion of the instrument to be corrected.

[Added by Acts 1981, 67th Leg., p. 831, ch. 297, § 1, eff. Aug. 31, 1981.]

Art.1302–7.03. Filing Articles of Correction

A. The original and a copy of the articles of correction shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of correction conform to law, the Secretary of State shall, when all fees have been paid as required by law:

(1) endorse on the original and the copy the word "Filed," and the month, day, and year that the articles are filed;

(2) file the original in the office of the Secretary of State; and

(3) issue a certificate of correction to which the Secretary of State shall affix the copy.

B. The certificate of correction, together with the copy of the articles of correction affixed to the certificate by the Secretary of State, shall be delivered to the corporation or its representative.

[Added by Acts 1981, 67th Leg., p. 831, ch. 297, § 1, eff. Aug. 31, 1981.]

Art. 1302–7.04. Effect of Certificate of Correction

A. After the issuance of the certificate of correction by the Secretary of State, the instrument as corrected is considered to have been filed on the date the original instrument was filed except as provided by Section B of this Article.

B. As to persons who are adversely affected by the correction, the instrument as corrected is considered to have been filed on the date the articles of correction were filed.

C. Any certificate issued by the Secretary of State before an instrument is corrected, with respect to the effect of filing the original instrument, is considered to be applicable to the instrument as corrected as of the date the instrument as corrected is considered to have been filed pursuant to this Article.

[Added by Acts 1981, 67th Leg., p. 831, ch. 297, § 1, eff. Aug. 31, 1981.]

Art. 1302–7.05. Fee

The Secretary of State shall collect, for the use of the State, a fee of Ten Dollars ($10) for filing articles of correction and issuing a certificate of correction.

[Added by Acts 1981, 67th Leg., p. 831, ch. 297, § 1, eff. Aug. 31, 1981.]

CHAPTER NINE. NON-PROFIT, COOPERATIVE, RELIGIOUS AND CHARITABLE

1. TEXAS NON–PROFIT CORPORATION ACT

Article
1396–2.23A. Financial Records and Annual Reports.

1. TEXAS NON–PROFIT CORPORATION ACT

Art. 1396–2.02. General Powers

A. Subject to the provisions of Sections B and C of this Article, each corporation shall have power:

(1) To have perpetual succession by its corporate name, unless a limited period of duration is stated in its articles of incorporation. Notwithstanding the articles of incorporation, the period of duration for any corporation incorporated before August 10, 1959, is perpetual if all fees and franchise taxes have been paid as provided by law.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed on, affixed to, or in any manner reproduced upon, instruments of any nature required to be executed by its proper officers.

(4) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with, real or personal property, or any interest therein, wherever situated, as the purposes of the corporation shall require, or as shall be donated to it.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets.

(6) To lend money to, and otherwise assist, its employees, but not to its officers and directors.

(7) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instruementality thereof.

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its affairs, carry on its operations, and have officers and exercise the powers granted by this Act in any state, territory, district, or possession of the United States, or any foreign country.

(11) To elect or appoint officers and agents of the corporation for such period of time as the corporation may determine and define their duties and fix their compensation.

(12) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes and in time of war to make donations in aid of war activities.

(14) To cease its corporate activities and terminate its existence by voluntary dissolution.

(15) Whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

(16) Any religious, charitable, educational, or eleemosynary institution organized under the laws of this State may acquire, own, hold, mortgage, and dispose of and invest its funds in real and personal property for the use and benefit and under the discretion of, and in trust for any convention, conference or association organized under the laws of this State or another state with which it is affiliated, or which elects its board of directors, or which controls it, in furtherance of the purposes of the member institution.

(17) To pay pensions and establish pension plans and pension trusts for all of, or class, or classes of its officer and employees, or its officers or its employees.

[See Compact Edition, Volume 2 for text of B and C]

[Amended by Acts 1977, 65th Leg., p. 837, ch. 313, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 174, ch. 96, § 1, eff. May 2, 1979.]

Art. 1396–2.05. Registered Office and Registered Agent

See [Compact Edition, Volume 2 for text of A and B]

C. The statement required by this Article shall be executed by the corporation by its president or a vice-president, and verified by him. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as prescribed by law:

(1) Endorse on the original and the copy the word "Filed" and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Deliver the copy to the corporation or its representative.

[See Compact Edition, Volume 2 for text of D]

[Amended by Acts 1979, 66th Leg., p. 213, ch. 120, § 1, eff. May 9, 1979.]

Art. 1396–2.06. Change of Registered Office or Agent

[See Compact Edition, Volume 2 for text of A]

B. The statement required by this Article shall be executed by the corporation by its president or vice-president, and verified by him. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as prescribed by law:

(1) Endorse on the original and the copy the word "Filed" and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

[See Compact Edition, Volume 2 for text of C]

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in triplicate (the original and two copies of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and both copies the word "filed" and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return one copy to such resigning registered agent.

(4) Return one copy to the corporation at the last known address of the corporation as shown in such written notice.

[Amended by Acts 1979, 66th Leg., p. 213, ch. 120, § 2, eff. May 9, 1979.]

Art. 1396–2.23A. Financial Records and Annual Reports

A. A corporation shall maintain current true and accurate financial records with full and correct entries made with respect to all financial transactions of the corporation, including all income and expenditures, in accordance with generally accepted accounting practices.

B. Based on these records, the board of directors or trustees shall annually prepare or approve a report of the financial activity of the corporation for the preceding year. The report must conform to accounting standards as promulgated by the American Institute of Certified Public Accountants and must include a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses, and balance sheets for all funds.

C. All records, books, and annual reports of the financial activity of the corporation shall be kept at the registered office or principal office of the corporation in this state for at least three years after the closing of each fiscal year and shall be available to the public for inspection and copying there during normal business hours. The corporation may charge for the reasonable expense of preparing a copy of a record or report.

D. A corporation that fails to maintain financial records, prepare an annual report, or make a financial record or annual report available to the public in the manner prescribed by this article is guilty of a Class B misdemeanor.

E. This article does not apply to:

(1) a corporation that solicits funds only from its members;

(2) a corporation which does not intend to solicit and receive and does not actually raise or receive contributions from sources other than its own membership in excess of $10,000 during a fiscal year;

(3) a proprietary school that has received a certificate of approval from the State Commissioner of Education, a public institution of higher education and foundations chartered for the benefit of such institutions or any component part thereof, a private institution of higher education with a certificate of authority to grant a degree issued by the Coordinating Board, Texas College and University System, or an elementary or secondary school;

(4) religious institutions which shall be limited to churches, ecclesiastical or denominational organizations, or other established physical places for worship at which religious services are the primary activity and such activities are regularly conducted;

(5) a trade association or professional society whose income is principally derived from membership dues and assessments, sales, or services;

(6) any insurer licensed and regulated by the State Board of Insurance;

(7) an organization whose charitable activities relate to public concern in the conservation and protection of wildlife, fisheries, and allied natural resources;

(8) an alumni association of a public or private institution of higher education in this state, provided that such association is recognized and acknowledged by the institution as its official alumni association.

[Added by Acts 1977, 65th Leg., p. 1947, ch. 773, § 1, eff. Jan. 1, 1978.]

Art. 1396–3.01. Incorporators

A. Three (3) or more natural persons, two (2) of whom must be citizens of the State of Texas, of the age of eighteen (18) years or more may act as incorporators of a corporation by signing and verifying the articles of incorporation for such corporation and delivering the original and a copy of the articles of incorporation to the Secretary of State.

[See Compact Edition, Volume 2 for text on B]

[Amended by Acts 1979, 66th Leg., p. 214, ch. 120, § 3, eff. May 9, 1979.]

Art. 1396–3.03. Filing of Articles of Incorporation

A. The original and a copy of the articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of incorporation conform to law, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of incorporation to which he shall affix the copy.

B. The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the Secretary of State shall be delivered to the incorporators or their representatives.

[Amended by Acts 1979, 66th Leg., p. 214, ch. 120, § 4, eff. May 9, 1979.]

Art. 1396–4.03. Articles of Amendment

A. The articles of amendment shall be executed by the corporation by its president or by a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

(1) The name of the corporation.

(2) If the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read. If the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added.

(3) Where there are members having voting rights, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(4) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

[Amended by Acts 1979, 66th Leg., p. 214, ch. 120, § 5, eff. May 9, 1979.]

Art. 1396–4.04. Filing of Articles of Amendment

A. The original and a copy of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of amendment to which he shall affix the copy.

B. The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

[Amended by Acts 1979, 66th Leg., p. 215, ch. 120, § 6, eff. May 9, 1979.]

Art. 1396–4.06. Restated Articles of Incorporation

[See Compact Edition, Volume 2 for text of A to C]

D. Such restated articles of incorporation shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and shall be verified by one of the officers signing such articles. The original and a copy of the restated articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the restated articles of incorporation conform to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a restated certificate of incorporation to which he shall affix the copy.

E. The restated certificate of incorporation, together with the copy of the restated articles of incorporation affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

[See Compact Edition, Volume 2 for text of F]

[Amended by Acts 1979, 66th Leg., p. 215, ch. 120, § 7, eff. May 9, 1979; Acts 1981, 67th Leg., p. 832, ch. 297, § 2, eff. Aug. 31, 1981.]

Art. 1396–5.04. Articles of Merger or Consolidation of Domestic Corporations

A. Upon such approval, articles of merger or articles of consolidation shall be executed by each corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles, and shall set forth:

(1) The plan of merger or the plan of consolidation.

(2) Where the members of any merging or consolidating corporation have voting rights, then as to each corporation (a) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

B. The original and a copy of the articles of merger or articles of consolidation shall be delivered

to the Secretary of State. If the Secretary of State finds that such articles conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of merger or a certificate of consolidation to which he shall affix the copy.

C. The certificate of merger or certificate of consolidation, together with the copy of the articles of merger or articles of consolidation affixed thereto by the Secretary of State, shall be returned to the surviving or new corporation, as the case may be, or its representative.

[Amended by Acts 1979, 66th Leg., p. 216, ch. 120, § 8, eff. May 9, 1979.]

Art. 1396–5.07. Merger or Consolidation of Domestic and Foreign Corporations

[See Compact Edition, Volume 2 for text of A]

B. Such merger or consolidation shall be carried out in the following manner:

(1) Each domestic corporation shall comply with the provisions of this Act with respect to merger or consolidation, as the case may be, of domestic corporations, except that if the surviving or new corporation is to be a foreign corporation, the plan of merger or consolidation shall specify the state under whose laws such surviving or new corporation is to be governed and the post office address of the registered or principal office of such surviving or new corporation in the state under whose laws it is to be governed; provided, however, that no domestic corporation shall be merged or consolidated with a foreign corporation unless and until a resolution authorizing such merger or consolidation shall receive, at a meeting of members of the domestic corporation, called and conducted in the same manner as provided by Article 5.03 of this Act, at least two-thirds (⅔) of the votes which members present at such meeting in person or by proxy are entitled to cast, and provided further that if any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, as to such corporation the resolution shall not be adopted unless it shall also receive at least two-thirds of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast, and provided further that if such a domestic corporation has no members, or no members having voting rights, the plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(2) If the surviving or new corporation, as the case may be, is a foreign corporation, it shall comply with the provisions of this Act with respect to foreign corporations if it is to transact business in this State, and in every case it shall file with the Secretary of State of this State:

(a) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which was a party to such merger or consolidation.

(b) An irrevocable appointment of the Secretary of State of this State as its agent to accept service of process in any such proceeding.

(3) Upon compliance by each domestic and foreign corporation which is a party to the merger or consolidation with the provisions of this Act with respect to merger or consolidation, and upon issuance by the Secretary of State of this State of the certificate of merger or the certificate of consolidation provided for in this Act, the merger or consolidation shall be effected in this State.

[See Compact Edition, Volume 2 for text of C]

[Amended by Acts 1981, 67th Leg., p. 832, ch. 297, § 3, eff. Aug. 31, 1981.]

Art. 1396–6.05. Article of Dissolution

A. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, or, in case its property and assets are not sufficient to satisfy and discharge all the corporation's liabilities and obligations, then when all the property and assets have been applied so far as they will go to the just and equitable payment of the corporation's liabilities and obligations, and all of the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act, articles of dissolution shall be executed by the corporation by its president or a vice-president, and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(1) The name of the corporation.

(2) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds (⅔) of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds (⅔) of the votes which members of any such class

who were present at such meeting in person or by proxy were entitled to cast, or (b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.

(4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor, or, in case the corporation's property and assets were not sufficient to satisfy and discharge all its liabilities and obligations, that all the property and assets have been applied so far as they would go to the payment thereof in a just and equitable manner and that no property or assets remained available for distribution among its members.

(5) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act; provided, however, that if assets were received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, there shall also be set forth a copy of the plan of distribution adopted as provided in this Act for the distribution of such assets, and a statement that distribution has been effected in accordance with such plan.

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

[Amended by Acts 1979, 66th Leg., p. 216, ch. 120, § 9, eff. May 9, 1979.]

Art. 1396–6.06. Filing of Articles of Dissolution

A. The original and a copy of such articles of dissolution shall be delivered to the Secretary of State. If the Secretary of State finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of dissolution to which he shall affix the copy.

B. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this Act.

[Amended by Acts 1979, 66th Leg., p. 217, ch. 120, § 10, eff. May 9, 1979.]

Art. 1396–7.01. Involuntary Dissolution; Reinstatement

[See Compact Edition, Volume 2 for text of A]

B. A corporation may be dissolved involuntarily by order of the Secretary of State when it is established that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise taxes or penalties prescribed by law when the same have become due and payable;

(2) The corporation has failed to maintain a registered agent in this state as required by law; or

(3) The corporation has failed to pay the filing fee for its articles of incorporation, or the fee was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No corporation shall be involuntarily dissolved under Subsection (1) or (2) of Section B hereof unless the Secretary of State, or other state agency with which such report, fees, taxes or penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such involuntary dissolution to correct the neglect, omission or delinquency.

(2) When a corporation is involuntarily dissolved under Subsection (3) of Section B of this article, the Secretary of State shall give the corporation notice of the dissolution by regular mail addressed to its registered office, its principal place of business, the last known address of one of its officers or directors, or any other known place of business of the corporation.

[See Compact Edition, Volume 2 for text of D to G]

[Amended by Acts 1981, 67th Leg., p. 833, ch. 297, § 4, eff. Aug. 31, 1981.]

Art. 1396–8.03. Corporate Name of Foreign Corporation

A. No certificate of authority shall be issued to a foreign corporation if the corporate name of such corporation:

(1) Contains any word or phrase which indicates or implies that it is organized for any

purpose other than one or more of the purposes contained in its articles of incorporation.

(2) Is the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any Act of this State, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a corporate name reserved or registered as permitted by the laws of this State; provided that a name may be similar if written consent is obtained from the existing corporation having the name deemed to be similar or the person, or corporation for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State. A certificate of authority shall be issued as provided by this Act to any foreign corporation having a name the same as, deceptively similar to, or, if no consent is given, similar to the name of any domestic corporation existing under the laws of this State or of any foreign corporation authorized to transact business or conduct affairs in this State, or a name the exclusive right to which is, at the time, reserved or registered in accordance with this Act, provided the foreign corporation qualifies and does business under a name that meets the requirements of this article. The foreign corporation shall set forth in the application for a certificate of authority the name under which it is qualifying and shall file an assumed name certificate in accordance with Chapter 36, Business & Commerce Code, as amended.

B. When a foreign non-profit corporation that is authorized to conduct affairs in this State changes its name to one under which a certificate of authority would not be granted to it on application for a certificate, the certificate of authority of the corporation is suspended, and after the suspension the corporation may not conduct any affairs in this State until it has changed its name to a name that is available to it under the laws of this State or until it has otherwise complied with this Act.

[Amended by Acts 1981, 67th Leg., p. 834, § 5, eff. Aug. 31, 1981.]

Art. 1396-8.04. Application for Certificate of Authority

A. A foreign corporation, in order to procure a certificate of authority to conduct affairs in this State, shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated and, if the corporation is required to qualify under a name other than its corporate name, the name under which the corporation is to be qualified.

(2) A statement that the corporation is a non-profit corporation.

(3) The date of incorporation and the period of duration of the corporation.

(4) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(5) The address of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at such address.

(6) The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this State.

(7) The names and respective addresses of the directors and officers of the corporation.

(8) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this State.

B. Such application shall be made on forms promulgated by the Secretary of State and shall be executed by any authorized officer of the corporation and verified by such officer. The verification shall include a statement that the officer executing the application is duly authorized to do so on behalf of the corporation.

[Amended by Acts 1979, 66th Leg., p. 218, ch. 120, § 11, eff. May 9, 1979; Acts 1981, 67th Leg., p. 835, ch. 297, § 6, eff. Aug. 31, 1981.]

Art. 1396-8.05. Filing of Application for Certificate of Authority

A. The original and a copy of the application of the corporation for a certificate of authority shall be delivered to the Secretary of State, together with a certificate issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence. If the certificate is in a language other than English, a translation of the certificate, under oath of the translator, must be attached to the certificate. The certificate must be dated after the 91st day preceding the date on which the application is filed. If the Secretary of State finds that such application conforms to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on each of such documents the word "Filed," and the month, day and year of the filing thereof.

(2) File in his office the original application and the certificate evidencing corporate existence.

(3) Issue a certificate of authority to conduct affairs in this State to which he shall affix the copy of the application.

B. The certificate of authority, together with the copy of the application affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

[Amended by Acts 1979, 66th Leg., p. 218, ch. 120, § 12, eff. May 9, 1979; Acts 1981, 67th Leg., p. 835, ch. 297, § 7, eff. Aug. 31, 1981.]

Art. 1396–8.08. Change of Registered Office or Registered Agent of Foreign Corporation

[See Compact Edition, Volume 2 for text of A]

B. Such statement shall be executed by any authorized officer of the corporation, and verified by such officer. The verification shall include a statement that the officer executing the statement is duly authorized to do so on behalf of the corporation. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

[See Compact Edition, Volume 2 for text of C]

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in triplicate (the original and two copies of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof.

Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and both copies the word "filed" and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return one copy to such resigning registered agent.

(4) Return one copy to the corporation at the last known address of the corporation as shown in such written notice.

[Amended by Acts 1979, 66th Leg., p. 218, ch. 120, § 13, eff. May 9, 1979.]

Arts. 1396–8.10, 1396–8.11. Repealed by Acts 1981, 67th Leg., p. 848, ch. 297, § 35, eff. Aug. 31, 1981

Art. 1396–8.12. Amended Certificate of Authority

A. A foreign corporation authorized to conduct affairs in this State shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this State other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Secretary of State.

B. Any other statement on the original application for a certificate of authority may be changed by filing an application for an amended certificate of authority setting forth the change.

C. An application for an amended certificate of authority submitted because of a name change must be accompanied by a certificate from the proper filing officer in the jurisdiction of incorporation evidencing the name change.

D. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of the original and a copy of the application with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

[Amended by Acts 1979, 66th Leg., p. 219, ch. 120, § 14, eff. May 9, 1979; Acts 1981, 67th Leg., p. 835, ch. 297, § 8, eff. Aug. 31, 1981.]

Art. 1396–8.13. Withdrawal or Termination of Foreign Corporation

A. A foreign corporation authorized to conduct affairs in this State may withdraw from this State upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not conducting affairs in this State.

(3) That the corporation surrenders its authority to conduct affairs in this State.

(4) That the corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the Secretary of State.

(5) A post office address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him.

(6) A statement that all sums due, or accrued, to this State have been paid, or that adequate

provision has been made for the payment thereof.

(7) A statement that all known creditors or claimants have been paid or provided for and that the corporation is not involved in or threatened with litigation in any court in this State, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suits.

B. The application for withdrawal shall be made on forms promulgated by the Secretary of State and shall be executed by any authorized officer of the corporation and verified by such officer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed and verified on behalf of the corporation by such receiver or trustee. The verification shall include a statement that the officer executing the application is duly authorized to do so on behalf of the corporation.

C. When the existence of a foreign corporation terminates because of dissolution, merger, or any other reason, a certificate from the proper officer in the jurisdiction of the corporation's incorporation evidencing the termination shall be filed with the Secretary of State.

[Amended by Acts 1981, 67th Leg., p. 836, ch. 297, § 9, eff. Aug. 31, 1981.]

Art. 1396–8.14. Filing of Application for Withdrawal

A. The original and a copy of such application for withdrawal shall be delivered to the Secretary of State. If the Secretary of State finds that such application conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed", and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of withdrawal to which he shall affix the copy.

B. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the Secretary of State, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this State shall cease.

[Amended by Acts 1979, 66th Leg., p. 219, ch. 120, § 15, eff. May 9, 1979.]

Art. 1396–8.15. Revocation of Certificate of Authority

[See Compact Edition, Volume 2 for text of A]

B. The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by order of the Secretary of State when it is established that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise taxes, or penalties prescribed by law when the same have become due and payable; or

(2) The corporation has failed to maintain a registered agent in this state as required by law; or

(3) The corporation has changed its corporate name and has failed to file with the Secretary of State within thirty days after such change of name became effective, an application for an amended certificate of authority, or that the corporation has changed its corporate name and that the newly adopted name is not available for use in this state; or

(4) The corporation has failed to pay the filing fee for the corporation's certificate of authority, or the fee was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No foreign corporation shall have its certificate of authority to conduct affairs in this state revoked under Subsections (1), (2), or (3) of Section B hereof unless the Secretary of State, or other state agency to which such report, taxes, fees or penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such revocation to correct the neglect, omission or delinquency.

(2) When the certificate of authority of a corporation to conduct affairs in this state is revoked under Subsection (4) of Section B of this article, the Secretary of State shall give the corporation notice of the revocation by regular mail addressed to its registered office, its principal place of business, the last known address of one of its officers or directors, or any other known place of business of the corporation.

[See Compact Edition, Volume 2 for text of D to G]

[Amended by Acts 1981, 67th Leg., p. 837, ch. 297, § 10, eff. Aug. 31, 1981.]

Art. 1396–9.03. Fees for Filing Documents and Issuing Certificates

A. The Secretary of State shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation, Twenty-five Dollars ($25); provided that the filing fee in the case of a church shall be Ten Dollars ($10).

(2) Filing articles of amendment and issuing a certificate of amendment, Twenty-five Dollars ($25); provided that the filing fee in the case of a church shall be Ten Dollars ($10).

(3) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, Fifty Dollars ($50).

(4) Filing a statement of change of address of registered office or change of registered agent, or both, Five Dollars ($5).

(5) Filing articles of dissolution, Five Dollars ($5).

(6) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, Twenty-five Dollars ($25).

(7) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, Twenty-five Dollars ($25).

(8) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, Five Dollars ($5).

(9) Filing any other statement or report of a domestic or foreign corporation, Five Dollars ($5).

(10) Filing restatement of articles of incorporation, Fifty Dollars ($50); provided that the filing fee in the case of a church shall be Twenty Dollars ($20).

[Amended by Acts 1981, 67th Leg., p. 837, ch. 297, § 11, eff. Aug. 31, 1981.]

1A. COOPERATIVES

Art. 1396–50.01. Cooperative Association Act

Short Title

Sec. 1. This Act may be cited as the Cooperative Association Act.

Definitions

Sec. 2. In this Act:

(1) "Association" means a group enterprise legally incorporated under this Act.

(2) "Member" means a member of a nonshare or share association.

(3) "Net savings" means the total income of an association less the costs of operation.

(4) "Savings returns" means the amount returned to patrons in proportion to their patronage or otherwise.

(5) "Cooperative basis" means that the net savings after payment, if any, of investment dividends and after making provisions for separate funds required or specifically permitted by statute, articles, or by-laws is allocated or distributed to member patrons, or to all patrons, in proportion to their patronage or retained by the enterprise for the actual or potential expansion of its services, the reduction of its charges to the patrons, or for other purposes not inconsistent with its non-profit character.

(6) "Membership Capital" means those funds of the association derived from the members generally either as a requirement of membership or in lieu of patronage dividends. Deposits and loans from members shall not be construed as "membership capital."

(7) "Invested Capital" means those funds invested in the association by an investor with the expectation of receiving investment dividends.

(8) "Investment Dividends" means the return on invested capital or on membership capital derived from the net savings of the association.

(9) "Patronage Dividends" means a share of net savings distributed among members on a basis of extent of patronage, as provided for in the articles of incorporation.

Applicability of Texas Non-Profit Corporation Act

Sec. 3. An association incorporated under this Act is subject to the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes), to the extent that the provisions of the Texas Non-Profit Corporation Act do not conflict with the provisions of the Act. An association incorporated under this Act may exercise the same powers and privileges and is subject to the same duties, restrictions, and liabilities as nonprofit corporations except to the extent that these are limited or enlarged by this Act.

Who May Incorporate

Sec. 4. Five or more natural persons or two or more associations may incorporate under this Act; provided, however, an association may not be incorporated or organized to serve or function as a health maintenance organization or furnish medical, or health care nor may an association employ or contract with providers of medical care in any manner which is prohibited by any licensing law of this state under which such persons are licensed.

Purposes

Sec. 5. An association may be incorporated under this Act to engage in acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type of property, commodities, goods, or services for the primary and mutual benefit of the members of the association.

Powers

Sec. 6. An association may exercise all the powers granted to a nonprofit corporation under Article 2.02, Texas Non-Profit Corporation Act and may:

(1) own and hold membership in and share capital of other associations or corporations, and own and exercise ownership rights in bonds or other obligations;

(2) make agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;

(3) exercise all powers not inconsistent with this Act that are necessary or convenient for the accomplishment of its purposes, and to that end the enumeration of powers in this section is not exclusive; and

(4) not engage, either directly or indirectly, in insurance companies of every type or character as the insurance business is defined and regulated by the Insurance Code, as amended, health maintenance organizations, or prepaid legal service corporations.

Registered Office and Registered Agent

Sec. 7. An association shall maintain a registered office and registered agent in accordance with the provisions of Article 2.05, Texas Non-Profit Corporation Act. An association may change its registered office and registered agent in accordance with the provisions of Article 2.06, Texas Non-Profit Corporation Act. Process may be served on an association in accordance with the provisions of Article 2.07, Texas Non-Profit Corporation Act.

Articles of Incorporation; Contents

Sec. 8. (a) Articles of incorporation shall be signed and acknowledged by each of the incorporators if they are natural persons and by the presidents and secretaries if they are associations.

(b) Subject to the limitations of this Act, the articles must contain:

(1) a statement of the purpose or purposes for which the association is formed;

(2) the name of the association, which must include the word "cooperative" or an abbreviation or derivative of it;

(3) the term of existence of the association, which may be perpetual;

(4) the location and street address of the initial registered office of the association and the initial registered agent at that address;

(5) the names and street addresses of the incorporators of the association;

(6) the names and street addresses of the directors who shall manage the affairs of the association for the first year, unless sooner changed by the members;

(7) a statement of whether the association is organized with or without shares, and the number of shares or memberships subscribed for;

(8) if organized with shares, a statement of the amount of authorized capital, the number and types of shares and the par value, if any, of the shares, and the rights, preferences, and restrictions of each type of share;

(9) the method by which a surplus is distributed on dissolution of the association, in conformity with the requirements of Section 38 of this Act for division of surplus.

(c) The articles may contain other provisions for the conduct of the association's affairs not inconsistent with this Act or any other law.

Filing, Certificate of Incorporation, Organization Meeting

Sec. 9. (a) The articles shall be delivered to the secretary of state in accordance with the provisions of Article 3.03, Texas Non-Profit Corporation Act. If he finds that the articles conform to law, he shall file them on payment by the association of the fee required by Article 9.03, Texas Non-Profit Corporation Act.

(b) After filing and recording the articles, the secretary of state shall issue a certificate of incorporation, in accordance with Article 3.04, Texas Non-Profit Corporation Act, at which point the corporate existence begins.

(c) After the issuance of the certificate of incorporation, an organization meeting shall be held in accordance with Article 3.05, Texas Non-Profit Corporation Act.

Amendments

Sec. 10. (a) An amendment to the articles may be proposed by a two-thirds vote of the board of directors or by petition of the association's members as provided in the by-laws. The secretary shall send notice of a meeting to consider an amendment to each member at the member's last known address, or shall post a written notice of the meeting in a conspicuous place in all principal places of activity of the association. Either type of notice shall be accompanied by the full text of the proposal and by the text of the part of the articles to be amended, at least 30 days before the meeting.

(b) Two-thirds of the members voting may adopt an amendment. When adoption of an amendment is verified by the president and secretary, it shall be filed and recorded with the secretary of state within 30 days after its adoption in accordance with Article 4.04, Texas Non-Profit Corporation Act.

Adoption of By-Laws

Sec. 11. By-laws may be adopted, amended, or repealed by a simple majority vote of the members voting, unless the articles or by-laws require a greater majority.

Contents of By-Laws

Sec. 12. Subject to the limitations of this Act, the by-laws may provide for:

(1) the requirements for the admission to membership and disposal of members' interests on cessation of membership;

(2) the time, place and manner of calling and conducting meetings;

(3) the number or percentage of the members constituting a quorum;

(4) the number, qualifications, powers, duties, method of election, and terms of directors and officers, and the division or classification, if any, of directors to provide for rotating or overlapping terms;

(5) the compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;

(6) the method of distributing the net savings;

(7) the bonding of every individual acting as officer or employee of an association handling funds or securities; and

(8) the various discretionary provisions of this Act as well as other provisions incident to the purposes and activities of the association.

Meetings

Sec. 13. (a) Regular meetings of members shall be held as prescribed in the by-laws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the membership. When a meeting is demanded, it is the duty of the secretary to call the meeting for a date 30 days after the demand.

(b) Regular or special meetings, including meetings by units, may be held inside or outside this state as the articles may prescribe.

Notice of Meetings

Sec. 14. The secretary shall give notice of the time and place of meetings to members in the manner provided for in the by-laws. In the case of a special meeting the notice shall specify the purpose for which the meeting is called.

Meetings by Units of the Membership

Sec. 15. The articles or by-laws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes cast at unit meetings to the central meeting, or for a method of representation of units by the election of delegates to the central meeting, or for a combination of both methods.

One Member—One Vote

Sec. 16. (a) Each member of an association has one vote, except that if an association includes among its members any number of other associations or groups organized on a cooperative basis, the voting rights of the member associations or groups may be as prescribed in the articles or by-laws.

(b) No voting agreement or other device to evade the one-member-one-vote rule is enforceable.

Proxy

Sec. 17. No member may vote by proxy.

Voting By Mail

Sec. 18. (a) The articles or by-laws may provide for either or both of the following procedures for voting by mail:

(1) the secretary may send to the members a copy of any proposal to be offered at a meeting with the notice of the meeting, and the mail votes cast by the members shall be counted together with those cast at the meeting if the mail votes are returned to the association within a specified number of days;

(2) the secretary may send to any member absent from a meeting an exact copy of the proposal acted on at the meeting, and the mail vote of the member on the proposal, if returned within a specified number of days, is counted together with the votes cast at the meeting.

(b) The articles or by-laws may also determine whether and to what extent mail votes are counted in computing a quorum.

Application of Voting Provisions in This Act to Voting by Mail

Sec. 19. If an association has provided for voting by mail, any provision of this Act referring to votes cast by the members applies to votes cast by mail.

Application of Voting Provisions in This Act to Voting by Delegates

Sec. 20. If an association has provided for voting by delegates, any provision of this Act referring to votes cast by the members applies to votes cast by delegates, but this does not permit delegates to vote by mail.

Directors

Sec. 21. (a) An association shall be managed by a board of not less than five directors, who are elected for a term fixed in the by-laws not to exceed three years, by and from the members of the association, and who hold office until their successors are elected or until removed. Vacancies which occur in the board of directors, other than by removal or expiration of term, are filled in the manner the by-laws provide.

(b) The by-laws may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

(c) An executive committee of the board of directors may be elected in the manner and with the powers and duties as prescribed by the articles or by-laws.

(d) Meetings of directors and of the executive committee may be held inside or outside this state.

Officers

Sec. 22. The officers of an association are a president, one or more vice-presidents, and a secretary and a treasurer or a secretary-treasurer. Any two or more offices may be held by the same person, except the offices of president and secretary. The officers of an association may be designated by such other titles as may be provided in the articles of incorporation or the by-laws. A committee duly designated may perform the functions of any office, and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary. The officers are elected annually by the directors unless the by-laws provide otherwise.

Removal of Directors and Officers

Sec. 23. A director or officer may be removed with cause by a vote of a majority of the members voting at a regular or special meeting. The director or officer involved shall be given an opportunity to be heard at the meeting. A vacancy caused by removal is filled by the vote provided in the by-laws for election of directors.

Referendum

Sec. 24. The articles or by-laws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least 10 percent of all the members or by vote of at least a majority of the directors. Rights of third parties which have vested between the time of the action and the referendum are not impaired by the results of the referendum.

Limitations on the Return on Capital

Sec. 25. (a) Investment dividends will not exceed eight percent on investment capital unless otherwise provided for in the by-laws and the investment dividend will not be cumulative unless otherwise provided for in the by-laws.

(b) Total investment dividends distributed for a fiscal year may not exceed 50 percent of the net savings for the period.

Eligibility and Admission to Membership

Sec. 26. A natural person, association, incorporated or unincorporated group organized on a cooperative basis, or a nonprofit group, may be admitted to membership in an association if it meets the qualifications for eligibility stated in the articles or by-laws.

Subscribers

Sec. 27. A natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether and the conditions under which voting rights or other rights of membership are granted to subscribers.

Share and Membership Certificates: Issuance and Contents

Sec. 28. (a) No certificates for membership capital may be issued until its par value, if any, has been paid in full. Each certificate issued by an association shall bear a full or condensed statement of the requirements of Sections 16, 17, and 29(a) of this Act.

(b) No certificate for invested capital may be issued until its par value, if any, has been paid in full. Each certificate for invested capital issued by an association shall bear a full or condensed statement of restrictions on transferability if specifically provided for in the by-laws of the association.

Transfer of Shares and Membership: Withdrawal

Sec. 29. (a) If a member decides to withdraw from the association, the member shall offer his membership certificates to the directors in writing and the directors may purchase such holdings within a 90-day period following receipt of notice by paying the member the par value. The directors shall then reissue or cancel those shares. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

(b) If an investor owning investor certificates desires to sell, assign, or convey his certificates, he must do so in accordance with the by-laws of the association; otherwise such investment certificates shall be repurchased by the association upon written notice to the directors within a 90-day period following receipt of notice by paying the investor the par value of the certificate, together with any investment dividend accrued.

Share and Membership Certificates: Recall

Sec. 30. (a) The by-laws may give the directors the power to use the reserve funds to recall, at par value, the membership certificates of any member in excess of the amount requisite for membership, and may also provide that if any member has failed to patronize the association during a time specified and in accordance with the by-laws, the directors may recall the member's membership certificates, thereby terminating his membership in the association. When membership certificates are recalled, they shall be either reissued or cancelled. No recall may be made if the solvency of the association would be jeopardized.

(b) The directors shall have the power to use the reserve funds to recall and repurchase at par value, together with any investment dividends due on the investment certificates of any investor. The by-laws may establish specific procedures, terms and conditions for such recall and repurchase.

Certificates: Attachment

Sec. 31. The holdings of any member of an association, to the extent of the minimum amount necessary for membership, but not to exceed $50, are

exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subjected to attachment, execution, or garnishment, the directors of the association may either admit the purchaser to membership, or may purchase the holdings at par value.

Liability of Members

Sec. 32. Members are not jointly or severally liable for debts of the association, nor is a subscriber liable, except to the extent of the unpaid amount on the membership certificates or on the invested capital certificates subscribed by him. No subscriber may be released from liability by assignment of his interest in the membership capital certificates or the invested capital certificates, but he is jointly and severally liable with the assignee until the membership certificates or investor certificates are fully paid up.

Expulsion

Sec. 33. A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed of the charges in writing at least 10 days in advance of the meeting, and shall be given an opportunity to be heard in person or by counsel at the meeting. If the association votes to expel a member, the board of directors shall purchase the member's capital holdings at par value if and when such purchases may be made without jeopardizing the solvency of the association.

Allocation and Distribution of Net Savings

Sec. 34. (a) At least once each year the members or the directors, as the articles or by-laws may provide, shall apportion the net savings of the association in the following order:

(1) investment dividends, within the limitations of Section 25 may be paid on invested capital, or if the by-laws so provide, on the membership certificates, but the investment dividends may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities;

(2) a portion of the remainder, as determined by the articles or by-laws, may be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association;

(3) a portion of the remainder may be allocated to retained earnings;

(4) the remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage as follows:

(A) in the case of a member patron, the proportionate amount of savings return distributed to the member may be in the form of cash, property, membership certificates, investment certificates or in any combination of these;

(B) in the case of a subscriber patron, his proportionate amount of savings returns as the articles or by-laws provide, may be distributed to him or credited to his account until the amount of capital subscribed for has been fully paid.

(b) This section does not prevent an association engaged in rendering services from disposing of the net savings from the rendering of services in a manner calculated to lower the fees charged for services or otherwise to further the common benefit of the members.

(c) This section does not prevent an association from adopting a system in which the payment of savings returns which would otherwise be distributed are deferred for a fixed period of time, nor from adopting a system in which the savings returns distributed are partly in cash, partly in shares, with the shares to be retired at a fixed future date, in the order of their serial number or date of issue.

Recordkeeping

Sec. 35. (a) To record its business operation, every association shall keep a set of books according to standard accounting practices.

(b) A written report shall be submitted to the annual meeting of the association which shall include the following:

(1) a balance sheet, and income and expense statement;

(2) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders, and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any return on capital has been paid; and

(3) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received.

(c) The directors shall appoint a review committee, composed of members who are not principal bookkeepers, accountants, or employees of the association.

(d) The committee shall report on the quality of the annual report and the bookkeeping system at the annual meeting.

Annual Report

Sec. 36. (a) Every association having 100 or more members or an annual business amounting to $20,000 or more shall prepare, within 120 days of the close of its operations each year, a report of its condition, sworn to by the president and secretary, which shall be filed in its registered office. The report shall state:

(1) the name and principal address of the association;

(2) the names, addresses, occupations, and date of expiration of the terms of the officers and directors, and their compensation, if any;

(3) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any investment dividends have been paid;

(4) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received; and

(5) the receipts, expenditures, assets, and liabilities of the association.

(b) Every association having 3,000 or more members or an annual business amounting to $750,000 or more shall file a copy of the report with the secretary of state.

(c) A person who subscribes or verifies a report containing a materially false statement, known to the person to be false, commits a misdemeanor punishable by a fine of not less than $25 nor more than $200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

Notice of Delinquent Reports

Sec. 37. (a) If an association required by Section 36 of this Act to file a report with the secretary of state fails to do so in the prescribed time, the secretary of state shall notify the association of the delinquency by registered letter mailed to its principal office within 60 days after the report becomes delinquent. If an association required by Section 36 of this Act to file a report at its registered office but not required to file a copy with the secretary of state fails to do so in the prescribed time, the secretary of state or any member may notify the association of the delinquency by registered letter mailed to its principal office.

(b) If the association fails to file the report within 60 days from the date of notice under Subsection (a) of this section, a member of the association or the attorney general may seek a writ of mandamus against the association and the appropriate officer or officers to compel the filing to be made, and in the court shall require the association or the officers at fault to pay all the expenses of the proceeding including attorney fees.

Dissolution

Sec. 38. (a) An association may, at a regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. If it is directed to dissolve, by a vote of a majority of the members voting, three of their number shall be designated as trustees, who shall liquidate, on behalf of the association and within a time fixed in their designation or within any extension of time, its assets, and shall distribute them in the manner set forth in this section.

(b) A suit for involuntary dissolution of an association organized under this Act may be instituted for the causes and prosecuted in the manner set forth in Articles 7.01 to 7.12, Texas Non-Profit Corporation Act (Articles 1396–7.01 through 1396–7.12, Vernon's Texas Civil Statutes), except that any distribution of assets shall be in the manner set forth in this section.

(c) When an association is dissolved, its assets shall be distributed in the following manner and order:

(1) by paying its debts and expenses;

(2) by returning to the investors the par value of their capital;

(3) by returning to the subscribers to invested capital the amounts paid on their subscriptions;

(4) by returning to patrons the amount of patronage dividends credited to their accounts;

(5) by returning to members their membership capital; and

(6) by distributing any surplus in either or both of the following ways, as the articles may provide: either among those patrons who have been members or subscribers at anytime during the six years preceding dissolution, on the basis of patronage during that period, or as a gift to any cooperative association or other non-profit enterprise which may be designated in the articles.

Use of Name "Cooperative"

Sec. 39. (a) Only an association organized under this Act, a group organized on a cooperative basis under any other law of this state, or a foreign corporation operating on a cooperative basis and authorized to do business in this state under this or any other law of this state may use the term "cooperative," or any abbreviation or derivation of the term "cooperative," as part of its business name, or represent itself, in advertising or otherwise, as conducting business on a cooperative basis.

(b) A person, firm, or corporation that violates Subsection (a) of this section commits a misdemeanor punishable by a fine of not less than $25 nor more than $200, with an additional fine of not more than $200 for each month during which a violation occurs after the first month, or by confinement in the county jail for not less than 30 days nor more than one year, or by any combination of those punishments.

(c) The attorney general may sue to enjoin a violation of this section.

(d) If a court of competent jurisdiction renders judgment that a person, firm, or corporation which

employed the name "cooperative" prior to this Act, is not organized on a cooperative basis, but may nonetheless continue to use the word "cooperative," the business shall always place immediately after its name the words "does not comply with the cooperative association law of Texas" in the same kind of type, and in letters not less than two-thirds as large, as those used in the word "cooperative."

Sec. 39A. [Expired]

Promotion Expenses

Sec. 40. (a) No association may use its funds, directly or indirectly, issue shares, or incur indebtedness for the payment of compensation for the organization of the association, except necessary legal fees, or for the payment of promotion expenses, in excess of five percent of the amount paid for the shares or membership certificates involved in the promotion transaction.

(b) An officer, director, or agent of an association who gives, or any person, firm, corporation or association who receives a promotion commission in violation of this section commits a misdemeanor and may be punished by a fine of not less than $25, nor more than $200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

False Reports

Sec. 41. A person, firm, corporation, or association that maliciously and knowingly spreads false reports about the management or finances of any association commits a misdemeanor punishable by a fine of not less than $25 and not more than $200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

Existing Cooperative Groups

Sec. 42. Any group operating on a cooperative basis on the effective date of this Act may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by this Act. If it elects to secure the benefits of this Act, it shall amend its articles and by-laws to conform with this Act. A certified copy of the amended articles shall be filed and recorded with the secretary of state and a fee of $5 shall be paid.

Foreign Corporations and Associations

Sec. 43. A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state in which it is organized may transact business in this state as a foreign cooperative corporation or association.

Exemption From Taxes

Sec. 44. Each association organized under this Act is exempt from the franchise tax and from license fees imposed by the state or a political subdivision of the state. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter.

Exemption

Sec. 45. This Act does not apply to any corporation or association organized and now existing or in the future organized under the Cooperative Marketing Act, as amended (Articles 5737 through 5764, Revised Civil Statutes of Texas, 1925).[1]

[1] Repealed; see, now, Agriculture Code, § 52.001 et seq.

Effect of Invalidity of Part of This Act

Sec. 46. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, subsection or section of this Act, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection or section of this Act so adjudged to be invalid or unconstitutional.

[Acts 1975, 64th Leg., p. 814, ch. 318, §§ 1 to 46, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 279, ch. 134, § 1, eff. May 11, 1977; Acts 1981, 67th Leg., p. 1777, ch. 389, § 27, eff. Jan. 1, 1982.]

Section 39A of this article expired of its own terms on September 1, 1978. Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

2. RELIGIOUS AND CHARITABLE

Art. 1407. Lodges: Tax

Bodies incorporated under this subdivision shall not be subject to, or required to pay a franchise tax. However, an incorporated body is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the body is exempted by that chapter. [Amended by Acts 1981, 67th Leg., p. 1775, ch. 389, § 21, eff. Jan. 1, 1982.]

Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

CHAPTER TEN. PUBLIC UTILITIES

2. TELEPHONE AND TELEGRAPH

Article

1432b. Alteration or Control of Telephone Lines in Hostage or Armed Robbery Emergency.

4. GAS AND LIGHT

1435a–1. Validation of Creation and Organization Proceedings of Certain Municipal Power Agencies.

1435b. Joint Acquisition, Construction, and Operation of Electric Utility Facilities.

8. MISCELLANEOUS PROVISIONS

1446c. Public Utility Regulatory Act.

1446d. Electric Metering in Apartments and Condominiums.

9. TRADE ZONES

1446.5. Amarillo Trade Zone Corporation.

1446.6. Galveston Port of Entry Trade Zone.

1446.7. Houston Port of Entry Foreign Trade Zone.

1446.8. Joint Airport Boards Foreign Trade Zone.

1446.9. El Paso Trade Zone Corporation.

1446.10. San Antonio Foreign Trade Zone.

1446.11. Brownsville Navigation District Foreign Trade Zone.

1446.12. Rio Grande City Foreign Trade Zone.

1446.13. Del Rio Foreign Trade Zone.

1446.14. Eagle Pass Foreign Trade Zone.

Article
1446.15. Foreign Trade Zones in Port Arthur Customs District and Orange and Jefferson Counties.

2. TELEPHONE AND TELEGRAPH

Arts. 1423 to 1425. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

Art. 1432b. Alteration or Control of Telephone Lines in Hostage or Armed Robbery Emergency

Sec. 1. The supervising law enforcement official having jurisdiction in the geographical area where hostages are held, or where an armed suspect is barricaded, who has probable cause to believe that the holder of one or more hostages is committing a crime, or that the armed suspect is committing a crime, shall have the authority to order a previously designated telephone company security employee to arrange to cut, reroute, divert, or otherwise control telephone lines in any emergency in which such hostages are being held, or where an armed suspect is barricaded, for the purpose of preventing telephone communication by the holder of such hostages, or armed barricaded suspect, with any person other than a peace officer or a person authorized by the peace officer.

The serving telephone company within the geographical area of a law enforcement unit shall designate a telephone company security official and an alternate to provide all required assistance to law enforcement officials to carry out the purpose of this section.

Sec. 2. Good faith reliance on an order by a supervising law enforcement official pursuant to this article shall constitute a complete defense to any civil or criminal action brought against a telephone company, its directors, officers, agents, or employees, as a result of compliance with such order. [Acts 1981, 67th Leg., p. 3055, ch. 801, eff. June 17, 1981.]

4. GAS AND LIGHT

Art. 1435a. Cooperation by Entities in Electric Facilities Construction, Financing, etc.

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

Definitions

Sec. 2. As used in this Act:

[See Compact Edition, Volume 2 for text of 2(1) to (3)]

(4) "Electric facilities" means any facilities necessary or incidental to the generation of electric power and energy or the transmission thereof, including electric generating units, electric generating plants, electric transmission lines, plant sites, rights-of-way, and real and personal property and equipment and rights of every kind in connection therewith.

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

Rights and Powers of Participating Entities

Sec. 4. Without limiting the general scope and application of Section 3 of this Act:

[See Compact Edition, Volume 2 for text of 4(1)]

(2) Each participating public entity and each participating private entity shall have the right and power to acquire, for the use and benefit of all participating entities, by purchase or through the exercise of the power of eminent domain, lands, easements, and properties for the purpose of jointly owned electric facilities, and shall have the power to transfer or convey such lands, easements, and properties, or interests therein, or otherwise to cause such lands, easements, and properties, or interests therein, to become vested in other participating entities to the extent and in the manner agreed between the participating entities. In all cases in which a participating entity exercises the right and power of eminent domain conferred hereby, it shall be controlled by the law governing the condemnation of property by incorporated cities and towns in this state, and the right and power of eminent domain hereby conferred shall include the right and power to take the fee title in land so condemned, except that no participating entity has the right or power to take by the exercise of the power of eminent domain any electric facilities, or interest therein, belonging to any other entity, or the power to take land or any interest therein, by exercise of the power of eminent domain, for the purpose of drilling for, mining, or producing from said land, any oil, gas, geothermal, geothermal/geopressured, lignite, coal, sulphur, uranium, plutonium, or other minerals belonging to another, whether the same be in place, or in the process of being mined and produced, or mined or produced. Provided, however, this provision shall not impair the right of any such entity to acquire full title to real property for plant sites, including cooling reservoirs and related surface installations and equipment.

[See Compact Edition, Volume 2 for text of 4(3), (4)]

Joint Powers Agency

Sec. 4a. (a) In order to more readily accomplish the purposes of this Act, two or more public entities by concurrent ordinances may create a joint powers agency to be known as a municipal power agency, without taxing power, as a separate municipal corporation, a political subdivision of the state, and body politic and corporate, to have and exercise all of the powers which are by Chapter 10 of Title 28, Revised Civil Statutes of Texas, 1925, as amended,[1] and this Act, conferred upon a public entity or

entities, provided that such agency shall not be authorized to engage in any utility business other than generation, transmission, and sale or exchange of electric energy to the participating public entities and to private entities who are joint owners with the agency of an electric generating facility located within the state. A public entity, at the time of the passage of such concurrent ordinance, must be one which has the authority to and is engaged in the generation of electric energy for sale to the public upon the effective date of this Act, but such entity may thereafter dispose of its electric generating capabilities. Prior to the passage of a concurrent ordinance to create a joint powers agency, the governing body of each public entity shall cause notice of its intention to adopt such ordinance to be published once a week for two consecutive weeks, the date of the first publication to be at least 14 days prior to the date set for the passage of the concurrent ordinance. The notice shall state the date, time, and place such governing body proposes to pass such ordinance, and that upon the effective date of the concurrent ordinances, the public entities so adopting them shall have created a public powers agency. If, prior to the day set for the passage of a concurrent ordinance, 10 percent of the qualified electors of the particular public entity shall present a petition to such governing body requesting a referendum election be called, then such ordinance shall not become effective until the qualified electors of such entity have approved such ordinance. The election shall be called and held in conformity with the Texas Election Code, the provisions of Chapter 1 of Title 22, Revised Civil Statutes of Texas, 1925, as amended,[2] and this Act. Except as herein provided, a concurrent ordinance shall not be subject to a referendum election.

(b) Public entities which establish a joint powers agency may, by concurrent ordinances, provide for the re-creation of such agency by the addition and deletion, either or both, of a public entity so long as there is no impairment of obligation of any existing obligation of the agency, provided that no agency may be re-created by the addition of a public entity from and after April 1, 1976, unless a majority of the participating qualified electors of the entity seeking to be added to the agency approve the same by a majority vote in an election called for that purpose, and provided further that no agency may be created from and after January 1, 1977, unless a majority of the participating qualified electors of each entity seeking to create such agency approve such creation by a majority vote in an election called for that purpose. Notice of such election shall be given as provided by Article 704, Revised Civil Statutes of Texas, 1925, as amended.

(c) Concurrent ordinances are ordinances or orders adopted by the governing bodies of more than one public entity which contain identical provisions with respect to the creation or re-creation of a public powers agency.

(d) The public entities which create, or provide for re-creation by addition or deletion of a public entity, a joint powers agency shall by concurrent ordinances (1) define the boundaries of the agency, to include the territory within the limits of such public entities, (2) designate the name of the Municipal Power Agency, (3) designate the number of directors (not less than four) that will constitute the board of directors of the agency and the initial term (so as to initially provide staggered terms) as may be agreed upon by the said public entities as evidenced by such concurrent ordinances, and (4) specify the manner in which such directors shall be appointed, but in any event each public entity shall be entitled to appoint at least one director.

(e) Directors shall serve by places and the concurrent ordinances shall specify the director for which place (and his successors) the governing body of the particular public entity may appoint. A director shall be a qualified elector and reside within the boundary of the agency at the time of execution of his constitutional oath of office. Directors shall serve without compensation, and an employee, officer, or member of the governing body of a public entity may serve as a director of the agency, but shall have no personal interest, other than as may exist as an employee or officer or member of the governing body of a public entity, in any contract executed by the agency.

(f) The agency is empowered to make contracts, leases, and agreements with, and accept grants and loans from, the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities, and political subdivisions, and public or private corporations and persons, and may generally perform all acts necessary for the full exercise of the powers vested in it; to participate through appropriate contracts in power pooling and power exchange arrangements with other entities either through direct or indirect system interconnections and each entity is given full authority to purchase electric energy from the agency or to sell, dispose of, or exchange electric energy to the agency. The agency may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties which are, in its judgment, not needed for the efficient operation and maintenance of its electric facilities. The responsibility of the management, operation, and control of the properties belonging to the agency shall be vested in the board of directors.

(g) Contracts for the sale or exchange of energy by the agency may be entered whereby the purchaser is obligated to pay for the same irrespective of whether such energy is produced or delivered to the purchaser. The agency is likewise empowered to establish and maintain rates and charges for energy delivered, transmitted, or exchanged, which shall be reasonable and in accordance with prudent utility practices. In the absence of a contract whereby a purchaser of energy waives such right, the rates and charges for power and energy sold or exchanged by

the agency shall be based upon periodic "cost of service studies" and be subject to modification. The rates and charges schedule or contract payments shall be developed with regard to the recovery of the cost of producing and transmitting, if such service is performed, such electric power and energy, including the amortization of the capital investment.

(h) The State of Texas reserves its power to regulate and control such rates and charges for electric energy supplied by the electric facilities, but does hereby pledge to and agree with the purchasers and successive holders of the obligations issued hereunder that the state will not limit or alter the powers hereby vested in the agency to establish and collect such rates and charges as will produce revenues sufficient to pay for (1) all necessary operational and maintenance expenses, (2) all interest and principal on obligations issued by the agency, (3) all sinking funds and reserve fund payments, and (4) for any other charges necessary to fulfill the terms of any agreements theretofore made or in any way to impair the rights or remedies of the holders of the obligations, until the obligations, together with the interest thereon, with interest on unpaid installments of interest, and any other obligations of the agency in connection therewith, are fully met and discharged.

(i) To the payment of obligations issued by it, the agency may pledge the revenues of all or part of its electric facilities, including or not including those thereafter acquired, as the agency may determine, but the expense of operation and maintenance, including salaries, labor, materials, and repairs necessary to render efficient service, of the facilities whose revenues are so encumbered and pledged shall be a first lien on and charge against such revenues.

(j) The agency shall have the full power to issue revenue bonds or notes, herein sometimes referred to as obligations, from time to time for the accomplishment of its purposes within the interest rate limitations of Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k–2, Vernon's Texas Civil Statutes).

(k) From the proceeds from the sale of obligations of the agency, the agency may set aside amounts for payments into the interest and sinking fund and reserve funds, and for interest and operating expenses during construction and development, as may be specified in the authorizing proceedings. Bond proceeds may be invested pending their use for the purpose for which issued, in such securities or interest bearing certificates or in time deposits as may be specified in such authorizing proceedings.

(*l*) Prior to delivery thereof, all obligations authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if he finds that they have been issued in accordance with the constitution and this Act, and that they will be binding special obligations of the agency issuing same, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration and the sale and delivery of the bonds or notes to the purchaser, they shall be incontestable.

(m) Refunding bonds or notes may be issued for the purposes and in the manner now or hereafter provided by general law, including, without limitation, Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k–3, Vernon's Texas Civil Statutes), as presently enacted or hereafter amended.

(n) All obligations issued by an agency pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies and shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas, and such obligations shall be lawful and sufficient security for said deposits to the extent of the principal amount thereof, or their value on the market, whichever is the lesser, when accompanied by all unmatured coupons, if any, appurtenant thereto.

(*o*) The agency may adopt, and from time to time amend, rules and regulations to govern the operation of the agency, its employees, facilities, and service, but contracts for the construction of improvements which involve the expenditure of more than $20,000 shall be awarded by the agency only after notice of intent to receive competitive bids has been published once a week for two consecutive weeks in a newspaper of general circulation in the state, the date of the first publication being at least 14 days prior to the date set for the receipt of bids, but contracts awarded by another entity, which is a joint owner of the facilities to be constructed or an agent of any of the joint owners shall be let under its contracting procedures. An entity may negotiate and enter into contract for the purchase of electric energy from the agency and payments for such energy purchased shall be an operating expense of the electric system of the purchaser.

(p) The agency may elect to utilize the Uniform System of Accounts Prescribed For Utilities and Licenses prescribed by the Federal Power Commission.

(q) The bonds or notes shall be signed by the presiding officer or the assistant presiding officer of the agency, shall be attested by its secretary, and shall bear the seal of the agency. It is provided, however, that such signatures may be printed or lithographed on the bonds and notes if authorized by the agency, and such may be impressed on the bonds or notes or may be printed or lithographed thereon. The agency may adopt or use for any purpose the

signature of any person who shall have been an officer, notwithstanding the fact that he may have ceased to be such officer at the time when bonds or notes shall be delivered to a purchaser or purchasers. The bonds or notes shall mature serially or otherwise in not to exceed 50 years, from their respective dates of issuance, may be sold, within interest rate limitations herein provided, at a public or private sale at a price or under terms determined by the agency to be the most advantageous reasonably obtainable, within the discretion of the agency, may be made callable prior to maturity at such times and prices as approved by the agency, and may be in coupon form with or without provisions for registration as to principal or may be registrable as to both principal and interest.

(r) Bonds and notes issued under the provisions of this Act, and coupons, if any, representing interest thereon, when made payable from (i) revenues of the agency, or (ii) anticipated bond proceeds shall when delivered be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code (Chapter 785, Acts of the 60th Legislature, Regular Session, 1967),[3] and shall constitute obligations which must be submitted to the attorney general under the provisions of Subsection (*l*) of this section. Nonnegotiable purchase money notes, payable in installments, issued by the agency for the acquisition of land or fuel resources shall not be a security or obligation within the aforesaid provisions; such notes shall be secured by the properties being acquired, with the right in the agency to substitute collateral, and may be further secured by a pledge and undertaking to thereafter issue bonds or bond anticipation notes for their ultimate payment. Bond anticipation notes may be issued, with the same limitations and conditions prescribed herein for bonds, for any purpose for which the agency may issue bonds or for the purpose of refunding or paying off previously issued bond anticipation notes or nonnegotiable purchase money notes, and the agency may covenant with the purchaser of bond anticipation notes that the proceeds of one or more particular series of bonds will be used to provide for the ultimate payment or refunding of such notes.

(s) This Act shall be liberally construed to carry out the purpose of its adoption and shall be in full and complete authority for the creation and operation of public powers agencies and the performance of the public duties imposed upon them. Insofar as this Act is inconsistent with any other laws, including Chapter 10 of Title 28, Revised Civil Statutes of Texas, 1925, as amended, or others regulating the affairs of municipal corporations, or with any home-rule charter provisions, then the provisions of this Act shall control.

Certain Public Entities Provided Power Through Interstate System

Sec. 4b. Notwithstanding any term, condition, or provision of Section 4a of this Act to the contrary, any public entity engaged in the distribution and sale of electric energy to the public, which is provided with a major portion of its power through or from an interstate electric system, and which purchases, or acts as a member of an electric cooperative which purchases for its members, hydroelectric power from facilities at a federally operated reservoir may pass a concurrent ordinance as provided in and with the effect specified in Section 4a of this Act. Any municipal power agency which is or was created by two or more public entities described in the preceding sentence may engage in the generation and transmission of electric power and energy within or outside the State of Texas and may engage in the sale, purchase, or exchange of electric power and energy with entities within or outside the State of Texas; provided, that nothing in this section authorizes an agency to engage in the distribution and retail sale of electric power and energy. The election required by Subsection (b) of Section 4a of this Act need not be held in connection with the creation of any such agency unless the concurrent ordinances are passed after December 31, 1981.

[See Compact Edition, Volume 2 for text of 5 and 6]

[Amended by Acts 1975, 64th Leg., p. 337, ch. 143, § 1, May 8, 1975; Acts 1977, 65th Leg., p. 174, ch. 85, §§ 1 to 3, eff. April 29, 1977; Acts 1979, 66th Leg., p. 885, ch. 405, § 1, eff. June 6, 1979; Acts 1981, 67th Leg., p. 48, ch. 23, § 1, eff. April 1, 1981.]

[1] Article 1106 et seq.
[2] Article 701 et seq.
[3] Business and Commerce Code, § 8.101 et seq.

Section 2 of the 1975 amendatory act provided:

"Nothing in this Act shall be construed to violate any provision of the federal or state constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the agency shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof."

For provisions relating to applicability and severability of 1981 amendment of this article, see art. 1435a-1, §§ 3 and 4.

Art. 1435a-1. Validation of Creation and Organization Proceedings of Certain Municipal Power Agencies

Sec. 1. [Amends art. 1435a, § 4b]

Sec. 2. The creation and organization proceedings of all municipal power agencies heretofore created or attempted to be created by two or more public entities prior to June 30, 1980, under Chapter 166, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1435a, Vernon's Texas Civil Statutes), which have functioned or attempted to function as municipal power agencies since their creation or attempted creation are validated in all respects as of the date of the creation and organization or attempted creation and organization including, without limitation of the generality of the foregoing, the notices and concurrent ordinances or attempted notices and concurrent ordinances of public entities. The creation and organization proceedings and the existence of any such municipal power agen-

cy may not be held invalid because they were not in accordance with law.

Sec. 3. This Act does not apply to or affect any litigation instituted prior to the effective date of this Act which questions the legality of any acts taken or proceedings had prior to the effective date of this Act.

Sec. 4. If any word, clause, or provision of this Act or the application thereof shall be held to be invalid, the remainder of this Act shall not be affected thereby, and to this end the provisions of this Act are declared to be severable.

[Acts 1981, 67th Leg., p. 48, ch. 23, §§ 2 to 4, eff. April 1, 1981.]

Art. 1435b. Joint Acquisition, Construction, and Operation of Electric Utility Facilities

Authority for Two or More Political Subdivisions to Jointly Own and Operate; Treatment of Cost

Sec. 1. Two or more political subdivisions heretofore or hereafter created are authorized to join together to finance, construct, complete, acquire, or operate electric utility facilities so that the same (or an undivided interest therein) will be jointly owned as cotenants or coowners with such ownership shares in such facilities as may be approved by their governing bodies and set forth in an agreement authorized by said governing bodies. Such agreement may provide for any political subdivision to increase its present or future ownership share of the facilities by installment purchase payments and for any other political subdivision party to such agreement to transfer, in consideration of such installment purchase payments, all or any portion of its present or future ownership share of such facilities to the political subdivision, so increasing its present or future ownership share as aforesaid. Payments made to acquire an ownership interest shall not be treated as a maintenance and operating expense but shall be treated as a capital cost in the same manner as if such political subdivision had issued bonds to construct or acquire such ownership interest, unless otherwise set forth in the agreement of the parties. All agreements by and between political subdivisions establishing an ownership interest in facilities (or undivided interest therein) executed pursuant to this Act shall be submitted to the Attorney General of Texas (in connection with any proceedings to finance said contractual obligation by the issuance of bonds) and when approved as to legality by such officer shall be incontestable.

Payment of Contractual Obligations

Sec. 2. In the event the facilities financed, acquired, constructed, or completed constitute a part of a utility system or a combined utility system of a political subdivision, the obligation to make the said contract payments to acquire an ownership interest shall constitute a lien on the revenues of such system or combined system on a parity with outstanding bonds of such system or combined system to the extent permitted in the ordinance, resolution, deed of trust, or indenture authorizing or securing the payment of such outstanding bonds. In instances in which the ordinance, resolution, or deed of trust or trust indenture authorizing or securing such revenue bonds (whether such bonds have been issued prior to the passage of this Act or may be hereafter issued) provides for the subsequent issuance of additional bonds or incurring of such contractual obligation and that the payments to be made for the security or payment thereof are to be on a parity with or of equal dignity to the previously issued revenue bonds (whether an original issue or a refunding issue) or bonds then to be issued, such entity shall have the power to authorize, issue, and sell additional bonds or incur such contractual obligation from time to time and in different series payable from the entire revenues of such system or combined systems on a parity with bonds previously issued or then to be issued and secured by a lien on the revenues of such system or combined systems on a parity with and of equal dignity with the lien securing the bonds previously issued or then to be issued, subject to such conditions as may be contained in the ordinance, resolution, deed of trust, or trust indenture providing for or securing such issue of original bonds or refunding bonds.

The pledge of revenues of a utility system or a combined utility system for the payment of such contract payments to acquire an ownership interest is hereby approved and authorized.

Powers and Authority as Original

Sec. 3. The powers and authority granted by this Act shall be in addition to and in substitution for any powers and authority granted to political subdivisions under the laws of this state, and the exercise by any political subdivision of the powers and authority granted hereby and the performance or effectuation of any agreements entered into pursuant to the provisions hereof shall be deemed to constitute additional public purposes of such political subdivision (including the power to issue bonds, notes, or other obligations for the accomplishment of such purposes), notwithstanding the existence of any express or implied limitations of the powers, authority, or purposes under any other general or special laws or charter provisions.

As to municipal corporations, this law shall be given effect as though originally contained in Chapter 10 of Title 28, Revised Civil Statutes of Texas, 1925, as amended, so as to provide full authority for the execution of agreements contemplated by the provisions hereof, and this law shall prevail over any charter provisions or general or special law.

Validation of Existing Agreements

Sec. 4. All agreements heretofore executed by and between political subdivisions whereby the par-

ties will jointly own electric utility facilities or whereby one political subdivision agrees to pay the other as a maintenance and operating expense of all or part of its utility systems for services supplied or to be supplied from facilities owned by the other are hereby validated, ratified, and confirmed provided that such agreements have been heretofore submitted to the Attorney General of Texas in connection with the issuance of bonds and are on file in the office of the comptroller of public accounts and provided further that such agreements are not in litigation upon the effective date of this Act.

Severability

Sec. 5. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision.

[Acts 1977, 65th Leg., p. 1287, ch. 506, §§ 1 to 5, eff. Aug. 29, 1977.]

7. REPORTS

Arts. 1441 to 1446. Repealed by Acts 1981, 67th Leg., p. 2382, ch. 593, § 1, eff. Aug. 31, 1981

8. MISCELLANEOUS PROVISIONS

Art. 1446c. Public Utility Regulatory Act

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

Short Title

Sec. 1. This Act may be referred to as the "Public Utility Regulatory Act."

Legislative Policy and Purpose

Sec. 2. This Act is enacted to protect the public interest inherent in the rates and services of public utilities. The legislature finds that public utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore utility rates, operations and services are regulated by public agencies, with the objective that such regulation shall operate as a substitute for such competition. The purpose of this Act is to establish a comprehensive regulatory system which is adequate to the task of regulating public utilities as defined by this Act, to assure rates, operations, and services which are just and reasonable to the consumers and to the utilities.

Definitions

Sec. 3. (a) The term "person," when used in this Act, includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations, as herein defined.

(b) The term "municipality," when used in this Act, includes cities and incorporated villages or towns existing, created, or organized under the general, home-rule, or special laws of the state.

(c) The term "public utility" or "utility," when used in this Act, includes any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation or a water supply or sewer service corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for:

(1) producing, generating, transmitting, distributing, selling, or furnishing electricity ("electric utilities" hereinafter) provided, however, that this definition shall not be construed to apply to or include a qualifying small power producer or qualifying cogenerator, as defined in Sections 3(17)(D) and 3(18)(C) of the Federal Power Act, as amended (16 U.S.C. Sections 796(17)(D) and 796(18)(C));

(2) the conveyance, transmission, or reception of communications over a telephone system; provided that no person or corporation not otherwise a public utility within the meaning of this Act shall be deemed such solely because of the furnishing or furnishing and maintenance of a private system; and provided further that nothing in this Act shall be construed to apply to telegraph services, services of specialized communications common carriers not providing local exchange telephone service, television stations, radio stations, or community antenna television services, or radio-telephone services that may be authorized under the Domestic Public Land Mobile Radio Service or Rural Radio Service rules of the Federal Communications Commission, other than such radio-telephone services provided by wire-line telephone companies;

(3) transmitting or distributing combustible hydrocarbon natural or synthetic natural gas for sale or resale in a manner which is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C.A., Section 717, et seq.) ("gas utilities" hereinafter) provided that the production, gathering, transportation, or sale of natural gas or synthetic gas under Section 4, Article 6050, Revised Civil Statutes of Texas, 1925, as amended, the distribution or sale of liquified petroleum gas, and the transportation, delivery, or sale of natural gas for fuel for irrigation wells or any other direct use in agricultural activities is not included.

(4) the transmitting, storing, distributing, selling, or furnishing of potable water to the

public or for resale to the public for any use, or the collection, transportation, treatment, or disposal of sewage, or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a city, town or other political subdivision of this state or a water supply or sewer service corporation. The term "public utility" or "utility" shall not include any person or corporation not otherwise a public utility that furnishes the services or commodity described in any paragraph of this subsection only to itself, its employees, or tenants as an incident of such employee service or tenancy, when such service or commodity is not resold to or used by others. The term "electric utility" shall not include any person or corporation not otherwise a public utility that owns or operates in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electric energy to an electric utility, if the equipment or facilities are used primarily for the production and generation of electric energy for consumption by the person or corporation.

(d) The term "rate," when used in this Act, means and includes every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any public utility for any service, product, or commodity described in Subdivision (c) of this section, and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(e) The word "commission," when used in this Act, means the Public Utility Commission of Texas, as hereinafter constituted.

(f) The term "railroad commission," when used in this Act, means the Railroad Commission of Texas.

(g) The term "regulatory authority," when used in this Act, means, in accordance with the context where it is found, either the commission, the railroad commission, or the governing body of any municipality.

(h) "Affected person" means any public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a public utility with respect to any service performed by the utility or that desires to enter into competition.

(i) "Affiliated interest" or "affiliate" means:

(1) any person or corporation owning or holding, directly or indirectly, five percent or more of the voting securities of a public utility;

(2) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a public utility;

(3) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by a public utility;

(4) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by any person or corporation that owns or controls, directly or indirectly, five percent or more of the voting securities of any public utility or by any person or corporation in any chain of successive ownership of five percent of such securities;

(5) any person who is an officer or director of a public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;

(6) any person or corporation that the commission or railroad commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a public utility, or over which a public utility exercises such control, or that is under common control with a public utility, such control being the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another, whether such power is established through ownership or voting of securities or by any other direct or indirect means; or

(7) any person or corporation that the commission or railroad commission, after notice and hearing determines is actually exercising such substantial influence over the policies and action of the public utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated with such public utility within the meaning of this section, even though no one of them alone is so affiliated.

(j) "Allocations" means, for all utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities or between municipalities and unincorporated areas, where such items are used for providing public utility service in a municipality, or for a municipality and unincorporated areas.

(k) "Commissioner" means a member of the Public Utility Commission of Texas.

(*l*) "Cooperative corporation" means any telephone or electric cooperative corporation organized and operating under the Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes) or the Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes).

(m) "Corporation" means any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in this Act.

(n) "Facilities" means all the plant and equipment of a public utility, including all tangible and intangi-

ble real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility.

(o) "Municipally-owned utility" means any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(p) "Order" means the whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the regulatory authority in a matter other than rulemaking, but including issuance of certificates of convenience and necessity and ratesetting.

(q) "Proceeding" means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this Act and includes the denial of relief or the dismissal of a complaint.

(r) "Separation" means, for communications utilities only, the division of plant, revenues, expenses, taxes, and reserves, applicable to exchange or local service where such items are used in common for providing public utility service to both local exchange service and other service, such as interstate or intrastate toll service.

(s) "Service" is used in this Act in its broadest and most inclusive sense, and includes any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities in the performance of their duties under this Act to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them. Service shall not include the printing, distribution, or sale of advertising in telephone directories.

(t) "Test year" means the most recent 12 months for which operating data for a public utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(u) "Water supply or sewer service corporation" means a nonprofit, member-owned corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes).

Applicability of Administrative Procedure and Texas Register Act

Sec. 4. The Administrative Procedure and Texas Register Act [1] applies to all proceedings under this Act except to the extent inconsistent with this Act.

[1] Article 6252–13a.

ARTICLE II. ORGANIZATION OF COMMISSION

Creation of Commission; Appointment and Terms; Chairman

Sec. 5. A commission, to be known as the "Public Utility Commission of Texas" is hereby created. It shall consist of three commissioners, who shall be appointed by the governor, with the advice and consent of two-thirds of the members of the senate present, and who shall have and exercise the jurisdiction and powers herein conferred upon the commission. Immediately after this Act takes effect, the governor shall, with the advice and consent of the senate, appoint one commissioner whose term shall expire two years after appointment; one commissioner whose term shall expire four years after appointment; and one commissioner whose term shall expire six years after appointment. At the expiration of each of the above named terms, there shall be appointed, in the same manner, one commissioner to hold office for a term of six years. Each commissioner shall hold office until his successor is appointed and qualified. At its first meeting following the biennial appointment and qualification of a commissioner, the commission shall elect one of the commissioners chairman.

Application of Sunset Act

Sec. 5a. The Public Utility Commission of Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

[1] Article 5429k.

Qualifications; Oath and Bond; Prohibited Activities

Sec. 6. (a) To be eligible for appointment as a commissioner, a person must be a qualified voter, not less than 30 years of age, a citizen of the United States, and a resident of the State of Texas. No person is eligible for appointment as a commissioner if at any time during the two-year period immediately preceding his appointment he personally served as an officer, director, owner, employee, partner, or legal representative of any public utility or any affiliated interest, or he owned or controlled, directly or indirectly, stocks or bonds of any class with a value of $10,000, or more in a public utility or any affiliated interest. Each commissioner shall qualify for office by taking the oath prescribed for other state officers and shall execute a bond for $5,000 payable to the state and conditioned on the faithful performance of his duties.

(b) No commissioner or employee of the commission may do any of the following during his period of service with the commission and for two years thereafter:

(1) have any pecuniary interest, either as an officer, director, partner, owner, employee, attorney, consultant, or otherwise, in any public utility or affiliated interest, or in any person or corporation or other business entity a significant portion of whose business consists of furnishing goods or services to public utilities or affiliated interests, but not including a nonprofit group or association solely supported by gratuitous contributions of money, property or services;

(2) own or control any securities in a public utility or affiliated interest, either directly or indirectly;

(3) accept any gift, gratuity, or entertainment whatsoever from any public utility or affiliated interest, or from any person, corporation, agent, representative, employee, or other business entity a significant portion of whose business consists of furnishing goods or services to public utilities or affiliated interests, or from any agent, representative, attorney, employee, officer, owner, director, or partner of any such business entity or of any public utility or affiliated interest; provided, however, that the receipt and acceptance of any gifts, gratuities, or entertainment after termination of service with the commission whose cumulative value in any one-year period is less than $100 shall not constitute a violation of this Act.

(c) The prohibited activities of this section do not include contracts for public utility products and services or equipment for use of public utility products when a member or employee of the commission is acting as a consumer.

(d) No commissioner or employee of the commission may directly or indirectly solicit or request from or suggest or recommend to, any public utility, or to any agent, representative, attorney, employee, officer, owner, director, or partner thereof, the appointment to any position or the employment in any capacity of any person by such public utility or affiliated interest.

(e) No public utility or affiliated interest or any person, corporation, firm, association, or business that furnishes goods or services to any public utility or affiliated interest, nor any agent, representative, attorney, employee, officer, owner, director, or partner of any public utility or affiliated interest, or any person, corporation, firm, association, or business furnishing goods or services to any public utility or affiliated interest may give, or offer to give, any gift, gratuity, employment, or entertainment whatsoever to any member or employee of the commission except as allowed by Subdivision (3) of Subsection (b) of this section, nor may any such public utility or affiliated interest or any such person, corporation, firm, association, or business aid, abet, or participate with any member, employee, or former employee of the commission in any activity or conduct that would constitute a violation of this subsection or Subdivision (3) of Subsection (b) of this section.

(f) It shall not be a violation of this section if a member of the commission or a person employed by the commission, upon becoming the owner of any stocks or bonds or other pecuniary interest in a public utility or affiliated interest under the jurisdiction of the commission otherwise than voluntarily, informs the commission and the attorney general of such ownership and divests himself of the ownership or interest within a reasonable time. In this section, a "pecuniary interest" includes income, compensation and payment of any kind, in addition to ownership interests. It is not a violation of this section if such a pecuniary interest is held indirectly by ownership of an interest in a retirement system, institution, or fund which in the normal course of business invests in diverse securities independently of the control of the commissioner or employee.

(g) Unless specifically authorized by this Act for disposition of ex parte matters, no member or employee of the commission assigned to render a decision or to make findings of fact and conclusions of law in a proceeding may communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

(h) No member of the commission may seek nomination or election to any other civil office of the State of Texas or of the United States while he is a commissioner. If any member of the commission files for nomination for or election to any civil office of the State of Texas or of the United States, his office as commissioner immediately becomes vacant, and the governor shall appoint a successor.

Vacancies

Sec. 7. Whenever a vacancy in the office of commissioner occurs, it shall be filled in the manner provided herein with respect to the original appointment, except that the governor may make interim appointments to continue until the vacancy can be filled in the manner provided. Any person appointed with the advice and consent of the senate to fill a vacancy shall hold office during the unexpired portion of the term.

Employees

Sec. 8. (a) The commission shall employ such officers, hearing examiners, investigators, lawyers, engineers, economists, consultants, statisticians, accountants, inspectors, clerical staff, and other employees as it deems necessary to carry out the provisions of this Act. All employees receive such compensation as is fixed by the legislature. Pending legislative determination, commission employees shall be paid the same salary as employees of the Railroad Commission holding comparable positions.

(b) The commission shall employ:

(1) a director of public utilities who has wide experience in utility regulation and rate determination;

(2) a chief engineer who is a registered engineer and an expert in public utility engineering and rate matters;

(3) a chief accountant who is a certified public accountant, experienced in public utility accounting;

(4) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake; and

(5) a general counsel.

(c) The general counsel and his staff are responsible for the gathering of information relating to all matters within the authority of the commission.

The duties of the general counsel include:

(1) accumulation of evidence and other information from public utilities and from the accounting and technical and other staffs of the commission and from other sources for the purposes specified herein;

(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

(3) conduct of investigations of public utilities under the jurisdiction of the commission;

(4) preparation of proposed changes in the rules of the commission;

(5) preparation of recommendations that the commission undertake investigation of any matter within its authority;

(6) preparation of recommendations and a report of such staff for inclusion in the annual report of the commission;

(7) protection and representation of the public interest before the commission; and

(8) such other activities as are reasonably necessary to enable him to perform his duties.

Salary

Sec. 9. The annual salary of the commissioners shall be determined by the legislature. Pending legislative determination, the commissioners shall be paid the same salary as members of the Railroad Commission.

Office; Meetings

Sec. 10. The principal office of the commission shall be located in the City of Austin, Texas, and shall be open daily during the usual business hours, Saturdays, Sundays, and legal holidays excepted. The commission shall hold meetings at its office and at such other convenient places in the state as shall be expedient and necessary for the proper performance of its duties.

Seal

Sec. 11. The commission shall have a seal bearing the following inscription: "Public Utility Commission of Texas." The seal shall be affixed to all records and authentications of copies of records and to such other instruments as the commission shall direct. All courts of this state shall take judicial notice of said seal.

Quorum

Sec. 12. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy or disqualification shall prevent the remaining commissioner or commissioners from exercising all the powers of the commission.

Orders; Transcript and Exhibits; Public Records

Sec. 13. All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed. The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters which were at any time pending before the commission and to records, reports, and inspections required by Article V hereof shall be public records, subject to the terms of the Texas Open Records Act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252–17a, Vernon's Texas Civil Statutes).

Annual Report

Sec. 14. (a) The commission shall publish an annual report to the governor, summarizing its proceedings, listing its receipts and the sources of its receipts, listing its expenditures and the nature of such expenditures, and setting forth such other information concerning the operations of the commission and the public utility industry as it considers of general interest.

(b) In the annual report issued in the year preceding the convening of each regular session of the legislature, the commission shall make such suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general as it may deem appropriate for protecting and furthering the interest of the public.

Attorney General to Represent Commission

Sec. 15. The Attorney General of the State of Texas shall represent the commission in all matters before the state courts, and any court of the United States, and before any federal public utility regulatory commission.

ARTICLE III. JURISDICTION

General Power; Rules; Hearings

Sec. 16. The commission has the general power to regulate and supervise the business of every public utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction. The commission shall make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. The commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, orders, or other actions of the commission.

Qualifying Cogenerators and Small Power Producers; Rules to Implement Federal Rules and Regulations

Sec. 16A. The commission shall make and enforce rules reasonably required to implement the

rules and regulations of the Federal Energy Regulatory Commission pertaining to the production of electric energy by qualifying cogenerators and qualifying small power producers.

Jurisdiction of Municipality; Surrender; Original and Appellate Jurisdiction of Commission

Sec. 17. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all electric, water, and sewer utility rates, operations, and services provided by an electric, water, and sewer utility within its city or town limits.

(b) At any time after two years have passed from the date this Act becomes effective, a municipality may elect to have the commission exercise exclusive original jurisdiction over electric, water, or sewer utility rates, operations, and services within the incorporated limits of the municipality. The governing body of a municipality may by ordinance elect to surrender its original jurisdiction to the commission, or the governing body may submit the question of the surrender to the qualified voters at a municipal election. Upon receipt of a petition signed by the lesser of 20,000 or ten percent of the number of qualified voters voting in the last preceding general election in that municipality, the governing body shall submit the question of the surrender of the municipality's original jurisdiction to the commission at a municipal election.

(c) A municipality that surrenders its jurisdiction to the commission may at any time, by vote of the electorate, reinstate the jurisdiction of the governing body; provided, however, that any municipality which reinstates its jurisdiction shall be unable to surrender that jurisdiction for five years after the date of the election at which the municipality elected to reinstate its jurisdiction. No municipality may, by vote of the electorate, reinstate the jurisdiction of the governing body during the pendency of any case before the commission involving the municipality.

(d) The commission shall have exclusive appellate jurisdiction to review orders or ordinances of such municipalities as provided in this Act.

(e) The commission shall have exclusive original jurisdiction over electric, water, and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this Act.

Telecommunications Utilities

Sec. 18. Subject to the limitations imposed in this Act, and for the purpose of regulating rates, operations, and services so that such rates may be just, fair, and reasonable, and the services adequate and efficient, the commission shall have exclusive original jurisdiction over the business and property of all telecommunications utilities in this state. In the exercise of its jurisdiction to regulate the rates, operations, and services of a telecommunications utility providing service in a municipality on the state line adjacent to a municipality in an adjoining state, the commission may cooperate with the utility regulatory commission of the adjoining state or the federal government and may hold joint hearings and make joint investigations with any of those commissions.

Gas Utilities

Sec. 19. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all gas utility rates, operations, and services provided by any gas utility within its city or town limits.

(b) The railroad commission shall have exclusive appellate jurisdiction to review all orders or ordinances of municipalities as provided in this Act. The railroad commission shall have exclusive original jurisdiction over the rates and services of gas utilities distributing natural gas or synthetic natural gas in areas outside the limits of municipalities, and it shall also have exclusive original jurisdiction over the rates and services of gas utilities transmitting, transporting, delivering, or selling natural gas or synthetic natural gas to gas utilities engaged in distributing such gas to the public.

(c) The provisions of this Act shall be deemed to be in addition to all existing laws relating to the jurisdiction, power, or authority of the railroad commission over gas utilities and, except as specifically in conflict with this Act, such laws shall not be deemed to be limited hereby. Provisions of this Act applicable to gas utilities within the jurisdiction of the railroad commission shall apply to all such gas utilities, including those that are within the jurisdiction, power, or authority of the railroad commission by virtue of laws other than this Act.

Municipally Owned Utilities

Sec. 20. Nothing in this article shall be construed to confer on the commission or railroad commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation, or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate and supervise public utilities within their boundaries, except as provided in this Act.

ARTICLE IV. MUNICIPALITIES

Franchises

Sec. 21. Nothing in this Act shall be construed as in any way limiting the rights and powers of a

municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for the use thereof, but no provision of any franchise agreement shall limit or interfere with any power conferred on the commission or railroad commission by this Act. If a municipality performs regulatory functions under this Act, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this Act.

Local Utility Service; Exempt and Nonexempt Areas

Sec. 22. Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the commission has assumed jurisdiction over the respective utility pursuant to this Act. If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the commission under the provisions of this Act to the extent that this Act applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the commission, or other standards and rules not inconsistent therewith. Notwithstanding any such election, the commission may consider a public utility's revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas, and may also exercise the powers conferred necessary to give effect to orders under this Act, for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider a public utility's revenues and return on investment in nonexempt areas. Utilities serving exempt areas shall be subject to the reporting requirements of this Act. Such reports shall be filed with the governing body of the municipality as well as with the commission. Nothing in this section shall limit the duty and power of the commission to regulate service and rates of municipally regulated utilities for service provided to other areas in Texas.

Rate Determination

Sec. 23. Any municipality regulating its public utilities pursuant to this Act shall require from those utilities all necessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for such determination shall be based on the procedures and requirements of this Act and said municipality shall retain any and all personnel necessary to make the determination of reasonable rates required under this Act.

Authority of Governing Body; Cost Reimbursement

Sec. 24. The governing body of any municipality shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof, to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on public utility ratemaking proceedings; and the public utility engaged in such proceedings shall be required to reimburse the governing body for the reasonable costs of such services.

Assistance by Commission or Railroad Commission

Sec. 25. The commission or the railroad commission may advise and assist municipalities upon request in connection with questions and proceedings arising under this Act. Such assistance may include aid to municipalities in connection with matters pending before the commission, the railroad commission, or the courts, or before the governing body of any municipality, including making members of the staff available as witnesses and otherwise providing evidence to them.

Appeal

Sec. 26. (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission or railroad commission.

(b) Citizens of a municipality may appeal the decision of the governing body in any rate proceeding to the commission or railroad commission through the filing of a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of such municipality.

(c) Ratepayers of a municipally owned gas or electric utility outside the municipal limits may appeal any action of the governing body affecting the rates of the municipally owned gas or electric utility through filing with the commission or railroad commission, as appropriate, petition for review signed by the lesser of 10,000 or 5 percent of the ratepayers served by such utility outside the municipal limits. For purposes of this subsection each person receiving a separate bill shall be considered as a ratepayer. But no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. Such petition for review shall be considered properly signed if signed by any person, or spouse of any such person, in whose name residential utility service is carried.

(d) The appeal process shall be instituted within 30 days of the final decision by the governing body with the filing of a petition for review with the commission or railroad commission and copies served on all parties to the original rate proceeding.

(e) The commission or railroad commission shall hear such appeal de novo and by its final order shall fix such rates as the municipality should have fixed in the ordinance from which the appeal was taken.

ARTICLE V. RECORDS, REPORTS, INSPECTIONS, RATES AND SERVICES

Records of Public Utility; Rates, Methods and Accounts

Sec. 27. (a) Every public utility shall keep and render to the regulatory authority in the manner and form prescribed by the commission or railroad commission uniform accounts of all business trans-

acted. The commission or railroad commission may also prescribe forms of books, accounts, records, and memoranda to be kept by such public utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of moneys, and any other forms, records, and memoranda which in the judgment of the commission or railroad commission may be necessary to carry out any of the provisions of this Act. In the case of any public utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by such agency may be deemed a sufficient compliance with the system prescribed by the commission or railroad commission; provided, however, that the commission or railroad commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the commission or railroad commission for a public utility or class of utilities shall not conflict nor be inconsistent with the systems and forms established by a federal agency for that public utility or class of utilities.

(b) The commission or railroad commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each public utility, and shall require every public utility to carry a proper and adequate depreciation account in accordance with such rates and methods and with such other rules and regulations as the commission or railroad commission prescribes. Such rates, methods, and accounts shall be utilized uniformly and consistently throughout the ratesetting and appeal proceedings.

(c) Every public utility shall keep separate accounts to show all profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise. No such profit or loss shall be taken into consideration by the regulatory authority in arriving at any rate to be charged for service by any such public utility, to the extent that such merchandise is not integral to the provision of utility service.

(d) Every public utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the commission or railroad commission, and to comply with all directions of the regulatory authority relating to such books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

(e) In determining the allocation of tax savings derived from application of such methods as liberalized depreciation and amortization and the investment tax credit, the regulatory authority shall equitably balance the interests of present and future customers and shall apportion such benefits between consumers and the public utilities accordingly. Where any portion of the investment tax credit has been retained by a public utility, that same amount shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied, to the extent allowed by the Internal Revenue Code.

(f) For the purposes of this section, "public utility" includes "municipally owned utility."

Powers of Commission and Railroad Commission

Sec. 28. (a) The commission and the railroad commission shall have the power to:

(1) require that public utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

(2) establish forms for all reports;

(3) determine the time for reports and the frequency with which any reports are to be made;

(4) require that any reports be made under oath;

(5) require that a copy of any contract or arrangement between any public utility and any affiliated interest be filed with it. It may require any such contract or arrangement not in writing to be reduced to writing and filed with it;

(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and

(7) require that a copy of annual reports showing all payments of compensation (other than salary or wages subject to the withholding of federal income tax) to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body.

(b) On the request of the governing body of any municipality, the commission or railroad commission may provide sufficient staff members to advise and consult with such municipality on any pending matter.

Inspections; Examination Under Oath; Compelling Production of Records; Inquiry into Management and Affairs

Sec. 29. (a) Any regulatory authority, and when authorized by the regulatory authority, its counsel, agents, and employees, shall have the right, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records, and to inspect the plant, equipment, and other property of any public utility within its jurisdiction. The regulatory authority may examine under oath, or it may authorize the person conducting such investigation

to examine under oath, any officer, agent, or employee of any public utility in connection with such investigation. The regulatory authority may require, by order or subpoena served on any public utility, the production within this state at the time and place it may designate, of any books, accounts, papers, or records kept by that public utility outside the state, or verified copies in lieu thereof if the commission or railroad commission so orders. Any public utility failing or refusing to comply with any such order or subpoena is in violation of this Act.

(b)(1) A member, agent, or employee of the regulatory authority may enter the premises occupied by a public utility to make inspections, examinations, and tests and to exercise any authority provided by this Act.

(2) A member, agent, or employee of the regulatory authority may act under this section only during reasonable hours and after giving reasonable notice to the utility.

(3) The public utility is entitled to be represented when inspections, examinations, and tests are made on its premises. Reasonable time for the utility to secure a representative shall be allowed before commencing an inspection, examination, or test.

(c) The regulatory authority may inquire into the management and affairs of all public utilities, and shall keep itself informed as to the manner and method in which the same are conducted.

Reporting of Advertising or Public Relations Expenses

Sec. 30. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment, and institutional, consumption-inducing and other advertising or public relations expenses. The regulatory authority shall not allow as costs or expenses for rate-making purposes any of these expenditures which the regulatory authority determines not to be in the public interest. The cost of legislative-advocacy expenses shall not in any case be allowed as costs or expenses for rate-making purposes. Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

Unlawful Rates, Rules and Regulations

Sec. 31. It shall be unlawful for any utility to charge, collect, or receive any rate for public utility service or to impose any rule or regulation other than as herein provided.

Filing Schedule of Rates, Rules and Regulations

Sec. 32. Every public utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time for any public utility service, product, or commodity offered by the utility. Every public utility shall file with, and as a part of such schedules, all rules and regulations relating to or affecting the rates, public utility service, product, or commodity furnished by such utility.

Office of Public Utility; Records; Removal From State

Sec. 33. Every public utility shall have an office in a county of this state in which its property or some part thereof is located in which it shall keep all books, accounts, records, and memoranda required by the commission or railroad commission to be kept in the state. No books, accounts, records, or memoranda required by the regulatory authority to be kept in the state shall be removed from the state, except on conditions prescribed by the commission or railroad commission.

Communications by Public Utilities With Regulatory Authority; Regulations and Records

Sec. 34. (a) The regulatory authority shall prescribe regulations governing communications by public utilities, their affiliates and their representatives, with the regulatory authority or any member or employee of the regulatory authority.

(b) Such records shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by the public utility, affiliate, or representative. These records shall be available to the public on a monthly basis.

Standards of Service

Sec. 35. (a) Every public utility shall furnish such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable.

(b) The regulatory authority after reasonable notice and hearing had on its own motion or on complaint, may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all public utilities with respect to the service to be furnished; ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the service; prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; and establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments and equipment used for the measurement of any service of any public utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by any public utility may be filed by it with the regulatory authority, and the same shall continue in force until amended by the public utility or until changed by the regulatory authority as herein provided.

Examination and Test of Equipment

Sec. 36. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of any service of any

public utility and may enter any premises occupied by any public utility for the purpose of making such examinations and tests and exercising any power provided for in this Act and may set up and use on such premises any apparatus and appliances necessary therefor. The public utility shall have the right to be represented at the making of the examinations, tests, and inspections. The public utility and its officers and employees shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the regulatory authority and any person or persons designated by the regulatory authority for the duties aforesaid.

(b) Any consumer or user may have any meter or measuring device tested by the utility once without charge, after a reasonable period to be fixed by the regulatory authority by rule, and at shorter intervals on payment of reasonable fees fixed by the regulatory authority. The regulatory authority shall declare and establish reasonable fees to be paid for other examining and testing such meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last such test of the same meter or other measuring device, the fee to be paid by the consumer or user at the time of his request shall be refunded to the consumer or user if the meter or measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period of presumed accuracy fixed by the regulatory authority since the last such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

ARTICLE VI. PROCEEDINGS BEFORE THE REGULATORY AUTHORITY

Power to Insure Compliance; Rate Regulation

Sec. 37. Subject to the provisions of this Act, the commission or railroad commission is hereby vested with all authority and power of the State of Texas to insure compliance with the obligations of public utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of public utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. No rule or order of the regulatory authority shall be in conflict with the rulings of any federal regulatory body.

Just and Reasonable Rates

Sec. 38. (a) It shall be the duty of the regulatory authority to insure that every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable.

(b) Rates charged or offered to be charged by a gas utility for pipeline-to-pipeline transactions and to transportation, industrial and other similar large volume contract customers, but excluding city gate sales-for-resale to gas distribution utilities, are deemed to be just and reasonable and otherwise to comply with this section and shall be approved by the regulatory authority if:

(1) neither the gas utility nor the customer had an unfair advantage during the negotiations; or

(2) the rates are substantially the same as rates between the gas utility and two or more such customers under the same or similar conditions of service; or

(3) competition does or did exist either with another gas utility, another supplier of natural gas, or with a supplier of an alternative form of energy.

(c) If a complaint is filed with the railroad commission by a transmission pipeline purchaser of gas sold or transported under any such pipeline-to-pipeline or transportation rate, then the provisions of Subsection (b) shall not apply.

Fixing Overall Revenues

Sec. 39. In fixing the rates of a public utility the regulatory authority shall fix its overall revenues at a level which will permit such utility to recover its operating expenses together with a reasonable return on its invested capital.

Fair Return; Burden of Proof

Sec. 40. (a) The regulatory authority shall not prescribe any rate which will yield more than a fair return upon the adjusted value of the invested capital used and useful in rendering service to the public.

(b) In any proceeding involving any proposed change of rates, the burden of proof to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable shall be on the public utility.

Components of Adjusted Value of Invested Capital and Net Income

Sec. 41. The components of adjusted value of invested capital and net income shall be determined according to the following rules:

(a) Adjusted Value of Invested Capital. Utility rates shall be based upon the adjusted value of property used by and useful to the public utility in providing service including where necessary to the financial integrity of the utility construction work in progress at cost as recorded on the books of the utility. The adjusted value of such property shall be a reasonable balance between original cost less depreciation and current cost less an adjustment for both present age and condition. The regulatory au-

thority shall have the discretion to determine a reasonable balance that reflects not less than 60% nor more than 75% original cost, that is, the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor, less depreciation, and not less than 25% nor more than 40% current cost less an adjustment for both present age and condition. The regulatory authority may consider inflation, deflation, quality of service being provided, the growth rate of the service area, and the need for the public utility to attract new capital in determining a reasonable balance.

(b) Separations and Allocations. Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

(c) Net Income. By "net income" is meant the total revenues of the public utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with the following:

(1) Transactions with Affiliated Interests. Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense shall not be allowed either as capital cost or as expense except to the extent that the regulatory authority shall find such payment to be reasonable. Any such finding of reasonableness shall include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations.

(2) Income Taxes. If the public utility is a member of an affiliated group that is eligible to file a consolidated income tax return, and if it is advantageous to the public utility to do so, income taxes shall be computed as though a consolidated return had been so filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a public utility is a member by reason of the elimination in the consolidated return of the intercompany profit on purchases by the public utility from an affiliate shall be applied to reduce the cost of the property or services so purchased. The investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be applied as a reduction in the rate based contribution of the assets to which such credit applies, to the extent and at such rate as allowed by the Internal Revenue Code.

(3) Expenses Disallowed. The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for ratemaking purposes.

Unreasonable or Violative Existing Rates; Investigating Costs of Obtaining Service from Another Source

Sec. 42. Whenever the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any public utility for any service are unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the public utility; and such rates shall constitute the legal rates of the public utility until changed as provided in this Act. Whenever a public utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority shall have the power and authority to investigate the cost of such production or generation in any investigation of the reasonableness of the rates of such public utility.

Statement of Intent to Change Rates; Major Changes; Hearing; Suspension of Rate Schedule; Determination of Rate Level

Sec. 43. (a) No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and such other information as may be required by the regulatory authority's rules and regulations. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of such proposed change once in each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed change, and to such other affected persons as may be required by the regulatory authority's rules and regulations. Provided, however, nothing in this subsection shall apply to a water or sewer utility that:

(1) has fewer than 150 customers; and

(2) is not a member of a group filing a consolidated tax return; and

(3) is not under common control or ownership with another water or sewer utility.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow changes in rate to take effect prior to the end of such 35 day period under such conditions as it may prescribe, subject to suspension as provided herein. All such changes shall be indicated immediately upon its schedules by such utility. "Major changes" shall mean an increase in rates which would increase the aggregate revenues of the applicant more than the greater of $100,000 or two and one-half percent, but shall not include changes in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held upon notice to the public.

(c) Whenever there is filed with the Regulatory Authority any schedule modifying or resulting in a change in any rates then in force, the Regulatory Authority shall on complaint by any affected person or may on its own motion, at any time within 30 days from the date when such change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities and counties, enter on a hearing to determine the propriety of such change. The Regulatory Authority shall hold such a hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change shall have been filed.

(d) Pending the hearing and decision, the Regulatory Authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 120 days beyond the date on which the schedule of rates would otherwise go into effect. If the Regulatory Authority finds that a longer time will be required for a final determination, the Regulatory Authority may further extend the period for an additional 30 days. If the Regulatory Authority does not make a final determination concerning any schedule of rates within a period of 150 days after the time when the schedule of rates would otherwise go into effect, the schedule shall be deemed to have been approved by the Regulatory Authority. This approval is subject to the authority of the Regulatory Authority thereafter to continue a hearing in progress. The Regulatory Authority may in its discretion fix temporary rates for any period of suspension under this section. During the suspension by the Regulatory Authority as above provided, the rates in force when the suspended schedule was filed shall continue in force unless the Regulatory Authority shall establish a temporary rate. The Regulatory Authority shall give preference to the hearing and decision of questions arising under this section over all other questions pending before it and decide the same as speedily as possible.

(e) If the regulatory authority fails to make its final determination of rates within 90 days from the date that the proposed change otherwise would have gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect upon the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned upon refund and in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

(f) If, after hearing, the Regulatory Authority finds the rates to be unreasonable or in any way in violation of any provision of law, the Regulatory Authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; these rates are thereafter to be observed until changed, as provided by this Act.

(g) A water or sewer utility exempted in Subsection (a) of this section may change its rates by filing a statement of change with the commission at least 30 days after providing notice of the change to its customers. The changed rates may be put into effect on the filing of the statement of change. At the request of one-tenth of the customers of the utility within 60 days after the day the rates are put into effect, the commission may hold a hearing, which may be an informal proceeding. On a finding by the commission that the changed rates are not just and reasonable, the commission shall set the utility's rates according to its usual procedure. The utility shall refund or credit against future bills all sums collected since the filing of the statement of change in excess of the rate finally set plus interest at the current rate as finally determined by the commission. No filing for a rate change under this section may be made for a period of six months from the last such filing by the same utility.

Rates for Areas Not Within Municipality

Sec. 44. Public utility rates for areas not within any municipality shall not exceed without commission or railroad commission approval 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

Unreasonable Preference or Prejudice as to Rates or Services

Sec. 45. No public utility may, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No public utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

Equality of Rates and Services

Sec. 46. No public utility may, directly or indirectly, by any device whatsoever or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the public utility applicable thereto when filed in the manner provided in this Act, nor may any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a public utility upon the effective date of this Act may be continued until schedules are filed. Nothing in this Act shall prevent a cooperative corporation from returning to its members the whole, or any part of, the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

Discrimination; Restriction on Competition

Sec. 47. No public utility may discriminate against any person or corporation that sells or leases equipment or performs services in competition with the public utility, nor may any public utility engage in any other practice that tends to restrict or impair such competition.

Payments in Lieu of Taxes

Sec. 48. No payments made in lieu of taxes by a public utility to the municipality by which it is owned may be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a public utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the public utility is owned.

ARTICLE VII. CERTIFICATES OF CONVENIENCE AND NECESSITY

Definitions

Sec. 49. For the purposes of this article only: (a) "Retail public utility" means any person, corporation, water supply or sewer service corporation, municipality, political subdivision or agency, or cooperative corporation, now or hereafter operating, maintaining, or controlling in Texas facilities for providing retail utility service.

(b) "Public utility" does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation under the jurisdiction of the Railroad Commission. For the purposes of this article only, "public utility" includes a water supply or sewer service corporation.

Certificate Required

Sec. 50. Beginning one year after the effective date of this Act, unless otherwise specified:

(1) No public utility may in any way render service directly or indirectly to the public under any franchise or permit without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such installation, operation, or extension.

(2) Except as otherwise provided in this article no retail public utility may furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility on or after the effective date of this Act, without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

Exceptions for Extension of Service

Sec. 51. (a) A public utility is not required to secure a certificate of public convenience and necessity for:

(1) an extension into territory contiguous to that already served by it and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity; or

(3) operation, extension, or service in progress on the effective date of this Act.

(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting public utility services from existing facilities to customers of retail utility service.

Application; Maps; Evidence of Consent

Sec. 52. (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment thereof.

(b) On or before 90 days after the effective date of this Act, or at a later date on request in writing by a public utility when good cause is shown, or at such later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.

(c) Each applicant for a certificate shall file with the commission such evidence as is required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

Prior Construction or Operation

Sec. 53. On application made to the commission within six months after the effective date of this Act, the commission shall issue a certificate of public convenience and necessity for the construction or operation then being conducted to any public utility actually providing service to any geographical area on the effective date of this Act, or to any person or corporation actively engaged on the effective date of this Act in the construction, installation, extension, or improvement of, or addition to, any facility or system used or to be used in providing public utility service.

Notice and Hearing; Issuance or Refusal; Factors Considered

Sec. 54. (a) When an application for a certificate of public convenience and necessity is filed, the commission shall give notice of such application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

(b) Except for certificates for prior operations granted under Section 53, the commission may grant applications and issue certificates only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege.

(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of existing service, the need for additional service, the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same kind already serving the proximate area, and on such factors as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in such area resulting from the granting of such certificate.

Area Included Within City, Town or Village

Sec. 55. (a) If an area has been or shall be included within the boundaries of a city, town, or village as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this Act to provide service or operate facilities in such area prior to the inclusion shall have the right to continue and extend service in its area of public convenience and necessity within the annexed or incorporated area, pursuant to the rights granted by its certificate and this Act.

(b) Notwithstanding any other provision of law, a public utility shall have the right to continue and extend service within its area of public convenience and necessity and to utilize the roads, streets, highways, alleys, and public property for the purpose of furnishing such retail utility service, subject to the authority of the governing body of a municipality to require any public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets by giving to the public utility 30 days' notice and specifying the new location for the facilities along the right-of-way of the street or streets.

(c) This section may not be construed as limiting the power of cities, towns, and villages to incorporate or extend their boundaries by annexation, nor may this section be construed as prohibiting any city or town from levying taxes and other special charges for the use of the streets as are authorized by Article 11.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended.

Contracts Valid and Enforceable

Sec. 56. Contracts between retail public utilities designating areas to be served and customers to be served by those utilities, when approved by the commission, shall be valid and enforceable and shall be incorporated into the appropriate areas of public convenience and necessity.

Preliminary Order for Certificate

Sec. 57. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issuance of the certificate. The commission may thereupon make an order declaring that it will, on application, under such rules as it prescribes, issue the desired certificate on such terms and conditions as it designates, after the public utility has obtained the contemplated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

Continuous and Adequate Service; Discontinuance, Reduction or Impairment of Service

Sec. 58. (a) The holder of any certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

(b) Unless the commission issues a certificate that neither the present or future convenience and necessity will be adversely affected, the holder of a certificate shall not discontinue, reduce, or impair service to a certified service area or part thereof except for:

(1) nonpayment of charges;

(2) nonuse; or

(3) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the commission, shall be in conformity with and subject

to such conditions, restrictions, and limitations as the commission shall prescribe.

Sale, Assignment or Lease of Certificate

Sec. 59. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

Interference with Other Public Utility

Sec. 60. If a public utility in constructing or extending its lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the lines, plants, or systems affected.

Improvements in Service; Interconnecting Service; Extended Area Toll-free Telephone Service

Sec. 61. After notice and hearing, the commission may:

(1) order a public utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the company to provide such improved service;

(2) order two or more public utilities to establish specified facilities for the interconnecting service; and

(3) order a telephone company or telephone companies to provide extended area toll-free service within a specified metropolitan area where there is a sufficient community of interest within the area and such service can reasonably be provided.

Revocation or Amendment of Certificate

Sec. 62. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

(b) When the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

(c) From the effective date of Subsections (c), (d), and (e) of this section until September 1, 1982, any person or corporation, including subsidiaries of a common parent corporation, owning a tract of land with no or minimal existing telecommunications services situated within the certified service areas of two or more telecommunications utilities as defined in Section 3(c)(2)(a), of this Act, as amended, may upon application in writing to the commission request the commission after notice and hearing to amend the certificates of the telecommunications utilities and to provide that the service to such tract will be furnished by the utility designated by the commission.

(d) In determining whether the certified service areas of the telecommunications utilities should be amended pursuant to an application under Subsection (c) of this section, the commission shall take into consideration the adequacy and quality of existing service, the need for existing service, the probable improvement of service or lowering of costs to consumers in such areas resulting from the requested amendments of certification, the particular needs of the applicant for service, including specialized or unusual services, and any duplication of facilities which would result from failure to amend the certificates.

(e) The commission may amend the certificates of telecommunications utilities as requested under Subsection (c) of this section if it finds such amendment to be proper after consideration of the factors listed in Subsection (d) of this section.

ARTICLE VIII. SALE OF PROPERTY AND MERGERS

Report of Sale, Merger, etc.; Investigation; Disallowance of Transaction

Sec. 63. No public utility may sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of $100,000 or merge or consolidate with another public utility operating in this state unless the public utility reports such transaction to the commission or railroad commission within a reasonable time. On the filing of a report with the commission or railroad commission, the commission or railroad commission shall investigate the same with or without public hearing, to determine whether the action is consistent with the public interest. In reaching its determination, the commission or railroad commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged or consolidated. If the commission or railroad commission finds that such transactions are not in the public interest, the commission or railroad commission shall take the effect of the transaction into consideration in the rate-making proceedings and disallow the effect of such transaction if it will unreasonably affect rates or service. The provisions of this section shall not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the public utility by construction.

Purchase of Voting Stock in Another Public Utility: Report

Sec. 64. No public utility may purchase voting stock in another public utility doing business in Texas, unless the utility reports such purchase to the commission or railroad commission.

Loans to Stockholders: Report

Sec. 65. No public utility may loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the public utility unless the public utility reports the transaction to the commission or railroad commission within a reasonable time.

Gas Reserve Rights: Approval of Sale, Conveyance, etc.

Sec. 66. No gas utility may sell, convey, bank, or assign rights to gas reserves to a utility or, where not in conflict with federal law, to an interstate pipeline without prior approval of the railroad commission.

ARTICLE IX. RELATIONS WITH AFFILIATED INTERESTS

Jurisdiction Over Affiliated Interests

Sec. 67. The commission or railroad commission shall have jurisdiction over affiliated interests having transactions with public utilities under the jurisdiction of the commission or railroad commission to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions.

Disclosure of Substantial Interest in Voting Securities

Sec. 68. The commission or railroad commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any public utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

ARTICLE X. JUDICIAL REVIEW

Right to Judicial Review; Evidence

Sec. 69. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule. The issue of confiscation shall be determined by a preponderance of the evidence.

Costs and Attorneys' Fees

Sec. 70. Any party represented by counsel who alleges that existing rates are excessive or that those prescribed by the commission are excessive, and who is a prevailing party in proceedings for review of a commission order or decision, may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for its efforts before the commission and the court, the amount of such attorneys' fees to be fixed by the court. On a finding by the court that an action under this article was groundless and brought in bad faith and for the purpose of harassment, the court may award to the defendant public utility the reasonable attorneys' fees.

ARTICLE XI. VIOLATIONS AND ENFORCEMENT

Action to Enjoin or Require Compliance

Sec. 71. Whenever it appears to the commission or railroad commission that any public utility or any other person or corporation is engaged in, or is about to engage in, any act in violation of this Act or of any order, rule, or regulation of the commission or railroad commission entered or adopted under the provisions of this Act, or that any public utility or any other person or corporation is failing to comply with the provisions of this Act or with any such rule, regulation, or order, the attorney general on request of the commission or railroad commission, in addition to any other remedies provided herein, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission or railroad commission against such public utility or other person or corporation to enjoin the commencement or continuation of any such act, or to require compliance with such Act, rule, regulation, or order.

Receivership

Sec. 71A. (a) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that violates a final order of the commission or allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if such appointment is necessary to guarantee the collection of assessments, fees, penalties, or interest, to guarantee continued service to the customers of the utility, or to prevent continued or repeated violation of the final order.

(c) The receiver shall execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the court.

(d) After appointment and execution of bond the receiver shall take possession of the assets of the utility specified by the court. Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the utility and shall strictly observe the final order involved.

(e) Upon a showing of good cause by the utility, the court may dissolve the receivership and order the assets and control of the business returned to the utility.

Payment of Costs of Receivership

Sec. 71B. The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of real or personal property, or any part thereof, of a water or sewer utility against which a proceeding has been brought under this article for the purpose of paying for the costs incurred in the operation of the receivership. Said costs shall include but are not limited

to the payment of fees to the receiver for his services; payment of fees to attorneys, accountants, engineers, or any other person or entity which provides goods or services necessary to the operation of the receivership; payment of costs incurred in ensuring any property owned or controlled by a water or sewer utility is not used in violation of a final order of the commission.

Penalty Against Public Utility or Affiliated Interest

Sec. 72. (a) Any public utility or affiliated interest that knowingly violates a provision of this Act, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the commission or railroad commission or decree or judgment of a court, shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each offense.

(b) A public utility or affiliated interest commits a separate offense each day it continues to violate the provisions of Subsection (a) of this section.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the commission or railroad commission, in a court of competent jurisdiction to recover the penalty under this section.

Penalty for Violating Section 6 of This Act

Sec. 73. (a) Any member of the commission, or any officer or director of a public utility or affiliated interest, shall be subject to a civil penalty of $1,000 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of, the commission.

(b) Any person, other than an officer or director of a public utility or affiliated interest or a member of the commission, shall be subject to a civil penalty of $500 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of the commission.

(c) Any member, officer, or employee of the commission found in any action by a preponderance of the evidence to have violated any provision of Section 6 of this Act shall be removed from his office or employment.

Personal Penalty

Sec. 74. (a) Any person or persons who willfully and knowingly violate the provisions of this Act shall be guilty of a third degree felony.

(b) All penalties accruing under this Act shall be cumulative and a suit for the recovery of any penalty shall not be a bar to or affect the recovery of any other penalty, or be a bar to any criminal prosecution against any public utility or any officer, director, agent, or employee thereof or any other corporation or person.

Contempt Proceedings

Sec. 75. If any person fails to comply with any lawful order of the commission or railroad commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the commission or railroad commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Disposition of Fines and Penalties

Sec. 76. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the commission or railroad commission and paid by the commission or railroad commission to the state treasury to be placed in the general revenue fund.

Venue

Sec. 77. Suits for injunction or penalties under the provisions of this Act may be brought in Travis County, in any county where such violation is alleged to have occurred, or in the county or residence of any defendant.

ARTICLE XII. COMMISSION FINANCING

Assessments Upon Public Utilities

Sec. 78. An assessment is hereby imposed upon each public utility within the commission's jurisdiction serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the Legislature, adjust this assessment to provide a level of income sufficient to fund commission operation.

Payment Dates; Delinquency

Sec. 79. All assessments shall be due on August 31 of each year. Any public utility may instead make quarterly payments due on August 31, November 30, February 28, and May 31 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of six percent per annum on the assessment and penalty due.

Payment into General Revenue Fund

Sec. 80. All fees, penalties, and interest paid under the provisions of sections 78 and 79 of this article shall be collected by the comptroller of public accounts and paid into the general revenue fund. The commission shall notify the comptroller of public accounts of any adjustment of the assessment imposed in Section 78 when made.

Approval of Budget

Sec. 81. The budget of the commission shall be subject to legislative approval as part of the appropriations act.

Accounting Records; Audit

Sec. 82. The commission shall keep such accounting records as required by the state auditor and shall be subject to periodic audit.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

Complaint by Any Affected Person

Sec. 83. Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any public utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer, or of any order, ordinance, rule, or regulation of the regulatory authority.

Record of Proceedings; Right to Hearing

Sec. 84. A record shall be kept of all proceedings had before the regulatory authority, and all the parties shall be entitled to be heard in person or by attorney.

Judicial Stay or Suspension of Order, Ruling or Decision.

Sec. 85. During the pendency of an appeal, the district court, the court of civil appeals, or the supreme court, as the case may be, may stay or suspend, in whole or in part, the operation of the regulatory authority order, ruling, or decision and such courts in granting or refusing a stay or suspension shall act in accordance with the practice of courts exercising equity jurisdiction.

Amendment

Sec. 86. [Amends art. 6252–9b, § 2(5)(A)]

Assumption of Jurisdiction

Sec. 87. (a) The regulatory authority shall assume jurisdiction and all powers and duties of regulation under this Act on January 1, 1976, except as provided in Subsection (b) of this section.

(b) The regulatory authority shall assume jurisdiction over rates and service of public utilities on September 1, 1976.

Certain Water and Sewer Utility Property Included in Rate Base; Valuation Used; Depreciation Expense

Sec. 87A. (a) The provisions of this section apply notwithstanding any other provision of this Act.

(b) Water and sewer utility property in service which was acquired from an affiliate or developer prior to September 1, 1976, included by the utility in its rate base shall be included in all ratemaking formulae and at the installed cost of the property rather than the price set between the entities. Unless the funds for this property are provided by explicit customer agreements, the property shall be considered invested capital and shall not be considered contributions in aid of construction or customer-contributed capital.

(c) Depreciation expense included in cost of service shall include depreciation on all currently used, depreciable utility property owned by the utility.

Effective Date

Sec. 88. This Act shall become effective on September 1, 1975, and the commission shall thereupon begin organization and the gathering of information as provided in this Act.

Liberal Construction

Sec. 89. This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of public utilities to the extent that such construction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

Repealer; Prior Rules and Regulations to Remain in Effect

Sec. 90. (a) Articles 1119, 1121, 1122, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1268, 1423, 1424, and 1425, Revised Civil Statutes of Texas, 1925, as amended; Section 8a, Chapter 283, Acts of the 40th Legislature, Regular Session, 1927 (Article 1011i, Vernon's Texas Civil Statutes) and all other laws and parts of laws in conflict with this Act are repealed effective September 1, 1976.

(b) All rules and regulations promulgated by regulatory authorities in the exercise of their jurisdiction over public utilities, as defined in this Act, shall remain in effect until such time as the commission or railroad commission promulgates provisions applicable to the exercise of the commission's or railroad commission's jurisdiction over public utilities.

Severability

Sec. 91. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1975, 64th Leg., p. 2327, ch. 721, §§ 1 to 91, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.061, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 93, ch. 57, §§ 1 to 4, eff. April 19, 1979; Acts 1979, 66th Leg., p. 578, ch. 268, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 607, ch. 284, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1553, ch. 669, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1600, ch. 676, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 49, ch. 24, § 1, eff. April 7, 1981; Acts 1981, 67th Leg., p. 70, ch. 31, §§ 1, 2, eff. April 10, 1981; Acts 1981, 67th Leg., p. 312, ch. 123, § 1, eff. May 13, 1981; Acts 1981, 67th Leg., p. 2442, ch. 626, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2561, ch. 683, §§ 1 to 4, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2749, ch. 751, § 1, eff. June 16, 1981.]

Art. 1446d. Electric Metering in Apartments and Condominiums

Sec. 1. In this Act:

(1) "Apartment house" means a building or buildings containing more than five dwelling units all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house shall include residential condominiums, whether rented or owner occupied.

(2) "Dwelling unit" means a room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

Sec. 2. After January 1, 1978, no incorporated city or town, including a home-rule city or other political subdivision of the state, may issue a permit, certificate, or other authorization for the construction or occupancy of a new apartment house or conversion to a condominium unless the construction plan provides for individual metering by the utility company or submetering by the owner of each dwelling unit for the measurement of the quantity of electricity, if any, consumed by the occupants within that dwelling unit.

Sec. 3. Notwithstanding any law to the contrary, the Public Utility Commission of Texas shall promulgate rules, regulations, and standards under which any owner, operator, or manager of an apartment house which is not individually metered for electricity for each dwelling unit may install submetering equipment for each individual dwelling unit for the purpose of fairly allocating the cost of each individual dwelling unit's electrical consumption. In addition to other appropriate safeguards for the tenant, such rules and regulations shall require (a) that an apartment house owner shall not impose on the tenant any extra charges, over and above the cost per kilowatt hour which is charged by the utility company to the owner, and (b) that the apartment house owner shall maintain adequate records regarding submetering and shall make such records available for inspection by the tenant during reasonable business hours. Any rule, regulation, or standard promulgated by the commission pursuant to this section shall be deemed to have been entered or adopted under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), and for purposes of enforcement, both utility companies and the owners, operators, or managers of apartment houses included in this Act are subject to enforcement pursuant to Sections 71, 72, 73, 74, 75, 76, and 77 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes). All submetering equipment shall be subject to the same rules, regulations, and standards established by the commission for accuracy, testing, and record keeping of meters installed by electric utilities and shall be subject to the meter testing requirements of Section 36 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

Sec. 4. If, during the 90-day period preceding the installation of individual meters or submeters, an owner, operator, or manager of an apartment house has increased rental rates and such increase is attributable to increased costs of utilities, then such owner, operator, or manager shall immediately reduce the rental rate by the amount of such increase and shall refund all of such increase that has previously been collected within said 90-day period.

[Acts 1977, 65th Leg., p. 942, ch. 353, §§ 1 to 4, eff. Aug. 29, 1977.]

9. TRADE ZONES

Art. 1446.1. Laredo Foreign Trade Zone

The City of Laredo, Webb County, Texas, a municipal corporation organized and incorporated under the laws of the State of Texas, or an instrumentality of the City of Laredo, is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone at the Laredo Port of Entry, and other sub-zones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

[Amended by Acts 1981, 67th Leg., p. 287, ch. 112, § 1, eff. May 9, 1981.]

Art. 1446.2. McAllen Trade Zone Corporation

The McAllen Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at McAllen, Hidalgo County, Texas, is authorized to apply for and accept a grant to establish, operate and maintain a foreign trade zone at the McAllen Port of Entry, and other sub-zones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board. One of the sub-zones may be in Starr County.

[Amended by Acts 1979, 66th Leg., p. 193, ch. 102, § 1, eff. May 9, 1979.]

Art. 1446.5. Amarillo Trade Zone Corporation

The Amarillo Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at or near Amarillo, Potter, and Randall counties, is authorized to apply for and accept a grant to establish, operate, and maintain a foreign-trade zone at Amarillo, Potter, and Randall counties, and other subzones, subject to the requirements of federal law and regulations of the Foreign-Trade Zones Board.

[Acts 1975, 64th Leg., p. 1929, ch. 628, § 1, eff. Sept. 1, 1975.]

Art. 1446.6. Galveston Port of Entry Trade Zone

The city of Galveston, Galveston County, Texas, a municipal corporation organized and incorporated under the laws of the State of Texas, or its board of trustees of the Galveston Wharves, is hereby authorized to apply for and accept a grant or permit to establish, operate, and maintain a United States foreign trade zone as defined in the Foreign Trade

Zones Act (19 U.S.C.A. Section 81a (1965)), at the Galveston port of entry, and any subzones thereof, and upon approval of such application and issuance of such grant or permit, to do all things necessary or appropriate to the establishment, operation, and maintenance of such foreign trade zone and any subzones thereof, subject to complying with the requirements of federal law and the regulations of the U. S. Foreign Trade Zones Board, Washington, D.C.
[Acts 1977, 65th Leg., p. 150, ch. 74, § 1, eff. April 25, 1977.]

Art. 1446.7. Houston Port of Entry Foreign Trade Zone

The Houston Foreign-Trade Zone, Incorporated, a private corporation incorporated under the laws of this state, the city of Houston, and the Port of Houston Authority of Harris County, Texas, are each authorized to apply for and accept a grant or permit to establish, operate, and maintain a foreign-trade zone at the Houston port of entry and any subzones of it, and to do anything necessary to establish, operate, and maintain the foreign-trade zone, if the application is approved, subject to federal law and the regulations of the Foreign-Trade Zones Board.
[Acts 1977, 65th Leg., p. 226, ch. 109, § 1, eff. Aug. 29, 1977.]

Art. 1446.8. Joint Airport Boards Foreign Trade Zone

Sec. 1. This Act shall be applicable to joint airport boards (herein called "Authorized Boards") created pursuant to Chapter 114, Acts of the 50th Legislature, Regular Session, 1947 (Article 46d–14, Vernon's Texas Civil Statutes), by two or more cities having a combined population greater than 1,000,000 according to the last preceding federal decennial census.

Sec. 2. Authorized boards are hereby authorized to apply for permits, licenses, and other grants of authority, and to accept the same, to establish, operate, and maintain one or more foreign trade zones within any county or counties in which the airport of the authorized board is situated, as Texas ports of entry under federal law, and to establish, operate, and maintain other sub-zones within the same counties, subject to all requirements of federal law and to the regulations of the Foreign Trade Zones Board of the United States or successor agency.

Sec. 3. In the operation and maintenance of any foreign trade zone or sub-zone under this Act, the authorized board shall have and possess whatever additional powers and authorizations, additional to its other statutory and locally granted powers, as shall be required or necessary to establish, operate, and maintain such foreign trade zones and sub-zones under and in accordance with federal law, rules, and regulations.
[Acts 1977, 65th Leg., p. 268, ch. 129, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 1446.9. El Paso Trade Zone Corporation

The City of El Paso or the El Paso Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at or near El Paso, El Paso County, Texas, is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone adjacent to any port of entry in El Paso County, Texas, and other subzones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.
[Acts 1977, 65th Leg., p. 372, ch. 183, § 1, eff. May 20, 1977. Amended by Acts 1981, 67th Leg., p. 287, ch. 112, § 2, eff. May 9, 1981.]

Art. 1446.10. San Antonio Foreign Trade Zone

Sec. 1. The city of San Antonio or a nonprofit corporation organized under Texas law and designated by the city of San Antonio is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone at or adjacent to any port of entry in Bexar County, Texas, and other subzones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

Sec. 2. After the nonprofit corporation has accepted a grant to establish, operate, and maintain the foreign trade zone as authorized by this Act, the city may not exercise any further control or supervision over the corporation in regard to the naming of directors and officers of the corporation or to the corporation's internal management or organization.
[Acts 1977, 65th Leg., p. 706, ch. 265, §§ 1, 2, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2108, ch. 491, § 1, eff. June 11, 1981.]

Art. 1446.11. Brownsville Navigation District Foreign Trade Zone

The Brownsville Navigation District, organized and incorporated under the laws of the State of Texas, is hereby authorized to apply for and accept a grant or permit to establish, operate, and maintain a U. S. Foreign-Trade Zone as defined in the U. S. Foreign-Trade Zone Act (19 U.S.C.A. Section 81a et seq., 1965, as amended) at the Brownsville port of entry, and subzones thereof, and upon approval of such application and issuance of such grant or permit to do all things necessary or appropriate to the establishment, operation, and maintenance of such Foreign-Trade Zone and any subzones thereof subject to compliance with the requirements of federal law and the regulations of the U.S. Foreign Trade Zones Board, Washington, D.C.
[Acts 1979, 66th Leg., p. 1637, ch. 685, § 1, eff. Aug. 27, 1979.]

Art. 1446.12. Rio Grande City Foreign Trade Zone

The Starr County Industrial Foundation, a nonprofit corporation organized and incorporated under the Texas Non-Profit Corporation Act, as amended (Articles 1396–1.01 et seq., Vernon's Texas Civil Statutes), to promote the economic development of

Starr County, with offices at Rio Grande City, Starr County, Texas, is authorized to apply for and accept a grant to establish, operate, and maintain a foreign-trade zone at Rio Grande City, Starr County, and other subzones, subject to federal law and the regulations of the Foreign Trade Zones Board.
[Acts 1981, 67th Leg., p. 163, ch. 73, eff. April 30, 1981.]

Art. 1446.13. Del Rio Foreign Trade Zone

The city of Del Rio or a nonprofit corporation organized under the laws of this state and designated by the city of Del Rio is authorized to apply for and accept a grant to establish, operate, and maintain a foreign-trade zone at Del Rio, Val Verde County, and other subzones, subject to federal law and the regulations of the Foreign Trade Zones Board.
[Acts 1981, 67th Leg., p. 348, ch. 137, eff. Aug. 31, 1981.]

Art. 1446.14. Eagle Pass Foreign Trade Zone

The city of Eagle Pass or a nonprofit corporation organized under the laws of this state and designated by the city of Eagle Pass is authorized to apply for and accept a grant to establish, operate, and maintain a foreign-trade zone at Eagle Pass, Maverick County, and other subzones, subject to federal law and the regulations of the Foreign Trade Zones Board.
[Acts 1981, 67th Leg., p. 349, ch. 138, eff. Aug. 31, 1981.]

Art. 1446.15. Foreign Trade Zones in Port Arthur Customs District and Orange and Jefferson Counties

Sec. 1. The City of Beaumont, the Beaumont Chamber of Commerce, the County of Jefferson, the Port of Beaumont Navigation District of Jefferson County, the Beaumont Economic Development Foundation, which is a nonprofit corporation organized and incorporated under the Texas Non-Profit Corporation Act, as amended (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes), with offices at Beaumont, Jefferson County, or any other corporation organized under the laws of this state and designated by the Port of Beaumont Navigation District of Jefferson County is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone and subzones at Beaumont, Jefferson County, or other locations in the portion of the Port Arthur Customs District located in this state, subject to federal law and the regulations of the Foreign Trade Zones Board.

Sec. 2. The Orange County Navigation and Port District is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone in Orange County, and other subzones, subject to federal law and the regulations of the Foreign Trade Zones Board.

Sec. 3. The Port of Port Arthur Navigation District of Jefferson County is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone in Jefferson County, and other subzones, subject to federal law and the regulations of the Foreign Trade Zones Board.

Sec. 4. The governing body of the Jefferson County Airport is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone, which may include land inside the boundaries of the airport and up to 1,000 acres of private industrial land adjacent to the airport, in Jefferson County, and other subzones, subject to federal law and the regulations of the Foreign Trade Zones Board.
[Acts 1981, 67th Leg., p. 2194, ch. 509, eff. June 12, 1981.]

CHAPTER SEVENTEEN. TRUST COMPANIES AND INVESTMENTS

Art. 1513a. Creation of Trust Company; Purposes

Creation; Purposes

Sec. 1. Except as provided by Section 6 of this Act, trust companies may be created, and any corporation, however created, may amend its charter in compliance herewith for the following purpose: to act as trustee, executor, administrator, or guardian when designated by any person, corporation, or court to do so, and as agent for the performance of any lawful act, including the right to receive deposits made by agencies of the United States of America for the authorized account of any individual, and to act as attorney-in-fact for reciprocal or inter-insurance exchange, and to lend and accumulate money without banking privileges, when licensed under the provisions of Subtitle II of Title 79, Revised Civil Statutes of Texas, 1925, as amended.[1]

[1] Article 5069–2.01 et seq.

Supervision of Banking Commissioner; Annual Statement; Examinations; Fees; Penalties

Sec. 2. (a) Such corporations shall be subject to supervision by the Banking Commissioner of Texas and shall file with the Banking Commissioner of Texas on or before February 1 of each year a statement of its condition on the previous December 31, in such form as may be required by the Banking Commissioner, showing under oath its assets and liabilities, together with a fee of $50 for filing; which statement when so filed shall not be open to the public but shall be for the information of the Banking Commissioner and his employees. The Banking Commissioner may, for good cause shown, extend the time for filing such statement for not more than 60 days. The Banking Commissioner, or his authorized assistants or representative, shall not make public the contents of said statement, or any information derived therefrom, except in the course of some judicial proceeding in this state.

(b) The Banking Commissioner of Texas shall have authority to examine or cause to be examined each such corporation annually or more often if he

deems it necessary. Such corporation shall pay the actual traveling expenses, hotel bills, and all other actual expenses incident to such examination, the equitable or proportionate cost of the maintenance and operation of the Banking Department, and the enforcement of this Act. The Banking Commissioner annually shall determine the fee. If such corporation has not sold in Texas, and does not offer for sale or sell in Texas, any of its securities which have been registered or with respect to which a permit authorizing their sale has been issued under the Securities Act,[1] as presently in force or hereafter amended, the Banking Commissioner of Texas, in lieu of an examination, shall accept the financial statement filed by such corporation pursuant to the first paragraph of this Section. Such fees, together with all other fees, penalties and revenues collected by the Banking Department, shall be retained by the department and shall be expended only for the expenses of the department.

[1] Article 581–1 et seq.

[See Compact Edition, Volume 2 for text of 2(c) to 5]

Registered Bank Holding Companies, Banks, or Trust Companies Whose Operations are Principally Outside State; Foreign Corporations

Sec. 6. (a) The provisions of this Act shall apply to any registered bank holding company, bank, or trust company whose operations are principally conducted outside this state, and any foreign corporations which were authorized to transact business in this state under a certificate of authority issued before September 1, 1979, which authorizes such corporation to exercise in this state all or any of the purposes, powers or authorities referred to in Section 1 hereof. Provided, however, nothing in this Act shall be construed as precluding any resident of the State of Texas from establishing a trust relationship with any state or national bank or trust company whether such state or national bank or trust company is or is not domiciled in the State of Texas.

(b) A registered bank holding company, bank, or trust company whose operations are principally conducted outside this state or a foreign corporation, the operations of which are principally conducted outside this state, either directly, indirectly, or through a foreign or domestic subsidiary or affiliate, may not:

(1) do business as a trust company in this state;

(2) acquire or control any trust company in this state that is chartered under the laws of this state; or

(3) exercise in this state any of the powers referred to in Section 1 of this Act except as provided by Section 105A, Texas Probate Code, as amended.

(c) Every such registered bank holding company or foreign corporation that before September 1, 1979, was authorized to transact business in the state shall be subject to the examination of the Banking Commissioner of Texas in the same manner and under the same terms and conditions as are domestic corporations. In lieu of such examinations, the Banking Commissioner of Texas may, in his discretion, accept reports of examination made by the supervising authority of the state in which the home office of such foreign corporation is domiciled. Failure to comply with this Act shall constitute grounds for revocation of the certificate of authority of such foreign corporation to transact business in this state in an action filed by the Attorney General upon the request of the Banking Commissioner of Texas.

Registered Bank Holding Companies, Banks, Trust Companies, or Foreign Corporations; Control over Trust Company

Sec. 6A. (a) A registered bank holding company, bank, trust company, or foreign corporation has control over a trust company if:

(1) it directly or indirectly, such as by acting through one or more persons, corporations, partnerships, business trusts, associations, or similar organizations, owns, controls, or has power to vote 25 percent or more of the shares of any class of voting securities of the trust company;

(2) it controls in any manner the election of a majority of the directors of the trust company; or

(3) the Banking Commissioner of Texas determines that the registered bank holding company, bank, or trust company or foreign corporation directly or indirectly exercises a controlling influence over the management or policies of the trust company.

(b) The operations of a registered bank holding company, bank, or trust company are principally conducted outside this state if:

(1) in the case of a registered bank holding company:

(A) the largest amount of the total deposits of all banks controlled by the registered bank holding company is held outside this state; or

(B) the largest amount of the total trust assets held by all banks or trust companies controlled by the registered bank holding company is held or administered outside this state;

(2) in the case of a bank, the largest amount of its total deposits is held outside this state; and

(3) in the case of a trust company, the largest amount of its total trust assets is held or administered outside this state.

[See Compact Edition, Volume 2 for text of 7]

[Amended Acts 1975, 64th Leg., p. 1368, ch. 523, §§ 1, 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1504, ch. 649, §§ 1 to 3, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 415, ch. 174, § 1, eff. Aug. 31, 1981.]

AGRICULTURAL FINANCE CORPORATIONS

Arts. 1514 to 1519. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Section 1 of Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

CHAPTER EIGHTEEN. MISCELLANEOUS

Article
1528i. Mutual Trust Investment Company Act.
1528j. Health Facilities Development Act.

Art. 1528b. Electric Cooperative Corporation Act

[See Compact Edition, Volume 2 for text of 1 to 29]

Exemption from Excise Taxes—License Fee

Sec. 30. Corporations formed hereunder shall pay annually, on or before May first, to the Secretary of State, a license fee of Ten Dollars ($10) and such corporations shall be exempt from all other excise taxes of whatsoever kind or nature. However, the corporations are exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporations are exempted by that chapter.

[See Compact Edition, Volume 2 for text of 31 to 36]

[Amended by Acts 1981, 67th Leg., p. 1778, ch. 389, § 30, eff. Jan. 1, 1982.]

Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

Art. 1528c. Telephone Cooperative Act

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

Powers of Corporation

Sec. 4. Each corporation shall have power:

(1) To sue and be sued, complain and defend, in its corporate name;

(2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;

(3) To adopt a corporate seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;

(4) To furnish, improve and expand telephone service to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members, provided, however, that, without regard to said ten per centum (10%) limitation, telephone service may be made available by a corporation through interconnection of facilities to any number of subscribers of other telephone systems, and through pay stations to any number of users; and provided, further, that a corporation which acquires existing telephone facilities may continue service to persons, not in excess of forty per centum (40%) of the number of its members, who are already receiving service from such facilities without requiring such persons to become members but such persons may become members upon such terms as may be prescribed in the by-laws; provided there shall be no duplication of services where reasonably adequate telephone services are available.

(5) To construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, telephone lines, facilities or systems, lands, buildings, structures, plants and equipment, exchanges, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the corporation is organized; provided that no cooperative shall furnish local telephone exchange service within the boundaries of any incorporated or unincorporated city, town or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the last preceding Federal Census, except where the governing body (the City Council of an incorporated area and Commissioners Court in an unincorporated area) after published notice and public hearing determines the population of such incorporated or unincorporated city, town or village has decreased below one thousand five hundred (1,500) inhabitants since taking and publishing the last preceding Federal Census, which order shall be entered of record in the official minutes of said governing body and shall be accepted as a true and correct determination of such population for all purposes hereunder unless contest thereof be filed within sixty (60) days from date of such order, or the official entry thereof, by any company or person at interest or living in the affected area, in a court of competent jurisdiction, in which event the question shall abide the result of such contest; and provided further that the corporation may continue to furnish telephone exchange service within the boundaries of any incorporated or unincorporated city, town, or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the latest Federal Census, if the area was previously receiving local telephone exchange service from the corporation prior to the time that the area increased in population to more than one thousand five hundred (1,500) inhabitants or the area became annexed to an incorporated city, town, or village having a population in excess of one thousand five hundred (1,500) inhabitants; and provided further that

this Subsection shall not be considered as a limitation or expansion of the provisions of Subsection (4) of Section 4.

(6) To connect and interconnect its telephone lines, facilities or systems with other telephone lines, facilities or systems;

(7) To make its facilities available to persons furnishing telephone service within or without this State;

(8) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements;

(9) To issue membership certificates as hereinafter provided;

(10) To borrow money and otherwise contract indebtedness, and to issue or guarantee notes, bonds, and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its real or personal property, assets, franchises, or revenues;

(11) To construct, maintain and operate telephone lines along, upon, under and across publicly owned lands and public thoroughfares, including all roads, highways, streets, alleys, bridges and causeways, subject, however, to the same restrictions and obligations required of electric transmission cooperatives in House Bill No. 393, Acts of the Fifty-first Legislature, Regular Session.[1]

(12) To exercise the power of eminent domain in the manner provided by the laws of this State for the exercise of such power by other corporations constructing or operating telephone lines, facilities or systems.

(13) To conduct its business and exercise its powers within or without this State;

(14) To adopt, amend and repeal by-laws;

(15) To make any and all contracts necessary, convenient or appropriate for the full exercise of the powers herein granted; and

(16) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the corporation is organized.

[1] Article 1436a.

[See Compact Edition, Volume 2 for text of 5 to 13]

Board of Directors

Sec. 14.

[See Compact Edition, Volume 2 for text of 14(a) and (b)]

(c) Instead of electing all the directors annually, the by-laws may provide that the directors, other than those named in the articles of incorporation to serve until the first annual meeting of the members, shall be elected by the members for a term not to exceed three (3) years. If a term other than one (1) year is provided by the by-laws, then a staggered term will be provided with one-half (½) of the directors (or the number nearest thereto) being elected annually when a two (2) year term is provided, and one-third (⅓) of the directors (or the number nearest thereto) being elected annually when a three (3) year term is provided. Thereafter, as directors' terms expire, the members shall elect their successors to serve until the second or third succeeding annual meeting after their election.

[See Compact Edition, Volume 2 for text of 14(d) to 28]

Exemption from Excise Taxes—License Fee

Sec. 29. Each corporation doing business in this State pursuant to this Act shall pay annually on or before the first day of July to the Secretary of State a fee of Ten Dollars ($10), but shall be exempt from all other excise taxes. However, a corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

[See Compact Edition, Volume 2 for text of 30 to 34]

[Amended by Acts 1975, 64th Leg., p. 343, ch. 145, § 1, eff. May 8, 1975; Acts 1975, 64th Leg., p. 344, ch. 146, § 1, eff. May 8, 1975; Acts 1981, 67th Leg., p. 1778, ch. 389, § 31, eff. Jan. 1, 1982.]

Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

Art. 1528e. Professional Corporations Act

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

Articles of Incorporation

Sec. 4. One or more individuals, each of whom is licensed or otherwise legally authorized to render the same kind of professional service within this state, may incorporate a professional corporation by filing the original and a copy of Articles of Incorporation with the Secretary of State. No professional corporation organized under this Act shall render more than one kind of professional service. The Articles of Incorporation shall set forth:

(a) The purpose for which the corporation is organized, including a statement of the one specific kind of professional service to be rendered by the corporation.

(b) The name of the corporation.

(c) The names and addresses of the individuals who are to be the shareholders of the corporation.

(d) The number of directors constituting the initial Board of Directors and the names and addresses of the persons who are to serve as the initial directors.

(e) The address of the principal office of the corporation.

(f) If the duration of the corporation is not to be perpetual, the period of its duration.

(g) The names and addresses of the Incorporators, each of whom must be duly licensed or otherwise legally authorized to render in this state the specific kind of professional service to be rendered by the corporation.

(h) Such other provisions, not inconsistent with law, which the shareholders may elect to set forth for the regulation of the internal affairs of the corporation.

[See Compact Edition, Volume 2 for text of 5 to 7]

Name

Sec. 8. A professional corporation may adopt any name that is not contrary to the law or ethics regulating the practice of the professional service rendered through the professional corporation. A professional corporation may use the initials "P.C." in its corporate name in lieu of the word, or in lieu of the abbreviation of the word, "corporation," "company," or "incorporated."

Board of Directors

Sec. 9. A professional corporation shall be governed by a Board of one or more Directors, which shall have the power to manage the business and affairs of the corporation, and the continuing authority to make management decisions on its behalf. No person not duly licensed or otherwise duly authorized to render the professional service of the corporation shall be a member of the Board of Directors. The number of directors shall be fixed by the bylaws of the professional corporation or by the Articles of Incorporation if such articles specifically prescribe the number of directors.

Officers

Sec. 10. The Board of Directors shall elect a President and a Secretary and such other officers as it may deem desirable to have to conduct the affairs of the professional corporation. One person may serve as both President and Secretary. No person not duly licensed or otherwise duly authorized to render the professional service of the professional corporation may hold an office.

[See Compact Edition, Volume 2 for text of 11 to 17]

Dissolution

Sec. 18. A professional corporation may be dissolved at any time by the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation by a meeting called and held in accordance with the bylaws or by unanimous written consent of all shareholders without the necessity of a meeting. The resolution (noting the shares voting for and against such resolution) or written consent, certified by the President or a Vice-President, or the Secretary of the corporation, and a copy of the resolution or consent shall be filed in the office of the Secretary of State and the dissolution shall be effective from the time of such filing. In the event of a dissolution of a professional corporation, the Board of Directors, as Trustees of the property and assets of the corporation, shall apply the assets first to the payment of debts of the corporation and second, to or among the shareholders, as the Articles of Incorporation shall provide.

[See Compact Edition, Volume 2 for text of 19 and 20]

[Amended by Acts 1975, 64th Leg., p. 243, ch. 92, § 1, eff. April 30, 1975; Acts 1977, 65th Leg., p. 1613, ch. 630, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 219, ch. 120, §§ 16, 17, eff. May 19, 1979.]

Art. 1528f. Professional Association Act

[See Compact Edition, Volume 2 for text of 1 to 11]

Filing of Articles of Association

Sec. 12. (A) The original and a copy of the articles of association shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of association conform to law, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of association to which he shall affix the copy.

(B) The certificate of association, together with the copy of the articles of association affixed thereto by the Secretary of State, shall be delivered to the members or their representatives.

[See Compact Edition, Volume 2 for text of 13 and 14]

Articles of Amendment

Sec. 15. The Articles of amendment shall be executed by the association by its president or a vice-president and by its secretary or an assistant secretary, and certified by one of the officers signing such articles, and shall set forth:

(1) The name and address of the association

(2) If the amendment alters any provision of the original or amended articles of association, an identification by reference or description of the altered provision and a statement of its text as it is amended to read. If the amendment is an addition to the original or amended articles of association, a statement of that fact and the full text of each provision added

(3) The date of the adoption of the amendment

(4) A statement that the amendment was adopted in accordance with the procedure for amendment stated in the articles of association, or, if none is stated therein, a statement that the amendment was adopted by two-thirds vote of its members.

Filing of Articles of Amendment

Sec. 16. (A) The original and a copy of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of amendment to which he shall affix the copy.

(B) The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the Secretary of State, shall be delivered to the association or its representatives.

[See Compact Edition, Volume 2 for text of 17]

Articles of Dissolution

Sec. 18. The articles of dissolution shall be executed by the association by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles. If there are no living officers of the association, the articles shall be executed by the legal representative of the last surviving officer. The articles of dissolution shall set forth:

(1) The name and address of the association

(2) The names and respective addresses of its officers

(3) The names and respective addresses of the members of its Board of Directors or Executive Committee

(4) A statement that the association is dissolving in accordance with its articles of association or, if there is no dissolution provision in the articles, by two-thirds vote of its members.

Filing of Articles of Dissolution

Sec. 19. (A) The original and a copy of the articles of dissolution shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of dissolution conform to law, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of dissolution to which he shall affix the copy.

(B) The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be delivered to the association or its representatives.

[See Compact Edition, Volume 2 for text of 20 to 25]

[Amended by Acts 1979, 66th Leg., p. 220, ch. 120, §§ 18 to 22, eff. May 9, 1979.]

Art. 1528i. Mutual Trust Investment Company Act

Short Title

Sec. 1. This Act may be cited as the Texas Mutual Trust Investment Company Act.

Definitions

Sec. 2. As used in this Act, the term "mutual trust investment company" means a corporation which is:

(a) an open-end investment company as defined in and subject to an Act of Congress entitled Investment Company Act of 1940, approved August 22, 1940, as amended; [1] and

(b) incorporated in compliance with the provisions of this Act to constitute a medium for the common investment of trust funds held in a fiduciary capacity and for true fiduciary purposes, either alone or with one or more cofiduciaries, by state banks with trust powers, trust companies, and national banks with trust powers.

[1] 15 U.S.C.A. § 80a-1 et seq.

Application of General Corporation Law; Articles of Incorporation

Sec. 3. Such a mutual trust investment company shall be incorporated under and be subject to the general corporation laws of this state except as herein otherwise provided. The incorporators subscribing and acknowledging the articles of incorporation shall consist of five or more persons who are officers or directors of the banks and trust companies causing such mutual trust investment company to be incorporated, and the articles of incorporation shall set forth, in addition to the facts specified in the general corporation laws, the name of each bank and trust company causing such corporation to be incorporated and the amount of stock originally subscribed for by each.

Corporate Powers; Ownership of Stock

Sec. 4. (a) The stock of a mutual trust investment company shall be owned only by state banks with trust powers, trust companies, and national banks with trust powers, acting as fiduciaries, and their cofiduciaries, if any, but may be registered in the name of their nominee or nominees.

(b) The stock of a mutual trust investment company shall not be subject to transfer or assignment except to the mutual trust investment company or to a fiduciary or cofiduciary which becomes successor to the stockholders and which is also a bank or trust company qualified to hold such stock under the provisions of this Act.

(c) A mutual trust investment company shall have not less than five directors who need not be stockholders but shall be officers or directors of banks or trust companies, provided that officers or directors of banks and trust companies not located in this state may not be directors of a mutual trust investment company unless that officer's or director's bank or trust company owns stock in a fiduciary capacity in the mutual trust investment company.

(d) A mutual trust investment company may invest its assets only in those investments in which a trustee may invest under the laws of this state.

(e) A mutual trust investment company may acquire, purchase, or redeem its own stock and shall, by means of contract or of its bylaws, bind itself to acquire, purchase, or redeem its own stock, but it shall not vote upon shares of its own stock.

(f) A mutual trust investment company shall not be responsible for ascertaining the investment powers of any fiduciary who may purchase its stock and shall not be liable for accepting funds from a fiduciary in violation of the restrictions of the will, trust indenture, or other instrument under which such fiduciary is acting in the absence of actual knowledge of such violation, and shall be accountable only to the fiduciaries who are the owners of its stock.

Purchase of Stock by Fiduciaries; Authority and Restrictions

Sec. 5. (a) State banks with trust powers, trust companies, and national banks with trust powers, acting as a fiduciary and for true fiduciary purposes, either alone or with one or more cofiduciaries, may, if exercising the care of a prudent investor and with the consent of such cofiduciary or cofiduciaries, if any, invest and reinvest funds held in such fiduciary capacity in the shares of stock of a mutual trust investment company except where the will, trust indenture, or other instrument under which such fiduciary is acting prohibits such investment.

(b) A mutual trust investment company shall be permitted to rely on the written statement of any bank or trust company purchasing its stock that the purchase complies with the foregoing requirement.

(c) For purposes of Sections 4 and 5 of this Act, the word "stock" shall mean a unit of participation in the net asset value of one or more of the investment funds of a mutual trust investment company.

Audits and Reports

Sec. 6. (a) A mutual trust investment company shall, at least once during each period of 12 months, cause an adequate audit to be made of the company by auditors responsible only to the board of directors of the company.

(b) A mutual trust investment company shall furnish annually a copy of the audited financial statement to each corporate fiduciary owning stock in the mutual trust investment company.

(c) The reasonable expenses of any such annual audits made by independent public accountants or certified public accountants and the cost of preparing and distributing the reports shall be borne and paid for by the mutual trust investment company. [Acts 1979, 66th Leg., p. 112, ch. 71, eff. Aug. 27, 1979.]

Art. 1528j. Health Facilities Development Act

Sec. 1.01. This Act may be cited as the "Health Facilities Development Act."

Sec. 1.02. It is hereby found, determined, and declared that the present and prospective health, safety, and general welfare of the people of this state require the providing by health facilities, as defined in this Act, of adequate, reasonable, and accessible health care, research, and education; that such health facilities in many portions of this state are presently obsolete, inadequate, or insufficient in number; and that the cost of health care, research, and education within this state has in many cases become excessive. It is the purpose of this Act to enable cities, counties, and hospital districts, as defined in this Act, to create corporations, as defined in this Act, with powers to provide, expand, and improve health facilities, as defined in this Act, determined by such corporations to be needed for the purpose of improving the adequacy, cost, and accessibility of health care, research, and education within this state. It is therefore determined and declared as a matter of public policy that the creation of such corporations, the issuance of revenue bonds and notes by such corporations, and the exercise of the other powers of such corporations, all as herein provided, are in the public interest and in furtherance of an important public purpose. This Act shall therefore be liberally construed in conformity with the intention of the legislature herein expressed.

Sec. 1.03. When used in this Act, unless the context requires a different definition:

(1) "Board of directors" means the board of directors of any corporation organized pursuant to the provisions of this Act.

(2) "Bonds" means bonds, notes, interim certificates, or other evidences of indebtedness of a corporation issued pursuant to this Act.

(3) "City" means any municipal corporation of this state presently existing or created hereafter, whether existing or created by general law or pursuant to a home-rule charter.

(4) "Corporation" means any health facilities development corporation created and existing under the provisions of this Act as a public corporation and constituted authority for the purposes set forth in this Act.

(5) "Cost" as applied to a health facility, as herein defined, means and includes any and all

costs of such health facility and, without limiting the generality of the foregoing, shall include the following:

(A) the cost of the acquisition of all land, rights-of-way, options to purchase land, easements, leasehold estates in land, and interests of all kinds in land related to such health facility;

(B) the cost of the acquisition, construction, repair, renovation, remodeling, or improvement of all buildings and structures to be used as or in conjunction with such health facility;

(C) the cost of site preparation, including the cost of demolishing or removing any buildings or structures the removal of which is necessary or incident to providing such health facility;

(D) the cost of architectural, engineering, legal, and related services; the cost of the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue; and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of such health facility;

(E) the cost of all machinery, equipment, furnishings, and facilities necessary or incident to the equipping of such health facility so that it may be placed in operation;

(F) the cost of financing charges and interest prior to and during construction and for a maximum of two years after completion of construction and the start-up costs of such health facility during construction and for a maximum of two years after completion of construction;

(G) any and all costs paid or incurred in connection with the financing of such health facility, including out-of-pocket expenses and compensation described in Subsection (e) of Section 4.04 hereof and further including without limitation the cost of financing, legal, accounting, financial advisory, and appraisal fees, expenses, and disbursements; the cost of any policy or policies of title insurance; the cost of printing, engraving, and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent; and

(H) all direct and indirect costs of the corporation, as herein defined, incurred in connection with providing such health facility, including without limitation reasonable sums to reimburse such corporation for time spent by its agents or employees with respect to providing such health facility and the financing thereof.

(6) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Constitution of Texas.

(7) "Director" means any member of a board of directors, as herein defined.

(8) "District" means a hospital district presently existing or created hereafter under authority of the constitution and laws of Texas.

(9) "Governing body" means, with reference to a sponsoring entity, as herein defined, the board of directors, council, commission, commissioners court, managers, trustees, or similar body charged by law with governance of such sponsoring entity.

(10) "Health facility" means and includes any real, personal, or mixed property, or any interest therein, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the board of directors of the corporation to be required, necessary, or convenient for health care, research, and education, any one or more, within this state, regardless of whether such property is in existence or is to be provided after the making of such finding. Without limiting the generality of the foregoing and when found by the board of directors of a corporation, as herein defined, to be so required, necessary, or convenient, "health facility" shall include any combination of one or more of the following:

(A) any land, buildings, equipment, machinery, furniture, facilities, and improvements;

(B) any structure suitable for use as a hospital, clinic, health facility, nursing home, extended-care facility, out-patient facility, rehabilitation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, laundry facility, administrative facility, computer facility, communication facility, fire-fighting or fire-prevention facility, food service and preparation facility, parking facility or parking area, storage facility, utility facility, x-ray facility, or building related to any health-care or health-care-related facility or system;

(C) any structure suitable for use as a multi-unit housing facility for medical staff, nurses, interns, and other employees of a health-care or health-care-related facility or system and the relatives of such persons, patients of a health-care facility, or relatives of patients admitted for treatment or care in a health-care facility;

(D) any structure suitable for use as a medical or dental research facility, medical or dental training facility, or any other facility used in the education or training of health-care personnel;

(E) any property or material used in the landscaping, equipping, or furnishing of a health-care or health-care-related facility or any similar items necessary or convenient for the operation of a health-care or health-care-related facility; and

(F) any other structure, facility, or equipment related to or essential to the operation of any health-care or health-care-related facility or system except that a health facility shall not include any nursing home organized for profit.

(11) "Resolution" means any resolution, order, ordinance, or other official action by the governing body, as herein defined, of a sponsoring entity, as herein defined.

(12) "Sponsoring entity" means any city, county, or district, all as herein defined.

(13) "User" means the person or persons, whether natural or corporate, who will occupy, operate, manage, or employ a health facility, as herein defined, after the financing, acquisition, or construction of such health facility, whether as owner, purchaser, lessee, manager, or otherwise.

The use of a singular term herein shall also include the plural of such term and the use of a plural term herein shall also include the singular of such term unless the context clearly requires a different connotation.

Sec. 2.01. There are hereby authorized to be created by sponsoring entities only, in accordance with the procedures set forth in this Act, nonmember, nonstock public corporations with the powers herein set forth for the sole purpose of acquiring, constructing, providing, improving, financing, and refinancing health facilities in order to assist the maintenance of the public health, which purpose is hereby declared to be a public purpose of this state and of every sponsoring entity on behalf of which such a corporation is created hereunder. Every sponsoring entity is hereby authorized to create and to utilize one or more corporations (1) to provide health facilities for the promotion and development of health care, research, and education, all for the public purpose of promoting the health and welfare of the citizens of this state, and (2) to issue bonds on its behalf to finance the cost of health facilities, all as provided in and in accordance with the terms of this Act. No sponsoring entity is or shall be authorized to lend its credit or grant any public money or thing of value in aid of a corporation.

Sec. 2.02. Whenever the governing body of a sponsoring entity by appropriate resolution finds and determines that it is in the public interest and to the benefit of its residents and the citizens of this state that a corporation be created to promote and develop new, expanded, or improved health facilities in order to assist the maintenance of the public health and the public welfare, the governing body may by appropriate resolution authorize and approve creation of one or more corporations on behalf of the sponsoring entity with the powers set forth in this Act and shall approve proposed articles of incorporation for such corporation. Any number of natural persons, not less than three, each of whom is at least 18 years of age and a resident of the sponsoring entity, may then act as incorporators of such corporation by signing and verifying the articles of incorporation and delivering the original and two copies of the articles of incorporation to the secretary of state. The articles of incorporation of the corporation shall set forth:

(1) the name of the corporation;

(2) a statement that the corporation is a nonprofit public corporation;

(3) the period of duration of the corporation, which may be perpetual;

(4) a statement that the purpose of the corporation is to acquire, construct, provide, improve, finance, and refinance health facilities to assist the maintenance of the public health;

(5) a statement that the corporation has no members and is a nonstock corporation;

(6) any provision for the regulation of the internal affairs of the corporation not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws;

(7) the street address of its initial registered office and the name of its initial registered agent at such street address;

(8) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(9) the name and street address of each incorporator; and

(10) the name and address of the sponsoring entity and a statement that the sponsoring entity has by resolution specifically authorized the corporation to act on its behalf to further the public purpose set forth in the articles of incorporation and has approved the articles of incorporation.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

Sec. 2.03. (a) The original and two copies of the articles of incorporation and a certified copy of the resolution by the governing body of the sponsoring entity approving such articles shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to the requirements of this Act and have been approved by the governing body of the sponsoring entity, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and each copy of such articles the word "filed" and the month, day, and year of the filing thereof;

(2) file the original of such articles in his office; and

(3) issue two certificates of incorporation to each of which he shall affix one copy of such articles.

(b) A certificate of incorporation, together with a copy of the articles of incorporation affixed thereto, shall be delivered by the secretary of state to the incorporators or their representative and to the governing body of the sponsoring entity on behalf of which the corporation was created.

(c) Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators and by the sponsoring entity have been complied with and that the corporation has been incorporated under this Act.

Sec. 2.04. After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held within this state at the call of a majority of the incorporators for the purpose of adopting bylaws and electing officers and for such other purposes as may come before the meeting. The incorporators calling the meeting shall give notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting and shall be mailed, postage prepaid, not less than five days prior to the time of such meeting.

Sec. 2.05. (a) The articles of incorporation shall be amended at any time and from time to time in any and as many respects as may be desired so long as such articles as amended contain only such provisions as are lawful under this Act when and if the governing body of the sponsoring entity on behalf of which the corporation was created by appropriate resolution finds and determines that such amendment is advisable and authorizes or directs that such amendment be made.

(b) The articles of amendment shall be executed by the corporation by its president or by a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the sponsoring entity on behalf of which the corporation was created, verified by one of the officers signing such articles, and shall set forth:

(1) the name of the corporation;

(2) if the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read; if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added; and

(3) the name and current address of the sponsoring entity, a statement that such amendment was authorized by the governing body of the sponsoring entity, and the date of the meeting at which the amendment was adopted or approved by such governing body.

Sec. 2.06. (a) The original and two copies of the articles of amendment shall be delivered to the secretary of state together with a certified copy of the resolution of the governing body of the sponsoring entity authorizing such articles. If the secretary of state finds that the articles of amendment conform to the requirements of this Act and have been authorized by the governing body of the sponsoring entity on behalf of which the corporation was created, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and on each copy of such articles the word "filed" and the month, day, and year of the filing thereof;

(2) file the original of such articles in his office; and

(3) issue two certificates of amendment to each of which he shall affix one copy of such articles.

(b) A certificate of amendment, together with a copy of the articles of amendment affixed thereto, shall be delivered by the secretary of state to the corporation or its representative and to the governing body of the sponsoring entity on behalf of which the corporation was created.

(c) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(d) No amendment shall affect any existing cause of action in favor of or against such corporation, any pending suit to which such corporation shall be a party, or the existing rights of any persons; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

Sec. 2.07. (a) A corporation may, by following the procedure to amend the articles of incorporation provided by this Act, including obtaining authorization from the governing body of the sponsoring entity on behalf of which the corporation was created, authorized, execute, and file restated articles of incorporation which may restate either:

(1) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state; or

(2) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the

secretary of state and as further amended by such restated articles of incorporation.

(b) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state, without making any further amendment thereof, the introductory paragraph shall contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and that the instrument contains no change in the provisions thereof, provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the name and address of each incorporator may be omitted.

(c) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation, the instrument containing such articles shall:

(1) set forth for any amendment made by such restated articles of incorporation a statement that each such amendment has been effected in conformity with the provisions of this Act and further set forth the statements required by this Act to be contained in articles of amendment; provided that the full text of such amendments need not be set forth except in the restated articles of incorporation as so amended;

(2) contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof; provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the names and addresses of the incorporators may be omitted; and

(3) restate the entire text of the articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation.

(d) Such restated articles of incorporation shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the sponsoring entity on behalf of which the corporation was created and shall be verified by one of the officers signing such articles.

Sec. 2.08. (a) The original and two copies of the restated articles of incorporation and a certified copy of the resolution of the governing body of the sponsoring entity authorizing such articles shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to the requirements of this Act and have been authorized by the governing body of the sponsoring entity on behalf of which the corporation was created, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and on each copy of such restated articles the word "filed" and the month, day, and year of the filing thereof;

(2) file the original of such restated articles in his office; and

(3) issue two restated certificates of incorporation to each of which he shall affix one copy of such restated articles.

(b) A restated certificate of incorporation, together with a copy of the restated articles of incorporation affixed thereto, shall be delivered by the secretary of state to the corporation or its representative and to the governing body of the sponsoring entity on behalf of which the corporation was created.

(c) Upon the issuance of the restated certificate of incorporation by the secretary of state, the original articles of incorporation and all amendments thereto shall be superseded and the restated articles of incorporation shall be deemed to be articles of incorporation of the corporation.

Sec. 3.01. Each corporation shall have and continuously maintain in this state:

(1) a registered office, which may be, but need not be, the same as its principal office; and

(2) a registered agent, which agent may be an individual resident in this state whose business office is identical with such registered office or a domestic or foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this state which has a principal or business office identical with such registered office.

Sec. 3.02. (a) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(1) the name of the corporation;

(2) the post-office address of its then registered office;

(3) if the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent is to be changed, the name of its successor registered agent;

(6) a statement that the post-office address of its registered office and the post-office address of the business office of its registered agent, as changed, will be identical; and

(7) a statement that such change was authorized by the board of directors or by an officer of the corporation so authorized by the board of directors.

(b) Such statement shall be executed by the corporation by its president or vice-president and verified by him. The original and a copy of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and the copy of word "filed" and the month, day, and year of the filing thereof;

(2) file the original in his office; and

(3) return the copy to the corporation or its representative.

(c) Upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(d) Any registered agent of a corporation may resign by giving written notice:

(1) to the corporation at its last known address; and

(2) in triplicate (the original and two copies of the notice) to the secretary of state within 10 days after mailing or delivery of said notice to the corporation.

Such notice shall include the last known address of the corporation and shall include a statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

(e) If the secretary of state finds that such written notice conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and both copies the word "filed" and the month, day, and year of the filing thereof;

(2) file the original in his office;

(3) return one copy to such resigning registered agent; and

(4) deliver one copy to the corporation at the last known address of the corporation as shown in such written notice.

Sec. 3.03. (a) The president and all vice-presidents of any corporation and the registered agent of such corporation shall be agents of such corporation upon whom may be served any process, notice, or demand required or permitted by law to be served upon the corporation.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this state or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any process, notice, or demand shall be made by delivering to and leaving with him, with the assistant secretary of state, or with any clerk having charge of the corporation department of his office duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than 30 days.

(c) The secretary of state shall keep a record of all processes, notices, and demands served upon him under this section and shall record therein the time of such service and his action with reference thereto.

Sec. 3.04. The affairs of a corporation shall be managed by a board of directors. The board of directors shall consist of any number of natural persons, not less than three, each of whom shall be appointed by the governing body of the sponsoring entity on behalf of which the corporation was created for a term of no more than six years, and each of whom shall be removable by the governing body of such sponsoring entity for cause or at will. The directors constituting the first board of directors shall be named in the articles of incorporation. Directors may be divided into classes, and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is appointed and until his successor shall have been appointed and qualified unless sooner removed. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

Sec. 3.05. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or to adopt new bylaws shall be vested in the board of directors. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or with the articles of incorporation. The initial bylaws and all amendments thereto, substitutes therefor, and repeals thereof shall be subject to the approval of the governing body of the sponsoring entity on behalf of which the corporation was created.

Sec. 3.06. (a) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, which, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws, shall have and exercise the authority of the board of directors in the management of the corporation. Each such committee shall consist of two or more persons, all of whom shall be directors. The designation of such committees and the delegation thereto of authority shall not operate to relieve the board of directors or any individual director of any responsibility imposed upon it or him by law.

(b) Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated and appointed by a resolution adopted by a majority of the directors at a meeting at which a quorum is present or by the president thereunto authorized by a like resolution of the board of directors or by the articles of incorporation or by the bylaws. Membership on such committees may, but need not be, limited to directors.

Sec. 3.07. (a) Regular meetings of the board of directors may be called and may be held at any location within the state with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held at any location within the state upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

(b) A quorum for the transaction of business by the board of directors shall be whichever is less:

(1) a majority of the number of directors fixed by the bylaws or, in the absence of a bylaw fixing the number of directors, a majority of the number of directors stated in the articles of incorporation; or

(2) any number, not less than three, fixed as a quorum by the articles of incorporation or the bylaws.

(c) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws of the corporation.

(d) Any action required to be taken at a meeting of the board of directors or any action which may be taken at a meeting of the board of directors or any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all directors or all of the members of the committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this Act.

Sec. 3.08. The officers of a corporation shall consist of a president, a vice-president, and a secretary, and such officers may include a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors. Any two or more offices may be held by the same person, except the offices of president and secretary. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby.

Sec. 3.09. (a) A corporation shall have the power to indemnify any director or officer or former director or officer of the corporation for expenses and costs, including attorney's fees, actually and necessarily incurred by him in connection with any claim asserted against him, by action in court or otherwise, by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

(b) If the corporation has not fully indemnified him, the court in the proceeding in which any claim against such director or officer has been asserted or any court having the requisite jurisdiction of an action instituted by such director or officer on his claim for indemnity may assess indemnity against the corporation or its receiver or trustee for the amount paid by such director or officer in satisfaction of any judgment or in compromise of any such claim, exclusive in either case of any amount paid to the corporation, and any expenses and costs, including attorney's fees, actually and necessarily incurred by him in connection therewith to the extent that the court shall deem reasonable and equitable; provided, nevertheless, that indemnity may be assessed under this section only if the court finds that the person indemnified was not guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

Sec. 4.01. Every corporation established under the provisions of this Act shall have all the rights and powers necessary or convenient to accomplish

the purposes of such corporation as set forth herein, including without limitation the powers:

(1) to provide or cause to be provided by a user by acquisition (whether by purchase, devise, gift, lease, or any one or more of such methods), construction, or improvement one or more health facilities located within this state and within or partially within the limits of the sponsoring entity on behalf of which the corporation was created or, with the consent of every other sponsoring entity within which such health facility is or is to be located, outside the limits of the sponsoring entity on behalf of which such corporation was created;

(2) to lease as lessor all or any part of any health facility for such rentals and upon such terms and conditions as the corporation may deem advisable and as are not in conflict with the provisions of this Act;

(3) to sell for installment payments or otherwise, to option or contract for sale, and to convey all or any part of any health facility for such price and upon such terms and conditions as the corporation may deem advisable and as are not in conflict with the provisions of this Act;

(4) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its bonds in accordance with the provisions of this Act, and secure any of its bonds or obligations by mortgage or pledge of all or any of its property, franchises, and income;

(5) to make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the cost of any health facility, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of a health facility, and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as the board of directors of such corporation may deem advisable and as are not in conflict with the provisions of this Act;

(6) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(7) to purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real or personal property or any interest therein, wherever situated, as the purposes of the corporation shall require or as shall be donated to it;

(8) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(9) to elect or appoint officers and agents of the corporation for such period of time as the corporation may determine and define their duties;

(10) to sue and be sued, complain and defend, in its corporate name;

(11) to have a corporate seal which may be altered at its pleasure and to use the same by causing it or a facsimile thereof to be impressed on, affixed to, or in any manner reproduced upon instruments of any nature required or authorized to be executed by its proper officers;

(12) to make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state for the administration and regulation of the affairs of the corporation, provided that such bylaws and all amendments thereto are approved by resolution of the governing body of the sponsoring entity on behalf of which the corporation was created;

(13) to cease its corporate activities and terminate its existence by dissolution as provided herein; and

(14) whether included in the forgoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

Provided, however, that no corporation shall be authorized to incur financial obligations under this Act unless payable solely from the proceeds of bonds, revenues derived from the lease or sale of a health facility or realized from a loan made by a corporation to finance or refinance in whole or in part a health facility, revenues derived from operating a health facility, or any other revenues as may be provided by a user of a health facility, any one or more; provided further, however, that such powers shall be subject at all times to the control of the governing body of the sponsoring entity on behalf of which the corporation was created as provided in Section 4.12 hereof; and further provided, however, that nothing in this Act shall be interpreted to bestow upon or authorize a sponsoring entity to delegate to a corporation the power of taxation, the power of eminent domain, the police power, or any equivalent sovereign power of this state or any sponsoring entity. Nothing in this section grants any authority to officers or directors of a corporation for the exercise of any of the foregoing powers inconsistent with limitations on any of the same which may be expressly set forth in this Act or in the articles of incorporation or bylaws or in any other laws of this state. Authority of officers and directors to act beyond the scope of the purpose or purposes of a corporation is not granted by any provisions of this section.

Sec. 4.02. Any corporation may convey land by deed, with or without the seal of the corporation, signed by the president or vice-president or attorney in fact of the corporation when authorized by appro-

priate resolution of the board of directors. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation or proved in the manner prescribed for other conveyances of land, may be recorded in like manner and with the same effect as other deeds. Any such deed when recorded, if signed by the president or any vice-president of the corporation, shall constitute prima facie evidence that such resolution of the board of directors was duly adopted.

Sec. 403. At least 14 days prior to the issuance of bonds by a corporation, such corporation shall file with the governing body of the sponsoring entity on behalf of which such corporation was created a full and complete description of any health facility the cost of which is to be paid in whole or in any part from the proceeds of bonds of the corporation proposed to be issued, including an explanation of the projected costs of and the necessity for such proposed health facility and the name of the proposed user of such health facility. All of the information deposited or required to be deposited by this section shall be public information open to public inspection.

Sec. 4.04. (a) Each corporation is hereby authorized to issue, sell, and deliver its bonds in accordance with the terms of this Act for the purpose of paying all or any part of the cost of a health facility.

(b) The bonds shall be dated, shall bear interest at such rate or rates (fixed or variable), shall mature at such time or times not exceeding 40 years from their date, and may be made redeemable prior to maturity at such price or prices and upon such terms and conditions as may be determined by the corporation. The bonds, including any interest coupons to be initially attached thereto, shall be in such form and denomination or denominations and payable at such place or places, and may be executed or authenticated in such manner, as the corporation may determine. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of and payment for such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery and payment. The bonds may be issued in coupon or in registered form, or both, or may be payable to a specific person, as the corporation may determine, and provision may be made for the registration of any coupon bonds as to principal alone, for the conversion of coupon bonds into fully registered bonds without coupons, and for the reconversion into coupon bonds of any fully registered bonds without coupons. The duty of conversion or reconversion may be imposed upon a trustee in a trust agreement.

(c) The principal of, redemption premium, if any, and interest on such bonds shall be payable solely from and may be secured by a pledge of all or any part of the proceeds of bonds, revenues derived from the lease or sale of a health facility or realized from a loan made by a corporation to finance or refinance in whole or in part a health facility, revenues derived from operating a health facility, or any other revenues as may be provided by a user of a health facility, any one or more.

(d) The corporation shall sell the bonds at such price or prices as it shall determine, at public or private sale. The net effective interest rate, calculated in accordance with Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k–2, Vernon's Texas Civil Statutes), on any bonds may not exceed a rate equal to the maximum annual interest rate established for business loans of $250,000 or more in this state.

(e) The proceeds of the bonds of each issue shall be used solely for the payment of all or part of the cost of, or for the making of a loan in the amount of all or part of the cost of, the health facility or health facilities for which such bonds have been authorized and, at the option of the corporation, for the deposit to a reserve fund or reserve funds for the bonds. Such proceeds shall be disbursed in such manner and under such restrictions, if any, as may be determined by the corporation. Each corporation shall be paid out of money from the proceeds of the sale and delivery of its bonds issued in accordance with this Act an amount of money equal to all of such corporation's out-of-pocket expenses and costs in connection with the issuance, sale, and delivery of such bonds, including without limitation all financing, legal, financial advisory, printing, and other expenses and costs in issuing such bonds, plus an amount of money equal to the compensation paid to any employees of such corporation for the time such employees have spent on activities relating to the issuance, sale, and delivery of such bonds.

(f) Prior to the preparation or issuance of definitive bonds, the corporation may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. Such interim receipts or temporary bonds shall be for a maximum term of three years.

Sec. 4.05. Each corporation is hereby authorized to issue, sell, and deliver its bonds for the purpose of refunding any bonds of the corporation then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such bonds, the maturities and other terms thereof, the rights of the holders thereof, and the rights, duties, and obligations of the corporation in respect thereof shall be governed by the provisions of this Act insofar as the same shall be applicable. Within the discretion of the corporation, such refunding bonds may be issued in exchange or substitution for outstanding bonds or may be sold and the proceeds used for the purpose of paying or redeeming outstanding bonds.

Sec. 4.06. Bonds issued in accordance with the provisions of this Act shall not constitute obligations of the State of Texas, any sponsoring entity, or any other political subdivision or agency of this state or a pledge of the faith and credit of any of them. All such bonds shall contain on the face thereof a statement to the effect that (1) neither the State of Texas, nor any political subdivision or agency of the State of Texas, including the sponsoring entity on behalf of which the corporation issuing such bonds was created, shall be obligated to pay the same or the interest thereon and (2) neither the faith and credit nor the taxing power of the State of Texas, said sponsoring entity, or any other political subdivision or agency thereof is pledged to the payment of the principal of, redemption premium, if any, or interest on such bonds.

Sec. 4.07. Any bonds issued by a corporation under the provisions of this Act and coupons, if any, representing interest thereon, shall be exempt securities under the Texas Securities Act, as amended (Article 581–1 et seq., Vernon's Texas Civil Statutes). If, however, any bonds issued by a corporation under this Act are secured by an agreement by a user to pay to the corporation amounts sufficient to pay the principal of, redemption premium, if any, and interest on such bonds, notwithstanding that such bonds shall be exempt securities, such an agreement by a user shall be deemed to be a separate security issued by such user, and not by such corporation, to the purchasers of such bonds for purposes of the provisions of the Texas Securities Act and shall be exempt from the provisions of such act only (1) if such security is an exempt security pursuant to the terms of such act or (2) if such bonds or the payments to be made under such agreement are guaranteed by any person and such guarantee is an exempt security pursuant to the terms of such act.

Sec. 4.08. Unless the bonds issued under this Act are ineligible for investments in accordance with criteria established in other statutes, rulings, or regulations of the State of Texas or the United States, the bonds issued under this Act shall be and are hereby declared to be legal and authorized investments for any banks; savings banks; trust companies; building and loan associations; insurance companies; fiduciaries; trustees and guardians; and sinking funds for cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public finds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas, and they shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmatured coupons, if any, appertaining thereto.

Sec. 4.09. Any security interest granted by a corporation may be perfected in the manner and with the effect specified in Chapter 9, Uniform Commercial Code-Secured Transactions, as amended,[1] any provision in Article 9.104, as amended, of such code to the contrary notwithstanding.

[1] Business and Commerce Code, § 9.101 et seq.

Sec. 4.10. Any health facility, including any leasehold estate therein, owned by a corporation which would otherwise be taxable to such corporation under the provisions of the Property Tax Code but for the purposes and nonprofit nature of a corporation shall be assessed to the user of such health facility or, if more than one such user exists, to the users thereof in proportion to the value of the rights of such users to occupy, operate, manage, or employ such health facility, all to the same extent and subject to the same exemptions from taxation, if any, as if such health facility were owned by such user or users. The user of any health facility shall be considered to be the owner of such health facility for the purposes of the application of any sales and use taxes both in the construction of the health facility and any further sale, lease, or rental of the health facility or any other taxes levied or imposed by this state or any political subdivision of this state. It is hereby declared as a matter of public policy that every corporation organized under the authority of this Act shall be engaged exclusively in the performance of charitable functions and shall be exempt from all taxation by this state and every municipal corporation and political subdivision hereof. All bonds issued by a corporation hereunder, their transfer, the interest thereon, and any profits from the sale or exchange thereof shall at all times be free from taxation by this state or any municipal corporation or political subdivision hereof.

Sec. 4.11. Any corporation created under the provisions of this Act shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its bonds and its expenses in accomplishing the public purpose provided for in this Act shall inure to the benefit of any person other than the sponsoring entity on behalf of which the corporation was created.

Sec. 4.12. The sponsoring entity on behalf of which a corporation was created may, in its sole discretion and at any time, alter the structure, organization, programs, or activities of such corporation, subject only to any limitation provided by the constitution and laws of the State of Texas and of the United States relating to the impairment of contracts entered into by the corporation. Representatives of the sponsoring entity on behalf of which a corporation is created shall have access at any time to all books and records of such corporation.

Sec. 5.01. (a) Whenever all bonds and obligations of a corporation have been paid and discharged or adequate provision has been made therefor and the governing body of the sponsoring entity on behalf of which the corporation was created shall

have by written resolution authorized and directed the dissolution of such corporation, such corporation shall be dissolved as hereinafter provided.

(b) The articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the sponsoring entity on behalf of which the corporation was created, verified by one of the officers signing such articles, and shall set forth:

(1) the name of the corporation;

(2) the name and address of the sponsoring entity, a statement that dissolution of the corporation has been authorized by the governing body of the sponsoring entity, and the date of the meeting at which such dissolution was so authorized;

(3) a statement that all bonds and obligations of the corporation have been paid and discharged or that adequate provision has been made therefor; and

(4) a statement that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

(c) The original and two copies of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to the requirements of this Act and have been authorized by the governing[1] of the sponsoring entity on behalf of which the corporation was created, he shall, when all fees have been paid as in this Act prescribed:

(1) endorse on the original and each copy of such articles the word "filed" and the month, day, and year of the filing thereof;

(2) file the original of such articles in his office; and

(3) issue two certificates of dissolution to each of which he shall affix one copy of such articles.

(d) A certificate of dissolution, together with a copy of the articles of dissolution affixed thereto, shall be delivered by the secretary of state to the representative of the dissolved corporation and to the governing body of the sponsoring entity on behalf of which the corporation was created. Upon the issuance of such certificates of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by the directors and officers of such corporation as provided in this Act.

(e) Whenever dissolution occurs, whether instituted by the governing body of the sponsoring entity on behalf of which the corporation was created or by the board of directors of such corporation, the title to all funds and properties then owned by such corporation shall automatically vest in such sponsoring entity without any further conveyance, transfer, or act of any kind whatsoever.

[1] So in enrolled bill.

Sec. 5.02. The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the secretary of state or (2) by expiration of its period of duration shall not take away or impair any remedy available to or against such corporation or its directors or officers for any right or claim existing or any liability incurred prior to such dissolution if action or other proceeding thereon is commenced within three years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of three years so as to extend its period of duration.

Sec. 6.01. Whenever any notice is required to be given to any director under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of a corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Sec. 6.02. Whenever, with respect to any action to be taken by the directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the directors, as the case may be, than required by this Act with respect to such action, the provisions of the articles of incorporation shall control.

Sec. 6.03. The secretary of state shall charge and collect for filing articles of incorporation and issuing two certificates of incorporation, filing articles of amendment and issuing two certificates of amendment, filing a statement of change of address of registered office or change of registered agent, or both, filing articles of dissolution, and filing restated articles of incorporation and issuing two restated certificates of incorporation the same fees as are charged by the secretary of state for such respective filings and issuances under the Texas Non-Profit Corporation Act (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes), as the same has previously been or may hereafter be amended.

Sec. 6.04. The secretary of state shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties herein imposed upon him.

Sec. 6.05. If the secretary of state shall fail to approve any articles of incorporation, amendment, or dissolution or any other document required by this

Act to be approved by the secretary of state before the same shall be filed in his office, he shall, within 10 days after the delivery thereof to him, give written notice of his disapproval to the person or corporation delivering the same, specifying in such notice the reasons therefor. From such disapproval such person or corporation may appeal to any district court of Travis County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper. Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

Sec. 6.06. All certificates issued by the secretary of state in accordance with the provisions of this Act and all copies of documents filed in his office in accordance with the provisions of this Act when certified by him shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated and may be officially recorded. A certificate by the secretary of state under the great seal of this state as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

Sec. 6.07. The legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the legislature shall have power to amend, repeal, or modify this Act.

Sec. 7.01. (a) This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the creation of any corporation authorized herein and all actions by such corporation authorized hereby without reference to any other general or special laws or specific acts or any restrictions or limitations contained therein; and in any case, to the extent of any conflict or inconsistency between any provisions of this Act and any other provisions of law, this Act shall prevail and control; provided, however, that any sponsoring entity and any corporation shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act. No proceedings, notice, or approval shall be required for the organization of a corporation or the issuance of any bonds or any instruments as security therefor, except as herein provided, any other law to the contrary notwithstanding; provided that nothing herein shall be construed to deprive this state and its municipal corporations and political subdivisions of their respective police powers over any properties of such corporation or to impair any police powers thereover of any official or agency of this state and its municipal corporations and political subdivisions as may be otherwise provided by law.

(b) Notwithstanding any provision of this Act, nothing in this Act shall exempt a corporation or any user from compliance with the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes).

Sec. 7.02. Nothing in this Act shall be construed so as to violate any provision of the Constitution of the State of Texas or of the United States, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided for or not. If any procedure hereunder may be held by any court to be violative of either of such constitutions, a corporation shall have the power by resolution to provide an alternative procedure conforming with such constitutions. It is the intent of the legislature in adopting this Act that a corporation authorized pursuant hereto shall be a public corporation, constituted authority, and instrumentality authorized to issue bonds on behalf of the sponsoring entity on behalf of which such corporation is created, all within the meaning of Section 103 of the Internal Revenue Code of 1954, as amended,[1] and the regulations promulgated and rulings issued thereunder, and this Act shall be construed accordingly.

[1] 26 U.S.C.A. § 103.

Sec. 7.03. The provisions of this Act are severable. If any word, phrase, clause, paragraph, sentence, section, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid; and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, section, part, or provision.

[Acts 1981, 67th Leg., p. 2966, ch. 783, eff. Aug. 31, 1981.]

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ELECTION CODE

CHAPTER ONE. MISCELLANEOUS PROVISIONS

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1.08b. Verification of Petition Signatures.
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Art. 1.01a. Definitions

(a) In this code:

(1) "Absentee voting" means the procedure prescribed by Section 37 of this code (Article 5.05, Vernon's Texas Election Code) that allows a voter to vote under certain conditions in an election without the necessity of presenting himself at the precinct polling place on election day.

(2) "Automatic tabulating equipment" or "tabulating equipment" is defined by Subdivision 2(b), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(3) "Ballot" is defined for purposes of voting systems by Section 25, Section 79, of this code (Article 7.14, Vernon's Texas Election Code) and in Subdivision 2(f), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(4) "Ballot card" is defined by Subdivision 2(d), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(5) "Ballot labels" is defined by Subdivision 2(e), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(6) "Bilingual election materials" means those items required to be printed in English and Spanish by Section 8a of this code (Article 1.08a, Vernon's Texas Election Code) or by the Federal Voting Rights Act of 1965, as amended.[1]

(7) "Campaign treasurer" means the individual designated by a candidate or political committee to be responsible for the administration of contributions and expenditures under Chapter 14 of this code.

(8) "Candidate" is defined for purposes of Chapter 14 of this code by Section 237(A) of this code (Article 14.01, Vernon's Texas Election Code).

(9) "Central counting station" is defined by Subdivision 2(g), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(10) "Certificate of election" means the certificate issued to a person who has received in an election a number of votes sufficient for election to an office.

(11) "Challenge procedure" means the procedure prescribed by Section 91 of this code (Article 8.09, Vernon's Texas Election Code), in which a prospective voter's right to vote is determined when his eligibility to vote is questioned by another person at the polling place.

(12) "Contribution" is defined for purposes of Chapter 14 of this code by Section 237(D) of this code (Article 14.01, Vernon's Texas Election Code).

(13) "Corporation" is defined for purposes of Chapter 14 of this code by Section 237(C) of this code (Article 14.01, Vernon's Texas Election Code).

(14) "County office" is defined for purposes of Chapter 14 of this code by Section 237(J) of this code (Article 14.01, Vernon's Texas Election Code).

(15) "District office" is defined for purposes of Chapter 14 of this code by Section 237(I) of this code (Article 14.01, Vernon's Texas Election Code).

(16) "Election" includes for purposes of this code, except Chapter 14, the meaning prescribed by Section 336 of this code (Article 15.36, Vernon's Texas Election Code). For purposes of Chapter 14 of this code, the term is defined by Section 237(F) of this code (Article 14.01, Vernon's Texas Election Code).

(17) "Election clerk" means a person appointed to assist an election judge in the conduct of an election.

(18) "Election contest" means the procedure prescribed by Chapter 9 of this code for determining the winner of an election.

(19) "Election inspector" means an individual appointed by the secretary of state to observe an election under Section 3 of this code (Article 1.03, Vernon's Texas Election Code).

(20) "Election judge" or "presiding judge" means the official appointed to conduct an election at the election precinct.

(21) "Electronic voting system" is defined by Subdivision 2(a), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(22) "Expenditures" is defined for purposes of Chapter 14 of this code by Section 237(E) of this code (Article 14.01, Vernon's Texas Election Code).

(23) "General election for state and county officers" means the election held on the first

Tuesday after the first Monday in November of even-numbered years for officers of the federal, state, and county governments.

(24) "General purpose political committee" is defined for purposes of Chapter 14 of this code by Section 237(Q) of this code (Article 14.01, Vernon's Texas Election Code).

(25) "Ineligible candidate" means a candidate for public office who fails to meet the qualifications for office prescribed by Section 5 of this code (Article 1.05, Vernon's Texas Election Code).

(26) "Joint election" means an election in which two or more political subdivisions have agreed to hold their elections together at common polling places under Section 9c of this code (Article 2.01c, Vernon's Texas Election Code).

(27) "Limited ballot" is defined by Subdivision 1, Section 37c, of this code (Article 5.05c, Vernon's Texas Election Code).

(28) "List of canceled registrations" or "struck list" means the list of voters whose registrations have been canceled under Subdivision 2, Section 46a, of this code (Article 5.14a Vernon's Texas Election Code).

(29) "Measure" is defined for purposes of Chapter 14 of this code by Section 237(M) of this code (Article 14.01, Vernon's Texas Election Code).

(30) "Municipal office" is defined for purposes of Chapter 14 of this code by Section 237(K) of this code (Article 14.01, Vernon's Texas Election Code).

(31) "Notice of election" means the public notice that must be given prior to the conduct of an election.

(32) "Officeholder" is defined for purposes of Chapter 14, of this code by Section 237(B) of this code (Article 14.01, Vernon's Texas Election Code).

(33) "Office of a political subdivision" is defined for purposes of Chapter 14 of this code by Section 237(L) of this code (Article 14.01, Vernon's Texas Election Code).

(34) "Pasters" means paper labels or stickers used to make ballot corrections as provided by Section 60 of this code (Article 6.04, Vernon's Texas Election Code).

(35) "Person" is defined for purposes of Chapter 14 of this code by Section 237(N) of this code (Article 14.01, Vernon's Texas Election Code).

(36) "Place" means the number designation given to offices when two or more offices of the same classification are to be voted on by the voters.

(37) "Political advertising" is defined for purposes of Chapter 14 of this code by Section 237(R) of this code (Article 14.01, Vernon's Texas Election Code).

(38) "Political committee" is defined for purposes of Chapter 14 of this code by Section 237(O) of this code (Article 14.01, Vernon's Texas Election Code).

(39) "Political party" means a voluntary association created for political purposes. It is organized for the purpose of effectuating the will of those who constitute its members, and it has the inherent power of determining its own policies.

(40) "Poll watcher," "watcher," or "supervisor" means a person appointed under Section 19 or 20 of this code (Articles 3.05 and 3.06, Vernon's Texas Election Code) to observe the conduct of an election and to report any irregularities or violations of the law.

(41) "Polling place" means the location designated for the conduct of an election.

(42) "Primary election" is defined by Section 179 of this code (Article 13.01, Vernon's Texas Election Code).

(43) "Protective counter" or "protective numbering counter" is defined by Section 25, Section 79, of this code (Article 7.14, Vernon's Texas Election Code).

(44) "Public counter" or "public numbering counter" is defined by Section 25, Section 79, of this code (Article 7.14, Vernon's Texas Election Code).

(45) "Public office" is defined for purposes of Chapter 14 of this code by Section 237(G) of this code (Article 14.01, Vernon's Texas Election Code).

(46) "Qualified voter" or "qualified elector" means a person who meets all qualifications and requirements for voting as prescribed in Section 34 of this code (Article 5.02, Vernon's Texas Election Code).

(47) "Recount" is the term commonly used in referring to the procedures prescribed by this code for the recounting of paper ballots, the recheck of voting machine returns, and the recheck or recount of electronically counted ballots.

(48) "Registrar of voters" means the county officer responsible for the registration of voters, keeping of registration records, preparation of lists of registered voters, and other duties incidental to voter registration.

(49) "Residence" is defined by Section 40 of this code (Article 5.08, Vernon's Texas Election Code).

(50) "Returns of election" means a statement prepared by the election judge indicating the total votes polled, the number of votes polled for the candidates, or the votes polled for and against any proposition.

(51) "Special canvassing board" means the body established to count the absentee ballots cast in an election.

(52) "Special election" means an election other than a general or primary election.

(53) "Special election to fill a vacancy" means an election ordered for the sole purpose of filling a vacancy in an office.

(54) "Specific purpose political committee" is defined for purposes of Chapter 14 of this code by Section 237(P) of this code (Article 14.01, Vernon's Texas Election Code).

(55) "State office" is defined for purposes of Chapter 14 of this code by Section 237(H) of this code (Article 14.01, Vernon's Texas Election Code).

(56) "Volunteer deputy registrar" means a volunteer appointed by the registrar of voters as a deputy registrar under Section 52a of this code (Article 5.20a, Vernon's Texas Election Code).

(57) "Voting booth" means an enclosure in which a voter may mark his ballot in secret, the dimensions of which are prescribed by Section 67 of this code (Article 7.02, Vernon's Texas Election Code).

(58) "Voting equipment" is defined by Subdivision 2(c), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(59) "Voting machine" means a device on which votes are cast, registered, and totalled by mechanical means.

(60) "Voting year" means the 12-month period beginning March 1 of each year.

(61) "Ward" in reference to a geographical subdivision of a city or town includes every geographical subdivision, by whatever name it is known, from which any members of the municipal governing body are elected by only the voters residing therein.

(62) "Writ of election" means a written statement issued by the county judge that states the date of the election and the offices or propositions to be voted on.

(b) The United States decennial census of date immediately preceding the action in question shall be the basis for determining population under any provision of this code.

[Amended by Acts 1977, 65th Leg., p. 1476, ch. 600, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2667, ch. 722, § 1, eff. Aug. 31, 1981.]

[1] 42 U.S.C.A. § 1973 et seq.

Art. 1.01–1. Expired

This article, derived from Acts 1977, 65th Leg., p. 880, ch. 331, §§ 1 to 7, and relating to the Election Code Revision Commission, expired of its own terms on May 29, 1979.

Art. 1.03. Secretary of State as Chief Election Officer

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

Subd. 2. At least 35 days before each general election for state and county officers, the Secretary of State shall prescribe forms of all blanks necessary under this code and shall furnish same to each county clerk. The Secretary of State shall at the same time certify to each county clerk a list of all the candidates who have been nominated for state and district offices and all other candidates whose names have been certified to the Secretary of State to be placed on the general election ballot.

Subd. 3. Upon petition of fifteen or more resident citizens of any one county to the Secretary of State, the Secretary of State shall, or may at any time upon his own initiative, appoint inspectors to observe all functions, activities, or procedures conducted pursuant to the election laws of this State. Any such inspectors shall be subject to the direction of and responsible to the Secretary of State and he may terminate any appointment at any time. Any such inspectors may be present at, observe, and take reasonable steps to evidence all activities, functions, and procedures (except for the marking of any ballot by a voter, unless being assisted by an election officer) at any polling place, place of canvass, central counting station, or other place where official election or registration functions take place. The Secretary of State or any member of his staff may, upon the initiative of the Secretary of State alone, whether any violation of election laws is suspected or not, be present at, observe, and take reasonable steps to evidence any activities, functions, and procedures at any polling place, place of canvass, central counting station, or other place where official election or registration functions take place. Any inspectors appointed under this provision shall report to the Secretary of State any violations of law observed and the Secretary of State may refer the violation to the Attorney General or a prosecuting attorney for appropriate action.

[Amended by Acts 1975, 64th Leg., p. 2074, ch. 681, § 1, eff. June 20, 1975; Acts 1977, 65th Leg., p. 882, ch. 332, § 1, eff. Aug. 29, 1977.]

Art. 1.05. Ineligibility

Subd. 1. No person shall be eligible to be a candidate for, or to be elected or appointed to, any public elective office in this state unless he is a citizen of the United States eligible to hold such office under the Constitution and laws of this state, is not mentally incompetent as determined by a court, has not been convicted of a felony for which he has not been pardoned or had his full rights of citizenship restored by other official action, and will be 18 years of age or older on the commencement of the term to be filled at the election or on the date of his appointment, and unless he will have resided in this state for a period of 12 months next preceding the applicable date specified below, and for any public office which is less than statewide, shall have resided for six months next preceding such date in the district, county, precinct, municipality or other political subdivision for which the office is to be filled:

(1) For a candidate whose name is printed on the ballot for a general (first) primary election, the applicable date is the last day on which any candidate for the office involved could file his application to have his name printed on the ballot for that primary election.

(2) For an independent or nonpartisan candidate in a general or special election, the applicable date is the last day on which the candidate's application for a place on the ballot could be delivered to the appropriate officer for receiving the application.

(3) For a write-in candidate, the applicable date is the day of the election at which the candidate's name is written in.

(4) For a party nominee who is nominated by any method other than by primary election, the applicable date is the day on which the nomination is made.

(5) For an appointee to an office, the applicable date is the day on which the appointment is made.

Subd. 2. The foregoing requirements do not apply to any office for which the Constitution or statutes of the United States or of this state prescribe the exclusive qualifications for the office or prescribe qualifications in conflict herewith, and in such case the provisions of such other laws control.

Subd. 2a. In the circumstances described in this subdivision, the residence requirements stated herein supersede the six-month precinct residence requirement stated in Subdivision 1 of this section. If the date of an order changing the boundaries of county commissioners precincts or justice of the peace precincts is less than seven months before the applicable date dated in Subdivision 1 of this section, a candidate for a precinct office in a precinct whose boundaries are affected by the order (including any newly created precinct) must have been a resident of the county in which the precinct is situated for six months next preceding the applicable date stated in Subdivision 1 and must be a resident of the precinct on that date. When a precinct office of an affected precinct is to be filled by an appointment to take effect on or after the date on which the boundary changes become effective but less than seven months after the date of the order making the changes, the appointee must have been a resident of the county for six months next preceding the effective date of the appointment and must be a resident of the precinct on that date.

For the purpose of the first paragraph of this subdivision, the date of the order changing the precinct boundaries means the appropriate date defined in this paragraph, as follows:

(1) If the change is made by an order of the commissioners court which is not challenged in a judicial proceeding brought before the applicable date stated in Subdivision 1 of this section, the date of the order means the date on which the commissioners court entered its order setting out the new boundaries.

(2) If the change is made, confirmed, or modified by a judicial decree or if judicial review of an order of the commissioners court is denied before the applicable date stated in Subdivision 1, the date of the order means the date of entry of the decree (including an order denying a motion for new trial, motion for rehearing, or similar motion) finally concluding the legal action establishing or confirming the boundary lines or denying review of the order establishing the lines.

(3) If on the applicable date stated in Subdivision 1 of this section a final decree concluding legal action has not been entered but there is an outstanding judicial decree putting a change in boundaries into effect or refusing to enjoin or to stay enforcement of an order establishing new boundary lines pending final disposition of the action, the date of the order means the date of entry of that decree.

Subd. 3. A home-rule city by charter may prescribe for its elective officers different age and residence requirements from those prescribed in Subdivision 1 of this section, but a charter may not set a minimum age greater than 21 years or a minimum length of residence in the state or city greater than 12 months next preceding the election.

Subd. 4. Except as provided in Section 104 of this code (Article 8.22, Vernon's Texas Election Code), no ineligible candidate shall ever have his name placed upon the ballot at any primary, general or special election. No ineligible candidate shall ever be voted upon nor have votes counted for him at any such primary, general or special election for the purpose of nominating or electing him, but votes cast for an ineligible candidate shall be taken into account in determining whether any other candidate received the necessary vote for nomination or election.

Subd. 5. No person who advocates the overthrow by force or violence or change by unconstitutional means of the present constitutional form of government of the United States or of this state shall be eligible to have his name printed on any official ballot in any general, special or primary election in this state.

[Amended by Acts 1975, 64th Leg., p. 2080, ch. 682, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1373, ch. 545, § 1, eff. Aug. 29, 1977.]

Art. 1.05–1. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 1.07. Injunction May Issue

The district court shall have authority to issue writs of injunction and all other necessary process at

the suit of any interested party, or of any voter, to enforce the provisions of the above two sections and to protect thereunder the rights of all parties and the public; for such purpose, jurisdiction and authority is conferred upon all district courts of this state and all cases filed hereunder shall have first right of precedence upon appeal.
[Amended by Acts 1981, 67th Leg., p. 2645, ch. 707, § 4(37), eff. Aug. 31, 1981.]

Art. 1.08a. Bilingual Election Materials in English and Spanish

Elections and Areas in Which Bilingual Materials are Required

Subd. 1. (a) In every general, special, or primary election, by whatever authority held, which is held within a county in which five percent or more of the inhabitants are persons of Spanish origin or descent, according to the federal census specified in Paragraph (b) of this subdivision, the election materials enumerated in Subdivision 3 of this section shall be printed in both English and Spanish for use at the polling place in each election precinct that is not exempt from this requirement under Subdivision 2. In the elections of a political subdivision that includes territory in more than one county, the bilingual materials must be used in each precinct that includes territory lying within a county to which this subdivision applies unless the precinct is exempt under Subdivision 2.

(b) The census used for determining the percentage of persons of Spanish origin or descent is the last preceding federal decennial census for which the enumeration date was more than two years before January 1 of the calendar year in which the election is held.

Election Precincts Exempt from Requirement

Subd. 2. (a) An election precinct situated in a county to which Subdivision 1 applies is exempt from the requirement for bilingual election materials if official census information or other information shows that persons of Spanish origin or descent comprise less than five percent of the inhabitants of the precinct. The authority holding the election has the burden of establishing entitlement to the exemption. Unless otherwise ordered by a court of competent jurisdiction, the officer or body responsible for obtaining the supplies for the election is relieved of the duty to furnish bilingual materials for those precincts for which there has been filed with the clerk or secretary of the political subdivision responsible for the expenses of the election, at least 30 days before the date of the election, a certificate executed by the presiding officer of the governing body of the political subdivision and approved by the governing body, identifying the precinct or precincts for which the exemption is claimed, together with an abstract of the official census information or other information relied on to support the exemption and a map or maps showing the precinct boundaries and the boundaries of the census enumeration areas referred to in the abstract. An authenticated copy of the resolution or other document evidencing the governing body's approval must be filed with the certificate.

(b) A new certificate and new supporting information must be filed following each decennial census. The supporting information must be revised following a change in election precinct boundaries, and a revised certificate must be filed if the certificate on file no longer correctly reflects the exempt precincts.

(c) In the case of a primary election held by a political party, the exempt precincts are those reflected in a certificate executed by the county judge or the secretary of state and filed in the office of the county clerk. The secretary of state is authorized to file a certificate for a county whenever the county judge has not filed a certificate by the 60th day before the date of the primary or whenever the certificate on file does not correctly reflect the exempt precincts.

Enumeration of Required Bilingual Materials; Preparation of the Materials

Subd. 3. (a) At each polling place where election materials in English and Spanish are required, the following materials shall be provided in bilingual form:

(1) Instruction cards for the information of voters shall be printed in both English and Spanish, either on separate cards to be posted side by side or on the same card with the Spanish text alongside the English text.

(2) Where voting machines or voting devices are used, a Spanish translation of the instructions for operating the machines or devices shall be posted in the compartment or booth that the voter occupies.

(3) All ballots and ballot labels may be printed with all ballot instructions, office titles, and propositions appearing in both Spanish and English. If the bilingual listing on the face of the ballot is not utilized, then a Spanish translation of the ballot shall be posted in each compartment or booth, and a statement shall be placed on the face of the ballot in Spanish to inform the voter that the Spanish translation is posted in the compartment or booth; and where paper ballots are used and booths are not provided for all voters, copies of the Spanish translation shall also be made available at the table where the voter selects his ballot, and a sign printed in Spanish shall be displayed at the table, informing the voter that he may take a copy of the Spanish translation for his use in preparing his ballot.

(4) All affidavit forms or other forms that voters are required to sign may have a Spanish translation printed beneath the English text or on the reverse side of the printed matter ap-

pearing on the form. If this translation is not utilized, then a Spanish translation of the affidavit shall be made available, and a statement shall be placed on the affidavit in Spanish that a Spanish translation is available upon request.

(b) The secretary of state shall prepare the Spanish translation for all bilingual materials required by Subdivisions 3 and 4 of this section, except ballot forms for local elections. The secretary of state shall prepare the Spanish translation of the ballot propositions for proposed constitutional amendments and other measures submitted by the legislature if the legislature fails to provide a Spanish text. The officer having the duty to make up the ballot for a local election shall prepare the Spanish translation of ballot material if the governing body of the political subdivision fails to provide a Spanish text.

Bilingual Materials for Absentee Voting

Subd. 4. In any countywide election, or in any election held in a political subdivision other than a county, in which bilingual election materials are required at any polling place in the county or other political subdivision, the absentee voting materials shall be printed in both English and Spanish. The forms for applying for an absentee ballot, the ballot envelopes and carrier envelopes, and any other instructions or forms furnished to the voters shall be printed in English with a Spanish translation on the face of the instrument or furnished separately along with the instrument. All ballots and ballot labels used for absentee voting shall be printed in the manner described in Subdivision 3; and whenever the Spanish translation of ballot propositions is printed separately from the ballot, a copy of the translation shall be furnished to each voter who votes by mail. In the conduct of absentee voting by personal appearance, any other materials enumerated in Subdivision 3 which are used in the voting shall be in bilingual form.

Optional Use of Bilingual Materials

Subd. 5. In any election held in a county to which Subdivision 1 of this section does not apply, or at any polling place where bilingual materials are not made mandatory under Subdivision 1, the governing body of the political subdivision responsible for the costs of the election may require the use of bilingual ballots and such other items of election materials enumerated in Subdivisions 3 and 4 as the governing body specifies, for any or all of the polling places as specified by the governing body; and the election officers of the political subdivision shall furnish bilingual materials in accordance with the resolution, ordinance, or other document by which their use is required. The governing body may provide for use of the bilingual materials on a continuing basis or on an election-by-election basis, as it sees fit.

[Added by Acts 1975, 64th Leg., p. 511, ch. 213, § 1, eff. May 16, 1975.]

Art. 1.08b. Encouragement to Vote of Non-English-Speaking Citizens

Text as added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18

Sec. 8b. It is the intent of the legislature that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to voting by citizens who lack sufficient skill in English to vote without assistance.

The presiding judge of a voting precinct in which the election materials provided in Section 8a of this code [1] are required to be used shall make reasonable efforts to appoint election clerks who are fluent in both English and Spanish.

[Added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18, eff. June 20, 1975.]

[1] Article 1.08a.

For text as added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2, see art. 1.08b, post

Art. 1.08b. Verification of Petition Signatures

Text as added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2

Whenever an application or petition of a candidate or a political party for a place on a ballot, or any other instrument authorized or required by this code, contains more than 1,000 signatures or names which need verification, the officer with whom the instrument is filed (including officers of political parties as well as public officers) may employ any reasonable statistical sampling method in determining whether the instrument contains the required number of names meeting the prescribed qualifications for signers or for names which may be listed thereon. However, in no event may the sample be less than one percent of the total number of names appearing on the instrument.

[Added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18, see art. 1.08b, ante

Art. 1.08c. Limitation on Early Filing of Application for Place on Ballot

An application to have the name of a candidate placed on the ballot for any election may not be filed earlier than 30 days before the deadline prescribed by this code for filing the application. An application filed before that day is void.

[Added by Acts 1979, 66th Leg., p. 1050, ch. 480, § 1, eff. Aug. 27, 1979.]

Art. 1.08d. Contracts for Election Services

Subd. 1. As used in this section "county officer in charge of election duties" means the county elections administrator in a county which has that office and the county clerk in a county which does not have the separate office of county elections administrator;

and "contracting officer" means the county officer in charge of election duties.

Subd. 2. (a) The county officer in charge of election duties may contract with the governing body of any city, school district, water district, or other political subdivision situated wholly or partly within the county to conduct or supervise the conduct of any single election or series of elections to be held by the political subdivision and to perform or supervise the performance of any or all of the functions enumerated in Subdivision 3 of this section in connection with the holding of the election or elections.

(b) The county officer in charge of election duties may contract with the county executive committee of any political party holding primary elections in the county to conduct or supervise the conduct of the party's general primary election or runoff primary election, or both, to be held within the county in an election year. The contract must be approved by the secretary of state before any duties may be performed or any payments may be made under the terms of the contract.

(c) When requested to do so by a political subdivision or political party, the county elections administrator shall enter into a contract to furnish the services requested in accordance with a cost schedule mutually agreed upon by the contracting parties. If a mutual agreement cannot be reached, the secretary of state shall prescribe the agreement, to which both parties are bound, or, in his discretion, the secretary of state may instruct the county elections administrator to decline to enter into a contract with the requesting party. The county clerk in counties not having the office of county elections administrator is not required to enter into a contract with a political subdivision or political party requesting services, but he may do so at his discretion.

Subd. 3. A contract with a political subdivision pursuant to Subdivision 2 of this section may include any or all of the following services, and a contract with a political party may include any or all of such services that pertain to a party primary:

(1) Recommendations on the formation of election precincts and the location of polling places and preparation of the appropriate documents for establishing the precincts and polling places.

(2) Preparation of election orders, resolutions, notices, and other pertinent documents for adoption or execution by the appropriate officer or body.

(3) Posting or publication of election notices.

(4) Preparation of lists of persons to recommend for appointment as election judge or clerk and the recruiting and training of the judges and clerks.

(5) Procurement and distribution of election supplies, including the preparation, printing, and distribution of ballots.

(6) Assembly and editing of the lists of registered voters to be used in conducting the election, in conformity with the boundaries of the political subdivision and the election precincts established for the election.

(7) Procurement, preparation, and distribution of election equipment and transportation of equipment to and from the polling places.

(8) The conduct of absentee voting, subject to the provisions of Subdivision 4 of this section.

(9) Arrangements for use of polling places on election day.

(10) In an election using electronic voting equipment, arrangements for use of a central counting station and for the personnel and equipment needed at the counting station and assistance in preparation of programs and test materials for tabulation of the ballots.

(11) Supervision of the handling and disposition of election returns, voted ballots, etc., and tabulation of unofficial returns and assistance in preparing the tabulation for the official canvass.

(12) Information services for voters and election officers.

(13) General overall supervision of the elections and advisory services in connection with decisions to be made and actions to be taken by officers of the political subdivision or political party holding the election.

(14) Preparation of submissions on voting changes to be made to the United States Department of Justice under the federal Voting Rights Act of 1965, as amended.[1]

(15) Preparation of data to support exemptions from the requirements for bilingual materials under Section 8a (Article 1.08a) of this code.

Subd. 4. (a) Notwithstanding any other provision of law, the contracting officer or any regular or temporary employee of the contracting officer may be designated as the absentee voting clerk for any political subdivision other than a municipality. The contracting officer may not replace the city secretary or clerk as the absentee voting clerk for a city election, but a contract may provide that the contracting officer is to supervise the conduct of the absentee voting and/or is to supply personnel to serve as deputy absentee voting clerks for the election.

(b) Notwithstanding any other provision of law, where a contract provides that the contracting officer is to serve as absentee voting clerk or that the contracting officer is to supply personnel to serve as deputy absentee voting clerks, residence within the county of the contracting officer satisfies the residence requirements for the positions filled under the contract.

Subd. 5. Nothing in this section authorizes or permits a change in the officer with whom or the place at which any document or record relating to an election is to be filed, or the place at which any function is to be carried out, or the officers to make the official canvass of the election returns, or the officer to serve as custodian of voted ballots or other election records, except that in elections held by a political subdivision other than a municipality, the contract may provide that the contracting officer will be custodian of the voted ballots as is permitted under Section 111a (Article 8.29a) of this code.

Subd. 6. A contract may provide that the contracting officer will pay the expenses payable to third persons which are incurred for an election or that the authority holding the election will make the payments directly to the claimants. If the contract provides that the authority holding the election is to pay the claimants, the contracting officer becomes the agent of the authority holding the election and he may contract with third persons in the name of the authority with respect to expenses within the scope of his duties. The contracting officer is not liable for the default of the authority holding the election. If the contract provides that the contracting officer is to pay the expenses, the authority holding the election is not liable for defaults of the contracting officer.

Subd. 7. (a) The contracting officer shall file with the county treasurer a copy of each contract for services to be performed under this section and shall file another copy with the county auditor or, in a county not having an auditor, with the county judge as presiding officer of the commissioners court.

(b) Contracts executed pursuant to this section need not be submitted to the commissioners court for approval. All moneys received by the contracting officer under such contracts shall be deposited in the county treasury in a special fund separate from any other funds, and shall be subject to expenditure by the contracting officer to defray the costs of carrying out the contracts without prior budgeting or appropriation by the commissioners court. However, all claims against the fund shall be audited and approved in the same manner as other claims against the county before they are paid. Salaries of personnel regularly employed by the contracting officer shall be paid from funds regularly budgeted and appropriated for that purpose, but salaries and wages paid to persons especially employed to perform duties under a contract and all other expenses directly attributable to the contract which are charged to the contracting officer shall be paid out of the special fund. From time to time, as surplus amounts accumulate in the special fund, the contracting officer may direct the treasurer to transfer the surplus, in specified amounts, to the special fund created by Section 51b (Article 5.19b) of this code.

Subd. 8. Any of the services to be performed by the contracting officer may be performed by deputies or other employees assigned by him to perform the services. In a county which does not have the separate office of county elections administrator, the county clerk may establish an elections division in his office and assign a deputy clerk to oversee the operation of the division and may delegate to the deputy the power to enter into contracts under this section.

[Added by Acts 1977, 65th Leg., p. 1505, ch. 609, § 5, eff. Aug. 29, 1977.]

[1] 42 U.S.C.A. § 1973 et seq.

CHAPTER TWO. TIME AND PLACE

Article
2.01b. Dates for Holding General and Special Elections.
2.01c. Joint Elections of Political Subdivisions.
2.06a. Municipal and School District Election Dates.

Art. 2.01. Time and Place

A general election shall be held on the first Tuesday after the first Monday in November, A.D. 1964, and every two years thereafter, at such places as may be prescribed by law after notice as prescribed by law. Special elections shall be held at such times and places as may be fixed by law providing therefor. In all elections, general, special, or primary, the polls shall be open from seven o'clock a. m. to seven o'clock p. m.; provided, that in any county having a population of one million or more, according to the last preceding federal census, the polls may be opened one hour earlier at six o'clock a. m. on order of the commissioners court of such county entered in the minutes thereof. The foregoing authority of the commissioners court shall extend to all elections held within the county, by whatever authority the election may be ordered, but the court may exercise this authority with respect to such elections as it deems necessary or desirable without advancing the opening hour for other elections, subject to the requirement that the court's order must apply uniformly to comparable types of elections held on the same day; and the order shall specify the elections to which it applies. The election shall be held for one day only.

All persons who are within the polling place and all persons who are waiting to enter the polling place at seven o'clock p. m. shall be allowed an opportunity to present themselves for voting in the same manner as if they had appeared and offered themselves for voting during regular voting hours. The presiding judge shall take necessary precautions to prevent voting by any person not present and waiting to vote at the time for official closing of the polls. If feasible, all persons waiting to vote at the time for official closing of the polls shall be required to enter the polling place, and the door to the polling place shall be closed and locked, and each such person shall remain inside the polling place until he has voted. If such procedure is not feasible, num-

bered identification cards or tokens shall be distributed to identify those persons waiting to vote at the time for official closing of the polls.
[Amended by Acts 1975, 64th Leg., p. 2075, ch. 681, § 2, eff. June 20, 1975.]

Art. 2.01b. Dates for Holding General and Special Elections

(a) Except as provided in Subsections (b) and (e) of this section, every general (regular) or special election held by the state or by any county, city, school district, water district, or any other political subdivision or agency of this state must be held on one of the following dates: the third Saturday in January, the first Saturday in April, the second Saturday in August, or the first Tuesday after the first Monday in November. Provided, however, that in even-numbered years the only issues which may be submitted to the voters in an election held on the first Tuesday after the first Monday in November shall be the election of state and county officers, the election of officers of a general-law city or town wherein the governing body of said city finds that the religious tenets of more than 50 percent of the registered voters of said city prohibit the adherents from voting in an election held on Saturday, the election of officers of a home-rule city with a population of less than 30,000, according to the last preceding federal census, where such city or town used, prior to 1975, the first Tuesday after the first Monday in November of even-numbered years as the date for the election of its officers, and amendments to the constitution of this state submitted to the voters by the legislature. This requirement does not apply to runoff elections, political subdivisions using the convention method of election, local option elections held under the Alcoholic Beverage Code, elections for bonds and elections for school maintenance taxes, to the biennial party primary elections held to nominate candidates for public office, or to confirmation elections, director elections, and maintenance tax elections, held in conjunction with the creation of political subdivisions provided for by Article XVI, Section 59, of the Texas Constitution, which furnish water or sewer services to household users. An election held on an unauthorized date is void.

(b) When a vacancy in office is to be filled at a special election, the election must be called for a date specified in Subsection (a) unless the governor finds the existence of an emergency that warrants calling the election for an earlier date. When the governing body of a political subdivision wishes to call an emergency special election to fill a vacancy, the governing body shall submit a request to the governor for permission to call the election, and the governor may grant permission if he finds that an emergency exists.

(c) In even-numbered years the only issues which may be included on the ballot of the election held on the first Tuesday after the first Monday in November shall be the election of state and county officers, the election of officers of a general-law city wherein the governing body of said city finds that the religious tenets of more than 50 percent of the registered voters of said city prohibit the adherents from voting in an election held on Saturday, the election of officers of a home-rule city with a population of less than 30,000, according to the last preceding federal census, where such city or town used, prior to 1975, the first Tuesday after the first Monday in November of even-numbered years as the date for the election of its officers, and constitutional amendments submitted to the people by the legislature. The governing body of local political subdivisions shall be allowed to choose for their permanent election day any of the above four election dates. The filing deadline for candidates, the dates for canvassing the returns of the election, the date for commencement of terms of office filled at the election, and any other date incidental to the election shall fall on the date that has the same relationship to the date of the election as provided under the preexisting law. Where by preexisting law the terms of office are set to commence on a specified calendar date and the date of the election is changed by this section, the governing board of the political subdivision shall set the date on which the terms begin until otherwise provided by law. A runoff election, when required, shall be held on a date that provides the same time interval with relation to the main election as provided under the preexisting law.

(d) When under the provisions of Subsection (c) the beginning date for a term of office is changed to fall on an earlier date, the current term on the effective date of this section is shortened accordingly, and the holder of the current term shall surrender the office to his successor on the beginning date of the succeeding term or as soon thereafter as the successor has qualified. When the beginning date is changed to fall on a later date, the incumbent in office at the expiration of the current term as set by preexisting law shall continue to perform the duties of the office, as required by Section 17 of Article XVI of the Texas Constitution, until the successor has qualified for the succeeding term.

(e) When a preexisting law requires that a special election be called within a specified time period after the occurrence of a certain event, the election shall be called for a date authorized in Subsection (a) of this section that falls within that time period; or if there is no authorized date within the period that allows sufficient time to comply with other requirements of law, the election shall be called for the first authorized date after its expiration, except that the election shall be called for some other date within the time period where the constitution requires it.
[Added by Acts 1975, 64th Leg., p. 2295, ch. 715, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 2032, ch. 811, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 503, ch. 234, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 888, ch. 314, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2401, ch. 607, § 1, eff. Aug. 31, 1981.]

Section 2 of the 1975 Act added art. 2.01c; § 3(a) provided that the Act shall take effect on January 1, 1976; § 3(b) thereof, providing that the Act shall no longer be in effect after the first Monday after the third Saturday in January, 1978, was repealed by Acts 1977, 65th Leg., p. 2032, ch. 811, § 1.

Section 3 of the 1977 Act provided:
"The provisions of Sections 9b and 9c, Texas Election Code (Articles 2.01b and 2.01c, Vernon's Texas Election Code), enacted by Chapter 715, Acts of the 64th Legislature, 1975, supersede any inconsistent or conflicting provision of any other statute enacted before the regular session of the 65th Legislature, provided, that nothing contained herein shall be construed as superseding the provisions of Subsection (i), Section 130.082, Texas Education Code, as amended. They also supersede any inconsistent or conflicting provision of any other statute enacted at the regular session of the 65th Legislature, regardless of the relative order of passage with respect to this Act, unless the other statute expressly states that its provisions prevail over the provisions of Sections 9b and 9c."

Art. 2.01c. Joint Elections of Political Subdivisions

(a) When two or more political subdivisions of this state are holding elections on the same day in all or part of the same territory, the governing bodies of any two or more of the political subdivisions may agree to hold their elections jointly in the election precincts that can be served by common polling places. When any other statute makes a joint election mandatory, a joint election must be held in accordance with the terms of the statute; and if any other political subdivisions are holding elections in any part of the same territory, any or all of them may also join in the agreement for a joint election.

(b) When a joint election is to be held, a resolution reciting the terms of the agreement, including the method for allocating the expenses for the election, shall be adopted by the governing body of each of the participating political subdivisions. The agreement may provide for use of a single ballot form at each polling place, to contain all the offices or propositions to be voted on at that polling place, or for separate ballot forms; provided, however, that no voter shall be given a ballot containing any office or proposition on which the voter is ineligible to vote. One set of election officers may be appointed to conduct the joint election, and any person who is qualified to serve as an election officer in the election of any one of the participating political subdivisions may be appointed to serve in the joint election. Poll lists, tally lists, return forms, and other records for the various elections may be combined in any manner convenient and adequate to record and report the results of each election. Where paper ballots or punchcard ballots are used, one set of ballot boxes and one stub box may be used for receiving all ballots and ballot stubs for the joint election. Returns on joint or separate forms may be made to, and the canvass made by, each officer, board, or body designated by law to receive and canvass the returns for each election, or one of such officers, boards, or bodies may be designated to receive and canvass the returns for the joint election and to report the results of each election to the proper authority. Where other records are combined, the officer designated by law to be the custodian of the records for any participating subdivision may be designated in the agreement to be the custodian of the combined records. Where the counted ballots for more than one subdivision are deposited in a single ballot box, the officer designated by law to be the custodian of the voted ballots for any one of the subdivisions may be designated in the agreement to be the custodian.

[Added by Acts 1975, 64th Leg., p. 2297, ch. 715, § 2, eff. Sept. 1, 1975.]

Art. 2.02. Formation of Election Precincts; Consolidation for Certain Elections

Unless a specific statute provides otherwise, the following rules shall govern the establishment of election precincts and the designation of polling places for the conduct of the various kinds of elections held within this state.

(a) County-wide elections held at the expense of the county. In general elections for state and county officers, special elections called by the Governor (including both county-wide elections and elections to fill vacancies in offices elected by districts which are less than county-wide), and in all other county-wide elections held at the expense of the county other than elections coming within Subsection (d) of this section, the election precincts shall be the regular election precincts established by the commissioners court pursuant to Section 12 of this code (Article 2.04, Vernon's Texas Election Code). The commissioners court shall designate the polling place for each regular precinct, in accordance with the following procedure. The county officer in charge of election duties (the county elections administrator in a county which has that office and the county clerk in a county which does not have the separate office of county elections administrator) shall recommend to the commissioners court the location of the polling place for each precinct, and the commissioners court shall designate as the polling place the location so recommended unless good cause exists for rejecting the recommendation.

[See Compact Edition, Volume 2 for text of (b) to (h)]

[Amended by Acts 1977, 65th Leg., p. 1508, ch. 609, § 6, eff. Aug. 29, 1977.]

Art. 2.04. County Election Precincts Formed by Commissioners Court

Subd. 1. Each county shall be divided into convenient election precincts by the Commissioners Court of the county, each of which precincts shall be differently numbered and described by natural or artificial boundaries or survey lines by an order entered upon the minutes of the Court. At any July or August term, the Court may make such changes in the election precincts as they deem proper, by such order entered upon the minutes of the Court. When such an order is entered, they shall immediately thereafter publish in some newspaper in the county for three consecutive weeks a notice of the entry of such order, giving a brief description in general terms of the changes made, without the necessity of including in such notice the field notes or other detailed description of the precinct boundaries. If there be no newspaper in the county, then a copy of such order shall be posted in some public place in each election precinct in the county which is affected by the order.

Subd. 2. Subject to the provisions of Subdivision 7(a) of this Section, no election precinct shall have resident therein less than 100 nor more than 2000 voters as ascertained by the number of registered voters for the last preceding presidential general election year; provided, however, that in counties of less than 100,000 population according to the last preceding federal census, the commissioners court may establish precincts of less than 100 but not less than 50 voters; and provided further, that in counties of less than 50,000 population according to the last preceding federal census, the commissioners court may establish precincts of less than 50 voters upon the petition of 25 or more registered voters within the county. In precincts in which voting machines or devices have been adopted for use in accordance with Section 79 or Section 80 of this Code,[1] the maximum number of voters shall be 3000.

Subd. 3. In cities and towns having ten thousand or more inhabitants, each ward shall constitute an election precinct unless there are more than two thousand registered voters residing in the ward. In such cities and towns, no precinct shall include territory outside the corporate limits of the city or town unless the Commissioners Court finds that adjacent unincorporated territory is so situated that it cannot be formed into or included within an election precinct wholly outside the city, of suitable size and shape and containing a suitable number of voters. If the Commissioners Court finds this condition to exist, it may include such territory in a precinct or precincts formed within the city or town, and the finding of the Commissioners Court shall be conclusive. If on September 15 of any year there exists any election precinct in the county which does not comply with the requirements of this paragraph, the Commissioners Court shall make the necessary changes before the first day of October, either at a regular meeting or at a special meeting called for that purpose; and the order shall be published as provided in Subdivision 1 of this Section.

Subd. 4. In cities, towns and villages of less than ten thousand inhabitants, election precincts may be formed without regard to the wards or the corporate limits of the city, town or village.

Subd. 5. Except as provided by Subdivision 7(c) of this Section, changes in election precincts shall not become operative in the holding of elections until the beginning of the following voting year. The Commissioners Court shall cause to be made out and delivered to the voter registrar before the first day of each September a certified copy of such last order for the year following; provided, however, that any order entered during the month of September, as provided in Subdivisions 2 and 3 of this Section, shall be delivered to the voter registrar forthwith.

Subd. 6. (a) This subdivision applies only to counties having a population of 500,000 or more, according to the last preceding federal census.

(b) If a change in the boundary of one or more county election precincts will be considered at a meeting of the Commissioners Court, not later than seven days before the day of the meeting, the Commissioners Court shall give written notice to each county chairman of a political party and to the affected precinct chairmen and presiding precinct election judges of the proposed change, identifying the precincts to be considered and the date, place, and hour of the meeting.

(c) Not later than seven days after entry of an order changing the boundary of one or more county election precincts, the Commissioners Court shall give written notice to the persons specified in Subsection (b) of this subdivision that the change has been made.

(d) Notice required by this subdivision may be delivered by regular first-class mail or by any other method. Notice delivered by mail is considered delivered when deposited in the mail. Notice delivered by mail must be addressed to the most recent address appearing on the records of the county clerk or Commissioners Court.

(e) The Commissioners Court shall maintain a record containing a copy of each notice given under this subdivision and the date of its delivery. The record may be destroyed or discarded at any time after one year following the date of delivery of the notice.

(f) Failure to deliver notice as required by this subdivision nullifies the boundary change as to which notice was required.

Subd. 7. (a) A county election precinct may not contain territory from more than one of the following territorial units:

(1) commissioners precinct;
(2) justice precinct;
(3) congressional district;
(4) state representative district;
(5) state senatorial district; or
(6) ward in a city or town with a population of 10,000 or more.

(b) Except as provided by Paragraph (d) of this subdivision, the Commissioners Court may order a change in a boundary of a county election precinct at any time if the change is necessary to give effect to a redistricting of territorial units specified by Paragraph (a) of this subdivision. The order shall be published as provided by Subdivision 1 of this Section and delivered to the voter registrar promptly after its adoption.

(c) For an election precinct boundary change ordered pursuant to Paragraph (b) of this subdivision, the Commissioners Court may order an earlier effective date than that prescribed by Subdivision 5 of this Section if:

(1) an election for an officer of the redistricted territorial unit is, or may be scheduled, to be

held before the effective date prescribed by Subdivision 5 of this Section and the territorial unit contains the election precinct as changed; and

(2) the voter registrar will have sufficient time to correct the voter registration records before the effective date.

(d) The Commissioners Court shall order the changes in county election precinct boundaries that are necessary to give effect to a redistricting done pursuant to Article III, Section 28, of the Texas Constitution not later than November 30 of the year in which the redistricting is done. The order shall be published as provided by Subdivision 1 of this Section and delivered to the voter registrar promptly after its adoption.

[Amended by Acts 1975, 64th Leg., p. 265, ch. 112, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1476, ch. 600, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1138, ch. 545, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2241, ch. 536, § 1, eff. June 12, 1981.]

[1] Articles 7.14, 7.15.

Art. 2.04a. County Election Precinct Maps Furnished to Secretary of State

Subd. 1. Between September 1, 1981, and January 1, 1982, each county clerk in the State shall furnish to the Secretary of State a map of his county showing the boundaries of the county commissioner precincts and the county election precincts as they exist under the most recent orders of the County Commissioners Court. The map may be in multiple sections. It shall show roads, streets, streams, city boundaries, and other natural or artificial landmarks which are used as boundary lines for the county commissioner precincts and the county election precincts, in sufficient detail and with sufficient designation by number, name, or other means of identification to depict the precinct boundaries in an accurate and understandable manner.

Subd. 2. When the Commissioners Court makes any changes in the county commissioner precincts or the county election precincts by order entered on or after September 1, 1981, within four months after the entry of the order the county clerk shall furnish to the Secretary of State a map depicting the changes in the manner described in Subdivision 1 of this section.

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

[Amended by Acts 1981, 67th Leg., p. 2661, ch. 717, art. I, § 1, eff. Aug. 31, 1981.]

Article 2 of the 1981 amendatory act, amending an Election Code as enacted by S.B. 610, 67th Legislature, Regular Session, 1981, and adding art. 2350q to the Revised Civil Statutes of Texas, 1925, was effective only if S.B. 610 became law, which it did not.

Art. 2.06a. Municipal and School District Election Dates

In counties where voting machines or electronic voting systems are used, all municipal and school district elections in which candidates are running for office, including without limitation, elections in home-rule cities and independent, municipal, and county school districts, otherwise scheduled to be held within 14 days of the date on which a proposed amendment or amendments to the Constitution of Texas are to be submitted to a vote of the electorate, may be held on the same date as the constitutional amendment election if the governing body of the municipality or the school district so provides. If the governing body changes the date of the elections as authorized by this Act, it may set the date of any second or runoff primary which may be necessary for any date not earlier than the 14th day after the first election and not later than the latest date which would have been permissible if the date of the first election had not been changed. This Act shall make no change in the term of office or commencement thereof in any election affected hereby.

[Added by Acts 1975, 64th Leg., p. 2108, ch. 688, § 1, eff. Sept. 1, 1975.]

Art. 2.06–1. Expired

CHAPTER THREE. OFFICERS OF ELECTION

Article
3.09b. Training of Election Officers.

Art. 3.01. Appointment of Election Officers

(a) For county elections. The commissioners court at its July term shall appoint from among the citizens of each election precinct one qualified voter as presiding judge of elections held at the expense of the county in that precinct and one qualified voter as alternate presiding judge, each of whom shall continue to act until his successor is appointed. Whenever a vacancy arises in either of such offices, the commissioners court may fill the vacancy at any regular or special term of court. All orders appointing judges and alternates shall be entered of record. Each presiding judge shall appoint two voters, who are eligible for appointment, to serve as election clerks, and shall appoint for each election as many additional clerks as he deems necessary for the proper conduct of the election, not to exceed the maximum number authorized by the commissioners court. The commissioners court shall fix the maximum number of clerks that may be appointed for each precinct, and may fix different maximums depending on the type of election. The clerks shall be selected from different political parties, when practicable. The chairman of the county executive committee of each of the two parties whose candidate for Governor received the most votes statewide in the last prior gubernatorial general election may submit a list of not less than two eligible nominees who are members of that party to each election judge at least 30 days prior to the date of a general election or 10 days prior to the date of a special election. If any such list is submitted to him, the election judge shall appoint at least one clerk from each list submitted. For the purpose of this section,

the term "members of that party" means persons who affiliated with the party in the manner prescribed in Section 179a of this code. (Article 13.01a, Vernon's Texas Election Code) during the last preceding set of primary elections and conventions.

(a–1) List of recommended appointees for judges of county precincts. Prior to the time at which the commissioners court makes its appointment of election judges pursuant to Subsection (a) of this section, the county officer in charge of election duties as defined by Section 8d of this code [1] shall select a presiding judge and an alternate presiding judge for each county election precinct to recommend for appointment to those offices and shall present a list of his selections to the commissioners court. The court shall give due consideration to these recommendations in making its appointments. This procedure shall also be followed whenever a vacancy is to be filled in the office of presiding judge or alternate presiding judge.

[See Compact Edition, Volume 2 for text of (b) to (f)]

[Amended by Acts 1977, 65th Leg., p. 1508, ch. 609, § 7, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1653, ch. 649, § 2, eff. Aug. 29, 1977.]

[1] Article 1.08d.

Art. 3.02. Duties and Working Hours of Clerks

(a) In all elections, general, special, or primary, the presiding judge shall be in charge of the management of the polling place and the conduct of the election. He shall designate the working hours and assign the duties to be performed by the clerks. Clerks may be assigned to work for different lengths of time and to begin work at different hours during the day while the polls are open or during the time necessary for counting the ballots after the polls are closed. Clerks who begin work at any time before closing of the polls shall remain on duty without leaving the polling place while the polls are open, except for such periods of absence for meals and other necessary reasons as may be permitted by the presiding judge.

(b) One or more clerks shall be assigned to assist in checking the names of voters on the list of registered voters and performing such other duties as are necessary in receiving the voters and supervising the deposit of the voted ballots. At every election there shall be kept a poll list in the number of copies required by law on which an election officer shall enter the name of each voter at the time he votes. In lieu of a poll list, the signature roster, together with any other forms, may be combined with the list of registered voters in the format prescribed by the secretary of state.

(c) In elections where paper ballots are used, the ballots shall be counted by one or more sets of counting officers, each set to consist of one judge or clerk who shall read the ballots, and one or more clerks who shall enter the votes on tally lists prepared for the election. As a safeguard in the accuracy of the tallying, the votes shall be entered on three original tally lists, and during the progress of the counting the lists shall be compared and errors and discrepancies shall be corrected, and at the close of the counting the tally clerks shall certify officially to the correctness of the lists.

(d) The clerks may be assigned to perform such other duties as the presiding judge directs.

[Amended by Acts 1977, 65th Leg., p. 590, ch. 209, § 1, eff. Aug. 29, 1977.]

Art. 3.03. Qualifications of Judges, Clerks and Watchers

(a) All judges of any general, special, or primary election shall be qualified voters of the election precinct in which they are named to serve. Unless otherwise provided in a statute pertaining to the specific type of election being held, in any general, special, or primary election all clerks and watchers shall be qualified voters of the county if the election is countywide, and shall be qualified voters of the city or other political subdivision in which the election is held if less than countywide, but it shall not be necessary that they reside within the election precinct in which they are named to serve.

(b) No person shall serve as a judge or a clerk in any general, special, or primary election who is employed by any candidate whose name appears on the ballot in that election either for a public office or for the party office of county chairman, or who is related to such candidate within the second degree either by affinity or consanguinity. Within the meaning of this section, a governmental employee is employed by the officer or officers who head the department or agency in which he is employed.

(c) No watcher shall be an employee or employer of any election judge or clerk in the election precinct in which he is named to serve or related to any such election officer within the second degree either by affinity or consanguinity.

[Amended by Acts 1977, 65th Leg., p. 966, ch. 363, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1652, ch. 649, § 1, eff. Aug. 29, 1977.]

Art. 3.04. Disqualifications

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

Subd. 3. No one shall act as chairman or as member of any district, county, or city executive committee of a political party who is not a qualified voter, or who is an officeholder or a candidate for nomination to or election to any office that would appear on a general election ballot.

[Amended by Acts 1977, 65th Leg., p. 966, ch. 363, § 2, eff. Aug. 29, 1977.]

Art. 3.07. Service, Duties, and Privileges of Watchers

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

(d) Each watcher appointed in accordance with this code shall be permitted, but not required, to sit conveniently near the judges or clerks so that he can observe the conduct of the election, including but not limited to the reading of the ballots, the tallying and counting of the votes, the making out of the returns, the locking of the ballot boxes, their custody and safe return. He shall also be permitted to be present when assistance is given by any election judge in the marking of the ballot of any voter not able to mark his own ballot, to see that the ballot is marked in accordance with the wishes of the voter, but he must remain silent except in cases of irregularity or violation of the law. He shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularity or violation of the law that he may observe. The watcher shall call the attention of officers holding the election to any fraud, irregularity or mistake, illegal voting attempted, or other failure to comply with the laws governing such election at the time it occurs, if practicable and if he has knowledge thereof at the time, and such complaint shall be reduced to writing and a copy delivered to the election judge. Preventing a poll watcher from observing any activity including, but not limited to, the tallying of ballots at any polling place, place of canvass, or central counting station shall constitute a Class A misdemeanor.

[See Compact Edition, Volume 2 for text of (e) to (h)]

[Amended by Acts 1975, 64th Leg., p. 2076, ch. 681, § 3, eff. June 20, 1975.]

Art. 3.08. Pay of Judges and Clerks

(a) In all elections, general, special, or primary, by whatever authority conducted, the rate of pay for judges and clerks of the election shall be determined by the appropriate authority, but shall not exceed $4 per hour for each judge or clerk. No judge or clerk shall be paid for more than one hour of work before the polls open. In precincts where voting machines are used, no judge or clerk shall be paid for any period of time subsequent to two hours after the official time for closing the polls or subsequent to two hours after voting is concluded by all voters offering themselves for voting during regular voting hours, whichever is the later. The judge who delivers the returns of election may be paid an amount not to exceed $25 for that service; provided, also, he shall make returns of ballots, ballot boxes, and election supplies not used when he makes returns of the election.

[See Compact Edition, Volume 2 for text of (b) to (d)]

[Amended by Acts 1977, 65th Leg., p. 1374, ch. 546, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1137, ch. 544, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 914, ch. 330, § 1, eff. Aug. 31, 1981.]

Sections 2 and 3 of the 1981 amendatory act, amending an Election Code as enacted by S.B. 610, 67th Legislature, Regular Session, 1981, were effective only if S.B. 610 became law, which it did not.

Art. 3.09. Precinct Judges Notified

Precinct judges for all general elections shall be delivered copies of the order of the Commissioners Court properly certified to by the clerk of the said court, designating the number, name and bounds of the election precinct and of their appointment as judges. Such delivery shall be made by the clerk of said court by United States mail or by personal delivery not later than 20 days after the date of entry of the order.

[Amended by Acts 1979, 66th Leg., p. 494, ch. 225, § 1, eff. Aug. 27, 1979.]

Art. 3.09b. Training of Election Officers

Subd. 1. The governing body of each county, city, or other political subdivision which holds elections and the county executive committee of a political party which holds primary elections may require that persons appointed to serve as judge or alternate judge in its elections be trained in election law and procedure prior to their appointment or prior to their service and may adopt minimum standards for the amount of training that the person must receive to be eligible for service. The governing body of a political subdivision may appropriate funds to pay its judges and alternate judges for attending training schools at an hourly rate not to exceed the maximum amount that may be paid for their service as judge or clerk and to pay the costs for conducting the schools, including payment for the services of instructors. With the approval of the secretary of state, the county executive committee of a political party may make like payments for the training of judges and alternate judges to serve in its primary elections, to be allowed as authorized expenditures for the conduct of the elections.

Subd. 2. A political party or a political subdivision may conduct its own schools of instruction or other training programs, either independently or in conjunction with other entities. Beginning on March 1, 1979, the county executive committee of a political party or the governing body of a political subdivision other than a county may also contract with the county officer in charge of election duties for the training of its election officers, as authorized in Section 8d of this code.[1]

[Added by Acts 1977, 65th Leg., p. 1509, ch. 609, § 8, eff. Aug. 29, 1977.]

[1] Article 1.08d.

CHAPTER FOUR. ORDERING ELECTIONS

Art. 4.01. Proclamation by Governor

Notice shall be given to the people of all elections for State and district officers, electors for President and Vice-president of the United States, members of Congress, and members of the Legislature. Such notices shall be by proclamation by the Governor ordering the election, not less than thirty-five (35) days before the election, issued and mailed to the several county judges.

[Amended by Acts 1981, 67th Leg., p. 544, ch. 225, § 1, eff. Aug. 31, 1981.]

Art. 4.09. Special Elections to Fill Vacancies in Public Offices

[See Compact Edition, Volume 2 for text of 1 to 7]

Sec. 8. Repealed by Acts 1981, 67th Leg., p. 3149, ch. 827, § 18, eff. Aug. 31, 1981.

[Amended by Acts 1981, 67th Leg., p. 3149, ch. 827, § 18, eff. Aug. 31, 1981.]

Art. 4.10. Vacancy: Application to Get on Ballot

Subd. 1. (a) Any person desiring his name to appear upon the official ballot at any special election held for the purpose of filling a vacancy, when no party primary has been held, may do so by presenting his application to the proper authority. Such application shall set forth:

(1) The name of the office sought;

(2) His occupation, his postoffice address, and the county of his residence;

(3) His age, place of birth, kind of citizenship, and length of residence in the county and state.

(b) In any special election for a statewide or district office which is regularly filled at the general election for state and county officers, the application shall also set forth the candidate's political party affiliation or shall state that the candidate is not affiliated with any political party.

Subd. 2. Such application must be filed not later than 5 p. m. of the 31st day before any such special election, and shall not be considered filed unless it has actually been received by the officer with whom it is to be filed.

Subd. 3. (a) The application must be filed with the Secretary of State in the case of a statewide or district special election. It must be accompanied with a fee of $1,000 for a statewide office, including without limitation the office of United States Senator, a fee of $500 for the district office of United States Representative, a fee of $400 for the district office of State Senator, and a fee of $200 for the district office of State Representative; or, in lieu of the filing fee, the application must be accompanied with a petition signed by at least 5,000 registered voters of the state in the case of a statewide office, and by at least 500 registered voters of the district in the case of a district office. A petition must show the address, voter registration number, and date of signing for each signer. No person may sign the petition of more than one candidate for the same office, and if a person signs the petition of more than one candidate, the signature is void as to all such petitions. A petition may be in multiple parts. To each part, which may consist of one or more sheets, there must be attached the affidavit of some registered voter, giving his address and voter registration number, and stating that each signature appearing in that part of the petition was affixed in the presence of the affiant and that to the best knowledge and belief of the affiant each signature is genuine and each person signing was a registered voter at the time of signing. A petition so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are registered voters. Fees received under this subdivision shall be deposited in the general revenue fund of the state.

(b) Upon receipt of an application which conforms to the above requirements, the Secretary of State shall issue his instruction to the county clerks of the state, or of the district in the case of a district vacancy, directing that the name of the applicant be printed on the official ballot.

(c) The party affiliation of the candidate shall be printed on the official ballot following the name of the candidate. If the candidate has stated in his application that he is not affiliated with any political party, the word "Independent" shall be printed on the ballot following the candidate's name. In other respects, the ballot shall be printed as indicated in Section 61 of this code (Article 6.05, Vernon's Texas Election Code) for a special election in which no party nomination has been made.

Subd. 4. The application must be filed with the city secretary or clerk in the case of a municipal special election. A home-rule city by charter may require that the application be accompanied with a reasonable filing fee or a petition of voters in lieu of the filing fee.

[Amended by Acts 1975, 64th Leg., p. 356, ch. 151, § 1, eff. Sept. 1, 1975.]

CHAPTER FIVE. SUFFRAGE

Article

5.09c. Office Hours of County Clerk and Tax Assessor on Election Day.
5.13c. Voter Registration Forms in Spanish.
5.15b. Service Program of Secretary of State; Copies of Master State Voter File.
5.20b. Distribution of Application Forms at Graduation Exercises.
5.24a. County Elections Administrator.
5.24b. Election Duties of County Clerk Transferred to County Elections Administrator.

5.01. Classes of Persons Not Qualified to Vote

The following classes of persons shall not be allowed to vote in this state:

1. Persons under 18 years of age.
2. Idiots and lunatics.
3. All paupers supported by the county.
4. All persons convicted of any felony except those restored to full citizenship and right of suffrage or pardoned.

[Amended by Acts 1975, 64th Leg., p. 2082, ch. 682, § 3, eff. Sept. 1, 1975.]

Art. 5.02. Qualifications and Requirements for Voting

(a) Every person subject to none of the foregoing disqualifications who is a citizen of the United States and a resident of this state and is eighteen years of age or older, and who has complied with the registration requirements of this code, is a qualified voter. No person may vote in an election held by a county, municipality, or other political subdivision unless he is a resident of the subdivision on the day of the election; and, except, as expressly permitted by some other provision of this code or another statute of this state, no person may vote in an election precinct other than the one in which he resides. The provisions of this section, as modified by Section 35 of this code (Article 5.03, Vernon's Texas Election Code), apply to all elections, including general, special, and primary elections, whether held by the state, by a county, municipality, or other political subdivision of the state, or by a political party.

(b) All citizens of this state who are otherwise qualified by law to vote at any election of this state or any district, county, municipality, or other political subdivision, shall be entitled and allowed to vote at all such elections. The Secretary of State shall, by directive, implement the policies stated herein throughout the elective procedures and policies by or under authority of this state. Enforcement of any directive of the Secretary of State pursuant to this section may be by injunction obtained by the Attorney General.

[Amended by Acts 1975, 64th Leg., p. 2076, ch. 681, § 4, eff. June 20, 1975; Acts 1975, 64th Leg., p. 2082, ch. 682, § 4, eff. Sept. 1, 1975.]

Arts. 5.03, 5.04. Repealed by Acts 1981, 67th Leg., p. 2990, ch. 786, § 1, eff. Aug. 31, 1981

Art. 5.05. Absentee Voting

Who May Vote Absentee

Subd. 1. (a) Any qualified voter of this state who expects to be absent from the county of his residence on the day of the election, or who will be 65 years of age or older on the day of the election, or who because of sickness, physical disability, confinement in jail, or religious belief cannot appear at the polling place in the election precinct of his residence on the day of the election, or who expects to serve as an election clerk or as a poll watcher on election day in an election precinct other than the precinct of his residence, or who participates in the administration of the election by reason of his or her employment, may nevertheless cause his vote to be cast at any election held in this state by compliance with the applicable method herein provided for absentee voting. If a voter's religious belief prohibits him from voting during any part of the time during which the polls are open on the day of the election, he shall nevertheless be entitled to vote absentee even though the prohibition does not operate throughout the entire time that the polls are open. A voter who is confined in jail is entitled to vote absentee if at the time of applying for an absentee ballot he is: (1) serving a misdemeanor sentence which extends through election day; (2) being held for trial after a denial of bail; (3) being held without bail pending the appeal of a felony conviction; or (4) being held for trial or pending an appeal on a bailable charge but he expects not to have been released on bail by the date of the election.

(b) Absentee voting shall be conducted by two methods: (1) voting by personal appearance at the clerk's office, and (2) voting by mail. All voters coming within the foregoing provisions of this subdivision may vote by personal appearance at the clerk's office if they are able to make such appearance within the period for absentee voting. Where the ground for voting absentee is confinement in jail, it is not mandatory that the voter be allowed to make a personal appearance, but the officer in charge of the jail, in his discretion is authorized to make the necessary arrangements to permit the voter to vote by personal appearance.

(c) The following persons, and no other, may vote by mail:

(i) Qualified voters who will be 65 years of age or older on the day of the election, or who because of sickness or physical disability, or because of religious beliefs, cannot appear at the polling place on the day of the election. The application for an absentee ballot shall be made not more than sixty days before the day of the election. It must be mailed to the clerk, and the clerk shall preserve the envelope in which it is received. If the application is delivered to the clerk by any method other than by mailing it to him, the ballot shall be void and shall not be counted. The voter shall state in his application the address to which the ballot is to be mailed to him, which must be either his permanent residence address or the address at which he is temporarily living. If the ballot is furnished to the voter by any method other than by mailing it to him, or if it is mailed to any address other than one of the foregoing, it shall be void and shall not be counted. The marked ballot must be mailed to the clerk, and if returned in any

other manner it shall be void and shall not be counted.

(ii) Qualified voters who, before the beginning of the period for absentee voting, make application for an absentee ballot on the ground of expected absence from the county of their residence on election day, and who expect to be absent from the county during the clerk's regular office hours for the entire period of absentee voting. The voter must state in his application that he expects to be absent from the county of his residence on election day and during the clerk's regular office hours for the entire period for absentee voting. The application shall be made not more than sixty days before the day of the election, and may be mailed to the clerk or delivered to him by the voter in person, but the clerk shall not furnish a ballot to the voter by any method other than by mailing it to him. Applications made under this paragraph may be mailed either from within or without the county of the voter's residence, but in every case the ballot must be mailed to the voter at an address outside the county. The ballot shall not be counted unless the carrier envelope in which the ballot is returned to the clerk is postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the voter's residence.

(iii) Qualified voters who, after the beginning of the period for absentee voting, apply for an absentee ballot on the ground of expected absence from the county and who are absent from such county at the time of applying for an absentee ballot and expect to be absent from such county during the clerk's regular office hours for the remainder of the period for absentee voting. The voter must state in his application that he is absent from the county at the time of making the application and expects to be absent on election day and during the clerk's regular office hours for the remainder of the period for absentee voting. The clerk shall not mail a ballot to any such voter unless the envelope in which the application is received is postmarked from a point outside the county, and the ballot must be mailed to the voter at an address outside the county. The ballot shall not be counted unless the envelope in which the application is received and the carrier envelope in which the ballot is returned to the clerk are each postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the voter's residence.

(iv) Qualified voters who are confined in jail under one of the circumstances listed in the first paragraph of this subdivision. The application for an absentee ballot shall be made not more than twenty days before the day of the election. It must be enclosed in an envelope and either mailed to the clerk or delivered to him by the jailer or one of his deputies or assistants, who shall place his signature on the envelope at the time of its delivery. The clerk shall preserve the envelope in which the application is received. If the application is delivered to the clerk by any method other than as expressly authorized herein, the ballot shall be void and shall not be counted. The clerk shall mail the ballot to the voter in care of the jail where he is confined; and if the ballot is furnished to the voter by any method other than by mailing it to him, or if it is mailed to any other address, it shall be void and shall not be counted. The marked ballot must be mailed to the clerk, and if returned in any other manner it shall be void and shall not be counted.

(d) An application for an absentee ballot to be voted by mail shall state the applicant's permanent address and the address to which the absentee ballot is to be mailed to the applicant, and shall also state the address to which his voter registration certificate is to be mailed back to him.

Application for Ballot

Subd. 2. (a) The secretary of state shall prescribe the official form or forms for an application for an absentee ballot to be voted by personal appearance and of an application for a ballot to be voted by mail. Each clerk for absentee voting shall obtain and keep on hand a supply of the official application forms to furnish to voters who request them. The secretary of state shall keep on hand a supply of the official application forms for voting by mail and shall furnish the forms in reasonable quantities to individuals and organizations requesting them for use in furnishing the forms to voters who wish to vote absentee by mail. A voter desiring to vote absentee shall make written application for an official ballot to the absentee voting clerk for the election in which the voter wishes to vote, which application shall be signed by the applicant or by a witness in the manner provided by Subdivision 2, Section 45a, of this code (Article 5.13a, Vernon's Texas Election Code), for signing an application for voter registration except that the application may not be signed by an agent for the applicant. The application shall state the ground on which the applicant is entitled to vote absentee, and in case of an application by mail, it shall also state the additional information required by Subdivision 1 of this section. An applicant is not required to use the official application form to apply for an absentee ballot. An application not made on the official form is referred to in this section as an "informal application."

(b) The application shall state the voter's voter registration certificate number or, in case the voter does not have his certificate in his possession at the time of making the application, to indicate whether the certificate has been lost or mislaid, has been left

at the voter's home (where he is applying from a temporary address), or has been used for applying for an absentee ballot in another election (stating the nature and date of the election) and has not been returned to him. Before furnishing a ballot to a voter, the clerk shall verify the voter's registration certificate number, or in case the number is not stated on the application, the clerk shall enter it from the list of registered voters. If the ground of application is sickness or physical disability by reason of which the voter cannot appear at the polling place on election day, a certificate of the applicant certifying to such sickness or physical disability shall accompany the application, which certificate shall be in substantially the following form:

This is to certify that because of sickness or physical disability I will be unable to appear at the polling place for an election to be held on the ____ day of ____, 19__.

Witness my hand at _____, Texas, this ____ day of ____, 19__.

_____

(Signature of Applicant)

The officially prescribed certificate form shall include a statement to the following effect: "I understand that giving false information in this certificate is a crime."

(c) Expected or likely confinement for childbirth on election day shall be sufficient to entitle a voter to vote absentee on the ground of sickness or physical disability.

(d) A voter who gives false information in his application for an absentee ballot is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 347 of this code (Article 15.47, Vernon's Texas Election Code). Printed application forms furnished to voters by the county clerk shall contain the following statement immediately preceding the space for the voter's signature: "I certify that the information given in this application is true, and I understand that the giving of false information in the application is a crime." An informal application need not contain the statement, but a voter who gives false information is subject to the criminal penalty regardless of whether the statement appears on the application.

(e) In any single election, a person, other than the absentee voting clerk or a deputy absentee voting clerk, may not sign applications as a witness for more than one applicant. However, a person may sign more than one application as a witness if the second and subsequent applicants are related to the witness as parent, grandparent, spouse, child, brother, or sister. An application signed by a witness must contain, in addition to the witness' signature, the witness' full name in printed form, residence address, and relationship to the applicant, if any. The validity of an application is not affected by a violation of this paragraph.

(f) A person, other than the absentee voting clerk or a deputy absentee voting clerk, who witnesses an application in violation of Paragraph (e) of this subdivision commits a Class B misdemeanor. The official application form shall contain a statement informing persons attesting applications as witnesses of this offense.

Absentee Voting by Members of the Armed Forces, Etc.

Subd. 2a.

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

(d) If the applicant is not currently registered through the registrar of voters, the clerk shall examine the information on the federal post card application, and if it shows that the applicant possesses the qualifications for voting at that election in the precinct of his residence, the clerk shall enter his name on a list headed "Absentee voters registering by FPCA for the _____ election held on _____" and shall also enter thereon the voter's local permanent address and election precinct number, the address to which the ballot is mailed, and the date on which it is mailed. The list shall be made up in duplicate and shall be kept up from day to day. After the election is held, one copy shall be filed as a record of the clerk's office if the clerk conducting the absentee voting is a county clerk or a city secretary or city clerk, and as a record of the authority which appointed the clerk for absentee voting in other instances, to be preserved for a period of two years, after which it may be destroyed. The other copy shall be placed with the records of the election which are delivered into the custody of the officer designated in Paragraph (a)(2) of Section 111b of this code (Article 8.29b, Vernon's Texas Election Code), to be subject to the same regulations as those records.

Comparison of Signatures

[See Compact Edition, Volume 2 for text of 2a(g) and (h) and 2b]

Subd. 2c. Repealed by Acts 1977, 65th Leg., p. 1688, ch. 668, § 4, eff. Aug. 29, 1977.

Subd. 2d. Repealed by Acts 1981, 67th Leg., p. 854, ch. 301, § 2, eff. Aug. 31, 1981.

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

Voting by Personal Appearance in County-wide Elections

Subd. 3a. (a) In a county-wide election, or in an election less than county-wide where the authority holding the election has provided that absentee voting by personal appearance shall be conducted on a voting machine or that absentee paper ballots shall be counted by a special canvassing board, upon receipt of an application for an absentee ballot to be voted by personal appearance, if the clerk is satisfied as to the right of the applicant to vote, the clerk shall place a notation on the list of registered voters showing that the particular person has voted absen-

tee and shall enter the voter's name on a poll list of absentee voters. The application shall be preserved in the clerk's office for the length of time provided by law for preservation of voted ballots.

(b) In the conduct of absentee voting under this subdivision, the clerk shall possess the same power as a presiding judge with respect to examination and acceptance of a voter. If the right of an applicant to vote is challenged, the procedure prescribed in Section 91 of this Code (Article 8.09, Vernon's Texas Election Code) shall be followed.

(c) Where paper ballots are used for absentee voting, after a voter has been accepted, the clerk shall furnish the voter with an official ballot which has been prepared in accordance with law for use in such election. The voter shall then and there, in the office of the clerk, mark his ballot and detach and sign the ballot stub, and shall deposit the ballot in a ballot box and the stub in a stub box in the manner provided in Section 97 of this Code (Article 8.15, Vernon's Texas Election Code). The ballots shall be deposited in a ballot box locked with two locks, the keys of one of which shall be kept during the period for absentee voting by the sheriff and the keys of the other by the county clerk. The stubs shall be deposited in a stub box prepared in accordance with Section 97 of this Code (Article 8.15, Vernon's Texas Election Code).

(d) Where a voting machine is used for absentee voting by personal appearance, after a voter has been accepted, he shall then be permitted to cast his ballot on the voting machine. Returns of absentee votes cast on a voting machine shall be made under the appropriate provision of Section 79 of this Code (Article 7.14, Vernon's Texas Election Code).

Voting by Personal Appearance in Election Less Than County-wide

Subd. 3b. (a) In an election less than county-wide in which absentee paper ballots are to be sent to the regular polling places for counting, upon receipt of an application for an absentee ballot to be voted by personal appearance, the clerk shall thereupon furnish to the voter the following absentee voting supplies:

(1) One official ballot which has been prepared in accordance with law for use in such election.

(2) One ballot envelope, which shall be a plain envelope, without any markings except the words "Ballot Envelope" printed on the face thereof, followed by the instructions contained in this subdivision and Subdivision 4 for marking the ballot, for placing it in the carrier envelope, and for returning a ballot to be voted by mail, together with a statement of the deadline for delivery of the marked ballot to the clerk's office in that election and a statement of the substance of Subdivision 15 of this section and of Sections 330 and 330a of this code (Articles 15.30 and 15.30a, Vernon's Texas Election Code) relating to assistance to a voter in preparing his ballot. The textual material may be continued onto the reverse side of the envelope if necessary. The secretary of state shall prescribe the wording of the textual material.

(3) One carrier envelope, upon the face of which there shall appear the words "Carrier Envelope for Absentee Ballot" and the name, official title, and post-office address of the absentee voting clerk, upon the other side there shall appear spaces for showing the nature and date of the election and the number or name of the election precinct in which the voter resides (which the clerk shall fill in before he furnishes the supplies to the voter), and a certificate in substantially the following form:

I certify that the enclosed ballot expresses my wishes, independent of any dictation or undue persuasion of any person and that I did not use any memorandum or device to aid me in the marking of the ballot.

_____

(Signature of voter)

By:_____

(Signature of person who assisted voter. See Ballot Envelope for restrictions and penalties.)

_____

(Residence address of person rendering the assistance)

Kinship to voter, if related:_____

If the voter has received assistance in marking the ballot, the person rendering the assistance shall print the name of the voter in the space for the voter's signature and shall fill in the remaining spaces in the certificate.

(b) The voter shall then and there, in the office of the clerk, mark the ballot, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot and place it in the envelope marked "Ballot Envelope" and seal the same. The voter shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign the certificate on the carrier envelope, and deliver the carrier envelope to the clerk.

Voting on Election Day by Disabled Voter in Voting Machine Counties

Subd. 3c. The provisions of this subdivision shall apply only to county-wide elections and to elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board, and shall apply only to voters residing in election precincts in which voting at the regular polling place on election day is being conducted by use of a voting machine or machines. Under these stated conditions, a voter may vote as herein provided if he is ill or disabled

and thus cannot, without injury to his health or without personal assistance, cast his vote in the regular manner. A voter complying with these requirements may be voted in an ambulance or other conveyance at the entrance to the place in which absentee voting by mail was conducted for the election, between the hours of 8:00 a.m. and 2:00 p.m. on the day of the election, by the clerk who conducted the absentee voting for the election, using an absentee-by-mail ballot. Poll watchers appointed to observe absentee voting for the election shall be entitled to be present at the voting. Except as otherwise provided in this subdivision, the voting procedure shall be the same as for absentee voting by personal appearance in the clerk's office under the provisions of Subdivision 3b of this Section.

The application to vote under the provisions of this subdivision shall be in the form of an affidavit substantially as follows:

"AFFIDAVIT FOR VOTING AT ABSENTEE VOTING PLACE ON ELECTION DAY

"I, the undersigned, do solemnly swear that:

(a) My name is _____

(b) My home address is _____

(c) I am a voter in Precinct _____

(d) My current voter registration certificate number is _____

(e) I am ill or disabled and thus cannot, without injury to my health or without personal assistance, cast my vote in the regular manner, and I have not previously voted in the election being held today.

Date _____ _____

(Signature of voter)

(Jurat of officer administering the oath.)"

The voter shall not be required to fill out the affidavit on the carrier envelope. The clerk shall place the application and the carrier envelope containing the voted ballot into a jacket envelope and shall deliver the jacket envelope to the special canvassing board for counting absentee ballots. Thereafter, the ballot shall be handled in the same manner as an absentee ballot voted by mail, with such modifications as are necessary to fit the circumstances.

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

Absentee Voting by Sick or Disabled Voter after Close of Regular Period

Subd. 3e. (a) The provisions of this subdivision apply only to county-wide elections and to elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board. In such an election, a voter who because of sickness or physical disability originating on or after the fifth day preceding election day will be unable to attend the polling place on election day may vote absentee under the procedure outlined in this subdivision. The voter shall make a written request signed by him, or signed by a witness at the voter's direction if the voter is unable to sign his name, and presented to the absentee voting clerk at his office, that the clerk send him a ballot by the person who presents the request to the clerk. The voter may select any person 18 years of age or older who shall not be employed by nor related within the third degree of consanguinity or affinity to any person whose name appears on the ballot, to act as his representative in presenting the request or delivering the marked ballot back to the clerk. No person may serve as the representative to present the request for a ballot or to deliver the marked ballot back to the clerk for more than one absentee voter in any election held under the provision of the Texas Election Code as amended. The voter's request must state in effect that sickness or physical disability will prevent the voter from appearing at the polling place on election day, giving the date of the election or otherwise identifying the election for which the ballot is requested, and that the inability to attend the polling place originated after the fifth day preceding the day of the election. The request must be accompanied by a certificate of a duly licensed physician or chiropractor or accredited Christian Science practitioner in substantially the following form:

"This is to certify that I have personal knowledge of the physical condition of _____; that because of sickness or physical disability he (she) will be unable to appear at the polling place for an election to be held on the _____ day of _____, 19__; and that the inability to attend the polling place originated after the fifth day preceding the day of the election.

Witness my hand at _____, Texas, this _____ day of _____, 19__.

_____

(Signature of practitioner)"

The request must state in effect that sickness or physical disability will prevent the voter from appearing at the polling place on election day, giving the date of the election or otherwise identifying the election for which the ballot is requested, and that the inability to attend the polling place arose on or after the fifth day preceding the day of the election. The request must be accompanied by the voter's voter registration certificate or his signed statement (either separately or included in the signed request) that the certificate has been lost or mislaid, has been left at the voter's home (when he is applying from a hospital or other temporary address), or has been used for applying for an absentee ballot in another election (stating the nature and date of the election) and has not been returned to him. Upon receiving a request that complies with the foregoing conditions at any time after the close of business on the fourth day preceding election day and before 12 noon on

election day, the clerk shall deliver to the voter's representative the balloting materials used for voting absentee by mail, but before doing so he shall record the representative's name and address on the request and shall require the representative to place his signature alongside his name.

(b) The clerk shall add to the list of absentee voters described in Subdivision 11 of this section the name of each voter to whom an absentee ballot is sent under this subdivision, with a notation that the ballot was sent to the voter through a representative, but the clerk is not required to include the names of these voters on the precinct lists of absentee voters sent to the presiding election judges.

(c) After receiving the balloting materials, the voter shall follow the procedure prescribed in Subdivision 4 of this section for voting absentee by mail, except that the marked ballot shall be hand-delivered to the clerk by the voter's representative instead of being mailed to the clerk. The ballot must be delivered to the clerk by the deadline for receiving ballots voted by mail. It must be delivered by the person who delivered the request to the clerk. Upon receiving the marked ballot, the clerk shall make a notation on the carrier envelope of the name and address of the person who delivered it and shall require the person to place his signature alongside his name on the envelope. The clerk shall then follow the same procedure as for a ballot received by mail. He shall return the voter's registration certificate to him by mailing it to his permanent address.

(d) A voter who gives false information in his request for an absentee ballot is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 347 of this code (Article 15.47, Vernon's Texas Election Code).

Voting by Mail

Subd. 4. (a) The period for absentee voting by mail shall begin on the twentieth day preceding the date of the election. An application for an absentee ballot to be voted by mail must be received in the clerk's office not later than the close of business on the fourth day preceding election day. In county-wide elections and in elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board, the marked ballot must be received in the clerk's office before the official time of closing of the polls on the day of the election. In all other elections which are less than county-wide, the marked ballot must be received in the clerk's office before ten o'clock a. m. on the second day preceding election day. The ballot may be marked by the voter at any time after he receives it.

(b) On the twentieth day preceding election day, or as soon thereafter as possible, the clerk shall mail an official ballot, ballot envelope, and carrier envelope, as described in Subdivision 3b of this section, to each voter who has theretofore made application for a ballot in compliance with this section. On applications which are received between the twentieth day and the fourth day preceding election day, the clerk shall forthwith mail the absentee voting supplies to the voter.

(c) The voter shall mark the ballot, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot, and place it in the envelope marked "Ballot Envelope" and seal the same. The voter shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign the certificate on the carrier envelope. The carrier envelope shall then be mailed, postage prepaid, to the county clerk.

(d) Repealed by Acts 1977, 65th Leg., p. 1688, ch. 668, § 4, eff. Aug. 29, 1977.

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

Period for Mailing Ballot to Voter Outside the United States, etc.

Subd. 4e. Notwithstanding the provisions of Subdivision 4 of this section, the clerk shall mail a ballot to an absentee voter as soon as possible after the ballots become available, but not earlier than 45 days before the election, if the ballot is to be mailed to one of the following: (1) an address outside the United States; (2) an address in the United States for forwarding to the voter at a location outside the United States; (3) an Army Post Office (APO) or a Fleet Post Office (FPO) address; or (4) an address in the United States for delivery or forwarding to a member of the merchant marine. If, after an absentee ballot is mailed to a voter, any change is made in the official ballot due to the death of a candidate or for any other reason except to correct an error, the clerk shall not mail another ballot to the voter, and the votes cast for that office on ballots mailed before the change is made shall not be counted.

Defective, Mutilated, and Unused Ballots

Subd. 4f. The absentee voting clerk shall handle and account for defectively printed, defaced, and mutilated ballots and other unused ballots in the same manner as prescribed by this code for unused ballots in regular voting on election day.

[See Compact Edition, Volume 1 for text of 5]

Counting of Ballots in County-Wide Elections

Subd. 6. (a) In all countywide elections, and in elections less than countywide where the authority holding the election has provided that absentee paper ballots shall be counted by a special canvassing board, on the day of the election the ballot box and stub box used for absentee voting by personal appearance, the keys to the ballot box, the jacket envelopes containing the ballots voted by mail and accompanying papers, the poll list for absentee voting on which the clerk has entered the names of persons voting by personal appearance, and the list of registered voters used by the county clerk, shall be delivered to a special canvassing board consisting of a presiding judge and two or more election clerks

appointed in the same manner as provided for appointment of the election officers for regular polling places at that election. The county clerk shall deliver the ballots to the canvassing board at such hour as the presiding judge shall direct, but not earlier than the hour at which the polls are opened and not later than the hour specified in Subdivision 4 of this section as the deadline for returning the marked ballots to the clerk's office. If delivered before the deadline, the clerk shall deliver in like manner to the board, immediately following the deadline, all ballots received by mail before the deadline which have not previously been delivered to the board.

(b) This special canvassing board shall open the jacket envelopes, announce the voter's name, and ascertain in each case if he is qualified to vote at that election and if he has complied with all applicable provisions of this section to entitle his ballot to be cast. On ballots voted by mail, the board shall compare the signatures on the application and the carrier envelope, and in case the board finds that the signatures correspond, that the application and the certificate on the carrier envelope are duly executed, that the voter is a qualified elector, and that he has voted in a manner authorized in this section, they shall enter his name on the official poll list (on which voters voting by mail shall be listed separately from those who have voted by personal appearance) and shall open the carrier envelope so as not to deface the certificate thereon, and shall place the sealed ballot envelope in the ballot box and the stub in the stub box. The carrier envelope, application, and accompanying papers shall be replaced in the jacket envelope and returned to the county clerk at the same time the voted ballots are returned, and shall be preserved for the length of time provided by law for the preservation of the voted ballots.

[See Compact Edition, Volume 2 for text of 6(c) to 6(f)]

(g) After the absentee ballots are counted, the ballot box containing the voted ballots and the returns and other records of the election shall be delivered to the proper officers as provided by law for regular polling places.

[See Compact Edition, Volume 2 for text of 7 to 10]

Records of Absentee Voters; Inspection of Applications, etc.

Subd. 11. (a) The county clerk and each other clerk for absentee voting designated in accordance with Subdivision 1a of this section shall maintain in his main office a complete record, in card-index or list form, of persons who have voted absentee by personal appearance and of persons to whom absentee ballots have been sent by mail (or, if authorized by some provision of law, have been sent by some other method of transmission). The record shall contain the voter's name, address, precinct of residence, voter registration number, a notation of whether the voter voted by personal appearance or was furnished a ballot to be returned by mail (or by other means of transmission, if authorized), and the date on which the voter voted, if by personal appearance, or on which the ballot was transmitted to the voter. The record shall be kept up from day to day.

(b) On or before the day preceding election day, the clerk for absentee voting shall deliver to each presiding election judge, in person or by mail, a list containing the name, address, and voter registration number of each resident of the precinct in which the judge serves, who has voted absentee by personal appearance or has been furnished an absentee ballot to be returned by mail. Before the hour for opening the polls on election day, the presiding judge shall cause the notation "absentee voter" to be placed by the name of each such voter on the list of registered voters to be used in accepting voters for voting at the polling place.

(c) The clerk's records of absentee voters and the applications for absentee ballots and accompanying papers shall be open to public inspection during the clerk's regular office hours, but under such reasonable rules and regulations as the clerk may adopt to safeguard the records and papers and to economize his own time. The clerk may require a person to present proof of identity before permitting him to inspect the records. The clerk must accept a current Texas voter registration certificate, Texas driver's license, or Department of Public Safety personal identification certificate as sufficient proof of identity.

[See Compact Edition, Volume 2 for text of 12 and 13]

Branch Offices for Absentee Voting by Personal Appearances

Subd. 14.

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) Any voter eligible to vote absentee by personal appearance in the main office of the clerk may vote in any branch office. The deputy clerk in charge of absentee voting at each branch office shall transmit to the clerk at the close of each day of absentee voting the names of all persons who have voted absentee in the branch office on that day, together with other necessary information as provided in Subdivision 11, for inclusion in the record of absentee voters maintained in the main office. During the period for absentee voting by personal appearance, the applications and ballots of persons who have voted absentee may be retained in the branch office or may be delivered to the main office from time to time, but all applications and ballots shall be delivered to the main office not later than one o'clock p. m. on the third day prior to election day. Except as otherwise provided in this subdivision, the voting in a branch office shall be subject to the same regulations as the voting in the main office.

Branch Offices for Absentee Voting by Personal Appearance in Counties Having a Population of More Than 2,000,000

Subd. 14a. (a) Upon authorization of the Commissioners Court of a county having a population of more than 2,000,000, the county clerk of such county shall conduct absentee voting by personal appearance at one or more suitable locations in each justice precinct in the county in elections in which the county clerk is the officer for conducting the absentee voting. The number of locations in each justice precinct may not exceed the number of justices of the peace elected in that precinct. This subdivision does not apply to elections in which the absentee voting is conducted by any officer other than the county clerk. Notwithstanding the provisions of Subdivision 14 of this section, if suboffices are established under this Subdivision 14–a, the county clerk shall not conduct absentee voting at any location other than his main office and the suboffices authorized by this subdivision. Such voting in each election suboffice shall be for the full period of time, and for the same hours, for which absentee voting is conducted at the main office.

[See Compact Edition, Volume 2 for text of (b)]

(c) The list of voters who vote absentee in each election suboffice each day shall be available for inspection the next day both in the election suboffice in which the voter voted and in the main office, with the list of each election suboffice being maintained in the main office separate and apart from the lists of the other election suboffices. Each such list of voters shall be compiled in accordance with statutory requirements.

[See Compact Edition, Volume 2 for text of (d) and (e)]

Assistance to Voter; Use of English Language

Subd. 15. (a) No assistance shall be given a voter in marking his absentee ballot except where the voter is unable to prepare the same himself because of his inability to read the language in which the ballot is printed or because of some bodily infirmity which renders him physically unable to write or to see or to operate the voting equipment. If a voter who is voting by personal appearance is entitled to assistance, he may be assisted by the clerk or a deputy clerk or by any qualified voter of the political subdivision in which the election is held, selected by the voter, subject to the restriction stated in Section 330a of this code.[1] When a person other than the clerk or a deputy clerk assists a voter who is voting by personal appearance, the clerk or a deputy shall make a notation on the voter's ballot application of the name and address of the person rendering the assistance and also of the person's kinship to the voter if related as parent, grandparent, spouse, child, brother, or sister. Subdivision 4 of Section 95 of this code (Article 8.13, Vernon's Texas Election Code) applies to absentee voting by personal appearance. If a voter who is voting by mail is entitled to assistance, he may be assisted by any person 18 years of age or older, selected by the voter, subject to the restriction stated in Section 330a of this code. A person assisting a voter shall not suggest, by word or sign or gesture, how the voter shall vote, and shall confine the assistance to answering the voter's questions, to stating the propositions to be voted on, and to naming the candidates and the political parties to which they belong, and the person shall prepare the ballot as the voter directs. Where any assistance is rendered in marking an absentee ballot other than as allowed in this subdivision, the ballot shall not be counted but shall be void for all purposes.

(b) In absentee voting by personal appearance at the clerk's office, any voter unable to speak or understand the English language may communicate with the clerk in some other language, and if the clerk is unable to speak or understand the language used by the voter or if he requests that the voter communicate through an interpreter, the voter shall be entitled to communicate through an interpreter of his choice, who shall be a qualified voter in the county. Before acting as interpreter, the person chosen by the voter shall take the following oath, to be administered by the clerk: "I solemnly swear that I will correctly interpret and translate each question, answer, or statement addressed to the voter by the clerk and each question, answer, or statement addressed to the clerk by the voter." When any language other than the English language is used either by the voter or by the clerk, any watcher present shall be entitled to request and receive a translation into the English language of anything spoken in some other language.

[1] Article 15.30a.

[See Compact Edition, Volume 2 for text of 16 to 18]

[Amended by Acts 1975, 64th Leg., p. 2084, ch. 682, §§ 6 to 11, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 86, ch. 43, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 376, ch. 186, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 660, ch. 247, § 9, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1653, ch. 649, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1682, ch. 665, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1687, ch. 668, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 109, ch. 68, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 167, ch. 91, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 602, ch. 278, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 867, ch. 392, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1169, ch. 568, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2059, ch. 806, §§ 1, 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 597, ch. 237, § 137, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 749, ch. 281, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 854, ch. 301, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3146, ch. 827, § 11, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3323, ch. 871, § 1, eff. Aug. 31, 1981.]

Addition of subd. 4f to this article by Acts 1979, 66th Leg., p. 173, ch. 95, § 1, eff. Aug. 27, 1979, was repealed by Acts 1979, 66th Leg., p. 602, ch. 278, § 3, eff. Aug. 27, 1979.

Art. 5.05a. Repealed by Acts 1975, 64th Leg. p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 5.05b. Voting by Former Residents of State in Presidential Elections

Former Residents Eligible to Vote

Subd. 1. A former resident of this state who has become a legal resident of another state of the United States or of the District of Columbia may vote for presidential and vice presidential electors in the county of his former residence if:

(1) on the day of the election he will not have resided in the state of his present residence for a period of 30 days and will not be eligible to vote in that state, and

(2) he otherwise possesses the substantive qualifications of an elector in this state, as defined in Section 34 of this code (Article 5.02, Vernon's Texas Election Code), except the requirement of residence, and

(3) at the time of his removal he was registered as a voter in this state, and

(4) he complies with the provisions of this section.

Application for Presidential Ballot

Subd. 2. (a) A person eligible to vote under the provisions of this section may vote either by personal appearance or by mail. The voter shall make a written, signed application to the county clerk of the county of his former residence for a ballot permitting him to vote for president and vice president only, on a form to be prescribed by the secretary of state and furnished by the county clerk.

Procedure for Voting by Mail

Subd. 3. When a voter desires to vote a ballot by mail, the procedure for absentee voting by mail in a countywide election shall be followed insofar as it can be made applicable and is not inconsistent with this section. The clerk shall mail the voter a ballot from which the clerk has stricken all offices and propositions other than the offices of president and vice president, together with a ballot envelope and a carrier envelope containing such markings and instructions as the secretary of state prescribes. When the election officer checks the voter's name on the list of registered voters and enters his name on the poll list, the officer shall add a notation that the voter is voting under this section, in the presidential race only. The ballots cast under this section shall be counted and return made thereof along with and on the same forms as the other absentee ballots.

Procedure for Voting by Personal Appearance

Subd. 4. A voter may vote by personal appearance at the clerk's office at any time that the office is open to the public, beginning on the 20th day preceding the election and ending on the day of the election. When the voter appears in person, the clerk shall furnish him with a ballot, ballot envelope, and carrier envelope prepared in accordance with Subdivision 3 of this section, and the ballot shall be processed and counted along with the absentee ballots voted by mail.

Cancellation of Registration

Subd. 5. When the registrar receives a list of registered voters containing a notation that a voter has voted under this section, he shall cancel the registration if it is still in the active file in his records.

[Amended by Acts 1975, 64th Leg., p. 2089, ch. 682, § 12, eff. Sept. 1, 1975.]

Art. 5.05c. Voting Limited Ballot After Removal to Another County

Definition of Limited Ballot

Subd. 1. The term "limited ballot" is used to mean a ballot listing only the offices and propositions on which a voter is entitled to vote under the procedure outlined in this section during a period not exceeding 90 days after his removal from one county to another county within the state. The term includes the ballot for any election at which the voter is entitled to vote, even though at some special or runoff elections the ballot may be identical with the full ballot for that election. For the purposes of this section, the day of arrival in the county of new residence is counted as the first day after removal.

Who is Eligible to Vote a Limited Ballot

Subd. 2. (a) Where a registered voter moves from one county to another county in the state, during the first 90 days after the removal he is entitled to vote, under the procedure outlined in this section, on all offices, questions, or propositions to be voted on by the electors throughout the state, if on the day of the election (1) he would have been eligible to vote in the county of his former residence except for the removal, and (2) a registration in the county of new residence has not become effective. He may also vote on all district offices for any district of which he was a resident before the removal and continues to be a resident after the removal. The term "district office" refers to the district offices which are regularly filled at the general election provided for in Section 9 of this code (Article 2.01, Vernon's Texas Election Code). After a new registration in the county of new residence becomes effective, he must thereafter vote under the normal procedures for voters registered in that county. In no event may he vote under the procedure outlined in this section after 90 days following the removal.

(b) Voting rights and registration requirements in other elections after removal from one county to another are governed by Subdivision 3 of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code).

Application for Limited Ballot; Procedure for Voting

Subd. 3. A person who is entitled to vote a limited ballot, as described in Subdivision 2 of this section, shall be permitted to vote upon making a written, signed application for a limited ballot to the county clerk of the county of his residence at the time of the election, upon an official application

form to be prescribed by the Secretary of State and furnished by the county clerk. The voter shall state in his application that he was registered in the county of his former residence at the time of his removal, and he shall accompany his application with his voter registration certificate from that county or shall state in his application that the certificate has been lost or misplaced. The procedure for voting a limited ballot shall be similar to the procedure for absentee voting. If the voter meets the requirements of Section 37 of this code (Article 5.05, Vernon's Texas Election Code) for voting an absentee ballot by mail, he shall be permitted to vote the limited ballot by mail under the procedure for absentee voting by mail upon submitting both an application for a limited ballot and an application for an absentee ballot. Otherwise, he shall vote by personal appearance during the period for absentee voting by personal appearance and under the procedure for voting by personal appearance in countywide elections insofar as it can be made applicable and is not inconsistent with this section. Ballots cast under this section shall be counted and return made thereof along with and on the same forms as the absentee ballots.

[See Compact Edition, Volume 2 for text of 4 and 5]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 14, eff. Nov. 5, 1975.]

Art. 5.05d. General Provisions on Voting by Persons Lacking Full Voting Rights

Record of Applicants

Subd. 1. The county clerk shall maintain in his office, for public inspection, a complete record of persons who have applied for a ballot under Section 37b or 37c of this code (Article 5.05b or 5.05c, Vernon's Texas Election Code), stating thereon the applicant's name, address, precinct of residence, the section of this code under which the application was made, and the date on which the ballot was delivered or mailed, which record shall be kept up from day to day. The record is subject to the same regulations as the record of absentee voters under Subdivision 11 of Section 37 of this code (Article 5.05, Vernon's Texas Election Code). The names of persons voting under Section 37c shall be included on the precinct lists of absentee voters which the clerk furnishes to the presiding judges of the election, as provided in Subdivision 11 of Section 37, with a notation by each name to indicate that the voter received a limited ballot under Section 37c.

Preservation of Applications; Inspection

Subd. 2. Applications and accompanying papers received pursuant to Sections 37b and 37c of this code (Articles 5.05b and 5.05c, Vernon's Texas Election Code) shall be preserved in the clerk's office for the length of time provided by law for preservation of voted ballots and shall be open to public inspection under the same rules as apply to applications for absentee ballots.

[Amended by Acts 1975, 64th Leg., p. 2090, ch. 682, § 13, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1684, ch. 665, § 5, eff. Aug. 29, 1977.]

Art. 5.06. Repealed by Acts 1977, 65th Leg., p. 661, ch. 247, § 11, eff. Aug. 29, 1977

Art. 5.07. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 5.08. Rules for Determining Residence

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

(m) Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

[Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.]

Art. 5.09a. Register of Voters

Subd. 1. Unless the county commissioners court makes a different designation as authorized in Section 41b or Section 56a of this code, the county tax assessor-collector of each county in this State is the registrar of voters in that county.

Subd. 2. The registrar of voters shall be responsible for the registration of voters, the keeping of records, the preparation of lists of registered voters, and such other duties incident to voter registration as are placed upon him by law. Any of the duties of the registrar, except the hearing of appeals on denial of registration and the hearing of challenges of registration, may be performed through a deputy or deputies. The registrar shall not make any charge against a voter for performing any duty incident to voter registration unless expressly authorized by law to do so. The registrar is authorized to administer oaths and certify thereto under the seal of his office in every case where an oath is required in complying with any portion of this code connected with his official duties. The registration records, the applications for registration, and the duplicate registration certificates on file in the registrar's office shall be open for public inspection at all times when the office is open.

Subd. 3. The expenses of the registrar in excess of the reimbursements received from the state under Section 51b of this code (Article 5.19b, Vernon's Texas Election Code) shall be borne by the county.

[Amended by Acts 1977, 65th Leg., p. 1497, ch. 609, § 1, eff. Aug. 29, 1977.]

Art. 5.09b. County Clerk as Registrar

Subd. 1. The commissioners court of any county in this state may designate the county clerk to be the registrar of voters for that county, by order recorded in its minutes. If some other officer is the registrar at the time the order is adopted, the order shall state the date on which the transfer of registration duties to the county clerk becomes effective.

The commissioners court may rescind the order at any time after two years have elapsed from the date of its adoption, by a rescission order recorded in its minutes, to become effective on a date stated in the order. Thereafter, the duties of the registrar of voters shall be performed by the county tax assessor-collector unless the commissioners court establishes the office of county elections administrator and transfers the duties to that officer, as authorized in Section 56a of this code.[1] Within three days after the entry of an order transferring registration duties to the county clerk or after the entry of an order, rescinding an order of transfer, the county clerk shall send a copy of the order to the secretary of state and the comptroller of public accounts.

Subd. 2. In a county where the commissioners court has designated the county clerk to serve as the registrar of voters, all references to the county tax assessor-collector in Sections 3, 12, 64, 199, 301, 321, and 335 of this code (Articles 1.03, 2.04, 6.09, 13.21, 15.01, 15.25, and 15.35, Vernon's Texas Election Code), and in any other statutes pertaining to voter registration, mean the county clerk.

Subd. 3. Where the county clerk is the registrar of voters, the amount appropriated by the commissioners court for the registration duties of the registrar shall not be less than the amount previously appropriated to the county tax assessor-collector for the registration duties formerly performed by him, with additional appropriations, if required, to compensate for the effects of inflation and rising costs of supplies, equipment, and personnel.

Subd. 4. The secretary of state shall prepare advisory budgetary guidelines for the establishment and operation of a division of elections in the county clerk's office for administering the consolidated election duties of the clerk as provided in this section and for the establishment and operation of the separate office of county elections administrator as provided in Section 56a of this code. In preparing the guidelines the secretary of state shall consider and accommodate the differing needs of counties and their differing capabilities for financing the administration of the consolidated duties.

[Added by Acts 1977, 65th Leg., p. 1498, ch. 609, § 2, eff. Aug. 29, 1977.]

[1] Article 5.14a.

Art. 5.09c. Office Hours of County Clerk and Tax Assessor on Election Day

Notwithstanding the designation of an election day as a legal holiday on which public offices may be closed, during the hours the polls are open on the day of any general election, primary election, or runoff primary election in which a statewide office appears on the ballot:

(1) the office of the county clerk shall remain open for the purpose of performing the clerk's duties in connection with administration of the election in counties where no county elections administrator has been appointed; and

(2) the office of tax assessor-collector shall remain open for voter registration purposes in counties where the tax assessor-collector serves as registrar of voters.

[Amended by Acts 1979, 66th Leg., p. 495, ch. 226, § 1, eff. Aug. 27, 1979.]

Art. 5.10a. Persons Entitled to Register

A person is entitled to register as a voter in the precinct in which he has his legal residence (i. e., domicile), as defined in Section 40 of this code (Article 5.08, Vernon's Texas Election Code), if:

(1) on the date of applying for registration he is a citizen of the United States and is subject to none of the disqualifications, other than nonage, stated in Section 33 of this code (Article 5.01, Vernon's Texas Election Code); and

(2) within 60 days after applying for registration he will be 18 years of age or older.

However, no person may vote at any election unless he fulfills all the qualifications of an elector for that election.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 1, eff. May 27, 1975.]

Art. 5.11a. Expired

This article, as amended by Acts 1971, 62nd Leg., p. 2509, ch. 827, § 3 and Acts 1975, 64th Leg., p. 751, ch. 296, § 2, provided for an initial registration period for permanent registration to begin on November 5, 1975 and continue through January 31, 1976. Subdivision 2 of this article provided: "This section expires on March 2, 1976."

See, now, art. 5.13a.

Art. 5.13a. Mode of Applying for Registration; Period for Which Registration is Effective

Subd. 1. Registration shall be conducted at all times the registrar's office is open for business. A person may apply for registration in person or by mail. Each applicant shall submit to the registrar of the county in which he resides a written application which supplies all the information required by Section 45b of this code (Article 5.13b, Vernon's Texas Election Code). The Secretary of State shall prescribe the application form. The application for registration by mail shall be in the form of a business reply postcard, or other suitable form, with postage to be paid by the state. The Secretary of State shall make necessary arrangements with the United States Postal Service for obtaining a permit for use of the business reply mail form, or other suitable form, and for payment of the postal charges through warrants issued by the comptroller of public accounts. The Secretary of State shall be authorized to use any form or system made available by the United States Postal Service if such other form or system will be less costly than business reply, and he shall be authorized to implement any procedures necessary to accommodate such other form or system. The application shall be available to individuals, organizations, businesses, and political subdivisions in reasonable quantities. No fee shall ever be charged for voter registration applications. The Secretary of State may prescribe one or more forms

for use in counties using electronic data processing methods for issuing voter registration certificates and a different form for use in counties not using those methods, but the registrar in each county shall accept any application made upon any form prescribed by the Secretary of State which supplies all the necessary information for registration. In addition to other requirements, the application form shall contain the following statement: "I understand that the giving of false information to procure the registration of a voter is a felony." It shall also contain a space for recording the number of the voter's registration certificate.

Subd. 2. The application shall be signed by the applicant or his agent. However, if the person making the application is unable to sign his name either because of physical disability or illiteracy, he shall affix his mark, if able to do so, which shall be attested by a witness, whose signature and address shall be shown on the application. If a person making the application is physically unable to make a mark, the witness shall so state on the application.

Subd. 3. The husband, wife, father, mother, son, or daughter of a person entitled to register may act as agent for such person in applying for registration, without the necessity of written authorization therefor, may sign for the applicant, and may receive the registration certificate. However, none of these persons may act as agent unless he is a qualified elector of the county. No person other than those mentioned in this subdivision may act as agent for a person in applying for registration. Except as permitted in this subdivision, a person who wilfully acts as agent for another in applying for registration or in obtaining a registration certificate is guilty of a Class B misdemeanor.

Subd. 4. A registration becomes effective on the 30th day after the date on which the registrar receives the application or on the day that the registrant attains the age of 18 years (the day before his 18th birthday), whichever is later. An application by mail is deemed to have been received by the registrar when it is actually placed into the possession of the registrar or his agent by a post-office employee, or is deposited in the registrar's mail box, or is left at the usual place of delivery for the registrar's official mail. If the registrar is unable to determine the exact date on which the application is deposited in his mail box, he shall treat it as having been deposited on the date of the last previous removal of mail from the box. Every registration of a voter which becomes effective on or after March 1, 1976, shall continue in effect until cancelled under some provision of this code.

Subd. 5. Any person who applies for registration of any person, or who signs an application purporting to be the application for registration of any person, either real or fictitious, other than the person making the application or affixing the signature, or someone for whom he may lawfully act as agent, or someone who is unable to sign and who requests him to sign for such other person, is guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 751, ch. 296, § 3, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1215, ch. 468, § 3, eff. Aug. 29, 1977.]

Art. 5.13b. Information on Application

Required Information

Subd. 1. An application form for voter registration shall provide that the following required information be furnished by the applicant:

(1) The applicant's first name, middle name (if any), and surname. If the applicant is a married woman using her husband's surname, she shall furnish her first name, maiden name, and husband's surname.

(2) The applicant's sex.

(3) The month, day, and year of the applicant's birth, and city or county and state, or foreign country, where the applicant was born.

(4) A statement that the applicant is a citizen of the United States.

(5) If a naturalized citizen, the court of naturalization, or its location.

(6) A statement that the applicant is a resident of the county.

(7) If the applicant is currently registered in another county or if the applicant was registered in the previous two-year certificate period in any county in the state and has not received a registration certificate for the current two-year certificate period, the name of that county and the applicant's residence address as shown on such registration certificate.

(8) The registrant's complete current permanent residence address (including apartment number, if any); or, if none, a concise description of the location of the registrant's residence.

(9) The address to which the registration certificate is to be mailed, but only if mail cannot be delivered to the registrant's permanent residence.

(10) If the application is made by an agent, a statement of the agent's relationship to the applicant.

Optional Information

Subd. 2. The application form shall contain a space for showing the election precinct in which the applicant resides, but an application is not deficient for failure to list the number or name of the precinct or for listing an incorrect number or name where the applicant's correct permanent residence address is given. It shall also contain a space for the applicant's social security number and telephone number, but an application is not deficient for failure to list these numbers. However, should it be made possible

for the state to require that a registrant provide his social security number when applying for a registration certificate, the providing of such a number by all those applicants who possess such a number may be made mandatory by directive of the Secretary of State in the exercise of his authority pursuant to the provisions of Section 3, Texas Election Code (Article 1.03, Vernon's Texas Election Code). The registrar shall not transcribe, copy, or record any telephone number furnished on an application for registration.
[Amended by Acts 1975, 64th Leg., p. 752, ch. 296, § 4, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1217, ch. 468, § 8, eff. Aug. 29, 1977.]

Art. 5.13c. Voter Registration Forms in Spanish

The secretary of state shall prescribe a voter registration application form that is printed in Spanish. In each county in which five percent or more of the inhabitants are persons of Spanish origin or descent, according to the last preceding federal decennial census, the registrar shall keep a supply of these, and shall keep a notice in Spanish posted at the place in his office where voter registration is conducted, stating that application forms in Spanish are available. Registrars in other counties may also use this form if they wish to do so. Every registrar in the state is required to accept and process applications that are tendered to him on the bilingual form, in the same manner as other applications.
[Added by Acts 1975, 64th Leg., p. 513, ch. 213, § 2, eff. May 16, 1975.]

Art. 5.14a. Registration Certificate Forms; Issuance of Certificates; Information Required on Certificate

Registration Certificate Forms

Subd. 1. (a) The form for a voter registration certificate shall be prescribed by the Secretary of State. He may prescribe one or more forms for use in counties using electronic data processing methods for issuing certificates and a different form for use in counties not using those methods. A certificate form prescribed by the Secretary of State shall be valid for use only during a two-year period, such two-year period to begin on March 1 of even-numbered years, unless rescinded by the Secretary of State.

(b) The registration certificates for each county may be numbered or labeled in any manner which will enable the registrar to efficiently and accurately maintain the voter registration rolls. However, the Secretary of State may establish a standardized numbering or labeling system and require its adoption by the various counties.

Issuance of Certificates

Subd. 2. (a) When a properly executed application is received by the registrar, he shall make out an initial registration certificate in duplicate and shall mail the original copy to the voter at his regular mailing address, or if none, at his permanent residence address, in time for him to receive it before his registration becomes effective. The registrar may also deliver the original copy to the voter personally, or to an agent making the application under Section 45a of this code (Article 5.13a, Vernon's Texas Election Code). The duplicate copy shall be retained by the registrar. At the time he prepares the initial registration certificate, the registrar shall enter the certificate number in an appropriate space on the voter's application for registration.

(b) Between January 1 and January 15 of each even-numbered year, the registrar shall prepare and mail to each registered voter in the county as of the preceding December 31 a registration certificate for use during the succeeding two voting years. The certificate shall be mailed to the permanent residence address shown on the voter's registration application; or, if provided, the mailing address. It shall not be sent in the same envelope as the voter's tax statement. Attached to or made a part of the registration certificate shall be adequate space for the voter to insert any change of information other than that printed on the certificate. If the voter has noted such changes, the notice shall be signed and affirmed by the voter and returned to the registrar for correction of the records and issuance of a corrected certificate to the voter.

The registration certificate or envelope containing the certificate shall be marked with a direction to the postal authorities not to forward it to any other address and to return it to the registrar if the addressee is no longer at that address. In the event the certificate is returned, the registrar shall prepare a list of all returned registration certificates showing the name, address, birth date, and registration number of the person to whom the certificate was issued. The list shall be kept in the registrar's office and shall be open to public inspection at all times during regular office hours of the registrar, subject to reasonable regulations and to proper safeguards against alterations, mutilation, or removal. The registrar shall furnish a copy of such list to any person requesting it and shall be permitted to charge One Dollar ($1) for each 10,000 names contained on the list, to be paid by the person so ordering such list. Any money collected pursuant to this subdivision shall be accounted for as official fees of office.

In the event that a person believes that his registration certificate has been returned solely because of postal service error, address reclassification, or clerical error on the part of the registrar of voters, he may present to the registrar of voters a sworn statement challenging such return. Upon receiving such statement, the registrar shall give notice to the person whose registration certificate has been returned of a hearing to be held on the third working day after receipt of such statement. However, if the person whose registration certificate was returned is present in the registrar's office, the regis-

trar may hold the hearing at that time with the person's consent. At the hearing, the registrar may consider such information relating to the challenge as may be presented. If no information controverting the sworn statement of the person claiming to have an erroneously returned registration certificate is introduced, such person's name shall be reinstated on the list of registered voters. If controverting information is introduced, the registrar of voters shall consider the information, including the sworn statement of the person whose name was allegedly erroneously placed on the list of returned voter registration certificates, and if satisfied that the sworn statement of the person whose registration certificate has been returned is true, he shall reinstate the person's name on the list of registered voters. If the registrar refuses to reinstate such person, the person may appeal from the decision of the registrar to a district court of the county within 30 days after the registrar's decision, and the decision of the district court shall be final.

Text of (b), fourth paragraph, as amended by Acts 1981, 67th Leg., p. 2242, ch. 536, § 2

Prior to the succeeding February 15, the registrar shall send to the Secretary of State a list of all the persons, along with all corresponding information available and required by the Secretary of State, whose registration certificates were cancelled as a result of the provisions of this section. Such list shall be in computer readable form. The Secretary of State shall furnish a copy of such list to any person requesting it and shall be permitted to charge One Dollar ($1) for each 10,000 names contained on the list, to be paid by the person so ordering such list. Funds collected by the Secretary of State pursuant to this subdivision shall be used by the Secretary of State to defray any expenses incurred in the preparation of such list.

Text of (b), fourth paragraph, as amended by Acts 1981, 67th Leg., p. 2478, ch. 644, § 1

Prior to the succeeding March 8, the registrar shall send to the Secretary of State a list of all the persons, along with all corresponding information available and required by the Secretary of State, whose registration certificates were returned under the provisions of this section. Such list shall be in computer readable form. The Secretary of State shall furnish a copy of such list to any person requesting it and shall be permitted to charge One Dollar ($1) for each 10,000 names contained on the list, to be paid by the person so ordering such list. Funds collected by the Secretary of State pursuant to this subdivision shall be used by the Secretary of State to defray any expenses incurred in the preparation of such list.

Any person who uses information obtained under this subdivision for any purpose other than informing voters about candidates for public offices or public issues or for voter registration purposes is guilty of a Class A misdemeanor.

(c) Each voter whose registration becomes effective after December 31 of an odd-numbered year but before the following March 1 shall be issued an initial certificate valid for the remainder of that voting year and a certificate valid for use during the two-year period beginning the following March 1.

(d) A registrar of voters who knowingly issues, mails, or delivers a registration certificate to a person other than the applicant therefor or his lawful agent as provided in Section 45a of this code (Article 5.13a, Vernon's Texas Election Code), is guilty of a felony of the third degree.

(e) Any person whose registration certificate is returned under the provision of this section shall be required to complete an affidavit of residence on or before August 15, or the registration shall be cancelled on that date. The secretary of state shall prescribe the forms for the document required by this section. A person whose registration is cancelled under this paragraph must reregister in the same manner as an initial registrant. If a person believes that his registration has been cancelled solely because of a return due to postal service error, address reclassification, or clerical error on the part of the registrar, he may seek reinstatement on the list of registered voters in the manner prescribed by Paragraph (b) of this subdivision for reinstatement of a person whose registration certificate was returned due to error.

Information Required on Certificate

Subd. 3. (a) Each certificate shall show the voter's name, permanent residence address, mailing address if any, sex, election precinct number, and if an initial certificate, the effective date of the registration. It shall contain a blank space for political party affiliation of the voter, to be completed as provided in Section 179a, of this code (Article 13.01a, Vernon's Texas Election Code). It shall not show the voter's telephone number or social security number. The certificate shall have a place for the voter's signature, and shall contain or be accompanied by a written instruction to the voter that the certificate is to be signed by the voter personally immediately upon receipt, if the voter is able to sign his name. Each certificate shall clearly indicate the two-year period for which it is issued, and shall contain a statement that the voter shall receive a new certificate every two years so long as such voter does not become disqualified under some provision of the election laws. Each certificate shall contain a statement giving notice that voting by use of the certificate by any person other than the person in whose name the certificate is issued is a felony. Voting by use of certificate which has been issued to another is hereby expressly made a felony of the third degree.

(b) Each certificate may contain a notice to the voter to correct and return the certificate to the registrar in case any of the information thereon

changes or is incorrect. It may be accompanied by a more detailed explanation of the registrant's rights and duties under this code, including, but not limited to: a statement that his registration is permanent unless cancelled under some provision of the election laws; the procedure by which he will receive a new certificate every two years; the need to reregister if he moves to another county; the period during which he may vote a limited ballot after removal from the county; the need to notify the registrar to transfer his registration if he moves to a new precinct within the county; the period during which he may vote in his old precinct after removal to another precinct within the county; his right to vote without a certificate; and the procedure for obtaining a replacement for a lost certificate.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 1, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1213, ch. 468, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1671, ch. 698, § 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2242, ch. 536, § 2, eff. June 12, 1981; Acts 1981, 67th Leg., p. 2478, ch. 644, § 1, eff. Aug. 31, 1981.]

Art. 5.15a. Registration Files

Subd. 1. (a) The applications on which registration certificates are issued shall be filed in an active application file and shall remain in that file as long as the registration continues in effect. The active application file shall be maintained in alphabetical order by voter name for the entire county, except that if the registrar regularly obtains a list of registrants in that order through use of electronic data processing equipment, he may keep the file in numerical order by certificate number.

(b) The registrar shall also maintain an inactive application file. The registrar shall place in alphabetical order into this file all applications which are rejected. He shall also transfer to a separate inactive file the application of each voter whose registration is cancelled. The registrar shall enter on the application form the date on which the registration is rejected or the date on which the registration is cancelled before filing an application in the inactive file. The application shall be kept in the inactive file for a period of two years from the date of rejection or cancellation, after which it may be destroyed.

Subd. 2. (a) After the registrar adds a voter's name to the list of registered voters from the duplicate registration certificate, he shall file the duplicate in an active duplicate registration certificate file. An active file shall be maintained in numerical order for the entire county.

(b) When a registration is cancelled, the registrar shall enter the date of and reason for cancellation on the duplicate certificate and shall transfer it to an inactive file arranged numerically for each voting year. The duplicate shall be kept in the inactive file for a period of two years from the date of cancellation, after which it may be destroyed.

(c) The duplicate registration certificate files may be maintained as information stored in electronic data processing equipment. If so maintained, a duplicate certificate may be discarded after the appropriate information is transferred to the electronic data processing record.

Subd. 3. Applications and duplicate registration certificates may be removed from the registrar's office temporarily, under proper safeguards, for use in preparing registration certificates, lists of registered voters, and other registration papers by electronic data processing methods, but they may not be removed for any other purpose. Except as permitted in the preceding sentence, the applications, and the duplicate registration certificates shall be kept in the registrar's office at all times in a place and in such a manner as to be properly safeguarded. The files shall be open to public inspection at all times during regular office hours of the registrar, subject to reasonable regulations and to proper safeguards against alteration, mutilation, or removal.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 6, eff. Nov. 5, 1975; Acts 1981, 67th Leg., p. 913, ch. 329, § 1, eff. Aug. 31, 1981.]

Art. 5.15b. Service Program of Secretary of State; Copies of Master State Voter File

Subd. 1. The secretary of state is hereby authorized to provide a service program to assist registrars in efficiently maintaining accurate and current lists of registered voters. Such service program shall provide for, but is not limited to:

(a) obtaining initial lists of registered voters and other necessary information from the registrars of voters in order to create master files of such information;

(b) obtaining periodic information from registrars and from any other available sources for the following purposes:

(1) to maintain the master files,

(2) to aid in the determination of the proper status of persons on the lists of registered voters,

(3) to aid in the determination of the proper registration information to be associated with each registrant;

(c) conducting the various procedures necessary or proper for the implementation of the service program by utilization of automatic data processing equipment or by other means;

(d) furnishing information which may be useful to the registrars in the performance of their duties;

(e) contracting with political subdivisions of this state to provide such other services as are necessary to the performance of the duties of election officials. Fees collected through such contracts shall be retained by the secretary of state to defray expenses of the service program.

Subd. 2. Implementation of this program shall be by directive of the secretary of state. The secretary of state shall make a full report to the legislature which convenes in January of 1977 of all steps taken to implement this program. He shall include in his report a description of any difficulties encountered and his recommendations, if any, for corrective legislation.

Subd. 3. Each March 1 and September 1 the secretary of state shall prepare a copy of the master state voter file on magnetic tape, which shall include each voter's county, voting precinct number, name, permanent residence address, mailing address if any, sex, year of birth, and registration number. It shall not include any voter's social security number or telephone number. The secretary of state shall furnish a copy of this tape to any person requesting it. Each person requesting a copy shall submit an affidavit that the information obtained will be used only for the purpose of informing voters about candidates for public office or about public issues, and will not be used to advertise or promote commercial products or services. The secretary of state shall provide the copy within 15 days of the date on which he receives the request. He shall exact a uniform charge against each person to whom he furnishes a copy of the tape. The charge shall not be greater than an amount deemed sufficient to reasonably reimburse the secretary of state for his actual expense in furnishing the copy, and in any event shall not exceed five cents per hundred names furnished.

Subd. 4. Any person who uses information obtained under Subdivision 3 of this section for any purpose other than informing voters about candidates for public office or about public issues is guilty of a Class A misdemeanor.

[Added by Acts 1975, 64th Leg., p. 750, ch. 296, § 7, eff. May 27, 1975.]

Sections 17 and 18 of the 1975 Act provided:

"Sec. 17. The secretary of state is hereby authorized to utilize any funds previously appropriated for the biennium ending August 31, 1975, for the purpose of publication of constitutional amendment explanatory statements, but which have not and will not be expended for that purpose, in connection with the implementation of the service program described in Section 7 of this Act.

"Sec. 18. Sections 1, 7, and 17 of this Act take effect immediately upon passage or as soon thereafter as permitted by law. All other sections preceding this section take effect on November 5, 1975."

Art. 5.16a. Correction of Errors on Certificates; Lost Certificates

Correction of Error

Subd. 1. When after issuance of a registration certificate it is discovered that an error has been made in filling out the blanks on the certificate through mistake of the registrar or through mistake of the voter in supplying the information, the voter may present the certificate to the registrar for correction and the registrar shall issue a corrected certificate and correct the information on the registration records on file in his office.

Error in Election Precinct

Subd. 2. Except as permitted in Section 50a of this code,[1] no person is entitled to vote in a precinct of which he is not a resident and an election officer shall not knowingly permit a voter to do so. However, where a voter is erroneously registered in a precinct in which he does not reside and the election officer permits him to vote without knowing of the erroneous registration, in an election contest a ballot cast in that precinct shall be given effect as to any offices or propositions on which the voter would have been entitled to vote in the precinct in which he resides unless it is proved that the voter intentionally gave false information to procure his registration in the wrong precinct, in which event the ballot is void for all purposes.

If an error in the election precinct has not been corrected at the time the voter offers to vote, he may vote in the precinct of his residence, if otherwise qualified, by making and leaving with the presiding judge an affidavit, in any form authorized by the secretary of state, that he is or has been during the previous 90 days a resident of the precinct and is voting only one ballot in this election and that the error was not intentional.

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

Returned Voter Registration Certificate

Subd. 3a. For elections held between March 1 and no later than August 15 in even-numbered years, where a voter's name is not shown on the precinct list of registered voters but does appear on the precinct list of returned voter registration certificates, the election officer shall permit such voter to cast a ballot, provided such voter submits a completed affidavit that he still resides within the county for county administered and primary elections and, if applicable, within the municipality or other political subdivision if administered by such authority. A voter who resides in a different county from that in which he is registered may not vote under this procedure. In the event the runoff primary election occurs within 29 days after the date of the general primary, the voter may vote at the election under the procedure outlined in this subdivision, except that the voter shall inform the presiding judge that he voted under this procedure at a previous election, and the presiding judge shall note that fact on the affidavit. When the registrar receives such an affidavit, he shall attach it to the affidavit previously received.

All affidavits required by this subdivision shall contain the content and be in the form prescribed by the Secretary of State. Each affidavit must contain the voter's full name, current voter registration certificate number, and complete residence address, including street number, apartment number, state, and zip code. If the voter does not have a street address, he must give a concise description of the location of his residence so that the registrar of

voters can identify the residence location in a specific voting precinct. An affidavit that does not include the above information is void.

A ballot of a voter cast in willful disregard of this subdivision is invalid.

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

Correction of Registration Records

Subd. 5. Within 10 days after the election, the officer to whom the list of registered voters is returned shall notify the registrar of any additions which the election officers made to the list of registered voters and deliver to the registrar each affidavit of residence submitted at the election. Within the same period, the officer to whom the affidavit of erroneous election precinct is returned shall notify the registrar of the names and other information contained on the affidavits used in the election. The registrar shall take the necessary steps to verify and correct the registration records, including deleting from the list of returned registration certificates the name of each voter who voted after submitting an affidavit of residence and delivering a corrected registration certificate to each voter. To ensure the accuracy of the registration certificates, the registrar may order a recall of the original registration certificates for correction where necessary. If the registrar finds that a person who voted is not registered, he shall report the matter to the presecuting attorney.

Replacement of Lost Certificate

Subd. 6. (a) If a voter to whom a registration certificate has been issued presents to the registrar his signed statement that the certificate has been lost or destroyed, the registrar shall issue to the voter a replacement certificate as a single-copy document, showing the same registration number and the same information as shown on the original certificate. The registrar shall make a notation on the face of the certificate showing it to be a replacement. He shall attach the statement to the voter's application.

A person who states in a request for a replacement certificate that his registration certificate has been lost or destroyed, knowing the statement to be false, is guilty of a Class A misdemeanor.

(b) A replacement certificate issued after October 31 in an odd-numbered year shall be valid for use during the two-year period beginning on the following March 1. But it shall bear a notation that it may be used beginning on the date of issuance, except that a corrected replacement certificate shall be dated for use beginning on the 30th day following receipt by the registrar of the voter's old certificate or statement of loss.

[See Compact Edition, Volume 2 for text of 7]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 8, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 591, ch. 209, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1216, ch. 468, § 5, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1672, ch. 698, § 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2480, ch. 644, § 2, eff. Aug. 31, 1981.]

[1] Article 5.18a.

Art. 5.17a. Challenge of Registration; Appeal

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

(3) Jurisdiction of district court; trial of appeal. The district courts of this State shall have jurisdiction to hear and determine appeals from decisions of the registrar refusing an application for registration and from decisions of the registrar either canceling or refusing to cancel a registration. The trial in the district court shall be de novo.

[Amended by Acts 1981, 67th Leg., p. 2645, ch. 707, § 4(38), eff. Aug. 31, 1981.]

Art. 5.18a. Change of Residence; Cancellation or Transfer of Registration

Change of Residence Within Precinct

Subd. 1. A registered voter who changes his place of residence within the election precinct shall give written notice to the registrar of the change of address and obtain a corrected certificate as provided in Subdivision 1 of Section 48a of this code (Article 5.16a, Vernon's Texas Election Code).

Change of Residence to Another Precinct Within County

Subd. 2. A registered voter who changes his residence to another election precinct within the county may vote a full ballot in the precinct of his former residence, if otherwise qualified, during the first 90 days after the removal, but not thereafter, in any election in which there is listed on the ballot any office or proposition on which he is eligible to vote at his new residence.

If he obtains a transfer of his registration to the precinct of his new residence during the 90-day period, he may vote only in the precinct of his new residence after the 29th day following the transfer. He may not vote in the precinct of his new residence before the 30th day following the transfer.

To obtain a transfer of his registration, the voter shall present the registrar with a written, signed request that his registration be transferred to the precinct of his new residence. Upon receiving a request for transfer, the registrar shall make the necessary changes on the registration records in his office and shall issue a new corrected registration certificate to the voter. He shall attach the request to the registrant's original application.

Change of Residence to Another County

Subd. 3. (a) A registered voter who moves from one county to another within the State must reregister in the county of his new residence in the same manner as an initial registrant. However, during the first 90 days after removal the voter may vote a limited ballot, as provided in Section 37c of this code (Article 5.05c, Vernon's Texas Election Code), if a reregistration in the county of new residence has not become effective.

(b) Where a registered voter who resides in a municipality or other political subdivision which is situated in more than one county moves from one county to another within the political subdivision, if the election precincts of the political subdivision are so constituted that the voter lives in the same precinct, he may continue to vote on the registration in the county of former residence at elections held by that political subdivision so long as that registration continues in effect. If he resides in a different precinct, during the first 90 days after the removal he may continue to vote in the precinct of his former residence at elections held by the political subdivision, on the registration in the county of former residence, if a reregistration in the county of new residence has not become effective.

Notification to Registrar in County of Former Residence

Subd. 4. When the registrar receives an application for registration of a voter who is registered in some other county, he shall notify the registrar of that county, giving him the voter's name, former registration certificate number if known, and former residence address. Upon receipt of notice, the registrar of the county wherein the voter was formerly registered shall cancel the registration in that county. When the registrar receives an application for registration of a voter who was registered in the previous two-year certificate period in any county and has not received a current registration certificate, he shall notify the registrar of that county, if different from the registrar's county, giving him the voter's name, former residence address, birth date, and social security number if available, and may also include a copy of the voter's signature. Upon receipt of such notice, the registrar of the county wherein the voter was formerly registered shall remove the voter from the list of cancelled voter registration certificates of the appropriate election precinct. If the voter's name is on a list of cancelled voter registration certificates in the county wherein he is attempting to register, the registrar of such county shall cause the voter's name to be removed from the appropriate precinct list. The name of any person shall not be removed from the list of cancelled voter registration certificates until such registration is effective.

Subd. 5. (a) The registrar may utilize any means available to determine whether a registered voter's current legal residence may be other than that indicated as the voter's legal residence on the registration records.

(b) Upon receiving information indicating that a registrant has a residence other than that shown on the registrant's registration records, or that indicates the existence of any grounds of disqualification other than death, the registrar shall send a notice to such person by forwardable mail at the permanent residence address or, if provided, the mailing address on the registrant's registration application and any new address of the registrant, if known, requesting a verification of the registrant's current residence address, or other relevant information which would be determinative of the registrant's right to retain his current registered status, and providing information of the necessity for the registrant to amend the registration records subsequent to a change in legal residence or to provide information establishing his right to retain his current registered status. The notice shall state that the registrant's registration will be cancelled if the registrar does not receive an appropriate reply within 60 days from the date on which the notice is mailed. If the registrant replies to the notice, the registrar shall take the appropriate action indicated by the reply. If no reply is timely received, the registrar shall cancel the registration. Notice of such cancellation shall be sent to the registrant at the new address, if it is known; otherwise it shall be sent to the residence or mailing address on the registration records. If the notice mailed to the permanent residence address on the registrant's application is returned to the registrar with no forwarding address information available, the registrar shall cancel the registration.

(c) In the event the registrar cancels a voter's registration pursuant to Paragraph (b) of this subdivision, such voter may, within 10 days after the date of cancellation by the registrar, request, in writing, a hearing before the registrar. The registrar, upon notice to the voter, shall conduct a hearing within five days of receipt of the request from the voter, or at any later time upon the consent of the voter. The registrar shall then determine whether to cancel the registration. The voter may appeal from a decision to cancel his registration to a district court of the county of registration within 29 days after the registrar's decision, and the decision of the district court shall be final. A voter who appeals a cancellation of his registration under the provisions of this paragraph may continue to vote until a final decision is made cancelling his registration.

Subd. 6. The Secretary of State shall prescribe forms for the various documents required by this section. However, the registrar may also accept and use forms other than those prescribed by the Secretary of State.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 10, Nov. 5, 1975; Acts 1977, 65th Leg., p. 1217, ch. 468, § 9, eff. Aug. 29, 1977.]

Art. 5.18b. Repealed by Arts. 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

Art. 5.18d. Change of Name

Subd. 1. A registered voter who changes his name through marriage or judgment of a court shall present his registration certificate to the registrar, with a signed request that his name be changed on the registration records. The registrar shall make the necessary changes on his records and issue a corrected certificate to the voter under his new

name. The registrar shall attach the request to the registrant's original application.

Subd. 2. If otherwise qualified, a voter whose name is changed is eligible to vote under the new name at any election held more than 29 days after the request for change of name was received by the registrar. He may vote under the former name at any election held within 29 days after the day the request was received by the registrar, upon making an affidavit that his certificate of registration under the former name has been surrendered to the registrar. The voter shall sign the form for the affidavit of a lost certificate, and the election officer shall add a notation in explanation of the circumstances. [Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 11, eff. Nov. 5, 1975; Acts 1979, 66th Leg., p. 581, ch. 270, § 1, eff. Aug. 27, 1979.]

Art. 5.19a. List of Registered Voters

(1) The registrar shall prepare for each election precinct of the county a certified list of registered voters who are registered as of the 30th day prior to the first election in each voting year. In preparing the list of registered voters for an election occurring during the period March 1 through August 15 of an even-numbered year, the registrar of voters may not include on the list of registered voters the name of any voter whose voter registration certificate was returned to the registrar of voters after the mailout required by Subdivision 2(b), Section 46a, Texas Election Code, as amended (Article 5.14a, Vernon's Texas Election Code), unless such voter has filed the affidavit required by Subdivision 2(e), Section 46a, Texas Election Code, as amended (Article 5.14a, Vernon's Texas Election Code), more than 29 days before the date of such election. Each precinct list shall be arranged alphabetically by the names of the voters and showing each voter's name, residence address, sex, date of birth and registration number. The Secretary of State may prescribe the content and format of the precinct list. The registrar shall deliver to each board, executive committee, or other authority having the duty of furnishing supplies for any general, special, or primary election to be held within the county during the voting year for which the list is prepared, one set of such lists for all precincts in the county if any election which may be held by such authority is countywide, and one set of such lists for all precincts wholly or partially within the boundaries of the particular political subdivision if all elections which may be held by such authority are less than countywide. The registrar shall also furnish to each such authority an updated supplemental list of the voters in each precinct who will have been registered for 29 days on the day of the election and whose names do not appear on the original list. In the event the prescribed combination form in accordance with Section 16 of this code [1] has been furnished, before the first day of absentee voting in any subsequent election held by the authority during that voting year, the registrar shall furnish to the authority in either the prescribed combination form or simple list form, another copy of the original list and an updated supplemental list of the voters in each precinct who will have been registered for 29 days on the day of the election and whose names do not appear on the original list, except that in the case of a runoff election the registrar may furnish a copy of the supplemental list prepared for the preceding election and a supplemental list of the voters who will have been registered for 29 days on the day of the runoff election and whose names do not appear on the original list or the supplemental list prepared for the preceding election instead of preparing a single updated supplemental list for that election. In every instance, instead of preparing a supplemental list or lists, the registrar may prepare a revised original list consolidating into it the names of the voters that would have been included on the supplemental list or lists. With each supplemental list or revised original list the registrar shall also furnish a list of persons whose registration information has been changed or corrected or whose registration has been cancelled or transferred to another precinct since preparation of the last set of lists. The authority shall furnish to the presiding judge in each precinct the original and supplemental lists of voters in his precinct at the time it furnishes other election supplies. Prior to the opening of the polls, the presiding judge shall strike from the registration list the names of persons whose registration has been cancelled or transferred to another precinct, and shall correct the list for persons whose registration information has been changed or corrected.

Before the first day of March in each even-numbered year and whenever appropriate thereafter, the registrar shall attach to each list herein required an alphabetical corresponding certified list of all the persons whose registration certificates were returned, pursuant to the provisions of Section 46a of this code, and such list shall remain attached to the election precinct list for four months thereafter. The precinct lists may be combined with the corresponding lists of returned registration certificates in accordance with the form and content prescribed by the Secretary of State.

(2) In addition to the lists to be furnished under Subsection (1) of this section, the registrar shall furnish without charge to each clerk having the duty of conducting absentee voting in any election the appropriate lists for use in the conduct of absentee voting for the election. He shall also maintain in his office for a period of three years one set of the original lists and one set of the supplemental lists prepared for each county-wide election, which shall be public records available for public inspection at all times that his office is open.

[See Compact Edition, Volume 2 for text of (3) to (5)]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 12, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 591, ch. 209, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1214, ch. 468, §§ 2, 12, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1509, ch. 609, § 9, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1672, ch. 698, § 4, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2481, ch. 644, § 3, eff. Aug. 31, 1981.]

[1] Article 3.02.

Section 12 of Acts 1977, 65th Leg., p. 1218, ch. 468, repealed § 3 of House Bill No. 1788 [ch. 209] of the 65th Legislature, Regular Session, 1977, which amended subsec. (1) of this article.

Art. 5.19b. Reimbursement of County by State

Subd. 1. Before April 1 of each year, the registrar shall submit to the Comptroller of Public Accounts a certified statement of the total number of new registrants, together with the total number of registration certificates which were cancelled under the provisions of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code), during the 12-month period ending February 1 of the year in which the statement is submitted. Before April 1 of each even-numbered year, the registrar shall include, in addition to the above statement, a certified statement of the total number of registered voters shown on the precinct registration lists as of March 1 of that year.

Subd. 2. Before June 1 of the year in which the statement is submitted, the Comptroller shall issue a warrant to each county in the aggregate of the following amounts:

(1) 40 cents multiplied by the total number of new registrants, and

(2) 40 cents multiplied by the number of voter registration certificates cancelled under the provisions of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code), as shown by the certified statement required by Subdivision 1 of this section, and

(3) when the total number of registered voters is supplied in accordance with Subdivision 1 of this section, 40 cents multiplied by the difference between the total number of registered voters and the total number of new registrants under this Act during the two 12-month periods prior to the statement in each county. However, before issuing a warrant the Comptroller may require additional proof to substantiate the certified statement.

Subd. 3. The Secretary of State shall determine whether the registrar has complied with the provisions of Section 46a of this code [1] and he shall notify the comptroller. The comptroller shall not issue the warrant provided for in Subdivision 2 of this section until notified by the Secretary of State that the registrar is in compliance.

Subd. 4. The disbursements prescribed by this section shall be made from the general revenue fund as provided by legislative appropriations. All money received by a county under this section shall be deposited in the county treasury in a special fund to be used for defraying expenses of the registrar's office in the registration of voters. None of the money shall be deemed to be fees of office or be retained by the registrar as fees in counties where the registrar is compensated on a fee basis.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 13, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1218, ch. 468, § 10, eff. Aug. 29, 1977.]

[1] Article 5.14a.

Art. 5.20a. Deputy Registrars

[See Compact Edition, Volume 2 for text of 1 to 4]

Subd. 5. No voter registrar shall refuse to deputize any person to register voters because of sex, race, creed, color, or national origin or ancestry. No bona fide resident of the county shall be excluded from serving as deputy by the registrar.

[Amended by Acts 1975, 64th Leg., p. 2079, ch. 681, § 79, eff. June 20, 1975.]

Art. 5.20b. Distribution of Application Forms at Graduation Exercises

The principal of each public or private high school in this state may have distributed at the school's graduation exercises, or at any assembly or function in which the graduating class participates, to each graduating student an officially prescribed voter registration application form. The principal may procure the forms from the voter registrar serving the county in which the school is located.

[Added by Acts 1981, 67th Leg., p. 2386, ch. 597, § 1, eff. Aug. 31, 1981.]

Art. 5.21a. Statement of Registrations

On or before March 5 of each year, the registrar shall make a statement to the secretary of state of the number of registered voters in each precinct as shown by the list of registered voters on March 1, and the secretary of state shall file the statement as a record of his office. The registrar shall also file a copy of the statement as a record of his office.

[Amended by Acts 1977, 65th Leg., p. 1509, ch. 609, § 10, eff. Aug. 29, 1977.]

Art. 5.22b. Repealed by Arts. 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

Art. 5.22c. Repealed by Arts. 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

Art. 5.24a. County Elections Administrator

Creation of Office

Subd. 1. In any county in this state, the commissioners court by order recorded in its minutes may establish the appointive office of county elections administrator of the county, who shall perform the duties and functions specified in Subdivision 3 of this section. The order of the commissioners court shall state the date on which the creation of the office of administrator becomes effective, but the date may not be earlier than March 1, 1979. The order may provide for placing the administrator-designate on the county payroll at a date not more than 90 days before the effective date for creation of the office so that he may make suitable plans for assuming his duties on the effective date. Within three days after the entry of the order, the county clerk shall send a copy of the order to each member of the county elections commission and to the secretary of state and the comptroller of public accounts.

Appointment of Administrator; County Elections Commission

Subd. 2. (a) Composition of the commission. Where the office of county elections administrator is created in a county, the office shall be filled by appointment of the county elections commission of the county, which shall consist of the following members: the county judge of the county as chairman of the commission; the county clerk of the county as vice-chairman of the commission; the tax assessor-collector of the county as clerk of the commission; and the chairman of the county executive committee of each political party whose nominees at the last general election for state and county officers were nominated by primary election. In any county in which the offices of sheriff and tax assessor-collector are combined, the sheriff shall hold the position specified for the tax assessor-collector. In any county in which a party which nominates by primary election does not have a county organization, the membership of the commission is reduced accordingly. A majority of the total membership of the commission constitutes a quorum. The affirmative vote of a majority of the total membership of the commission is necessary for the selection of an administrator. Each member of the commission who is present at a meeting, including the presiding officer, is entitled to vote. Each appointment made by the commission shall be evidenced by a written resolution or order signed by the number of members necessary to make the appointment, and the resolution or order shall be filed as a public record in the office of the county clerk. Within three days after the filing, the county clerk shall forward a copy of the resolution or order to the secretary of state.

(b) Meetings of the commission. Meetings of the commission shall be called by the chairman. If the chairman fails to call a meeting within 10 days after the entry of the order creating the office of county elections administrator or within 10 days after a vacancy arises in the office, or if he fails to call a meeting by January 15 of an odd-numbered year, preceding the expiration of the administrator's term of office, the vice-chairman shall call the meeting. The person who calls a meeting shall set the time and place for the meeting and shall give written notice of the time and place to each other member at least three days in advance of the meeting date.

(c) Qualifications for administrator. (1) The person appointed as administrator must be a resident of this state but need not be a resident of the county at the time of his appointment; but after he assumes the office, he must maintain his residence in the county during his tenure in office.

(2) He must be a registered voter at his place of residence.

(3) He may not be a candidate for public office, as defined by Chapter 14 of this code, while holding the office of county elections administrator. Filing for candidacy constitutes an automatic resignation from the position of county elections administrator effective at the time of filing.

(4) He may not actively support or contribute to any candidate for public office, any officeholder, or any political party while holding the office of county elections administrator. Violation of this provision is a Class A misdemeanor and conviction produces automatic removal from office. A person so convicted is ineligible for appointment as county elections administrator in any county in the state.

(d) Time of appointment; rescission. The county elections commission may make the initial appointment of an administrator at any time after the entry of the commissioners court's order creating the office, regardless of the length of time remaining between the date of the appointment and the effective date of the creation of the office, and it may make an appointment to fill an anticipated vacancy arising from a resignation to take effect at a future date at any time after the resignation is accepted. After an appointment is made and accepted, it may not be rescinded without the consent of the appointee, regardless of any changes that may occur in the membership of the commission before the appointee assumes his duties.

Duties of the Administrator

Subd. 3. (a) Registration of voters. On the effective date of an order entered pursuant to Subdivision 1 of this section, or as soon thereafter as an administrator has been appointed and has qualified, the county elections administrator shall assume and thereafter perform all the duties and functions to be performed by the registrar of voters, pursuant to Section 41a of this code (Article 5.09a, Vernon's Texas Election Code).

(b) Conduct of elections. In addition to the duties and functions specified in paragraph (a) of this subdivision, the administrator shall perform all the duties and functions which are placed upon the county clerk by any provision of this code or any other statute of this state in connection with the conduct of elections, as more fully defined in Section 56b of this code.[1]

Salary of Administrator; Office Staff; Operating Expenses

Subd. 4. Where the office of county elections administrator is created, the commissioners court shall fix his salary, and shall also fix the number, grade, and salaries of paid deputies, assistants, and other persons that he may employ. However, the administrator may appoint unpaid deputies to assist in voter registration, as authorized in Section 52a of this code (Article 5.20a, Vernon's Texas Election Code), without the approval of the commissioners court. The salary of the administrator shall not exceed the salary paid to the county clerk of that county, and the salaries paid to his employees shall not exceed the salaries paid to the employees of the county clerk in comparable positions. The commissioners court may allow such automobile expense as

it deems necessary to the administrator and to any of his employees in the performance of their official duties. The commissioners court shall make provision for furnishing the administrator with suitable office space and with the necessary equipment and operating expenses for the proper conduct of his office. The amount appropriated by the commissioners court for the administrator's office shall not be less than the amounts previously appropriated to the county clerk and the county tax assessor-collector for the duties formerly required of them but now assigned to the administrator, with additional appropriations, if required, to compensate for the effects of inflation and rising costs of supplies, equipment, and personnel.

Term of Office

Subd. 5. The initial appointment of the county elections administrator shall be until the beginning of the first regular term thereafter. The regular term of office for the administrator is for a period of two years beginning on March 1 in each odd-numbered year. Between January 1 and January 15 preceding the expiration of the term, the chairman of the county elections commission shall call a meeting of the commission for the purpose of making an appointment for the succeeding term. Any vacancy in the office shall be filled by the commission for the remainder of the unexpired term. The administrator may be removed from office in the same manner and on the same grounds as provided by general law for removal of county officers or as provided for under paragraph (c) of Subdivision 2 of this section.

Bond of Administrator and Deputies

Subd. 6. Before entering into the duties of his office, the county elections administrator shall take and subscribe to the official oath and shall give an official bond in an amount to be fixed by the commissioners court, made payable to the county judge and approved by the commissioners court, conditioned for the faithful performance of the duties of his office. Either the commissioners court or the administrator may require his deputies to give a similar bond in an amount not exceeding the amount of the administrator's bond.

Seal of Administrator

Subd. 7. The administrator shall provide himself with an official seal, on which shall be inscribed a star with five points surrounded by the words "County Elections Administrator, _____ County, Texas" (the blank to be filled in with the name of the county), for use in certifying documents which are required to be impressed with the seal of the certifying officer.

Transfer of Records

Subd. 8. As soon as practicable after the effective date of the order creating the office of county elections administrator, the officer formerly serving as the registrar of voters shall transfer to the administrator all records and papers pertaining to voter registration, and the county clerk shall transfer to him all voting equipment and supplies of which the clerk has custody and all records and papers in his possession which pertain to an uncompleted election. The commissioners court shall determine which records of prior elections are to be transferred to the administrator and which are to remain in the county clerk's office.

Abolishment of Office

Subd. 9. The commissioners court may abolish the office of county elections administrator at any time after two years have elapsed from the date of the order creating it by having an order entered into the minutes of the court to become effective at the expiration of the current term of the administrator. If the office is abolished, voter registration duties thereafter shall be performed by the county tax assessor-collector and the other duties shall be performed by the county clerk, except that the commissioners court may designate the county clerk to be the registrar of voters and to perform the duties assigned to the registrar, as authorized in Section 41b of this code.[2] Within three days after the entry of an order abolishing the office of county elections administrator, the county clerk shall send a copy of the order to the secretary of state and the comptroller of public accounts.

Office Hours on Election Day

Subd. 10. The office of the county elections administrator shall remain open during the hours the polls are open on the day of any general election, primary election, or runoff primary election in which a statewide office appears on the ballot.

[Added by Acts 1977, 65th Leg., p. 1499, ch. 609, § 3, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 495, ch. 226, § 2, eff. Aug. 27, 1979.]

[1] Article 5.24b.

[2] Article 5.09b.

Section 11 of the 1977 Act provided:

"Sections 3 and 4 of this Act take effect 90 days after the adjournment of the regular session of the 65th Legislature for the purpose of authorizing the creation of the office of county elections administrator and the promulgation of rules with respect to the duties transferred to the administrator, but an appointment to that office or a transfer of duties to the administrator may not become effective before March 1, 1979."

Art. 5.24b. Election Duties of County Clerk Transferred to County Elections Administrator

Subd. 1. (a) Where the office of county elections administrator is created, in addition to performing the duties of the registrar of voters, the administrator shall perform all duties and functions which are placed upon the county clerk by any provision of this code or any other statute of this state in connection with the calling or holding of elections, the preparation of ballots, the preparation and furnishing of election equipment and supplies, the conduct of voting, the canvass of election returns, the custody of voted ballots and other election records, the filing of instruments relating to primary elections, conventions, or other affairs of political parties, and the filing of instruments under Chapter 14 of this code (the Political Funds Reporting and Disclosure Act of 1975).

(b) The enumeration in paragraph (a) of this subdivision states the general guidelines for determining what duties and functions are to be transferred from the county clerk to the administrator. In order to eliminate possible uncertainties in several types of situations, the rules stated in Subdivision 2 of this section establish the division of duties in the specific areas covered by those rules.

(c) The guidelines and rules stated in this section apply in the construction of statutes enacted or amended after the enactment of this section as well as to those previously enacted, unless the statute expressly states that the county clerk is to perform the function in counties having the office of administrator as well as in other counties.

Subd. 2. (a) This subdivision states rules for the division of duties between the county clerk and the county elections administrator in a county which has the office of administrator.

(b) With respect to every meeting of the commissioners court, including meetings at which the only business to be conducted pertains to election matters, the county clerk shall continue to perform all duties regularly performed by that officer in giving notice of meetings of the commissioners court and making up the agenda for the meetings, in attending the meetings and making a record of the proceedings and preparing and maintaining the minutes of the court, and in filing and preserving copies of the court's orders. The administrator shall cooperate with the county clerk in supplying the information on election matters which are to be brought before the court, and he shall attend or be represented at the meetings of the court at which such matters are to be considered. The county clerk shall furnish to the administrator a copy of each order of the court which pertains to or affects any election, and the administrator shall maintain in his office a file of all such orders, in addition to the record maintained by the county clerk.

(c) Every reference in this code to the county clerk or the clerk of the commissioners court which relates to the performance of any function or the receipt or filing of any instrument by that officer is to be construed as referring to the administrator, except for Subsection (3) of Section 208 of this code (Article 13.30), relating to service of process on the county clerk in a contest of a primary election under certain circumstances. References to the clerk of the county court are not to be construed as referring to the administrator.

(d) Certificates and supporting documents filed under Subdivision 2, Section 8a (Article 1.08a) of this code for the exemption of election precincts from requirements for bilingual materials in primary elections and in elections held at the expense of the county are to be filed in the office of the administrator.

(e) When any statute, including Section 28 (Article 4.05) of this code, provides for the filing or posting of an election notice in the office of the county clerk, the notice shall be filed or posted in the office of the administrator. When a statute provides for the filing of proof of posting, publication, or issuance of an election notice in the office of the county clerk, it shall be filed in the office of the administrator.

(f) Under the supervision of the county election board, the administrator shall make the record of blank ballots furnished for an election which is required by Section 64 (Article 6.09) of this code and shall file the record in his office, in lieu of recordation in the minutes of the commissioners court.

(g) The administrator shall have custody of and be responsible for maintaining the book for recording in detail the results of elections, as provided in Section 116 (Article 8.34) of this code.

(h) When a statute provides that the return of an election notice is to be recorded in the minutes of the commissioners court, in lieu of that procedure the return shall be filed in the office of the administrator.

(i) When a statute provides that an order declaring the outcome of an election on a question or proposition is to be filed in the office of the county clerk, the order shall be filed both in the office of the county clerk and in the office of the administrator.

(j) When a statute provides for the calling of an election on a question or proposition by the commissioners court or the county judge upon the presentation or filing of a petition therefor, the administrator shall perform, in addition to the duties and functions directly relating to the holding of the election, all duties and functions which the statute places on the county clerk or the clerk of the commissioners court, either expressly or by implication, in connection with the filing of the petition and the determination of its sufficiency, and any other preliminary matters which precede the entry of the order calling the election.

(k) The application for issuance of a petition seeking a local option election on the sale of alcoholic beverages and the signed petition for the election shall be filed with the administrator; and the administrator shall perform all duties relating to the election which are placed upon the county clerk or the clerk of the commissioners court through and including the canvass of the returns, the posting of the order declaring the result of the election where required, and certification of the results to the proper authorities. A copy of the order declaring the result of the election shall be entered of record in the office of the county clerk and a copy shall also be filed in the office of the administrator.

(*l*) When a statute prescribing the procedure for creation of a special district provides for the calling of an election as a step in completing the creation, in

addition to performing the duties directly related to the holding of such an election after it is called, the administrator shall also perform all acts which otherwise would be performed by the county clerk in connection with all preliminary matters leading up to the entry of the order on whether the election will be called, including but not limited to the presentation or filing of the petition for creation of the district, the holding of any hearing on the proposal, the filing of any report or other document that is a step in the procedure, and the taking of an appeal from the order on whether the election is to be called. When the holding of an election is not one of the steps in the creation, the county clerk shall continue to perform all duties placed by statute upon that officer in connection with the creation of a district, including duties relating to a petition for its creation.

(m) The county clerk is the proper officer to receive and post copies of proposed constitutional amendments under Article XVII, Section 1, of the Texas Constitution. However, the secretary of state shall send an information copy of each proposed amendment to the administrator also.

Subd. 3. (a) In keeping with the general guidelines and the specific statutory rules stated in Subdivisions 1 and 2 of this section, the secretary of state shall promulgate rules, as necessary, classifying the various statutes according to which of the two offices of county clerk or county elections administrator is to perform the duties and functions prescribed therein. The secretary of state's classification has the force of law unless or until the legislature enacts a statute expressly providing for a different assignment of that specific function.

(b) The secretary of state may initiate the promulgation of a rule on his own motion, and he may promulgate rules at any time after this section becomes law, regardless of whether the office of administrator has yet been created in any county. Whenever the county clerk or the administrator in any county in which the office of administrator has been created is uncertain as to which officer should perform a function under a statute for which the secretary of state has not made a classification, the officer shall request the secretary of state to promulgate a rule classifying that function, and the secretary of state shall comply with the request as expeditiously as possible.

(c) In addition to other notice of a proposed rule or of an adopted rule which is required by law, the secretary of state shall mail a copy of each rule proposed under this section to the county clerk and the county elections administrator in each county having the office of administrator within five days after notice of the proposal is published in the Texas Register and shall mail a copy of each adopted rule to those officers within five days after the certified copy of the rule is filed in the secretary of state's office. However, failure to mail the notice to these officers does not invalidate any actions taken or rules adopted.

(d) Upon receiving notification of the creation of the office of administrator in a county, the secretary of state shall mail to the county clerk a complete set of the rules previously promulgated under this section; and upon receiving notification of the appointment of the administrator, the secretary of state shall mail a complete set of rules to the administrator.

(e) Notwithstanding any other provision of law, the secretary of state may adopt an emergency rule under the emergency provisions of the Administrative Procedure and Texas Register Act [1] whenever a determination of the classification of a function is needed in a shorter time than that provided by normal procedures. The prior notice requirements prescribed in paragraph (c) of this subdivision do not apply to the promulgation of an emergency rule; however, notification of the adoption of an emergency rule is to be given in accordance with those provisions.

Subd. 4. (a) When an instrument which should be filed with the county elections administrator is mailed to the county clerk, or vice versa, the officer receiving the instrument shall make a notation thereon of the time of its receipt and shall promptly deliver it to the proper officer. If the statute does not specify that the instrument is to be filed with the administrator in a county which has that office, the misdirection does not prejudice the timeliness of the filing where time of mailing or time of receipt is material, and timeliness is determined by the time of mailing or the time of receipt by the officer to whom the instrument is addressed.

(b) When an instrument which should be filed with the county elections administrator is tendered in person to the county clerk, or vice versa, the officer to whom the instrument is tendered shall direct the person making the tender to take it to the proper office.

(c) Notwithstanding paragraphs (a) and (b) of this subdivision, where a statute specifies that an instrument is to be filed with the county clerk, without specifying that it is to be filed with a county elections administrator in a county which has that office, but the place of filing is changed to the office of the administrator by virtue of this section, if the county clerk accepts and files the instrument, the filing has the same legal effect as if the instrument had been filed with the administrator.

(d) Where a statute specifies that an action is to be taken by the county clerk, without specifying that it is to be taken by the county elections administrator in a county which has that office, but the officer to act is changed to the administrator by virtue of this section, action taken by the county clerk without objection from the administrator has

the same legal effect as action taken by the administrator.

Subd. 5. Statutes prescribing criminal penalties against the county clerk or his deputies or other employees for acts or omissions relating to duties which are transferred to the county elections administrator are to be construed as applying to the administrator or his deputies or employees, as the case may be.

[Added by Acts 1977, 65th Leg., p. 1502, ch. 609, § 4, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 6252–13a.

CHAPTER SIX. OFFICIAL BALLOT

Art. 6.01. Official Ballot

In all elections by the people, the vote shall be by official ballot, which shall be numbered and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot." It shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the head of the party that nominates them, except as otherwise provided by this Code. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this Code. The name of no candidate shall appear more than once upon the official ballot, except (a) as a candidate for two or more offices permitted by the Constitution to be held by the same person; or (b) when a candidate has been duly nominated for the office of President or Vice-President of the United States and also for an office requiring a state-wide vote for election. The name of no candidate of any political party that cast 20 percent or more of the votes for governor at the last preceding general election for that office shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as otherwise provided in this code.

[Amended by Acts 1975, 64th Leg., p. 2091, ch. 682, § 14, eff. Sept. 1, 1975.]

Art. 6.04. Removing or Substituting Names on Printed Ballots

Subd. 1. If the ballots for an election have already been printed when notice of a substitute nomination for an office is received, instead of having new ballots printed, the official board charged with the duty of furnishing the supplies for the election may make the necessary change in either of the following methods: (1) by having the ballots overprinted to blot or line out the name of the former nominee and to print above, below, or alongside it the name of the new nominee, if space on the ballot permits use of this method, or (2) by printing pasters or stickers bearing the name of the new nominee, to be pasted over the name of the former nominee.

Subd. 2. If after the ballots are printed it becomes necessary to remove the name of a nominee for whom a substitute nomination has not been made or to remove the name of an independent candidate in order to comply with Section 233 of this code, instead of having new ballots printed, the officer or board charged with the duty of furnishing the supplies for the election may make the change either by having the ballots overprinted to blot out the name of the candidate (and also the square beside the name in the case of paper ballots) or by furnishing blank pasters or stickers to be pasted over the name and square.

Subd. 3. When pasters are used, a paster shall be affixed to each ballot before the presiding judge of the precinct, or the absentee voting clerk, endorses his name on the ballot for identification, or before the opening of the polls where the voting is by use of a voting machine or a voting device to which ballot labels are attached. As used in this section, the term "ballots" includes ballot labels.

[Amended by Acts 1975, 64th Leg., p. 2103, ch. 685, § 1, eff. Sept. 1, 1975.]

Art. 6.05. Form of the Ballot

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

Subd. 2. The designation of the election (e. g., "General Election, Travis County, Texas") and the date on which the election is held shall be printed at the top of the ballot, above the words "Official Ballot." All ballots prepared for the election shall be numbered consecutively beginning with No. 1 in each county if the election is to be held in a single county or part thereof, or is to be held in more than one county or part thereof and the result in each county is to be canvassed separately prior to the final canvass. In elections held by a city or other political subdivision of the State, all ballots for the election shall be numbered consecutively beginning with No. 1. The numbers shall be printed or stamped in consecutive order on all the ballots prepared for any election, with a separate number for each ballot, at the time of printing and before they are divided up and delivered to the election judges.

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

Subd. 4. When presidential electors are to be voted upon, their names shall not appear on the official ballot, but the names of the candidates for president and vice-president, respectively, of the political parties shall appear at the head of their respective tickets, printed as one race, and the names

of each set of independent candidates for president and vice-president, printed as one race, shall be printed at the head of the independent column in the order determined under Subdivision 3 of Section 61c of this Code (Article 6.05c, Vernon's Texas Election Code). The votes for presidential candidates shall be canvassed, counted, and returns made in accordance with Section 171 and Section 172 of this Code (Articles 11.02 and 11.03, Vernon's Texas Election Code).

[See Compact Edition, Volume 2 for text of 5 to 7]

Subd. 8. When constitutional amendments or other propositions are to be voted on, they shall appear once on each ballot in uniform style and type. Each proposition shall be submitted by printing the word "FOR" and beneath it the word "AGAINST" on the left-hand side of a single statement of the proposition, with a brace or parallel horizontal lines or other suitable device to show clearly to which proposition each "FOR" and "AGAINST" belongs. A square shall be printed on the left-hand side of the word "FOR" and of the word "AGAINST" in the statements submitting each proposition, and the following instruction note shall be printed immediately above the propositions: "Place an 'X' in the square beside the statement indicating the way you wish to vote." The provisions of this subdivision shall supersede all existing statutes on the form in which propositions are to be submitted in all elections where paper ballots are used and shall also supersede any conflicting enactment passed by the 60th Legislature at its regular session unless such enactment expressly excepts it from the operation of this subdivision.

[Amended by Acts 1977, 65th Leg., p. 557, ch. 194, § 3, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 649, ch. 240, § 6, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 657, ch. 247, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1159, ch. 560, § 5, eff. Sept. 1, 1979.]

Art. 6.05b. Order of Party Columns on the Ballot

In any election held at the expense of the county, in which party columns appear on the official ballot, the columns shall be arranged in the following order, beginning on the left-hand side of the ballot:

(1) columns of parties with state organization which have nominated candidates to be voted on at the election, arranged in the order of the number of votes cast throughout the state for each party's candidate for Governor at the last preceding general election for that office, with the party whose candidate for Governor received the highest vote being placed in the first column;

(2) columns of parties without state organization which have nominated candidates to be voted on at the election;

(3) a column for independent candidates;

(4) a column for write-in candidates.

If there is no independent or nonpartisan candidate whose name is to be printed on the ballot, the column for independent candidates shall be omitted.

Where voting machines are used in the election and the columns on the ballot are arranged horizontally, the columns shall appear on the ballot in the order herein provided, beginning at the top of the ballot instead of on the left-hand side.

[Amended by Acts 1975, 64th Leg., p. 2091, ch. 682, § 15, eff. Sept. 1, 1975.]

Art. 6.05c. Order of Offices and Names of Candidates

Subd. 1. (a) Whenever there are to appear on the ballot for any general, special, or primary election, two or more office titles of offices which are regularly filled at the general election provided for in Section 9 of this code, they shall be listed on the ballot in the following relative order:

Federal offices:
- President and Vice President
- United States Senator
- Congressman-at-Large
- United States Representative (district office)

State offices:

(1) Statewide offices
- Governor
- Lieutenant Governor
- Attorney General
- Comptroller of Public Accounts
- State Treasurer
- Commissioner of General Land Office
- Commissioner of Agriculture
- Railroad Commissioner
- Chief Justice, Supreme Court
- Justice, Supreme Court
- Presiding Judge, Court of Criminal Appeals
- Judge, Court of Criminal Appeals

(2) District offices
- State Senator
- State Representative
- Member, State Board of Education
- Chief Justice, Court of Appeals
- Associate Justice, Court of Appeals
- District Judge
- Criminal District Judge
- District Attorney
- Criminal District Attorney

(3) County offices
- County Judge
- Judge, County Court-at-Law
- Judge, County Criminal Court
- Judge, County Probate Court
- County Attorney

District Clerk
District and County Clerk
County Clerk
Sheriff
Sheriff and Tax Assessor-Collector
County Tax Assessor-Collector
County Treasurer
County School Superintendent
County Surveyor
Inspector of Hides and Animals

(4) Precinct offices
County Commissioner
Justice of the Peace
Constable
Public Weigher.

The headings "federal offices" and "state offices" and the subheadings under "state offices" shall not be printed on the ballot.

(b) Whenever any new office within either of the above categories is created, the Secretary of State shall issue a directive designating its relative position on the ballot.

(c) Whenever the titles of party offices are to appear on the ballot for a primary election, they shall be listed following the public offices, in the order of "County Chairman" and "Precinct Chairman".

(d) Whenever any provision of this code authorizes or permits certain offices to be grouped and placed on a separate ballot or in a special column or section on the main ballot, the relative order as prescribed in Paragraph (a) of this subdivision shall be observed in listing such offices on the separate ballot or in the special column on the main ballot.

[See Compact Edition, Volume 2 for text of 2]

Order of Names of Candidates

Subd. 3.

(a) In any general or special election in which the names of more than one candidate for the same office are to be printed on the ballot in an independent or non-partisan column or are to be printed on the ballot without party designation, the order in which the names of such canidates are to be printed on the ballot shall be determined by a drawing, to be conducted by the county clerk in elections held at the expense of the county, by the city secretary in city elections, and by the officer with whom the applications for a place on the ballot are filed in elections held by other political subdivisions. The officer conducting the drawing shall post a notice in his office, at least three days prior to the date on which the drawing is to be held, of the time and place of the drawing; and each candidate involved in the drawing or a representative designated by him shall have a right to be present and observe the drawing.

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

(c) The provisions of paragraph (a) of this subdivision apply to every runoff election following a general or special election, except runoff elections which are governed by Section 81 of this code (Article 7.16, Vernon's Texas Election Code) and runoff elections in home-rule cities which have charter provisions specifying a different method for determining the order of the names on the ballot in a runoff election.

(d) With respect to a drawing conducted pursuant to Paragraph (a) of this subdivision for an election held at county expense or a city election, on receipt of a candidate's written request accompanied by a stamped, self-addressed envelope, the authority conducting the drawing shall mail notice of the date, hour, and place of the drawing to the candidate. With respect to a drawing conducted pursuant to Paragraph (a) of this subdivision for an election held by any other political subdivision, the authority conducting the drawing shall mail notice of the date, hour, and place of the drawing to each candidate, at the address stated on the candidate's application for a place on the ballot, not later than the fourth day before the day of the drawing.

[Amended by Acts 1977, 65th Leg., p. 1682, ch. 664, § 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 796, ch. 291, § 83, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 987, ch. 369, § 1, eff. Aug. 31, 1981.]

Art. 6.06. How to Mark Ballot

In all elections, general, special, or primary, the voter shall place an "X" in the square beside the name of each candidate for whom he wishes to vote; provided, however, that if the voter places a plus sign (+) or a check mark (✓) or any other mark that clearly shows his intention, in such space, it shall be counted as a vote for that candidate, provided that no more names are thus marked than there are places to be filled. When party columns appear on the ballot, a voter desiring to vote a straight ticket may do so by placing an "X" or other clear mark in the square at the head of the column of the party for which he wishes to vote. If the name of the person for whom the voter wishes to vote is not printed on the ballot, the voter shall write in the name of the candidate for whom he wishes to vote, in the write-in column under the appropriate office title in elections where party columns appear on the ballot, and in an appropriate space under the title of the office in other elections; provided, however, that a voter shall not be entitled to vote for any candidate whose name is not printed on the ballot in any runoff election for nominating candidates or electing officers, and a space for write-in votes shall not be provided on the ballot for such elections. A voter shall also not be entitled to vote for any candidate whose name is not printed on the ballot in any other type of election where the law expressly prohibits votes for write-in candidates. In all elections where questions or propositions are to be voted on, the voter shall place an "X" or other clear mark in the

square beside the statement indicating the way he wishes to vote on each proposition. The failure of a voter to mark his ballot in strict conformity with these directions or failure to vote a full ballot shall not invalidate the ballot, and a ballot shall be counted on all races and propositions wherein the intention of the voter is clearly ascertainable, except where the law expressly prohibits the counting of the ballot. It is specifically provided that the election officers shall not refuse to count a ballot because of the voter's having marked his ballot by scratching out the names of candidates for whom or the statement of propositions for which he does not wish to vote.

[Amended by Acts 1977, 65th Leg., p. 557, ch. 194, § 4, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1159, ch. 560, § 6, eff. Sept.1, 1979.]

Art. 6.06b. Write-in Candidate for Public Office; Declaration of Candidacy

Elections to Which Applicable; Procedure for Filing Declaration

Subd. 1. In the general election for state and county officers held on the first Tuesday after the first Monday in November of even-numbered years, no write-in vote may be counted for a person unless that person files a declaration of write-in candidacy within the time specified in Subdivision 2 or Subdivision 3 of this section, whichever is applicable. The declaration shall be filed with the same person with whom an independent candidate for the same office files his application to have his name printed on the ballot. It shall contain the same information as that required on the application of a candidate whose name is to be printed on the ballot, but shall state that the person is running as a write-in candidate instead of requesting that his name be printed on the ballot.

Filing Deadline

Subd. 2. Except as provided in Subdivision 3 of this section, the declaration of write-in candidacy must be filed not later than 5 p. m. of the last day which is not a Saturday, a Sunday, or an official state holiday, preceding the beginning of the period for absentee voting in the election. The declaration must reach the office of the appropriate officer by that deadline, and a mailing without a delivery by the deadline is not sufficient.

Extended Deadline

Subd. 3. Where a candidate whose name is to be printed on the ballot dies or is declared ineligible to hold this office on or after the second day preceding the filing deadline stated in Subdivision 2 of this section, a write-in candidate may file his declaration at any time before 12 noon of the day preceding election day. Absentee ballots voted before the death or ineligibility or before the filing of the declaration of write-in candidacy shall be counted in the same manner as if the write-in candidate had filed under Subdivision 2.

Certification of Filing

Subd. 4. On a declaration which is filed under Subdivision 2 of this section, the officer with whom it is filed shall certify the name of the write-in candidate to the clerk for absentee voting in the election (or to each clerk, if there is more than one), before the absentee voting begins. On a declaration which is filed under Subdivision 3, he shall notify the clerk for absentee voting immediately if the period for applying for an absentee ballot has not expired. He shall also certify the name of each write-in candidate to the officer who is in charge of distribution of ballots to the presiding judges of the election.

Notification to Presiding Election Judges

Subd. 5. (a) Before election day, the officer having charge of distribution of the ballots for the election shall furnish to each presiding judge a sufficient number of copies of a list of the names of write-in candidates who have qualified under this section so that the presiding judge shall be able to comply with the requirements of Subsection (b) of this subdivision.

(b) Each presiding judge shall post a copy of the list of write-in candidates in the same locations where instruction cards are posted in accordance with Section 80, Texas Election Code (Article 7.15, Vernon's Texas Election Code) and Section 85, Texas Election Code (Article 8.03, Vernon's Texas Election Code), or in the same location where sample ballots are posted in accordance with Section 80, Texas Election Code (Article 7.15, Vernon's Texas Election Code) and Section 79, Texas Election Code (Article 7.14, Vernon's Texas Election Code).

[Added by Acts 1977, 65th Leg., p. 1282, ch. 503, § 1, eff. Aug. 29, 1977.]

Art. 6.07. Constitutional Amendments and Other Questions

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

Subd. 1a. A proposed constitutional amendment submitted to the voters by the legislature in the Called Special Session of the 65th Legislature shall be designated "Tax Relief Amendment," and the place of the amendment on the ballot shall be determined by the legislature in the resolution proposing the amendment.

Subd. 2. A notice of each proposed constitutional amendment shall be published, under the authority of the Secretary of State, as required by Section 1, Article XVII, Constitution of Texas. The Secretary of State shall contract with the eligible newspapers for the publication of the notices; shall furnish affidavit forms, in duplicate, to be executed by the owner, editor or publisher of the newspaper, when two publications have been made; shall furnish one approved copy of each executed affidavit to the Comptroller, who shall then authorize the Treasurer to issue a warrant in the amount specified. Executed affidavits must be returned from the owner,

editor, or publisher of the newspaper to the Secretary of State within 30 days from the date of the last publication; unless this time limit is observed, the Secretary of State shall refrain from approving affidavits for payment. Provided, however, if the Secretary of State deems it more expeditious or economical, he may make a written contract with any state-wide association of daily and weekly newspapers in Texas for the publication of the notices of such constitutional amendments in newspapers eligible to publish them. Such association shall cause such notices to be published in the eligible newspapers in the manner required by the Constitution; shall furnish such materials as are necessary for a correct and uniform publication of such notices; shall furnish affidavit forms, in duplicate, to such newspapers, to be executed by the owner, editor, or publisher thereof, when two publications have been made; shall make an itemized report to the Secretary of State showing the names of all the newspapers in which such notices were published, the number of column inches submitted to each publication, the cost of publication in each newspaper, together with a clipping for such newspaper, and any other information desired by the Secretary of State pertaining to such task; shall return within 30 days from the date of the last publication all affidavits executed by the owner, editor, or publisher of such newspapers, together with an affidavit executed in duplicate by the general manager of such association that the notices have been published by said newspapers as required by the Constitution, to the Secretary of State, who shall, after satisfying himself as to the proper publication of such notices, furnish one approved copy of the executed affidavit of the general manager of the association to the Comptroller, who shall authorize the Treasurer to issue a warrant in the amount specified to the association. The Comptroller and Treasurer shall forthwith perform their duties in this connection, so that undue length of time shall not elapse between publication and payment therefor. The Legislature shall appropriate a sufficient fund for such publication, such fund to be estimated by the Secretary of State.

Subd. 2a. (a) Where the Secretary of State contracts directly with the newspapers for publication of notices of proposed constitutional amendments, each newspaper which publishes a notice is entitled to be paid for the publication an amount computed at the rate of 85 percent of the newspaper's published national rate for advertising per column inch if the Secretary of State furnishes to the newspaper a copy of the notice in the form of a camera-ready paste-up proof, a matrix, or a printing plate, and an amount computed at the full rate of the newspaper's published national rate for advertising per column inch if the Secretary of State does not furnish a copy of the notice in that form.

(b) Where the Secretary of State contracts with a state-wide association of newspapers for the publication of the notices, the association is entitled to be paid an amount equal to the sum of the cost of publication in each newspaper, computed at the full rate of each newspaper's national rate for advertising per column inch. The commission retained by the association shall be on a percentage basis uniformly applied to all newspapers, and the percentage shall be stipulated in the contract between the Secretary of State and the association.

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

Subd. 4. [Expired]

[Amended by Acts 1975, 64th Leg., p. 445, ch. 189, § 1, eff. May 13, 1975; Acts 1975, 64th Leg., p. 2091, ch. 682, § 16, eff. Sept. 1, 1975; Acts 1978, 65th Leg., 2nd C.S., p. 12, ch. 6, § 1, eff. Aug. 14, 1978.]

Former subd. 4 of this article, added by Acts 1975, 64th Leg., p. 445, ch. 189, § 1, providing that the amendments to the Constitution proposed by S.J.R.No. 11 of the 64th Legislature were to be printed and numbered on the ballot in the order in which numbered by that resolution, expired by its own terms on December 31, 1975.

Acts 1975, 64th Leg., p. 1181, ch. 440, related to the methods of publicizing proposed amendments to the Constitution contained in S.J.R.No. 11 of the 64th Legislature and made an appropriation for that purpose.

Art. 6.09. Ballots Furnished

(a) The authority responsible for furnishing the ballots in an election shall furnish each election precinct a number of ballots sufficient to conduct the election. The official ballots to be counted before delivery and sealed up and together with the instruction cards, with poll lists, tally sheets, distance markers, returning blanks and stationery, shall be delivered to the precinct judges, and the number of each endorsed on the package, and entered of record by the clerk in the minutes of the Commissioners Court or, in an election ordered by an authority of a political subdivision other than a county, on the minutes of the governing body of that subdivision. In like manner, shall be sent the list of qualified voters for the precinct certified to by the collector.

(b) The number of ballots delivered for use in absentee voting and the range of serial numbers on those ballots and on the ballots delivered for use in regular voting on election day shall also be entered of record in the minutes.

[Amended by Acts 1979, 66th Leg., p. 602, ch. 278, § 1, eff. Aug. 27, 1979.]

Amendment of this article by Acts 1979, 66th Leg., p. 173, ch. 95, § 2, eff. Aug. 27, 1979, was repealed by Acts 1979, 66th Leg., p. 602, ch. 278, § 3, eff. Aug. 27, 1979.

CHAPTER SEVEN. ARRANGEMENT AND EXPENSES OF ELECTION

Article

7.17a. Secretary of State to Certify Voting Devices.

Art. 7.02. Booths and Guard Rails

There shall be one voting booth or place for every seventy citizens who reside in the voting precinct and who at the last general election were registered to vote, provided, the judges of the election may provide as many more booths and places as they

deem necessary. Each polling place, whether provided with voting booths or not, shall be provided with a guard rail, so constructed and placed that only such persons as are inside of such guard rail can approach the ballot boxes or compartments, places or booths at which the voters are to prepare their votes, and that no person outside of the guard rail can approach nearer than six (6) feet of the place where the voter prepares his ballot. The arrangement shall be such that neither the ballot boxes nor the voting booths nor the voters while preparing their ballots shall be hidden from view of those outside the guard rail, or from the judges, and yet the same shall be far enough removed and so arranged that the voter may conveniently prepare his ballot for voting in secrecy. Where voting booths are required they shall have three (3) sides closed and the front side open, shall be twenty-two (22) inches wide on the inside, thirty-two (32) inches deep and six (6) feet four (4) inches high, contain a shelf for the convenience of the voter in preparing his ballot; and shall be so constructed with hinges that they can be folded up for storage when not in use. The voting booths shall be so arranged that there shall be no access to them through any doors, window or opening except through the front of the booth; and the same care shall be observed in precincts where there are no booths in protecting the voter from intrusion while he is preparing his ballot.

[Amended by Acts 1981, 67th Leg., p. 3147, ch. 827, § 12, eff. Aug. 31, 1981.]

Art. 7.10. Repealed by Acts 1981, 67th Leg., p. 1786, ch. 389, § 39(e)(1), eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 3149, ch. 827, § 19, eff. Aug. 31, 1981.

Art. 7.14. Providing for Voting Machines

[See Compact Edition, Volume 2 for text of 1 to 8]

Color of Ink for Ballots on Voting Machines in Large Counties

Sec. 8a. In counties having a population in excess of two million (2,000,000) inhabitants according to the last preceding federal census, the ballots may be printed in one or more colors of ink; however, the names of all the candidates for any one office shall be printed in the same color.

[See Compact Edition, Volume 2 for text of 9 to 12]

Conduct of the Voting

Sec. 13. The presiding judge shall be in general charge of the poll and shall see that a clerk of the election properly checks off the name of each voter from the list of qualified voters and enters his name on the poll list before the voter casts his ballot. It shall further be the duty of one of the clerks to see that the voting machine is not tampered with and to attend the machine at all times. He shall inspect the ballot labels after each voter leaves the machine to see that none has been tampered with and to see that the machine has not been injured. He shall see that the coverings of the counter compartments of the machine are never unlocked nor opened so the counters are exposed during voting except for good and sufficient reasons, a statement of which shall be made and signed by all election officers and watchers in the polling place and attached to the returns.

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

Manner of Voting

Sec. 15. But one voter shall be admitted at a time, and no voter shall be permitted to keep the curtain of the machine closed longer than two minutes. However, if a voter is unable to read the language in which the ballot is printed or if because of some bodily infirmity he is physically unable to operate the machine or to see, he may be assisted by two election officials, or by a person selected by the voter, who shall operate the machine so as to vote the ballot in accordance with the voter's wishes, and he shall be permitted to keep the curtain of the machine closed no longer than five minutes. The provisions of Section 95 of this Code shall govern the assistance rendered under this section insofar as they can be made applicable.

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

Arrangement of Ballot and Write-in Vote in Certain Counties

Sec. 16a.

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

(b) In any election in which, pursuant to the authorization in paragraph (a) hereof, the ballot is so arranged that the write-in slot on the voting machine cannot be utilized, and the election is one in which write-in voting is permitted, a sufficient supply of write-in ballots as described herein shall be provided at each polling place. The ballots shall bear the heading prescribed in Subdivision 2 of Section 61 of this code, as amended (Article 6.05, Vernon's Texas Election Code), with the substitution of the words "Official Write-in Ballot" for "Official Ballot," and shall bear the following instruction note: "Do not cast a vote on the voting machine for the office for which you cast a ballot herewith by way of a write-in." The instruction note for the write-in ballot for a general election for state and county officers shall contain the following additional sentence: "If you pull the straight-party lever of a political party that has a nominee for the office for which you are casting a write-in vote, be sure to turn up the selector key by the name of the nominee before you pull the voting lever." Beneath the instruction note there shall appear the following:

FOR _____

(Name of write-in candidate)

For the office of:

_____

(Title of office)

If an open write-in campaign is being conducted for more than one office, the ballots shall provide as many spaces as there are offices for which write-in campaigns are being conducted.

Each voter is entitled, but is not required, to receive one official write-in ballot. The procedure outlined in Section 93 of this code, as amended (Article 8.11, Vernon's Texas Election Code), shall be observed in the authentication and delivery of the ballot to the voter. After filling in the write-in ballot, the voter shall deposit the ballot in a ballot box prepared for that purpose in the manner provided for elections conducted by use of paper ballots. No write-in ballot shall be cast or counted for any person whose name appears on the ballot on the voting machine.

Provided however, that the following affidavit shall be signed by any voter who receives an official write-in ballot.

STATE OF TEXAS

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, who, having been by me first duly sworn, upon his oath, did depose and say:

That I have not and will not cast a vote on the voting machine for the office of _____

_____

for which I have cast a ballot herewith by way of a write-in.

_____

Subscribed and sworn to before me this the _____ day of _____ A.D. 19__.

Presiding officer, Precinct _____, _____ County, Texas.

Making Out the Returns and Proclamation of the Result

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) If the machine is provided with a device which produces a printed record of the numbers registered on the counters, the procedure outlined herein shall be followed in lieu of the procedure set out above for preparation of the statements of canvass. The presiding judge, in the presence of at least two clerks and two watchers of opposed interest (if such there be) and of any other person lawfully present who wishes to observe, shall take the necessary steps to secure a printed record from each machine. Ample opportunity shall be given to all persons lawfully entitled to be present at the polling place to examine the printed record. The printed record shall then be signed by the presiding judge and two clerks and by two watchers of opposed interest (if such there be), certifying that the printed record was obtained from the machine designated thereon, and the certified printed record shall constitute the official statement of canvass for that machine.

[See Compact Edition, Volume 2 for text of 18(d), 19 to 25]

[Amended by Acts 1975, 64th Leg., p. 2093, ch. 682, §§ 17, 18, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 658, ch. 247, § 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 598, ch. 237, § 138, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 3148, ch. 827, § 13, eff. Aug. 31, 1981.]

Art. 7.15. Providing for Electronic Voting Systems

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

Definitions

Subd. 2. As used in this section, unless otherwise specified:

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

(b) "Automatic tabulating equipment" or "tabulating equipment" means any apparatus which automatically examines and counts voted ballots and tabulates the results.

[See Compact Edition, Volume 2 for text of 2(c)]

(d) "Ballot card" means a card which is used in conjunction with ballot labels and which is marked or pierced by the voter in the process of voting an official ballot.

(e) "Ballot labels" means a booklet or one or more pages or sheets of paper or other material containing the names of offices, candidates and parties, and statements of measures to be voted on, and which is used in conjunction with ballot cards.

(f) "Ballot" may refer to paper ballots which are counted by automatic tabulating equipment and which contain the matters to be voted on and the voter marks, stamps, or otherwise indicates his choices directly on the ballot itself, or it may refer to ballot cards, ballot labels, or combinations of ballot cards and ballot labels, or it may refer to ordinary manually-counted paper ballots, depending on the context.

[See Compact Edition, Volume 2 for text of 2(g)]

Examination and Approval of Electronic Voting Systems

Subd. 3.

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

(b) Before making and filing his report, the Secretary of State shall require the system to be examined by three examiners to be appointed by the Secretary of State for such purpose, one of whom shall be expert in patent law, one of whom shall be expert in electronic data processing, and one of whom shall be expert in election law and procedure, and shall require from them a written report on their examination, which shall be attached to the Secretary of State's report and kept on file. Each examiner shall receive one hundred and fifty dollars as his compensation and expenses in making the examination and report. Neither the Secretary of State nor any examiner shall have any pecuniary interest in any electronic voting system. When a

system has been approved, every improvement or change must be filed with the Secretary of State. The Secretary of State may, at any time, in his discretion, reexamine an electronic voting system. Any electronic voting system not approved as herein provided cannot be used at any election in this state.

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

Adoption by Commissioners Court

Subd. 5. (a) The commissioners court of any county in the state may adopt one or more kinds of approved electronic voting systems for use in elections in part or all of the election precincts in the county or in part or all of the conduct of absentee voting, or both. If a particular system is not adopted for use throughout the county, the commissioners court shall designate the precincts in which such system is to be used, and any other authorized method of voting may be used in the remaining precincts. In any precinct designated for use of a particular electronic voting system, the voting in that precinct may be supplemented by use of some other authorized method of voting when in any election it appears that the number of available units of the system designated for use in that precinct is inadequate for that election; and the officer or board charged with the duty of furnishing supplies of the election may make such supplementation under those conditions.

(b) The commissioners court at any time may rescind or modify its previous order or orders adopting any electronic voting system and may discontinue use of the system altogether.

(c) The electronic voting system adopted by the commissioners court shall be used at the biennial general elections for state and county officers in precincts and for absentee voting as designated by the court for use of such system. In all other elections, general, special, or primary, the authority holding the election shall determine within its discretion whether the voting for the particular election shall be by use of such system or by some other authorized method of voting. The determination shall be made by the commissioners court in elections held at the expense of the county, by the governing body of the municipality or political subdivision in elections held by municipalities and other political subdivisions, and by the county executive committee of the party holding the election in primary elections of political parties.

[See Compact Edition, Volume 2 for text of 5(d)]

Experimental Use of Electronic Voting Systems

Subd. 6. The commissioners court of any county in the state may secure, for experimental use in elections in one or more precincts or for absentee voting, without formal adoption thereof, any kind of electronic voting system approved by the Secretary of State, and its use at any election in designated precincts or for absentee voting within the period specified by the commissioners court for experimental use of such electronic voting system shall be as valid for all purposes as if it has been formally adopted; provided, however, that the period for experimental use shall not exceed two years from the date of the order authorizing its use.

[See Compact Edition, Volume 2 for text of 7 and 8]

Absentee Voting

Subd. 9. (a) When an electronic voting system has been adopted by the commissioners court, then the system may be used in any election for absentee voting by personal appearance or by mail, or both. The authority charged with holding the election may within its discretion determine by proper resolution or order whether or not an electronic voting system will be used for absentee voting by personal appearance or by mail, or both, at such election. If an electronic voting system is to be used for such absentee voting and more than one kind of system has been adopted by the commissioners court, the authority shall specify what kind is to be used.

(b) If the authority holding the election determines that an electronic voting system shall be used for absentee voting, the necessary ballots and voting equipment shall be provided in the clerk's office. The procedure for absentee voting where ordinary paper ballots are used shall be followed insofar as it can be made applicable. If an electronic voting system is used for voting by personal appearance and the absentee ballots voted by mail are counted manually, such ballots shall be counted by a special canvassing board as provided in Subdivision 6 of Section 37 of this code (Subdivision 6, Article 5.05, Vernon's Texas Election Code), except that the county clerk shall deliver the ballots to the canvassing board when the presiding judge so directs. The board shall also prepare the voted electronic voting system ballots for delivery to the central counting station in the manner provided in Subdivision 19 of this section, and such ballots shall be delivered to the central counting station and there tabulated, as provided in Subdivisions 19 and 20 of this section. The absentee voting clerk may deliver ballots that are to be counted at the central counting station to the special canvassing board between the end of the period for voting absentee by personal appearance and the closing of the polls on election day at intervals specified by the board's presiding judge. The clerk shall have notice of each delivery that is to be made before the polls open election day posted outside his office continuously for at least 24 hours before delivery, and at least 24 hours before the first such delivery in any particluar election, the clerk shall notify the county chairman of each political party having a nominee on the ballot of the time that the first delivery is to be made. Watchers appointed for the election are entitled to acompany the election officer making any delivery. The board, at the presiding judge's direction, may begin prepar-

ing the ballots for delivery to the central counting station anytime after they are received. The presiding judge of the central counting station shall add and attach the results of any manually counted ballots and attach the results of any write-in votes to the tabulation made on the automatic tabulating equipment, and shall make returns showing the totals thus obtained.

(c) When absentee ballots voted by personal appearance or by mail are to be marked with an ordinary pen or pencil in the manner that ordinary paper ballots are marked, and the absentee ballots are to be counted manually, the ballots shall be handled in the manner provided in Section 37 of this code (Subdivision 6, Article 5.05, Vernon's Texas Election Code) for the handling of absentee paper ballots, and shall be counted and tallied by a special canvassing board in the same way that ordinary paper ballots are tallied.

[See Compact Edition, Volume 2 for text of 9(d) and (e) to 10a]

Form of the Ballot

Subd. 11.

[See Compact Edition, Volume 2 for text of 11(a) to (b)(3)]

(4) Repealed by Acts 1977, 65th Leg., p. 661, ch. 247, § 11, eff. Aug. 29, 1977

(5) In elections in which party columns appear on the ordinary paper ballot, the following method of showing party affiliations may be used in lieu of party columns. The title of each office shall be printed on the ballot followed by the names of the candidates for that office and their party affiliations, if any. Provision shall be made at the head of the ballot for voting a straight party ticket, and the candidate of the party which is printed in the first party column on ordinary paper ballots shall be printed in the first position under the office title, the candidate of the party which is printed in the second column on ordinary paper ballots shall be printed in the second position, and so on. Uncontested races may be listed separately from contested races under the heading "Uncontested Races," and may be voted on as a bloc.

(c) This paragraph (c) shall govern the form of the ballot to be used with electronic voting systems in which the names of offices, candidates and parties and statements of measures to be voted on are set forth on ballot labels and the voter records his vote by marking or punching a ballot card which is used in conjunction with the ballot labels.

(1) Ballot cards may be of such size, composition, texture and color (other than yellow, which shall be used for sample ballots only) and may be printed in any type of ink or combinations of ink that will be suitable for use in the automatic tabulating equipment in which they are intended to be placed. Ballot labels may be of such size, composition, texture and color (other than yellow) that will be suitable for the intended manner of use. Printing on the ballot label shall be of such size that it will be clearly legible when read by the voter in the manner contemplated by the voting system being used.

(2) Ballot cards may contain printed code marks or prepunched holes to assure that the card is properly positioned in the voting device, if the ballot labels are attached to a voting device, or to assure that the card is placed in correct reading position in the tabulating equipment, but the code marks or prepunched holes shall not be used in any way that will reveal the identity of the voters voting the ballots.

(3) The names of candidates, offices, parties and statements of issues to be voted on may be printed on two or more ballot labels. Where all candidates for the same office or all party columns cannot conveniently be placed on the same face of the same label, the candidates or columns may be carried on more than one page, but in such event the first page of the sequence shall contain a statement that the names of other candidates or other parties appear on the following page or pages. If the ballot is printed on more than one ballot label, different tints of paper, other than yellow, may be used for different pages of the ballot labels, and other suitable means may be adopted to facilitate the use of the ballot labels with the ballot card. When party columns appear on the ballot, there shall be printed at the head of the ballot the names of the parties and a space for voting a straight ticket.

[See Compact Edition, Volume 2 for text of 11(c)(4)]

(5) The ballot card may have attached at the top an unnumbered detachable stub, which may contain the designation and date of the election and the instructions for marking the ballot and depositing it in the ballot box. The stub shall contain an instruction to the voter not to detach the stub; however, detachment of the stub before the ballot is deposited in the ballot box does not invalidate the ballot card. The election officers who prepare the voted ballot cards for counting shall detach and discard the stubs at the time they examine the ballots as provided in paragraph (a) of Subdivision 19 of this section.

(6) If the number of candidates and/or propositions to be voted upon in any election exceeds the capacity of one ballot card, the ballot may be divided into parts and a different ballot card used for each of the separate parts, but in all cases where more than one card is necessary to accommodate the entire ballot, the names of all candidates for any particular office shall be placed on the same part. A separate voting device shall be provided for each part at each polling place. Each ballot card shall bear the

ballot number, and other appropriate provisions may be made for identifying the related ballot cards. In lieu of using separate ballot parts for listing the ballot, uncontested races may be listed separately under the heading "Uncontested Races," with the name of each candidate appearing under the title of the office for which he is a candidate, and if the election is one in which party columns appear on the ballot, the party affiliation of the candidate shall be indicated by printing the name of the party which nominated him (or the word "Independent" if he is an independent candidate) after the candidate's name; and all such uncontested races may be voted on as a bloc.

[See Compact Edition, Volume 2 for text of 11(c)(7)]

(8) A separate write-in ballot, which may be in the form of a card, ballot, or envelope which the voter places with his ballot or ballot card after voting, shall be provided to permit voters to vote for a person whose name does not appear on the ballot.

(d) This paragraph (d) shall apply to the form of the ballot for all electronic voting systems.

[See Compact Edition, Volume 2 for text of 11(d)(1)]

(2) The statement of propositions and measures submitted to the voters may be abbreviated on the ballot if necessary, provided there is displayed at the polling place the verbatim statement on each proposition or measure as it appears on paper ballots. Abbreviation of matter to be voted on throughout the state shall be done by the Secretary of State.

Preparation of Ballot and Program

Subd. 11a. (a) The ballots to be used at an election shall be prepared and procured under the same regulations as ordinary paper ballots, except that the officer responsible for making up the ballot may determine the number of ballots or ballot cards needed for the election based on the turnout for similar elections in the past and shall confer with the programmer for that election before ordering the ballots printed, to make sure that the ballot is properly prepared for counting by means of the electronic tabulating equipment which will be used.

(b) The authority charged with the duty to provide ballots shall select a competent person to prepare the program for the electronic tabulating equipment. The programmer may be one of the persons appointed or approved by the commissioners court under Paragraph (b), Subdivision 20 of this section or some other person, but if the program is prepared by anyone other than the tabulation supervisor, it must be submitted to the tabulation supervisor for his approval at least 10 days before the election.

[See Compact Edition, Volume 2 for text of 12 and 13]

Assistance to Voter

Subd. 14. If a voter is unable to read the language in which the ballot is printed or if because of some bodily infirmity he is physically unable to operate the voting equipment or to see, he may be assisted by two election officers, or by a person selected by the voter, who shall mark the ballot in accordance with the voter's wishes. The provisions of Section 95 of this code[1] govern the assistance rendered insofar as they can be made applicable.

[1] Article 8.13.

Ballot boxes

Subd. 15. For each polling place where an electronic voting system is used, there shall be supplied two ballot boxes for the deposit of voted ballots, which shall be of suitable design and with a suitable opening for placing the ballots therein in such manner that the ballots will not be damaged or rendered unfit for counting on the tabulating equipment. There shall also be supplied suitable containers for transporting the voted ballots to the central counting station.

[See Compact Edition, Volume 2 for text of 16]

Conduct of the Voting

Subd. 17. (a) The procedure at the polls where voting is by use of an electronic voting system shall be the same as at polling places where paper ballots are used, except as provided in this section. Where the portion of the ballot to be marked by the voter consists of more than one page or ballot card, the related parts may be placed in an envelope or otherwise secured so that the parts will not become separated before delivery to the voter. When a voter selects his ballot, he shall be instructed to use only the voting equipment provided for marking the ballot and that he is not to mark his ballot in any other way and is not to place any other marks thereon, except for write-ins. After a voter has marked his ballot, he shall deposit it in the ballot box provided for the deposit of voted ballots.

[See Compact Edition, Volume 2 for text of 17(b)]

Procedure while Polls are Open

Subd. 18. (a) At any time after the expiration of one hour after the voting has begun, the presiding judge may direct the receiving officers to deliver ballot box No. 1 to the clerks preparing the ballots for the central counting station, who shall immediately deliver in its place ballot box No. 2, which shall be opened and examined and securely closed and locked; and until the boxes are again interchanged, the voters shall deposit their ballots in box No. 2. In this manner, ballot boxes No. 1 and No. 2 may be interchanged periodically as directed by the presiding judge, but the box for receiving the ballots shall not be exchanged and the ballots shall not be re-

moved from it at any time before the polls are closed unless there are more than 10 ballots in the box. Once the box for receiving the ballots is delivered to the clerks preparing the ballots for the central counting station, they shall remove the voted ballots from the ballot box and carry out the procedures prescribed in Subdivision 19 of this section preparatory to making the ballots, envelopes, and other materials ready for delivery to the central counting station.

(b) The authority holding the election may in its discretion also provide that voted ballots of designated precincts shall be delivered by authorized election officials, in the presence of watchers, to a central counting station at stated intervals during the day and that the processing of such ballots in accordance with the procedures prescribed in Subdivision 20 may begin prior to the close of the polls. Such processing may be limited by the authority holding the election to procedures preparatory to the counting and tabulating of ballots, or the authority holding the election may also permit the preliminary counting and tabulating of ballots with automatic tabulating equipment; but in no event shall any results be disclosed prior to the close of the polls, and all persons connected with the handling and tabulating of the ballots shall be subject to the provisions of Section 105 of this code (Article 8.23, Vernon's Texas Election Code) with respect to revealing information as to the results of the election.

Procedure after Polls are Closed

Subd. 19.

[See Compact Edition, Volume 2 for text of 19(a) to (e)]

(f) After the election officers at the polling place have delivered all ballots to the central counting station, the ballot label assemblies and all other election supplies and records, including all duplicate certificates and unused seals, shall be delivered to the proper authority designated by law to receive them.

[See Compact Edition, Volume 2 for text of 20 to 24]

[Amended by Acts 1975, 64th Leg., p. 2068, ch. 680, §§ 1 to 10, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2093, ch. 682, § 19, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 659, ch. 247, §§ 3 to 6, 11, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 867, ch. 310, § 1, eff. Aug. 31, 1981.]

Art. 7.16. Runoff Elections in Cities and Towns of over 200,000

Sec. 1. In all cities and towns in this State, whether incorporated under General and Special Law, (including home rule cities) having a population in excess of two hundred thousand (200,000) inhabitants, according to the last preceding or future Federal Census the election of candidates for all municipal offices shall be determined in the following manner:

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

(b) In the event any candidate for either of said offices fails to receive a majority of all votes cast for all the candidates for such office at such election the Mayor of said city shall, on the first day following the completion of the official count of the ballots cast at said first election, issue a call for a second election to be held in said city within thirty (30) days following the issuance of such call, at which said second election the two (2) candidates receiving the highest number of votes for any such office in the first election at which no one was elected at said first election by receiving a majority of all votes cast for all candidates for such office, shall again be voted for. The official ballot to be used at said second election shall be prepared by the City Clerk or City Secretary and the name of no person shall appear thereon unless he was a candidate for the office designated at said first election, and the two (2) persons receiving at said first election the first and second highest number of votes cast for candidates for such office at such first election shall be entitled to have their names printed on said official ballot in the order of their standing in the computation of the votes cast for such candidates at said first election as candidates at said second election for such office; provided, however, that in the event any person who was a candidate at said first election and who shall be entitled to become a candidate at such second election shall fail to request that his name shall appear on the official ballot therefor at such second election as herein provided, the candidate for such office standing next highest in the computation of votes shall succeed to the rights of such candidate who failed to request that his name appear upon the ballot at said second election; provided further, that two (2) candidates for such office at said first election shall be entitled to become candidates therefor at said second election, which two (2) candidates shall be those two (2) among such candidates as shall stand highest respectively in the computation of all votes cast for all the candidates for such office at said first election as shall file written request to be placed on the official ballot as candidates for such office at said second election. In the event of a tie in the vote for the two (2) leading candidates for any office at said first election, said office shall be filled at a second election as herein provided for, at which such candidates so tied in said first election may again become candidates. In the event such candidates who tied in said first election, or either or them, shall fail so to do, the two (2) candidates for such office who are next highest in the computation of votes therefor and who desire to become candidates therefor at said second election shall be entitled so to do in

order of the number of votes they respectively received at said first election. In the event of a tie between the two (2) candidates for any office at said second election, they shall cast lots to determine who shall be elected to such office.

Sec. 2. Notwithstanding any provision in Section 1 of this statute, when in any municipal election nominations have been made by one or more political parties and the names of the candidates are listed on the ballot in party columns in conformity with the provisions of this code applicable to the method of voting used in the election, if any party nominee is a candidate in a succeeding runoff election, the ballot for the runoff election shall also be arranged in party columns in the same relative order as they appeared on the ballot for the first election, omitting any column in which no candidate's name is to be printed on the runoff ballot. If all candidates whose names appear on the runoff ballot are independent candidates, the ballot shall be made up without party columns, and the names of the two candidates in each race shall be printed on the ballot in the order of their standing in the computation of the votes cast at the first election.

Sec. 3. Whenever any home-rule city whose charter provides for election of more than one member of its governing body from the same list of candidates attains a population in excess of 200,000 inhabitants, not later than the 90th day before the first regular election at which the provisions of this section are applicable, the governing body of the city shall assign a place number to each such position, identifying it by the name of the incumbent member at the time the designation is made; and thereafter one person to fill each such position shall be elected separately by place number until such time as the charter is amended to provide for some other method of election that is consistent with an election by majority vote.

Sec. 4. This law does not apply to any city whose charter provides for the selection of its officers by means of a preferential type of ballot or to any city whose charter requires that its officers be elected by majority vote and specifies the procedures for conducting a runoff election.

[Amended by Acts 1977, 65th Leg., p. 326, ch. 157, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1681, ch. 664, § 1, eff. Aug. 29, 1977.]

The 1977 amendatory act repealed former § 3 of this article, renumbered and amended former § 2 as § 4 and added new §§ 2 and 3.

Art. 7.17a. Secretary of State to Certify Voting Devices

(a) Any person, firm, or corporation owning or controlling any voting device or system and desiring to have the same adopted for use in this state may apply to the secretary of state to have such device or system examined under the provisions of this section if in the opinion of the secretary of state the device or system cannot be adequately examined under either Section 79 or Section 80 of this code (Article 7.14 or Article 7.15, Vernon's Texas Election Code). Before the examination the applicant shall pay to the secretary of state the sum of $450. The secretary of state shall cause the device or system to be examined as hereinafter provided and shall make and file and keep on file in the office of the secretary of state a report of such examination, which shall show whether the kind of device or system so examined can safely be used by the voters under the conditions hereinafter provided. If the report states that the device or system can be so used, it shall be deemed approved and the device or system may be adopted for use in any election held in this state. Before making and filing such report, the secretary of state shall require the voting device or system to be examined by three examiners to be appointed by the secretary of state for such purpose, one of whom shall be an expert in patent law and the other two shall be mechanical experts or electronics experts, as may be appropriate, and shall require each of them to make a written report on such device or system, which reports shall be attached to the secretary of state's report and kept on file. Each examiner shall receive the sum of $150 as his compensation and expenses in making an examination and report as to each voting device or system examined by him. Neither the secretary of state nor any examiner may have any pecuniary interest in any voting device or system. When a device or system has been approved, every improvement or change must be filed with the secretary of state. The secretary of state may, at any time, in his discretion, reexamine a device or system approved under this section. Any form of voting device or system not approved under either this section or Section 79 or 80 of this code cannot be used at any election in this state.

(b) A voting device or system approved by the secretary of state must be so constituted as to provide facilities for voting for such candidates as may be legally placed on an official ballot in any election in this state. It must also permit a voter in a general election to vote for any person for any office, whether or not nominated as a candidate by any party but whose name is legally on the ballot as an independent candidate, and must permit voting in absolute secrecy. It also must be so constituted that a voter cannot vote for a candidate or on a proposition for whom or on which he is not lawfully entitled to vote. It also must be so constituted as to prevent a voter from having his vote counted for more than one person for the same office, unless permitted by law, and at the same time preventing his vote from being counted for the same person twice. It must also permit each voter to vote for a person whose name does not appear on the ballot, in any election and for any office where write-in votes are permitted by law. It must also permit the voter to vote by means of a single mark or punch or other appropriate act for all the candidates of one party or to vote a split ticket as he desires. No voting device or

system shall be approved by the secretary of state unless he finds that it is suitable for the purpose for which it is intended, and that it will operate efficiently and accurately and provide adequate safeguards against fraudulent manipulation under the conditions under which it is intended to be used.

(c) In the event a voting system is approved under this section for which this code prescribes no applicable or suitable procedures concerning its use, the secretary of state shall, upon certification of such system, issue a directive prescribing the procedures, limitations, and conditions for the implementation of such system.

[Added by Acts 1977, 65th Leg., p. 572, ch. 205, § 1, eff. Aug. 29, 1977.]

CHAPTER EIGHT. CONDUCTING ELECTIONS AND RETURNS THEREOF

Article
8.19b. Tallying Votes of Write-in Candidates.
8.36a. County Chairmen to Send Lists of Elected Party Nominees to State Chairman.

Art. 8.07. Present Registration Certificate

No citizen shall be permitted to vote, except as provided in the Constitution of Texas unless he first presents to the judge of election his registration certificate unless the same has been lost or mislaid, or left at home, in which event he shall make an affidavit of that fact, to be left with the judges and sent by them with the returns of the election; provided, that, if since he obtained his certificate he removes from the precinct or county of his residence, he may vote on complying with other provisions of this Code. The affidavit may be incorporated into any combination signature roster and list of registered voters as prescribed by the secretary of state.

[Amended by Acts 1977, 65th Leg., p. 592, ch. 209, § 4, eff. Aug. 29, 1977.]

Art. 8.08. Procedure for Accepting Voter; Signature Roster

Subd. 1. An election officer shall receive from the voter his registration certificate, when he presents himself to vote. If the voter has lost or mislaid his certificate or left it at home, he shall make an affidavit of that fact. For elections held on or after April 1 and no later than June 30 in even-numbered years. if any voter who is a resident of a county in a primary election or of a county, municipality, or district which is conducting any other election has failed to receive a certificate for the current two-year registration period, the election officer shall determine if the name of such voter appears on the list of cancelled voter registration certificates for the particular election precinct, and, if so, the election officer shall allow such voter to cast a ballot in the manner stated in Section 48a of this code. The election officer shall announce the voter's name in an audible voice and shall ascertain that his name appears on the list of registered voters or shall satisfy himself, in the manner stated in Section 48a of this code, that the voter is a registered voter and is entitled to vote in that precinct. He shall then require the voter to sign the signature roster provided for in Subdivision 3 of this section. If the voter has presented his registration certificate, the election officer shall compare the signature on the roster with the signature on the certificate to see that it is the same. If he finds that the signatures do not correspond, he shall not allow the voter to vote unless the voter complies with the procedure prescribed in Section 91 of this code for acceptance of a challenged voter.

Subd. 2. When a voter is accepted for voting, the election officer shall place a notation on the list of registered voters showing that he has voted and shall enter the voter's name on the poll list or shall use a combination signature roster and list of registered voters in the manner and format prescribed by the secretary of state. If a separate poll list is used, the names on the poll list shall be entered in the same order as the names on the signature roster. The officer shall return the registration certificate to the voter and shall allow him to select his ballot. The voter shall then immediately retire to a voting booth or a place prepared for voting by the election officers, and there prepare his ballot in the manner provided by law.

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

Subd. 4. Notwithstanding any other provision of this code which prescribes a criminal penalty, an election officer who knowingly violates any provision of this section shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not more than 90 days, or be both so fined and imprisoned.

[Amended by Acts 1975, 64th Leg., p. 2079, ch. 681, § 20, eff. June 20, 1975; Acts 1977, 65th Leg., p. 593, ch. 209, § 5, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1215, ch. 468, § 4, eff. Aug. 29, 1977.]

Art. 8.09. Vote Challenged

When a person offering to vote at any general, special, or primary election shall be objected to by an election judge or clerk, a poll watcher, or any other person, the presiding judge shall examine him upon oath touching the points of such objection, and if such person establishes his right to vote to the satisfaction of the presiding judge, he shall be permitted to vote, and the word "sworn" shall be written upon the poll list or on the prescribed combination form opposite the name of the voter. If upon his own oath the person fails to establish his right to vote to the satisfaction of the presiding judge, his vote shall not be accepted unless in addition to his own oath he submits proof by the oath of one well-known resident of the precinct that he is a qualified voter at such election and in such precinct. When such proof is submitted, his vote shall be accepted, and the word "challenged" and the name

and address of the person testifying under oath as to the voter's qualifications shall be written on the poll list or on the prescribed combination form opposite the name of the voter.
[Amended by Acts 1977, 65th Leg., p. 593, ch. 209, § 6, eff. Aug. 29, 1977.]

Art. 8.13. Aid to Voter

Subd. 1. Not more than one person at the same time shall be permitted to occupy any one compartment, voting booth or place prepared for a voter, nor shall any assistance be given a voter in preparing his ballot, except when a voter is unable to prepare the same because of the voter's inability to read the language in which the ballot is printed or because of some bodily infirmity which renders the voter physically unable to write or to see, in which case two officers of such election shall assist the voter (with the aid of an interpreter, when necessary), they having first sworn that they will not suggest, by word or sign or gesture, how such voter shall vote; that they will confine their assistance to answering the voter's questions, to stating the propositions to be voted on, and to naming candidates and the political parties to which they belong; and that they will prepare the voter's ballot as such voter directs. If the election is a general election, the election officers who assist such voters shall be of different political parties, if there be such officers present. One or more watchers may be present when the assistance herein permitted is being given by election officers, but each watcher must remain silent except in cases of irregularity or violation of the law.

Subd. 2. Instead of being assisted by two election officers as provided in Subdivision 1 of this section, a voter who is entitled to assistance may select any qualified voter residing in the precinct to assist him, subject to the restriction stated in Section 330a of this code,[1] and no other person shall be permitted to be present while the ballot is being prepared. Before assisting the voter, the person selected shall take the following oath, which shall be administered by one of the election officers: "I solemnly swear that I will not suggest, by word or sign or gesture, how the voter shall vote; I will confine my assistance to answering the voter's questions, to stating propositions to be voted on and to naming candidates and the political parties to which they belong; and I will prepare the voter's ballot as the voter directs." The election officer who administers the oath shall cause a notation of the name and address of the person rendering the assistance to be entered on the poll list by the name of the voter who is assisted, together with a notation of the person's kinship to the voter if related as parent, grandparent, spouse, child, brother, or sister.

Subd. 3. Where any assistance is rendered in preparing a ballot other than as herein allowed, the ballot shall not be counted, but shall be void for all purposes.

Subd. 4. When an election officer assists a voter, the officer shall read the entire ballot to the voter unless the voter informs the officer that he wishes to vote only in certain specified races. When a voter is to be assisted by someone other than an election officer, the officer who waits on the voter shall ask the voter if he wants the entire ballot read to him, and if the voter says that he does, the officer shall instruct the person who will render the assistance that he must read the entire ballot to the voter.
[Amended by Acts 1975, 64th Leg., p. 2093, ch. 682, § 20, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2060, ch. 806, §§ 3, 4, eff. Aug. 27, 1979.]

[1] Article 15.30a.

Art. 8.15. Deposit of Ballot

Subd. 1. After the voter has prepared his ballot, he shall fold it so as to conceal the printing thereon and so as to expose the signature of the presiding judge on the back of the ballot (except that ballot cards and certain other types of ballots used in electronic voting systems should not be folded), and then deposit it in the proper ballot box.

Subd. 2. The ballot stub to be signed by the voter and the stub box for the deposit of the signed stub, formerly provided for in this and other sections of this code, are eliminated by amendments enacted by the 65th Legislature at its regular session in 1977. All statutory provisions relating to the use of ballot stubs and stub boxes which appear in other statutes enacted at the regular session of the 65th Legislature, regardless of whether they are enacted before or after this amendment, or enacted at any prior session, except provisions relating to stubs attached to ballot cards used in an electronic voting system, are to be treated as void.
[Amended by Acts 1977, 65th Leg., p. 660, ch. 247, § 7, eff. Aug. 29, 1977.]

Section 12 of the 1977 amendatory act provided:
"The statutory provisions relating to the preservation, examination, and destruction of ballot stubs which were in effect on the date of the election continue to apply to the ballot stubs for elections held before the effective date of this Act."

Art. 8.17. Bystanders Excluded

From the time of opening the polls until the announcement of the results of the canvass of votes cast and the signing of the official returns, the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges, and watchers, if any. No person, except those admitted to vote, shall be admitted within the room where the election is being held, except the judges, clerks, persons admitted by the presiding judge to preserve order, inspectors, watchers, and children under 10 years old who accompany a parent who is admitted to vote. Notwithstanding any other provision of this code, the child or children may also be present in the voting booth or compartment while the parent is voting.
[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 17, eff. June 20, 1975; Acts 1977, 65th Leg., p. 309, ch. 143, § 1, eff. Aug. 29, 1977.]

Art. 8.19b. Tallying Votes for Write-in Candidates

In the general election for state and county officers held on the first Tuesday after the first Monday in November of even-numbered years, before the counting begins the presiding judge shall furnish the counting officers with the list of write-in candidates who have qualified for the election as provided in Section 62b of this code.[1] Only the names of the candidates printed on the ballot and the names of write-in candidates appearing on the list shall be entered on the tally sheets, and a write-in vote for any other person shall not be tallied.

[Added by Acts 1977, 65th Leg., p. 1283, ch. 503, § 2, eff. Aug. 29, 1977.]

[1] Article 6.06b.

Art. 8.22. Death or Ineligibility of Candidate Before Election

(a) When the name of a deceased or ineligible candidate is printed on the ballot for a general or special election, as provided in Section 233 of this code,[1] the votes cast for him shall be counted and return made thereof; and if he receives a plurality of the votes cast for the office where a plurality is sufficient for election, or if he receives a majority of the votes cast for the office where a majority is required for election, the vacancy shall be filled as in the case of a vacancy occurring after the election. If he is one of the two highest candidates in an election where a majority is required and no one has a majority, the two candidates with the highest votes other than the deceased or ineligible candidate shall be certified as the two highest candidates for the runoff election.

(b) If after the 45th day preceding the first primary election, a candidate in that primary dies or is declared ineligible to be elected to the office, his name shall be printed on the first primary ballot and the ballots cast for him shall be counted and a return made thereof. If such a deceased or ineligible candidate receives a majority of the votes, the proper executive committee shall choose a nominee and certify such name to the proper officer, as provided in Section 233 of this code, to be printed on the general election ballot. If such a deceased or ineligible candidate is one of the two highest candidates in that race in the first primary and if no one has a majority vote, the two candidates with the highest votes, other than the deceased or ineligible candidate, shall be certified to have their names printed on the second primary ballot. If a candidate whose name is to appear on the second primary ballot dies between the dates of the first and second primaries, his name shall be printed on the second primary ballot and the votes cast for him shall be counted and returned for him; and if such a deceased candidate receives a majority of the votes in the second primary, the proper executive committee shall choose a nominee and certify his name to the proper officer, as provided in Section 233 of this code, to be printed on the general election ballot. Withdrawal of a candidate in the second primary is regulated by Section 204a of this code.[2]

[Amended by Acts 1975, 64th Leg., p. 2104, ch. 685, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 883, ch. 332, § 2, eff. Aug. 29, 1977.]

[1] Article 13.56.
[2] Article 13.26a.

Art. 8.29b. Copies of Returns, Poll Lists or Combination Forms, and Tally Lists; Distribution

(a) In precincts using paper ballots. In all general, special, and primary elections, the number of copies of the returns, poll list or prescribed combination form, and tally list required for each precinct in which paper ballots are used shall be as follows: four copies of the returns, three copies of the poll list or prescribed combination form, and three copies of the tally list. These records shall be distributed as follows:

(1) One copy of the returns and tally list shall be delivered to the presiding officer of the authority which canvasses the returns (the county judge in elections held by the county; the mayor in city elections; the presiding officer of the governing board in elections held by other political subdivisions; and the chairman of the county executive committee in county primary elections) and shall be preserved by the canvassing authority for sixty days from the day of the election.

(2) One copy of the returns, poll list, or prescribed combination form, and tally list shall be delivered to the proper officer (the county clerk in elections held by the county and in county primary elections; the city secretary or clerk in municipal elections; and the presiding officer of the governing board in elections held by other political subdivisions), to be kept by him in his office open to inspection by the public for sixty days from the day of the election.

(3) One copy of the returns, poll list, or prescribed combination form, and tally list shall be placed in the ballot box containing the voted ballots.

(4) The presiding judge shall retain in his custody one copy of the returns and one copy of the poll list or prescribed combination form of the election, and shall keep the same for sixty days after the day of the election, subject to the inspection of anyone interested in such election.

[See Compact Edition, Volume 2 for text of (b) and (c)]

(d) The presiding judge shall deliver all applications for registration received pursuant to Section 48a of this code[1] to the officer who receives the election records that are open to public inspection at the same time that he delivers those records. Within five days after the election, this latter officer shall forward the applications from all election pre-

cincts to the county registrar of voters, who shall process the applications and issue registration certificates thereon in the same manner as other applications.

[Amended by Acts 1977, 65th Leg., p. 593, ch. 209, § 7, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1217, ch. 468, § 7, eff. Aug. 29, 1977.]

[1] Article 5.16a.

Art. 8.36a. County Chairmen to Send Lists of Elected Party Nominees to State Chairman

Not later than February 1 following each general election for state and county officers, the chairman of the county executive committee of each political party with a state organization that had nominees on the general election ballot shall send to the state chairman of the party a list of the names of the party's nominees who were elected to county and precinct offices in that county at that election, and the office to which each was elected.

[Added by Acts 1975, 64th Leg., p. 2107, ch. 687, § 1, eff. Sept. 1, 1975.]

Art. 8.38. Such Returns Counted

Not earlier than the 15th day or later than the 21st day after election day, at the time set by the Secretary of State, the Secretary of State in the presence of the Governor and one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years, or in case of vacancy or of inability or failure of either to act, then in the presence of either one (1) of them, shall open and count the returns of the elections.

[Amended by Acts 1981, 67th Leg., p. 536, ch. 219, § 1, eff. Aug. 31, 1981.]

Art. 8.46. Death of Governor-elect or Death or Incapacity of Governor-elect and Lieutenant Governor-elect

Pursuant to the provisions of Article IV, Section 3a, of the Constitution of the State of Texas, the successor to the office of Governor shall be as follows:

If, at the time the Legislature shall canvass the election returns for the offices of Governor and Lieutenant Governor, the person receiving the highest number of votes for the office of Governor, as declared by the Speaker, has died, then the person having the highest number of votes for the office of Lieutenant Governor shall act as Governor until after the next general election.

It is further provided that in the event that both the Governor-elect and the Lieutenant Governor-elect die or have become permanently incapacitated to take their oaths of office at the time when the Legislature shall canvass the election returns for the offices of Governor and Lieutenant Governor, and the Legislature finds that neither the Governor-elect nor the Lieutenant Governor-elect are able to take the oath of office and fulfill the duties thereof, then the Speaker of the House of Representatives and the President pro tem of the Senante will call a joint session of the House of Representatives and Senate for the purpose of electing a Governor and Lieutenant Governor.

The person receiving the highest number of votes cast by the Members of the Legislature for the office of Governor shall become the Governor and hold that office until the next general election, at which time the unexpired two-year remainder of the term shall be filled by election. The person receiving the highest number of votes for the office of Lieutenant Governor cast by the Members of the Legislature, shall become Lieutenant Governor and hold that office until the next general election, at which time the unexpired two-year remainder of the term shall be filled by election.

[Amended by Acts 1981, 67th Leg., p. 2467, ch. 640, § 1, eff. Aug. 31, 1981.]

CHAPTER NINE. CONTESTING ELECTIONS

Article
9.29a. Application of Sunset Act.
9.38b. Compelling Voter to Testify How He Voted.

Art. 9.01. District Court, Jurisdiction and Venue

The district court shall have original and exclusive jurisdiction of all contests of elections, general or special, for all school, municipal, precinct, county, district, state offices, or federal offices, except elections for the offices of Governor, Lieutenant Governor, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, Attorney General, and Members of the Legislature.

The venue of suits or contests between candidates for any office to be filled by the choice of voters of the entire state shall be in Travis County. The venue of suits or contests between candidates for any justice of any Court of Appeals shall be in the county where said Court of Appeals has its sittings.

The venue in all other election contests between candidates shall be in the county where the candidate receiving the certificate of election resides. If there is but one district court in the county in which venue is placed by this law and the judge of said court is disqualified to hear any contest, said judge shall be replaced for purposes of said contest in the manner provided by law for civil suits.

Nothing herein shall be construed to prohibit the district court in the county where any such contest may be filed from changing the venue to some adjacent county, upon showing of adequate cause.

[Amended by Acts 1981, 67th Leg., p. 797, ch. 291, § 84, eff. Sept. 1, 1981.]

Art. 9.07. Cause to be Docketed

When the notice, statement and reply have been filed with the clerk of the court, he shall docket the same as in other causes. If the office contested for

be that of district clerk, then a clerk pro tem shall be appointed as is provided by law in suits where the clerk is a party to the suit.
[Amended by Acts 1981, 67th Leg., p. 2645, ch. 707, § 4(39), eff. Aug. 31, 1981.]

Art. 9.17. Appeal Available

Either the contestant or contestee may appeal from the judgment of the district court to the Court of Appeals, under the same rules and regulations as are provided for appeals in civil cases; and such cases shall have precedence in the Court of Appeals over all other cases. In cases of appeal as provided for in this Section, the clerk shall, without delay, make up the transcript and forward the same to the clerk of the Court of Appeals for that district.
[Amended by Acts 1981, 67th Leg., p. 797, ch. 291, § 85, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

Art. 9.20. For Legislature

Initiation of Election Contest

Subd. 1. A candidate for State Senator or Representative who desires to contest the election must initiate election contest proceedings in the manner prescribed by this section.

Notice and Statement

Subd. 2. (a) Not later than 10 days after election day, the contestant shall give notice in writing of his intent to contest the election to the candidate who is shown by the unofficial returns to have the greatest number of votes when the returns of all counties are totaled.

(b) The contestant shall give the contestee a written statement of the grounds on which the election is contested not later than five days after the day the official results are declared.

(c) Within the period of time prescribed by Subsection (b) of this subdivision, the contestant shall mail a certified copy of the notice and statement to the President of the Senate or to the Speaker of the House of Representatives, as the case may be, in care of the Secretary of State.

Reply

Subd. 3. The candidate who receives the notice and statement shall cause a reply in writing to be delivered to the contestant, his agent or attorney, within 10 days after receiving the notice and statement; and within the same period of time he shall mail a certified copy of the reply to the President of the Senate or to the Speaker of the House of Representatives, as the case may be, in care of the Secretary of State.

Service; Use of Certified Mail

Subd. 4. (a) The notice, statement, and reply may be served as provided in Section 133 of this code (Article 9.05, Vernon's Texas Election Code) or by certified mail with return receipt requested.

(b) When certified mail is used for service or to transmit a copy of the notice, statement, or reply to the Secretary of State, the fact and date of sending and the fact and date of receipt may be proven with window receipts and return receipts for certified mail.

Duty of Secretary of State

Subd. 5. (a) The Secretary of State shall submit the papers of the case to the President of the Senate or to the Speaker of the House of Representatives, as the case may be, not later than three days after receipt of the contestee's reply or as soon thereafter as practicable.

(b) The papers of the case consist of the copies of the notice, statement, reply, and the Secretary of State's certified statement of the total votes cast for each candidate for the office as shown by the official canvass of the returns.
[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

Art. 9.21. Discovery; Master of Discovery

Discovery Procedures

Subd. 1. The parties to a contest for the office of State Senator or Representative may conduct discovery under the procedures applicable in civil actions generally, subject to any changes in those procedures or limitations imposed by the master of discovery or by rules of the House in which the contest is pending.

Master of Discovery

Subd. 2. (a) The presiding officer of the House at any time may appoint a master of discovery in the manner that a master in chancery is appointed in civil actions generally for the purpose of supervising discovery proceedings.

(b) The master must be a member of the House in which the contest is filed.

(c) The presiding officer may limit the master's authority in the same manner as a civil court in the appointment of a master in chancery.

(d) The master's rulings are subject to review by the committee to which the contest is referred unless otherwise provided by rules of the House.

Costs of Discovery

Subd. 3. Each party is responsible for the initial payment of his own costs of discovery, but discovery costs may be assessed by the House as provided by Section 151 of this code (Article 9.23, Vernon's Texas Election Code).
[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

Art. 9.22. Grounds of Contest; Scope of Inquiry

The grounds on which an election for the office of State Senator or Representative may be contested and the scope of inquiry of the contest are the same as for an election contest tried before a court.
[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

Art. 9.23. Costs of Contest

The House considering an election contest for the office of State Senator or Representative may assess the costs of the contest against any one or more of the parties.

[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

Art. 9.24. Contest Referred to Committee; Hearing and Report

Referral to Committee

Subd. 1. The President of the Senate or Speaker of the House of Representatives shall refer a contest for the office of State Senator or Representative to a special committee, standing committee, or committee of the whole.

Committee Hearing and Report

Subd. 2. The committee shall proceed without delay to fix a time for the hearing of said case and, after due notice to the parties thereto, shall investigate the issues between said parties, hearing all the legal evidence that may be presented to said committee, and shall as soon thereafter as practicable report their conclusions of law and findings of fact in respect to said case to the House, accompanied by all the papers in the case and the evidence taken therein, with such recommendations as may to them seem proper.

Minority Report

Subd. 3. Any one or more of the committee dissenting from the views of the majority may present a minority report.

[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

Art. 9.25. Committee Procedure

Procedure Generally

Subd. 1. The procedure for the committee hearing of an election contest for the office of State Senator or Representative shall be as prescribed by rules of the House in which the contest is pending.

Evidence

Subd. 2. Unless otherwise provided by House rule, the rules of evidence and the laws in force respecting the admissibility of evidence in the district courts of this State shall be observed by said committee, so far as the same may be applicable.

Issuance of Process

Subd. 3. Said committee shall have the power to send for persons and papers, and the chairman of said committee shall have the power to issue all process necessary to secure the attendance of witnesses and the production of papers, ballot boxes and other documents before said committee, and such process shall be executed by the sergeant-at-arms of the House in which the contest is pending, or by such other person as the presiding officer of said House may designate.

[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

Art. 9.26. Disposition of Contest by House

House to Consider Report

Subd. 1. The House in which a contest for the office of State Senator or Representative is pending, as soon as practicable after the report of the committee has been received, shall fix a day for consideration of the report.

Action on Contest

Subd. 2. The House may seat the contestant or the contestee or may hold the election void. In the last case the Governor shall at once be notified of the vacancy.

Mileage and Fees

Subd. 3. Such fees shall be paid to the witnesses and the officers serving the process as shall be prescribed by the rules of the House in which said contest in pending, and no mileage or per diem shall be paid to either of the parties to said contest until said case is determined, and in no case shall any mileage or per diem be paid to any party against whom any contest is decided.

[Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 1, 1979.]

Art. 9.29a. Application of Sunset Act

The State Board of Canvassers is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.171, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

Art. 9.35. Decree

Either party may appeal as in other civil cases and the same shall have precedence over all other causes pending in the appellate courts to which the appeal or writ of error is taken, except such cases as may be entitled to precedence over said cause by virtue of some provision of the Constitution of this State. Upon final judgment in said appellate court, it shall enter a decree ordering and directing the Secretary of State to declare the true result of said election as judicially determined and ascertained by said court, and the Secretary of State shall make his tabulations, canvassings and certificates of the results of such election in accordance with the final judgment of said court, and said amendment shall be adopted or rejected in accordance with the final result of said election as finally determined by the judgment of said court.

[Amended by Acts 1981, 67th Leg., p. 2645, ch. 707, § 4(40), eff. Aug. 31, 1981.]

Art. 9.38a. Recount of Paper Ballots

Grounds for Recount

Subd. 1. (a) A candidate for nomination or election to any public office or to the party office of county chairman or precinct committeeman may ob-

tain a recount of the votes cast for the office on manually counted paper ballots, in the manner outlined in this section:

(1) if the difference in the number of votes received by him and the next highest candidate above him is less than five percent of the number of votes received by such next highest candidate, as shown by the returns of the election officers, and the candidate seeking the recount would gain the election or nomination or a place on a runoff election ballot if the recount showed him to have received a greater number of votes than that opponent, or

(2) if one or more judges of the election make an uncontradicted affidavit stating that certain ballots cast for the office were counted or were not counted, as the case may be, and the Secretary of State certifies that, on the basis of the statements in the affidavit, the election officers were in error in either counting or failing to count the ballots, as the case may be, and further certifies that from the affidavit or affidavits submitted to him and on the basis of the unofficial returns it appears likely that the number of miscounted ballots were of sufficient number to change the result of the election in that race as it affects the candidate seeking the recount.

(b) In addition to recount grounds prescribed by Paragraph (a) of this subdivision, a candidate for nomination or election to an office may obtain a recount of the votes cast for the office on manually counted paper ballots in the manner outlined in this section if the candidate did not receive the greatest number of votes and if the total number of votes cast for all candidates for such office is less than 1,000, as shown by the returns.

(c) If the ground of the application for a recount is that prescribed by Paragraph (a)(1) or (b) of this subdivision, the request must be for a recount of all the ballots cast for the office in each and every election precinct, including the absentee ballots cast for the office; and the canvassing board shall order a complete recount.

(d) If the ground of the application is that prescribed by Paragraph (a)(2) of this subdivision, the candidate at his option may request a recount of all the ballots cast in the election or only the ballots cast in the election precincts in which the miscounting is alleged to have occurred; and if only a partial recount is requested, the canvassing board shall order a recount only of all the ballots cast in those precincts in which the Secretary of State certifies that ballots were erroneously counted or not counted.

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

Election on Measure

Subd. 13. (a) Any 25 or more persons, acting jointly, who were eligible to vote in the election may obtain a recount of the votes cast on a measure on manually counted paper ballots:

(1) if the difference in the number of votes received for the measure and against the measure is less than five percent of the total number of votes on the measure, as shown by the returns of the election officers; or

(2) on the ground prescribed by Subdivision 1(a)(2) of this section with respect to an election on an office.

(b) In addition to the grounds prescribed by Paragraph (a) of this subdivision, any 25 or more persons, acting jointly, who were eligible to vote in the election may obtain a recount if the total number of votes for and against the measure is under 1,000, as shown by the returns.

(c) If the ground of the application for a recount is that prescribed by Paragraph (a)(1) or (b) of this subdivision, the request must be for a recount of all the ballots cast on the measure in each election precinct, including absentee ballots, and the canvassing board shall order a complete recount.

(d) If the ground of the application is that prescribed by Paragraph (a)(2) of this subdivision, the applicants at their option may request a recount of all ballots cast in the election or only those cast in the election precincts in which the miscounting is alleged to have occurred. If a partial recount is requested, the canvassing board shall order a recount only of all the ballots cast in those precincts in which the secretary of state certifies that ballots were erroneously counted or not counted.

(e) Except as provided by Paragraphs (a)–(d) of this subdivision, the provisions of this section regulating a recount for an election on an office, including those relating to the deposit for and assessment of costs, govern a recount for an election on a measure, with the appropriate changes consistent with this subdivision to account for the fact that the election is on a measure instead of for an office.

(f) A statute outside this code supersedes this subdivision to the extent of any conflict.

[Amended by Acts 1979, 66th Leg., p. 1779, ch. 722, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2696, ch. 733, § 1, eff. Aug. 31, 1981.]

Art. 9.38b. Compelling Voter to Testify How He Voted

In an election contest or criminal proceeding in which the issue is relevant, any voter who fraudulently or illegally casts a ballot or who casts a fraudulent or illegal ballot at any general, special, or primary election may be required and compelled, after the fraud or illegality has been established by competent evidence before a tribunal of competent jurisdiction, to disclose in testimony before the tribunal having jurisdiction of the matter the name of any candidate for whom he voted and the way he voted on any question at the election. The voter's testimony may be impeached by the testimony of

other witnesses in regard to statements by the voter, either before or after the election, or by other competent evidence; and the issue of how the voter voted shall be decided on the basis of all the evidence before the tribunal. In an election contest, instead of undertaking to determine how individual voters voted, the tribunal may declare the election void and order another election if the number of illegal votes is sufficient to change the outcome of the election. This section applies to election contests and criminal proceedings instituted under any provision of this code or under any other statute of this state.

[Added by Acts 1977, 65th Leg., p. 661, ch. 247, § 10, eff. Aug. 29, 1977.]

CHAPTER ELEVEN. PRESIDENTIAL ELECTION

Article
11.01b. Independent Candidate for President.
11.01c. Write-In Candidate for President.

Art. 11.01. Time of Election; Qualifications of Electors

Subd. 1. On the first Tuesday after the first Monday in November in the year 1980 and every four years thereafter, there shall be elected by the voters of the State as many electors for President and Vice-President of the United States as the State of Texas may at that time be entitled to elect.

Subd. 2. Each elector at the time of nomination as a presidential elector candidate, at the time of election, and at the time of the convening of the electors must be a registered, qualified voter of this state and must not hold the office of senator or representative in congress, or any office of trust or profit under the United States.

[Amended by Acts 1977, 65th Leg., p. 647, ch. 240, § 1, eff. Aug. 29, 1977.]

Art. 11.01b. Independent Candidate for President

Subd. 1. Any person eligible to hold the office of President of the United States may have his name and the name of a vice-presidential running mate printed on the ballot as independent candidates in the presidential race by complying with the provisions of this section.

Subd. 2. A person desiring to become an independent candidate for president shall file with the Secretary of State, not later than the second Monday in July before the general election at which his name will appear on the ballot:

(1) an application to have his name and the name of an eligible vice-presidential candidate as his running mate printed on the ballot on a form prescribed by the Secretary of State;

(2) the signed written consent of the person designated as the vice-presidential candidate to have his name printed on the ballot in that capacity;

(3) a list of the names and addresses of persons to represent the applicant as presidential elector candidates in the number to be elected, together with the signed written consent of each such person to become a candidate; and

(4) a petition of voters signed by qualified voters of the state in a number equal to not less than one percent of the entire vote of the state cast for president and vice-president at the last preceding presidential general election.

Subd. 3. A petition may not be circulated for signatures until after the date of the general primary election in that election year, and any signature obtained on or before that date is void. A voter who voted in the general primary of any political party that held a presidential primary that year is ineligible to sign the petition of an independent candidate for president. The following statement shall appear at the head of each page of a petition: "I certify that I did not vote this year in the general primary election of any political party that held a presidential primary."

Subd. 4. The Secretary of State shall prescribe the form for the petition of voters to be filed by an independent candidate for president. For each signer the petition shall show the signer's address, the county of issuance and number of his voter registration certificate, and the date of signing. The petition may be in multiple parts. To each part shall be attached an affidavit of the person who circulated it, stating that he witnessed the affixing of each signature, that he called the attention of each signer to the statement at the head of the page before the person signed the petition, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are registered voters.

[Added by Acts 1977, 65th Leg., p. 647, ch. 240, § 2, eff. Aug. 29, 1977.]

Art. 11.01c. Write-In Candidate for President

Subd. 1. Any person eligible to hold the office of President of the United States may become a write-in candidate for the office by complying with the provisions of this section. No write-in vote cast for the office may be counted unless the person whose name is written in has complied with these requirements. The Secretary of State shall certify to the county clerks the names of write-in candidates who have complied with this section at the same time that he certifies the names of the presidential candidates to be printed on the ballot.

Subd. 2. A person desiring to become a write-in candidate for president shall file with the Secretary of State, not later than the 45th day before the general election:

(1) a declaration that he is a write-in candidate for the office of president;

(2) the name of an eligible vice-presidential candidate as his running mate and the signed written consent of that person to the candidacy; and

(3) a list of the names and addressees of persons to represent the write-in presidential candidate as presidential elector candidates in the number to be elected, together with the signed written consent of each such person to become a candidate.

[Added by Acts 1977, 65th Leg., p. 648, ch. 240, § 3, eff. Aug. 29, 1977.]

Art. 11.02. Effect of Votes for Presidential Candidates

A vote for the set of candidates of any political party or for a set of independent or write-in candidates for both President and Vice-President of the United States shall be conclusively deemed to be a vote for the presidential elector candidates representing that party or that set of independent or write-in candidates, and shall be so counted and recorded for such electors as the state shall be empowered to elect. No vote shall be counted unless the voter has cast his vote for both the candidate for President and the candidate for Vice-President of the same political party or set of independent candidates. A ballot on which a voter has written in the name of a presidential candidate who has filed a declaration of write-in candidacy in accordance with this section shall be counted as a vote for the presidential elector candidates representing that write-in candidate, regardless of whether the name of the corresponding vice-presidential candidate is written in.

[Amended by Acts 1977, 65th Leg., p. 649, ch. 240, § 4, eff. Aug. 29, 1977.]

Art. 11.03. Canvass of Votes and Returns

The canvass of the votes for candidates for President and Vice-President of the United States and the returns thereof shall be a canvass and return of the votes cast for the electors of the same party or set of independent or write-in candidates, respectively, and the certificate of such election made by the Governor shall be in accord with such return.

[Amended by Acts 1977, 65th Leg., p. 649, ch. 240, § 5, eff. Aug. 29, 1977.]

Art. 11.04. Certification of Candidates

The names of the candidates for President and Vice-President and for presidential electors, respectively, of a political party as defined in the law shall be certified to the Secretary of State by the chairman and secretary of the state committee of the party not later than the 40th day prior to the election.

[Amended by Acts 1977, 65th Leg., p. 888, ch. 332, § 6, eff. Aug. 29, 1977.]

CHAPTER THIRTEEN. NOMINATIONS

Article
13.08a–1. State Financing of Primary Expenses of State Executive Committee.
13.08c. Funding.
13.21. Repealed.
13.34b. Participation in Conventions by Persons Voting on List of Cancelled Voter Registration Certificates.
13.46. Repealed.
13.58a. Expired.

Art. 13.01a. Who Are Members of Organized Party

[See Compact Edition, Volume 2 for text of (1) to (3)]

(4) An applicant for party affiliation shall become a qualified member of a political party which is holding primary elections when he has voted within that party's primary or has taken part in a convention of that party prior to a primary. At the head of the signature roster for each primary election there shall be printed the following statement: "I swear that I have not voted at a primary election or participated in a convention of any other political party during this voting year." The presiding judge or another election officer designated by him shall place each voter under oath and require him to swear to this statement before he signs the roster. The first time a voter presents his voter registration certificate at a primary election, the election officer shall stamp the appropriate party designation within the party affiliation space on the face of the certificate. If the voter is voting on a statement of a lost registration certificate, the presiding judge shall issue to him a certificate of his having voted, in the following form:

Date _____

_____ has voted on this date in the
(Name of Voter)

primary election of the _____ Party.

_____

Presiding Judge, Precinct No. _____,

_____ County, Texas.

When a voter votes by absentee ballot in a primary election, the county clerk shall stamp the appropriate party designation on the voter's registration certificate; of if the voter is voting on a statement of a lost or unreturned certificate, the clerk shall deliver or mail to the voter, at the time specified by law for returning a registration certificate to an absentee voter, a certificate of his having voted by absentee ballot in the primary.

(5) To become qualified to participate in any party convention of a party which does not hold a primary or to become qualified for party membership for any party convention held prior to a primary, each voter who desires to participate in the convention shall

present to the precinct chairman his affidavit that he has not participated in the primary or convention of any other party during that voting year. Thereupon, the precinct chairman shall stamp the appropriate party designation on the voter's registration certificate if the voter presents it, and if the registration certificate is not presented, the chairman shall issue to the voter a certificate in the following form:

Date _____

_____ has affiliated with
(Name of Voter)

the _____ Party for the current year.

_____

Precinct Chairman, Precinct No. _____,

_____ County, Texas.

Each precinct chairman is authorized to administer the oath required by this subsection. Within 10 days after the precinct convention, he shall arrange the affidavits in alphabetical order and deliver them to the county clerk. If he receives an affidavit after the date of the precinct convention, he shall deliver it to the county clerk within 10 days after he receives it. The county clerk shall keep the affidavits on file in alphabetical order within each precinct for a period of two years after the end of the voting year in which they are filed. The county clerk shall maintain a separate file for each political party.

(6) A voter registration certificate which has been stamped with a party designation, a certificate of having voted in a primary election, or a certificate of party affiliation issued by a precinct chairman, all as provided in this section, shall serve as evidence that the person whose name appears on the certificate is affiliated with the party designated on the certificate and is therefore eligible to participate in that party's conventions.

[See Compact Edition, Volume 2 for text of (7) and (8)]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 15, eff. Nov. 5, 1975.]

Art. 13.07a. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.08. Conduct of the Primary Elections

(a) The primary election held by a political party pursuant to Sections 180 and 181 of this code (Articles 13.02 and 13.03, Vernon's Texas Election Code) shall be conducted through the party's state executive committee and county executive committees in accordance with the procedures detailed in this code.

(b) In order for a candidate to have his name placed on the ballot for the general primary election, his application for a place on the ballot must be accompanied by a filing fee or a nominating petition in compliance with Subsection (c) or (d) of this section.

(c) The schedule of filing fees for either a full term or an unexpired term for the various offices is as follows:

(1) United States Senator	$2,000
(2) All other statewide offices	1,500
(3) United States representative	1,500
(4) State senator	750
(5) State representative	400
(6) Member, state board of education	250
(7) Chief justice or associate justice, court of appeals	750
(8) District judge or judge of any court having status of a district court as classified in Section 61c[1] of this code, as added and amended (Article 6.05c, Vernon's Texas Election Code)	700
(9) Judge of a statutory county court or judge of any court having status of a county court as classified in Section 61c of this Code, as added and amended (Article 6.05c, Vernon's Texas Election Code), other than the constitutional county court	700
(10) District attorney or criminal district attorney or a county attorney that performs the same functions as either of the above	600
(11) A county office as classified in Section 61c of this code, as added and amended (Article 6.05c, Vernon's Texas Election Code), for which a specific fee is not set by this subsection	300
(12) County surveyor or inspector of hides and animals	50
(13) Judge of the constitutional county court and county commissioner,	
County of 200,000 or more inhabitants	600
County under 200,000 inhabitants	300
(14) Justice of the peace or constable,	
County of 200,000 or more inhabitants	500
County under 200,000 inhabitants	200
(15) Public weigher	50

No fee shall be charged for any office of a political party.

(d) In lieu of the payment of a filing fee, a candidate may file a nominating petition which may be in multiple parts and must be signed by the qualified voters eligible to vote for the office for which the candidate is running as follows:

For statewide office, 5,000 signatures.

For district, county, precinct, or other political subdivisions, equal in number to at least two percent of the number of votes cast in the territory for that party's candidate for governor in the last preceding gubernatorial general election. However, in no event shall the number required be more than 500; and if two percent

of the votes cast in the territory was less than 25, the number required is the lesser of 25 signatures or 10 percent of the number of votes cast.

Where a candidate is running in a district, county, or precinct which has been created or the boundaries of which have been changed since the last gubernatorial general election, he may request that the secretary of state in the case of a district or county office, or the county clerk of the county in which the precinct is situated in the case of a precinct office, make an estimate in advance of the filing deadline of the number of votes cast for that party's candidate for governor within that territory at the last gubernatorial election. Not later than the 15th day after receiving such a request, the officer shall make the estimate and notify the candidate, and also the officer with whom the candidate files his application. The estimate shall be used as the official basis for computing the number of signatures required on a petition. If an advance estimate is not requested, the officer with whom the petition is filed shall make the estimate, whenever necessary, before he acts on the sufficiency of the petition. In every instance, the candidate may challenge the accuracy of the estimate, and if he is dissatisfied with the final decision of the officer he may appeal the decision to any district court having jurisdiction in the territory involved.

The following statement shall appear at the head of each page of the petition: "I know the contents of this petition. I am a qualified voter eligible to vote in the forthcoming primary election of the (fill in name) Party for the office for which (fill in name) is a candidate. I have not signed the petition of a candidate who is running for any office[2] the primary of any other party. I understand that by signing this petition I become ineligible to affiliate with any other party or to participate in the primary elections, conventions, or other party affairs of any other party, including a party which is not holding a primary election, during the voting year in which this election is held, and that I am guilty of a misdemeanor if I attempt to do so."

To each part of the petition shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the petition, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters.

The petition must show the following information with respect to each signer: His address (including his street address if residing in a city, and his rural route address if not residing in a city), his current voter registration certificate number (also showing the county of issuance if the office includes more than one county), and the date of signing. The secretary of state shall prescribe a form for the petition before the 30th day prior to the filing deadline and provide copies of that form to the state chairman and the county chairmen of each party holding a primary election. However, a candidate may use any other form which complies with the requirements of this section. It is the specific intent of the legislature that there shall be no requirement for the administering of an oath to any person signing a petition under the provisions of this section.

A petition filed under this section shall be filed with the same officer with whom an application for a place on the ballot for the office being sought is to be filed and must be filed at the same time as such an application.

(e) The fees paid to the county chairman on applications filed with him pursuant to the provisions of Section 190 of this code, as amended (Article 13.12, Vernon's Texas Election Code), the apportionment of fees received from the state chairman pursuant to this subsection, and any contributions made to the county chairman or the county executive committee for the specific purpose of helping defray the costs of the primary elections shall be deposited to the credit of the primary fund referred to in Section 196 of this code, as amended (Article 13.18, Vernon's Texas Election Code), and shall be applied to payment of the costs of the primary elections. The county chairman and the committee may also use any other available funds toward defraying costs. The remaining costs incurred shall be borne by the state except as otherwise provided by procedures outlined in this code. Within five days after the regular filing deadline, the chairman of the state executive committee shall forward to the secretary of state an itemized listing of all filing fees for statewide offices and for district offices collected on applications filed with him pursuant to Section 190. Within 10 days after the regular filing deadline, the state chairman shall also forward all filing fees for district offices collected by him pursuant to Section 190 to the county chairmen for the counties lying partially or wholly within such district. The amount forwarded to each county chairman shall be equal to the quotient obtained upon dividing the appropriate filing fee by the number of counties in the district of the candidate paying the fee. The state chairman shall retain all filing fees for statewide offices and all filing fees for district offices paid to him under filing deadlines falling after the regular deadline and shall apply them to the sole use of helping defray the costs incurred by the state chairman and the state executive committee in conducting the primary elections.

(f) In each county in which voting machines or an electronic voting system has been adopted, the coun-

ty commissioners court shall permit the county-owned voting machines or voting equipment to be used for the primary elections, including the conduct of absentee voting for the elections, at a charge for use at each election not exceeding $16 per unit for voting machines adopted under Section 79 (Article 7.14, Vernon's Texas Election Code), and not exceeding $3 per unit for voting equipment adopted under Section 80 (Article 7.15, Vernon's Texas Election Code); provided, however, that the county commissioners court shall not be required to provide voting machines or equipment for use in any election precinct in which fewer than 100 votes were cast in the preceding first or general primary or runoff primary election. The maximum amount fixed in this subsection includes the lease price for the use of the unit, and also the charge for its preparation and maintenance if the county provides these services. The county is entitled to reimbursement for the cost of transporting the machines or equipment to and from the polling places if the county provides this service. Where voting is by an electronic voting system, the county may not charge for use of county-owned automatic tabulating equipment at the central counting station; but all actual expenditures incidental and necessary to operation of the central counting station in counting the ballots are payable out of the primary fund.

(g) All expenses of the county clerk in conducting absentee voting in the primary elections, including the employment of additional deputies where necessary, shall be paid by the county. A county is not entitled to reimbursement for any expenditure of county funds in connection with absentee voting or any other services rendered by the county clerk in the primary elections, except for voting machines and/or punch card units used in conducting the absentee voting or any other services for which reimbursement is specifically authorized by law.

(h) The secretary of state is authorized to promulgate rules under which compensation is limited to polling places at which voters of more than one election precinct cast their votes, notwithstanding the provisions of Section 10(g) (Article 2.02(g), Vernon's Texas Election Code). The rules for such common polling places shall provide for adequate public notice by the county chairman to the voters in election precincts affected by the application of such rules and shall provide for an adequate number of polling places taking into account all other relevant factors including distances of polling places from parts of the precincts served, estimated voter turnout, and geographic or other boundaries. However, the secretary of state may not require that there be less than one polling place for each commissioner's precinct for reimbursement purposes.

(i) The secretary of state is authorized to promulgate rules in regard to the maximum number of election clerks who may be compensated for their services at a polling place and the maximum number of other necessary office personnel employed to assist in the performance of the duties placed upon the county chairman, taking into account the number of registered voters in the election precinct or precincts, the number of votes cast in the precinct, county, or state in previous elections, the method of voting, and any other relevant factors. The secretary of state must allow compensation for the presiding judge, alternate judge, and at least one clerk for each precinct. The secretary of state may allow compensation for clerks and other necessary office personnel employed in excess of the applicable limits set by his rules if he finds that the employment of additional clerks or other office personnel was justified by a good cause. The total compensation paid to the county chairman and the secretary of the county executive committee (where the executive committee has named a secretary) in the performance of the duties placed upon the chairman shall not exceed five percent of the amount actually spent in holding the primary elections for the year; provided, however, that in no case shall the total compensation paid be less than $300 nor more than $8,000.

(j) The secretary of state is authorized to promulgate any other reasonable rules which will minimize the costs of the primary elections. The secretary of state shall furnish a copy of all rules promulgated pursuant to this section to each county chairman at least 10 days before the election to which the rules apply.

(k) The county chairman shall account for the primary fund in the manner provided in Section 196 of this code.

(*l*) The secretary of state shall not approve any expenditure of state funds to any county organization that practices discrimination based on race, sex, age, creed, or national origin. The attorney general shall be specifically responsible for the enforcement of this section.

(m) In the event a court of competent jurisdiction declares any portion of this section or any other provision of this code relating to the financing of primary elections to be invalid, the secretary of state shall promulgate reasonable rules for the enforcement of the intent of the legislature, consistent with the court's judgment and the valid portions of the code. Such authority of the secretary of state shall include authority to promulgate a schedule of filing fees, if necessary, and that schedule shall be substituted for the statutory schedule until the legislature enacts a new schedule.

[Amended by Acts 1975, 64th Leg., p. 2046, ch. 675, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1281, ch. 502, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1398, ch. 563, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 240, ch. 127, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 455, ch. 210, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 798, ch. 291, § 86, eff. Sept. 1, 1981.]

[1] Article 6.05c.

[2] So in enrolled bill; word "in" probably omitted.

Section 2 of Acts 1977, 65th Leg., ch. 502, provided:

"If any filing fee amended by this Act is declared invalid, then the amount of such filing fee shall be the amount prescribed by prior law."

Art. 13.08a. State Financing

(a) Each county chairman of each political party in the state which is holding primary elections shall submit to the secretary of state at least 30 days before the first primary election a sworn itemized estimate of the costs for conducting the first primary election in his county, together with a sworn statement of the filing fees and contributions received by the chairman, for such primary elections to and including the date of such sworn statement. The secretary of state shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized or excessive expenditures. Expenditures may be allowed only for those purposes which are properly payable out of the primary fund under existing law as established by the statutes, court decisions, and administrative rulings of this state. Any other provisions of this code notwithstanding, the secretary of state shall pay for expenditures which, in his discretion, are reasonably necessary for the proper conduct and supervision of the primary elections under the provisions of this code. The secretary of state is authorized to set forth guidelines to determine the necessity of expenditures in conducting primary elections. The secretary of state shall subtract from the approved estimate any balance remaining from previous primary elections in the appropriate primary fund, and any amount of the fees and contributions received by the chairman for the conduct and financing of the primary elections for the particular year, and shall certify to the comptroller of public accounts the net estimated amount which is payable out of the state funds, together with the secretary of state's calculation of three-fourths of that amount. The comptroller shall forthwith issue a warrant to the chairman for three-fourths of the certified amount.

(b) In each county in which a second or runoff primary is necessary, within 10 days after the first primary the county chairman shall submit to the secretary of state a sworn itemized estimate of the costs of the runoff primary. As in the case of the first primary, the secretary of state shall notify the chairman of items which he disallows, and shall certify to the comptroller the approved estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount; and the comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the county chairman shall submit to the secretary of state a sworn itemized report of the actual costs, filing fees collected, and contributions received for the primary election or elections (as the case may be) held by his party in his county. If the actual expenditure for an item exceeded the estimated amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the secretary of state shall allow the increase if good cause is shown. The secretary of state shall certify to the comptroller the difference between the total amount payable out of state funds and the amount which has already been transmitted to the chairman. If the total amount of fees and contributions and the payments from the state exceeds the actual expenditures incurred, the chairman shall retain the difference in the primary fund referred to in Section 196 of this code (Article 13.18, Vernon's Texas Election Code). The exact amount of the balance in the primary fund shall be reported to the secretary of state in the actual expense report provided by this section and said amount shall be a beginning balance on hand for the next ensuing primary conducted by the chairman or his successor. If the primary fund is invested as authorized in Section 196, the beginning balance on hand for the next ensuing primary shall be the amount of the primary fund after termination of the investment.

(d) Each county chairman shall deposit to the credit of the primary fund all warrants received by him under this section. Expenses properly incurred by or on behalf of the county executive committee for the conduct of the primary elections shall be paid from the primary fund, in the manner authorized by the committee.

(e) The county chairman is responsible for payment of claims for primary election expenses, and the state is not liable to any claimant for failure of the county chairman to pay a claim. No county chairman shall be personally liable, nor shall a county executive committee be liable for any debts incurred in the administration of the primary but unpaid because the appropriation provided by the legislature was not sufficient to cover the actual expenditures made.

(f) A county chairman may request that the secretary of state approve an expenditure for the purposes of the auditing of the expenditures made out of the primary fund; however, the secretary of state shall not be required to approve such an expenditure. The secretary of state may require an audit of the primary fund, without such a request, when, in his discretion, he believes a valid purpose will be served by such a procedure.

(g) The secretary of state shall prescribe and shall furnish to the county chairmen the forms which they are to use in submitting statements and reports to the secretary of state.

(h) Wherever the word "county chairman" is used in this section, it shall apply to the county chairman or his successor in office, and such county chairman shall not be personally liable except for the misapplication of funds.

(i) In any case in which the secretary of state disallows an item of expenditure under Subsection (a) or (b) of this section, or refuses to allow an increase under Subsection (c) of this section, the county chairman may appeal to the district court of Travis County by filing a petition within 20 days after the date the notification is received from the

secretary of state, and the district court shall allow such expenditures as are properly payable out of the primary fund under existing law. Any item not certified to the comptroller of public accounts within 15 days after its submission to the secretary of state may be considered disallowed for this purpose.
[Amended by Acts 1975, 64th Leg., p. 2050, ch. 675, § 2, eff. Sept. 1, 1975.]

Art. 13.08a–1. State Financing of Primary Expenses of State Executive Committee

(a) If the state executive committee of a political party which is holding primary elections wishes to obtain state financing of the expenses incurred by the state chairman and the committee in conducting the primary elections in addition to the filing fees retained by the state chairman under Section 186 of this code, as amended (Article 13.08, Vernon's Texas Election Code), the state chairman shall submit to the secretary of state at least 30 days before the first primary election a sworn itemized estimate of the costs for conducting the first primary, together with an itemized statement of any filing fees received by him under filing deadlines falling after the regular deadline to and including the date of the estimate and a statement of the amount of any balance remaining from previous primary elections. The secretary of state shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized or excessive expenditures. No expenditure in connection with a party convention or with any party activity other than the conduct of a primary election may be allowed. The secretary of state is authorized to set forth guidelines to determine the necessity of expenditures in conducting primary elections. The secretary of state shall subtract from the approved estimate the amount of the fees collected and retained by the state chairman for that election year and any balance remaining from previous primary elections and shall certify to the comptroller of public accounts the net estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount. The comptroller shall forthwith issue a warrant to the chairman for three-fourths of the certified amount.

(b) When a runoff for any statewide or district office is necessary, within 15 days after the first primary the state chairman shall submit to the secretary of state a sworn itemized estimate of the state executive committee's costs for the runoff primary. As in the case of the first primary, the secretary of state shall notify the chairman of items which he disallows and shall certify to the comptroller the approved estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount; and the comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the state chairman shall submit to the secretary of state a sworn itemized report of the actual costs incurred by the state chairman and the state executive committee in conducting the primary election or elections (as the case may be) and of any filing fees not previously reported. If the actual expenditure for an item exceeded the estimated amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the secretary of state shall allow the increase if good cause is shown. The secretary of state shall certify to the comptroller the difference between the total amount payable out of state funds and the amount which has already been transmitted to the chairman. If the total amount of fees retained and the payments from the state exceed the actual expenditures incurred, the chairman shall retain the difference, to be used as a beginning balance on hand for the next ensuing primary conducted by the party.

(d) In any case in which the secretary of state disallows an item of expenditure under Subsection (a) or (b) of this section or refuses to allow an increase under Subsection (c), the state chairman may appeal to the district court of Travis County by filing a petition within 20 days after the date the notification is received from the secretary of state, and the district court shall allow such expenditures as are properly payable under existing law. Any item not certified to the comptroller of public accounts within 15 days after its submission to the secretary of state may be considered disallowed for this purpose.
[Added by Acts 1977, 65th Leg., p. 1398, ch. 563, § 2, eff. Aug. 29, 1977.]
Former art. 13.08a–1 was repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8(a).

Art. 13.08b. Refund Upon Death of Candidate

No refund of a filing fee shall be made except to a candidate who dies or is declared ineligible to be a candidate for the office before the date of the first or general primary election, in which case the fee paid by the candidate shall be refunded to the candidate or to his estate, as appropriate.
[Amended by Acts 1975, 64th Leg., p. 2052, ch. 675, § 3, eff. Sept. 1, 1975.]

Art. 13.08c. Funding

Funds for the administration of the primary financing provisions of this code shall be supplied from the General Revenue Fund or any special fund which the legislature may direct by the General Appropriations Act. Said funds shall be appropriated for the 1976 primary elections and for subsequent primary elections thereafter, and shall be an amount payable from the General Revenue Fund or any special fund which the legislature may direct to pay all necessary expenses of primary elections approved by the secretary of state under the provisions of this code. The secretary of state is authorized to expend funds appropriated in the General Appropriations Act for the administration of primary elections for seasonal and part-time help, consumable supplies

and materials, travel expenses, professional fees and services, and current and recurring operating expenses in an amount not to exceed $60,000.
[Added by Acts 1975, 64th Leg., p. 2052, ch. 675, § 4, eff. Sept. 1, 1975.]

Art. 13.08c–1 to 13.08c–4. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.09. Balloting at Primaries: Write-in Votes Permitted for Party Offices Only

(a) The vote at all primary elections shall be by official ballot, which shall conform to the provisions of this section and other provisions of this code relating to the official ballot for a primary election that are applicable to the method of voting used in the election. The provisions of this section which are expressed in terms applicable to paper ballots shall be construed in a manner consistent with the method of voting used in the election whenever some other method is used. The name of the party shall be printed at the head of the ballot, and under such head shall be printed the names of all candidates, those for each nomination being arranged in the order determined by the county executive committee as provided in Section 195 of this code,[1] beneath the title of the office for which the nomination is sought.

[See Compact Edition, Volume 2 for text of (b) to (d)]

[Amended by Acts 1977, 65th Leg., p. 660, ch. 247, § 8, eff. Aug. 29, 1977.]

[1] Article 13.17.

Art. 13.12. Application for Place on Ballot; Filing; Deadline; Extension; Withdrawal; Notice

(a) The application to have the name of any person affiliating with a party placed on the official ballot for a general primary as a candidate for the nomination of such party for any office for which a nomination may be made at such primary shall be governed by the rules stated in this section.

(b) Such application shall be in writing, indicating the office for which nomination is sought and whether for a full term or for an unexpired term, signed and duly acknowledged by the person desiring such nomination, or by twenty-five qualified voters. It shall state the occupation, county of residence, and post-office address of such person, and if made by him shall also state his age. If the application is made by qualified voters, there shall be endorsed on the application or filed in a separate instrument, before the deadline for filing applications, a statement signed by the candidate showing his consent to such candidacy.

(c) The application shall be filed with the state chairman in the case of all statewide offices and all district offices which are filled by the choice of voters residing in more than one county. It shall be filed with the county chairman of the particular county in the case of county and precinct offices and district offices which are filled by the choice of voters residing in only one county or less than one county. Except as provided in Subsection (d) of this section, the application shall be filed not later than 6 p. m. on the first Monday in February preceding such primary.

(d) The filing deadline stated in Subsection (c) of this section shall be extended for the particular party primary and office involved, as provided in this subsection:

(i) if between the fifth day preceding the filing deadline stated in Subsection (c) and the 45th day preceding the general primary, both dates included, any candidate for an office dies, if the candidate had complied with all prerequisites for having his name placed on the ballot which he was required to perform by the date of his death;

(ii) if between the filing deadline stated in Subsection (c) and the 45th day preceding the general primary, both dates included, any candidate who is seeking nomination to an office which he then holds withdraws or is declared ineligible for election to that office; or

(iii) if between the filing deadline stated in Subsection (c) and the 45th day preceding the general primary, both dates included, the only candidate who has filed for a particular office in the primary of that party withdraws or is declared ineligible. In the enumerated circumstances, the name of the deceased, withdrawn, or ineligible candidate shall not be printed on the ballot, and applications for that party's nomination for that office may be filed not later than 6 p. m. on the 15th day following the death, withdrawal, or declaration of ineligibility of the candidate; provided, however, that where the death, withdrawal, or declaration of ineligibility occurs less than 15 days before the 40th day preceding the primary, the deadline for filing shall be 6 p. m. on the 40th day preceding the primary. Notwithstanding the provisions of Subsection (e) of this section, an application which is not received by the chairman until after 6 p. m. on the 40th day shall not be timely, and applications mailed but not actually received by that time shall not be accepted for filing.

(e) Except as otherwise provided in Subsection (d), an application filed under either Subsection (c) or (d) of this section shall be considered filed if sent to the proper chairman at his post-office address by registered or certified mail from any point in this state not later than the day on which the filing deadline falls, as shown by the postmark, provided, however, that if the deadline falls on a Saturday, Sunday, or holiday observed by the post office, it must be postmarked not later than the next regular business day for the post office. Any application

not received by the chairman before the deadline does not comply with this law unless it has been mailed by registered or certified mail as herein provided, and it shall not be sufficient to send the application by any other type of mail unless it is delivered before the deadline.

(f) A candidate may withdraw by filing with the chairman with whom his application was filed, a signed request, duly acknowledged by him, that his name not be printed on the primary ballot. Whenever a filing period is extended by the death, withdrawal, or ineligibility of a candidate, each county chairman with whom the candidate's application was filed shall give notice of the opening of the filing and of the deadline to file by mailing or delivering a news release within 48 hours after his first knowledge of the death, withdrawal, or ineligibility, to each newspaper, as defined in Article 28a, Vernon's Texas Civil Statutes, as amended, which is published in the county. Where the application was filed with the state chairman, he shall give notice in like manner by mailing or delivering the release to at least three daily newspapers which maintain news representatives in the State Capitol. The failure of a county chairman or state chairman to comply with this requirement shall be ground for his removal from office by the committee of which he is chairman.

(g) A candidate shall not be permitted to withdraw after the 45th day preceding the general primary. If after the 45th day preceding the general primary a candidate dies or is declared ineligible, the procedure detailed in Section 104 of this code [1] shall be followed. Except as provided in that section, the name of a deceased, withdrawn, or ineligible candidate shall not be printed on the ballot.

(h) Within ten days after the first Monday in February, the state chairman shall file with the Secretary of State, and each county chairman shall file with the county clerk of his county a list containing the names of all candidates, as the names are to appear on the primary election ballot, arranged by office for which nomination is sought, whose applications have been timely received and the candidates' addresses, as entered on the applications. In like manner each chairman shall file, within three days after any extended filing deadline under Subsection (d) of this section, a supplemental list of candidates whose applications were timely received after the original list was prepared. Each county chairman shall forward to the chairman of the state executive committee a copy of each list which he files with the county clerk.

(i) On the second Monday in March preceding each general primary, the state committee shall meet at some place to be designated by its chairman, who shall not less than three days prior to such meeting notify by mail all members of the committee and all persons whose names have been requested to be placed upon the official ballot of such designation. Such committee at this meeting by resolution shall direct their chairman to certify to each county chairman the names of such candidates as shown by the applications received by him. Copies of such certificates shall be immediately furnished to each newspaper in the state desiring to publish same, and one copy shall at once be mailed to the chairman of the executive committee of each county.

(j) The terms of this law shall apply to the county chairman and precinct committeemen, and the names of such candidates shall not be printed on the primary ballot unless such application shall have been filed as provided herein.

[Amended by Acts 1977, 65th Leg., p. 883, ch. 332, § 3, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 583, ch. 272, § 1, eff. Aug. 27, 1979.]

[1] Article 8.22.

Art. 13.12a. Nomination and Election to Fill Unexpired Term

(a) Offices to which applicable; occurrence of vacancy. The provisions of this section shall govern nomination for and election to unexpired terms which are to be filled by election at the general election, in state, district, county and precinct offices where the vacancy occurs by reason of the creation of a new office or the death, resignation, or removal from office of the incumbent in an existing office, and the length of the unexpired term to be filled at the election extends beyond the first day of January following the election. This section does not apply to offices, vacancies which are to be filled by special election, nor does it apply to the office of United States Senator, which is governed by Section 177 of this code.[1] For the purpose of this section, where a new office is created to come into existence at a date subsequent to the effective date of the statute or date of entry of the order creating it, the vacancy shall be deemed to occur as of the effective date of the statute or date of entry of the order, and where the incumbent of an office has submitted a resignation to become effective at a future date, the vacancy shall be deemed to occur upon acceptance of the resignation.

(b) Nominations by parties holding primary elections. For any party holding primary elections for nominating candidates for the ensuing general election, nominations for unexpired terms shall be made in accordance with the following provisions.

(1) If the vacancy occurs more than five days prior to the regular deadline for filing an application for a place on the general primary ballot, as provided in Section 190 of this Code,[2] nomination for the unexpired term shall be made by primary election in the same manner and under the same rules applicable to nominations for full terms.

(2) If the vacancy occurs on or after the fifth day preceding the regular filing deadline and on or before the 45th day before the day of the general primary election, nomination for the unexpired term shall be made by primary elec-

tion, and candidates shall have until the end of the 40th day preceding the day of the general primary in which to file applications for a place on the primary ballot. The applications must be received and filed in the office of the proper chairman before the deadline, and applications mailed but not actually received before the deadline shall not be accepted for filing. Except as otherwise provided herein, the application shall conform to the requirements of Section 190 of this Code and shall be accompanied by the filing fee or petition provided for in Section 186 of this Code.[3] Immediately following the deadline for filing applications, the state chairman shall certify to the county chairman the names of candidates, if any, who have filed applications with him and paid their filing fee or filed a petition in accordance with this paragraph. Whenever the name of more than one candidate for the same office is to be placed on the ballot pursuant to the provisions of this paragraph, the county chairman shall call a meeting of the primary committee, in time to allow printing of the ballots before commencement of absentee voting in the general primary, and the primary committee shall determine by lot, in open meeting, the order in which the names of the candidates shall be printed on the ballot. If there is not more than one candidate for the same office, the county chairman shall make any necessary changes in the ballot as previously made up by the primary committee.

(3) If the vacancy occurs after the 45th day preceding the day of the general primary and on or before the 45th day before the day of the general election, the state executive committee in the case of state offices, the appropriate district executive committee in the case of district offices, the county executive committee in the case of county offices, and the appropriate precinct committee in the case of precinct offices, shall have the power to name a nominee for such office, and a nomination shall not be made by any other method; provided, however, that in any case where a district committee empowered to name a nominee fails to do so because it is unable to agree upon a nominee by majority vote, the state executive committee of that political party may name a candidate for such office and certify the name of the nominee to the proper officer.

(c) Nominations by parties not holding primary elections. For any party which is authorized to make nominations by party conventions, as provided in this Code, a nomination for the unexpired term shall be made at the appropriate party convention having power to make nominations for the particular office if the vacancy occurs more than two days prior to the date on which the convention is held. If the vacancy occurs on or after the second day preceding the convention and on or before the 45th day before the day of the general election, the appropriate executive committee of the party shall have the power to name a nominee, and a nomination shall not be made by any other method.

(d) Nominations by executive committees. The nomination must be made and certified to the proper officer not later than the 40th day before the day of the general election. Nominations for state offices and for district offices (including districts composed of only one county or part of one county) shall be certified to the Secretary of State, and nominations for county and precinct offices shall be certified to the county clerk. The certificate of nomination shall be signed and acknowledged by the chairman of the committee making the nomination, and shall set forth the name of the nominee, the office for which he was nominated, and when, where, by whom, and how the nomination was made.

(e) Independent and nonpartisan candidates. If the vacancy occurs on or before the date of the second primary election, applications of independent or nonpartisan candidates must be filed in accordance with the provisions of Section 227 of this Code,[4] not later than thirty days after the second primary election day. If the vacancy occurs after the second primary election day, and on or before the 45th day before the day of the general election, independent or nonpartisan candidates may file applications in the manner provided in Section 227, except that the application shall be filed not later than the 40th day before the day of the general election. No person shall sign an application prior to the occurrence of the vacancy, and any signature before that time shall be void.

(f) Write-in candidates. If the vacancy occurs on or before the 45th day before the day of the general election, the title of the office shall be printed on the ballot for the general election regardless of whether any nominations have been made for the unexpired term, and each voter may write in the name of the candidate of his choice.

(g) When election not to be held. If a vacancy occurs after the 45th day before the day of the general election, no one shall be elected to the unexpired term at that election, and the person appointed to fill the vacancy shall continue to hold office until the next succeeding general election and until a successor has been elected and has qualified.

(h) In all nominations made by an executive committee under this section or under Section 233 of this code,[5] or under any other provision of law, a majority of the members of the committee must participate in making the nomination, and all nominations must be made by a majority vote of those members participating in the nomination.

[Amended by Acts 1975, 64th Leg., p. 2053, ch. 675, § 6, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 885, ch. 332, § 4, eff. Aug. 29, 1977.]

[1] Article 12.02.
[2] Article 13.12.
[3] Article 13.08.
[4] Article 13.50.
[5] Article 13.56.

Art. 13.13. Certificates to County Committee

At the meeting of the county executive committee provided for in Section 195 of this Code,[1] the county chairman shall present to the committee the certificates of the chairman of the state comittee, showing the names of all persons whose names are to appear on the official ballot as candidates for state-wide offices and the office of Justice of the Court of Appeals.

[Amended by Acts 1981, 67th Leg., p. 798, ch. 291, § 87, eff. Sept. 1, 1981.]

[1] Article 13.17.

Art. 13.14. Primary Committee

Subject to the approval of the committee, the county chairman shall appoint a subcommittee of five (5) members to be known as the primary committee, of which he shall be ex-officio chairman. This subcommittee shall meet at any time on or after the day of the meeting of the county executive committee held under Subsection (a), Section 195 of this code, as amended (Article 13.17, Vernon's Texas Election Code), and before the fourth Tuesday in March and make up the official ballot for such general primary in such county, in accordance with the certificates of the State and district chairman and the request filed with the county chairman, and place the names of the candidates for nomination for State, district, county and precinct offices thereon in the order determined by the county executive committee as herein provided.

[Amended by Acts 1979, 66th Leg., p. 237, ch. 124, § 1, eff. Aug. 27, 1979.]

Arts. 13.15, 13.16. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.18. County Executive Committees

[See Compact Edition, Volume 2 for text of 1 to 4]

Subd. 5. The funds received by the county executive committee from contributions, fees and assessments paid by candidates, and expenses paid by the secretary of state shall constitute the primary fund, and any surplus remaining in the fund after payment of the necessary expenses for holding the primary elections for that year shall be retained in the primary fund, and the balance reported to the secretary of state as required by Section 186a of this code.[1] The county executive committee is authorized to invest the primary fund by deposit with any federally insured institution; provided, however, that the required length of time of the deposit shall not extend beyond 30 days prior to the next general primary election.

Subd. 6. In cases where there is no county party organization in a county, the state executive committee may, by a majority vote of the total membership of the committee, appoint a qualified voter of that county to serve as the acting county chairman until such time as his successor is elected and assumes office under the provisions of Subdivision 1 of this section. A temporary county chairman appointed under the provisions of this subdivision shall call a meeting of the voters of that county, at which time a temporary county executive committee may be elected by the voters participating in the meeting, with such committee to be empowered to fulfill all the duties placed upon a county executive committee by law until such time as a permanent executive committee is elected by the voters in the party's primary.

[Amended by Acts 1975, 64th Leg., p. 2052, ch. 675, § 5, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1702, ch. 677, § 1, eff. Aug. 29, 1977.]

[1] Article 13.08a.

Art. 13.18a. District and Precinct Executive Committees

(1) For a district composed of more than one county or part thereof, the county chairman of each county wholly within the district shall be ex officio a member of the district executive committee for each such district of which his county is a part. When a part of a county is joined with one or more other counties or parts of counties to form a district, at a meeting of the county executive committee on the second Monday in February preceding each general primary election the precinct chairman of the election precincts included within such part of the county shall elect one of their number to serve as district committeeman; and a district committeeman shall be selected in this manner for each type of district and for each district for which any part of the county less than the whole county is joined with territory in another county or counties. The district committee thus formed shall elect its own chairman. Whenever a vacancy occurs in a district office and the district committee is empowered to name a nominee or a substitute nominee, or whenever for any other reason it becomes necessary for the district committee to meet and organize, the chairman of the state executive committee shall call a meeting of the district committee by giving notice to each member of the time and place where such meeting will be held and of the purpose of the meeting. The state chairman shall designate one member as temporary chairman, who shall call the meeting to order and preside until the committee elects its own chairman. The chairman elected by the committee shall continue to act as chairman during the remainder of that term of office, and shall call any subsequent meetings of the committee which are held during that time.

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

(3) For a district composed of only a part of one county, the precinct chairmen of the election precincts included within the district shall constitute the district executive committee. At the meeting of the county executive committee on the second Monday in February preceding each general primary elec-

tion, the precinct chairman within the district shall elect one of their number to serve as chairman of the district executive committee; and a chairman shall be selected in this manner for each type of district and for each district composed of only a part of the county.

[See Compact Edition, Volume 2 for text of (4) and (5)]

[Amended by Acts 1975, 64th Leg., p. 2053, ch. 675, § 7, eff. Sept. 1, 1975.]

Art. 13.19. Supplies

The executive committee shall have a general supervision of the primary in such county and shall be charged with the full responsibility for the distribution to the presiding judge of all supplies, including but not limited to the number of voter registration applications, necessary for holding same in each election precinct. If the duly appointed presiding officer shall fail to obtain from the executive committee the supplies for holding such election, such committee shall deliver the same to the precinct chairman for such precinct, and, if unable to deliver the same to such presiding officer or precinct chairman not less than twenty-four (24) hours prior to the time of opening the polls for such primary, such committee shall deliver the same to any qualified voter of the party residing in such precinct, taking his receipt therefor, and appointing him to hold such election in case such presiding officer or precinct chairman shall fail to appear at the time prescribed for opening the polls.

[Amended by Acts 1977, 65th Leg., p. 1216, ch. 468, § 6, eff. Aug. 29, 1977.]

Art. 13.21. Repealed by Acts 1977, 65th Leg., p. 594, ch. 209, § 8, eff. Aug. 29, 1977

Art. 13.27. Canvass by State Executive Committee

(a) The chairman of the executive committee for each county shall immediately prepare, within twenty-four hours after the vote in the primary election has been canvassed by the county executive committee as provided in Section 202 of this code,[1] a tabulated statement of the votes cast in his county for each candidate for each nomination for a state, district, county or precinct office, and of those cast for county chairman and precinct chairman, and within that twenty-four-hour period deliver such statement as to a state or district office, in a sealed envelope to the chairman of the state executive committee by registered or certified mail or any other method of delivery in which the sender receives a receipt from the carrier indicating the date of deposit with the carrier. The state chairman shall present the same to the state executive committee as herein provided.

(b) On the second Thursday following the day of the general primary in May, the state executive committee shall meet at a place selected at the meeting held on the second Monday in March preceding, and shall open and canvass the returns of the election as to candidates for state and district offices, as certified by the various county chairmen, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the state committee and certified by its chairman. In the event any candidate for a district office received in the general primary the necessary vote to nominate, within twenty days after the canvass the chairman of the state executive committee shall certify the name of such candidate to the Secretary of State, to be printed upon the official ballot for the general election as a candidate of the party for the office to which he was nominated. If such returns show that for any state or district office no candidate received a majority of all the votes cast for all candidates for such office, the committee shall prepare a list of the two candidates receiving the highest vote for each office for which no candidate received a majority and shall certify same to the county chairmen of the several counties to be placed upon the official ballot as candidates for office at the second primary election to be held on the first Saturday in June thereafter.

(c) Not later than the third Saturday in June of each election year, the state executive committee shall meet at the call of the chairman fixing the date of the meeting, at a place selected at the meeting held under Subsection (b) of this section, and shall open and canvass the returns of the second primary election as to candidates for state and district offices as certified by the various county chairmen to the state chairman, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the state committee and certified by its chairman. Within twenty days thereafter, the chairman of the state executive committee shall certify to the Secretary of State, the names of the district candidates receiving the highest vote, to be placed on the general election ballot.

[See Compact Edition, Volume 2 for text on (d)]

[Amended by Acts 1979, 66th Leg., p. 238, ch. 125, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 239, ch. 126, § 1, eff. Aug. 27, 1979.]

[1] Article 13.24.

Art. 13.30. Contest of Primary Nominations

[See Compact Edition, Volume 2 for text of (1) to (3)]

(4) The filing of the suit shall be immediately called to the attention of the district judge by the clerk of said court. If the district court be then in session, the judge thereof shall set the said contest for trial at a date not more than ten (10) days from the date of the filing of said contest. If the district court be not in session at said time, the judge thereof shall order a special term of said court to be convened not later than ten (10) days from the filing of such contest for the hearing of same.

[See Compact Edition, Volume 2 for text of (5) to (10)]

(11) When the District Court shall have decided the contest, unless notice of appeal to the Court of Appeals be given and an appeal bond filed within five (5) days, the said Court shall certify its findings to the officers charged with the duty of providing the official ballot for the ensuing election for observance in the preparation of the ballot for that particular party. The trial Court shall further fix a time within which the record in the trial Court shall be filed in the appellate Court, and make all such other orders in the cause as in his discretion may be necessary and expedient in order to expedite such appeal.

(12) In all contests for party nominations filed in the district courts under authority of this Act, either party thereto may appeal to the Court of Appeals for that particular Supreme Judicial district, which appeal shall be advanced upon the docket of said court and shall have precedence over all other cases. Provided, that no appeal in such cases shall be dismissed as moot merely because of possible interference with the printing of the official ballot unless the appellant has been guilty of negligence in perfecting and prosecuting such appeal, but such appellate court shall retain jurisdiction of such appeal and expeditiously dispose of same. Upon decision of the appeal by the Court of Appeals no motion for rehearing shall be filed except with approval of the court given within three (3) days after such decision. The Supreme Court of Texas shall have no jurisdiction to review any election contest filed under this Act by writ of error, certified question, or any other manner.

[Amended by Acts 1981, 67th Leg., p. 799, ch. 291, §§ 88, 89, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2646, ch. 707, § 4(41), eff. Aug. 31, 1981.]

Art. 13.34. Precinct, County, and Senatorial District Conventions

(a) On the second Saturday after the general primary election day in each election year, there shall be held in each county a county convention of each party holding primary elections; provided, however, that except as provided in the last sentence of this subsection, whenever the territory of a county forms all or part of more than one state senatorial district, in lieu of the county convention in such county there shall be held on the day stated above a convention (hereinafter called senatorial district convention) in each part of the county constituting all or part of each of such senatorial districts. Each county convention or senatorial district convention shall be composed of one delegate from each election precinct in such county or senatorial district or part thereof for each twenty-five votes, or major fraction thereof, cast for the party's candidate for Governor in such precinct at the last preceding general election, which delegate or delegates shall be elected by the qualified members of the party in each precinct at precinct conventions to be held on the general primary election day. In case at the preceeding general election there were cast for such candidate for Governor less than twenty-five votes in any precinct, then all such precincts shall elect one delegate. Where the boundaries of an election precinct have been changed or a new precinct formed since the last general election, the county executive committee shall allocate to each such precinct the number of delegates to be elected in that precinct, and may use any fair and reasonable method for making the allocation. However, notwithstanding the provisions of this subsection, in any county which forms all or part of two senatorial districts, the less populous of which has a population of less than 50,000 persons, according to the last preceding federal census, there shall be held one county convention in lieu of the two senatorial district conventions which would otherwise be required by this subsection.

[Amended by Acts 1981, 67th Leg., p. 64, ch. 28, § 1, eff. Aug. 31, 1981.]

Art. 13.34a. Refusing Employee Privilege of Attending Political Convention

It shall be unlawful for any employer to refuse to an employee the privilege of attending a precinct convention of a political party with which the employee is affiliated or is eligible to affiliate or attending a county, district, or state convention to which the employee is a duly constituted delegate. An employer shall not be required to compensate an employee for the time the employee is absent for the purpose of attending a political convention, but the employee shall not be subjected to any other penalty or deduction of wages because of the exercise of such privilege. Any employer who violates any provision of this section shall be fined not to exceed five hundred dollars.

[Amended by Acts 1981, 67th Leg., p. 1808, ch. 397, § 1, eff. Aug. 31, 1981.]

Art. 13.34b. Participation in Conventions by Persons Voting on List of Cancelled Voter Registration Certificates

Notwithstanding any other provision of this code, any person whose name appears on the list of cancelled voter registration certificates and who has voted in the primary election of a party may participate in any part of the convention process of such party on the same basis as any other qualified member of the party.

[Added by Acts 1979, 66th Leg., p. 1670, ch. 698, § 1, eff. Aug. 27, 1979.]

Art. 13.35. Date and Place for State Convention

At the meeting of the State Executive Committee held on the second Monday in March preceding each general primary election the said committee shall announce the date, hour, and place where the State convention of the party shall be held, said date to be any day between the first Tuesday and the last

Saturday, inclusive in September, 1980, and each two (2) years thereafter; provided, however, that no decision on the date, hour, and place of holding said convention be made prior to the state convention at which the members of said committee were elected. The chairman of the State executive committee shall file with the Secretary of State a notice of the date, hour, and place of holding the State convention and a copy of such notice shall be mailed to the county chairman of that party in each county in the State at least ten (10) days before the convention is held.
[Amended by Acts 1975, 64th Leg., p. 2099, ch. 683, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 584, ch. 273, § 1, eff. Aug. 27, 1979.]

Art. 13.38. State Convention

The state convention to announce a platform of principles and to announce nominations for Governor and other state offices, held by a political party making nominations by primary election, shall meet as provided in Section 213 of this Code,[1] and shall remain in session from day to day until all nominations are announced and the work of the convention is finished. The convention shall elect a chairman and a vice-chairman of the state executive committee, one of whom shall be a man and the other a woman, and sixty-two members thereof, two from each senatorial district of the state, one of whom shall be a man and the other a woman, the members of the committee to be those who shall be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold office until his successor is elected; and, in case of a vacancy, a majority of the members of the committee shall fill the vacancy by electing some eligible person thereto, but such person shall be of the same sex as the vacating member and from the same senatorial district.

At any meeting of the state executive committee a person cannot hold a proxy or participate in such meeting unless he is a resident of the same senatorial district as the member giving the proxy, and no person shall be permitted to hold or vote more than one proxy.
[Amended by Acts 1975, 64th Leg., p. 2100, ch. 683, § 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 584, ch. 273, § 2, eff. Aug. 27, 1979.]

[1] Article 13.35.

Art. 13.45. Nominations by Parties Receiving Less Than 20 Percent of Vote for Governor

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

Parties Receiving Less Than Two Percent of Vote for Governor

Subd. 2. (a) Any political party whose nominee for governor received less than two percent of the total votes cast for governor in the last preceding general election for that office, or any new party, or any previously existing party which did not have a nominee for governor in the last preceding general election for that office, may nominate candidates by conventions as provided in Sections 224 and 225 of this code,[1] but in order to have the names of its nominees printed on the general election ballot there must be filed with the secretary of state, within 30 days after the date for holding the party's state convention, the lists of participants in precinct conventions held by the party in accordance with Sections 222a and 224 of this code,[2] signed and certified by the temporary chairman of each respective precinct convention, listing the names, addresses (including street address or post-office address), and registration certificate numbers of qualified voters attending such precinct conventions in an aggregate number of at least one percent of the total votes cast for governor at the last preceding general election for that office; or if the number of qualified voters attending the precinct conventions is less than that number, there must be filed along with the precinct lists a petition requesting that the names of the party's nominees be printed on the general election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least one percent of the total votes cast for governor at the last general election for that office. The address and registration certificate number of each signer shall be shown on the petition. No person who, during that voting year, has voted at any primary election or participated in any convention of any other party shall be eligible to sign the petition.

(b) The following statement shall appear at the head of each page of the petition: "I know the contents of this petition, requesting that the names of the nominees of the _____ Party be printed on the ballot for the next general election. I am a qualified voter at the next general election under the constitution and laws in force, and during the current voting year I have not voted in any primary election or participated in any convention held by any other political party, and I will not vote in a primary election or participate in a convention of any other party during the remainder of this voting year." The petition may be in multiple parts. To each part of the petition shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the petition, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters. The petition may not be circulated for signatures until after the date of the party's precinct conventions. Any signatures obtained on or before that date are void.

(c) Any person who signs a petition after having voted in a primary election or participated in a convention of any other party during the same vot-

ing year, or any person who votes in a primary election or participates in a convention of any other party during the same voting year after having signed the petition, is guilty of a misdemeanor and upon conviction shall be fined not less than $100 nor more than $500.

(d) The chairman of the state executive committee shall be responsible for forwarding the precinct lists and petition to the secretary of state.

(e) At the time the secretary of state makes his certifications to the county clerks as provided in Section 3 of this code,[3] he shall also certify to the county clerks the names of parties subject to this subdivision which have complied with its requirements, and the county clerks shall not place on the ballot the names of any nominees of such a party which have been certified directly to them unless the secretary of state certifies that the party has complied with these requirements.

[Amended by Acts 1975, 64th Leg., p. 2094, ch. 682, § 21, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1702, ch. 677, § 2, eff. Aug. 29, 1977.]

[1] Articles 13.47 and 13.48.
[2] Articles 13.47 and 13.48.
[3] Articles 13.45a and 13.47.

Art. 13.45a. Regulation of Party Affairs and Conventions

Subd. 1. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

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

[Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.]

Art. 13.46. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 13.47a. Application for Nomination; Affidavit of Intent to Run; Filing

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

Sec. 3. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

Sec. 4. The requirements of Section 1 do not apply to candidates for unexpired terms where the vacancy in office occurs subsequent to the tenth day preceding the regular deadline for filing applications for a place on a primary election ballot as prescribed in Paragraph 2 of Section 190 of this code (Article 13.12, Vernon's Texas Election Code).

[Amended by Acts 1975, 64th Leg., p. 2095, ch. 682, §§ 22, 28, eff. Sept. 1, 1975.]

Art. 13.50. Nonpartisan or Independent Candidate

Subd. 1. This section applies to nonpartisan or independent candidates for federal, state, district, county, and precinct offices in the general election provided for in Section 9 of this code (Article 2.01, Vernon's Texas Election Code). A person may run as a nonpartisan or independent candidate for any such office, other than the offices of president, vice president, and presidential elector, by complying with this section and other applicable provisions of this code.

Subd. 2. (a) As a condition precedent to having a candidate's named printed on the official ballot as an independent candidate under this section, in addition to the application required by Subdivision 3 of this section, the person must file, by the deadline provided in Section 190 of this code (Article 13.12, Vernon's Texas Election Code), a declaration of his intent to run as an independent candidate. The declaration shall state the person's name, occupation, county of residence, post office address, age, and the office for which he intends to run, and shall be signed and duly acknowledged by the person desiring to be a candidate. It shall be filed with the officer with whom the application required by Subdivision 3 of this section is filed.

(b) The requirements of Paragraph (a) of this subdivision do not apply to candidates for unexpired terms where the vacancy in office occurs subsequent to the tenth day preceding the regular deadline for filing application for a place on a primary election ballot as prescribed in Section 190 of this code (Article 13.12, Vernon's Texas Election Code), and do not apply to candidates for any office for which the filing deadline in a primary election is extended under the provisions of Paragraph 2a of Section 190. However, an independent candidate who is not required to file a declaration of intent under Paragraph (a) of this subdivision must file with the secretary of state or the county judge, as the case may be, his written consent to become a candidate, within 30 days after the second primary election day.

Subd. 3. The name of a nonpartisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the proper officer, as herein provided, and delivered to him within 30 days after the second primary election day, as follows:

If for an office to be voted for throughout the state, the application shall be signed by one per cent of the entire vote of the state cast for Governor at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of more than one county, the application shall be signed by three per cent of the entire vote cast for Governor in such district at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of only one county or part of one county, the application shall be signed by five per cent of

the entire vote cast for Governor in such district at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a county office, the application shall be signed by five per cent of the entire vote cast for Governor in such county at the last preceding gubernatorial general election, and shall be addressed to the county judge.

If for a precinct office, the application shall be signed by five per cent of the entire vote cast for Governor in such precinct at the last preceding gubernatorial general election, and shall be addressed to the county judge.

Notwithstanding the foregoing provisions, the number of signatures required on an application for any district, county, or precinct office need not exceed 500.

Subd. 4. No application shall contain the name of more than one candidate. No person shall sign the application of more than one candidate for the same office; and if any person signs the application of more than one candidate for the same office, the signature shall be void as to all such applications. No person shall sign such application unless he is a qualified voter, and no person who has voted at either the general primary election or the runoff primary election of any party shall sign an application in favor of anyone for an office for which a nomination was made at either such primary election. An application may not be circulated for signatures until the day after the general primary election day, or if a runoff primary election is held for the office sought by the applicant, until the day after the runoff primary election day. A signature obtained before the day an application may be circulated is void.

Subd. 5. In addition to the person's signature, the application shall show each signer's address, the number of his voter registration certificate, and the date of signing.

Subd. 6. Any person signing the application of an independent candidate may withdraw and annul his signature by delivering to the candidate and to the officer with whom the application is filed (or is to be filed, if not then filed), his written request, signed and duly acknowledged by him, that his signature be cancelled and annulled. The request must be delivered before the application is acted on, and not later than the day preceding the last day for filing the application. Upon such withdrawal, the person shall be free to sign the application of another candidate for the same office.

[Amended by Acts 1975, 64th Leg., p. 2095, ch. 682, § 23, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1042, ch. 472, § 1, eff. Aug. 27, 1979.]

Art. 13.51. Signer's Statement on Application; Verification

The following statement shall appear at the head of each page of the application: "I know the contents of this application; I have not participated in the general primary election or the runoff primary election of any party which has nominated, at either such election, a candidate for the office for which I desire _____ (here insert the name of the candidate) to be a candidate; I am a qualified voter at the next general election under the Constitution and laws in force and am signing this application of my own free will." The application may be in multiple parts. To each part of the application shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the application, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the application, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. An application so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters.

[Amended by Acts 1977, 65th Leg., p. 1703, ch. 677, § 3, eff. Aug. 29, 1977.]

Art. 13.52. Consent to Run

Upon receipt of an application which conforms to the above requirements, the Secretary of State shall issue his instruction to the county clerks of the state or of the district, as the case may require, and the county judge shall issue his instruction to the county clerk of the county, directing that the name of the candidate on whose favor the application is made shall be printed on the official ballot in the independent column under the title of the office for which he is a candidate; provided, that any candidate who is required by Subdivision 2, Section 227 of this code (Subdivision 2, Article 13.50, Vernon's Texas Election Code) to file a statement of intent to become an independent candidate must have filed such statement in compliance with the provisions of that subdivision, and any candidate not required to file such statement must file with the Secretary of State or the county judge, as the case may be, his written consent to become a candidate, within 30 days after the second primary election day.

[Amended by Acts 1975, 64th Leg., p. 2097, ch. 682, § 24, eff. Sept. 1, 1975.]

Art. 13.54. Nominations by Parties Without State Organization

Any political party without a state organization desiring to nominate candidates for county and precinct offices only may nominate such candidates therefor by a county convention held on the second Saturday in May of the election year, which convention shall be composed of delegates from the various

election precincts in the county, elected therein at conventions held in such precincts on the first Saturday in May. All nominations made by any such parties shall be certified to the county clerk by the chairman of the county committee of such party, and, after taking the same course as nominations of other parties so certified, shall be printed on the official ballot in a separate column, headed by the name of the party; provided, a written application for such printing shall have been made to the county judge not later than June 30 following the conventions, signed by qualified voters of the county equal in number to at least three per cent of the entire vote cast for governor in such county at the last general election for that office. No person who is affiliated with any other political party is eligible to sign the application. The application shall contain the following information with respect to each person signing it: his address, the number of his voter registration certificate, and the date of signing. The application may not be circulated for signatures until after the date of the precinct conventions, and any signatures obtained on or before that date are void. The application may be in multiple parts. To each part there shall be attached an affidavit of the person who circulated it, who must be a registered voter in the county, stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the application, and that to his best knowledge and belief each signature is the genuine signature of the person whose name is signed. An application so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are qualified voters of the county.

[Amended by Acts 1975, 64th Leg., p. 2097, ch. 682, § 25, eff. Sept. 1, 1975.]

Art. 13.56. Death, Withdrawal, or Ineligibility of Candidate; Filling Vacancy in Nomination

(a) A nominee of a political party may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed and to the chairman of the executive committee having the power to fill a vacancy in such nomination, not later than the 45th day before the day of the general election, a declaration in writing, signed by him and acknowledged before some officer authorized to take acknowledgments, whereupon the officer receiving the declaration shall take the necessary action to have the name of the nominee removed from the ballot. A nominee may not decline the nomination after the 45th day before election day.

(b) If on or before the 45th day before the day of the election, a nominee dies or declines the nomination, or is declared ineligible to be elected to or to hold the office for which he is a candidate, the executive committee of the party for the state, district, county, or precinct, as the office to be nominated may require, may nominate a candidate to supply the vacancy. A certificate of such nomination, signed and duly acknowledged by the chairman of the executive committee, must be filed with the officer with whom the certificate of the original nomination was filed and must set forth the name of the original nominee, the cause of the vacancy, the name of the new nominee, the office for which he was nominated, and when, where, by whom, and how he was nominated. The certificate must be filed not later than the 40th day before the day of the election. The officer with whom the substitute nomination is filed shall immediately take the necessary action to cause the name of the new nominee to be placed on the ballot.

(c) In any case where a district committee is empowered to name a nominee and fails to do so, the state executive committee may name a candidate for such office and certify the name to the proper officer to have the name printed on the official ballot for the general election. The certification must be filed not later than the 5th day after the deadline for certification by the district committee and in any event not later than the 40th day before election day.

(d) If a party nominee dies or declines the nomination or is declared ineligible after the 45th day preceding the day of the general election, the procedure set out in Section 104 of this code [1] shall be followed.

(e) An independent candidate may withdraw his candidacy and cause his name to be kept off the ballot by delivering to the officer with whom the application requesting his name to be placed on the ballot was filed, not later than the 40th day before election day a declaration in writing, signed and duly acknowledged by him, whereupon the officer with whom the declaration is filed shall immediately take the necessary action to cause the candidate's name to be removed from the ballot. A candidate may not withdraw after the 40th day before election day.

(f) If an independent candidate in the general election for state and county officers withdraws or is declared ineligible before the 44th day before election day, his name shall not be printed on the ballot. If he dies after completing all the procedural requirements for candidacy and before the 44th day before election day, his name shall be printed on the ballot if he was the incumbent in the office for which he was a candidate or if no other candidate's name is to be printed on the ballot in that race; otherwise, his name shall not be printed on the ballot. If he dies or is declared ineligible after the 45th day before election day, his name shall be printed on the ballot. When a deceased or ineligible candidate's name is printed on the ballot, the procedure set out in Section 104 of this code shall be followed.

(g) If an independent candidate in any election other than the general election for state and county officers dies before the second day before the filing deadline for independent candidates in that election, or if he withdraws or is declared ineligible before the

20th day before election day, his name shall not be printed on the ballot. If he dies on or after the second day before the filing deadline or if he is declared ineligible on or after the 20th day before election day, his name shall be printed on the ballot and the procedure set out in Section 104 of this code shall be followed.

(h) When a candidate dies and his name is to be removed from the ballot under any provision of this section, the officer responsible for making up the ballot for the election shall remove the candidate's name upon receiving reliable information of the death. However, in the case of a candidate whose name is certified to the county clerk by the secretary of state, the clerk shall not remove the candidate's name from the ballot without authorization from the secretary of state.

(i) The provisions of this section in regard to independent candidates apply to all general and special elections, by whatever authority held, except that charter provisions of a home-rule city supersede the provisions of this section. The term "independent candidate" means any candidate, not the nominee of a political party in a partisan election, who is seeking ballot position in any general or special election.

[Amended by Acts 1975, 64th Leg., p. 2104, ch. 685, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 887, ch. 332, § 5, eff. Aug. 29, 1977.]

[1] Article 8.22.

Art. 13.58. National Convention

(a) Any political party holding primary elections in an election year during which it desires to elect delegates to a national convention shall hold a state convention at such hour and place and on such date as may be designated by the state executive committee of the party, such date to be any day between the second and fourth Tuesdays, inclusive, following the second primary election date. Such convention shall be composed of delegates duly elected at the county and senatorial district conventions as provided for in Section 212 of this code. The chairman of the state executive committee shall notify the Secretary of State as to the date, hour and place at which the state convention will be held and shall also mail a copy of such notice to each county chairman and the temporary chairman of each senatorial district convention in the state at least ten days prior to the date of the state convention.

[See Compact Edition, Volume 2 for text of (b)]

[Amended by Acts 1975, 64th Leg., p. 2100, ch. 683, § 3, eff. Sept. 1, 1975.]

Art. 13.58a. Expired

This article, enacted by Acts 1975, 64th Leg., p. 630, ch. 261, § 1, requiring certain political parties to hold presidential primary elections and prescribing the method for selecting delegates to national nominating conventions of those parties, expired by the terms of § 2 of the Act on March 1, 1977.

CHAPTER FOURTEEN. POLITICAL FUNDS REPORTING AND DISCLOSURE ACT

Article
14.03a. Form of Contribution.
14.03b. Restriction on Contributions to Certain Office-Holders During Regular Session.
14.03c. State Officer-Elect and Legislator-Elect Considered Office-Holder.
14.07a. Annual Report of Unexpected Contributions.
14.10. Campaign Communications.
14.10A. Repealed.

Art. 14.01. Definitions

As used in this chapter—

(A) "Candidate" is defined as any person who has knowingly and willingly taken affirmative action for the purpose of seeking nomination or election to any public office which is required by law to be determined by an election. Some examples of affirmative action are:

1. Filing of application for a position on a ballot.

2. Filing of application for nomination by a convention under Section 224a of this code.[1]

3. Independent candidate's declaration of intent under Section 224a of this code.

4. Public announcement of a definite intent to run for office at a particular election, either with or without designating the specific office to be sought.

5. Statement of definite intent and solicitation of support through letters or other modes of communication, prior to a public announcement.

6. Solicitation of or acceptance of a contribution for use in a future election.

7. Seeking the nomination of an executive committee of a political party to fill a vacancy pursuant to Section 233 of this code (Article 13.56, Vernon's Texas Election Code).

The filing of a designation of a campaign treasurer is not affirmative action which makes one a candidate as defined in this chapter.

(B) "Office-holder" is defined as any person serving in a public office as defined herein and any other constitutionally designated member of the Executive Department.

(C) "Corporation" is defined as every organization organized or operating under authority of the Texas Business Corporation Act or the Texas Non-Profit Corporation Act, any corporation or association organized by authority of any law of Congress or of any other state or nation than Texas, national, state, private or unincorporated banks, trust companies, building and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies, cooperatives, abstract and title insurance companies, and stock companies. However, any political committee

whose only principal purpose is to accept contributions and to make expenditures, as defined in this section, shall not be deemed to be a corporation under the provisions of this chapter if such committee is incorporated for liability purposes only. Incorporation of a political committee shall not relieve any person of any liability, duty, or obligation created pursuant to any provision of the Texas Election Code.

(D) "Contribution" is defined as: (1) any advance, loan, deposit or transfer of funds, goods, services or any other thing of value, or any contract or obligation, whether enforceable or unenforceable, to transfer any funds, goods, services, or anything of value to any candidate, or political committee, which advance or other such item is involved in an election; providing that an individual or group of persons is involved in an election upon the receipt of a contribution or the making of an expenditure which was given or made and received with the intent that it be used or held for some election and that the receipt of or making of the contribution or expenditure may occur before, during, or after an election; or as (2) any advance, deposit or transfer of funds, goods, services or anything of value or creation of any contract or obligation, enforceable or unenforceable, to transfer any funds, goods, services, or anything of value knowingly accepted by any office-holder for the purpose of assisting such person in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision. "Contribution" does not include an honorarium to a public servant that is excluded from the application of penal sanction by Section 36.10(3) of the Penal Code.

(E) "Expenditures" is defined as any payments made or obligations incurred (1) by a candidate, or political committee, when such payments or obligations are involved in an election; or (2) by an office-holder, when such payments are made in the performance of duties or activities in connection with the office which are nonreimbursable by the state or the political subdivision.

"Involved in an election" has the same meaning as in (D) above.

(F) "Election" is defined as any election held to nominate or elect a candidate to any public office. It shall also include any election at which a measure is submitted to the people.

(G) "Public office" is defined as any office created by or under authority of the laws of the state, that is filled by the voters.

(H) "State office" is defined as any public office of the state government which is to be filled by the choice of the voters of the entire state, except presidential electors.

(I) "District office" is defined as any public office of the state government, less than statewide, which is to be filled by the choice of the voters residing in more than one county, and the offices of State Senator, State Representative, and State Board of Education.

(J) "County office" is defined as any public office of the state or county government which is to be filled by the choice of the voters residing in only one county or less than one county, except for those offices specifically enumerated as district offices above.

(K) "Municipal office" is defined as any public office of any incorporated city, town, or village which is to be filled by the choice of the voters.

(L) "Office of a political subdivision" is defined as any public office of any political subdivision of this state which is organized as a body politic and has a governing board or body, except counties, cities, towns and villages, which is to be filled by the choice of the voters residing in that subdivision.

(M) "Measure" is defined as any proposal submitted to the people for their approval or rejection at an election, including any proposed law, Act or part of an Act of the legislature, revision of or amendment to the constitution, local, special, or municipal legislation or proposition or ballot question.

(N) "Person" is defined as an individual, corporation, partnership, labor union or labor organization, or any unincorporated association, firm, committee, club, or other organization or group of persons including any group of persons associated with a political party or element thereof.

(O) "Political committee" is defined as any group of persons (1) formed to collect contributions or make expenditures in support for or in opposition to a candidate or candidates, whether presently identifiable or not, or a measure or measures, whether presently identifiable or not, on a ballot in a public election; or (2) formed to collect contributions or make expenditures for office holders whether presently identifiable or not.

(P) "Specific purpose political committee" is defined as: (1) any political committee which accepts only contributions and/or makes only expenditures in support for or in opposition to candidates who are identifiable and for whom the office(s) to be sought are known and any political committee only accepting contributions and/or making expenditures in support for or in opposition to measures which are identifiable; or (2) any political committee which accepts only contributions and/or makes only expenditures in assisting identifiable office-holders.

(Q) "General purpose political committee" is defined as: (1) any political committee which accepts contributions and/or makes expenditures in support for or in opposition to candidates who are indefinite in identity or for whom the office(s) to be sought are unknown and any political committee which accepts contributions and/or makes expenditures in support for or in opposition to measures which are indefinite in identity; or (2) any political committee which accepts contributions and/or makes expenditures in assisting office-holders, who are not identified.

(R) "Political advertising" is defined as anything in favor of or in opposition to any candidate for public office or office of a political party, or in favor of or in opposition to any political party, or in favor of or in opposition to the success of any public officer, or in favor of or in opposition to any measure submitted to a vote of the people, which is communicated in any of the following forms:

(1) anything published in a newspaper, magazine, or journal or broadcast over a radio or television station in consideration of money or other thing of value; or

(2) any handbill, pamphlet, circular, flier, commercial billboard sign, bumper sticker, or similar printed material.

The term does not include nonpolitical letterheads, ordinary printed invitations to and tickets for fund-raising events or other affairs, campaign pins, buttons, fingernail files, matchbooks, emblems, hats, pencils, and similar materials.

[Amended by Acts 1975, 64th Leg., p. 2257, ch. 711, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 735, ch. 276, §§ 1, 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2708, ch. 738, § 2, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 3325, ch. 873, §1, eff. Sept. 1, 1981.]

[1] Article 13.47a.

The 1975 Act, which by §§ 2 to 14 amended arts. 14.01 to 14.10, 14.13 and 14.15, provided in §§ 1, 15 to 17:

"Sec. 1. This Act shall be styled the Political Funds Reporting and Disclosure Act of 1975."

"Sec. 15. Nothing in this Act repeals or otherwise affects Article 5428a, Vernon's Texas Civil Statutes, as added by Chapter 48, Acts of the 63rd Legislature, Regular Session, 1973.

"Sec. 16. There is hereby appropriated to the Secretary of State out of the General Revenue Fund the amount of $204,020 for the year ending August 31, 1976, and the amount of $147,020 for the year ending August 31, 1977, for the purpose of implementing this Act.

"Sec. 17. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 14.02. Appointment of Campaign Treasurer

(A) Notwithstanding the following subsections of this section, no designation of a campaign treasurer shall be required in order that an office-holder accept contributions or make expenditures as defined in Section 237(D)(2), Texas Election Code, as amended (Article 14.01(D)(2), Vernon's Texas Election Code) and Section 237(E)(2), Texas Election Code, as amended (Article 14.01(E)(2), Vernon's Texas Election Code). Unexpended campaign contributions, as defined in Subsection (D)(1) of Section 237, which are lawfully accepted, may be used by an office-holder for expenditures in connection with the office pursuant to subsection (E)(2) of Section 237. Notwithstanding the requirement set forth in subsection (F)(1) of this section, any contribution as defined in Section 237(D)(2), Texas Election Code, as amended (Article 14.01(D)(2), Vernon's Texas Election Code) that has been lawfully accepted prior to the designation of a campaign treasurer may be utilized as campaign contributions after such designation.

(B) Every candidate for nomination to or election to a state or district office and every specific purpose political committee in any such election or in an election involving a statewide or district measure and every general purpose political committee shall designate a campaign treasurer by written appointment filed with the Secretary of State, and may also designate assistant campaign treasurers for each county by written appointment to be filed either with the county clerk of said county, or the Secretary of State.

(C) Every candidate for nomination to or election to a county office and every specific purpose political committee in any such election or in an election involving a county measure shall designate a campaign treasurer by written appointment to be filed with the county clerk of such county.

(D) Every candidate for nomination to or election to a municipal office or an office of a political subdivision and every specific purpose political committee in any such election or in an election involving a measure of a municipality or political subdivision shall designate a campaign treasurer by written appointment to be filed with the clerk or secretary of the municipality or political subdivision and, if the political subdivision extends beyond the boundaries of one county, may also designate assistant campaign treasurers for each county affected by such candidacy.

(E) Any campaign treasurer or assistant campaign treasurer designated as provided in this Section may be removed by the candidate or political committee at any time by the written appointment of a successor filed in the manner provided for the original designations.

(F)(1) Except as expressly permitted in this chapter, no contribution as defined in Section 237(D)(1) shall be accepted nor any expenditure, as defined in Section 237(E)(1), including the paying of any filing fee, made by an individual until he has filed the name of his campaign treasurer with the appropriate authority. No contribution shall be accepted nor any expenditure made by a political committee until it has filed the name of its campaign treasurer with the appropriate authority. If it is not otherwise possible for a candidate or specific purpose political committee to determine which authority is appropriate for the filing of campaign treasurer designation, then a filing with the Secretary of State shall be sufficient, but only until such time as the appropri-

ate authority may be determined in accordance with the provisions of Subsections (a), (b), and (c) of this Section.

(2) A political committee existing prior to the effective date of this Act shall file a new designation of a campaign treasurer with the appropriate authority for that committee before accepting any additional contributions or making any additional expenditures after the effective date of this Act.

(G) It shall be unlawful for any candidate, political committee, campaign treasurer, assistant campaign treasurer, or any other person to expend funds from any unlawful contributions.

(H) Nothing in this Act shall be construed to prohibit a candidate from appointing himself or herself as the campaign treasurer.

(I) An individual intending to become a candidate for public office may file a designation of campaign treasurer before taking any affirmative action for the purpose of seeking nomination or election.

(J) A designation of a campaign treasurer shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to such designation. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the designation may show by competent evidence that the actual date of posting was to the contrary. No charge shall be made for filing designations of campaign treasurer with any authority.

[Amended by Acts 1975, 64th Leg., p. 2259, ch. 711, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 736, ch. 276, §§ 3, 4, eff. Aug. 29, 1977.]

Art. 14.03. Campaign Contributions

(A) It shall be lawful for an individual not acting in concert with any other person to expend a sum in a campaign which shall not in the aggregate exceed $100 per election for any lawful purpose out of his own funds to aid or defeat any candidate or measure, where the sum is not to be repaid to him. Such a sum will not be reportable to any authority unless it constitutes a contribution. If an individual not acting in concert with any person wishes to expend more than $100 for any lawful purpose out of his own funds to aid or defeat any candidate or candidates or measures, he may do so either by making a contribution or by complying with all of the provisions of this chapter as if he were a campaign treasurer of a political committee.

(B) It shall be lawful for any individual to donate his own personal services and personal traveling expenses to aid or defeat any candidate or measure and such a donation shall not constitute a contribution or expenditure, as defined in Section 237 of this code [1] only so long as he either is not compensated or reimbursed for same.

(C) It shall be unlawful for any person to make any contribution or expenditure in the name of another or on behalf of another without revealing that fact in order that the proper disclosure may be made.

(D) Except as expressly permitted by Paragraphs (A) and (B) of this Section it shall be unlawful for any person, other than a candidate, his campaign treasurer, or assistant campaign treasurer, or the campaign treasurer of a political committee, to make or authorize any campaign expenditure. Except as provided in Paragraphs (A) and (B) of this Section, campaign expenditures must be made by the candidate, campaign treasurer, or assistant campaign treasurer, or the campaign treasurer of a political committee.

[Amended by Acts 1975, 64th Leg., p. 2261, ch. 711, § 5, eff. Sept. 1, 1975.]

[1] Article 14.01.

Former article 14.03, Purposes of Expenditures, was repealed by Acts 1975, 64th Leg., p. 2261, ch. 711, § 4. Prior to repeal the article was amended by Acts 1973, 63rd Leg., p. 1103, ch. 423, § 4.

Former article 14.04 was renumbered article 14.03 and amended by § 5 of the 1975 Act.

Art. 14.03a. Form of Contribution

It is unlawful for a person except a general purpose political committee to accept a single contribution from a person in the form of cash that exceeds $100.

[Added by Acts 1981, 67th Leg., p. 3325, ch. 873, § 2, eff. Sept. 1, 1981.]

A former art. 14.03a, relating to limitations on campaign expenditures, was added by Acts 1975, 64th Leg., p. 2101, ch. 684, § 1, and repealed by Acts 1977, 65th Leg., p. 743, ch. 276, § 16.

Art. 14.03b. Restriction on Contributions to Certain Office-Holders During Regular Session

(a) It is unlawful for a person to make a contribution to a person who holds a state office or to a member of the legislature, or to a specific-purpose political committee that supports or assists a person who holds a state office or a member of the legislature, during a period beginning on the 30th day before the day a regular session of the legislature is convened and continuing through the day of final adjournment.

(b) It is unlawful for a person who holds a state office, a member of the legislature, or a specific-purpose political committee that supports or assists either a person who holds a state office or a member of the legislature to accept a contribution during the period prescribed in Subsection (a) of this section.

(c) This section does not apply to a contribution that was made and accepted with the intent that it be used in an election held or called during the period prescribed in Subsection (a) of this section in which the person accepting the contribution is a candidate if the contribution was made after the person has designated a campaign treasurer for the office sought and before the person was sworn in to that office.

[Added by Acts 1981, 67th Leg., p. 3325, ch. 873, § 2, eff. Sept. 1, 1981.]

Art. 14.03c. State Officer-Elect and Legislator-Elect Considered Office-Holder

(a) For purposes of this chapter, a state officer-elect or a member-elect of the legislature is considered an office-holder beginning on the day after the day of the general or special election in which the officer-elect or member-elect was elected.

(b) This section does not relieve the state officer-elect or the member-elect of any reporting responsibilities he may have as a candidate under Section 243 of this code (Article 14.07, Vernon's Texas Election Code.)

[Added by Acts 1981, 67th Leg., p. 3325, ch. 873, § 2, eff. Sept. 1, 1981.]

Art. 14.04. Civil Remedy

(A) Any person who knowingly makes or knowingly accepts an unlawful campaign contribution or who knowingly makes an unlawful expenditure in support of a candidate shall be civilly liable to each opposing candidate whose name appeared on the ballot in the election in which the unlawful contribution or expenditure was involved for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

(B) Any person who knowingly makes or knowingly accepts an unlawful campaign contribution or expenditure not expressly supporting any candidate but opposing a particular candidate or candidates shall be civilly liable to each of such opposed candidates for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

(C) Any person who knowingly makes or knowingly accepts an unlawful contribution or expenditure shall, in addition to any other penalties, be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unlawful contribution or expenditure.

[Amended by Acts 1975, 64th Leg., p. 2261, ch. 711, § 6, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 737, ch. 276, § 5, eff. Aug. 29, 1977.]

This article was renumbered from article 14.05 and amended by the 1975 Act.

Art. 14.05. Criminal Penalty

Any person who knowingly makes or knowingly accepts an unlawful contribution or who knowingly makes an expenditure in violation of this Chapter shall be guilty of a Class A misdemeanor unless otherwise provided by law.

[Amended by Acts 1975, 64th Leg., p. 2262, ch. 711, § 7, eff. Sept. 1, 1975.]

This article was renumbered from article 14.06 and amended by the 1975 Act.

Art. 14.06. Corporations and Labor Organizations Not to Contribute

(A) It is unlawful for any corporation, as defined in this Act, to make a contribution or expenditure, as defined in Section 237 of this code,[1] or any labor organization to make a contribution or expenditure, or for any candidate, office-holder, political committee, or other person to knowingly accept any contribution prohibited by this Article except that a corporation or labor organization may make a contribution or expenditure for the purpose of aiding or defeating a measure.

(B) For the purpose of this section, "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(C) As used in this section, the phrase "contribution or expenditure" shall also include giving, lending, or paying any money or other thing of value, directly or indirectly, to any candidate, or political committee, campaign treasurer, assistant campaign treasurer, or any other person, for the purpose of aiding or defeating the nomination or election of any candidate; provided, however, that nothing in this section shall prevent the making of a loan or loans to any candidate, office-holder, or political committee, for campaign or other lawful purposes by any corporation which is legally engaged in the business of lending money and which has conducted such business continuously for more than one year prior to the making of such loan, provided the loan is made in the due course of business and is not directly or indirectly a contribution. As used in this chapter, the phrase "contribution or expenditure" shall not include expenditures for the following purposes: communications, on any subject, by a corporation to its stockholders and their families or, if the corporation is an association, to its members and their families, or by a labor organization to its members and their families; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or, if the corporation is an association, at its members and their families, or by a labor organization aimed at its members and their families; or the establishment, administration and solicitation of contributions from the members and their families of one or more labor organizations, or from the stockholders, employees and their families of one or more corporations, or from the members and their families of one or more associations to a separate segregated fund or other general purpose political committee to be utilized for political purposes by one or more corporations or one or more labor organizations. It is provided that it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, or financial reprisals, or by threats thereof, or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in a commercial transaction.

(D) Any corporation or labor organization making or promising a gift, loan, or payment to any candidate, political committee, campaign treasurer, assistant campaign treasurer, or other person in violation of this section shall be civilly liable for double the amount or value of such loan or gift, promised or made, to each opponent of the candidate, or political committee, opposed by such gift, loan, or payment. An opponent of the candidate is an opposing candidate whose name appeared on the ballot in the election in which the unlawful gift, loan, or payment was involved. The corporation or labor organization shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of any unlawful gift, loan, or payment to any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer.

(E) Any corporation or labor organization that violates Subsection (A), (B), or (C) of this section shall be guilty of a felony of the third degree.

(F) Every officer or director of any corporation or labor organization who shall consent to any such unlawful gift, loan, or payment or such unlawful promise to give, lend, or pay by the corporation or labor organization shall be guilty of a felony of the third degree.

(G) Any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer who knowingly accepts such unlawful gift, loan, or payment from a corporation or labor organization shall be guilty of a felony of the third degree. [Amended by Acts 1975, 64th Leg., p. 2262, ch. 711, § 8, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 737, ch. 267, § 6, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 3326, ch. 873, § 3, eff. Sept. 1, 1981.]

[1] Article 14.01.

This article was renumbered from article 14.07 and repealed in its entirety, substituting new provisions therefor, by the 1975 Act.

Art. 14.07. Records and Sworn Statement

(A) Each candidate, office-holder, and political committee, or a campaign treasurer representing the same, is hereby required to keep an accurate record of contributions received, and of all expenditures made. Such record shall contain all information hereinafter required to be reported by such candidate, office-holder, or political committee.

(B) Each opposed candidate whose name is printed on the ballot, each person who, after having become a candidate, has withdrawn as a candidate, each write-in candidate taking affirmative action in an election and each political committee involved in an election concerning a candidate or measure shall file a sworn statement at each time required herein. The statement shall include the full name and complete address of each person to whom, a payment is made from unexpended contributions, and the date, amount, and purpose of the payment. Each office-holder and political committee as defined in Subsections (O)(2), (P)(2), or (Q)(2) in Section 237 of this Code,[1] shall file a sworn statement as required herein.

(C)(1) Each statement filed by a candidate, office-holder, political committee, or the political committee's campaign treasurer must list all contributions received and all expenditures made during the period covered by the statement as described in Subsection (H) of this section. Each statement must include, for the period covered, the following information:

(a) the full name and complete address of each person from whom contributions in an aggregate amount of more than $50 were received, and the date and amount of the contributions;

(b) the full name and complete address of each person to whom any expenditures aggregating more than $50 were made, and the date, amount, and purpose of the expenditures;

(c) the full name and complete address of each person to whom a payment that is not an expenditure was made, if the payment was made from a contribution, and the date, amount, and purpose of the payment;

(d) the full name and complete address of each person who assisted in obtaining credit or a loan of money for or on behalf of the candidate, office-holder, or political committee, or who guaranteed or otherwise agreed to assume any financial obligation for or on behalf of the candidate, office-holder, or political committee, if the benefit of the credit, the proceeds of the loan, or the guarantee or assumption of the obligation was to be involved, directly or indirectly, in an election, and the date and total value of the credit, loan, or guarantee or assumption;

(e) a total of all contributions of $50 and less received and a total of all expenditures of $50 and less made; and

(f) a total of all contributions received and all expenditures made.

(2) Each statement filed by a candidate or a political committee must include the campaign treasurer's name, business or residence street address, and telephone number.

(3) Each statement filed by a general-purpose political committee or its campaign treasurer must include the principal occupation of each person from whom contributions in an aggregate amount of more than $50 were received in the period covered by the statement.

(4) Each statement filed by a political committee or its campaign treasurer must include the amount of each expenditure in the form of a contribution made to a candidate, office-holder, or another political committee that was returned to the political committee during the period covered by the statement, the name of the person to whom the expenditure was originally made, and the date it was returned.

(5) A contribution received but not accepted is not required to be reported pursuant to this section. A determination of whether to accept a contribution that is received by a candidate, office-holder, campaign treasurer, or assistant campaign treasurer shall be made before the end of the reporting period during which the contribution was received. If the determination on accepting the contribution is not made before that time, it is considered accepted on the last day of the reporting period for purposes of reporting pursuant to this section. The candidate, office-holder, campaign treasurer, or assistant campaign treasurer who received a contribution that was not accepted shall return it to the contributor not later than the 30th day after the deadline for filing a statement for the reporting period during which the contribution was received. A candidate, office-holder, campaign treasurer, or assistant campaign treasurer, commits a Class A misdemeanor if he knowingly fails to return a contribution as required by this subdivision.

(6) For purposes of the time and manner of reporting, an expenditure need not be considered to have been made until the amount is readily determinable or, if the character of the expenditure is such that normal business practice is not to disclose the amount until the next periodic bill is received, then the expenditure need not be considered to have been made until the date of receipt of the bill.

(D)(1) A general-purpose political committee may not accept a contribution or make an expenditure until the committee has filed a statement of organization with the secretary of state. If there is a change in the information required to be included in the statement of organization, the political committee shall file an amended statement of organization with the secretary of state not later than the 30th day after the change occurs. The statement of organization must include the political committee's campaign treasurer's name, business or residence street address, and telephone number, and the following information:

(a) the name of each corporation, labor organization, or other association or legal entity that directly establishes, administers, or controls the political committee, if applicable; or

(b) the name of each person that determines to whom the political committee makes contributions or for what purposes the political committee makes expenditures.

(2) Each political committee receiving contributions or making expenditures on behalf of a candidate, or office-holder, shall notify the candidate, or office-holder, as to the name and address of the political committee and its campaign treasurer, if one is required. The candidate, or office-holder, shall include within each statement required by this code a list identifying the name and address of each such political committee and its campaign treasurer, if one is required. "On behalf of" means the knowing acceptance of a contribution for a candidate(s), or office-holder(s), or the making of an expenditure for a candidate(s), or office-holder(s). Any campaign treasurer, candidate, office-holder, or other person managing a political committee, who violates the provisions of this subdivision shall be guilty of a Class A misdemeanor.

(3) In reporting a contribution received from a political committee not in this state, the information for the contributing committee that is required by Subdivision (1) of this subsection shall be included.

(E) Such statements shall be accompanied by the following affidavit verified by the person filing the statement:

"I do solemnly swear that the foregoing statement, filed herewith, is in all things true and correct, and fully shows all information required to be reported by me pursuant to the Political Funds Reporting and Disclosure Act of 1975."

(F) The statement and oath shall be filed as follows: for a county office, or a measure submitted at an election called by a county, with the county clerk of the county; for a district office or a state office, or statewide measure, or other constitutionally designated members of the Executive Department, with the secretary of state; for a municipal office, or a measure submitted at an election called by a municipality, with the city secretary or city clerk of the municipality; and for an office of a political subdivision, or a measure submitted at an election called by a political subdivision other than a county or municipality, with the secretary of the governing body of the political subdivision. General purpose political committees shall file the required sworn statements and oaths with the Secretary of State. The deadline for filing any statement required under this section is 5 p. m. of the last day designated in the pertinent subsection for filing the statement. When the last day of filing falls on a Saturday or Sunday or an official state holiday enumerated in Article 4591, Revised Civil Statutes of Texas, 1925, as amended, the deadline for filing is extended to 5 p. m. of the next day which is not a Saturday or Sunday or enumerated holiday. A statement shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to the statement. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person making the report may show by competent evidence that the actual date of posting was to the contrary.

(G) In the event a political committee has elected to comply with the provisions applicable to political

committees within this state, the requirements of this paragraph shall not be applicable. A candidate, office-holder, or political committee shall not accept a contribution aggregating more than $500 in a reporting period from a political committee not in this state unless the contribution is accompanied by a written statement which sets forth the full name and complete address of each person who contributed more than $100 to such committee during the preceding twelve months and which is certified by an officer of the contributing political committee. A correct copy of any such statement shall be included with the statement filed on which the contribution is reported. For the purpose of reporting, "political committee not in this state" shall mean any political committee expending 80 percent or more of its expenditures in any combination of elections outside of this state and federal offices not voted on in this state within the immediately preceding twelve-month period.

(H)(1)(a) Candidates and the campaign treasurers of specific purpose political committees as defined in subsection (P)(1) of Section 237, shall file sworn statements at the times required in paragraph (4) of this subsection.

(b)(i) Office-holders and specific purpose political committees assisting office-holder(s) as defined in subsection (P)(2) of Section 237 of this Code shall file sworn statements on January 15 of each year of all contributions received and all expenditures made during the previous calendar year in accordance with the provisions of subsection (C) of this section but reporting only such contributions accepted and expenditures made that have not been previously reported.

(ii) In addition to the annual statement required in subsection (H)(1)(b)(i) above, any such office-holder shall file additional statements to cover all contributions received and expenditures made by such office-holder for that period of time prior to the designation of a campaign treasurer by such office-holder, and after such designation all contributions and expenditures are to be reported pursuant to subsection (H)(1)(a). The statements required by this subsection shall be filed not later than the 15th day following the designation of a campaign treasurer.

(2) Campaign treasurers of general purpose political committees shall file sworn statements at times required in paragraph (7) of this subsection.

(3) If the operations of a political committee necessitate a change in the applicability of paragraph (1) or (2) of this subsection, the campaign treasurer of such political committee shall make such change and declare the identity of the authorities with whom future filings are expected to be made by filing (a) notification(s) with the authority(ies) with whom such committee has previously been required to file sworn statements. Failure to file such notice(s), when such change has been properly made, before the next applicable deadline for filing sworn statements under the formerly applicable sections, shall constitute a Class B misdemeanor.

(4) Every candidate or specific purpose political committee shall file three sworn statements relating to the election in which such person is involved in addition to any statement as provided in paragraph (6) below. The three sworn statements shall be filed not later than the 30th day prior to the election, not later than the 7th day prior to the election, and not later than the 30th day after the election, respectively. A candidate who has been nominated by his party's primary or a specific purpose political committee existing for the sole purpose of supporting such candidate and having given notice of such sole purpose in lieu of filing his third statement which encompasses nine (9) days prior to the twenty-five (25) days after the election shall include in his first statement prior to the general election all previously unreported contributions and expenditures. The period reported in the first such statement shall begin on the day of campaign treasurer designation, and end on and include the 40th day prior to the election. The period reported in the second such statement shall begin on the 39th day before the election and end on and include the 10th day before the election. The period reported in the third such statement shall begin on the 9th day before the election and end on and include the 25th day after the election. In the event a candidate or specific purpose political committee becomes involved in an election after the end of any period covered by the regular reports otherwise required herein, the first applicable sworn statement shall be filed at the next regularly required deadline and its reporting period shall begin on the date of designation of campaign treasurer.

(5) In lieu of any third statement required, which falls on the 30th day after any general primary or special elections, whenever a candidate or specific purpose political committee is involved in a run-off election, not later than the 7th day before the run-off election, the candidate or specific purpose political committee shall file a statement of all previously unreported contributions and expenditures through the 10th day before the run-off election. The next statement required shall be filed not later than the 30th day after the run-off election and shall report all contributions received and all expenditures made during a period beginning on the 9th day before the run-off election and ending on the 25th day after the run-off election.

(6) Each year after the last deadline for filing a statement of contributions and expenditures, an additional statement shall be filed, provided,

however, if there have been no expenditures made or contributions knowingly accepted since the last required reporting period, or if any contributions knowingly accepted and any expenditures made have all been reported under Subsection (H)(1)(b) of this section, there shall be no filing required. The annual statement shall be filed on or before January 15 (following the last filing) and the period shall cover all previously unreported contributions and expenditures through and including the 31st day of December.

(7) All general purpose political committees shall file sworn statements as designated either in this paragraph or in Paragraph (8) of this subsection:

(a) On January 15th of each year, a statement of all contributions received and all expenditures made during the previous calendar year which have not been previously reported;

(b) Not earlier than the 40th day and not later than the 30th day before the date of an election in which the general purpose committee is involved, a statement of all contributions received and all expenditures made during the period from the date on which the general purpose political committee filed a designation of a campaign treasurer through the 40th day before the date of the election which have not been previously reported;

(c) Not earlier than the 10th day and not later than the 7th day before the date of an election in which the general purpose political committee is involved, a statement of all contributions received and all expenditures made through the 10th day before the date of the election which have not been previously reported;

(d) Not earlier than the 25th day and not later than the 30th day after the date of an election in which the general purpose political committee is involved, a statement of all contributions received and all expenditures made since the date covered by the last report filed under this subsection;

(e) Whenever a general purpose political committee is involved in a run-off election, in lieu of the statement to be filed by not later than the 30th day after the first election, the committee shall file a statement on the 7th day before the date of the run-off election showing all contributions received and all expenditures made since the date of the last report filed under this subsection;

(f) In the event a general purpose political committee becomes involved in an election after the end of any periods covered by the regular reports otherwise required herein, the first applicable sworn statement shall be filed at the next regularly required deadline and its reporting period shall begin on the date of designation of campaign treasurer.

(8) In lieu of the sworn statements required under Paragraph (7), a general purpose political committee may elect to file sworn monthly statements of all contributions received and all expenditures made which have not been previously reported by filing the sworn statements designated herein:

(a) A notice of intent to file monthly statements shall be filed between January 1 and January 15 of the first year in which the committee intends to file monthly statements. However, a general purpose political committee formed after January 15 of any particular year may upon designation of its campaign treasurer file at the same time a notice of intent to file monthly statements pursuant to this paragraph. The filing remains effective until notice of intent to revert to the regular filing schedule is filed pursuant to Subparagraph (c) of this paragraph.

(b) On the first day of each calendar month, even if there has been no activity, a statement of all previously unreported contributions received and all previously unreported expenditures made through the 25th day of the preceding month. Any general purpose political committee filing under the procedures of this paragraph shall include in each statement the dates and amounts and the full name and complete address of each person from whom contributions in an aggregate amount of more than $10 has been received or borrowed during the reporting period. Each statement shall also include the dates and amounts and the full names and complete addresses of all persons to whom any expenditures aggregating more than $10 were made during the appropriate reporting period and the purpose of such expenditures.

(c) If a general purpose political committee electing to file sworn monthly statements wishes to revert to filing the sworn statements required under Paragraph (7), such committee must file its intent to do so between January 1 and January 15 in addition to a statement of all contributions received and expenditures made which have not previously been reported.

(9) Candidates for offices created under laws of the United States are specifically exempted from the requirements of this section. It is provided, however, that they shall file copies of any reports required by federal laws with the secretary of state on the same date they file such reports with the appropriate federal authorities.

(10) Final Statement. A candidate or political committee may cease filing sworn statements regarding a campaign after a final statement has been filed and designated as such.

Any of the required sworn statements may constitute a final statement if its filing results in the completion of the reporting of all contributions and expenditures involved in an election, together with the appropriate related information, required to be reported.

(11) In the event a general purpose political committee makes a contribution to either another general purpose political committee or an out of state political committee, and cannot thereby make the determination of the appropriate times to make filings of sworn statements, such contributing general purpose political committee shall be deemed to have complied with the requirements of this Section by filing a sworn statement with the Secretary of State fully reporting such contribution (as an expenditure) no later than the next succeeding filing deadline for the January 15th annual statement.

(12) In the event a campaign treasurer of a political committee is terminated, either voluntarily or by action of the political committee, he shall file a sworn statement no later than the 10th day after such termination, reporting all appropriate matters for the period from the end of the period reported in the preceding sworn statement through the day of his termination. Any subsequent sworn statement which is to be filed by a successor campaign treasurer need not report those matters included in the previous campaign treasurer's termination statement.

(I)(1) If any candidate, office-holder, or campaign treasurer of a political committee fails to file a sworn statement containing all information required by this chapter, such person shall be guilty of a Class C misdemeanor.

(2) Any candidate, office-holder, campaign treasurer, or other person managing a political committee who swears falsely in a filed statement is subject to the provisions of Section 37.02 of the Texas Penal Code.

(J) Any candidate or campaign treasurer of a political committee who fails to report in whole or in part any contribution or expenditure as provided in the foregoing provisions of this Section shall be liable for double the amount or value of such unreported contribution or expenditure or unreported portion thereof, to each opposing candidate in the election in which same should have been reported. Each of such opposing candidates shall also recover reasonable attorneys' fees for collecting the above liquidated damages.

(K) Any candidate, office-holder, or campaign treasurer, of a political committee who fails to report in whole or in part any contribution or expenditure as provided in this Section, shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unreported contribution or unreported expenditure.

(L) Statements filed under this Section shall be open to public inspection. They shall be preserved for a period of two years, after which they may be destroyed unless a court of competent jurisdiction has ordered their further preservation.

(M) No charge shall be levied for the filing of any report required by this section.

(N) No charge greater than that authorized by the State Board of Control for copies of similar documents filed with state agencies shall be charged for copies of any reports required to be filed by this section.

(O) A statement filed under this section shall be written in black ink or typed with black typewriter ribbon, on a form prescribed by the secretary of state, unless the statement is a computer printout.

[Amended by Acts 1975, 64th Leg., p. 2263, ch. 711, § 9, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 738, ch. 276, §§ 7 to 14, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 1868, ch. 446, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3327, ch. 873, §§ 4 to 7, eff. Sept. 1, 1981.]

[1] Article 14.01.

This article was renumbered from article 14.08 and amended by the 1975 Act.

Art. 14.07a. Annual Report of Unexpended Contributions

(a) Each of the following persons shall file a sworn statement each year, even if there is no additional activity, for as long as the person retains unexpended contributions:

(1) a former office-holder who has unexpended contributions after the filing of the last sworn statement required to be filed by Section 243 of this code (Article 14.07, Vernon's Texas Election Code); or

(2) an unsuccessful candidate for public office who:

(A) was opposed and has unexpended contributions after the filing of the last sworn statement required to be filed by Section 243 of this code; or

(B) was unopposed and has unexpended contributions.

(b) An annual statement filed pursuant to this section shall be filed between January 1 and January 15 of each year. The statement shall include the total amount of unexpended contributions at the end of the year and the amount of interest earned on the contributions during the calendar year. The statement shall be filed with the same authority with whom the person was required to file sworn statements pursuant to Section 243 of this code. An unsuccessful unopposed candidate shall file the statement with the authority with whom an opposed candidate for that office is required to file.

(c) The provisions of Section 243 of this code pertaining to penalties, inspection, and charges apply to an annual statement filed pursuant to this section.

[Added by Acts 1981, 67th Leg., p. 3329, ch. 873, § 8, eff. Sept. 1, 1981.]

Art. 14.08. Repealed by Acts 1981, 67th Leg., p. 2709, ch. 739, § 1, eff. Aug. 31, 1981

Prior to repeal, this article was renumbered from art. 14.09 and amended by Acts 1975, 64th Leg., p. 2268, ch. 711, § 10.

Art. 14.09. Political Advertising

(A) It is unlawful for any person knowingly to enter into a contract or transaction to print, publish or broadcast, any political advertising which does not disclose thereon that it is political advertising and which does not state thereon the name and address either of the agent who personally entered into the contract or transaction with the printer, publisher, or broadcaster, or the person represented by such agent. A violation of this provision shall constitute a Class A misdemeanor. However, in the event the political advertisement conveys the impression that it emanates from a source other than its true source for the purpose of injuring any candidate or influencing the vote in any election, the candidate, campaign treasurer, assistant campaign treasurer or any other person purchasing or contracting for the furnishing of such political advertisement in support of or in opposition to any candidate or measure, who knowingly violates this subsection shall be guilty of a felony of the third degree.

(B) Any advertising medium or any officer or agent thereof who willfully demands or receives for any political advertising any money or other thing of value in excess of the sum due for such service, or any person who pays or offers to pay for such service any money or other thing of value in excess of the sum due, or any person who pays or offers to pay any money or other thing of value for the publication or broadcasting of political advertising except as advertising or production matter, shall be fined not more than $100. No advertising medium may charge a rate for political advertising in excess of the following:

(1) For advertising broadcast over a radio or television station, including a community antenna or cable television system, the rate charged shall not exceed the lowest unit charge of the station for the same class, condition and amount of time for the same period;

(2) For advertising printed or published by any other medium, the rate charged shall not exceed the lowest charge made for comparable use of such space for other purposes. The rate shall take into account the amount of space used, the number of times used, the frequency of use, and the kind of space used, as well as the type of advertising copy submitted by or on behalf of a candidate, or political committee. All discount privileges otherwise offered by a newspaper or magazine to advertisers shall be available upon equal terms to all candidates, or political committees.

(C) It is unlawful for an officer or employee of any political subdivision of this state to expend or authorize the expenditure of the funds of such political subdivision for the purpose of political advertising. The provisions of this subsection shall not apply to any advertising which describes the factual reasons for a measure and which does not advocate the passage or defeat of such measure.

(D) It is the legislative intent to impose both civil and criminal responsibility on persons, corporations, partnerships, labor unions, or labor organizations, or any unincorporated associations, firms, committees, clubs, or other organizations, or groups of persons, including any groups of persons associated with a political party or element thereof, for violations of this section.

[Amended by Acts 1975, 64th Leg., p. 2268, ch. 711, § 11, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 742, ch. 276, § 15, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2001, ch. 799, § 1, eff. Aug. 29, 1977.]

This article was renumbered from article 14.10 and amended by the 1975 Act.

Art. 14.10. Campaign Communications

(A)(1) It is unlawful for an individual to misrepresent his identity or, if acting or purporting to act as an agent for any person, to misrepresent the identity of that person in any written or oral communication relating to the campaign of a candidate for nomination or election to a public office or election to the office of a political party or relating to the success or defeat of any ballot measure with the intent to injure any candidate or to influence the vote on the measure.

(2) It is unlawful for any person to issue any communication relating to the candidacy of a person for nomination or election to a public office or election to the office of a political party or relating to the success or defeat of any ballot measure, which purports to emanate from any source other than its true source.

(B)(1) It is unlawful for any candidate for nomination or election to a public office to use the title of an office in his political advertising when the use of such title could reasonably be construed to lead the voters to believe that the candidate is the holder of an office, unless the candidate is the holder of the office at the time the representation is made.

(2) It is unlawful for any person to print, publish, or broadcast any political advertising, or to make any written or oral commercial communication, relating to the campaign of a candidate for nomination or election to a public office which states, implies, or otherwise represents that the candidate is the holder of an office, unless the candidate is the holder of the office at the time the representation is made.

(C) A violation of this section is a Class A misdemeanor.

[Added by Acts 1975, 64th Leg., p. 2269, ch. 711, § 12, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1663, ch. 657, § 1, eff. Aug. 29, 1977.]

Art. 14.10A. Repealed by Acts 1977, 65th Leg., p. 1663, ch. 657, § 2, eff. Aug. 29, 1977

The repealed article, relating to the misleading use of office title, was added by Acts 1975, 64th Leg., p. 2098, ch. 682, § 26.

Art. 14.13. Regulation of Illegal Acts; Providing Duties for Secretary of State

(A) Filing complaint with Secretary of State. Any citizen of this state may file with the Secretary of State a complaint alleging that a person has committed one or more of the following violations of this chapter:

(1) Failure to file a statement of contributions and expenditures that is required to be filed with the Secretary of State, or late filing of a statement with the Secretary of State.

(2) Filing of a statement of contributions and expenditures with the Secretary of State that does not conform to law.

(3) Accepting a contribution or making an expenditure before the filing of a designation of a campaign treasurer in an election in which the designation is required to be filed with the Secretary of State.

(4) Making or accepting an unlawful contribution or making an unlawful expenditure.

(B) Form and contents of complaint. A complaint must:

(1) be signed and sworn to by the complainant as containing allegations that are true and correct and made on personal knowledge; and

(2) state the name of the person accused, the election involved, if any, and the alleged violation; and

(3) allege facts indicating that the person accused has committed a violation.

(C) Notice to the accused. Upon receipt of a complaint meeting the requirements of Paragraphs (A) and (B) of this section, the Secretary of State shall give notice by registered or certified mail, restricted delivery, return receipt requested, to the person who is the subject of the complaint:

(1) informing the person that the complaint has been filed;

(2) attaching a copy of the complaint;

(3) requesting the person to make a written response within 15 days after the date shown on the notice (the date of mailing); and

(4) attaching a copy of this section.

(D) Referral to prosecuting attorney and Attorney General.

(1) If the accused is a candidate or the campaign treasurer of a candidate or of a political committee supporting a candidate, the Secretary of State shall not report any alleged violations to the prosecuting attorney or to the Attorney General while the candidate is still engaged in the campaign in the specific election in which the alleged violation is said to have occurred or in a subsequent runoff or general election for the same term of office.

(2) After a lapse of 25 days from the date of a notice pursuant to Paragraph (C) or after a lapse of 25 days from an election described in (D)(1) above of this section, if it appears that the person accused in the complaint may have failed to comply with the relevant provisions of law, the Secretary of State shall forward to the appropriate prosecuting attorney the original complaint and the accused's response (if any) to the notice, together with certified copies of all pertinent records filed with the Secretary of State, in order that appropriate action may be taken.

(3) If the alleged violation is one for which a civil penalty accrues in favor of the state, the Secretary of State shall also forward to the Attorney General certified copies of the original complaint, the accused's response, and all pertinent records filed with the Secretary of State, in order that appropriate action be taken.

(E) Malicious complaints. A civil action for damages exists against the complainant in favor of any person against whom a complaint is filed maliciously and without probable cause, after the termination of any resulting prosecution. In addition, a person who makes a false allegation in a complaint is subject to the provisions of the Texas Penal Code relating to the offense of perjury.[1]

(F) The procedures outlined in this section are cumulative of other available procedures for investigation and enforcement of violations of this chapter. Nothing in this section shall be taken as precluding the filing of a complaint directly with a prosecuting attorney or as precluding investigations and prosecutions by a prosecuting attorney and actions by the Attorney General for recovery of civil penalties without a referral from the Secretary of State.

(G) Duties of Secretary of State.

(1) It shall be the duty of the Secretary of State to prescribe forms for any instruments required to be filed by this code, regardless of whether the instruments are to be filed with the Secretary of State or with some other authority, and to make such forms available to persons required to file such statements and information with the Secretary of State, or any other authority.

(2) It shall be the duty of the Secretary of State to furnish such forms to the following: the State Executive Committee of any political party, the clerk of each county, the duly elected chairman of each county political subdivision or authority holding an election under this code.

(3) The State Executive Committee, county clerk, county chairman, and secretary or clerk shall make available to all candidates, officeholders, or political committees the forms provided by the Secretary of State.

(4) It shall be the duty of the Secretary of State to interpret and administer the provisions

of this Act in the exercise of his authority stated in Section 3, Texas Election Code (Article 1.03, Vernon's Texas Election Code) and to make such interpretations and administrative rulings available to any person upon request.

[Added by Acts 1975, 64th Leg., p. 2270, ch. 711, § 13, eff. Sept. 1, 1975.]

[1] See Penal Code, § 37.01 et seq.

Former article 14.13, added by Acts 1973, 63rd Leg., p. 1110, ch. 423, § 11, establishing County Election Commissions and a State Election Commission, was repealed by § 13 of the 1975 Act, enacting this article.

Art. 14.15. Venue for Offenses

Venue for any offense resulting from a violation of this chapter shall lie exclusively in the county of residence of the accused, except when the accused is a nonresident of Texas, in which case venue shall lie in Travis County.

[Amended by Acts 1975, 64th Leg., p. 2272, ch. 711, § 14, eff. Sept. 1, 1975.]

CHAPTER FIFTEEN. OFFENSES RELATING TO ELECTIONS

SUBCHAPTER C. OFFENSES BY OFFICERS OF ELECTION

Article

15.30a. Restriction on Number of Voters Assisted by Same Person in an Election.

SUBCHAPTER F. MISCONDUCT AT ELECTIONS

15.73. Intimidation or Reprisal Against a Voter.
15.74. Inducing Another Person to Make False Statement on Registration Application.

SUBCHAPTER A. POLL TAX

Arts. 15.01 to 15.03. Repealed by Acts 1981, 67th Leg., p. 3149, ch. 827, § 19, eff. Aug. 31, 1981

SUBCHAPTER B. OFFENSES BEFORE ELECTION

Art. 15.13. Protecting Ballots, Supplies and Returns

If any person intrusted with the transmission to the precinct election judges of official ballots, sample cards, distance markers and any supplies required to conduct an election wilfully fails to deliver the same within the time required by law, or wilfully does any act to defeat the delivery thereof, or not being a person intrusted therewith, shall do any act to defeat the due delivery thereof, he shall be fined not less than two hundred nor more than five hundred dollars.

[Amended by Acts 1981, 67th Leg., p. 3148, ch. 827, § 14, eff. Aug. 31, 1981.]

Art. 15.17. Repealed by Acts 1981, 67th Leg., p. 3329, ch. 873, § 9, eff. Sept. 1, 1981

Prior to repeal, this article was amended by Acts 1977, 65th Leg., p. 743, ch. 276, § 16.

SUBCHAPTER C. OFFENSES BY OFFICERS OF ELECTION

Art. 15.21. List of Qualified Voters

Any person who being an officer, clerk or employee of the county's registrar of voters, precinct judge, or clerk of election who knowingly puts in the certified list of registered voters of a precinct any other number than that written when the voter registration certificate was issued; or who knowingly delivers to or receives from any voter any voter registration certificate on which is placed any other name than that first written when it was issued, shall be fined not to exceed five hundred dollars.

[Amended by Acts 1981, 67th Leg., p. 3148, ch. 827, § 14, eff. Aug. 31, 1981.]

Art. 15.22. Permitted Illegal Voting

Any judge of an election or primary who wilfully permits a person to vote, whose name does not appear on the list of registered voters of the precinct and who fails to present his voter registration certificate or make affidavit of its loss or misplacement or inadvertently left at home, except in cases where no voter registration certificate is required, shall be fined not exceeding five hundred dollars.

[Amended by Acts 1981, 67th Leg., p. 3148, ch. 827, § 14, eff. Aug. 31, 1981.]

Art. 15.28. Election Officer Divulging Vote

Any presiding officer, judge, clerk, watcher, interpreter, person assisting a voter in preparing his ballot, inspector, or any other person performing official functions, of any general, primary or special election who shall from an inspection of the ballot or other information obtained at the polling place and not in a judicial investigation divulge how any person has voted at such election is guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 5, eff. June 20, 1975.]

Art. 15.30. Aid to Voter

Any judge or clerk at an election or any other person who assists any voter to prepare his ballot except when a voter is unable to prepare the same himself because of his inability to read the language in which the ballot is printed or because of some bodily infirmity which renders him unable to write or to see or to operate the voting equipment, or who in assisting a voter in the preparation of his ballot prepares the same otherwise than as the voter directs, or who suggests by word or sign or gesture how such voter shall vote, shall be fined not less than two hundred dollars nor more than five hundred dollars or be confined in jail for not less than two nor more than twelve months, or both.

[Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 27, eff. Sept. 1, 1975.]

Art. 15.30a. Restriction on Number of Voters Assisted by Same Person in an Election

(a) In any single election, it is unlawful for a person, other than a clerk or deputy clerk for absen-

tee voting or an election judge or clerk at a regular polling place, to assist in preparing the ballot of more than five voters who are not related as parent, grandparent, spouse, child, brother, or sister to the person rendering the assistance. A violation of this subsection is a Class B misdemeanor. A person commits a separate offense for each voter assisted in violation of this subsection.

(b) A clerk or deputy clerk for absentee voting or an election judge or clerk at a regular polling place who knowingly permits assistance to be rendered in violation of Subsection (a) of this section commits a Class B misdemeanor.

(c) Subsection (a) of this section does not apply to a person who is called on by an absentee voting clerk or a presiding election judge to render oral assistance to Spanish-speaking voters in order to comply with the requirements of the federal Voting Rights Act,[1] regardless of whether the person rendering the assistance has been officially designated as a deputy absentee voting clerk or as an election clerk at a regular polling place.

(d) A violation of this section does not affect the validity of the ballot of the voter who is unlawfully assisted.

[Added by Acts 1979, 66th Leg., p. 2061, ch. 806, § 5, eff. Aug. 27, 1979.]

[1] 42 U.S.C.A. § 1973 et seq.

SUBCHAPTER D. ILLEGAL VOTING

Art. 15.41. Illegal Voting

If any person knowing himself not to be a qualified voter, shall at any election vote for or against any officer to be then chosen, or for or against any proposition to be determined by said election, he shall be guilty of a third degree felony.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 6, eff. June 20, 1975.]

Art. 15.42. Instigating Illegal Voting

Whoever shall procure, aid, or advise another to give his vote at any election, knowing that the person is not qualified to vote, or shall procure, aid, or advise another to give his vote more than once at such election, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 7, eff. June 20, 1975.]

Art. 15.43. False Swearing

Whoever shall swear falsely as to his own qualifications to vote, or who shall swear falsely as to the qualifications of a person offering to vote who is challenged as unqualified, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 8, eff. June 20, 1975.]

Art. 15.44. Inducing Voter to Swear Falsely

Whoever knowingly and intentionally induces or attempts to induce another person to swear falsely as prohibited in the preceding article, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 9, eff. June 20, 1975.]

Art. 15.47. Absentee Voting

Any person wishing to vote as an absentee voter who shall vote or offer to vote illegally, or in any case or at any place where he is not entitled to vote, or who shall make false representation in any effort to vote, or who shall attempt to vote on any voter registration certificate issued to a person other than himself, shall be fined not more than one thousand dollars or be imprisoned in the county jail not more than two years or both so fined and imprisoned. This law applies to any and all elections including general, special and primary elections.

[Amended by Acts 1981, 67th Leg., p. 3148, ch. 827, § 14, eff. Aug. 31, 1981.]

Art. 15.48. Falsely Personating Another

Whoever attempts to falsely personate at an election another person, and vote or attempt to vote on the authority of a voter registration certificate not issued to him by the county's registrar of voters, shall be confined in the penitentiary not less than three nor more than five years.

[Amended by Acts 1981, 67th Leg., p. 3148, ch. 827, § 14, eff. Aug. 31, 1981.]

Art. 15.49. Participating in Primary Elections or Conventions of More Than One Party

Whoever votes or offers to vote at either a general primary election or a runoff primary election or participates or offers to participate in a convention of a political party, having voted at either a general primary election or a runoff primary election or participated in a convention of any other party during the same voting year, shall be guilty of a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 10, eff. June 20, 1975.]

Art. 15.50. Voting More Than Once

Whoever at a general, special or primary election votes or attempts to vote more than once shall be guilty of a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 11, eff. June 20, 1975.]

SUBCHAPTER E. OFFENSES AFTER ELECTION

Art. 15.61. Altering or Destroying Ballots, etc.

If any person shall willfully alter, obliterate, or suppress any ballots, election returns or certificates of election, or shall willfully destroy any ballots or

election returns except as permitted by law, he shall be guilty of a third degree felony.
[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 12, eff. June 20, 1975.]

Art. 15.62. Messenger Tampering with Ballot

Any person legally intrusted with the ballots cast at an election who shall open and read a ballot or permit it to be done before delivering the same shall be guilty of a felony of the third degree.
[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 13, eff. June 20, 1975.]

Art. 15.65. Failure to Keep Ballot Box

Whoever fails to keep securely any ballot box containing ballots voted at an election, when committed to his charge by one having authority over the same, shall be guilty of a felony of the third degree.
[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 14, eff. June 20, 1975.]

SUBCHAPTER F. MISCONDUCT AT ELECTIONS

Art. 15.73. Intimidation or Reprisal Against a Voter

Whoever knowingly and intentionally harms or threatens to harm another person by an unlawful act or economic reprisal in retaliation for or on account of having voted for or against any candidate or measure or refusing to reveal how he voted is guilty of a felony of the third degree.
[Added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 15, eff. June 20, 1975.]

Art. 15.74. Inducing Another Person to Make False Statement on Registration Application

Whoever requests, commands, or attempts to induce another person to make any false statement on any voter registration application shall be guilty of a felony of the third degree.
[Added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 16, eff. June 20, 1975.]

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CHAPTER ONE. THE BOARD, ITS POWERS AND DUTIES

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Art. 1.02. State Board of Insurance

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

(f) The State Board of Insurance is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.058, eff. Aug. 29, 1977.]

[1] Civil Statutes, art. 5429k.

Art. 1.04. Duties and Organization of the State Board of Insurance

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

(e) Repealed by Acts 1981, 67th Leg., p. 413, ch. 170, § 2, eff. May 20, 1981.

(f) If any insurance company or other party at interest be dissatisfied with any decision, regulation, order, rate, rule, act or administrative ruling adopted by the State Board of Insurance, such dissatisfied company or party at interest after failing to get relief from the State Board of Insurance, may file a petition setting forth the particular objection to such decision, regulation, order, rate, rule, act or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the State Board of Insurance as defendant. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the Justice Court to the County Court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending.

The Board shall not be required to give any appeal bond in any cause arising hereunder.

[See Compact Edition, Volume 2 for text of (g)]

[Amended by Acts 1981, 67th Leg., p. 413, ch. 170, § 2, eff. May 20, 1981; Acts 1981, 67th Leg., p. 2637, ch. 707, § 4(22), eff. Aug. 31, 1981.]

Art. 1.09. Commissioner of Insurance

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

(b) Repealed by Acts 1975, 64th Leg., p. 853, ch. 326, § 3, eff. May 30, 1975.

[See Compact Edition, Volume 2 for text of (c) to (g)]

[Amended by Acts 1975, 64th Leg., p. 853, ch. 326, § 3, eff. May 30, 1975.]

Art. 1.09A. Office of the State Fire Marshal

The chairman of the board shall appoint a state fire marshal, who shall be a state commissioned officer, and who shall function as such subject to the rules and regulations of the board. He shall administer, enforce, and carry out the applicable provisions of this code relating to the duties and responsibilities of the state fire marshal under the supervision of the board. He shall hold his position at the pleasure of the board and may be discharged at any time. The state fire marshal shall be the chief investigator in charge of the investigation of arson and suspected arson within the state, and may commission arson investigators to act under his supervision, and may revoke an investigator's commission for just cause. After consultation with the state fire marshal, the State Board of Insurance shall adopt necessary rules and regulations to guide the state fire marshal and his investigators in the investigation of arson and suspected arson.

[Added by Acts 1975, 64th Leg., p. 853, ch. 326, § 2, eff. May 30, 1975.]

Art. 1.10. Duties of the Board

In addition to the other duties required of the Board, it shall perform duties as follows:

[See Compact Edition, Volume 2 for text of 1 to 6]

May Order Sanctions

7. After notice and hearing, the State Board of Insurance may cancel or revoke any permit, license,

certificate of authority, certificate of registration, or other authorization issued or existing under its authority or the authorization of this Code if the holder or possessor of same is found to be in violation of, or to have failed to comply with, specific provisions of the Code or any duly promulgated rule or regulation of the State Board of Insurance. In lieu of such cancellation or revocation, the State Board of Insurance may order one or more of the following sanctions if it determines from the facts that such would be more fair, reasonable, or equitable:

(a) Suspend such authorization for a time certain, not to exceed one year;

(b) Order the holder or possessor of such authorization to cease and desist from the specified activity determined to be in violation of specific provisions of this Code or rules and regulations of the State Board of Insurance or from failure to comply with such provisions of this Code or such rules and regulations; or

(c) Direct the holder or possessor of such authorization to remit within a specified time, not to exceed sixty (60) days, a specified monetary forfeiture not to exceed Ten Thousand ($10,000) Dollars for such violation or failure to comply.

Any monetary forfeiture paid as a result of an order issued pursuant to (c) above shall be deposited with the State Treasurer to the credit of the General Revenue Fund. If it is found after hearing that any holder or possessor has failed to comply with an order issued pursuant to (a), (b), and (c) above, the State Board of Insurance shall, unless its order is lawfully stayed, cancel all authorizations of such holder or possessor. The State Board of Insurance shall have authority to informally dispose of any such matters by consent order or default.

The Board shall give notice of any action taken pursuant to this section to the Insurance Commissioner or other similar officer of every state.

The authority vested in the State Board of Insurance in this Article shall be in addition to and not in lieu of any other authority to enforce or cause to be enforced any sanctions, penalties, fines, forfeitures, denials, suspensions, or revocations otherwise authorized by law, and shall be applicable to every form of authorization to any person or entity holding or possessing the same.

[See Compact Edition, Volume 2 for text of 8 to 11]

Report to Governor

12. It shall report annually to the Governor the receipts and expenses of its department for the year, its official acts, the condition of companies doing business in this State, and such other information as will exhibit the affairs of said department. Upon specific request by the Governor, the Board shall report the names and compensations of its clerks.

[See Compact Edition, Volume 2 for text of 13 to 17]

[Amended by Acts 1979, 66th Leg., p. 574, ch. 264, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 412, ch. 170, § 1, eff. May 20, 1981.]

Art. 1.11. May Change Form of Annual Statement

The Board may, from time to time, make such changes in the forms of the annual statements required of insurance companies of any kind, as shall seem to it best adapted to elicit a true exhibit of their condition and methods of transacting business. Such form shall elicit only such information as shall pertain to the business of the company.

If any annual statement, report, financial statement, tax return, or tax payment required to be filed or deposited in the offices of the State Board of Insurance, is delivered by the United States Postal Service to the offices of the State Board of Insurance after the prescribed date on which the annual statement, report, financial statement, tax return, or tax payment is to be filed, the date of the United States Postal Service postmark stamped on the cover in which the annual statement is mailed, or any other evidence of mailing authorized by the United States Postal Service reflected on the cover in which the annual statement is mailed, shall be deemed to be the date of filing, unless otherwise specifically made an exception to this general statute.

[Amended by Acts 1979, 66th Leg., p. 390, ch. 181, § 1, eff. Aug. 27, 1979.]

Art. 1.14–2. Surplus Lines Insurance

[See Compact Edition, Volume 2 for text of 1 to 7]

Eligibility of Surplus Lines Insurers

Sec. 8.

[See Compact Edition, Volume 2 for text of 8(a) to 8(c)]

(d) No unauthorized insurer shall be eligible if the insurer or its agents have failed to submit to any fine or penalty levied pursuant to statute. No unauthorized insurer shall be eligible if the insurer is obligated to pay and has failed to pay premium taxes required under Section 11 of Article 1.14–1. The State Board of Insurance may order revocation of insurance contracts issued by insurers that do not conform with the eligibility requirements of this section.

[See Compact Edition, Volume 2 for text of 8(e) to 18]

[Amended by Acts 1979, 66th Leg., p. 625, ch. 290, § 1, eff. Aug. 27, 1979.]

Art. 1.16. Expenses of Examinations; Disposition of Sums Collected

The expenses of all examinations of domestic insurance companies made on behalf of the State of

Texas by the State Board of Insurance or under its authority shall be paid by the corporations examined in such amount as the Commissioner of Insurance shall certify to be just and reasonable.

Assessments for the expenses of such domestic examination which shall be sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Article and Articles 1.17 and 1.18 of this Code, shall be made by the Commissioner of Insurance upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets and/or insurance in force; provided such assessments shall be made and collected as follows: (1) expenses attributable directly to a specific examination including employees' salaries and expenses shall be collected at the time of examination; (2) assessments calculated annually for each corporation or association which take into consideration annual premium receipts and/or admitted assets and/or insurance in force shall be assessed for periods not previously assessed through December 31, 1978; thereafter each such corporation or association shall be assessed annually. Provided further that the amount of all such assessments paid in each taxable year to or for the use of the State of Texas by any insurance corporation or association hereby affected shall be allowed as a credit on the amount of premium taxes to be paid by any such insurance corporation or association for such taxable year.

All sums collected by the State Board of Insurance, or under its authority, on account of the cost of examinations assessed as hereinabove provided for shall be paid into the State Treasury to the credit of the Insurance Examination Fund; and the salaries and expenses of the actuary of the State Board of Insurance and of the examiners and assistants, and all other expenses of such examinations, shall be paid upon the certificate of the State Board of Insurance by warrant of the Comptroller drawn upon such fund in the State Treasury.

If at any time it shall appear that additional pro rata assessments are necessary to cover all of the expenses and disbursements required by law and necessary to comply with this Article and Articles 1.17 and 1.18 of this Code, the same shall be made, and any surplus arising from any and all such assessments, over and above such expenses and disbursements, shall be applied in reduction of subsequent assessments in the proportion assessed so that there shall be so assessed and collected the funds necessary to meet such expenses and disbursements and no more.

In case of an examination of a company not organized under the laws of Texas, whether such examination is made by the Texas authorities alone, or jointly with the insurance supervisory authorities of another state or states, the expenses of such examination due to Texas' participation therein, shall be borne by the company under examination. Payment of such cost shall be made by the company upon presentation of itemized written statement by the Commissioner of Insurance and shall consist of the examiners' remuneration and expenses, and the other expenses of the State Board of Insurance properly allocable to the examination. Payment shall be made directly to the State Board of Insurance, and all money collected by assessment on foreign companies for the cost of examination shall be deposited in the State Treasury by the State Board of Insurance to the credit of the Insurance Examination Fund out of which shall be paid, by warrant of the State Comptroller of Public Accounts on voucher of the State Board of Insurance, the examiners' remuneration and expenses in the amounts determined by the method hereinafter provided, when verified by their affidavit and approved by the Commissioner of Insurance; and said money is hereby appropriated for that purpose, the balance, if any, to remain in the Insurance Examination Fund in the State Treasury subject to be expended for the purposes as are other funds placed therein. Examiners' remuneration and expenses shall be the same as that which would be paid by the home state of a company under examination to persons conducting the examination of a Texas company admitted to do business in that State. If there be no recognized charge for such service, the Commissioner of Insurance shall fix the remuneration and expense allowance of the examiners at such reasonable figure as he may determine.

[Amended by Acts 1979, 66th Leg., p. 568, ch. 262, § 1, eff. Aug. 27, 1979.]

Art. 1.30. Notification

Definitions

Sec. 1. (a) "Insurer" shall include but not be limited to capital stock companies, title insurance companies, reciprocal or interinsurance exchanges, Lloyds associations, fraternal benefit societies, mutual and mutual-assessment companies of all kinds and types, statewide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty and surety companies, trust companies organized under the provisions of Chapter 7 of Texas Insurance Code,[1] and all other organizations, corporations, or persons transacting an insurance business, whether or not named above, unless such insurers are by statute specifically by naming this article exempted from the operation of this article.

(b) "Board" means the State Board of Insurance of Texas.

(c) "Commissioner" means the Commissioner of Insurance of Texas.

Notice of Order or Judgment

Sec. 2. An insurer shall notify the commissioner and deliver a copy of any order or judgment to the commissioner within 30 days of the happening in another state of any one or more of the following:

(1) suspension or revocation of his right to transact business;

(2) receipt of an order to show cause why its license should not be suspended or revoked;

(3) imposition of any penalty, forfeiture, or sanction on it for any violation of the insurance laws of such other state.

Penalty for Failure to Notify

Sec. 3. Any insurer who has failed to notify the commissioner and to deliver a copy of any order or judgment to him pursuant to Section 2 of this article shall forfeit to the people of the state a sum not to exceed $500 for each such violation, which may be recovered by a civil action. The board may also suspend or revoke the license of an insurer or agent for any such wilful violation.

[Added by Acts 1975, 64th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 862, ch. 386, § 1, eff. June 6, 1979.]

[1] Article 7.01 et seq.

Art. 1.31. Refunds

This article applies to any tax, fee, or other sum of money, including any interest or penalty, collected or administered by the State Board of Insurance. When the State Board of Insurance determines that any person, firm, or corporation has through mistake of law or fact overpaid or paid erroneously any amount to the state on any tax, fee, or other sum of money, including any interest or penalty, collected or administered by the State Board of Insurance, the State Board of Insurance may refund such payment by warrant on the state treasury from any funds appropriated for such purpose. This article shall not apply to any payment of tax made pursuant to Articles 4769, 7064, and 7064a of the Revised Civil Statutes of Texas, 1925.

[Added by Acts 1979, 66th Leg., p. 191, ch. 100, § 1, eff. May 2, 1979.]

Art. 1.32. Hazardous Financial Condition

Definitions

Sec. 1. (a) "Insurer" shall include but not be limited to capital stock companies, reciprocal or interinsurance exchanges, Lloyds associations, fraternal benefit societies, mutual and mutual assessment companies of all kinds and types, state-wide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty, and surety companies, trust companies organized under the provisions of Chapter 7 of the Texas Insurance Code of 1951, as amended,[1] and all other organizations, corporations, or persons transacting an insurance business, whether or not named above, unless such insurers are by statute specifically, by naming this article, exempted from the operation of this article.

(b) "Board" means the State Board of Insurance of Texas.

(c) "Commissioner" means the Commissioner of Insurance of Texas.

Order to Rectify Financial Condition

Sec. 2. Whenever the financial condition of an insurer when reviewed in conjunction with the kinds and nature of risks insured, the loss experience and ownership of the insurer, the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve increases, its method of operation, its affiliations, its investments, any contracts which lead or may lead to contingent liability, or agreements in respect to guaranty and surety, indicate a condition such that the continued operation of the insurer might be hazardous to its policyholders, creditors, or the general public, then the commissioner may, after notice and hearing, order the insurer to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(a) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) reduce the volume of new business being accepted;

(c) reduce general insurance and commission expenses by specified methods;

(d) suspend or limit the writing of new business for a period of time; or

(e) increase the insurer's capital and surplus by contribution.

Standards and Criteria for Early Warning

Sec. 3. The board is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of an insurer might be hazardous to its policyholders, creditors, or the general public, and to fix standards for evaluating the financial condition of an insurer, which standards shall be consistent with the purposes expressed in Section 2 of this article.

Arrangements with Other Jurisdictions

Sec. 4. The commissioner is authorized to enter into arrangements or agreements with the insurance regulatory authorities of other jurisdictions concerning the management, volume of business, type of risks to be insured, expenses of operation, plans for reinsurance, rehabilitation, or reorganization, and method of operations of an insurer that is licensed in such other jurisdictions and that is deemed to be in a hazardous financial condition or needful of specific remedies which may be imposed by the commissioner and insurance regulatory authorities of such other jurisdictions.

Additional Authority of Article

Sec. 5. Authority granted by the provisions of this article is in addition to other provisions of law and not in substitution, restriction, or diminution thereof.

[Added as art. 1.30 by Acts 1975, 64th Leg., p. 1019, ch. 388, § 1, eff. June 19, 1975. Renumbered as art. 1.32 by Acts 1981, 67th Leg., p. 201, ch. 94, § 1, eff. Aug. 31, 1981.]

[1] Article 7.01 et seq.

Art. 1.33. Summary Procedures for Routine Matters

(a) The State Board of Insurance may, by rules adopted in accordance with Section 5, Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), create a summary procedure and designate certain activities of the agency that are deemed by the board to be routine matters that should be handled by such summary procedure authorized by this article, although such activities would otherwise be subject to the Administrative Procedure and Texas Register Act. The designation of activities as routine matters shall be confined to activities that are voluminous, repetitive, believed to be noncontroversial, and of limited interest to any persons other than those immediately involved in or affected by the proposed agency action.

(b) State Board of Insurance rules creating summary procedures for the processing of routine matters shall provide for reasonable prior notice of proposed agency action, but may establish notice procedures alternative to those contemplated by the Administrative Procedure and Texas Register Act. Such alternative procedures may include, but are not limited to, provisions to post notices in a public area at the offices of the agency for not less than five days prior to taking the proposed action, so long as actual notice of any proposed negative action is given to parties directly involved.

(c) Such summary procedure rules may provide for the delegation of authority to take action on routine matters to such deputies, assistants, and other salaried personnel of the State Board of Insurance as the board may designate.

(d) Any person affected, directly or indirectly, by the action of the State Board of Insurance on a routine matter shall have a right to have such action reviewed in accordance with the procedures established pursuant to the Administrative Procedure and Texas Register Act by making application to the board no more than 60 days after such action. The timely filing of such application for review shall immediately stay the action taken pursuant to the summary procedure pending a hearing on its merits. The board may make such other rules and regulations respecting such applications and their consideration as it deems advisable, not inconsistent with this section.

[Added by Acts 1981, 67th Leg., p. 2069, ch. 460, § 1, eff. June 11, 1981.]

CHAPTER TWO. INCORPORATION OF INSURANCE COMPANIES

Art. 2.10. Investment of Funds in Excess of Minimum Capital and Minimum Surplus

No company except any writing life, health and accident insurance, organized under the laws of this state, shall invest its funds over and above its minimum capital and its minimum surplus, as provided in Article 2.02, except as otherwise provided in this Code, in any other manner than as follows:

1. As provided for the investment of its minimum capital and its minimum surplus in Article 2.08;

2. In bonds or other evidences of debt which at the time of purchase are interest-bearing and are issued by authority of law and are not in default as to principal or interest, of any of the States of the United States or in the stock of any National Bank, in stock of any State Bank of Texas whose deposits are insured by the Federal Deposit Insurance Corporation; provided, however, that if said funds are invested in the stock of a State Bank of Texas that not more than thirty-five per cent (35%) of the total outstanding stock of any one (1) State Bank of Texas may be so purchased by any one (1) insurance company; and provided further, that neither the insurance company whose funds are invested in said bank stock nor any other insurance company may invest its funds in the remaining stock of any such State Bank;

3. In bonds or first liens or first mortgages upon unencumbered real estate in this state or in any other state, country or province in which such company may be duly licensed to conduct an insurance business, the title to which is valid and the market value of which is not less than forty per cent (40%) more than the amount loaned thereon. If any part of the value of such real estate is in buildings, such buildings shall be insured against loss by fire for at least sixty per cent (60%) of the value thereof provided that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below sixty per cent (60%) of the value of the buildings, the loss clause shall be payable to such company. The provisions of this paragraph with respect to the value of real estate compared to the amount loaned thereon shall not apply to loans secured by real estate which are insured by the Federal Housing Administrator or successors. The valuation of such real estate where the loan is not insured by the Federal Housing Administrator shall be by appraisal by two (2) or more competent and disinterested citizens of Texas appointed by the Board of Insurance Commissioners of Texas, the cost and expense of such appraisal to be paid by the insurance company to the Board, as amended

Acts 1959, 56th Legislature, page 96, Chapter 49, Section 1.

4. In bonds or other interest-bearing evidences of debt of any county, municipality, road district, turnpike district or authority, water district, any subdivision of a county, incorporated city, town, school district, sanitary or navigation district, any municipally owned revenue water system, sewer system or electric utility company where special revenues to meet the principal and interest payments of such municipally owned revenue water system, sewer system or electric utility company bonds or other evidences of debt shall have been appropriated, pledged or otherwise provided for by such municipality. Provided, before bonds or other evidences of debt of navigation districts shall be eligible investments such navigation district shall be located in whole or in part in a county containing a population of not less than 100,000 according to the last preceding Federal Census; and provided further, that the interest due on such navigation bonds or other evidences of debt of navigation districts must never have been defaulted;

5. In the stocks, bonds, debentures, bills of exchange or other commercial notes or bills and securities of any solvent dividend paying corporation at time of purchase, incorporated under the laws of this state, or of any other State of the United States, or of the United States, which has not defaulted in the payment of any of its obligations for a period of five (5) years, immediately preceding the date of the investment; provided such funds may not be invested in the stock of any oil, manufacturing or mercantile corporation organized under the laws of this state, unless such corporation has at the time of investment a net worth of not less than $250,000.00 nor in the stock of any oil, manufacturing or mercantile corporation, not organized under the laws of this state, unless such corporation has a combined capital, surplus and undivided profits of not less than $2,500,000.00; provided further:

(a) Any such insurance company may invest its funds over and above its minimum capital stock, its minimum surplus, and all reserves required by law, in the stocks, bonds or debentures of any solvent corporation organized under the laws of this state, or of any other State of the United States, or of the United States.

(b) No such insurance company shall invest any of its funds in its own stock or in any stock on account of which the holders or owners thereof may, in any event, be or become liable to any assessment, except for taxes.

(c) No such insurance company shall invest any of its funds in stocks, bonds or other securities issued by a corporation if a majority of the stock having voting powers of such issuing corporation is owned, directly or indirectly, by or for the benefit of one or more officers or directors of such insurance company; provided, however, that this Section shall not apply to any insurance company which has been in continuous operation for five (5) years.

6. In loans upon the pledge of any mortgage, stock, bonds or other evidence of indebtedness acceptable as investments under the terms of this Article, if the current value of such mortgage, stock, bonds or other evidence of indebtedness is at least twenty-five per cent (25%) more than the amount loaned thereon;

7. In interest-bearing notes or bonds of The University of Texas issued under and by virtue of Chapter 40, Acts of the 43rd Legislature, Second Called Session; [1]

8. In real estate to the extent only as elsewhere authorized by this Code;

9. In equipment trust obligations or certificates that are adequately secured or in other adequately secured instruments evidencing an interest in transportation equipment in whole or in part within the United States and a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment;

10. In insured accounts and evidences of indebtedness as defined and limited by Section 1, Chapter 618, page 1356, Acts of the 47th Legislature; [2] in shares or share accounts as authorized in Section 1, page 76, Acts 1939, 46th Legislature; [3] in insured or guaranteed obligations as authorized in Chapter 230, page 315, Acts 1945, 49th Legislature; [4] in bonds issued under the provisions authorized by Section 9, Chapter 231, page 774, Acts 1933, 43rd Legislature; [5] in bonds under authority of Section 1, Chapter 1, page 427, Acts 1939, 46th Legislature; [6] in bonds and other indebtedness as authorized in Section 1, Chapter 3, page 494, Acts 1939, 46th Legislature; [7] in "Municipal Bonds" issued under and by virtue of Chapter 280, Acts 1929, 41st Legislature; [8] or in bonds as authorized by Section 5, Chapter 122, page 219, Acts 1949, 51st Legislature; or in bonds as authorized by Section 10, Chapter 159, page 326, Acts 1949, 51st Legislature; [9] or in bonds as authorized by Section 19, Chapter 340, page 655, Acts 1949,[10] 51st Legislature; [11] or in bonds as authorized by Section 10, Chapter 398, page 737, Acts 1949, 51st Legislature; [12] or in bonds as authorized by Section 18, Chapter 465, page 855, Acts 1949, 51st Legislature; [13] or in shares or share accounts authorized in Chapter 534, page 966, Acts 1949, 51st Legislature; [14] or in bonds as authorized by Section 24, Chapter 110, page 193, Acts 1949, 51st Legislature;[15] together with such other investments as are now or may hereafter be specifically authorized by law.

[Amended by Acts 1979, 66th Leg., p. 325, ch. 151, § 1, eff. May 11, 1979; Acts 1979, 66th Leg., p. 1885, ch. 762, § 1, eff. June 13, 1979.]

[1] Civil Statutes, art. 2603d (repealed).
[2] Civil Statutes, art. 842a.
[3] Civil Statutes, art. 881a–24 (repealed; see, now, Civil Statutes, art. 852a, §§ 6.11, 6.12).
[4] Civil Statutes, art. 842a–1.
[5] Civil Statutes, art. 1187a, § 9.
[6] Civil Statutes, art. 1269k–1.
[7] Civil Statutes, art. 5890c (repealed; see, now, art. 5931–11).
[8] Civil Statutes, art. 7880–19a (repealed; see, now, Water Code, §§ 51.038, 51.039).
[9] Civil Statutes, art. 6795b–1, § 7(b).
[10] Civil Statutes, art. 8280–134, § 10 (see, now, Water Auxiliary Laws, Table).
[11] Civil Statutes, art. 8280–137, § 19 (see, now, Water Auxiliary Laws, Table).
[12] Civil Statutes, art. 8280–138, § 10 (see, now, Water Auxiliary Laws, Table).
[13] Civil Statutes, art. 8280–139, § 18 (see, now, Water Auxiliary Laws, Table).
[14] Civil Statutes, art. 881a–24 (repealed; see, now, Civil Statutes, art. 852a, §§ 6.11, 6.12).
[15] Civil Statutes, art. 8280–133, § 24 (see, now, Water Auxiliary Laws, Table).

CHAPTER THREE. LIFE, HEALTH AND ACCIDENT INSURANCE

SUBCHAPTER A. TERMS DEFINED; DOMESTIC COMPANIES

Article
3.10A. Reinsurance Ceded to Nonadmitted Reinsurers.
3.14. Repealed.

SUBCHAPTER D. POLICIES AND BENEFICIARIES

3.44b. Standard Non-forfeiture Law for Individual Deferred Annuities.
3.44c. Interest Rates on Life Insurance Policy Loans.

SUBCHAPTER E. GROUP; INDUSTRIAL AND CREDIT INSURANCE

3.50–2. Employees Uniform Group Insurance Benefits Act.
3.50–3. Texas State College and University Employees Uniform Insurance Benefits Act.
3.51–5. Payments of Group Life and Health Insurance Premiums for Retired employees of the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, a Texas Senior College or University, and the Coordinating Board, Texas College and University System.
3.51–6. Group and Blanket Accident and Health Insurance.
3.51–6A. Replacement and Discontinuance of Group and Group-Type Accident and Health Insurance.
3.51–7. Payments of Additional Death Benefits for Retired Appointed Officers and Employees of the Teacher Retirement System of Texas, and the Texas Central Education Agency, and the Texas Schools for the Blind and Deaf.
3.51–8. Continuation of Group Life and Group Accident and Health Insurance During Labor Dispute.
3.51–9. Availability of Alcohol and Other Drug Dependency Coverage.

SUBCHAPTER G. ACCIDENT AND SICKNESS INSURANCE

3.74. Minimum Standards for Medicare Supplement Policies.

SUBCHAPTER A. TERMS DEFINED; DOMESTIC COMPANIES

Art. 3.10. May Reinsure

Any domestic company may reinsure in any solvent assuming insurer, any risk or part of a risk which it may assume; provided, however, no credit for the reserve liability on such reinsurance may be taken by the ceding insurer unless the assuming insurer is licensed to do business in this state, or such reinsurance and the ceding insurer and assuming insurer comply with the provisions of Article 3.10A of this code, and, provided further, no company operating under Section 2(a) of Article 3.02 shall reinsure any risk or part of a risk with any insurer which is not licensed to do business in this state. No such domestic company shall have the power to reinsure its entire outstanding business unless the assuming insurer is licensed in this state and until the contract therefor shall be submitted to the Commissioner of Insurance of Texas and approved by him as protecting fully the interests of all policy holders.

[Amended by Acts 1979, 66th Leg., p. 1167, ch. 567, § 1, eff. Aug. 27, 1979.]

Art. 3.10A. Reinsurance Ceded to Nonadmitted Reinsurers

(a) No credit shall be given in the accounting and financial statements, either as an asset or a deduction from liability, of any domestic ceding insurer on account of any reinsurance of insurance policies or reinsurance reserved ceded to an assuming insurer which is not licensed to do business in this state, unless:

(1) pursuant to a written agreement between the ceding insurer and the assuming insurer, assets equal to the reserves required to be established by the ceding insurer on such reinsured business are deposited by or are withheld from the assuming insurer and are in the custody of the ceding insurer as security for the payment of the assuming insurer's obligations under the reinsurance agreement, and such assets are held subject to withdrawal by and under the control of the ceding insurer; or

(2) pursuant to a written agreement between the ceding insurer and the assuming insurer, assets equal to the reserves required to be established by the ceding insurer on such reinsurance business are either placed in a trust account for such purpose with a bank domiciled in this state which is a member of the Federal Reserve System or are represented by an irrevocable letter of credit to the benefit of the ceding insurer from such a bank, and if withdrawals from such trust account or reduction in the amount of the letter of credit cannot be made without the consent of the ceding insurer except for those amounts which are in excess of the reserves required to be established by the ceding insurer.

(b) As used in this article, the term "assets" refers to any asset or investment authorized by this code to be counted for reserve fund purposes in the financial statements of domestic life, health, and accident insurance companies.

(c) The commissioner of insurance shall have the right to examine any of such reinsurance agreements, deposit arrangements, or letters of credit at any time in accordance with the authority to make examinations of insurance companies as conferred by other provisions of this code.

(d) The State Board of Insurance may promulgate and adopt such rules and regulations as may be deemed necessary to assure uniform standards for such deposit arrangements, trust agreements, letters of credit, and reinsurance agreements, consummated under the provisions of this article.

[Added by Acts 1979, 66th Leg., p. 1168, ch. 567, § 2, eff. Aug. 27, 1979.]

Art. 3.12. Compensation of Officers and Others; Including Pensions

(a) No "domestic" company shall pay any salary, compensation or emolument which, together with any salary, compensation or emolument from an affiliated "domestic" company, amounts in any year to more than Fifty Thousand Dollars ($50,000) to any officer, trustee or director thereof, or to any person, firm or corporation, unless such payment be first authorized by a vote of the board of directors of such company, or by a committee of such board charged with the duty of authorizing such payments. The limitation as to time contained herein shall not be construed as preventing any "domestic" company from entering into contracts with its agents for the payment of renewal commissions.

[See Compact Edition, Volume 2 for text of (b) and (c)]

[Amended by Acts 1979, 66th Leg., p. 1810, ch. 737, § 1, eff. Aug. 27, 1979.]

Art. 3.14. Repealed by Acts 1975, 64th Leg., p. 464, ch. 198, § 2, eff. May 15, 1975

See, now, art. 21.39-B.

SUBCHAPTER C. RESERVES AND INVESTMENTS

Art. 3.28. Standard Valuation Law

Title

Sec. 1. This Article shall be known as the Standard Valuation Law.

Reserve Valuation

Sec. 2. The State Board of Insurance shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, the Board may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, the Board may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the State Board of Insurance when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

Computation of Minimum Standard

Sec. 3. The minimum standard for the valuation of all such policies and contracts issued prior to the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance) shall be that provided in Section 12 of this article. Except as otherwise provided in Sections 4 and 5 of this article, the minimum standard for the valuation of all such policies and contracts issued on or after the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance) shall be the commissioners reserve valuation methods defined in Sections 6, 7, and 10 of this article, three and one-half per cent (3½%) interest; in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after June 14, 1973, four per cent (4%) interest for such policies issued prior to August 29, 1977; or five and one-half per cent (5½%) interest for single premium life insurance policies and four and one-half per cent (4½%) interest for all other such policies issued on and after August 29, 1977, and the following tables:

(a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of Section 6 of the Standard Nonforfeiture Law for Life Insurance, as amended, the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after the operative date of Section 6 of the Standard Nonforfeiture Law for Life Insurance, as amended, and prior to the operative date of Section 8 of the Standard Nonforfeiture Law for Life Insurance, as amended, provided that for any category of such policies issued on female risks, all modified net premiums and present values referred to in this Act may be calculated according to an age not more than three years younger than the actual age of the insured for policies issued prior to August 29, 1977 and not more than six years younger than the actual age of the insured for policies issued on and after August 29, 1977; and for such policies issued on or after the operative date of Section 8 of the Standard Nonforfeiture Law for Life Insurance, as amended, (i) the Commissioners 1980 Standard Ordinary Mortality Table, or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or (iii) any ordinary mortality table adopt-

ed after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard valuation for such policies.

(b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of Section 7 of the Standard Nonforfeiture Law for Life Insurance, as amended, and for such policies issued on or after such operative date, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such policies.

(c) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table, or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the State Board of Insurance.

(d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951, any modification of such table approved by the State Board of Insurance, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(e) For total and permanant disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the National Association of Insurance Commissioners that are approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the State Board of Insuance.

Computation of Minimum Standard for Annuities

Sec. 4. Except as provided in Section 5 of this article, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this Section 4, as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts shall be the commissioners reserve valuation methods defined in Sections 6 and 7 of this article and the following tables and interest rates:

(a) For individual annuity and pure endowment contracts issued prior to August 29, 1977, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest for single premium immediate annuity contracts, and four per cent (4%) interest for all other individual annuity and pure endowment contracts.

(b) For individual single premium immediate annuity contracts issued on or after August 29, 1977, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the State Board of Insurance, and seven and one-half per cent (7½%) interest.

(c) For individual annuity and pure endowment contracts issued on or after August 29, 1977, other than single premium immediate an-

nuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table or any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the State Board of Insurance, and five and one-half per cent (5½%) interest for single premium deferred annuity and pure endowment contracts and four and one-half per cent (4½%) interest for all other such individual annuity and pure endowment contracts.

(d) For all annuities and pure endowments purchased prior to August 29, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest.

(e) For all annuities and pure endowments purchased on or after August 29, 1977, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table or any group annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation promulgated by the State Board of Insurance for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the State Board of Insurance, and seven and one-half per cent (7½%) interest.

After June 14, 1973, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1979, which shall be the operative date of this section for such company; provided, a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this section for such company shall be January 1, 1979.

Computation of Minimum Standard by Calendar Year of Issue

Sec. 5. (a) Applicability of this section

(1) The calendar year statutory valuation interest rates as defined in this Section shall be the interest rates used in determining the minimum standard for valuation of:

(A) all life insurance policies issued in a particular calendar year on or after the operative date of Section 8 of the Standard Nonforfeiture Law for Life Insurance;

(B) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;

(C) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and

(D) the net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts.

(b) Calendar Year Statutory Valuation Interest Rates

(1) The calendar year statutory valuation interest rates, "I," shall be determined as follows and the results rounded to the nearer one-fourth of one per cent (¼ of 1%):

(A) For life insurance,

$$I = .03 + W(R_1 - .03) + \frac{W}{2}(R_2 - .09).$$

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$I = .03 + W(R - .03)$

where R_1 is the lesser of R and .09,

R_2 is the greater of R and .09,

R is the reference interest rate defined in this section, and

W is the weighting factor defined in this section.

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in Paragraph (B) of Subdivision (1) of Subsection (b) of this section, the formula for life insurance stated in Paragraph (A) of Subdivision (1) of Subsection (b) of this section shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single premium immediate annuities stated in Paragraph (B) of Subdivision (1) of Subsection (b) of this section shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less.

(D) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in Paragraph (B) of Subdivision (1) of Subsection (b) of this section shall apply.

(E) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium im-

mediate annuities stated in Paragraph (B) of Subdivision (1) of Subsection (b) of this section shall apply.

(2) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one per cent (½ of 1%), the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when Section 8 of the Standard Nonforfeiture Law for Life Insurance becomes operative.

(c) Weighting Factors

(1) The weighting factors referred to in the formulas stated above are given in the following tables:

(A) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(B) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

(C) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in Paragraph (B) of Subdivision (1) of Subsection (c) of this section, shall be as specified in tables (i), (ii), and (iii) below, according to the rules and definitions in (iv), (v), and (vi) below:

(i) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

(ii) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (i) above increased by:

Plan Type A	B	C
.15	.25	.05

(iii) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in (i) or derived in (ii) increased by:

Plan Type A	B	C
.05	.05	.05

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(v) Plan type as used in the above tables (i), (ii), and (iii) is defined as follows:

Plan Type A: At any time policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of funds by the insurance company, or (2) without such adjustment but in installments over five years or more, or (3) as an immediate life annuity, or (4) no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, the policyholder may withdraw funds only (1) with an adjustment to re-

flect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) without such adjustment but in installments over five years or more, or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(vi) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(d) Reference Interest Rate

(1) Except as provided in Subsection (e) of this section, the reference interest rate referred to in Subsection (b) of this section shall be defined as follows:

(A) For all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's Corporate Bond Yield Average—Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's Corporate Bond Yield Average—Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(C) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Paragraph (B) of Subdivision (1), of Subsection (d) of this section, with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average—Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(D) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in Paragraph (B) of Subdivision (1) of Subsection (d) of this section, with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average—Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(E) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average—Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(F) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in Paragraph (B) of Subdivision (1) of Subsection (d) of this section, the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of Moody's Corporate Bond Yield Average—Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(e) State Board of Insurance Promulgation of Definitions of Reference Interest Rate

The State Board of Insurance shall, not less than annually, determine whether the definition of reference interest rates as specified in Subsection (d) of this section continues to be a reasonably accurate approximation of the average yield achieved from purchases in the United States in publicly quoted markets of investment grade fixed term and fixed interest corporate obligations for the times specified in such subsection and shall, if it determines that such definition is no longer such reasonably accurate approximation, promulgate rules in the manner specified in the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), to adopt such alternative methods as are appropriate to achieve such purpose.

Commissioners Reserve Valuation Method

Sec. 6. Except as otherwise provided in Sections 7 and 10 of this article, reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(b) A net one year term premium for such benefits provided for in the first policy year.

Provided that for any life insurance policy issued on or after January 1, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in Section 10 of this article, be the greater of the reserve as of such policy anniversary calculated as previously described in this Section 6 and the reserve as of such policy anniversary calculated as previously described in this Section 6 but with (i) the value defined in Subsection (a) of Section 6 of this article being reduced by fifteen per cent (15%) of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on such date as an endowment, and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in Sections 3 and 5 of this article shall be used.

Reserves according to the commissioners reserve valuation method for: (1) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (2) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended;[1] (3) disability and accidental death benefits in all policies and contracts; and (4) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts; shall be calculated by a method consistent with the principles of the preceding paragraphs of this section.

[1] 26 U.S.C.A. § 408.

Commissioners Reserve Valuation Method—Annuity and Pure Endowment Benefits

Sec. 7. This section shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the commissioners annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

Minimum Reserves

Sec. 8. In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance), be less than the aggregate reserves calculated in accordance with the methods set forth in Sections 6, 7, 10, and 11 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

Optional Reserve Calculation

Sec. 9. Reserves for all policies and contracts issued prior to the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance) may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts or benefits as established by the State Board of Insurance, issued on or after the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance), may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the State Board of Insurance, adopt any lower standard of valuation, but not lower than the minimum herein provided.

Reserve Calculation—Valuation Net Premium Exceeding the Gross Premium Charged

Sec. 10. If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in Sections 3 and 5 of this article.

Provided that for any life insurance policy issued on or after January 1, 1985, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this Section 10 shall be applied as if the method actually used in calculating the reserve for such policy were the method described in Section 6 of this article, ignoring the second paragraph of Section 6. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with Section 6, including the second paragraph of that section, and the minimum reserve calculated in accordance with this Section 10.

Reserve Calculation—Indeterminate Premium Plans and Certain Other Plans

Sec. 11. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in Sections 6, 7, and 10 of this article, the reserves which are held under any such plan must:

(a) be appropriate in relation to the benefits and the pattern of premiums for that plan, and

(b) be computed by a method which is consistent with the principles of this Standard Valuation Law, as determined by regulations promulgated by the State Board of Insurance.

Notwithstanding any other provision in the laws of this state, any policy, contract, or certificate providing life insurance under any such plan must be affirmatively approved by the State Board of Insurance before it can be marketed, issued, delivered, or used in this state.

Computation of Minimum Standard by Calendar Year of Issue

Sec. 12. This section shall apply only to those policies and contracts issued prior to the operative date of Article 3.44a (the Standard Nonforfeiture Law for Life Insurance). The reserve liability of all such policies and contracts shall be computed in accordance with their terms and the following rules:

(a) As respects policies issued prior to the first day of January, 1910, the computation shall be on the basis of the American Experience

Table of Mortality and four and one-half per cent (4½%) interest per annum.

(b) As respects policies issued after the 31st day of December, 1909, and prior to January 1, 1948, the computation shall be on the basis of the Actuaries or Combined Experience Table of Mortality with four per cent (4%) interest per annum, if the interest rate guaranteed in the policy is four per cent (4%) per annum or higher. If any such policies were issued upon a reserve basis of an interest rate lower than four per cent (4%) per annum, then the computation shall be made on the basis of the American Experience Table of Mortality with interest at such lower specified rate.

(c) As respects policies issued after the 31st day of December, 1947, the computation shall be on the basis of the mortality table and interest rate specified in the respective policies, provided that (A) the specified rate of interest shall not exceed three and one-half per cent (3½%) per annum; (B) the specified table for policies other than policies of industrial life insurance shall be the American Experience Table of Mortality, the American Men Ultimate Table of Mortality, the Commissioners 1941 Standard Ordinary Mortality Table, or, as respects policies issued after the 31st day of December, 1959, the Commissioners 1958 Standard Ordinary Mortality Table; and (C) the specified table for policies of industrial life insurance shall be the American Experience Table of Mortality, the Standard Industrial Mortality Table, the Sub Standard Industrial Mortality Table, the 1941 Standard Industrial Mortality Table, or the 1941 Sub-Standard Industrial Mortality Table, or, as respects policies issued after the 31st day of December, 1963, the Commissioners 1961 Standard Industrial Mortality Table.

(d) As respects policies on female risks issued after the 31st day of December, 1959, other than policies of industrial life insurance, computation shall be based on any mortality table and rate of interest permitted under Subsection (c) of Section 12 of this article and specified in the respective policies but may at the option of the company be based on an age not more than three (3) years younger than the actual age of the insured.

(e) Except as otherwise provided in Section 4 of this article with respect to coverages purchased on or after the operative date of such subsection under group annuity and pure endowment contracts, as respects policies issued on substandard risks and annuity contracts and contracts or policies for disability benefits and accidental death benefits, the computation shall be on the basis of the standards and methods adopted by the respective companies and approved by the State Board of Insurance.

(f) The reserve values of all policies of group insurance issued prior to May 15, 1947, shall be computed upon the basis of the American Men Ultimate Table of Mortality with interest at the rate of three per cent (3%) or three and one-half per cent (3½%) per annum as provided in such policies. The reserve values of all policies of group insurance issued on and subsequent to May 15, 1947, and prior to January 1, 1961, shall be computed upon the basis of either the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary Mortality Table with interest at a rate not in excess of three and one-half per cent (3½%) per annum as provided in such policies. The reserve values of all policies of group insurance issued on and subsequent to January 1, 1961, shall be computed on the basis of an interest rate not exceeding three and one-half per cent (3½%) per annum and such mortality table as shall be adopted by the company with the approval of the State Board of Insurance.

Repeal of Conflicting Laws

Sec. 13. All acts and parts of acts inconsistent with the provisions of this article are hereby repealed.

[Amended by Acts 1977, 65th Leg., p. 2098, ch. 842, §§ 1 to 5, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2170, ch. 508, § 1, eff. Aug. 31, 1981.]

Art. 3.34. Texas Securities

The term "Texas Securities," as used in this Chapter, shall be held to include the following:

PART I. INVESTMENTS.

[See Compact Edition, Volume 2 for text of Part I, 1 to 6]

7. Federal Farm Loan Bonds.

Bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916,[1] where such bonds are issued against and secured by promissory notes or other obligations, the payment of which is secured by mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this state.

8. Corporate First Mortgage Bonds, Notes, and Debentures.

(1) First mortgage bonds or first lien notes secured by real estate or personal property:

(a) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or

(b) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are fully guaranteed by a

solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or

(c) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes; or

(d) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or

(2) in the notes or debentures of any such corporation incorporated under the laws of this state and doing business in this state with a net worth of not less than Five Million Dollars ($5,000,000) where no prior lien exists in excess of 10 percent (10%) of the net worth of such corporation, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created in excess of 10 percent (10%) of the net worth of such corporation, against the real or personal property of such corporation at the time the notes or debentures were issued; or

(3) in the notes or debentures of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years where no prior lien exists, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created against the real or personal property of such corporation at the time the notes or debentures were issued, but whose notes or debentures are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment and has a net worth of at least Five Million Dollars ($5,000,000), the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes or whose notes or debentures are fully guaranteed by any such corporation; or (4) in the bonds, bills of exchange, or other commercial notes or bills of any solvent corporation incorporated under the laws of and doing business in this state which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent corporation incorporated under the laws of and doing business in this state which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment, and which corporation has a net worth of not less than Fifty Million Dollars ($50,000,000) and has no long-term indebtedness in excess of its net worth, as evidenced by its latest published financial statements or other financial data available to the public; but in no event shall the amount of such investment in the bonds, notes, debentures, or other obligations or any one such corporation exceed five per cent (5%) of the admitted assets of the insurance company making such investment.

[See Compact Edition, Volume 2 for text of Part I, 9]

10. Bank and Bank Holding Company Stocks.

The stock of state banks incorporated under the laws of this state and national banks domiciled and doing business in this state that are members of the Federal Deposit Insurance Corporation and the stock of bank holding companies as defined in the Bank Holding Company Act of 1956 (12 U.S.C.A. Section 1841 et seq.), as amended by the Bank Holding Company Act Amendments of 1970 (12 U.S.C.A. Section 1841 et seq., 1971 et seq.) enacted by the United States Congress, and which are incorporated under the laws of this state and doing business in this state; provided, however, that no such investment shall exceed twenty per cent (20%) of the total outstanding shares of the stock of any such bank or bank holding company, and in no event shall the amount of investment in any such stock exceed ten per cent (10%) of the admitted assets of the insurance company making such investment.

The values of any stock owned by an insurance company in a bank holding company which is directly attributable to an original investment by the insurance company in the stock of either a state bank incorporated in Texas or a national bank domiciled and doing business in Texas, which bank subsequently became the bank holding company as previously defined, shall be treated as Texas Securities hereunder even

though such bank holding company is not incorporated in Texas.

11. Debt Obligations of Corporations Not Otherwise Qualified.

In addition to those investments otherwise qualifying as Texas Security under other provisions of this Act, investments in corporate first mortgage bonds, debentures, and other debt obligations of any solvent, dividend-paying corporation, which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent dividend corporation which has not been in existence for five (5) consecutive years, but whose corporate obligations are fully guaranteed by a solvent, dividend-paying corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, and which issuing corporation meets at least one of the following criteria, shall be considered as Texas Securities for the purposes of this Act:

a. more than fifty per cent (50%) of the corporation's total assets are "Texas Securities" as herein defined,

b. more than fifty per cent (50%) of the corporation's total gross receipts are from sales which accrued within the State of Texas,

c. more than fifty per cent (50%) of the corporation's employees perform their duties and jobs within the State of Texas.

An insurer claiming as a "Texas Security" one of the foregoing defined investments shall have the burden of proving that such investment meets one of the three above-listed tests.

PART II. LOANS.

[See Compact Edition, Volume 2 for text of Part II, 1 to 5]

6. Insurance Requirements on Improvements Securing First Liens on Real Estate.

If any part of the value of buildings is required to be included in the value of such real estate to attain the minimum authorized value of the security, such buildings shall be insured against loss by fire in a company authorized to transact business in the State of Texas for at least fifty per cent (50%) of the value thereof; provided, that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company.

[See Compact Edition, Volume 2 for text of Part II, 7]

PART III. REAL ESTATE.

All real estate situated in this state now owned and held and all real estate situated in this state hereafter acquired, owned and held by such insurance company in accordance with the provisions of this Chapter.

PART IV. MISCELLANEOUS.

1. Bank Deposits.

For the purpose of this Act, "Texas Securities" shall include the average daily balance of cash on deposit, subject to check and withdrawal, in a state or national chartered bank which has qualified for Federal Deposit Insurance Corporation coverage, provided the bank and the deposits are both located within the State of Texas.

The amount to be included in the average daily balance of cash on deposit shall be the sum of the balances on the bank's books at the close of each day, including weekends and/or holidays, divided by the total days of the year.

Each tax return reflecting an amount of average daily balance as a Texas Security must be supported by a sworn certification as to the amount, which shall have been executed by an officer of the bank where the deposits were maintained.

Nonnegotiable certificates of deposit held in a state or national chartered bank, which is insured by Federal Deposit Insurance Corporation coverage, shall be defined as a "Texas Security" and not subject to the foregoing restriction if the issuing bank and the deposit is located within the State of Texas and if the funds evidenced by the certificates have been on deposit for at least one year or such funds are committed by the terms of the certificate of deposit for one or more years, or such funds represent the renewal of a certificate of deposit which previously qualified under this provision.

Negotiable certificates of deposit may be treated the same as nonnegotiable if they are held to maturity and the funds evidenced by the certificates have been on deposit for at least one year, or such funds are committed by the terms of the certificate of deposit for one or more years, or such funds represent the renewal of a certificate of deposit which previously qualified under this provision. If not held to maturity, the negotiable certificate shall be included in the average daily balance of cash on deposit and subject to the average daily balance of cash on deposit provisions herein. The amount to be included in the numerator of the formula for the calculation of the average daily balance of cash on deposit shall be the sum of the days on deposit, including weekends and holidays, multiplied by the face amount of the certificate of deposit.

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

4. Valuation of Texas Securities and/or Similar Securities.

The value of the foregoing Texas Securities, exclusive of cash on deposit, shall be limited to the original cost of common or preferred stock, the amortized value of bonds, debentures, warrants, and other interest-bearing indebtedness, and the unpaid principal balance of mortgage loan notes and collateral loan notes. The improvements situated on Texas real estate held under Articles 3.40 and 3.40–1, Insurance Code, 1951, as amended, shall be valued at the depreciated cost less any outstanding indebtedness. The land shall be valued at the original cost less any outstanding indebtedness. No increases in value to either land or improvements by reason of appraisals will be allowed as a part of the "Texas Securities" for the purposes of this Article.

[Amended by Acts 1977, 65th Leg., p. 1982, ch. 793, § 1, eff. Jan. 1, 1978.]

[1] 12 U.S.C.A. § 641 et seq. (repealed).

Section 2 of the 1977 Act provided for a January 1, 1978 effective date.

Art. 3.39. Authorized Investments and Loans for "Domestic" Life Insurance Companies

PART I. AUTHORIZED INVESTMENTS

A life insurance company organized under the laws of this state may invest its several funds, identified as follows, in the following securities, respectively, and none other:

A. ANY OF ITS FUNDS AND ACCUMULATIONS

1. U.S. Bonds and Obligations Guaranteed by the United States.

The bonds, treasury bills, notes and certificates of indebtedness of the United States or any other obligation or security fully guaranteed as to principal and interest by the full faith and credit of the United States.

2. Canadian Bonds.

The bonds of the Dominion of Canada or any province or city of the Dominion of Canada.

3. State, County and City Bonds.

The bonds of any state, county, or city of the United States.

4. County, City and School District Bonds.

Any bonds or interest-bearing warrants issued by authority of law by any county, city, town, school district or other municipality or subdivision, which is now or hereafter may be constituted or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the Constitution and laws of the state in which it is situated; provided legal provision has been made by a tax to meet said obligations.

5. Bonds of Educational Institutions.

Any bonds or interest-bearing warrants issued by authority of law by any educational institution which is now or hereafter may be constituted or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the Constitution and laws of the state in which it is situated; provided legal provision has been made by a tax to meet said obligations.

6. Revenue Bonds, etc., of Educational Institutions.

The bonds and warrants, including revenue and special obligations, of any educational institution located in any state in the United States when special revenue or income to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged or otherwise provided by such educational institution.

7. Bonds and Warrants of Municipally Owned Systems.

The bonds and warrants payable from designated revenues of any city, county, drainage district, road district, town, township, village or other civil administration, agency, authority, instrumentality, or subdivision which is now or hereafter may be constituted or organized under the laws of any state in the United States, and which is authorized to issue such bonds and warrants under the Constitution and laws of the state in which it is situated; provided special revenue or income to meet the principal and interest payments as they accrue upon such obligations shall have been appropriated, pledged or otherwise provided by such municipality.

8. Paving Certificates.

Any paving certificates or other certificates or evidence of indebtedness issued by any city in any state in the United States and secured by a first lien on real estate.

9. Bonds Issued Under Federal Farm Loan Act.

Bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916 (12 U.S.C.A. Sec. 641 et seq.), when such bonds are issued against and secured by promissory notes, or obligations, the payment of which is secured by mortgage, deed of trust, or other valid lien upon unincumbered real estate situated in this state.

10. Corporate First Mortgage Bonds, Notes and Debentures.

(1) First mortgage bonds or first lien notes on real estate or personal property: (a) of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or (b) of any solvent corporation which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are fully guaranteed by a solvent corporation which has not defaulted

in the payment of any debt within five (5) years next preceding such investment; or (c) of any solvent corporation which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes; or (d) of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or (2) in the notes or debentures of any such corporation with a net worth of not less than Five Million Dollars ($5,000,000) where no prior lien exists in excess of 10 percent of the net worth of such corporation, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created in excess of 10 percent of the net worth of such corporation, against the real or personal property of such corporation at the time the notes or debentures were issued; or (3) in the notes or debentures of any solvent corporation which has not been in existence for five (5) consecutive years where no prior lien exists, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created against the real or personal property of such corporation at the time the notes or debentures were issued, but whose notes or debentures are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment and has a net worth of at least Five Million Dollars ($5,000,000), the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes, or whose notes or debentures are fully guaranteed by any such corporation; or (4) in the bonds, bills of exchange, or other commercial notes or bills of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment, and which corporation has a net worth of not less than Fifty Million Dollars ($50,000,000) and has no long-term indebtedness in excess of its net worth, as evidenced by its latest published financial statements or other financial data available to the public; but in no event shall the amount of such investment in the bonds, notes, debentures, or other obligations of any one such corporation exceed five percent (5%) of the admitted assets of the insurance company making such investment.

11. Shares of Savings and Loan Associations.

The shares, stock, share accounts or savings accounts, and investment certificates of Savings and Loan Associations doing business in this state where such association has qualified for participation in insurance issued by the Federal Savings and Loan Insurance Corporation; no such investment shall exceed twenty per cent (20%) of the total assets of any such Individual Savings and Loan Association.

12. Bank and Bank Holding Company Stocks.

The stock of banks, either state or national, that are members of the Federal Deposit Insurance Corporation and the stock of bank holding companies as defined in the Bank Holding Company Act of 1956 (12 U.S.C.A. 1841 et seq.) as amended by the Bank Holding Company Act Amendments of 1970 (12 U.S.C.A. 1841 et seq., 1971 et seq.) enacted by the United States Congress; no such investment shall exceed twenty per cent (20%) of the total outstanding shares of the stock of any such bank or bank holding company and in no event shall the amount of investment in any such stock exceed ten per cent (10%) of the admitted assets of the insurance company making such investment.

13. Debentures of Public Utility Corporations.

The debentures of any solvent public utility corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment provided such corporation has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and public utility corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; provided further, that such public utility corporation shall not have failed in any one of the five (5) years next preceding such investment to

have earned, after taxes, including income taxes, and after deducting proper charges for replacements, depreciation and obsolescence, a sum applicable to interest on its outstanding indebtedness equal at least to two times the amount of interest due for that year, or where, in the case of issuance of new debentures, such earnings applicable to interest are equal to at least two times the amount of annual interest on such public utility corporation's obligations after giving effect to such new financing; or, in the case of a public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment but has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and the public utility corporation so succeeded have not failed in any one of the five (5) years next preceding such investment to have earned, after taxes, including income taxes, and after deducting proper charges for replacements, depreciation and obsolescence, a sum applicable to interest on the outstanding indebtedness equal to at least two times the amount of interest due for that year, to where in the case of issuance of new debentures such earnings applicable to interest are equal to at least two times the amount of annual interest on such public utility corporation's obligations after giving effect to such new financing; but in no event shall the amount of such investment in debentures under this Subdivision exceed five per cent (5%) of the admitted assets of the issurance company making the investment.

14. Preferred Stock of Public Utility Corporations.

The preferred stock of any solvent public utility corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which public utility corporation and the public utility corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; provided further, that such public utility corporation shall not have failed in any one of the five (5) years next preceding such investment to have earned a sum applicable to dividends on such preferred stock equal to at least three times the amount of dividends due in that year, or, in the case of issuance of new preferred stock such earnings applicable to dividends are equal at least to three times the amount of the annual dividend requirements after giving effect to such new financing, and where the bonds and debentures are eligible investments for such insurance company; or, in the case of a public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment, but has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and the public utility corporation so succeeded have not failed in any one of the five (5) years next preceding such investment to have earned a sum applicable to the dividends on such preferred stock equal to at least three times the amount of dividends due in that year, or, in the case of issuance of new preferred stock, such earnings applicable to dividends are equal at least to three times the amount of the annual dividend requirements after giving effect to such new financing, and where the bonds and debentures are eligible investments for such insurance company; provided that any preferred stock so purchased shall be of an issue which is entitled to first claim upon the net earnings of such public utility corporation after deducting such sum as may be necessary to service any outstanding bonds and debentures, but in no event shall the amount of such investment in preferred stock under this Subdivision exceed two and one-half per cent (2-½%) of the admitted assets of the insurance company making the investment.

15. Securities Not Otherwise Specified.

Notwithstanding any expressed or implied prohibitions, a life insurance company may, after the effective date of this amendment, invest any of its funds and accumulations in investments which do not otherwise qualify under any other provision of Chapter 3 of the Insurance Code; provided, however, that the amount of any one such investment under this Section shall not exceed one per cent (1%) of the admitted assets of any such life insurance company; and provided further, that the investments authorized by this Section shall not exceed the lesser of (a) five per cent (5%) of its admitted assets, or (b) the amount of its capital and surplus in excess of Two Hundred Thousand Dollars ($200,000) as shown on its last annual statement preceding the date of the acquisition of such investment as filed with the State Board of Insurance.

Nothing herein shall be construed or applied so as to authorize any life insurance company to invest any of its funds or accumulations in real property unless already authorized to do so by this Act or some other existing law of the State of Texas.

15A. Other Bonds.

A company may also invest its funds and accumulations in:

(1) bonds issued, assumed, or guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), and the Asian Development Bank; and

(2) bonds issued, assumed, or guaranteed by the State of Israel.

16. Securities Authorized by Special Acts of the Legislature.

Securities authorized under Articles: 842a; 842a–1; 881a–24; 1187a; 5890c; 6795b–1; 7880–19a; 8247a; 8280–133; 8280–134; 8280–137; 8280–138; and 8280–139 of the Revised Civil Statutes of Texas.

17. Other Securities Specifically Authorized by Law.

(1) Equipment trust obligations or certificates that are adequately secured or other adequately secured instruments evidencing an interest in transportation equipment that is in whole or in part within the United States and a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment; and

(2) Such other securities as are now or may hereafter be specifically authorized by law.

B. POLICY RESERVES AND SURPLUS

1. Specified Municipal Bonds.

It may invest its policy reserves and surplus over and above its capital in "Municipal Bonds" issued under and by virtue of Chapter 280, Acts 1929, 41st Legislature.

C. CAPITAL, SURPLUS AND CONTINGENCY FUNDS OVER AND ABOVE POLICY RESERVES

It may invest its capital, surplus and contingency funds over and above the amount of its policy reserves in the following securities:

1. Capital Stock, Bonds, and other Obligations of Corporations.

The capital stock, bonds, bills of exchange, or other commercial notes or bills and securities of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment.

2. Bonds or Notes of Educational or Religious Corporations.

The bonds or notes of any educational or religious corporation where provision has been made for the payment of a sufficient amount of the first weekly or monthly revenues thereof to an interest and sinking fund account in a bank or trust company as an independent paying agent.

3. Limitation of Investments.

It may not invest in its own capital stock nor in the stock of any one corporation to any extent more than ten per cent (10%) of the amount of its own capital, surplus, and contingent funds, nor in the stock of any manufacturing corporation with a net worth of less than Twenty-Five Thousand Dollars ($25,000), nor in the stock of any oil corporation with a net worth of less than Five Hundred Thousand Dollars ($500,000); provided, however, that it may own and invest not more than twenty-five per cent (25%) of its capital, surplus and contingency funds in the capital stock of one fire and casualty insurance company, provided such investment gives it a majority of the outstanding stock of such fire and casualty insurance company; and provided further, it may additionally invest that portion of its surplus funds which is in excess of the greater amount of either (a) ten per cent (10%) of its admitted assets as determined from its latest annual statement on file with the State Board of Insurance or (b) the minimum capital and surplus requirements for incorporating a life insurance company under Chapter 3 of the Insurance Code, as amended, as it may be amended, in the capital stock, bonds and other obligations of any one or more solvent corporations.

4. Certain Life Income Interests.

(a) Life income interest in an irrevocable express testamentary trust that has as the fee simple recipient of all the corpus of the trust one or more Texas public charities, Texas churches, Texas educational institutions or Texas scientific institutions; provided each recipient is recognized by the Internal Revenue Service of the United States as exempt from payment of income taxes and provided further that (1) the corpus of any such trust is in whole or in part composed of interests in real estate, stocks, bonds, debentures and other securities of an aggregate total value of not less than $5,000,000; and (2) the corpus of any such trust produces annual income of not less than $100,000.

(b) No life insurance company's interest in any such trust shall exceed ten per cent (10%) of its admitted assets.

(c) Before such interest shall be acquired, satisfactory evidence shall be presented to the Commissioner of Insurance as follows:

(1) That the interest is subject to and recognized as transferable,

(2) That the interest is capable of reasonable valuation,

(3) That a market for sale of such interest exists,

(4) That the life income interest is supported by life insurance in an amount not less than its admitted value and in form approved by the Commissioner of Insurance.

(d) In valuing such interest on its books, the life insurance company shall value the interest only on the basis of the lesser of, (1) the recognized market established in accordance with Section (c)(3) above, or (2) the ratio that such fractional life income interest in the income of the trust bears to the total market value of the properties held by the trust that are of the type of property a life insurance company can lawfully acquire under the investment statutes of the State of Texas.

D. CAPITAL, SURPLUS AND CONTINGENCY FUNDS NOT TO EXCEED 10%

1. Capital Stock of Other Insurance Corporations.

It may invest not to exceed ten per cent (10%) of its capital, surplus, and contingency funds, in not more than twenty per cent (20%) of the capital stock of any other insurance company, now or hereafter organized under this Chapter, whose principal business is the reinsurance, either partially or wholly, of risks ceded to it by other life insurance companies. The investment herein authorized may be made by purchase of stock then issued and outstanding or by subscription to and payment for the increase in the capital stock of such reinsurance corporation.

E. MINIMUM CAPITAL AND SURPLUS

1. Requirement as to Investment of Minimum Capital and Surplus.

Notwithstanding other provisions of this Article 3.39 of this Code, the capital and surplus of a company hereafter organized under Article 3.02 of this Code and the free surplus of a company hereafter organized under Article 11.01 of this Code shall, at the time of incorporation, consist only of lawful money of the United States, or bonds of the United States, or of this state, or of any county or incorporated municipality thereof, or government insured mortgage loans which are otherwise authorized by this Chapter, and shall not include any real estate; provided, however, that fifty per cent (50%) of the minimum capital may be invested in first mortgage real estate loans; and the minimum capital of a company hereafter organized under said Article 3.02 and the minimum free surplus of a company hereafter organized under said Article 11.01 at all times shall be maintained in cash or in the same classes of investments. After the granting of charter the surplus in excess of such One Hundred Thousand Dollars ($100,000) may be invested as otherwise provided in this Code for Stock Companies.

F. GENERAL

1. Investment in Foreign Securities.

Any such company legally authorized to transact business in a foreign country may invest in the same kind of securities of said country as hereinbefore authorized in the United States of America for an aggregate amount not exceeding the reserve on the business in force in said country.

2. Investments to be Approved by Board of Directors.

No investment shall be made by any such insurance company, unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such investments.

3. Investments of Companies Reinsured.

In any case in which a life insurance company organized under the laws of this state shall reinsure the business and take over the assets of another life insurance company, either domestic or foreign, all investments of such reinsured company that were authorized, when made, by the laws of the state in which it was organized, as proper securities for investment of the funds of a life insurance company, and which are taken over by such reinsuring company, shall be considered as valid securities of such reinsuring company under the laws of this state, provided such investments are approved by the Board of Insurance Commissioners of this state, and the same are taken over on terms satisfactory to said Board; and upon the condition that the Board of Insurance Commissioners shall have the power to require the reinsuring company to dispose of such investments upon such notice as it may deem reasonable.

4. Not to Invest in Stock Subject to Assessment.

No such insurance company shall invest any of its funds in any stock on account of which the holder or owner thereof may in any event be or become liable to any assessment except for taxes.

5. Certain Investment Privileges are Cumulative.

The investment powers conferred by Paragraphs Nos. 11 and 12, Section A, are in addition to those conferred by Paragraphs Nos. 1, 2 and 3, Section C, and are not to be construed as restricting the powers already granted by said Paragraphs Nos. 1, 2 and 3 of Section C and Paragraphs Nos. 11 and 12, Section A, and the powers conferred herein are cumulative with respect to Paragraphs Nos. 1, 2 and 3, Section C, and the powers conferred therein.

PART II. AUTHORIZED LOANS

A life insurance company organized under the laws of this state may loan its several funds identified as follows, taking as collateral security for the payment of such loans the securities named below, and none other.

A. ANY OF ITS FUNDS ACCUMULATIONS

Such company may loan any of its funds and accumulations on the following securities:

1. First Liens Upon Real Estate.

First liens upon real estate, the title to which is valid and provided the amount of the loan does not exceed: (a) seventy-five (75%) per cent of the value of such real estate; or (b) ninety (90%) per cent of the value of such real estate if it contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes; or (c) ninety-five (95%) per cent of the value of such real estate if it contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes, and the portion of the unpaid balance of such loan which is in excess of an amount equal to eighty (80%) per cent of such value is guaranteed or insured by a mortgage insurance company qualified to do business in the State of Texas; provided, however, that loans in excess of seventy-five (75%) per cent of the value of such real estate authorized under (b) or (c) hereof shall not be originated by such company; provided, however, that the aggregate amount of loans secured by first liens on real estate to any one corporation, company, partnership, individual, or any affiliated person or group may not exceed ten (10%) per cent of the admitted assets of such insurer, and provided further that the amount of any such single loan secured by a first lien on real estate may not exceed five (5%) per cent of the admitted assets of the insurer. The limitation provided by this subsection shall not apply to any first lien on real estate where the Commissioner of Insurance finds that: (1) the making or acquiring of such lien is beneficial to and protects the interest of the insurer and (2) no substantial damage to the policyholders and creditors of such insurer appears probable from the taking or acquiring of such lien.

2. First Liens Upon Leasehold Estates.

First liens upon leasehold estates in real property and improvements situated thereon, the title to which is valid; provided that the duration of any loan upon such leasehold estates shall not exceed a period equal to four-fifths (⅘) of the then unexpired term of such leasehold estate, provided the unexpired term of the leasehold estate must extend at least ten (10) years beyond the term of the loan, and any such loan shall be payable only in equal monthly, quarterly, semi-annual or annual installments, on principal and interest during a period not exceeding four-fifths (⅘) of the then unexpired term of such leasehold estate.

3. Collateral Securities.

Upon any obligation secured collaterally by any such first liens on real estate or leasehold estates.

4. Policy Loans.

Security of its own policies. No loan on any policy shall exceed the reserve values thereof.

5. Other Securities.

It may loan any of its funds and accumulations, taking as collateral to secure the payment of such loan, any of the securities named or referred to in Part 1 of this Article 3.39 above in which it may invest any of its funds and accumulations.

6. Restrictions as to Value of Real Estate Removed Where Loans Insured by the United States.

The foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended (12 U.S.C.A. Sec. 1701 et seq.), or by the State of Texas, or, if not wholly insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended, or by the State of Texas, would not exceed the amount of loan permissible under said restrictions.

7. Loans to be Authorized by Board of Directors.

No loan, except policy loans, shall be made by any such insurance company unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such loans.

8. Insurance Requirements.

If any part of the value of buildings is required to be included in the value of such real estate to attain the minimum authorized value of the security, such buildings shall be insured against loss by fire in a company authorized to transact business in the state in which such real estate is located, or in a company recognized as acceptable for such purpose by the insurance regulatory official of the state in which such real estate is located, which insurance shall be in an amount of at least fifty per cent (50%) of the value of such buildings; provided, that the insurance coverage need not exceed the outstand-

ing balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company.

B. CAPITAL, SURPLUS AND CONTINGENCY FUNDS OVER AND ABOVE POLICY RESERVES

1. Capital Stock, Bonds, and Other Obligations of Solvent Corporations, and Educational or Religious Corporations.

It may loan its capital, surplus, and contingency funds, or any part thereof over and above the amount of its policy reserves, taking as security therefor the capital stock, bonds, bills of exchange, or other commercial notes or bills and the securities of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or in the bonds or notes of any Educational or Religious Corporation where provision has been made for the payment of a sufficient amount of the first weekly or monthly revenues thereof to an interest and sinking fund account in a bank or trust company as an independent paying agent; provided, the market value of such stock, bills of exchange, or other commercial notes or bills and securities shall be at all times during the continuance of such loan at least fifty per cent (50%) more than the sum loaned thereon; provided that it shall not take as collateral security for any loan its own capital stock, nor shall it take as collateral security for any loan the stock of any one corporation to any extent more than ten per cent (10%) of the amount of its own capital, surplus, and contingency funds, nor shall it take as collateral security for any loan the stock of any manufacturing corporation with a net worth of less than Twenty-Five Thousand Dollars ($25,000), nor the stock of any oil corporation with a net worth of less than Five Hundred Thousand Dollars ($500,000); and provided further, that it shall not take as collateral security for any such loan any stock on account of which the holder or owner thereof may in any event be or become liable to any assessment except for taxes.

[See Compact Edition, Volume 2 for text of Part III]

[Amended by Acts 1975, 64th Leg., p. 1109, ch. 418, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 202, ch. 101, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 327, ch. 151, § 2, eff. May 11, 1979; Acts 1979, 66th Leg., p. 1217, ch. 589, § 1, eff. June 13, 1979.]

Art. 3.40. May Hold Real Estate

Every such insurance company may secure, hold and convey real property only for the following purposes and in the following manner:

[See Compact Edition, Volume 2 for text of 1(a) to (c), 2 to 4]

5. All such real property specified in Subdivisions 2, 3, and 4 of this Article which shall not be necessary for its accommodation in the convenient transactions of its business, except interests in minerals and royalties reserved upon the sale of land acquired under such Subdivisions 2, 3, and 4 hereof, and further excepting interests in producing royalties and producing overriding royalties otherwise acquired, shall be sold and disposed of within five (5) years after the company shall have acquired title to the same, or within five (5) years after the same shall have ceased to be necessary for the accommodation of its business. It shall not hold such property for a longer period, unless it shall procure a certificate from the Board that its interests will suffer materially by the forced sale thereof; in which event the time for the sale may be extended to such time as the Board shall direct in such certificate.

In addition to, and without limitation on, the purposes for which real property may be acquired, secured, held or retained pursuant to other provisions of this Article, every such insurance company may secure, hold, retain and convey production payments, producing royalties and producing overriding royalties as an investment for the production of income; provided, however, that the total amount of all such investments in production payments, producing royalties and producing overriding royalties plus the total amount of investments in home office and branch office properties under Subdivision 1(a) of this Article shall not exceed the total amount permitted by and shall be subject to all of the limitations and restrictions of Subdivisions 1(b) and 1(c) of this Article and for this purpose all investments in production payments, producing royalties and producing overriding royalties pursuant to the provisions of this paragraph shall be deemed to be "properties described in Subdivision 1(a)" of this Article; and provided further, that in valuing each such production payment, producing royalty and producing overriding royalty for the purposes of Subdivision 1(c) of this Article the State Board of Insurance may establish such value as being the maximum amount which the company purchasing such production payment, producing royalty and producing overriding royalty could loan against a first lien on such production payment, producing royalty and producing overriding royalty under the provisions of Part II, Section A, Subsection 2 of Article 3.39 of the Insurance Code; and provided further, no such company shall make any investment in such production payments, producing royalties and producing overriding royalties solely as an investment for the pro-

duction of income if, after making such investment, the total investment of the company at cost in such production payments, producing royalties and producing overriding royalties is in excess of ten per cent (10%) of its admitted assets as of December 31st next preceding the date of such investment. For the purposes of this paragraph, a production payment is defined to mean a right to oil, gas or other minerals in place or as produced that entitles its owner to a specified fraction of production until a specified sum of money, or a specified number of units of oil, gas or other minerals, has been received; a royalty and an overriding royalty are each defined to mean a right to oil, gas and other minerals in place or as produced that entitles the owner to a specified fraction of production without limitation to a specified sum of money, or a specified number of units of oil, gas or other minerals; "producing" is defined to mean producing oil, gas or other minerals in paying quantities, provided that it shall be deemed that oil, gas or other minerals are being produced in paying quantities if a well has been "shut in" and "shut in royalties" are being paid. In the event production in paying quantities should cease from any such royalty interest or overriding royalty interest held by any insurance company, such royalty or overriding royalty shall be sold and disposed of within two (2) years after such production shall have ceased, unless production in paying quantities shall have been resumed, or unless such Insurance Company shall have procured a certificate from the Board that its interests will suffer materially by the forced sale thereof; in which event the sale may be extended to such time as the Board shall direct in such certificate.

[Amended by Acts 1977, 65th Leg., p. 207, ch. 102, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided:

"All laws or parts of laws in conflict with the provisions of this article are repealed to the extent of such conflict only."

Art. 3.40–1. Investments in Income Producing Real Estate

Sec. 1. Notwithstanding any provision or limitation of Article 3.40 of this Code, any life insurance company organized under the laws of this state may invest any of its funds and accumulations in improved income producing real estate or any interest therein, and may hold, improve, maintain, manage, lease, sell or convey such property or interest therein, subject to the following terms, conditions and limitations:

(1) The term "improved income producing real estate" as used in this Article shall include all commercial and industrial real property, a substantial portion of which has been materially enhanced in value by the construction of durable, permanent-type buildings and other improvements costing an amount at least equal to the value of such real estate exclusive of building and improvements, as may be held or acquired by purchase or lease, or otherwise, for the production of income, excepting any agricultural, horticultural, farm and ranch property, residential property, single or multiunit family dwelling property, which is expressly excluded.

(2) The total amount invested by any such company in all such income producing property and improvements thereof shall not exceed fifteen per centum of its admitted assets, provided, however, that the amount invested in any one such property and its improvements shall not exceed five per centum of its admitted assets. The admitted assets of the company at any time shall be determined from its annual statement made as of the last preceding December 31 and filed with the State Board of Insurance as required by law. The value of any investment made under this Article shall be subject to Subdivision 1(c) of Article 3.40 of this Code.

(3) The investment authority granted by this Article 3.40–1 is in addition to and separate and apart from that granted by Article 3.40 of this Code, provided, however, that no such company shall make any investment in the properties described in this Article 3.40–1 which when added to those described in subdivision 1(a) of Article 3.40 of this Code would be in excess of the limitations provided by subdivision 1(b) of Article 3.40 of this Code.

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

[Amended by Acts 1981, 67th Leg., p. 2657, ch. 713, § 1, eff. Aug. 31, 1981.]

Art. 3.41a Student Loans

A foreign or domestic life insurance company may make loans to a student enrolled in an institution of higher education provided that the principal amount of the loans is insured by the federal government pursuant to the provisions of the Federal Higher Education Act of 1965, as amended (P.L. 89–329, as amended),[1] or by the Texas Guaranteed Student Loan Corporation, Section 57.01 et seq., Texas Education Code, as added.

[Amended by Acts 1981, 67th Leg., p. 18, ch. 13 § 1, eff. March 20, 1981.]

[1] 20 U.S.C.A. § 1001 et seq.

SUBCHAPTER D. POLICIES AND BENEFICIARIES

Art. 3.42. Policy Form Approval

(a) No policy, contract or certificate of life, term or endowment insurance, group life or term insurance, industrial life insurance, accident or health insurance, group accident or health insurance, hospitalization insurance, group hospitalization insurance, medical or surgical insurance, group medical or surgical insurance, or fraternal benefit insurance, and no annuity or pure endowment contract or group annuity contract, shall be delivered, issued or used in this state by a life, accident, health or casualty insurance company, a mutual life insurance compa-

ny, mutual insurance company other than life, mutual or natural premium life insurance company, general casualty company, Lloyds, reciprocal or interinsurance exchange, fraternal benefit society, group hospitalization service or any other insurer, unless the form of said policy, contract or certificate has been filed with the State Board of Insurance and approved by said Board as provided in Paragraph (c) of this Article. Provided, however, that this Article shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the State Board of Insurance and which is entitled by statute to an exemption certificate from said Board in evidence of its exempt status; provided, further, that this Act shall not be construed to enlarge the powers of any of the insurers subject to this Article.

(b) No application form which is required to be or is attached to the policy, contract or certificate, and no rider or endorsement to be attached to, printed upon or used in connection with any policy, contract or certificate described in Paragraph (a) of this Article shall be delivered, issued or used in this state by any insurer described in Paragraph (a) of this Article unless the form of said application, rider or endorsement has been filed with the State Board of Insurance and approved by said Board as provided in Paragraph (c) of this Article. Each individual accident and sickness insurance policy application form, which is required to be or is attached to the policy, shall comply with the rules and regulations of the Board promulgated pursuant to Subchapter G of this chapter. Provided, however, that this Article shall not apply to riders or endorsements which relate to the manner of distribution of benefits or to the reservation of rights and benefits under such policies, contracts and certificates, and which are used at the request of the holder of the policy, contract or certificate.

(c) Every such filing hereby required shall be made not less than sixty days in advance of any such issuance, delivery, or use. At the expiration of sixty days the form so filed shall be deemed approved by the State Board of Insurance unless prior thereto it has been affirmatively approved or disapproved by the written order of said Board. The State Board of Insurance may withdraw any such approval at any time. Approval of any such form by such Board shall constitute a waiver of any unexpired portion of the waiting period, or periods, herein provided.

(d) The order of the State Board of Insurance disapproving any such form or withdrawing a previous approval shall state the grounds for such disapproval or withdrawal.

(e) The State Board of Insurance may, by written order, exempt from the requirements of this Article for so long as it deems proper, any insurance document or form specified in such order, to which in its opinion this Article may not practicably be applied, or the filing and approval of which are, in its opinion, not desirable or necessary for the protection of the public.

(f) The State Board of Insurance shall forthwith disapprove any such form, or withdraw any previous approval thereto if, and only if,

(1) It is in any respect in violation of or does not comply with this Code.

(2) It contains provisions which encourage misrepresentation or are unjust, unfair, inequitable, misleading, deceptive or contrary to law or to the public policy of this state.

(3) It has any title, heading or other indication of its provisions which is misleading.

(g)(1) The Board may, after notice and hearing, withdraw any previous approval of an individual accident and sickness insurance policy form if, after consideration of all relevant facts, the Board finds that the benefits provided under such policy form are unreasonable in relation to the premium charged. The Board shall from time to time as conditions warrant, and after notice and hearing, promulgate such reasonable rules and regulations and amendments thereto as are necessary to establish the standard or standards by which any previous approval of a policy form may be withdrawn. Any such rule or regulation shall be promulgated in accordance with Article 3.70–10 of the Texas Insurance Code. Nothing in this section shall be construed as granting the State Board of Insurance any power or authority to determine, fix, prescribe, or promulgate the rates to be charged for any individual accident and sickness insurance policy or policies.

(2) The Board shall require the filing of all rates to be charged for individual accident and sickness policies and may adopt necessary forms to be filed by insurers in conjunction with the annual statement required under Articles 3.07 and 3.20 of this code for reporting the experience on all individual accident and sickness insurance policy forms issued by the insurer so as to determine compliance with Subsection (1).

(h) Appeals from any order of the State Board of Insurance issued under this Article may be taken to the District Court of Travis County, Texas, in accordance with Article 21.44 of Sub-Chapter F of this Insurance Code, or any amendments thereof.

(i) No policy, contract, or certificate filed pursuant to this article that contains a coordination of benefits provision may be approved for use in this state unless it also provides the order of benefit determination for insured dependent children. An order of benefits determination provision may not be approved unless it complies with the standards specified in Section (f) of this article. The State Board of Insurance is authorized to promulgate and may promulgate and enforce reasonable rules and regulations and may order such provision as is necessary in the accomplishment of the purpose of this section. [Amended by Acts 1975, 64th Leg., p. 2208, ch. 703, § 4, eff. June 21, 1975; Acts 1979, 66th Leg., p. 873, ch. 398, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 601, ch. 239, § 1, eff. Aug. 31, 1981.]

Art. 3.44a. Standard Non-forfeiture Law for Life Insurance

Title

Sec. 1. This Article shall be known as the Standard Nonforfeiture Law for Life Insurance.

Nonforfeiture Benefits

Sec. 2. In the case of policies issued on and after the operative date of this Article (as defined in Section 13), no policy of life insurance, except as stated in Section 12, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the State Board of Insurance are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified, and are essentially in compliance with Section 11 of this law:

(1) That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty (60) days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be hereinafter specified. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(2) That, upon surrender of the policy within sixty (60) days after the due date of any premium payment in default after premiums have been paid for at least three (3) full years in the case of ordinary insurance or five (5) full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

(3) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty (60) days after the due date of the premium in default.

(4) That, if the policy shall have become paid-up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

(5) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty (20) policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy.

(6) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the State in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand therefor with surrender of the policy.

Computation of Cash Surrender Value

Sec. 3. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by Section 2, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits

which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (a) the then present value of the adjusted premiums as defined in Sections 5, 6, 7, and 8, corresponding to premiums which would have fallen due on and after such anniversary, and (b) the amount of any indebtedness to the company on the policy. The preceding sentence shall not require any cash surrender value greater than the reserve for the policy calculated as provided by Article 3.28.

Provided, however, that for any policy issued on or after the operative date of Section 8 as defined therein, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in the first paragraph of this Section shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

Provided, further, that for any family policy issued on or after the operative date of Section 8 as defined therein, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one (71), the cash surrender value referred to in the first paragraph of this Section shall be an amount not less than the sum of the cash surrender value as defined in such paragraph for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in such paragraph for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

Any cash surrender value available within thirty (30) days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by Section 2, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.

Computation of Paid-up Nonforfeiture Benefits

Sec. 4. Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this Article in the absence of the condition that premiums shall have been paid for at least a specified period.

Calculation of Adjusted Premiums

Sec. 5. (a) This Section 5 shall not apply to policies issued on or after the operative date of Section 8 as defined therein. Except as provided in Section 5(c), the adjusted premiums for any policy shall be calculated on an annual basis, or at the option of the company on a fully continuous basis provided such basis is consistent with actual policy provisions and the use of such basis is specified therein, and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(1) the then present value of the future guaranteed benefits provided for by the policy;

(2) two per cent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy;

(3) forty per cent (40%) of the adjusted premium for the first policy year;

(4) twenty-five per cent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (3) and (4) above, no adjusted premium shall be deemed to exceed four per cent (4%) of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this Section shall be the date as of which the rated age of the insured is determined.

(b) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this Section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

(c) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (1) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (2) the adjusted premiums for such term insurance, the foregiong items (1) and (2) being calculated separately and as specified in Sections 5(a) and 5(b).

(d) Except as otherwise provided in Sections 6 and 7, all adjusted premiums and present values referred to in this Article shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent (3½%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred and thirty per cent (130%) of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

Calculation of Adjusted Premiums—Ordinary Policies

Sec. 6. This Section 6 shall not apply to ordinary policies issued on or after the operative date of Section 8 as defined therein. In the case of ordinary policies issued on or after the operative date of this Section 6 as defined herein, all adjusted premiums and present values referred to in this Article shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent (3½%) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after June 14, 1973, and prior to August 29, 1977, and a rate of interest not exceeding five and one-half per cent (5½%) per annum may be used for policies issued on or after August 29, 1977, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half per cent (6½%) per annum may be used provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured for policies issued prior to August 29, 1977, and for policies issued on and after August 29, 1977, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

After the effective date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date of this Section for such company), this Section shall become operative with respect to the ordinary policies thereafter issued by such company prior to the operative date of Section 8 as defined therein. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1974.

Calculation of Adjusted Premiums—Industrial Policies

Sec. 7. This Section 7 shall not apply to industrial policies issued on or after the operative date of Section 8 as defined therein. In the case of industrial policies issued on or after the operative date of this Section 7 as defined herein, all adjusted premiums and present values referred to in this Article shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent (3½%) per annum, except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after June 14, 1973, and prior to August 29, 1977, and a rate of interest not exceeding five and one-half per cent (5½%) per annum may be used for policies issued on or after August 29, 1977, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half per cent (6½%) per annum may be used. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mor-

tality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

After the effective date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date of this Section for such company), this Section shall become operative with respect to the industrial policies thereafter issued by such company prior to the operative date of Section 8 as defined therein. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1974.

Calculation of Adjusted Premiums by the Nonforfeiture Net Level Premium Method

Sec. 8. (a) This Section shall apply to all policies issued on or after the operative date of this Section 8 as defined herein. Except as provided in Section 8(d), the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of:

(1) the then present value of the future guaranteed benefits provided for by the policy;

(2) one per cent (1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and

(3) one hundred twenty-five per cent (125%) of the nonforfeiture net level premium as hereinafter defined.

Provided, however, that in applying the percentage specified in (3) above no nonforfeiture net level premium shall be deemed to exceed four per cent (4%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

(b) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(c) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

Except as otherwise provided in Section 8(d), the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (A) the sum of (i) the then present value of the then future guaranteed benefits provided for by the policy and (ii) the additional expense allowance, if any, over (B) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of (i) one per cent (1%) of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten (10) policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten (10) policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (ii) one hundred twenty-five per cent (125%) of the increase, if positive, in the nonforfeiture net level premium.

The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (A) by (B) where (A) equals the sum of (i) the nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which

a premium would have fallen due had the change not occurred, and (ii) the present value of the increase in future guaranteed benefits provided for by the policy, and (B) equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(d) Notwithstanding any other provisions of this Section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(e) All adjusted premiums and present values referred to in this Section shall for all policies of ordinary insurance be calculated on the basis of (i) the Commissioners 1980 Standard Ordinary Mortality Table or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this Section for policies issued in that calendar year. Provided, however, that:

(1) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this Section, for policies issued in the immediately preceding calendar year.

(2) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by Section 2, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(3) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(4) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

(5) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(6) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the State Board of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table.

(7) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the State Board of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table.

(f) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five per cent (125%) of the calendar year statutory valuation interest rate for such policy as defined in the Standard Valuation Law,[1] rounded to the nearer one-fourth on one per cent (¼ of 1%).

(g) Notwithstanding any other provision in this Code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any provisions of that policy form.

(h) After the effective date of this Section 8, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1989, which shall be the operative date of this Section for such company. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1989.

[1] Article 3.28.

Nonforfeiture Benefits for Indeterminate Premium Plans and Certain Other Plans

Sec. 9. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in Section 2, 3, 4, 5, 6, 7, or 8 herein, then:

(a) The State Board of Insurance must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by Section 2, 3, 4, 5, 6, 7, or 8 herein.

(b) The State Board of Insurance must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds.

(c) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this Standard Nonforfeiture Law for Life Insurance, as determined by regulations promulgated by the State Board of Insurance.

(d) Notwithstanding any other provision in the laws of this state, any policy, contract, or certificate providing life insurance under any such plan must be affirmatively approved by the State Board of Insurance before it can be marketed, issued, delivered, or used in this state.

Proration of Values; Net Value of Paid-up Additions

Sec. 10. Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary; provided, however, such cash surrender value or nonforfeiture benefit shall not be required unless such cash surrender value or nonforfeiture benefit was required on the preceding policy anniversary. All values referred to in Sections 3, 4, 5, 6, 7, and 8 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall not be less than the amounts used to provide such additions. Notwithstanding the provisions of Section 3, additional benefits payable

(a) in the event of death or dismemberment by accident or accidental means,

(b) in the event of total and permanent disability,

(c) as reversionary annuity or deferred reversionary annuity benefits,

(d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this Article would not apply,

(e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child is such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid-up by reason of the death of a parent of the child, and

(f) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this Article, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

Consistency of Progression of Cash Surrender Values with Increasing Policy Duration

Sec. 11. This Section, in addition to all other applicable sections of this law, shall apply to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one per cent (2/10 of 1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years, from the sum of (a) the greater of zero and the basic cash value hereinafter specified and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as hereinafter defined, corresponding to premiums which would have fallen due on and after such anniversary. Provided, however, that the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in Section 3 or 5, whichever is applicable, shall be the same as are the effects specified in Section 3 or 5, whichever is applicable, on the cash surrender values defined in such applicable Section.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in Section 5 or 8, whichever is applicable. Such percentage (a) must be the same percentage for each policy year between the second policy anniversary and the later of (1) the fifth policy anniversary and (2) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one per cent (2/10 of 1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and (b) must be such that no percentage after the later of the two

(2) policy anniversaries specified in the preceding item (a) may apply to fewer than five (5) consecutive policy years. Notwithstanding the provisions contained in (a) and (b) of this paragraph, no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in Section 5 or 8, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this Section shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this Article. The cash surrender values referred to in this Section shall include any endowment benefits provided for in the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in Sections 2, 3, 4, 8, and 10. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in items (a) through (f) in Section 10 shall conform with the principles of this Section 11.

Exceptions

Sec. 12. This Article shall not apply to any of the following:

(a) reinsurance,

(b) group insurance,

(c) pure endowment,

(d) annuity or reversionary annuity contract,

(e) term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy,

(f) term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in Sections 5, 6, 7, and 8, is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy,

(g) policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in Sections 3, 4, 5, 6, 7, and 8 exceeds two and one-half per cent (2½%) of the amount of insurance at the beginning of the same policy year, nor to any

(h) policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy.

For purposes of determining the applicability of this Article, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

Effective Date

Sec. 13. After the effective date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Article after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date for such company), this Article shall become operative with respect to the policies thereafter issued by such company. If a company makes no such election, the operative date of this Article for such company shall be January 1, 1974.

[Amended by Acts 1977, 65th Leg., p. 2095, ch. 841, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2182, ch. 508, § 2, eff. Aug. 31, 1981.]

Art. 3.44b. Standard Non-forfeiture Law for Individual Deferred Annuities

Contracts of Annuity to Contain Certain Provisions

Sec. 1. In the case of contracts issued on or after the operative date of this Article as defined in Section 11, no contract of annuity, except as stated in Section 10, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the State Board of Insurance are at least as favorable to the contract holder, on cessation of payment of considerations under the contract.

(a) That on cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in Sections 3, 4, 5, 6, and 8 of this Article.

(b) If a contract provides for a lump-sum settlement at maturity, or at any other time, that on surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in Sections 3, 4, 6, and 8 of this Article. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six (6) months

after demand therefor with surrender of the contract.

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

(d) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this Section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars ($20.00) monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

Minimum Non-forfeiture Amounts

Sec. 2. The minimum values as specified in Sections 3, 4, 5, 6, and 8 of this Article of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum non-forfeiture amounts as defined in this Section.

(a) With respect to contracts providing for flexible considerations, the minimum non-forfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of three per cent (3%) per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

(1) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three per cent (3%) per annum; and

(2) the amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum non-forfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars ($30.00) and less a collection charge of one dollar and twenty-five cents ($1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five per cent (65%) of the net consideration for the first contract year and eighty-seven and one-half per cent (87½%) of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five per cent (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five per cent (65%).

(b) With respect to contracts providing for fixed scheduled considerations, minimum non-forfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(1) the portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five per cent (65%) of the net consideration for the first contract year plus twenty-two and one-half per cent (22½%) of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years; and

(2) the annual contract charge shall be the lesser of (i) thirty dollars ($30.00) or (ii) ten per cent (10%) of the gross annual consideration.

(c) With respect to contracts providing for a single consideration, minimum non-forfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum non-forfeiture amount shall be equal to ninety per cent (90%) and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars ($75.00).

Present Value of Paid-up Annuity

Sec. 3. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum non-forfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

Contracts Which Provide Cash Surrender Benefits

Sec. 4. For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one per cent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum non-forfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

Contracts Which Do Not Provide Cash Surrender Benefits

Sec. 5. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a non-forfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present values of a paid-up annuity be less than the minimum non-forfeiture amount at that time.

Maturity Dates

Sec. 6. For the purpose of determining the benefits calculated under Sections 4 and 5 of this Article, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, whichever is later.

Statement Indicating No Benefits

Sec. 7. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum non-forfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

Benefits Available Other Than On Contract Anniversary

Sec. 8. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of consideration under the contract occurs.

Contracts Which Provide Both Annuity Benefits and Life Insurance Benefits

Sec. 9. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum non-forfeiture benefits shall be equal to the sum of the minimum non-forfeiture benefits for the annuity portion and the minimum non-forfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of Sections 3, 4, 5, 6, and 8 of this Article, additional benefits payable (a) in the event of total and permanent disability, (b) as reversionary annuity or deferred reversionary annuity benefits, or (c) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum non-forfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this Article. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum non-forfeiture amounts, paid-up annuity, cash surrender and death benefits.

Inapplicability of Article

Sec. 10. This Article shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship), or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1954, as amended (Title 26, United States Code, as amended), premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered

outside this state through an agent or other representative of the company issuing the contract.

Operative Date of Article

Sec. 11. After the effective date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Article after a specified date before the second anniversary of the effective date of this Article. After the filing of such notices, then upon such specified date, which shall be the operative date of this Article for such company, the Article shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this Article for such company shall be the second anniversary of the effective date of this Article.

[Added by Acts 1977, 65th Leg., p. 2104, ch. 843, § 1, eff. Aug. 29, 1977.]

Art. 3.44c. Interest Rates on Life Insurance Policy Loans

Purpose

Sec. 1. The purpose of this Act is to permit and set guidelines for life insurers to include in life insurance policies issued after the effective date of this Act a provision for periodic adjustment of policy loan interest rates.

Definitions

Sec. 2. For purposes of this Act the "published monthly average" means:

(1) Moody's Corporate Bond Yield Average—Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto; or

(2) In the event that Moody's Corporate Bond Yield Average—Monthly Average Corporates is no longer published, a substantially similar average, established by regulation issued by the State Board of Insurance.

Maximum Rate of Interest on Policy Loans

Sec. 3. (a) Policies issued on or after the effective date of this Act shall provide for policy loan interest rates as follows:

(1) a provision permitting a maximum interest rate of not more than 10 percent per annum; or

(2) a provision permitting an adjustable maximum interest rate established from time to time by the life insurer as permitted by law; provided, however, the maximum interest rate permitted in this subdivision shall not exceed 15 percent per annum.

(b) The rate of interest charged on a policy loan made under Subdivision (2) of Subsection (a) of this section shall not exceed the higher of the following:

(1) the published monthly average for the calendar month ending two months before the date on which the rate is determined; or

(2) the rate used to compute the cash surrender values under the policy during the applicable period plus one percent per annum.

(c) If the maximum rate of interest is determined pursuant to subdivision (2) of Subsection (a) of this section, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy.

(d) The maximum rate for each policy must be determined at regular intervals at least once every 12 months but not more frequently than once in any three-month period. At the intervals specified in the policy:

(1) the rate being charged may be increased whenever such increase as determined under Subsection (b) of this section would increase that rate by one-half percent or more per annum;

(2) the rate being charged must be reduced whenever such reduction as determined under Subsection (b) of this section would decrease that rate by one-half percent or more per annum.

(e) The life insurer shall:

(1) notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;

(2) notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan; notice need not be given to the policyholder when a further premium loan is added, except as provided in Subdivision (3) below;

(3) send to policyholders with loans 30 days advance notice of any increase in the rate; and

(4) include in the notices required above the substance of the pertinent provisions of Subsections (a) and (c) of this section.

(f) The loan value of the policy shall be determined in accordance with Section 6 of Article 3.44 of this code, but no policy shall terminate in a policy year as the sole result of change in the interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

(g) The substance of the pertinent provisions of Subsections (a) and (c) of this section shall be set forth in the policies to which they apply.

(h) For purposes of this section:

(1) The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy.

(2) The term "policy loan" includes any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they fell due.

(3) The term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer.

(4) The term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.

(i) No other provision of law shall apply to policy loan interest rates unless made specifically applicable to such rates.

Applicability to Existing Policies

Sec. 4. The provisions of this Act shall not apply to any insurance contract issued before the effective date of this Act.

[Added by Acts 1981, 67th Leg., p. 2984, ch. 784, § 1, eff. Aug. 31, 1981.]

SUBCHAPTER E. GROUP; INDUSTRIAL AND CREDIT INSURANCE

Art. 3.50. Group Life Insurance

Definitions

Sec. 1. No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's fund or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least ten (10) employees at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides insurance on any employee which together with any other insurance under any group life insurance policies issued to the employer or to the trustees of a fund established by the employer exceeds One Hundred Thousand Dollars ($100,000.00), unless four hundred percent (400%) of the annual compensation of such employee from his employer or employers exceeds One Hundred Thousand Dollars ($100,000.00), in which event all such term insurance shall not exceed four hundred percent (400%) of such annual compensation, except that this limitation shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension or profit sharing plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater.

(2) A policy issued to a labor union, which shall be deemed the employer and policyholder, to insure the members of such union who are actively engaged in the same occupation and who shall be deemed to be the employees of such union within the meaning of this Article.

(3) A policy issued to any association of employees of the United States Government or any subdivision thereof, provided the majority of the members of such association are residents of this state, an association of public employees, an incorporated city, town or village, an independent school district, common school district, state colleges or universities, any association of

state employees, any association of state, county and city, town or village employees, and any association of any combination of state, county or city, town or village employees and any department of the state government which employer or association shall be deemed the policyholder to insure the employees of any such incorporated city, town or village, of any such independent school district, of any common school district, of any such state college or university, of any such department of the state government, members of any association of state, county or city, town or village or of the United States Government or any subdivision thereof, provided the majority of such employees reside in this state, employees for the benefit of persons other than the policyholder subject to the following requirements:

(a) The persons eligible for insurance under the policy shall be all of the employees of the employer or if the policyholder is an association, all of the members of the association.

(b) The premium for a policy issued to any policyholder authorized to be such policyholder under Subsection (3) of Section 1, Article 3.50, Texas Insurance Code, may be paid in whole or in part from funds contributed by the employer, or in whole or in part from funds contributed by the persons insured under said policy; or in whole or in part from funds contributed by the insured employees who are members of such association of employees; provided, however, that any monies or credits received by or allowed to the policyholder pursuant to any participation agreement contained in or issued in connection with the policy shall be applied to the payment of future premiums and to the pro rata abatement of the insured employees' contribution therefor; and provided further, that the employer may deduct from the employees' salaries the employees' contributions for the premiums when authorized in writing by the respective employees so to do. Such policy may be placed in force only if at least 75% of the eligible employees or if an association of employees is the policyholder, 75% of the eligible members of said association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder. Any group policies heretofore issued to any of the groups named in Section 1(3) above and in existence on the effective date of this Act shall continue in force even though the number of employees or members insured thereunder is less than 75% of the eligible employees or members on the effective date of this Act.

(c) The policy must cover at least ten (10) employees at date of issue, or if an association of employees is the policyholder, ten (10) members of said association at date of issue.

(d) The term employees as used herein in addition to its usual meaning shall include elective and appointive officials of the state.

(4) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall all be members of a group of persons numbering not less than fifty (50) at all times, who become borrowers, or purchasers of securities, merchandise or other property, under agreement to repay the sum borrowed or to pay the balance of the price of the securities, merchandise or other property purchase, to the extent of their respective indebtedness, but not to exceed Twenty Thousand Dollars ($20,000.00) on any one life; provided, however, the face amount of any loan or loan commitment, totally or partially executed, made to a debtor for educational purposes or to a debtor with seasonal income by a creditor in good faith for general agricultural or horticultural purposes, secured or unsecured, where the debtor becomes personally liable for the payment of such loan, may be so insured in an initial amount of such insurance not to exceed the total amount repayable under the contract of indebtedness and, when such indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater, and such insurance on such credit commitments not exceeding one year in duration may be written up to the amount of the loan commitment on a nondecreasing or level term plan, but such insurance shall not exceed Fifty Thousand Dollars ($50,000.00) on any one life.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or both.

(c) The insurance issued shall not include annuities or endowment insurance.

(d) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment; provided that in the case of a debtor for educational purposes or of a debtor with seasonal income, under a loan or loan commitment for general agricultural or horticultural purposes of the type described in paragraph (a), the insurance in excess of the indebtedness to the creditor, if any, shall be payable to the estate of the debtor or under the provision of a facility of payment clause.

(5) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or to the trustees of a fund established by one or

more employers in the same industry and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the union, subject to the following requirements:

(a) The persons eligible for insurance shall be all of the employees of the employers and the employees of the trade association of such employers or all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy may provide that the term "employees" shall include retired employees, and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(b) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or, partly from such funds and partly from funds contributed by the insured persons, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible persons of each participating employer unit, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at date of issue at least one hundred (100) persons; unless the policy is issued to the trustees of a fund established by employers which have assumed obligations through a collective bargaining agreement and are participating in the fund either pursuant to those obligations with regard to one or more classes of their employees which are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of their employees, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder or employer. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to trustees or employers exceeds One Hundred Thousand Dollars ($100,000.00), unless four hundred percent (400%) of the annual compensation of such employee from his employer or employers exceeds One Hundred Thousand Dollars ($100,000.00), in which event all such term insurance shall not exceed four hundred percent (400%) of such annual compensation.

(e) The limitation as to amount of group insurance on any person shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amount provided by the policy which it replaces, or the amounts provided above whichever is greater.

(f) No policy may be issued (i) to insure employees of any employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer (regardless of whether such other employer is or is not participating in the fund); or (ii) to insure employees of any employer which is not located in this state, unless the majority of the employers whose employees are to be insured are located in this state, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(6) A policy issued to cover any other substantially similar group which, in the discretion of the commissioner of insurance, may be subject to the issuance of a group life insurance policy or contract.

(7) No policy of wholesale, franchise or employee life insurance, as hereinafter defined,

shall be issued or delivered in this state unless it conforms to the following requirements:

(a) Wholesale, franchise or employee life insurance is hereby defined as: a term life insurance plan under which a number of individual term life insurance policies are issued at special rates to a selected group. A special rate is any rate lower than the rate shown in the issuing insurance company's manual for individually issued policies of the same type and to insureds of the same class.

(b) Wholesale, franchise or employee life insurance may be issued to (1) the employees of a common employer or employers, covering at date of issue not less than five employees; or (2) the members of a labor union or unions covering at date of issue not less than five members; or (3) the members of a credit union or credit unions covering at date of issue not less than five (5) members.

(c) The premium for the policy shall be paid either wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions or by both, or partly from such funds and partly from funds contributed by the insured person, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month.

(d) No policy may be issued on a wholesale, franchise or employee life insurance basis which, together with any other term life insurance policy or policies issued on a wholesale, franchise, employee life insurance or group basis, provides term life insurance coverage for an amount in excess of One Hundred Thousand Dollars ($100,000.00), unless four hundred percent (400%) of the annual compensation of such employee from his employer or employers exceeds One Hundred Thousand Dollars ($100,000.00), in which event all such term insurance shall not exceed four hundred percent (400%) of such annual compensation. An individual application shall be taken for each such policy and the insurer shall be entitled to rely upon the applicant's statements as to applicant's other similar coverage upon his life.

(e) Each such policy of insurance shall contain a provision substantially as follows:

A provision that if the insurance on an insured person ceases because of termination of employment or of membership in the union, such person shall be entitled to have issued to him by the insurer, without evidence of insurability an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one (31) days after such termination.

(f) Each such policy may contain any provision substantially as follows:

(1) A provision that the policy is renewable at the option of the insurer only;

(2) A provision for termination of coverage by the insurer upon termination of employment by the insured employee;

(3) A provision requiring a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as condition to coverage.

(g) The limitation as to amount of group and wholesale, franchise or employee life insurance on any person shall not apply to group insurance on other than the term plan where such insurance is to be used to fund benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater.

(h) Nothing contained in this Subsection (7) shall in any manner alter, impair or invalidate (1) any policy heretofore issued prior to the effective date of this Act; nor (2) any such plan heretofore placed in force and effect provided such prior plan was at date of issue legal and valid; nor (3) any policy issued on a salary savings franchise plan, bank deduction plan, pre-authorized check plan or similar plan of premium collection.

(7A) A policy may be issued to a principal, or if such principal is a life or life and accident or life, accident and health insurer, by or to such principal, covering when issued not less than ten (10) agents of the principal, subject to the following requirements:

(a) As used in this section, the term "agents" shall be deemed to include general agents, subagents and salesmen.

(b) The agents eligible for insurance under the policy shall be those who are under contract to render personal services for the principal for a commission or other fixed or ascertainable compensation.

(c) The premium for the policy shall be paid either wholly by the principal or partly from funds contributed by the principal and partly from funds contributed by the insured agents. A policy on which no part of the premium is to be derived from funds contributed by the insured agents must insure all of the eligible agents or all of any class or classes thereof determined by conditions pertaining to the services to be rendered by the agents to the principal. A policy on which part of the premium is

to be derived from funds contributed by the insured agents must cover at issue at least seventy-five percent (75%) of the eligible agents or at least seventy-five percent (75%) of any class or classes thereof determined by conditions pertaining to the services to be rendered by the agents; provided, however, that the benefits may be extended to other classes of agents as seventy-five percent (75%) thereof express the desire to be covered.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the principal or by the agents. No policy may be issued which provides term insurance on any agent which together with any other term insurance under any group life insurance policy or policies issued to the principal exceeds One Hundred Thousand Dollars ($100,000.00), unless four hundred percent (400%) of the annual commissions or other fixed or ascertainable compensation of such agent from the principal exceeds One Hundred Thousand Dollars ($100,000.00), in which event all such term insurance shall not exceed four hundred percent (400%) of such annual commissions or other fixed or ascertainable compensation.

(e) The insurance shall be for the benefit of persons other than the principal.

(8) A policy issued to the Veterans Land Board of the State of Texas, who shall be deemed the policyholder to insure persons purchasing land under the Texas Veterans Land Program as provided in Section 16(B) of Article 5421m, Vernon's Texas Civil Statutes (Chapter 318, Acts of the 51st Legislature, Regular Session, 1949, as amended).[1]

(9) Any policy of group term life insurance may be extended, in the form of group term life insurance only, to insure the spouse and minor children, natural or adopted, of an insured employee, provided the policy constitutes a part of the employee benefit program established for the benefit of employees of the United States government or any subdivision thereof, and provided further, that the spouse or children of other employees covered by the same employee benefit program in other states of the United States are or may be covered by group term life insurance, subject to the following requirements:

(a) The premiums for the group term life insurance shall be paid by the policyholder from funds solely contributed by the insured employee.

(b) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured employee or by the policyholder, provided that group term life insurance upon the life of a spouse shall not exceed the lesser of (1) Ten Thousand Dollars ($10,000.00) or (2) one-half of the amount of insurance on the life of the insured employee under the group policy; and provided that group term life insurance on the life of any minor child shall not exceed Two Thousand Dollars ($2,000.00).

(c) Upon termination of the group term life insurance with respect to the spouse of any insured employee by reason of such person's termination of employment or death, or termination of the group contract, the spouse insured pursuant to this section shall have the same conversion rights as to the group term life insurance on his or her life as is provided for the insured employee.

(d) Only one certificate need be issued for delivery to an insured employee if a statement concerning any dependent's coverage is included in such certificate.

(10) A policy of group life insurance may be issued to a nonprofit service, civic, fraternal, or community organization or association which has had an active existence for at least two years, has a constitution or bylaws, was formed for purposes other than obtaining insurance, and which association shall be deemed the policyholder to insure members and employees of such association for the benefit of persons other than the association or any of its officers, subject to the following requirements:

(a) The persons eligible for insurance shall be all the members of the association, or all of any class thereof determined by conditions pertaining to membership in the association.

(b) The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the insured members or by the association.

(c) The premium for the policy shall be paid by the policyholder from the policyholder's own funds or from funds contributed by the employees or members specifically for their insurance, or from both.

(d) The policy shall cover at least twenty-five (25) persons at date of issue.

[1] Repealed; see, now, Natural Resources Code, §§ 161.361 and 161.363 et seq.

[See Compact Edition, Volume 2 for text of 2 to 5]

Dependents: Continuation of Benefits After Death of Insured

Sec. 6. Any group life insurance policy which contains provisions for the payment by the insurer of benefits for members of the family or dependents of a person in the insured group may provide for a continuation of such benefits or any part or parts thereof after the death of the person in the insured group, and provided further that any amounts of insurance so provided by such benefits shall not be construed as life insurance for the purpose of deter-

mining the maximum amount of term insurance that may be issued on any one life.

[Amended by Acts 1975, 64th Leg., p. 766, ch. 299, § 1, eff. May 27, 1975; Acts 1975, 64th Leg., p. 2171, ch. 698, § 1, eff. June 21, 1975, Acts 1977, 65th Leg., p. 1512, ch. 612, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2194, ch. 867, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 173, ch. 80, § 1, eff. April 30, 1981; Acts 1981, 67th Leg., p. 201, ch. 94, § 2, eff. Aug. 31, 1981.]

Art. 3.50–2. Texas Employees Uniform Group Insurance Benefits Act

Citation

Sec. 1. This Act shall be known and may be cited as the "Texas Employees Uniform Group Insurance Benefits Act."

Purposes

Sec. 2. It is hereby declared that the purposes of this Act are:

(a) to provide uniformity in life, accident, and health insurance and benefits coverages on all employees of the State of Texas;

(b) to enable the State of Texas to attract and retain competent and able employees by providing them with life, accident, and health insurance and benefits coverages at least equal to those commonly provided in private industry;

(c) to foster, promote, and encourage employment by and service to the State of Texas as a career profession for persons of high standards of competence and ability;

(d) to recognize and protect the state's investment in each permanent employee by promoting and preserving economic security and good health among state employees;

(e) to foster and develop high standards of employer-employee relationships between the State of Texas and its employees;

(f) to recognize the service to the state by elected state officials by extending to them the same life, accident, and health insurance and benefits coverages as are provided herein for state employees; and

(g) to recognize the long and faithful service and dedication of employees of the State of Texas and to encourage them to remain in state service until eligible for retirement by providing health insurance benefits for such employees.

Definitions

Sec. 3. (a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this Act shall have the following meanings:

(1) "Administering carrier" shall mean any carrier designated by the trustee to administer any insurance coverages, services, benefits, or requirements in accordance with this Act and the trustee's regulations promulgated pursuant thereto.

(2) "Annuitant" shall mean an officer or employee who retires under:

(A) the jurisdiction of the Employees Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes),[1] Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes),[2] or Chapter 570, Acts of the 65th Legislature, Regular Session, 1977 (Article 6228k, Vernon's Texas Civil Statutes);[3]

(B) the jurisdiction of the Teacher Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Chapter 3, Title I, Texas Education Code,[4] whose last state employment prior to retirement was as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, or the Coordinating Board, Texas College and University System; or

(C) the optional retirement program established by Subchapter G, Chapter 51, Texas Education Code, as amended,[5] and either receives an annuity or is eligible to receive an annuity under that program, if the person's last state employment before retirement, including employment by a public community/junior college, was as an officer or employee of the Coordinating Board, Texas College and University System, and if the person either:

(i) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas had the person not elected to participate in the optional retirement program; or

(ii) is disabled.

(3) "Carrier" shall mean a qualified carrier as defined in this Act.

(4) "Department" shall mean commission, board, agency, division, or department of the State of Texas created as such by the constitution or statutes of this state.

(5)(A) "Employee" shall mean any appointive or elective state officer or employee in the service of the State of Texas, except employees of any university, senior or community/junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code: [2]

(i) who is retired or retires and is an annuitant under the jurisdiction of the Employees Retirement System of Texas, pursuant to Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article

6228b, Vernon's Texas Civil Statutes), or Chapter 570, Acts of the 65th Legislature, Regular Session, 1977 (Article 6228k, Vernon's Texas Civil Statutes), who is retired or retires and is an annuitant under the jurisdiction of the Teacher Retirement System of Texas, pursuant to Chapter 3, Title I, Texas Education Code, whose last employment with the state prior to retirement was as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, or the Coordinating Board, Texas College and University System, or who is retired or retires and is an annuitant under the optional retirement program established by Subchapter G, Chapter 51, Texas Education Code, as amended, if the person's last state employment before retirement, including employment by a public community/junior college, was as an officer or employee of the Coordinating Board, Texas College and Univerisity System, and if the person either:

(a) would have been eligible to retire and receive a service retirement annuity from the Teacher Retirement System of Texas had the person not elected to participate in the optional retirement program; or

(b) is disabled; or

(ii) who receives his compensation for services rendered to the State of Texas on a warrant issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state; or

(iii) who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the State Comptroller of Public Accounts upon the State Treasurer against appropriations made by the Texas Legislature from any state funds or against any trust funds held by the State Treasurer or who is paid from funds of an official budget of a state department, rather than from funds of the General Appropriations Act; or

(iv) who is appointed, subject to confirmation of the senate, as a member of a board or commission with administrative responsibility over a statutory agency having statewide jurisdiction whose employees are covered by this Act.

(B) Persons performing personal services for the State of Texas as independent contractors shall never be considered employees of the state for purposes of this Act.

(C) Repealed by Acts 1977, 65th Leg., p. 55, ch. 31, § 1, eff. March 29, 1977.

(6) "Employer" shall mean the State of Texas and all its departments.

(7) "Health benefits plan" shall mean any group insurance policy or contract, medical, dental, or hospital service agreement, membership or subscription contract, salary continuation plan, or similar group arrangement provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health care services, including comparable health care services for employees who rely solely on spiritual means through prayer for healing in accordance with the teachings of a well recognized church or denomination.

(8) "Dependent" shall mean the spouse of an employee or retired employee and an unmarried child under 25 years of age, including: (A) an adopted child and (B) a stepchild, foster child, or other child who is in a regular parent-child relationship and (C) any such child, regardless of age, who lives with or whose care is provided by an employee or annuitant on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the trustee shall determine.

(9) "Qualified carrier" shall mean: (A) any insurance company authorized to do business in this state by the State Board of Insurance to provide any of the types of insurance coverages, benefits, or services provided for in this Act under any of the insurance laws of the State of Texas, which has a surplus of $1 million, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; (B) any corporation operating under Chapter 20 of the Insurance Code [3] which provides any of the types of coverage, benefits, or services provided for in this Act, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; or (C) any combination or carriers as herein defined, upon such terms and conditions as may be prescribed by the trustee, providing, however, that for purposes of this Act carriers combining for the purpose of bidding and/or underwriting this program shall not be considered in violation of Sections 15.01 through 15.34, Chapter 15, Title 2, Competition and Trade Practices, Texas Business & Commerce Code.

(10) "Service" shall mean any personal service of an employee creditable in accordance with rules and regulations promulgated by the trustee.

(11) "Trustee" shall mean the State Board of Trustees, provided for in Section 6, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), to administer the Employees Retirement System of Texas.

(12) "Active employee plan" shall mean a plan or program of group insurance as determined by the trustee as defined in Paragraph (11) above for the benefit of employees of the State of Texas as defined in this Act who are not retired.

(13) "Retired employees plan" shall mean a plan or program of group insurance as determined by the trustee for all retired employees as defined in this Act. This plan may be separate or a part of the active employee plan at the discretion of the trustee, and, if separate, shall include both full benefits and supplemental coverage options.

(14) "Part-time employee" shall mean, for purposes of this Act, an employee designated by his employing agency as working less than 20 hours per week. A part-time employee shall receive the benefits of one-half the amount of the state's contribution received by full-time employees.

(15) "Full-time employee" shall mean, for purposes of this Act, an employee designated by his employing agency as working 20 or more hours per week. A full-time employee shall receive the benefits of a full state contribution for coverage under this Act.

(16) "Basic plan for active full-time employees" shall mean the program of group insurance determined by the trustee in which every full-time employee participates automatically unless participation is specifically waived, the premium for which is paid wholly by the state or the employing department.

(17) "Basic plan for retired employee-annuitants" shall mean the program of group insurance determined by the trustee in which every retired employee-annuitant participates automatically unless participation is specifically waived, the premium for which is paid wholly by the state.

(b) In addition to the foregoing definitions, the trustee shall have authority to define by rule any words in terms necessary in the administration of this Act.

[1] Repealed; see, now, Civil Statutes Title 110B, § 21.001 et seq.
[2] Repealed; see, now, Civil Statutes Title 110B, § 41.001 et seq.
[3] Repealed; see, now, Civil Statutes Title 110B, § 13.001 et seq.
[4] Repealed; see, now, Civil Statutes Title 110B, § 31.001 et seq.
[5] Repealed; see, now, Civil Statutes Title 110B, § 36.001 et seq.

Administration

Sec. 4. The administration and implementation of this Act are vested solely in the trustee. As it shall deem necessary to insure the proper administration of this Act and the insurance coverages, services, and benefits provided for or authorized by this Act, the trustee, as an agency of the State of Texas, shall have full power and authority to hire employees. The duties of such employees and their compensation shall be determined and assigned by the trustee. The trustee may, on a competitive bid basis, contract with a qualified, experienced firm of group insurance specialists who shall act for the trustee in a capacity as independent administrators and managers of the programs authorized under this Act. The independent administrator so selected by the trustee shall assist the trustee to insure the proper administration of the Act and the insurance coverages, services, and benefits provided for or authorized by the Act and shall be paid by the trustee. Compensation of all persons employed by the trustee and their expenses shall be paid at such rates and in such amounts as the trustee shall approve, providing that in no case shall they be greater than those expenses paid for like or similar services. Also, as an agency of the State of Texas, the trustee shall have full power and authority to enter into interagency contracts with any department of the State of Texas. The interagency contracts shall provide for reimbursement to the state departments and shall define the services to be performed by the departments for the trustee. The trustee shall have full power and authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of this Act in all its particulars, including but not limited to the following:

(a) preparation of specifications for all insurance provided by authority of this Act;

(b) prescribing the time at which and the conditions under which an employee is eligible for all coverages provided under this Act;

(c) determination of the methods and procedures of claims administration;

(d) determination of the amount of employee payroll deductions and the responsibility of establishing procedures by which such deductions shall be made;

(e) establishment of grievance procedures by which the trustee shall act as an appeals body for complaints by insured employees regarding the allowance and payment of claims, eligibility, and other matters;

(f) continuing study of the operation of all insurance coverages provided under this Act, including such matters as gross and net cost, administration costs, benefits, utilization of benefits, and claims administration;

(g) administration of the Employees Life, Accident, and Health Insurance and Benefits Fund, providing for the beginning and ending dates of coverages of employees and annuitants and their dependents under health benefit plans;

(h) adoption of all rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out its statutory duties and responsibilities;

(i) development of basic plans of group insurance coverages and benefits applicable to all state employees. The trustee also may provide

for optional group insurance coverages and benefits in addition to the basic plan; and

(j) to provide either additional statewide optional programs or individual agency optional programs as the trustee may determine is appropriate.

Rulemaking

Sec. 4A. The trustee may adopt rules consistent with this Act that provide standards for determining eligibility for participation in the program established by this Act, including standards for determining disability. All costs incurred in determining whether or not a person is disabled who is an annuitant under the optional retirement program established by Subchapter G, Chapter 51, Texas Education Code, as amended, and whose last state employment was as an officer or employee of the Coordinating Board, Texas College and University System, shall paid by that board.

Authority to Purchase Group Insurance

Sec. 5. (a) The trustee shall establish a plan or plans for active employees and retired employees, and is hereby authorized, empowered, and directed to contract with one or more qualified carriers or a combination of qualified carriers for the establishment of such plans. The trustee is further authorized, empowered, and directed to establish the above referenced plans of group insurance which in the trustee's discretion may include but are not necessarily limited to the following: group life insurance, accidental death and dismemberment, health benefits plans, including but not limited to hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, obstetrical benefits, prescribed drugs, medicines, and prosthetic devices and supplement benefits, supplies, and services in conformity with the provisions of this Act, insurance protection against either long or short term loss of salary and any other coverages of group insurance which in the discretion of the trustee with consultation from the advisory committee shall be deemed advisable. All rules and regulations shall be promulgated pursuant thereto upon such terms and conditions as shall be agreed upon between the trustee and the carrier or carriers selected to provide such insurance coverages and benefits. The trustee shall determine the insurance coverages desired for state employees and will submit this information to the State Board of Insurance for any recommendations as to the types and sufficiency of such coverages. The State Board of Insurance will notify the board of trustees within 15 days as to any such recommendations and will furnish the board of trustees with a list of all carriers authorized to do business in the State of Texas who would be eligible to bid on the insurance coverage proposed. The trustee will notify those carriers that competitive bidding will be conducted and that they are to submit their bids to the State Board of Insurance by a specified date if they wish to bid on the contract. The State Board of Insurance will, after the designated closing date for receiving bids, examine and evaluate the bidding contracts and certify their actuarial soundness to the trustee within 15 days from the closing date. The trustee shall select the desired carrier or carriers and will notify the bidding eligible carriers as to the results of the bidding. The trustee shall select the desired carrier or carriers to provide services which shall be in the best interest of the employees covered by this Act. The trustee is not required to select the lowest bid but shall take into consideration other factors such as ability to service contracts, past experience, financial ability, and other relevant criteria. Should the trustee select a carrier whose bid differs from that advertised, such deviation shall be recorded and the reasons for such deviation shall be fully justified and explained in the minutes of the next meeting of the trustee.

(b) In the event the trustee shall select as the carrier one whose bid was not the lowest of all bids submitted, such selection shall be submitted together with justifications and reasons therefor to the State Board of Insurance. Such deviating selection shall not be deemed final and binding unless and until a majority of the State Board of Insurance has certified its approval in writing to the trustee, or upon the expiration of 30 days after receipt thereof by the State Board of Insurance such deviating selection shall be deemed approved.

(c) The trustee will be required to submit for competitive bidding the coverages provided by the group plan as follows:

(1) at least every three years;

(2) whenever a change in the types and amounts of coverage occurs, provided that submission for competitive bidding shall not be required more than once within a year from the last submission.

(d) No department shall establish, continue, or authorize payroll deductions for any benefits or coverage as provided in this section without the express approval of the trustee, except for benefits from the deferred compensation program established pursuant to Chapter 197, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252–3b, Vernon's Texas Civil Statutes).

(e) The trustee is authorized to select and contract for services performed by health maintenance organizations which are approved by the federal government or the State of Texas to offer health care services to eligible employees and annuitants in a specific area of the state. Eligible employees and annuitants may participate in a selected health maintenance organization in lieu of participation in the health insurance benefits in the Employees Uniform Group Insurance Program, and the employer contributions provided by Subsection (a), Section 15 of this Act for health care coverage shall be paid to the selected health maintenance organizations on behalf of the participants.

Benefit Certificates

Sec. 6. The trustees shall provide for the issuance to each employee insured under this Act a certificate of insurance setting forth the benefits to which the employee is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting the employee.

Annual Report

Sec. 7. As soon as practicable after the end of each calendar year but not later than 90 days thereafter, the trustee shall make a written report to the State Board of Insurance concerning the insurance coverages provided and the benefits and services being received by all state employees insured under the provisions of this Act. It shall be the duty of the State Board of Insurance to review such report and advise the trustee in regard to the insurance features of the coverages provided for all state employees and cooperate fully with the trustee in carrying out the purposes of this Act.

Reinsurance

Sec. 8. (a) The trustee shall arrange with any carrier or carriers issuing any policy or policies under this Act for the reinsurance, under conditions approved by the trustee, of portions of the total amount of insurance under such policy or policies, with other qualified carriers which elect to participate in the reinsurance.

(b) The trustee shall determine for and in advance of a policy year which qualified carriers are eligible to participate as reinsurers and the amount of insurance under a policy or policies which is to be allocated to the issuing company and reinsurers. The trustee shall make this determination at least every three years and when a participating company withdraws.

Annual Accounting; Special Contingency Reserve

Sec. 9. (a) Carriers providing any policy purchased under this Act shall provide an accounting to the trustee not later than 90 days after the end of each policy year. The accounting shall set forth, in a form approved by the trustee:

(1) the amounts of premiums actually accrued under the policy from its date of issue to the end of the policy year;

(2) the total of all mortality and other claims, charges, losses, costs, and expenses incurred for that period; and

(3) the amounts of the insurers' allowance for a reasonable profit and contingencies for that period.

(b) An excess of the total of Subdivision (a)(1) of this section over the sum of Subdivisions (a)(2) and (a)(3) of this section shall be held by the carrier issuing the policy as a special contingency reserve to be used by the carrier only for charges, claims, costs, and expenses under the policy. The reserve shall bear interest at a rate determined in advance of each policy year by the carrier and approved by the trustee as being consistent with the rates generally used by the carrier for similar funds held under other group insurance policies. When the trustee determines that the special contingency reserve has attained an amount estimated by it to make satisfactory provision for adverse fluctuations in future charges, claims, costs, or expenses under the policy, any further excess shall be deposited in the State Treasury to the credit of the Employees Life, Accident, and Health Insurance and Benefits Fund. When a policy is discontinued, any balance remaining in the special contingency reserve after all charges have been made shall be deposited in the State Treasury to the credit of the fund. The carrier may make the deposit in equal monthly installments over a period of not more than two years.

Exemption from Execution and Taxes on Premiums

Sec. 10. (a) Exemption from Execution. All insurance benefit payments, employee contributions, optional benefits payments, and any and all rights, benefits, or payments accruing to any person under the provisions of this Act, as well as all money in any fund created by this Act, shall be and the same are hereby exempt from execution, attachment, garnishment, or any other process whatsoever and shall be unassigned except for direct payment which the employee may assign to providers of health care services and as specifically provided in this Act.

(b) Exemption from Taxes on Premiums. Premiums on policies, insurance contracts, or agreements with health maintenance organizations established under this Act shall not be subject to any state tax.

Group Life Insurance

Sec. 11. (a) The trustee is authorized and directed to establish a group life insurance program for all employees, including retired employees, of this state as herein provided, which, subject to the conditions and limitations contained in this Act and the trustee's rules and regulations promulgated pursuant thereto, will provide for each employee group life insurance in such an amount as shall be determined by the trustee. In addition to the benefits hereinabove provided and subject to the conditions and limitations of the policy or policies purchased by the trustee, such policy or policies shall provide such payments and benefits for employees and retired employees as shall be determined by the trustee. The trustee is also authorized to include the dependents of employees in the group life insurance program.

(b) The trustee shall prescribe regulations providing for the conversion of other than annual rates of pay to annual rates of pay, and specify the types of pay included in annual pay and all other matters necessary to implement this section.

Death Claims; Order of Precedence; Escheat

Sec. 12. (a) The amount of group life insurance and group accidental death and dismemberment insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to other kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

(b) If, within one year after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by Subsection (a) of this section, or if payment to the person within that period is prohibited by any statute or regulation, payment may be made in the order of precedence as if the person had predeceased the employee, and the payment bars recovery by any other person.

(c) If, within two years after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named in Subsection (a) of this section, and neither the trustee nor the office established by the administering carrier has received notice that such a claim will be made, payment may be to the claimant who in the judgment of the trustee is equitably entitled thereto, and the payment bars recovery by any other person.

(d) If, within four years after the death of the employee, payment has not been made under this section and no claim for payment by a person entitled under this section is pending, the amount payable escheats to the credit of the fund.

Automatic Coverage

Sec. 13. (a) No employee of the State of Texas shall be denied any of the group insurance coverage provided under this Act.

(b) Unless participation is waived specifically, every full-time employee shall be covered automatically by the basic plan for active full-time employees and every employee-annuitant shall be covered by the basic plan for retired employee-annuitants. Coverage shall begin on the date he becomes eligible for insurance, and each policy of insurance purchased by the trustee providing such insurance shall provide for such automatic coverage.

(c) Every part-time employee is eligible for participation in the group insurance programs provided under this Act upon execution of appropriate payroll deduction authorization for the required payment of premiums.

(d) On application to the trustee and on arrangement for payment of premiums, and postage, a person who has at least eight years creditable legislative service, as defined in Chapter 352, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), on ending his or her service in the legislature, continues to be eligible for participation in the group insurance programs under this Act.

Payment of Premiums

Sec. 14. (a) The State of Texas shall contribute monthly to the cost of each insured employee's group insurance such amount as shall be appropriated therefor by the legislature in the General Appropriations Act. A like amount for each employee shall be appropriated by the governing board of state departments in their respective official operating budgets if their employees are compensated from funds appropriated by such budgets rather than by the General Appropriations Act.

(b) If an employee or annuitant refuses in writing the coverages, benefits, or services provided by this Act by a statement in writing satisfactory to the trustee, then in no event shall the State of Texas or the employee's department make any contribution to the cost of any other insurance coverages, services, or benefits on such employee or annuitant.

(c) If any insured employee or annuitant applies for coverage for which the premium exceeds the state's or the employing department's contribution under this Act, he shall authorize in writing and in a form satisfactory to the trustee a deduction from his monthly compensation or annuity the difference between the cost of premiums under said group policies and the amount contributed therefor by the State of Texas or the employing department.

Employer Contributions

Sec. 15. (a) On or before the first day of November next preceding each regular session of the legislature, the trustee shall certify to the Legislative Budget Board and budget division of the governor's office for information and review the amount necessary to pay the contributions of the State of Texas to the trustee for insurance premiums on the coverages provided under this Act during the ensuing biennium. This amount shall be included in the budget of the state which the governor submits to the legislature. The trustee shall certify on or be-

fore August 31 of each year to the state comptroller of public accounts and the State Treasurer the estimated amount of state contributions to be received for employees covered by this Act during the ensuing year.

(b) From and after the effective date of this Act, there is hereby allocated and appropriated to the trustee, in accordance with the provisions of this Act, from the several funds from which state employees receive their respective salaries, a sum equal to the total of all employer contributions computed in accordance with the provisions of this Act and the rules and regulations of the trustee promulgated pursuant thereto.

(c) All money hereby allocated and appropriated by the state to the trustee under this Act shall be paid to the trustee in monthly installments based on the annual estimate by the trustee of the contributions to be received for all state employees during said year; provided, however, that in the event said estimate of the contributions of the state employees shall vary from the actual amount of the employer contributions during the year, such adjustments shall be made at the close of each fiscal year as may be required. Each of said monthly installments shall be paid into the appropriate fund created by this Act in the amount certified by the trustee.

(d) The trustee shall certify to the governing boards of those state departments who provide contributions for their employees from operating budgets provided from sources other than the General Appropriations Act the proportionate amounts needed to pay their respective contributions. Such certifications shall be made at least 30 days prior to the meeting at which the governing board adopts its operating budget.

Employees Life, Accident, and Health Insurance and Benefits Fund

Sec. 16. (a) There is hereby created with the treasury of the State of Texas an Employees Life, Accident, and Health Insurance and Benefits Fund which shall be administered by the trustee. The contributions of employees, annuitants, and the state provided for under this Act shall be paid into the fund. The fund is available:

(1) without fiscal year limitation for all payments for any insurance coverages provided for under this Act; and

(2) to pay expenses for administering this Act within the limitations that may be specified annually by the legislature.

(b) Portions of the contributions made by employees, annuitants, and the state shall be regularly set aside in the fund as follows: a percentage, not to exceed one percent of all contributions, determined by the trustee to be reasonably adequate to pay the administrative expenses made available by Subsection (a) of this section. The trustee, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves of the plans then under contract with the trustee. When funds are so transferred, each contingency reserve shall be credited in proportion to the total amount of the subscription charges paid and accrued to the plan for the contract term immediately before the contract term in which the transfer is made. The income derived from dividends, rate adjustments, or other refunds made by a plan shall be credited to its contingency reserve. The contingency reserves may be used to defray increases in future rates, or may be applied to reduce the contributions of employees and the state to, or to increase the benefits provided by, the plan from which the reserves are derived, as the trustee from time to time shall determine.

(c) The trustee shall have full power to invest and reinvest any of the money in the fund subject only to the restrictions contained in Section 7, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes). The interest on and the proceeds from the sale of these obligations become a part of the fund.

(d) When insurance coverages or benefits provided for under this Act are discontinued, the contingency reserve of that plan shall be credited to the contingency reserves of such insurance continuing under this Act for the contract term following that in which termination occurs, each reserve to be credited in proportion to the amount of the subscription charges paid and accrued to the plan for the year of termination.

Studies, Reports, Records, and Audits

Sec. 17. (a) The trustee shall make a continuing study of the operation and administration of this Act, including surveys and reports on group insurance coverages and benefits available to employees and on the experience thereof.

(b) Each contract entered into under this Act shall contain provisions requiring carriers to

(1) furnish such reasonable reports as the trustee determines to be necessary to enable it to carry out its functions under this Act; and

(2) permit the trustee and representatives of the state auditor to examine records of the carriers as may be necessary to carry out the purposes of this Act.

(c) Each state department shall keep such records, make such certifications, and furnish the trustee with such information and reports as may be necessary to enable the trustee to carry out its functions under this Act.

Group Insurance Advisory Committee

Sec. 18. (a) There is created and established hereby the Group Insurance Advisory Committee, which shall consist of 23 members who shall be active or retired employees of the State of Texas. One classified employee shall be appointed from each of the 10 largest state agencies or departments by

the chief administrative officer of those agencies or departments. One nonvoting member shall be the executive director of the Employees Retirement System of Texas. One member shall be a classified employee of the governor's office, appointed by the governor. One member shall be a retired state employee appointed by the trustee for a three-year term. The remaining members shall be elected by and from the classified employees of the other state departments and agencies in a manner consonant with the election for membership to the board of the Employees Retirement System of Texas, but not more than one employee shall be from any one agency or department.

(b) All members of the committee shall be appointed or elected for three-year terms; provided, however, that in the initial appointments and election, the trustee shall designate seven members to serve for one year, seven to serve for two years, and seven to serve for three years. Subsequent appointments or elections shall be for three-year terms. During a term of appointment or election, vacancies shall be filled by an employee of the same agency from which the vacancy occurred, being appointed by the trustees for the balance of the vacated term.

(c) The Group Insurance Advisory Committee shall advise and consult with the trustee on matters concerning all insurance coverages provided under this Act. The committee shall cooperate and work with the trustee in coordinating and correlating the administration of the Employees Uniform Group Insurance Program among the various state departments and agencies. The duties of each member of the Group Insurance Advisory Committee shall be to secure input from fellow employees and shall be considered additional duties required of his or her other state office or employment and all expenses incurred by any such member in performing his or her duties as a member of the committee shall be paid out of funds made available for those purposes to the agency or department of which he or she is an employee or officer.

Coverage for Dependents

Sec. 19. (a) Any employee or annuitant shall be entitled to secure for his dependents any uniform group insurance coverages provided for employees under this Act, as shall be determined by the trustee. Premium payments required of the employee in excess of employer contributions shall be deducted from the monthly pay of the employee or from his retirement benefits in such manner and form as the trustee shall determine.

(b) A surviving spouse of an employee or a retiree who is entitled to monthly benefits paid by a retirement system named in this Act may, following the death of the employee or retiree, elect to retain the spouse's authorized insurance coverage and also retain authorized insurance coverage for any dependent of the spouse, at the group rate for employees, provided such coverage was previously secured by the employee or retiree for the spouse or dependent, and the spouse directs the applicable retirement system to deduct required premiums from the monthly benefits paid the surviving spouse by the retirement system.

(c) The surviving spouse of an employee or a retiree who designated or selected a time certain annuity option, upon expiration of the annuity option, may retain authorized insurance coverage by advance payment of premiums to the Employees Retirement System of Texas under rules and regulations adopted by the trustee.

Effective Date

Sec. 20. This Act shall become effective September 1, 1975, but no insurance coverages shall be provided hereunder until such time as the trustee shall have made a study of the coverages and benefits authorized by this Act and gathered the necessary statistical data and information to secure such group insurance and the Texas Legislature has appropriated the funds necessary to provide the insurance coverages and benefits provided for in this Act; provided, however, that subject only to the legislature's appropriating the necessary funds, group insurance coverages for state employees contemplated by this Act shall be provided beginning not later than September 1, 1976. Departments are specifically authorized to continue or initiate state employee insurance plans and policies with state financial participation until the date and time this Act is implemented; provided, however, that any experience rating refunds becoming payable to such department under any such plans or policies on or after the date and time this Act is implemented shall be paid to the Employees Life, Accident, and Health Insurance and Benefits Fund, and such payment shall be deemed payment to such department.

Affect of Section Headings

Sec. 21. Section headings contained in this Act shall not be deemed to govern, limit, expand, modify, or in any manner affect the scope, meaning, or intent of the provisions of any section hereof.

Severability

Sec. 22. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and as to all other persons and circumstances shall be valid and of full force and effect, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision; and to this end the provisions of this Act are declared to be severable.

Repeal

Sec. 23. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only.

[Acts 1975, 64th Leg., p. 208, ch. 79, §§ 1 to 23, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 55, ch. 31, § 1, eff. March 29, 1977; Acts 1977, 65th Leg., p. 1995, ch. 797, §§ 1 to 10, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 512, ch. 238, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 3210, ch. 843, §§ 1 to 3, eff. Sept. 1, 1981.]

Article 3.50–2 was not enacted as part of the Insurance Code of 1951.

Art. 3.50–3. Texas State College and University Employees Uniform Insurance Benefits Act

Citation

Sec. 1. This Act shall be known and may be cited as the "Texas State College and University Employees Uniform Insurance Benefits Act."

Purposes

Sec. 2. It is hereby declared that the policy and purposes of this Act are:

(a) to provide uniformity in the basic group life, accident, and health insurance coverages for all employees of Texas state colleges and universities;

(b) to enable Texas state colleges and universities to attract and retain competent and able employees by providing them with basic life, accident, and health insurance coverages at least equal to those commonly provided in private industry and those provided employees of other agencies of the State of Texas under the Texas Employees Uniform Group Insurance Benefits Act; [1]

(c) to foster, promote, and encourage employment by and service to the state colleges and universities of Texas as a career profession for persons of high standards of competence and ability;

(d) to recognize and protect the investment of the Texas state colleges and universities in each employee by promoting and preserving economic security and good health among employees of the Texas state colleges and universities;

(e) to foster and develop high standards of employer-employee relationships between the Texas state colleges and universities and their employees;

(f) to recognize the long and faithful service and dedication of employees of the Texas state colleges and universities and to encourage them to remain in service until eligible for retirement by providing health insurance and other group insurance benefits for such employees;

(g) to provide for greater uniformity of procedures for administration of retirement annuity insurance programs available to employees of Texas state colleges and universities through the optional retirement programs and tax sheltered annuity programs.

[1] Article 3.50–2.

Definitions

Sec. 3. (a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this Act shall have the following meanings:

(1) "Administering carrier" shall mean any carrier or organization, qualified to do business in Texas, designated by the administrative council to administer any services, benefits, insurance coverages, or requirements in accordance with this Act and the council's regulations thereunder.

(2) "Retired employee" shall mean an employee as defined in this Act who retires or has retired under a retirement provision under the jurisdiction of:

(A) the Teachers Retirement System of Texas, pursuant to Chapter 3, Title 1, Texas Education Code, as amended; [1]

(B) the Optional Retirement Program, Articles 51.351 et seq., Texas Education Code, as amended; [2] provided, however, that the employee has met service requirements, age requirements, and other applicable requirements as may be promulgated by the administrative council comparable to the requirements for retirement under the Teachers Retirement System of Texas;

(C) the Employees Retirement System of Texas, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes),[3] as authorized by Chapter 75, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 6228a–2, Vernon's Texas Civil Statutes); [4]

(D) any other federal or state statutory retirement program to which the institution has made employer contributions; provided, however, that the employee has met service requirements, age requirements, and other applicable requirements as may be promulgated by the administrative council comparable to the requirements for retirement under the Teachers Retirement System of Texas.

(3) "Carrier" shall mean a qualified carrier as defined in this Act.

(4) (A) "Employee" shall mean any person employed by a governing board of a state university, senior or community/junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code: [2]

(i) who retires under the provisions cited in subsection (a)(2) of this section;

(ii) who receives his compensation for services rendered to a public community/junior college

or a senior college, university, or other agency of education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code, on a warrant or check issued pursuant to a payroll certified by an institution or by an elected or duly appointed officer of this state, and who is eligible for participation in the Teacher Retirement System of Texas.

(B) Persons performing personal services for such public community/junior colleges or senior colleges, universities, or other agencies of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code, as independent contractors shall never be considered employees for purposes of this Act.

(5) "Employer" shall mean the institutions defined elsewhere in Subsection (8) of this section.

(6) "Group life, accident, or health insurance plan" shall mean any group insurance policy or contract, life, accident, medical, dental, or hospital service agreement, membership or subscription contract, or similar group arrangement provided by an administering carrier.

(7) "Retirement annuity insurance" shall mean policies or contracts provided by an administering carrier or carriers to provide optional retirement and/or tax sheltered annuity benefits as authorized by applicable state and federal statutes.

(8) "Institution" shall mean each association of one or more public community/junior colleges or senior colleges or universities, medical or dental units, technical institutes, or other agencies of higher education under the policy direction of a single governing board.

(9) "Dependent" shall mean the spouse, as defined in the Texas Family Code, of an employee or retired employee, and an unmarried child under 25 years of age including: (A) an adopted child, (B) a stepchild, foster child, or other child who is in a regular parent-child relationship, (C) any such child, regardless of age, who lives with or whose care is provided by an employee or retired employee on a regular basis, if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the administrative council shall determine.

(10) "President" shall mean the duly authorized chief official of any institution covered under the provisions of this Act or such other official as may be designated by a governing board to carry out the provisions of this Act.

(11) "Qualified carrier" shall mean:

(A) any insurance company authorized to do business in this state by the State Board of Insurance to provide any of the types of insurance coverages, benefits, or services provided for in this Act under any of the insurance laws of the State of Texas, which has an adequate surplus, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance;

(B) any corporation operating under Chapter 20 of the Texas Insurance Code [3] which provides any of the types of coverage, benefits, or services provided for in this Act, which has a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; or

(C) any combination of carriers as herein defined, upon such terms and conditions as may be prescribed by the administrative council; provided, however, that for purposes of this Act carriers combining for the purpose of bidding and/or underwriting this program shall not be considered in violation of Sections 15.01 through 15.34, Chapter 15, Title 2, Competition and Trade Practices, Texas Business & Commerce Code.

(12) "Service" shall mean any personal services of an employee creditable in accordance with rules and regulations promulgated by the administrative council.

(13) "Active employee plan" shall mean a plan or program of group life, accident, or health insurance for active employees as determined by the administrative council as provided in this Act.

(14) "Retired employee plan" shall mean a plan or program of group insurance as determined by the administrative council as defined in this Act for all retired employees as defined in this Act.

(b) In addition to the foregoing definitions, the administrative council shall have authority to define by rule any words and terms necessary in the administration of this Act.

[1] Repealed; see, now, Civil Statutes Title 110B, § 31.001 et seq.
[2] Repealed; see, now, Civil Statutes Title 110B, § 36.001 et seq.
[3] Repealed; see, now, Civil Statutes Title 110B, § 21.001 et seq.
[4] Repealed.

Authority

Sec. 4. (a) A Texas State College and University Employees Uniform Insurance Benefits Program is hereby created. The uniform insurance benefits program shall be established within the authority of the Coordinating Board, Texas College and University System. The commissioner of higher education, acting under the direction and established policies of the coordinating board, shall appoint a coordinating board staff member who shall serve as executive secretary for the program, and shall provide from appropriated funds such additional staff and other resources necessary to provide technical consulting

and administrative and clerical support for the effective administration of this Act by the administrative council and the advisory committee as hereinafter provided.

(b) The administrative council shall be selected, serve, and perform duties as hereinafter described:

(1) Selection. (A) Acting as a group, the presidents of the six senior level institutions having the highest number of employees as defined in this Act, based on the most current statistical reports of the Coordinating Board, Texas College and University System, shall with prior consultation with all other presidents of all senior level institutions covered by this Act, designate three representatives to serve as members of the council. The persons so designated shall be employees as defined in this Act and may be from any of the senior level institutions.

(B) Acting as a group, the presidents of the three junior level institutions or technical institutions having the highest number of employees as defined in this Act, based on the most current statistical reports of the Coordinating Board, Texas College and University System, shall with prior consultation with all other presidents of all junior level institutions covered by this Act, designate three representatives to serve as members of the council. The persons so designated shall be employees as defined in this Act and may be from any of the junior level institutions or technical institutions.

(C) The commissioner of higher education shall appoint three members of the council, which members shall not be subject to the restrictions in Section 4(b)(2).

(2) Qualifications of members. The persons designated as members of the administrative council, in addition to being employees as defined in this Act, shall have demonstrable qualifications for the administration of the program established by this Act.

(3) Terms of membership. (A) Except for initial appointments, all appointments shall serve for a period of six years each except for appointments to fill vacancies occurring in cases of incompleted terms, in which case the appointment shall be for the remainder of the unexpired term.

(B) The administrative council initially shall be established as follows:

(i) Of the three appointments made by the presidents of senior level institutions as described in Subsection (b)(1)(A) of this section, one of the members so appointed shall serve for a period of six years, one shall serve for a period of four years, and one shall serve for a period of two years from the effective date of this Act. Thereafter terms of all appointees shall be for six years.

(ii) Of the three appointments made by the presidents of the junior level institutions or technical institutions as described in this Act, one of these appointments shall be for a period of six years, one shall be for a period of four years, and one shall be for a period of two years from the effective date of this Act. Thereafter terms of all appointees shall be for six years.

(iii) The members thus appointed shall, at the first organizational meeting of the administrative council, draw lots for terms of office as described above in this Act and shall elect a chairman and other such officers as may be necessary. Thereafter, elections shall be held annually for the chairmanship and other such offices.

(4) Duties. The administrative council shall:

(A) determine basic coverage standards which shall be at least equal to those commonly provided in private industry and those provided employees of other agencies of the State of Texas under the Texas Employees Uniform Group Insurance Benefits Act,[1] after considering recommendations of the advisory committee.

(B) require each institution to include in its respective bid documents for the various coverages a provision calling for each bidder to identify its administrative cost as a distinguishable figure and to enumerate what services the bidder will render in exchange for the administrative costs so identified.

(C) determine basic procedural and administrative practices for insurance coverages to be provided employees covered under the provisions of this Act, after considering recommendations of the advisory committee.

(D) determine if existing institutional programs meet, equate to, or exceed standards for such basic coverages. If so, such programs may be continued in accordance with existing contractual arrangements between those institutions and their carrier or carriers, provided, however, that each program so continued shall be submitted by the institution for competitive bidding within standards established by the administrative council at least once during each four-year period following the effective date of coverage under this Act. It is further provided that:

(i) The State Board of Insurance shall provide, by request of the institution, a list of all carriers authorized to do business in the State of Texas and who will be eligible to bid on the insurance coverage or coverages provided in this Act.

(ii) The State Board of Insurance shall, upon request by the institution, examine and evalute the bidding contracts and certify their actuarial soundness to the institution within 15 days from the date of request.

(iii) The institution is not required to select the lowest bid, but shall take into consideration other factors such as ability to service contracts, past experience, financial stability, and other relevant criteria. Should the institution select a carrier whose bid differs from that advertised, such deviation shall be reported to the administrative council and the reasons for such deviation shall be fully justified and recorded in the minutes of the next meeting of the administrative council.

(iv) The institution may select and contract for services performed by health maintenance organizations that are approved by this state to offer health-care services to eligible employees and retired persons in a specific area of the state. Eligible employees and retired persons may participate in a selected health maintenance organization in lieu of participation in the health insurance benefits under this Act, and the employer contributions provided by Section 13 of this Act for health-care coverage shall be paid to the selected health maintenance organizations on behalf of the participants.

(E) determine those institutions whose programs contain deficiencies with regard to the basic standards, administrative costs, and practices provided for under this Act. Where such program deficiencies occur, the president of each institution found to be deficient shall be notified of such program deficiencies by the administrative council, which shall also report its action to the commissioner of higher education, and the institution shall be provided a reasonable deadline not to exceed two years for correcting said deficiencies. The affected institution may appeal this determination of deficiency to the Coordinating Board, Texas College and University System. The board shall within 90 days from receipt of the appeal either affirm or reverse the decision of the administrative council. In case of reversal the board shall return the appeal to the administrative council with written instructions for disposition. Where institutions do not correct said deficiencies as directed by the administrative council, the council is hereby authorized and empowered to direct the institution to establish such plans as determined by the council, and to report its action to the commissioner of higher education. If such plans are not established within a reasonable time period not to exceed six months from date of notification, the council shall notify the state comptroller of public accounts, who shall withhold state insurance premium matching funds from the affected institutions until notified by the administrative council that the deficiencies have been corrected. These notifications to the state comptroller shall be reported to the commissioner of higher education.

(F) provide that the governing boards of two or more institutions of higher education may procure one or more group contracts with any insurance company or companies authorized to do business in this state, insuring the employees of each participating institution. The purpose of such authorization shall be to provide institutions of higher education with the ability to obtain the benefits of economy and/or improved coverages for their employees which may occur through increased purchasing economies for larger groups of employees. All contracts for basic coverages negotiated from the effective date of this Act shall be in compliance with basic coverage standards, rules, and regulations of the administrative council promulgated pursuant to this Act. Each governing board may provide such additional or optional insurance programs and coverages as it deems desirable for its employees.

(G) adopt rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out the statutory responsibilities.

(H) require that procedures be established by each institution to allow each covered employee to obtain prompt action regarding claims pertaining to insurance provided under this Act.

(I) publish such additional goals, guidelines, and surveys as are necessary to assist covered institutions in providing their employees with effective benefits programs.

(J) develop policies, practices, and procedures as necessary in accordance with provisions of applicable statutes to provide for greater uniformity in the administration of retirement annuity insurance programs available to employees of Texas state colleges and universities through the Optional Retirement Program, Article 51.351 et seq., Texas Education Code, as amended, and tax sheltered annuity programs as provided in Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 6228a-5, Vernon's Texas Civil Statutes).

(K) establish rules, regulations, and procedures for preparation and review of the annual reports of the institutions as further provided for under Section 6 of the Act.

(c) The advisory committee shall be selected, serve, and perform duties as hereinafter described:

(1) Selection. One member of the advisory committee shall be elected from each of the institutional components, units, or agencies under the policy direction of a single governing board at such times as designated by the administrative council and in accordance with general guidelines for such elections provided by the administrative council.

(2) Qualifications of members. The members of the advisory committee shall be chosen from among employees as defined in this Act. The persons so elected shall demonstrate mature judgment, special abilities, and sincere interests in employee insurance programs and be able to represent the needs of all employees of the institution represented with regard to advisory committee actions.

(3) Terms of membership. Members of the advisory committee elected under the terms of this Act shall serve for a period of two years, subject to reelection. At the initial meeting of the advisory committee, and subsequently each year, the members who are elected shall elect a chairman and other such officers as may be necessary. A vacancy shall be filled by an employee of the same institution from which the vacancy occurred, being appointed by the president of said institution for the balance of the vacated term.

(4) Duties. (A) The advisory committee shall cooperate and work with the administrative council in coordinating and correlating the administration of the group insurance program among the various institutions. Members of the advisory committee shall cooperate and work with the administrative council as advisors in development, implementation, coordination, and administration of the group insurance programs among the various institutions.

(B) The advisory committee shall provide a channel for open communication of ideas and suggestions regarding coverages, eligibility, claims, procedures, bidding, administration, and all other aspects of employee insurance benefits.

[1] Article 3.50–2.

Benefit Certificates

Sec. 5. The administrative council shall assure that each employee insured under this Act is issued a certificate of insurance setting forth the benefits to which the employee is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting the employee.

Annual Report

Sec. 6. As soon as practicable after the end of each contract year, but not later than 180 days thereafter, each institution covered under the provisions of this Act shall submit an annual report to the administrative council, comparing the insurance coverages provided and the benefits and services received by its employees insured under the provisions of this Act. The administrative council shall, within 30 days of receipt of the institutional annual reports, submit the annual reports together with a summary and commentary to the commissioner of higher education for submission to the Coordinating Board, Texas College and University System.

Reinsurance

Sec. 7. (a) The institutions may arrange with any administering carrier or carriers issuing any policy or policies under this Act for the reinsurance of portions of the total amount of insurance under such policy or policies with other qualified carriers which elect to participate in the reinsurance.

(b) The administrative council may determine all rules, regulations, and actions necessary for the providing of such reinsurance through qualified carriers.

Annual Accounting

Sec. 8. (a) Carriers providing any policy purchased under this Act shall provide an accounting to the institution not later than 120 days after the end of each policy year. The accounting for each line of coverage shall set forth, in a form acceptable to the administrative council:

(1) the cumulative amount of premiums actually remitted to the carrier under the policy from its date of issue to the end of the policy year, the amount of premiums actually remitted under the policy for each year from the anniversary date to the end of that policy year;

(2) the total of all mortality and other claims, charges, losses, costs, contingency reserve for pending and unreported claims and expenses incurred for each of the periods corresponding to each of the periods heretofore described in Subsection (a)(1) of this section;

(3) the amounts of the allowance for a reasonable profit, contingency reserves, and all other administrative charges corresponding to each of the periods as heretofore described in Subsection (a)(1) of this section.

(b) Any excess of the total of Subsection (a)(1) of this section over the corresponding sum of Subsections (a)(2) and (a)(3) of this section may be held by the carrier issuing the policy as a special reserve. Such reserve may be used at the discretion of the institution with prior approval of the administrative council for, but not limited to, providing additional coverage for participating employees, offsetting necessary employee premium rate increases, or to reduce participating employee premium contributions to the coverage. Any reserve held by the carrier would bear interest at a rate determined each policy year by the carrier and approved by the institution as being consistent with the rate generally used by the carrier for similar funds held under other group insurance policies. Alternative report requirements or arrangements may be approved by the administrative council.

Exemption from Execution

Sec. 9. (a) All insurance benefits and other payments and transactions made pursuant to the provisions of this Act to any employee covered under the provisions of this Act shall be exempt from execu-

tion, attachment, garnishment, or any other process whatsoever.

(b) Premiums on policies, insurance contracts, or agreements with health maintenance organizations established under this Act are not subject to any state tax.

Death Claims

Sec. 10. The amount of group life insurance and group accidental death and dismemberment insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order:

(a) to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

(b) if no beneficiary is designated in accordance with Subsection (a) of this section, payment shall be made in accordance with the death benefit provisions of the Teacher Retirement System of Texas, Chapter 3, Title 1, Texas Education Code, as amended.[1]

[1] See Education Code, § 3.33.

Automatic Coverage

Sec. 11. No eligible employee shall be denied enrollment in any of the coverages provided by this Act; provided, however, that the employee may waive in writing any or all such coverages. Each policy of insurance shall provide for automatic coverage on the date the employee becomes eligible for insurance. From the first day of employment, each active full-time employee who has not waived basic coverage or selected optional coverages shall be protected by a basic plan of insurance coverage automatically. The premium for such coverage shall not exceed the amount of the employer contribution. Each employee who is automatically covered under this section may subsequently retain or waive the basic plan and may make application for any other coverages provided under this Act within institutional and administrative council standards.

Payment of Premiums

Sec. 12. Each institution and agency covered under the provisions of this Act shall contribute monthly to the cost of each insured employee's coverage no less than the amount appropriated therefor by the legislature in the General Appropriations Act or as determined by the governing board of the institution in its respective official operating budget, if the employees are compensated from funds appropriated by such budgets rather than by the General Appropriations Act. The employees shall authorize in writing and in a form satisfactory to the institution a deduction from his monthly compensation of the difference between the total cost of benefits and the amount contributed therefor by the institution or agency.

Employer Contributions

Sec. 13. Certification shall be submitted on or before the first day of November next preceding each regular session of the legislature; the institutions and agencies covered under the provisions of this Act shall certify to the Legislative Budget Board and budget division of the Governor's Budget and Planning Office the amount necessary to pay employer contributions for each active and retired employee from the effective date of this Act. The Legislative Budget Board and the Governor's Budget and Planning Office will establish procedures to insure that eligible institutions request appropriate funds to support this program and shall present appropriate budget recommendations to the legislature. The Teacher Retirement System of Texas, Optional Retirement Program carriers, and Employees Retirement System of Texas shall furnish each institution such information as may be deemed necessary by the administrative council to provide retired employees with the coverages and employer contributions provided under the Act.

Administrative Costs

Sec. 14. No employee covered under the provisions of this Act shall be required to pay out of the amount of employer contributions due him or out of the amount of his additional premiums due for selected coverages, any administrative costs, fees, or tax whatsoever to pay expenses of a state institution, the coordinating board, or committees as herein established for administering this Act. The duties of each member of the administrative council and the advisory committee shall be considered additional duties to those required of his other state office or employment, and all expenses incurred by any such member in performing his duties as a member of the council or committee shall be paid out of funds made available for those purposes to the institution of which he is an employee or officer.

Studies, Reports, Records, and Audits

Sec. 15. (a) The administrative council shall cause to be established a continuing study of the operation and administration of this Act, including surveys and reports on group insurance coverages and benefits.

(b) Each contract entered into under this Act shall contain provisions requiring administering carriers to

(1) furnish such reasonable reports as the administrative council determines to be necessary to enable it to carry out its functions under this Act; and

(2) permit the administrative council and representatives of the state auditor to examine records of the carriers as may be necessary to carry out the purpose of this Act.

(c) Each institution shall keep such records, make such certifications, and furnish the administrative council with such information and reports as may be necessary to enable the administrative council to carry out its functions under this Act.

Applicability of State Open-Meetings and Open-Records Statutes and Federal and State Privacy Statutes

Sec. 16. Any reports which shall be required by action of the administrative council and advisory committee which have been established under the Act shall be a matter of open record, available for review under the provisions of applicable open-record statutes of the State of Texas. This shall not be interpreted to require the release of any records pertaining to individuals insured under the provisions of this Act, the release of which would be in conflict with the rights of these individuals under federal and state privacy statutes. Meetings which are necessary for the administration of the Act shall be subject to applicable provisions of state open-meetings statutes.

Coverage for Dependents

Sec. 17. Any employee or retired employee shall be entitled to secure for his dependents any uniform group insurance coverages provided for such dependents under the rules and regulations to be promulgated by the administrative council. Such payments for such coverages for dependents shall be deducted from the monthly pay of the employee or paid in such manner and form as the administrative council shall determine.

Effective Date

Sec. 18. This Act shall become effective September 1, 1977, and basic coverages shall be provided by each institution covered under this Act beginning no later than September 1, 1979.

Severability

Sec. 19. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and as to all other persons and circumstances shall be valid and of full force and effect, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision, and to this end the provisions of this Act are declared to be severable.

Repeal

Sec. 20. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only.

[Acts 1977, 65th Leg., p. 56, ch. 32, §§ 1 to 20, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 96, ch. 50, §§ 1, 2, eff. Aug. 31, 1981.]

Article 3.50–3 was not enacted as part of the Insurance Code of 1951.

Art. 3.51–1. Payment of Group Insurance Premiums by Cities, Towns or Villages

Any incorporated city, town or village in the State of Texas which is authorized by law to procure a contract insuring its respective employees or any class or classes thereof under a policy or policies of group insurance covering one or more risks may pay all or any portion of the premiums on such policy or policies from the local funds of such city, town or village.

[Amended by Acts 1981, 67th Leg., p. 1868, ch. 445, § 1, eff. June 11, 1981.]

Art. 3.51–2. County and Political Subdivision of the State of Texas—Officials, Employees, and Retirees

(a) Each county or political subdivision of the State of Texas is authorized to procure contracts insuring its officials, employees, and retirees or any class or classes thereof under a policy or policies of group life, group health, accident, accidental death and dismemberment, and hospital, surgical, and/or medical expense insurance. The dependents of any such officials, employees, and retirees may be insured under group policies which provide hospital, surgical and/or medical expense insurance. The employees' contributions to the premiums for such insurance issued to the employer as the policyholder may be deducted by the employer from the employees' salaries when authorized in writing by the respective employees so to do; provided, however, no state funds shall be used to procure such contracts, nor shall any state funds be used to pay premiums under said contracts of insurance.

(b) Any county or political subdivision of the State of Texas which is authorized by law to procure a contract insuring its respective officials, employees, and retirees or any class or classes thereof under a policy or policies of group insurance covering one or more risks may pay all or any portion of the premiums on such policy or policies from the local funds of such county or political subdivision of the State of Texas.

[Amended by Acts 1975, 64th Leg., p. 278, ch. 120, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 537, ch. 252, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1975 amendatory act provided:

"The provisions of this Act are severable. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act and the application of such provision to other persons or circumstances shall not thereby be rendered invalid or unconstitutional, nor be affected thereby."

Art. 3.51–4. Payment of Premiums of Group Life and Health Insurance Policies for Retirees of the Central Education Agency, the Texas Rehabilitation Commission, the Coordinating Board, Texas College and University System, Retired Employees of the Texas Department of Mental Health and Mental Retardation Who Accepted Retirement Under the Teacher Retirement System of Texas, Retired Employees of the Texas Youth Council Who Accepted Retirement Under the Teacher Retirement System of Texas, and Retired Employees of the Teacher Retirement System of Texas Who Accepted Retirement Under the Teacher Retirement System of Texas

The premium cost of group life, health, accident, hospital, surgical and/or medical expense insurance

for retirees of the Central Education Agency, the Texas Rehabilitation Commission, the Coordinating Board, Texas College and University System, for retired employees of the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, and the Teacher Retirement System of Texas who accepted retirement under the Teacher Retirement System of Texas pursuant to Chapter 3, Texas Education Code,[1] shall be paid by the State of Texas, subject to the following limitations and conditions:

(a) Payment shall be from the funds of the agency, commission, board or department from which the officer or employee retired, shall be limited to the same amount allowed active employees under current group life and health insurance programs of the agency, commission, board or department, and shall be made in accordance with rules and regulations to be established no later than September 1, 1973, by the Central Education Agency, the Texas Rehabilitation Commission, and the Coordinating Board, Texas College and University System for its respective retirees and no later than September 1, 1975, by the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, and the Teacher Retirement System of Texas for their retired employees who accepted retirement under the Teacher Retirement System of Texas pursuant to Chapter 3, Texas Education Code.

(b) The agency, commission, board and department shall certify to the state comptroller of public accounts and to the state treasurer each month the amount required each month to pay the insurance premiums of the said retirees, and the State of Texas shall pay the amount so ascertained each month, beginning September 1, 1973, to the Central Education Agency, the Texas Rehabilitation Commission, and the Coordinating Board, Texas College and University System, and beginning September 1, 1975, to the Texas Department of Mental Health and Mental Retardation and the Texas Youth Council.

[Amended by Acts 1975, 64th Leg., p. 1027, ch. 394, § 1, eff. June 19, 1975.]

[1] Repealed; see, now, Civil Statutes Title 110B, § 31.001 et seq.

Art. 3.51-4A. Extension of Term Life Insurance to Spouses and Children

Sec. 1. Insurance under any group term life insurance policy issued and delivered pursuant to the laws of the State of Texas, except a policy issued and delivered to a creditor pursuant to Section 1(4) of Article 3.50 of the Texas Insurance Code or pursuant to any other law of the State of Texas providing for credit life insurance, may be extended to cover the spouse, the children under 21 years of age, natural or adopted, and the children over 21 years of age, natural or adopted, who are enrolled as full-time students at an educational institution or are physically or mentally disabled and who are under the supervision of the parents, of each insured thereunder, provided that the amounts of insurance under the policy are based on some plan precluding individual selection either by the insured or the policyholder, and provided further that the amount of such insurance on the life of the spouse shall not exceed $10,000 or one-half of the amount of insurance on the life of the aforesaid insured under said policy, whichever is less, nor shall the amount of such insurance on the life of a child exceed $2,000.

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

[Amended by Acts 1975, 64th Leg., p. 766, ch. 299, § 2, eff. May 27, 1975.]

Art. 3.51-5. Payments of Group Life and Health Insurance Premiums for Retired Employees of the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, a Texas Senior College or University, and the Coordinating Board, Texas College and University System

(a) The costs of group life and health insurance premiums to persons retired under the Teacher Retirement Act, who at the time of their retirement were employed by the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, a Texas senior college or university, and the Coordinating Board, Texas College and University System, shall be fully paid from the funds of such agency, commission, institution, or board under the following provisions and conditions:

(1) The coverage of this Act shall extend to all such retired persons within the limits of eligibility under state contracts in force on the effective date of this Act or as may be otherwise provided by law;

(2) such payment shall be in accordance with rules and regulations established by such agency, commission, institution, or board;

(3) such agency, commission, institution, and board shall certify to the Comptroller of Public Accounts and the State Treasurer each month the amount so ascertained each month to such agency, commission, institution, and board;

(4) payments shall begin on the first day of the month following the month in which this Act takes effect and shall continue to be paid until otherwise provided by law.

(b) There are hereby authorized to be paid out of the funds of each agency, commission, institution, or board named in the Act the sums necessary to fund the payments of premiums provided in this Act.

[Added by Acts 1975, 64th Leg., p. 1062, ch. 408, § 1, eff. Sept. 1, 1975.]

Art. 3.51–6. Group and Blanket Accident and Health Insurance

Group Insurance Defined; Coverage, Certificate, Fees or Allowances

Sec. 1. (a) Group accident and health insurance is hereby defined to be that form of accident, sickness, or accident and sickness insurance covering groups of persons as provided in Subdivisions (1) through (6) below:

(1) under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor, or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners, and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise, and retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship;

(2) under a policy issued to an association, including but not limited to a labor union or organizations of such unions, membership corporations organized or holding a certificate of authority under the Texas Non-Profit Corporation Act,[1] and cooperatives and corporations subject to the supervision and control of the Farm Credit Administration of the United States of America, and which association shall have a constitution and bylaws, which has been organized and has had an active existence for at least two years, and which is maintained in good faith for purposes other than that of obtaining insurance, to insure members, employees, or employees of members (active and retired for the benefit of persons other than the association or its officers or trustees);

(3) under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in (2) above, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or such association, or employees of members of such association for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers, and employees of the employer, retired employees, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship;

(4) under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy;

(5) under a policy issued by an insurer to a trustee of a fund, which shall be deemed to be the policyholder, to insure former employees, former members, their spouses, former spouses, and their dependents, who were previously insured by such insurer under a policy issued to any of the groups provided for in this article;

(6) under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner of insurance, may be subject to the issuance of a group accident and sickness policy or contract.

(b) The spouse and dependents of employees or members referred to in Subdivisions (a)(1) through (a)(6) of this section may be included within the coverage provided in a group policy.

(c) An insurer issuing a group policy under this article shall furnish to the policyholder for delivery to each employee or member of the insured group a certificate of insurance which shall contain a statement, in summary form, of the essential features of the insurance coverage of such employee or member and to whom benefits are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(d) No group policy of accident, health, or accident and health insurance shall be delivered or issued for delivery in this state which does not conform to the requirements and definitions set forth in Subdivisions (a)(1) through (a)(6) of this section.

(e) No insurer shall pay to any individual, firm, corporation, or group entity any fees or allowances for services related to group policies except as reimbursement for the cost of such services which would otherwise have been provided by the insurer, provided that this provision shall not limit the right of the insurer to pay dividends or make returns of premium to any group or to any combination of groups or make provision for rate stabilization funds with combinations of groups, nor shall it prohibit payment of commissions or compensation to a duly licensed agent.

(f) Any group accident and health insurance policy which contains provisions for the payment by the insurer of benefits for members of the family or

dependents of a person in the insured group may provide for a continuation of such benefits or any part thereof after the death of the person in the insured group and provided further that any amounts of insurance so provided by such benefits shall not be construed as life insurance under this chapter. Such coverage may continue for a period not to exceed 180 days subject to any other policy provisions relating to termination of dependent's coverage.

[1] Civil Statutes, Art. 1396–1.01 et seq.

Blanket Insurance Defined; Application or Certificate; Liability for Death or Injury of Member; Fees or Allowances

Sec. 2. (a) Blanket accident and health insurance is hereby defined to be that form of accident, health, or accident and health insurance covering groups of persons as provided in (1) through (9) below:

(1) under a policy issued to any common carrier or to any operator, owner, or lessor of a means of transportation, who or which shall be deemed the policyholder, covering a group of persons who may become passengers defined by reference to their travel status on such common carrier or such means of transportation; or, under a policy issued to any automobile and/or truck leasing company, which shall be deemed the policyholder, covering a group of persons who may become either renters, lessees, or passengers defined by their travel status on such rented or leased vehicles;

(2) under a policy issued to an employer, who shall be deemed the policyholder, covering any group of employees, dependents, or guests, defined by reference to specified hazards incident to an activity or activities or operations of the policyholder;

(3) under a policy issued to a college, school, or other institution of learning, a school district or districts, or school jurisdictional unit, or to the head, principal, or governing board of any such education unit, who or which shall be deemed the policyholder, covering students, teachers, or employees;

(4) under a policy issued to any religious, charitable, recreational, educational, or civic organization, or branch thereof, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to any activity or activities or operations sponsored or supervised by such policyholder;

(5) under a policy issued to a sports team, camp, or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials, or supervisors;

(6) under a policy issued to any governmental or volunteer fire department or fire company, first aid, civil defense, or other such governmental or volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder;

(7) under a policy issued to a newspaper or other publisher, which shall be deemed the policyholder, covering its carriers;

(8) under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder;

(9) under a policy issued to cover any other risk or class of risks which, in the discretion of the commissioner of insurance, may be properly eligible for blanket accident and sickness insurance. The discretion of the commissioner of insurance may be exercised on an individual risk basis or class of risks, or both.

(b) An individual application need not be required from a person covered under a blanket accident and sickness policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate.

(c) Nothing in this section shall be deemed to affect the legal liability of any policyholder for the death of or injury to any member of a group.

(d) No blanket policy shall be delivered or issued for delivery in this state which does not conform to the requirements and definitions set forth in Subdivisions (a)(1) through (a)(9) of this section.

(e) No insurer shall pay to any individual, firm, or corporation any fees or allowances for services related to blanket policies except as reimbursement for the cost of such services which would otherwise have been provided by the insurer provided that this provision shall not limit the right of the insurer to pay dividends or make return of premium to any group or any combination of groups or make provision for rate stabilization funds with combinations of groups, nor shall it prohibit the payment of commissions or compensation to a duly licensed agent.

Payment of Benefits

Sec. 3. All benefits under any group or blanket accident and sickness policy shall be payable to the person insured, or to his designated beneficiary or beneficiaries, or to his estate, except that if the person insured be a minor or otherwise not competent to give a valid release, such benefits may be made payable to his parent, guardian, or other person actually supporting him. The policy may provide that all or a portion of any indemnities provided by any such policy on account of hospital, nursing, medical, or surgical services may, at the option of the insurer and unless the insured requests otherwise in writing not later than the time of filing

proofs of such loss, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the obligation of the insurer with respect to the amount of insurance so paid.

Conversion Privilege

Sec. 3A. (a) In this section:

(1) "Health insurance policy" means a group policy or contract, including group contracts issued by companies subject to Chapter 20, Insurance Code, as amended, providing insurance for hospital, surgical, or medical expenses incurred as a result of an accident or sickness.

(2) "Insured" means an employee or member of a group that is covered by a health insurance policy.

(b) A health insurance policy delivered or issued for delivery in this state that provides for conversion to an individual policy by an insured on termination of membership in or employment with the group shall provide a conversion privilege to an individual policy to the spouse of the insured on death of the insured or divorce from the insured or on termination of the insured's membership in or employment with the group for any reason including retirement. If the conversion privilege available to the insured provides for coverage of the insured's spouse, the group insurer shall not be required to issue a separate conversion policy to the spouse.

(c) Subsection (b) of this section applies only to a spouse of an insured if the spouse is covered under the health insurance policy at the time of the insured's death or divorce from the insured or termination of the insured's coverage.

Exemptions

Sec. 4. The provisions of this article shall not be applicable to:

(1) credit accident and health insurance policies subject to Article 3.53 of the Insurance Code, as amended;

(2) any group specifically provided for or authorized by law in existence and covered under a policy filed with the State Board of Insurance prior to April 1, 1975;

(3) accident and health coverages that are incidental to any form of group automobile, casualty, property, or workmen's compensation —employers' liability policies promulgated or approved by the State Board of Insurance;

(4) any policy or contract of insurance with a state agency, department, or board providing health services to all eligible persons under Section 6, The Medical Assistance Act of 1967, as amended (Article 695j–1, Vernon's Texas Civil Statutes),[1] 343–353[2] (42 U.S.C.A. 1396–1396g), providing health care and sevices under a state plan.

[1] Repealed; see, now, Human Resources Code, § 32.001 et seq.
[2] So in enrolled bill; probably should read "79 Stat. 343–353".

Rules and Regulations

Sec. 5. The State Board of Insurance is authorized to issue such rules and regulations as may be necessary to carry out the various provisions of this article. Rules and regulations promulgated pursuant to this article shall be subject to notice and hearing pursuant to Section 10, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70–10, Vernon's Texas Insurance Code).

[Added by Acts 1975, 64th Leg., p. 1112, ch. 419, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 805, ch. 364, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1063, ch. 493, § 1, eff. June 7, 1979; Acts 1981, 67th Leg., p. 184, ch. 85, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 1870, ch. 447, § 1, eff. Jan. 1, 1982.]

Section 2 of the 1975 Act provided:

"This Act shall apply to all group accident, health, or accident and health insurance policies and all blanket accident, health, or accident and health insurance policies, delivered or issued for delivery in the State of Texas on and after January 1, 1976."

Section 2 of Acts 1979, 66th Leg., p. 805, ch. 364, provided:

"This Act applies to all health insurance policies defined in Section 3A of Article 3.51–6, Insurance Code, and group contracts issued by companies subject to Chapter 20, Insurance Code, as amended, that are delivered or issued for delivery in this state on or after January 1, 1980. Any presently approved policy forms containing any provision in conflict with the requirements of this Act may be brought into compliance with this Act by the use of riders and endorsements which have been approved by the State Board of Insurance."

Art. 3.51–6A. Replacement and Discontinuance of Group and Group-Type Accident and Health Insurance

Scope

Sec. 1. This article is applicable to:

(1) all accident and health insurance policies, including subscriber contracts of a nonprofit service corporation subject to Chapter 20 of this code; and

(2) benefit packages of multiple employer trusts which are not exempt from regulation by the State of Texas as employee welfare benefit plans under the Employee Retirement Income Security Act of 1974, as amended (Public Law 93–406),[1] that are delivered or issued for delivery in this state on a group or group-type basis covering a person who is eligible for insurance because of the person's status as an employee of an employer or as a member of a labor union or as a member of an association. This article does not apply to or otherwise regulate any entity not engaged in the business of insurance in this state.

[1] 29 U.S.C.A. § 1001 et seq.

Definitions

Sec. 2. (a) "Group-type basis" means an accident and health benefit plan that meets the following conditions:

(1) insurance coverage is provided through insurance policies or subscriber contracts to classes of employees or members of a labor union or members of an association, in which the classes are defined in terms of conditions pertaining to employment or membership;

(2) coverage is not available to the general public and can be obtained and maintained only because of the covered person's employment status or membership in a labor union or an association;

(3) payment of premiums or subscription charges is arranged on an aggregate or bulk-payment basis to the insurer or nonprofit service corporation; and

(4) the employer, union, or association sponsors the plan. The term does not refer to a salary-budget plan utilizing either individual insurance policies or subscriber contracts that do not meet the conditions specified in this subsection.

(b) "Carrier" means any insurer, including a nonprofit service corporation subject to Chapter 20 of this code as specified in Section 1 of this article.

Effective Date of Discontinuance for Nonpayment of Premium or Subscription Charges

Sec. 3. If a policy or contract subject to this article provides a grace period for payment of premiums or subscription charges and for automatic discontinuance of the policy or contract after a premium or subscription charge has remained unpaid through the grace period allowed for that payment, the carrier or other entity responsible for making payments or submitting subscription charges or premiums to the carrier is liable for valid claims for covered losses incurred before the end of the grace period. The State Board of Insurance may adopt reasonable rules that are necessary to implement this section.

Requirements for Notice of Discontinuance

Sec. 4. A notice of discontinuance of the policy or contract must include a request to the group policyholder or other entity responsible for making payments or submitting subscription charges to the carrier for notification of employees covered under the policy or contract of the date on which the policy or contract will discontinue.

Extension of Benefits

Sec. 5. (a) Every policy or other contract subject to this article delivered or issued for delivery in this state or under which the level of benefits is altered, modified, or amended, on or after the date this article takes effect, must contain a reasonable provision for extension of benefits in the event of total disability at the date of discontinuance of the group policy or contract. The provision must at a minimum comply with this section.

(b) In a group or group-type basis coverage providing benefits for loss of time from work or specific indemnity during hospital confinement, discontinuance of the policy during a disability does not discontinue or otherwise affect the benefits payable for that disability or confinement.

(c) In the case of hospital or medical expense coverages other than dental expense coverages, a reasonable extension of benefits provision must be included. The provision is considered reasonable if it provides an extension of benefits for any person under the policy who is totally disabled at the date of discontinuance of the group policy or contract at least for the period of such total disability or for 90 days, whichever is less, for expenses for treatment of the condition causing such total disability.

(d) Any applicable extension of benefits must be described in the policies, contracts, and group insurance certificates. The benefits payable during any period of extension may be subject to the regular benefit limits of the policy or contract.

(e) Any extension of benefits provision under this Section 5 may provide that the extension of benefits are not applicable to any person whose coverage under the group policy or contract being discontinued is replaced by coverage with a succeeding carrier as defined in Section 6 of this article providing substantially equivalent or greater benefits than those provided by the discontinued policy or contract.

(f) For the purposes of this section, the terms "total disability" and "totally disabled" mean (1) with respect to an employee or other primary insured under the policy, the complete inability of the person to perform all of the substantial and material duties and functions of his or her occupation and any other gainful occupation in which such person earns substantially the same compensation earned prior to disability, and (2) with respect to any other person under the policy, confinement as a bed patient in a hospital.

Continuance of Coverage in Situations Involving Replacement of One Carrier's Coverage by Another

Sec. 6. (a) This section applies to determination of the carrier responsible for liability in those instances in which one carrier's plan of benefits replaces a plan of similar benefits of another.

(b) In this section:

(1) "Prior carrier" means an insurer including a group hospital service corporation subject to Chapter 20 of this code, whose coverage has been replaced by a succeeding carrier.

(2) "Prior plan" means the plan of benefits of a prior carrier.

(3) "Succeeding carrier" means an insurer including a group hospital service corporation subject to Chapter 20 of this code that has replaced the coverage of a prior carrier with its coverage.

(4) "Succeeding carrier's plan" means the plan of benefits of the succeeding carrier.

(c) In this section, any reference to an individual who was or was not totally disabled means the individual's status immediately before the date the succeeding carrier's coverage becomes effective.

(d) The prior carrier is liable only to the extent of its accrued liabilities and extensions of benefits, regardless of whether the group policyholder or other entity responsible for making payments or submitting subscription charges to the carrier secures replacement coverage from a new carrier, self-insures, or foregoes the provision of coverage.

(e) Any person covered under the prior plan on its date of discontinuance who is eligible for coverage in accordance with the succeeding carrier's plan of benefits, in respect of classes eligible and actively at work and nonconfinement rules and who elects such coverage shall be covered under the succeeding carrier's plan on its effective date; provided that any person who would have been covered under the succeeding provisions of this subsection but for the actively at work or nonconfinement rules shall become covered under the succeeding carrier's plan when such person satisfied such actively at work and nonconfinemet rules.

(F) When replacing a prior carrier's plan which is not subject to Section 5 of this article, the succeeding carrier's plan, in the case of a type of coverage for which Section 5 of this article requires an extension of benefits for a person who is totally disabled shall provide the lesser of (1) the extension of benefits which would have been required by the prior carrier's plan under Section 5, or (2) the extension of benefits required for the succeeding carrier's plan; provided, any such benefits may be reduced by any benefits actually payable under the prior carrier's plan.

(g) If there is a preexisting conditions limitation, other than a waiting period, included in the succeeding carrier's plan, the level of benefits applicable to preexisting conditions of persons becoming covered in accordance with this subsection by the succeeding carrier's plan and who were covered under the prior plan on the date of discontinuance of the prior plan during the period of time the limitation applies under the succeeding carrier's plan shall be the lesser of:

(1) the benefits of the succeeding carrier's plan determined without application of the preexisting conditions limitation; or

(2) the benefits of the prior plan.

(h) The succeeding carrier, in applying any waiting periods in its plan, shall give credit for the satisfaction or partial satisfaction of same or similar provisions under a prior plan providing similar benefits.

If a determination of the benefits of the prior plan is required by the succeeding carrier, the prior carrier shall, at the succeeding carrier's request, furnish a statement of the benefits available or pertinent information sufficient either to permit verification of the benefits available under the prior plan or to permit the determination of the benefits by the succeeding carrier. For the purposes of this subsection, benefits of the prior plan are determined in accordance with all of the definitions, conditions, and covered expense provisions of the prior plan and not the succeeding carrier's plan. The benefit determination is made as if the prior plan had not been replaced by the succeeding carrier.

[Added by Acts 1981, 67th Leg., p. 2159, ch. 503, § 1, eff. Jan. 1, 1982.]

Art. 3.51–7. Payments of Additional Death Benefits for Retired Appointed Officers and Employees of the Teacher Retirement System of Texas, and the Texas Central Education Agency, and the Texas Schools for the Blind and Deaf

(a) This article shall apply only to persons retired as annuitants under the provisions of the Teacher Retirement System of Texas who were immediately prior to retirement appointed officers or employees of the Central Education Agency, the Teacher Retirement System of Texas, and the Texas Schools for the Blind and Deaf.

(b) There shall be paid from the funds of the Central Education Agency, the Teacher Retirement System of Texas or the Texas Schools for the Blind and Deaf an additional lump-sum death benefit in such amount as, when added to any lump-sum death benefit payable under the provisions of the Teacher Retirement System of Texas, shall equal $5,000 upon satisfactory proof of the death, occurring on or after September 1, 1977, of any person defined in Part (a) of this article. Each such additional lump-sum death benefit shall be paid from the funds of the agency or school from which such person retired.

(c) Such benefit shall be paid as provided by the laws of descent and distribution unless the retiree has directed in writing that it be paid otherwise.

(d) Such payment shall be made in accordance with rules and regulations established by the Central Education Agency, the Teacher Retirement System of Texas, and the Texas Schools for the Blind and Deaf, and each shall certify to the Comptroller of Public Accounts of Texas and the State Treasurer each month the amounts of all such payments made in the preceding month.

(e) There are hereby authorized to be paid out of the funds of the Central Education Agency, the Teacher Retirement System of Texas, and the Texas Schools for the Blind and Deaf the sums necessary to pay such additional lump-sum death benefits.

[Added by Acts 1977, 65th Leg., p. 1272, ch. 494, § 1, eff. June 15, 1977.]

Art. 3.51–8. Continuation of Group Life and Group Accident and Health Insurance During Labor Dispute

No group life insurance policy or group accident and health insurance policy shall be delivered or issued for delivery in this state where the premiums or any part thereof is paid or is to be paid in whole or in part by an employer pursuant to the terms of a collective bargaining agreement unless the policy

provides that in the event of a cessation of work by the employees covered by the policy as the result of a labor dispute, the policy upon timely payment of the premium shall continue in effect with respect to all employees insured by the policy on the date of the cessation of work who continue to pay their individual contribution and who assume and pay the contribution due from the employer for the period of cessation of work, under the following conditions:

(a) If the policyholder is not a trustee or the trustees of a fund established or maintained in whole or in part by the employer, the policy shall provide that the employee's individual contribution shall be the rate in the policy, on the date cessation of work occurs, applicable to an individual in the class to which the employee belongs as set forth in the policy. If the policy does not provide for a rate applicable to individuals, the policy shall provide that the employee's individual contribution shall be an amount equal to the amount determined by dividing (1) the total monthly premium in effect under the policy at the date of cessation of work by (2) the total number of persons insured under the policy at such date.

(b) If the policyholder is a trustee or the trustees of a fund established or maintained in whole or in part by the employer, the employee's contribution shall be the amount which he and his employer would have been required to contribute to the trust for such employee if (1) the cessation of work had not occurred and (2) the agreement requiring the employer to make contributions to the trust were in full force.

(c) The policy may provide that the continuation of insurance is contingent upon the collection of individual contributions by the union or unions representing the employees for policies referred to in Subdivision (a) above and by the policyholder or the policyholder's agent with respect to policies referred to in Subdivision (b) above.

(d) The policy may provide that the continuation of insurance on each employee is contingent upon timely payment of contributions by the individual and timely payment of the premium by the entity responsible for collecting the individual contributions.

(e) The policy may provide that each individual premium rate shall be increased by any amount up to 20 percent, or any higher percent which may be approved by the commissioner, of that otherwise shown in the policy during the period of cessation of work in order to provide sufficient compensation to the insurer to cover increased administrative costs and increased mortality and morbidity. If the policy does provide for such an increase, this shall have the effect of increasing the employee's contribution by a like percent.

(f) Nothing in this article shall be deemed to limit any right which the insurer may have in accordance with the terms of the policy to increase or decrease the premium rates before, during, or after such cessation of work if in fact the insurer would have had the right to increase the premium rate had the cessation of work not occurred. If such a premium rate change is made, it shall be effective, notwithstanding any other provisions of this article, on such date as the insurer shall determine in accordance with the terms of the policy.

(g) The policy may contain such other provisions with respect to such continuation of insurance as the Commissioner of Insurance may approve.

(h) The policy may provide that, if a premium is unpaid at the date of cessation of work and such premium became due prior to such cessation of work, the continuation of insurance is contingent upon payment of such premium prior to the date the next premium becomes due under the terms of the policy.

(i) Nothing herein shall be deemed to require the continuation of any loss of time payments included in any such group accident and health insurance policy, nor of any other coverages beyond the time that 75 percent of the employees continue such coverage or as to any individual employee beyond the time that he takes full-time employment with another employer; nor shall anything herein be deemed to require continuation of coverage more than six months after the cessation of work.

[Added as art. 3.51-7 by Acts 1977, 65th Leg., p. 1948, ch. 774, § 1, eff. Aug. 29, 1977. Renumbered as art. 3.51-8 by Acts 1981, 67th Leg., p. 201, ch. 94, § 4, eff. Aug. 31, 1981.]

Art. 3.51-9. Availability of Alcohol and Other Drug Dependency Coverage

Purpose

Sec. 1. The purpose of this Act is to encourage consumers to avail themselves of basic levels of benefits provided by group health insurance policies, contracts, and coverage provided by health maintenance organizations for the care and treatment of alcohol and other drug dependency and to preserve the right of the consumer to select such coverage according to his medical-economic needs.

Availability of Coverage for Alcohol and Other Drug Dependency

Sec. 2. Insurers, nonprofit hospital and medical service plan corporations subject to Chapter 20 of this code, and health maintenance organizations transacting health insurance or providing other health coverage in this state shall offer and make available, under group policies, contracts, and plans providing hospital and medical coverage on an expense incurred, service or prepaid basis, benefits for the necessary care and treatment of alcohol and other drug dependency that are not less favorable

than for physical illness generally, subject to the same durational limits, dollar limits, deductibles, and coinsurance factors. Such offer of benefits shall be subject to the right of the group policy or contract holder to reject the coverage or to select any alternative level of benefits if such right is offered by or negotiated with such insurer, service plan corporation, or health maintenance organization.

Any benefits so provided shall be determined as if necessary care and treatment in an alcohol or other drug dependency treatment center were care and treatment in a hospital. For purposes of this Act, the term "alcohol or other drug dependency treatment center" means a facility which provides a program for the treatment of alcohol or other drug dependency pursuant to a written treatment plan approved and monitored by a physician and which facility is also (1) affiliated with a hospital under a contractual agreement with an established system for patient referral, or (2) accredited as such a facility by the Joint Commission on Accreditation of Hospitals, or (3) licensed as an alcohol treatment program by the Texas Commission on Alcoholism, or (4) certified as a drug dependency treatment program by the Texas Department of Community Affairs in accordance with such standards, if any, as may be adopted pursuant to Subsection (c) of Section 5.12 of the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes), by the Executive Director of the Texas Department of Community Affairs, or (5) licensed, certified, or approved as an alcohol or other drug dependency treatment program or center by any other state agency having legal authority to so license, certify, or approve.

Applicability and Effective Date

Sec. 3. This Act applies to group policies or contracts or coverage provided by health maintenance organizations delivered or issued for delivery or renewed, extended, or amended in this state on or after January 1, 1982, or upon the expiration of a collective bargaining agreement applicable to a particular policyholder, whichever is later; provided that this Act does not apply to blanket, short-term travel, accident only, limited or specified disease, individual conversion policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act,[1] known as Medicare, or any other similar coverage under state or federal governmental plans. With respect to any policy forms approved by the State Board of Insurance prior to the effective date of this Act, an insurer is authorized to achieve compliance with this Act by the use of endorsements or riders provided such endorsements or riders are approved by the State Board of Insurance as being in compliance with this Act and other provisions of the Texas Insurance Code.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 63, ch. 7, § 1, eff. Nov. 10, 1981.]

[1] 42 U.S.C.A. § 1395 et seq.

Art. 3.53. Credit Life Insurance and Credit Accident and Health Insurance

[See Compact Edition, Volume 2 for text of 1 to 5]

Provisions of Policies and Certificates of Insurance; Disclosure to Debtors

Sec. 6.

[See Compact Edition, Volume 2 for text of A to C]

D. If said individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the full amount of premium or the total identifiable isurance charge, if any, to the debtor, separately for credit life insurance and credit accident and health insurance, the amount, term and a brief description of the coverage provided, shall be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for, or notice of proposed insurance, shall also refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument or agreement, unless the information required by this Subsection is prominently set forth therein. Upon acceptance of the insurance by the insurer and within forty-five (45) days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. Said application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in Section 5.

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

Filing, Approval and Withdrawal of Forms

Sec. 7. A. All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders delivered or issued for delivery in this State and the schedules of premium rates pertaining thereto shall be filed with the Commissioner.

B. The Commissioner shall within sixty (60) days after the filing of any such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders, disapprove any such form if the benefits provided therein are not reasonable in relation to the premium charge, or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of the coverage, or are contrary to any provision of the Insurance Code or of any rule or regulation promulgated hereunder.

C. If the Commissioner notifies the insurer that the form is disapproved, it is unlawful thereafter for such insurer to issue or use such form. In such

notice, the Commissioner shall specify the reason for his disapproval and state that a hearing will be granted within twenty (20) days after request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, nor any application, endorsement or rider, shall be issued or used until the expiration of sixty (60) days after it has been so filed, unless the Commissioner shall give his prior written approval thereto.

D. The Commissioner may, at any time after a hearing held not less than twenty (20) days after written notice to the insurer, withdraw his approval of any such form on any ground set forth in Subsection B above. The written notice of such hearing shall state the reason for the proposed withdrawal.

E. It shall not be lawful for the insurer to issue such forms or use them after the effective date of such withdrawal.

F. If a group policy of credit life insurance or credit accident and health insurance

(i) has been delivered in this State before the effective date of this Act, or

(ii) has been or is delivered in another State before or after the effective date of this Act,

the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this State as specified in Subsection B of Section 6 of this Act and such certificate shall be approved by the Commissioner if it conforms with the requirements specified in said Subsection and if the schedule of premium rates applicable to the insurance evidenced by such certificate or notice is not in excess of the presumptive premium rate established by the Board.

G. Any order or final determination of the Commissioner under the provisions of this Section shall be subject to the appeal and review provisions of Article 1.04, Insurance Code of Texas.

Premiums and Refunds

Sec. 8. A. (1) Any insurer may revise its schedules of premium rates from time to time, and shall file such revised schedules with the Commissioner. No insurer shall issue any credit life insurance policy or credit accident and health insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the Commissioner.

(2) The State Board of Insurance may, after notice and hearing, adopt and promulgate a presumptive premium rate which shall be presumed, subject to a rebuttal of such presumption, to be just, reasonable, adequate, and not excessive. Any hearing conducted pursuant to this section shall be held in accordance with the contested case provisions of the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).

Text of B as amended by Acts 1981, 67th Leg., p. 2110, ch. 493, § 2

B. Each individual policy, or group policy and group certificate shall provide that in the event of termination of the indebtedness or the insurance prior to the schedule maturity date of the indebtedness, any refund of an amount paid by or charged to the debtor for insurance shall be paid or credited promptly to the person entitled thereto; provided, however, no refund need be made if the amount thereof is less than Five Dollars ($5). The formula to be used in computing such refund shall be filed with and approved by the Commissioner.

Text of B as amended by Acts 1981, 67th Leg., p. 3227, ch. 849, § 2

B. Each individual policy, or group policy and group certificate shall provide that in the event of termination of the indebtedness or the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by or charged to the debtor for insurance shall be paid or credited promptly to the person entitled thereto; provided, however, no refund need be made if the amount therof is less than Three Dollars ($3). The formula to be used in computing such refund shall be filed with and approved by the Commissioner.

C. If a creditor requires a debtor to make any payment for credit life insurance or credit accident and health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

D. The amount charged to a debtor by the creditor for any credit life or credit accident and health insurance issued to the debtor shall not exceed the actual premium charged the creditor by the insurer for such insurance, as computed at the time the charge to the debtor is determined.

[See Compact Edition, Volume 1 for text of 9 to 14]

[Amended by Acts 1981, 67th Leg., p. 2109, ch. 493, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3227, ch. 849, §§ 1, 2, eff. Aug. 31, 1981.]

SUBCHAPTER F. MISCELLANEOUS PROVISONS

Art. 3.67. Director Not to Do Certain Things

No director or officer of any insurance company transacting business in or oragnized under the laws of this State, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, co-principal, agent or beneficiary in any such purchase, sale or loan. Nothing in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower, not in excess of the reserve value thereof. Provided, however, that

nothing in this article shall prevent any transaction, purchase, sale or loan which is approved by the commissioner of insurance under the provisions of either Article 1.29 or Article 21.49–1 of this code, as amended.

[Amended by Acts 1981, 67th Leg., p. 710, ch. 270, § 1, eff. Aug. 31, 1981.]

Art. 3.67–1. Repealed by Acts 1981, 67th Leg., p. 710, ch. 270, § 2, eff. Aug. 31, 1981

SUBCHAPTER G. ACCIDENT AND SICKNESS INSURANCE

Art. 3.70–1. Purpose; Definitions; Scope of Act; Rules and Regulations; Standards for Policy Provisions; Minimum Standards; Outline of Coverage; Pre-Existing Conditions; Administrative Procedures

(A) Purpose. The purpose of this Act shall be to provide for reasonable standardization, readability, and simplification of terms and coverages contained in individual accident and sickness insurance policies; to facilitate public understanding of coverages; to eliminate provisions contained in individual accident and sickness insurance policies which may be unjust, unfair, misleading, or unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims; and to provide for full and fair disclosure in the sale of accident and sickness coverages.

(B) Definitions. As used in this Act,

(1) "Board" shall mean the State Board of Insurance of the State of Texas.

(2) "Commissioner" shall mean the Commissioner of Insurance of the State of Texas.

(3) "Policy of accident and sickness insurance" as used herein, includes any policy or contract providing insurance against loss resulting from sickness or from bodily injury or death by accident or both.

(4) "Policy" means the entire contract between the insurer and the insured, including the policy, riders, endorsements, and the application, if attached.

(C) Scope of Act. This Act shall apply to and govern individual accident and sickness insurance policies delivered, or issued for delivery, in the State of Texas by life, health and accident companies, mutual life insurance companies, mutual assessment life insurance companies, mutual insurance companies, local mutual aid associations, mutual or natural premium life or casualty insurance companies, general casualty companies, Lloyds, reciprocal or interinsurance exchanges, nonprofit hospital, medical, or dental service corporations including but not limited to companies subject to Chapter 20 of this code, as amended, stipulated premium insurance companies, or any other insurer which by law is required to be licensed by the Board; provided, however, this Act shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the Board and which are entitled by statute to an exemption certificate from the Board in evidence of their exempt status, nor to fraternal benefit societies; nor to credit accident and sickness insurance policies written under Article 3.53 of this code, as amended; provided further, that this Act shall not be construed to enlarge the powers of any of the enumerated companies. Conversion policies issued pursuant to a contractual conversion privilege under a group accident and sickness insurance policy shall not be subject to Subsections (D) through (H) of this article.

(D) Rules and Regulations. The Board is authorized to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article.

(E) Standards for Policy Provisions.

(1) The Board shall issue reasonable rules and regulations to establish specific standards including standards for readability of policies and for full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of individual policies of accident and sickness insurance which shall be in addition to and in accordance with applicable laws of this state which may cover but shall not be limited to:

(a) terms of renewability;

(b) initial and subsequent conditions of eligibility;

(c) nonduplication of coverage provisions;

(d) coverage of dependents;

(e) pre-existing conditions;

(f) termination of insurance;

(g) probationary periods;

(h) limitations;

(i) exceptions;

(j) reductions;

(k) elimination periods;

(*l*) requirements for replacement;

(m) recurrent conditions; and

(n) the definition of terms including but not limited to the following: hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable and noncancellable; provided that any definition of hospital so developed shall not be applicable to companies organized under Chapter 20 of this code, as amended.

(2) The Board may issue rules and regulations that specify prohibited policy provisions, not otherwise specifically authorized by statute, which in the opinion of the Board are unjust, unfair, or unfairly discriminatory to the policyholder, any person insured under the policy, or beneficiary.

(F) Minimum Standards for Benefits.

(1) The Board shall issue rules and regulations to establish minimum standards for benefits under each of the following categories of coverage in individual policies of accident and sickness insurance:

(a) basic hospital expense coverage;

(b) basic medical-surgical expense coverage;

(c) hospital confinement indemnity coverage;

(d) major medical expense coverage;

(e) disability income protection coverage;

(f) accident only coverage;

(g) specified disease or specified accident coverage; and

(h) limited benefit coverage.

(2) Nothing in this section shall preclude the issuance of any policy which combines two or more of the categories of coverage enumerated in Paragraphs (a) through (h) of Subsection (1) of this section.

(3) No policy shall be issued, or issued for delivery, in the State of Texas which does not meet the prescribed minimum standards for the categories of coverage listed in Paragraphs (a) through (h) of Subsection (1) of this section which are contained within the policy unless the Board finds such policy to be a supplemental policy, a policy experimental in nature or finds such policy will fulfill a reasonable public need and such policy meets the requirements set forth in Article 3.42 of the Insurance Code.

(4) The Board shall prescribe the method of identification of policies based on coverages provided.

(G) Outline of Coverage.

(1) In order to provide for full and fair disclosure in the sale of individual accident and sickness insurance policies, no such policy shall be delivered, or issued for delivery, in the State of Texas unless: (i) in the case of a direct response insurance product, the outline of coverage described in Subsection (2) of this section accompanies the policy; (ii) in all other cases, the outline of coverage described in Subsection (2) of this section is delivered to the applicant at the time application is made and an acknowledgement of receipt or certificate of delivery of such outline is provided the insurer with the application. In the event the policy is issued on a basis other than that applied for, the outline of coverage properly describing the policy must accompany the policy when it is delivered and clearly state that it is not the policy for which application was made.

(2) The Board shall prescribe the format and content of the outline of coverage required by Subsection (1) of this section. "Format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(a) a statement identifying the applicable category or categories of coverage provided by the policy as prescribed in Section (F) of this article;

(b) a description of the principal benefits and coverage provided in the policy;

(c) a statement of the exceptions, reductions, and limitations contained in the policy;

(d) a statement of the renewal provision including any reservation by the insurer of a right to change premiums;

(e) a statement that the outline is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions;

(f) a summary of such provisions required to be in the policy by Section 3, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70–3, Vernon's Texas Insurance Code), as the Board may determine to be necessary to carry out the purposes of this Act.

(g) Any other statements, descriptions, or outlines that the Board may determine to be reasonably necessary to carry out the purposes of this Act.

(H) Pre-existing Conditions. (1) Notwithstanding the provisions of Section 3(A)(2)(b), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70–3, Vernon's Texas Insurance Code), if an insurer elects to use a simplified application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insured's health history or medical treatment history, the policy must cover any loss occurring after 12 months from any pre-existing condition not specifically excluded from coverage by terms of the policy. (2) Notwithstanding the provisions of Section 3(A)(2)(b), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70–3, Vernon's Texas Insurance Code), or of Paragraph (1) of this subsection, no individual policy of accident and sickness insurance delivered or issued for delivery in this state to a person age 65 or over may contain a provision excluding from coverage any loss due to a pre-existing condition, not specifically excluded from coverage by name or specific description in an exclusion endorsement or rider effective on the date of the loss, for a period in excess of six months from the effective date of coverage under the policy; provided, however, that if the Board finds that the public interest would be served thereby, it may authorize a policy provision excluding coverage for pre-existing conditions for a period in excess of six months but in no event shall such period exceed one year. (3) Except as so provided, a policy issued under the provisions of this section may not include wording that would permit a defense based on pre-existing conditions.

(I) Administrative Procedures. Rules and regulations promulgated pursuant to this Article shall be subject to notice and hearing pursuant to Section 10, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70–10, Vernon's Texas Insurance Code).

[Amended by Acts 1975, 64th Leg., p. 2199, ch. 703, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1285, ch. 505, § 1, eff. June 15, 1977.]

Sections 2 and 3 of the 1975 amendatory act amended subsecs. (A) and (B) of art. 3.70–3; § 4 amended art. 3.42; § 5 amended art. 3.70–9; and § 6 thereof provided:

"This Act shall apply to all policies of accident and sickness insurance issued, or issued for delivery, in the State of Texas after June 1, 1976. This Act shall not apply to policies issued, or issued for delivery, in the State of Texas prior to such date."

3.70–2. Form of Policy; Designation of Practitioners of the Healing Arts; Dependent Children

[See Compact Edition, Volume 2, for text of A to D]

(E) No individual policy or group policy of accident and sickness insurance, including policies issued by companies subject to Chapter 20, Texas Insurance Code, as amended, delivered or issued for delivery to any person in this state which provides for accident and sickness coverage of additional newborn children or maternity benefits, may be issued in this state if it contains any provisions excluding or limiting initial coverage of a newborn infant for a period of time, or limitations or exclusions for congenital defects of a newborn child.

[Formerly subsec. (D), redesignated subsec. (E) by Acts 1981, 67th Leg., p. 201, ch. 94, § 3, eff. Aug. 31, 1981.]

Art. 3.70–3. Accident and Sickness Policy Provisions

(A) Required Provisions. Except as provided in paragraph (C) of this section each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions, provisions of different wording approved by the Board, in accordance with reasonable rules and regulations promulgated by the Board, which are in each instance not less favorable in any respect to the insured or the beneficiary; and provided further that Provisions 6, 8, and 9 shall not be required provisions under this Subsection A for companies organized under Chapter 20 of this code, as amended. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Board may approve.

(1) A provision as follows:

Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(2) A provision as follows:

Time Limit on Certain Defenses: (a) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of Section 3(B), (1), (2), (3), (4), and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "incontestible":

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestible as to the statements contained in the application.)

(b) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows:

Grace Period: A grace period of ..... (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies, and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision:

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

(4) A provision as follows:

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

Notice of Claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at ..... (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every ..... (insert a number not less than one nor more than six) months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of ..... (insert a number not less than one nor more than six) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of ..... (insert a number not less than one nor more than six) months preceding the date on which such notice is actually given.)

(6) A provision as follows:

Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(7) A provision as follows:

Proofs of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible; and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows:

Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic

payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid ..... (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows:

Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $..... (insert an amount which shall not exceed $1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

(10) A provision as follows:

Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows:

Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows:

Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(B) Other Provisions. Except as provided in paragraph (C) of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a provision of different wording approved by the Board, in accordance with reasonable rules and regulations promulgated by the Board, which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Board may approve.

(1) A provision as follows:

Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro-rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable

or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

(2) A provision as follows:

Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) A provision as follows:

Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for ..... (insert type of coverage or coverages) in excess of $..... (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate;

or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) A provision as follows:

Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro-rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of Two Hundred Dollars ($200.00) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the Board, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Board or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

(5) A provision as follows:

Unpaid Premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(6) A provision as follows:

Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro-rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(7) A provision as follows:

Conformity With State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby

amended to conform to the minimum requirements of such statutes.

(8) A provision as follows:

Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(9) A provision as follows:

Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

[See Compact Edition, Volume 2 for text of (C) to (G)]

[Amended by Acts 1975, 64th Leg., p. 2202, ch. 703, §§ 2 and 3, eff. June 21, 1975.]

Art. 3.70–9. Violation

Any person, partnership, or corporation wilfully violating any provision of this Act or order of the Board made in accordance with this Act, shall forfeit to the people of the state a sum not to exceed Five Thousand Dollars ($5,000.00) for each such violation, which may be recovered by a civil action. The Board may also suspend or revoke the license of an insurer or agent for any such wilful violation. [Amended by Acts 1975, 64th Leg., p. 2210, ch. 703, § 5, eff. June 21, 1975.]

Art. 3.72. Variable Annuity Contracts

[See Compact Edition, Volume 2 for text of 1 to 7]

Investment of Separate Account Funds

Sec. 8. Any domestic insurance company which has established one or more separate variable annuity accounts pursuant to this article may invest and reinvest all or any part of the assets allocated to any such account in and only in the securities and investments authorized by Article 3.39 of this Insurance Code for any of the funds of a domestic life insurance company, free and clear of any and all limitations and restrictions in such Article 3.39, and in addition thereto in common capital stocks or other equities which are listed on or admitted to trading in a securities exchange located in the United States of America, or which are publicly held and traded in the "over-the-counter market" as defined by the State Board of Insurance and as to which market quotations have been available. None of the assets allocated to any such variable annuity account shall be invested in common stocks of corporations which shall have defaulted in the payment of any debt within five years next preceding such investment. No such company shall invest in excess of the greater of (a) Twenty-Five Thousand Dollars ($25,000) or (b) five percent (5%) of the assets of any such separate variable annuity account in any one corporation issuing such common capital stock, except that subject to the approval of the State Board of Insurance all of the assets of a separate account may be invested in the shares of one or more open-end management companies registered under the Federal Investment Company Act of 1940 [1] and qualifying as a diversified company thereunder. The assets and investments of such separate variable annuity accounts shall not be taken into account in applying the quantitative investment limitations applicable to other investments of the company. In the purchase of common capital stock or other equities, the insurer shall designate to the broker, or to the seller if the purchase is not made through broker, the specific variable annuity account for which the investment is made.

[See Compact Edition, Volume 2 for text of 9 to 12]

Variable Annuity Agents' Licenses

Sec. 13. (a) Notwithstanding any other law of this State, no person shall, within this State, sell or offer for sale a variable annuity contract, or do or perform any act or thing in the sale, negotiation, making or consummating of any variable annuity contract other than for himself unless such person shall have a valid and current certificate from the State Board of Insurance authorizing such person to act within this State as a variable annuity insurance agent. No such certificate shall be issued unless and until the said Board is satisfied, after examination, that such person is by training, knowledge, ability and character qualified to act as such agent. Any such certificate may be withdrawn and cancelled by said Board, after notice and hearing, if it shall find that the holder thereof does not then have the qualifications required for issue of such certificate.

(b) The Commissioner of Insurance shall collect in advance from variable annuity agent applicants a license fee of $25 and an examination fee of $10. A new examination fee shall be paid for each and every examination. The examination fee shall not be returned under any circumstance other than for failure to appear and take the examination after the applicant has given at least 24 hours notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval. All fees collected pursuant to this section shall be paid into the State Treasury to the credit of the Insurance Agents License Fund to be used to administer the provisions of this section and Article 21.07–1, Insurance Code.

(c) Each license issued to a variable annuity agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Commissioner of Insurance or the authority of the agent to act for the insurer is terminated.

(d) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent and payment of a renewal fee of $25.

(e) Any agent licensed under this article may represent and act as an agent for more than one insurance carrier any time while his or its license is in force, if he or it so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional insurance carrier or carriers. Such notice must set forth the insurance carrier or carriers which the agent is then licensed to represent and shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment that said insurance carrier desires to appoint the applicant as its agent. This notice shall also contain such other information as the State Board of Insurance may require. The agent or company shall be required to pay a fee of $8 for each additional appointment applied for, which fee shall accompany the notice.

[See Compact Edition, Volume 2 for text of 14 to 16]

[Amended by Acts 1975, 64th Leg., p. 1379, ch. 528, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 457, ch. 212, § 1, eff. Aug. 27, 1979.]

[1] 15 U.S.C.A. § 80a–1 et seq.

Art. 3.73. Variable Life Insurance or Annuity Contracts

[See Compact Edition, Volume 2 for text of 1 to 9]

Agent's Licenses: Application, Issuance, Renewal, and Cancellation

Sec. 10. (a) No person or other legal entity may act as a variable life insurance agent within the State of Texas for any insurance company authorized to write variable life insurance, unless the person or entity receives a special license to write variable life insurance from the commissioner. Persons or entities applying shall file applications for licenses on forms provided by the commissioner.

(b) The Commissioner of Insurance shall collect in advance from variable life insurance agent applicants a license fee of $25 and an examination fee of $10. A new examination fee shall be paid for each examination. The examination fee shall not be returned under any circumstance other than for failure to appear and take the examination after the applicant has given at least 24 hours notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval. The examination fee and license fee shall be paid into the State Treasury to the credit of the Insurance Agents License Fund.

(c) Each license issued to a variable life insurance agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Commissioner of Insurance or the authority of the agent to act for the insurer is terminated.

(d) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent and the payment of a $25 renewal fee.

Additional Appointments

Sec. 11. Any agent licensed under this article may represent and act as an agent for more than one insurance carrier any time while his or its license is in force, if he or it so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional insurance carrier or carriers. Such notice must set forth the insurance carrier or carriers which the agent is then licensed to represent and shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment that said insurance carrier desires to appoint the applicant as its agent. This notice shall also contain such other information as the State Board of Insurance may require. The agent or insurance carrier shall be required to pay a fee of $8 for each additional appointment applied for, which fee shall accompany the notice. All fees collected pursuant to this section and Section 10 of this article shall be deposited with the State Treasury to the credit of the Insurance Agents License Fund to be used to administer the provisions of this article and Article 21.07–1, Insurance Code.

[Amended by Acts 1979, 66th Leg., p. 458, ch. 212, § 2, eff. Aug. 27, 1979.]

Art. 3.74. Minimum Standards for Medicare Supplement Policies

Definitions and Scope

Sec. 1. (a) Scope of Article. This article applies to and governs group and individual medicare supplement policies delivered or issued for delivery in this state by capital stock companies, including buy not limited to life, health and accident, and general casualty companies; mutual life insurance companies; mutual assessment life insurance companies, including but not limited to statewide mutual assessment corporations, local mutual aids, and burial associations; mutual and mutual assessment associations of all kinds and types, including but not limited to associations subject Article 14.17 of this code; mutual insurance companies other than life; mutual or natural premium life or casualty insurance companies; fraternal benefit societies; Lloyds; reciprocal or inter-insurance exchanges; nonprofit hospital, medical, or dental service corporations, including but not limited to companies subject to Chapter 20 of this code; stipulated premium insurance companies; or any other insurer which by law is required to be licensed by the State Board of Insurance; and health maintenance organizations subject to the Texas Health Maintenance Organization Act, as amended (Chapter 20A, Vernon's Texas Insurance Code); provided, however, this article does not apply to any insurance coverage delivered or issued for delivery in this state pursuant to a group policy

delivered or issued for delivery outside of this state; provided further, that this article shall not be construed to enlarge the powers of any of the enumerated companies.

(b) Definitions.

(1) "Applicant" means:

(A) in the case of an individual medicare supplement policy, the person who seeks to contract for insurance or other health benefits, and

(B) in the case of a group medicare supplement policy, the proposed certificate holder.

(2) "Certificate" means, for the purposes of this article, any certificate issued under a group medicare supplement policy, which policy has been delivered or issued for delivery in this state.

(3) "Medicare supplement policy" means a group or individual policy of accident and sickness insurance or a subscriber contract of a hospital service corporation subject to Chapter 20 of this code or evidence of coverage issued by a health maintenance organization subject to the Texas Health Maintenance Organization Act, as amended (Chapter 20A, Vernon's Texas Insurance Code), which policy, subscriber contract, or evidence of coverage is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare; provided that the State Board of Insurance may by rule modify the definition of medicare supplement policy to the extent necessary for the State of Texas to qualify as a state with an approved regulatory program under the provisions of Public Law 96–265, Section 507(a), 94 Stat. 476 (42 U.S.C.A. Section 1395ss (1980)). Such term does not include:

(A) a policy, contract, subscriber contract, or evidence of coverage of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(B) a policy, contract, subscriber contract, or evidence of coverage of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association:

(i) is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(ii) has been maintained in good faith for purposes other than obtaining insurance; and

(iii) has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members;

(C) a policy, contract, subscriber contract, or evidence of coverage issued pursuant to a conversion privilege under a policy or contract of group insurance or group contract of a hospital service corporation subject to Chapter 20 of this code or group evidence of coverage issued by a health maintenance organization subject to the Texas Health Maintenance Organization Act, as amended (Chapter 20A, Vernon's Texas Insurance Code), when such group policy, subscriber contract, or evidence of coverage includes provisions which are inconsistent with the requirements of this article.

(4) "Medicare" means the Health Insurance for the Aged Act, Part 1 of Title I of the Social Security Amendments of 1965, as amended (Public Law 89–97).[1]

[1] See 42 U.S.C.A. § 1395 et seq.

Standards for Contractual Provisions

Sec. 2. (a) The State Board of Insurance shall issue reasonable rules to establish specific standards for provisions of medicare supplement policies. Such standards shall be in addition to and in accordance with applicable laws of this state, including but not limited to Subchapter G of Chapter 3 and Chapter 20 of this code and the Texas Health Maintenance Organization Act, as amended (Chapter 20A, Vernon's Texas Insurance Code), and may cover but shall not be limited to:

(1) terms of renewability;

(2) initial and subsequent conditions of eligibility;

(3) nonduplication of coverage;

(4) probationary periods;

(5) benefit limitations, exceptions, and reductions;

(6) elimination periods;

(7) requirements for replacement;

(8) recurrent conditions; and

(9) definitions of terms.

(b) The State Board of Insurance may issue reasonable rules that specify prohibited provisions not otherwise specifically authorized by statute which, in the opinion of the State Board of Insurance, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

(c) Notwithstanding any other provisions of the law, a medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. Such policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

Minimum Standards for Benefits

Sec. 3. The State Board of Insurance shall issue reasonable rules to establish minimum standards for benefits under medicare supplement policies.

Loss Ratio Standards

Sec. 4. Medicare supplement policies shall be expected to return to holders of a medicare supplement policy benefits which are reasonable in relation to the premium charged. The State Board of Insurance shall issue reasonable rules to establish minimum standards for loss ratios of medicare supplement policies on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted acturial principles and practices. For purposes of rules issued pursuant to this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual medicare supplement policies.

Disclosure Standards

Sec. 5. (a) In order to provide for full and fair disclosure in the sale of medicare supplement policies, no medicare supplement policy shall be delivered or issued for delivery in this state and no certificate shall be delivered pursuant to a group medicare supplement policy delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time application is made.

(b) The State Board of Insurance shall prescribe the format and content of the outline of coverage required by Subsection (a) of this section. For purposes of this section, "format" means style, arrangements, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall, at a minimum, include:

(1) a description of the principal benefits and coverage provided in the medicare supplement policy;

(2) a statement of the exceptions, reductions, and limitations contained in the medicare supplement policy;

(3) a statement of the renewal provisions, including any reservation by the insurer, group hospital service corporation, or health maintenance organization of a right to change the premiums;

(4) a statement that the outline of coverage is a summary of the medicare supplement policy issued or applied for and that the medicare supplement policy should be consulted to determine governing contractual provisions.

(c) The State Board of Insurance may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response medicare supplement policies, the State Board of Insurance may require by rule that the informational brochure be provided to any prospective insureds eligible for medicare concurrently with delivery of the outline of coverage. With respect to direct response medicare supplement policies, the State Board of Insurance may require by rule that the prescribed brochure be provided upon request to any prospective insureds eligible for medicare but in no event later than the time of policy delivery.

(d) The State Board of Insurance may promulgate reasonable rules for captions or notice requirements determined to be in the public interest and designed to inform prospective insureds, subscribers, or enrollees that particular coverages are not medicare supplement coverages for all accident and sickness insurance policies or subscriber contracts or evidences of coverage sold to persons eligible for medicare, other than:

(1) medicare supplement policies;

(2) disability income policies;

(3) basic, catastrophic, or major medical expense policies;

(4) single premium nonrenewable policies; or

(5) other policies, contracts, subscriber contracts, or evidences of coverage as specified in Paragraphs (A), (B), and (C) of Subsection (b) of Section 1 of this article.

(e) The State Board of Insurance may further promulgate reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts, certificates, or evidences of coverage by persons eligible for medicare.

Notice of Free Examination

Sec. 6. Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of such policy or certificate or attached thereto stating in substance that the applicant shall have the right to return such policy or certificate within 10 days of its delivery and to have the premium refunded if, after examination of such policy or certificate, the applicant is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return such policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.

Construction with Other Laws

Sec. 7. The provisions of this article are cumulative of all other law, but in the event of any conflict between the provisions of this article and any other provisions of the Insurance Code, the provisions of this article control to the extent of such conflict.
[Added by Acts 1981, 67th Leg., p. 194, ch. 91, § 1, eff. Jan. 1, 1982.]

Sections 3 and 4 of the 1981 Act provide:

"Sec. 3. This Act does not apply to litigation pending before the effective date of this Act.

"Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

CHAPTER FOUR. TAXES AND FEES

4.10. Insurance Companies Other Than Life, Other Than Fraternal Benefit Associations, and Other Than Nonprofit Group Hospital Service Plans; Tax on Gross Premiums.
4.11. Tax on Domestic Life, Accident and Health Insurance Organizations.
4.12. Disposition of Certain Revenue.
4.13. Penalty for Failure to Report.
4.14. Penalty for Failure to Pay Tax.
4.15. Permit not Granted until Tax Paid.

Art. 4.02. Insurance Companies Other Than Life, Other Than Fraternal Benefit Associations, and Other Than Non-Profit Group Hospital Service Plans; Tax on Gross Premiums

Sec. 1. Each such insurance organization shall be subject to the provisions of Articles 4.13, 4.14, and 4.15 of this code.
[Amended by Acts 1981, 67th Leg., p. 1784, ch. 389, § 37(b), eff. Jan. 1, 1982.]

Art. 4.10. Insurance Companies Other Than Life, Other Than Fraternal Benefit Associations, and Other Than Nonprofit Group Hospital Service Plans; Tax on Gross Premiums

Sec. 1. Every insurance carrier, including Lloyd's and reciprocal exchanges and any other organization or concern receiving gross premiums from the business of fire, marine, marine inland, accident, credit, title, livestock, fidelity, guaranty, surety, casualty, workers' compensation, employers' liability, or any other kind or character of insurance, except as provided in Sections 2, 3, and 4 of this article, shall pay to the commissioner of insurance for transmittal to the state treasurer an annual tax upon such gross premium receipts as provided in this article. Any such insurance carrier doing other kinds of insurance business shall pay the tax levied upon its gross premiums received from such other kinds of business as provided in Article 4769 and Article 7064a, Revised Civil Statutes of Texas, 1925.[1]

[1] Transferred; see, now, art. 4.11 of this Code.

Sec. 2. This article shall not apply to premium receipts received from the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit, written by life insurance companies, life and accident insurance companies, health and accident insurance companies, or for mutual benefit or protection of this state.

Sec. 3. This article shall not apply to fraternal benefit associations or societies in this state, to nonprofit group hospital service plans, to stipulated premium companies nor to mutual assessment associations, companies, or corporations regulated by Chapter 14, Insurance Code, as amended.

Sec. 4. This article shall not apply to purely cooperative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property and not for profit.

Sec. 5. Gross premium receipts referred to herein are the total gross amount of premiums received for the taxable year on each and every kind of insurance or risk written upon property or risks located in the State of Texas (except premium receipts under Section 2), except premiums received from other licensed companies for reinsurance, less return premiums and dividends paid policyholders with no deduction for premiums paid for reinsurance.

Sec. 6. A premium tax return for each taxable year ending the 31st day of December preceding shall be filed and the total amount of the tax due under this article shall be paid on or before the 1st day of March of each year.

Sec. 7. The amount of tax imposed shall be determined on the basis of the amount that such insurance carrier owned on the 31st day of December preceding of Texas investments as defined herein, and the amount such insurance carrier owned on said date of similar investments in the comparison state. "Comparison state" is defined as the state (other than Texas) in which such insurance carrier owned the largest amount of such investments.

Sec. 8. For purposes of this article, Texas investments include only the following:

(a) Bonds, warrants, and interest-bearing indebtedness of any kind issued by the State of Texas, any county, city, school district, or any municipality or subdivision thereof which is now or may hereafter be constituted or organized and authorized to issue such bonds, warrants, and interest-bearing indebtedness by the constitution or statutes of the State of Texas. The value of such bonds, warrants, or interest-bearing indebtedness for purposes of this article shall be their amortized value.

(b) Notes and bonds secured by mortgage or deeds of trust on real property located solely in this state including deeds of trust on residential property located in the State of Texas. The value of such notes or bonds for purposes of this article shall be their unpaid principal balance.

(c) The average daily balance of cash on deposit, including both negotiable and non-negoti-

able certificates of deposit and accounts in state banks and national banks insured by the Federal Deposit Insurance Corporation and in state and federal savings and loan associations insured by the Federal Savings and Loan Insurance Corporation located in the State of Texas. The value of such deposits shall be determined on the basis of the sum of the balance in such accounts and such certificates of deposit as shown on the books of the insurance carrier on the close of each day including Saturdays, Sundays, and holidays divided by 365.

Sec. 9. For purposes of this article, "similar investments" is defined as the same character of property and investments described in Section 8 hereof, located in a state other than Texas and originating and existing with the same relationship to such state as the location and relationship of such property to the State of Texas.

Sec. 10. There is imposed on each such insurance carrier an annual tax equal to 3.5% of its premium receipts. Any insurance carrier may qualify for a tax rate lower than the 3.5% imposed by this article. Such qualification for a lower rate can be accomplished in the following two ways:

(a) If such insurance carrier as of December 31 preceding owns Texas investments in an amount in total value which is not less than 85% nor more than 90% of the amount such insurance carrier owned in the comparison state in similar investments as herein defined, the tax imposed shall be equal to 2.4% of its gross premium receipts.

(b) If such insurance carrier as of December 31 preceding owns Texas investments in an amount in total value which is in excess of 90% of the amount such insurance carrier owned in the comparison state in similar investments as herein defined, the tax imposed shall be equal to 1.2% of its gross premium receipts.

Sec. 11. Each insurance carrier which is liable under this article for tax on premiums shall file a tax return annually, under oath by two officers of such carrier, on forms prescribed by the State Board of Insurance.

Sec. 12. After receipt by the commissioner of insurance of each insurance carrier's tax return and tax payments, the commissioner shall certify to the state treasurer the amount of taxes paid by each insurance carrier. The commissioner's certification shall be authorization for the state treasurer to transfer such certified amounts from the insurance suspense account to the general revenue fund unless there is a lawful reason for maintaining the payment in the insurance suspense account.

Sec. 13. The amount of all examination and evaluation fees paid in each taxable year to or for the use of the State of Texas by an insurance carrier shall be allowed as a credit on the amount of premium taxes due under this article. Any credit allowed by the provisions of this section is in addition to any other credits allowable by statute.

Sec. 14. No occupational tax shall be levied on insurance carriers or companies herein subjected to this premium receipts tax by any county, city, or town. The taxes in this article shall constitute all taxes collectible under the laws of Texas against any such insurance carrier, except maintenance taxes specifically levied under the laws of Texas and assessed by the State Board of Insurance to support the various activities of the divisions of the State Board of Insurance.

No other tax shall be levied or collected from any insurance carrier by the state, county, or city or any town, but this law shall not be construed to prohibit the levy and collection of state, county, and municipal taxes upon the real and personal property of such carrier.

Sec. 15. Any insurance carrier failing to pay all taxes imposed by this article shall, in addition, be subject to the provisions of Article 4.05, Insurance Code.

Sec. 16. (a) Except as otherwise provided in this article, the amount of any tax imposed by this article upon examination of any carrier or in any other manner shall be filed by the commissioner of insurance with the state treasurer by supplemental certificate showing the amount of any taxes due by such carrier within four years after the return was filed (whether or not such return was filed on or after the date due).

(b) When an administrative review or a judicial proceeding is pending in a court of competent jurisdiction prior to the expiration of the time presented in Subsection (a), the time period prescribed in Subsection (a) shall be suspended with respect to the amount of tax in issue in such proceeding until such matters are finally determined, whereupon the running of such period of time shall resume until finally expired.

(c) In the case of failure to file a return, the commissioner of insurance may notify the state treasurer of the taxes due and the commissioner of insurance may proceed in a court of competent jurisdiction for collection of such tax at any time.

Sec. 17. Any insurance carrier which believes or contends that the premium tax under this article is being paid in error or under unlawful requirements shall, nevertheless, be required to pay such amount as deemed to be due under written protest as provided under Article 1.05, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended,[1] provided, however, nothing in this article limits the applicability of Article 1.04(d), Insurance Code.

[1] Repealed; see, now, Tax Code, § 112.001 et seq.

Sec. 18. Any suit for refund must be filed in accordance with law within four years of the March 1 due date for taxes in question. Any claim for refund filed within any other time period shall be barred by this statute of limitation except that on request of the insurance carrier, the four-year statute of limitation provided for in this article may be extended by written order of the State Board of Insurance for a period not to exceed 90 days from the expiration of the four-year period provided that such order is entered prior to the expiration of the four-year period.

[Transferred from Civil Statutes, Article 7064, and amended by Acts 1981, 67th Leg., p. 1780, ch. 389, § 36, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 3212, ch. 844, § 1, eff. Jan. 1, 1982.]

Sections 2 to 5 of Acts 1981, 67th Leg., ch. 844, add arts. 7064b to 7064e to Chapter 2, Title 122, of the Revised Civil Statutes, without reference to enactment of Title 2 of the Tax Code by chapter 389. As added these articles read:

"Art. 7064b. Any insurance carrier and any person, corporation, association, or entity or any receiver thereof to which Article 7064, Revised Civil Statutes of Texas, 1925 [now, this article], shall apply, which fails to pay the tax on or before March 1 as provided herein, shall pay interest to the State Board of Insurance to be deposited in the general revenue fund at an annual rate of nine percent for the period from March 1 of the taxable year until the date such taxes are paid in addition to the taxes due.

"Art. 7064c. Any insurance carrier which either fails to file a tax return as provided in Article 7064, Revised Civil Statutes of Texas, 1925 [now, this article], or fails to pay any taxes imposed by Article 7064, Revised Civil Statutes of Texas, 1925, on or before the due date of March 1 in the year following the taxable year, shall pay to the State Board of Insurance to be deposited in the general revenue fund a penalty equal to five percent of the amount of taxes due for each month or portion of a month for which such return or payment is late. Any penalty assessed under this article shall not exceed 20 percent of the amount of taxes due. Payment of such penalty is in addition to payment of the taxes due.

"Art. 7064d. All delinquent taxes under Article 7064, Revised Civil Statutes of Texas, 1925 [now, this article], including penalties, which are due and owing to the State of Texas shall be recovered by the attorney general in a suit brought by him in the name of the State Board of Insurance on behalf of the State of Texas. The venue and jurisdiction of all suits arising hereunder are hereby conferred upon the courts of Travis County, Texas. For delinquent taxes, penalties and interest herein provided for, the state shall have a prior and preferred lien on every Texas investment and other thing of value owned by the delinquent taxpayer which shall extend to and be enforceable against any property, either real or personal, or both, owned by the delinquent insurance carrier which property is not exempt from forced sale by reason of existing laws or the constitution of this state or the United States. In addition to the authority to file suit against an insurance organization for delinquent taxes, penalties, and interest, the attorney general, by a suit in the name of the State Board of Insurance, shall have the right to enjoin such delinquent insurance carrier from engaging in the business of insurance in the State of Texas until such delinquent taxes, penalties, and interest are paid in full. Venue for a suit of this nature is also fixed in Travis County, Texas.

"Art. 7064e. The State Board of Insurance shall have authority for the purpose of verifying reports and investigating the affairs of insurance carriers in order to determine whether the tax due under Article 7064, Revised Civil Statutes of Texas, 1925 [now, this article], is being properly reported and paid. Such authority shall include the power to enter upon the premises of any taxpayer liable for such a tax, and any other premises necessary, in determining the correct tax liability and to examine, or cause to be examined, any books or records of any person employed by the insurance carrier subject to such tax, and to secure any other information, directly or indirectly, concerned in the enforcement of Article 7064, Revised Civil Statutes of Texas, 1925. The State Board of Insurance shall further have the authority to promulgate and enforce, according to law, rules and regulations pertinent to Article 7064, Revised Civil Statutes of Texas, 1925, and such rules and regulations shall have the full force and effect of law."

Sections 6 and 7 of Acts 1981, 67th Leg., ch. 844, provide:

"Sec. 6. This Act takes effect January 1, 1982, and applies to taxes on all premiums collected by an insurance carrier after that date.

"Sec. 7. Nothing in this Act shall apply to any suit for refund of taxes paid in prior years, pending on the effective date of this Act."

Art. 4.11. Tax on Domestic Life, Accident and Health Insurance Organizations

Sec. 1. Every group of individuals, society, association, group hospital service plan, or corporation (all of which shall be deemed included in the term "insurance organization" wherever used in this Article) organized under the laws of this State and transacting the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit or otherwise, or for mutual benefit, or protection in this State shall on or before the first day of March of each year file its annual statement showing the gross amount of premiums collected during the year ending December 31st, preceding, from persons residing or domiciled in this State on policies of insurance, and showing in separate columns the first-year premiums and the renewal premiums collected on such Texas policies, and each such insurance organization, except local mutual aid associations, fraternal benefit societies, and fraternal insurance associations or societies that limit their membership to one (1) occupation, shall pay an annual tax of 1.1% of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas on policies of insurance. Each such insurance organization shall also report to the State Board of Insurance on or before the first day of March of each year the amount that it had invested on the 31st day of December, preceding, in Texas securities as defined by Article 3.34, Texas Insurance Code, as amended; provided, however, that all such insurance companies whose gross premium receipts are less than Four Hundred and Fifty Thousand Dollars ($450,000) for the preceding year ending December 31st, wherever and irrespective of from whom collected, according to its annual statement which shall disclose such information, shall pay a tax of $^{55}/_{80}$ of 1% of the gross amount of premiums collected during such year from persons residing or domiciled in the State of Texas except as to first-year premiums as provided herein; provided, however, that the gross premium taxes herein imposed shall not be applicable to first-year premiums; and provided further that where any policy is written on a term plan only the premium collected during the first year shall be deducted on such policy or any renewal, extension or substitution thereof by the company issuing such term policy, and provided further that the amount of all examination and valuation fees paid in such taxable year to or for the use of the State of Texas by any insurance organization hereby affected shall be allowed as a credit on the amount of premium taxes to be paid by any such insurance organization for such taxable year.

Sec. 2. Such gross premium receipts so reported shall not include premiums received from other licensed companies for reinsurance of business in Texas and there shall be no deduction for premiums paid for reinsurance. Such gross premium receipts so reported shall not include premiums received from the Treasury of the State of Texas or from the Treasury of the United States for insurance contracted for by the state or federal government for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by the state or federal government in accordance with or in furtherance of the provisions of Title 2, Human Resources Code, or the Federal Social Security Act. The gross premium receipts so reported

shall not include the amount of premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for municipal employees of this State. If any such insurance organization does more than one (1) kind of insurance business, then it shall pay the tax herein levied upon the gross premiums on each kind of insurance written. The report of the gross premium receipts and the invested assets shall be made upon the sworn statement of two (2) principal officers.

Sec. 3. Upon receipt by it of the sworn statement above provided, the State Board of Insurance shall certify to the State Treasurer the amount of taxes due by such insurance organization which shall be paid to the State Treasurer on or before the 15th day of March, following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this State during the calendar year ending December 31st, in which such premiums were collected, or for that portion of the year during which the insurance organization transacted business in this State.

Sec. 4. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State from any such insurance organization, organized under the laws of this State, except, and only except unemployment compensation taxes levied under Chapter 482, Acts of the 44th Legislature, 3rd Called Session, 1936, as amended (Article 5221b–1 et seq., Vernon's Texas Civil Statutes); and the fees provided for under Article 4.07, Texas Insurance Code, the deposit fees prescribed by that Article and amendments thereto; and in case of companies writing workers' compensation insurance, the taxes otherwise provided by law on account of such business; and no other taxes shall be levied or collected by the State or any county, city or town except State, county, and municipal ad valorem taxes upon real or personal properties of such insurance organization.

[Transferred from Civil Statutes, Article 7064a, and amended by Acts 1981, 67th Leg., p. 1780, ch. 389, § 36, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2731, ch. 746, § 1, eff. Jan. 1, 1982.]

Art. 4.12. Disposition of Certain Revenue

Receipts from the taxes imposed by Articles 4.10 and 4.11 and Sections 11 and 12 of Article 1.14–1 of this code and by Article 4769, Revised Civil Statutes of Texas, 1925, as amended, shall be deposited in the general revenue fund. An amount equal to one-fourth (¼) of this revenue shall be transferred to the available school fund, and an amount equal to three-fourths (¾) of this revenue shall be credited to the general revenue fund.

[Added by Acts 1981, 67th Leg., p. 1769, ch. 389, § 4, eff. Jan, 1, 1982. Amended by Acts 1981, 67th Leg., p. 2778, ch. 752, § 9(g), eff. Jan. 1, 1982.]

Art. 4.13. Penalty for Failure to Report

Any person, company, corporation or association, or any receiver or receivers, failing to make report for thirty days from the date when said report is required by this chapter to be made, shall forfeit and pay to the State of Texas a penalty of not exceeding one thousand dollars.

[Transferred from Civil Statutes, Article 7074, by Acts 1981, 67th Leg., p. 1784, ch. 389, § 37(a), eff. Jan. 1, 1982.]

Art. 4.14. Penalty for Failure to Pay Tax

Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty days from the date when said tax is required by this chapter to be paid, shall forfeit and pay to the State of Texas a penalty of ten per cent upon the amount of such tax.

[Transferred from Civil Statutes, Article 7075, by Acts 1981, 67th Leg., p. 1784, ch. 389, § 37(a), eff. Jan. 1, 1982.]

Art. 4.15. Permit Not Granted Until Tax Paid

No individual, company, corporation or association, failing to pay all taxes imposed by this chapter, shall receive a permit to do business in this State, or continue to do business in the State; until the tax hereby imposed is paid. The receipt of the State Treasurer shall be evidence of the payment of such tax.

[Transferred from Civil Statutes, Article 7077, by Acts 1981, 67th Leg., p. 1784, ch. 389, § 37(a), eff. Jan. 1, 1982.]

CHAPTER FIVE. RATING AND POLICY FORMS

SUBCHAPTER A. MOTOR VEHICLE OR AUTOMOBILE INSURANCE

Article

5.01–1. Premium Rating Plans.

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5.91. Maintenance Tax.
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SUBCHAPTER A. MOTOR VEHICLE OR AUTOMOBILE INSURANCE

Art. 5.01–1. Premium Rating Plans

A rating plan promulgated by the State Board of Insurance respecting the writing of motor vehicle insurance, other than insurance written pursuant to Section 35 of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), may not assign any rate consequence to a charge or conviction, or otherwise cause premiums for motor vehicle insurance to be increased because of a charge or conviction for a violation of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).

[Added by Acts 1979, 66th Leg., p. 1769, ch. 717, § 1, eff. June 13, 1979.]

Art. 5.03. Promulgated Rates as Controlling

(a) On and after the filing and effective date of such classification of such risks and rates, no such insurer, except as otherwise provided herein, shall issue or renew any such insurance at premium rates which are greater or lesser than those promulgated by the Board as just, reasonable, adequate and not excessive for the risks to which they respectively apply, and not confiscatory as to any class of insurance carriers authorized by law to write such insurance after taking into consideration the deviation provisions of this Article. Any insurer desiring to write insurance at rates different from those promulgated by the Board shall make a written application to the Board for permission to file a uniform percentage deviation for a lesser or greater rate, on a statewide basis unless otherwise ordered by the Board, from the class rates or classes of rates promulgated by the Board. Any insurer desiring to write insurance under a classification plan different from that promulgated by the Board shall make written application to the Board for permission to do so; provided, however, the Board shall approve the use of only such additions or refinements in its classification plan as will produce subclassifications which, when combined, will enable consideration of the insurer's experience under both the Board classification plan and its own classification plan. Such application shall be approved in whole or in part by the Board, provided the Board finds that the resulting premiums will be just, adequate, reasonable, not excessive and not unfairly discriminatory, taking into consideration the following:

(1) the financial condition of the insurer;

(2) the method of operation and expenses of such insurer;

(3) the actual paid and incurred loss experience of the insurer;

(4) earnings of the insurer from investments together with a projection of prospective earnings from investments during the period for which the application is made; and

(5) such application meets the reasonable conditions, limitations, and restrictions deemed necessary by the Board.

In considering all matters set forth in such application the Board shall give consideration to the composite effect of items (2), (3), and (4) above and the Board shall deny such application if it finds that the resulting premiums would be inadequate, excessive, or unfairly discriminatory. Any original or renewal policy of insurance issued pursuant to an approved plan of deviation shall have attached to or imprinted on the face of such policy the following notice: "The premium charged for this policy is greater than the premium rates promulgated by the State Board of Insurance." The notice shall be in 10-point or larger prominent type-size.

Except as the Board may authorize, the deviation provisions in this Article shall not apply to insurance written pursuant to other provisions of this Chapter in which a deviation from standard rates is authorized, including, but not limited to, automobile liability experience rating and fleet rating plans.

[See Compact Edition, Volume 2 for text of (b) to (f)]

[Amended by Acts 1977, 65th Leg., p. 1981, ch. 792, § 1, eff. Aug. 29, 1977.]

Art. 5.06. Policy Forms and Endorsements

(1) In addition to the duty of approving classifications and rates, the Board shall prescribe certificates in lieu of a policy and policy forms for each kind of insurance uniform in all respects except as necessitated by the different plans on which the various kinds of insurers operate, and no insurer shall thereafter use any other form in writing automobile insurance in this State; provided, however, that any insurer may use any form of endorsement appropriate to its plan of operation, provided such endorsement shall be first submitted to and approved by the Board; and any contract or agreement not written into the application and policy shall be void and of no effect and in violation of the provisions of this subchapter, and shall be sufficient cause for revocation of license of such insurer to write automobile insurance within this State.

(2) An insurer, if in compliance with applicable requirements and conditions, may issue and deliver a certificate of insurance as a substitute for the entire policy of insurance. The certificate of insurance shall make reference to and identify the Board prescribed policy or policy form for which the substitution of certificate is made. The certificate shall be in such form as is prescribed by the State Board of Insurance. The certificate will represent the policy of insurance, and when issued, shall be evidence that the certificate holder is insured under such identified policy and policy form prescribed by the Board. The certificate is subject to the same limitations, conditions, coverages, selection of options, and other provisions of the policy as are provided in the policy,

and that insurance policy information is to be shown on and adequately referenced by the certificate of insurance issued by the insurer to the insured. Policy forms include endorsements, whether those endorsements are attached initially with the issuance of an insurance agreement or subsequent thereto. Reference shall be made in such certificate, or in subsequent attachments, to all endorsements to the policy of insurance. The certificate shall be executed in the same manner as though a policy were issued. When such a certificate is substituted for the policy of insurance by an insurer, such insurer shall simultaneously furnish to the insured receiving such certificate an "outline of coverages", the form and content of which has been approved by the Board. At the request of an insured at any time, an insurer which has substituted a certificate for a policy of insurance shall provide a copy of its uniform policy of insurance as prescribed by the Board.

(3) The Board may promulgate such rules as are necessary to implement the certificate in lieu of policy provision herein, including a rule limiting the application thereof to private passenger automobile policies.

[Amended by Acts 1981, 67th Leg., p. 2700, ch. 736, § 1, eff. Jan. 1, 1982.]

Art. 5.06–1. Uninsured or Underinsured Motorist Coverage

(1) No automobile liability insurance (including insurance issued pursuant to an Assigned Risk Plan established under authority of Section 35 of the Texas Motor Vehicle Safety-Responsibility Act),[1] covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state unless coverage is provided therein or supplemental thereto, in at least the limits described in the Texas Motor Vehicle Safety-Responsibility Act, under provisions prescribed by the Board, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness, or disease, including death, or property damage resulting therefrom. The coverages required under this Article shall not be applicable where any insured named in the policy shall reject the coverage in writing; provided that unless the named insured thereafter requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured has rejected the coverage in connection with a policy previously issued to him by the same insurer or by an affiliated insurer.

(2) For the purpose of these coverages: (a) the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency.

(b) The term "underinsured motor vehicle" means an insured motor vehicle on which there is valid and collectible liability insurance coverage with limits of liability for the owner or operator which were originally lower than, or have been reduced by payment of claims arising from the same accident to, an amount less than the limit of liability stated in the underinsured coverage of the insured's policy.

(c) The State Board of Insurance is hereby authorized to promulgate the forms of the uninsured and underinsured motorist coverages. The Board may also, in such forms, define "uninsured motor vehicle" to exclude certain motor vehicles whose operators are in fact uninsured.

(d) The forms promulgated under the authority of this section shall include provisions that, regardless of the number of persons insured, policies or bonds applicable, vehicles involved, or claims made, the total aggregate limit of liability to any one person who sustains bodily injury or property damage as the result of any one occurrence shall not exceed the limit of liability for these coverages as stated in the policy and the total aggregate limit of liability to all claimants, if more than one, shall not exceed the total limit of liability per occurrence as stated in the policy; and shall provide for the exclusion of the recovery of damages for bodily injury or property damage or both resulting from the intentional acts of the insured. The forms promulgated under the authority of this section shall require that in order for the insured to recover under the uninsured motorist coverages where the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured.

(3) The limits of liability for bodily injury, sickness, or disease, including death, shall be offered to the insured in amounts not less than those prescribed in the Texas Motor Vehicle Safety-Responsibility Act and such higher available limits as may be desired by the insured, but not greater than the limits of liability specified in the bodily injury liability provisions of the insured's policy.

(4) (a) Coverage for property damage shall be offered to the insured in amounts not less than those prescribed in the Texas Motor Vehicle Safety-Responsibility Act and such higher available limits as may be desired by the insured, but not greater than limits of liability specified in the property damage liability provisions of the insured's policy, subject to a deductible amount of $250.

(b) If the insured has collision coverage and uninsured or underinsured property damage liability coverage, the insured may recover under the policy coverage chosen by the insured. In the event neither coverage is sufficient alone to cover all damage resulting from a single occurrence, the insured may recover under both coverages. When recovering under both coverages, the insured shall designate

one coverage as the primary coverage and pay the deductible applicable to that coverage. The primary coverage must be exhausted before any recovery is made under the secondary coverage. If both coverages are utilized in the payment of damages from a single occurrence, the insured shall not be required to pay the deductible applicable to the secondary coverage when the amount of the deductible otherwise applicable to the secondary coverage is the same as or less than the amount of the deductible applicable to the primary coverage. If both coverages are utilized in the payment of damages from a single occurrence and the amount of the deductible otherwise applicable to the secondary coverage is greater than the amount of the deductible applicable to the primary coverage, the insured shall be required to pay in respect of the secondary coverage only the difference between the amount of the two deductibles. In no event shall the insured recover under both coverages more than the actual damages suffered.

(5) The underinsured motorist coverage shall provide for payment to the insured of all sums which he shall be legally entitled to recover as damages from owners or operators of underinsured motor vehicles because of bodily injury or property damage in an amount up to the limit specified in the policy, reduced by the amount recovered or recoverable from the insurer of the underinsured motor vehicle.

(6) In the event of payment to any person under any coverage required by this Section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury, sickness or disease, or death for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer; provided, however, whenever an insurer shall make payment under a policy of insurance issued pursuant to this Act, which payment is occasioned by the insolvency of an insurer, the insured of said insolvent insurer shall be given credit in any judgment obtained against him, with respect to his legal liability for such damages, to the extent of such payment, but such paying insurer shall have the right to proceed directly against the insolvent insurer or its receiver, and in pursuance of such right such paying insurer shall possess any rights which the insured of the insolvent company might otherwise have had if the insured of the insolvent insurer had made the payment.

(7) If a dispute exists as to whether a motor vehicle is uninsured, the burden of proof as to that issue shall be upon the insurer.

[Amended by Acts 1977, 65th Leg., p. 370, ch. 182, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1418, ch. 626, § 1, eff. Jan. 1, 1980; Acts 1981, 67th Leg., p. 1002, ch. 380, § 1, eff. Aug. 31, 1981.]

[1] Civil Statutes, art. 6701h, § 35.

Art. 5.06–3. Personal Injury Protection Coverage

(a) No automobile liability insurance policy, including insurance issued pursuant to an assigned risk plan established under authority of Section 35 of the Texas Motor Vehicle Safety-Responsibility Act,[1] covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state unless personal injury protection coverage is provided therein or supplemental thereto. The coverage required by this article shall not be applicable if any insured named in the policy shall reject the coverage in writing; provided, unless the named insured thereafter requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy if the named insured has rejected the coverage in connection with a policy previously issued to him by the same insurer or by an affiliated insurer.

[See Compact Edition, Volume 2 for text of (b) to (h)]

[Amended by Acts 1981, 67th Leg., p. 100, ch. 51, § 1, eff. Aug. 31, 1981.]

[1] Civil Statutes, art. 6701h, § 35.

SUBCHAPTER B. CASUALTY INSURANCE AND FIDELITY, GUARANTY AND SURETY BONDS

Art. 5.13–1. Legal Service Contracts

(a) Every insurer governed by Subchapter B of Chapter 5 of the Insurance Code, as amended,[1] and every life, health, and accident insurer governed by Chapter 3 of the Insurance Code, as amended,[2] is authorized to issue prepaid legal services contracts. Every such insurer or rating organization authorized under Article 5.16 of the Insurance Code shall file with the State Board of Insurance all rules and forms applicable to prepaid legal service contracts in a manner to be established by the State Board of Insurance. All rates, rating plans, and charges shall be established in accordance with actuarial principles for various categories of insureds. Rates, rating plans, and charges shall not be excessive, inadequate, unfairly discriminatory, and the benefits shall be reasonable with respect to the rates charged. Certification, by a qualified actuary, to the appropriateness of the charges, rates, or rating plans, based upon reasonable assumptions, shall accompany the filing along with adequate supporting information.

(b) The State Board of Insurance shall, within a reasonable period, approve any form if the requirements of this section are met. It shall be unlawful to issue such forms until approved or to use such schedules of charges, rates, or rating plans until filed and approved. If the State Board of Insurance has good cause to believe such rates and rating plans do not comply with the standards of this article, it shall give notice in writing to every insurer or rating organization which filed such rates or rating plans, stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying

therein a reasonable time, not less than 30 days thereafter, in which such noncompliance may be corrected. If the board has not acted on any form, rate, rating plan, or charges within 30 days after the filing of same, they shall be deemed approved. The board may require the submission of whatever relevant information is deemed necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(c) The right of such insurers to issue prepaid legal services contracts on individual, group, or franchise bases is hereby recognized, and qualified agents of such insurers who are licensed under Articles 21.07 and 21.14 of the Insurance Code, as amended, and Chapter 213, Acts of the 54th Legislature, 1955, as amended (Article 21.07–1, Vernon's Texas Insurance Code), shall be authorized to write such coverages under such rules and regulations as the State Board of Insurance may prescribe.

(d) The State Board of Insurance is hereby vested with power and authority under this article to promulgate, after notice of hearing, and to enforce, rules and regulations concerning the application to the designated insurers of this article and for such clarification, amplification, and augmentation as in the discretion of the State Board of Insurance are deemed necessary to accomplish the purposes of this article.

(e) This article shall be construed as a specific exception to Article 3.54 of the Texas Insurance Code.

(f) Nothing in this Act shall be construed as compelling the State Board of Insurance to establish standard or absolute rates and the board is specifically authorized, in its discretion, to approve different rates for different insurers for the same risk or risks on the types of insurance covered by this article; nor shall this article be construed as to require the State Board of Insurance to establish a single or uniform rate for each risk or risks or to compel all insurers to adhere to such rates previously filed by other insurers; and the board is empowered to approve such different rates for different insurers, and is required to approve such rates as filed by any insurer unless it finds that such filing does not meet the requirements of this article.

[Added by Acts 1975, 64th Leg., p. 126, ch. 60, § 2, eff. Sept. 1, 1975.]

[1] Article 5.13 et seq.

[2] Article 3.01 et seq.

Limitations. Section 3 of the 1975 Act provided:

"An insurer operating under the requirements of Section 2 shall not contract itself to practice law in any manner, nor shall it control or attempt to control the relations existing between an insured and his or her attorney. These attorneys shall never be employees of the insurer but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the insured. Such insurer must agree to pay any attorney licensed by the Supreme Court to practice law in Texas for such services rendered."

Art. 5.15. Filing of Rates and Rating Information; Approval

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

(d) It is expressly provided, however, that notwithstanding any other provision of this subchapter to the contrary, a rate or premium for such insurance greater than the standard rate or premium that has been approved by the Board may be used on any specific risk if:

(1) a written application is made to the Board naming the insurer and stating the coverage and rate proposed;

(2) the person to be insured or person authorized to act in relation to the risk to be insured consents to such rate;

(3) the reasons for requiring such greater rate or premium are stated in or attached to the application;

(4) the person to be insured or person authorized to act for such person signs the application; and

(5) the Board approves the application by order or by stamping.

(e) Any filing for which there is no approved rate shall be deemed approved from the date of filing to the date of such formal approval or disapproval.

(f) If at any time the Board finds that a filing so approved no longer meets the requirements of this subchapter, it may, after a hearing held on not less than twenty (20) days' notice specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order withdrawing its approval thereof. Said order shall specify in what respects the Board finds that such filing no longer meets the requirements of this subchapter and shall be effective not less than thirty (30) days after its issuance. Copies of such order shall be sent to every such insurer and rating organization.

(g) Any person or organization aggrieved by the action of the Board with respect to any filing may, within thirty (30) days after such action, make written request to the Board for a hearing thereon. The Board shall hear such aggrieved party within thirty (30) days after receipt of such request and shall give not less than ten days' written notice of the time and place of the hearing to the insurer or rating organization which made the filing and to any other aggrieved party. Within thirty (30) days after such hearings the Board shall affirm, reverse or modify its previous action. Pending such hearing and decision thereon the Board may suspend or postpone the effective date of its previous action.

[Amended by Acts 1977, 65th Leg., p. 225, ch. 108, § 1, eff. May 4, 1977.]

Art. 5.15–1. Professional Liability Insurance for Physicians and Health Care Providers

Scope of Article

Sec. 1. This article shall apply to the making and use of insurance rates by every insurer licensed to write or engaged in writing professional liability insurance for any physician or any health care provider including rating organizations, acting on behalf of insurers.

Definitions

Sec. 2. In this article:

(1) "Physician" means a person licensed to practice medicine in this state.

(2) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed or chartered by the State of Texas to provide health care as a registered nurse, hospital, dentist, podiatrist, chiropractor, optometrist, blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks, or not-for-profit nursing home, or an officer, employee, or agent of any of them acting in the course and scope of his employment.

(3) "Hospital" means a licensed public or private institution as defined in Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes), or in Section 88, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Article 5547–88, Vernon's Texas Civil Statutes).

Rate Standards

Sec. 3. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience inside this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

Filing Rates

Sec. 4. (a) The provisions of Article 5.15, Insurance Code, shall apply to the filing of rates and rating information required under this article.

(b) Nothing contained in this article or other provisions of this subchapter concerning the regulation of rates, rating plans, and rating classifications shall, as applies to the writing of professional liability insurance for health care providers and physicians, give the board the power to prescribe uniform or absolute rates; nor shall anything therein be construed as preventing the filing of different rates for risks in a given classification or modified rates for individual risks made in accordance with rating plans, as filed by different insurers or organizations authorized to file such rates. As used in this subsection, "absolute rates" means rates, rating classifications, or rating plans filed by an insurer or authorized rating organization in accordance with this subchapter and the rates, rating classifications, or rating plans so filed are required to be used, to the exclusion of all others, by each insurer lawfully engaged in writing policies.

(c) The State Board of Insurance shall prescribe standardized policy forms for occurrence, claims-made and claims-paid policies of professional liability insurance covering health care providers and physicians, and no insurer may use any other forms in writing professional liability insurance for health care providers and physicians without the prior approval of the State Board of Insurance. However, an insurer writing professional liability insurance for health care providers and physicians may use any form of endorsement if the endorsement is first submitted to and approved by the board.

Reporting of Claims and Claims Information

Sec. 5. Each insurer who issues policies of professional liability insurance covering physicians and health care providers shall file annually with the State Board of Insurance a report of all claims and amount of claims, amounts of claims reserves, investment income of the company derived from medical professional liability premiums, information relating to amounts of judgments and settlements paid on claims, and other information required by the board. The board may formulate and promulgate a form on which this information shall be reported. The form shall be so devised as to require the information to be reported in an accurate manner, reasonably calculated to facilitate interpretation and to protect the confidentiality of the health care provider or physician.

Annual Premiums

Sec. 6. Policies of professional liability insurance under this article shall be written on not less than an annual premium basis.

Notice of Cancellation or Nonrenewal

Sec. 7. An insurer who issues a policy of professional liability insurance covered by this article shall give at least 90 days' written notice to an insured if premiums on the insurance are to be increased or the policy is to be cancelled or is not to be renewed other than for nonpayment of premiums or because the insured is no longer licensed. If the premiums are to be increased, the notice shall state the amount of the increase, and if the policy is to be cancelled or is not to be renewed, the insurer shall state in the notice the reason for cancellation or nonrenewal. Notice of cancellation under this section may only be given within the first 90 days from the effective date of the policy.

Punitive Damages under Medical Professional Liability Insurance

Sec. 8. No policy of medical professional liability insurance issued to or renewed for a health care provider or physician in this state may include coverage for punitive damages that may be assessed against the health care provider or physician.

Claim Surcharges

Sec. 9. A claim surcharge assessed by an insurer against a health care provider or physician under a professional liability insurance policy may be based only on claims actually paid by an insurer as a result of a settlement or an adverse judgment or an adverse decision of a court.

[Added by Acts 1977, 65th Leg., p. 2054, ch. 817, § 31.01, eff. Aug. 29. 1977.]

Art. 5.15–2. Accident Prevention Services

(a) Any insurer desiring to write professional liability insurance for hospitals in Texas shall maintain or provide accident prevention facilities as a prerequisite for a license to write such insurance. Such facilities shall be adequate to furnish accident prevention services required by the nature of its policyholder's operations and shall include surveys, recommendations, training programs, consultations, analyses of accident causes and hospital risk control management, to implement the program of accident prevention services. Each field safety representative shall be either a college graduate who shall have a bachelor's degree in science or engineering, a registered professional engineer, a certified safety professional, or an individual who shall have completed a course of training in accident prevention services approved by the State Board of Insurance.

(b) The insurer shall render accident prevention services to its policyholders reasonably commensurate with the risks and exposures and experience of the subscriber's business. To provide such facilities, the insurer may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of the methods enumerated in this subsection. Such personnel shall have the qualification required for field safety representatives as provided in Subsection (a) of this article.

(c) If the Commissioner of Insurance shall determine that reasonable accident prevention services are not being maintained or provided by the insurer or are not being used by the insurer in a reasonable manner to prevent injury to patients of its policyholders, the fact shall be reported to the State Board of Insurance, and the board shall order a hearing to determine if the insurer is not in compliance with this article. If it is determined that the insurer is not in compliance, its authority to write professional liability insurance for hospitals in Texas shall be revoked.

(d) The State Board of Insurance may promulgate reasonable rules and regulations for the enforcement of this article after holding a public hearing on the proposed rules and regulations.

(e) In this article, "hospital" means a licensed public or private institution as defined in Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes), or in Section 88, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Article 5547–88, Vernon's Texas Civil Statutes).

(f) The provisions of this section shall become effective on January 1, 1978.

[Added by Acts 1977, 65th Leg., p. 2057, ch. 817, § 31.02, eff. Jan. 1, 1978.]

SUBCHAPTER C. FIRE INSURANCE AND ALLIED LINES

Art. 5.26. Maximum Rate Fixed, and Deviations Therefrom

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

(g) The Board may call a public hearing on any application for permission to file a deviation or a hearing on a permitted deviation and shall call a hearing upon the request of any aggrieved policyholder of the company filing the deviation made within thirty (30) days after the granting or denying of any deviation. The Board shall give reasonable notice of such hearings and shall hear witnesses respecting such matters. Any applicant dissatisfied with any order of the Board made without a hearing under this Article may within thirty (30) days after entry of such order make written request of the Board for a hearing thereon. The Board shall hear such applicant within twenty (20) days after receiving such request and shall give not less than ten (10) days written notice of the time and place of the hearing. Within fifteen (15) days after such hearing the Board shall affirm, reverse or modify by order its previous action, specifying in such order its rea-

sons therefor. Any applicant who may be dissatisfied with any order of the Board respecting its application may appeal to the District Court of Travis County, Texas, and not elsewhere, by filing a petition within thirty (30) days after the rendition or entry of such order setting forth its grounds of objection thereto, in which said action the appealing applicant shall be plaintiff and the Board shall be defendant. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided in the case of an appeal from the Justice Court to the County Court. The judgment of the District Court shall be appealable as in any other civil case. Such action shall have precedence over other civil cases on the dockets of the appellate courts. Should the Board terminate or refuse to renew a permitted deviation or refuse permission for filing of a deviation under subdivision (f) hereof, then such deviation shall remain in effect during the course of any hearing thereon and thirty (30) days thereafter, and during the course of any appeal taken from such order and until final judgment of the courts. The Board shall not be required to give any appeal or supersedeas bond in any cause arising hereunder. All hearings before the Board and appeals to the District Courts under this Article shall be governed exclusively by this Article.

[See Compact Edition, Volume 2 for text of (h)]

[Amended by Acts 1981, 67th Leg., p. 2637, ch. 707, § 4(23) eff. Aug. 31, 1981.]

Art. 5.33A. Reduction in Homeowners Insurance Premiums

Definitions

Sec. 1. In this article:

(1) "Institute" means the Texas Crime Prevention Institute.

(2) "Inspector" means a person certified by the institute to be an inspector under this article.

(3) "Board" means the State Board of Insurance.

Qualification for Premium Reduction

Sec. 2. A person is entitled to a premium reduction for homeowners insurance coverage if that person is found by an inspector to be in compliance with the specifications in Section 6 of this article.

Procedure for Certification

Sec. 3. (a) A person who desires a premium reduction on homeowners insurance shall apply to the institute for a premium reduction certification inspection. Application for the inspection shall be made in writing and in the form required by the institute.

(b) On receiving an application for an inspection, the institute shall assign an inspector to inspect the property to be covered by the applicant's homeowners policy.

(c) The inspector who is assigned by the institute shall inspect the property and shall file a written report with the board stating the inspector's findings and whether or not the property qualifies for a premium reduction.

Premium Reduction Certificate

Sec. 4. (a) If the inspector's report states that the applicant's property qualifies for a premium reduction, the board shall issue to the applicant a premium reduction certificate entitling him or her to a premium reduction on the homeowners insurance.

(b) The premium reduction certificate must be signed by the person to whom the certificate is issued, the inspector, and the insurer issuing the policy or the insurer's agent.

(c) A certificate is valid for a term of three years and may be renewed for an additional three-year period at the request of the insured.

Amount of Premium Reduction

Sec. 5. The board shall establish by rule the amount of premium reduction applicable under this article to homeowners insurance.

Specifications for Qualifying for a Premium Reduction

Sec. 6. (a) A person's property qualifies for a homeowners insurance premium reduction if the property meets the following specifications:

(1) exterior doors must be solid core doors that are 1⅜ inches thick and must be secured by dead-bolt locks;

(2) metal doors must be secured by dead-bolt locks;

(3) double doors must meet the specifications provided by Subdivision (1) of this subsection, must have the inactive door secured by header and threshold bolts that penetrate metal strike plates, and in the case of glass located within 40 inches of header and threshold bolts, must have the bolts flush-mounted in the edge of the door;

(4) sliding glass doors must be secured by secondary locking devices to prevent lifting and prying;

(5) dutch doors must have concealed flush-bolt locking devices to interlock upper and lower halves and must be secured by a dead-bolt lock;

(6) garage doors must be equipped with key-operated locking devices;

(7) windows must be secured by auxiliary locking devices.

(b) A dead-bolt lock required by Subsection (a) of this section must lock with a minimum bolt throw of one inch that penetrates a metal strike plate. If a door secured by a dead-bolt lock has breakable glass

within 40 inches of the lock, the lock must be key-operated from both sides unless prohibited by life safety codes.

(c) An auxiliary locking device required by Subsection (a) of this section must include screws, wooden dowels, pinning devices, and key-operated locks. In areas in which life safety codes permit, metal bars or grating, if mounted to prevent easy removal, may be substituted for auxiliary locking devices.

(d) Jalousie or louvered windows do not meet the specifications of this section unless they have metal grating mounted as provided by Subsection (c) of this section.

Duties of the Institute

Sec. 7. The institute shall administer the inspection program under this article, shall adopt rules to carry out the inspection program, and shall certify and supervise inspectors who do the inspections.

Inspectors

Sec. 8. (a) Before a person may act as an inspector, that person must apply for and receive certification from the institute and must meet the qualifications stated in Subsection (b) of this section.

(b) To be qualified as an inspector, a person must:

(1) be a city or county employee;

(2) be of high moral integrity; and

(3) have a minimum of 20 hours classroom instruction from the institute or from an agent of the institute.

(c) A person approved under this section to act as an inspector must register annually with the institute to maintain the certification as an inspector under this article.

(d) The institute shall adopt rules and procedures for certification and for registering to maintain certification as an inspector.

(e) The institute may deny in inspector's annual registration if it finds on application for registration that the inspector has failed or refused to carry out his or her duties in the manner provided by this article and rules adopted by the institute.

Assumption of Powers, Duties, and Responsibilities by Board

Sec. 9. If for any reason the institute is unable to assume the powers, duties, and responsibilities given to it under this article, the board shall designate a successor to exercise those powers, duties, and responsibilities.

[Added by Acts 1981, 67th Leg., p. 3071, ch. 809, § 1, eff. June 17, 1981.]

Art. 5.43-1. Fire Extinguishers

Purpose

Sec. 1. The purpose of this article is to regulate the servicing of portable fire extinguishers and the installing and servicing of fixed fire extinguisher systems, in the interest of safeguarding lives and property.

Administration

Sec. 2. The State Board of Insurance shall administer this article and it may issue rules and regulations which it considers necessary to its administration through the State Fire Marshal. The board, in adopting necessary rules and regulations, may use recognized standards such as, but not limited to, those of the National Fire Protection Association, those recognized by federal law or regulation, and those published by any nationally recognized standards-making organization, or the manufacturer's installation manuals.

Definitions

Sec. 3. As used in this article the following terms have the meanings specified in this section.

(a) "Firm" means any person, partnership, corporation, or association.

(b) "Hydrostatic testing" means pressure testing by hydrostatic methods.

(c) "Portable fire extinguisher" means any device that contains within it chemical fluids, powder, or gases for extinguishing fires and has a label of approval attached by a nationally recognized testing laboratory, such as, but not limited to, the Underwriters Laboratories Inc. and Factory Mutual Research Corporation.

(d) "Service and servicing" means servicing portable fire extinguishers or fixed fire extinguisher systems by charging, filling, maintaining, recharging, refilling, repairing, or testing.

(e) "Fixed fire extinguisher system" means those listed or approved fire extinguisher systems installed in compliance with the manufacturer's installation manuals or the applicable National Fire Protection Association Standard and its references as follows:

(1) the National Fire Protection Association Standards Foam Extinguisher Systems, No. 11, 1978 edition;

(2) the National Fire Protection Association Standards on Carbon Dioxide Extinguisher Systems, No. 12, 1977 edition;

(3) the National Fire Protection Association Standards for Halogenated Fire Extinguishing Agents Systems—Halon 1301, No. 12A, 1977 edition;

(4) the National Fire Protection Association Standards for Dry Chemical Extinguisher Systems, No. 17, 1980 edition;

(5) the National Fire Protection Association Standards for the Installation of Equipment for the Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment, No. 96, 1978 edition; and

(6) additional or updated National Fire Protection Association Standards as adopted by the State Board of Insurance.

Registration, Licensing, and Fees

Sec. 4. (a) Each firm engaged in the business of installing or servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems must have a certificate of registration issued by the State Board of Insurance. The initial fee for the certificate of registration is $225 and the renewal fee for each year thereafter is $150. Each separate office location of a firm engaged in the business of installing or servicing portable fire extinguishers or installing or servicing fixed extinguisher systems, other than the location identified on the certificate of registration, must have a branch office registration certificate issued by the board. The initial fee for a branch office registration certificate is $50, and the renewal fee for each year thereafter is $50. The board shall identify each branch office location as a part of a registered firm before a branch office registration certificate may be issued.

(b) A $10 fee shall be charged for a duplicate certificate of registration, license, or apprentice permit issued under this article or for any request requiring changes to a certificate of registration, license, or permit. A new certificate of registration with a new number shall be issued to a registered firm on a change of ownership for a $225 fee. A $50 fee shall be charged for a change of ownership of a branch office.

(c) Each employee, other than an apprentice, of firms engaged in the business of installing or servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems who services extinguishers or fixed systems, must have a license issued by the State Board of Insurance. The initial fee for the license, including the initial examination, is $25 and the license renewal fee for each year thereafter is $25. A $10 fee shall be charged for each reexamination.

(d) Each person servicing portable fire extinguishers or fixed fire extinguisher systems as an apprentice shall, before servicing any portable fire extinguisher or servicing any fixed fire extinguisher system, apply to the State Board of Insurance for an apprentice permit. The fee for the apprentice permit is $15. An apprentice may perform the services only under direct supervision of a person holding a valid license under this article who works for the same firm as the apprentice. An apprentice permit is valid for one year from the date of issuance.

(e) Each firm performing hydrostatic testing of fire extinguishers manufactured in accordance with the specifications and procedures of the United States Department of Transportation shall do so in accordance with the procedures specified by that department for compressed gas cylinders and shall be required to have a hydrostatic testing certificate of registration authorizing such testing issued by the state fire marshal. Persons qualified to do this work shall be given such authority on their licenses. The initial fee shall be $125, and the renewal fee for each year thereafter shall be $75. Hydrostatic testing of fire extinguishers not performed pursuant to the United States Department of Transportation specifications shall be performed as recommended by the National Fire Protection Association.

Selling or Leasing of Portable Fire Extinguishers or Fixed Fire Extinguisher Systems

Sec. 5. (a) No portable fire extinguisher or fixed fire extinguisher system may be leased, sold, or installed in this state unless it carries a label of approval of a nationally recognized testing laboratory or a testing laboratory approved by the State Board of Insurance.

(b) Except as provided in Section 6 of this article, only the holder of a current and valid license or an apprentice permit issued pursuant to this article may service portable fire extinguishers or install and maintain fixed fire extinguisher systems.

(c) A person who has been issued a license pursuant to this article to service portable fire extinguishers or install and service fixed fire extinguisher systems must be an employee, agent, or servant of a firm that holds a certificate of registration issued pursuant to this article.

(d) A certificate of registration, license, or permit issued under this article is not transferable.

Exceptions

Sec. 6. The provisions of this article do not apply to the following:

(a) the filling or charging of a portable fire extinguisher by the manufacturer prior to its initial sale;

(b) the servicing by a firm of its own portable fire extinguishers and/or fixed systems by its own personnel specially trained for such servicing;

(c) the installation or servicing of water sprinkler systems installed in compliance with the National Fire Protection Association's Standards for the Installation of Sprinkler Systems, No. 13;

(d) firms engaged in the retailing or wholesaling of portable fire extinguishers as defined in Section 3, but not engaged in the installation or recharging of them;

(e) fire departments recharging portable fire extinguishers as a public service where no charge is made, provided, however, that the members of the fire department are trained in the proper filling and recharging of the fire extinguishers.

Applications and Hearings on Licenses, Permits and Certificates

Sec. 7. (a) Applications and qualifications for licenses, permits, and certificates issued hereunder shall be made pursuant to regulations adopted by the State Board of Insurance.

(b) The State Board of Insurance may through the State Fire Marshal conduct hearings or proceedings concerning the suspension, revocation, or refusal of the issuance or renewal of licenses, apprentice

permits, hydrostatic testing certificates, certificates of registration, or approvals of testing laboratories issued under this article or the application to suspend, revoke, refuse to renew, or refuse to issue the same.

(c) An applicant, registrant, licensee, or permit holder whose certificate of registration, license, or permit has been refused or revoked under this article, except for failure to pass a required written examination, may not file another application for a certificate of registration, license, or permit within one year from the effective date of the refusal or revocation. After one year from that date, the applicant may reapply and in a public hearing show good cause why the issuance of his certificate of registration, license, or permit is not against the public safety and welfare.

(d) A person whose license to service portable fire extinguishers or to install or service fixed fire extinguisher systems has been revoked must retake and pass the required written examination before a new license may be issued.

(e) A person whose license to service portable fire extinguishers or to install or service fixed fire extinguisher systems has expired may not renew the license until he has taken and passed the required written examination for a license.

Powers and Duties of State Board of Insurance

Sec. 8. The State Board of Insurance shall:

(a) formulate and administer such rules and regulations as may be determined essentially necessary for the protection and preservation of life and property, in controlling:

(1) the registration of firms engaging in the business of servicing portable fire extinguishers or installing and maintaining fixed fire extinguisher systems;

(2) the registration of firms engaged in the business of hydrostatic testing of portable fire extinguishers;

(3) the examination of persons applying for a license to service portable fire extinguishers;

(4) the licensing of persons to service portable fire extinguishers and install fixed fire extinguisher systems; and

(5) the requirements for the servicing of portable fire extinguishers and the maintenance of fixed fire extinguisher systems;

(b) evaluate the qualifications of firms or individuals for a certificate of registration to engage in the business of servicing portable fire extinguishers or installing fixed fire extinguisher systems;

(c) conduct examinations to ascertain the qualifications and fitness of applicants for a license to service portable fire extinguishers or install fixed fire extinguisher systems;

(d) issue certificates of registration for those firms that qualify under the rules and regulations to engage in the business of servicing portable fire extinguishers or installing and servicing fixed fire extinguisher systems, and issue licenses, apprentice permits, and authorizations to perform hydrostatic testing to the firms or individuals who qualify; and

(e) evaluate the qualifications of firms seeking approval as testing laboratories for portable fire extinguishers.

Delegation of Power by State Board of Insurance

Sec. 9. The State Board of Insurance may delegate the exercise of all or part of its functions, powers, and duties under this article, except for the issuance of licenses, certificates, and permits, and the formulation of rules and regulations, to a Fire Extinguisher Advisory Council whose members shall be appointed by the State Board of Insurance. The members shall be experienced and knowledgeable in one or more of the following areas: fire services, fire extinguisher manufacturing, fire insurance inspection or underwriting, fire extinguisher servicing, or be a member of a fire protection association or industrial safety association.

Certain Acts Prohibited

Sec. 10. No person may do any of the following:

(1) engage in the business of servicing portable fire extinguishers without a current certificate of registration;

(2) engage in the business of installing or servicing fixed fire extinguisher systems without a current certificate of registration;

(3) service portable fire extinguishers or service or install fixed fire extinguisher systems without a current license;

(4) perform hydrostatic testing of portable fire extinguishers manufactured in accordance with the specifications and requirements of the United States Department of Transportation without a current hydrostatic testing certificate of registration;

(5) obtain or attempt to obtain a certificate of registration or license by fraudulent representation;

(6) service portable fire extinguishers or service or install fixed fire extinguisher systems contrary to the provisions of this article or the rules and regulations formulated and administered under the authority of this article;

(7) service or hydrostatic test a fire extinguisher that does not have the proper identifying labels; or

(8) sell, service, or recharge a carbon tetrachloride fire extinguisher.

Use of Funds

Sec. 11. All funds collected through the licensing and other provisions of this article, excepting penalties, shall be paid to the State Board of Insurance and be deposited in a special fund with the State

Treasurer for carrying out the administration of this article.

Penalties

Sec. 12. (a) The State Fire Marshal may refuse the issuance or renewal of, suspend, or revoke a certificate of registration, license, or permit if, after notice and hearing, he finds that the applicant, registrant, licensee, or permit holder has violated this article.

(b) A person commits an offense if the person knowingly or intentionally violates Section 10 of this article.

(c) An offense under Subsection (b) of this section is a Class B misdemeanor. Venue for the offense is in Travis County.

[Amended by Acts 1975, 64th Leg., p. 899, ch. 335, § 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 903, ch. 412, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 416, ch. 175, § 1, eff. Sept. 1, 1981.]

Section 4 of the 1981 amendatory act provides:

"Section 12, Article 5.43-1, Insurance Code, and Section 11, Article 5.43-2, Insurance Code, as those laws are amended by this Act, apply to offenses commited on or after the effective date of this Act. Offenses committed before the effective date of this Act are covered by the law as it existed at the time the offense was committed, and the prior law is continued in effect for that purpose. For purposes of this section, an offense is commited before the effective date of this Act if any element of the offense occurred before that date."

Art. 5.43-2. Fire Detection and Alarm Devices

Purpose

Sec. 1. The purpose of this article is to regulate the sales, servicing, installation, and maintenance of fire detection and fire alarm devices and systems in the interest of safeguarding lives and property.

Definitions

Sec. 2. As used in this article:

(1) "Person" means a natural person, including an owner, manager, officer, employee, occupant, or individual.

(2) "Organization" means a corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, firm or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(3) "Advisory council" means a group of five individuals experienced and knowledgeable in one or more of the following areas: sale, installation, maintenance, or manufacturing of fire alarm or detection systems, electrical engineering, fire services or be a member of a fire protection association which is to be appointed by the State Board of Insurance.

(4) "Board" means the State Board of Insurance.

(5) "Sale" means sale or offering for sale, lease, or rent any merchandise, equipment, or service at wholesale or retail, to the public or any person, for an agreed sum of money or other consideration.

(6) "Installation" means the initial placement of equipment and/or the extension, modification, or alteration of equipment already in place.

(7) "Approval, approved" means that equipment which has been tested or listed by a nationally recognized testing laboratory such as but not limited to Underwriters' Laboratories, Incorporated, or Factory Mutual Research Corporation, or has gained specific written approval for the use intended by the state marshal.

(8) "Maintenance" means to maintain in a condition of repair that will allow performance as originally designed or intended.

(9) "Service, servicing" means any charging, recharging, maintaining, repairing, testing, or installing.

(10) "Fire detection device" means any arrangement of materials, the sole function of which is to provide indication of fire, smoke, or combustion in its incipient stages.

(11) "Fire alarm device" means any device capable, through audible and/or visible means, of sounding a warning that fire or combustion has taken or is taking place.

(12) "Fire alarm installation superintendent" means an individual or individuals who shall be designated by each company that sells, services, installs, or maintains a fire alarm or detection system to inspect and certify that each fire alarm or detection system as installed meets the standards as provided for by law.

Exceptions

Sec. 3. (a) The provisions of this article and the rules and regulations promulgated under this article shall have uniform force and effect throughout the state and no municipality or county shall hereinafter enact any ordinances, rules, or regulations inconsistent with the provisions of this article or rules and regulations promulgated pursuant to this article. Provided, however, that any municipality or county ordinances, rules, or regulations in force or effect on the effective date of this article shall not be invalidated because of any provision of this article.

(b) This article shall not apply to:

(1) the sale, offer for sale, or installation of fire detection devices or fire alarm devices that are not specifically required by Chapters 8 through 16, Life Safety Code, National Fire Protection Association Standard, No. 101, 1976 edition;

(2) a person or organization in the business of building construction that installs electrical wiring and devices that may include in part the installation of a fire alarm or detection device if:

(A) the person or organization is a party to a contract that provides that the installation will be performed under the direct supervision of

and inspected and certified by a person or organization licensed to install and certify such an alarm or detection device and that the licensee assumes full responsibility for the installation of the alarm or detection device; and

(B) the person or organization does not sell, service, or maintain fire alarms or detection devices;

(3) a person or organization that owns and installs fire detection or fire alarm devices on the person's or organization's own property or, if the person or organization does not charge for the device or its installation, installs it for the protection of the person's or organization's personal property located on another's property and does not install the devices as a normal business practice on the property of another;

(4) a person or organization that sells fire detection or fire alarm devices if the sales are exclusively over-the-counter or by mail order and if the person or organization does not install, service, or maintian this equipment; or

(5) response to a fire alarm or detection device by a law enforcement agency or fire department or by a law enforcement officer or fireman acting in an official capacity.

Administration

Sec. 4. The board shall administer this article and it may issue rules and regulations which it considers necessary to its administration through the state fire marshal. The board, in promulgating necessary rules and regulations, may utilize recognized standards such as, but not limited to, those of the National Fire Protection Association, the National Electrical Code, those recognized by federal law or regulation, those published by any nationally recognized standards-making organization, or any information furnished by individual manufacturers.

Registration and Licensing

Sec. 5. (a) Each organization engaged in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices shall have a certificate of registration issued by the board. The initial fee for the certificate of registration is $250 and the renewal fee for each year thereafter is $250.

(b) Each separate office location of an organization engaged in the act of selling, leasing, servicing, maintaining, or installing fire detection or fire alarm devices or systems, other than the location identified on the certificate of registration, shall have a branch office registration certificate, issued by the board. The initial fee for this branch office registration certificate is $75 and the renewal fee for each year thereafter is $75. The board shall identify each branch office location as a part of a registered organization before a branch office registration certificate may be issued.

(c) Each fire alarm installation superintendent must obtain a license issued by the board. The initial fee for the license is $50 and the renewal fee for each year thereafter is $50.

(d) A $10 fee shall be charged for a duplicate certificate of registration or license issued by the board and for any requested change to a certificate of registration or license.

(e) No person may inspect with the intention of certifying any fire alarm or fire detection system or device unless he is the holder of a valid and current license issued pursuant to this article.

(f) A person licensed pursuant to this article to inspect and certify a fire alarm or fire detection system or device shall be an employee or agent of an organization that holds a valid and current certificate of registration issued pursuant to this article.

(g) A person who sells, services, installs, or maintains fire alarm systems or fire detection devices shall be an employee or agent of an organization that holds a valid certificate of registration issued pursuant to this article.

(h) A certificate of registration or license issued under this article is not transferable.

Expiration Dates of Licenses

Sec. 5A. (a) Each renewal of a license issued under this article is valid for a period of two years. The total license fee for both years is payable on renewal.

(b) The State Board of Insurance by rule may adopt a system under which the licenses issued under this article expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on the date of issuance shall be probated on a monthly basis so that each licensee shall pay only that portion of the license fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

(3) proof of a policy of public liability insurance conditioned to pay on behalf of the principal all sums that the principal becomes legally obligated to pay as damages because of injury caused by an occurrence involving the principal or the principal's servant, officer, agent, or employee in the conduct of any business licensed under this article.

(b) The limits of insurance coverage required by Subdivision (3) of Subsection (a) of this section may not be less than:

(1) $50,000 for bodily injury;

(2) $25,000 for property damage; and

(3) $50,000 for personal injury.

(c) The policies of public liability insurance required by this section must be in the form of a certificate of insurance executed by an insurer authorized to do business in the state and counter-

signed by a local recording agent licensed in the state. Insurance certificates executed and filed with the board under this section remain in force until the insurer has terminated future liability by a 10-day notice to the board.

Required Bond and Insurance

Sec. 5B. (a) The board may not issue a certificate of registration under this article unless the applicant files with the board:

(1) a surety bond executed by a surety company authorized to do business in this state in the sum of $10,000 conditioned to compensate for damages caused by wrongful or illegal acts of the principal or the principal's servant, officer, agent, or employee in conducting the business registered or licensed under this article, or instead of the surety bond, the applicant may deposit with the state a sum of $10,000 in cash; and

(2) proof of a policy of public liability insurance conditioned to pay on behalf of the principal all sums that the principal becomes legally obligated to pay as damages because of injury caused by an occurrence involving the principal or the principal's servant, officer, agent, or employee in the conduct of any business registered or licensed under this article.

(d) The applicant shall make the required surety bond payable to the state. Anyone injured by the principal or by the principal's servant, officer, agent, or employee may sue directly on the bond. The bond is subject to successive suits for recovery until the face amount of the bond is completely exhausted. Bonds executed and filed with the board under this section remain in force until the surety has terminated future liability by a 30-day notice to the board.

(e) Each holder of a certificate of registration shall at all times maintain in force and on file with the board the surety bond and certificates of insurance required by this section. If the holder of a certificate of registration fails to do so, the board shall immediately suspend the certificate of registration and may not reinstate it until an application in the form prescribed by the board is filed with a proper bond and proper insurance certificates. The board may deny such an application if:

(1) the board finds a reason that justifies:

(A) refusal to issue a certificate of registration; or

(B) suspension or revocation of a certificate of registration; or

(2) while under suspension for failure to keep the bond or insurance certificate in force, the applicant performs a practice for which a certificate of registration under this article is required.

(f) For a person who is licensed to install or service burglar alarms under the Private Investigators and Private Security Agencies Act, as amended (Article 4413(29bb), Vernon's Texas Civil Statutes), compliance with the bond and insurance requirements of that Act constitutes compliance with the bond and insurance requirements of this section.

Powers and Duties of the State Board of Insurance

Sec. 6. The board shall delegate authority to exercise all or part of its functions, powers, and duties under this article, including the issuance of certificates and licenses, to the state fire marshal, and the state fire marshal along with assistance of a nonbinding advisory council to be appointed by the board shall implement such rules and regulations as may be determined by the board to be essentially necessary for the protection and preservation of life and property in controlling:

(1) the registration of organizations engaging in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems;

(2) the requirements for the sale, service, installation, or maintenance of fire alarm or fire detection devices or systems by:

(A) conducting examinations and evaluating the qualifications of applicants for a certificate of registration to engage in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems;

(B) conducting examinations and evaluating the qualifications of applicants for fire alarm installation superintendent licenses to engage in certifying fire alarm or fire detection devices or systems;

(C) evaluating and determining which organizations shall be approved as testing laboratories for fire alarm and fire detection devices and systems; and

(D) evaluating and approving a required training program for all persons who engage in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems.

Certain Acts Prohibited

Sec. 7. No organization pursuant to this article may do any of the following:

(1) sell, service, install, or maintain fire alarm or fire detection devices and systems without a valid and current certificate of registration;

(2) obtain or attempt to obtain a certificate of registration by fraudulent representation; or

(3) sell, service, install, or maintain fire alarm or fire detection devices or systems contrary to the provisions of this article or the rules and regulations formulated by the board under the authority of this article.

Fees Collected

Sec. 8. The fees herein provided for, when collected, shall be placed with the State Treasurer in a separate fund, which shall be known as the fire alarm and detection systems fund, and expenditures shall be made from said fund as set forth in the General Appropriations Act.

Selling or Leasing Fire Alarm or Fire Detection Devices

Sec. 9. (a) No device or alarm, the sole intended purpose of which is to detect and/or give alarm of fire, may be sold, offered for sale, leased, or installed in this state unless it carries a label of approval of a nationally recognized testing laboratory or a laboratory approved by the fire marshal.

(b) No fire detection or fire alarm device may be sold or installed in this state unless accompanied by printed information supplied to the owner by the supplier or installing contractor concerning:

(1) instructions describing the installation, operation, testing, and proper maintenance of the device;

(2) information which will aid in establishing an emergency evacuation plan for the protected premises; and

(3) the telephone number and location, including notification procedures, of the nearest fire department.

Applications and Hearings on Licenses and Certificates

Sec. 10. (a) Applications and qualifications for certificates and licenses issued hereunder shall be made pursuant to rules and regulations adopted by the board.

(b) The board may, through the State Fire Marshal, conduct hearings or proceedings concerning the suspension, revocation, or refusal of the issuance or renewal of certificates of registration, licenses, or approvals of testing laboratories issued under this article or the application to suspend, revoke, refuse to renew, or refuse to issue the same.

(c) A certificate of registration, license, or testing laboratory approval may be denied, or same duly issued may be suspended or revoked, or the renewal thereof refused, if after notice and public hearing, the board, through the State Fire Marshal, finds from the evidence presented at said hearing that one or more provisions of this article or of any rule or regulation promulgated under this article has been violated.

(d) A person or organization that has had a certificate of registration, license, or testing laboratory approval revoked may not reapply for the certificate, license, or approval within one year from the date of revocation. A person reapplying under this subsection must request a public hearing to show cause why a certificate of registration, license, or testing laboratory approval should not be denied.

Penalties

Sec. 11. In addition to any other penalties, any person of an organization who performs a function that requires a certificate of registration or license as described herein without first obtaining such certificate of registration or license commits a Class B misdemeanor, venue for which is in Travis County.
[Added by Acts 1975, 64th Leg., p. 853, ch. 326, § 1, eff. May 30, 1975. Amended by Acts 1977, 65th Leg., p. 363, ch. 178, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2173, ch. 830, § 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 421, ch. 175, §§ 2, 3, eff. Sept. 1, 1981.]

Section 4 of the 1981 amendatory act provides:

"Section 12, Article 5.43–1, Insurance Code, and Section 11, Article 5.43–2, Insurance Code, as those laws are amended by this Act, apply to offenses committed on or after the effective date of this Act. Offenses committed before the effective date of this Act are covered by the law as it existed at the time the offense was committed, and the prior law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurred before that date."

Art. 5.45. Acting Fire Marshal

If for any reason the State Fire Marshal is unable to make any required investigation in person, he may designate the fire marshal of such city or town or some other suitable person to act for him; and such person so designated shall have the same authority as is herein given the State Fire Marshal with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as the Board may allow.
[Amended by Acts, 1977, 65th Leg., p. 2002, ch. 800, § 1, eff. Aug. 29, 1977.]

Art. 5.46. Report of Information

(A) The State Fire Marshal, any fire marshal of a political subdivision in Texas, or the chief of any established fire department in Texas, or any peace officer in Texas, may request any insurance company investigating a fire loss of real or personal property in which damages or losses exceed $1,000 to release information in its possession relative to that loss. The company shall release the information and cooperate with any official authorized to request such information pursuant to this section. The information may include but not exceed:

(1) any insurance policy relevant to a fire loss under investigation and any application for such a policy;

(2) policy premium payment records;

(3) history of previous claims made by the insured for fire loss;

(4) material relating to the investigation of the loss, including statements of any person, proof of loss, or other relevant evidence.

(5) The provisions of this section shall not be construed to authorize a public official or agency to promulgate or require any type or form of periodic report by an insurer.

(B) If an insurance company has reason to suspect that a fire loss to its insured's real or personal property was caused by incendiary means and if it receives a request for information pursuant to Sec-

tion (A) of this article, the company shall notify the requesting official and furnish him with all relevant material acquired during its investigation of the fire loss, cooperate with and take such action as may be requested of it by any law enforcement agency, and permit any person ordered by a court to inspect any of its records pertaining to the policy and the loss.

(C) In the absence of fraud or malice no insurance company or person who furnished information on its behalf is liable for damages in a civil action or subject to criminal prosecution for oral or written statement made or any other action taken that is necessary to supply information required pursuant to this section.

(D) The officials and departmental and agency personnel receiving any information furnished pursuant to this section shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding.

(E) Any official referred to in Section (A) of this article may be required to testify as to any information in his possession regarding the fire loss of real or personal property in any civil action in which any person seeks recovery under a policy against an insurance company for the fire loss.

(F)(1) No person shall purposely refuse to release any information requested pursuant to Section (A) of this article.

(2) No person shall purposely refuse to notify the fire marshal of a fire loss required to be reported pursuant to Section (B) of this article.

(3) No person shall purposely refuse to supply the fire marshal with pertinent information required to be furnished pursuant to Section (B) of this article.

(4) No person shall purposely fail to hold in confidence information required to be held in confidence by Section (D) of this article.

[Amended by Acts 1977, 65th Leg., p. 2003, ch. 800, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1099, ch. 515, § 1, eff. June 11, 1979.]

Section 3 of the 1977 Act provides as follows:

"For the purpose of paying the expenditures authorized for the enforcement and administration of this Act, the state comptroller shall place in the Insurance Board Operating Fund from current revenues and balances on hand the amounts designated by the Commissioner of Insurance from the following sources:

"Fireworks License Fund 119;

"Fire Extinguisher Fund 110;

"Fire Alarms and Detection System Fund 181."

Art. 5.53–A. Home Warranty Insurance

Sec. 1. Any company licensed to engage in the business of fire insurance and its allied lines, or marine insurance, or both, is authorized to write home warranty insurance in Texas. Home warranty insurance is not inland marine insurance, but shall be governed in the same manner and to the same extent as inland marine insurance.

Sec. 2. As used in this Code, the term "home warranty insurance" means insurance assuring either

(1) performance by builders of residential property of their warranty obligations to purchasers of such property; or

(2) against named defects arising from failure of the builder to construct residential property in accordance with specified construction standards.

[Added by Acts 1975, 64th Leg., p. 56, ch. 32, § 1, eff. April 3, 1975.]

SUBCHAPTER F. JOINT UNDERWRITING AND REINSURANCE; ADVISORY ORGANIZATIONS

Art. 5.75–1. Reinsurance

Every company authorized to do business in Texas, regulated by this Act, and while in compliance with all laws applicable to it, will be eligible to reinsure any risk or part of a risk which it may assume as a direct writer under authority of law. No such company shall have the power to so reinsure its entire outstanding business until the contract therefor shall be submitted to the Board of Insurance Commissioners, and be by it approved, as protecting fully the interests of all the policyholders. This Article shall be cumulative of the provisions of this Code pertaining to reinsurance.

[Formerly Art. 5.76. Renumbered Art. 5.75–1 by Acts 1981, 67th Leg., p. 201, ch. 94, § 5, eff. Aug. 31, 1981.]

SUBCHAPTER G. WORKERS' COMPENSATION AND LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION INSURANCE

Art. 5.76. Prevention of Injuries and Assignment of Rejected Risks

(a) The words "company" and "association" used in this Subchapter shall mean the Texas Employers' Insurance Association, or any stock company, or any mutual company, or any reciprocal, or any inter-insurance exchange, or Lloyds association authorized to write Workers' Compensation and/or Longshoremen's and Harbor Workers' Compensation Insurance in this State. The word "Board" shall mean the State Board of Insurance of this State. As used in this Subchapter, the term "rejected risk" includes any and all legal entities that may be combined for experience rating purposes according to rules of the Board; provided the Agency, to prevent injustice, in its discretion may insure an individual entity without insuring the combinable entities.

(b) For the purpose of carrying into effect the provisions of this Article, and with the approval of the Board, there shall be organized and maintained in this State, by insurance companies and associations as defined herein, an Administrative Agency to be known as "The Texas Workers' Compensation Assigned Risk Pool" (hereinafter referred to as "Agency"), and every such company and association shall be a member of the Agency. Provided, that any company or association not engaged in writing such insurance for members of the public generally shall, upon being so certified by the Board and under such conditions and for such time as the Board may

determine, be exempt from the provisions of this Article during the period of any such certification.

(c) It shall be the duty of the companies and associations, members of the agency established pursuant to Paragraph (b) of this article, to provide insurance, in the manner herein provided, for any risk under the Workers' Compensation Law of Texas,[1] the Longshoremen's and Harbor Workers' Compensation Act,[2] and/or the Federal Coal Mine Health and Safety Act of 1969, as amended,[3] or for any city, county or any other political subdivision, agency or department of the State authorized to provide workers compensation insurance for its employees under any laws of the State of Texas, heretofore or hereafter enacted, which risk shall have been tendered to and rejected by any member of said agency. It shall be the further duty of the companies and associations, members of the agency established pursuant to Paragraph (b) of this article, to provide insurance in the manner herein provided on all policies and claims in existence for any insurance company which has been declared insolvent by the courts of this State or any other state in the same manner as if said policies had been written by servicing companies of this agency. With respect to said claims in existence at the time of said declaration of insolvency and paid by the agency, the agency shall have the same rights against the receiver of said insolvent company as are provided by the laws of this State for workers' compensation loss claimants of the insolvent insurance company. From and after the date the rules made and adopted under Paragraph (e) have been approved by the Board the procedures and remedies established under this article shall be the sole and exclusive procedure and remedies, either at law or in equity, of any applicant for such insurance whose insurance has been rejected or cancelled by any company or association.

[See Compact Edition, Volume 2 for text of (d) to (f)]

(g) The Board, in addition to the provisions prescribed by Subchapter D is hereby authorized and empowered to determine, fix, prescribe, promulgate, change, or amend policy forms, endorsements, rates, rating plans or minimum premiums normally applicable to a risk so as to apply to any and every risk assigned by said Agency such policy forms, endorsements, rates, rating plans and minimum premiums as are commensurate with the greater hazard of the risk, considering in connection therewith, the experience, physical or other conditions of such risk. In promulgating a rate or rates for any risk or risks assigned by said Agency the Board shall give due consideration to an appropriate allowable for losses, claims expense, audit expenses, taxes, general administration expense, acquisition expense, inspection expense, an allowance for profit and contingencies, and any other relevant factors in connection with insuring and servicing such risk or risks. The Board shall promulgate a special form of All States Endorsement, in keeping with the purposes of this subchapter, which may be used in connection with any risk insured by the Agency and shall establish premiums for the use of such endorsement.

(h) Any company or association may make and enforce reasonable rules for the prevention of injuries to employees of its policyholders or applicants for insurance under the Workers' Compensation Act. For this purpose, representatives of any such company or association, and representatives of the Board, shall be granted free access to the premises of each such policyholder or applicant during regular working hours. Failure or refusal by any such policyholder or applicant to comply with any such reasonable rule for the prevention of injuries as shall be prescribed by the Agency, together with such other relevant factors, shall determine the issue of whether said policyholder or applicant in good faith is entitled to such insurance. Any policyholder or applicant aggrieved by any such rule for the prevention of injuries may, within thirty (30) days after notice of such rule, petition the Board for a review, and the Board, upon a hearing held after notice and in conformity with Article 5.65 of this Code, shall affirm, modify or annul such rule.

[Amended by Acts 1975, 64th Leg., p. 1164, ch. 436, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 154, ch. 77, § 3, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 912, ch. 328, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2395, ch. 602, § 1, eff. Jan. 1, 1982.]

[1] Civil Statutes, Art. 8306 et seq.
[2] 33 U.S.C.A. § 901 et seq.
[3] 30 U.S.C.A. § 801 et seq.

Section 2 of the 1975 amendatory act provided:

"As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing, or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the Board, or of the association, or of any other person shall be in any way affected by any of the amendments herein made to the original law hereby amended, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments hereby adopted had never been made."

Section 3 of Acts 1981, 67th Leg., p. 2395, ch. 602, provides:

"As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the board, or of the association, or of any other person shall be in any way affected by any of the amendments or repeals herein made to the original law hereby amended or repealed, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments or repeals hereby adopted had never been made, and to that end it is hereby declared that as respects such injuries occurring prior to the effective date of this Act, said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties, and authority; and further this Act insofar as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment."

SUBCHAPTER J. PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS, PODIATRISTS, AND HOSPITALS

Art. 5.82. Repealed by Acts 1977, 65th Leg., p. 2064, ch. 817, § 41.03, eff. Aug. 29, 1977

The repealed article, relating to professional liability insurance for physicians, podiatrists, and hospitals, was added by Acts 1975, 65th Leg., p. 864, ch. 330, § 1.

See, now, art. 5.15–1.

SUBCHAPTER K. POLICY FORMS AND ENDORSEMENTS FOR CERTAIN AIRCRAFT

Art. 5.90. Policy Forms and Endorsements

When the State Board of Insurance finds that a public need exists for the regulation of aircraft hull

and aircraft liability insurance, it may, by board order, require all insurers issuing any form of aircraft hull and aircraft liability insurance in Texas to file with the board all policy forms and endorsements used by each insurer in the writing of such insurance. The board may disapprove the use of any form or endorsement so filed and no insurer may thereafter use such disapproved form or endorsement. Any contract or agreement not written into the application, if any, or policy shall be void and of no effect and in violation of the provisions of this subchapter and shall be sufficient cause for revocation of license of the insurer to write aircraft insurance within this state.

[Added by Acts 1977, 65th Leg., p. 1455, ch. 593, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1070, ch. 501, § 1, eff. June 7, 1979.]

Art. 5.91. Maintenance Tax

The State of Texas shall assess and collect not exceeding an additional two-fifths of one percent of the gross premiums on all classes of insurance covered by this subchapter, of all insurers writing such insurance in this state, according to the reports made to the State Board of Insurance as required by law. Said taxes when collected shall be deposited with the state treasurer to the credit of a special fund to be designated as the aircraft insurance fund, which fund shall be kept separate and apart from all other funds and money in his or her hands, to be used for the sole purpose of administering this subchapter; and to be expended only on warrants issued by the comptroller upon vouchers drawn by the State Board of Insurance, such vouchers to be accompanied by itemized sworn statements of the expenditures, and to be in addition to all taxes now imposed, or which may hereafter be imposed, not in conflict with this article of this subchapter. Should there be an unexpended balance at the end of any year in said fund, the board shall reduce the assessment for the succeeding year so that the amount produced and paid into the treasury will not exceed the amount necessary for the current year to pay all expenses of maintaining the division of the State Board of Insurance administering this subchapter.

[Added by Acts 1977, 65th Leg., p. 1455, ch. 593, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1070, ch. 501, § 1, eff. June 7, 1979.]

Art. 5.92. Rules

When the State Board of Insurance acts under Article 5.90, it shall have authority to make any rules that are necessary to carry out the provisions of this subchapter.

[Added by Acts 1977, 65th Leg., p. 1455, ch. 593, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1070, ch. 501, § 1, eff. June 7, 1979.]

CHAPTER SIX. FIRE AND MARINE COMPANIES

Article

6.01–A. Reserving Home Warranty Insurance.

Art. 6.01–A. Reserving Home Warranty Insurance

Sec. 1. Every company writing home warranty insurance in Texas shall maintain reinsurance or unearned premium reserves on all policies in force.

Sec. 2. The reserves on home warranty insurance shall be computed in the same manner and to the same extent as fire insurance is reserved in accordance with Article 6.01 of this Code.

[Added by Acts 1975, 64th Leg., p. 56, ch. 32, § 2, eff. April 3, 1975.]

CHAPTER NINE. TEXAS TITLE INSURANCE ACT

Article

9.48. Title Insurance Guaranty.
9.49. Insured Closing.
9.50. Home Solicitation Transactions Act as Consumer Protection Law.
9.51. Title Insurance Agents Right to Surrender License.
9.52. Escrow Officer's Right to Surrender License.
9.53. Uniform Closing and Settlement Statements.
9.54. Advance Disclosure of Settlement Costs Involving Residential Property.
9.55. Requirement for Issuance of Owners and Mortgagee Title Policies in Connection With Residential Property.
9.56. Creation and Operation of Attorney's Title Insurance Company.

Art. 9.01. Short Title and Legislative Purpose and Intent

A. This Act shall be known and may be cited as the "Texas Title Insurance Act."

B. The Legislature of the State of Texas finds that the business of title insurance, both the direct issuance of policies and the reinsurance of any assumed risks, of every type, shall in all respects be totally regulated by the State of Texas so as to provide for the protection of every consumer and purchaser of a title insurance policy. It is the express legislative intent that this Chapter 9 accomplish such a result.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 1, eff. Sept. 1, 1975.]

Art. 9.02. Definitions

(a) "Title Insurance" means insuring, guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, or defects in the title to said property, and the invalidity of liens thereon, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(b) The "business of title insurance" shall be deemed to be (1) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance; (2) the transacting or proposing to transact, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting

matters subsequent to the execution of the contract and arising out of it, including reinsurance; or (3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(c) "Title Insurance Company" means any domestic company organized under the provisions of this Act for the purpose of insuring titles to real property, any title insurance company organized under the laws of another state or foreign government meeting the requirements of this Act and holding a certificate of authority to transact business in Texas and any domestic or foreign company having a certificate of authority to insure titles to real estate within this state and which meet the requirements of this Act.

(d) "Commissioner" means the Commissioner of Insurance of the State of Texas.

(e) "Board" means the State Board of Insurance of the State of Texas.

(f) "Title Insurance Agent" means a person, firm, association, or corporation owning or leasing and controlling an abstract plant as defined by the Board, or as a participant in a bona fide joint abstract plant operation as defined by the Board, and authorized in writing by a title insurance company to solicit insurance and collect premiums and to issue or countersign policies in its behalf.

(g) "Escrow Officer" means an officer or employee of a title insurance agent whose duties include any or all of the following: (1) countersigning title insurance policies, commitments and binders; or (2) supervising the preparation and delivery of title insurance policies, commitments and binders; or (3) receiving, handling, or disbursing escrow funds; provided that no clerical employees who perform any of the above duties under the direction and control of an escrow officer shall be included in this definition.

(h) "Foreign Title Insurance Company" means a title insurance company organized under the laws of any jurisdiction other than the State of Texas.

(i) "Abstract plant" as used herein shall mean a geographical abstract plant such as is defined by the Board from time to time and the Board, in defining an abstract plant, shall require a geographically arranged plant, currently kept to date, that is found by the Board to be adequate for use in insuring titles, so as to provide for the safety and protection of the policyholders.

(j) "Residential real property" means any real property which has improvements thereon and is designed principally for the occupancy of from one to four families (including individual units of condominiums and cooperatives).

(k) "Thing of value" includes any payment, advance, funds, loan, service, or other consideration.

(*l*) "Person" includes individuals, corporations, associations, partnerships and trusts.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 2, eff. Sept. 1, 1975.]

Art. 9.06. Capital Stock and Surplus Required

Except as provided by Article 9.56, Section 4A of this Chapter 9, all title insurance companies created and operating under the provisions of this Chapter must have a paid up capital of not less than One Million Dollars ($1,000,000) and a surplus of not less than Four Hundred Thousand Dollars ($400,000), provided, however, that the minimum unimpaired capital and surplus for a corporation which was authorized to transact title insurance business on the effective date of this Chapter and which on that date had an unimpaired capital of less than One Million Dollars ($1,000,000) and a surplus of less than Four Hundred Thousand Dollars ($400,000) shall be as follows:

(a) Two Hundred Fifty Thousand Dollars ($250,000) capital and One Hundred Thousand Dollars ($100,000) surplus until July 1, 1976;

(b) From July 1, 1976, to July 1, 1977, Five Hundred Twenty-Five Thousand Dollars ($525,000) capital and One Hundred Sixty Thousand Dollars ($160,000) surplus;

(c) From July 1, 1977, to July 1, 1978, Six Hundred Fifty Thousand Dollars ($650,000) capital and Two Hundred Twenty Thousand Dollars ($220,000) surplus;

(d) From July 1, 1978, to July 1, 1979, Seven Hundred Seventy-Five Thousand Dollars ($775,000) capital and Two Hundred Eighty Thousand Dollars ($280,000) surplus;

(e) From July 1, 1979, to July 1, 1980, Nine Hundred Thousand Dollars ($900,000) capital and Three Hundred Forty Thousand Dollars ($340,000) surplus; and

(f) After July 1, 1980, every such corporation shall be required to have and maintain unimpaired capital of not less than One Million Dollars ($1,000,000) and surplus of not less than Four Hundred Thousand Dollars ($400,000) as otherwise required by this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 3, eff. Sept. 1, 1975.]

Art. 9.07. Policy Forms and Premiums

Corporations organized under this Chapter, as well as foreign corporations and those created under Subdivision 57, Article 1302, of the Revised Civil Statutes of 1925, or under Chapter 8 of this Code, or any other law insofar as the business of either may be the business of title insurance, shall operate in Texas under the control and supervision and under such uniform rules and regulations as to forms of policies and underwriting contracts and premiums therefor, and such underwriting standards and practices as may be from time to time prescribed by the Board; and no Texas or foreign corporation, whether incorporated under this Chapter or any other law of the State of Texas, shall be permitted to issue any title policy of any character, or underwriting contract, or reinsure any portion of the risk assumed by any title

policy, on Texas real property other than under this Chapter under such rules and regulations. No policy of title insurance, reinsurance of any risk assumed under any policy of title insurance, or any guarantee of any character on Texas titles shall be issued or valid unless written by a corporation complying with all provisions of and authorized or qualified under this Chapter, except as is provided in Article 9.19D. Before any premium rate provided for herein shall be fixed or charged, reasonable notice shall issue, and a hearing afforded to the title insurance companies and title insurance agents authorized or qualified under this Chapter and the public. Under no circumstances may any title insurance company or title insurance agent use any form which is required under the provisions of this Chapter 9 to be promulgated or approved until the same shall have been so promulgated or approved by the Board.

The Board shall have the duty to fix and promulgate the premium rates to be charged by title insurance companies and title insurance agents created or operating under this Chapter for policies of title insurance or other promulgated or approved forms, and the premiums therefor shall be paid in the due and ordinary course of business. Premium rates for reinsurance as between title insurance companies qualified under this Chapter shall not be fixed or promulgated by the Board, and title insurance companies may set such premium rates for reinsurance as such title insurance companies shall agree upon. Under no circumstance shall any premium be charged for any policy of title insurance or other promulgated or approved forms different from those fixed and promulgated by the Board, except for premiums charged for reinsurance. The premium rates fixed by the Board shall be reasonable to the public and nonconfiscatory as to the title insurance companies and title insurance agents. For the purpose of collecting data on which to determine the proper rates to be fixed, the Board shall require all title insurance companies and all title insurance agents operating in Texas to submit such information in such form as it may deem proper, all information as to loss experience, expense of operation, and other material matter for the Board's consideration.

The Board shall hold an annual hearing during November of each calendar year, commencing in 1975, to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any title insurance company, any title insurance agent, any member of the public, or as the Board may determine necessary to consider. Proper notice of such public hearing and the items to be considered shall be made to the public and shall be sent direct to all title insurance companies and title insurance agents qualified or authorized to do business under this Chapter for at least four (4) weeks in advance of such hearing.

Premium rates when once fixed shall not be changed until after a public hearing shall be had by the Board, after proper notice sent direct to all title insurance companies and title insurance agents qualified or authorized to do business under this Chapter, and after public notice in such manner as to give fair publicity thereto for at least four (4) weeks in advance. The Board must call such additional hearing to consider premium rate changes at the request of a title insurance company.

The Board may, on its own motion, following notice as required for the annual hearing hold at any time a public hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as the Board shall determine necessary or proper.

Any title insurance company, any title insurance agent, or other person interested, feeling injured by any action of the Board with regard to premium rates or other action taken by the Board, shall have the right to file a suit in the District Court of Travis County, within thirty (30) days after the Board has made such order, to review the action. Such cases shall be tried de novo in the District Court in accordance with the provisions of Article 21.44 of the Insurance Code and shall be governed by the same rules of evidence and procedure as other civil cases in said court; in which suit the court may enter a judgment setting aside the Board's order, or affirming, the action of the Board.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 4, eff. Sept. 1, 1975.]

Art. 9.09. Prohibiting Transacting of Other Kinds of Insurance by Title Insurance Companies or the Transacting of Title Insurance by Other Types of Insurance Companies

Corporations, domestic or foreign, operating under this Chapter shall not transact, underwrite or issue any kind of insurance other than title insurance on real property; nor shall title insurance be transacted, underwritten or issued by any company transacting any other kinds of insurance; provided, however, that the above prohibitions shall not apply as to any corporation, domestic or foreign, which on October 1, 1967 was transacting, underwriting and issuing within the State of Texas title insurance and any other kind of insurance. Any corporation now organized and doing business under the provisions of Chapter 8 and actively writing title insurance shall be subject to all the provisions of this Chapter except Article 9.18 relating to investments.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 5, eff. Sept. 1, 1975.]

Art. 9.11. Revocation of Right to Do Business

Any foreign or domestic corporations issuing any form of title insurance policy or other promulgated or approved forms, or charging any premium rates on an owner, mortgagee, or other title insurance

policy, or on other promulgated or approved forms, except for the premium rates charged for reinsurance, on Texas real property other than forms and premium rates prescribed by the Board, under the provisions of this Chapter shall forfeit its right to do business in this state. The provisions of this Article 9.11 shall not, however, be applicable to premium rates charged in connection with reinsurance transactions between or among title insurance companies doing business under the provisions of this Chapter, provided any such reinsurance contract complies with the provisions of Article 9.19 of this Chapter.
[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 6, eff. Sept. 1, 1975.]

Art. 9.13. Fees

The general laws applicable to payment of filing fees of corporations having capital stock are hereby made applicable to corporations coming under the provisions of this Chapter.
[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 7, eff. Sept. 1, 1975.]

Art. 9.14. Charter and Amendments

The original charter of corporations doing the business of title insurance and incorporated under the provisions of this Chapter, or under Subdivision 57, Article 1302, Revised Civil Statutes of 1925, or under Article 1302a, Texas Civil Statutes (Acts 1929, 41st Legislature, page 383, Chapter 245, Section 1) or under any other law regardless of the nature of such amendment, shall be certified only to and filed only with the Board, and only the Board shall collect from the said companies filing fees required under the law. All other laws or parts of laws, to the extent that the same are in conflict with the provisions of this Article, shall not hereafter apply to such corporations.
[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 8, eff. Sept. 1, 1975.]

Art. 9.15. Certificate of Authority

The Board after having satisfied itself by such investigation as it may deem proper with reference to the payment of capital stock and surplus as required by this Chapter 9, and the value of the assets offered in payment thereof (the expense of which examination shall be borne by the title insurance company), shall issue to such title insurance company a certificate of authority to transact the characters of business provided for in this Chapter on either an annual or a continuing basis. No title insurance company, domestic or foreign, shall transact business under this Chapter unless it shall hold a valid certificate of authority.
[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 9, eff. Sept. 1, 1975.]

Art. 9.19. Maximum Liability

A. No title insurance company operating under the provisions of this Chapter shall issue any policy of title insurance on any real property located within the State of Texas involving a potential liability by virtue of such policy of more than fifty (50%) percent of the capital stock and surplus as stated in the most recent annual statement of the company unless the excess shall in due course be reinsured in some other title insurance company authorized to do business in Texas under this Chapter. Each title insurance company authorized to do business under the provisions of this Chapter may reinsure any or all of its policies and contracts issued on real property situated within the State of Texas, provided:

(i) the reinsuring title insurance company shall be licensed to do business in the State of Texas under the provisions of this Chapter; and

(ii) the form of the reinsurance contract shall be approved in advance by the Board.

B. If the Board has first approved one or more forms of reinsurance contracts for a title insurance company, such title insurance company may thereafter continue using such form or forms without submitting individual reinsurance contracts to the Board. Authority is reserved to the Board, however, to alter the required form so previously approved by it after first giving written notice to the title insurance company or title insurance companies affected by such required change.

C. No title insurance company authorized to do business in Texas under the provisions of this Chapter may accept reinsurance risks on real property situated within the State of Texas except from other title insurance companies holding a certificate of authority to do business in the State of Texas under the provisions of this Chapter.

D. The Board may, however, upon application and hearing permit any title insurance company licensed to do business in this State under this Chapter to acquire reinsurance upon an individual policy or facultative basis from title insurance companies not licensed to do business in this State, provided:

(i) any such non-admitted foreign title insurance company has a combined capital and surplus of at least $1,400,000 evidenced by its annual statement last preceding the acceptance of such reinsurance; and

(ii) any such title insurance company so authorized to do business under this Chapter has exhausted the opportunity to acquire such reinsurance from all other title insurance companies so authorized to do business under the provisions of this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 10, eff. Sept. 1, 1975.]

Art. 9.25. Capital and Surplus Required; Foreign Corporations

No foreign corporation shall conduct the business of title insurance in this state unless it shall show from its financial statement and such other examination as the Board may desire to make, an unim-

paired capital of not less than One Million Dollars ($1,000,000.00) and surplus of not less than Four Hundred Thousand Dollars ($400,000.00), provided, however, that the minimum unimpaired capital and surplus requirements for a foreign corporation operating under a certificate of authority on the effective date of this Chapter, which corporation on such date had an unimpaired capital of less than One Million Dollars ($1,000,000.00) and surplus of less than Four Hundred Thousand Dollars ($400,000.00) shall be as follows:

(a) Two Hundred Fifty Thousand Dollars ($250,000.00) capital and One Hundred Thousand Dollars ($100,000.00) surplus until July 1, 1976;

(b) From July 1, 1976, to July 1, 1977, Five Hundred Twenty-five Thousand Dollars ($525,000.00) capital and One Hundred Sixty Thousand Dollars ($160,000.00) surplus;

(c) From July 1, 1977, to July 1, 1978, Six Hundred Fifty Thousand Dollars ($650,000.00) capital and Two Hundred Twenty Thousand Dollars ($220,000.00) surplus;

(d) From July 1, 1978, to July 1, 1979, Seven Hundred Seventy-five Thousand Dollars ($775,000.00) capital and Two Hundred Eighty Thousand Dollars ($280,000.00) surplus;

(e) From July 1, 1979, to July 1, 1980, Nine Hundred Thousand Dollars ($900,000.00) capital and Three Hundred Forty Thousand Dollars ($340,000.00) surplus; and

(f) After July 1, 1980, every such corporation shall be required to have and maintain unimpaired capital of not less than One Million Dollars ($1,000,000.00) and surplus of not less than Four Hundred Thousand Dollars ($400,000.00) as otherwise required by this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 11, eff. Sept. 1, 1975.]

Art. 9.30. Rebates and Discounts

A. No commission, rebate, discount, or other thing of value shall be paid, allowed or permitted by any title insurance company, domestic or foreign, or by any title insurance agent doing the business of title insurance provided for in this Chapter, relating to title policies or underwriting contracts and no portion of any premium shall be paid to any person for soliciting or referring title insurance business; provided this Article 9.30 shall not prevent any title insurance company, domestic or foreign, doing business under this Chapter, from appointing as its title insurance agent in any county any person, firm, or corporation owning and operating an abstract plant of such county as its title insurance agent and making such arrangements for division of premiums as may be approved by the Board.

B. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement or closing in connection with a transaction involving the conveyance or mortgaging of real estate located in the State of Texas other than for services actually performed.

C. Nothing in this Article 9.30 shall, however, be construed as prohibiting (a) the payment of a fee to attorneys at law for services actually rendered or (b) the payment to any person of a bona fide salary, compensation or other payment for goods or facilities actually furnished or for services actually performed.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 12, eff. Sept. 1, 1975.]

Art. 9.40. Right of Title Insurance Company to Examine Agent's Trust Fund Accounts and to Require Reports

Any title insurance company may at such time or times as it sees fit, through its examiners or auditors or through independent certified public accountants commissioned by it, examine the trust fund accounts and records pertaining thereto of any of its title insurance agents, such examination to be made at the expense of the title insurance company; or the title insurance company may require special reports from any such agent regarding any of its transactions. Each title insurance company shall periodically, but at least every two years, audit the unused forms in the possession of each of its title insurance agents so as to determine that all used forms have been reported to the title insurance company. A report of each such audit shall be made to the State Board of Insurance.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 22, eff. Sept. 1, 1975.]

Art. 9.36. Agent's License: Application, Issuance, Renewal, and Cancellation

A. Before an initial license is issued to any person, firm, association or corporation to act as agent within the State of Texas for any title insurance company, there shall first be filed by the title insurance company with the Board an application for agent's license, on forms to be provided by the Board, accompanied by a license fee of Twenty-Five Dollars ($25), which fee including license renewal fees shall be paid into the state treasury to the credit of the title insurance fund to be used by the State Board of Insurance to enforce the provisions of this article and all laws of this state governing and regulating title agents for such insurance companies. On initial application if an applicant fails to qualify for, or is refused a license, the license fee shall be refunded. The application shall be signed and duly sworn to by the title insurance company and the proposed agent. Such application shall contain the following:

(1) That the proposed agent, if an individual, is a bona fide resident of Texas; or if a firm or association, that it is composed wholly of Texas residents; or if a corporation, that it is a Texas

corporation or a foreign corporation which has been authorized to do business in Texas; and

(2) That the proposed agent (and if a corporation, its managerial personnel) has reasonable experience or instruction in the field of title insurance; and

(3) That the proposed agent is known to the title insurance company to have a good business reputation and is worthy of the public trust and said title insurance company knows of no fact or condition which would disqualify him from receiving a license; and

(4) That the proposed agent qualified as a title insurance agent as defined in this Act.

The Board shall grant such license if it determines from the application and its own investigation that the foregoing requirements have been met.

B. On or before the first day of June of each year, every title insurance company, domestic or foreign, operating under the provisions of this Act, shall certify to the Board, on forms provided by the Board, the names and addresses of every title insurance agent of said company within the state whose license is to be renewed, and shall apply for and pay a license renewal fee of Twenty-Five Dollars ($25) for a license in the name of each such agent included in said list; if any such company shall terminate any licensed agent, it shall immediately notify the Board in writing of such act and request cancellation of such license, notifying the agent of such action. No such title insurance company shall permit any agent appointed by it to write, sign, or deliver title insurance within the state until the foregoing conditions have been complied with, and the Board has granted said license. The Board shall deliver such license to the title insurance company for transmittal to the Agent.

A license shall continue in force until the second June first following its issuance, unless previously cancelled; provided, however, that if any title insurance company surrenders or has its certificate of authority revoked by the Board, all existing licenses of its title insurance agents shall automatically terminate without notice.

Any title insurance agent may be licensed to represent one or more such title insurance companies, with a separate license granted for each.

The Board shall keep a record of the names and addresses of all licensed agents in such manner that the agents appointed by any company authorized to transact title insurance business within the State of Texas may be conveniently ascertained and inspected by any person upon request.

C. A licensed title insurance agent may be licensed to represent additional title insurance companies upon application by such additional title insurance company for agent's license, on forms to be provided by the Board, and upon payment of a license fee. The application shall be signed and duly sworn to by such additional title insurance company. Such application shall contain the following:

(1) That the proposed agent, if an individual, is a bona fide resident of Texas; or if a firm or association, that it is composed wholly of Texas residents; or if a corporation, that it is a Texas corporation or a foreign corporation which has been authorized to do business in Texas; and

(2) That the proposed agent (and if a corporation, its managerial personnel) has reasonable experience or instruction in the field of title insurance; and

(3) That the proposed agent is known to the title insurance company to have a good business reputation and is worthy of the public trust and said title insurance company knows of no fact or condition which would disqualify him from receiving a license; and

(4) That the proposed agent qualified as a title insurance agent as defined in this Act; and

(5) That the proposed agent is currently licensed by a title insurance company.

D. If a title insurance company terminates its contract with a title insurance agent or gives notice of termination to the title insurance agent, then any such agent may, within thirty (30) days after either occurrence apply to the Board for continuation of his license with an amendment thereto showing the name of another title insurance company for whom he is or will be authorized to act.

[Amended by Acts 1979, 66th Leg., p. 1890, ch. 765, § 1, eff. Aug. 27, 1979.]

Art. 9.37. Agent's Licenses: Surrender, Forfeiture; Grounds for Revocation; Notice, Hearing and Appeal

[See Compact Edition, Volume 2 for text of A to D]

E. If the Board shall refuse an application for any license provided for in this Act, or shall suspend, revoke or refuse to renew any such license at said hearing, then any such applicant or licensee, and any title insurance company or companies concerned, may appeal from said order by filing suit against the Board as defendant in any of the District Courts of Travis County, Texas, and not elsewhere, within twenty (20) days from the date of the order of said Board. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Any party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

[Amended by Acts 1981, 67th Leg., p. 2638, ch. 707, § 4 (24) eff. Aug. 31, 1981.]

Art. 9.39. Annual Audit

Every title insurance agent shall have an annual audit, at its or his expense, made of trust fund accounts, and within ninety (90) days from the termination of its fiscal year, shall send by certified mail, postage prepaid, to the Board one copy of such audit report with a letter of transmittal, and each such agent, shall also send a copy of such letter of transmittal and audit report to every title insurance company which it represents.

Every title insurance company shall have an annual audit, at its expense, made of trust fund accounts for each county in which it operates in its own name and within ninety (90) days from the termination of its fiscal year shall send by certified mail, postage prepaid, to the Board one copy of such audit report.

The Board shall promulgate regulations setting forth the standards of audit and the form of audit report required.

Said audit shall be made by an independent certified public accountant or licensed public accountant, or a firm composed of either.

Each title insurance company shall examine and analyze the audit report furnished by each of its agents, and shall within three (3) months of receipt of same report to the Board on forms to be furnished by the Board the findings and results of its examination and analysis of such audit report. If a title insurance company fails to receive an audit report from any of its agents within the time specified above, it shall forthwith report such omission to the Board.

All such reports and analyses furnished by the title insurance company to the Board shall, at the election of the Commissioner, be classed as confidential and privileged after having been filed with the Board.

If any agent or title insurance company shall fail or refuse to furnish an audit report within the time required, or shall furnish an audit report which reveals any shortage or other irregularity, or any practice not in keeping with sound, honest business practices, the Board may, after notice to the agent or each title insurance company involved and after a hearing at which the agent or title insurance company may offer evidence explaining or excusing such omissions or irregularity, revoke the license of such agent or revoke the certificate of authority of such title insurance company.

Any agent or title insurance company feeling aggrieved by any action of the Board hereunder shall have the right to file a suit in the District Court of Travis County in the time and manner provided in Article 9.37.

[Amended by Acts 1979, 66th Leg., p. 1891, ch. 765, § 2, eff. Aug. 27, 1979.]

Art. 9.42. List of Escrow Officers Must Be Filed

Every title insurance agent licensed and operating under the provisions of this Act shall on or before the first day of June of each year, certify to the Board on forms provided by the Board the names and addresses of every person employed by it to serve in the capacity of escrow officer within the state, whose license is to be renewed, and shall apply for and pay a license renewal fee of Twenty-Five Dollars ($25) for each person included in said list. If it shall terminate any licensed escrow officer, it shall immediately notify the Board in writing of such act and request cancellation of the license, notifying such escrow officer of such action. No agent shall permit any person to act as escrow officer within the state until the foregoing conditions have been complied with, and the Board has granted the said license.

A license shall continue in force until the second June first following its issuance, unless previously cancelled. Provided, however, that if any title insurance agent surrenders all its licenses, or has all its licenses revoked by the Board, all existing licenses of its escrow officers shall automatically terminate without notice.

The Board shall keep a record of the names and addresses of all escrow officers licensed by it in such manner that the escrow officers employed by any title insurance agent within the state may be conveniently determined.

[Amended by Acts 1979, 66th Leg., p. 1892, ch. 765, § 3, eff. Aug. 27, 1979.]

Art. 9.43. Application for Escrow Officer's License

A. Before an initial license is issued to any person to act as escrow officer within the State of Texas for any title insurance agent, there shall be first filed by such title insurance agent with the Board an application for an escrow officer's license on forms provided by the Board, accompanied by a license fee of Twenty-Five Dollars ($25), which fees including license renewal fees under Article 9.42 shall be paid into the state treasury to the credit of the title insurance fund to be used by the State Board of Insurance to enforce the provisions of this article and all laws of this state governing and regulating escrow officers for such title insurance agents. In the event an applicant fails to qualify for, or is refused a license, the license fee shall be refunded. The application shall be signed and duly sworn to by such title insurance agent and by the proposed escrow officer.

B. Such application shall contain the following:

(1) that the proposed escrow officer is a natural person and a bona fide resident of the State of Texas;

(2) that the proposed escrow officer has reasonable experience or instruction in the field of title insurance;

(3) that the proposed escrow officer is known to the agent to have a good business reputation and is worthy of the public trust and the agent knows of no fact or condition which would disqualify him from receiving a license;

(4) that the proposed escrow officer qualifies as an escrow officer as defined in this Act.

The Board shall grant such license, if it determines from the application and its own investigation that the foregoing requirements have been met.
[Amended by Acts 1979, 66th Leg., p. 1893, ch. 765, § 4, eff. Aug. 27, 1979.]

Art. 9.44. Annual License of Escrow Officers; Surrender and Cancellation

[See Compact Edition, Volume 2 for text of A to D]

E. If the Board shall refuse an application for any license provided for in this Article, or shall suspend, revoke or refuse to renew any such license at said hearing, then any such applicant may appeal from said order by filing suit against the Board as defendant in any of the District Courts of Travis County, Texas, and not elsewhere, within twenty (20) days from the date of the order of said Board. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.
[Amended by Acts 1981, 67th Leg., p. 2638, ch. 707, § 4(25), eff. Aug. 31, 1981.]

Art. 9.48. Title Insurance Guaranty

Title

Sec. 1. This article shall be known and may be cited as the "Texas Title Insurance Guaranty Act."

Purpose

Sec. 2. This article is for the purposes and findings set forth in Section 1 of Article 21.28–A of the Insurance Code and in supplementation thereto by providing funds in addition to assets of impaired insurers for the protection of the holders of "covered claims" as defined herein through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise.

Scope

Sec. 3. This article shall apply only to all title insurance (direct and reinsurance) written by title insurance companies authorized to do business in this state and doing business under and regulated by the provisions of this Chapter 9.

Construction

Sec. 4. This article shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

Definitions

Sec. 5. As used in this article

(1) A. "State Board of Insurance" is the State Board of Insurance of this State.

B. "Commissioner" is the Commissioner of Insurance of this State.

(2) "Covered claim" is an unpaid claim of an insured which arises out of and is within the coverage and not in excess of the applicable limits of a title insurance policy to which this article applies, issued or assumed (whereby an assumption certificate is issued) by an insurer licensed to do business in this state and covered by this article, if such insurer becomes an "impaired insurer" after the effective date of this article and the insured real property (or lien thereon) is located within this state. Individual "covered claims" shall be limited to $100,000 and shall not include any amount in excess of $100,000. "Covered claim" shall also include any sum up to $100,000 for which any insurer is liable in connection with the fidelity or solvency of any title insurance agent of such insurer as authorized by Article 9.49 of this chapter of this code. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys' fees and expenses, court costs, interest, and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this article.

(3) "Insurer" is any title insurance company authorized to do business in this state, and doing business under and regulated by the provisions of this Chapter 9.

(4) "Impaired insurer" is (a) an insurer which, after the effective date of this article, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and which has been designated an "impaired insurer" by the commissioner; or (b) after the effective date of this article, an insurer placed in conservatorship after it has been deemed by the commissioner to be insolvent and which has been designated an "impaired insurer" by the commissioner.

(5) "Payment of covered claims" is actual payment of claims and also is the utilization of funds of the impaired insurer and funds derived from assessments for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities arising from covered claims.

(6) "Net direct written premiums" is the gross amount of premiums paid by policyholders for issuance of policies of title insurance insuring risks located in this state and to which this article applies. The term does not include premiums for reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for reinsurance ceded to other insurers.

Assessments

Sec. 6. Whenever the commissioner determines that an insurer has become an impaired insurer, the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28–A or Article 9.29 of the Insurance Code shall promptly estimate the amount of additional funds needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. Thereafter, the commissioner shall be empowered to make such assessments as may be necessary to produce the additional funds needed to make payment of all covered claims. The commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer.

The commissioner shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas. Assessments during a calendar year may be made up to, but not in excess of, two percent of each insurer's net direct written premium for the preceding calendar year. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next successive calendar years.

Insurers designated as impaired insurers by the commissioner shall be exempt from assessment from and after the date of such designation and until the commissioner determines that such insurer is no longer an impaired insurer.

The commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the conservator or receiver, as the case may be, within 30 days after the commissioner gives notice of the assessment, and assessments may be collected by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.

Funds derived from assessments under the provisions of this article shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

No insurer shall be deemed or considered to have or incur any liability, real or contingent, under the provisions of this Article 9.48 of this Chapter 9 until any such assessment shall have been actually made in writing by the commissioner under the provisions of this Article 9.48.

Penalty for Failure to Pay Assessments

Sec. 7. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due.

Any insurer whose certificate or authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

Accounting for and Repayment of Assessments

Sec. 8. Upon receipt from an insurer of payment of an assessment or partial assessment, the receiver or conservator shall provide the insurer with a participation receipt which shall create a liability against the impaired insurer, and the holder of such participation receipt shall be regarded as a general creditor of the impaired insurer; provided, however, that with reference to the remaining balance of any portions of assessments received by the receiver or conservator and not expended in payment of "covered claims," the holders of such participation receipts shall have preference over other general creditors and shall share pro rata with other holders of participation receipts. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from assessments or partial assessments and shall make a final report of the expenditure and use of such funds to the commissioner, which final report shall set forth the remaining balance, if any, from the funds collected by assessment. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the commissioner. Upon completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund pro rata the remaining balance of such assessments to the holders of the participation receipts.

Payment of Covered Claims

Sec. 9. When an insurer has been designated by the commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constituted reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this article. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from assessments in the payment of claims, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from assessments. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this article.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from assessments for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. The commissioner shall not require the insurer that reinsures or assumes the policies of the impaired insurer or enters into an agreement to substitute itself in the place of the impaired insurer, to issue assumption certificates or other written evidence of such agreement to the policyholders of the impaired insurer, except to policyholders that have made a claim for loss arising under their policy (issued by the impaired insurer) before the date of such reinsurance, assumption or substitution agreement. The commissioner shall require that the reinsurance, assumption, or substitution agreement be filed as a public record with the State Board of Insurance. The commissioner shall approve such agreement unless, after public hearing held within 30 days following such filing, he determines that such agreement does not effectively protect the policyholders of the insurers to give notice of such hearing to its policyholders. Such notice shall be by publication, not less than seven days in advance of the hearing, in a newspaper of general circulation printed in the State of Texas. No cause of action shall lie against the impaired insurer for breach of contract or refund of premium after the agreement has been approved by the commissioner and the notice of hearing before the commissioner shall so advise the policyholders of the impaired insurer.

This article shall not be construed to impose restriction or limitation upon the authority granted or authorized the commissioner, the conservator, or the receiver elsewhere in the Insurance Code and other statutes of this state but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

Approval of Covered Claims

Sec. 10. Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further that in ancillary receiverships in this state, funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this state. Such funds received from assessments shall not be liable for any amount over and above that approved by the receiver for a covered claim, and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.

If a conservator is appointed to handle the affairs of an impaired insurer, the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption, or substitution. Upon determination by the conservator that actual payment of covered claims should be made, the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than 90 days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from assessments shall be liable only for the

difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a title insurance policy issued or assumed by such insurer shall, if such cause of action meets the definition of "covered claim," have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be contingent, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising from the same title insurance policy shall be no greater than its total liability would be were it not in liquidation, rehabilitation, or conservation. In the proceedings of considering "covered claims," no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution. Such assignment to the impaired insurer may be assigned to the insurer executing such reinsurance, assumption or substitution agreement.

Release From Conservatorship or Receivership

Sec. 11. An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this article shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid pro rata in full to each holder of a participation receipt the assessment amount paid by the receipt holder or its assigns; provided, however, the commissioner may, upon application of the advisory association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of assessments. The commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan. The commissioner shall give 10 days notice of such hearing to the insurers to whom the participation receipts were issued for an assessment made for the benefit of the released insurer, and the holders of the receipts shall be entitled to appear at and participate in such hearing.

Creation of Advisory Association

Sec. 12. There is created by this article an advisory association to be known as the "Texas Title Insurance Advisory Association", herein called the "advisory association", to be composed of four insurers. Within 30 days after the effective date of this article, the State Board of Insurance shall appoint the insurers who will serve as the initial advisory association. Of the initial advisory association members, one shall be appointed to serve for a one-year term of office, one shall be appointed to serve for a two-year term of office, one shall be appointed to serve for a three-year term of office, and one shall be appointed to serve a four-year term of office. Subsequent members of the advisory association shall serve for the term of office as stated above and shall be elected by insurers, subject to the approval by the commissioner.

The initial members of the advisory association and subsequent members shall be chosen to afford fair representation to all insurers subject to this article, giving due consideration to geographical location and segments of the industry represented in Texas. Vacancies on the advisory association shall be filled for the remaining period of the term in the same manner as the initial appointments.

The advisory association shall conduct its meetings in Austin, Texas, in the Insurance Building of the State of Texas. Meetings shall be held upon call by the commissioner or upon written request of a majority of the members. Meetings shall not be open to the public, and only members of the advisory association, members of the State Board of Insurance, the commissioner, and persons authorized by the commissioner shall attend such meetings.

The advisory association shall advise and counsel with the commissioner upon matters relating to the solvency of insurers. The commissioner shall call a meeting of the advisory association when he determines that an insurer is insolvent or impaired and may call a meeting of the advisory association when he determines that a danger of insolvency or impairment of an insurer exists. The advisory association shall, upon majority vote, notify the commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the advisory association any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The commissioner may summon officers, directors, and employees of an insolvent or impaired insurer, or an insurer the commissioner considers to be in danger of insolvency or impairment, to appear before the advisory association for conference or for the taking of testimony. Members of the advisory association shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Advisory association members shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, except that no bond shall be required of advisory association members.

The advisory association shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner, the liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the commissioner, liquidator, or conservator to best protect the interests of persons holding covered claims against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of covered claims.

Reports or recommendations made by the advisory association to the commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the advisory association or the advisory association for any report, individual report, recommendation or individual recommendation by the advisory association or members to the commissioner, liquidator, or conservator.

Members shall serve without pay, but their expenses in attending meetings shall be paid subject to the authorization by the legislature in its appropriations bills or otherwise, and subject to the rules of the State Board of Insurance. Members shall serve until their successors are appointed.

Any insurer that has an officer, director, or employee serving as a member of the advisory association shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for covered claims with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

The advisory association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code.

The State Board of Insurance shall within 90 days after the effective date of this article promulgate reasonable organizational rules for the association which shall set forth, among other things, quorum and attendance requirements for meetings, procedural rules to be followed at association meetings and rules concerning the replacement of members.

Recognition of Assessments in Rates and Premium Tax Offset

Sec. 13. Insurers shall be entitled to recoup assessments up to one percent of their net direct written premiums from rates promulgated, established, or approved by the State Board of Insurance in the next calendar year. The State Board of Insurance in promulgating, establishing, or approving rates shall take into account assessments and refunds of assessments made in accordance with this article and shall include in the formula forming the basis for promulgating, establishing, or approving rates sums sufficient to provide for such recoupment.

Unless the State Board of Insurance has determined that all amounts paid by each insurer on assessments on total net direct written premiums have been included in the rates and premiums as provided above, any amounts not so included shall be allowed to such insurer as a credit against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit referred to herein shall be allowed at a rate of 20 percent per year for five successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years.

Advertisement

Sec. 14. It shall be unlawful for an insurer to advertise or refer to this Act in any manner as an inducement to the purchase of title insurance.

Immunity

Sec. 15. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer subject to this article or its agents or employees, the advisory association, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this article.

Rules and Regulations

Sec. 16. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article and in augmentation thereof.

Appeals

Sec. 17. Any action or ruling of the commissioner under this article may be appealed as provided in Article 1.04 of the Insurance Code, as amended. The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.

Control Over Conflicts

Sec. 18. The provisions of this article and the powers and functions authorized by this article are to be exercised to the end that its purposes are accomplished. This article is cumulative of existing laws, but in the event of conflict between this article and any other law relating to the subject matter of this article or its application, the provisions of this article shall control.

Unconstitutional Application Prohibited

Sec. 19. This article and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.
[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 13, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2639, ch. 707, § 4(26), eff. Aug. 31, 1981.]

Art. 9.49. Insured Closing

Title insurance companies operating under the provisions of this chapter are hereby expressly authorized and empowered to issue upon request on real property transactions in this state at no charge whatever insured closing and settlement letters, in the form prescribed by the board, in connection with the closing and settlement of loans made by title insurance agents for any title insurance company operating under the provisions of this chapter. After January 1, 1976, only the form prescribed by the board shall be used thereafter in issuing such insured closing and settlement letters. The liability of the title insurance company shall not be changed or altered by the failure of the title insurance company to issue such insured closing and settlement letters as authorized by this Article 9.49.
[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 14, eff. Sept. 1, 1975.]

Art. 9.50. Home Solicitation Transactions Act as Consumer Protection Law

Chapter 246, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5069–13.01 through Article 5069–13.06, Vernon's Texas Civil Statutes), shall be deemed and considered a consumer protection law when construed in connection with any policy of title insurance issued in this state.
[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 15, eff. Sept. 1, 1975.]

Art. 9.51. Title Insurance Agents Right to Surrender License

No title insurance agent shall be permitted to surrender his license under the provisions of Article 9.37 of this Chapter 9 if, prior to the offer to surrender such license, an action shall have been commenced under the provisions of Article 9.37 by the commissioner of insurance for revocation of such person's title insurance agent's license.
[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 16, eff. Sept. 1, 1975.]

Art. 9.52. Escrow Officer's Right to Surrender License

No escrow officer shall be permitted to surrender his license under the provisions of Article 9.44 of this Chapter 9 if, prior to the offer to surrender such license, an action shall have been commenced under the provisions of Article 9.44 by the commissioner of insurance for revocation of such person's escrow agent's license.
[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 17, eff. Sept. 1, 1975.]

Art. 9.53. Uniform Closing and Settlement Statements

On or prior to January 1, 1976, the board, after notice and hearing, shall prescribe uniform settlement and closing statement forms to be used in connection with the settlement and closing of any conveyance or mortgaging of real estate in which transaction a title insurance policy is issued by any title insurance company or title insurance agent. The board is specifically authorized to establish separate forms for transactions involving improved residential real property and for all other real property transactions. The forms prescribed by the board shall be designed so that dual forms or separate forms provided for each party to the transaction identifying only the charges made to such party may be used at any settlement or closing.

Every such settlement and closing statement furnished to a party to the transaction shall state thereon the name of any person, firm, or corporation receiving any sum from such party to the settlement or closing. The title insurance company and the title insurance agent, however, shall be required to include within the closing and settlement statement only those items of disbursement as are actually disbursed by the title insurance company or the title insurance agent. If a title is examined or any closing or settlement services rendered by an attorney, other than a full-time employee of either the title insurance company or the title insurance agent, the amount of such fee (shown as included in the premium) and the name of the attorney (which may be expressed by the name of the firm, if applicable) to whom such fee was paid shall be shown thereon. Such form shall also conspicuously and clearly itemize the charges imposed upon such party in connection with the settlement and closing. If a charge for

title insurance is made to such party, the form shall state whether the title insurance premium included in such charges covers or insures the mortgagee's interest in the property, the borrower's interest, or both.

Any title insurance company or any title insurance agent may at its election use the uniform closing statement prepared under the provisions of the Real Estate Settlement Procedures Act of 1974 (Public Law 93–533) [1] in lieu of the uniform closing statement prescribed by the board.

The provisions of this Article 9.53 of this Chapter 9 shall not apply to the settlement or closing of any residential real estate transaction regulated by the provisions of the Real Estate Settlement Procedures Act of 1974 (Public Law 93–533).

The provisions of this Article 9.53 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 18, eff. Sept. 1, 1975.]

[1] 12 U.S.C.A. § 2601 et seq.

Art. 9.54. Advance Disclosure of Settlement Costs Involving Residential Property

Every title insurance company and every title insurance agent licensed to do business in Texas under the provisions of this Chapter 9 shall, in connection with the issuance of any type of title policy guaranteeing either a lien upon or the title to improved residential property, upon written request of the buyer, seller, or borrower prior to settlement and closing, furnish to any such requesting party to such transaction an itemized disclosure in writing, to the extent that the information is available, each charge to be made to such party, arising in connection with such closing and settlement, upon any standard real estate settlement and closing form developed, prescribed or authorized under Article 9.53 of this chapter. If information is not available concerning any item or items of charges to be made to such party, proper notation shall be made that a charge is to be made, but the information is not available or that the amount shown is an estimate of such charge. Such person shall be advised in writing as to the identity of the person or organization responsible for such charges to be made for which an estimate has been made or for which notation has been made that the information is not available.

Provided, however, that the title insurance company or title insurance agent providing the disclosures of items of charge shall not be required to disclose costs or charges which the lender is required by any law to disclose to such party. Nothing contained in this Article 9.54 shall be deemed or construed as placing upon any title insurance company or title insurance agent any of the obligations imposed upon lenders by reason of the Federal Real Estate Settlement Procedures Act of 1974 (Public Law 93–533).[1]

The provisions of this Article 9.54 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 19, eff. Sept. 1, 1975.]

[1] 12 U.S.C.A. § 2601 et seq.

Art. 9.55. Requirement for Issuance of Owners and Mortgagee Title Policies in Connection With Residential Property

After January 1, 1976, whenever any improved residential real property situated in the State of Texas shall be sold and a mortgagee title policy issued to guarantee the validity of a lien thereon, the title insurance company or title insurance agent so issuing such mortgagee title policy of insurance shall also issue an owner title policy to the owner of such property and the required premium as promulgated by the board shall be charged.

The provisions of this article may, however, be rejected, provided that the person acquiring title shall, at or prior to closing and settlement, execute a written and acknowledged rejection wherein the purchaser rejects issuance of such owner title policy. The form of such rejection shall be prescribed, after notice and hearing, by the board.

The provisions of this Article 9.55 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 20, eff. Sept. 1, 1975.]

Art. 9.56. Creation and Operation of Attorney's Title Insurance Company

Autnorization; Applicability of Chapter; Legislative Intent

Sec. 1. (a) This Article 9.56 authorizes, under the limitations and express requirements as herein contained, the incorporation and operation of an "attorney's title insurance company."

(b) All provisions of Chapter 9 of this Insurance Code shall be applicable to such attorney's title insurance company as may be so incorporated, ex-

cept as shall be otherwise expressly provided in this Article 9.56. The provisions of this Chapter 9 which apply to title insurance companies shall also apply to attorney's title insurance companies except as otherwise expressly provided in this Article 9.56; the provisions of this Chapter 9 which apply to title insurance agents shall also apply to title attorneys, except as otherwise expressly provided in this Article 9.56.

(c) Any rule, regulation, or promulgated premium rate heretofore adopted by the State Board of Insurance or hereafter adopted by the State Board of Insurance under the provisions of Chapter 9 of this Insurance Code shall likewise be applicable to any such attorney's title insurance company and to any title attorneys.

(d) It is the express intent of the Legislature of the State of Texas that any such attorney's title insurance company as and when created shall be expressly regulated as are other title insurance companies conducting the business of title insurance under the provisions of this Chapter 9 of this Insurance Code unless expressly provided in this Article 9.56 to the contrary.

Definitions

Sec. 2. The following definitions shall be applicable to this Article 9.56 of this Chapter 9, to wit:

(a) "Attorney's title insurance" means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, or defects in the title to said property, and the invalidity of liens thereon, issued only in connection with and as a part of a real property transaction and title opinion of a title attorney as the term "title attorney" is defined herein, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Chapter 9.

(b) The "business of attorney's title insurance" shall be conducted by and through a title attorney, as herein defined, duly appointed by such attorney's title insurance company and such business of attorney's title insurance shall be deemed to be

(1) the making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, of any contract or policy of title insurance;

(2) the transacting or proposing to transact, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or

(3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Chapter 9, all as a part of a real estate transaction and title opinion of a title attorney.

(c) "Attorney's title insurance company" means any domestic company organized under the provisions of this chapter for the business of attorney's title insurance.

(d) "Title attorney" means any attorney who

(1) is a member in good standing of the State Bar of Texas; and

(2) owns one or more shares of stock in the attorney's title insurance company by which he is appointed a title attorney under this section; and

(3) is actively engaged in the practice of law; and

(4) owns or leases and controls an abstract plant as defined by the board, or is a participant in a bona fide joint plant operation as defined by the board, or has a contract to obtain title information from an abstract plant licensed by the board (which said contract is upon the form promulgated by the board and the portion of the premium to be paid to the owner or the operator of said abstract plant has been approved by the board), or who is the appointed title attorney for an attorney's title insurance company and bases his title opinion upon title evidence furnished from an abstract plant approved by the board and owned or leased and controlled by such attorney's title insurance company, except that in the event any attorney does not own or lease and control a licensed abstract plant nor is a participant in a bona fide joint plant operation and is further unable to contract to obtain title information from an abstract plant licensed by the board and located in the county in which such attorney is a resident, such attorney may satisfy the requirements of this Subsection (4) by filing with the board disclosure of the inability to obtain said contract as a part of his license application upon a form prescribed by the board so as to make such disclosure a part of the application; and

(5) is appointed as a title attorney by an attorney's title insurance company by contract making such arrangements for division of premium as may be approved by the board under this chapter and authorized by such attorney's title insurance company to solicit insurance and collect premiums and to issue or countersign policies in its behalf; and

(6) is certified as such to the State Board of Insurance; and

(7) is licensed by the board as a title attorney for such attorney's title insurance company.

May Incorporate

Sec. 3. Private corporations may be created by 15 or more State of Texas resident members of the

State Bar of Texas to insure titles to lands or interest therein in this state and indemnify the owners of such lands, or the holders of interests in or liens on such lands, against loss or damage on account of encumbrances upon or defects in the title to such lands or interests therein, provided that such title insurance shall be issued only in connection with and as a part of a title opinion of a title attorney, without any premium or fee therefor except the prescribed title insurance rates provided for in Article 9.07 of this Chapter 9.

Subject to the provisions of Article 9.06 of this Chapter 9, and Section 4 of this article, the capital shares of such corporations may be issued for a par value of $100 or more per share, and in one or more classes, provided, however, that (a) except as provided in (b) hereafter, all such shares shall be subscribed and paid for, and issued to members of the State Bar of Texas, residing in the State of Texas, subject to the right of reacquisition of such shares by such corporation in the event of death of such attorney shareholder or failure of such attorney shareholder to be and remain a licensed member of the State Bar of Texas, or failure of such attorney shareholder to be and remain qualified to be appointed a title attorney under the provisions of this Article 9.56; and (b) nothing herein contained prohibits an association of the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, whose purposes include among others the continuing legal education of the bench and bar of Texas, from owning shares of any class thereof, providing at least 15 resident members of the State Bar of Texas at all times own shares therein whether of the same class or not.

Capital Stock and Surplus Required–Association of the Organized State Bar of Texas, the State Bar of Texas, or any Foundation Created By or Through the State Bar of Texas

Sec. 4. (a) The attorney's title insurance company created as an affiliate or subsidiary of the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, and operating under the provisions of this section, must have a paid-up capital of not less than $250,000 and a surplus of not less than $150,000.

(b) Any other attorney's title insurance company shall meet the capital and surplus requirements upon organization as required by Article 9.06 of this Chapter 9.

Requirements for Title Attorneys

Sec. 5. No attorney shall act within this state as a title attorney for an attorney's title insurance company without first having been (1) licensed as a title attorney for such company by the board and (2) filing a bond or cash deposit in lieu thereof as required in Section 9; and no attorney's title insurance company shall allow or permit any attorney to act as its title attorney within the state unless said attorney shall first have obtained a license and filed a bond as required by this chapter.

Title Attorney's Licenses

Sec. 6. (a) Before an initial license is issued to any Texas licensed attorney to act as a title attorney within the State of Texas for an attorney's title insurance company, there shall first be filed by the attorney's title insurance company with the board an application for a title attorney's license, on forms to be provided by the board, accompanied by a fee of $2. The application shall be signed and duly sworn to by the attorney's title insurance company and the applicant title attorney. Such application shall contain the following:

(1) that the applicant title attorney is a bona fide licensed Texas attorney, resident of Texas; and

(2) that the applicant title attorney is actively engaged in the practice of law; and

(3) that the applicant title attorney is known to the attorney's title insurance company to have a good business reputation, to be a current member of the State Bar of Texas, in good standing, and is worthy of the public trust and said attorney's title insurance company knows of no fact or condition which would disqualify him from receiving a license; and

(4) that the applicant title attorney is qualified as defined in this Article 9.56 of this Chapter 9.

The board shall grant such title attorney's license if it determines from the application and its own investigation that the foregoing requirements have been met.

(b) On or before the first day of June of each year, every attorney's title insurance company operating under the provisions of this Chapter 9 shall certify to the board, on forms provided by the board, the names and addresses of every title attorney of said attorney's title insurance company, and shall apply for and pay a fee of $2 for an annual license in the name of each title attorney included in said list; if any such attorney's title insurance company shall terminate any licensed title attorney, it shall immediately notify the board in writing of such act and request cancellation of such license, notifying the title attorney of such action. No such attorney's title insurance company shall permit any title attorney appointed by it to write, sign, or deliver title insurance policies within the state until the foregoing conditions have been complied with, and the board has granted said license. The board shall deliver such license to the attorney's title insurance company for transmittal to the title attorney.

Licenses shall continue until the first day of the next June unless previously cancelled; provided, however, that if any attorney's title insurance company surrenders or has its certificate of authority revoked by the board, all existing licenses of its title

attorneys shall automatically terminate without notice.

The board shall keep a record of the names and addresses of all licensed title attorneys in such manner that the title attorneys appointed by any attorney's title insurance company authorized to transact the business of an attorney's title insurance company within the State of Texas may be conveniently ascertained and inspected by any person upon request.

(c) If an attorney's title insurance company terminates its contract with a title attorney or gives notice of termination to the title attorney, then any such title attorney may, within 30 days after either occurrence apply to the board for continuation of his license with an amendment thereto showing the name of another attorney's title insurance company for whom he is or will be authorized to act.

Authority of Title Attorney

Sec. 7. (a) A duly licensed title attorney may issue policies of title insurance for an attorney's title insurance company only if: (1) such title attorney is an appointed title attorney for an attorney's title insurance company; and (2) such title attorney bases each title opinion upon separate and current title evidence furnished by a licensed abstract plant of the records of the county in which the real property, the title to which is to be insured, is located; and (3) if such title attorney does not own or lease and control a licensed abstract plant and does not participate in a bona fide joint plant operation, such title attorney pays to the licensed abstract plant furnishing the title information the portion of the premium which may be agreed upon between the title attorney and the licensed abstract plant and approved by the board under the contract to furnish title information provided for under Paragraph (b) of this Section 7.

(b) The board shall, not later than January 1, 1976, promulgate the form of the contract to be made and entered into between a title attorney and a licensed abstract plant whereby title information shall be furnished by a licensed abstract plant to a title attorney. Such contract shall state therein the standards for the information which is to be furnished. Contracts shall be entered into between each title attorney and each licensed abstract plant. The board may from time to time alter, change, or amend the form of such contract.

The parties to any such contract shall determine the portion of the premium to be paid by the title attorney to the licensed abstract plant, except that the board is authorized to and may disapprove any division of the premium which the board finds to be excessive or inadequate. Such portion of the premium to be paid to the licensed abstract plant shall be deemed and considered as the "regular charge" for title information as that term is used in Article 9.34 of this Chapter 9. Within 10 days following execution, the parties to each such contract shall file a copy of the executed contract with the board. Each such contract shall be deemed to be approved as to the division of the premium until the parties are notified of disapproval by the board.

(c) In the event a title attorney does not own or lease and control a licensed abstract plant nor is a participant in a bona fide joint plant operation and is unable to contract with a licensed abstract plant to obtain the required title information in the county in which the real property, the title to which is to be insured, is located, such title attorney may deliver (but not issue) title insurance policies in conformity with the provisions of Article 9.34 of this Chapter 9. Likewise, a title attorney may deliver (but not issue) a title insurance policy upon real property in conformity with the provisions of Article 9.34 of this Chapter 9 when based upon a duly certified abstract of title prepared by a licensed abstract plant covering the particular real property from the sovereignty of the soil to the date of the transaction.

(d) Each annual audit of each title attorney shall include therein disclosure of the payments for title information and to whom such payments were made."

Title Attorneys' Licenses: Surrender, Forfeiture, Grounds for Revocation; Notice, Hearing, and Appeal

Sec. 8. (a) Any title attorney may surrender his license at any time by giving notice to the board and to the attorney's title insurance company concerned, except that no title attorney shall be permitted to surrender his license under the provisions of this Section 8 if prior to the offer to surrender such license an action shall have been commenced under the provisions of this Section 8 by the Commissioner of Insurance for revocation of such title attorney's license. Any title attorney shall automatically forfeit the license under the attorney's title insurance company represented if he shall terminate his relationship with the attorney's title insurance company.

(b) The license of any title attorney may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the board, if, after notice and hearing as hereafter provided, it finds that the applicant for or holder of such license:

(1) has wilfully violated any provision of this Chapter 9; or

(2) has intentionally made a material misstatement in the application for such license; or

(3) has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(4) has misappropriated or converted to his own use or illegally withheld money belonging to an attorney's title insurance company, an insured, or any other person; or

(5) has otherwise demonstrated lack of trustworthiness or competence to act as a title attorney; or

(6) has been guilty of fraudulent or dishonest practices; or

(7) has materially misrepresented the terms and conditions of title insurance policies or contracts; or

(8) is not of good character or reputation; or

(9) has failed to maintain a separate and distinct accounting of escrow funds, and has failed to maintain an escrow bank account or accounts separate and apart from all other accounts; or

(10) has failed to remain a member of the State Bar of Texas, or has been disbarred; or

(11) is no longer actively engaged in the practice of law.

(c) Before the license of any title attorney shall be denied, or suspended or revoked, or the renewal thereof refused hereunder, the board shall give notice of its intention so to do, by registered mail, to the applicant for or holder of such license and to the attorney's title insurance company who desires that such license be granted or continued in effect, and shall set a date not less than 20 days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the attorney's title insurance company may appear to be heard and produce evidence. In the conduct of such hearing, the commissioner of insurance or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records, or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the attorney's title insurance company concerned.

(d) No applicant or licensee whose license has been denied, refused, or revoked hereunder shall be entitled to file another application for a license as a title attorney within one year from the effective date of such denial, refusal, or revocation, or, if judicial review of such denial, refusal, or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the board unless the applicant shows good cause why the denial, refusal, or revocation of his license shall not be deemed a bar to the issuance of a new license.

(e) If the board shall refuse an application for any license provided for in this Act, or shall suspend, revoke, or refuse to renew any such license at said hearing, then any such applicant or licensee, and any attorney's title insurance company concerned, may appeal from said order by filing suit against the board as defendant in any of the district courts of Travis County, Texas, and not elsewhere, within 20 days from the date of the order of said board. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Any party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The board shall not be required to give any appeal bond in any cause arising hereunder.

Bonds for Title Attorneys

Sec. 9. (a) Every attorney who has been licensed as a title attorney shall make, file, and pay for a surety bond with a corporate surety company authorized to write surety bonds in this state, payable to the State Board of Insurance in the sum of $7,500, which bond shall obligate the principal and surety to (1) pay such pecuniary losses as may result to any participant in a real estate settlement or closing where an attorney's title insurance policy is issued by such title attorney which shall be sustained through acts of fraud, dishonesty, theft, embezzlement, or wilful misapplication on the part of any title attorney, (2) to pay such pecuniary loss as any party to an escrow agreement in which the title attorney is escrowee shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication on the part of such title attorney, either directly and alone, or in connivance with others. In lieu of such bond any title attorney may deposit with the board cash (or securities approved by the board) which cash and securities shall be in the amount of $7,500 and subject to the same conditions as provided for in said bond.

(b) If at any time it appears to the board that the terms of any title attorney's bond may have been violated, the board may require the title attorney to appear in Travis County with such records as the board deems proper on a named date not earlier than 10 days nor later than 15 days from service of notice, and there conduct an examination into the matter. If upon such examination the board is satisfied that the terms of said bond have been violated, the board shall immediately notify the surety and prepare a written statement covering the facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that the terms of said bond have been violated, then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the board for the benefit of all parties who have suffered any loss because of breach of the terms of said bond.

Annual Audit and Report of Title Attorneys

Sec. 10. Every title attorney shall have an annual audit, at his expense, made of trust fund accounts, and within 90 days after January 1 of each calendar year shall send by certified mail, postage prepaid, to

the board one copy of such audit report with a letter of transmittal, and each such title attorney shall also send a copy of such letter of transmittal and audit report to the attorney's title insurance company which he represents.

Said audit shall be made by an independent certified public accountant or licensed public accountant, or a firm composed of either, recommended by said title attorney and approved by the title insurance company represented by said title attorney.

Each attorney's title insurance company shall examine and analyze the audit report furnished by each of its title attorneys and shall within three months of receipt of same report to the board on forms to be promulgated by the board the findings and results of its examination and analysis of such audit report. If an attorney's title insurance company fails to receive an audit report from any of its title attorneys within the time specified above, it shall forthwith report such omission to the board.

All such reports and analyses furnished by the attorney's title insurance company to the board shall, at the election of the commissioner, be classed as confidential and privileged after having been filed with the board.

If any title attorney shall fail or refuse to furnish an audit report within the time required, or shall furnish an audit report which reveals any shortage or other irregularity, or any practice not in keeping with sound, honest business practices, the board may, after notice to the title attorney and the attorney's title insurance company involved and after a hearing at which the attorney and attorney's title insurance company may offer evidence explaining or excusing such omissions or irregularity, revoke the license of such title attorney.

Any title attorney or attorney's title insurance company feeling aggrieved by any action of the board hereunder shall have the right to file a suit in a District Court of Travis County in the time and manner provided in Section 8.

Right of Attorney's Title Insurance Company to Examine Title Attorney's Fund Accounts and Require Reports

Sec. 11. Any attorney's title insurance company may at such time or times as it sees fit, through its examiners or auditors or through independent certified public accountants commissioned by it, examine the trust fund accounts and records pertaining thereto of any of its title attorneys, such examination to be made at the expense of the attorney's title insurance company; or the attorney's title insurance company may require special reports from any such title attorney regarding any of its transactions.

Application to Other Title Insurance Companies

Sec. 12. The business of attorney's title insurance shall only be conducted by attorney's title insurance companies, as defined herein, and no title insurance company, foreign or domestic, or title insurance agent or escrow officer of a title insurance agent presently or hereafter licensed to transact a title insurance business in the State of Texas, pursuant to the provisions of this Chapter 9 of this Insurance Code, may operate as an attorney's title insurance company or a title attorney under the provisions of this chapter.

Exemption From Other Acts

Sec. 13. (a) The sale, issuance, or offering of any capital stock to persons permitted by the provisions of this Article 9.56 to own such capital stock are hereby exempted from all provisions of the laws of this state, other than this Chapter 9, which provide for supervision, registration, or regulation in connection with the sale, issuance, or offering of securities; and the sale, issuance, or offering of any such capital stock to such persons shall be legal without any action or approval whatsoever on the part of any official or state regulatory agency authorized to license, regulate, or supervise the sale, issuance, or offering of securities.

(b) The shares of stock of each attorney's title insurance company (regardless of class) may be owned only (except as provided in Section 3 of this Article 9.56) by attorneys duly licensed by the State Bar of Texas, residing in the State of Texas, and qualified to be appointed a title attorney under the provisions of this Article 9.56. Each certificate evidencing any share shall have endorsed thereon provisions relating to limitation upon the alienation of such shares whereby such shares may be owned only by such qualifying attorneys or the attorney's title insurance company so issuing such shares. The provisions of this Section 13B shall not, however, be applicable to shares owned by the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, whose purposes include among others the continuing legal education of the bench and bar of Texas.

(c) At time of organization of any attorney's title insurance company, the applicants for such attorney's title insurance company shall, as a part of the application for granting and approving the charter of such attorney's title insurance company, file with and obtain the approval of the State Board of Insurance an acceptable plan providing for the reacquisition of any and all shares of stock of such attorney's title insurance company issued to any qualified attorney when such attorney no longer remains qualified to own the same or upon the death of such attorney, whichever shall first occur. Such plan shall, in addition to its other provisions, contain an express provision that under no circumstance may such attorney's title insurance company acquire outstanding shares of its stock as treasury stock if such reacquisition of such shares will result in reducing the capital and surplus of such attorney's title insurance company below the minimum capital and surplus required for the initial organization of such attorney's title insurance company.

(d) In the event of the death of any title attorney, the attorney's title insurance company shall have a period of nine months following the death of such title attorney within which to acquire such deceased title attorney's share or shares.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 21, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2640, ch. 707, § 4 (27), eff. Aug. 31, 1981.]

CHAPTER TEN. FRATERNAL BENEFIT SOCIETIES

Art. 10.07. Contributions on Certificates; How Based

The contributions to be made upon such certificate shall be based upon the "Standard Industrial Mortality Table Three and One-half Per Cent," or the "English Life Table Number Six," or upon such other mortality and interest standards permitted by the Standard Valuation Law[1] and authorized by the laws of this state for use by life insurance companies for a similar type of contract or benefit issued in the same calendar year or such other mortality table as may be approved by the State Board of Insurance.

[Amended by Acts 1981, 67th Leg., p. 2987, ch. 785, § 1, eff. June 17, 1981.]

[1] Art. 3.28.

Art. 10.08. Reserve

Any society issuing such benefit certificates shall maintain on all such certificates the reserve required by the mortality and interest standards adopted by the society for computing contributions, the same to be first approved by the State Board of Insurance.

[Amended by Acts 1981, 67th Leg., p. 2987, ch. 785, § 1, eff. June 17, 1981.]

Art. 10.16. Funds

Any society may create, maintain, invest, disburse and apply an emergency surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment of the surrender of any part thereof, except as provided in Article 10.05 of this chapter. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds. No society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this State which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard with interest assumption not more than four (4%) per cent per annum, or any mortality tables and interest assumptions authorized presently or in the furture which would be permitted by the Standard Valuation Law[1] for use by life insurance companies for a similar type of contract or benefit issued in the same calendar year, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with interest assumptions authorized presently or in the future which would be permitted by the Standard Valuation Law for use by life insurance companies, for a similar type of disability benefit issued in the same calender year. Provided, however, that any society may value its certificates in accordance with valuation standards otherwise authorized by the laws of this state for the valuation of similar policies issued by life insurance companies. Deferred payments or installments of claims shall be considered as fixed liabilities on the happenings of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities.

[Amended by Acts 1981, 67th Leg., p. 2987, ch. 785, § 1, eff. June 17, 1981.]

[1] Art. 3.28.

Art. 10.30. Annual Reports

Every society transacting business in this State shall annually, on or before the first day of March, file with the State Board of Insurance in such form as the Board may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and its transactions for the year ending on that date, and shall furnish such other information as said Board may deem necessary to a proper exhibit of its business and plan of working. The Board may at other times require any further statement it may deem necessary to be made relating to such society.

In addition to such annual report, each society shall annually report to said Board a valuation of its certificates in force on December 31st last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses. Such report of valuation shall show as contingent liabilities the present mid-year value of the promised benefits provided in the constitution and laws of such society, under the certificates subject to valuation; and as contingent assets the present mid-year value of the future net contributions provided in the Constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provid-

ed, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the Department of Insurance of the home State of the society, and shall be filed with the State Board of Insurance within ninety (90) days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23, 1899; or, at the option of the society, any higher table; or, at its option, it may use a table based upon the society's own experience of at least twenty (20) years, and covering not less than one hundred thousand (100,000) lives with interest assumption not more than four (4%) per centum per annum, provided, however, that any society may value its certificates in accordance with valuation standards otherwise authorized by the laws of this state for the valuation of similar policies issued by life insurance companies. Each such valuation report shall set forth clearly and fully the mortality and interest bases and the method of valuation.

Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experiences, and in such cases a separation of the funds shall not be required.

The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities. A report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June 1st of each year; or in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society.

The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws additional, increased or extra rates of contributions shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five (5%) per centum per annum.
[Amended by Acts 1981, 67th Leg., p. 2987, ch. 785, § 1, eff. June 17, 1981.]

CHAPTER FOURTEEN. GENERAL PROVISIONS FOR MUTUAL ASSESSMENT COMPANIES

Article
14.40a. Repealed.

Art. 14.17. Certificate of Authority Required; Exemptions

It shall be the duty of the Board of Insurance Commissioners to require any corporation, person, firm, association, local mutual aid association, or any local association, company, or organization to have a certificate of authority before being authorized to carry on any insurance business in this State. If, in any event, any such company, person, firm, association, corporation, local aid association, or local organization is writing any form of insurance whatsoever without a permit or certificate of authority issued by the Department of Insurance of Texas, it shall be the duty of the Board to make known said fact to the Attorney General of the State of Texas, who is hereby required to institute proceedings in the District Court of Travis County, Texas, to restrain such corporation, person, firm, association, company, local aid association, or organization from writing any insurance of any kind or character without a permit; provided no provision of this and the preceding Article shall be construed to apply to associations which limit their membership to the employees and the families of employees of any particular designated firm, corporation, or individual, nor shall it apply to associations which limit their membership to bona fide borrowers of a Federal agency in Texas and members of the borrower's immediate family who are living with him and who are not engaged in nonfarm work for their chief income, and which association has been in existence for at least five (5) years, and which are not operated for profit and which pay no commissions to anyone; provided, however, that all such associations shall make annual reports to the Department of Insurance on blanks furnished for that purpose, showing the financial condition, the receipts and expenditures, and such other facts as the Board of Insurance Commissioners may require. No such association shall be permitted to operate, however, without making report to the Insurance Department of the State of Texas and securing a permit to so function. Such permit shall be for the current year or fractional part thereof and shall expire on the thirty-first day of May thereafter and shall be renewed annually upon the approval of the financial statement of the organization by the Board of Insurance Commissioners.
[Amended by Acts 1975, 64th Leg., p. 483, ch. 206, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 363, ch. 146, § 1, eff. May 14, 1981.]

Art. 14.20. Reduced Benefits or Excluded Coverage on Life Policies; Health and Accident Policies Excluded

Sec. 1. Any company or association licensed and operating under this chapter, may with the approval of the State Board of Insurance issue policies providing for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service, or aerial flight in time of peace or war; or in case of death of the member by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy; or if death or injury is caused by mob violence or legal execution; or reduce or exclude benefits for sickness from certain named causes. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided herein, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy. The provisions of this Section 1 of this Article 14.20 shall apply to all outstanding policies already containing such limitations.

Sec. 2. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Section 1 of this Article 14.20) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by Section 1 of this Article 14.20) shall not exceed five years from issue date. This Section 2 of this Article 14.20 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

Sec. 3. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Section 3 of this Article 14.20 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

Sec. 4. The provisions of Section 2 and Section 3 of this Article 14.20 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 2(a)(2) of Article 14.15 of this Insurance Code.

Sec. 5. The provisions of this Article 14.20 shall not apply to health and accident policies.

[Amended by Acts 1975, 64th Leg., p. 1035, ch. 400, § 1, eff. Nov. 1, 1975.]

Section 2 of the 1975 Act amended § 5 of art. 22.13; § 3 thereof provided:

"Sec. 3. The provisions of this Act shall be effective on November 1, 1975, and any insurer issuing a policy which has been previously approved for issuance in this state may bring it into compliance with the provisions of this Act by the use of endorsements thereon or affixed thereto, provided that any such endorsement is approved by the State Board of Insurance prior to usage."

Arts. 14.40 to 14.41. Repealed by Acts 1979, 66th Leg., p. 1252, ch. 593, § 4, eff. June 13, 1979

Former art. 14.40a, relating to application of the Sunset Act to the Burial Association Rate Board, was added by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.020.

Art. 14.42. Annual Assessment; Burial Association Rate Fund

There is levied upon each burial association having a permit to do business in Texas and upon each burial association which may hereafter be granted a permit to do business in Texas, an annual assessment of one-half of one cent (½ of 1¢) per member in the association as of December thirty-first of each year but not less than Five ($5.00) Dollars annually, which shall be in addition to any other fees now payable and which assessment shall be paid by each association between January first and March first of each year. Said assessments shall be paid to the State Board of Insurance along with and at the same time each association files with said Board its annual statement. Said assessment shall be based upon the calendar year and a proportionate part of said assessment for the remaining part of the current calendar year. All assessments paid to the State Board of Insurance under this article shall be and the same are here and now appropriated for and to the use and benefit of the State Board of Insurance for the purpose of obtaining advice, information, and knowledge relative to adequate and reasonable rates to be charged by burial associations of Texas and compiling records thereof and carrying out Articles 14.42–14.52 of this code. All assessments collected under this article shall be deposited in the State Treasury as a special fund to be known as the Burial Association Rate Fund to be used as and for the purposes aforesaid.

[Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Section 2 of the 1979 amendatory act provided:

"On the effective date of this Act, the Burial Association Rate Board is abolished, and its powers, duties, and functions are transferred to the State Board of Insurance."

Art. 14.43. General Responsibilities of Board; Contracts

(a) The State Board of Insurance shall assume and exercise the powers, duties, and functions provided by Articles 14.44–14.52 of this code.

(b) The State Board of Insurance may contract with experts and consultants to assist it in carrying out its powers, duties, and functions under Articles 14.44, 14.45, 14.47, and 14.48 of this code. Before entering into a contract, the Board shall solicit com-

petitive bids, and the contract shall be awarded to the lowest and best bidder. Procedures for soliciting bids and awarding contracts shall be provided in the rules of the Board.
[Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.44. Experience Rating; Rate Schedules Fixed

The State Board of Insurance shall adopt a schedule of reasonable and adequate rates, giving the maximum and minimum rates which may be charged per week, per month, per quarter, per six (6) months and per annum by burial associations for the definite benefits at the definite ages, which ages will be in convenient groups as designated by said Board. Such schedule of rates shall be adopted in compliance with the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes). To insure the adequacy and reasonableness of rates the Board may take into consideration experience gathered from a territory within this State sufficiently broad to include the varying conditions of the risks involved and over a period sufficiently long to insure that the minimum and maximum rates determined therefrom shall be just and reasonable as they may apply to the insuring public, and adequate and non-confiscatory as they may apply to the burial associations. The Board is hereby authorized and empowered to require sworn statements from any burial association within this State showing its experience in assessments collected and claims paid over a reasonable period of time and such other information as the Board shall find to be necessary or helpful in making the maximum and minimum rate schedules. After said rate schedules have been adopted, the Board shall cause to be mailed a copy of such rate schedule to each burial association having a permit to do business in Texas.
[Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Section 3 of the 1979 amendatory act provided:

"Within 90 days after the effective date of this Act, the State Board of Insurance shall adopt a schedule of rates for burial associations that is in compliance with and that is adopted in the manner provided by Article 14.44, Insurance Code, as amended. Until the schedule of rates is adopted under this section, the schedule of rates in effect on the effective date of this Act continues in force."

Art. 14.45. Adoption and Filing of Rate Schedule by Associations

After such rate schedule has been so mailed by the State Board of Insurance, it shall be the duty of the officers and directors of each burial association to convene and to adopt a rate schedule to be thereafter used and charged by such association for the different benefits at the different ages and which schedule shall use the same age groups and benefits as is given in the rate schedule so mailed to it by the State Board of Insurance and which rates so adopted shall not be less than the minimum nor more than the maximum rates adopted by the Board. Each burial association shall file with the State Board of Insurance, duplicate copies of the rate schedule adopted by it and which rate schedule must be so filed at least within thirty (30) days from the date the rate schedule was so mailed by the State Board of Insurance. Such copy shall be endorsed by the State Board of Insurance showing the date of its filing and one of such copies shall be retained by the Board and the other copy returned to the association to be kept as a part of its permanent files. With the consent of the State Board of Insurance an association may change its rates by adopting and filing with the Board, a new rate schedule in all respects similar to the first schedule but in each instance each rate must be within the maximum and minimum as adopted by the State Board of Insurance.
[Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.47. Data for Fixing Rates

It shall be the duty of said State Board of Insurance to gather such data, statistics, and information as it can from time to time as to the death rates, lapses, experiences and other information relative to burial association rates within, and without the State of Texas as may be deemed beneficial in fixing reasonable and adequate burial association rates and which information may be disseminated by the Board among the burial associations of Texas.
[Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.48. Limitation on Board's Power; Amendment of Schedules

The Board's duties and power shall not cease upon the adoption of its first rate schedule, but it shall continue to study the statistics, rates, and experiences of burial associations and at any time it deems proper, it may adopt a new rate schedule or amendment to a previous schedule and when any such amendment or new schedule is adopted, it shall thereafter be considered the official rate schedule of burial associations. When a new or amended schedule is adopted and copies forwarded to the burial associations by the State Board of Insurance, the new or amended rate schedule shall be thereafter used by it as to members thereafter accepted and such procedure shall be followed from time to time, when and as often as the Board shall adopt an amended or new rate schedule for the State.
[Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

Art. 14.51. Affiliation with Funeral Home; Rules and Regulations

It is against the public policy of this State for a funeral home or for those who own it in whole or in part to be connected directly or indirectly or affiliated with more than one burial association and the provisions of Articles 14.42 through 14.52 of this chapter shall be liberally construed and the State Board of Insurance shall make such rules and regulations as may be necessary to carry out the spirit and purpose of this article.
[Amended by Acts 1979, 66th Leg., p. 1250, ch. 593, § 1, eff. June 13, 1979.]

CHAPTER FIFTEEN. MUTUAL INSURANCE COMPANIES OTHER THAN LIFE

Article
15.05–A. Application of Texas Non-Profit Corporation Act.

Art. 15.05–A. Application of Texas Non-Profit Corporation Act

Insofar as the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes), are not inconsistent with or contrary to any applicable provisions of the Insurance Code, as amended, the provisions of the Texas Non-Profit Corporation Act as amended (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes), shall apply to and govern mutual insurance companies as defined in Article 15.01 of this chapter. Provided however, any such mutual insurance company may upon advance approval of the Commissioner of Insurance pay dividends to its members, and wherever in the Texas Non-Profit Corporation Act, as amended (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes), some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the secretary of state, such is to be vested in, required of, or performed by the Commissioner of Insurance insofar as such mutual insurance companies are concerned.

[Added by Acts 1975, 64th Leg., p. 347, ch. 148, § 1, eff. May 8, 1975.]

Art. 15.12. May Advance Money

Any director, officer or member of such company, or any other person, may advance to such company, any sum or sums of money necessary for the purpose of its business or to enable it to comply with any requirements of the law and such moneys and interest thereon as may have been agreed upon, not exceeding twenty (20%) per cent per annum shall be payable only out of the surplus remaining after providing for all reserve, other liabilities and lawful surplus, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, and the amount of such advances shall be reported in each annual statement.

[Amended by Acts 1981, 67th Leg., p. 558, ch. 236, § 1, eff. Aug. 31, 1981.]

CHAPTER SEVENTEEN. COUNTY MUTUAL INSURANCE COMPANIES

Art. 17.22. Exemption from Insurance Laws

County mutual insurance companies shall be exempt from the operation of all insurance laws of this state, except such laws as are made applicable by their specific terms or as in this Chapter specifically provided. In addition to such other Articles as may be made to apply by other Articles of this Code, county mutual insurance companies shall be subject to all the provisions of Article 1.04(e),[1] and of Subdivision 7 of Article 1.10 and of Article 1.24 and of Article 2.04 and of Article 2.05 and of Article 2.08 and of Article 2.10 and of Article 5.12 and of Article 5.37 and of Article 5.38 and of Article 5.39 and of Article 5.40 and of Article 5.49 and of Article 21.21 and of Article 21.28B and of Article 21.49 of this Code, and the provisions of Article 7064 of the Revised Civil Statutes of Texas, 1925.[2]

[Amended by Acts 1981, 67th Leg., p. 2298, ch. 561, § 1, eff. Sept. 1, 1981.]

[1] Repealed.
[2] Transferred; see, now, art. 4.10 of this Code.
Section 2 of Acts 1981, 67th Leg., p. 2298, ch. 561, provides:
"This Act takes effect September 1, 1981, and Articles 1.04(e), 1.10(7), and 21.21, Insurance Code, apply only to actions of county mutual insurers occurring on or after that date."

Art. 17.25. County Mutual Insurance Companies

[See Compact Edition, Volume 2 for text of 1 to 8]

Agents' License

Sec. 9. Agents or solicitors for such companies shall be licensed and appointed as provided in Article 21.07 or 21.14 of this Code.

[See Compact Edition, Volume 2 for text of 10 to 22]

[Amended by Acts 1979, 66th Leg., p. 873, ch. 399, § 1, eff. June 6, 1979; Acts 1981, 67th Leg., p. 403, ch. 166, § 1, eff. May 20, 1981.]

CHAPTER TWENTY. GROUP HOSPITAL SERVICE

Art. 20.02. Supervision; Requirements

All corporations organized under the provisions of this chapter shall be under the direct supervision of the Board of Insurance Commissioners of the State of Texas, and shall be subject to the following requirements:

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) They shall maintain reserves to cover the liability for claims incurred but not yet paid and for the expenses of settlement on those claims; provided that the reserves shall be estimated using a method which has been submitted to the Commissioner of Insurance for approval; and provided further that the method shall be deemed approved thirty (30) days after filing unless earlier affirmatively approved or disapproved by the Commissioner of Insurance;

[See Compact Edition, Volume 2 for text of (d)]

(e) Policy, certificate, and application forms, and forms of all contracts with health care providers, as defined in Article 20.11 of this chapter, as amended, shall be subject to the provisions of Article 3.42 of this code, as amended.

[Amended by Acts 1977, 65th Leg., p. 1037, ch. 383, § 1, eff. Oct. 1, 1977.]

Section 10 of Acts 1977, 65th Leg., p. 1039, ch. 383, provided an October 1, 1977 effective date.

Art. 20.06. Dissolution; Liquidation; Rehabilitation; Conservation

Any dissolution, liquidation, rehabilitation, or conservation of any such corporation shall be handled as provided in Articles 21.28, 21.28–A, and 21.28–B of this code.

[Amended by Acts 1977, 65th Leg., p. 1037, ch. 383, § 2, eff. Oct. 1, 1977.]

Art. 20.07. Repealed by Acts 1977, 65th Leg., p. 1039, ch. 383, § 9, eff. Oct. 1, 1977

Art. 20.09. Applicability of Certain Legal Requirements

Such corporations organized and operated under the provisions of this chapter shall not be required by any department of this State to post bond, or place deposits with any department of this State to begin and/or operate under this chapter, except as may be otherwise required in this chapter, and the provisions of the other chapters of this code which are not expressly made applicable to corporations organized and operating under this chapter are hereby declared inapplicable.

[Amended by Acts 1977, 65th Leg., p. 1038, ch. 383, § 3, eff. Oct. 1, 1977.]

Art. 20.10. Corporations Nonprofit; Salaries; Investments; Expenses

Such corporations shall be governed and conducted as nonprofit organizations; and provided that no paid officer or employee of said corporations shall receive more than Twenty Thousand Dollars ($20,000.00) per annum for his services, unless such payment be first authorized by a vote of the board of directors of such company, or by a committee of such board charged with the duty of authorizing such payments. Such corporation's investments shall be subject to the limitations applicable to insurance companies operating under the provisions of Chapter 3 of this code. No corporation operating under this chapter may incur general expenses during a calendar year in excess of twenty percent (20%) of premiums earned in that calendar year; provided further that the maximum expense shall be reduced by one-half percent (½%) for each Fifty Million Dollars ($50,000,000) of premium earned to fifteen percent (15%) for corporations earning Five Hundred Million Dollars ($500,000,000) or more of premium in a calendar year. "General expenses" means the expenses incurred by a corporation in the operation of its business except that the term shall not be deemed to include taxes, license fees, commissions, or any expenses incurred in the performance of contracts made directly or indirectly with the government of this state or of the United States under which the corporation does not assume an insurance risk.

[Amended by Acts 1977, 65th Leg., p. 1038, ch. 383, § 4, eff. Oct. 1, 1977.]

Art. 20.11. Authority of Corporation to Contract with Providers Other Than Physicians

Such corporations shall have authority to contract with health care providers, other than physicians, in such manner as to assure to each person holding a policy or certificate of said corporation the furnishing of such services and supplies as may be agreed upon in the policy, with the right to said corporation to limit in the policy the types of disease for which it shall furnish benefits; provided that such corporations shall not be required to contract with any particular health care provider; and provided further that this Article shall not be deemed to authorize such corporation to contract with any health care provider in any manner which is prohibited by any licensing law of this state under which the health care provider operates. Health care provider means any person, association, partnership, corporation, or other entity furnishing or providing any services or supplies for the purpose of preventing, alleviating, curing, or healing human illness or injury.

[Amended by Acts 1977, 65th Leg., p. 1038, ch. 383, § 5, eff. Oct. 1, 1977.]

Art. 20.12. Prohibition Against Contracting for Medical Services

Such corporations shall not contract to furnish to the member a physician or any medical services, nor shall said corporation contract to practice medicine in any manner, nor shall said corporation control or attempt to control the relations existing between said member and his or her physician, nor restrict the right of the patient to obtain the services of any licensed doctor of medicine; provided that nothing in this article shall prohibit a corporation from contracting with a health organization certified under Article 4509a, Revised Civil Statutes of Texas, 1925. In addition, such corporations are hereby authorized to provide benefits for medical and/or surgical care on the basis of indemnity payments for expenses incurred.

[Amended by Acts 1977, 65th Leg., p. 1039, ch. 383, § 6, eff. Oct. 1, 1977.]

Art. 20.13. Personnel of Directors

Such corporation shall have 20 directors who shall have full control over its management affairs. The board of directors shall be composed of persons who are residents of Texas. Not more than five directors may be persons who are chief executive officers or owners of an institutional health care provider. Not more than three directors may be persons licensed by the Texas State Board of Medical Examiners. Not more than one director may be a person licensed by the Texas State Board of Dental Examiners. The remaining directors shall not be health care providers or employees of or have a financial interest in a health care provider as defined in this chapter.

[Amended by Acts 1977, 65th Leg., p. 1039, ch. 383, § 7, eff. Oct. 1, 1977.]

Art. 20.15. Minimum Surplus

Such corporation shall maintain a surplus of at least $100,000 to meet adverse contingencies.
[Amended by Acts 1977, 65th Leg., p. 1039, ch. 383, § 8, eff. Oct. 1, 1977.]

CHAPTER TWENTY A. HEALTH MAINTENANCE ORGANIZATION ACT

Article

20A.01. Short Title.
20A.02. Definitions.
20A.03. Establishment of Health Maintenance Organization.
20A.04. Application for Certificate of Authority.
20A.05. Issuance of Certificate of Authority.
20A.06. Powers of Health Maintenance Organization.
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20A.30. Officers and Employees Bond.
20A.31. Injunctions.
20A.32. Fees.
20A.33. Taxation.
20A.34. Effective Date.
20A.35. Severability.

This chapter was not enacted as part of the Insurance Code of 1951.

Art. 20A.01. Short Title

This Act may be cited as the Texas Health Maintenance Organization Act.
[Acts 1975, 64th Leg., p. 514, ch. 214, § 1, eff. Dec. 1, 1975.]

Art. 20A.02. Definitions

For the Purposes of this Act:

(a) "Basic health care services" means health care services which an enrolled population might reasonably require in order to be maintained in good health, including, as a minimum, emergency care, inpatient hospital and medical services, and outpatient medical services.

(b) "Board" means the State Board of Health.

(c) "Commissioner" means the commissioner of insurance.

(d) "Enrollee" means an individual who is enrolled in a health care plan, including covered dependents.

(e) "Evidence of coverage" means any certificate, agreement, or contract issued to an enrollee setting out the coverage to which the enrollee is entitled.

(f) "Group hospital service corporation" means a nonprofit corporation organized and operating under Chapter 20 of the Insurance Code.

(g) "Health care" means prevention, maintenance, and rehabilitation services provided by qualified persons other than medical care.

(h) "Health care plan" means any plan whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services; provided, however, a part of such plan consists of arranging for or the provision of health care services, as distinguished from indemnification against the cost of such service, on a prepaid basis through insurance or otherwise.

(i) "Health care services" means any services, including the furnishing to any individual of medical or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury.

(j) "Health maintenance organization" means any person who arranges for or provides a health care plan to enrollees on a prepaid basis.

(k) "Medical care" means furnishing those services defined as the practice of medicine in Section 11, Chapter 426, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4510a, Vernon's Texas Civil Statutes).[1]

(*l*) "Person" means any natural or artificial person, including, but not limited to, individuals, partnerships, associations, organizations, trusts, or corporations.

(m) "Physician" means anyone licensed to practice medicine in the State of Texas.

(n) "Provider" means any practitioner other than a physician, such as a registered nurse, pharmacist, optometrist, pharmacy, hospital, or other institution or organization or person that furnishes health care services, who is licensed or otherwise authorized to practice in this state.

(*o*) "Sponsoring organization" means a person who guarantees the uncovered expenses of the health maintenance organization.

(p) "Uncovered expenses" means the estimated administrative expenses and the estimated cost of health care services that are not guaranteed, insured, or assumed by a person other than the health maintenance organization. Health care services may be considered covered if the physician or provider agrees in writing that enrollees shall in no way be liable, assessable, or in any way subject to payment for services except as described in the evidence of coverage issued to the enrollee under Section 9 of this Act.

[Acts 1975, 64th Leg., p. 514, ch. 214, § 2, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1449, ch. 638, § 1, eff. June 13, 1979; Acts 1981, 67th Leg., p. 2299, ch. 562, § 1, eff. June 12, 1981.]

[1] Repealed; see, now, Civil Statutes, art. 4495b.

Art. 20A.03. Establishment of Health Maintenance Organization

(a) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this Act. No person shall establish or operate a health maintenance organization in this state, or sell or offer to sell or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate of authority under this Act. A foreign corporation may qualify under this Act, subject to its registration to do business in this state as a foreign corporation under the Texas Business Corporation Act and compliance with all provisions of this Act and other applicable Texas statutes.

(b) Within 90 days of the effective date of this Act, every existing health maintenance organization shall submit an application for a certificate of authority. Each such applicant may continue to operate until the commissioner acts on the application. In the event that an application is denied, the applicant shall henceforth be treated as a health maintenance organization whose certificate of authority has been revoked.

[Acts 1975, 64th Leg., p. 514, ch. 214, § 3, eff. Dec. 1, 1975.]

Art. 20A.04. Application for Certificate of Authority

(a) Each application for a certificate of authority shall be on a form prescribed by rule of the commissioner and shall be verified by the applicant, an officer, or other authorized representative of the applicant, and shall set forth or be accompanied by the following:

(1) a copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(2) a copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) a list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing body or committee, the principal officer in the case of a corporation, and the partnership or members in the case of a partnership or association;

(4) a copy of any independent or other contract made or to be made between any provider, physician, or persons listed in Paragraph (3) hereof and the applicant;

(5) a statement generally describing the health maintenance organization, its health care plan or plans, facilities, and personnel;

(6) a copy of the form of evidence of coverage to be issued to the enrollee;

(7) a copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;

(8) a financial statement showing the applicant's assets, liabilities, and sources of financial support; if the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this Act;

(9) a description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of the initial operating results anticipated, and a statement as to the sources of working capital, as well as any other sources of funding;

(10) a power of attorney duly executed by such applicant, if not domiciled in this state, appointing the commissioner and his successors in office, or a duly authorized deputy, as the true and lawful attorney of such applicant in and for the state upon whom all lawful processes in any legal action or proceedings against the health maintenance organization on a cause of action arising in this state may be served;

(11) a statement reasonably describing the geographic area or areas to be served;

(12) a description of the complaint procedures to be utilized;

(13) a description of the procedures and programs to be implemented to meet the quality of health care requirements set forth herein;

(14) a description of the mechanisms by which enrollees will be afforded the opportunity to participate in matters of policy and operation; and

(15) such other information as the commissioner may require to make the determinations required by this Act.

(b) The State Board of Insurance may promulgate such reasonable rules and regulations as it deems necessary to the proper administration of this Act to require a health maintenance organization, subsequent to receiving its certificate of authority, to submit the modifications or amendments to the operations or documents described in Subsection (a) of this section to the commissioner, either for his approval or for information only, prior to the effectuation of the modification or amendment. As soon as reasonably possible after any filing for approval

required by this subsection is made, the commissioner shall in writing approve or disapprove it. Any modification or amendment for which the commissioner's approval is required shall be considered approved unless disapproved within 30 days; provided that the commissioner may postpone the action for such further time, not exceeding an additional 30 days, as necessary for proper consideration.

[Acts 1975, 64th Leg., p. 515, ch. 214, § 4, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1450, ch. 638, § 2, eff. June 13, 1979.]

Art. 20A.05. Issuance of Certificate of Authority

(a)(1) Upon receipt of an application for issuance of a certificate of authority, the commissioner shall begin consideration of the application and forthwith transmit copies of such application and accompanying documents to the board.

(2) The board shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

(A) has demonstrated the willingness and potential ability to assure that such health care services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities, in a manner enhancing availability, accessibility, and continuity of services;

(B) has arrangements, established in accordance with rules and regulations promulgated by the board with the concurrence of the commissioner, for an ongoing quality of health care assurance program concerning health care processes and outcome; and

(C) has a procedure, established by rules and regulations of the board with the concurrence of the commissioner, to develop, compile, evaluate, and report statistics relating to the cost of operation, the pattern of utilization of its services, availability and accessibility of its services.

(3) Within 45 days of receipt of the application by the board for issuance of a certificate of authority, the board shall certify to the commissioner whether the proposed health maintenance organization meets the requirements of this section. If the board certifies that the health maintenance organization does not meet such requirements, it shall specify in what respects it is deficient.

(b) The commissioner shall, after notice and hearing, issue or deny a certificate of authority to any person filing an application pursuant to Section 4 of this Act within 75 days of the receipt of the certification of the board; provided, however, that the commissioner may grant a delay of final action on the application to an applicant who has demonstrated a need therefor, including any delay occasioned by an application to the federal government. Issuance of the certificate of authority shall be granted upon payment of the application fee prescribed in Section 32 of this Act if:

(1) the board certifies that the health maintenance organization's proposed plan of operation meets the requirements of Subsection (a)(2) of this section; and

(2) the commissioner is satisfied that:

(A) the person responsible for the conduct of the affairs of the applicant is competent, trustworthy, and possesses a good reputation;

(B) the health care plan constitutes an appropriate mechanism whereby the health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for co-payment;

(C) the health maintenance organization is fully responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner shall consider:

(i) the financial soundness of the health care plan's arrangement for health care services and a schedule of charges used in connection therewith;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, group hospital service corporation, a political subdivision of government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of plan;

(iv) any agreement which provides for the provision of health care services; and

(v) any surety bond or deposit of cash or securities submitted in accordance with Section 13 of this Act as a guarantee that the obligations will be duly performed;

(D) the enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to Section 7(b) of this Act;

(E) nothing in the proposed method of operation, as shown by the information submitted pursuant to Section 4 of this Act, or by independent investigation, is contrary to Texas law.

(c) If the board or the commissioner, or both, shall certify that the health maintenance organization's proposed plan of operation does not meet the requirements of this section, the commissioner shall not issue the certificate of authority. The commissioner shall notify the applicant that it is deficient, and shall specify in what respects it is deficient.

(d) A certificate of authority shall continue in force as long as the person to whom it is issued meets the requirements of this Act or until suspended or revoked by the commissioner or terminated at the request of the certificate holder. Any change in control, as defined by Article 21.49–1 of the Insurance Code of Texas, of the health maintenance or-

ganization, shall be subject to the approval of the commissioner.

[Acts 1975, 64th Leg., p. 517, ch. 214, § 5, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1450, ch. 638, § 3, eff. June 13, 1979.]

Art. 20A.06. Powers of Health Maintenance Organization

(a) The powers of a health maintenance organization include, but are not limited to, the following:

(1) the purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and ancillary equipment and such property as may reasonably be required for its principal office or for such other purposes as may be necessary in the transaction of the business of the health maintenance organization;

(2) the making of loans to a medical group, under an independent contract with it in furtherance of its program, or corporations under its control, for the purpose of acquiring or constructing medical facilities and hospitals, or in the furtherance of a program providing health care services to enrollees;

(3) the furnishing of medical care services through physicians who have independent contracts with the health maintenance organizations; the furnishing or arranging for the delivery of health care services through providers or groups of providers who are under contract with or employed by the health maintenance organization; provided, however, that a health maintenance organization is not authorized to employ or contract with physicians or providers in any manner which is prohibited by any licensing law of this state under which such physicians or providers are licensed;

(4) the contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment, and administration;

(5) the contracting with an insurance company licensed in this state, or with a group hospital service corporation authorized to do business in the state, for the provision of insurance, indemnity, or reimbursement against the cost of health care and medical care services provided by the health maintenance organization;

(6) the offering, in addition to the basic health care services, of:

(A) additional health care or medical services;

(B) indemnity benefits covering out-of-area emergency services; and

(C) indemnity benefits in addition to those relating to out-of-area and emergency services, provided through insurers or group hospital service corporations;

(7) receiving and accepting from government or private agencies payments covering all or part of the cost of the services provided or arranged for by the organization;

(8) all powers given to corporations (including professional corporations and associations), partnerships, and associations pursuant to their organizational documents which are not in conflict with provisions of this Act, or other applicable law.

(b)(1) The health maintenance organization shall file notice, with adequate supporting information, with the commissioner prior to the exercise of any power granted in Subdivision (1) or (2) of Subsection (a) of this section. The commissioner shall disapprove such exercise of powers which, in his or her opinion would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. If the commissioner does not disapprove within 30 days of filing, it shall be deemed approved; provided that the commissioner may, by official order, postpone action for such further time, not exceeding 30 days, as may be considered necessary for proper consideration.

(2) The commissioner may promulgate rules and regulations exempting from the filing requirements of this subdivision those activities having a de minimis effect.

[Acts 1975, 64th Leg., p. 518, ch. 214, § 6, eff. Dec. 1, 1975.]

Art. 20A.07. Governing Body

(a) The governing body of any health maintenance organization may include physicians, providers, or other individuals, or any combination of the above.

(b) The governing body shall establish a mechanism to afford the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other mechanisms.

[Acts 1975, 64th Leg., p. 519, ch. 214, § 7, eff. Dec. 1, 1975.]

Art. 20A.08. Fiduciary Responsibility

Any director, officer, member, employee, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of such organization shall be responsible for such funds in a fiduciary relationship to the enrollees.

[Acts 1975, 64th Leg., p. 519, ch. 214, § 8, eff. Dec. 1, 1975.]

Art. 20A.09. Evidence of Coverage and Charges

(a)(1) Every enrollee residing in this state is entitled to evidence of coverage under a health care plan. If the enrollee obtains coverage under a health care plan through an insurance policy or a contract issued by a group hospital service corporation, whether by option or otherwise, the insurer or

the group hospital service corporation shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

(3) An evidence of coverage shall contain:

(A) no provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading, or deceptive as defined in Section 14 of this Act; and

(B) a clear and complete statement, if a contract, or a reasonably complete facsimile, if a certificate, of:

(i) the medical and health care services and the issuance of other benefits, if any, to which the enrollee is entitled under the health care plan;

(ii) any limitation on the services, kinds of services, benefits, or kinds of benefits to be provided, including any deductible or co-payment feature;

(iii) where and in what manner information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or indication whether the plan is contributory or noncontributory with respect to group certificates; and

(v) a clear and understandable description of the health maintenance organization's methods for resolving enrollee complaints. Any subsequent changes may be evidenced in a separate document issued to the enrollee.

(4) Any form of the evidence of coverage or group contract to be used in this state, and any amendments thereto, are subject to the filing and approval requirements of Subsection (c) of this section, unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or group hospital service corporations, in which event the filing and approval provisions of such law shall apply. To the extent, however, that such provisions do not apply to the requirements of Subdivision (3), Subsection (a) of this section, the requirements of Subdivision (3) shall be applicable.

(b)(1) No schedule of charges for enrollee coverage for medical services or health care services or amendments thereto may be used in conjunction with any health care plan until a copy of such schedule or amendments thereto has been filed with the commissioner.

(2) Such charges may be established in accordance with actuarial principles for various categories of enrollees, provided that charges applicable to an enrollee shall not be individually determined based on the status of his or her health. However, the charges shall not be excessive, inadequate, or unfairly discriminatory, and the benefits shall be reasonable with respect to the rates charged. A certification, by a qualified actuary, to the appropriateness of the charges, based on reasonable assumptions, shall accompany the filing along with adequate supporting information.

(c) The commissioner shall, within a reasonable period, approve any form of the evidence of coverage or group contract, or amendment thereto, if the requirements of this section are met. It shall be unlawful to issue such form until approved. If the commissioner disapproves such form, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reason for the disapproval. A hearing shall be granted within 30 days after a request in writing by the person filing. If the commissioner does not disapprove any form within 30 days after the filing of such form it shall be considered approved; provided that the commissioner may by written notice extend the period for approval or disapproval of any filing for such further time, not exceeding an additional 30 days, as necessary for proper consideration of the filing.

(d) The commissioner may require the submission of whatever relevant information he or she deems necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(e) Article 3.74 of the Texas Insurance Code applies to health maintenance organizations.

(f) Article 3.51–9 of the Texas Insurance Code applies to health maintenance organizations.

[Acts 1975, 64th Leg., p. 519, ch. 214, § 9, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1451, ch. 638, § 4, eff. June 13, 1979; Acts 1981, 67th Leg., p. 198, ch. 91, § 2, eff. Jan. 1, 1982; Acts 1981, 67th Leg., 1st C.S., p. 64, ch. 7, § 2, eff. Nov. 10, 1981.]

Art. 20A.10. Annual Report

(a) Each health maintenance organization shall annually, on or before the 1st day of March, file a report, verified by at least two principal officers, with the commissioner, with a copy to the board, covering the preceding calendar year.

(b) Such report shall be on forms prescribed by the State Board of Insurance and shall include:

(1) a financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year, certified by an independent public accountant;

(2) the number of persons enrolled during the year, the number of enrollees as of the end of the year, and the number of enrollments terminated during the year;

(3) a summary of the information compiled pursuant to Section 12 of this Act in such form as required by the State Board of Insurance; and

(4) such other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out the duties under this Act.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 10, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1451, ch. 638, § 5, eff. June 13, 1979.]

Art. 20A.11. Information to Enrollees

Every health maintenance organization shall annually provide to its enrollees:

(a) the most recent annual statement of financial condition, including a balance sheet and summary of receipts and disbursements;

(b) a description of the organizational structure and operation of the health care plan and a summary of any material changes since the issuance of the last report;

(c) a description of services and information describing where and how to secure the services; and

(d) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 11, eff. Dec. 1, 1975.]

Art. 20A.12. Complaint System

(a)(1) Every health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner after consultation with the board to provide reasonable procedures for the resolution of written complaints initiated by enrollees concerning health care services.

(2) Every health maintenance organization shall submit to the commissioner and to the board an annual report in a form prescribed by rule of the State Board of Insurance after consultation with the board.

(b) The commissioner or board may examine such complaint system.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 12, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1452, ch. 638, § 6, eff. June 13, 1979.]

Art. 20A.13. Protection Against Insolvency

(a) Unless otherwise provided by this section, each health maintenance organization shall furnish a surety bond, or deposit with the State Treasurer cash or securities, or any combination of these or other guarantees that are acceptable to the State Board of Insurance, in an amount as set forth in this section.

(b) For a health maintenance organization which has not received a certificate of authority from the State Board of Insurance prior to September 1, 1981:

(1) the amount of the initial surety bond, deposit, or other guarantee shall be equal to five percent of its estimated uncovered expenses for the first 12 months of operation, but in no event less than $100,000; and

(2) on or before March 15 of each year following the year in which the health maintenance organization receives a certificate of authority, the health maintenance organization shall deposit with the State Treasurer an amount equal to four percent of the dues or premium revenue collected during the previous calendar year.

(c) For a health maintenance organization which has received a certificate of authority from the State Board of Insurance prior to September 1, 1981:

(1) on or before March 15, 1982, the organization shall deposit an amount equal to one percent of the dues or premium revenue collected during the previous calendar year; and

(2) two percent of dues or premium revenue collected during the previous calendar year shall be deposited on or before March 15, 1983, three percent of dues or premium revenue collected during the previous calendar year shall be deposited on or before March 15, 1984, and four percent of dues or premium revenue collected during the previous calendar year shall be deposited on or before March 15, 1985, and on or before March 15 of each subsequent year until the requirement is waived by the State Board of Insurance.

(d) Upon application by a health maintenance organization operating for more than one year under a certificate of authority issued by the State Board of Insurance, the State Board of Insurance may waive some or all of these requirements for any period of time it shall deem proper whenever it finds that one or more of the following conditions justifies such waiver:

(1) the total amount of the surety bond, deposit, or other guarantee is equal to 25 percent of the health maintenance organization's estimated uncovered expenses for the next calendar year;

(2) the health maintenance organization's net worth is equal to at least 25 percent of its estimated uncovered expenses for the next calendar year; or

(3) either the health maintenance organization or its sponsoring organization has been in operation for at least 10 years and has a net worth of at least $5,000,000.

(e) If one or more of the requirements is waived, any amount previously deposited shall remain on deposit until released in whole or in part by the State Treasurer upon order of the State Board of Insurance pursuant to the same standards specified in Subsection (d) of this section.

(f) A health maintenance organization that has made a deposit with the State Treasurer may, at its option, withdraw the deposit or any part thereof, first having deposited with the State Treasurer, in lieu thereof, a deposit of cash or securities of equal amount and value to that withdrawn. Any securities shall be approved by the State Board of Insurance before being substituted.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 13, eff. Dec. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2300, ch. 562, § 2, eff. June 12, 1981.]

Art. 20A.14. Prohibited Practices

(a) No health maintenance organization, or representatives thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For the purposes of this Act:

(1) a statement or item of information shall be deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health care plan;

(2) a statement or item of information shall be deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which said statement is made or such item of information is communicated, such statement or items of information may be reasonably understood by a reasonable person, not possessing special knowledge, regarding health care coverage, as indicating any benefit or advantage or absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of or person considering enrollment in, a health care plan, if such benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist;

(3) an evidence of coverage shall be deemed to be deceptive if the evidence of coverage, taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health care plans, and evidence of coverage therefor, to expect benefits, services, charges, or other advantages which the evidence of coverage does not provide or which the health care plan issuing such evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage.

(b) Article 21.21, as amended, and Article 21.21–2, of the Insurance Code, shall be construed to apply to health maintenance organizations and health care plans and evidence of coverage, except to the extent that the commissioner determines that the nature of health maintenance organizations and health care plans and evidence of coverage renders any provisions of such sections clearly inappropriate.

(c) An enrollee may not be cancelled or not renewed except for the failure to pay the charges for such coverage, or for such other reason as may be promulgated by rule of the commissioner.

(d) No health maintenance organization, unless licensed as an insurer, may use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state.

(e) No physician or health care provider or group of physicians or providers or health care facility or institution may exclude any other physician or provider from staff privileges, facilities, or institutions solely on the ground that such physician or provider is associated with a health maintenance organization issued a certificate of authority under this Act.

(f) Only those persons who comply with the provisions of this Act and are issued a certificate of authority by the commissioner may use the phrase "health maintenance organization" or "HMO" in the course of operation.

[Acts 1975, 64th Leg., p. 522, ch. 214, § 14, eff. Dec. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2301, ch. 562, § 3, eff. June 12, 1981.]

Art. 20A.15. Regulation of Agents

(a) A health maintenance organization agent is anyone who represents any health maintenance organization in the solicitation, negotiation, procurement, or effectuation of health maintenance organization membership or holds himself or herself out as such. No person or other legal entity may perform the acts of a health maintenance organization agent within this state unless such person or legal entity has a valid health maintenance organization agent's license issued pursuant to this Act. The term "health maintenance organization agent" shall not include:

(1) any regular salaried officer or employee of a health maintenance organization or of a licensed health maintenance organization agent, who devotes substantially all of his or her time to activities other than the solicitation of applications for health maintenance organization membership and receives no commission or other compensation directly dependent upon the business obtained and who does not solicit or accept from the public applications for health maintenance organization membership;

(2) employers or their officers or employees or the trustees of any employee benefit plan to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits involving the use of membership in a health maintenance organization; provided that such employers, officers, employees, or trustees

are not in any manner compensated directly or indirectly by the health maintenance organization issuing such health maintenance organization membership;

(3) banks or their officers and employees to the extent that such banks, officers, and employees collect and remit charges by charging same against accounts of depositors on the orders of such depositors.

(b) The Commissioner of Insurance shall collect in advance from health maintenance organization agent applicants a license fee of $25 and an examination fee of $10. A new examination fee shall be paid for each examination. The examination fee shall not be returned under any circumstances other than for failure to appear and take the examination after the applicant has given at least 24 hours notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval.

(c) Each license issued to a health maintenance organization agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the commissioner or the authority of the agent to act for the health maintenance organization is terminated.

(d) Licenses which have not expired or been suspended or revoked may be renewed upon written request and payment of a $25 renewal fee by the agent.

(e) Any agent licensed under this section may represent and act as an agent for more than one health maintenance organization at any time while the agent's license is in force. Any such agent and the health maintenance organization involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing the agent to act as agent for an additional health maintenance organization or health maintenance organizations. Such notice must set forth the health maintenance organization or health maintenance organizations which the agent is then licensed to represent and shall be accompanied by a certificate from each health maintenance organization to be named in each additional appointment that said health maintenance organization desires to appoint the applicant as its agent. This notice shall contain such other information as the State Board of Insurance may require. The agent shall be required to pay a fee of $8 for each additional appointment applied for, which fee shall accompany the notice.

(f) It shall be the duty of the commissioner to collect from every agent of any health maintenance organization in the State of Texas under the provisions of this section a licensing fee and an initial appointment fee for each appointment by a health maintenance organization, which fees shall constitute a fund to be used by the State Board of Insurance to administer the provisions of the Texas Health Maintenance Organization Act and all laws of this state governing and regulating agents for such health maintenance organizations as provided for in this section. All of such funds shall be paid into the State Treasury to the credit of the Health Maintenance Organization Fund and shall be paid out for salaries, traveling expenses, office expenses, and other incidental expenses incurred and approved by the State Board of Insurance.

(g) The State Board of Insurance may, after notice and hearings, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents.

[Acts 1975, 64th Leg., p. 523, ch. 214, § 15, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1452, ch. 638, § 7, eff. June 13, 1979.]

Art. 20A.16. Powers of Insurers and Others

(a) An insurance company licensed in this state, pursuant to Chapter 2, 3, or 15 of the Insurance Code, or a group hospital service corporation authorized to do business in this state, may either directly or through a subsidiary or affiliate organize and operate a health maintenance organization under the provisions of this Act. Notwithstanding any other law which may be inconsistent herewith, any two or more such insurance companies or group hospital service corporations, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization under the provisions of this Act.

(b) Notwithstanding any provision of insurance or group hospital service corporation laws, an insurer or group hospital service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided by a health maintenance organization and to provide coverage in the event of failure of a health maintenance organization to meet its obligations. Among other things, under such contracts, the insurer or group hospital service corporation may make benefit payments to a health maintenance organization for health care services rendered by physicians or providers pursuant to health care plans.

[Acts 1975, 64th Leg., p. 523, ch. 214, § 16, eff. Dec. 1, 1975.]

Art. 20A.17. Examinations

(a) The commissioner may make an examination of the affairs of any health maintenance organization as it is deemed necessary, but not less frequently than once every three years.

(b) The board may make an examination concerning the quality of health care services of any health maintenance organization and providers with whom such organization has contracts, agreements, or other arrangements as often as it deems it necessary, but not less frequently than once every three years.

(c)(1) Every health maintenance organization shall make its books and records relating to its operation available for such examinations and in every way facilitate the examinations. Every physician and provider so examined need only make available for

examination that portion of its books and records relevant to its relationship with the health maintenance organization.

(2) Medical, hospital and health records of enrollees and records of physicians and providers providing service under independent contract with a health maintenance organization shall only be subject to such examination as is necessary for an ongoing quality of health assurance program concerning health care procedures and outcome in accordance with an approved plan as provided for in this Act. Said plan shall provide for adequate protection of confidentiality of medical information and shall only be disclosed in accordance with applicable law and this Act and shall only be subject to subpoena upon a showing of good cause.

(3) For the purpose of examinations, the commissioner and board may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of such physicians and providers concerning their business.

(d) Articles 1.15, 1.16, and 1.19, as amended, of the Insurance Code shall be construed to apply to health maintenance organizations, except to the extent that the commissioner determines that the nature of the examination of a health maintenance organization renders such clearly inappropriate.

(e) Articles 1.04(e),[1] 1.12, and 1.24, and Section 7 of Article 1.10, Insurance Code, as amended, and Article 1.30, Insurance Code, apply to health maintenance organizations.

[Acts 1975, 64th Leg., p. 523, ch. 214, § 17, eff. Dec. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2301, ch. 562, § 4, eff. June 12, 1981.]

[1] Repealed.

Art. 20A.18. Management and Exclusive Contracts

(a) No health maintenance organization may enter into an exclusive agency contract or management contract, unless the contract is first filed with the commissioner and approved under this section within 30 days after filing or such reasonable extended period as the commissioner may specify by notice given within the 30 days.

(b) The commissioner shall disapprove a contract submitted under Subsection (a) of this section if he finds that:

(1) it subjects the health maintenance organization to excessive charges;

(2) the contract extends for an unreasonable period of time;

(3) the contract does not contain fair and adequate standards of performance;

(4) the persons empowered under the contract to manage the health maintenance organization are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the health maintenance organization with due regard for the interests of its enrollees, creditors, or the public; or

(5) the contract contains provisions which impair the interests of the organization's enrollees, creditors, or the public in this state.

[Acts 1975, 64th Leg., p. 524, ch. 214, § 18, eff. Dec. 1, 1975.]

Art. 20A.19. Hazardous Financial Condition

(a) Whenever the financial condition of any health maintenance organization indicates a condition such that the continued operation of the health maintenance organization might be hazardous to its enrollees, creditors, or the general public, then the commissioner of insurance may, after notice and hearing, order the health maintenance organization to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by reinsurance;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods;

(4) to suspend or limit the writing of new business for a period of time; or

(5) to increase the health maintenance organization's capital and surplus by contribution.

(b) The State Board of Insurance is authorized, by rules and regulations, to fix uniform standards and criteria for early warning that the continued operation of any health maintenance organization might be hazardous to its enrollees, creditors, or the general public, and to fix standards for evaluating the financial condition of any health maintenance organization, which standards shall be consistent with the purposes expressed in Subsection (a) of this section.

[Acts 1975, 64th Leg., p. 524, ch. 214, § 19, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1453, ch. 638, § 8, eff. June 13, 1979.]

Art. 20A.20. Suspension or Revocation of Certificate of Authority

(a) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this Act if the commissioner finds that any of the following conditions exist:

(1) The health maintenance organization is operating significantly in contravention of its basic organizational documents, or its health care plan, or in a manner contrary to that described in and reasonably inferred from any other information submitted under Section 4 of this Act.

(2) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which does not comply with the requirements of Section 9 of this Act.

(3) The health care plan does not provide or arrange for basic health care services.

(4) The board certifies to the commissioner that:

(A) the health maintenance organization does not meet the requirements of Section 5(a)(2) of this Act; or

(B) the health maintenance organization is unable to fulfill its obligation to furnish health care services as required under its health care plan.

(5) The health maintenance organization is no longer financially responsible and may be reasonably expected to be unable to meet its obligations to enrollees or prospective enrollees.

(6) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under Section 7(b) of this Act.

(7) The health maintenance organization has failed to implement the complaint system required by Section 12 of this Act in a manner to resolve reasonably valid complaints.

(8) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(9) The continued operation of the health maintenance organization would be hazardous to its enrollees.

(10) The health maintenance organization has otherwise failed to comply substantially with this Act, and any rule and regulation thereunder.

(b) A certificate of authority shall be suspended or revoked only after compliance with this section.

(c) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children, or newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(d) When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization, as he may find to be in the best interest of the enrollees, to the end that the enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

[Acts 1975, 64th Leg., p. 525, ch. 214, § 20, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1453, ch. 638, § 9, eff. June 13, 1979.]

Art. 20A.21. Rehabilitation, Liquidation, or Conservation of Health Maintenance Organizations

All rehabilitation, liquidation, or conservation of a health maintenance organization shall be considered to be rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to Articles 21.28, as amended, 21.28–A, and 21.28–B of the Insurance Code. The commissioner may also order the conservation, liquidation, or rehabilitation of a health maintenance organization if the commissioner is of the opinion that the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of the state.

[Acts 1975, 64th Leg., p. 526, ch. 214, § 21, eff. Dec. 1, 1975.]

Art. 20A.22. Rules and Regulations

The State Board of Insurance may, after notice and hearing, promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of this Act.

[Acts 1975, 64th Leg., p. 526, ch. 214, § 22, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1454, ch. 638, § 10, eff. June 13, 1979.]

Art. 20A.23. Appeals

(a) Any person who is affected by any rule, ruling, or decision of the commissioner or board shall have the right to have such rule, ruling, or decision reviewed by the State Board of Insurance by making an application to the State Board of Insurance. Such application shall state the identities of the person, the rule, ruling, or decision complained of, the interest of the person in such rule, ruling, or decision, the grounds of such objection, the action sought of the State Board of Insurance, and the reasons and grounds for such action by the State Board of Insurance. The original shall be filed with the chief clerk of the State Board of Insurance together with a certification that a true and correct copy of such application has been filed with the commissioner. Within 30 days after the application is filed, and after 10 days' written notice to all parties of record, the State Board of Insurance shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter. The State Board of Insurance shall make such other rules and regulations with respect to such applications and their consideration as it considers to be advisable, not inconsistent with this Act. Said application shall have precedence over all other business of a different nature pending before said State Board of Insurance.

(b) In the public hearing, any and all evidence and matters pertinent to the appeal may be submitted to the State Board of Insurance whether included in the application or not.

(c) If any person who is affected by any rule, ruling, or decision of the State Board of Insurance

be dissatisfied with any rule, ruling, or decision adopted by the commissioner, board, or State Board of Insurance, that person, after failing to get relief from the State Board of Insurance, may file a petition setting forth the particular objection to such rule, ruling, or decision, or either or all of them, in the district court of Travis County, Texas, and not elsewhere, against the State Board of Insurance as a defendant. Said action shall have precedence over all other causes on the docket of a different nature. Said appeal shall be filed within 20 days after the State Board of Insurance has entered an order. The decision of the State Board of Insurance shall not be enjoined or stayed except on application to such district court after notice to the State Board of Insurance. The proceedings on appeal shall be under the substantial evidence rule, and such appeal shall be taken to a district court in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall at once be returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The State Board of Insurance shall not be required to give any appeal bond in any cause arising hereunder.

[Acts 1975, 64th Leg., p. 526, ch. 214, § 23, eff. Dec. 1, 1975.]

Art. 20A.24. Violation of Act

A person or an agent or an officer of a health maintenance organization who wilfully violates this Act or the rules promulgated pursuant to this Act or who knowingly makes a false statement with respect to a report or a statement required by this Act is guilty of a Class B misdemeanor.

[Acts 1975, 64th Leg., p. 527, ch. 214, § 24, eff. Dec. 1, 1975.]

Art. 20A.25. Confidentiality of Medical and Health Information

Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any physician or provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Act; or upon the express consent of the enrollee or applicant; or pursuant to a statute or court order for the production of evidence or to discovery therefor; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent. The health maintenance organization shall be entitled to claim such statutory privilege against such disclosure which the physician or provider who furnishes such information to the health maintenance organization is entitled to claim.

[Acts 1975, 64th Leg., p. 527, ch. 214, § 25, eff. Dec. 1, 1975.]

Art. 20A.26. Statutory Construction in Relationship to Other Laws

(a) Except as otherwise provided in this Act, provisions of the insurance law and provisions of the group hospital service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this Act. This provision shall not apply to an insurance company or a group hospital service corporation licensed and regulated pursuant to the insurance laws or the group hospital service corporation laws of this state except with respect to its health maintenance organization's activities authorized and regulated pursuant to this Act.

(b) Solicitation of enrollees by health maintenance organizations granted a certificate of authority, or their representatives or agents, shall not be construed to violate any provision of law relating to solicitation or advertising by providers or physicians.

(c) Nothing in this Act shall be construed as permitting the practice of medicine as defined by the laws of this state. Nothing in this Act shall be construed to repeal, modify, or amend Section 3, Chapter 627, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4505, Vernon's Texas Civil Statutes), and no health maintenance organization shall be exempt from same.

(d) The provision of factually accurate information regarding coverage, rates, location and hours of service, and names of affiliated institutions, physicians, and providers by health maintenance organizations or its personnel to potential enrolled participants shall not be construed to be violative of any provision of law relating to solicitation or advertising by physicians or providers. Such information with respect to providers or physicians shall in no manner be contrary to or in conflict with any law or ethics regulating the practice of practitioners of any professional service rendered through or in connection with such providers or physicians.

(e) Any health maintenance organization authorized under this Act which contracts with a health facility or enters into an independent contractual arrangement with physicians or providers organized on a group practice or individual practice basis shall not by virtue of any contracts or arrangements be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

(f)(1) This Act shall not be applicable to any person licensed to practice medicine in this state, nor to any professional association organized under the Texas Professional Association Act, as amended (Article 1528f, Vernon's Texas Civil Statutes), nor to any nonprofit corporation organized and complying with Section 4, Chapter 627, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4509a, Vernon's Texas Civil Statutes), so long as that person, professional association, or nonprofit corporation is engaged in the delivery of health or medical care

that is within the definition of the practice of medicine as defined in Section 2(k) of this Act.

(2) Any person, professional association, or nonprofit corporation referred to above, which shall employ or enter into a contractual arrangement with a provider or group of providers to furnish basic health care services as defined in Section 2(a) of this Act, would be subject to the provisions of this Act, and shall be required to obtain a certificate of authority from the commissioner.

(3) Notwithstanding any other law, any person, professional association, or nonprofit corporation referred to above, which conducts activities permitted by law but which do not require a certificate of authority under this Act, and in the process contracts with one or more physicians, professional associations, or nonprofit corporations referred to above, shall not, by virtue of such contract or arrangement, be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

(4) Notwithstanding any other law, provisions of the insurance law and the provisions of the group hospital service corporation law shall not be applicable to the above persons, professional associations, or nonprofit corporations.

(g)(1) No health maintenance organization shall be exempt from any statute that provides for the regulation and certification of need of health care facility construction, expansion, or other modification, or the institution of a health care service through the issuance of a certificate of need, if at the time of establishment of operation or during the course of operation of the health maintenance organization it becomes subject to the provisions of that statute.

(2) If the proposed plan of operation of the health maintenance organization includes the provision of any facility and/or service that makes the health maintenance organization subject to the statute mentioned in Subdivision (1) of this subsection, the commissioner may not issue a certificate of authority until the commissioner has received a certified copy of the certificate of need granted to the health maintenance organization by the agency responsible for the issuance of the certificate of need.

(h) Activities permitted under authority of Chapter 491, Acts of the 52nd Legislature, 1951, as amended,[1] shall not be considered subject to the provisions of this Act.

[Acts 1975, 64th Leg., p. 527, ch. 214, § 26, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1454, ch. 638, § 11, eff. June 13, 1979.]

[1] Article 1.01 et seq.

Art. 20A.27. Public Record

All applications, filings, and reports required under this Act shall be treated as public documents, except that examination reports shall be considered confidential documents which may be released if, in the opinion of the commissioner, it is in the public interest.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 27, eff. Dec. 1, 1975.]

Art. 20A.28. Authority to Contract

The commissioner or board, in carrying out their obligations under this Act, may contract with other state agencies or, after notice and hearing, with other qualified persons to make recommendations concerning the determinations to be made by the commissioner or board.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 28, eff. Dec. 1, 1975.]

Art. 20A.29. Physician-Patient Relationship

This Act shall not be construed to:

(a) authorize any person, other than a duly licensed physician or practitioner of the healing arts, acting within the scope of his or her license, to engage, directly or indirectly, in the practice of medicine or any healing art, or

(b) authorize any person to regulate, interfere, or intervene in any manner in the practice of medicine or any healing art.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 29, eff. Dec. 1, 1975.]

Art. 20A.30. Officers and Employees Bond

(a) Each health maintenance organization shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the commissioner, designate therein some officer who shall be responsible in the handling of the funds of the health maintenance organization. Said health maintenance organization shall make and file for such officer a surety bond with a corporate surety company authorized to write surety bonds in this state, as surety, satisfactory and payable to the State Board of Insurance in the sum of not less than $25,000 for the use and benefit of the health maintenance organization, which said bond shall obligate the principal and surety to pay such pecuniary loss as the health maintenance organization shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication on the part of such officer, either directly or alone or in connivance with others, while employed as such officer or exercising powers of such office. In lieu of any such bond, any such officer may deposit with the commissioner cash, or securities approved by the commissioner, which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond.

(b) In addition to the bond required in the preceding paragraph, each health maintenance organization shall procure for all other office employees, and other persons who may have access to any of its funds, separate bonds or blanket bonds with some surety licensed by the State Board of Insurance to do business in Texas, in an amount or amounts of not less than $1,000, satisfactory and payable to the State Board of Insurance for the use and benefit of the health maintenance organization obligating the principal and surety to pay each pecuniary loss as the health maintenance organization shall sustain through acts of fraud, dishonesty, forgery, theft,

embezzlement, wrongful abstraction, or wilful misapplication on the part of such persons, either directly or alone or in connivance with others. Successive recoveries on any of the bonds provided from this article may be had on such bonds until same are exhausted.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 30, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1455, ch. 638, § 12, eff. June 13, 1979.]

Art. 20A.31. Injunctions

When it appears to the commissioner that a health maintenance organization is violating or has violated this Act or any rule or regulation issued pursuant to this Act, the commissioner may bring suit in a district court of Travis County to enjoin the violation and for such other relief as the court may deem appropriate.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 31, eff. Dec. 1, 1975.]

Art. 20A.32. Fees

Every organization subject to this chapter shall pay to the commissioner the following fees:

(a) for filing its original application for a certificate of authority, $250;

(b) for filing each annual report pursuant to Section 10 of this Act, $100;

(c) the expenses of any examinations conducted pursuant to this Act; and

(d) the licensing, appointment, and examination fees pursuant to Section 15, Texas Health Maintenance Organization Act (Article 20A.15, Vernon's Texas Insurance Code).

[Acts 1975, 64th Leg., p. 530, ch. 214, § 32, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1455, ch. 638, § 13, eff. June 13, 1979.]

Art. 20A.33. Taxation

(a) Each health maintenance organization shall on or before the first day of March of each year file its annual statement showing the gross amount of revenues collected during the year ending December 31 preceding, and each such health maintenance organization if organized under the laws of this state shall pay an annual tax for the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts in accordance with Article 7064a, Revised Civil Statutes of Texas, 1925, as amended; [1] if such health maintenance organization is not organized under Texas laws, said health maintenance organization shall pay an annual tax for the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts in accordance with Article 4769, Revised Civil Statutes of Texas, 1925, as amended. For the purposes of computing and collecting the tax herein provided, a health maintenance organization is an "insurance organization" within the terms of Article 7064a, Revised Civil Statutes of Texas, 1925, as amended, and Article 4.03, Insurance Code.

Upon receipt of the sworn statement above provided, the State Board of Insurance shall certify to the State Treasurer the amount of taxes due by such health maintenance organization which shall be paid to the State Treasurer on or before March 15 following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this state during the calendar year ending December 31 in which such payments were collected, or for that portion of the year during which the health maintenance organization transacted business in this state.

(b) Each such health maintenance organization shall be subject to the provisions of Articles 4.13, 4.14, and 4.15, Insurance Code, as amended.

[Acts 1975, 64th Leg., p. 530, ch. 214, § 33, eff. Dec. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1456, ch. 638, § 14, eff. June 13, 1979; Acts 1981, 67th Leg., p. 1784, ch. 389, § 37(c), eff. Jan. 1, 1982.]

[1] Transferred; see, now, art. 4.11 of this Code.

Art. 20A.34. Effective Date

This Act shall take effect on the first day of December, 1975.

[Acts 1975, 64th Leg., p. 531, ch. 214, § 34, eff. Dec. 1, 1975.]

Art. 20A.35. Severability

If any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of this Act which can be given effect without the invalid provisions or application. To this end, all provisions of the Texas Health Maintenance Organization Act are declared to be severable.

[Acts 1979, 66th Leg., p. 1456, ch. 638, § 15, eff. June 13, 1979.]

CHAPTER TWENTY-ONE. GENERAL PROVISIONS

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

Article
21.32A. Legality of Dividend.
21.35A. Coverage Under Group Insurance and Group Hospital Plans for Psychological Services.
21.39–B. Restriction on Transactions with Funds and Assets.
21.49–3. Texas Medical Liability Insurance Underwriting Association Act.
21.49–4. Self-Insurance Trusts.
21.49–4a. Coverage of Physicians Under Contracts of Professional Liability Insurance Issued by Health Care Liability Claim Trusts.
21.49–5. [Blank].
21.49–6. Self-Insurance Trusts for Banks.
21.49–9. Exclusionary Clauses in Health Insurance.
21.49–10. Payment to State.
21.52. Right to Select Practitioner under Health and Accident Policies.
21.53 to 21.76. [Blank].
21.77. Group Marketing of Motor Vehicle Insurance.
21.80. Judicial Review of Board Action.

SUBCHAPTER A. AGENTS AND AGENTS' LICENSES

Art. 21.05. Who May Not Be Agents

No stock company shall be licensed or granted a certificate of authority as the agent or representative of any life insurance company in soliciting, selling or in any manner placing life insurance policies or contracts in the State.

[Amended by Acts 1977, 65th Leg., p. 1421, ch. 579, § 1, eff. Aug. 29, 1977.]

Art. 21.07. Licensing of Agents

Applicability of Act

Sec. 1. (a) No person or corporation shall act as an agent of any (i) local mutual aid association, (ii) local mutual burial association, (iii) statewide mutual assessment corporation, (iv) stipulated premium company, (v) county mutual insurance company, (vi) casualty company writing accident and health insurance, or (vii) any other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of Article 21.07, Texas Insurance Code, 1951, as amended, on the date that this Act shall become effective, unless he or it shall have first procured a license from the State Board of Insurance as in this Article 21.07, as amended hereby, is provided, and no such insurance carrier shall appoint any person or corporation to act as its agent unless such person or corporation shall have obtained a license under the provisions of this Article, and no such person or corporation who obtains a license shall engage in business as an agent until he or it shall have been appointed to act as an agent by some duly authorized insurance carrier designated by the provisions of this Article 21.07 and authorized to do business in the State of Texas. Any person or corporation desiring to act as an agent of any insurance carrier licensed to do business in the State of Texas and writing health and accident insurance may obtain a separate license as an agent to write health and accident insurance provided such person or corporation complies with the provisions of this Article and has been appointed to act as an agent by some duly authorized insurance carrier authorized to do health and accident insurance business in the State of Texas.

(b) No insurer or licensed insurance agent doing business in this State shall pay directly or indirectly any commission, or other valuable consideration, to any person or corporation for services as an insurance agent within this State, unless such person or corporation shall hold a currently valid license to act as an insurance agent as required by the laws of this State; nor shall any person or corporation other than a duly licensed insurance agent, accept any such commission or other valuable consideration; provided, however, that the provisions of this Section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because such person or corporation has ceased to hold a license to act as an insurance agent.

Application for License; To Whom License May Be Issued

Sec. 2. (a) Hereafter, when any person or corporation shall desire to become a agent for a (i) local mutual aid association, (ii) a local mutual burial association, (iii) a statewide mutual assessment corporation, (iv) a stipulated premium company, (v) a county mutual insurance company, (vi) a casualty company writing accident and health insurance, or (vii) any other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of Article 21.07, Texas Insurance Code, 1951, as amended, such person or corporation shall, in such form and giving such information as may be reasonably required, make application to the State Board of Insurance for a license to act as an agent. The application shall be accompanied by a certificate on forms to be prescribed and furnished by the State Board of Insurance and signed by an officer or properly authorized representative of the insurance carrier the applicant proposes to represent, stating that the insurance carrier has investigated the character and background of the applicant and is satisfied that he or its officers, directors, and shareholders are trustworthy and qualified to hold himself or the corporation out in good faith to the general public as an insurance agent, and that the insurance carrier desires that the applicant act as an insurance agent to represent it in this state.

(b) The Board shall issue a license to a corporation if the Board finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as an agent covered by this Article;

(2) That every officer, director, and shareholder of the corporation is individually licensed under the provisions of this Article; and

(3) That such corporation will have the ability to pay any sums up to $25,000 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business under this Article. The term "customer" means any person, firm, or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(A) an errors and omissions policy insuring such corporation against errors and omissions in at least the sum of $50,000 with no more than a

$2,500 deductible feature issued by an insurance company licensed to do business in the State of Texas or, if a policy cannot be obtained from a company licensed to do business in Texas, a policy issued by a company not licensed to do business in Texas on filing an affidavit with the State Board of Insurance stating the inability to obtain coverage and receiving the Board's approval;

(B) a bond executed by such corporation as principal and a surety company authorized to do business in this State, as surety, in the principal sum of $25,000, payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(C) a deposit of cash or securities of the class authorized by Articles 2.08 and 2.10, Insurance Code, as amended, having a fair market value of $25,000 with the State Treasurer. The State Treasurer is directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Board evidence satisfactory to it that the corporation has withdrawn from business and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of an agent under this Article without obtaining a license.

If at any time, any corporation holding an agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as an agent shall be cancelled or denied in accordance with the provisions of Sections 10 and 11 of this Article; provided, however, that should any person who is not a licensed agent under this Article acquire shares in such a corporation by devise or descent, he shall have a period of 90 days from date of acquisition within which to obtain a license or to dispose of the shares of a person licensed under this Article.

Should such an unlicensed person acquire shares in a corporation and not dispose of them within a period of 90 days to a licensed agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the board of directors and such shareholder or his personal representative, or at a price and upon such terms as may be provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as an agent under this Article shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its yearly application for renewal license.

Each corporation shall immediately notify the State Board of Insurance upon any change in its officers, directors, or shareholders.

No other corporation may own any interest in a corporation licensed under this Article, and each owner of an interest in a corporation licensed under this Article shall be a natural person who holds a valid license issued under this Article.

Issuance of License Under Certain Circumstances

Sec. 3. After the State Board of Insurance has determined that such applicant is of good character and trustworthy, the State Board of Insurance shall issue a license to such person or corporation in such form as it may prepare authorizing such applicant to write the types of insurance authorized by law to be issued by applicant's appointing insurance carrier, except that such applicant shall not be authorized to write health and accident insurance unless: (i) applicant, if not a corporation, shall have first passed a written examination as provided for in this Article 21.07, as amended, or (ii) applicant will act only as a ticket-selling agent of a public carrier with respect to accident life insurance covering risks of travel or as an agent selling credit life, health and accident insurance issued exclusively in connection with credit transactions, or (iii) applicant will write policies or riders to policies providing only lump sum cash benefits in the event of the accidental death, or death by accidental means, or dismemberment, or providing only ambulance expense benefits in the event of accident or sickness.

Examination of Applicant for License to Write Health and Accident Insurance

Sec. 4. (a) Each applicant for a license under the provisions of this Article 21.07, Texas Insurance Code, 1951, as amended, who desires to write health and accident insurance, other than as excepted in Section 3 of this Article 21.07, within this State shall submit to a personal written examination prescribed and administered in the English or Spanish language by the State Board of Insurance to determine his

competency with respect to health and accident insurance and his familiarity with the pertinent provisions of the laws of the State of Texas relating to health and accident insurance, and shall pass the same to the satisfaction of the State Board of Insurance; except that no written examination shall be required of:

(i) An applicant for the renewal of a license issued by the State Board of Insurance pursuant to Article 21.07, Texas Insurance Code, 1951, as amended, which is currently in force at the effective date of this Act;

(ii) An applicant whose license expired less than one year prior to the date of application may, in the discretion of the State Board of Insurance, be issued a license without written examination, provided such prior license granted such applicant the right to sell health and accident insurance; or

(iii) An applicant that is a corporation.

(b)(i) The State Board of Insurance shall, within sixty (60) days from the effective date of this Act, establish reasonable rules and regulations with respect to the scope, type and conduct of such written examination and the times and places within this State where such examinations shall be held; applicants, shall, however, be permitted to take such examinations at least once in each week at the office of the State Board of Insurance. The rules and regulations of the State Board of Insurance shall designate text books, manuals and other materials to be studied by applicants in preparation for examination pursuant to this Section. Such text books, manuals and other materials may consist of matter available to applicants by purchase from the publisher or may consist of matter prepared at the direction of the State Board of Insurance and distributed to applicants upon request therefor and payment of the reasonable cost thereof. All examination questions shall be prepared from the contents of the text books, manuals and other materials designated or prepared by the State Board of Insurance pursuant to this Section and such questions shall be limited to and substantially similar to the questions relating to health and accident insurance contained in the written examination prescribed by the State Board of Insurance pursuant to Article 21.07–1 of this Insurance Code. The State Board of Insurance shall charge each applicant a fee of $10.00 for the privilege of taking such written examination and which fee shall not be returned under any circumstance other than for failure to appear and take the examination after the applicant has given at least 24 hours' notice of an emergency situation to the State Board of Insurance and received board approval. A new examination fee shall be paid for each and every examination.

[See Compact Edition, Volume 2 for text of 4(b)(ii) to (e)]

Failure of Applicant to Qualify for License

Sec. 5. If the State Board of Insurance is not satisfied that the applicant for a license is trustworthy and of good character, or, if applicable, that the applicant, if required to do so, has not passed the written examination to the satisfaction of the State Board of Insurance, the State Board of Insurance shall forthwith notify the applicant and the insurance carrier in writing that the license will not be issued to the applicant, and return to said agent the $25.00 fee for application for license and the $8.00 fee for appointment.

Agent May Be Licensed to Represent Additional Insurers

Sec. 6. Any agent licensed under this Article may represent and act as an agent for more than one insurance carrier at any time while his or its license is in force, if he or it so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional insurance carrier or carriers. Such notice must set forth the insurance carrier or carriers which the agent is then licensed to represent, and shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment, that said insurance carrier desires to appoint the applicant as its agent. This notice shall also contain such other information as the State Board of Insurance may require. The agent shall be required to pay a fee of $8.00 for each additional appointment applied for, which fee shall accompany the notice.

Expiration and Renewal of License

Sec. 7. (a) Each license issued to an agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the State Board of Insurance or the authority of the agent to act for the insurance carrier is terminated.

(b) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent.

[See Compact Edition, Volume 2 for text of (c)]

(d) The appointment or appointments given under any Section of this Article authorizing the agents to act as an agent for an insurance carrier shall continue in full force and effect without the necessity of renewal until terminated and withdrawn by the insurance carrier in accordance with Section 9 of this Article 21.07 or otherwise terminated in accordance with this Article 21.07, and each renewal license issued to the agent shall authorize him or it to represent and act for the insurance carriers for which he or it holds an appointment until the appointment is so terminated, and the agent shall prima facie be deemed, for the purpose of this Article 21.07, to be the agent of the appointing

insurance carriers, provided that on or before April 1st of each and every calendar year, commencing on or before April 1, 1970, each such insurance carrier so appointing such agent shall file with the State Board of Insurance a certificate, upon forms promulgated by the State Board of Insurance, certifying that such insurance carrier desires to continue the appointment of such agent, and if such insurance carrier shall for any reason fail to file such certificate for any year as relates to such agent, it shall be deemed and considered for all purposes that such insurance carrier has terminated the appointment of such agent in like manner as if compliance had been made by such insurance carrier with Section 9 of this Article.

[See Compact Edition, Volume 2 for text of 8 and 9]

Denial, Refusal, Suspension or Revocation of Licenses

Sec. 10. (a) A license may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the State Board of Insurance if, after notice and hearing as hereafter provided, it finds that the applicant, individually or through any officer, director, or shareholder, for, or holder of, such license:

(1) Has wilfully violated any provision of the insurance laws of this State: or

(2) Has intentionally made a material misstatement in the application for such license; or

(3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(4) Has misappropriated or converted to his or its own use or illegally withheld money belonging to an insurance carrier or an insured or beneficiary; or

(5) Has otherwise demonstrated lack of trustworthiness or competence to act as an agent; or

(6) Has been guilty of fraudulent or dishonest practices; or

(7) Has materially misrepresented the terms and conditions of any insurance policy or contract; or

(8) Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance contract legally issued by any insurance carrier, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another; or

(9) Is not of good character or reputation.

(b) Before any license shall be denied (except for failure to pass a required written examination), or suspended or revoked, or the renewal thereof refused hereunder, the Board shall give notice of its intention so to do, by registered mail, to the applicant for, or holder of, such license and the insurance carrier whom he or it represents or who desires that he or it be licensed, and shall set a date not less than twenty days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the insurance carrier may appear to be heard and produce evidence. In the conduct of such hearing, the Board or any regular salaried employee specially designated by it for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon its own initiative or upon the request of the applicant or licensee. Upon termination of such hearings, findings shall be reduced to writing and, upon approval by the Board, shall be filed in its office and notice of the findings sent by registered mail to the applicant or licensee and the insurance carrier concerned.

(c) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass a required written examination) shall be entitled to file another application for a license as an agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Board unless the applicant shows good cause why the denial, refusal or revocation of his or its license shall not be deemed a bar to the issuance of a new license.

Judicial Review of Acts of State Board of Insurance

Sec. 11. If the said Board shall refuse an application for any license provided for in this Article, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the State Board of Insurance as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence or principal place of business, and not elsewhere, within twenty (20) days from the date of the order of said State Board of Insurance.

The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The State Board of Insurance shall not be required to give any appeal bond in any cause arising hereunder.

Penalty

Sec. 12. Any person or officer, director, or shareholder of a corporation required to be licensed by this Article who individually, or as an officer or employee of an insurance carrier, or other corporation, wilfully violates any of the provisions of this Article shall, in addition to any other penalty specifically provided, be guilty of a misdemeanor and, upon conviction, shall be fined not more than $500.00 or imprisoned not more than six (6) months, or both, each such violation being a separate offense hereunder. In addition, if such offender or the corporation of which he is an officer, director, or shareholder holds a license as an agent, such license shall automatically expire upon such conviction.

[See Compact Edition, Volume 2 for text of 13]

Fees and Use of Funds

Sec. 14. (a) It shall be the duty of the State Board of Insurance to collect from every agent of any insurance carrier writing insurance in the State of Texas under the provisions of this Article, a licensing fee and an initial appointment fee, as provided in Subsection (b) of this section, for each and every appointment by any insurance carrier, which fees shall constitute a fund to be used by the State Board of Insurance to enforce the provisions of this Article 21.07 and all laws of this State governing and regulating agents for such insurance carriers, as provided in Subsection (b) of this section.

(b) For those agents subject to licensing under the provisions of this Act, the license fee shall be Twenty-five Dollars ($25) and Eight Dollars ($8) for each appointment.

[See Compact Edition, Volume 2 for text of 14(c)]

Dual Licensing

Sec. 15. Any person or corporation that holds a license under the provisions of Article 21.07–1, Texas Insurance Code, 1951, as amended, shall be entitled to receive a license under this Article 21.07, and be authorized to write health and accident insurance without being required to pass the examination as required under this Article 21.07. Any person or corporation that holds a license under the provisions of Article 21.14, Texas Insurance Code, 1951, as amended, shall be entitled to write health and accident insurance written by those companies for whom he or it is licensed under Article 21.14 without being required to pass the examination required under this Article 21.07.

[See Compact Edition, Volume 2 for text of 16 and 17]

Assignment of Agent's Commissions

Sec. 18. Notwithstanding any provisions of either this Article or of the Insurance Code to the contrary, an employee, officer, director, or shareholder of either a state or national bank who is licensed as an agent under this Article and who enters into a contract with an insurer to act as the insurer's agent in soliciting or writing policies or certificates of credit life insurance, credit accident and health insurance, or both, covering debtors of the bank in which such agent is an employee, officer, director, or shareholder, may assign and transfer to such bank any commissions, fees, or other compensation to be paid to such agent under the agent's contract with the insurer.

Agent for United States Military Personnel in Foreign Countries

Sec. 19. (a) Notwithstanding any provisions of either this Article or of the Insurance Code to the contrary, any natural person may be licensed by the State Board of Insurance under this Section of this Article to represent any type of authorized life insurance company, including legal reserve life insurance companies, domiciled in this State, provided such person represents such insurer exclusively in a foreign country or territory and either on a United States military installation or with United States military personnel.

(b) The State Board of Insurance may, upon request of such insurer on application forms furnished by the State Board of Insurance and upon payment of a license fee of $25, issue such license to such person which will be valid only for such limited representation of such insurer as provided herein. The application shall be accompanied by a certificate, on forms to be prescribed and furnished by the State Board of Insurance and signed by an officer or properly authorized representative of the insurance company the applicant proposes to represent, stating that the insurance company has investigated the character and background of the applicant and is satisfied that the applicant is trustworthy and qualified to hold himself out in good faith as an insurance agent, and that the insurance company desires that the applicant act as an insurance agent to represent the insurance company. The insurer shall also certify to the State Board of Insurance that it has provided the applicant with at least forty (40) hours of training, has tested the applicant and found the applicant qualified to represent the insurer, and that the insurer is willing to be bound by the acts of such applicant within the scope of such limited representation.

(c) Such application and license shall be subject to the provisions of Sections 7, 9, 10, 11, 12, 13, and 14 of this Article.

[Amended by Acts 1975, 64th Leg., p. 2372, ch. 731, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 386, ch. 192, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 387, ch. 193, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1421, ch. 579, §§ 2 to 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 369, ch. 166, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 884, ch. 404, § 1, eff. June 6, 1979; Acts 1981, 67th Leg., p. 708, ch. 269, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2640, ch. 707, § 4(28), eff. Aug. 31, 1981.]

Art. 21.07-1. Legal Reserve Life Insurance Agents; Examination; Licenses

Legal Reserve Life Insurance Agent Defined

Sec. 1.

[See Compact Edition, Volume 2 for text of 1(a)]

(b) The term "life insurance agent" for the purpose of this Act means any person or corporation that is an authorized agent of a legal reserve life insurance company, and any person who is a subagent of such agent, who acts as such in the solicitation of, negotiation for, or procurement of, or collection of premiums on, an insurance or annuity contract with a legal reserve life insurance company; except that the term "life insurance agent" shall not include:

[See Compact Edition, Volume 2 for text of 1(b)(1) to (5), (c) to (g)]

Acting for Unauthorized Companies Prohibited

Sec. 2. (a) No person or corporation shall, within this State, solicit, procure, receive, or forward applications for life insurance or annuities, or issue or deliver policies for, or in any manner secure, help, or aid in the placing of any contract of life insurance or annuity for any person other than himself, or itself, directly or indirectly, with any legal reserve life insurance company not authorized to do business in this State.

[See Compact Edition, Volume 2 for text of 2(b)]

Acting as Agent Without License Prohibited; No Commissions to be Paid to Unlicensed Persons

Sec. 3. (a) No person or corporation shall act as a life insurance agent within this State until he or it shall have procured a license as required by the laws of this State.

(b) No insurer or licensed life insurance agent doing business in this State shall pay directly or indirectly any commission, or other valuable consideration, to any person or corporation for services as a life insurance agent within this State, unless such person or corporation shall hold a currently valid license to act as a life insurance agent as required by the laws of this State; nor shall any person or corporation, other than a duly licensed life insurance agent, accept any such commission or other valuable consideration; provided, however, that the provisions of this Section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because such person or corporation has ceased to hold a license to act as a life insurance agent.

Application for License; To Whom License May Be Issued

Sec. 4. (a) Each applicant for a license to act as a life insurance agent within this State shall file with the Insurance Commissioner his or its written application on forms furnished by the Commissioner. The application shall be signed and duly sworn by the applicant. The prescribed form shall require the applicant to state his full name; residence; age; occupation and place of business for five years preceding date of the application; whether applicant has ever held a license to solicit life, or any other insurance in any State; whether he has been refused, or has had suspended or revoked a license to solicit life, or any other insurance in any State; what insurance experience, if any, he has had; what instruction in life insurance and in the insurance laws of this State he has had or expects to have; whether any insurer or general agent claims applicant is indebted under any agency contract, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto; whether applicant has had an agency contract cancelled and, if so, when, by what company or general agent and the reasons therefor; whether applicant will devote all or part of his efforts to acting as a life insurance agent, and, if part only, how much time he will devote to such work, and in what other business or businesses he is engaged or employed; whether, if applicant is a married woman, her husband has ever applied for or held a license to solicit life, or any other insurance in any State and whether such license has been refused, suspended, or revoked; and such other information pertinent to the licensing of such agent as the Insurance Commissioner in his discretion may prescribe. It is not intended that the Insurance Commissioner shall be authorized to deny a license to an applicant on the sole ground that he will act only part time as a life insurance agent.

(b) The application shall be accompanied by a certificate on forms furnished by the Insurance Commissioner and signed by an officer or properly authorized representative of the legal reserve life insurance company he or it proposes to represent, stating that the insurer has investigated the character and background of the applicant and is satisfied that he or the officers, directors, and shareholders of the corporation are trustworthy and qualified to hold himself or itself out in good faith to the general public as a life insurance agent, that the applicant has completed the educational requirements as provided in sub-section (e), Section 4 of this Act, and that the insurer desires that the applicant be licensed as a life insurance agent to represent it in this State.

(c) The application, when filed, shall be accompanied by a filing fee in the amount of $25.00 and, in the case of applicants required to take an examination administered by the Commissioner of Insurance as hereafter prescribed, by an examination fee in the amount of $10.00. In the event an applicant fails to qualify for, or is refused a license, the filing fee shall be returned; the examination fee shall not be returned for any reason other than for failure to appear and take the examination after the applicant has given at least 24 hours' notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval. A new exami-

nation fee shall be paid for each and every examination.

(d) The Insurance Commissioner shall issue a license to a corporation if he finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act or the Texas Professional Corporation Act[1] having its principal place of business in the State of Texas and having as one of its purposes the authority to act as agent under this Act;

(2) That every officer, director, and shareholder of the corporation is individually licensed as an agent under the provisions of this Act; and

(3) That such corporation will have the ability to pay any sums up to $25,000.00 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as under this Act. The term "customer" as used herein shall mean any person, firm, or corporation to whom such corporation sells or attempts to sell a policy of insurance or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(A) An errors and omissions policy insuring such corporation against errors and omissions in at least the sum of $50,000.00, with no more than a $2,500.00 deductible feature issued by an insurance company licensed to do business in the State of Texas or, if a policy cannot be obtained from a company licensed to do business in Texas, a policy issued by a company not licensed to do business in Texas on filing an affidavit with the State Board of Insurance stating the inability to obtain coverage and receiving the Board's approval; or

(B) A bond executed by such corporation as principal and a surety company authorized to do business in this State, as surety, in the principal sum of $25,000.00, payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(C) A deposit of cash or securities of the class authorized by Articles 2.08 and 2.10 of the Insurance Code, having a fair market value of $25,000.00 with the State Treasurer. The State Treasurer is hereby authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Insurance Commissioner evidence satisfactory to it that the corporation has withdrawn from business and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as hereinbefore provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of an agent under this Act without obtaining a license.

If at any time, any corporation holding a license under this Act does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as an agent shall be cancelled or denied in accordance with the provisions of Sections 12 and 13 of this Act; provided, however, that should any person who is not an agent licensed under this Act acquire shares in such a corporation by devise or descent, they shall have a period of 90 days from date of acquisition within which to obtain a license as an agent or to dispose of the shares to an agent licensed under this Act.

Should such an unlicensed person acquire shares in such a corporation and not dispose of them within said period of 90 days to a licensed agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the board of directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as an agent under this Act shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its yearly application for renewal license.

Each corporation licensed as an agent under this Act shall immediately notify the State Board of Insurance upon any change in its officers, directors, or shareholders.

No other corporation may own any interest in a corporation licensed under this Act, and each owner of an interest in a corporation licensed under this Act shall be a natural person who holds a valid license issued under this Act.

No association, partnership, or any legal entity of any nature, other than an individual person or corporation, may be licensed as a life insurance agent.

(e) Each applicant, prior to sitting for the written examination as provided for in Section 5 of this Act, shall complete, under the supervision of such sponsoring insurer, an educational program that shall include:

(1) such texts as may be prescribed by the Commissioner of Insurance on the recommendation of the Advisory Board as provided in Subsection (c) of Section 5 of this Act; and

(2) materials that will provide the applicant with the basic knowledge of:

(A) the broad principles of insurance, licensing, and regulatory laws of this State; and

(B) the obligations and duties of a life insurance agent.

[1] Civil Statutes, art. 1528e.

Examination of Applicant for License

Sec. 5. (a) Each applicant for a license to act as a life insurance agent within this State shall submit to a personal written examination administered in the English or Spanish language, and as shall be prescribed by the State Board of Insurance, to determine his competence with respect to insurance and annuity contracts and his familiarity with the pertinent provisions of the laws of this State, and shall pass the same to the satisfaction of the State Board of Insurance; except that no such written examination shall be required of:

(1) An applicant for the renewal of a license issued by the State Board of Insurance pursuant to Article 21.07, Texas Insurance Code, 1951, which is currently in force at the time of the effective date of this Act;

(2) An applicant whose license as a life insurance agent expired less than one year prior to the date of application may, in the discretion of the State Board of Insurance, be issued a license without written examination;

(3) A person who holds the designation Chartered Life Underwriter (CLU);

(4) An applicant that is a corporation.

(b) The Commissioner shall establish rules and regulations with respect to the scope, type and conduct of such written examinations and the times and places within this State where they shall be held; provided, that applicants shall be permitted to take such examinations at least once in each week at the office of the Commissioner, and at least once in each month in the county court house of the residence of the applicant. The rules and regulations of the Commissioner shall designate text books, manuals and other materials to be studied by applicants in preparation for examinations pursuant to this Section. Such text books, manuals or other materials may consist of matter available to applicants by purchase from the publisher or may consist of matter prepared at the direction of the Commissioner and distributed to applicants upon request therefor and payment of the reasonable cost thereof. All examination questions shall be prepared from the contents of the text books, manuals and other materials designated or prepared by the Commissioner pursuant to this Section.

(c) The Commissioner shall appoint an Advisory Board consisting of eight persons of whom two shall be holders of licenses issued under this Article, two shall be employed by and familiar with the operations of legal reserve life insurance companies, two shall be general agents and managers, and two shall be citizens of the State of Texas who are neither agents, general managers, nor employees of legal reserve life insurance companies, which shall make recommendations to him with respect to the scope, type, and conduct of written examinations and the times and places within the State where they shall be held. This Advisory Board shall make such recommendations not less frequently than once every four years. The members of the Advisory Board shall serve without pay but shall be reimbursed for their reasonable expenses in attending meetings of the Advisory Board.

(d) An applicant other than a corporation for a license to act as a combination life insurance agent for a combination company, or as an industrial life agent for an industrial company, may, in lieu of taking and passing to the satisfaction of the Insurance Commissioner a personal written examination as provided in Sub-section (a) of this Section 5, submit to a personal written examination given by the combination or industrial insurer for which he is to be licensed, subject to the following definitions and condititons:

[See Compact Edition, Volume 2 for text of 5(d)(1)]

(2) Any combination or industrial insurer desiring to qualify to administer the examination to its agents shall file with the Commissioner a complete outline and explanation of the course of study and instruction to be given such applicants and the nature and manner of conducting the examinations of applicants and, after official approval thereof by the Commissioner, may administer such examinations.

[See Compact Edition, Volume 2 for text of 5(d)(3)]

(4) It shall be the duty of the Commissioner to investigate the manner and method of instruction and examination of each combination and industrial insurer as often as deemed necessary by the Commissioner and the Commissioner may, in his discretion, withdraw from any insurer the privilege of examining agents in lieu of the examination administered by the Commissioner pursuant to Sub-section (a) of this Section 5.

[See Compact Edition, Volume 2 for text of 5(d)(5), 6 and 7]

Agent May Be Licensed to Represent Additional Insurers

Sec. 8. (a) Any life insurance agent licensed in this state may represent and act as a life insurance agent for more than one legal reserve life insurance company at any time while his or its license is in force, if he or it so desires. Any such life insurance agent and the company involved must give notice to the Commissioner of Insurance of any additional appointment or appointments authorizing him or it to act as a life insurance agent for an additional legal reserve life insurance company or companies. Such notice must set forth the insurer or insurers which the agent is then licensed to represent, and shall be accompanied by a certificate from each insurer to be named in each additional appointment, that said insurer desires to appoint the applicant as its agent. This notice shall also contain such other information as the Commissioner may require. The agent shall be required to pay a fee of $8.00 for each additional appointment applied for, which fee shall accompany the notice. Any insurer may file a request with the Insurance Commissioner for notification in the event any agent licensed to represent such insurer has given the Commissioner of Insurance notice of an additional appointment to represent another insurer; and in such event the Commissioner shall notify the insurer filing such request.

(b) Any life insurance agent licensed in this state may place excess or rejected risks with any legal reserve life insurance company lawfully doing business in this state other than an insurer such agent is licensed to represent; provided, however, that such life insurance agent shall procure an additional appointment to represent such other insurer before receiving commissions or other compensation for his or its services.

Expiration and Renewal of License

Sec. 9. (a) Each license issued to a life insurance agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Insurance Commissioner or the authority of the agent to act for the insurer is terminated.

(b) Licenses which have not expired or which have not been suspended or revoked, may be renewed upon request in writing of the agent.

(c) Each request for renewal of license shall show whether the agent devotes all or part of his or its efforts to acting as a life insurance agent, and if part only, how much time he or it devotes to such work.

(d) Upon the filing of a request for renewal of license, and payment of a renewal fee of $25.00 for such license, prior to the date of expiration, the current license shall continue in force until the renewal license is issued by the Commissioner or until the Commissioner has refused, for cause, to issue such renewal license, as provided in Section 12, of this Act, and has given notice of such refusal in writing to the insurer and the agent.

(e) The appointment or appointments given under Section 4 or Section 8 of this Act authorizing the agents to act as a life insurance agent for a legal reserve life insurance company or companies, shall continue in full force and effect, without the necessity of renewal, until terminated and withdrawn by the companies in accordance with Section 11 of this Act, or otherwise terminated in accordance with this Act, and each renewal license issued to the agent shall authorize him or it to represent and act for the companies for which he or it holds an appointment until the appointment is so terminated, and the agent shall prima facie be deemed, for the purpose of this Article, to be the agent of the appointing companies, provided that on or before April 1st of each and every calendar year, commencing on or before April 1, 1968, each such company so appointing such life insurance agent shall file with the Commissioner a certificate, upon forms promulgated by the Commissioner, certifying that such legal reserve life insurance company desires to continue the appointment of such life insurance agent, and if such company shall for any reason fail to file such certificate for any year as relates to such agent, it shall be deemed and considered for all purposes that such company has terminated the appointment of such life insurance agent in like manner as if compliance has been made by such company with Section 11 of this Act.

Temporary License

Sec. 10. The Life Insurance Commissioner, if he is satisfied with the honesty and trustworthiness of the applicant, may issue a temporary life insurance agent's license, effective for ninety days, without requiring the applicant to pass a written examination, as follows:

[See Compact Edition, Volume 2 for text of 10(a) to (b)(3)]

(4) that such person will complete, under such insurer's supervision, at least forty hours of training as prescribed by sub-section (c) of Section 10 of this Act within fourteen days from the date on which the application and certificate were delivered or mailed to the Commissioner.

(5) The Commissioner shall have the authority to cancel, suspend, or revoke the temporary appointment powers of any life insurance company, if, after notice and hearing, he finds that such company has abused such temporary appointment powers. In considering such abuse, the Commissioner may consider, but is not limited to, the number of temporary appointments made by a company, the percentage of appointees sitting for the examination as life insurance agents under this Article as it may be in violation of sub-section (d) of this Section, and the

number of appointees successfully passing said examination. Appeals from the Commissioner's decision shall be made in accordance with Section 13 hereof.

(c) At least forty hours of training must be administered to any applicant for a temporary license as herein defined within fourteen days from the date on which the application and certificate were delivered or mailed to the Commissioner. Such training program shall be constructed so as to provide an applicant with the basic knowledge of:

(1) the broad principles of insurance, licensing, and regulatory laws of this State; and

(2) the obligations and duties of a life insurance agent.

The Commissioner of Insurance may, in his discretion, require that such training program shall be filed with the State Board of Insurance for approval in the event he finds an abuse of temporary appointment powers under sub-section (b)(5) of this Section.

(d) Each insurer is responsible for requiring at least 70 percent of such insurer's applicants for temporary licenses during a fiscal year to sit for the examination as defined in Section 5 of this Act.

[See Compact Edition, Volume 2 for text of 11]

Denial, Refusal, Suspension, or Revocation of Licenses

Sec. 12. (a) A license may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the Insurance Commissioner if, after notice and hearing as hereafter provided, he finds that the applicant, individually or through any officer, director, or shareholder, for, or holder of such license:

[See Compact Edition, Volume 2 for text of 12(a)(1) to (3)]

(4) Has misappropriated or converted to his or its own use or illegally withheld money belonging to an insurer or an insured or beneficiary; or

[See Compact Edition, Volume 2 for text of 12(a)(5) to (8)]

(9) Has obtained, or attempted to obtain such license, not for the purpose of holding himself or itself out to the general public as a life insurance agent, but primarily for the purpose of soliciting, negotiating or procuring life insurance or annuity contracts covering himself or itself or members of his family or his or its business associates; or

[See Compact Edition, Volume 2 for text of 12(a)(10)]

(b) Before any license shall be denied (except for failure to pass a required written examination), or suspended or revoked, or the renewal thereof refused hereunder, the Insurance Commissioner shall give notice of his intention so to do, by registered mail, to the applicant for, or holder of such license and the insurer whom he or it represents or who desires that he or it be licensed, and shall set a date not less than twenty days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the insurer may appear to be heard and produce evidence. In the conduct of such hearing, the Commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the Commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the insurer concerned.

(c) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass a required written examination) shall be entitled to file another application for a license as a life insurance agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Commissioner unless the applicant shows good cause why the denial, refusal or revocation of his or its license shall not be deemed a bar to the issuance of a new license.

Judicial Review of Acts of Commissioner

Sec. 13. If the said Insurance Commissioner shall refuse an application for any license provided for in this Act, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the Insurance Commissioner as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence or principal place of business, and not elsewhere, within twenty (20) days from the date of the order of said Insurance Commissioner.

Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

Penalty

Sec. 14. Any person or officer, director, or shareholder of a corporation required to be licensed by this Act who individually, or as an officer or employee of a legal reserve life insurance company, or other corporation, violates any of the provisions of this Act shall, in addition to any other penalty specifically provided, be guilty of a misdemeanor and, upon conviction, shall be fined not more than $500.00 or imprisoned not more than six months, or both, each such violation being a separate offense hereunder. In addition, if such offender or corporation of which he is an officer, director, or shareholder holds a license as a life insurance agent, such license shall automatically expire upon such conviction.

[See Compact Edition, Volume 2 for text of 15]

[Amended by Acts 1975, 64th Leg., p. 2372, ch. 731, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 383, ch. 191, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 386, ch. 192, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 388, ch. 193, §§ 5 to 7, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1427, ch. 579, §§ 5 to 9, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2124, ch. 849, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 488, ch. 166, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2045, ch. 800, § 2, eff. June 13, 1979.]

Art. 21.07–3. Managing General Agent's Licensing Act

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

Acting Without License Prohibited

Sec. 3. It shall be unlawful for any person, firm or corporation to act as a managing general agent in behalf of any insurance company or carrier without having in force the license provided for herein, except that no license shall be required if the applicant is a business corporation authorized to do business in Texas, all of whose outstanding stock is solely owned by an insurance company or carrier licensed to do business in Texas, whose business affairs are completely controlled by such insurance company or carrier and the principal purpose for which the corporation exists is to facilitate the accumulation of commissions from the insurance company or carrier and its subsidiaries and affiliates for the account of and payment to an agent who could otherwise lawfully receive such commission direct from the insurance company or carrier and its subsidiaries and affiliates and the corporation does no other act of a managing general agent as provided for in this article; provided, however, that any contracts entered into with agents shall be executed by the managing general agent in behalf of the insurance company or carrier.

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

Issuance of License to Those Presently Acting as Managing General Agents; Renewals

Sec. 5.

[See Compact Edition, Volume 2 for text of 5(a) to (g)]

(h) Except as provided herein, a licensee that qualifies under this section may not be owned in whole or in part, either directly or indirectly by a state bank, national bank, or bank holding company, as those terms are defined in Article 2, Chapter I, The Texas Banking Code of 1943, as amended (Article 342–102, Vernon's Texas Civil Statutes), or by a subsidiary of one of those financial institutions. This subsection shall not apply to any licensee that on June 1, 1981, is owned by a state bank, national bank, or bank holding company or by a subsidiary of one of those financial institutions so long as ownership continues; nor shall this subsection apply to a licensee for which on July 15, 1981, a state bank, national bank, or bank holding company, or a subsidiary of one or those financial institutions has, pursuant to the applicable law, filed an application for prior approval of ownership or other notice of ownership with the governmental agency having regulatory authority over the financial institution or subsidiary. Before renewing a license issued under this section, the commissioner shall require the licensee to certify compliance with or exemption from this subsection.

[See Compact Edition, Volume 2 for text of 6 to 21]

[Amended by Acts 1975, 64th Leg., p. 1094, ch. 414, § 2, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2345, ch. 576, § 1, eff. June 15, 1981.]

Art. 21.07–4. Licensing of Insurance Adjusters

[See Compact Edition, Volume 2 for text of 1 to 13]

Fees for License and Examination; Insurance Adjustors' Fund

Sec. 14. (a) The commissioner shall collect in advance the following fees for an adjuster's license and examination:

[See Compact Edition, Volume 2 for text of (a)(1) to (b)]

(c) When collected, the fees provided for by this section shall be placed with the state treasurer in a separate fund, which shall be known as the insurance adjusters' fund, provided that no expenditure shall be made from said fund except under authority of the Legislature as set forth in the general appropriations bill.

[Amended by Acts 1975, 64th Leg., p. 656, ch. 273, § 1, eff. Sept. 1, 1975.]

Art. 21.09. Resident Agents, Companies Excepted

Any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety, or fidelity insurance company, legally authorized to do business in this State is hereby prohibited from authorizing or allowing any person, agent, firm or corporation that is a nonresident of the State of Texas to issue, or cause to be issued, to sign or countersign, or to deliver, or cause to be delivered, any policy or policies of insurance on property, person or persons located in this State, except through

regularly licensed local recording agents of such companies in Texas. By the term "Local Recording Agent" is meant a person or firm engaged in soliciting and writing insurance, being authorized by an insurance company or insurance carrier including Fidelity and Surety Companies to solicit business and to write, sign, execute and deliver policies of insurance and to bind companies on insurance risks, and who maintains an office and a record of such business and the transactions which are involved, who collects premiums on such business and otherwise performs the customary duties of a local recording agent representing an insurance carrier in its relation with the public.

This law shall not apply to property owned by the railroad companies or other common carriers. Upon oath made in writing by any person that he can not procure insurance on property through such agents in Texas it shall be lawful for any insurance company not having an agent in Texas to insure property of any person upon application of said person, upon his filing said oath with the county clerk of the county in which such person resides, and with the Board of Insurance Commissioners.

Countersigning may be effected manually or by stamp or by any other method of printing, if authorized by the agent in writing.

This Article shall not apply to insurance companies whose general plan of operation does not contemplate the use of local recording agents, and such companies may issue policies signed by any of their other resident licensed agents.

This Article shall not apply to bid bonds issued by any surety company authorized to do business in the State of Texas in connection with any public or private contract.
[Amended by Acts 1979, 66th Leg., p. 448, ch. 205, § 1, eff. Aug. 27, 1979.]

Art. 21.14. Licensing of Local Recording Agents and Solicitors; Life, Health and Accident Insurance Excepted; Other Exceptions

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

Application for License; To Whom License May Be Issued

Sec. 3. (a) When any person, partnership or corporation shall desire to engage in business as a local recording agent for an insurance company, or insurance carrier, he or it shall make application for a license to the State Board of Insurance, in such form as the Board may require. Such application shall bear a signed endorsement by a general, state or special agent of a qualified insurance company, or insurance carrier that applicant or each member of the partnership or each stockholder of the corporation is a resident of Texas, trustworthy, of good character and good reputation, and is worthy of a license.

(b) The Board shall issue licenses to individuals or to individuals engaging as partners in the insurance business, provided the names of all persons interested in any such partnership are named in the license, and each named as active in the business of the partnership qualify, and it be established that none not active have interest in the partnership principally to have written and be compensated therefor for insurance on property controlled through ownership, mortgage or sale, family relationship, or employment; and provided further, that all licensed agents must be residents of Texas. Provided, that a person who may reside in a town through which the state line may run and whose residence is in the town in the adjoining state may be licensed, if his business office is being maintained in this state. All persons acting as agent or solicitor for health and accident insurance within the provisions hereof, and who represent only fire and casualty companies, and not life insurance companies, shall be required to procure only one license, and such license as is required under the provisions of this article.

(c) The Board shall issue a license to a corporation if the Board finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act or the Texas Professional Corporation Act [1] having its principal place of business in the State of Texas and having as one of its purposes the authority to act as a local recording agent; and

(2) That every officer, director and shareholder of the corporation is individually licensed as a local recording agent under the provisions of this Insurance Code, except as may be otherwise permitted by this Section or Section 3a of this article; and

(3) That such corporation will have the ability to pay any sums up to Twenty-Five Thousand Dollars ($25,000.00) which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as a local recording agent. The term "customer" as used herein shall mean any person, firm or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(a) An errors and omissions policy issued by an insurance company licensed to do business in the State of Texas insuring such corporation against errors and omissions in at least the sum of One Hundred Thousand Dollars ($100,000.00), with no more than a Five Thousand Dollars ($5,000.00) deductible feature; or

(b) A bond executed by such corporation as principal and a surety company authorized to do business in this state, as surety, in the principal sum of Twenty-Five Thousand Dollars ($25,000.00), payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(c) A deposit of cash or securities of the class authorized by Articles 2.08 and 2.10 of this Code, having a fair market value of Twenty-Five Thousand Dollars ($25,000.00) with the State Treasurer. The State Treasurer is hereby authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Board evidence satisfactory to it that the corporation has withdrawn from business, and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as hereinbefore provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of a local recording agent without obtaining a local recording agent's license. The Board shall not require a corporation to take the examination provided in Section 6 of this Article 21.14.

If at any time, any corporation holding a local recording agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as a local recording agent shall be cancelled or denied in accordance with the provisions of Sections 16, 17 and 18 of this Article 21.14; provided, however, that should any person who is not a licensed local recording agent acquire shares in such a corporation by devise or descent, they shall have a period of ninety (90) days from date of acquisition within which to obtain a license as a local recording agent or to dispose of the shares to a licensed local recording agent except as may be permitted by Section 3a of this article.

Should such an unlicensed person, except as may be permitted by Section 3a of this article, acquire shares in such a corporation and not dispose of them within said period of ninety (90) days to a licensed local recording agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the Board of Directors and such shareholder or his personal representative, or at such price and upon such terms as may be provided in the Articles of Incorporation, the Bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as a local recording agent shall file, under oath, a list of the names and addresses of all of its officers, directors and shareholders with its yearly application for renewal license.

Each corporation licensed as a local recording agent shall immediately notify the State Board of Insurance upon any change in its officers, directors or shareholders.

The term "firm" as it applies to local recording agents in Sections 2, 12 and 16 of this Article 21.14 shall be construed to include corporations.

[1] Civil Statutes, art. 1528e.

Persons Other Than Licensed Local Recording Agents Who May Share in Profits of Local Recording Agent

Sec. 3a. (1) Upon the death of a duly licensed local recording agent who is a member of an agency partnership, the surviving spouse and children, if any, of such deceased partner, or a trust for such surviving spouse and children, may share in the profits of such agency partnership during the lifetime of such surviving spouse or such children, as the case may be, if and as provided by a written partnership agreement, or in the absence of any written agreement, if and as agreed by the surviving partner or partners and the surviving spouse, the trustee, and the legal representative of the surviving child or children. Such surviving spouse and any such surviving children or trusts shall not be required to qualify as local recording agents to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such partnership without having qualified as a local recording agent; provided, however, that a duly licensed local recording agent who is a member of an agency partnership may, with the approval of the other members of the partnership, transfer an interest in the agency partnership to his children or a trust for same, and may operate such interest for their use and benefit; and such children or trusts may share in the profits of such agency partnership. Such child or children or trusts shall not be required to qualify as a local recording agent to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such partnership without having qualified as a local recording agent.

(2) Upon the death of a duly licensed local recording agent, who is a sole proprietorship, unless otherwise provided by the last will of such deceased agent, the surviving spouse and children, if any, of such deceased agent, or a trust for such spouse or children, may share in the profits of the continuance of the agency business of said deceased agent, provided such agency business is continued by a duly licensed local recording agent. Said surviving spouse, trusts or children, may participate in such profits during the lifetime of such surviving spouse and said children. Said surviving spouse, trusts or children shall not be required to qualify as local recording agents in order to participate in the profits of such agency, but shall not do or perform any act of a local recording agent in connection with the continuance of such agency business without first having been duly licensed as a local recording agent; provided, however, that a duly licensed local recording agent who is a sole proprietorship may transfer an interest in his agency to his children, or a trust for same, and may operate such interest for their use and benefit; and such children may share in the profits of such local recording agency during their lifetime, and during such time shall not be required to qualify as a local recording agent in order to participate in such profits, but shall not do or perform any act of a local recording agent in connection with such agency business without first having been duly licensed as a local recording agent.

(3) Upon the death of a shareholder in a corporate licensed local recording agency, the surviving spouse and children, if any, of such deceased shareholder, or a trust for such surviving spouse and children, may share in the profits of such corporate agency during the lifetime of such surviving spouse or children, as the case may be, if and as provided by a contract entered into by and between all of the shareholders and the corporation. Any such surviving spouse, surviving children, or trusts shall not be required to individually qualify as a local recording agent in order to participate in such profits, but shall not do or perform any act of a local recording agency on behalf of such corporation without having qualified as a local recording agent; provided, however, that a shareholder in a corporate licensed local recording agent, may, if provided by a contract entered into by and between all of the shareholders and the corporation, transfer an interest in the agency to his children or a trust for same, and such children or trusts may share in the profits of such agency to the extent of such interest during their lifetime. Such children or trusts shall not be required to qualify as a local recording agent to participate in such profits, but shall not do or perform any act of a local recording agent on behalf of such corporation without having qualified as a local recording agent.

(4) Except as provided in Subsections (1), (2), and (3) above, and as may be provided in Section 6a, Article 21.14 of the Insurance Code, no person shall be entitled to perform any act of a local recording agent nor in any way participate as a partner or corporate shareholder in the profits of any local recording agent, without first having qualified as a duly licensed local recording agent and having successfully passed the examination required by the Insurance Code; provided, however, that all persons, or trusts for any person, that received licenses before March 1, 1963, as silent, inactive, or non-active partners, or who are silent, inactive, or non-active partners in an agency which was so qualified before such date, shall continue to receive licenses, or renewals thereof, as partners in such agency or in any successor agency, providing: (a) that such persons are members of an agency in which there is at least one partner who has qualified as a duly licensed local recording agent; (b) that such non-active partner or partners do not actively solicit insurance; and (c) that such agency is not a limited partnership.

[See Compact Edition, Volume 2 for text of 4 to 6]

Death, Disability or Insolvency; Emergency License Without Examination

Sec. 6a. In event of death or disability of a local recording agent or in event a local recording agent is found to be insolvent and unable to pay for premiums coming to his hands as such local recording agent, the Board may issue to an applicant for local recording agent's license an emergency local recording agent's license for a period of ninety (90) days in any twelve (12) consecutive months and at the Board's option, an additional period up to ninety (90) days without an examination provided the other requirements of this article are met and if it is established to the satisfaction of the Board that such emergency license is necessary for the preservation of the agency assets of a deceased or disabled local recording agent or of an insolvent local recording agent.

Conduct of Examinations; Notice; Manual of Questions and Answers

Sec. 7. All examinations provided by this article shall be conducted by the State Board of Insurance, and shall be held not less frequently than one each sixty (60) days every year at times and places prescribed by the State Board of Insurance, of which applicants shall be notified by the State Board of Insurance in writing, ten (10) days prior to the date of such examinations, and shall be conducted in writing in either the English or Spanish language, except that the applicant upon notice to the State Board of Insurance shall be entitled to be examined in the county seat of the county of his residence. Provided, further, that printed copies of a manual of questions and answers thereto pertaining to the examination published under the direction of the State Board of Insurance shall be made available to all companies, general agents, and managers for the use of their prospective agents, to all agents for the use of their prospective solicitors in preparing for such examination. The questions to be asked on such examination shall be based upon the questions and answers contained in the manual.

Expiration of License; Renewal

Sec. 8. Every license issued to a local recording agent shall expire two years from the date of its issue, unless an application to qualify for the renewal of any such license shall be filed with the Board of Insurance Commissioners and fee paid on or before such date, in which event the license sought to be renewed shall continue in full force and effect until renewed or renewal is denied. Every license issued to a solicitor for a local recording agent shall expire on the same date that the license of the local recording agent expires, unless an application to qualify for the renewal of the local recording agent's license and the solicitor's license shall be filed with the Board of Insurance Commissioners and fee paid on or before such date, in which event the solicitor's license sought to be renewed shall continue in full force and effect until renewed or renewal is denied.

Fees Payable Before Examination

Sec. 9. Applicants required to be examined shall, at time and place of examination, pay prior to being examined the following fees: For a local recording agent's license a fee of Twenty-five dollars ($25.00) and for a solicitor's license a fee of Ten Dollars ($10.00). The fees paid under this section shall not be returned for any reason other than failure to appear and take the examination after the applicant has given at least 24 hours' notice of an emergency situation to the State Board of Insurance and received board approval. A new fee shall be paid before each and every examination.

Renewal Fees

Sec. 10. An applicant for the renewal of a local recording agent's license shall pay, at the time the renewal application is filed, a fee of Twenty-five Dollars ($25.00). An applicant for the renewal of a solicitor's license shall pay, at the time the renewal application is filed, a fee of Ten Dollars ($10.00).

[See Compact Edition, Volume 2 for text of 11 to 19]

Life, Health and Accident Insurance, Inapplicable to; Other Exceptions

Sec. 20. No provisions of this article shall apply to the Life, Health and Accident Insurance business or the Life, Health and Accident Department of the companies engaged therein, nor shall it apply to any of the following, namely:

(a) Any actual full-time home office or salaried traveling representatives of any insurance carrier licensed to do business in Texas.

(b) Any actual attorney in fact and its actual traveling salaried representative as to business transacted through such attorney in fact or salaried representative of any reciprocal exchange or interinsurance exchange admitted to do business in Texas.

(c) Any adjuster of losses, and/or inspector of risks, for an insurance carrier licensed to do business in Texas.

(d) Any General Agent or State Agent or Branch Manager representing an admitted and licensed insurance company or carrier, or insurance companies or carriers, in a supervisory capacity.

(e) The actual attorney in fact for any Lloyds.

(f) All incorporated or unincorporated mutual insurance companies, their agents and representatives, organized and/or operating under and by authority of Chapters 16 and 17 of this code.

(g) Nothing in this entire article shall ever be construed to apply to any member, agent, employee, or representative of any county or farm mutual insurance company as exempted under Chapters 16 and 17 of this code.

(h) Nothing in this article shall apply to the group motor vehicle insurance business or the group motor vehicle department of the companies engaged in that business.

[See Compact Edition, Volume 2 for text of 21 to 26]

[Amended by Acts 1975, 64th Leg., p. 2373, ch. 731, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 359, ch. 176, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 386, ch. 192, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 389, ch. 193, § 8, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 834, ch. 310, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1030, ch. 461, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1170, ch. 569, §§ 1, 2, eff. June 11, 1979; Acts 1979, 66th Leg., p. 2043, ch. 800, § 1, eff. June 13, 1979.]

SUBCHAPTER B. MISREPRESENTATION AND DISCRIMINATION

Art. 21.21A. Misrepresentations of Policy Terms; Penalty

Sec. 1. No insurer or agent thereof may make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon, nor may any such insurer or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly as an inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon or any paid employment or contract for service of any kind, or any thing of value or inducement whatever, not specified in the policy; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance or in connection therewith, any stocks, bonds or other securities of any insurer or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy.

Sec. 2. No life, health, or casualty insurance corporation including corporations operating on the cooperative or assessment plan, mutual insurance companies, and fraternal benefit associations or societies, and any other societies or associations authorized to issue insurance policies in this state, and no officer, director, representative, or agent therefor or thereof, or any other person, corporation, or copartnership may issue or circulate or cause or permit to be issued or circulated any illustrated circular or statement of any sort misrepresenting the terms of any policy issued by any such corporation or association or any certificate of membership issued by any such society or corporation, or other benefits or advantages permitted thereby, or any misleading statement of the dividends or share of surplus to be received thereon, or may use any name or title of any policy or class of policy or class of policies, or certificate of membership or class of such certificate misrepresenting the true nature thereof. Nor may any such corporation, society, or association, or officer, director, agent, or representative thereof, or any other person, make any misleading representations or incomplete comparisons of policies or certificates of membership to any person insured in such corporation, association, or society, or member thereof, for the purpose of inducing or tending to induce such person to lapse, forfeit, or surrender said insurance or membership therein.

Sec. 3. If any person violates any of the provisions of this Article, the person shall, in addition to any other penalty specifically provided, be guilty of a Class A misdemeanor.

Sec. 4. The commissioner, upon giving 10 days' notice of hearing by certified mail, and upon hearing, may suspend or cancel the certificate, charter, permit, or license to engage in the business of insurance of any society, association, corporation, or person violating the provisions of this Article.

[Amended by Acts 1977, 65th Leg., p. 2084, ch. 834, § 1, eff. Aug. 29, 1977.]

Art. 21.21B. Repealed by Acts 1977, 65th Leg., p. 2085, ch. 834, § 2, eff. Aug. 29, 1977

SUBCHAPTER D. CONSOLIDATION, LIQUIDATION, REHABILITATION, REORGANIZATION OR CONSERVATION OF INSURERS

Art. 21.25. Mergers and Consolidations of Stock Insurers

[See Compact Edition, Volume 2 for text of 1 to 6]

Purchase of Outstanding Stock: Conditions and Limitations

Sec. 7. One life insurance corporation may purchase or contract to purchase all or part of the outstanding stock of another life insurance corporation for purposes of merger or consolidation. The provisions contained in Article 3.39 of the Insurance Code which limit investments in the corporate stock of another corporation shall not apply provided that such purchase or contract to purchase shall be subject to the following conditions or limitations:

[See Compact Edition, Volume 2 for text of 7(a)]

(b) The purchasing corporation shall either (1) initially purchase or contract to purchase at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other insurance corporation was organized, (2) offer to purchase, make a tender offer for, request or invite tenders of, or otherwise seek to acquire, in the open market or otherwise, at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other corporation was organized, or (3) by any combination of the provisions of (1) and (2) hereof, obtain or seek to obtain the number of shares of stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other insurance corporation was organized; and

(c) No such purchase of stock, offer to purchase, tender offer, request or invitation to purchase stock in excess of the limits of Article 3.39 of the Insurance Code may be made until such proposed purchase, offer to purchase, tender offer, request or invitation to purchase has been filed with and approved by the commissioner in accordance with the provisions of Article 21.49–1 of this code; and

(d) Following the date of the contract to purchase such shares or the date of the commissioner's approval of such purchase, offer to purchase, tender offer, request or invitation to purchase such stock, whichever shall first occur, the corporation whose stock is being purchased shall not purchase or contract to purchase any of its own shares as treasury stock, issue or contract to issue any of its authorized but unissued stock, nor shall such corporation make any investments in or loans to the purchasing corporation or any of its affiliates unless such investment or loan is otherwise authorized and approved in advance by the commissioner under the provisions of Article 21.49–1, as amended, of the Insurance Code; and

(e) The merger or consolidation shall become effective on or before December 31st in the second year following the year in which the initial purchase of such stock is made or the initial contract to purchase is executed, whichever shall occur first, unless the commissioner for good cause shown shall extend such time for the effective date of the merger or consolidation; and

(f) If the merger or consolidation fails to become effective within such time as may be final-

ly determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of such purchased shares which are in excess of the investment limitations of Article 3.39 of this code within six months of such final effective date; and

(g) In no event shall any sums actually paid out by the purchasing corporation for the purchase of stock acquired or obtained hereunder include the minimum capital, minimum surplus, and policy reserves required by law for such corporation.

[See Compact Edition, Volume 2 for text of 8]

[Amended by Acts 1977, 65th Leg., p. 222, ch. 107, § 1, eff. May 4, 1977.]

Art. 21.26. Purchase of Stock for Total Assumption Reinsurance

Sec. 1. Nothing in this Act or in the Insurance Code shall be construed as in any way affecting or limiting the right of a life insurance corporation organized or operating under Chapter Three (3) or Chapter Eleven (11) of the Insurance Code of the State of Texas to purchase or to contract to purchase all or part of the outstanding shares of another life insurance corporation, domestic or foreign, doing a similar line of business for the purpose of reinsuring all of the business of such other insurance corporation and assuming all of the liabilities and taking over all of the assets of such other corporation. The provisions contained in Article 3.39 of the Insurance Code limiting investments in the purchase of the corporate shares of another corporation shall not apply to such purchase or contract to purchase provided that:

[See Compact Edition, Volume 2 for text of 1(a)]

(b) The reinsuring corporation shall either (1) initially purchase or contract to purchase the number of shares of the stock of the other insurance corporation necessary to vote an approval of a total assumption reinsurance agreement under the laws of the state in which such other insurance corporation was organized, (2) offer to purchase, make a tender offer for, request or invite tenders of, or otherwise seek to acquire, in the open market at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such reinsurance agreement under the laws of the state in which such other corporation was organized, or (3) by any combination of the provisions of (1) and (2) hereof, obtain or seek to obtain the number of shares of stock of the other insurance corporation necessary to vote an approval of such reinsurance agreement under the laws of the state in which such other insurance corporation was organized; and

(c) No such purchase of stock, offer to purchase, tender offer, request or invitation to purchase stock in excess of the limits of Article 3.39 of the Insurance Code may be made until such proposed purchase, offer to purchase, tender offer, request or invitation to purchase has been filed with and approved by the commissioner in accordance with the provisions of Article 21.49–1 of this code; and

(d) Following the date of the contract to purchase such shares or the date of the commissioner's approval of such purchase, offer to purchase, tender offer, request or invitation to purchase such stock, whichever shall first occur, the corporation whose stock is being purchased shall not purchase or contract to purchase any of its own shares as treasury stock, issue or contract to issue any of its authorized but unissued stock, nor shall such corporation make any investments in or loans to the purchasing corporation or any of its affiliates unless such investment or loan is otherwise authorized and approved in advance by the commissioner under the provisions of Article 21.49–1, Insurance Code as amended, of the Insurance Code; and

(e) The reinsurance agreement shall become effective on or before December 31st in the second year following the year in which the initial purchase of such stock is made or the initial contract to purchase is executed, whichever shall occur first, unless the commissioner for good cause shown shall extend such time for the effective date of the reinsurance agreement; and

(f) If the reinsurance agreement fails to become effective within such time as may be finally determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of such purchased shares which are in excess of the investment limitations of Article 3.39 of this code within six months of such final effective date; and

(g) In no event shall any sums actually paid out by the purchasing corporation for the purchase of stock acquired or obtained hereunder include the minimum capital, minimum surplus, and policy reserves required by law for such corporation.

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

[Amended by Acts 1977, 65th Leg., p. 223, ch. 107, § 2, eff. May 4, 1977.]

Art. 21.28–A. Insurer Delinquencies and Prevention of Insurer Delinquencies; Supervision of Insurers and Proceedings, Conservatorships, Liquidations—Additional and Alternate Provisions

[See Compact Edition, Volume 2 for text of 1 to 6]

Review and Stay of Action

Sec. 7. During the period of supervision and during the period of conservatorship, the insurance com-

pany may request the Commissioner of Insurance or in his absence, the duly appointed deputy for such purpose, to review an action taken or proposed to be taken by the supervisor or conservator, specifying wherein the action complained of is believed not to be in the best interests of the insurance company, and such request shall stay the action specified pending review of such action by the Commissioner or his duly appointed deputy. Any order entered by the Commissioner appointing a supervisor and providing that the insurance company shall not do certain acts as provided in Section 4 of this Article, any order entered by the Commissioner appointing a conservator, and any order by the Commissioner following the review of an action of the supervisor or conservator as hereinabove provided shall be immediately reviewed by the State Board of Insurance upon the filing of an appeal by the insurance company. The Board shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter, and the requirement of ten (10) days notice set out in Article 1.04(d) of this Code may be waived by the parties of record. The Board may stay the effectiveness of any order of the Commissioner, pending its review of such order. Such appeal shall have precedence over all other business of a different nature pending before the Board, and in the public hearing any and all evidence and matters pertaining to the appeal may be submitted to the Board, whether included in the appeal or not, and the Board shall make such other rules and regulations with regard to such applications and their consideration as it deems advisable. If such insurance company be dissatisfied with any decision, regulation, order, rule, act or administrative ruling adopted by the State Board of Insurance, such dissatisfied insurance company after failing to get relief from the State Board of Insurance, may file a petition setting forth the particular objection to such decision, regulation, order, rule, act or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the State Board of Insurance as defendant. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, except as interpretation of the Constitution may require, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the Justice Court to the County Court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

[See Compact Edition, Volume 2 for text of 8 to 12]

[Amended by Acts 1981, 67th Leg., p. 2641, ch. 707, § 4(29), eff. Aug. 31, 1981.]

Art. 21.28–C. Property and Casualty Insurance Guaranty Act

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

Scope

Sec. 3. This Act shall apply to all kinds of insurance written by stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and shall also include all kinds of insurance written by county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not apply to insurance written by farm mutual insurance companies or title insurance companies or title insurance written by any insurer; and shall not apply to mortgage guaranty insurance companies or mortgage guaranty insurance, nor to ocean marine insurance, nor to home warranty insurance; and shall not apply to Mexican casualty insurance companies or to policies of insurance issued by Mexican casualty insurance companies.

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

Definitions

Sec. 5. As used in this Act

[See Compact Edition, Volume 2 for text of 5(1)]

(2) "Covered claim" is an unpaid claim of an insured or third party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this State, if such insurer becomes an "impaired insurer" after the effective date of this Act and (a) the third party claimant or liability claimant or insured is a resident of this State at the time of the insured event; or (b) the property from which the claim arises is permanently located in this State. "Covered claim" shall also include seventy-five percent (75%) of unearned premiums but in no event shall a "covered claim" for unearned premiums exceed Five Hundred Dollars ($500). Individual "covered claims" shall be limited to Fifty Thousand Dollars ($50,000) and shall not include any amount in excess of Fifty Thousand Dollars ($50,000). "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys fees and expenses, court costs, interest and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this Act. With respect to a "covered claim" for unearned premi-

ums, both persons who were residents of this State at the time the policy was issued and persons who are residents of this State at the time the company is found to be an "impaired insurer" shall be considered to have "covered claims" under this Act. Where the impaired insurer has no assets within the State of Texas, or has insufficient assets to pay the expenses of administering the receivership or conservatorship estate, that portion of the expenses of administration incurred in the processing and payment of claims against the estate shall also be a "covered claim" under this Act.

(3) "Insurer" and "member insurer" includes all stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and also includes all county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not include farm mutual insurance companies, title insurance companies, mortgage guaranty insurance companies or Mexican casualty insurance companies.

(4) "Impaired insurer" is (a) a member insurer which, after the effective date of this Act, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and which has been designated an "impaired insurer" by the Commissioner; or (b) after the effective date of this Act, a member insurer placed in conservatorship after it has been deemed by the Commissioner to be insolvent and which has been designated an "impaired insurer" by the Commissioner.

[See Compact Edition, Volume 2 for text of 5(5) to (7)]

(8) "Association" means the Texas Property and Casualty Insurance Guaranty Association created under Section 14 of this article.

(9) "Account" means one of the four accounts created under Section 14 of this article.

(10) "Board" or "board of directors" means the board of directors of the Texas Property and Casualty Insurance Guaranty Association created under Section 14 of this article.

[See Compact Edition, Volume 2 for text of 6]

Assessments

Sec. 7. Whenever the Commissioner determines that an insurer has become an impaired insurer the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28–A of the Insurance Code shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. The receiver or conservator shall advise the board of directors of the association of such estimates, and the board shall make available from the account maintained by the association for each line of business funds sufficient to enable the receiver or conservator to carry out an efficient program of paying the covered claims of the impaired insurer. The board shall make additional funds available as the actual need therefor arises for each impaired insurer.

When the board of directors shall determine that additional funds are needed in any of the three accounts, they shall advise the Commissioner who shall make such assessments as may be needed to produce the necessary funds. The Commissioner in determining the proportionate amount to be paid by individual insurers under an assessment shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer for such line or lines of business during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas for such lines of business. Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year in the lines of business for which the assessments are being made. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

Insurers designated as impaired insurers by the Commissioner shall be exempt from assessment from and after the date of such designation and until the Commissioner determines that such insurer is no longer an impaired insurer.

It shall be the duty of each insurer to pay the amount of its assessment to the association within thirty (30) days after the Commissioner gives notice of the assessment, and assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver, the conservator, nor the association shall be required to give an appeal bond in any cause arising hereunder.

Funds advanced by the association under the provisions of the Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for pay-

ment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

Income from the investment of any of the funds of the association may be transferred to the administrative account authorized in Section 14A(1) of this article. The funds in this account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. Upon notification by the association of the amount of any additional funds needed for the administrative account the Commissioner shall assess member insurers to obtain the needed funds in the same manner as hereinbefore set out, provided, that he shall take into consideration the net direct written premium collected in the State of Texas for all lines of business covered by this article.

Penalty for Failure to Pay Assessments

Sec. 8. The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this State of any insurer who fails to pay an assessment when due, and the association shall promptly report to the Commissioner any such failure.

Any insurer whose certificate of authority to do business in this State is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

Accounting for and Repayment of Assessments

Sec. 9. Upon receipt from an insurer of payment of an assessment or partial assessment, the association shall provide the insurer with a participation receipt which shall create a liability against the account for the line or lines of business for which the assessment was made. The account from which an advance is made to an impaired insurer for the payment of covered claims shall be regarded as a general creditor of the impaired insurer for the amount of funds so advanced; provided, however, that with reference to the remaining balance of any advances received by the receiver or conservator and not expended in payment of "covered claims" the claim of such account shall have preference over other general creditors. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from the association and shall make a final report of the expenditure and use of such funds to the Commissioner and to the association, which final report shall set forth the remaining balance, if any, from the moneys advanced. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the Commissioner or requested by the association. Upon completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund by line of business the remaining balance of such advances to the accounts maintained by the association.

Should the association at any time determine that there exist moneys in the account for any line of business in excess of those reasonably necessary for efficient future operation under the terms of this Act, it shall cause such excess moneys to be returned pro rata to the holders of any participation receipts on which there is a balance outstanding after deducting any credits taken against premium taxes as authorized in Section 15 of this article, which receipts were issued for an assessment on the same line of business as that for which the excess moneys are found to exist. If after such a distribution the association finds that an excess amount still exists in any such fund, or if there are no such participation receipts on which there is an outstanding balance, it shall cause such excess amount to be deposited with the State Treasurer for credit to the general fund of this State.

Payment of Covered Claims

Sec. 10. When an insurer has been designated by the Commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constitute reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this Act. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from the association in the payment of claims, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from those advanced by the association. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this Act.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from the association for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. This Act shall not be construed to impose restrictions or limitations upon the authority granted or authorized the Commissioner, the conservator or the receiver elsewhere in the Insurance Code and other statutes of this State but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

Approval of Covered Claims

Sec. 11. Covered claims against an impaired insurer placed in temporary or permanent receivership

under an order of liquidation, rehabilitation or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from the association shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further, that in ancillary receiverships in this State, funds received from the association shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this State. Such funds received from the association shall not be liable for any amount over and above that approved by the receiver for a covered claim, and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.

If a conservator is appointed to handle the affairs of an impaired insurer the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption or substitution. Upon determination by the conservator that actual payment of covered claims should be made the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than ninety (90) days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from the association shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a liability insurance policy issued or assumed by such insurer shall (if such cause of action meets the definition of "covered claim") have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be contingent, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation. In the proceedings of considering "covered claims" no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution.

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

Release from Conservatorship or Receivership

Sec. 13. An impaired insurer placed in conservatorship or receivership for which advances have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has

repaid in full to the association the funds advanced by it; provided, however, the Commissioner may, upon application of the association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of advances. The Commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan.

Advisory Association

Sec. 14. A. Creation of the Association. (1) There is hereby created a nonprofit legal entity to be known as the Texas Property and Casualty Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition precedent to their authority to transact insurance in this State. The association shall perform its functions under the plan of operation established and approved as set out below and shall exercise its powers through a board of directors established as set out below. For the purposes of administration and assessment, the board shall establish four accounts:

(a) the administrative account;

(b) the workmen's compensation account;

(c) the automobile account; and

(d) the other lines of insurance account.

(2) The association shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this State.

B. Board of Directors. (1) The association shall exercise its powers through a board of directors consisting of eight (8) persons who shall be chosen from employees or officers of the member insurers and who shall be chosen to give fair representation to all member insurers giving due consideration to the various categories of premium income, geographical location, and segments of the industry represented in Texas. Members of the board shall be elected for overlapping four-year terms, with the terms of two of the members expiring each year. The initial membership of the board of directors shall consist of the industry representatives in the Texas Property and Casualty Advisory Association as it exists under this Act prior to the time this amendment takes effect, and those members shall serve out the terms for which they were elected to the advisory association. Their replacements shall be elected by the member insurers under procedures to be established in the plan of operation. All directors shall be eligible to succeed themselves in office.

(2) Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as directors.

C. Powers and Duties of Association. In addition to the powers and duties enumerated in other sections of this article, the association:

(1) May render assistance and advice to the Commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer;

(2) Shall have the standing to appear before any court in this State with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this Act;

(3) May enter into such contracts as are necessary or proper to carry out the provisions and purposes of this article;

(4) May sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments;

(5) May employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this Act;

(6) May negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association; and

(7) May take such legal action as may be necessary to avoid the payment of improper claims.

D. Plan of Operation. (1)(a) The association shall submit to the Commissioner a plan of operation and any amendment thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Commissioner.

(b) If the association fails to submit a suitable plan of operation within one hundred and eighty (180) days following the effective date of this Act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the Commissioner may, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the association and approved by the Commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under this section;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;

(e) establish any additional procedures for assessments under Section 7 of this article; and

(f) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

E. Prevention of Impairments. To aid in the detection and prevention of insurer impairments:

(1) The board of directors shall, upon majority vote, notify the Commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations and may request appropriate investigation and action by the Commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate.

(2) The board of directors shall advise and counsel with the Commissioner upon matters relating to the solvency of insurers. The Commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of insolvency or impairment of an insurer exists. Such meetings shall not be open to the public and only members of the board of directors, members of the State Board of Insurance, the Commissioner, and persons authorized by the Commissioner shall attend such meetings. The board of directors shall, upon majority vote, notify the Commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the Commissioner. At such meetings the Commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The Commissioner may summon officers, directors, and employees of an insolvent or impaired insurer (or an insurer the Commissioner considers to be in danger of insolvency or impairment) to appear before the board of directors for conference or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the Commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, as amended, except that no bond shall be required of a board member.

The board of directors shall, upon request by the Commissioner, attend hearings before the Commissioner and meet with and advise the Commissioner, liquidator, or conservator appointed by the Commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the Commissioner, liquidator, or conservator appointed by the Commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.

(3) The board of directors may, upon majority vote, make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the Commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation, or individual recommendation by the board of directors or members to the Commissioner, liquidator, or conservator.

(4) The board of directors may, upon majority vote, make recommendations to the Commissioner for the detection and prevention of member insurer impairments.

(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this article or exercised any of its powers under this article, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit a report on same to the Commissioner.

(6) Any insurer that has an officer, director, or employee serving as a member of the board of directors shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

(7) The association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code, as amended.

Recognition of Assessments in Premium Tax Offset

Sec. 15. Any assessment paid by an insurer under this Act shall be allowed to such insurer as a credit against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit referred to herein shall be allowed at a rate of twenty percent (20%) per year for five (5)

successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years, and the balance of any assessment paid by the insurer and not claimed as such tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this Code.

[See Compact Edition, Volume 2 for text of 16 and 17]

Advertising Prohibited

Sec. 17a. It shall be unlawful for any insurer required to participate in the association to advertise or use in any manner for promotional purposes the fact that its policies are protected under this Act, and such acts of advertisement or promotion shall constitute unfair methods of competition or unfair or deceptive acts or practices under Article 21.21, Insurance Code, and shall be subject to the provisions thereof.

[See Compact Edition, Volume 2 for text of 18]

Certain Evidence Not Admissible; Unfair Practices

Sec. 19. (1) In any lawsuit brought by a conservator or receiver of an impaired insurer for the purpose of recovering assets of the impaired insurer, the fact that claims against the impaired insurer have been or will be paid under the provisions of this article shall not be admissible for any purposes and shall not be placed before any jury either by evidence or argument.

(2) The use in any manner of the protection afforded by this article by any person in the sale of insurance shall constitute unfair competition and unfair practices under Article 21.21 of the Insurance Code, as amended, and shall be subject to the provisions thereof.

Control Over Conflicts

Sec. 20. The provisions of this Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes are accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and any other law relating to the subject matter of this Act or its application, the provisions of this Act shall control.

Unconstitutional Application Prohibited

Sec. 21. This Act and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

Severance Clause

Sec. 22. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Amended by Acts 1975, 64th Leg., p. 56, ch. 32, § 3, eff. April 3, 1975; Acts 1975, 64th Leg., p. 1094, ch. 414, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1950, ch. 775, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2110, ch. 845, §§ 1 to 12, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1057, ch. 487, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2641, ch. 707, § 4(30), eff. Aug. 31, 1981.]

Section 13 of Acts 1977, 65th Leg., p. 2120, ch. 845, provided:

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

Section 2 of the 1979 amendatory act provided:

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

Art. 21.28–D. Life, Accident, Health, and Hospital Service Insurance Guaranty Association

[See Compact Edition, Volume 2 for text of 1 to 4]

Definitions

Sec. 5.

[See Compact Edition, Volume 2 for text of 5(1) to (3)]

(4) "Contractual obligation" means any policy or contract benefit (including but not limited to death, disability, hospitalization, medical, premium deposits, advance premiums, supplemental contracts, cash surrender, loan, nonforfeiture, extended coverage, annuities, and coupon and dividend accumulations to the owner, beneficiary, assignee, certificate holder, or third-party beneficiary), arising from an insurance policy or annuity contract to which this Act applies, issued or assumed by an insurer who becomes an impaired insurer. A contractual obligation shall not include an amount in excess of $300,000 in the aggregate under one or more covered policies on any one life; nor shall a contractual obligation include an amount in excess of $300,000 in the aggregate under one or more annuity contracts within the scope of this Act issued to the same contract holder.

[See Compact Edition, Volume 2 for text of 5(5) to (8)]

(9) "Premiums" means direct gross insurance premiums and annuity considerations collected from persons residing or domiciled in the State of Texas on covered contracts and policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in Section 9, "premiums" are those for the calen-

dar year preceding the determination of insolvency or impairment.

[See Compact Edition, Volume 2 for text of 5(10) to 20]

[Amended by Acts 1981, 67th Leg., p. 429, ch. 181, §§ 1, 2, eff. May 20, 1981.]

Section 3 of the 1981 amendatory act provides:

"If any provision of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

Art. 21.28–E. Life, Health and Accident Guaranty Act

[See Compact Edition, Volume 2 for text of 1 to 6]

Assessments

Sec. 7. Whenever the Commissioner determines that an insurer has become an impaired insurer the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28–A of the Insurance Code shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. Thereafter, the Commissioner shall be empowered to make such assessments as may be necessary to produce the additional funds needed to make payment of all covered claims. The Commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer.

The Commissioner in determining the proportionate amount to be paid by individual insurers under an assessment shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer for such line or lines of business during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas for such lines of business. Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year in the lines of business written by the impaired insurer. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

Insurers designated as impaired insurers by the Commissioner shall be exempt from assessment from and after the date of such designation and until the Commissioner determines that such insurer is no longer an impaired insurer.

The Commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the conservator or receiver, as the case may be, within thirty (30) days after the Commissioner gives notice of the assessment, and assessments may be collected by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.

Funds derived from assessments under the provisions of this Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

[See Compact Edition, Volume 2 for text of 8 to 24]

[Amended by Acts 1981, 67th Leg., p. 2643, ch. 707, § 4(31), eff. Aug. 31, 1981.]

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

Art. 21.32A. Legality of Dividend

For the purpose of determining the legality of a dividend to shareholders paid by stock domestic insurance companies authorized to transact life, accident, and health insurance business in Texas, all stock foreign and alien life, health, and accident insurance companies, stock insurance companies authorized to transact property and casualty business and fire insurance business and domestic Lloyds', reciprocals, and title insurance companies under the laws of the State of Texas, the "earned surplus" or "surplus profits arising from the business" of the insurance company may include the acquired "earned surplus" of an insurance subsidiary which has been acquired by the insurance company, to the extent allowed by an order of the commissioner made in accordance with the rules of the board but only to the extent that the "earned surplus" of the acquired subsidiary on the date of acquisition, and in existence on the date of the order, is not otherwise reflected in the "earned surplus" of the insurance company.

[Added by Acts 1977, 65th Leg., p. 844, ch. 315, § 1, eff. Aug. 29, 1977.]

Art. 21.35A. Coverage Under Group Insurance and Group Hospital Plans for Psychological Services

Any person who is covered by a policy, contract, or certificate of group insurance or of a group hospital plan including but not limited to coverage issued by a company operating under Chapter 20, Insurance Code, as amended, and whose policy, contract, or

certificate provides for services or partial or total reimbursement for services that are within the scope of practice of a licensed psychologist, is entitled to obtain these services or receive reimbursement for these services regardless of whether the services are performed by a licensed doctor of medicine or a licensed psychologist. This article applies to all policies, contracts, and certificates issued, renewed, modified, altered, amended, or reissued on or after the effective date of this article.

[Added by Acts 1977, 65th Leg., p. 1389, ch. 556, § 1, eff. Aug. 29, 1977.]

Art. 21.39-A. Asset Protection Act

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

Exception

Sec. 3A. (a) This Act shall not apply to those reserve assets of an insurer which are held, deposited, pledged, hypothecated, or otherwise encumbered as provided herein to secure, offset, protect, or meet those reserve liabilities of such insurer which are established, incurred, or required under the provisions of a reinsurance agreement whereby such insurer has reinsured the insurance policy liabilities of a ceding insurer, provided:

(1) the ceding insurer and the reinsurer are both licensed to transact business in this state;

(2) pursuant to a written agreement between the ceding insurer and the reinsurer, reserve assets substantially equal to the reserve liabilities required to be established by the reinsurer on the reinsured business are either (a) deposited by or are withheld from the reinsurer and are in the custody of the ceding insurer as security for the payment of the reinsurer's obligations under the reinsurance agreement, and such assets are held subject to withdrawal by and under the separate or joint control of the ceding insurer, or (b) are deposited and held in a trust account for such purpose and under such conditions with a state or national bank domiciled in this state.

(b) The Commissioner of Insurance shall have the right to examine any of such assets, reinsurance agreements, or deposit arrangements at any time in accordance with the authority to make examinations of insurance companies as conferred by other provisions of this code.

[See Compact Edition, Volume 2 for text of 4 to 8]

[Amended by Acts 1981, 67th Leg., p. 401, ch. 164, § 1, eff. Aug. 31, 1981.]

Art. 21.39-B. Restriction on Transactions with Funds and Assets

Sec. 1. Any director, member of a committee, or officer, or any clerk of a domestic company, who is charged with the duty of handling or investing its funds, shall not:

(1) deposit or invest such funds, except in the corporate name of such company, provided, however, that securities kept under a custodial agreement or trust agreement with a bank or trust company may be issued in the name of a nominee of such bank or trust company if such bank or trust company has corporate trust powers and is duly authorized to act as a custodian or trustee and is organized under the laws of the United States of America or any state thereof and either is a member of the Federal Reserve System or is a member of the Federal Deposit Insurance Corporation;

(2) borrow the funds of such company;

(3) be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; or

(4) take or receive to his own use any fee, brokerage, commission, gift, or other consideration for, or on account of, a loan made by or on behalf of such company.

Sec. 2. The State Board of Insurance may promulgate such regulations as may be deemed necessary to carry out the provisions of this article.

Sec. 3. The provisions of this article are applicable to all domestic insurance companies subject to regulation by the Insurance Code, as amended, and any provision of exemption or any provision of inapplicability or applicability limiting such regulation in any chapter of the code are not in limitation of the provisions of this article, and in the event of conflict between this article and any other article of the code or in the event of any ambiguity, the provisions of this article shall govern.

As used herein, the term "insurance companies" includes stock companies, reciprocals or inter-insurance exchanges, Lloyds associations, fraternal benefit societies, stipulated premium companies, and mutual companies of all kinds, including state-wide mutual assessment corporations, local mutual aids, burial associations, and county mutual insurance companies and farm mutual insurance companies and all other organizations, corporations, or persons transacting an insurance business, unless such insurance companies are by statute specifically, by naming this article, exempted from the operation of this article.

[Added by Acts 1975, 64th Leg., p. 464, ch. 198, § 1, eff. May 15, 1975.]

Art. 21.43. Foreign Insurance Corporations

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

(b) No foreign insurance corporation of a type provided for in any Chapter of this Code shall be denied permission to do business in this state for the reason that the name of such corporation is the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state

or of any foreign corporation authorized to transact business in this state, provided such foreign insurance corporation files an assumed name certificate setting forth a different name, with the State Board of Insurance and with any county clerks as provided by Sections 36.10 and 36.11 of the Business & Commerce Code. No such foreign insurance corporation shall transact or conduct any business in this state except under the assumed name.

[See Compact Edition, Volume 2 for text of (c)]

(d) No foreign casualty insurer shall be required to make or maintain the deposit required of domestic casualty insurers in Article 8.05 of this Code if a similar deposit has been made in any state of the United States, under the laws of that state, in a manner which secures equally all the policyholders of the company who are citizens and residents of the United States. A certificate of the deposit under the signature and seal of the officer of the other state with whom the deposit is made shall be filed with the board.

[Amended by Acts 1977, 65th Leg., p. 1101, ch. 403, § 3, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 403, ch. 167, § 1, eff. May 20, 1981.]

Art. 21.48A. Prohibiting Certain Practices Relating to Insurance of Real or Personal Property

Definitions

Sec. 1. (1) "Lender" means any person, partnership, corporation, association, or other entity, or any agent, loan agent, servicing agent, or any loan or mortgage broker, who lends money and receives or otherwise acquires a mortgage, lien, deed of trust, or any other security interest in or upon any real or personal property as security for such loan.

(2) "Borrower" means any person, partnership, corporation, association, or other entity, who has or acquires a legal or equitable interest in real or personal property which is or becomes subject to a mortgage, lien, security agreement, deed of trust, or other security instrument.

Prohibited Practices

Sec. 2. (a) No Lender shall require a fee of over Ten Dollars ($10.00) for the substitution by the Borrower of an insurance policy for another insurance policy still in effect, or require any fee for the furnishing by the Borrower of an insurance policy for an existing policy upon termination of the existing policy, when such insurance policy is provided through an insurance company duly licensed to do business in the State of Texas pursuant to the provisions of this Insurance Code.

(b) No Lender shall directly or indirectly impose or require as a condition of any financing or lending of money or the renewal or the extension thereof, that the purchaser or borrower or his successors, shall procure any policy of insurance or the renewal or extension thereof, covering the property involved in the transaction, from or through any particular agent or agents, solicitor or solicitors, insurer or insurers, or any other person or persons, or from or through any particular type or class of any of the foregoing.

(c) No Lender shall use or permit the use of any of the information taken from a policy of insurance insuring the property of a Borrower for the purpose of soliciting insurance business from the Borrower, or make any of such information available to any other person for any purpose, unless such Lender has first been furnished specific written authority from the Borrower permitting or directing such particular use or disclosure; provided, however, this paragraph shall not prevent a Lender who is a licensed local recording agent from selling insurance to a Borrower.

(d) No Lender may require a Borrower to furnish evidence of insurance more than fifteen (15) days prior to the termination date of an existing policy.

Exceptions

Sec. 3. Nothing contained in Section 2 hereof shall be deemed to prevent such Lender from:

(a) requiring evidence, to be produced prior to the commencement or renewal of the risk, that insurance with a fixed termination date providing adequate coverage has been obtained in an amount sufficient to cover the debt or loan and that it will not be cancelled without reasonable notice to the lender;

(b) requiring insurance in an insurer authorized to do business and having a licensed resident agent in this state;

(c) refusing to accept or approve insurance in any particular insurer on reasonable and nondiscriminatory grounds relating to its financial soundness, or its facility to service the policy;

(d) providing adequate insurance coverage to protect the Lender's security interest in any property in accordance with the terms of the mortgage, security agreement, deed of trust, or other security instrument should the Borrower fail to furnish an insurance policy meeting the requirements established by the Lender as authorized by this article within fifteen (15) days prior to the termination date of an existing policy, and in such instance the Lender shall be entitled to use any information contained in the existing policy for the purpose of determining adequate insurance coverage;

(e) requiring at or before the time of delivery of an insurance policy to the Lender by a local recording agent or insurer a statement in writing from the Borrower designating such agent or insurer as his agent for such purpose; provided, however, such statement shall not be required when an agent or insurer is furnishing a renewal of an existing expiring policy provided by such agent or insurer;

(f) furnishing to any person, firm, or corporation who is or becomes the owner or holder of any note or obligation secured by a mortgage, security agreement, deed of trust, or other security instrument the policy of insurance or any information contained therein covering property which is security for such loan; or

(g) processing a claim under the terms of the insurance policy.

Violations, Enforcement, and Civil Remedies

Sec. 4. (a) The attorney general or the commissioner or board may institute any injunction or other proceeding to enforce the provisions of this article and to enjoin any person, partnership, corporation, association, or other entity from engaging or attempting to engage in any activity in violation of this article or any of its provisions. The provisions of this section are cumulative of the other penalties or remedies provided for by law.

(b) A Borrower may recover from any Lender who violates any of the provisions of this article civil damages in an amount equal to three (3) times the annual premium for the policy of insurance in force upon the mortgaged property. In the event that such policy of insurance be for a period of more than one (1) year, the annual premium shall be calculated by dividing the number of years of the duration of such policy into the total premium specified therein for such entire period.

Application to Title Insurance

[See Compact Edition, Volume 2 for text of 5]

[Amended by Acts 1977, 65th Leg., p. 349, ch. 171, § 1, eff. Aug. 29, 1977.]

Art. 21.49. Catastrophe Property Insurance Pool Act

[See Compact Edition, Volume 2 for text of 1 to 18]

Payment of Losses Exceeding $100 Million in Year; Premium Tax Credit

Sec. 19. In the event any occurrence or series of occurrences within the defined catastrophe area results in insured losses of the association totaling in excess of $100 million within a single calendar year, the proportion of the total loss allocable to each insurer shall be determined in the same manner as its participation in the association has been determined for the year under Subsection (c) of Section 5 of the Texas Catastrophe Insurance Pool Act, as amended, and any insurer which has paid its share of total losses exceeding $100 million in a calendar year shall be entitled to credit the amount of that excess share against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit herein authorized shall be allowed at a rate not to exceed 20 percent per year for five or more successive years following the year of payment of the claims. The balance of payments paid by the insurer and not claimed as such tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this Insurance Code.

[Amended by Acts 1979, 66th Leg., p. 1599, ch. 675, § 1, eff. Aug. 27, 1979.]

Art. 21.49-1. Insurance Holding Company System Regulatory Act

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

Registration of Insurers

Sec. 3.

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

(b) Information and Form Required. Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

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

(3) the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its holding company, its subsidiaries, or its affiliates:

[See Compact Edition, Volume 2 for text of 3(b)(3)(i) to (iv)]

(v) all management and service contracts and all cost-sharing arrangements; and

[See Compact Edition, Volume 2 for text of 3(b)(3)(vi) to (5), 4]

Acquisition or Retention of Control of or Merger with Domestic Insurer

Sec. 5. (a) Filing Requirements of Public Tenders or Offers. (1) Except as otherwise provided in Subsection (b) of this Section, no person other than the issuer shall make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, from the shareholders, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

[See Compact Edition, Volume 2 for text of 5(a)(2)]

(b) Filing Requirements of Negotiated Agreements. No person who has executed or entered into a privately negotiated agreement or contract directly with shareholders of a domestic insurer to acquire any voting security of such insurer by which, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, shall consummate or make effective any such agreement or control, or acquire any further right, title, or interest in such voting security, or exercise any control over such insurer, until and unless such person has filed with the commissioner a statement containing the information required by Subsection (c) of this section and such agreement, contract, and acquisition has been approved by the commissioner in the manner hereinafter prescribed. The statement filed under this Subsection (b) shall be subject to public inspection at the office of the commissioner, and a copy thereof shall be sent to the insurer but shall not be required to be sent to the insurer's shareholders.

(c) Content of Statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in either Subsection (a) or (b) is to be effected (hereinafter called "acquiring party"), and

(i) if such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years; and

(ii) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by Paragraph (i) of this subsection;

(2) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement, unless such acquiring party is an individual person in which case he shall provide such personal financial information as required by the commissioner;

(4) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(5) the number of shares of any security referred to in either Subsection (a) or (b), which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in either Subsection (a) or (b), and a statement as to the method by which the fairness of the proposal was arrived at;

(6) the amount of each class of any security referred to in either Subsection (a) or (b) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements, or understanding with respect to any security referred to in either Subsection (a) or (b) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in either Subsection (a) or (b) during the 12 calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(9) a description of any recommendations to purchase any security referred to in either Subsection (a) or (b) made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party;

(10) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and contracts or agreements to acquire or exchange any securities referred to in either Subsection (a) or (b), and (if distributed) of additional soliciting material relating thereto;

(11) the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in either Subsection (a) or (b) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(12) such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in either Subsection (a) or (b) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by Clauses (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in either Subsection (a) or (b) is a corporation, the commissioner may require that the information called for by Clauses (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change.

(d) Alternative Filing Materials. If any offer, request, invitation, contract, agreement, or acquisition referred to in either Subsection (a) or Subsection (b) is proposed to be made by means of a registration statement under the Securities Act of 1933, as amended,[1] or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, as amended,[2] or under a State law requiring similar registration or disclosure, the person required to file the statement referred to in either Subsection (a) or Subsection (b) may utilize such documents in furnishing the information called for by that statement.

(e) Approval by Commissioner; Hearings. (1) The commissioner shall approve any such acquisition of control referred to in either Subsection (a) or Subsection (b) unless, after a public hearing thereon, he finds that:

(i) after the change of control the domestic insurer referred to in either Subsection (a) or Subsection (b) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) the effect of such acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein;

(iii) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with such acquiring party;

(iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (a) are unfair and unreasonable to the securityholders of the insurer;

(v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair, prejudicial, hazardous, or unreasonable to policyholders or stockholders of the insurer and not in the public interest;

(vi) the competence, trustworthiness, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vii) such acquisition or merger would violate any law of this or any other state or of the United States.

(2) The public hearing referred to in Clause (1) hereof shall be held within 30 days after the statement required by either Subsection (a) or Subsection (b) is filed, and at least 20 days' notice thereof shall be given by the commissioner to the person filing the statement and to the domestic insurer. Not less than 10 days' notice of such public hearing shall be given by the person filing the statement to such other persons as may be designated by the commissioner. The insurer shall give prompt notice of the hearing to its securityholders as prescribed in Subsection (f) hereof. The commissioner shall make a determination within 30 days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments in connection therewith.

(f) Mailings to Shareholders; Payment of Expenses. Except as provided in Subsection (b), all

statements, amendments, or other material filed pursuant to Subsection (a), (b), or (c), and all notices of public hearings held pursuant to Subsection (e), shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(g) Exemptions. The provisions of this section shall not apply to:

(1) any offers, requests, invitations, agreements, or acquisitions by the person referred to in Subsection (a) who is a broker-dealer under state or federal securities laws of any voting security referred to in Subsection (a) which, immediately prior to consummation of such offer, request, invitation, agreement, or acquisition, was not issued and outstanding and which acquisition is solely for resale under a plan approved by the commissioner that will not reasonably result in acquisition of control on resale and where during the period prior to resale no actual positive act of control by virtue of those shares is committed;

(2) any transaction which is subject to the provisions of: (i) Article 21.25, Sections 1 through 5, of this code, dealing with the merger or consolidation of two or more insurers and complying with the terms of such article until the plan of merger or consolidation has been filed by the insurer with the Commissioner of Insurance in accordance with such Article 21.25. After the filing of such plan of merger or consolidation the transaction shall be subject to the approval provisions of Subsection (e) of Section 5 of this article, but the Commissioner may exempt such transaction from any or all of the other provisions and requirements of Section 5 of this article if he finds that the notice, proxy statement, and other materials furnished to shareholders and security holders in connection with such merger or consolidation contained reasonable and adequate factual and financial disclosure, material and information relating to such transaction, (ii) Article 11.20 of this code, (iii) Article 11.21 of this code, (iv) Article 14.13 of this code, (v) Article 14.61 of this code, (vi) Article 14.63 of this code, (vii) Article 21.26 of this code, provided that the requirements of said article are fully complied with, (viii) Article 22.15 of this code, and (ix) Article 22.19 of this code, provided that the reinsurance is a total direct reinsurance agreement; or

(3) any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section.

(h) Retention of Control. (1) The following conditions affecting any controlled insurer, regardless of when such control has been acquired, are violations of this article: (i) the violation of this article, or other demonstration of untrustworthiness, by the insurer, its holding company or any controlling person, or any of the officers or directors of either; or (ii) the violation of any provision of Chapter 15 of the Business and Commerce Code, Chapter 785, Acts of the 60th Legislature, 1967, as amended, or any other antitrust law of this State by the insurer, the holding company or any affiliate. If, after notice and an opportunity to be heard the commissioner determines that any of the foregoing violations exists, he shall reduce his findings to writing and shall issue an order based thereon and cause the same to be served upon the insurer and upon all persons affected thereby directing any person found to be in violation hereof to take appropriate action to cure such violation. Upon the failure of any such person to comply with such order, Section 3 of Article 1.14 of this code shall become applicable to such person, as well as any other provisions of this article.

(2) The commissioner may require the submission of such information as he deems necessary to determine whether any retention of control complies with this article and may require, as a condition of approval of such retention of control, that all or any portion of such information be disclosed to the insurer's stockholders.

(i) Duty of Insurer. Unless subject to registration under Section 3, or unless it is a foreign insurer not subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this article, or unless acquisition of its control is subject to Subsections (a), (b), (c), and (d) hereof, every authorized insurer shall, on or before November 1, 1971, or within 30 days after any event requiring notice hereunder, whichever is later, notify the commissioner in writing of the identity of any person whom the insurer then knows, or has reason to believe, controls or has taken any action, other than preliminary negotiations or discussions, to acquire control of the insurer.

(j) Violations. The following shall be violations of this section:

(1) the failure to file any statement, amendment, or other material required to be filed pursuant to this section; or

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(k) Jurisdiction; Consent to Service of Process. The courts of this State are hereby vested with

jurisdiction over every person not resident, domiciled, or authorized to do business in this State who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

Subsidiaries of Insurers

Sec. 6. (a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize, acquire, invest in or make loans to one or more subsidiaries, and may loan to or invest in affiliates, as permitted by the investment provisions of the Insurance Code.

(b) Additional investment authority. In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of the Insurance Code, a domestic insurer may also:

(1) invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose amounts which in the aggregate do not exceed the lesser of five percent of the insurer's assets or 50 percent of the insurer's surplus as regards policyholders, but after such investments the insurer's surplus as regards policyholders must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there must be included (i) total net money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

(2) if the insurer's total liabilities, as calculated for National Association of Insurance Commissioners annual statement purposes, are less than 10 percent of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose, but after such investment the insurer's surplus as regards policyholders, considering such investment as if it were a nonadmitted asset, must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(3) invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose, provided that such subsidiary or affiliate agrees to limit its investments in any particular asset so that such investments will not cause the amount of the total investment of the insurer to exceed the amount the insurer could have directly invested in such asset. For the purpose of this clause, "the total investment of the insurer" will include (i) any direct investment by the insurer in an asset and (ii) the insurer's proportionate share of any investment in such asset by any subsidiary or affiliate of the insurer, which must be calculated by multiplying the amount of the subsidiary's or affiliate's investment by the percentage of the insurer's ownership of such subsidiary or affiliate; and

(4) with the prior approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries and affiliates, but after such investment the insurer's surplus as regards policyholders must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(c) Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries and affiliates made under Subsection (b) hereof are not subject to any of the otherwise applicable restrictions or prohibitions contained in this code applicable to such investment of a company subject to this code, but such investments are subject to all of the provisions of Section 4 of this Act.

(d) Qualification of Investment. Whether any investment under Subsection (b) hereof meets the applicable requirements thereof is to be determined on a pro forma basis as of the time immediately after such investment is made, taking into account the insurer's assets, liabilities, and surplus as regards policyholders, the then outstanding principal balance of all previous investments in debt obligations of subsidiaries and affiliates, and the value of all previous investments in equity securities of subsidiaries and affiliates.

(e) Cessation of Control. If an insurer ceases to control a subsidiary, it must dispose of any investment therein made under Subsection (b) within three years from the time of the cessation of control or within such further time as the commissioner may prescribe and approve, unless at any time after the investment is made the investment otherwise meets the requirements of and qualifies for investment under any other section of this code, and the insurer has notified the commissioner thereof.

Valuation of Investment in a Subsidiary or Affiliate

Sec. 6A. (a) Valuation of an investment by an insurer in a subsidiary or affiliate of an insurer, which is not itself an insurer, shall be valued, subject to the additional provisions of this section, on the basis of the greater of:

(1) the net stockholder equity value owned by the insurer in the subsidiary or affiliate, adjusted to include the value of only such of the assets of such subsidiary as would constitute lawful investments for the insurer if acquired or held directly by the insurer; or

(2) one of the following bases appropriate to each type of subsidiary or affiliate owned by it, provided, however, that an insurer shall not be required to value the stock of all its subsidiaries or affiliates on the same basis:

(i) the net worth of the subsidiary or affiliate determined in accordance with generally accepted accounting principles as of the end of its most recent fiscal year, provided, subject to the other provisions of this section, that the financial statements of the subsidiary or affiliate for its most recent fiscal year have been audited by an independent certified public accountant in accordance with generally accepted auditing standards; or

(ii) a value equal to the cost of the stock of the subsidiary or affiliate, provided such value is determined and adjusted to reflect subsequent operating results in accordance with generally accepted accounting principles; or

(iii) the market value of the stock of the subsidiary or affiliate, if the stock is listed on a national securities exchange; or

(iv) the value, if any, placed on the stock of such subsidiary or affiliate by the National Association of Insurance Commissioners; or

(v) any other value which the insurer can substantiate to the satisfaction of the commissioner as being a reasonable value.

(b) Within 60 days after the effective date of this section, an insurer shall file with the commissioner relevant information identifying, supporting, and justifying the value of and basis of valuation used in accordance with the provisions of Subsection (a) hereof for each of its noninsurer subsidiaries and affiliates.

(c) Within 30 days after the acquisition of a noninsurer subsidiary or affiliate, an insurer shall file with the commissioner relevant information identifying, supporting, and justifying the value of and the basis of valuation used in accordance with the provisions of Subsection (a) for such subsidiary or affiliate.

(d) A valuation basis used for a subsidiary or affiliate shall thereafter be consistently used unless a change is substantiated as reasonable and on that basis is approved in writing by the commissioner.

(e) If a subsidiary or affiliate is valued on the basis of Subsection (a)(2)(i) and the books of the subsidiary or affiliate are not audited at the time the valuation is included in the insurer's annual statement, the insurer shall thereafter report and explain the difference, if any, between the value of the subsidiary or affiliate as reported in the annual statement and the value as determined by audit. Such report and explanation shall be made as soon as possible following such audit.

(f) If any subsidiary or affiliate, which is not itself an insurance company, is valued other than on a basis of market value as defined in Subsection (a)(2)(iii), there shall be deducted from otherwise determined value a sum equal to the value claimed for any of its assets which would not constitute admitted assets for the insurer if held directly by the insurer, if such assets

(1) are held by the subsidiary or affiliate but used, under a lease agreement or otherwise, significantly in the conduct of the insurer's business; or

(2) were acquired from or purchased for the benefit or use of the insurer by the subsidiary or affiliate under specific circumstances that, in the opinion of the commissioner, support a reasonable finding that the primary purpose of such acquisition or purchase was the evasion or avoidance of the Insurance Code.

(g) The commissioner may, after notice and opportunity to be heard, determine that the basis used for valuation of the stock of any subsidiary or affiliate does not, under the specific circumstances of the case, reflect the value of the subsidiary or affiliate and may order either an adjustment in valuation or the use of one of the other specified bases of valuation.

[See Compact Edition, Volume 2 for text of 7 to 15]

Rescission, Revocation, and Reversal of Unauthorized Transactions

Sec. 16. Whenever it appears to the commissioner that any person has entered into any transaction or act without having first complied with the provisions of this article applicable to such transaction or act, and in violation hereof, or has obtained his approval of or acquiescence in a transaction or act subject to this article based upon a material fraudulent misrepresentation, misstatement, or omission, the commissioner may, after giving notice and an opportunity to be heard, determine and order that such transaction or act be set aside, rescinded, revoked, reversed, and rendered void and of no force or effect, and that the parties to such transaction or act shall be returned to the position they would have occupied had not such transaction or act occurred in violation of this article.

[See Compact Edition, Volume 2 for text of 17 and 18]

[Amended by Acts 1977, 65th Leg., p. 2195, ch. 868, §§ 1 to 5, eff. May 11, 1977.]

[1] 15 U.S.C.A. § 77a et seq.
[2] 15 U.S.C.A. § 78a et seq.

Art. 21.49–3. Medical Liability Insurance Underwriting Association Act

Short Title

Sec. 1. This Act shall be known as the "Texas Medical Liability Insurance Underwriting Association Act."

Definitions

Sec. 2. (1) "Medical liability insurance" means primary and excess insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering or the failure to render professional service by a health care provider or physician who is in one of the categories eligible for coverage by the association.

(2) "Association" means the joint underwriting association established pursuant to the provisions of this article.

(3) "Net direct premiums" means gross direct premiums written on automobile liability and liability other than auto insurance written pursuant to the provisions of the Insurance Code, less policyholder dividends, return premiums for the unused or unabsorbed portion of premium deposits and less return premiums upon cancelled contracts written on such liability risks.

(4) "Board" means the State Board of Insurance of the State of Texas.

(5) "Physician" means a person licensed to practice medicine in this state.

(6) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed or chartered by the State of Texas to provide health care as defined in Section 1.03(2), Medical Liability Insurance Improvement Act of Texas,[1] as a registered nurse, hospital, dentist, podiatrist, pharmacist, chiropractor, optometrist, or not-for-profit nursing home, or a radiation therapy center that is independent of any other medical treatment facility and which is licensed by the Texas State Radiation Control Agency pursuant to the provisions of Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), and which is in compliance with the regulations promulgated by the Texas State Radiation Control Agency, a blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks, or a nonprofit corporation which is organized for the delivery of health care to the public and which is certified under Article 4509a, Revised Civil Statutes of Texas, 1925,[2] or an officer, employee, or agent of any of them acting in the course and scope of his employment.

[1] Civil Statutes, art. 4590i.
[2] Repealed; see, now, Civil Statutes, art. 4495b.

Joint Underwriting Association

Sec. 3. (a) A joint underwriting association is hereby created, consisting of all insurers authorized to write and engaged in writing, within this state, on a direct basis, automobile liability and liability other than auto insurance on or after January 1, 1975, as provided in the Insurance Code, specifically including and applicable to Lloyds and reciprocal or interinsurance exchanges, but excluding farm mutual insurance companies as authorized by Chapter 16 of this code, and county mutual insurance companies as authorized by Chapter 17 of this code. Every such insurer shall be a member of the association and shall remain a member as a condition of its authority to continue to transact such kind of insurance in this state. The purpose of the association shall be to provide medical liability insurance on a self-supporting basis. The association shall not be a licensed insurer within the meaning of Article 1.14–2, Insurance Code.

(b) The association shall, pursuant to the provisions of this article and the plan of operation with respect to medical liability insurance, have the power on behalf of its members:

(1) to issue, or to cause to be issued, policies of insurance to applicants, including primary, excess, and incidental coverages and subject to limits as specified in the plan of operation; provided that no individual or organization may be insured by policies issued by the association for an amount exceeding a total of $750,000 per occurrence and $1.5 million aggregate per annum;

(2) to underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions;

(3) to either or both accept and refuse the assumption of reinsurance from its members; and

(4) to cede and purchase reinsurance.

(c)(1) The board shall, after consultation with the joint underwriting association, representatives of the public, the Texas Medical Association, the Texas Podiatry Association, the Texas Hospital Association, and other affected individuals and organizations, promulgate a plan of operation consistent with the provisions of this article, to become effective and operative no later than 90 days after the effective date of this Act.

(2) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medi-

cal liability insurance, and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members and assessment of policyholders to defray losses and expenses, administration of the policyholder's stabilization reserve fund, commission arrangements, reasonable and objective underwriting standards, acceptance, assumption, and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association.

(3) The plan of operation shall provide that any balance remaining in the funds of the association at the close of its fiscal year, meaning its then excess of revenue over expenditures after reimbursement of members' contributions in accordance with Section 4(b)(5) of this article by the association shall be added to the reserves of the association.

(4) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the board, or shall be made at the direction of the board.

Eligibility for Coverage

Sec. 3A. (a) The board shall establish by order the categories of physicians and health care providers who are eligible to obtain coverage from the association and may, from time to time, revise its order to include or exclude from eligibility particular categories of such physicians and health care providers.

(b) If a category of physicians or health care providers has been excluded from eligibility to obtain coverage from the association, the board may determine, after notice of at least 10 days and a hearing, that medical liability insurance is not available. On that determination, the category of physicians or health care providers is eligible to obtain insurance coverage from the association.

Procedures

Sec. 4. (a)(1) Any health care provider or physician included in one of the categories of health care providers eligible for coverage by the association shall, on or after the effective date of the plan of operation, be entitled to apply to the association for such coverage. Such application may be made on behalf of an applicant by an agent authorized pursuant to Article 21.14 of this code.

(2) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium, policyholder stabilization reserve fund charge, or assessment due from the applicant for prior insurance (as shown by the insured having failed to pay or make written objection to such charges within 30 days after billing) then the association, upon receipt of the premium and the policyholder stabilization reserve fund charge, or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of medical liability insurance for a term of one year.

(b)(1) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto shall be subject to Subchapter B of Chapter 5 of the Insurance Code, as amended,[1] giving due consideration to the past and prospective loss and expense experience for medical professional liability insurance within and without this state of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the board may require; provided, that if any article of the above subchapter is in conflict with any provision of this Act, this Act shall prevail.

(2) Within such time as the board shall direct, the association shall submit, for the approval of the board pursuant to Article 5.15 of the Insurance Code, an initial filing, in proper form, of policy forms, classifications, rates, rating plans, and rating rules applicable to medical liability insurance to be written by the association.

(3) Any deficit sustained by the association in any one year shall be recouped, pursuant to the plan of operation and the rating plan then in effect, by one or more of the following procedures in this sequence:

First, a contribution from the policyholder's stabilization reserve fund until the same is exhausted.

Second, an assessment upon the policyholders pursuant to section 5(a) of this article;

Third, an assessment upon the members pursuant to Section 5(b) of this article. To the extent a member has paid one or more assessments and has not received reimbursement from the association in accordance with Subdivision (5) of this subsection, a credit against premium taxes under Article 7064, Revised Civil Statutes of Texas, 1925, as amended[2] shall be allowed. The tax credit shall be allowed at a rate of 20 percent per year for five successive years following the year in which said deficit was sustained and at the option of the insurer may be taken over an additional number of years.

(4) After the initial year of operation, rates, rating plans, and rating rules, and any provision for recoupment should be based upon the association's loss and expense experience, together with such other information based upon such experience as the board may deem appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.

(5) In the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant

to the plan of operation in accordance with Section 3(c)(2) of this article and contributions from the policyholder's stabilization reserve fund, all members shall, on a basis authorized by the board, as long as the board deems it necessary, contribute to the financial requirements of the association in the manner provided for in Section 5. Any assessment or contribution shall be reimbursed to the members with interest at a rate to be approved by the board. Pending recoupment or reimbursement of assessments or contributions paid to the association by a member, the unrepaid balance of such assessments and contributions may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this code.

(c) Excess insurance coverage written for a health care provider or a physician by the association under this article shall be written on a following form basis to the primary insurance coverage of that health care provider.

[1] Article 5.13 et seq.
[2] Transferred; see, now, art. 4.10 of this Code.

Policyholder's Stabilization Reserve Fund

Sec. 4A. There is hereby created a policyholder's stabilization reserve fund which shall be administered as provided herein and in the plan of operation of the association. Each policyholder shall pay annually into the stabilization reserve fund a charge, the amount of which shall be established annually by advisory directors chosen by health care providers and physicians eligible for insurance in the association in accordance with the plan of operation. The charge shall be in proportion to each premium payment due for liability insurance through the association. Such charge shall be separately stated in the policy, but shall not constitute a part of premiums or be subject to premium taxation, servicing fees, acquisition costs, or any other such charges. The policyholder's stabilization reserve fund shall be collected and administered by the association and shall be treated as a liability of the association along with and in the same manner as premium and loss reserves. The fund shall be valued annually by the board of directors as of the close of the last preceding year. Collections of the stabilization reserve fund charge shall continue until such time as the net balance of the stabilization reserve fund is not less than the projected sum of premiums to be written in the year following valuation date. The fund shall be credited with all stabilization reserve fund charges collected from policyholders and shall be charged with any deficit from the prior year's operation of the association.

Participation

Sec. 5. (a) Each policyholder shall have contingent liability for a proportionate share of any assessment of policyholders made under the authority of this article. Whenever a deficit, as calculated pursuant to the plan of operation, is sustained by the association in any one year, its directors shall levy an assessment only upon those policyholders who held policies in force at any time within the two most recently completed calendar years in which the association was issuing policies preceding the date on which the assessment was levied. The aggregate amount of the assessment shall be equal to that part of the deficit not recouped from the stabilization reserve fund. The maximum aggregate assessment per policyholder shall not exceed the annual premium for the liability policy most recently in effect. Subject to such maximum limitation, each policyholder shall be assessed for that portion of the deficit reflecting the proportion which the earned premium on the policies of such policyholder bears to the total earned premium for all policies of the association in the two most recently completed calendar years.

(b) All insurers which are members of the association shall participate in its writings, expenses, and losses in the proportion that the net direct premiums, as defined herein, of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer that may be required by the board. No member shall be obligated in any one year to reimburse the association on account of its proportionate share in the deficit from operations of the association in that year in excess of one percent of its surplus to policyholders and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this subdivision, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficit. In the event that the deficit from operations allocated to all members of the association in any calendar year shall exceed one percent of their respective surplus to policyholders, the amount of such deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this subdivision.

Directors

Sec. 6. The association shall be governed by a board of nine directors, to be elected annually by the members of the association. On or before 15 days after the effective date of this Act, the State Board of Insurance shall appoint a temporary board of directors of the association which shall consist of nine members who are representatives of the association, selected so as to fairly represent various classes of member insurers and organizations of insurers. Such temporary board of directors shall serve until the first annual meeting of the members

of the association or until their successors have been elected in accordance with this section. The first elected board shall be elected at the annual meeting of the members, or their authorized representatives, which shall be held at a time and place designated by the board.

Appeals

Sec. 7. (a) Any person insured or applying for insurance pursuant to this Act, or his duly authorized representative, or any affected insurer who may be aggrieved by an act, ruling, or decision of the association, may, within 30 days after such act, ruling, or decision, appeal to the board of directors of the association. The board of directors of the association shall hear said appeal within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the person making such request or the duly authorized representative. Within 10 days after such hearing, the board of directors of the association shall affirm, reverse, or modify its previous action or the act, ruling, or decision appealed to the board of directors of the association.

(b) In the event any person insured or applying for insurance is aggrieved by the final action of the board of directors of the association or in the event the association is aggrieved by the action of the board with respect to any ruling, order, or determination of the board of directors of the association or the board, the aggrieved party may, within 30 days after such action, make a written request to the board for a hearing thereon. The board shall hear the association, or the appeal from an act, ruling, or decision of the association, within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the association making such request or the person, or his duly authorized representative, appealing from the act, ruling, or decision of the board of directors of the association. Within 30 days after such hearing, the board shall affirm, reverse, or modify its previous action or the act, ruling, or decision appealed to the board. Pending such hearing and decision thereon, the board may suspend or postpone the effective date of its previous rule or of the act, ruling, or decision appealed to the board. The association, or the person aggrieved by any order or decision of the board, may thereafter appeal in accordance with Article 1.04(f) of the Insurance Code of Texas.

Privileged Communications

Sec. 8. There shall be no liability on the part of, and no cause of action of any nature shall arise against the association, its agents or employees, an insurer, any licensed agent, or the board or its authorized representatives, for any statements made in good faith by them in any reports or communications, concerning risks insured or to be insured by the association, or at any administrative hearings conducted in connection therewith.

Annual Statements

Sec. 9. The association shall file in the office of the board, annually on or before the first day of March, a statement which shall contain information with respect to its transactions, condition, operations, and affairs during the preceding calendar year. Such statement shall contain such matters and information as are prescribed and shall be in such form as is approved by the board. The board may, at any time, require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

Examinations

Sec. 10. The board shall make an examination into the affairs of the association at least annually. Such examination shall be conducted, the report thereon filed, and expenses borne and paid for, in the manner prescribed in Articles 1.15 and 1.16 of the Insurance Code.

Dissolution of the Association

Sec. 11. Upon the effective date of this article, the board shall, after consultation with the joint underwriting association, representatives of the public, the Texas Medical Association, the Texas Podiatry Association, the Texas Hospital Association, and other affected individuals and organizations, promulgate a plan of dissolution consistent with the provisions of this article, to become effective and operative on December 31, 1983, unless the board determines before that time that the association is no longer needed to accomplish the purposes for which it was created and orders its dissolution, in which case, the plan of dissolution shall become effective on the date of dissolution ordered by the board. The plan of dissolution shall contain provisions for maintaining reserves for losses which may be reported subsequent to the expiration of all policies in force. If, at the expiration of five years and annually thereafter, if necessary, from December 31, 1983, or the date of dissolution ordered by the board, the board finds, after notice and hearing, that all known claims have been paid or otherwise disposed of by the association, then the board may wind up the affairs of the association by paying all funds remaining in the association to a special fund created by the statutory liquidator of the board as a reasonable reserve to be administered by said liquidator for unknown claims and for reimbursing assessments and contributions in accordance with Section 4(b)(5) of this article. The board shall, after consultation with the representatives of the public, the Texas Medical Association, the Texas Podiatry Association, the Texas Hospital Association, and other affected individuals and organizations, promulgate a plan for distribution of funds, if any, less reasonable and necessary expenses, to the policyholders ratably in proportion to premiums and assessments paid during

the period of time in which the association issued policies. When all claims have been paid and no further liability of this association exists, the statutory liquidator shall distribute all funds in its possession to the applicable policyholders in accordance with the plan promulgated by the board. If such reserve fund administered by the statutory liquidator proves inadequate, the association shall be treated as an insolvent insurer in respect to the application of the provisions of Article 21.28–C, Property and Casualty Insurance Guaranty Act, Insurance Code. Notice of claims shall be made upon the board.

Authority of the Board Over Dissolution

Sec. 12. Before December 31, 1983, if the board finds that the association is no longer needed to accomplish the purposes for which it was created, the board may issue an order dissolving the association as of a certain date stated in the order.

Termination of Policies

Sec. 13. After December 31, 1983, if no earlier dissolution date is ordered by the board, or after the date ordered for dissolution by the board, no policies will be issued by the association. All then issued policies shall continue in force until terminated in accordance with the terms and conditions of such policies.

[Added by Acts 1975, 64th Leg., p. 867, ch. 331, § 1, eff. June 3, 1975. Amended by Acts 1977, 65th Leg., p. 129, ch. 59, §§ 1, 2, eff. April 13, 1977; Acts 1977, 65th Leg., p. 2057, ch. 817, §§ 31.03 to 31.12, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 147, ch. 79, §§ 1 & 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 3159, ch. 829, § 1, eff. June 17, 1981.]

Section 3 of the 1975 Act was repealed by Acts 1977, 65th Leg., p. 2064, ch. 817, § 41.03. Prior thereto it read:

"This Act shall take effect upon its passage; provided, however, that after December 31, 1977, no new policies will be issued by the association. All then issued policies shall continue in force until their expiration."

Art. 21.49–4. Self-Insurance Trusts

(a) In this article:

(1) "Physician" means a person licensed to practice medicine in this state.

(2) "Dentist" means a person licensed to practice dentistry in this state.

(3) "Health care liability claim" means a cause of action against a physician or dentist for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(b) An incorporated association, the purpose of which, among other things, shall be to federate and bring into one compact organization the entire profession licensed to practice medicine and surgery or dentistry in the State of Texas and to unite with similar associations of other states to form a nationwide medical association or dental association, may create a trust to self-insure physicians or dentists and by contract or otherwise agree to insure other members of the organization or association against health care liability claims and related risks on complying with the following conditions:

(1) the organization or association must have been in continuing existence for a period of at least two years prior to the effective date of this Act;

(2) establishment of a health care liability claim trust or other agreement to provide coverage against health care liability claims and related risks; and

(3) employment of appropriate professional staff and consultants for program management.

(c) The trust may purchase, on behalf of the members of the organizing association, medical professional liability insurance, specific excess insurance, aggregate excess insurance, and reinsurance, as in the opinion of the trustees are necessary. The trust fund is further authorized to purchase such risk management services as may be required and pay claims that arise under any deductible provisions.

(d) The trust investment powers and limitations shall be the same as those of any state bank with trust powers. The trust shall adopt rules and regulations to guarantee all contingent liabilities in the event of dissolution.

(e) The trust is not engaged in the business of insurance under this code and other laws of this state and the provisions of any chapters or sections of this code are declared inapplicable to a trust organized and operated under this article, provided that the State Board of Insurance may require any trust created under this article to satisfy reasonable minimum requirements to insure the capability of the trust to satisfy its contractual obligations.

[Added by Acts 1977, 65th Leg., p. 2063, ch. 817, § 31.13, eff. Aug. 29, 1977.]

Art. 21.49–4a. Coverage of Physicians Under Contracts of Professional Liability Insurance Issued by Health Care Liability Claim Trusts

Contracts of professional liability insurance issued by a health care liability claim trust created under Article 21.49–4, Insurance Code, may include any of the following:

(1) Coverage of professional associations and partnerships of physicians against health care liability claims and related risks where a majority of the persons having a proprietary interest in the professional association or partnership to be insured are members of the association that created such trust.

(2) Coverage of proprietary members, associates, and stockholders of such professional associations and partnerships and executive officers and directors thereof, with respect to potential vicarious liability for acts or omissions of others

giving rise to health care liability claims and related risks.

(3) Coverage of insured physicians and, as applicable, insured professional associations and partnerships (including proprietary members, associates, and stockholders thereof and executive officers and directors thereof) with respect to liability on the part of any applicable insured arising out of:

(i) injuries to patients related to ownership, maintenance, or use of premises for the practice of medicine, including operations necessary or incidental thereto; or

(ii) service by an insured physician as a member of a duly established committee, board, or similar group of a hospital medical staff or of a professional association or society with respect to medical staff privileges, accreditation, or disciplinary matters relating to competency or patient safety and risk reduction programs; or

(iii) health care liability claims or related risks based in whole or in part upon any act or omission occurring prior to the date a contract of professional insurance is issued by such trust.

(4) Coverage of an applicant for membership in the association that created such trust, pending final action upon such application, with respect to health care liability claims and related risks, including coverages described in the preceding Subparagraphs (1), (2), and (3), as applicable.

[Added by Acts 1979, 66th Leg., p. 335, ch. 152, § 1, eff. May 11, 1979.]

Art. 21.49–5. [Blank]

Art. 21.49–6. Self-Insurance Trusts for Banks

Definitions

Sec. 1. In this article:

(1) "Bank" means any bank chartered under the provisions of federal or state law.

(2) "Board" means the State Board of Insurance.

(3) "Trustees" means the trustees of a self-insurance trust created under this article.

Authorization to Create Trusts to Self-Insure Banks

Sec. 2. On approval of its plan of organization and operation as provided in Section 3 of this article, a group or association of banks or bankers, composed of any number of members, may create a trust to self-insure banks that are members of the group or association or any of whose officers are members of the group or association against losses resulting from dishonest acts and criminal acts of employees or losses resulting from robbery or both.

Plan of Organization and Operation

Sec. 3. Before organizing and operating a trust as provided in this article, the group or association proposing to organize the trust shall select trustees to administer the trust and shall prepare a detailed plan of organization and operation in the form and manner prescribed by the board. The plan shall be submitted to the board for examination, suggested changes, and final approval, and may be amended from time to time with the approval of the board.

Approval of Plan

Sec. 4. The board shall approve a self-insurance plan under this article only if it is satisfied that the trust has and will continue to possess the ability to pay valid claims made against it.

Creation of Trust Fund

Sec. 5. (a) The trustees of the self-insurance trust shall create a trust fund to pay claims made under the coverage provided in Section 2 of this article.

(b) The fund shall be under the administration and control of the trustees and shall be paid out on claims and shall be invested as provided in the plan.

Participation in Trust; Contributions

Sec. 6. Any bank that is a member or any of whose officers are members of the group or association organizing the trust may participate in the self-insurance trust by entering into contract or agreement with the trustees for insurance under the trust against losses resulting from dishonest acts or criminal acts of its employees or losses resulting from robbery, or both, and shall pay the required contribution to the trust fund.

Amount of Coverage

Sec. 7. The amount of coverage to be provided banks participating in the trust and the amount of contributions to be paid by those banks shall be determined by the trustees as provided in the plan.

Professional Staff and Consultants

Sec. 8. (a) The trustees shall employ appropriate professional staff and consultants for program management.

(b) Salaries for professional staff and consultants and for paying the costs of administering the trust program shall be paid from the trust fund; provided that, the total amount for payment of salaries and administration shall not exceed an amount fixed by the board but in no event to exceed 35 percent of the total amount of money in the trust fund in any one year.

Continuing Supervision

Sec. 9. A self-insurance trust approved by the board under the provisions of this article is subject to the continuing supervision of the board relating to its solvency and to approval of its policy forms, and the board may set certain minimum requirements to ensure the capability of the trust to satisfy its contractual obligations.

Rules

Sec. 10. The board may adopt necessary rules to carry out the provisions of this article.

Trust Not Engaged in Business of Insurance

Sec. 11. A self-insurance trust created under this article is not engaged in the business of insurance under this code and under other laws of this state, and the provisions of any chapters or articles of this code, including Article 21.28–C, are declared inapplicable to a trust organized and operated under this article.

[Added by Acts 1977, 65th Leg., p. 1698, ch. 674, § 1, eff. June 15, 1977.]

Art. 21.49–9. Exclusionary Clauses in Health Insurance

No individual policy or group policy of accident or sickness insurance, including policies issued by companies subject to Chapter 20 of this code, delivered or issued for delivery to any person in this state, may include a provision that excludes or limits coverage of the insurer from paying benefits covered by The Medical Assistance Act of 1967, as amended (Article 695j–1, Vernon's Texas Civil Statutes).[1]

[Added by Acts 1979, 66th Leg., p. 1988, ch. 783, § 3, eff. Sept. 1, 1979.]

[1] Repealed; see, now, Human Resources Code, § 32.001 et seq.

Section 4 of the 1979 Act provided:

"Articles 21.49–9 and 21.49–10, Insurance Code, as added by this Act, apply to all accident and sickness policies issued or issued for delivery, renewed, extended, or amended in this state on or after January 1, 1980."

Art. 21.49–10. Payment to State

Each individual policy or group policy of accident or sickness insurance, including policies issued by companies subject to Chapter 20 of this Code, delivered or issued for delivery to any person in this state shall provide for payment to the Texas Department of Human Resources for the actual cost of medical expenses the department pays through medical assistance for a person insured by the contract if the insured is entitled to payment for the medical expenses by the insurance contract.

[Added by Acts 1979, 66th Leg., p. 1988, ch. 783, § 3, eff. Sept. 1, 1979.]

Policies to which this article applies, see note under art. 21.49–9.

Art. 21.52. Right to Select Practitioner under Health and Accident Policies

Definitions

Sec. 1. As used in this article:

(a) "health insurance policy" means any individual, group, blanket, or franchise insurance policy, insurance agreement, or group hospital service contract, providing benefits for medical or surgical expenses incurred as a result of an accident or sickness;

(b) "doctor of podiatric medicine" includes D.P.M., podiatrist, doctor of surgical chiropody, D.S.C., and chiropodist;

(c) "doctor of optometry" includes optometrist, doctor of optometry, and O.D.; and

Text of subsection (d) as added by Acts 1979, 66th Leg., p. 340, ch. 155, § 1

(d) "doctor of chiropractic" means a person who is licensed by the Texas Board of Chiropractic Examiners to practice chiropractic.

Text of subsection (d) as added by Acts 1979, 66th Leg., p. 1037, ch. 467, § 1

(d) "licensed dentist" means a person who is licensed to practice dentistry by the State Board of Dental Examiners.

Application of this Article

Sec. 2. This article applies to and embraces all insurance companies, associations, and organizations, whether incorporated or not, which provide health benefits, accident benefits, or health and accident benefits for medical or surgical expenses incurred as a result of an accident or sickness. Without limiting the foregoing, this article specifically applies to the insurance companies, associations, and organizations which come within the purview of the following designated chapters of the Insurance Code: Chapter 3, pertaining to life, health and accident insurance companies; Chapter 8, pertaining to general casualty companies; Chapter 10, pertaining to fraternal benefit societies; Chapter 11, pertaining to mutual life insurance companies; Chapter 12, pertaining to local mutual aid associations; Chapters 13 and 14, pertaining to statewide mutual assessment companies, mutual assessment companies, and mutual assessment life, health and accident associations; Chapter 15, pertaining to mutual insurance companies writing other than life insurance; Chapter 18, pertaining to underwriters making insurance on the Lloyd's Plan; Chapter 19, pertaining to reciprocal exchanges; and Chapter 22, pertaining to stipulated premium insurance companies. This article also applies to health maintenance organizations established pursuant to Chapter 214, Acts of the 64th Legislature, Regular Session, 1975 (Articles 20A.01–20A.33, Insurance Code), as now or hereafter amended.

Selection of Practitioners

Text of section as amended by Acts 1979, 66th Leg., p. 16, ch. 8, § 1; Acts 1979, 66th Leg., p. 340, ch. 155, § 1

Sec. 3. Any person who is issued, who is a party to, or who is a beneficiary under any health insurance policy delivered, renewed, or issued for delivery in this state by any insurance company, association, or organization to which this article applies may select a licensed doctor of podiatric medicine or a doctor of chiropractic to perform the medical or surgical services or procedures scheduled in the policy which fall within the scope of the license of that doctor or a licensed doctor of optometry to perform the services or procedures scheduled in the policy which fall within the scope of the license of that doctor of optometry, and payment or reimbursement by the insurance company, association, or organization for those services or procedures in accordance

with the payment schedule or the payment provisions in the policy shall not be denied because the same were performed by a licensed doctor of podiatric medicine, a licensed doctor of optometry, or a licensed doctor of chiropractic. There shall not be any classification, differentiation, or other discrimination in the payment schedule or the payment provisions in a health insurance policy, nor in the amount or manner of payment or reimbursement thereunder, between scheduled services or procedures when performed by a doctor of podiatric medicine, a doctor of optometry, or a doctor of chiropractic which fall within the scope of his license and the same services or procedures when performed by any other practitioner of the healing arts whose services or procedures are covered by the policy. Any provision in a health insurance policy contrary to or in conflict with the provisions of this article shall, to the extent of the conflict, be void, but such invalidity shall not affect the validity of the other provisions of this policy. Any presently approved policy form containing any provision in conflict with the requirements of this Act shall be brought into compliance with this Act by the use of riders and endorsements which have been approved by the State Board of Insurance or by the filing of new or revised policy forms for approval by the State Board of Insurance.

Selection of Practitioners

Text of section as amended by Acts 1979, 66th Leg., p. 16, ch. 8, § 1; Acts 1979, 66th Leg., p. 1037, ch. 467, § 1

Sec. 3. Any person who is issued, who is a party to, or who is a beneficiary under any health insurance policy delivered, renewed, or issued for delivery in this state by any insurance company, association, or organization to which this article applies may select a licensed doctor of podiatric medicine or a licensed dentist to perform the medical or surgical services or procedures scheduled in the policy which fall within the scope of the license of that doctor or a licensed doctor of optometry or licensed dentist to perform the services or procedures scheduled in the policy which fall within the scope of the license of that doctor of optometry or licensed dentist, and payment or reimbursement by the insurance company, association, or organization for those services or procedures in accordance with the payment schedule or the payment provisions in the policy shall not be denied because the same were performed by a licensed doctor of podiatric medicine, a licensed doctor of optometry, or a licensed dentist. There shall not be any classification, differentiation, or other discrimination in the payment schedule or the payment provisions in a health insurance policy, nor in the amount or manner of payment or reimbursement thereunder, between scheduled services or procedures when performed by a doctor of podiatric medicine, a doctor of optometry, or a licensed dentist which fall within the scope of his license and the same services or procedures when performed by any other practitioner of the healing arts whose services or procedures are covered by the policy. Any provision in a health insurance policy contrary to or in conflict with the provisions of this article shall, to the extent of the conflict, be void, but such invalidity shall not affect the validity of the other provisions of this policy. Any presently approved policy form containing any provision in conflict with the requirements of this Act may be brought into compliance with this Act by the use of riders and endorsements which have been approved by the State Board of Insurance or by the filing of new or revised policy forms for approval by the State Board of Insurance.

Certain Exemptions not Applicable

Sec. 4. The exemptions and exceptions in Articles 13.09 and 21.41 of the Insurance Code do not apply to this article.

[Added by Acts 1977, 65th Leg., p. 1102, ch. 404, § 1, eff. June 15, 1977. Amended by Acts 1979, 66th Leg., p. 16, ch. 8, § 1, eff. March 7, 1979; Acts 1979, 66th Leg., p. 340, ch. 155, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1037, ch. 467, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1977 Act provided:

"All laws or parts of laws in conflict with this Act are repealed to the extent of such conflict."

Section 2 of Acts 1979, 66th Leg., p. 1038, ch. 467, provided:

"The provisions of Section 3, Article 21.52, Insurance Code, relating to certain insurance coverage of services of a licensed dentist are applicable only to policies delivered, renewed, or issued for delivery in this state more than 90 days after the effective date of this Act."

Arts. 21.53 to 21.76. [Blank]

Art. 21.77. Group Marketing of Motor Vehicle Insurance

Purpose

Sec. 1. The purpose of this article is to authorize the writing of motor vehicle insurance covering persons over 55 years of age in this state on a group marketing basis subject to the conditions stated in this article and to set forth the terms and conditions under which insurance covering persons over 55 years of age on a group marketing basis may be written.

Definitions

Sec. 2. As used in this article:

(1) "Group motor vehicle insurance" means all motor vehicle insurance covering persons over 55 years of age that is offered by a licensed insurer in this state on a group marketing plan to an eligible group as defined in this article.

(2) "Group marketing" means the marketing of group motor vehicle insurance by a licensed insurer otherwise engaged in insuring independent individual risks to an eligible group on a guaranteed basis under a single insurance program without individual underwriting selection or individual proof of insurability.

Eligible Group

Sec. 3. Any group, to be eligible for group marketing, must have been in existence for at least six

months before the purchase of the insurance and must be a group organized for a purpose other than to become an insurance group under this Act, and the group may include any group that will be actuarially credible for underwriting purposes.

Eligible Members of Group

Sec. 4. Eligible members of a group shall include all members in good standing in the group who are over 55 years of age and lawful drivers.

Conditions

Sec. 5. (a) Group motor vehicle insurance may be issued in this state provided the conditions in this section are met.

(b) The insurer and the group insured must accept all members who are eligible and wish to participate in the plan.

(c) To qualify to write the group insurance defined in this article, an insurer must also be engaged in the business of writing the type of coverage offered for insureds other than group and may not be organized solely for the purpose of furnishing coverage to such groups.

(d) Each member of the group shall be issued a policy on forms prescribed for issue in this state by the State Board of Insurance.

(e) Insurance must be provided by individual policies to each member of the group under an agreement whereby the premiums on the policies will be paid to the insurer periodically by the group.

(f) An insurer may not cancel the insurance of an individual member of the group except for the nonpayment of premiums by the member or unless the insurance for the entire group is cancelled, and in such cases, notice of cancellation as provided in like nongroup policies shall be given to each member.

(g) The plan shall provide that only those motor vehicles owned by members of the group or their spouses jointly or severally shall be eligible for coverage.

Maintenance of Records

Sec. 6. Every insurer writing insurance under a group marketing plan shall keep and maintain separate experience data on this type of business, including complete records of premium income, losses, and expenses so that the experience may be fairly ascertained.

Rates

Sec. 7. Rates for the type of business authorized under this article shall be determined, fixed, prescribed, and promulgated in the manner provided in Article 5.01, Insurance Code, as amended, so far as it is applicable.

Policy Forms

Sec. 8. All policy forms for insurance written under this article shall be prescribed by the board as provided in Article 5.06, Insurance Code.

Rules

Sec. 9. The board may make any rules necessary to carry out the provisions of this article.

Construction of Other Provisions

Sec. 10. The provisions of Article 21.02 of this code may not be construed to apply to groups participating in group plans approved under this article. [Added by Acts 1979, 66th Leg., p. 1028, ch. 461, § 1, eff. Aug. 27, 1979.]

Art. 21.80. Judicial Review of Board Action

Except where otherwise provided for under the provision of the Insurance Code, if any insurance company or other party at interest be dissatisfied with any decision, regulation, order, rate, rule, act, or administrative ruling adopted by the Board of Insurance Commissioners, such dissatisfied company or party at interest after failing to get relief from the Board of Insurance Commissioners, may file a petition setting forth the particular objection to such decision, regulation, order, rate, rule, act, or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the Board of Insurance Commissioners as defendant. Said action shall have precedence over all other causes on the docket of a different nature. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the Justice Court to the County Court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.
[Formerly art. 21.44. Renumbered as art. 21.80 by Acts 1981, 67th Leg., p. 201, ch. 94, § 6, eff. Aug. 31, 1981.]

CHAPTER TWENTY-TWO. STIPULATED PREMIUM INSURANCE COMPANIES

Art. 22.13. Policy Form Approval

[See Compact Edition, Volume 2 for text of 1 to 4]

Reductions or Increases

Sec. 5. A. Any policy may provide for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service or aerial flight in time of peace or war; or in case of death of the insured by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided in any life policy, and the circumstances or conditions under

which reduction or exclusion of benefits are applicable shall be plainly stated in the policy.

B. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Subparagraph A of Section 5 of this Article 22.13) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by Subparagraph A of Section 5 of this Article 22.13) shall not exceed five years from issue date. This Subparagraph A of Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

C. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Subparagraph C of this Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

D. The provisions of Section 5 of this Article 22.13 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 1(b) of Article 22.11 of this Insurance Code.

E. The provisions of this Section 5 of this Article 22.13 shall not apply to health and accident policies.

[See Compact Edition, Volume 2 for text of 6]

[Amended by Acts 1975, 64th Leg., p. 1035, ch. 400, § 2, eff. Nov. 1, 1975.]

Section 1 of the 1975 Act amended art. 14.20. Section 3 of said Act provided:

"The provisions of this Act shall be effective on November 1, 1975, and any insurer issuing a policy which has been previously approved for issuance in this state may bring it into compliance with the provisions of this Act by the use of endorsements thereon or affixed thereto, provided that any such endorsement is approved by the State Board of Insurance prior to usage."

Art. 22.23. Issuance of Life Insurance Policies and Annuity Contracts by Stipulated Premium Companies

Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of $100,000.00 may issue policies of life insurance as authorized and permitted under the provisions of Chapter Three of this Insurance Code provided that:

(1) no individual life shall be insured for more than $5,000.00,

(2) each such policy shall be reserved and reinsured as required under the provisions of Chapter Three of this Insurance Code, and

(3) each such life policy shall be issued only upon an endowment or limited pay basis.

Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of $100,000.00, over and above all liabilities, including contingent liabilities, may issue annuity contracts as authorized and permitted under the provisions of Chapter Three of this Insurance Code. Reserves on such contracts shall be maintained in accordance with the statutes governing reserves on equivalent contracts issued by legal reserve companies, as such laws now exist or as they may hereafter be amended. Any insurer which elects to write annuity contracts under authority of this Article shall thereafter be required to maintain capital and unencumbered surplus of at least the combined total sum of $100,000.00, over and above all liabilities, including contingent liabilities, and any such company shall be regarded as insolvent which fails to maintain capital and unencumbered surplus of at least a combined total sum of $100,000.00, over and above all liabilities, including contingent liabilities.

[Amended by Acts 1975, 64th Leg., p. 1126, ch. 425, § 1, eff. June 19, 1975.]

CHAPTER TWENTY-THREE. NON-PROFIT LEGAL SERVICES CORPORATIONS

Article

23.01. Incorporations; Definitions.
23.02. Supervision; Requirements.
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Art. 23.01. Incorporation; Definitions

Any seven or more persons on application to the secretary of state for a corporate charter under the Texas Non-Profit Corporation Act as a nonmember-

ship corporation may be incorporated for the sole purpose of establishing, maintaining, and operating non-profit legal service plans, whereby legal services may be provided by such corporation through contracting attorneys as is hereinafter provided.

As used in this chapter, the following words, unless the context of their use clearly indicates otherwise, shall have the following meanings:

(1) "Attorney" means a person currently licensed by the Supreme Court of Texas to practice law.

(2) "Applicant" means a person applying for a legal services contract for performance of legal services through a corporation qualified under this chapter.

(3) "Benefit certificate" means a writing setting forth the benefits and other required matters issued to a participant under a group contract for legal services and also an individual contract for legal services issued to a participant.

(4) "Contracting attorney" means an attorney who has entered into the contract provided by Article 23.11 of this code.

(5) "Participant" means the person entitled to performance of legal services under contract with a corporation qualified under this chapter.

(6) "State Board of Insurance" means all of the insurance regulatory officials whose duties and functions are designated by the Insurance Code of Texas as such now exists or may be amended in the future. Any duty stated by this chapter to be performed by or to be placed on the State Board of Insurance is placed upon and is to be performed by the insurance regulatory official or group of officials on whom similar duties are placed or to be performed for insurers or the business of insurance by the Insurance Code. The multimember insurance regulatory body designated by the Insurance Code as the uniform insurance rule-making authority is authorized to enact rules designating the proper insurance regulatory official to perform any duty placed by this chapter on the insurance regulatory officials where such duty is not similar to duties otherwise performed by a specific official or group of such officials.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.02. Supervision; Requirements

All corporations organized under the provisions of this chapter shall be under the direct supervision of the State Board of Insurance, and shall be subject to the following requirements:

(1) After incorporation, but as a condition of doing business other than seeking applicants and obtaining contracting attorneys, they shall have collected in advance from at least 200 applicants (unless a lesser number of applicants is found by the State Board of Insurance to be a large enough number of applicants to constitute a workable prepaid legal service plan) the application fee and at least one month's payment for services. Such funds shall, at all times prior to issuance by the State Board of Insurance of its certificate of authority as below provided, be maintained in a trust account in a bank in Texas and shall be refunded in full should such certificate of authority not be issued. It shall thereinafter be a condition of continued operation that a minimum number of 200 participants or lesser number previously approved by the State Board of Insurance be maintained.

(2) They shall file a statement of their operations for the year ending December 31 each year, said statement to reach the State Board of Insurance not later than March 1 of the succeeding year. The statements shall be on such forms and shall reveal such information as shall be required by the State Board of Insurance.

(3) They shall maintain solvency in each of its funds, i. e., the admitted assets of each such fund shall exceed its liabilities (except for claim liability covered by attorney guarantees provided by Article 23.15 of this code), and it shall be a continuing condition of licensing by the State Board of Insurance that such solvency be maintained.

(4) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this chapter, the State Board of Insurance shall issue it a certificate of authority authorizing it to transact business until such certificate shall be revoked for noncompliance with law, by operation of law or as provided by this chapter.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.03. Attorneys Under Contract

Each corporation complying with the requirements of this chapter before issuing any contract for prepaid legal services shall have and so long as it issues such contracts maintain such number of contracting attorneys as is sufficient in the determination of the State Board of Insurance to service the participant contracts contemplated by the corporation's plan of operation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.04. Officers: Employees Bond

Each corporation complying with the requirements of this chapter shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the State Board of Insurance, designate some officer or officers who shall be responsible in the handling of the funds of the corporation. Said corporation shall make and file for each such officer a surety bond or blanket bond covering all such officers with a corporate surety company authorized to write surety bonds in

this state, as surety, satisfactory and payable to the State Board of Insurance in the sum of not less than $25,000 for each officer for the use and benefit of said corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of each such officer, either directly and alone or in connivance with others, while employed as such an officer or exercising powers of such office. In lieu of such bond any such officer may deposit with the State Board of Insurance cash (or securities approved by the State Board of Insurance) which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond.

In addition to the bond required in the preceding paragraph, each corporation shall procure for all other office employees, or other persons who may have access to any of its funds, separate bonds or blanket bonds with some surety licensed by the State Board of Insurance to do business in Texas, in an amount or amounts fixed by the State Board of Insurance with a minimum of $1,000 and a maximum of $10,000 for each employee, satisfactory and payable to the State Board of Insurance for the use and benefit of the corporation obligating the principal and surety to pay each pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided from this article may be had on such bonds until same are exhausted.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.05. Claims; Cancellation of Certificate of Authority

All lawful claims for payment based upon certificates issued to participants shall be paid within 120 days after receipt of due proof of claim. Written notice of claim given to a corporation complying with the requirements of this chapter shall be deemed due proof in the event the corporation fails, upon receipt of notice, to furnish the participant making claim within 15 days such forms as are usually furnished by it for filing such claims. The State Board of Insurance after public hearing on written specifications after 20 days notice shall cancel the certificate of authority of any such corporation found to be not in compliance with this chapter, operating fraudulently, or which fails to pay its valid claims in accordance with the provisions of this article.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.06. Dissolution

Any dissolution or liquidation of any corporation subject to the provisions of this chapter shall be under the supervision of the State Board of Insurance. In case of dissolution of any group formed under the provisions of this chapter, participants' claims shall be given priority over all other claims except cost of liquidation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.07. Method of Dissolution

Any corporation operating under this chapter may be dissolved at any time by a vote of its board of directors, and after such action has been approved by the State Board of Insurance. In the case of voluntary dissolution, the disposition of the affairs of the corporation shall be made by the officers (including the settlement of all outstanding obligations to participants), and when the liquidation has been completed and a final statement, in acceptable form, filed with and approved by the State Board of Insurance, the provisions for voluntary dissolution under the Texas Non-Profit Corporation Act shall be followed to dissolve the corporation. In all other cases where a corporation operating under this chapter is found to be insolvent, or to have violated the provisions of this chapter, on a determination of this condition, and after due notice and hearing, the affairs of the corporation shall be disposed of by a liquidator appointed by and under the supervision of the State Board of Insurance, or, in appropriate cases, under the direction of a court of competent jurisdiction in Travis County.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.08. Fees; Taxes

(a) The State Board of Insurance shall charge a fee of $50 for filing the annual statement of each corporation operating under this chapter; an application fee of $100 for each corporation applying under this chapter; and a fee of $25 for the issuance of each certificate of authority to the corporation.

(b) To defray the expense of carrying out the provisions of this chapter, there shall be annually assessed and collected by the State of Texas, through the State Board of Insurance, from each corporation operating under this chapter, in addition to all other taxes now imposed, or which may hereafter be imposed by law, a tax of one percent of all revenues received by such corporation in return for issuance of prepaid legal services contracts in this state, according to the reports made to the State Board of Insurance as required by law. Said taxes, when collected, shall be placed in a separate fund with the State Treasurer which shall be kept separate and apart from other funds and money in his hands, and shall be known as the Prepaid Legal Services Fund, said fund to be expended during the current and succeeding years, or so much thereof as may be necessary, in carrying out such provisions. Such expenditures shall not exceed in the aggregate the sum assessed and collected from such corporations; and should there be an unexpended balance at the end of any year, the State Board of Insurance shall reduce the assessment for the succeeding year

so that the amount produced and paid into the State Treasury together with said unexpended balance in the treasury will be sufficient to pay all expenses of carrying out the provisions of this chapter, which funds shall be paid out and filed by a majority of the State Board of Insurance when the comptroller shall issue warrants therefor. Any amount remaining in said fund at the end of any year shall be carried over and expended in accordance with the provisions of this article during the subsequent year or years. Provided, that no expenditures shall be made from said fund except under authority of the legislature as set forth in the general appropriations bill.

(c) The payment of the maximum tax of one percent provided by the preceding section of this article by any corporation complying with this chapter in any year either as a maintenance tax or as a voluntary elected payment into the General Revenue Fund of the State of Texas or a combination of such payments equaling such one percent shall be deemed to be a payment in lieu of any franchise or other gross receipts tax by or under the laws of this state and such corporation shall be exempt from such franchise and other gross revenue taxes as would apply to such corporation during the period for which the one percent tax or voluntary payment or combination thereof is made.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.09. Applications

Any corporation complying with the requirements of this chapter shall be authorized to accept applicants, who upon issuance of a benefit certificate shall be entitled to legal services for such period of time as is provided therein. Such corporation shall be governed by this chapter and shall not be construed as being engaged in the business of insurance nor subject to laws respecting insurers so long as it complies with the provisions of this chapter. The provisions of this article shall not be deemed to declare the issuance of contracts for prepaid legal services when done by those entities other than corporations complying with this chapter not to be the business of insurance. The right of corporations complying with the requirements of this chapter to issue prepaid legal services contracts on individual, group, and franchise bases is recognized.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.10. Corporations Non-Profit; Funds; Investments

The corporations complying with the requirements of this chapter shall be governed and conducted as non-profit nonmembership organizations for the purpose of contracting for and obtaining legal services for their participants through contracting attorneys, in consideration of the payment by the participants of a definite sum to fund the payment of attorneys fees for the legal services to be furnished by the contracting attorneys. Provided further, that each such corporation shall have two funds, namely: the claim fund and the expense fund. The claim fund shall be composed of at least 80 percent of the regular payments by participants, and the application fees. The percentage amounts above stated may be modified by the State Board of Insurance upon showing that such is in the best interest of the then existing persons receiving legal services under contract or that such is necessary for the development of the corporation during its first year of existence. The application fees shall be paid by applicants prior to issuance of a benefit certificate, and shall not apply as a part of the cost of receiving benefits under the benefit certificate issued. Claim fund investments may include, besides lawful money and demand deposits, only certificates of deposits, share accounts, and time deposits in public banks and savings and loan institutions whose deposits are insured by a federal governmental agency, and obligations of a state or the federal government; and the expense fund investments may include only such as are legal investments for the capital, surplus, and contingency funds of capital stock life insurance companies. The net income from the investments shall accrue to the funds, respectively, from which the investments were made. The claim fund shall be disbursed only for the payment of valid claims, taxes on income of such fund, security transfer costs, and refunds of fees paid into such fund; and to the extent approved by the State Board of Insurance, cost of settling contested claims, expenses directly incurred on or for preservation of investments of the claim fund and contracts authorized under Article 23.19 of this code.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.11. Authority to Contract

Corporations complying with the requirements of this chapter shall have authority to contract in accordance with this chapter with attorneys in such manner as to assure to each participant holding a benefit certificate of the corporation the furnishing of such legal services by attorney under contract, or who shall agree to contract, to the extent agreed upon in prepaid legal service contract between the corporation and the participant, with the right to the corporation to limit in the prepaid legal service contract and benefit certificate the types and extent of benefits and the circumstances for which such legal services shall be furnished.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.12. Limitations

The corporation complying with the requirements of this chapter shall not contract itself to practice law in any manner, nor shall the corporation control or attempt to control the relations existing between a participant and his or her attorney, but the corporation shall confine its activities to contracting as an agent on behalf of its participants for legal services to be rendered only by and through contracting attorneys, who shall never be employees of the cor-

poration but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the participants. Such corporation must agree to contract under Article 23.11 of this code with any attorney licensed by the Supreme Court to practice law in Texas. Contracting attorneys shall maintain such professional liability, and errors and omissions insurance as the corporation shall deem proper and the State Board of Insurance may by uniform rule declare a minimum amount of each such coverage to be maintained.
[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.13. Contingent Liabilities

Any person may advance to the corporation on contingent liability basis such funds as are necessary for the purposes of its business or to enable it to comply with any requirements of this chapter and such money and interest thereon as may have been agreed upon shall be repayable and shall be repaid only on prior approval of the State Board of Insurance.
[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.14. Supervision

Every corporation complying with the requirements of this chapter shall, before accepting applications for participation in said non-profit legal service plan, have sufficient money in its expense fund to cover initial operations and shall submit to the State Board of Insurance a plan of operation together with a rate schedule of its charges to participants and a schedule and projections of costs of legal services to be contracted for on behalf of the participants; which plan, rate schedule, and the sufficiency of expense fund shall first be approved by the State Board of Insurance as adequate, fair, and reasonable and not excessive before such corporation shall engage in business. The State Board of Insurance shall have continuing control over the plan of operation of such corporation and its rate schedule of charges to participants. No change in such plan or rate schedule shall be effectuated without its first being filed and approved by the State Board of Insurance.
[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.15. Approval of Rates

The State Board of Insurance shall likewise approve the ratio of benefits to be paid to anticipated revenues from the rate schedule proposed to be used if such be found to be actuarially sound. No prepaid legal services contract or benefit certificate thereunder shall be issued by corporations complying with this chapter without such finding. The contracting attorneys shall guarantee to the participants the services stated under the benefit certificates and shall agree to perform such services which they agree to render to the participants under the benefit certificates without there being any liability for the cost thereof to the participants beyond the funds of such corporation held for their benefit in accordance with the plan of operation of the corporation. Such corporations may issue prepaid legal service contracts without such guarantees and providing for indemnity for costs of attorney services where the attorney is not a contracting attorney under such rules and regulations as may be approved by the State Board of Insurance provided that the State Board of Insurance be satisfied that the plan of operation, financial standing and experience of the corporation (including but not limited to a proper amount of free surplus) is adequate to assure the performance of such contracts.
[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.16. Benefit Certificates and Legal Services Contracts

Every corporation shall issue to its applicants that are covered by a contract for prepaid legal services benefit certificates setting forth the benefits to which they are or may become entitled. Such certificates, application forms, and contracts made between the corporation and the participants' employer or group representative shall be in form approved by the State Board of Insurance prior to issuance. The State Board of Insurance shall be authorized to issue rules and regulations concerning such forms to provide that they shall properly describe their benefits and not be unjust, misleading, or deceptive.
[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.17. Blank Deposits

All funds collected from applicants and participants of a corporation complying with this chapter shall be deposited to the account of the corporation in a public bank, which is a state depository having Federal Deposit Insurance Corporation protection of its deposits.
[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.18. Finance Procedures

A corporation complying with the requirements of this chapter shall not pay any of the claim funds collected from participants to any attorney except for legal services rendered by such attorney to the participants.
[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.19. Participation Contracts; Agreements with Insurers

Corporations complying with the requirements of this chapter shall be authorized to contract with other organizations complying with this chapter and insurers licensed to do business in Texas for joint participation through mutualization contract agreements or guaranty treaties or otherwise cede or accept legal services obligations from such companies on the whole or any part of such legal service obligations, provided that such contract forms, documents, treaties, or agreement forms are filed with and approved by the State Board of Insurance to be

in accordance with the plan of operation of the corporation prior to their effectiveness.

The State Board of Insurance shall be authorized to issue rules and regulations concerning such participation contracts and agreements with insurers as provided by this article in accordance with and in carrying out its purposes.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.20. Expenses of Directors: Meetings

No director of any corporation created under this chapter shall receive any salary, wages, or compensation for his services, but shall be allowed reasonable and necessary expenses incurred in attending any meeting called for the purpose of managing or directing the affairs of the corporation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.21. Examination of Books and Records

Every corporation complying with this chapter shall keep complete books and records, showing all funds collected and disbursed, and all books and records shall be subject to examination by the State Board of Insurance, the expense of such examination to be borne by said corporation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.22. Complaints

The State Board of Insurance shall refer any complaints received by it concerning the performance of any attorney connected with any corporation complying with this chapter to the Supreme Court of the State of Texas or to any person designated by the Supreme Court to receive attorney grievances from the public.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.23. Regulation of Agents

(a) The State Board of Insurance may after notice and hearing promulgate such reasonable rules and regulations as are necessary to license and control agents of corporations complying with this chapter. An agent means a natural person who solicits legal services contracts or enrolls applicants.

(b) The Commissioner of Insurance shall collect in advance from agents of corporations complying with this chapter a license fee of $25 and an examination fee of $10. A new examination fee shall be paid for each and every examination. The examination fee shall not be returned under any circumstances other than for failure to appear and take the examination after the applicant has given at least 24 hours notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval.

(c) Each license issued to agents of corporations complying with this chapter shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Commissioner of Insurance or the authority of the agent to act for the corporation complying with this chapter is terminated.

(d) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent and payment of $25 renewal fee.

(e) Any agent licensed under this article may represent and act as an agent for more than one corporation complying with this chapter at any time while his or its license is in force, if he or it so desires. Any such agent and the corporation complying with this chapter involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional corporation complying with this chapter. Such notice must set forth the corporation or corporations complying with this chapter which the agent is then licensed to represent and shall be accompanied by a certificate from each corporation complying with this chapter to be named in each additional appointment that said corporation desires to appoint the applicant as its agent. This notice shall also contain such other information as the State Board of Insurance may require. The agent shall be required to pay a fee of $8 for each additional appointment applied for, which fee shall accompany the notice.

(f) All fees collected pursuant to this article constitute a fund to be used by the State Board of Insurance to administer the provisions of Chapter 23 and all laws of this state governing and regulating agents for such corporations complying with this chapter, which fees shall be paid into the State Treasury to the credit of the Prepaid Legal Services Fund and shall be paid out for salaries, traveling expenses, office expenses, and other incidental expenses incurred and approved by the State Board of Insurance.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 459, ch. 212, § 3, eff. Aug. 27, 1979.]

Art. 23.24. Hazardous Financial Condition

(a) Whenever the financial condition of any corporation complying with the requirements of this chapter indicates a condition such that the continued operation of such corporation might be hazardous to its participants, creditors, or the general public, then the State Board of Insurance may, after notice and hearing, order such corporation to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by use of Article 23.19 of this code;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods; or

(4) to suspend or limit the writing of new business for a period of time.

Where none of the foregoing remedies is effective and the hazardous condition is determined to be a shortage of money in the expense fund the State Board of Insurance may after further notice and hearing order funds sufficient to cure the hazardous condition to be placed in the expense fund. The State Board of Insurance shall not have authority hereby to require the maintenance of money in the expense fund except as provided by Article 23.02(3) of this code.

(b) The State Board of Insurance is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of any company might be hazardous to its participants, creditors, or the general public, and to fix standards for evaluating the financial condition of any corporation complying with the requirement of this chapter, which standards shall be consistent with the purposes expressed in this article.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.25. Management and Exclusive Agency Contracts

(a) No corporation complying with the requirements of this chapter may enter into an exclusive agency contract or management contract, unless the contract is first filed with the State Board of Insurance and approved under this article within 30 days after filing or such reasonable extended period as the State Board of Insurance may specify by notice given within the 30 days.

(b) The State Board of Insurance shall disapprove a contract submitted under Section (a) of this article if it finds that:

(1) it subjects the corporation to excessive charges;

(2) the contract extends for an unreasonable period of time;

(3) the contract does not contain fair and adequate standards of performance;

(4) the persons empowered under the contract to manage the corporation are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the corporation with due regard for the interest of its participants, creditors, or the public; or

(5) the contract contains provisions which impair the interests of the corporation's participants, creditors, or the public in this state.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.26. Application of Other Laws

(a) Corporations complying with this chapter shall be subject to and are required to comply with the provisions of the Texas Miscellaneous Corporation Laws Act and the Texas Non-Profit Corporation Act as those laws now exist or may be amended in the future to the extent the provisions of this chapter are not in conflict therewith.

(b) The following provisions of the Insurance Code as they now exist or shall hereafter be amended shall, where not in conflict with this chapter, apply to corporations complying with the provisions of this chapter to the same extent as they apply to insurers and to those doing the business of insurance: Articles 1.01, 1.02, 1.04, 1.08, 1.09, 1.09–1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.29, 3.12, 3.13, 3.14, 21.21, 21.21–2, 21.25, 21.28, 21.28A, and 21.47 and Sections 1, 2, 6, 8, 9, 10, 11, 12, 13, 14, and 17 of Article 1.10 of the Insurance Code, as amended.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 672, ch. 263, § 1, eff. Aug. 31, 1981.]

CHAPTER TWENTY-FOUR. FINANCING OF INSURANCE PREMIUMS

Article

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Art. 24.01. Definitions

In this chapter:

(1) "Insurance premium finance company" means:

(A) a person engaged in the business of making loans under this chapter by entering into premium finance agreements with insureds or prospective insureds, except that the preparation and delivery of a premium finance agreement or disclosure statement required by Section (f), Article 24.11 of this chapter by an insurance agent on behalf of the insured is not doing business as an insurance premium finance company;

(B) a person engaged in the business of acquiring premium finance agreements from insurance agents or brokers or other premium finance companies; or

(C) an insurance agent or broker making loans under this chapter who holds premium

finance agreements made and delivered by insureds payable to him or her or his or her order.

(2) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent in payment of premium on an insurance contract.

(3) "Board" means the State Board of Insurance.

(4) "Licensee" means an insurance premium finance company holding a license issued by the board under this chapter.

(5) "Annual percentage rate" means the annual percentage rate of finance charge as determined in accordance with the Consumer Credit Protection Act of 1970 (15 U.S.C.A. Section 1601 et seq.; 18 U.S.C.A. Section 891 et seq.) and Regulation Z (12 C.F.R. 226.1 et seq.) promulgated under that Act.

(6) "Insured" means a person who enters into a premium finance agreement with an insurance premium finance company.

(7) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any other legal entity, however organized.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.02. License; Offices

(a) A person, without first obtaining a license from the board as provided in Section (d), Article 24.03 of this chapter, may not negotiate, transact, or engage in the business of insurance premium financing in this state or contract for, charge, or receive directly or indirectly on or in connection with any insurance premium financing any charges, whether for interest, compensation, consideration, expense, or otherwise, that in the aggregate are greater than the person would be permitted by law to charge if the person were not a licensee under this chapter. A license issued under this chapter allows the holder to maintain only one office from which business may be conducted. The board may issue more than one license but not more than 60 licenses to any one person on compliance with this chapter for each license.

(b) Any bank or savings and loan association doing business under the laws of this state or the United States is entitled to receive a license on notification to the board of its intention to operate under this chapter. The board shall immediately issue a license to that bank or savings and loan association.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.03. License Application; Fees; Action by Board

(a) Each application for a license to engage in the business of insurance premium financing must be in writing and in the form prescribed by the board. It must be accompanied by an investigation fee of $200.

(b) Within 90 days after receipt of an application, the board shall notify the applicant that:

(1) the application has been approved and a license will be issued on payment of the appropriate license fee; or

(2) the application has been denied.

(c) The board may refuse to issue a license if it finds that:

(1) the financial responsibility, experience, character, or general fitness of the applicant or any person associated with the applicant does not command the confidence of the community and does not warrant the belief that the business will be conducted honestly, fairly, and efficiently; or

(2) the applicant does not have available for the operation for the business net assets of at least $25,000.

(d) After approval and on receipt of the license fee, the board shall execute the license to engage in the business of a premium finance company at the location specified in the application and shall transmit the license to the applicant.

(e) The refusal of the board to issue a license does not entitle the applicant to a return of any part of the investigation fee that accompanied the application.

(f) The fee for each license is $100 and shall be paid to the board. Each license shall be issued for the calendar year and shall remain in force until December 31 of each year, unless suspended, revoked, or surrendered in accordance with Article 24.05 of this chapter. If a license is granted after June 30 of any year, the fee is $50 for that year.

(g) Any person holding a license under Chapter 3, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–3.01 et seq., Vernon's Texas Civil Statutes), on the effective date of this chapter is required only to pay the license fee required under this article and is not required to pay the investigation fee required by Section (a) of this article.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Sections 2 and 4 of the 1979 Act provided:

"Sec. 2. Beginning November 1, 1979, the license fee for a license to engage in the business of insurance premium financing shall be paid to the State Board of Insurance."

"Sec. 4. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 1980.

"(b) Section 1 of this Act to the extent that it relates to the collection of license fees, the deposit of those fees in the State Treasury, and the use of those fees and Section 2 of this Act take effect November 1, 1979.

"(c) The provisions of this Act shall not apply to arrangements and accounts covered by Chapter 15 of Subtitle 3, Title 79, Interest-Consumer Credit-Consumer Protection, Revised Civil Statutes of Texas, 1925, as amended by Senate Bill Number 811, Acts of the 66th Legislature, Regular Session, 1979 [Civil Statutes, art. 5069–15.01 et seq.]."

Art. 24.04. License Provisions; Posting; Change of Location; Other Business

(a) A license issued under this chapter must state the name and address of the licensee. The license shall be conspicuously posted in the specified office of the licensee. Except as provided in this chapter, the license is not transferable or assignable. Before a licensee changes an office from one location to another, the licensee shall give written notice of the change to the board which, if it approves the change, shall issue an endorsement indicating the change and the date of the change. The licensee shall attach the endorsement to the license for that office. The endorsement constitutes authority for the operation of the business under the license at the new location.

(b) A licensee may conduct the business of premium financing under this chapter in any office, suite, room, or place of business in which any other business is solicited or engaged in or in association or conjunction with any other business, unless the board:

(1) finds, after a hearing, that the conduct by the licensee of the other business in the particular licensed office has concealed evasions of this chapter; and

(2) orders the licensee in writing to stop conducting the business of premium financing in that office.

(c) A licensee may not conduct the business of premium financing provided for by this chapter under any name or at any place of business other than that stated in the license. The preparation and delivery of a premium finance agreement by an insurance agent on behalf of the insured does not constitute doing business as an insurance premium finance company, unless the agreement is held for the benefit of the agent in accordance with Article 24.01(1)(C) of this chapter.

(d) Nothing in this chapter limits the premium financing of any licensee to residents of the community in which the licensed office is situated or prohibits the licensee from conducting premium financing by mail.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.05. Grounds for Revocation of License; Procedure

(a) After notice and hearing, the board may revoke or suspend any license issued under this chapter if it finds:

(1) that the licensee has violated this chapter or any rule lawfully made by the board under this chapter; or

(2) the existence of any fact or condition that, if it had existed at the time of the original application for the license, clearly would have warranted the board to refuse to issue the license.

(b) The board, after notice and hearing, may suspend or revoke a license if it learns from the commissioner of insurance or from any other source that the licensee has failed to return all amounts due from the insurance premium finance company to the person whose insurance policy has been canceled as required by Section (g), Article 24.17 of this chapter.

(c) Any licensee may surrender any license by delivering to the board written notice that the licensee surrenders the license. The surrender of a license does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender.

(d) A revocation, suspension, or surrender of any license does not affect the obligation of any insured under a lawful premium finance agreement previously acquired or held by the licensee.

(e) If the board revokes or suspends a license, it shall immediately execute in duplicate a written order to that effect and shall file one copy of that order in the office of the secretary of state and mail one copy to the licensee.

(f) The board may reinstate a suspended license or issue a new license to a person whose license has been revoked if no fact or condition then exists that clearly would have justified the board in refusing originally to issue the license under this chapter.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.06 Examinations, Investigations, and Use of Fees

(a) The board may make examinations or investigations necessary to determine whether a licensee is in compliance with this chapter or whether a licensee has conducted himself or herself so as to justify the revocation of his or her license. The board or its duly authorized representatives may require the attendance of any person, may examine the person under oath, and may compel the production of all relevant books, records, accounts, and documents.

(b) All reports of examinations or investigations and all correspondence and memoranda concerning or arising out of those examinations or investigations, including any duly authenticated copy or copies of those reports in the possession of any licensee or the board, are confidential communications, are not subject to subpoena, and may not be made public, except in connection with a hearing under Article 24.05 of this chapter and any appearance in connection with such a hearing. Information obtained in the course of these examinations or investigations may be made available to other governmental agencies when the information involves matters within the scope or jurisdiction of those agencies.

(c) In addition to the investigation and license fees set forth in Article 24.03 of this chapter, each licensee shall pay to the board an amount assessed by the board to cover the direct and indirect cost of

examinations and investigations made under this article and a proportionate share of general administrative expense attributable to the regulation of the persons licensed under this chapter.

(d) Fees collected under this chapter shall be placed in the State Treasury in a separate fund. The board may use any portion of those fees to enforce this chapter. The board may employ persons as necessary to examine or investigate and make reports on alleged violations of this chapter or on compliance with the other provisions of this code by persons licensed under this chapter and may pay the salaries and expenses of those persons and of all office employees and the expenses necessary to enforce this chapter.

(e) If any residue of those funds remains after the amounts necessary to carry on the work, examinations, and investigations and to employ the persons as authorized by this chapter have been paid, the residue shall be carried over from year to year and used in the enforcement of this article. All funds collected under this provision shall be paid into the State Treasury at least once each week and kept in a special fund and shall be paid out for salaries, traveling expenses, office expenses, and other expenses incurred by the board under this chapter on proper account duly approved by the board.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.07. Hearings and Investigations; Subpoena Power

In conducting a hearing or investigation under this chapter, the board or any person duly designated by it may:

(1) subpoena witnesses;

(2) take depositions of witnesses residing outside of the state in the manner provided for in civil actions in district courts;

(3) pay to those witnesses the fees and mileage for their attendance as provided for witnesses in civil actions in district courts; and

(4) administer oaths.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.08. Violations

(a)(1) A person commits an offense if the person:

(A) intentionally, knowingly, recklessly, or negligently engages in the operation of a premium finance company without first obtaining a license;

(B) intentionally, knowingly, recklessly, or negligently acts in violation of this chapter;

(C) intentionally or knowingly omits to state any material fact necessary to give the board any information lawfully required of the person; or

(D) refuses to permit any lawful investigation or examination under this chapter.

(2) An offense under this chapter is a Class B misdemeanor.

(b) A premium finance company's taking or receiving from or charging an insured a greater charge than authorized by this chapter does not invalidate the premium finance agreement or the principal balance payable under the agreement but may be adjudged a forfeiture of all charges that the premium finance agreement carries with it or that have been agreed to be paid on the agreement. If a greater charge has been paid by an insured, the person paying the charge or the person's legal representative may recover from the premium finance agency twice the entire amount of the charges paid if action is brought within two years after the day on which the payment was made.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.09. Rules

The board may adopt and enforce rules necessary to carry out this chapter. Those rules may contain the classifications, differentiations, or other provisions and may provide for the adjustments and exceptions for any class of transactions that are necessary to carry out the purposes of this chapter, to prevent circumvention or evasion of this chapter, or to facilitate compliance with this chapter. Those rules may not contain any classification, differentiation, or other provision with respect to or provide for any adjustment or exception for any class of transaction that would result in less stringent disclosure requirements than afforded that class of transaction under the Federal Consumer Credit Protection Act of 1970 (15 U.S.C.A. Section 1601 et seq.; 18 U.S. C.A. Section 891 et seq.) and the applicable portions of Regulation Z (12 C.F.R. 226.1 et seq.).

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.10. Licensee's Books and Records

(a) The licensee shall keep and use books, accounts, and records in enough detail to enable representatives of the board to determine whether the licensee is complying with this chapter and with the rules and regulations lawfully made by the board. The licensee shall preserve and keep available for inspection those books, accounts, and records, including cards used in a card system, if any, for at least four years after the final entry of any premium finance agreement is recorded in those books, accounts, and records.

(b) On or before the first day of April of each year each licensee shall file with the board a report giving the information that the board requires concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee in the state.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan 1, 1980. Amended by Acts 1981, 67th Leg., p. 415, ch. 173, § 1, eff. May 20, 1981.]

Art. 24.11. Written Premium Finance Agreement

(a) A premium finance agreement shall be in writing on a form approved by the board.

(b) The agreement shall be dated and signed by the insured. If the agreement contains policies for other than personal, family, or household purposes and if the premiums for the policies exceed $1,000, it may be signed on behalf of the insured by the insured's agent.

(c) The agreement must contain:

(1) the name and business address of the insurance agent or insurance broker negotiating the related insurance contract;

(2) the name and residence or business address of the insured as specified by the insured;

(3) the name and place of business of the premium finance company to which payments are to be made;

(4) a description of each insurance contract involved;

(5) the amount of the premium for each insurance contract;

(6) the total amount of the premiums for all insurance contracts;

(7) the amount of the down payment;

(8) the principal balance (difference between items (6) and (7));

(9) the total amount of the finance charge, with a description of each amount included, using the term "finance charge"; and

(10) the balance payable by the insured (sum of items (8) and (9)).

(d) The premium finance agreement in addition must contain the following items as applicable:

(1) the finance charge expressed as an annual percentage rate, using the term "annual percentage rate";

(2) the number of installments required, the amount of each installment expressed in dollars, and the due date or period of each installment;

(3) the amount or method of computing the amount of any default or delinquency charge that is payable in the event of late payment; and

(4) identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

(e) The disclosures required to be given shall be made clearly, conspicuously, and in meaningful sequence. Where the terms "finance charge" and "annual percentage rate" are required to be used, they shall be printed more conspicuously than other terminology required by this chapter. All numerical amounts and percentages shall be stated in figures and shall be printed in not less than the equivalent of 10-point type, 75/1,000 inch computer type, or elite size typewritten numerals or shall be legibly handwritten.

(f) It shall be a violation of this Act for any licensee to take an insurance premium finance agreement that has not been fully completed and executed at the time the insurance premium finance agreement is executed. The insurance agent is responsible for the completion of the insurance premium finance agreement and for delivery to the insured any and all disclosure statements that are required by any existing law.

(g) If, in a premium finance agreement, changes in an insured's policy due to amending of the rate classification by endorsement or otherwise result in an increased principal balance and the amount under the previous contract has not been fully paid, the subsequent increase may at the insured's option be included in and consolidated with the previous contract, if so provided in the premium finance agreement.

(h) Those additions may be accomplished by a memorandum of agreement between the agent and the insured, if before the first scheduled payment date of the amended transaction the premium finance company gives to the insured the following information in writing:

(1) the amount of the premium increase;

(2) the down payment on increase;

(3) the principal amount of increase;

(4) the total amount of finance charge on increase;

(5) the total of additional balance due;

(6) the outstanding balance of original agreement;

(7) the consolidated agreement balance;

(8) the annual percentage rate of finance charge on additional balance due;

(9) the revised schedule of payments;

(10) the amount or method of computing the amount of any default, deferment, or similar charges authorized in Chapter 3, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–3.01 et seq., Vernon's Texas Civil Statutes), payable in the event of late payments; and

(11) identification of the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.12. Application of Truth-in-Lending Act

A transaction, although subject to this chapter, is also subject to the Consumer Credit Protection Act of 1970 (15 U.S.C.A. Section 1601 et seq.; 18 U.S.C.A. Section 891 et seq.) and those applicable portions of Regulation Z (12 C.F.R. 226.1 et seq.) adopted under that Act.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.13. Deceptive Advertising

A licensee may not advertise or cause to be advertised in any manner whatsoever any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of any premium finance agreement. If rates or charges are stated in advertising, the licensee shall express them in terms of a simple annual percentage rate as defined by federal law.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.14. Rebate of Finance Charge; Filing of Premium Finance Agreement

(a) A premium finance company or an employee of such a company may not pay or allow or offer to pay or allow in any manner whatsoever to an insurance agent or broker or any employee of an insurance agent or broker or to any other person any consideration or compensation whatsoever, either from the charge for financing specified in the premium finance agreement or otherwise, or give or offer to give any valuable consideration or inducement of any kind directly or indirectly to an insurance agent or broker or any employee of an insurance agent or broker other than an article of merchandise not exceeding $1 in value on which there is an advertisement of the premium finance company, except that nothing in this article prevents payments by a premium finance company under contractual arrangements with a validly organized and operating association of insurance agents or its subsidiary, so long as no part of any funds received under the agreement is distributed to any insurance agent or broker or employee of any insurance agent or broker or inures directly to the benefit of any member of the association or employee of the member. All of those contractual agreements must be in writing and are not valid until approval of the board has been received.

(b) Filing of a premium finance agreement or a financing statement is not necessary to perfect the validity of such an agreement as a secured transaction against creditors, subsequent purchasers, pledgees, encumbrancers, successors, or assigns of the insured or any other party.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.15. Services Charges; Limitation of Charges; Computation

A premium finance company may not take or receive from an insured a greater rate or charge than is provided by Chapters 3 and 4, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–3.01 et seq. and Article 5069–4.01 et seq., Vernon's Texas Civil Statutes). Those charges begin on the date from which the insurance company requires payment of the premium and payment was made to the insurance company for the finance policy or on the effective date of the policy, whichever is earlier. The finance charge shall be computed on the balance of the premiums due after subtracting the down payment made by the insured in accordance with the premium finance agreement. On insurance premium finance agreements made under this chapter, no insurance charges or any other charge or fee, except those authorized by this chapter, are permitted.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.16. Prepayment; Refund

Notwithstanding the provisions of any premium finance agreement to the contrary, any insured may pay it in full at any time before the maturity of the final installment of the balance of the agreement, and if the insured does so and the agreement included an amount for a charge, the insured shall receive for the prepayment either by cash or by renewal a refund credit in accordance with the provisions for refunds contained in Section (6), Article 3.15, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–3.15, Vernon's Texas Civil Statutes), and the regulations issued under that article. Where the amount of the credit for anticipation of payments is less than $1, no refund need be made.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.17. Default and Cancellation; Right to Cancel; Refund

(a) A premium finance agreement may provide for the payment of a default charge by the insured as provided in Section (5), Article 3.15, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–3.15, Vernon's Texas Civil Statutes), the Insurance Code, and the regulations issued under those statutes.

(b) A premium finance agreement may contain a power of attorney enabling the premium finance company to cancel any insurance contract or contracts listed in the agreement. An insurance contract or contracts may not be canceled by the premium finance company unless the cancellation is effectuated in accordance with this section.

(c) If the insured fails to make the payments at the time and in the amount provided in the premium finance agreement, the premium finance company shall mail to the insured a written notice of the intent of the premium finance company to cancel the insurance contract because of the default in payments by the insured unless the default in payments is cured within a time certain stated in the notice. That time may not be earlier than the 10th day after the date on which the written notice was mailed. The premium finance company shall also mail a copy of the notice to the insurance agent or insurance broker indicated on the premium finance agreements.

(d) After expiration of the period given to cure the default, the premium finance company may cancel the insurance contract or contracts by mailing to

the insurer a notice of cancellation. The insurance contract shall be canceled as if the notice of cancellation had been submitted by the insured, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a notice of cancellation to the insured at the insured's last known address and to the insurance agent or insurance broker indicated on the premium finance agreement.

(e) All statutory, regulatory, and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party apply where cancellation is effected under this section. The insurer shall give the prescribed notice on behalf of itself or the insured to any governmental agency, mortgagee, or other third party on or before the second business day after the day on which it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation.

(f) Whenever a financed insurance contract is canceled, and the premium finance agreement contains an assignment or power of attorney for the benefit of the premium finance company, the insurer shall return whatever unearned premiums are due under the insurance contract directly to the premium finance company within 60 days after receipt of a copy of the notice of cancellation from the premium finance company only if such company timely notified the insurer of the existence of the premium finance agreement in accordance with the provisions of Article 24.22 herein. In the event that the premium finance company fails to comply with the provisions of Article 24.22 herein, the insurer may satisfy any legal obligation it has to return the unearned premiums due under the insurance contract to the insurance premium finance company by returning said unearned premiums through the insurance agent or agencies writing the insurance. Provided, however, the insurer may deduct from the unearned premiums returned directly to the premium finance company the amount of unearned commissions due from the agent or agency writing the insurance if the insurer notifies such agent or agency that such unearned commissions should be returned to the premium finance company. The insurer except for the Texas Catastrophe Property Insurance Association, the Texas Automobile Insurance Plan, and the Texas Medical Liability Insurance Underwriting Association shall be liable for the return of unearned commission to the premium finance company if the agent has not returned the same to the premium finance company within 120 days after the agent has been notified of the cancellation.

(g) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured. No refund is required if it amounts to less than $1.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., p. 2663, ch. 718, § 2, eff. Aug. 31, 1981.]

Art. 24.18. Assignments

Unless the insured has notice of actual or intended assignment of a premium finance agreement, payment under the agreement by the insured to the last known holder of the agreement is binding on all subsequent holders or assignees.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.19. Restrictions on Premium Finance Agreements

(a) A premium finance agreement may not contain any provision by which, in the absence of default of the insured, the premium finance company holding the agreement may arbitrarily and without reasonable cause accelerate the maturity of any part or all of the amount owing thereunder. Reasonable cause without limitation includes a proceeding in bankruptcy, receivership, or insolvency being instituted by or against the insured or the insolvency of or suspension of business or cessation of the right to conduct business by an insurance company writing policies that are financed for the insured under the premium finance agreement.

(b) A licensee may not take:

(1) any instrument in which the borrower waives any right accruing to the borrower under this chapter;

(2) any instrument that has not been fully completed and executed by the insured;

(3) an assignment of wages as security for any insurance premium finance agreement made under this chapter;

(4) a lien on real estate as security for any insurance premium finance agreement made under this chapter, except such a lien as is created by law on the recording of an abstract of judgment; or

(5) any confession of judgment or any power of attorney running to the licensee or to any third person to confess judgment or to appear for a borrower in a judicial proceeding.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.20. Authority of Licensed Local Recording Agents to Charge Interest to Certain Purchasers of Insurance

Notwithstanding any other provision of law, any person, partnership, or corporation duly licensed as a local recording agent under Article 21.14, Insurance Code, as amended, may enter into or establish a written agreement with any purchaser of insurance from the agent providing for the payment of inter-

est to the agent in an amount not to exceed the greater of a rate allowed by Article 1.04 of this Title [1] or the rate of one percent a month, on any amount due and owing to the agent for insurance purchased by the purchaser. In those instances the claim or defense of usury is prohibited.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., p. 286, ch. 111, § 25, eff. May 8, 1981.]

[1] So in enrolled bill; probably should refer to Civil Statutes, art. 5069–1.04. Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 24.21. Transfer of Records and Funds

(a) There shall be transferred to the State Board of Insurance from the consumer credit commissioner all records collected under Chapter 12, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–12.01 et seq., Vernon's Texas Civil Statutes), necessary to insure the continuous regulation of insurance premium finance companies by the State Board of Insurance. This transfer shall be made no later than January 1, 1980.

(b) The consumer credit commissioner and the State Board of Insurance shall cooperate to ensure an orderly transition period. It is the intent and desire of the legislature that the consumer credit commissioner and the State Board of Insurance consult with the state auditor, the comptroller of public accounts, the Legislative Budget Board, and any other state agency for the orderly transfer of all funds and records as outlined in Subsection (a) of this section from the consumer credit commissioner to the State Board of Insurance.

[Added by Acts 1979, 66th Leg., p. 2149, ch. 825, § 1, eff. Jan. 1, 1980.]

Art. 24.22. Existence of Agreement; Notification of Insurers

Any premium finance company which enters into a premium finance agreement under the provisions of this chapter shall notify the insurer whose premiums are being financed of the existence of such agreement within a reasonable period of time not to exceed 30 days after the date such agreement is received by the premium finance company.

[Added by Acts 1981, 67th Leg., p. 2663, ch. 718, § 1, eff. Aug. 31, 1981.]

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CHAPTER I. GENERAL PROVISIONS

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§ 3. Definitions and Use of Terms

When used in this Code, unless otherwise apparent from the context:

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

(e) "County Court" and "Probate Court" are synonymous terms and denote county courts in the exercise of their probate jurisdiction, courts created by statute and authorized to exercise original probate jurisdiction, and district courts exercising probate jurisdiction in contested matters.

(f) "County Judge," "Probate Judge," and "Judge" denote the presiding judge of any court having original jurisdiction over probate proceedings, whether it be a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise probate jurisdiction, or a district court exercising probate jurisdiction in contested matters.

(g) "Court" denotes and includes both a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise original probate jurisdiction, or a district court exercising original probate jurisdiction in contested matters.

[See Compact Edition, Volume 2 for text of (h) to (p)]

(q) "Independent executor" means the personal representative of an estate under independent administration as provided in Section 145 of this Code. The term "independent executor" includes the term "independent administrator."

[See Compact Edition, Volume 2 for text of (r) to (s)]

(t) "Minors" are all persons under eighteen years of age who have never been married or who have not had disabilities of minority removed for general purposes.

[See Compact Edition, Volume 2 for text of (u) to (z)]

(aa) "Personal representative" or "Representative" includes executor, independent executor, administrator, independent administrator, temporary administrator, guardian, and temporary guardian, together with their successors. The inclusion of independent executors herein shall not be held to subject such representatives to control of the courts in probate matters with respect to settlement of estates except as expressly provided by law.

[See Compact Edition, Volume 2 for text of (bb) to (hh)]

(ii) "Statutory probate court" refers to any statutory court presently in existence or created after the passage of this Act, the jurisdiction of which is limited by statute to the general jurisdiction of a probate court, and such courts whose statutorily designated name contains the word "probate." County courts at law exercising probate jurisdiction are not statutory probate courts under this Code unless their statutorily designated name includes the word "probate."

(jj) "Next of kin" includes an adopted child or his or her descendents and the adoptive parent of the adopted child.

[Amended by Acts 1975, 64th Leg., p. 104, ch. 45, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2195, ch. 701, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1061, ch. 390, §§ 1, 2, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1740, ch. 713, § 1, eff. Aug. 27, 1979.]

Acts 1977, 65th Leg., ch. 390, which by §§ 1 to 8 amended subsecs. (q) and (aa) of this section, §§ 145, 147, 148, 149A(a), (b), and 150 and added § 154A, provided in §§ 9 and 10:

"Sec. 9. All other laws in conflict with this Act are hereby repealed to the extent they conflict.

"Sec. 10. This Act shall become effective September 1, 1977, and shall apply to estates of decedents who die intestate after September 1, 1977."

§ 5. Jurisdiction of District Court and Other Courts of Record With Respect to Probate Proceedings and Appeals from Probate Orders

(a) The district court shall have original control and jurisdiction over executors, administrators, guardians and wards under such regulations as may be prescribed by law.

(b) In those counties where there is no statutory probate court, county court at law or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, and mental illness matters shall be filed and heard in the county court, except that in contested probate matters, the judge of the county court may on his own motion, or shall on the motion of any party to the proceeding transfer such proceeding to the district court, which may then hear such proceeding as if originally filed

in such court. In contested matters transferred to the district court in those counties, the district court, concurrently with the county court, shall have the general jurisdiction of a probate court, and it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons and to apprentice minors, as provided by law. Upon resolution of all pending contested matters, the probate proceeding shall be transferred by the district court to the county court for further proceedings not inconsistent with the orders of the district court.

(c) In those counties where there is a statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, and mental illness matters shall be filed and heard in such courts and the constitutional county court, rather than in the district courts, unless otherwise provided by the legislature, and the judges of such courts may hear any of such matters sitting for the judge of any of such courts. In contested probate matters, the judge of the constitutional county court may on his own motion, and shall on the motion of any party to the proceeding, transfer the proceeding to the statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, which may then hear the proceeding as if originally filed in such court.

(d) All courts exercising original probate jurisdiction shall have the power to hear all matters incident to an estate. When a surety is called on to perform in place of an administrator or guardian, all courts exercising original probate jurisdiction may award judgment against the personal representative in favor of his surety in the same suit.

(e) All final orders of any court exercising original probate jurisdiction shall be appealable to the courts of (civil) appeals.

[Amended by Acts 1975, 64th Leg., p. 2195, ch. 701, § 2, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1170, ch. 448, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1740, ch. 713, § 2, eff. Aug. 27, 1979.]

§ 5A. Matters Appertaining and Incident to an Estate

(a) In proceedings in the constitutional county courts and statutory county courts at law, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the issuance of letters testamentary and of administration, the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land incident to an estate and for the enforcement of liens thereon incident to an estate, all actions for trial of the right of property incident to an estate, and actions to construe wills, and generally all matters relating to the settlement, partition, and distribution of estates of wards and deceased persons.

(b) In proceedings in the statutory probate courts and district courts, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the issuance of letters testamentary and of administration, and the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land and for the enforcement of liens thereon, all actions for trial of the right of property, all actions to construe wills, the interpretation and administration of testamentary trusts and the applying of constructive trusts, and generally all matters relating to the settlement, partition, and distribution of estates of wards and deceased persons. All statutory probate courts may, in the exercise of their jurisdiction, notwithstanding any other provisions of this Code, hear all suits, actions, and applications filed against or on behalf of any guardianship, heirship proceeding, or decedent's estate, including estates administered by an independent executor. This subsection shall be construed in conjunction with and in harmony with Section 145 and all other sections of this Code dealing with independent executors, but shall not be construed so as to increase permissible judicial control over independent executors. All statutory probate courts shall have the same powers over independent executors that are exercisable by the district courts. In situations where the jurisdiction of a statutory probate court is concurrent with that of a district court, any cause of action appertaining to estates or incident to an estate shall be brought in a statutory probate court rather than in the district court.

[Added by Acts 1979, 66th Leg., p. 1741, ch. 713, § 3, eff. Aug. 27, 1979.]

§ 28. Personal Representative to Serve Pending Appeal of Appointment

Pending appeals from orders or judgments appointing administrators or guardians or temporary administrators or guardians, the appointees shall continue to act as such and shall continue the prosecution of any suits then pending in favor of the estate.

[Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 3, eff. June 21, 1975.]

§ 30. Repealed by Acts 1975, 64th Leg., p. 2197, ch. 701, § 7, eff. June 21, 1975

§ 36. Duty and Responsibility of Judge

It shall be the duty of each county and probate court to use reasonable diligence to see that personal representatives of estates being administered under orders of the court, guardians of the persons of wards, and other officers of the court, perform the

duty enjoined upon them by law pertaining to such estates and wards. The judge shall annually, if in his opinion the same be necessary, examine the condition of each of said estates, the well-being of each ward of the court, and the solvency of the bonds of personal representatives of estate and guardians of persons. He shall, at any time he finds that the personal representative's bond is not sufficient to protect such estate or ward, require such personal representatives to execute a new bond in accordance with law. In each case, he shall notify the personal representative, and the sureties on the bond, as provided by law; and should damage or loss result to estates or wards through the gross neglect of the judge to use reasonable diligence in the performance of his duty, he shall be liable on his bond to those damaged by such neglect.

[Amended by Acts 1975, 64th Leg., p. 979, ch. 375, § 1, eff. June 19, 1975.]

§ 36B. Examination of Documents or Safe Deposit Box With Court Order

(a) A judge of a court having probate jurisdiction of a decedent's estate may order a person to permit a court representative named in the order to examine a decedent's documents or safe deposit box if it is shown to the judge that:

(1) the person may possess or control the documents or that the person leased the safe deposit box to the decedent; and

(2) the documents or safe deposit box may contain a will of the decedent, a deed to a burial plot in which the decedent is to be buried, or an insurance policy issued in the decedent's name and payable to a beneficiary named in the policy.

(b) The court representative shall examine the decedent's documents or safe deposit box in the presence of:

(1) the judge ordering the examination or an agent of the judge; and

(2) the person who has possession or control of the documents or who leased the safe deposit box or, if the person is a corporation, an officer of the corporation or an agent of an officer.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981.]

§ 36C. Delivery of Document With Court Order

(a) A judge who orders an examination by a court representative of a decedent's documents or safe deposit box under Section 36B of this code may order the person who possesses or controls the documents or who leases the safe deposit box to permit the court representative to take possession of the following documents:

(1) a will of the decedent;

(2) a deed to a burial plot in which the decedent is to be buried; or

(3) an insurance policy issued in the decedent's name and payable to a beneficiary named in the policy.

(b) The court representative shall deliver:

(1) the will to the clerk of a court that has probate jurisdiction and that is located in the same county as the court of the judge who ordered the examination;

(2) the burial plot deed to the person designated by the judge in the order for the examination; or

(3) the insurance policy to a beneficiary named in the policy.

(c) A court clerk to whom a will is delivered under Subsection (b) of this section shall issue a receipt for the will to the court representative who delivers it.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981.]

§ 36D. Examination of Document or Safe Deposit Box Without Court Order

(a) A person who possesses or controls a document delivered by a decedent for safekeeping or who leases a safe deposit box to a decedent may permit any of the following persons to examine the document or the contents of the safe deposit box:

(1) the spouse of the decedent;

(2) a parent of the decedent;

(3) a descendant of the decedent who is at least 18 years old; or

(4) a person named as executor of the decedent's estate in a copy of a document that the person has and that appears to be a will of the decedent.

(b) The examination shall be conducted in the presence of the person who possesses or controls the document or who leases the safe deposit box or, if the person is a corporation, an officer of the corporation.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981.]

§ 36E. Delivery of Document Without Court Order

(a) A person who permits an examination of a decedent's document or safe deposit box under Section 36D of this code may deliver:

(1) a document appearing to be the decedent's will to the clerk of a court that has probate jurisdiction and that is located in the county in which the decedent resided or to the person named in the document as an executor of the decedent's estate;

(2) a document appearing to be a deed to a burial plot in which the decedent is to be buried or appearing to give burial instructions to the person making the examination; or

(3) a document appearing to be an insurance policy on the decedent's life to a beneficiary named in the policy.

(b) A person who has leased a safe deposit box to the decedent shall keep a copy of a document appearing to be a will that the person delivers under Subsection (a) of this section. The person shall keep the copy for four years after the day of delivery.

(c) A person may not deliver a document under Subsection (a) of this section unless requested to do so by the person examining the document and unless the person examining the document issues a receipt for the document to the person who is to deliver it.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981.]

§ 36F. Restriction on Removal of Contents of Safe Deposit Box

A person may not remove the contents of a decedent's safe deposit box except as provided by Section 36C or 36E of this code or except as provided by another law.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981.]

CHAPTER II. DESCENT AND DISTRIBUTION

§ 37. Passage of Title Upon Intestacy and Under a Will

When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will, and all powers of appointment granted in such will, shall vest immediately in the devisees or legatees of such estate and the donees of such powers; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; subject, however, to the payment of the debts of the testator or intestate, except such as is exempted by law, and subject to the payment of court-ordered child support payments that are delinquent on the date of the person's death; and whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, but with the exception aforesaid shall still be liable and subject in their hands to the payment of the debts of the intestate and the delinquent child support payments; but upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to possession of the estate as it existed at the death of the testator or intestate, with the exception aforesaid; and he shall recover possession of and hold such estate in trust to be disposed of in accordance with the law.

[Amended by Acts 1981, 67th Leg., p. 2537, ch. 674, § 3, eff. Sept. 1, 1981.]

Section 5 of the 1981 amendatory act provides:

"This Act takes effect September 1, 1981. Section 3 of this Act applies to the estates of persons who die on or after the effective date of this Act, and Section 37, Probate Code, as in effect before the effective date of this Act, applies to the estates of persons who die before the effective date of this Act."

§ 37A. Means of Evidencing Disclaimer or Renunciation of Property or Interest Receivable from a Decedent Under a Will or by an Inheritance

Any person, or the personal representative of an incompetent, deceased, or minor person, with prior court approval of the court having, or which would have, jurisdiction over such personal representative or any independent executor of a deceased person, without prior court approval, who may be entitled to receive any property from a decedent by an insurance contract or under any will of or by inheritance from a decedent and who intends to effect disclaimer irrevocably on or after September 1, 1977, of the whole or any part of such property shall evidence same as herein provided. A disclaimer evidenced as provided herein, shall be effective as of the death of decedent and the property subject thereof shall pass as if the person disclaiming or on whose behalf a disclaimer is made had predeceased the decedent unless decedent's will provides otherwise. Failure to comply with the provisions hereof shall render such disclaimer ineffective except as an assignment of such property to those who would have received same had the person attempting the disclaimer died prior to the decedent. The term "property" as used in this section shall include all legal and equitable interests, powers, and property, whether present or future, whether vested or contingent, and whether beneficial or burdensome, in whole or in part. The term "disclaimer" as used in this section shall include "renunciation." Nothing in this section shall be construed to preclude a subsequent disclaimer by any person who shall be entitled to property as a result of a disclaimer. The following shall apply to such disclaimers:

(a) Written Memorandum of Disclaimer and Filing Thereof. In the case of property receivable under a will or by inheritance or by an insurance contract, the disclaimer shall be evidenced by a written memorandum, acknowledged before a notary public or other person authorized to take acknowledgements of conveyances of real estate. A written memorandum of disclaimer disclaiming a present interest shall be filed not later than nine months after the death of the decedent and a written memorandum of disclaimer disclaiming a future interest may be filed not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. The written memorandum of disclaimer shall be filed in the probate court in which the decedent's will has been probated or in which proceedings have been commenced for the administration of the decedent's estate or which has before it an application for either of the same; provided, however, if the administration of the decedent's estate is closed, or after the expiration of one year following the date of the issuance of letters testamentary in an independent administration, or if there has been no

will of the decedent probated or filed for probate, or if no administration of the decedent's estate has been commenced, or if no application for administration of the decedent's estate has been filed, the written memorandum of disclaimer shall be filed with the county clerk of the county of the decedent's residence, or, if the decedent is not a resident of this state but real property or an interest therein located in this state is disclaimed, a written memorandum of disclaimer shall be filed with the county clerk of the county in which such real property or interest therein is located, and recorded by such county clerk in the deed records of that county.

(b) Notice of Disclaimer. Copies of any written memorandum of disclaimer shall be delivered in person to, or shall be mailed by registered or certified mail to and received by, the legal representative of the transferor of the interest or the holder of legal title to the property to which the disclaimer relates not later than nine months after the date on which the transfer creating the interest in the disclaiming person is made.

(c) Power of Testator to Provide for Disclaimer. Nothing herein shall prevent a testator from providing in a will for the making of disclaimers by legatees, devisees, and beneficiaries and for the disposition of disclaimed property in a manner different from the provisions hereof.

(d) Irrevocability of Disclaimer. Any disclaimer filed and served under this section shall be irrevocable.

(e) Partial Disclaimer. Any person who may be entitled to receive any property from a decedent by an insurance contract or under any will of or by inheritance from a decedent may disclaim such property in whole or in part, including but not limited to specific powers of invasion, powers of appointment, and fee estate in favor of life estates; and a partial disclaimer or renunciation, in accordance with the provisions of this section, shall be effective whether the property so renounced or disclaimed constitutes a portion of a single, aggregate gift or constitutes part or all of a separate, independent gift; provided, however, that a partial disclaimer shall be effective only with respect to property expressly described or referred to by category in such disclaimer; and provided further, that a partial disclaimer of property which is subject to a burdensome interest created by the decedent's will shall not be effective unless such property constitutes a gift which is separate and distinct from undisclaimed gifts.

(f) Disclaimer After Acceptance. No disclaimer shall be effective after the acceptance of the property by the heir, legatee, devisee, or beneficiary. For the purpose of this section, acceptance shall occur only if the person making such disclaimer has previously taken possession or exercised dominion and control of such property in the capacity of heir, legatee, devisee, or beneficiary.

[Amended by Acts 1977, 65th Leg., p. 1918, ch. 769, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1741, ch. 713, § 4, eff. Aug. 27, 1979.]

§ 42. Inheritance Rights of Legitimated Children

(a) Maternal Inheritance. For the purpose of inheritance, a child is the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

(b) Paternal Inheritance. For the purpose of inheritance, a child is the legitimate child of his father if the child is born or conceived before or during the marriage of his father and mother or is legitimated by a court decree as provided by Chapter 13 of the Family Code, or if the father executed a statement of paternity as provided by Section 13.22 of the Family Code, or a like statement properly executed in another jurisdiction, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

(c) Homestead Rights, Exempt Property, and Family Allowances. A legitimate child as provided by Subsections (a) and (b) of this section is a legitimate child of his mother, and a legitimate child of his father, for the purpose of determining homestead rights, distribution of exempt property, and the making of family allowances.

(d) Marriages Null in Law. The issue also of marriages deemed null in law shall nevertheless be legitimate.

[Amended by Acts 1977, 65th Leg., p. 762, ch. 290, § 1, eff. May 28, 1977; Acts 1979, 66th Leg., p. 40, ch. 24, § 25, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1743, ch. 713, § 5, eff. Aug. 27, 1979.]

§ 46. Joint Tenancies Abolished

(a) Where two (2) or more persons hold an estate, real, personal, or mixed, jointly, and one (1) joint owner dies before severance, his interest in said joint estate shall not survive to the remaining joint owner or joint owners, but shall descend to, and be vested in, the heirs or legal representatives of such deceased joint owner in the same manner as if his interest had been severed and ascertained. Provided, however, that by an agreement in writing of joint owners of property the interest of any joint owner who dies may be made to survive to the surviving joint owner or joint owners, but no such agreement shall be inferred from the mere fact that the property is held in joint ownership.

(b) A written agreement between spouses and a bank, savings and loan, credit union, or other financial institution may provide that existing funds or securities on deposit and funds and securities to be deposited in the future and interest and income thereon shall by that agreement be partitioned into separate property and may further provide that the property partitioned by that agreement be held in joint tenancies and pass by right of survivorship.

[Amended by Acts 1981, 67th Leg., p. 895, ch. 319, § 1, eff. Sept. 1, 1981.]

§ 47. Requirement of Survival by 120 Hours

(a) Survival of Heirs. A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly, except as otherwise provided in this section. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This subsection does not apply where its application would result in the escheat of an intestate estate.

(b) Disposal of Community Property. When a husband and wife have died, leaving community property, and neither the husband nor wife survived the other by 120 hours, one-half of all community property shall be distributed as if the husband had survived, and the other one-half thereof shall be distributed as if the wife had survived. The provisions of this subsection apply to proceeds of life or accident insurance which are community property and become payable to the estate of either the husband or the wife, as well as to other kinds of community property.

(c) Survival of Devisees or Beneficiaries. A devisee who does not survive the testator by 120 hours is treated as if he predeceased the testator, unless the will of the decedent contains some language dealing explicitly with simultaneous death or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will. If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, the beneficiary shall be deemed not to have survived unless he or she survives the person by 120 hours. However, if any interest in property is given alternatively to one of two or more beneficiaries, with the right of each to take being dependent upon his surviving the other or others, and all shall die within a period of less than 120 hours, the property shall be divided into as many equal portions as there are beneficiaries, and those portions shall be distributed respectively to those who would have taken in the event that each beneficiary had survived.

(d) Joint Owners. If any stocks, bonds, bank deposits, or other intangible property shall be so owned that one of two joint owners is entitled to the whole on the death of the other, and neither survives the other by 120 hours, these assets shall be distributed one-half as if one joint owner had survived and the other one-half as if the other joint owner had survived. If there are more than two joint owners and all have died within a period of less than 120 hours, these assets shall be divided into as many equal portions as there are joint owners and these portions shall be distributed respectively to those who would have taken in the event that each joint owner survived.

(e) Insured and Beneficiary. When the insured and a beneficiary in a policy of life or accident insurance have died within a period of less than 120 hours, the insured shall be deemed to have survived the beneficiary for the purpose of determining the rights under the policy of the beneficiary or beneficiaries as such. The provisions of this subsection shall not prevent the application of subsection (b) above to the proceeds of life or accident insurance which are community property.

(f) Instruments Providing Different Disposition. When provision has been made in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation, for disposition of property different from the provisions of this Section, this Section shall not apply.

[Amended by Acts 1979, 66th Leg., p. 1743, ch. 713, § 6, eff. Aug. 29, 1979.]

CHAPTER III. DETERMINATION OF HEIRSHIP

§ 48. Proceedings to Declare Heirship. When and Where Instituted

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) Notwithstanding any other provision of this section, a probate court in which the proceedings for the guardianship of the estate of a ward who dies intestate were pending at the time of the death of the ward may, if there is no administration pending in the estate, determine and declare who are the heirs and only heirs of the ward, and their respective shares and interests, under the laws of this State, in the estate of the ward.

[Amended by Acts 1977, 65th Leg., p. 1521, ch. 616, § 1, eff. Aug. 29, 1977.]

§ 49. Who May Institute Proceedings to Declare Heirship

(a) Such proceedings may be instituted and maintained in any of the instances enumerated above by any person or persons claiming to be the owner of the whole or a part of the estate of such decedent, or by the guardian of the estate of a ward, if the proceedings are instituted and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the death of the ward. In such a case an application shall be filed in a proper court stating the following information:

(1) the name of the decedent and the time and place of death;

(2) the names and residences of the decedent's heirs, the relationship of each heir to the decedent, and the true interest of the applicant and each of the heirs in the estate of the decedent;

(3) all the material facts and circumstances within the knowledge and information of the applicant that might reasonably tend to show the time or place of death or the names or residences of all heirs, if the time or place of death or the names or residences of all the heirs are not definitely known to the applicant;

(4) a statement that all children born to or adopted by the decedent have been listed;

(5) a statement that each marriage of the decedent has been listed with the date of the marriage, the name of the spouse, and if the marriage was terminated, the date and place of termination, and other facts to show whether a spouse has had an interest in the property of the decedent;

(6) whether the decedent died testate and if so, what disposition has been made of the will;

(7) a general description of all the real and personal property belonging to the estate of the decedent; and

(8) an explanation for the omission of any of the foregoing information that is omitted from the application.

(b) Such application shall be supported by the affidavit of each applicant to the effect that, insofar as is known to such applicant, all the allegations of such application are true in substance and in fact and that no such material fact or circumstance has, within the affiant's knowledge, been omitted from such application. The unknown heirs of such decedent, all persons who are named in the application as heirs of such decedent, and all persons who are, at the date of the filing of the application, shown by the deed records of the county in which any of the real property described in such application is situated to own any share or interest in any such real property, shall be made parties in such proceeding.

[Amended by Acts 1977, 65th Leg., p. 1522, ch. 616, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1744, ch. 713, § 7, eff. Aug. 29, 1979.]

§ 50. Notice

(a) Citation shall be served by registered or certified mail upon all distributees whose names and addresses are known, or whose names and addresses can be learned through the exercise of reasonable diligence, provided that the court may in its discretion require that service of citation shall be made by personal service upon some or all of those named as distributees in the application.

(b) Unknown heirs, and known heirs whose addresses cannot be ascertained, shall be served by publication in the county in which the proceedings are commenced, and if the decedent resided in another county, then a citation shall also be published in the county of his last residence.

(c) Except in proceedings in which there is service of citation by publication as provided by Subsection (b) of this section, citation shall also be posted in the county in which the proceedings are commenced and in the county of the decedent's last residence.

(d) A party to the proceedings who has executed the application need not be served by any method.

[Amended by Acts 1979, 66th Leg., p. 1745, ch. 713, § 8, eff. Aug. 29, 1979.]

§ 55. Effect of Judgment

(a) Such judgment shall be a final judgment, and may be appealed or reviewed within the same time limits and in the same manner as may other judgments in probate matters at the instance of any interested person. If any person who is an heir of the decedent is not served with citation by registered or certified mail, or by personal service, he may at any time within four years from the date of such judgment have the same corrected by bill of review, or upon proof of actual fraud, after the passage of any length of time, and may recover from the heirs named in the judgment, and those claiming under them who are not bona fide purchasers for value, his just share of the property or its value.

[See Compact Edition, Volume 2 for text of (b) and (c)]

[Amended by Acts 1979, 66th Leg., p. 1746, ch. 713, § 9, eff. Aug. 29, 1979.]

CHAPTER IV. EXECUTION AND REVOCATION OF WILLS

Section
59A. Contracts Concerning Succession.

§ 59A. Contracts Concerning Succession

(a) A contract to make a will or devise, or not to revoke a will or devise, if executed or entered into on or after September 1, 1979, can be established only by provisions of a will stating that a contract does exist and stating the material provisions of the contract.

(b) The execution of a joint will or reciprocal wills does not by itself suffice as evidence of the existence of a contract.

[Added by Acts 1979, 66th Leg., p. 1746, ch. 713, § 10, eff. Aug. 29, 1979.]

§ 66. Repealed by Acts 1979, 66th Leg., p. 1746, ch. 713, § 11, eff. Aug. 27, 1979

§ 69. Voidness Arising From Divorce

(a) If the testator is divorced after making a will, all provisions in the will in favor of the testator's spouse so divorced, or appointing such spouse to any fiduciary capacity under the will or with respect to the estate or person of the testator's children, shall be null and void and of no effect.

(b) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death.

[Amended by Acts 1979, 66th Leg., p. 1746, ch. 713, § 12, eff. Aug. 29, 1979.]

§ 77. Order of Persons Qualified to Serve

Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

(a) To the person named as executor in the will of the deceased.

(b) To the surviving husband or wife.

(c) To the principal devisee or legatee of the testator.

(d) To any devisee or legatee of the testator.

(e) To the next of kin of the deceased, the nearest in order of descent first, and so on, and next of kin includes a person and his descendants who legally adopted the deceased or who have been legally adopted by the deceased.

(f) To a creditor of the deceased.

(g) To any person of good character residing in the county who applies therefor.

(h) To any other person not disqualified under the following Section. When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or more of such applicants.

[Amended by Acts 1979, 66th Leg., p. 1763, ch. 713, § 34, eff. Aug. 27, 1979.]

CHAPTER V. PROBATE, GRANT OF ADMINISTRATION, AND GUARDIANSHIP

PART 2. PROCEDURE PERTAINING TO FOREIGN WILLS

Section

107A. Suit for the Recovery of Debts by a Foreign Executor or Administrator.

PART 3. ESTATES OF MINORS AND INCOMPETENTS

113A. Appointment of Attorney Ad Litem.
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PART 1. ESTATES OF DECEDENTS

§ 82. Contents of Application for Letters of Administration

An application for letters of administration when no will, written or oral, is alleged to exist shall state:

(a) The name and domicile of the applicant, relationship to the decedent, if any, and that the applicant is not disqualified by law to act as administrator;

(b) The name and intestacy of the decedent, and the fact, time and place of death;

(c) Facts necessary to show venue in the court to which the application is made;

(d) Whether the decedent owned real or personal property, with a statement of its probable value;

(e) The name, age, marital status and address, if known, and the relationship, if any, of each heir to the decedent;

(f) If known by the applicant at the time of the filing of the application, whether children were born to or adopted by the decedent, with the name and the date and place of birth of each;

(g) If known by the applicant at the time of the filing of the application, whether the decedent was ever divorced, and if so, when and from whom; and

(h) That a necessity exists for administration of the estate, alleging the facts which show such necessity.

[Amended by Acts 1979, 66th Leg., p. 1746, ch. 713, § 13, eff. Aug. 27, 1979.]

PART 2. PROCEDURE PERTAINING TO FOREIGN WILLS

§ 107A. Suit for the Recovery of Debts by a Foreign Executor or Administrator

(a) On giving notice by registered or certified mail to all creditors of the decedent in this state who have filed a claim against the estate of the decedent for a debt due to the creditor, a foreign executor or administrator of a person who was a nonresident at the time of death may prosecute a suit in this state for the recovery of debts due to the decedent.

(b) The plaintiff's letters testamentary or letters of administration granted by a competent tribunal, properly authenticated, shall be filed with the suit.

(c) By filing suit in this state for the recovery of a debt due to the decedent, a foreign executor or administrator submits personally to the jurisdiction of the courts of this state in a proceeding relating to the recovery of a debt due by his decedent to a resident of this state. Jurisdiction under this subsection is limited to the money or value of personal property recovered in this state by the foreign executor or administrator.

(d) Suit may not be maintained in this state by a foreign executor or administrator if there is an

executor or administrator of the decedent qualified by a court of this state or if there is pending in this state an application for appointment as an executor or administrator.

[Added by Acts 1977, 65th Leg., p. 1190, ch. 457, § 1, eff. Aug. 29, 1977.]

PART 3. ESTATES OF MINORS AND INCOMPETENTS

§ 109. Persons Qualified to Serve as Guardians

(a) Natural Guardians. If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents, which may be either the father or the mother, is entitled to be appointed guardian of their estates. In event of disagreement as to which parent shall be appointed, the court shall make the appointment on the basis of which one is the better qualified to serve in that capacity. If one parent is dead, the survivor is the natural guardian of the person of the minor children, and is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal; the guardianship of their minor children shall be assigned to one or the other, the interest of the children alone being considered.

[See Compact Edition, Volume 2 for text of (b) and (c)]

[Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 22, eff. Aug. 27, 1979.]

§ 110. Persons Disqualified to Serve as Guardians

The following persons shall not be appointed guardians:

(a) Minors.

(b) Persons whose conduct is notoriously bad.

(c) Incompetents.

(d) Those who are themselves parties, or whose father or mother is a party to a lawsuit on the result of which the welfare of the person for whom, or for whose estate, a guardian is to be appointed, may depend.

(e) Those who are indebted to the person for whom or for whose estate a guardian is to be appointed, unless they pay the debt prior to the appointment, or who are asserting any claim to any property, real or personal, adverse to the person for whom, or for whose estate, the appointment is sought.

(f) [Deleted.]

(g) Those who by reason of inexperience or lack of education, or for other good reason, are shown to be incapable of properly and prudently managing and controlling the ward or his estate.

[Amended by Acts 1977, 65th Leg., p. 2142, ch. 857, § 1, eff. Aug. 29, 1977.]

§ 113A. Appointment of Attorney Ad Litem

In a proceeding under the provisions of this chapter for the appointment of a guardian of a person who is not a minor, the judge may appoint an attorney ad litem to represent the interests of the person for whom the permanent guardianship is sought and shall allow the attorney ad litem a reasonable fee for his services to be taxed as part of the costs.

[Added by Acts 1977, 65th Leg., p. 1380, ch. 551, § 1, eff. Aug. 29, 1977.]

§ 127A. Guardianship of Person Missing on Public Service

(a) Not less than six months after a person is reported by an executive department of the United States to be a prisoner of war or missing on the public service of the United States, any person may file a written application for the appointment of a guardian of the person of the missing person in the court of the county of residence of the missing person's spouse or, if there is no spouse, in the county of residence of a parent or child of the missing person, or if there is no parent or child, in the county of residence of the missing person's next of kin.

(b) The application shall state:

(1) the name, sex, and last known residence of the person for whom the appointment of a guardian is sought;

(2) the executive department issuing the report, the date of the report, and the last known whereabouts of the missing person;

(3) the names and addresses of the missing person's spouse, children, and parents or, if there is no spouse, child, or parent, the name and address of the person's next of kin and facts that show that the court has venue of the proceeding;

(4) the reason for the appointment and the interest of the applicant in the appointment; and

(5) the name, relationship, and address of the person whom the applicant desires to have appointed as guardian.

(c) The court shall appoint an attorney to represent the interests of the missing person and shall allow the attorney a reasonable fee, not to exceed $25, for his services to be taxed as part of the costs.

(d) The attorney appointed to represent the interest of the missing person shall be personally served with citation to appear and answer the application for the appointment of a guardian. The clerk of the court shall issue a notice setting forth that an application has been filed for the guardianship of the person of the missing person and by whom the application is made. The notice shall cite all persons interested in the welfare of that person to appear at the time and place stated in the notice and contest the application, if they so desire. The notice shall be served by posting, and the sheriff or other officer posting the notice shall return the original, signed

officially, stating thereon in writing the time and place that he posted the copy of the notice. In addition to posting the notice, a copy of the notice shall be mailed by registered or certified mail to the spouse, to each child, to each parent of the missing person, and to any other person that the court deems appropriate.

(e) Any person has the right to appear and contest the appointment of a particular person as guardian of the missing person, or to contest any guardianship proceeding which he deems to be injurious to the missing person, or to commence a guardianship proceeding which he deems beneficial to the missing person.

(f) Before appointing a guardian, the court must find:

(1) that the person has been reported missing by an executive department of the United States and still is missing;

(2) that the court has venue of the proceeding and that there is not an existing guardianship of this person;

(3) that the person applying for appointment as the guardian is a proper person to act as the guardian; and

(4) that the rights of the missing person will be protected by the appointment of the guardian.

(g) After the hearing, the court shall dismiss the application or enter an order appointing a guardian to protect the rights of the missing person and may impose in the order any conditions or restrictions it deems necessary to protect the rights of the missing person. In appointing the guardian, the court shall give preference to the spouse of the missing person, and if there is no spouse shall give preference to parents and children of the missing person.

(h) The jurisdiction of the court over the guardianship is continuing. If the missing person returns, on motion of any interested person after a notice, stating that the motion has been filed and specifying the date of a hearing, has been issued and served on the formerly missing person as in other cases, the court shall amend or vacate the original order of guardianship. A copy of the motion shall accompany the notice.

[Added by Acts 1977, 65th Leg., p. 569, ch. 203, § 1, eff. Aug. 29, 1977.]

PART 5. LIMITED GUARDIANSHIP PROCEEDINGS

§ 130A. Limited Guardianship

Limited guardianship for mentally retarded persons shall be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence in the individual, and shall be ordered only to the extent necessitated by the individual's actual mental and adaptive limitations. A mentally retarded person for whom a limited guardian has been appointed shall not be presumed to be incompetent and shall retain all legal and civil rights and powers except those which have by court order been designated as legal disabilities by virtue of having been specifically granted to the limited guardian. An appointment of a limited guardian shall be made pursuant to the provisions of Part 5, Chapter V. For the purposes of Chapter V, Texas Probate Code, a mentally retarded person is defined as a person with significantly subaverage general intellectual functioning of two or more standard deviations below the age-group mean for the tests used, existing concurrently with deficits in adaptive behavior.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130B. Authority to Appoint

The court exercising original probate jurisdiction of the county having venue may appoint limited guardians for mentally retarded persons. However, no limited guardianship may be created for a person who is the ward under a full guardianship of the person or the estate.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130C. Petition; Contents

The mentally retarded person or a person interested in his welfare may petition the court for the appointment of a limited guardian. A petition for a limited guardianship shall state:

(1) the name, age, residence, and post-office address of the alleged mentally retarded person;

(2) the nature of his alleged incompetency, in accordance with Section 130A of this code;

(3) the approximate value and description of his property, including any compensation, pension, insurance, or allowance to which he may be entitled;

(4) whether there is, in any state, a guardian or limited guardian of the alleged mentally retarded person;

(5) the nature and description of any existing guardianship or limited guardianship;

(6) the residence and post-office address of the person whom the petitioner asks to be appointed limited guardian;

(7) the names and addresses, so far as is known or can be reasonably ascertained, of the persons most closely related to the alleged mentally retarded person;

(8) the name and address of the person or institution having the care and custody of the alleged mentally retarded person;

(9) the reason for the appointment of a limited guardian and the interest of the petitioner in the appointment;

(10) the nature and degree of the alleged disability, the specific areas of protection and assist-

ance requested, and the limitation of rights requested to be included in the court's order of appointment; and

(11) the requested term of the limited guardianship to be included in the court's order of appointment.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130D. Filing Fee

A fee of $15 shall be charged for filing a petition for limited guardianship, and a fee of $4 shall be charged for the service of notice and citation. However, no fees shall be charged by the court for filing a petition for limited guardianship unless the alleged mentally retarded person has an estate valued in excess of $1500. A party may file with the county clerk an affidavit stating that the estate of the alleged mentally retarded person is valued at less than $1500, and the clerk shall thereupon accept the application and issue process and perform all other services required of him in the same manner as if security had been given.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130E. Notices and Citations in Limited Guardianship Proceedings

(a) On the filing of an application for appointment of a limited guardian, the clerk shall issue a notice setting forth that the application has been filed for the limited guardianship, the name of the person for whom the guardian is sought and the nature of the disability, and by whom the application is made. The notice shall cite all persons interested in the welfare of that person to appear at the time and place stated in the notice and contest the application, if they so desire.

(b) The notice shall be served by posting, and the sheriff or other officer posting the notice shall return the original, signed officially and stating thereon in writing the time and place that he posted the copy.

(c) The alleged mentally retarded person and his parents, if the parents can be found within this state, or the conservator or any person having control of the care and welfare of the alleged mentally retarded person shall be personally served with citation to appear and answer the application for the appointment of a limited guardian. Notwithstanding the foregoing, all persons then living who stand in the first degree of consanguinity or affinity to the alleged mentally retarded person shall be given notice if their whereabouts are known or can be reasonably ascertained.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130F. Examination and Report

Within 30 days after the filing of the petition for limited guardianship, the person alleged to be mentally retarded shall be examined at a facility approved by the Texas Department of Mental Health and Mental Retardation to perform such service. The examination shall be conducted in accordance with rules promulgated by the commissioner of the Texas Department of Mental Health and Mental Retardation. The facility shall submit a written report of its findings and recommendations to the court with copies to the alleged mentally retarded person and the petitioner. The report may include a description of the alleged mentally retarded person's degree of incompetency, if any. The findings and recommendations of the examinations shall not be binding on the court.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130G. Hearing

The person alleged to be mentally retarded shall be present at the hearing, unless the court determines that such personal appearance would not be in the person's best interest. He is entitled to be represented by counsel. If he is unable to pay for counsel, the county is responsible for costs of counsel. He is entitled, on request, to a jury trial. The hearing may be closed if the person alleged to be mentally retarded or his counsel requests a closed hearing. At the hearing, the court shall:

(1) inquire into the nature and extent of the general intellectual functioning of the individual asserted to need a limited guardian;

(2) evaluate the extent of the impairment in his adaptive behavior;

(3) ascertain his capacity to care for himself and manage his property; and

(4) inquire into the qualifications, abilities, and capabilities of the person seeking to be appointed limited guardian.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130H. Order of the Court

If it is found that the alleged mentally retarded person possesses the capacity to care for himself and to manage his property as would a reasonably prudent person or if it is found that the alleged mentally retarded person is totally without capacity to care for himself and to manage his property, the court shall dismiss the petition for the appointment of a limited guardian. If it is found that the alleged mentally retarded person lacks the capacity to do some, but not all, of the tasks necessary to care for himself or to manage his property, the court may appoint a limited guardian for the individual and shall define the powers and duties of the limited guardian so as to permit the mentally retarded person to care for himself or to manage his property commensurate with his ability to do so. However, the powers and duties granted to and imposed on the limited guardian by the court in its order shall not duplicate or be in conflict with the powers and

duties of any other limited guardian, and the powers and duties shall not exceed those applicable to full guardians under this code. An order appointing a limited guardian shall contain findings of fact and shall also specify:

(1) the properties of the mentally retarded person to which the limited guardian is entitled to possession and management, giving the description of the properties that will be sufficient to identify them;

(2) the debts, rentals, wages, or other claims due the mentally retarded person which the limited guardian is entitled to collect, or file suit with respect to, if necessary, and thereafter to possess and manage;

(3) the contractual or other obligations which the limited guardian may incur on behalf of the mentally retarded person;

(4) the claims against the mentally retarded person which the limited guardian may pay, compromise, or defend, if necessary; and

(5) any other powers, limitations, or duties with respect to the care of the mentally retarded person or the management of his property by the limited guardian which the court shall specifically and explicitly specify.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130I. Who May be Guardians

(a) Only a person, institution, or corporation found by the court to be suitable may be appointed limited guardian of a mentally retarded person. The court shall not customarily or ordinarily appoint the Texas Department of Mental Health and Mental Retardation or a community mental health and mental retardation center, or any other agency, public or private, that is directly providing services to the mentally retarded person, except as a last resort.

(b) Prior to appointment, the court shall make reasonable effort to question the mentally retarded person concerning his preference of the person to be appointed limited guardian, and a preference indicated shall be given due consideration by the court.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130J. Certain Duties of Limited Guardian

(a) It is the duty of the limited guardian to file annually within 30 days after the anniversary date of his appointment and also within 30 days after termination of his appointment as the limited guardian a written verified account of his administration. The court in its discretion may also allow such accounts to be filed at intervals of up to 36 months, with instructions to the limited guardian that any substantial increase in income or assets or substantial change in the mentally retarded person's condition shall be reported within 30 days of the substantial increase or change.

(b) It is the duty of the limited guardian who is managing properties to prepare and file within three months after his appointment a verified inventory of all the property of the mentally retarded person which shall come to his possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item.

(c) To the extent that the order of the court gives the limited guardian control of any property of a mentally retarded person, the limited guardian must take care of and manage the property as a prudent man would manage his own property.

(d) Pursuant to the orders of the court, the limited guardian may expend funds of the limited guardianship in order to care for and maintain the mentally retarded person, including making application for residential care and services provided by public or private facilities. The limited guardian is required to report the condition of the mentally retarded person to the court at regular intervals or otherwise as the court may direct. If the person is receiving residential care in a public or private residential care facility, the limited guardian shall report to the court the necessity for continued care in the facility.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130K. Oath and Bond of Limited Guardian

The limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court, shall file a bond in accordance with the provisions of Section 194, Texas Probate Code, as amended, except that in a limited guardianship of the person and in a limited guardianship of the estate in which the inventory filed with the court shows that the person has total accumulated assets of a value of less than $1500, the court may dispense with the requirement of a bond. If the court dispenses with a bond, the limited guardian shall report to the court any known changes in the accumulated assets of the mentally retarded person that increase the value to more than $1500.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130L. Authority of Limited Guardian

On the filing of the oath and bond, if any, the order of the court appointing the limited guardian shall become effective without the necessity for issuance of letters of guardianship. The order shall be evidence of the authority of the limited guardian to act within the scope of the powers and duties set forth in the order.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130M. Termination, Removal, or Resignation of Limited Guardian

(a) The limited guardianship shall be settled and closed when the mentally retarded person has died, or when he has been found by the court to have full

capacity to care for himself and to manage his property, or when a full guardian of the person or estate of such individual has been appointed in this state and has qualified, or being married, when such individual's spouse has qualified as survivor in community.

(b) On petition of the mentally retarded person or any person interested in his welfare and on such notice as the court may direct, the court may remove the limited guardian if the court finds that to be in the best interest of the mentally retarded person. On petition of the limited guardian, the court may accept his resignation.

(c) When a limited guardian dies, resigns, or is removed, the court may, on application and on such notice as the court may direct, appoint a successor limited guardian. A successor limited guardian shall have all of the powers and rights and shall be subject to all of the duties of the prior limited guardian.

(d) An order appointing a limited guardian or a successor limited guardian may specify a minimum period, not exceeding one year, during which no petition for adjudication that the mentally retarded person no longer requires the limited guardianship may be filed without special leave. Subject to this restriction, the mentally retarded person or any person interested in his welfare may petition the court for an order that he is no longer in need of the limited guardianship and that requires the removal or resignation of the limited guardian. A request for this order may be made by informal letter to the court or judge, and a person who knowingly interferes with the transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130N. Venue

A proceeding for the appointment of a limited guardian of a mentally retarded person shall begin in the county where the mentally retarded person resides or where his principal estate is situated.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130*O*. Transfer of Venue

A court having venue of a limited guardianship proceeding may transfer venue of the limited guardianship proceeding to the court of any other county of the state on application of the limited guardian and with such notice to the mentally retarded person or other interested party as the court may require. A transfer of a limited guardianship proceeding shall be made to the court of the county in which either the limited guardian or the mentally retarded person resides, as the court may deem appropriate, at the time of making application for the transfer. The original order providing for a transfer shall be retained as the permanent record by the clerk of the court in which the order is entered, and a certified copy thereof, together with the original file in the limited guardianship proceeding and a certified transcript of all record entries up to and including the order for the change, shall be transmitted to the clerk of the court to which the proceeding is transferred.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

CHAPTER VI. SPECIAL TYPES OF ADMINISTRATION AND GUARDIANSHIP

PART 3. SMALL ESTATES

Section
149B. Accounting and Distribution.
149C. Removal of Independent Executor.

PART 4. INDEPENDENT ADMINISTRATION

154A. Court-Appointed Successor Independent Executor.

PART 3. SMALL ESTATES

§ 137. Collection of Small Estates Upon Affidavit

The distributees of an estate shall be entitled thereto, to the extent that the assets, exclusive of homestead and exempt property, exceed the known liabilities of said estate, without awaiting the appointment of a personal representative when:

(a) No petition for the appointment of a personal representative is pending or has been granted; and

(b) Thirty days have elapsed since the death of the decedent; and

(c) The value of the entire assets of the estate, not including homestead and exempt property, does not exceed $50,000; and

(d) There is filed with the clerk of the court having jurisdiction and venue an affidavit sworn to by such distributees as have legal capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or incompetent who is also a distributee, which affidavit shall be approved by the judge of the court having jurisdiction and venue, to be recorded in "Small Estates" records by the clerk, showing the existence of the foregoing conditions, including a list of the assets and liabilities of the estate, the names and addresses of the distributees, and their right to receive the money or property of the estate, or to have such evidences of money, property or other rights of the estate as found to exist transferred to them, being heirs, devisees, or assignees, and listing all assets and known liabilities of the estates; and

(e) A copy of such affidavit, certified to by said clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary or transfer agent of or for evidences of interest,

indebtedness, property or other right belonging to said estate.

Henceforth the county clerk of every county in this state shall provide and keep in his office an appropriate book labeled "Small Estates," with accurate index, in which he shall record every such affidavit so filed, upon being paid his legal recording fee, said index to show the name of decedent and reference to land, if any, involved.

[Amended by Acts 1975, 64th Leg., p. 1402, ch. 543, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 361, ch. 177, § 1, eff. May 20, 1977; Acts 1979, 66th Leg., p. 1747, ch. 713, § 14, eff. Aug. 29, 1979.]

§ 144. Payment of Claims Without Guardianship

(a) To Residents. Whenever a resident minor, or whenever a resident person legally adjudged to be of unsound mind or to be an habitual or common drunkard sometimes referred to in this Section as "creditor," being without a legal guardian of his person or estate, shall be entitled to money in an amount not exceeding Ten Thousand Dollars, the right to which is liquidated and is uncontested in any pending lawsuit, the debtor may pay same to the County Clerk of the county in which such creditor resides in this state, for the account of such creditor, giving his name, the nature of his disability, and if a minor his age, and his post-office address, and the receipt for such money signed by the clerk shall be forever binding on such creditor as of the date and to the extent of such payment. Upon receipt of such payment by the clerk, he shall forthwith call same to the attention of the court and shall invest such money as authorized by the Probate Code pursuant to the orders of the court in the name and for the account of such minor or other person entitled to same, and by letter mailed to the address given by the debtor, shall apprise such creditor of the fact that such deposit has been made. Any increase, dividend or income from such investments shall be credited to the account of such minor or other person entitled to such investment. Any money heretofore deposited under the terms of this section which has not been paid out shall within thirty (30) days after the effective date of this Act be subject to the provisions of this Act as amended.

Within sixty (60) days from the first day of each calendar year the clerk of the court shall make a report to the court in writing of the status of such investments. Such report shall contain the following:

(1) The amount of the original investment or the amount of the investment at the last annual report, whichever is later.

(2) Any increase, dividend or income from such investment since the last annual report.

(3) The total amount of the investment and all increases, dividends or income at the date of the report.

(4) The name of the depository or the type of investment.

The father or mother or unestranged spouse of such creditor, priority being given to such spouse, residing in this state or if there be no such spouse and both father and mother be dead or nonresidents of this state, then the person residing in this state who has actual custody of such creditor, may as custodian, upon filing with such clerk written application and bond approved by the County Judge of such county, withdraw such money from the clerk for the use and benefit of such creditor, such bond to be in double the amount of said money and to be payable to the judge or his successors in office and to be conditioned that such custodian will use said money for the benefit of such creditor under directions of the court and that he will, when legally called upon to do so, faithfully account to such creditor, his heirs or legal representatives for such money and any increase thereof upon removal of the disability to which such creditor is subject, or upon his death or the appointment of a guardian. No fees or commissions shall be allowed to such custodian for taking care of, handling or expending such money so withdrawn by him.

When such custodian shall have expended such money in accordance with directions of the court or shall have otherwise complied with the terms of his bond by accounting for said money and any increase, he shall file with the County Clerk of said county his sworn report of his accounting, the filing of which report, when approved by the court shall operate as a discharge of said person as custodian and his sureties from all further liability under said bond. The court shall satisfy itself that the report is true and correct and may require proof as in other cases.

(b) To Non-Resident. Whenever a non-resident minor or whenever a non-resident person duly adjudged by a court of competent jurisdiction to be of unsound mind or to be an habitual drunkard, having no legal guardian qualified in this state, is entitled to money in an amount, not exceeding Ten Thousand Dollars owing as a result of transactions within this state, the right to which is liquidated and is uncontested in any pending lawsuit in this state, the debtor in this state may pay such money to the guardian of such creditor duly qualified in his domiciliary jurisdiction or to the county clerk of any county in this state in which real property owned by such non-resident person is situated. If such person is not known to own any real property in any county in this state such debtor shall have the right to pay such money to the county clerk of the county of this state in which the debtor resides. In either case, such payment to the clerk shall be for the use and benefit and for the account of such non-resident creditor, and the receipt for such payment signed by the clerk, reciting the name of such creditor and his post-office address, if known, shall be forever binding against such creditor as of the date and to the extent of such payment. Such money so paid to such clerk shall be handled by him in the same manner as above provided for in cases of payments

to the clerk for the accounts of residents of this state, and all applicable provisions of Subsection (a) above shall apply to the handling and disposition of money or any increase, dividend, or income herefrom so paid to the clerk for the use, benefit, and account of such non-resident creditor.

(c) When the Deposit Is Not Withdrawn by Another Person. If no person authorized hereunder withdraws such money from the clerk as provided for in this Section, then the creditor himself, after termination of his disability, or his subsequent personal representatives or heirs, as the case may be, may at any time, without special bond for the purpose, withdraw such money upon simply exhibiting to the clerk an order of the county or probate court of the county where such money is held by the clerk, directing the clerk to deliver such money to such creditor or to his personal representative or heirs named in such order, the identity of such persons and their credentials being first proved to the satisfaction of the court.

(d) Money in the Registry of a Court and Belonging to an Inmate of a State Eleemosynary Institute. Whenever it is made to appear to the judge of a county court, district court, or other court of the State of Texas, by an affidavit executed by the superintendent, business manager or field representative of any eleemosynary institution of the State of Texas, that a certain inmate therein is a lunatic, idiot, person of unsound mind or a person whose mental illness or mental incapacity, or both, renders him incapable of caring for himself and managing his property and financial affairs, and there is no known legal guardian appointed for the estate of such inmate, and that there is on deposit in the registry of the court a certain sum of money belonging to the inmate and not exceeding the sum of Ten Thousand Dollars, the judge of the court may order the disposition of the funds as herein provided. The judge of the court, upon satisfactory proof by affidavit or otherwise, that the inmate is a lunatic, idiot, person of unsound mind, or a person whose mental illness or mental incapacity, or both, renders him incapable of caring for himself and managing his property and financial affairs, without a legally appointed guardian of his estate, may by order direct the clerk of the court to pay the money to the institution for the use and benefit of the inmate. The State institution to which the payment is made shall not be required to give bond or security for receiving the fund from the registry of the court, and the receipt from the State institution for such payment, or the cancelled check or warrant by which the payment was made, shall be sufficient evidence of the disposition thereof and the clerk of the court shall be relieved of further responsibility therefor. Upon receipt of the money the institution shall deposit all of the amount received to the trust account of the inmate, to be used by or for the personal use of the owner thereof under the regulations or custom of the institution in the expenditure of such funds by the inmate or for the use and benefit of the inmate by the responsible officer of the institution. The provisions of this subdivision shall be cumulative of all other laws affecting the rights of lunatics, idiots, persons of unsound mind or of mental illness, and moneys belonging to such persons as inmates of a state eleemosynary institution.

Should such inmate become deceased leaving a balance in his trust account, such balance may be applied on the burial expenses of said inmate, or applied on his care, support and treatment account at said institution. After the expenditure of all funds in such trust account or after the death of such inmate the responsible officer shall furnish a statement of expenditures of such funds to nearest relative entitled to such statement; and, a copy of such statement shall be filed with the court which first granted the order to dispose of the funds in accordance with the provisions of this Act.

[Amended by Acts 1979, 66th Leg., p. 1747, ch. 713, § 15, eff. Aug. 27, 1979.]

PART 4. INDEPENDENT ADMINISTRATION

§ 145. Independent Administration

(a) Independent administration of an estate may be created as provided in Subsections (b) through (e) of this section.

(b) Any person capable of making a will may provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisement, and list of claims of his estate.

(c) In situations where an executor is named in a decedent's will, but the will does not provide for independent administration of the decedent's estate as provided in Subsection (b) of this section, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will the executor named in the will to serve as independent executor and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will, and the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent executor, unless the county court finds that it would not be in the best interest of the estate to do so.

(d) In situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent's estate his inability or unwillingness to serve as executor, all of the distributees of the decedent

may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will, and the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the county court finds that it would not be in the best interest of the estate to do so.

(e) All of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the county court finds that it would not be in the best interest of the estate to do so.

(f) In those cases where an independent administration is sought under the provisions of Subsections (c) through (e) above, all distributees shall be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(g) In no case shall any independent administrator be appointed by any court to serve in any intestate administration until those parties seeking the appointment of said independent administrator offer clear and convincing evidence to the court that they constitute all of the said decedent's heirs.

(h) When an independent administration has been created, and the order appointing an independent executor has been entered by the county court, and the inventory, appraisement, and list aforesaid has been filed by the executor and approved by the county court, as long as the estate is represented by an independent executor, further action of any nature shall not be had in the county court except where this Code specifically and explicitly provides for some action in the county court.

(i) If a distributee described in Subsections (c) through (e) of this section is a minor or an incompetent, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated in the application as independent executor would not be in the best interests of the minor or incompetent, then, notwithstanding anything to the contrary in Subsectons (c) through (e) of this section, the county court shall not enter an order granting independent administration of the estate. If such distributee who is a minor or incompetent has no guardian of the person, the county court may appoint a guardian ad litem to make application on behalf of the minor or incompetent if the county court considers such an appointment necessary to protect the interest of the distributees.

(j) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, shall, for the purposes of Subsections (c) and (d) of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust.

(k) If a life estate is created either in the decedent's will or by law, the life tenant or life tenants, when determined as if the life estate were to commence on the date of the decedent's death, shall, for the purposes of Subsections (c) through (e) of this section, be deemed to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for independent administration on behalf of the estate without the consent or approval of any remainderman.

(*l*) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, then, for the purposes of determining who shall be the distributee under Subsections (c), (d), (h), and (i) of this section, it shall be presumed that the distributees living at the time of the filing of the application for probate of the decedent's will survived the decedent by the prescribed period.

(m) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Subsections (c), (d), (e), (h), and (i) of this section, it shall be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(n) If a distributee of a decedent's estate should die and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may

sign the application for independent administration of the decedent's estate under Subsections (c), (d), (e), (h), and (i) of this section.

(*o*) Notwithstanding anything to the contrary in this section, a person capable of making a will may provide in his will that no independent administration of his estate may be allowed. In such case, his estate, if administered, shall be administered and settled under the direction of the county court as other estates are required to be settled.

(p) If an independent administration of a decedent's estate is created pursuant to Subsections (c), (d), or (e) of this section, then, unless the county court shall waive bond on application for waiver, the independent executor shall be required to enter into bond payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety. This subsection does not repeal any other section of this Code.

(q) Absent proof of fraud or collusion on the part of a judge, no judge may be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as an independent executor under Subsections (c), (d), and (e) of this section.

[Amended by Acts 1977, 65th Leg., p. 1061, ch. 390, § 3, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1750, ch. 713, § 16, eff. Aug. 27, 1979.]

§ 147. Enforcement of Claims by Suit

Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the decedent in the hands of the independent executor which is subject to such debt. The independent executor shall not be required to plead to any suit brought against him for money until after six months from the date that an independent administration was created and the order appointing an independent executor was entered by the county court.

[Amended by Acts 1975, 64th Leg., p. 980, ch. 376, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1064, ch. 390, § 4, eff. Sept. 1, 1977.]

§ 148. Requiring Heirs to Give Bond

When an independent administration is created and the order appointing an independent executor is entered by the county court, any person having a debt against such estate may, by written complaint filed in the county court where such order was entered, cause all distributees of the estate, heirs at law, and other persons entitled to any portion of such estate under the will, if any, to be cited by personal service to appear before such county court and execute a bond for an amount equal to the amount of the creditor's claim or the full value of such estate, as shown by the inventory and list of claims, whichever is the smaller, such bond to be payable to the judge, and his successors, and to be approved by said judge, and conditioned that all obligors shall pay all debts that shall be established against such estate in the manner provided by law. Upon the return of the citation served, unless such person so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such bond to the satisfaction of the county court, such estate shall thereafter be administered and settled under the direction of the county court as other estates are required to be settled. If the bond is executed and approved, the independent administration shall proceed. Creditors of the estate may sue on such bond, and shall be entitled to judgment thereon for the amount of their debt, or they may have their action against those in possession of the estate.

[Amended by Acts 1977, 65th Leg., p. 1064, ch. 390, § 5, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1750, ch. 713, § 17, eff. Aug. 29, 1979.]

§ 149A. Accounting

(a) Interested Person May Demand Accounting. At any time after the expiration of fifteen months from the date that an independent administration was created and the order appointing an independent executor was entered by the county court, any person interested in the estate may demand an accounting from the independent executor. The independent executor shall thereupon furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

1. The property belonging to the estate which has come into his hands as executor.
2. The disposition that has been made of such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining in his hands.
6. Such other facts as may be necessary to a full and definite understanding of the exact condition of the estate.
7. Such facts, if any, that show why the administration should not be closed and the estate distributed.

Any other interested person shall, upon demand, be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) Enforcement of Demand. Should the independent executor not comply with a demand for an accounting authorized by this section within sixty days after receipt of the demand, the person making

the demand may compel compliance by an action in the county court or by a suit in the district court. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it deems proper under the circumstances.

[See Compact Edition, Volume 2 for text of (c) and (d)]

[Amended by Acts 1977, 65th Leg., p. 1065, ch. 390, § 6, eff. Sept. 1, 1977.]

§ 149B. Accounting and Distribution

(a) In addition to or in lieu of the right to an accounting provided by Section 149A of this code, at any time after the expiration of 12 months after all estate and all inheritance taxes are paid or three years from the date that an independent administration was created and the order appointing an independent executor was entered, whichever date is later, a person interested in the estate may petition the court for an accounting and distribution. The proceeding for an accounting and distribution may be brought in the county court if the county judge is licensed to practice law in the State of Texas or may be brought in a statutory probate court, a county court at law with probate jurisdiction, or a district court of the county. The court may order an accounting to be made with the court by the independent executor at such time as the court deems proper. The accounting shall include the information that the court deems necessary to determine whether any part of the estate should be distributed.

(b) On receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, the court may order its distribution by the independent executor to the persons entitled to the property.

(c) If all the property in the estate is ordered distributed by the executor and the estate is fully administered, the court also may order the independent executor to file a final account with the court and may enter an order closing the administration and terminating the power of the independent executor to act as executor.

[Added by Acts 1979, 66th Leg., p. 1751, ch. 713, § 18, eff. Aug. 27, 1979.]

§ 149C. Removal of Independent Executor

(a) The county court, if the county judge is licensed to practice law in the State of Texas, or a statutory probate court, a county court at law with probate jurisdiction, or a district court of the county, on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, may remove an independent executor when:

(1) the independent executor fails to return within ninety days after qualification, unless such time is extended by order of the court, an inventory of the property of the estate and list of claims that have come to his knowledge;

(2) sufficient grounds appear to support belief that he has misapplied or embezzled, or that he is about to misapply or embezzle, all or any part of the property committed to his care;

(3) he fails to make an accounting which is required by law to be made;

(4) he is proved to have been guilty of gross misconduct or gross mismanagement in the performance of his duties; or

(5) he becomes an incompetent, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing his fiduciary duties.

(b) The order of removal shall state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed executor. The order of removal shall require that letters issued to the removed executor shall be surrendered and that all letters shall be canceled of record. If an independent executor is removed by the court under this section, the court may, on application, appoint a successor independent executor as provided by Section 154A of this code.

(c) An independent executor who defends an action for his removal in good faith, whether successful or not, shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney's fees, in the removal proceedings.

[Added by Acts 1979, 66th Leg., p. 1751, ch. 713, § 19, eff. Aug. 27, 1979.]

§ 150. Partition and Distribution or Sale of Property Incapable of Division

If the will does not distribute the entire estate of the testator, or provide a means for partition of said estate, or if no will was probated, the independent executor may file his final account in the county court in which the will was probated, or if no will was probated, in the county court in which the order appointing the independent executor was entered, and ask for either partition and distribution of the estate or an order of sale of any portion of the estate alleged by the independent executor and found by the court to be incapable of a fair and equal partition and distribution, or both; and the same either shall be partitioned and distributed or shall be sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in estates administered under the direction of the county court.

[Amended by Acts 1975, 65th Leg., p. 1065, ch. 390, § 7, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1751, ch. 713, § 20, eff. Aug. 27, 1979.]

§ 151. Closing Independent Administration by Affidavit

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) Authority to Transfer Property of a Decedent After Filing the Affidavit. An independent

executor's affidavit closing the independent administration shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the persons described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The persons described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

[Amended by Acts 1979, 66th Leg., p. 1752, ch. 713, § 21, eff. Aug. 27, 1979.]

§ 152. Closing Independent Administration Upon Application by Distributee

(a) At any time after an estate has been fully administered and there is no further need for an independent administration of such estate, any distributee may file an application to close the administration; and, after citation upon the independent executor, and upon hearing, the court may enter an order closing the administration and terminating the power of the independent executor to act as such.

(b) The order of the court closing the independent administration shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the persons described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The persons described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

[Amended by Acts 1979, 66th Leg., p. 1752, ch. 713, § 22, eff. Aug. 27, 1979.]

§ 154A. Court-Appointed Successor Independent Executor

(a) If the will of a person who dies testate names an independent executor who, having qualified, fails for any reason to continue to serve, or is removed for cause by the court, and the will does not name a successor independent executor or if each successor executor named in the will fails for any reason to qualify as executor or indicates by affidavit filed with the application for an order continuing independent administration his inability or unwillingness to serve as successor independent executor, all of the distributees of the decedent as of the filing of the application for an order continuing independent administration may apply to the county court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. If the county court finds that continued administration of the estate is necessary, the county court shall enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent executor, unless the county court finds that it would not be in the best interest of the estate to do so. Such successor shall serve with all of the powers and privileges granted to his predecessor independent executor.

(b) If a distributee described in this section is a minor or an incompetent, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent executor would not be in the best interest of the minor or incompetent, then, notwithstanding anything to the contrary in subsection (a) of this section, the county court shall not enter an order continuing independent administration of the estate. If the distributee who is a minor or incompetent has no guardian of the person, the court may appoint a guardian ad litem to make application on behalf of the minor or incompetent if the county court considers such an appointment necessary to protect the interest of such distributee.

(c) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust.

(d) If a life estate is created either in the decedent's will or by law, and if a life tenant is living at the time of the filing of the application for an order continuing independent administration, then the life tenant or life tenants, determined as if the life estate were to commence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be deemed to the distributee or distributees on behalf of the entire estate created, and are authorized to apply for an order continuing independent administration on behalf of the estate without the consent or approval of any remainderman.

(e) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, for the purposes of determining who

shall be the distributee under this section, it shall be presumed that the distributees living at the time of the filing of the application for an order continuing independent administration of the decedent's estate survived the decedent for the prescribed period.

(f) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under this section, it shall be presumed that no distributee living at the time the application for an order continuing independent administration of the decedent's estate is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(g) If a distributee of a decedent's estate should die, and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may sign the application for an order continuing independent administration of the decedent's estate under this section.

(h) If a successor independent executor is appointed pursuant to this section, then, unless the county court shall waive bond on application for waiver, the successor independent executor shall be required to enter into bond payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

[Added by Acts 1977, 65th Leg., p. 1066, ch. 390, § 8, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1753, ch. 713, § 23, eff. Aug. 27, 1979.]

PART 5. ADMINISTRATION OF COMMUNITY PROPERTY

§ 176. Remarriage of Surviving Spouse

The remarriage of a surviving spouse shall not terminate the surviving spouse's powers or liabilities as a qualified community administrator or administratrix; nor shall it terminate his or her powers as a surviving partner.

[Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 23, eff. Aug. 27, 1979.]

CHAPTER VII. EXECUTORS, ADMINISTRATORS, AND GUARDIANS

PART 5. GENERAL POWERS OF PERSONAL REPRESENTATIVES

Section
238A. Administration of Partnership Interest by Personal Representative.

PART 2. OATHS AND BONDS OF PERSONAL REPRESENTATIVES

§ 193. Bond of Guardian of Person

The bond of a guardian of the person shall be in an amount to be fixed by the Court granting such guardianship, payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety. The bond shall be conditioned that the guardian will faithfully discharge the duties of guardian of the person of his ward.

[Amended by Acts 1979, 66th Leg., p. 1753, ch. 713, § 24, eff. Aug. 27, 1979.]

§ 194. Bonds of Personal Representatives of Estates

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

4. Penalty of Bond.

The penalty of the bond shall be fixed by the judge in an amount equal to the estimated value of all personal property belonging to the estate, or to the person under disability, together with an additional amount to cover revenue anticipated to be derived during the succeeding twelve (12) months from interest, dividends, collectible claims, the aggregate amount of any installments or periodical payments exclusive of income derived or to be derived from federal social security payments, and rentals for use of real and personal property; provided, that the penalty of the original bond shall be reduced in proportion to the amount of cash or value of securities or other assets authorized or required to be deposited or placed in safekeeping by order of court, or voluntarily made by the representative or by his sureties as hereinafter provided in Subdivisions 6 and 7 hereof.

[See Compact Edition, Volume 2 for text of 5 to 15]

[Amended by Acts 1979, 66th Leg., p. 1754, ch. 713, § 25, eff. Aug. 27, 1979.]

§ 199. Bonds of Married Persons

When a married person is appointed personal representative, the person may, jointly with, or without, his or her spouse, execute such bond as the law requires; and such bond shall bind the person's separate estate, but shall bind his or her spouse only if signed by the spouse.

[Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 24, eff. Aug. 27, 1979.]

§ 200. Bond of Married Person Under Eighteen Years of Age

When a person under eighteen years of age who is or has been married shall accept and qualify as executor, administrator, or guardian, any bond re-

quired to be executed by him shall be as valid and binding for all purposes as if he were of lawful age. [Amended by Acts 1975, 64th Leg., p. 105, ch. 45, § 3, eff. Sept. 1, 1975.]

PART 5. GENERAL POWERS OF PERSONAL REPRESENTATIVES

§ 230. Care of Property of Estates

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

(b) Estates of Wards (1) General Powers and Duties. The guardian of the estate of a ward is entitled to the possession and management of all properties belonging to the ward, to collect all debts, rentals, or claims due such ward, to enforce all obligations in his favor, and to bring and defend suits by or against him; but, in the management of the estate, the guardian shall be governed by the provisions of this Code. It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property. He shall account for all rents, profits, and revenues that the estate would have produced by such prudent management.

(2) Power to Make Tax-Motivated Gifts. (A) On application of the guardian or any interested party, and after notice to all interested persons and to such other persons as the court may direct, and on a showing that the ward will probably remain incompetent during his lifetime, the court may, after hearing and by order, authorize the guardian to apply such principal or income of the ward's estate as is not required for the support of the ward during his lifetime or of his family towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate. The court may authorize the guardian to make gifts of the ward's personal property or real estate, outright or in trust, on behalf of the ward, to or for the benefit of

(i) organizations to which charitable contributions may be made under the Internal Revenue Code and in which it is shown the ward would reasonably have an interest,

(ii) the ward's heirs at law who are identifiable at the time of the order,

(iii) devisees under the ward's last validly executed will, if there be such a will,

(iv) and a person serving as guardian of the ward provided he is eligible under either category (ii) or (iii) above.

(B) The person making application to the court shall outline the proposed estate plan, setting forth all the benefits to be derived therefrom. The application shall also indicate that the planned disposition is consistent with the intentions of the ward insofar as they can be ascertained. If the ward's intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of his estate as herein provided.

(C) The court may appoint a guardian ad litem for the ward or any interested party at any stage of the proceedings, if deemed advisable for the protection of the ward or the interested party.

(D) Subsequent modifications of an approved plan may be made by similar application to the court. [Amended by Acts 1975, 64th Leg., p. 268, ch. 114, § 1, eff. April 30, 1975.]

§ 236. Sums Allowable for Education and Maintenance of Ward

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

(b) Court Approval of Previous Expenditures. When a guardian has in good faith expended funds from the corpus of his ward's estate for support and maintenance for the ward, and when it is not convenient or possible to first secure approval of the Court, if the proof is clear and convincing that such expenditures were reasonable and proper and such that the Court would have granted authority to make the expenditures out of the corpus, and that the ward received the benefits of such expenditures, the judge, in the exercise of his sound discretion, may approve such expenditures in the same manner as if such expenditures were made by the guardian out of the income from the ward's estate. Provided, however, such expenditures may not exceed the sum of Two Thousand Dollars ($2,000) during an annual accounting period.

[Amended by Acts 1975, 64th Leg., p. 978, ch. 374, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1170, ch. 448, § 2, eff. Aug. 29, 1977.]

§ 238A. Administration of Partnership Interest by Personal Representative

If the decedent was a partner in a general partnership and the articles of partnership provide that, on the death of a partner, his or her executor or other personal representative shall be entitled to the place of the deceased partner in the firm, the executor or other personal representative so contracting to come into the partnership shall, to the extent allowed by law, be liable to third persons only to the extent of the deceased partner's capital in the partnership and the estate's assets held by the executor or other personal representative. This section does not exonerate an executor or other personal representative from liability for his or her negligence. [Amended by Acts 1979, 66th Leg., p. 71, ch. 46, § 1, eff. April 1, 1979.]

PART 6. COMPENSATION, EXPENSES, AND COURT COSTS

§ 245. When Costs Are Adjudged Against Representative

When the personal representative of an estate or person neglects the performance of any duty required of him, and any costs are incurred thereby, or if he is removed for cause, he and the sureties on his bond shall be liable for costs of removal and other

additional costs incurred that are not authorized expenditures, as defined by this code.
[Amended by Acts 1977, 65th Leg., p. 1171, ch. 448, § 3, eff. Aug. 29, 1977.]

CHAPTER VIII. PROCEEDINGS DURING ADMINISTRATION AND GUARDIANSHIP

PART 5. SALES

Section
339A. Sale of Property of a Minor by a Parent Without Guardianship.

PART 12. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

404B. Payment by Guardian of Taxes or Expenses.

PART 3. SETTING APART HOMESTEAD AND OTHER EXEMPT PROPERTY, AND FIXING THE FAMILY ALLOWANCE

§ 270. Liability of Homestead for Debts

The homestead shall not be liable for the payment of any of the debts of the estate, except for the purchase money thereof, the taxes due thereon, or work and material used in constructing improvements thereon; and in this last case only when the work and material are contracted for in writing, with the consent of both spouses given in the same manner as required in making a sale and conveyance of the homestead.
[Amended by Acts 1979, 66th Leg., p. 35, ch. 24, § 1, eff. Aug. 27, 1979.]

§ 271. Exempt Property to be Set Apart

Immediately after the inventory, appraisement, and list of claims have been approved, the court shall, by order, set apart for the use and benefit of the surviving spouse and minor children and unmarried children remaining with the family of the deceased, all such property of the estate as is exempt from execution or forced sale by the constitution and laws of the state.
[Amended by Acts 1979, 66th Leg., p. 35, ch. 24, § 2, eff. Aug. 27, 1979.]

§ 272. To Whom Delivered

The exempt property set apart to the surviving spouse and children shall be delivered by the executor or administrator without delay as follows: (a) If there be a surviving spouse and no children, or if the children be the children of the surviving spouse, the whole of such property shall be delivered to the surviving spouse. (b) If there be children and no surviving spouse, such property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian if they be minors. (c) If there be children of the deceased of whom the surviving spouse is not the parent, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian, if they be minors. (d) In all cases, the homestead shall be delivered to the surviving spouse, if there be one, and if there be no surviving spouse, to the guardian of the minor children and unmarried children, if any, living with the family.
[Amended by Acts 1979, 66th Leg., p. 35, ch. 24, § 3, eff. Aug. 27, 1979.]

§ 273. Allowance in Lieu of Exempt Property

In case there should not be among the effects of the deceased all or any of the specific articles exempted from execution or forced sale by the Constitution and laws of this state, the court shall make a reasonable allowance in lieu thereof, to be paid to such surviving spouse and children, or such of them as there are, as hereinafter provided. The allowance in lieu of a homestead shall in no case exceed Ten Thousand Dollars and the allowance for other exempted property shall in no case exceed One Thousand Dollars, exclusive of the allowance for the support of the surviving spouse and minor children which is hereinafter provided for.
[Amended by Acts 1977, 65th Leg., p. 351, ch. 172, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 36, ch. 24, § 4, eff. Aug. 27, 1979.]

§ 274. How Allowance Paid

The allowance made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that come to the hands of the executor or administrator, or in any property of the deceased that such surviving spouse or children, if they be of lawful age, or their guardian if they be minors, shall choose to take at the appraisement, or a part thereof, or both, as they shall select; provided, however, that property specifically bequeathed or devised to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.
[Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 5, eff. Aug. 27, 1979.]

§ 275. To Whom Allowance Paid

The allowance in lieu of exempt property shall be paid by the executor or administrator, as follows:

(a) If there be a surviving spouse and no children, or if all the children be the children of the surviving spouse, the whole shall be paid to such surviving spouse.

(b) If there be children and no surviving spouse, the whole shall be paid to and equally divided among them if they be of lawful age, but if any of such children are minors, their shares shall be paid to their guardian or guardians.

(c) If there be a surviving spouse, and children of the deceased, some of whom are not children of the surviving spouse, the surviving spouse shall receive one-half of the whole, plus the shares of the children of whom the survivor is the parent, and the remaining shares shall be paid to the

children of whom the survivor is not the parent, or, if they are minors, to their guardian.
[Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 6, eff. Aug. 27, 1979.]

§ 276. Sale to Raise Allowance

If there be no property of the deceased that such surviving spouse or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds, of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, the court, on the application in writing of such surviving spouse and children, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.
[Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 7, eff. Aug. 27, 1979.]

§ 277. Preference of Liens

If property upon which there is a valid subsisting lien or encumbrance shall be set apart to the surviving spouse or children as exempt property, or appropriated to make up allowances made in lieu of exempt property or for the support of the surviving spouse or children, the debts secured by such lien shall, if necessity requires, be either paid or continued as against such property. This provision applies to all estates, whether solvent or insolvent.
[Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 8, eff. Aug. 27, 1979.]

§ 279. When Estate is Insolvent

Should the estate, upon final settlement, prove to be insolvent, the title of the surviving spouse and children to all the property and allowances set apart or paid to them under the provisions of this Code shall be absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided.
[Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 9, eff. Aug. 27, 1979.]

§ 280. Exempt Property Not Considered in Determining Solvency

In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the surviving spouse or children, or the allowance in lieu thereof, and the family allowance hereinafter provided for, shall not be estimated or considered as assets of the estate.
[Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 10, eff. Aug. 27, 1979.]

§ 282. Nature of Homestead Property Immaterial

The homestead rights of the surviving spouse and children of the deceased are the same whether the homestead be the separate property of the deceased or community property between the surviving spouse and the deceased, and the respective interests of such surviving spouse and children shall be the same in one case as in the other.
[Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 11, eff. Aug. 27, 1979.]

§ 283. Homestead Rights of Surviving Spouse

On the death of the husband or wife, leaving a spouse surviving, the homestead shall descend and vest in like manner as other real property of the deceased and shall be governed by the same laws of descent and distribution.
[Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 12, eff. Aug. 27, 1979.]

§ 284. When Homestead Not Partitioned

The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the surviving spouse, or so long as the survivor elects to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased is permitted, under the order of the proper court having jurisdiction, to use and occupy the same.
[Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 13, eff. Aug. 27, 1979.]

§ 285. When Homestead Can Be Partitioned

When the surviving spouse dies or sells his or her interest in the homestead, or elects no longer to use or occupy the same as a homestead, or when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.
[Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 14, eff. Aug. 27, 1979.]

§ 286. Family Allowance to Surviving Spouses and Minors

Immediately after the inventory, appraisement, and list of claims have been approved, the court shall fix a family allowance for the support of the surviving spouse and minor children of the deceased.
[Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 15, eff. Aug. 27, 1979.]

§ 287. Amount of Family Allowance

Such allowance shall be of an amount sufficient for the maintenance of such surviving spouse and minor children for one year from the time of the death of the testator or intestate. The allowance shall be fixed with regard to the facts or circumstances then existing and those anticipated to exist during the first year after such death. The allowance may be paid either in a lump sum or in installments, as the court shall order.
[Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 16, eff. Aug. 27, 1979.]

§ 288. When Family Allowance Not Made

No such allowance shall be made for the surviving spouse when the survivor has separate property adequate to the survivor's maintenance; nor shall such allowance be made for the minor children when they have property in their own right adequate to their maintenance.

[Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 17, eff. Aug. 27, 1979.]

§ 290. Family Allowance Preferred

The family allowance made for the support of the surviving spouse and minor children of the deceased shall be paid in preference to all other debts or charges against the estate, except expenses of the funeral and last sickness of the deceased.

[Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 18, eff. Aug. 27, 1979.]

§ 291. To Whom Family Allowance Paid

The executor or administrator shall apportion and pay the family allowance:

(a) To the surviving spouse, if there be one, for the use of the survivor and the minor children, if such children be the survivor's.

(b) If the surviving spouse is not the parent of such minor children, or of some of them, the portion of such allowance necessary for the support of such minor child or children of which the survivor is not the parent shall be paid to the guardian or guardians of such child or children.

(c) If there be no surviving spouse, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

(d) If there be a surviving spouse and no minor child or children, the entire allowance shall be paid to the surviving spouse.

[Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 19, eff. Aug. 27, 1979.]

§ 292. May Take Property for Family Allowance

The surviving spouse, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisement; provided, however, that property specifically devised or bequeathed to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

[Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 20, eff. Aug. 27, 1979.]

§ 293. Sale to Raise Funds for Family Allowance

If there be no personal property of the deceased that the surviving spouse or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the court, as soon as the inventory, appraisement, and list of claims are returned and approved, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

[Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 21, eff. Aug. 27, 1979.]

PART 4. PRESENTATION AND PAYMENT OF CLAIMS

§ 294. Notice by Representative of Appointment

(a) Giving of Notice Required. Within one month after receiving letters, personal representatives of estates shall send to the comptroller of public accounts by certified or registered mail if the decedent remitted or should have remitted taxes administered by the comptroller of public accounts and publish in some newspaper, printed in the county where the letters were issued, if there be one, a notice requiring all persons having claims against the estate being administered to present the same within the time prescribed by law. The notice shall state the time of issuance of letters held by the representative, together with his residence and post office address.

[See Compact Edition, Volume 2, for text of (b) and (c)]

[Amended by Acts 1981, 67th Leg., p. 243, ch. 102, § 9, eff. Aug. 31, 1981.]

§ 312. Contest of Claims, Action by Court, and Appeals

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

(e) Appeal. When a claimant or any person interested in an estate or ward shall be dissatisfied with the action of the court upon a claim, he may appeal therefrom to the courts of (civil) appeals, as from other judgments of the county court in probate matters.

[Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 14, eff. June 21, 1975.]

§ 313. Suit on Rejected Claim

When a claim or a part thereof has been rejected by the representative, the claimant shall institute suit thereon in the court of original probate jurisdiction in which the estate is pending or in any other court of proper jurisdiction within ninety days after such rejection, or the claim shall be barred. When a rejected claim is sued on, the endorsement made on or annexed thereto shall be taken to be true without further proof, unless denied under oath. When a rejected claim or part thereof has been established by suit, no execution shall issue, but the judgment shall be certified within thirty days after rendition, if of any court other than the court of original probate jurisdiction, and filed in the court in which

the cause is pending, entered upon the claim docket, classified by the court, and handled as if originally allowed and approved in due course of administration.

[Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 5, eff. June 21, 1975.]

§ 320. Order of Payment of Claims

(a) Estates of Decedents. Executors and administrators, when they have funds in their hands belonging to the estate, shall pay in the following order:

(1) Funeral expenses and expenses of last sickness, in an amount not to exceed Two Thousand Dollars, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or administration, but if not presented within such time, their payment shall be postponed until the allowances made to the widow and children, or to either, are paid.

(2) Allowances made to the widow and children, or to either.

(3) Expenses of administration and the expenses incurred in the preservation, safe-keeping, and management of the estate.

(4) Other claims against the estate in the order of their classification.

(b) Estates of Wards. The guardian shall pay all claims against the estate of his ward that have been allowed and approved, or established by suit, as soon as practicable, in the following order:

(1) expenses for the care, maintenance and education of the ward or his dependents;

(2) funeral expenses and expenses of last sickness, if the guardianship is kept open after the death of the ward as provided by Section 404A of this Code, except that any claim against the estate of a ward that has been allowed and approved or established by suit prior to the death of the ward shall be paid prior to the funeral expenses and expenses of last sickness;

(3) expenses of administration; and

(4) other claims against the estate.

(c) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitations and upon due proof procure an order for its allowance and payment from the estate.

[Amended by Acts 1975, 64th Leg., p. 1818, ch. 554, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 352, ch. 173, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1876, ch. 758, § 1, eff. Aug. 27, 1979.]

§ 322. Classification of Claims Against Estates of Decedent

Claims against an estate of a decedent shall be classed and have priority of payment, as follows:

Class 1. Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed Five Thousand Dollars, any excess to be classified and paid as other unsecured claims.

Class 2. Expenses of administration and expenses incurred in the preservation, safe-keeping, and management of the estate.

Class 3. Claims secured by mortgage or other liens, including tax liens, so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage or lien shall exist upon the same property, the oldest shall be first paid; but no preference shall be given to such mortgage or lien.

Class 4. Claims for taxes, penalties, and interest due under Title 2, Tax Code; [1] Chapter 8, Title 132, Revised Civil Statutes of Texas, 1925, as amended; [2] Section 81.111, Natural Resources Code; the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes); Section 11B, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes); or Section 16, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes).

Class 5. All other claims legally exhibited within six months after the original grant of letters testamentary or of administration.

Class 6. All claims legally exhibited after the lapse of six months from the original grant of letters testamentary or of administration.

[Amended by Acts 1979, 66th Leg., p. 869, ch. 394, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 242, ch. 102, § 8, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 1785, ch. 389, §§ 38A, 39(*l*), eff. Jan. 1, 1982.]

[1] Tax Code, § 101.001 et seq.
[2] Civil Statutes, art. 8801 et seq.
Section 1 of Acts 1981, 67th Leg., ch. 389, enacted Title 2 of the Tax Code.

PART 5. SALES

§ 339A. Sale of Property of a Minor by a Parent Without Guardianship

(a) A natural or adoptive parent of a minor who is not a ward may apply to the court for an order to sell real or personal property of a minor in an estate without being appointed guardian, when the value of the property does not exceed $10,000. A sale of property pursuant to an order of the court under this section is not subject to disaffirmance by the minor.

(b) The parent shall make application under oath to the court for the sale of the property. Venue for the application shall be the same as in applications for the appointment for guardians of a minor. The application shall contain the following information:

(1) a legal description of real property and a description identifying personal property;

(2) the name of the minor or minors and his interest in the property;

(3) the name of the purchaser;

(4) that the sale of the minor's interest is for cash; and

(5) that all funds received by the parent shall be used for the use and benefit of the minor.

(c) The court, on receipt of the application, shall set the application for hearing at a date not less than five days from date of the filing of the application and, if it deems necessary, may cause citation to be issued.

(d) At the time of the hearing of the application, the court shall order the sale of the property, if it is satisfied from the evidence that the sale is in the best interest of the minor. The court may require an independent appraisal of the property to be sold to establish the minimum sale price.

(e) When the order of sale has been entered by the court, the purchaser of the property shall pay the proceeds of the sale belonging to the minor or minors into the registry of the court.

(f) Nothing in this section shall prevent the proceeds so deposited from being withdrawn from the registry of the court under Section 144 of the Texas Probate Code.

[Added by Acts 1979, 66th Leg., p. 1754, ch. 713, § 26, eff. Aug. 27, 1979.]

§ 341. Application for Sale of Real Estate

(a) Application may be made to the court for an order to sell property of the estate when it appears necessary or advisable in order to:

(1) Pay expenses of administration, funeral expenses and expenses of last sickness of decedents, and allowances and claims against the estates of decedents and wards.

(2) Make up the deficiency when the income of a ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay debts against the estate.

(3) Dispose of property of the estate of a ward which consists in whole or in part of an undivided interest in real estate, when it is deemed to the best interest of the estate to sell such interest.

(4) Dispose of real estate of a ward, any part of which is nonproductive or does not produce sufficient revenue to make a fair return upon the value of such real estate, when the improvement of same with a view to making it productive is not deemed advantageous or advisable, and it appears that the sale of such real estate and the investment of the money derived therefrom would be to the best interest of the estate.

(5) Conserve the estate of a ward by selling mineral interest and/or royalties on minerals in place owned by a ward.

(6) Dispose of any interest in real property of the estate of a decedent, when it is deemed to the best interest of the estate to sell such interest.

(b) to (g) Repealed by Acts 1979, 66th Leg., p. 1755, ch. 713, § 27, eff. Aug. 27, 1979.

[Amended by Acts 1975, 64th Leg., p. 975, ch. 372, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 976, ch. 373, § 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 1755, ch. 713, § 27, eff. Aug. 27, 1979.]

§ 343. Setting of Hearing on Application

Whenever an application for the sale of real estate is filed, it shall immediately be called to the attention of the judge by the clerk, and the judge shall designate in writing a day for hearing said application, any opposition thereto, and any application for the sale of other land, together with the evidence pertaining thereto. The judge may, by entries on the docket, continue such hearing from time to time until he is satisfied concerning the application.

[Amended by Acts 1979, 66th Leg., p. 1755, ch. 713, § 28, eff. Aug. 27, 1979.]

§ 350. Private Sales of Real Estate

All private sales of real estate shall be made in such manner as the court directs in its order of sale, and no further advertising, notice, or citation concerning such sale shall be required, unless the court shall direct otherwise.

[Amended by Acts 1979, 66th Leg., p. 1755, ch. 713, § 29, eff. Aug. 29, 1979.]

§ 355. Action of Court on Report of Sale

After the expiration of five days from the filing of a report of sale, the court shall inquire into the manner in which the sale was made, hear evidence in support of or against such report, and determine the sufficiency or insufficiency of the representative's general bond, if any has been required and given; and, if he is satisfied that the sale was for a fair price, was properly made and in conformity with law, and has approved any increased or additional bond which may have been found necessary to protect the estate, the court shall enter a decree confirming such sale, showing conformity with the foregoing provisions of the Code, and authorizing the conveyance of the property to be made by the representative of the estate upon compliance by the purchaser with the terms of the sale, detailing such terms. If the court is not satisfied that the sale was for a fair price, was properly made, and in conformity with law, an order shall be made setting the same aside and ordering a new sale to be made, if necessary. The action of the court in confirming or disapproving a report of sale shall have the force and effect of a final judgment; and any person interested in the estate or in the sale shall have the right to have such decrees reviewed as in other final judgments in probate proceedings.

[Amended by Acts 1975, 64th Leg., p. 2197, ch. 701, § 6, eff. June 21, 1975.]

PART 9. PARTITION OF WARD'S ESTATE IN REALTY

§ 388. Partition of Ward's Interest in Realty

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

(f) Judicial Proceeding to Secure Partition. If the guardian of the estate of a ward is of the opinion that it is for the best interest of said ward's estate that any real estate which said ward owns in common with others, part owner or owners, should be partitioned, he may bring suit in the court in which such guardianship proceedings are pending against the other part owner for the partition of such real estate; and the court after hearing such suit may, if it is satisfied that such necessity exists, enter an order partitioning such real estate to the owner thereof.

[Amended by Acts 1975, 64th Leg., p. 1128, ch. 427, § 1, eff. June 19, 1975.]

PART 10. INVESTMENTS, LOANS, AND CONTRIBUTIONS OF ESTATES OF WARDS

§ 389A. Other Investments

(a) Application to Invest or Sell. When a guardian of an estate shall deem it to be in the best interest of its ward to invest in or sell any property or security in which a trustee is authorized to invest by either Article 7425b–46 V.A.T.S. (the Texas Trust Act) or Article 7425b–48 V.A.T.S. (the Uniform Common Trust Fund Act), and such investment or sale is not expressly permitted by other Sections of this Code, the guardian may file a written application in the court where the guardianship is pending, asking for an order authorizing it to make such desired investment or sale and stating the reason why the guardian is of the opinion that such investment or sale would be beneficial to the ward. No citation or notice is necessary unless ordered by the court.

[See Compact Edition, Volume 2 for text of (b) and (c)]

[Amended by Acts 1977, 65th Leg., p. 1137, ch. 428, § 1, eff. Aug. 29, 1977.]

PART 12. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

§ 404. Closing Administration of Estates of Decedents and Guardianship of Wards or Their Estates

Administration of the estates of decedents and guardianship of the persons and estates of wards shall be settled and closed:

(a) Estates of Decedents. When all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets in the hands of an administrator or executor of such estate will permit, and when there is no further need for administration.

(b) Persons and Estates of Wards.

1. Of a Minor. When the minor dies, or becomes an adult by becoming eighteen years of age, or by removal of disabilities of minority according to the law of this state, or by marriage.

2. Of Incompetents. When the ward dies, or is decreed as provided by law to have been restored to sound mind or sober habits, or, being married, when his or her spouse has qualified as survivor in community.

3. Of a Person Entitled to Funds From Any Governmental Source. When the ward dies, or when the court finds that the necessity for the guardianship has ended.

4. Exhaustion of Estate. When the estate of a ward becomes exhausted.

5. When Income Negligible. When the foreseeable income accruing to a ward or to his estate is so negligible that maintaining the guardianship in force would be burdensome. In such case the court may authorize such income to be paid to a parent, or some other person who has acted as guardian, to assist as far as possible in the maintenance of the ward, and without liability to account to the court for such income.

[Amended by Acts 1975, 64th Leg., p. 104, ch. 45, § 2, eff. Sept. 1, 1975.]

§ 404A. Payment of Funeral Expenses and Other Debts

Notwithstanding the provisions of the preceding Section, before the guardianship of the persons and the estates of wards shall be closed upon the death of any ward, the guardian subject to the approval of the Court may make all funeral arrangements, pay for such funeral expenses out of the estate of the deceased ward and pay all other debts out of such estate. If a personal representative of the estate of a deceased ward is appointed, the Court shall on the written complaint of the personal representative cause the guardian to be cited to appear and present a final account as provided in Section 406 of this Code.

[Amended by Acts 1979, 66th Leg., p. 1876, ch. 758, § 2, eff. Aug. 29, 1979.]

§ 404B. Payment by Guardian of Taxes or Expenses

Notwithstanding any other provision of this Code, a Probate Court in which proceedings to declare heirship are maintained, under the provisions of Subsection (c), Section 48 of this Code, may order the payment by the guardian of inheritance or estate taxes or expenses of administering the estate and may order the sale of properties in the ward's estate, when necessary, for the purpose of paying inheritance or estate taxes, or expenses of administering the estate, or for the purpose of distributing the estate among the heirs.

[Added by Acts 1977, 65th Leg., p. 1522, ch. 616, § 3, eff. Aug. 29, 1977.]

§ 406. Procedure in Case of Neglect or Failure to File Final Account; Payments Due Meantime

If a personal representative charged with the duty of filing a final account fails or neglects so to do at the proper time, the court shall, upon its own motion, or upon the written complaint of any one interested in the decedent's or ward's estate which has been administered, cause such representative to be cited to appear and present such account within the time specified in the citation. So far as applicable, this Section shall also govern with respect to guardians of the person. Meantime, rentals or other payments becoming due to the ward, his estate, or his guardian, between the date the ward's disability terminates or the date of the ward's death and the effective date of the guardian's discharge may be paid or tendered to the emancipated ward, his guardian, or the personal representative of the ward's estate, at obligor's option, and such payment or tender shall constitute and be an absolute discharge of such matured obligation for all purposes to the extent of the amount thus paid or tendered.

[Amended by Acts 1979, 66th Leg., p. 1876, ch. 758, § 3, eff. Aug. 27, 1979.]

§ 407. Citation Upon Presentation of Account for Final Settlement

Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents or wards, or of the persons of wards, citation shall contain a statement that such final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person or persons cited to appear and contest the same if they see proper. Such citation shall be issued by the county clerk to the persons and in the manner set out below.

1. In case of the estates of deceased persons, notice shall be given as directed by the court by written order.

2. If a ward be a living resident of this state who is 14 years of age or older, and his or her residence be known, the ward shall be cited by personal service, unless the ward, in person or by attorney, by writing filed with the clerk, waives the issuance and personal service of citation.

3. If one who has been a ward be deceased, the ward's executor or administrator, if one has been appointed, shall be personally served, but no service is required if the executor or administrator is the same person as the guardian.

4. If a ward's residence is unknown, or if the ward is a non-resident of this state, or if the ward is deceased and no representative of the ward's estate has been appointed and qualified in this state, the citation to the ward or to the ward's estate shall be by publication, unless the court by written order directs citation by posting.

5. If the court deems further additional notice necessary, it shall require the same by written order.

[Amended by Acts 1979, 66th Leg., p. 1755, ch. 713, § 30, eff. Aug. 27, 1979.]

§ 408. Action of the Court

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

(b) Distribution of Remaining Property. Upon final settlement of an estate, if there be any of such estate remaining in the hands of the personal representative, the court shall order that it be delivered, in case of a ward, to such ward, or in the case of a deceased ward to the personal representative of the deceased ward's estate if one be appointed, or to any other person legally entitled thereto; in case of a decedent, that a partition and distribution be made among the persons entitled to receive such estate.

[See Compact Edition, Volume 2 for text of (c) and (d)]

[Amended by Acts 1979, 66th Leg., p. 1877, ch. 758, § 4, eff. Aug. 27, 1979.]

CHAPTER XI. NOW TESTAMENTARY TRANSFERS

PART 1. MULTIPLE-PARTY ACCOUNTS

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PART 2. PROVISIONS RELATING TO EFFECT OF DEATH

450. Provisions for Payment or Transfer at Death.

PART 1. MULTIPLE-PARTY ACCOUNTS

§ 436. Definitions

In this part:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(3) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust compa-

nies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions.

(4) "Joint account" means an account payable on request to one or more of two or more parties whether or not there is a right of survivorship.

(5) "Multiple-party account" means a joint account, a P.O.D. account, or a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(6) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits made to that account by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include a named beneficiary unless the beneficiary has a present right of withdrawal.

(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge.

(9) "Proof of death" includes a certified copy of a death certificate or the judgment or order of a court in a proceeding where the death of a person is proved by circumstantial evidence to the satisfaction of the court as provided by Section 72 of this code.

(10) "P.O.D. account" means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

(11) "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(12) "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution, but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(13) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party.

(14) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. It is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client.

(15) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 437. Ownership as Between Parties and Others

The provisions of Sections 438 through 440 of this code that concern beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 895, ch. 319, § 2, eff. Sept. 1, 1981.]

§ 438. Ownership During Lifetime

(a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or

payees. If two or more parties are named as original payees, during their lifetimes rights as between them are governed by Subsection (a) of this section.

(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by Subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 439. Right of Survivorship

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties against the estate of the decedent if, by a written agreement signed by the party who dies, the interest of such deceased party is made to survive to the surviving party or parties. A survivorship agreement will not be inferred from the mere fact that the account is a joint account. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 438 of this code augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death, and the right of survivorship continues between the surviving parties if a written agreement signed by a party who dies so provides.

(b) If the account is a P.O.D. account, on death of the original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee. If two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account, on death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent. If two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 440. Effect of Written Notice to Financial Institution

The provisions of Section 439 of this code as to rights of survivorship are determined by the form of the account at the death of a party. Notwithstanding any other provision of the law, this form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 441. Accounts and Transfers Nontestamentary

Transfers resulting from the application of Section 439 of this code are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to the testamentary provisions of this code.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 442. Rights of Creditors

No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and minor children, if other assets of the estate are insufficient. A party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to the deceased party's personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate, but is not liable in an amount greater than the amount that the party, P.O.D. payee, or beneficiary received from the multiple-party account. No proceeding to assert this liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor, or one acting for a minor child of the decedent, and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution received written notice from the personal representative stating the sums needed to pay debts, taxes, and expenses of administration.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 443. Protection of Financial Institutions

Sections 444 through 449 of this code govern the liability of financial institutions that make payments as provided in this chapter and the set-off rights of the institutions.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 444. Payment on Signature of One Party

Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. A multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 445. Payment of Joint Account After Death or Disability

Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded, but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Section 439 of this code.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 446. Payment of P.O.D. Account

A P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 447. Payment of Trust Account

A trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 448. Discharge from Claims

Payment made as provided by Section 444, 445, 446, or 447 of this code discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

§ 449. Set-Off to Financial Institution

Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

PART 2. PROVISIONS RELATING TO EFFECT OF DEATH

§ 450. Provisions for Payment or Transfer at Death

(a) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension plan, trust agreement, conveyance of real or person-

al property, or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this code does not invalidate the instrument or any provision:

(1) that money or other benefits theretofore due to, controlled, or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(2) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promissor before payment or demand; or

(3) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(b) Nothing in this section limits the rights of creditors under other laws of this state.

[Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979.]

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REVISED CIVIL STATUTES

TITLE 1

GENERAL PROVISIONS

Article
1c. Expired.
11c. References to General Appropriations Act.

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

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

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

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

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

Art. 1b. Liability of Real Property Owner Permitting Persons to Enter for Recreational Purposes

Sec. 1. If any owner, lessee or occupant of real property gives permission to another to enter the premises for recreational purposes, he does not thereby

(1) extend any assurance that the premises are safe for such purposes, or

(2) constitute the person to whom permission is granted one to whom a greater degree of care is owed than that owed to a trespasser on the premises, or

(3) assume responsibility for or incur liability for any injury to persons or property caused by any act of persons to whom permission is granted.

[See Compact Edition, Volume 3 for text of 2 to 5]

Sec. 6. (a) The work "premises," as used in this Act, shall include lands, roads, waters, water courses, and private ways, together with all buildings, structures, machinery or equipment attached thereto or located thereon.

(b) The term "recreational purposes," as used in this Act, means activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing and water sports.

[Amended by Acts 1981, 67th Leg., p. 934, ch. 349, §§ 1, 2, eff. June 10, 1981.]

Art. 1c. Expired

By the terms of § 2 of this article, the Governor's Committee on Human Relations ceased to exist on August 31, 1975.

SPECIAL LAWS

Art. 2. Special Laws: Notice

Any person intending to apply for the passage of any local or special law shall give notice of such intention by having a statement of the substance of such law published once in some newspaper published in the county embracing the locality to be affected by said law, at least thirty days prior to the introduction into the Legislature of such contemplated law.

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

CONSTRUCTION OF LAWS

Art. 11c. References to General Appropriations Act

Sec. 1. [Amends art. 6252–11, § 2]

Sec. 2. [Amends art. 6701m–1]

Sec. 3. It is the intent of the legislature that references in law to a specific article of the General Appropriations Act should be by article title only.

Sec. 4. If a statute enacted or last amended before 1982 refers by number to an article of the General Appropriations Act, the reference shall be construed as meaning the article of the current

General Appropriations Act, regardless of numerical designation, that corresponds in substance to the numerically cited article as it existed on the date of the enactment or most recent amendment of the statutory citation.

[Added by Acts 1981, 67th Leg., p. 1006, ch. 383, §§ 3, 4, eff. Aug. 31, 1981.]

MISCELLANEOUS

Art. 26. Oaths, Affidavits and Affirmations; Persons Authorized to Administer and Issue Certificate; Armed Forces Members and Spouses; Presumption; Absence of Seal

1. All oaths, affidavits, or affirmations made within this State may be administered and a certificate of the fact given by:

a. A judge, clerk, or commissioner of any court of record;

b. A notary public;

c. A justice of the peace;

d. Any member of any board or commission created by the laws of this State, in matters pertaining to the duties thereof;

e. The Secretary of State of Texas; and

f. An employee of the Secretary of State of Texas who has duties related to the records required by Chapter 14, Texas Election Code, as amended (Article 14.01 et seq., Vernon's Texas Election Code), in matters pertaining to those duties.

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

4. In addition to the methods above provided, any such oath, affidavit, or affirmation made by a member of the Armed Forces of the United States of America or any Auxiliaries thereto, or by the husband or wife of a member of the Armed Forces of the United States of America or any Auxiliaries thereto, may be administered by any commissioned officer in the Armed Forces of the United States of America or in the Auxiliaries thereto, and a certificate of such fact may be made by such officer.

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

No oath, affidavit, or affirmation administered in accordance with the provisions of this sub-section 4 of this Act shall be held invalid by reason of the failure of the officer certifying to such oath, affidavit, or affirmation to attach an official seal to the certificate thereto.

[Amended by Acts 1975, 64th Leg., p. 166, ch. 70, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2885, ch. 771, § 1, eff. Aug. 31, 1981.]

Art. 29b. Annual Financial Statements; Publication by School, Soil Conservation, Road, and Other Districts

(a) The governing body of each school district, junior college district, road district, soil conservation district, water improvement district, water control and improvement district, fresh water supply district, drainage district, navigation district, river authority, conservation and reclamation district, or any other kind of district organized under Section 52 of Article III or Section 59 of Article XVI of the Constitution of Texas, shall cause to be prepared an annual financial statement showing the total receipts of each fund subject to its orders during the fiscal year, itemized according to source, such as taxes, assessments, service charges, grant of state money, gifts, or any other general source from which such funds are derived; showing total disbursements of such funds, itemized according to the nature of the expenditure; and showing the balance on hand in each fund at the close of the fiscal year.

(b) Except as provided by Subsection (c) of this section, the presiding officer of such governing body shall submit such financial statements to some newspaper in each county in which the district or any part thereof is located. The publication shall be made within two months after the close of the fiscal year, except that the publication of a school district statement shall be made within 120 days after the close of the fiscal year and in accordance with the accounting method required by the Central Education Agency. Provided, however, if the district is located in more than one county then such publication may be in any newspaper having a general circulation in said district. If there is no newspaper published in the county, then the publication shall be made in a newspaper in an adjoining county.

(c) The presiding officer of a school district shall submit the district's financial statement to a daily, weekly, or biweekly newspaper published within the boundaries of the district. If no daily, weekly, or biweekly newspaper is published within the boundaries of the district, the financial statement shall be published in accordance with Subsection (b) of this section.

[Amended by Acts 1981, 67th Leg., p. 457, ch. 193, § 1, eff. May 25, 1981; Amended by Acts 1981, 67th Leg., p. 628, ch. 249, § 1, eff. May 28, 1981.]

Art. 29d. Official Notice of Federal Decennial Census

Sec. 1. (a) Except as provided by Subsection (b) of this section, neither the state nor any political subdivision or agency thereof except the legislature shall ever officially recognize or act upon any report or publication, in whatever form, of any Federal Decennial Census, either as a whole or as to any part thereof, before the first day of September of the year immediately following the calendar year during which such census was taken.

(b) For purposes of redistricting, a political subdivision that is governed by a body elected from single-member districts may recognize and act on the population tabulations of a census on or after the date on which the governor receives the report of the basic tabulations of population from the Secretary of Commerce under 13 U.S.C. Sec. 141(c). If a statute requires political subdivisions classified by population to elect the governing body from single-member districts, this subsection does not apply to a political subdivision that is not subject to the statute under the immediately prior census.

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

[Amended by Acts 1981, 67th Leg., p. 1873, ch. 450, § 1, eff. June 11, 1981.]

Art. 29e. Boards and Commissioners Courts; Notice of Certain Public Hearings

(a) In addition to other required notice and if not otherwise required by law to give notice by publication, any school board, county commissioners court, or governing board of a city shall publish notice not more than 30 days nor less than 10 days before a public hearing relating to fiscal budgets or a regular or special election. Except as provided by Subsection (b) of this section, the notice shall be published in at least one newspaper of general circulation in the county in which the board or court is located.

(b) A school board shall publish notice in a daily, weekly, or biweekly newspaper published within the boundaries of the district. If no daily, weekly, or biweekly newspaper is published within the boundaries of the district, the school board shall publish notice in accordance with subsection (a) of this section.

[Amended by Acts 1979, 66th Leg., p. 2315, ch. 841, § 4(a), eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 458, ch. 193, § 2, eff. Jan. 1, 1982.]

TITLE 2

ACCOUNTANTS—PUBLIC AND CERTIFIED

Article
41a–1. Public Accounting Act of 1979.
41b. Audits of River Authorities.

Art. 41a. Repealed by Acts 1979, 66th Leg., p. 1496, ch. 646, § 30, eff. Sept. 1, 1979

Prior to repeal, this article was amended by Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.017.

See, now, art. 41a–1.

Art. 41a–1. Public Accounting Act of 1979

Policy and Purpose

Sec. 1. The practice of public accountancy is in all respects a learned profession having specialized educational and experience requirements. The terms "accountant" and "auditor" and the derivations, combinations, and abbreviations of those terms carry with them an implication of competence in the profession of public accountancy on which the public relies in personal, business, and public activities and enterprises. It is the policy of this state and the purpose of this Act that the admission of persons to practice public accountancy depends on education and experience commensurate with and required by the exigencies of the profession, that persons professing to practice public accountancy be qualified to do so, that the persons continue to maintain high standards of professional competence, integrity, and learning, that areas of specialized practice require special training, and that the activities and competitive practices of those practicing public accountancy be regulated to be free of commercial exploitation toward the end that the public will be provided with a high level of professional competence at reasonable fees by independent, qualified persons.

Short Title

Sec. 1A. This Act may be cited as the Public Accountancy Act of 1979.

Definitions

Sec. 2. In this Act:

(1) "Board" means the Texas State Board of Public Accountancy.

(2) "Person" means an individual, partnership, or corporation.

(3) "State" includes any state, territory, or insular possession of the United States and the District of Columbia.

(4) "Corporation" means a professional public accounting corporation organized under The Texas Professional Corporation Act, as amended (Article 1528e, Vernon's Texas Civil Statutes), or an equivalent law of another state, territory, or foreign country.

(5) "Financial statement" means a statement and related footnotes that purport to show financial position at a specified time or changes in financial position during a specified period of time, including a statement that uses the cash or other incomplete basis of accounting. The term includes a balance sheet, statement of income, statement of retained earnings, statement of changes in financial position, and statement of changes in owners' equity or any combination thereof, but does not include incidental financial data included in a management advisory or consulting services report to support recommendations to a client, nor does it include a tax return and supporting schedules.

Acts Not Restricted

Sec. 3. (a) Nothing contained in this Act shall be construed as applying to restrict any official act of any county auditor or other officer of the state, county, municipality, or other political subdivision or any officer of a federal department or agency or of their assistants, deputies, or employees while working in their official capacities.

(b) Nothing contained in this Act shall prohibit any person not a certified public accountant or public accountant from serving as an employee of a certified public accountant or public accountant, partnership, or corporation composed of certified public accountants and/or public accountants holding a license or licenses to practice issued by the board; provided, however, that such employee shall not issue any accounting or financial statement over his own name.

(c) Nothing contained in this Act shall prohibit a certified public accountant or a registered public accountant of another state or any accountant who holds a certificate, degree, or license in a foreign country, constituting a recognized qualification for the practice of public accountancy in such country, from temporarily practicing in this state on professional business incident to his regular practice outside this state; provided that such temporary practice is conducted in conformity with the laws of Texas and the regulations and rules of professional conduct promulgated by the board. The person coming into this state shall notify the board of his incidental, temporary practice in the state and shall

pay to the board a fee set by the board, not to exceed $10.

State Board of Public Accountancy

Sec. 4. (a) The Texas State Board of Public Accountancy shall consist of 12 members, each of whom shall be a citizen of the United States and a resident of this state. Members of the board and their successors shall be appointed by the governor with the advice and consent of the senate. At least seven members shall be certified public accountants in public practice. Two members shall be certified public accountants or public accountants. The remaining three members shall be public representatives who are not licensed under this Act and who are not financially involved in an organization subject to regulation by the board. The term of office of each member of the board shall be six years and each member shall continue until a successor is appointed. Members of the present board shall continue in office until their respective terms have expired or until their successors have been appointed.

(b) A member of the board may not be an officer, employee, or paid consultant of a trade association of the public accountancy profession.

(c) A member or employee of the board may not be related within the second degree of affinity or within the second degree of consanguinity to a person who is an officer, employee, or paid consultant of a trade association of the profession of public accountancy.

(d) A board member who has served as a member for six consecutive years shall not be eligible for reappointment until two years shall have elapsed between the end of the term of his last prior appointment and the beginning of the term of a new appointment.

(e) Each member of the board is entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the board and to $100 for each day on which the member attends an official meeting of the board or assists in the administration of an examination under this Act.

(f) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(g) Each member of the board shall be present for at least one-half of the regularly scheduled board meetings held each year. Failure of a board member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.

(h) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not act as a general counsel to the board or serve as a member of the board.

Powers and Duties of Board

Sec. 5. (a) The board shall administer and carry out this Act and shall:

(1) elect from its members a chairman, secretary, treasurer, and other officers as the board considers necessary;

(2) keep records of all proceedings and actions by and before the board;

(3) keep a seal which shall be judicially noticed; and

(4) employ personnel and independent contractors necessary to assist it in the performance of its duties.

(b) A majority of the board constitutes a quorum for the transaction of business. The members of the board who are not certified public accountants have all the authority, responsibility, and duties of any other member of the board.

(c) The board shall keep an information file about each complaint filed with the board. If a written complaint is filed with the board relating to a licensee under this Act, the board, at least as frequently as quarterly and until the complaint is finally disposed of, shall notify the complainant of the status of the complaint.

Rulemaking

Sec. 6. (a) The board shall promulgate rules deemed necessary or advisable to effectuate this Act, including the promulgation of rules of professional conduct in order to establish and maintain high standards of competence and integrity in the practice of public accountancy and to insure that the conduct and competitive practices of licensees serve the purposes of this Act and the best interest of the public. The board in its rules of professional conduct shall not restrict advertising or competitive bidding by licensees except if necessary to:

(1) insure that advertising, price information, and other communications from licensees are informative, free of deception, and consistent with the professionalism expected and deserved by the public from those engaged in the practice of public accountancy;

(2) insure that the conduct and dealings of licensees are free from fraud, undue influence, deception, intimidation, overreaching, harassment, and other forms of vexatious conduct, including uninvited solicitations to perform professional accounting services; provided, however, that the term "uninvited solicitation" shall not be deemed to include advertising in print, radio, motion pictures, and television media; or

(3) regulate the competitive practices of licensees to the extent necessary to insure that:

(A) contracts or engagements between a licensee and any state agency, political subdivision, county, municipality, district, authority, or publicly owned utility for the performance of

professional accounting services are not solicited or awarded on the basis of competitive bids submitted for such contracts or engagements in violation of law;

(B) contracts or engagements for the preparation of or opinion on any financial statement which is or can be used by or given to a person or entity not a party to the contract or engagement for the purpose of inducing reliance thereon are not entered into on the basis of competitive bids; this paragraph shall not apply to any tax or consulting services; further, this paragraph shall not apply to any accounting services or any contracts or engagements for or opinion on any financial statement of any sole proprietorship, partnership, or corporation whose sales or other revenues did not exceed $300,000 for the latest complete fiscal year; however, the $300,000 amount provided in this paragraph shall be adjusted proportionately upward or downward on the first day of each calendar year according to changes from January 1, 1979, in the Consumer Price Index for all Urban Consumers published by the United States Department of Labor; or

(C) no licensee engages in any competitive practice which would impair the independence of or quality of services rendered by any licensee or which would impair or restrict the opportunity for members of the public to seek and secure high quality professional accounting services at reasonable prices or which would unreasonably restrict competition among licensees.

The board may adopt a system of required annual continuing education for licensees to assure that the licensees remain informed of changes in the field of accountancy. The board may recognize areas of specialization in the field of accountancy and may recognize alternate ways by which licensees may demonstrate acceptable levels of competency.

(b) If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as added (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the board receives the committees' statements.

Expenses of Board

Sec. 7. (a). The fees and other money received by the board under this Act shall be deposited in the state treasury to the credit of a special fund to be known as the public accountancy fund and may be used only for the administration of this Act.

(b) The board shall file an annual report of its activities with the governor and the Legislative Budget Board. The report shall include a summary statement of all receipts and disbursements of the board for each calendar year. The board's funds shall be audited each fiscal year by the state auditor.

Prohibition Against Practicing Without License

Sec. 8. (a). No person shall assume or use the title or designation "Certified Public Accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant, unless such person has received a certificate as a certified public accountant under this or prior Acts, holds a license issued under Section 9 of this Act which is not revoked or suspended, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under Section 10 of this Act; provided, however, that an accountant of another state or foreign country who has registered under the provisions of this or prior Acts and who holds a license issued under Section 9 of this Act may use the title under which he is generally known in his state or country followed by the name of the state or country from which he received his certificate, license, or degree.

(b) No partnership or corporation shall assume or use the title or designation "Certified Public Accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless such partnership or corporation is registered as a partnership or corporation of certified public accountants under this or prior Acts, holds a license issued under Section 9 of this Act, and all of such partnership's or corporation's offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act.

(c) No person shall assume or use the title or designation "Public Accountant" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant, unless such person is registered as a public accountant under this or prior Acts, holds a license issued under Section 9 of this Act, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under Section 10 of this Act or unless such person has received a certificate as a certified public accountant under this or prior Acts, holds a license issued under Section 9 of this Act, and all of such person's offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act.

(d) No partnership or corporation shall assume or use the title or designation "Public Accountants" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants, unless such partnership or corporation

is registered as a partnership or corporation of public accountants under this or prior Acts or as a partnership or corporation of certified public accountants under this or prior Acts, holds a license issued under Section 9 of this Act, and all of such partnership's or corporation's offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act.

(e) No person shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," or any other title or designation likely to be confused with "certified public accountant" or "public accountant," or any of the abbreviations, "CA," "PA," "EA," "RA," or "LA," or similar abbreviations likely to be confused with "CPA"; provided, however, that only a person holding a license issued under Section 9 of this Act and all of whose offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act may hold himself out to the public as an "accountant" or "auditor" or any combination of said terms; and provided further that a foreign accountant registered under this or prior Acts who holds a license issued under Section 9 of this Act and all of whose offices in this state for the practice of public accountancy are maintained and registered as required under Section 10 of this Act, may use the title under which he is generally known in his state or country, followed by the name of the state or country from which he received his certificate, license, or degree.

(f) No person shall sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he is an accountant or auditor or with any wording indicating that he has expert knowledge in accounting or auditing, to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement, unless he has complied with the applicable provisions of this Act; provided, however, that the provisions of this subsection shall not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of the organization with any wording designating the position, title, or office which he holds in such organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(g) No licensee shall assume or use a name which is misleading in any way as to the legal form of the firm or as to the persons who are partners, officers, or shareholders of the firm. The name or designation any partnership or corporation may assume or use shall contain the personal name or names of one or more individuals presently or previously members thereof, and the name or designation any individual may assume or use shall contain his name. No trade name or descriptive words indicating character or grade of service offered may be used or included except as authorized by rules promulgated by the board.

(h) No licensee shall assume or use the designation "and Company" or "and Associates" or abbreviations thereof in designating a firm in the practice of public accountancy unless there are at least two persons holding licenses under this Act involved in the practice of the firm.

Annual Licenses to Practice

Sec. 9. (a) Licenses shall be issued by the board to the following upon the payment of fees hereinafter specified:

(1) holders of the certificate of "Certified Public Accountant" issued under this or prior Acts; and

(2) such persons as are registered with the board under the provisions of this or prior Acts.

There shall be paid to the Texas State Board of Public Accountancy by all persons referred to in Subdivisions (1) and (2) of this subsection an annual license fee not to exceed $60. All licenses shall expire on the 31st day of December of each year or on such other date or dates as set by the board pursuant to Subsection (b) of this section, but shall annually be renewed for a period of one year upon the payment of a fee of not more than $60, the board being hereby given the authority and duty to determine the amount of such renewal fee not less than 30 days prior to the beginning of the year to which it applies and to mail notices thereof each year by that date.

Failure of any licensee to pay the annual license renewal fee on or before the date it is due shall automatically cancel his license. Any licensee whose license shall have been canceled because of failure to pay the annual license renewal fee may secure reinstatement of his license at any time within that license year upon payment of the delinquent fee together with a penalty of $20. After expiration of the license year for which the license fee was not paid, no license shall be reinstated except upon application and examination satisfactory to the board and payment of delinquent fees and a penalty to be assessed by the board. The board shall have no authority to waive the collection of any fee or penalty.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year. Dates relating to cancellation and reinstatement of licenses shall be adjusted accordingly. For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee shall be payable.

(c) The board by rule may adopt a system by which individual licensees over age 65 may qualify for a reduced license fee.

Registration With the Board

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

(1) all individuals registered as Public Accountants under the Public Accountancy Act of 1945 [1] and all individuals registered under Section 14 of this Act;

(2) partnerships qualified under this or prior Acts;

(3) corporations qualified under this or prior Acts; and

(4) each office established or maintained in this state for the practice of public accountancy in this state by a certified public accountant or partnership or corporation of certified public accountants or by a public accountant or a partnership or corporation of public accountants or by an individual registered under Section 14 of this Act, but no fee shall be charged for such registration. Each such office shall be under the direct supervision of a resident manager who may be either a principal or a staff employee holding a license issued by the board which is in full force and effect; provided that the title or designation "Certified Public Accountant" or the abbreviation "CPA" shall not be used in connection with such office unless such resident manager is the holder of a certificate as a certified public accountant and a license issued by the board, both of which are in full force and effect. Such resident manager may serve in such capacity only in one office at the same time except as authorized by rule of the board. The board shall by regulation prescribe the procedure to be followed in effecting such registrations. The board may by rule require that a sign notifying consumers that complaints may be directed to the board be prominently displayed in each office registered under the provisions of this section and may prescribe the size and contents of such sign.

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

[1] Article 41a (repealed).

Rules and Requirements Applicable to Partnerships and Corporations

Sec. 11. (a) All rules and statutory requirements applying to partnerships apply to corporations. All rules and statutory requirements applying to partners of partnerships apply to incorporators, stockholders, officers, and directors of corporations. All rules and statutory requirements governing employees or agents of partnerships apply to employees or agents of corporations.

(b) All rules and statutory requirements applying to partnerships apply to the partners of the partnership. Rules and statutory requirements applying to corporations apply to incorporators, stockholders, officers, and directors of corporations.

Certification of Certified Public Accountants

Sec. 12. The certificate of a "Certified Public Accountant" shall be granted by the board to any person:

(1) who is a citizen of the United States or who, if not a citizen, has lived in the State of Texas for the 90 days immediately preceding the date of submitting to the board the initial application to take the written examination conducted by the board for the purpose of granting a certificate of "Certified Public Accountant" or has maintained permanent legal residence in Texas for the six months immediately preceding the date of submission;

(2) who shall have qualified to take the examination for the certificate in this state;

(3) who has attained the age of 18 years;

(4) who is of good moral character;

(5) who meets the requirements of education and experience as hereinafter provided:

(A) the experience requirements shall be for the number of years as provided in Paragraph (B) or (C) below and shall be in public practice under the supervision of a certified public accountant or public accountant or in an activity comparable thereto or in any combination of such types of experience in work of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters; and all such experience must be satisfactory to the board;

(B) the education requirement shall be either (i) a baccalaureate degree conferred by a college or university recognized by the board, with a major in accounting, or with a nonaccounting major, supplemented by what the board determines to be substantially the equivalent of an accounting major, with not less than 30 semester hours of accounting and 20 additional semester hours of related courses in other areas of business administration; and the experience requirement shall be two years of the experience described in Paragraph (A) above; or (ii) graduation from an accredited high school, plus two years of study of accounting or related subjects including at least 20 semester hours of accounting in one or more colleges or universities recognized by the board, plus six years of experience under the supervision of a certified public accountant in work described in Paragraph (A) above, in which event such certified pubic accountant or certified public accountants, if the applicant has been employed by more than one, shall certify to the board that the applicant has

had during such six-year period the experience described in Paragraph (A) above; and

(C) the experience requirement shall be only one year of the experience described in Paragraph (A) above for any candidate holding a master's degree in accounting or business administration from a college or university recognized by the board or holding a professional degree in accounting with a minimum of 30 semester hours in accounting designated other than as a master's degree but judged by the board to be equivalent to that degree and to be at an appropriate professional level, if the candidate has satisfactorily completed at least 30 semester hours in accounting and 20 semester hours in other areas of business administration and such related subjects as the board shall determine to be appropriate; and

(6) who shall have passed a written examination in theory of accounts, accounting practice, auditing, commercial law affecting public accounting, and such other related subjects as the board shall determine to be appropriate. A grade of at least 75 percent on each subject shall be required as a passing grade.

Any candidate who meets the education requirements under Paragraph (B) or (C) of Subdivision (5) above and who is duly enrolled as an attorney by the Supreme Court of Texas shall be given credit for commercial law without taking the written examination on commercial law.

The board may by written regulations provide for granting credit to a candidate for his satisfactory completion of a written examination in any of the subjects specified in Subdivision (6) above given by the licensing authority in any other state. Such regulations shall include such requirements as the board shall determine to be appropriate in order that any examination approved as a basis for any such credit shall in the judgment of the board be at least as thorough as the most recent examination given by the board at the time of granting such credit.

None of the education or experience requirements specified above shall apply to a candidate who is registered as a public accountant under The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), and holds a license issued under this Act.

A candidate who has met the education requirements shall be eligible to take the examination in all subjects without waiting until he meets the experience requirements; provided that the candidate also meets the requirements of Subdivisions (1), (2), (3), and (4) of this section.

A candidate for the certificate of certified public accountant who has successfully completed the examination under Subdivision (6) above shall have no status as a certified public accountant, unless and until the candidate has the requisite experience and has received notice of certification as a certified public accountant.

The holder of a certificate heretofore issued under the provisions of prior Acts shall not be required to secure a new certificate as a certified public accountant under this Act.

The applicable education and experience requirements under this Act shall be those in effect on the date of the candidate's application for the examination or reexamination by which the candidate successfully completes the examination. Any person qualified to sit under The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), shall continue to qualify to sit for the examination as long as the initial qualifications are met.

Any person who at the effective date of this Act has entered a program to meet the education and experience requirements of The Public Accountancy Act of 1945, as amended and as in force immediately prior to the effective date of this Act, shall file with the board within 180 days after the effective date of this Act a written declaration thereof and submit such proof thereof as the board may require. After the filing of such declaration and proof under rules and regulations prescribed by the board, a person shall be allowed the time reasonably required to complete his program to meet the education requirements in force immediately prior to the effective date of this Act, but no more than four years following the effective date of this Act to meet such education requirements in force immediately prior to the effective date of this Act. Upon completion of such requirements, if otherwise qualified to take the examination, he shall be permitted to make his application and take the examination under such education requirements.

Every person who has met the requirements of Subdivisions (1), (2), (3), (4), (5), and (6) of this section and is ready to receive his certificate as a "Certified Public Accountant" shall before receiving such certificate take an oath that he will support the Constitution of the United States and of this state and the laws thereof and will comply with the rules of professional conduct promulgated under this Act. This oath shall be administered by a member of the board or by such other person as may be authorized by law to administer oaths.

Reciprocity

Sec. 13. The board may in its discretion waive the examination of and may issue a certificate of "Certified Public Accountant" to any person possessing the other qualifications mentioned in Section 12 of this Act who is the holder of a certificate as certified public accountant issued under the laws of any state or territory or the equivalent thereof issued in any foreign country, provided the requirements for such certificate in the state or territory or foreign country which has granted it to the appli-

cant were in the opinion of the board at least equivalent to those required in this state at the time the applicant's original certificate was issued. The board shall charge for the issuance of such a certificate as a "Certified Public Accountant" under this section a fee of not more than $100.

Registration of Certified Public Accountants of Other States and Persons Holding Similar Titles in Foreign Countries

Sec. 14. A certified public accountant of another state or territory or the holder of a certificate, license, or degree authorizing him to practice public accountancy in a foreign country may register with the board as a certified public accountant of such other state or territory or as holding such certificate, license, or degree of a foreign country, if the board determines that the standards under which the applicant became a certified public accountant or received such certificate, license, or degree were as high as the standards of this state at the same time for granting the certificate of certified public accountant. A person so registered may describe himself as a certified public accountant of the state or territory which issued his certificate or may use the title held by him in a foreign country; provided that the country of its origin is indicated. The registered person must pay the license fee provided in Section 9 of this Act and a processing fee set by the board of not more than $100.

Examinations, Reexaminations, and Fees

Sec. 15. All examinations provided for under this Act shall be conducted by the board. The examination for the certificate of "Certified Public Accountant" shall take place as often as the board deems necessary, but not less frequently than once each year. The board as it considers appropriate may use all or part of the Uniform CPA Examination and any related service available from the American Institute of Certified Public Accountants or the National Association of State Boards of Accountancy. The board by rule may adopt a system for the maintenance of the security and integrity of the examination process.

Not later than the 30th day after the day on which the board receives an individual's examination results, the board shall send to the individual the examination results.

A candidate who fails shall have the right to apply for additional examinations, subject to the satisfaction of the board that the candidate continues to meet requirements of Subdivisions (1), (2), and (4) of Section 12 of this Act.

Any candidate who at the time of filing his application to take the examination or reexamination provided for herein had prior to the effective date of this Act any examination credits or who after the effective date of this Act shall pass in a single examination two or more subjects (accounting practice counting as two subjects), or who is registered as a public accountant under The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), and who shall pass one or more subjects after the effective date of this Act shall have the right, subject to the approval of his application for reexamination under the provisions of the preceding paragraph, to be reexamined in the remaining subjects only at subsequent examinations held by the board, except that the candidate must pass the remaining subjects within the next 10 consecutive examinations, and the candidate may receive credit for one or more subjects in any subsequent examination. When the candidate shall have received credit for all subjects, the candidate shall then be considered to have passed the examination. A candidate having two or more credits on September 1, 1979, is entitled to an unlimited number of reexaminations on the remaining parts of the examination.

The board shall charge for the first examination of a candidate for certification as a "Certified Public Accountant" a fee of not more than $150, which shall be payable by the applicant at the time of making the initial application. For each subsequent examination or reexamination, the fee shall not exceed for each subject for which the candidate is eligible $60 for accounting practice and $30 for each of theory of accounts, auditing, and commercial law, which shall be payable by the applicant at the time of making the application for the subsequent examination or reexamination. Where the applicant fails to be present for the examination and shows to the board satisfactory reason for such failure, the board may in its discretion refund any fee so paid.

All fees provided for herein shall be paid to the Texas State Board of Public Accountancy.

It is further provided that any applicant who has failed any such examination or reexaminations shall have a right to request a copy of the questions and the answers thereto made by him upon any such examination with the grade clearly shown, together with a copy of solutions to such questions; and the board shall forthwith comply with such request by delivering by registered or certified mail to such applicant a true copy of the questions and his answers thereto, together with a copy of solutions to such questions. The board may charge such applicant a reasonable fee therefor, and such request by the candidate shall be made within six months after the grades are mailed to said candidate and not thereafter.

Use of Designation "Certified Public Accountant"

Sec. 16. Any person who has received from the board a certificate of "Certified Public Accountant" and holds a license to practice shall be styled and known as a "Certified Public Accountant" and may also use the abbreviation "CPA."

Use of Designation "Certified Public Accountant" by Partnerships

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

(1) at least one general partner must be a certified public accountant of this state in good standing;

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

(3) each partner must be a certified public accountant of some state in good standing; and

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

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

Use of Designation "Public Accountant"

Sec. 18. Any individual qualified under this Act to register with the board for the practice of public accountancy and who has so registered and who holds a license for the practice of public accountancy may be styled and known as a "Public Accountant."

Use of Designation "Public Accountant" by Partnerships

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

(1) at least one general partner must be a certified public accountant or a public accountant of this state in good standing;

(2) each partner personally engaged within this state in the practice of public accountancy as a member must be a certified public accountant or a public accountant of this state in good standing;

(3) each partner must be a certified public accountant or a public accountant of some state in good standing; and

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

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

Practice of Public Accountancy by Corporations

Sec. 20. A corporation authorized to engage in the practice of public accountancy in this state may register with the board as a corporation engaged in the practice of public accountancy. Application for such registration must be made upon the affidavit of an officer of such corporation. The affidavit must set out the corporate name, the post office address within the state, and the address of the principal office of the corporation. The board shall in each case determine whether the applicant is eligible for registration. A corporation which is so registered and which holds a license issued under this Act may practice public accountancy under a corporate name indicating that it is engaged in such practice. Licensing provisions and procedures applicable to partnerships under Sections 17 and 19 of this Act are also applicable to corporations.

Resignation, Revocation, or Suspension of Certificate or License

Sec. 21. (a) Any individual holding a certificate or registration issued by the board may, at any time and for any reason, subject to the approval of the board, resign and surrender that certificate or registration to the board. An individual who has resigned and surrendered a certificate or registration may not apply for reinstatement of the certificate or registration but may be issued a new certificate or registration upon completion of all requirements for the issuance of a certificate or registration. No certificate shall be issued to any person who has previously resigned a certificate unless that person shall have successfully completed the examination requirement for a new certificate between the time of resignation and the issuance of a new certificate unless, upon application, the examination requirement is waived by the board. If any individual shall

resign and surrender a certificate or registration during the course of a disciplinary investigation or proceeding conducted by the board, this fact shall be disclosed in any later application for a new certificate or registration, and the board shall consider this fact in determining whether to issue a new certificate or registration.

(b) After notice and hearing as provided in Section 22 of this Act, the board may revoke or may suspend for a period not to exceed five years any certificate issued under this or any prior Acts or any registration granted under this or any prior Acts or may revoke, suspend, or refuse to renew any license issued under Sections 9 or 13 of this Act or may reprimand the holder of any such license for any one or more of the following causes:

(1) fraud or deceit in obtaining a certificate as certified public accountant or in obtaining registration under this or any prior Acts or in obtaining a license to practice public accountancy under this Act;

(2) dishonesty, fraud, or gross negligence in the practice of public accountancy;

(3) violation of any of the provisions of Section 8 of this Act;

(4) violation of a rule of professional conduct promulgated by the board under the authority granted by law;

(5) final conviction of a felony under the laws of any state or of the United States;

(6) final conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(7) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay an annual registration fee in such other states;

(8) suspension or revocation of the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action;

(9) failure of a certificate holder or registrant to obtain an annual license under Section 9 of this Act within either (A) three years from the expiration date of the license to practice last obtained or renewed by said certificate holder or registrant or (B) three years from the date upon which the certificate holder or registrant was granted his certificate or registration, if no license was ever issued to him, unless such failure shall be excused by the board pursuant to the provisions of Section 9 of this Act; or

(10) conduct indicating lack of fitness to serve the public as a professional accountant.

(c) Upon conviction by any court of original jurisdiction of a felony under the laws of any state or of the United States or of any crime, an element of which is dishonesty or fraud, under the laws of any state or the United States and after notice and hearing as provided in Section 22 of this Act, the board may suspend any certificate issued under this or prior Acts, any registration granted under this or prior Acts, or may suspend or refuse to renew any license issued under this Act for the period between the date of such conviction and the date such conviction becomes final or set aside. If such conviction becomes final whether by passage of time, exhaustion of appeal, or otherwise, the board may without further notice and hearing take any action authorized in Subsection (b) of this section. If such conviction is reversed, set aside, or modified so that it no longer constitutes a conviction of a felony or of a crime of which an element is dishonesty or fraud, the board shall reinstate any license, registration, or certificate suspended under this subsection; provided, however, that such reinstatement shall be without prejudice to the rights of the board to invoke any other applicable provisions of this section.

(d) After notice and hearing as provided in Section 22 of this Act, the board shall revoke the registration and license to practice of a partnership or corporation which does not meet all the qualifications for registration prescribed by this Act.

After notice and hearing as provided in Section 22 of this Act, the board may revoke or suspend the registration of a partnership or corporation or may revoke, suspend, or refuse to renew its license under Section 9 of this Act to practice or may reprimand the holder of any such license for any of the causes enumerated in Subsection (b) of this section or for any of the following additional causes:

(1) the revocation or suspension of the certificate or registration or the revocation or suspension or refusal to renew the license to practice of any partner or shareholder;

(2) the cancellation, revocation, suspension, or refusal to renew the authority of the partnership or corporation or any partner or shareholder thereof to practice public accountancy in any other state for any cause other than failure to pay an annual registration fee in such other state; or

(3) the suspension or revocation of the right of any partner or shareholder to practice before any state or federal agency for a cause which in the opinion of the board warrants its action.

Hearing and Review Procedure

Sec. 22. (a) The board may, on its own motion or on the complaint of any person, initiate proceedings to determine the eligibility of any person for examination, registration, and certification under this Act.

(b) The board may initiate disciplinary proceedings under this Act either on its own motion or on the complaint of any person.

(1) A written notice stating the nature of the charge or charges against the accused and the

time and place of the hearing before the board on such charges shall be served on the accused not less than 20 days prior to the date of said hearing either personally or by mailing a copy thereof by registered or certified mail to the last known address of the accused.

(2) At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on his own behalf, cross-examine witnesses, and examine such evidence as may be produced against him. The accused shall be entitled on application to the board to the issuance of subpoenas to compel the attendance of witnesses on his behalf.

(3) The board or any member thereof may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony, hear proofs, and receive exhibits in evidence in connection with or upon hearings under this Act. In cases of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(4) If, after having been served with the notice of hearing as provided for herein, the accused fails to appear at said hearing, the board may proceed to hear evidence against him and may enter such order as shall be justified by the evidence, and a copy of such order shall be mailed by registered or certified mail to the last known address of the accused. The board is hereby authorized to grant continuances upon written request and upon a showing of good cause for failure to appear at such hearing, set out in writing, signed by the accused, and filed with the board. The board may reopen said proceedings and permit the accused to submit evidence in his behalf; provided further that said written request to reopen is filed with the board within 20 days after the date a copy of said order has been mailed to the accused.

(c) A stenographic record of the hearings shall be kept, and if deemed necessary by the board, a transcript shall be ordered.

(d) At all hearings the attorney general or one of his assistants or such other legal counsel as may be employed shall appear and represent the board.

(e) The decision of the board shall be by majority vote.

(f)(1) Any person, firm, or corporation aggrieved by any order, ruling, or decision of the board may file a motion for rehearing. Such a motion must be filed within 15 days of the rendition of the order, ruling, or decision complained of. Replies to motions for rehearings must be filed within 25 days after the rendition of the order, ruling, or decision. Unless the board has acted upon a motion for rehearing within 45 days from the time it is filed, the motion shall be overruled as a matter of law. The board may extend the time for filing of motions for rehearings and replies, but in no event shall the board extend the period within which it may act to more than 90 days from the date of rendition of the order, ruling, or decision. Any motion for rehearing pending after the expiration of 90 days from the date of rendition of the order, ruling, or decision complained of shall be overruled as a matter of law.

(2) An order, ruling, or decision is final and appealable when the motion for rehearing is overruled or when the time for filing a motion has expired and no motion has been filed.

(3) Any party aggrieved by a final order, ruling, or decision of the board shall be entitled to judicial review under the substantial evidence rule. Proceedings for review shall be initiated by the filing of a petition in the District Court of Travis County, Texas, setting forth the particular objection to such decision, ruling, or order against the Texas State Board of Public Accountancy as defendant, such petition to be filed within 30 days after the decision, ruling, or order complained of is final and appealable. Service of citation on the board may be had by delivery of a copy of the petition to the board at its offices in Austin, Travis County, Texas. The board shall not be required to give any bond in any cause or appeal arising hereunder. Neither the board nor any member thereof shall be liable to any person, firm, or corporation charged or investigated by the board for any damages incident to such investigation or any complaint, charge, prosecution, proceeding, or trial of the results thereof.

(g) Upon application in writing and after hearing pursuant to notice, the board may issue a new certificate to a certified public accountant whose certificate shall have been revoked or may permit the reregistration of anyone whose registration has been revoked or may reissue or modify the suspension of any license to practice public accountancy which has been revoked or suspended.

(h) None of the provisions of this Section 22 shall apply to persons who have not applied to the board to take the Uniform CPA Examination or who have not applied for a license, registration, or certificate under the provisions of this Act.

Penalties

Sec. 23. (a) Whenever in the judgment of the board any person who is not the holder of a license to practice public accountancy in this state has engaged in any act or practices which constitute the practice of public accountancy within this state, the board may apply to the district court of the county in which such person resides or has an office to enjoin such person from engaging in the practice of public accountancy, and in such cases the board shall not be required to give bond as a condition precedent to the issuance of such injunctive relief.

(b) Any person who violates any provision of The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), or of this Act

shall be deemed guilty of a Class B misdemeanor and each violation shall constitute a separate offense. Any complaints filed under the provisions of this section shall be filed in the county where the offense occurred.

Advisory Committees

Sec. 24. (a) The board may appoint advisory committees composed of individuals who are not members of the board. An advisory committee shall perform the advisory functions assigned to it by the board.

(b) A member of an advisory committee serves without compensation and is entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the committee.

(c) A member of an advisory committee serves at the will of the board.

Confidentiality of Certain Board Files

Sec. 25. Any file maintained or information gathered or received by the board concerning a candidate, licensee, or former licensee shall be available for inspection by that candidate, licensee, or former licensee during normal business hours at the offices of the board in Austin. A candidate, licensee, or former licensee may by written communication authorize the board to make any information about that candidate, licensee, or former licensee available for inspection by designated persons or available for inspection by the public at large. Except upon such written authorization, all information received or gathered by the board concerning the qualifications of any licensee or candidate to register as a public accountant or to receive a certificate as a certified public accountant and all information received or gathered by the board concerning a disciplinary proceeding against a licensee under Section 22 of this Act prior to a public hearing on the matter shall be confidential and shall not be subject to disclosure under Chapter 424, Acts of the 63rd Legislature, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes).

Client-Accountant Communications

Sec. 26. (a) Except by permission of the client or person or entity engaging him or the heirs, successors, or personal representatives of such client or person or entity, a certified public accountant, public accountant, partnership, or corporation holding a license to practice under this Act shall not be required to disclose or divulge information which has come into his possession relative to or in connection with any professional services as a certified public accountant, public accountant, partnership, or corporation. Any information derived from or as the result of such professional services shall be deemed confidential and privileged. However, this section shall not apply to information related to the methods or procedures used in: (1) the preparation of a "financial statement"; (2) management advisory or consulting services; (3) tax returns and supporting schedules; or (4) audits, reviews, and compilations of financial statements.

(b) No information shall be deemed confidential and privileged from disclosure in:

(1) an action against a licensee by the client or entity engaging the licensee;

(2) any disciplinary investigation or proceeding conducted under or pursuant to this Act;

(3) any criminal investigation or proceeding; or

(4) quality control reviews of audits, reviews, and compilations of financial statements conducted in accordance with board rules.

(c) No documentary information, books or records shall be deemed confidential and privileged from examination by the Comptroller of Public Accounts or any agency of the State of Texas pursuant to the authority granted by law.

(d) No disclosure provided for under Subdivisions (1) through (4) of Subsection (b) and Subsection (c) shall constitute a waiver of the privilege established herein.

(e) None of the provisions of Section 26 shall apply to individuals who are not licensed under this Act.

Application of Open Meetings Law and Administrative Procedure and Texas Register Act

Sec. 27. The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Application of Sunset Act

Sec. 28. The Texas State Board of Public Accountancy is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

Transition

Sec. 29. (a) The Texas State Board of Public Accountancy to which this Act refers is a continuation of the Texas State Board of Public Accountancy created by The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes).

(b) A person holding office as a member of the Texas State Board of Public Accountancy on the effective date of this Act shall continue to hold office for the term for which the member was originally appointed.

(c) The terms of office of all succeeding members of the board expire on January 31 of odd-numbered years, six years after expiration of the previous term of office. The initial appointment under this Act shall be for such staggered terms as are necessary to provide for the expiration of the terms of one-third of the board members every two years.

(d) After the effective date of this Act the governor shall appoint members to the board in a manner that achieves as soon as possible the membership plan provided in this Act.

Repealer

Sec. 30. The Public Accountancy Act of 1945, as amended (Article 41a, Vernon's Texas Civil Statutes), is repealed.

[Acts 1979, 66th Leg., p. 1479, ch. 646, §§ 1 to 30, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 3264, ch. 859, §§ 1 to 7, eff. June 18, 1981; Acts 1981, 67th Leg., p. 3312, ch. 866, § 1, eff. June 18, 1981.]

Acts 1981, 67th Leg., p. 3312, ch. 866, § 2, provides:

"(a) Section 10, Public Accountancy Act of 1979 (Article 41a–1, Vernon's Texas Civil Statutes), as amended by this Act, does not affect:

"(1) the prior operation of that section;

"(2) any obligation or liability previously acquired, accrued, or incurred under that section;

"(3) any prior violation of that section or any penalty or punishment previously incurred under it; or

"(4) any investigation or proceeding relating to a previously acquired, accrued, or incurred obligation or liability or a previously incurred penalty or punishment; the investigation or proceeding may be instituted, continued, or enforced, and the penalty imposed, as if that section had not been amended by this Act.

"(b) Section 10, Public Accountancy Act of 1979 (Article 41a–1, Vernon's Texas Civil Statutes), as it existed before enactment of this Act, is continued in effect for the purposes of this section as if it had not been amended by this Act."

Art. 41b. Audits of River Authorities

Annual Audit of Fiscal Accounts by Public Accountant or State Auditor

Sec. 1. The fiscal accounts of each river authority in this state shall be audited annually. The board of directors of a river authority may have the authority's fiscal accounts audited at authority expense by an independent public accountant or certified public accountant holding a permit from the Texas State Board of Public Accountancy. If a river authority does not elect to have the fiscal accounts audited by an independent public accountant or a certified public accountant, the state auditor shall audit the authority in the manner provided by law for state government audits. The annual audit, if performed by an accountant other than the state auditor, shall be completed within 120 days after the close of the district's fiscal year.

Generally Accepted Auditing and Accounting Standards

Sec. 2. The audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants and shall include the auditor's representation that the financial statements have been prepared in accordance with generally accepted accounting principles.

Approval and Filing of Report

Sec. 3. After the board of directors of the authority approves the annual audit report, the report shall be filed with the Texas Water Rights Commission. If the board of directors refuses to approve the audit report, the board shall nevertheless file the report with the commission along with a statement detailing the reasons why the report was not accepted.

Copy of Report Available for Public Inspection

Sec. 4. A copy of the audit report shall be available for public inspection in the administrative office of the river authority during regular office hours.

Advertisement for Competitive Bids Unnecessary

Sec. 5. It is not necessary that the board of directors advertise for competitive bids before selecting the independent public accountant or certified public accountant to perform the annual audit required by the provisions of this Act.

Audit by State Auditor

Sec. 6. If the state auditor considers it necessary, he may have an audit made of any river authority in this state. The audit shall be conducted in the manner provided by law for audit of the state government.

Repealer

Sec. 7. Section 7b, Chapter 293, Acts of the 48th Legislature, 1943, as amended (Article 4413a–7b, Vernon's Texas Civil Statutes), is repealed.

[Acts 1975, 64th Leg., p. 591, ch. 242, §§ 1 to 7, eff. May 20, 1975.]

TITLE 3

ADOPTION

Art. 46b–2. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

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

Prior to repeal, this article was amended by Acts 1975, 64th Leg., p. 1034, ch. 399, § 1; Acts 1979, 66th Leg., p. 1079, ch. 508, §§ 1, 2.

TITLE 3A

AERONAUTICS

OPERATION OF AIRCRAFT

Article
46f–4. Use of Aircraft on County Roads.

MISCELLANEOUS

46h. Expenditure of Bond Revenues by Joint Boards without Competitive Bidding in Certain Circumstances.

AERONAUTICS COMMISSION AND DIRECTOR OF AERONAUTICS

Art. 46c–1. Definitions

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

(c) The term "certificate" means a certificate of public convenience and necessity or a certificate of operating authority issued under this Act.

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

(e) The term "air carrier" means every person owning, controlling, operating or managing any aircraft as a common carrier in the transportation of persons or property for compensation or hire which conducts all or part of its operation in the State of Texas; provided that the term "air carrier" as used in this Act shall not include, and this Act shall not apply to, air carriers carrying passengers or property as common carriers for compensation or hire in commerce between a place in this state and a place outside this state.

(f) The term "aeronautics" means the art and science of flight of aircraft of all types; aviation; the operation, navigation, maintenance, construction of aircraft and all component parts thereof; and includes air navigation aids, such as lighting, markings, radio, ground to aircraft, aircraft to ground, aircraft to aircraft, and related communications; navigation and piloting; and air crew and air passenger facilities; and also includes airports and airstrips and the design, construction, repair or maintenance of all or any part thereof and improvements thereto; and the dissemination of information and instruction pertaining to all of the foregoing.

[Amended by Acts 1981, 67th Leg., p. 2858, ch 767, § 1, eff. Sept. 1, 1981.]

Art. 46c–2. Declaration

It is hereby declared that the purpose of this Act is to further the public interest and aeronautical progress by providing for the protection, promotion, and development of aeronautics; by cooperating in effecting a uniformity of the laws relating to the development of aeronautics in the several states; by revising existing statutes relative to the development and regulation of aeronautics so as to grant to a state agency such powers and impose upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction; by assisting in the promotion of a state-wide system of airports; by cooperating with and assisting the political subdivisions of this state in order that those engaged in aeronautics of every character may so engage with the least possible restrictions consistent with the safety and the rights of other person or persons; and by providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions properly in the province of the federal agencies.

[Amended by Acts 1981, 67th Leg., p. 2858, ch. 767, § 2, eff. Sept. 1, 1981.]

Art. 46c–3. Aeronautics Commission, Organization, Membership

(a) The Texas Aeronautics Commission, created in 1945, shall consist of six Commissioners to be appointed by the Governor and confirmed by the Senate. Appointments to the Commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The terms of the Commissioners shall be for a period of six years. Such terms shall begin on the first day of an odd numbered year and end on the last day of an even numbered year. The present Commissioners shall continue in office for a term as designated by the Governor at the time of their appointment. The Governor shall appoint successors for the present Commissioners (who may be reappointed) at the expiration of their present terms. Any member appointed to fill a vacancy occurring prior to the expiration of the term to which his predecessor was appointed shall be appointed to only the remainder of such term. Each member shall serve until the appointment and qualification of his successor. Each member is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Commission. A member may not receive any compensation for travel expenses, including expenses for meals and lodg-

ing, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

(b) To qualify for appointment to the Commission by the Governor, an appointee must have the following minimum qualifications in addition to those set out herein:

(1) Bona fide continuous residence in the state for the 10 years immediately previous.

(2) Ten years of successful experience in business, professional or governmental activities.

(c) The Texas Aeronautics Commission is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act the commission is abolished effective September 1, 1993.

(d) A member or employee of the Commission may not be an officer, employee, or paid consultant of a trade association in the aeronautics industry. A member or employee of the Commission may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the aeronautics industry.

(e) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the Commission or act as the general counsel to the Commission.

(f) It is a ground for removal from the Commission if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (b) of this section for appointment to the Commission;

(2) violates Subsection (d) or (e) of this section; or

(3) fails to attend at least half of the regularly scheduled Commission meetings held in a calendar year, excluding meetings held while the person was not a Commission member.

(g) If a ground for removal of a member of the Commission exists, the Commission's actions during the existence of the ground for removal are not invalid for that reason.

[Amended by Acts of 1977, 65th Leg., p. 1839, ch. 735, § 2.052, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2858, ch. 767, § 2, eff. Sept. 1, 1981.]

Art. 46c–4. Organization, Meetings, Reports

(a) The Commission shall adopt a seal, and make such rules and regulations for its administration, not inconsistent with this Act, as hereby amended, as in its judgment it may deem advisable or necessary, and may from time to time amend such rules and regulations. It shall elect from among its members a chairman, a vice chairman, and a secretary, to serve for one year and annually thereafter shall elect such officers all to serve until their successors are appointed and qualified. It shall fix the date and place for its regular meetings. Four members shall constitute a quorum, and except as hereafter provided, no action shall be taken by less than a majority of the Commission members present. Special meetings may be called as provided by its rules and regulations. All regular and special Commission meetings shall be open to the public. Funds received by the Commission under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund. The state auditor shall audit the financial transactions of the Commission during each fiscal biennium. Not later than December 1 each year, it shall report in writing to the governor detailed and itemized statements of all revenues and of all expenditures made by or in behalf of the Commission, and shall furnish such other information as it may deem necessary or useful or which may be requested by the Governor. The fiscal year of the Commission shall conform to the fiscal year of the state.

(b) The Commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(c) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Commission receives the committee's statements.

[Amended by Acts 1981, 67th Leg., p. 2858, ch. 767, § 2, eff. Sept. 1, 1981.]

Art. 46c–5. Office and Expense—Employees

Suitable offices and office equipment shall be provided by the state for the Commission in the City of Austin; and it may maintain temporary offices in any other place in the state that it may designate and may incur the necessary expense for office furniture, stationary, printing, incidental expenses, and other expenses necessary for the enforcement of this Act and the general promotion of aeronautics within the state. Regular meetings shall be held at its offices at Austin, but, whenever the convenience of the public or of the parties may be promoted, or delay or expense may be prevented, it may hold hearings or proceedings at any other place designated by it. The Commission may employ such clerical and other employees and assistants as it may deem necessary for the proper transaction of its business and shall fix their salaries. Provided that the Commission shall not make any obligations or expend any state moneys unless and until an appropriation by the Legislature is made therefor. The Executive

Director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the Executive Director must be based on the system established under this section. The Commission shall maintain an information file about each complaint filed with the Commission. If a written complaint is filed with the Commission, the Commission, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation.

[Amended by Acts 1981, 67th Leg., p. 2858, ch. 767, § 2, eff. Sept. 1, 1981.]

Section 7(b) of the 1981 amendatory act provides:

"The requirement under Section 5, Chapter 344, Acts of the 49th Legislature, Regular Session, 1945 (Article 46c–5, Vernon's Texas Civil Statutes), as amended by this Act, that the executive director of the commission develop a system of annual performance evaluation shall be implemented before September 1, 1982. The requirement under Section 5 that merit pay be based on the performance evaluation system shall be implemented before September 1, 1983."

Art. 46c–6. Commission Powers and Duties

Subd. 1. General. The Commission, and its Executive Director acting under its authority, is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and to encourage, aid and assist in the establishment of airports and airstrips and air navigational facilities in this state, and, as to lands, or portions thereof, or navigational aids or facilities donated or given to the state, or to the Texas Aeronautics Commission to be held by it in trust for the state, the Texas Aeronautics Commission may control, administer, and have jurisdiction thereover, and may lease the same on the terms hereafter provided. The Commission and its Executive Director may cooperate with and assist the United States, municipalities or other governmental subdivisions of this state, or persons engaged in aeronautics or in the development of aeronautics and may endeavor to coordinate the aeronautical activities of such others, and, municipalities and governmental subdivisions are authorized to cooperate with the Commission in the development of aeronautics and aeronautical navigational facilities or aids in this state.

Subd. 2. Authority to Contract. The Commission may enter into contracts which it deems necessary or advisable in conformity with and in the execution of the powers granted it by this Act, as amended. However, the Commission shall have no power to enter into any contract or agreement binding on the State of Texas for the payment of any moneys which have not been authorized by appropriation of the Legislature from the general revenues or from the Texas Aeronautics Commission Fund. All contracts entered into by the Commission shall be submitted to the attorney general for the approval as to form. The Commission shall not enter into any contract binding the State of Texas in excess of the power granted in this Act.

Subd. 3. Air Carriers.

(a) The Commission is hereby granted and vested with the right, power and authority to promulgate and administer economic rules and regulations over air carriers. The Commission shall promulgate and administer rules providing for the safety of air carriers subject to the requirements of this Act. The Commission shall be vested with broad discretion in promulgating such rules and regulations. Without limiting the right, power and authority of the Commission, to the extent necessary to enable it to perform its functions, it shall determine the financial, managerial, and equipment fitness and operational capability of each air carrier, require filing of such reports and other data of air carriers as the Commission may deem necessary, inspect air carrier facilities and equipment, and adopt a program, rules and regulations necessary to effectuate its duties hereunder to the extent that its rules and regulations do not conflict with federal rules and legislation concerning functions within the jurisdiction of federal agencies.

(b) No air carrier shall operate as such, after this Act goes into effect, without having first obtained from the Commission a certificate that all operating rights and privileges granted to any air carrier by the Commission prior to the passage of this Act shall continue in effect, authorizing the same service under the same terms and conditions as previously granted by the Commission. Upon notice and hearing, certificates shall be subject to revocation or suspension for violation of the Commission's regulations, the provisions of this Act or the regulations or laws of the United States or any authorized agency or board thereof. Proceedings for the refusal, suspension, or revocation of a certificate are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes). Any such certificates so revoked or suspended may be reinstated upon order of the Commission on its own motion or upon application of the air carrier, when the Commission finds reinstatement to be in the public interest. Prior to issuing or amending a certificate of public convenience and necessity or a certificate of operating authority, the Commission shall consider the encouragement and development of an intrastate air transportation system properly adapted to the present and future needs of the State of Texas, and in addition shall consider the financial responsibility of the air carrier, its proposed points of service or routes and rates or charges, the effect, if any, upon existing air carriers and CAB certificated carriers, and any other factors similarly related to the interest and safety of the public. Nothing in this Act affects any litigation pending on the effective date of this Act.

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

(c) No application for a certificate shall be received and filed by the Commission unless the same shall be in writing under oath in original and six copies filed with the Executive Director of the Commission and contain the following information:

(1) The name and address of the applicant and the names and addresses of its officers, if any, and full information concerning the financial condition and physical properties of the applicant.

(2) The complete route or routes over which the applicant desires to operate or intended points of service, together with the description of each aircraft which the applicant intends to use.

(3) A proposed schedule of service and schedule of rates to be charged between the several points or localities to be served.

(4) It shall be accompanied by plats or maps showing the route or routes over which the applicant desires to operate, on which plats or maps shall be delineated the line or lines of any existing air carrier or airlines, whether or not subject to this Act, serving such territory, and shall point out the need for additional air service.

(5) Such other information, exhibits and other data in regard to the application as may be required by duly promulgated rules and regulations of the Commission.

(6) Every application filed with the Commission for a certificate shall be accompanied by a filing fee in an amount determined by the Commission, but not less than $200, which fee shall be in addition to any other fees and taxes and shall be retained by the Commission, whether the application is approved or not, to defray operating expenses.

Copies of such application shall be transmitted contemporaneously by certified mail, return receipt requested, to the Civil Aeronautics Board, the Federal Aviation Administration and to any air carrier or CAB certificated carrier, which serves, or is authorized to serve, over the routes or to the service points proposed to be served by the applicant. Upon receipt of such application in proper form, the Commission shall set a date for public hearing which may be conducted by the Commission, or at its discretion, by the Executive Director, or any staff member of the Commission.

Any other provision of this Act notwithstanding, carriers certificated by the Civil Aeronautics Board pursuant to the Federal Aviation Act of 1958, as now or hereafter amended,[1] together with any other interested party shall be afforded the right to appear and present evidence and arguments at such hearing on all issues involved in any such hearing. The final determination of such application shall be made by the Commission by written order setting forth its findings and served upon the parties in such manner as the Commission shall specify, and such application may be granted or denied, in whole, or in part. The order of the Commission granting any application and the certificate issued thereunder shall be voidable upon appeal unless the Commission shall set forth in its order full and complete findings of fact pointing out in detail the basis on which it made each of its findings on the factors related to the interest and safety of the public as provided in Subsection (b) of this Subdivision.

(d) Any certificate held, owned or obtained by any air carrier operating under the provisions of this Act may be sold, assigned, leased, transferred or inherited; provided, however, that any proposed sale, lease, assignment or transfer shall be first presented in writing to the Commission for its approval or disapproval and after public notice and public hearing the Commission may disapprove such proposed sale, assignment, lease or transfer if it is found and determined by the Commission that such proposed sale, assignment, lease or transfer is not in good faith or that the proposed purchaser, assignee, lessee or transferee is not in good faith or that the proposed purchaser, assignee, lessee or transferee is not able or capable of continuing the operation of the equipment proposed to be sold, assigned, leased or transferred in such manner as to render the services required by the certificate held, or that the proposed sale, assignment, lease or transfer is not in the best public interest. The Commission in approving or disapproving any sale, assignment, lease or transfer of any certificate may take into consideration all the requirements and qualifications of a regular applicant required in this Act and apply the same as necessary qualifications of any proposed purchaser, assignee, lessee or transferee. Every application filed with the Commission for an order approving the lease, sale or transfer of any certificate of convenience and necessity shall be accompanied by a filing fee in an amount equal to one-half of the application fee required for a certificate, which fee shall be in addition to any other fees and taxes and shall be retained by the Commission whether the lease, sale or transfer of the certificate is approved or not.

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

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

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

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

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

(b) Independently and additionally, the Commission shall be authorized to accept any grant, pay-

ment, or gift of moneys, funds or property made to it by any person, individual, firm, association, corporation, municipality, county, or other political subdivision of the state, or from the United States, or any department or agency thereof, as to which the donor has prescribed a particular use for one or more aeronautical purposes. The Commission shall utilize any such grant of property in accordance with the terms of the grant, and as to any such payment, or gift of funds or moneys, the Commission shall utilize such moneys for the purpose or purposes prescribed by the donor. A record shall be maintained in the Commission's offices of such properties and funds. Such funds shall be expended only upon general or special order of the Commission, and all checks shall be signed by the Executive Director.

Subd. 7. Investigations, Hearings (General). The Commission shall have the power to conduct and hold investigations, inquiries, and hearings concerning matters covered by the provisions of this Act and the rules, regulations and orders of the Commission, unless specifically provided otherwise herein. Hearings shall be open to the public. Each member of the Commission, the Executive Director and every officer or employee of the Commission, designated by it to hold an inquiry, investigation or hearing, shall have the power to administer oaths, certify to all official acts, issue subpoenas, and order the attendance and testimony of witnesses and the production of papers, books and documents. In the case of the failure of any person to comply with any subpoena or order issued under the authority of this section, the Commission shall notify the attorney general who may bring suit in the name of the state in any district court of Travis County, Texas. The court, if it determines such noncompliance was not justified, shall thereupon order such person to comply with the requirements of the subpoena or order, and failure to obey the order of the court may be punished by the court as a contempt thereof.

Subd. 8. Education, Publications. The Commission may organize and administer a program of aeronautical education in the schools and colleges of the state and for the general public and may prepare and conduct flight clinics for air crews. The programs and clinics may be conducted with or without charge by the Commission. The Commission may issue such aeronautical publications as may be required in the public interest. The Commission shall charge a fee sufficient to recover the cost of preparing and distributing all Commission publications that do not clearly promote public safety.

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

Subd. 10. Aviation Facilities Development and Financial Assistance. (a) When in the discretion of the Commission the public interest will best be served, and the governmental function of the state or its political subdivisions relative to aeronautics will best be discharged, it may provide funds, through loan agreements or grant contracts, appropriated to it for that purpose by the Legislature, to any state agency with a governing board that is authorized to operate airports, and to any governmental entity in this state for the establishment, construction, reconstruction, enlargement or repair of airports, airstrips or air navigational facilities. Provided that any such funds must be expended by the governmental entity for the purpose provided herein and in conformity with the laws of this state and with the rules and regulations which the Commission is hereby authorized to promulgate.

(b) The Commission shall:

(1) prepare and adopt an aviation facilities development program identifying the aviation facility requirements, locations, timing, eligibility for funding, and the investment necessary for a statewide airport system that, for the least practicable cost, will provide for the state's air transportation needs;

(2) establish and maintain a method for determining priorities among locations and projects eligible to receive state financial assistance for aviation facility development;

(3) prepare and update at least annually a multi-year aviation facilities capital improvement program based on those priorities, with the estimated annual cost of the total program being approximately equal to revenues forecast to be available for aviation facilities development during the year; and

(4) periodically review the adopted capital improvement program to determine the need for revision of system development criteria; addition or deletion of aviation facility requirements; revision of capital improvement program priorities; and the addition, deletion, or revision of the scope of projects in the program.

(c) The aviation facilities capital improvement program shall be the basis for allocation of state financial assistance and for preparation of the Commission's biennial budget request to the Legislature.

(d) Prior to approving any financial assistance under this Act the Commission shall hold a public hearing at which all interested parties shall have an opportunity to be heard. No loan shall be made without a majority vote of the entire Commission in favor thereof. No grant contract shall be made without a two-thirds vote of the entire Commission in favor thereof.

(e) Prior to approving any loan or grant contract the Commission shall require that:

(1) The airport or facility remain in the control of the political subdivision or political subdivisions involved for at least 20 years, and

(2) The political subdivision disclose the source of all funds for the project and its ability to finance and operate the project, and

(3) All loans shall bear interest at the rate of at least three percent per annum and have a term of not longer than 20 years; and the principal and interest derived from the loans shall be placed in the Texas Aeronautics Commission revolving loan fund administered by the Commission for the purpose of future loans and the administration of the loans, and

(4) At least ten percent of the total project cost be provided from sources other than the State of Texas, and

(5) The project be adequately planned.

(f) Loans shall be made in lieu of grants whenever feasible under this subdivision, and in particular the Commission shall consider carefully the making of loans in lieu of grants for revenue-producing improvements.

(g) Under a grant contract, prior to payment by the Commission of the final ten percent of its share of project costs, the sponsor shall have enacted an airport hazard zoning ordinance or order under the Airport Zoning Act, as amended (Article 46e–1 et seq., Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 54, ch. 30, § 1, eff. March 29, 1977; Acts 1977, 65th Leg., p. 308, ch. 142, § 1, eff. May 13, 1977; Acts 1977, 65th Leg., p. 380, ch. 189, § 1, eff. May 20, 1977; Acts 1979, 66th Leg., p. 31, ch. 22, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2861, ch. 767, §§ 3 to 5, eff. Sept. 1, 1981.]

[1] 49 U.S.C.A. § 1301 et seq.

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

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

Art. 46c–7. Executive Director

Subd. 1. Appointment, Compensation. An Executive Director shall be appointed by the Commission. He shall receive such compensation as may be provided in the biennial department appropriation bill and shall be reimbursed for all traveling and other expenses incurred by him in the discharge of his official duties.

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

[Amended by Acts 1977, 65th Leg., p. 308, ch. 142, § 2, eff. May 13, 1977; Acts 1981, 67th Leg., p. 2866, ch. 767, § 6, eff. Sept. 1, 1981.]

MUNICIPAL AIRPORTS ACT

Art. 46d–7. Regulations and Jurisdiction

(a) In this section "airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this Act.

(b) Scope. A municipality, which has established or acquired or which may hereafter establish or acquire an airport or air navigation facility, is authorized to adopt, amend and repeal such reasonable ordinances, resolutions, rules, regulations and orders as it shall deem necessary for the management, government and use of such airport or air navigation facility under its control or an airport hazard area relating to the airport, whether situated within or without the territorial limits of the municipality. For the enforcement thereof, the municipality, may, by ordinance or resolution, as may by law be appropriate, appoint airport guards or police, with full police powers, and fix penalties, within the limits prescribed by law, for the violation of the aforesaid ordinances, resolutions, rules, regulations and orders. Said penalties shall be enforced in the same manner in which penalties prescribed by other ordinances, or resolutions of the municipality are enforced. To the extent that an airport, air navigation facility, or airport hazard area controlled and operated by a municipality is located outside the territorial limits of the municipality, it shall, subject to Federal and State laws, rules and regulations, be under the jurisdiction and control of the municipality controlling or operating it, and no other municipality shall have any authority to charge or exact a license fee or occupation tax for operations thereon.

(c) Conformity to Federal and State Law. No ordinance, resolution, rule, regulation or order adopted by a municipality pursuant to this Act shall be inconsistent with, or contrary to, any Act of the Congress of the United States or laws of this State, or to any regulations promulgated or standards established pursuant thereto.

[Amended by Acts 1981, 67th Leg., p. 851, ch. 300, § 1, eff. Aug. 31, 1981.]

Art. 46d–14. Joint Operations

(a) Authorization. For the purposes of this Section, unless otherwise qualified, the term "public agency" includes municipality, as defined in this Act, any agency of the State government and of the United States, and any municipality, political subdivision and agency of another State; and the term "governing body" means the governing body of a county or municipality, and the head of the agency if the public agency is other than a county or municipality, and the term "airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this Act. All powers, privileges and authority granted to any municipality by this Act may be exercised and enjoyed jointly with any pub-

lic agency of any other State or of the United States to the extent that the laws of such other State or of the United States permit such joint exercise or enjoyment. If not otherwise authorized by law, any agency of the State government when acting jointly with any municipality, may exercise and enjoy all of the powers, privileges and authority conferred by this Act upon a municipality.

(b) Agreement. Any two (2) or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this Act and any two (2) or more municipalities are specially authorized to make such agreement or agreements as they may deem necessary for the joint acquisition and operation of airports, air navigation facilities, or airport hazard areas. Concurrent action by ordinance, resolution or otherwise of the governing bodies of the participating public agencies shall constitute joint action. Each such agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities and privileges involved, the proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport, air navigation facility, or airport hazard area, the proportion of the expenses of maintenance, operation, regulation and protection thereof to be borne by each and such other terms as are required by the provisions of this Section. The agreement may also provide for: amendments thereof, and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities and privileges jointly owned, prior to or upon said property, facilities and privileges, or any part thereof, ceasing to be used for the purposes provided in this Act, or upon termination of the agreement; the distribution of the proceeds received upon any such disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

(c) Joint Board. Public agencies acting jointly pursuant to this Section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their term and compensation, if any, shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police any airport, air navigation facility, or airport hazard area to be jointly acquired, controlled and operated, and such board may exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, air navigation facility or airport hazard area, subject to the limitations of Subsection (d) of this Section.

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

[Amended by Acts 1981, 67th Leg., p. 852, ch. 300, § 2, eff. Aug. 31, 1981.]

Art. 46d–16. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

AIRPORT ZONING REGULATIONS

Art. 46e–1. Definitions

(1) "Airport" means any area of land or water, whether of public or private ownership, designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purposes. The term "Airport" shall also include any area having installations relating to flight and particularly including installations, facilities and base of operations for tracking and/or data acquisition concerning flight. Such areas shall be deemed to be "utilized in the interest of the public" when the owner thereof by contract, license or otherwise permits the use of such areas by the public to an extent that the airport fulfills an essential community purpose. Such areas also shall be deemed to be "utilized in the interest of the public" when utilized by the Government of the State of Texas or an agency thereof or by the Government of the United States or any agency thereof in furtherance of the National Defense or any National Government Program relating to flight.

[See Compact Edition, Volume 3 for text of (2) to (7)]

(8) "Obstruction" means any structure, growth, or other object, including a mobile object, that exceeds a limiting height established by federal regulations or by a hazard zoning regulation.

(9) "Runway" means a defined area on an airport prepared for landing and taking off of aircraft along its length.

(10) "Compatible land use" includes any use of land adjacent to an airport that will protect the owners, occupants, or users of the land from levels of noise or vibrations created by the operations of the airport, including the taking off and landing of aircraft, that may endanger the health, safety, or welfare of the owners, occupants, or users of the land, and protect airport users from airport hazards.

[Amended by Acts 1981, 67th Leg., p. 2874, ch. 769, § 1, eff. Sept. 1, 1981.]

Art. 46e–3. Power to Adopt Airport Zoning Regulations

(1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial

limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate the types of structures permitted and restrict the height to which structures and trees may be erected or allowed to grow so as not to create an obstruction to flight operations or air navigation.

(2) Where an airport is utilized in the interest of the public to the benefit of a political subdivision or where an airport owned or operated by a defense agency of the federal government or the State of Texas is located within the territorial limits of a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, the political subdivision gaining the benefits of the airport's utilization in the public interest or the political subdivision within whose territorial limits the airport owned or operated by a defense agency of the federal government or the State of Texas is situated and the political subdivision within which the airport hazard area is located may create, by ordinance or resolution duly adopted, a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) in the political subdivision within which such area is located. Each such joint board shall have as members two (2) representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed.

Provided, however, where an airport is utilized in the interest of the public to the benefit of any political subdivision having more than 25,000 inhabitants, according to the last preceding Federal Census, and such airport is located within the territorial limits of such political subdivision and any airport hazard area appertaining to such airport is located outside of the territorial limits of said political subdivision receiving the benefits of the airport's utilization, the political subdivision shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsections (1) and (3) in the political subdivision within which such area is located. Each hazard zoning regulation shall include a statement that the airport fulfills an essential community purpose.

(3) In this subsection, "centerline" means a line extending through the midpoint of each end of a runway; "primary runway" means existing or planned paved runway(s), as shown in the official Airport Layout Plan (ALP), of at least 4,000 feet on which a majority of the approaches to and departures from the airport occur; "instrument runway" means existing or planned runway(s) of at least 4,000 feet for which there is or is planned to be an instrument landing procedure published by a defense agency of the federal government or by the Federal Aviation Administration; and "controlled area" means that land located outside airport boundaries and within a rectangle bounded by lines located no farther than one and one-half (1.5) statute miles from the centerline of an instrument or primary runway and lines located no farther than five (5) statute miles from each end of the paved surface of an instrument or primary runway.

When an airport is utilized in the interest of the public to the benefit of a political subdivision or when an airport owned or operated by a defense agency of the federal government or by the State of Texas is located within the territorial limits of a political subdivision, and whether the controlled area is located within or outside the territorial limits of the political subdivision, the political subdivision may, for the purpose of restricting the controlled areas to compatible land use, exercise the powers prescribed by subsections (1) and (2) of this section. The political subdivision may also by ordinance or resolution implement federal laws or rules controlling the use of land located adjacent to or in the immediate vicinity of the airport in connection with compatible land use restrictions. The establishment and enforcement of compatible land use restrictions in the controlled area shall be accomplished in the same manner as prescribed in this Act for airport hazard zoning. Each compatible land use regulation shall include a statement that the airport fulfills an essential community purpose.

[Amended by Acts 1981, 67th Leg., p. 2875, ch. 769, § 2, eff. Sept. 1, 1981.]

Art. 46e–4. Relation to Comprehensive Zoning Regulations

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

(2) Conflict. In the event of conflict between any airport hazard zoning regulations adopted under this Act and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

(3) Conflict. In the event of a conflict between any airport compatible land use regulation adopted under this Act and any other regulation applicable to the same area, whether the conflict is with respect to the use of land or any other matter and whether the other regulation was adopted by the political subdivision that adopted the airport land

use regulation or by some other political subdivision, the airport compatible land use regulation governs.

[Amended by Acts 1981, 67th Leg., p. 2876, ch. 769, §§ 3, 4, eff. Sept. 1, 1981.]

Art. 46e–6. Airport Zoning Requirements

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

(2) Non-conforming Uses. No airport zoning regulations adopted under this Act shall require changes in land use or the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in Section 7(3).[1]

[Amended by Acts 1981, 67th Leg., p. 2877, ch. 769, § 5, eff. Sept. 1, 1981.]

[1] Article 46e–7(3).

OPERATION OF AIRCRAFT

Art. 46f–1. Taking Off, Landing or Maneuvering Aircraft on Highway, Road or Street

Sec. 1. No person may take off, land, or maneuver an aircraft, including heavier than air and lighter than air, on a public highway, road, or street except when it is necessary to prevent serious injury to a person or property or except as provided by Article 46f–4, Revised Civil Statutes of Texas, 1925. However, nothing herein shall prohibit any operation of said aircraft on a public highway, road or street during or within a reasonable time after an emergency.

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

[Amended by Acts 1981, 67th Leg., p. 2672, ch. 723, § 2, eff. Aug. 31, 1981.]

Art. 46f–4. Use of Aircraft on County Roads

Sec. 1. A commissioners court of a county may enact ordinances to ensure the safe use of county roads by aircraft. The ordinances may:

(1) limit the kinds of aircraft that may use the roads;

(2) establish the procedure that a pilot shall follow before using a road, including, but not limited to, requiring the pilot to furnish flagmen at both ends of the road to be used; and

(3) establish other requirements that the commissioners court considers necessary for the safe use of the roads by aircraft.

Sec. 2. If the ordinances relating to the use of an aircraft on a county road are followed, the pilot of the aircraft may land or take off in the aircraft on the county road and is not subject to the traffic laws of this state during the landing or takeoff.

[Added by Acts 1981, 67th Leg., p. 2671, ch. 723, § 1, eff. Aug. 31, 1981.]

MISCELLANEOUS

Art. 46g. Airport Security Personnel; Employment; Commission as Peace Officers

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

(d) Any peace officer commissioned under this Act shall be vested with all the rights, privileges, obligations, and duties of any other peace officer in this state while he is on the property under the control of the airport, or in the actual course and scope of his employment.

[Amended by Acts 1975, 64th Leg., p. 991, ch. 380, § 1, eff. June 19, 1975.]

Art. 46h. Expenditure of Bond Revenues by Joint Boards without Competitive Bidding in Certain Circumstances

Sec. 1. This Act applies to any joint board created under the provisions of Section 14, Municipal Airports Act (Article 46d–14, Vernon's Texas Civil Statutes).

Sec. 2. (a) A joint board covered by this Act is authorized to spend or agree to spend the proceeds of revenue bonds under its control for the acquisition and installation of furniture, fixtures, and equipment to be used at any airport operated by such joint board, without the necessity of inviting, advertising for, or otherwise requiring competitive bids therefor, or requiring or obtaining payment or performance bonds in connection therewith. The provisions of this Act shall apply to such furniture, fixtures, and equipment hereafter purchased, presently in the process of purchase, or on order by (i) the joint board, or (ii) a private entity which will ease such facilities in accordance with the provisions of this Act. In order to qualify under this Act, such furniture, fixtures, and equipment must be, prior to the delivery of such bonds, the subject of a lease from the joint board to a private entity pursuant to the terms of which the lessee is obligated to maintain such furniture, fixtures, and equipment solely at its expense and is unconditionally obligated throughout the term of the bonds to make payments of net rent in such amounts and at such times as will be sufficient to provide for the timely payment of all principal, interest, redemption premiums, and other costs and expenses arising or to arise in connection with the payment of such bonds.

(b) This Act does not apply to the expenditure of the proceeds of bonds unless the bonds provide by their own terms that:

(1) they are payable solely from the net rents required by Subsection (a) of this section; and

(2) they are not payable in any circumstances from tax revenues.

(c) This Act does not apply to the expenditure of the proceeds of bonds that provide for the creation of a contractual mortgage lien against real property owned by any public agencies creating such joint board.

Sec. 3. This Act is permissive only, and any such joint board may promulgate such rules and regulations as it finds to be in the public interest to govern the method and installation of the properties to which this Act relates.

[Acts 1981, 67th Leg., p. 400, ch. 163, § 1, eff. May 20, 1981.]

TITLE 4

AGRICULTURE AND HORTICULTURE

Chapter Article

9A. Protection of Agricultural Operations [Repealed] ---------- 165b–1

17. Alcohol Fuels ---------- 165–10

CHAPTER ONE. COMMISSIONER OF AGRICULTURE

Article

47a. Repealed.

55f to 55h. Repealed.

Arts. 47 to 51. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Former art. 47a, subjecting the office of commissioner of agriculture to the Sunset Act, was added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.126.

Art. 52. Repealed by Acts 1953, 53rd Leg., p. 31, ch. 25, § 1; Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

Arts. 53 to 55a. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Arts. 55c to 55g. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal, art. 55c was amended by Acts 1975, 64th Leg., p. 851, ch. 325, §§ 1, 2.

Former art. 55f, relating to grading of livestock by the commissioner of agriculture, was derived from Acts 1975, 64th Leg., p. 1838, ch. 567.

Former art. 55g, relating to the family farm and ranch security program, was derived from Acts 1979, 66th Leg., p. 2205, ch. 839, §§ 1 to 16.

Acts 1981, 67th Leg., p. 3136, ch. 826, §§ 1 to 8, amended art. 55g without reference to its repeal by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1).

For text of art. 55g as amended by Acts 1981, 67th Leg., p. 3136, ch. 826, §§ 1 to 8, see the italicized notes following Agriculture Code, §§ 252.002, 252.013, 252.021 to 252.025, 252.027, 252.028, 252.057, 252.062, and 252.083.

Art. 55h. Repealed by Acts 1981, 67th Leg., p. 2595, ch. 693, § 20, eff. Aug. 31, 1981

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

Former art. 55h, relating to the licensing of persons who sample grain for grading purposes, was derived from Acts 1981, 67th Leg., p. 368, ch. 150, §§ 1 to 7.

CHAPTER TWO. STATE SEED AND PLANT BOARD

Article

67b. Repealed.

Arts. 56 to 67a. Repealed by Acts 1975, 64th Leg., p. 348, ch. 149, § 15, eff. Sept. 1, 1975

See, now, art. 67b.

Art. 67b. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

The repealed article, the Seeds and Plant Certification Act, was derived from Acts 1975, 64th Leg., p. 348, ch. 149; Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.128.

CHAPTER THREE. PINK BOLLWORM

Article

76a. Repealed

Arts. 68 to 74a. Repealed by Acts 1981, 67th leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

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

Arts. 76 to 82a. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Former art. 76a, subjecting the Pink Bollworm Commission to the Sunset Act, was added by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.002.

CHAPTER FOUR. AGRICULTURAL SEEDS

Arts. 93b to 93d–8. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal, art. 93b was amended by Acts 1975, 64th Leg., p. 984, ch. 379, §§ 1 to 4.

CHAPTER FIVE. COMMERCIAL FERTILIZERS

Art. 108a. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

CHAPTER SIX. FRUITS AND VEGETABLES

Arts. 109 to 117. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Arts. 118 to 118c–1. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal, art. 118b was amended by:

Acts 1975, 64th Leg., p. 993, ch. 382, §§ 1, 2.

Acts 1977, 65th Leg., p. 1048, ch. 386, §§ 11 to 19.

Acts 1981, 67th Leg., p. 362, ch. 145, § 1.

Acts 1981, 67th Leg., p. 2594, ch. 693, § 17.

Acts 1981, 67th Leg., p. 1489, ch. 388, § 4(2)(K) repealed §§ 20 and 21 of Acts 1977, 65th Leg., ch. 386, formerly appearing as a note under art. 118b.

Prior to repeal, art. 118b–1 was amended by Acts 1975, 64th Leg., p. 991, ch. 381, §§ 1 to 3.

Art. 118c–3. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

Art. 118e. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

CHAPTER SEVEN. NURSERY STOCK

Arts. 119, 119a. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Arts. 121 to 133. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Arts. 135, 135.1. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

CHAPTER SEVEN A. PLANT DISEASES AND PESTS

Article

135b–5a. Repealed.

Arts. 135a–1 to 135a–4. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal, art. 135a–1 was amended by Acts 1981, 67th Leg., 1st C.S., p. 239, ch. 22, art. I, effective August 14, 1981, which amendment expired September 1, 1981, by the terms of art. III, § 2 of the Act.

Art. 135b–4. Replaced by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

Art. 135b–5. Repealed by Acts 1975, 64th Leg., p. 995, ch. 383, § 34, eff. Nov. 1, 1976

See, now, art. 135b–5a.

Art. 135b–5a. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

The repealed article, the Pesticide Control Act, was derived from:

Acts 1975, 64th Leg., p. 995, ch. 383.

Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.008.

Acts 1981, 67th Leg., p. 318, ch. 127.

Acts 1981, 67th Leg., p. 2592, ch. 693, § 13.

Art. 135b–6. Structural Pest Control Act

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

Definitions

Sec. 2. (a) For purposes of this Act a person shall be deemed to be engaged in the business of structural pest control if he engages in, offers to engage in, advertises for, solicits, or performs any of the following services for compensation:

(1) identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations of:

(A) arthropods (insects, spiders, mites, ticks, and related pests), wood-infesting organisms, rodents, weeds, nuisance birds, and any other obnoxious or undesirable animals which may infest households, railroad cars, ships, docks, trucks, airplanes, or other structures, or the contents thereof, or

(B) pests or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street;

(2) making inspection reports, recommendations, estimates, or bids, whether oral or written, with respect to such infestations; or

(3) making contracts, or submitting bids for, or performing services designed to prevent, control, or eliminate such infestations by the use of insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances or mechanical devices.

(b) As used in this Act:

(1) "Person" means an individual, firm, partnership, corporation, association, or other organization, or any combination thereof, or any type of business entity.

(2) "Restricted-use pesticide" means a pesticide classified for restricted or limited use by the administrator of the federal Environmental Protection Agency.

(3) "State-limited-use pesticide" means a pesticide classified for restricted or limited use by the state commissioner of agriculture.

(4) "Certified applicator" means an individual who has been licensed and determined by the board to be competent to use or supervise the use of any restricted-use and state-limited-use pesticide covered by his currently valid certified applicator license.

(5) "Direct supervision" means that, in the application of a pesticide, the application is made by an individual acting under the instructions and control of a certified applicator responsible for the actions of that individual and available if and when needed for consultation or assistance although the certified applicator need not be physically present at the time and place of the pesticide application.

(6) "Branch office" means any place of business other than the primary office that has at least one (1) employee during normal business hours who is capable of answering customers' normal questions, scheduling normal inspections or work, or performing structural pest control functions; provided, however, that a facility serving solely as a telephone answering service shall not be a branch office.

(7) "Structural Pest Control Business License" means that license issued to a person entitling that person and his employees to engage in the business of structural pest control under the direct supervision of a certified applicator.

(8) "Device" means an instrument or contrivance, except a firearm, that is designed for trapping, destroying, repelling, or mitigating the effects of a pest or another form of plant or animal life, other than human beings or bacteria, viruses, or other microorganisms that live on or in human beings or animals. The term does not include any equipment used for the application of pesticides if the equipment is sold separately from a device as defined in this subdivision.

(9) "Endorsement of license" means an individual who establishes residence in Texas and who has been determined by the board to meet the qualifications of a certified applicator by taking the appropriate examination in a state other than Texas.

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

Sec. 3. (a) The Texas Structural Pest Control Board is created. The board is composed of nine members, six of whom shall be appointed. Four of the appointed members must be persons who have been engaged in the business of structural pest control for at least five years. No two members shall be representatives of the same business entity. Two members must be representatives of the general public who are not licensed under this Act. These appointments to the board shall be made by the Governor with the advice and consent of the Senate for staggered terms of two years. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The failure of an appointed member of the board to attend at least one-half of the regularly scheduled meetings held by the board each year automatically removes the member from the board and creates a vacancy on the board. In addition to the appointed members, the board shall also consist of the Commissioner of Agriculture, the Commissioner of Health, and the chairman of the Department of Entomology at Texas A & M University, or their designated representatives.

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

(d) The board shall appoint an executive director who shall administer the provisions of this Act and the rules and regulations promulgated by the board. The executive director shall receive a salary as determined by the board which shall be paid from funds available to the board. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the board or serve as a member of the board.

(e) The Texas Structural Pest Control Board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes) and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

(f) A member of the board or an employee of the board who carries out the functions of the board may not:

(1) be an executive officer, employee, or paid consultant of a trade association in the structural pest control industry;

(2) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the structural pest control industry; or

(3) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the board unless notice and an opportunity to participate are given to all parties to the proceeding, if the member or employee is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding.

(g) A member of the board, except those members who are duly licensed structural pest control operators, may not have personally, nor be related to persons within the second degree by affinity or third degree by consanguinity who have, except as consumers, financial interests in structural pest control businesses as officers, directors, partners, owners, employees, attorneys, or paid consultants of the structural pest control business or otherwise.

(h) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Licensing Standards; Rules and Regulations; Coordination of Activities; Examinations; Complaints; Contracts of Licensee; Public Information Program

Sec. 4. (a) The board shall develop standards and criteria for licensing individuals engaged in the business of structural pest control. The board may require individuals to pass an examination demonstrating their competence in the field in order to qualify for a Certified Applicator's License. Not later than the 30th day after the day on which a person completes an examination administered by the board, the board shall send to the person his examination results. If requested in writing by a person who fails the examination, the board shall send to the person not later than the 30th day after the day on which the request is received by the board an analysis of the person's performance on the examination.

(b) The board shall develop standards and criteria for issuing Structural Pest Control Business Licenses to persons engaged in the business of structural pest control. Persons engaged in the business of structural pest control must possess a Structural Pest Control Business License for each place of said business, including each branch office. Each structural pest control business licensee shall have in his employment at all times a certified applicator.

(c) The board shall promulgate rules and regulations governing the methods and practices of structural pest control when it determines that the public's health and welfare necessitates such regulations in order to prevent adverse effects on human life and the environment. The rules and regulations relating to the use of economic poisons shall comply with applicable standards of the federal government and the state commissioner of agriculture governing the use of such substances.

(d) The board may waive all or part of any examination requirement on a reciprocal basis with any other state or federal agency which has substantially the same standards as those prescribed by the board.

(e) The board shall coordinate its computer, administrative, and licensing functions with the Department of Agriculture if the board determines that the coordination would result in the more practical and efficient performance of those functions.

(f) The board may not promulgate rules restricting advertising or competitive bidding by licensees except to prohibit false, deceptive, or misleading practices by the licensee.

(g) If a written complaint is filed with the board relating to a licensee under this Act, the board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved or until litigation has been initiated. All records of complaints shall be filed in the offices of the board.

(h) The board must within 31 days from the date of filing of the complaint determine whether a hearing shall be held on such complaint or whether such complaint shall be dismissed and shall notify both the person who filed the complaint and the person against whom the complaint has been filed of the board's decision.

(i) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committees' statements.

(j) In each written contract in which a licensee under this Act agrees to perform structural pest control services in this state, the licensee shall include the mailing address and telephone number of the board and a statement that the board has jurisdiction over individuals licensed under this Act.

(k) The board shall establish a public information program for the purpose of informing the public about the practice and regulation of structural pest control in this state. As part of the program, the board shall prescribe and distribute in a manner that it considers appropriate a standard complaint form and shall make available to the general public and other appropriate state agencies the information compiled as part of the program. The program shall inform prospective applicants for licensing under this Act about the qualifications and requirements for licensing.

Prohibited Acts; Work on Own or Employer's Premises

Sec. 5. (a) No person, except an individual under the direct supervision of a certified applicator, may engage in the business of structural pest control after the effective date of this Act unless he meets

the standards set by the board and possesses a valid Structural Pest Control Business License issued by the board.

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

Application Forms; List of Study Materials and Seminars; Expiration and Renewal of Licensees; Nontransferability; Arrest and Conviction Records

Sec. 6. (a) All applications for licenses shall be made on forms prescribed and provided by the board, and each applicant shall furnish such information as the board may require for its determination of the applicant's qualifications. The board shall make public a list of study materials and educational seminars that are available to help applicants successfully complete any examination administered under this Act.

(b) All licenses issued by the board before 1981 shall expire on March 1 of each calendar year. Licenses issued by the board during or after 1981 expire on December 31 of each year or on various dates of the year as the board may determine as part of a staggered license renewal system. The board may issue a license for a period of less than one year if necessary to conform the license to a renewal system authorized by this subsection. If the board issues a license for a period of less than one year, the board shall prorate the fee for the license on a monthly basis. A person may renew a license by submitting an application to the board and paying the required renewal fees.

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

(d) The Department of Public Safety shall, upon request, supply the board arrest and conviction records of individuals applying for or holding Structural Pest Control Business Licenses or Certified Applicator's Licenses.

Sec. 6A. Repealed by Acts 1979, 66th Leg., p. 1374, ch. 614, § 10, eff. Aug. 27, 1979.

Fees, New Developments; Proof of Study

Sec. 7. (a) An applicant for an initial or renewal Structural Pest Control Endorsement of License, Business License, or a Certified Applicator's License shall accompany his application with a fee of not more than $75 each, as determined by the board, and a fee of not more than $20, as determined by the board, for each employee of the applicant who is engaged in structural pest control services.

(b) A licensee whose license has been lost or destroyed or whose name has been changed shall be issued a replacement license after application therefor and the payment of a fee set by the board not to exceed $20.

(c) The board may retroactively grant a Structural Pest Control Business License or a Certified Applicator's License to the applicant for a renewal license if such applicant pays a late renewal fee of $25 and if his application is filed with the board not more than 30 days after the expiration of his license. If such application is received between 30 and 60 days after the expiration of the applicant's license, the board may retroactively grant the renewal license when said application is accompanied by a renewal fee of $50. An applicant who applies for a renewal license more than 60 days after the expiration of his license must be reexamined by the board to obtain a license.

(d) Each time an applicant takes a test for a license, he shall pay the board a testing fee of not more than $25, as determined by the board, for each test taken.

(e) If the board determines that new developments in pest control have occurred that are so significant that their proper knowledge is necessary to protect the public, the board may require proof of study either by attendance of approved training courses or by taking additional examinations on the new developments only.

Security Insurance

Sec. 7A. (a) The board may not issue or renew a Structural Pest Control Business License until the license applicant:

(1) files with the board a policy or contract of insurance, approved as sufficient by the board, in an amount of not less than $25,000 in bodily injury coverage and $5,000 in property damage coverage insuring him against liability for damages to persons or property occurring as a result of operations performed in the course of the business of structural pest control to premises or any other property under his care, custody, or control; or

(2) files with the board a certificate or other evidence from an insurance company, in the case of an applicant who has an unexpired and uncancelled insurance policy or contract on file with the board, stating that the policy or contract insures the applicant against liability for acts and damage as described in Subdivision (1) of this subsection and that the amount of insurance coverage is not less than $25,000 in bodily injury coverage and $5,000 in property damage coverage.

(b) The policy or contract shall be maintained at all times in an amount not less than $25,000 in bodily injury coverage and $5,000 in property damage coverage. Failure to renew the policy or contract or maintain it in the required amount is a ground for suspension or revocation of a Structural Pest Control Business License.

(c) The board by rule may require different amounts of insurance coverage for different classifications of operations under this Act.

Records by Licensee

Sec. 7B. The board may require each licensee to make records, as prescribed by the board, of his use of pesticides. Records required shall be maintained for at least two years on business premises of the licensee and shall be made available for inspection by the board and by its authorized agents during normal business hours.

Disposition of Fees; Report; Audit

Sec. 8. (a) The proceeds from the collection of the fees provided in this Act shall be deposited in a special fund in the State Treasury to be known as the Structural Pest Control Fund, and shall be used for the administration and enforcement of the provisions of this Act. Any balance in the special fund at the end of each State fiscal biennium in excess of appropriations out of that fund for the succeeding biennium shall be transferred to the general revenue fund.

(b) Before September 1 of each year, the board shall file a written report with the legislature and the governor in which the board accounts for all funds received and disbursed by the board during the preceding year.

(c) The state auditor shall audit the financial transactions of the board during each fiscal year.

License Suspension, Revocation and Refusal; Appeal

Sec. 9.

[See Compact Edition, Volume 3 for text of 9(a)]

(b) An applicant or licensee may appeal from an order or other action of the board by an action in the district court of Travis County. Notice of appeal must be filed within 30 days of issuance of the order by the board. The hearing in district court shall be governed by the substantial evidence rule.

Civil Penalties and Injunctive Relief

Sec. 10. (a) A person who violates any provision of this chapter or any rule, regulation, permit, or other order of the board is subject to a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation to be recovered as provided in this chapter. Whenever it appears that a person has violated or is threatening to violate any provision of this chapter, or any rule, regulation, license, or other order of the board, then the board, or the executive director when authorized by the board, may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, regulation, license, or other order of the board, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the board, or the executive director when authorized by the board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

Criminal Offenses

Sec. 10A. (a) A person commits an offense if he:

(1) violates any section of this Act;

(2) violates regulations adopted under Section 4 of this Act; or

(3) intentionally makes a false statement in an application for a license or otherwise fraudulently obtains or attempts to obtain a license.

(b) Each day of violation is a separate offense.

(c) An offense under this section is a Class C misdemeanor unless the person has been convicted previously of an offense under this section, in which event the offense is a Class B misdemeanor.

Exceptions

Sec. 11. The provisions of this Act shall not apply to nor shall the following persons be deemed to be engaging in the business of structural pest control:

(1) an officer or employee of a governmental or educational agency who performs pest control services as part of his duties of employment;

(2) a person who performs pest control work upon property which he owns, leases, or rents as his dwelling;

(3) a nurseryman, holding a certificate from the commissioner of agriculture pursuant to Articles 126 and 126a, Revised Civil Statutes of Texas, 1925, as amended, when doing pest control work on growing plants, trees, shrubs, grass, or other horticultural plants; and

(4) a person or his employee who is engaged in the business of agriculture or aerial application or custom application of pesticides to agricultural lands.

Board as Sole Licensing Authority

Sec. 11A. The Texas Structural Pest Control Board is the sole authority in this state for licensing persons engaged in the business of structural pest control.

Continuation Under Federal Law

Sec. 11B. The Texas Structural Pest Control Act, as amended (Article 135b–6, Vernon's Texas Civil Statutes), is to be continued in effect as ap-

proved and required under the United States Environmental Protection Agency Public Law # 92–516 (Federal Insecticide, Fungicide, and Rodenticide Act of October 21, 1972, and subsequently amended).[1]

[1] 7 U.S.C.A. § 136 et seq.

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

[Amended by Acts 1975, 64th Leg., p. 2251, ch. 709, §§ 1 to 12, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1452, ch. 590, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.022, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1369, ch. 614, §§ 1 to 10, eff. Aug. 27, 1979.]

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

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

Section 11 of the 1979 amendatory act provided:

"(a) A person holding office as a member of the Texas Structural Pest Control Board on the effective date of this Act continues to hold the office for the term for which the person was originally appointed.

"(b) After August 30, 1979, the governor shall appoint to the board a consumer member for a term expiring on August 30, 1980, and a consumer member for a term expiring on August 30, 1981. As the terms of the incumbent structural pest control members of the board expire, the governor shall appoint two structural pest control members to the board for terms expiring on August 30, 1980, and shall appoint two structural pest control members to the board for terms expiring on August 30, 1981."

Art. 135b–7. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

CHAPTER SEVEN B. NOXIOUS WEEDS

Art. 135c. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

Prior to repeal, this article was amended by:

Acts 1977, 65th Leg., p. 1375, ch. 547, §§ 1 to 4.

Acts 1977, 65th Leg., p. 2017, ch. 805, § 1.

Acts 1979, 66th Leg., p. 792, ch. 353, §§ 1, 2.

CHAPTER EIGHT. EXPERIMENT STATIONS

2. COUNTY FARMS AND STATIONS

Arts. 150 to 165. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

CHAPTER NINE. SOIL AND WATER CONSERVATION AND PRESERVATION

Arts. 165a–2 to 165a–7. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal, art. 165a–4 was amended by:

Acts 1975, 64th Leg., p. 156, ch. 66, § 1.

Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.097.

Acts 1979, 66th Leg., p. 27, ch. 17, § 1.

Acts 1979, 66th Leg., p. 318, ch. 147, § 1.

Acts 1981, 67th Leg., p. 1489, ch. 388, § 4(2)(E), also repealed Acts 1941, 47th Leg., ch. 308, § 5 (see note under art. 165a–4 in Compact Edition, Volume 3).

Acts 1981, 67th Leg., p. 1489, ch. 388, § 4(2)(J), repealed §§ 1 and 2 of Acts 1965, 59th Leg., p. 370, ch. 176 (see the italicized "Change of Names" note in Compact Edition, Volume 3 following art. 165a–4).

Art. 165a–10. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

Prior to repeal, this article was amended by Acts 1979, 66th Leg., p. 1738, ch. 711, § 1.

CHAPTER NINE A. PROTECTION OF AGRICULTURAL OPERATIONS [REPEALED]

165b–1. Repealed.

Art. 165b–1. Repealed by Acts 1981, 67th Leg., p. 2605, ch. 693, § 23, eff. Aug. 1, 1981

The repealed article, the Right-to-Farm Act, was added by Acts 1981, 67th Leg., p. 313, ch. 124, § 1, effective May 13, 1981.

See, now, Agriculture Code § 251.001 et seq.

CHAPTER TEN. MILK PRODUCERS AND DISTRIBUTORS

Art. 165–3. Milk Grading and Pasteurization

Definitions

Sec. 1. The following definitions shall apply in the interpretation and enforcement of this Act:

A. Sanitization. Sanitization is the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable. Such treatment shall not adversely affect the equipment, the milk or milk product or the health of consumers, and shall be acceptable to the health authority.

B. Milk Producer. A milk producer is any person who operates a dairy farm and provides, sells, or offers milk for sale to a milk plant, receiving station, or transfer station.

C. Milk Hauler. A milk hauler is any person who transports raw milk and/or raw milk products to or from a milk plant, a receiving or transfer station.

D. Milk Distributor. A milk distributor is any person who offers for sale or sells to another any milk or milk products.

E. State Health Officer. The term "State Health Officer" shall mean the Commissioner of Health of the State of Texas.

F. Health Authority. The health authority shall mean the State Health Officer or his representative. The term "Health Authority", wherever it appears in these specifications and requirements, shall mean the appropriate agency having jurisdiction and control over the matters embraced within these specifications and requirements.

G. Dairy Farm. A dairy farm is any place or premises where one or more cows or goats are kept, and from which a part or all of the milk or milk product(s) is provided, sold, or offered for sale to a milk plant, transfer station, or receiving station.

H. Milk Plant and/or Receiving Station. A milk plant and/or receiving station is any place, premises, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution.

I. Transfer Station. A transfer station is any place, premises, or establishment where milk or milk products are transferred directly from one transport tank to another.

J. Official Laboratory. An official laboratory is a biological, chemical, or physical laboratory which is under the direct supervision of the State Health Officer or of the officer's designated representative.

K. Officially Designated Laboratory. An officially designated laboratory is a commercial laboratory authorized to do official work by the supervising agency, or a milk industry laboratory officially designated by the supervising agency for the examination of producer samples of Grade "A" raw milk for pasteurization.

L. Person. The word "person" shall mean any individual, plant operator, partnership, corporation, company, firm, trustee, or association.

State Health Officer to Fix Specifications; Fees for Movement, Distribution or Sale; Tests or Inspections by Political Subdivisions

Sec. 2. (a) The State Health Officer is hereby authorized and empowered to define what shall constitute Grade "A" raw milk, Grade "A" raw milk products, Grade "A" pasteurized milk, and Grade "A" pasteurized milk products and to fix specifications, rules or regulations for the production and handling of such milk and milk products, according to the safety and food value of the same and the sanitary conditions under which the same are produced and handled. Such definitions, specifications, rules or regulations shall be based upon and shall be in general harmony with (but need not be identical to) the definitions, specifications, rules or regulations relating to such milk and milk products set forth in the most recent federal definitions, specifications, rules and regulations. Such definitions, specifications, rules or regulations shall be set forth in specifications, rules or regulations promulgated by the State Health Officer in accordance with the procedures prescribed by Section 2A hereof.

(b) No political subdivision or agency of this State other than the Texas Department of Health may impose a license fee on any milk or milk product or on any person for the movement, distribution, or sale of any milk or milk product. The Texas Department of Health may impose only the following fees for the movement, distribution, or sale of milk or milk products:

(1) a permit fee not to exceed $25 a year for a producer dairy farm;

(2) a permit fee not to exceed $100 a year for a processing or bottling plant;

(3) a permit fee not to exceed $100 for a receiving and transfer station; and

(4) a permit fee not to exceed $50 a year for a milk transport tanker.

(c) A city, county, or other political subdivision may test or inspect milk or milk products, but the political subdivision shall bear the cost of any testing or inspection that it performs.

(d) The State Health Officer may contract with a county or incorporated city to inspect milk and milk products and, to the extent designated by the State Health Officer, to perform other regulatory functions necessary to enforce this Act. A county or incorporated city is the agent of the State Health Officer in performing duties under this subsection.

Notice and Hearing; Emergency Specifications; Advice; Filing Copy; Effective Date

Sec. 2A. Prior to the adoption, amendment, or repeal of any specification, rule or regulation, the State Health Officer shall:

(1) give at least sixty (60) days notice of his intended action. The notice shall include a statement of either the expressed terms or an informative summary of the proposed action, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be published not less than forty-five (45) nor more than sixty (60) days prior to such intended action in a newspaper of general circulation in Travis County and in each of the five most populous counties in Texas, according to the latest U. S. Census. In addition, the notice is to be mailed to all persons who have made timely written requests of the agency for advance notice of its specification, rule or regulation making proceedings; provided, however, that failure to mail such notice shall not invalidate any actions taken or specifications, rules or regulations adopted; and

(2) afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. Opportunity for oral argument must be granted if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members. The State Health Officer shall consider fully all written and oral submissions respecting the proposed specification, rule or regulation. Upon adoption of a specification, rule or regulation, the State Health Officer, if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(3) If the State Health Officer finds that an imminent peril to the public health, safety, or welfare requires adoption of a specification, rule or regulation upon fewer than sixty (60) days notice and states in writing his reasons for that find, he may proceed without prior notice or hearing or upon any abbreviated notice and hearing that he finds practicable, to adopt an emergency specification, rule or regulation. The specification, rule or regulation may be effective for a period of not longer than one hundred twenty (120) days renewable once for a period not exceeding sixty (60) days, but the adoption of an identical specification, rule or regulation under Subsections (a)(1) and (a)(2) of this section is not precluded.

(4) No specification, rule or regulation hereafter adopted is valid unless adopted in substantial compliance with this section. A proceeding to contest any specification, rule or regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within two (2) years from the effective date of the specification, rule or regulation.

(5) The State Health Officer may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons with respect to contemplated specification, rule or regulation making. The State Health Officer is also authorized to appoint committees of experts or interested persons or representatives of the general public to advise him with respect to contemplated specification, rule or regulation making. The powers of such committees shall be advisory only.

(6) The State Health Officer shall file with the Secretary of State a certified copy of each specification, rule or regulation adopted by him and shall mail a printed copy of each specification, rule or regulation adopted by him to all County and City Health Officers.

(7) Each specification, rule or regulation adopted is effective forty-five (45) days after filing except that: (1) a later date specified in the specification, rule or regulation shall be the effective date; and (2) subject to applicable constitutional or statutory provisions, an emergency specification, rule or regulation becomes effective immediately upon filing, or at a stated date after filing, if the State Health Officer finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(8) Specifications, rules or regulations filed with the Secretary of State shall be made available upon request to any person at prices fixed by the Secretary of State to cover costs of mailing, publication and copying.

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

Permits for Use of Labels in Advertising or Labeling Milk

Sec. 3. Any person, firm, association or corporation desiring to use Grade "A" labels in representing, publishing or advertising any milk or milk products offered for sale or to be sold within this State, shall make application for a permit to the State Health Officer or the officer's designated representative to use any such label in advertising, representing, or labeling such milk or milk products.

The State Health Officer or the officer's designated representative, after receiving such application as provided for in this section, is hereby authorized and empowered to take the necessary steps to determine and award the grade of the milk or milk products offered for sale by such applicant, according to the requirements of this Act for grade labels. The State Health Officer shall maintain a list of the name or names of all applicants to whom he has awarded permission to use Grade "A" labels, and shall remove from the list the names of persons whose permits have been revoked.

Milk to Conform to Marked Grades; Ordinances Allowing Only Pasteurized Milk and Milk Products

Sec. 4. (a) No milk or milk products sold, produced or offered for sale within this State by any person, firm, association or corporation shall carry a label, device or design marked "Grade A", or any other grade, statement, design or device, regarding the safety, sanitary quality or food value of the contents of the container which is misleading or which does not conform to the definitions and requirements of this Act.

(b) No milk or milk products, except those produced or processed by a person, firm, association or corporation having a permit to use a Grade "A" label under the provisions of this Act and which are produced, treated and handled in accordance with the specifications and requirements fixed and promulgated by the State Health Officer for Grade "A" milk and milk products, shall be represented, published, labeled or advertised as being Grade "A" milk or Grade "A" milk products.

(c) No person may sell to a consumer milk or a milk product labeled Grade "A" that has not been produced or processed by a person who has a Grade "A" permit from the State Health Officer.

(d) An incorporated city or town may by ordinance allow only pasteurized milk and pasteurized milk products to be sold at retail within the city or town.

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

Regulation of Grading and Labeling by State Health Officer; Procedure for Review of Grievance

Sec. 6. (a) The State Health Officer is hereby authorized and empowered to supervise and regulate

the grading and labeling of milk and milk products in conformity with the standards, specifications and requirements which he promulgates for such grades, and in conformity with the definitions of this Act; and he and his representatives shall have the power to revoke and re-grade permits when upon examination he or his representative shall find that such permit for the use of any grade label does not conform to the specifications or requirements promulgated by him in conformity to this Act.

(b) The State Health Officer shall establish a procedure by which a person aggrieved by the application of an agency rule or the denial of a license may receive a hearing on the action in question under the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Sec. 7. Repealed by Acts 1979, 66th Leg., p. 364, ch. 161, § 3, eff. May 15, 1979.

Sampling, Testing and Inspection of Grade "A" Milk and Milk Products

Sec. 7A. It shall be the duty of the State Health Officer or his representative to sample, test, or inspect Grade "A" pasteurized milk and milk products, or Grade "A" raw milk and milk products for pasteurization delivered to any milk plant and/or receiving station, or other place of delivery. Grade "A" pasteurized milk or Grade "A" raw milk for pasteurization which comes from beyond the limits of inspection of this State shall be sampled, tested and/or inspected in order to determine if such Grade "A" pasteurized milk and milk products or Grade "A" raw milk and milk products for pasteurization meets the standards and requirements of the Texas State Department of Health relating to milk and milk products. Such sampling, testing, and inspection of Grade "A" pasteurized milk and milk products or Grade "A" raw milk and milk products for pasteurization shall include, in addition to any other tests that may be required, the following:

(1) plate count or direct microscopic count;
(2) antibiotics;
(3) sediments;
(4) phosphotase;
(5) checks for water or any elements foreign to the natural contents of Grade "A" pasteurized milk or milk products or Grade "A" raw milk or milk products for pasteurization as defined in this Act.

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

[Amended by Acts 1975, 64th Leg., p. 63, ch. 35, § 1, eff. April 3, 1975; Acts 1979, 66th Leg., p. 362, ch. 161, §§ 1 to 3, eff. May 15, 1979.]

CHAPTER ELEVEN. COTTON

Article
165–4c. Repealed.

Arts. 165–4a to 165–4c. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal, art. 165–4a was amended by Acts 1975, 64th Leg., p. 1934, ch. 632, §§ 1 to 3; Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.127.

Former art. 165–4c, relating to registration of cotton buyers, was derived from Acts 1975, 64th Leg., p. 1863, ch. 584.

CHAPTER THIRTEEN. ANTIFREEZE

Art. 165–6. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

CHAPTER FOURTEEN. POULTRY

Article
165–7a. Repealed.

Arts. 165–7, 165–7a. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Former art. 165–7a, subjecting the poultry improvement board to the Sunset Act was added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.123.

CHAPTER FIFTEEN. CHICKEN EGGS

Art. 165–8. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

Prior to repeal, this article was amended by Acts 1979, 66th Leg., p. 48, ch. 28, § 1.

CHAPTER SIXTEEN. FORESTS

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

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

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

CHAPTER SEVENTEEN. ALCOHOL FUELS

Article
165–10. Alcohol fuels and fuel alcohol equipment.

Art. 165–10. Alcohol Fuels and Fuel Alcohol Equipment

Definitions

Section 1. In this Act:

(1) "Commissioner" means the Commissioner of Agriculture.

(2) "Person" means an individual, corporation, or association.

(3) "Industrial alcohol" means an alcohol which is produced for industrial purposes only and is not fit for human consumption.

(4) "Fuel alcohol equipment" means equipment capable of producing alcohol.

(5) "Agriculturally derived fuel" means fuel produced from agricultural crops, including trees, or by-products of agricultural crops.

Alcohol Fuels Development

Sec. 2. (a) The commissioner, with assistance from other state agencies that have responsibilities for agriculturally derived fuels, may compile and distribute information on the production and use of agriculturally derived fuels. An agency with responsibilities relating to agriculturally derived fuels shall provide the commissioner with relevant information related to the agency's responsibilities.

(b) The commissioner may cooperate with an agency of another state or of the federal government in activities relating to agriculturally derived fuels or other alcohol fuels. The commissioner or an individual appointed by the commissioner may serve as a representative of this state to any organization formed for the purposes of encouraging the development, production, and use of alcohol fuels.

(c) Any individual appointed by the commissioner under Subsection (b) of this section is entitled to be reimbursed for actual or necessary expenses incurred in acting as a representative of this state to an organization.

Standards for Alcohol Fuels

Sec. 3. (a) The commissioner may develop and by rule adopt standards of quality and purity for industrial alcohol used as motor fuel or as a component of a motor fuel. The standards shall include a minimum allowable proof for industrial alcohol used for that purpose.

(b) In order to determine compliance with the standards, the commissioner or an inspector employed by the commissioner may test any motor fuel sold in this state if the fuel is advertised to be alcohol or to have alcohol as a component. The commissioner or inspector may perform the tests with or without a complaint about the fuel.

Registration of Fuel Alcohol Equipment

Sec. 4. (a) The commissioner shall develop and by rule adopt procedures for the registration of fuel alcohol equipment that is offered for sale or lease and has an annual alcohol production capacity of one million gallons or less.

(b) A person may not sell or lease fuel alcohol equipment that has an annual alcohol production capacity of one million gallons or less unless the equipment is registered with the commissioner. The manufacturer of the equipment shall apply for registration on forms prescribed by the commissioner. The application for registration must contain:

(1) the name and address of the manufacturer;

(2) a description of the design of the equipment;

(3) a statement of the quantity of alcohol the equipment is capable of producing annually;

(4) a statement of any claims made by the manufacturer relating to the quality or quantity of alcohol the equipment is capable of producing;

(5) information relating to any certification of the equipment by a reputable testing entity;

(6) each brand name under which the equipment is sold; and

(7) other information required by rule of the commissioner.

(c) Registration of fuel alcohol equipment under this section must be renewed annually. Any change from the information provided on the application for registration must be reported to the commissioner before the 30th day following the effective date of the change or the registration is invalidated.

(d) The commissioner may compile and distribute a list of fuel alcohol equipment registered in this state. The listing of equipment is not an endorsement of the equipment, and the state is not liable for damages resulting from its use.

(e) The commissioner may prescribe and collect an initial registration fee and may prescribe and collect an annual renewal fee. Neither fee may exceed $100.

Injunction

Sec. 5. (a) The Department of Agriculture may sue to enjoin the sale or lease of fuel alcohol equipment that:

(1) is required to be registered but is not registered;

(2) produces alcohol that does not meet the quality and purity standards prescribed by the commissioner;

(3) is unsafe; or

(4) does not produce the quality or quantity of alcohol that is claimed in the registration.

(b) Suits under this section shall be brought in a district court of Travis County.

Penalty

Sec. 6. (a) A person commits and offense if the person sells or leases fuel alcohol equipment that is not registered as required by this Act.

(b) An offense under this section is a Class C misdemeanor.

Funding

Sec. 7. The legislature shall appropriate funds for the Texas Department of Agriculture to carry out the functions described in this Act.

[Acts 1981, 67th Leg., p. 2814, ch. 760, eff. Sept. 1, 1981.]

TITLE 6

AMUSEMENTS—PUBLIC HOUSES OF

Article
179d. Bingo Enabling Act.

Art. 179d. Bingo Enabling Act

Short Title

Sec. 1. This Act may be cited as the Bingo Enabling Act.

Definitions

Sec. 2. In this Act:

(1) "Governing body" means the commissioners court with regard to a county or justice precinct or the city council or other chief legislative body with regard to an incorporated city or town.

(2) "Bingo" or "game" means a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random.

(3) "Nonprofit organization" means an unincorporated association or society or a corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act, as amended (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes), that:

(A) does not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(B) for at least three years:

(i) has had a governing body or officers elected by a vote of members or by a vote of delegates elected by the members; or

(ii) has been affiliated with a state or national organization organized to perform the same purposes; and

(C) has obtained a 501(c) exemption from the Internal Revenue Service.

(4) "Fraternal organization" means a nonprofit organization that is organized to perform and engages primarily in performing a charitable, benevolent, patriotic, employment-related, or educational functions and that:

(A) has been organized for at least three years;

(B) has not authorized any person on behalf of its membership, governing body, or officers to support or oppose a particular candidate for public office by making political speeches, passing out cards or other political literature, writing letters, signing or circulating petitions, making campaign contributions, or soliciting votes; and

(C) is not a veterans organization.

(5) "Religious society" means a church, synagogue, or other organization or association that is organized primarily for religious purposes and that has been in existence for at least 10 years.

(6) "Veterans organization" means a nonprofit organization whose members are veterans or dependents of veterans of the armed services of the United States and that is chartered by the United States Congress and organized to advance the interests of veterans, or active duty personnel of the armed forces of the United States and their dependents.

(7) "Person" means an individual, partnership, corporation, or other group, however organized.

(8) "Volunteer fire department" means an association that:

(A) operates fire-fighting equipment;

(B) is organized primarily to provide and actively provides fire-fighting services; and

(C) does not pay its members compensation other than nominal compensation.

(9) "Charitable purposes" means one or more of the following causes, deeds, or activities to which the net proceeds derived from the playing of bingo are dedicated:

(A) those that benefit needy or deserving persons in this state, indefinite in number, by enhancing their opportunity for religious or educational advancement, by relieving them from disease, suffering, or distress, or by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles on which this nation was founded and enhancing their loyalty to their government;

(B) those that initiate, perform, or foster worthy public works in this state or enable or further the erection or maintenance of public structures in this state;

(10) "Net proceeds" means:

(A) in relation to the gross receipts from one or more occasions of bingo, the amount that remains after deducting the reasonable sums necessarily and actually expended for advertis-

ing, security, repairs to premises and equipment, bingo supplies and equipment, prizes, stated rental, or mortgage and insurance expenses, if any, bookkeeping or accounting services according to a schedule of compensation authorized by the governing body, fees for personnel as permitted by this Act, food, beverages, janitorial services and utility supplies and services, if any, license fees, gross receipts tax, and the cost of bus transportation, if authorized by the governing body; and

(B) in relation to the gross rent received by an organization licensed to conduct bingo for the use of its premises by another licensee, the amount that remains after deducting the reasonable sums necessarily and actually expended for janitorial services and utility supplies directly attributable to the use of the premises, if any.

(11) "Authorized organization" means a religious society, a nonprofit organization (other than an organization whose membership is predominantly veterans or their dependents organized to advance the interests of veterans, active duty personnel, or their dependents) whose predominant activities are for the support of medical research or treatment programs, a fraternal or veterans organization, or a volunteer fire department.

(12) "Authorized commercial lessor" means a person, other than a licensee permitted to conduct bingo under this Act, who owns or is a lessee of premises that he offers for leasing to an authorized organization for the purpose of conducting bingo. The term does not include:

(A) a person convicted of a felony, criminal fraud, or a crime of moral turpitude;

(B) a public officer who receives any consideration, direct or indirect, as owner or lessor of premises offered for the purpose of conducting bingo; or

(C) a firm or corporation in which a person covered by Paragraph (A) or (B) of this subdivision or a person married or related in the first degree to such a person has greater than a 10 percent proprietary, equitable, or credit interest or in which such a person is active or employed.

This subdivision does not prevent any firm or corporation that is not organized for pecuniary profit and no part of the net earnings of which inure to the benefit of any individual, member, or shareholder, from being an authorized commercial lessor solely because a public officer or a person married or related in the first degree to a public officer is a member of, active in, or employed by the firm or corporation.

(13) "Gross receipts" means the total amount received from the sale, rental, transfer, or use of bingo cards, the sale of food and beverages, and entrance fees charged at locations in which bingo is conducted.

(14) "Municipal secretary" means the officer of a municipality who performs the duties of city secretary, regardless of the officer's title.

(15) "Municipality" means an incorporated city or town.

(16) "Political subdivision" means a county, justice precinct, or municipality.

Authorization for Gross Receipts Tax

Sec. 3. (a) The commissioners court of a county that has voted to legalize bingo or in which a justice precinct has voted to legalize bingo by order may impose a two percent gross receipts tax on the conduct of bingo games within the county.

(b) The governing body of a municipality that has voted to legalize bingo by ordinance may impose a two percent gross receipts tax on the conduct of bingo games within the municipality.

(c) Any municipality within which one or more justice precincts have voted to legalize bingo and which municipality has not voted to prohibit bingo may impose a two percent gross receipts tax on the conduct of bingo games within the municipality.

(d) Any gross receipts otherwise subject to tax by a county are exempt from the municipal tax if a tax has been imposed on the gross receipts by a county.

Ordering Election

Sec. 4. (a) The governing body of a county, justice precinct, or municipality shall order and hold an election under this Act in the appropriate political subdivision if the governing body is presented with a petition for an election that meets the requirements of this Act.

(b) The governing body of a political subdivision may not order an election under this Act for a political subdivision earlier than two years after another election on the same ballot proposition was held for the same political subdivision. If a petition for an election is submitted an it is not possible to order an election under this Act as requested by the petition without violating this subsection, the petition has no legal effect.

Petition

Sec. 5. (a) A petition for a legalization election must have a statement substantially as follows preceding the space reserved for signatures on each page: "This petition is to require that an election be held in (name of political subdivision) to legalize bingo names authorized under the Bingo Enabling Act." A petition for a prohibitory election must have a statement substantially as follows preceding the space reserved for signatures on each page: "This petition is to require that an election be held in (name of political subdivision) to prohibit bingo games authorized under the Bingo Enabling Act."

(b) A petition is valid only if it is signed by registered, qualified voters of the political subdivi-

sion in a number equal to or greater than 10 percent of the number of votes cast for governor by qualified voters of the political subdivision in the most recent general election at which that office was filled, or the amount specified in the document governing the administration of the political subdivision, whichever is less. If boundaries of the political subdivision do not coincide exactly with boundaries of election precincts in effect for the election, the officer verifying the petition may use any reasonable method to estimate the number of votes for governor cast by qualified voters of the political subdivision.

(c) Each signer must enter beside his signature the date he signs the petition. A signature may not be counted if the signer fails to do so or if the date of signing is earlier than the 90th day before the date the petition is submitted to the governing body.

(d) In addition to the signature and date of each qualified voter, the following information must also be provided: current voter registration number, printed name, and residence address including zip code.

Verification of Petition

Sec. 6. (a) Not later than the fifth day after the date a petition for election is received in the office of the governing body, the governing body shall submit the petition for verification to the county clerk if the petition is applicable to a county or justice precinct or to the municipal secretary if the petition is applicable to a municipality.

(b) The officer to whom the petition is submitted for verification shall determine whether the petition is signed by the required number of registered voters of the political subdivision for which the election is requested. Not later than the 30th day after the date the petition is submitted to the officer for verification, the officer shall certify in writing to the governing body whether the petition is valid or invalid. If the officer determines that the petition is invalid, he shall state all reasons for that determination.

Date of Election

Sec. 7. (a) If the officer responsible for certifying a petition certifies that a petition is valid, the governing body shall order that an election be held in the appropriate political subdivision on a date not later than the 60th day after the date of the officer's certification.

(b) If no uniform election day as specified in Section 9b, Texas Election Code (Article 2.01b, Vernon's Texas Election Code), occurs within the 60-day period, the election shall be held on the next date specified within that section.

Ballot Proposition

Sec. 8. (a) In an election to legalize bingo games covered by this Act in a political subdivision, the ballot shall be prepared to provide for voting for or against the proposition: "Legalizing bingo games for charitable purposes as authorized by the Bingo Enabling Act in (name of political subdivision)."

(b) In an election to prohibit bingo games covered by this Act in a political subdivision, the ballot shall be prepared to provide for voting for or against the proposition: "Prohibiting bingo games for charitable purposes as authorized by the Bingo Enabling Act in (name of political subdivision)."

Effect of Election

Sec. 9. (a) In a legalization election, if a majority of the qualified voters voting on the question vote in favor of legalization, the holding of bingo games as authorized by this Act is legalized throughout the political subdivision effective the 10th day after the date the result of the election is officially declared, except that the legalization does not apply to any part of the political subdivision for which Section 10 of this Act requires a contrary status.

(b) In a prohibitory election, if a majority of the qualified voters voting on the question vote in favor of prohibition, the holding of bingo games as authorized by this Act is prohibited throughout the political subdivision effective the 10th day after the date the result of the election is officially declared, except that the prohibition does not apply to any part of the political subdivision for which Section 10 of this Act requires a contrary status.

(c) If a majority of the qualified voters voting on the question in a legalization election do not favor legalization, or if a majority of the qualified voters voting on the question in a prohibitory election do not favor prohibition, the election has no effect on the status under this Act of the political subdivision in which the election is held.

(d) If a majority of the qualified voters vote to legalize bingo in the political subdivision, the governing body of the political subdivision shall within 10 days of the election notify in writing the comptroller of public accounts and the attorney general of the date and results of the election and shall furnish with the notice a map prepared by the governing body indicating the boundaries of the politicial subdivision in which the playing of bingo may be conducted.

Determination of Local Option Status

Sec. 10. (a) In determining whether bingo games authorized by this Act are permitted in an area, the rules prescribed by this section apply.

(b) The games are permitted in an area only as the result of a successful legalization election held under this Act.

(c) To the extent that the results of local option elections held by different types of political subdivi-

sions conflict with regard to the same territory, the relative dates of the elections are of no consequence and the following rules apply:

(1) the status of an area as determined by a municipal election prevails over a contrary status as determined by a justice precinct or county election; and

(2) the status of an area as determined by a justice precinct election prevails over the status of an area as determined by a county election.

(d) To the extent that two or more local option elections held at the justice precinct level apply to the same territory, the most recent election prevails.

(e) If a municipality has established a status under this Act by a municipal election, territory annexed to the municipality after that status is established assumes the status under this Act of the rest of the municipality. Territory detached from such a municipality assumes the status the territory would have had if it had never been a part of the municipality. If the detached territory is added to another municipality that has established a status by a municipal election, the territory assumes the status of the municipality to which it is added.

(f) The addition of territory to or detachment of territory from a justice precinct does not affect the status under this Act of the added or detached territory. The abolition of a justice precinct does not affect the status under this Act of the territory formerly within the justice precinct.

Restrictions on Bingo Games

Sec. 11. (a) The conduct of bingo games authorized under this Act is subject to the restrictions prescribed by this section regardless of whether the restrictions are contained in a local ordinance.

(b) A person, other than a licensee under this Act, may not lease or otherwise make available for conducting bingo a hall or other premises for any consideration, direct or indirect.

(c) A bingo game may not be conducted on or within any leased premises if rental under the lease is to be paid, in whole or part, on the basis of a percentage of the receipts or net proceeds derived from the operation of the game.

(d) The net proceeds of any game of bingo and of any rental of premises for bingo shall be exclusively devoted to the charitable purposes of the organization permitted to conduct the game. The proceeds of any game of bingo or of any rental may not be used to support or oppose a particular candidate or a slate of candidates for public office or in favor of or in opposition to any measure submitted to a vote of the people.

(e) A prize may not exceed the sum or value of $500 in any single game of bingo.

(f) A series of prizes on any one bingo occasion may not aggregate more than $2,500.

(g) A person other than a member of a licensed authorized organization may not conduct, promote, or administer a bingo game.

(h) A person may not be denied admission to a game or the opportunity to participate in a game because of race, color, creed, religion, national origin, sex, or handicap.

(i) Bingo games may not be conducted at more than one location on property owned or leased by a licensed authorized organization.

Application for License

Sec. 12. (a) To conduct bingo, an applicant for a license must file with the comptroller of public accounts a written application in a form prescribed by the comptroller, duly executed and verified, which must include:

(1) the name and address of the applicant and sufficient facts relating to its incorporation and organization to enable the comptroller of public accounts to determine whether it is an authorized organization;

(2) the names and addresses of its officers and the place where and the time when the applicant intends to conduct bingo under the license applied for;

(3) in case the applicant intends to lease premises for this purpose from other than an authorized organization, the name and address of the licensed commercial lessor of such premises, and the capacity or potential capacity for public assembly purposes of space in any premises presently owned or occupied by the applicant;

(4) the amount of rent to be paid or other consideration to be given directly or indirectly for each occasion for use of the premises of another authorized organization licensed under this Act to conduct bingo or for use of the premises of a licensed commercial lessor;

(5) all other items of expense intended to be incurred or paid in connection with the conducting, promoting, and administering of games of bingo and the names and addresses of the persons to whom, and the purposes for which, they are to be paid;

(6) the specific purposes to which the net proceeds of the games are to be devoted and in what manner and a statement that the net proceeds will go to one or more of the authorized charitable purposes under this Act;

(7) a designation of an active member or members of the applicant organization under whom the game or games of bingo will be conducted, accompanied by a statement executed by the member or members so designated that he or they will be responsible for the conduct of bingo games in accordance with the terms of the license and this Act; and

(8) a statement that a copy of the application has been sent to the appropriate governing body and the attorney general.

(b) An applicant for a license to act as an authorized commercial lessor must file with the comptroller of public accounts a verified written application on a form prescribed by the comptroller, which must include:

(1) the name and address of the applicant;

(2) a designation and address of the premises intended to be covered by the license sought;

(3) the lawful capacity for public assembly purposes;

(4) a statement that a copy of the application has been sent to the appropriate governing body and the attorney general; and

(5) a statement that the applicant complies with the specifications prescribed by Section 2(12) of this Act.

(c) At any time the comptroller of public accounts, the governing body, or the attorney general may make a written request of a commercial lessor to disclose any of the following information:

(1) the cost of the premises and appraised value for property tax purposes or annual net lease rent, whichever is applicable;

(2) gross rentals received and itemized expenses for the immediately preceding calendar or fiscal year, if any;

(3) gross rentals, if any, derived from bingo during the last preceding calendar or fiscal year;

(4) the computation by which the proposed rental schedule was determined;

(5) the number of occasions on which the applicant anticipates receiving rent for bingo during the ensuing year or shorter period if applicable and proposed rent for each such occasion;

(6) estimated gross rental income from all other sources during the ensuing year; and

(7) estimated expenses itemized for the ensuing year and the amount of each item allocated to bingo rentals.

(d) An authorized organization may receive a temporary license for the conduct of bingo games on filing with the comptroller of public accounts an application, on a form prescribed by the comptroller, accompanied by a $5 license fee. A temporary license is valid for one week. An organization may receive no more than three temporary licenses in a calendar year. An organization operating under a temporary license is not subject to the gross receipts tax authorized by this Act but is subject to the other provisions of this Act to the extent they can be made applicable.

(e) A copy of each application under this Act shall be sent to the appropriate governing body and the attorney general before a license is issued.

Investigation; Matters to be Determined; Issuance of License; Fees; Duration of License

Sec. 13. (a) The comptroller of public accounts shall investigate the qualifications of each applicant and the merits of each application promptly after the filing of the application.

(b) The comptroller of public accounts shall issue to an applicant a license for the conduct of bingo, on payment of a $50 license fee, if the comptroller determines that:

(1) the member or members of the applicant designated in the application to conduct bingo are active members of the applicant;

(2) the person or persons under whose name the game or games of bingo will be conducted have never been convicted of a felony, criminal fraud, or a crime of moral turpitude;

(3) the games are to be conducted in accordance with this Act;

(4) the proceeds of the games are to be disposed of as provided by this Act; and

(5) no prize will be offered or given in excess of the sum or value of $1,000 in any single game and that the aggregate of all prizes offered and given in all of the games conducted on a single occasion under the license will not exceed the sum or value of $5,000.

(c) The comptroller of public accounts may not issue a license to an applicant seeking to conduct bingo on the premises of a licensed commercial lessor if the comptroller determines that the premises presently owned or occupied by the applicant are in every respect adequate and suitable for conducting bingo games.

(d) The comptroller of public accounts shall issue a license permitting a commercial lessor applicant to lease premises for the conduct of bingo to an authorized organization or organizations specified in the application during the period therein specified or such shorter period as the comptroller determines, but not to exceed one year, on payment of a $10 license fee if the comptroller determines that:

(1) the applicant seeking to lease a hall or premises for the conduct of bingo to an authorized organization is qualified to be licensed under this Act;

(2) the applicant satisfies the requirements for an authorized commercial lessor as prescribed by Section 2(12) of this Act;

(3) the rent to be charged is fair and reasonable;

(4) there is no diversion of the funds of the proposed lessee from the lawful purposes as prescribed by this Act; and

(5) the leasing of a hall or premises for the conduct of bingo is to be in accordance with this Act.

(e) A license issued under this Act may not be effective for more than one year.

(f) When a license is issued by the comptroller of public accounts, a copy of the license shall immediately be sent by the licensee to the appropriate

governing body and the attorney general for filing in a central file containing each license issued under this Act.

(g) A license may not be transferred by a licensee.

Hearing; Amendment of License

Sec. 14. (a) An application for a license may not be denied by the comptroller of public accounts until a hearing is held after due notice to the applicant. At the hearing, the applicant is entitled to be heard on the qualifications of the applicant and the merits of the application.

(b) Any license issued under this Act may be amended on application to the comptroller of public accounts if the subject matter of the proposed amendment could lawfully and properly have been included in the original license.

Form and Contents of License; Display of License

Sec. 15. (a) Each license to conduct bingo shall include:

(1) the name and address of the licensee and the names and addresses of the member or members of the licensee under whom the games will be conducted;

(2) an indication of the place where and the time when the games are to be conducted;

(3) the specific purposes to which the net proceeds of the games are to be devoted; and

(4) a statement of whether any prize is to be offered and the amount of any authorized prize.

(b) Each license issued for the conduct of any game shall be conspicuously displayed at the place where the game is conducted at all times during the conduct of the game.

(c) Each license to lease premises for conducting bingo shall contain a statement of the name and address of the licensee and the address of the premises, and each license shall be conspicuously displayed on the premises at all times during the conduct of bingo.

(d) Each location must be separately licensed.

Control and Supervision; Suspension of Licenses; Inspection of Premises

Sec. 16. (a) The comptroller of public accounts shall have and exercise strict control and close supervision over all games of bingo conducted under this Act to the end that the games are fairly conducted in accordance with the license and this Act.

(b) The comptroller may suspend or revoke any license issued under this Act for failing to comply with this Act.

(c) The comptroller and city or county peace officers may enter, through their respective officers and agents, at all times any premises where any game of bingo is being conducted or where it is intended that any game is to be conducted or where any equipment being used or intended to be used in the conduct of a game is found, for the purpose of inspecting the premises.

Participation by Persons Under 18

Sec. 17. (a) A person under the age of 18 years may not play any game of bingo conducted under any license issued under this Act unless accompanied by his parent or guardian.

(b) A person under the age of 18 years may not conduct or assist in the conduct of any game of bingo conducted under any license issued under this Act.

Frequency and Times of Games

Sec. 18. A game of bingo may not be conducted under any license issued under this Act more often than three days per calendar week, not to exceed four hours per 24-hour period.

Persons Operating and Conducting Games; Equipment; Expenses; Compensation

Sec. 19. (a) A person may not conduct, promote, or administer any game of bingo under any license issued under this Act except an active member of the authorized organization to which the license is issued. A person may not assist in the conducting, promoting, or administering of any game of bingo under a license except such an active member or a member of an organization or association that is an auxiliary to the licensee, a member of an organization or association of which the licensee is an auxiliary, or a member of an organization or association that is affiliated with the licensee by being, with it, auxiliary to another organization or association, and except bookkeepers, accountants, cashiers, ushers, or callers as provided by this Act.

(b) A game of bingo may not be conducted with any equipment except that owned by the licensed authorized organization or used without payment of any compensation therefor by the licensee.

(c) Items of expense may not be incurred or paid in connection with the conduct of any game of bingo under any license issued under this Act except those that are reasonable and are necessarily expended for advertising, security, repairs to premises and equipment, bingo supplies and equipment, prizes, stated rental or mortgage and insurance expenses, if any, bookkeeping or accounting services, fees for personnel permitted under this Act, food, beverages, janitorial services and utility supplies and services, if any, license fees, and the cost of bus transportation, if authorized by the comptroller of public accounts.

(d) A person may not receive compensation for conducting, promoting, or administering a game or for assisting in conducting, promoting, or administering a game.

Reporting and Due Date of Taxes

Sec. 20. The gross receipts taxes authorized to be imposed by a political subdivision under this Act are due and payable by the licensee conducting bingo

games to the comptroller of public accounts monthly on or before the 15th day of the month succeeding each monthly reporting period. The report shall be filed under oath on forms prescribed by the comptroller.

$2,500 Exemption

Sec. 21. The first $2,500 of gross receipts from the conduct of bingo within each reporting period is exempted from the tax authorized by this Act.

Computation of Tax

Sec. 22. Each licensee required to report gross receipts taxes to the comptroller of public accounts under this Act shall compute the taxes by multiplying the gross receipts from the conduct of bingo games by two percent, but may exclude $2,500 from the gross receipts of bingo games conducted during the reporting period.

Report of Receipts, Expenses

Sec. 23. (a) Each licensee conducting bingo games shall submit quarterly to the comptroller of public accounts a report under oath containing the following information:

(1) the amount of the gross receipts derived from the games;

(2) each item of expense incurred or paid;

(3) each item of expenditure made or to be made, the name and address of each person to whom each item has been paid or is to be paid, with a detailed description of the merchandise purchased or the services rendered;

(4) the net proceeds derived from the games;

(5) the use to which the proceeds have been or are to be applied; and

(6) a list of prizes offered and given, with their respective values.

(b) Each licensee shall maintain records to substantiate the contents of each report.

(c) A copy of each report shall be furnished to the appropriate governing body and the attorney general.

Administration, Collection, Enforcement, and Operation of the Tax

Sec. 24. The comptroller of public accounts shall perform all functions incident to the administration, collection, enforcement, and operation of any tax imposed under this Act.

Delivery of Return; Remittance

Sec. 25. A licensee required to file a tax return shall deliver the monthly return with a remittance of the net amount of the tax due to the office of the comptroller of public accounts.

Transmittals, Refunds, and Collections

Sec. 26. (a) Each jurisdiction's share of all gross receipts taxes collected under this Act by the comptroller of public accounts shall be transmitted to the treasurer or the officer of the jurisdiction performing the functions of that office by the comptroller of public accounts payable to the jurisdiction periodically as promptly as feasible. Transmittals required under this Act shall be made at least twice in each state fiscal year. The funds so transmitted may be used by the jurisdiction for any purpose for which the general funds of the jurisdiction may be used.

(b) Before transmitting funds under Subsection (a) of this section, the comptroller shall deduct two percent of the sum collected from each jurisdiction during such period and shall deposit the funds in the state treasury to the credit of a special fund to be known as the bingo enforcement fund. The fund may be used only for the administration and enforcement of this Act.

(c) The comptroller of public accounts is authorized to retain in the suspense account of any jurisdiction a portion of the jurisdiction's share of the tax collected under this Act. The balance so retained in the suspense account may not exceed five percent of the amount remitted to the jurisdiction. The comptroller is authorized to make refunds from the suspense account of any jurisdiction for overpayments made to such accounts and to redeem dishonored checks and drafts deposited to the credit of the suspense account of the jurisdiction.

(d) When any jurisdiction imposes the gross receipts tax and thereafter abolishes the tax, the comptroller of public accounts may retain in the suspense account of the jurisdiction for one year five percent of the final remittance to each such jurisdiction at the time of termination of collection of the tax in the jurisdiction to cover possible refunds for overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of the account. After one year has elapsed after the effective date of abolition of the tax in the jurisdiction, the comptroller shall remit the balance in the account to the jurisdiction and close the account.

Examination of Records; Disclosure of Information

Sec. 27. (a) The governing body and the attorney general may examine or cause to be examined the records of:

(1) any authorized organization that is or has been licensed to conduct bingo, so far as the organization's activities may relate to bingo, including the maintenance, control, and disposition of net proceeds derived from bingo or from the use of its premises for bingo, and may examine any manager, officer, director, agent, member, or employee thereof under oath in relation to the conduct of any game under any license, the use of its premises for bingo, or the disposition of proceeds derived from bingo; and

(2) any licensed authorized commercial lessor so far as the activities of the lessor may relate to leasing premises for bingo and may examine the lessor or any manager, officer, director, agent, or employee thereof under oath in relation to such leasing.

(b) The comptroller of public accounts, or any person authorized in writing by him, may examine the books, papers, records, equipment, and place of business of any licensee under this Act and may investigate the character of the business of the person in order to verify the accuracy of any return, statement, or report made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(c) If the comptroller of public accounts determines that this Act is not being complied with, he shall notify the attorney general and the governing body of the appropriate political subdivision.

Information Available for Public Inspection

Sec. 28. All applications, returns, reports, statements, and audits submitted to or conducted by the comptroller of public accounts and the governing body are available for public inspection.

Penalties for Failure to Pay or Report

Sec. 29. (a) If any licensee fails to file a return as required by this Act or fails to pay to the comptroller of public accounts taxes imposed under this Act when the return or payment is due, the licensee shall forfeit five percent of the amount due as a penalty, and after the first 30 days, he shall forfeit an additional five percent.

(b) Delinquent tax shall draw interest at the rate of 10 percent a year, beginning 60 days from the due date.

Recomputation of Tax

Sec. 30. If the comptroller of public accounts is not satisfied with the return or returns of the tax or the amount of tax required to be remitted to the state by any licensee, he may compute and determine the amount required to be paid on the basis of the facts contained in the return or returns or report of receipts and expenses or on the basis of any information within his possession or which may come into his possession.

Determination if No Return Made

Sec. 31. If any licensee fails to make a required return, the comptroller of public accounts shall make an estimate of the gross receipts of the licensee. The estimate shall be made for the period in respect to which the licensee failed to make a return and shall be based on any information that is in the comptroller's possession or may come into his possession. On the basis of this estimate, the comptroller shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10 percent thereof. One or more determinations may be made for one or for more than one period.

Jeopardy Determination

Sec. 32. (a) If the comptroller of public accounts believes that the collection of any tax or any amount of tax required to be remitted to the state or the amount of any determination will be jeopardized by delay, he shall make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination. The amount determined is due and payable immediately.

(b) If the amount specified in the determination is not paid within 20 days after service of notice thereof on the licensee against whom the determination is made, the amount becomes final at the expiration of the 20 days unless a petition for redetermination is filed within the 20 days. A delinquency penalty of 10 percent of the tax or amount of the tax and interest at the rate of 10 percent a year shall attach to the amount of the tax or the amount of the tax required to be collected.

Application of Tax Laws

Sec. 33. Chapter 1, Title 122A, Taxation—General, Revised Civil Statutes of Texas, as amended,[1] applies to the administration, collection, and enforcement of the tax imposed under this Act except as modified by this Act.

[1] Repealed; see, now, Tax Code, § 101.001 et seq.

Appeals on Denial of License

Sec. 34. (a) Any applicant for, or holder of, any license issued or to be issued under this Act aggrieved by any action of the comptroller of public accounts relating to licensing under this Act may appeal to a district court of Travis County from the determination of the comptroller by filing with the comptroller, the governing body, and the attorney general a written notice of appeal within 30 days after the determination or action appealed from, and on the hearing of the appeal, the evidence, if any, taken before the comptroller of public accounts and any additional evidence may be produced and shall be considered in arriving at a determination of the matters in issue.

(b) The district court may order the comptroller of public accounts to issue a license to an applicant or reform a license issued to an applicant or order that the application be reconsidered by the comptroller if the court finds that the comptroller abused his discretion in his decision on the application.

Exemption From Prosecution

Sec. 35. (a) A person lawfully conducting or participating in the conduct of bingo or permitting the conduct on any premises owned or leased by him or it under any license lawfully issued under this Act is not liable to prosecution or conviction for violation of any provision of the Penal Code, as amended, or any other law or ordinance to the extent that such conduct is specifically authorized by this Act. The immunity does not extend to any person knowingly conducting or participating in the conduct of bingo under any license obtained by any false pretense or by any false statement made in any application for license or otherwise or permitting the conduct on any premises owned or leased by him or it of any

game of bingo conducted under any license known to him or it to have been obtained by any false pretense or statement.

(b) A licensee under this Act may possess paraphernalia, devices, or equipment that is required to conduct bingo games.

(c) This Act does not apply to a bingo game or any conduct related to bingo under circumstances that would not constitute an offense under Chapter 47 of the Penal Code if this Act were not in effect.

Offenses; Forfeiture of License; Ineligibility to Apply for License

Sec. 36. (a) A person commits an offense and forfeits a license issued under this Act if the person:

(1) makes a false statement in an application for a license authorized to be issued under this Act;

(2) fails to maintain records that fully and truly record all transactions connected with the conducting of bingo or the leasing of premises to be used for the conduct of bingo;

(3) falsifies or makes any false entry in any books or records so far as they relate in any manner to the conduct of bingo, to the disposition of the proceeds thereof, or to the application of rent received by any authorized organization;

(4) diverts or pays any portion of the net proceeds of any game of bingo to any person except in furtherance of one or more of the lawful purposes prescribed by this Act; or

(5) violates this Act or a term of a license issued under this Act.

(b) An offense under this section is a Class C misdemeanor, unless the person has been convicted previously under this section, in which event it is a Class B misdemeanor.

(c) A person whose license is forfeited under this section may not apply for another license under this Act until one year has elapsed from the date of forfeiture.

Seizure and Sale

Sec. 37. (a) At any time within three years after a person is delinquent in the payment of any amount of required tax due, the comptroller of public accounts may collect the amount as provided by this section.

(b) The comptroller of public accounts shall seize any property, real or personal, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due with any interest or penalties on account of the seizure and sale. Any seizure made to collect a tax due shall be only of property of the licensee not exempt from execution under the laws of this state.

(c) Notice of the sale and the time and place of the sale shall be given to the delinquent person in writing at least 20 days before the date set for the sale as provided by this subsection. The notice shall be enclosed in an envelope addressed to the person, in case of a sale for limited sales tax due, at his last known address or place of business, and in case of a sale for use taxes due, at his last known residence or place of business in this state. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published for at least 10 days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county at least 20 days before the date set for the sale. The notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with the law and the notice.

(d) At the sale, the comptroller of public accounts shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

(e) If on the sale the money received exceeds the total of all amounts, including interest, penalties, and costs due the state, the comptroller of public accounts shall return the excess to the person liable for the amounts and obtain his receipt. If any person having an interest in or lien on the property files with the comptroller before the sale notice of his interest or lien, the comptroller shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the comptroller shall deposit the excess money with the state treasurer, as trustee for the owner, subject to the order of the person liable for the amount, his heirs, successors, or assigns.

Bonds or Securities

Sec. 38. (a) Each licensee under this Act shall furnish to the comptroller of public accounts a cash bond, a bond from a surety company chartered or authorized to do business in this state, certificates of deposit, certificates of savings or U.S. treasury bonds, or, subject to the discretion and approval of the comptroller, an assignment of negotiable stocks or bonds, or such other security as the comptroller may deem sufficient to secure the payment of required taxes under this Act. The comptroller of public accounts shall fix the amount of the bond or security in each case, taking into consideration the

amount of money that has or is expected to become due from the licensee under this Act. The amount of the bond or security required by the comptroller may not exceed three times the amount the licensee's average monthly reports.

(b) On failure to pay taxes imposed under this Act, the comptroller of public accounts may notify both the licensee and any surety of the delinquency by jeopardy or deficiency determination. If payment is not made when due, the comptroller may forfeit the bond or security or any part thereof.

(c) If the licensee ceases to conduct bingo games and relinquishes his license, the comptroller of public accounts shall authorize the release of all bonds and security on his determination that no amounts of tax remain due and payable under this Act.

Unlawful Bingo or Game

Sec. 39. (a) For the purposes of this section, "bingo" or "game" means a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random, whether or not a person who participates as a player furnishes something of value for the opportunity to participate.

(b) Any person conducting, promoting, or administering a game commits a felony of the third degree unless the person is conducting, promoting, or administering a game:

(1) in accordance with a valid license issued under this Act;

(2) within the confines of a home for purposes of amusement or recreation when:

(A) no player or other person furnishes anything of value for the opportunity to participate;

(B) participation in the game does not exceed 15 players; and

(C) the prizes awarded or to be awarded are nominal; or

(3) on behalf of an organization of persons 60 years of age or over or the patients in a hospital or nursing home or residents of a retirement home solely for the purpose of amusement and recreation of its members, residents, or patients, when:

(A) no player or other person furnishes anything of value for the opportunity to participate; and

(B) the prizes awarded or to be awarded are nominal.

(c) This section applies to all political subdivisions regardless of local option status.

Fraudulent Award of Prizes

Sec. 40. (a) A person commits an offense if the person participates in the award of a prize to a player in a bingo game knowing that the award of the prize is made in a manner that disregards, to any extent, the random selection of numbers or symbols.

(b) An offense under this section is a felony of the third degree.

(c) It is a defense to prosecution under this section that no participant in the game furnished anything of value for the opportunity to participate in the game.

Application of Penal Code

Sec. 41. Section 47.09, Penal Code applies to any prosecution for a violation of this Act.

Civil Remedies and Penalties

Sec. 42. (a) If the comptroller of public accounts, the governing body, or the attorney general has reason to believe that this Act has been or is about to be violated, the comptroller of public accounts, the governing body, or the attorney general may petition the court for injunctive relief to restrain any such violations. Venue for the injunctive relief is in the district courts of Travis County, Texas.

(b) If the court finds that this Act has been violated by any person, the court shall issue a temporary restraining order, and after due notice and hearing a temporary injunction and after a final trial a permanent injunction to restrain such violations.

(c) If the court finds that this Act has been knowingly violated, the court shall order all proceeds from the illegal bingo game or games to be forfeited to the appropriate governing body as a civil penalty. [Acts 1981, 67th Leg., 1st C.S., p. 85, ch. 11, §§ 1 to 42, eff. Nov. 10, 1981.]

TITLE 7

ANIMALS

1. CRUELTY TO ANIMALS

Article
182a. Disposition of Cruelly Treated Animals.

1. CRUELTY TO ANIMALS

Art. 182a. Disposition of Cruelly Treated Animals

Sec. 1. In this Act "cruelly treated" means tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, caused to fight with another animal, or otherwise cruelly treated.

Sec. 2. (a) If a county sheriff, constable, or deputy constable or an officer who has responsibility for animal control in an incorporated city or town has reason to believe that an animal has been or is being cruelly treated, he may apply to a justice court in the county where the animal is located for a warrant to seize the animal. On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court shall issue the warrant and set a time within 10 days for a hearing in the court to determine whether the animal has been cruelly treated. The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the justice court hearing.

(b) If the owner of the animal is found guilty in county court of a violation of Section 42.11, Penal Code, involving the animal, this finding is prima facie evidence at the hearing that the animal has been cruelly treated. Statements of an owner made at a hearing provided for in this Act are not admissible in a trial of the owner for a violation of Section 42.11, Penal Code. After all interested parties have been given an opportunity to present evidence at the hearing, if the court finds that the owner of an animal has cruelly treated the animal, the court shall order a public sale of the animal by auction. If the court does not find that the owner of the animal has cruelly treated the animal, the court shall order the animal returned to the owner.

Sec. 3. (a) Notice of an auction ordered as provided in this Act must be posted on a public bulletin board where other public notices are posted for the city, town, or county. At the auction, a bid by the former owner of the animal or his representative may not be accepted.

(b) Proceeds from the sale of the animal shall be applied first to the expenses incurred in caring for the animal during impoundment and in conducting the auction. The officer conducting the auction shall pay any excess proceeds to the justice court ordering the auction. The court shall cause the excess proceeds to be returned to the former owner of the animal.

(c) If the officer is unable to sell the animal at auction, he may cause the animal to be destroyed or may give the animal to a nonprofit animal shelter, pound, or society for the protection of animals.

Sec. 4. An owner of an animal ordered sold at public auction as provided in this Act may appeal the ruling by giving notice of appeal in justice court within 10 days of the hearing. Appeal is by means of a hearing in county court in the county where the animal was impounded. At the hearing in county court, the court may assess costs of the hearing. During the pendency of an appeal under this section the animal shall not be sold, destroyed, or given away as provided in Sections 2 and 3 of this Act. [Acts 1975, 64th Leg., p. 197, ch. 77, §§ 1 to 4, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2066, ch. 456, § 1, eff. Aug. 31, 1981.]

Arts. 183 to 185. Repealed by Acts 1975, 64th Leg., p. 197, ch. 77, § 5, eff. Sept. 1, 1975

See, now, art. 182a.

Arts. 187 to 189. Repealed by Acts 1975, 64th Leg. p. 197, ch. 77, § 5, eff. Sept. 1, 1975

See, now, art. 182a.

2. DESTRUCTION OF ANIMALS

Art. 192b. Cooperations Between State and Federal Agencies in Control of Predatory Animals and Rodents

State to Cooperate

Sec. 1. The State of Texas will cooperate through The Texas A & M University System with the appropriate officers and agencies of the United States in the control of coyotes, mountain lions, bobcats, the Russian boar, and other predatory animals and in the control of prairie dogs, pocket gophers, jack rabbits, ground squirrels, rats and other rodent pests for the protection of livestock, food and feed supplies, crops and ranges.

Sec. 2. Repealed by Acts 1981, 67th Leg., p. 670, ch. 261, § 2, eff. Aug. 31, 1981.

Expenditure of Appropriation

Sec. 3. The funds appropriated for administration of this Act shall be expended in amounts as authorized by the Board of Regents of The Texas A & M University System and disbursed by warrants issued by the State Comptroller upon vouchers or payrolls certified by the Director of Extension of the System.

Sec. 4. Repealed by Acts 1981, 67th Leg., p. 670, ch. 261, § 2, eff. Aug. 31, 1981.

Cooperative Agreement

Sec. 5. The Director of Extension of the System is hereby authorized and directed to execute a cooperative agreement with the appropriate officers or agencies of the United States for carrying out such cooperative work in predatory animal and rodent control in such manner and under such regulations as may be stated in such agreement.

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

Sale of Furs, Skins and Specimens

Sec. 7. All furs, skins and specimens of value taken by hunters or trappers paid from State funds shall be sold under rules prescribed by The Texas A & M University System and the proceeds of such sales shall be credited and added to the fund set up for predatory animal and rodent control; provided that any specimen may be presented free of charge to any State, county or Federal institution for scientific purposes.

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

Sec. 9. Repealed by Acts 1981, 67th Leg., p. 670, ch. 261, § 2, eff. Aug. 31, 1981.

Construction With Other Laws

Sec. 10. The provisions, restrictions and penalties of Section 72.005, Parks and Wildlife Code,[1] shall not be construed as applying to hunters and trappers under this Act, provided they are acting in performance of duties contemplated under the terms of this Act.

[1] Repealed; see, now, Parks and Wildlife Code, § 71.004(b).

[See Compact Edition, Volume 3 for text of 11 to 13]

[Amended by Acts 1981, 67th Leg., p. 669, ch. 261, § 1, eff. Aug. 31, 1981.]

TITLE 8

APPORTIONMENT

REPRESENTATIVE DISTRICTS

Article
195a–4 to 195a–6. Repealed.
195a–7. Representative Districts.

CONGRESSIONAL DISTRICTS

197e. Repealed.
197f. Congressional Districts.

REPRESENTATIVE DISTRICTS

Arts. 195a to 195a–2. Repealed by Acts 1975, 64th Leg., p. 2368, ch. 727, § 4, eff. June 21, 1975

Section 5 of Acts 1971, 62nd Leg., p. 2980, ch. 981, also purported to repeal these articles. However, ch. 981 was held unconstitutional in its entirety by the Texas Supreme Court in Smith v. Craddick (Sup.1971) 471 S.W.2d 375.

See, now, art. 195a–7.

Art. 195a–3. Unconstitutional

This article was held invalid as violative of Const. art. 3, § 26, in Smith v. Craddick (Sup.1971) 471 S.W.2d 375.

Arts. 195a–4 to 195a–6. Repealed by Acts 1981, 67th Leg., p. 3309, ch. 864, art. III, § 3, eff. Aug. 31, 1981

Former art. 195a–4, relating to representative districts, was derived from Acts 1975, 64th Leg., p. 2358, ch. 727.

Former art. 195a–5, relating to representative districts 72A and 72B, was derived from Acts 1979, 66th Leg., p. 1739, ch. 712, §§ 1, 2.

Former art. 195a–6, relating to representative districts 32C and 32D, was derived from Acts 1979, 66th Leg., p. 1961, ch. 774, §§ 1, 2.

See, now, art. 195a–7.

Art. 195a–7. Representative Districts

ARTICLE I

Sec. 1. The representative districts of the state are composed respectively of the counties or parts of counties as described in Article II.

ARTICLE II

Sec. 1. District 1 is composed of Bowie and Red River counties.

Sec. 2. District 2 is composed of Delta, Franklin, Lamar, and Titus counties; and that part of Hopkins County not included in District 3.

Sec. 3. District 3 is composed of Fannin, Hunt, and Rains counties; and that part of Hopkins County included in census tract 9902, and enumeration districts 129, 131, 132, 133, 134, and 136.

Sec. 4. District 4 is composed of Van Zandt and Wood counties; and that part of Smith County included in census tracts 19.01, 19.02, and 20.01; enumeration districts 207, 208T, and 208U of census tract 14; enumeration district 202 of census tract 15; block groups 3, 4, and 6, blocks 131, 132, 133, 148, 149, 150, 901, 902, 903, 904, 905, 906, 908, 909, 910, 911, 912, 913, 914, and 941, and enumeration district 211 of census tract 16; block groups 2, 3, and 4, and block 901 of census tract 18; block group 5, blocks 205, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 237, 238, 239, 240, 241, 242, 243, 244, 245, 310, 326, 327, 328, 329, 330, 342, 343, 353, 906, 907, 908, and 910, and enumeration district 226A of census tract 20.02.

Sec. 5. District 5 is composed of Camp, Cass, Marion, Morris, and Upshur counties; that part of Gregg County included in block groups 4 and 5, and blocks 101, 102, 103, 104, 105, 107, 108, 112, 113, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 601, 602, 603, 604, 605, 606, 607, 608, 624, 625, 626, 627, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, and 650 of census tract 102.

Sec. 6. District 6 is composed of Harrison and Rusk counties.

Sec. 7. District 7 is composed of that part of Gregg County not included in District 5.

Sec. 8. District 8 is composed of that part of Smith County not included in District 4.

Sec. 9. District 9 is composed of Ellis and Navarro counties.

Sec. 10. District 10 is composed of Anderson and Henderson counties; and that part of Cherokee County included in census tracts 9901 and 9902, and enumeration districts 405, 407, 409, and 410.

Sec. 11. District 11 is composed of Freestone, Houston, Leon, Limestone, and Madison counties; and that part of Walker County not included in District 15.

Sec. 12. District 12 is composed of Angelina and Trinity counties; and that part of Cherokee County not included in District 10.

Sec. 13. District 13 is composed of Nacogdoches, Panola, and Shelby counties; and that part of San Augustine County not included in District 14.

Sec. 14. District 14 is composed of Hardin, Jasper, Sabine, and Tyler counties; and that part of San Augustine County included in enumeration districts 205, 206, and 207.

Sec. 15. District 15 is composed of Polk and San Jacinto counties; that part of Liberty County not included in District 18; and that part of Walker County included in census tracts 1902, 1904, and 1907, and block group 1 of census tract 1901, enumeration districts 829, 833, and 834 of census tract 1903, block groups 1, 2, 3, and 4 of census tract 1905, and block groups 1, 2, 3, 4, and 5 of census tract 1906.

Sec. 16. District 16 is composed of that part of Montgomery County not included in District 17.

Sec. 17. District 17 is composed of Grimes County; that part of Harris County included in census tracts 553, 554, 556.01, 557, 558.01, 558.02, 559.01, and 559.02; and that part of Montgomery County included in census tracts 902.04, 902.05, 902.06, 902.07, 903.01, 903.02, and 904, and block group 3 and blocks 203, 207, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, and 230 of census tract 902.03.

Sec. 18. District 18 is composed of Chambers County; that part of Jefferson County included in census tracts 1.01, 1.02, 2, 3.01, 3.02, 3.03, 3.04, 4, 13.02, 113, 114, 115, and 116, and that part of census tract 13.01 not included in District 19; and that part of Liberty County included in census tracts 1007, 1008, 1009, and 1010.

Sec. 19. District 19 is composed of that part of Jefferson County included in census tracts 1.03, 5, 6, 7, 8, 9, 10, 11, 12, 13.03, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 110.01, 111.01, 111.02, and 112, and blocks 201, 203, 205, 206, 213, 215, 216, 217, 218, 230, 231, 232, 233, 234, and 235 of census tract 13.01.

Sec. 20. District 20 is composed of that part of Jefferson County not included in District 18 or District 19.

Sec. 21. District 21 is composed of Newton and Orange counties.

Sec. 22. District 22 is composed of that part of Galveston County not included in District 23.

Sec. 23. District 23 is composed of that part of Galveston County included in census tracts 1201.01, 1201.02, 1202, 1212.01, 1212.02, 1214, 1215, 1218, 1219.01, 1219.02, 1223, 1224, 1225, 1226, 1227, 1228.01, 1228.02, 1229.01, 1229.02, 1250.01, 1250.02, 1251, 1252, and 1253; block group 2, blocks 903, 904, 905, 906, 907, 908, 909, 910, 913, 917, 918, 919, and 920, and enumeration district 17 of census tract 1203; block group 1, and blocks 909 and 910 of census tract 1204; block groups 1 and 2, and blocks 902 and 903 of census tract 1208; block groups 2 and 3, and blocks 108, 111, 112, 113, 114, 115, 116, 117, and 118 of census tract 1213; block groups 1, 2, and 3, and blocks 901, 902, 905, 907, 908, 909, 910, 913, 918, 926, 927, 932, 933, 934, and 935 of census tract 1216; block groups 5, 6, and 7 of census tract 1220; blocks 106, 107, 118, 119, and 206 of census tract 1245; block groups 1 and 2 of census tract 1246; block groups 3 and 4, and blocks 221 and 222 of census tract 1247; block groups 2 and 3 of census tract 1248; and block group 4, and blocks 318, 905, and 906 of census tract 1249.

Sec. 24. District 24 is composed of that part of Brazoria County not included in District 25 or District 27.

Sec. 25. District 25 is composed of that part of Brazoria County included in census tracts 601, 602.-01, 602.02, 603, 604, 605, 606, 607, and 632; and that part of Fort Bend County not included in District 26.

Sec. 26. District 26 is composed of that part of Fort Bend County included in census tracts 701.01, 701.02, 701.03, 701.04, 702.01, 702.02, 702.03, 702.04, 703.01, 703.02, 703.03, 704, 705, 707.01, and 707.02; block groups 4, 5, and 9 and block 604 of census tract 701.05; and block group 9 of census tract 701.06.

Sec. 27. District 27 is composed of Matagorda and Wharton counties; and that part of Brazoria County included in census tracts 615, 616, 617, 618, 619, and 620.01.

Sec. 28. District 28 is composed of Calhoun and Victoria counties; and that part of Aransas County included in census tract 9901, and enumeration districts 800A, 800B, 802A, 802B, 805, 807C, 808A, 813A, 814, and 826A.

Sec. 29. District 29 is composed of DeWitt, Goliad, Gonzales, Jackson, Karnes, Lavaca, and Refugio counties.

Sec. 30. District 30 is composed of Bee, Live Oak, and San Patricio counties.

Sec. 31. District 31 is composed of that part of Nueces County included in census tracts 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 17, 35, 56, 57, 58, 59, 60, and 61; block groups 5, 6, 7, and 8 and blocks 408, 409, 410, 411, 412, 413, 414, 415, and 416 of census tract 16; block groups 1, 3, and 9 of census tract 36; block groups 1 and 2 and enumeration districts 413 and 414 of census tract 54; and that part of Kleberg County included in block group 1 of census tract 9901, and enumeration district 126.

Sec. 32. District 32 is composed of that part of Nueces County included in census tracts 9, 10, 13, 14, 15, 18, 19, 20, 22, 23, and 24; block groups 1, 2, and 3 and blocks 401, 402, 403, 404, 405, 406, 418, 419, and 420 of census tract 16; and blocks 101, 102, 103, 104, 105, 106, 107, 108, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 124, 125, 126, 127, 128, 129, 132, 133, 147, 148, 175, 176, 177, 180, 181, and 183 of census tract 33.

Sec. 33. District 33 is composed of that part of Nueces County not included in District 31 or District 32; and that part of Aransas County not included in District 28.

Sec. 34. District 34 is composed of Brooks, Kenedy, Starr, and Willacy counties; that part of Cameron County not included in District 35 or District 36; and that part of Kleberg County not included in District 31.

Sec. 35. District 35 is composed of that part of Cameron County included in census tracts 101, 102.-02, 105, 106.01, 106.02, 107, 108, 109, 110, 111, 112, 113.01, 113.02, 114, 115, 116, 117, 118.01, 118.02, 119, 120.01, 120.02, 121, 122, 123.01, 123.02, 124, and 125.-01, and enumeration district 203 of census tract 125.02.

Sec. 36. District 36 is composed of that part of Cameron County included in census tracts 126, 127, 128, 129, 130.01, 130.02, 131.01, 131.02, 131.03, 132, 133, 134.01, 134.02, 135, 136, 137, 138.01, 138.02, 139.-01, 139.02, 139.03, 140.01, 140.02, and 141, and block groups 1 and 2 and enumeration district 207 of census tract 125.02.

Sec. 37. District 37 is composed of that part of Hidalgo County included in census tracts 201, 202, 203, 204, 205, 207, 208, 212, 213, 241, and 242.

Sec. 38. District 38 is composed of that part of Hidalgo County included in census tracts 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, and 229; blocks 109, 110, 111, 112, 113, 114, 120, 121, 122, 123, 124, 125, 220, 221, 222, 223, 224, 225, 226, 227, 228, 306, 307, 308, 309, and 310 of census tract 230; and blocks 320, 321, 322, 328, 329, 330, 331, 332, 333, 340, and 341 of census tract 231.

Sec. 39. District 39 is composed of that part of Hidalgo County not included in District 37 or District 38.

Sec. 40. District 40 is composed of that part of Webb County not included in District 41.

Sec. 41. District 41 is composed of Dimmit, Duval, Jim Hogg, Jim Wells, LaSalle, Zapata, and Zavala counties; and that part of Webb County included in census tract 18, and enumeration district 325.

Sec. 42. District 42 is composed of Atascosa, Frio, McMullen, Medina, and Wilson counties; and that part of Bexar County included in census tracts 1719 and 1720, and enumeration district 1321 of census tract 1619.

Sec. 43. District 43 is composed of Bandera, Gillespie, Kerr, Kimble, Llano, Mason, Menard, Real, and Uvalde counties.

Sec. 44. District 44 is composed of Comal, Guadalupe, and Kendall counties.

Sec. 45. District 45 is composed of Blanco, Caldwell, and Hays counties; and that part of Travis County included in census tracts 24.04, 24.05, 24.06, and 24.07, block group 3 of census tract 17.12, block group 3 of census tract 17.13, block group 4 and blocks 101, 102, 103, 104, 105, 128, and 310 of census tract 17.14, block group 5 of census tract 17.15, block groups 4 and 5 of census tract 24.01, block group 3 and blocks 404, 405, 406, and 407 of census tract 24.02, and block group 5 of census tract 24.08.

Sec. 46. District 46 is composed of Austin, Bastrop, Colorado, Fayette, and Lee counties.

Sec. 47. District 47 is composed of that part of Travis County not included in District 45, District 48, District 49, or District 50.

Sec. 48. District 48 is composed of that part of Travis County included in census tracts 1.02, 6.01, 6.02, 16.02, 16.04, 16.06, 17.03, 17.04, 17.05, 17.11, 17.16, 17.17, 19.01, 19.02, 19.03, 19.04, 20.01 and 20.02; block group 5 of census tract 13.04; block group 5 of census tract 16.03; block groups 1, 5, and 6 of census tract 16.05; block groups 1 and 2 of census tract 17.12; block group 2 of census tract 17.13; block group 2 and blocks 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 301, 302, 303, 304, 305, 306, 307, 308, 309, 311, and 312 of census tract 17.14; and block groups 1, 2, 3, and 4 of census tract 17.15.

Sec. 49. District 49 is composed of that part of Travis County included in census tracts 1.01, 2.01, 2.02, 2.03, 2.04, 3.01, 3.02, 5, 15.01, 15.04, 15.05, 17.06, 17.07, 17.08, 17.09, 17.10, 18.05, 18.07, 18.08, 18.10, 18.17, and 18.18; and block groups 1, 2, 3, and 4 of census tract 16.03.

Sec. 50. District 50 is composed of that part of Travis County included in census tracts 3.03, 4.01, 4.02, 8.02, 8.03, 8.04, 9.01, 15.03, 18.04, 18.06, 18.09, 18.11, 18.12, 18.13, 18.14, 18.15, 18.16, 21.03, 21.04, 21.05, 21.06, 21.07, 21.08, 21.09, 22.01, 22.02, 22.03, and 22.04; block groups 1 and 2 and blocks 301, 302, 303, 304, 305, 306, 307, and 308 of census tract 21.10; and blocks 101, 102, 104, 301, 302, 303, 304, 305, 306, and 312 of census tract 21.11.

Sec. 51. District 51 is composed of Brazos County.

Sec. 52. District 52 is composed of Burleson, Milam, Robertson, Waller, and Washington counties.

Sec. 53. District 53 is composed of Burnet and Williamson counties.

Sec. 54. District 54 is composed of Lampasas, Mills, and San Saba counties; that part of Bell County not included in District 55; and that part of Coryell County included in census tract 108.

Sec. 55. District 55 is composed of that part of Bell County included in census tracts 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 215, 216, 217, 218, and 232; block groups 3 and 8 of census tract 214, block groups 3, 8, and 9 and blocks 146, 147, 148, 149, 150, 151, 401, 404, 405, 410, 411, 412, 413, 414, 417, 418, 419, 420, 421, 422, 435, 436,

640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 709, 715, 716, 717, 718, 719, and 720 of census tract 219, and block groups 2, 3, 4, 5, 6, 7, 8, and 9 and enumeration district 1093 of census tract 220.

Sec. 56. District 56 is composed of Falls County and that part of McLennan County not in District 57.

Sec. 57. District 57 is composed of that part of McLennan County included in census tracts 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 22, 23.01, 31, 32, 33, 34, 35, 36, 41.01, 41.02, and 42; block groups 1, 5, and 6 of census tract 4; block groups 2, 4, and 9 of census tract 19; and blocks 101, 102, 103, 202, 203, 204, 205, 206, 901, 902, and 903 of census tract 37.01.

Sec. 58. District 58 is composed of Bosque, Hamilton, and Hill counties; and that part of Coryell County not included in District 54.

Sec. 59. District 59 is composed of Hood, Johnson, and Somervell counties; and that part of Erath County included in enumeration districts 553T, 553U, and 554.

Sec. 60. District 60 is composed of that part of Denton County included in census tracts 203.01, 203.02, 210, 211, 212, 213, 214, 215.01, 215.02, 216.01, 216.02, 217.01, 217.02, 217.03, and 217.04; block groups 2 and 3 and blocks 106, 107, 108, 109, 110, 111, 112, 113, 114, and 115 of census tract 209; and enumeration districts 514T, 514U, 514V, 514W, 514X, 514Y, and 514Z.

Sec. 61. District 61 is composed of that part of Collin County included in census tracts 316.01, 316.02, 316.03, 316.04, 317, 318.01, 318.02, 318.03, 319, 320.01, and 320.02; block groups 1, 2, 3, 5, 6, 7, and 9 of census tract 313.02; block group 4 and blocks 604, 605, 606, 607, 608, and 609 of census tract 314, block groups 5 and 7 and blocks 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, and 419 of census tract 315; block group 2 of census tract 316.05; block groups 4 and 5 of census tract 316.06; blocks 505, 506, 508, 509, 510, 604, 605, 701, 702, and 703 of census tract 316.07; and enumeration districts 883, 891A, 891B, 901, 902, 903, 904, and 905A.

Sec. 62. District 62 is composed of that part of Collin County not included in District 61; and that part of Denton County not included in District 60 or District 63.

Sec. 63. District 63 is composed of Grayson County; and that part of Denton County included in enumeration districts 475A, 475B, 476, 486A, and 486B, and the area north of enumeration district 475A bounded by state highway 99 on the east and the Texas and Pacific Railroad on the west.

Sec. 64. District 64 is composed of Parker and Wise counties; that part of Tarrant County included in census tracts 1142.01 and 1142.02; and that part of Cooke County included in census tract 9903 and enumeration districts 325, 326, 327, 328, 330A, 331, 333A, 335, 336, 337, 338A, 338B, 339T, 339U, 340T, and 340U.

Sec. 65. District 65 is composed of Archer, Clay, Montague, and Young counties; that part of Wichita County included in census tracts 135, 136, 137, and 138; blocks 119, 121, 122, 123, 124, 125, 126, 127, 128, 129, 135, 136, 137, 138, 139, 140, and 141 of census tract 129; blocks 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, and 215 of census tract 130; block groups 1, 2, 3, and 4, and blocks 908, 946, 951, 952, 953, 954, 955, 956, 957, 958, 960, 961, 962, 963, 964, 965, 966, 967, 970, 971, 972, 973, 974, 975, 976, 977, and 978 of census tract 131; and that part of Cooke County not included in District 64.

Sec. 66. District 66 is composed of that part of Wichita County not included in District 65.

Sec. 67. District 67 is composed of Baylor, Eastland, Jack, Palo Pinto, Shackelford, Stephens, and Throckmorton counties; and that part of Erath County not included in District 59.

Sec. 68. District 68 is composed of Brown, Callahan, Coke, Coleman, Comanche, Concho, McCulloch, and Runnels counties.

Sec. 69. District 69 is composed of Irion, Reagan, Schleicher, and Tom Green counties.

Sec. 70. District 70 is composed of Brewster, Crockett, Edwards, Jeff Davis, Kinney, Maverick, Presidio, Sutton, Terrell, and Val Verde counties.

Sec. 71. District 71 is composed of Crane, Culberson, Hudspeth, Loving, Pecos, Reeves, Ward, and Winkler counties; that part of Ector County included in census tracts 22 and 26; block groups 1 and 5 and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 910, 911, 912, 913, and 914 of census tract 21; blocks 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, and 902 of census tract 23; block 903 of census tract 24; block groups 1, 3, and 9 and blocks 209, 210, 211, 215, 216, 217, 227, 228, 229, 230, 231, 232, 233, 234, 235, and 236, of census tract 25; and that part of El Paso County not included in District 72, 73, 74, 75, or 76.

Sec. 72. District 72 is composed of that part of El Paso County included in census tracts 11.01, 11.03, 11.04, 12, 13, 14, 15, 16, 17, 18, 19, 21, and 102.01; and block groups 2, 3, 4, 5, 6, 7, and 8 and blocks 101, 102, 103, 104, 105, 115, 116, 118, 119, and 124 of census tract 22.

Sec. 73. District 73 is composed of that part of El Paso County included in census tracts 1.01, 1.02, 1.04, 1.05, 2.01, 2.02, 3.01, 3.02, 4.01, 4.02, 5, 101, and 102.02.

Sec. 74. District 74 is composed of that part of El Paso County included in census tracts 6, 7, 8, 9, 10, 20, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 36; blocks 106, 107, 108, 109, 110, 112, and 113 of census tract 22; and block groups 2, 3, 4, 5, and 6 of census tract 33.

Sec. 75. District 75 is composed of that part of El Paso County included in census tracts 34.01, 34.02, 35.01, 35.02, 37.01, 37.02, 38.01, 38.02, 39, 42.02, 43.02, 43.03, and 43.05; and block groups 1 and 7 of census tract 33.

Sec. 76. District 76 is composed of that part of El Paso County included in census tracts 40, 41.01, 41.02, 42.01, 43.04, 103.01, 104 and 105; and block group 1 and blocks 207, 421, 422, 423, 424, 425, 426, 427, and 428 of census tract 103.02.

Sec. 77. District 77 is composed of Glasscock, Martin, Midland, and Upton Counties.

Sec. 78. District 78 is composed of that part of Ector County not included in District 71.

Sec. 79. District 79 is composed of Fisher, Haskell, Jones, Mitchell, Nolan, Scurry, and Sterling counties; and that part of Taylor County not located in District 80.

Sec. 80. District 80 is composed of that part of Taylor County included in census tracts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 129, 130, 131, 132, and 133; enumeration district 477; and blocks 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 933, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, and 945 of census tract 134.

Sec. 81. District 81 is composed of Andrews, Cochran, Gaines, Hockley, Terry, and Yoakum counties; and that part of Lubbock County included in census tracts 103 and 104, and enumeration districts 380, 381, and 383A of census tract 102.

Sec. 82. District 82 is composed of that part of Lubbock County included in census tracts 4.01, 4.02, 4.03, 5, 15, 16.01, 16.02, 17.02, 17.03, 17.04, 17.05, 18.01, 18.03, 18.04, 19.01, 19.03, 19.04, 20, 21.01, 21.02, 105.02, and 105.03; and blocks 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, and 527 of census tract 105.01.

Sec. 83. District 83 is composed of that part of Lubbock County not in Districts 81 and 82.

Sec. 84. District 84 is composed of Armstrong, Briscoe, Carson, Childress, Collingsworth, Crosby, Donley, Floyd, Gray, Hall, Hardeman, Motley, and Wheeler counties.

Sec. 85. District 85 is composed of Deaf Smith and Randall counties.

Sec. 86. District 86 is composed of Bailey, Castro, Hale, Lamb, Parmer, and Swisher counties.

Sec. 87. District 87 is composed of Dallam, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Roberts, and Sherman counties; and that part of Potter County included in census tracts 135, 141, and 143.

Sec. 88. District 88 is composed of that part of Potter County included in census tracts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 136, 137, 138, 139, 140, and 142.

Sec. 89. District 89 is composed of that part of Tarrant County included in census tracts 1005.01, 1005.02, 1006.01, 1006.02, 1007, 1050.01, 1050.04, 1066, 1067, 1104.01, 1104.02, 1105, 1106.01, 1107.01, 1137.01, 1137.02, 1139, 1140.01, 1140.02, and 1141; block groups 3 and 4 of census tract 1138.01; and block group 1 of census tract 1138.02.

Sec. 90. District 90 is composed of that part of Tarrant County included in census tracts 1019, 1020, 1021, 1022.01, 1022.02, 1023.01, 1023.02, 1024.01, 1024.02, 1025, 1026, 1027, 1029, 1030, 1042.01, 1042.02, 1051, 1052, 1053, 1054.03, 1054.04, 1106.02, 1107.02, 1108.01, 1108.02, and 1108.03; and that part of census tract 1054.01 not included in District 91.

Sec. 91. District 91 is composed of that part of Tarrant County included in census tracts 1028, 1043, 1048.01, 1048.02, 1055.01, 1055.02, 1055.03, 1055.04, 1056, 1057.01, 1057.02, 1058, 1060.01, 1109.01, 1109.02, 1110.01, 1110.03, 1110.04, 1112.01, and 1113.01; and block 110 of census tract 1054.01.

Sec. 92. District 92 is composed of that part of Tarrant County included in census tracts 1060.03, 1113.02, 1114, 1115.03, 1115.09, 1115.10, 1130, 1217.01, 1217.02, 1218, 1219.01, 1219.02, 1220, 1221, 1222, 1223, 1228, and 1229; and block groups 1 and 2, and blocks 301, 302, 303, 304, 305, 306, 307, and 308 of census tract 1131.

Sec. 93. District 93 is composed of that part of Tarrant County included in census tracts 1065.03, 1134.03, 1134.04, 1134.05, 1134.06, 1135.03, 1135.04, 1135.05, 1135.06, 1136.03, 1136.04, 1136.05, 1136.06, 1136.07, and 1136.08; block groups 1 and 2 of census tract 1065.04; that part of census tract 1138.01 not included in District 89; and that part of census tract 1065.05 not included in District 94.

Sec. 94. District 94 is composed of that part of Tarrant County included in census tracts 1012.01, 1013.01, 1014.01, 1015, 1065.01, 1065.02, 1101.01, 1101.02, 1102.01, 1102.02, 1103, 1132.03, 1132.04, 1132.05, 1132.06, 1133.01, and 1133.02; block group 7 and block 604 of census tract 1065.05; and that part of census tract 1138.02 not included in District 89.

Sec. 95. District 95 is composed of that part of Tarrant County included in census tracts 1001.01, 1001.02, 1002.01, 1002.02, 1003, 1004, 1008, 1009, 1010, 1011, 1012.02, 1016, 1017, 1018, 1031, 1032, 1033, 1034,

1038, 1039, 1040, 1041, 1044, 1045.01, 1045.02, 1045.03, 1047, and 1049; and block group 6 and blocks 414, 505, 506, 507, 508, 509, 510, 511, 514, 515, 516, 517, 518, 519, 522, 523, and 524 of census tract 1035.

Sec. 96. District 96 is composed of that part of Tarrant County included in census tracts 1013.02, 1014.02, 1014.03, 1036.01, 1036.03, 1037.01, 1037.02, 1046.01, 1046.02, 1046.03, 1046.04, 1046.05, 1059, 1060.02, 1061.01, 1061.02, 1062.01, 1062.02, 1063, 1064, 1111.01, 1111.02, and 1112.02; and that part of census tract 1035 not in District 95.

Sec. 97. District 97 is composed of that part of Tarrant County included in census tracts 1115.04, 1115.05, 1115.06, 1115.07, 1115.08, 1216.01, 1216.04, 1216.05, 1216.06, 1216.07, 1224, 1225, 1226, and 1227; that part of census tract 1065.04 not included in District 93; and that part of census tract 1131 not include in District 92.

Sec. 98. District 98 is composed of that part of Dallas County included in census tracts 141.04, 142, 143.01, 143.02, 143.03, 143.04, 144.02, 145, 146, 147, 149, 150, 151, 152.01, 152.02 and block group 1 and block 201 of census tract 148.01.

Sec. 99. District 99 is composed of that part of Dallas County included in census tracts 136.01, 136.04, 136.06, 136.07, 136.08, 137.01, 137.02, 137.04, 137.05, 137.06, 137.07, 137.08, 138.01, 138.02, 139, 140.01, 140.02, 141.01, 141.02, and 141.03.

Sec. 100. District 100 is composed of that part of Dallas County included in census tracts 4.01, 4.03, 6.01, 16, 17.01, 17.02, 18, 19, 21, 22.01, 22.02, 23, 28, 29, 30, 31.01, 31.02, 32.01, 32.02, 33, 34, 35, 36, 37, 39.02, 40, 41, 49, 71.02, 86.02, 89, 100, 102, and 148.02; that part of census tract 72 not included in District 114; and that part of census tract 115 not included in District 107, and that part of census tract 148.01 not included in District 98.

Sec. 101. District 101 is composed of that part of Dallas County included in census tracts 178.03, 181.04, 181.05, 181.06, 181.07, 181.08, 181.09, 181.10, 181.11, 181.12, 181.13, 181.14, 181.15, 182.01, 182.02, 190.06, 190.07, 190.08, and 190.09.

Sec. 102. District 102 is composed of that part of Dallas County included in census tracts 2.01, 2.02, 3, 11.01, 11.02, 71.01, 73.01, 73.02, 74, 75.01, 75.02, 76.01, 76.02, 76.03, 76.04, 79.02, 79.03, 79.04, 79.05, 80, 94, 193.01, 193.02, 194, 195.01, 195.02, 196, 197, and 198; and blocks 101, 102, 103, 111, 112, 113, 201, 202, 203, 210, 211, and 212 of census tract 10.

Sec. 103. District 103 is composed of that part of Dallas County included in census tracts 42, 43, 44, 45, 46, 51, 52, 53, 64, 65, 67, 68, 69, 101, 103, 104, 108.01, 108.02, 108.03, and 199.

Sec. 104. District 104 is composed of that part of Dallas County included in census tracts 165.02, 165.03, 165.05, 165.06, 165.07, 166.01, 166.02, 166.03, 166.04, 167.02, 168, 169.02, 169.03, 169.04, 170, and 173.01.

Sec. 105. District 105 is composed of Kaufman and Rockwall counties; that part of Dallas County included in census tracts 173.02, 174, 175, 176.02, 177, and 178.04; that part of census tract 176.01 not included in District 108; block groups 1 and 2 of census tract 178.01; and that part of census tract 178.05 not included in District 108.

Sec. 106. District 106 is composed of that pat of Dallas County included in census tracts 105, 106, 107, 144.01, 153.01, 153.02, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, and 164.

Sec. 107. District 107 is composed of that part of Dallas County included in census tracts 1, 4.02, 5, 6.03, 6.04, 7.01, 7.02, 8, 9, 12, 13.01, 13.02, 14, 15.01, 15.02, 24, 25, 26, 27.01, 27.02, 38, 39.01, and 83; that part of census tract 84 not included in District 108; that part of census tract 10 not included in District 102; and block group 1 of census tract 115.

Sec. 108. District 108 is composed of that part of Dallas County included in census tracts 85, 90.01, 90.02, 91.01, 91.02, 92.01, 92.02, 93.01, 93.03, 93.04, 117, 118, 119, 120, 121, 122.02, 172, 179, and 180; block groups 1, 2, and 3 of census tract 84; block group 4 of census tract 176.01; that part of census tract 178.01 not included in District 105; and block group 1 of census tract 178.05.

Sec. 109. District 109 is composed of that part of Dallas County included in census tracts 81, 82, 122.03, 122.04, 122.05, 123, 124, 125, 126, 127, 183, 184.01, 184.02, 184.03, 185.01, 186, 187, 188.01, 188.02, and 189.

Sec. 110. District 110 is composed of that part of Dallas County included in census tracts 59.02, 60.02, 87.01, 87.05, 109, 110.01, 110.02, 111.01, 111.02, 112, 113, 114.01, 114.02, 116.01, 116.02, 165.01, 167.01, 169.01, and 171; and block 109 of census tract 87.04.

Sec. 111. District 111 is composed of that part of Dallas County included in census tracts 20, 47, 48, 50, 54, 55, 56, 57, 59.01, 60.01, 61, 62, 63.01, 63.02, 86.01, 87.03, 88.01, and 88.02; and that part of census tract 87.04 not included in District 110.

Sec. 112. District 112 is composed of that part of Dallas County included in census tracts 136.05, 190.04, 190.10, 190.11, 190.12, 190.13, 190.14, 190.15, 191, 192.02, 192.03, 192.04, 192.05, 192.06, and 192.07.

Sec. 113. District 113 is composed of that part of Dallas County included in census tracts 77, 78.01, 78.08, 78.09, 128, 129, 130.02, 130.03, 130.04, 131.02, 131.03, and 185.02; block group 2 and blocks 102, 105, 106, 107, 108, 109, 110, 111, and 112 of census tract 78.06; block groups 1, 3, 4, 5, and 6 and blocks 207, 208, 209, 210, 211, 212, and 213 of census tract 78.07; and block groups 1, 2, and 3 of census tract 190.03.

Sec. 114. District 114 is composed of that part of Dallas County included in census tracts 78.04, 78.05,

95, 96.03, 96.04, 96.05, 96.06, 96.07, 96.08, 96.09, 97.01, 97.02, 98.01, 98.02, 99, 131.01, 132, 133, 134.01, 134.02, 135, 136.09, 136.10, and 192.01; block groups 1 and 4 and blocks 201, 202, 215, and 216 of census tract 72; blocks 101, 103, and 104 of census tract 78.06; blocks 201, 202, 203, 204, and 205 of census tract 78.07; and block groups 4 and 5 of census tract 190.03.

Sec. 115. District 115 is composed of that part of Bexar County included in census tracts 1105, 1106, 1107, 1701, 1702, 1703, 1704, 1705, 1901, 1905, and 1906; block group 5 and blocks 105, 106, 107, 205, 206, 207, 406, 407, 408, 409, 410, 411, 412, 413, 414, and 415 of census tract 1108; block groups 1, 6, 7, and 8 and block 509 of census tract 1601; block groups 1 and 8 and blocks 705, 706, 708, 709, 710, 711, 713, 714, 715, and 716 of census tract 1605; blocks 101, 102, 103, 104, 105, 106, 107, 121, and 122 of census tract 1606; block group 1 of census tract 1709; blocks 101, 102, 103, 104, 105, 106, 109, 110, 111, 113, 114, 115, 118, 119, 120, 121, 201, 202, 203, 204, 207, 208, 209, 210, 211, 212, 213, 214, 215, 218, 219, 220, 221, 301, 302, 303, 304, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, and 321 of census tract 1801; block groups 2, 3, and 4 and blocks 105, 114, 115, 116, 117, 118, 119, 120, 121, 123, 124, 125, 126, 127, and 128 of census tract 1802; block groups 4, 5, 6, and 7 of census tract 1902; blocks 203, 204, 205, 206, 207, 208, 210, 211, 212, 213, 214, 215, 303, 304, 305, 306, 307, 308, 312, 313, 314, 401, 402, 403, 412, 413, 414, 415, 416, and 417 of census tract 1904; and block groups 2, 3, 4, and 5 of census tract 1907.

Sec. 116. District 116 is composed of that part of Bexar County included in census tracts 1706, 1707, 1708, 1710, 1711, 1712, 1713, 1714, 1715, 1717, 1803, and 1804; block groups 2, 3, 4, 5, and 6 and blocks 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, and 120 of census tract 1606; block groups 5, 6, and 7 and blocks 108, 109, 110, 111, 112, 113, 114, 118, 119, 120, 121, 122, 412, and 415 of census tract 1607; block groups 2, 3, 4, 5, 6, 7, and 8 of census tract 1709; blocks 101, 102, 103, 122, 217, 218, 219, 220, 221, 222, 223, and 224 of census tract 1716; block groups 4, 5, and 6 and blocks 107, 108, 116, 117, 205, 206, 216, 217, 305, and 306 of census tract 1801; block group 5 of census tract 1802; and block groups 3, 4, 5, and 6 and blocks 114, 115, 116, 117, 118, 201, 202, 203, 204, 205, 206, 208, 218, 219, 701, 702, 703, 704, 705, 706, 708, 709, 710, 711, 712, 713, 714, 715, 723, and 733 of census tract 1806.

Sec. 117. District 117 is composed of that part of Bexar County included in census tracts 1608, 1610, 1611, 1612, 1613, 1614.01, 1614.02, 1615, 1616, 1617, 1618, 1620, and 1718; block group 7 and blocks 804, 805, 806, 807, 813, 814, 815, 820, 821, 822, 823, 824, 825, 827, and 828 of census tract 1511; blocks 408, 409, 420, and 421 of census tract 1604; block groups 2 and 3 and blocks 115, 116, 117, and 414 of census tract 1607; block groups 3, 4, 5, 6, 7, and 8 and block 103 of census tract 1609; block group 1 of census tract 1619; blocks 104, 105, 108, 109, 110, 111, 112, 113, 114, 115, 117, 118, 119, 120, 121, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 215, 216, 225, 226, 227, 228, 229, and 230 of census tract 1716; and enumeration districts 1316, 1322, and 1323.

Sec. 118. District 118 is composed of that part of Bexar County included in census tracts 1415, 1416, 1418, 1505, 1506, 1507, 1508, 1509, 1510, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, and 1522; block group 1 and blocks 903, 904, 905, 906, 907, 908, 909, 910, 922, 924, 925, 926, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, and 989 of census tract 1417; block group 2 of census tract 1503; block groups 3, 4, and 5 of census tract 1504; block groups 1, 2, 3, 4, 5, and 6 and block 801 of census tract 1511; blocks 207, 208, 209, 210, 211, 212, 213, 214, 215, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, and 315 of census tract 1603; block group 3 and blocks 401, 403, 404, 405, 406, and 407 of census tract 1604; and blocks 101, 102, 104, 105, 106, 107, 108, 109, 110, 113, 201, 202, 203, 204, 206, 207, 208, 209, 212, 213, and 214 of census tract 1609.

Sec. 119. District 119 is composed of that part of Bexar County included in census tracts 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1501, 1502, and 1602; blocks 209, 210, 211, 212, 213, and 214 of census tract 1312; block groups 3 and 9 and blocks 201, 203, 204, 205, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, and 222 of census tract 1313; block group 1 and blocks 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 920, 922, 987, 988, 989, and 999 of census tract 1314; block groups 1, 3, 4, and 5 of census tract 1503; block groups 1 and 2 of census tract 1504, block groups 2, 3, and 4 and blocks 501, 502, 503, 504, 505, 510, 511, 512, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, and 525 of census tract 1601; block groups 1, 4, and 5 and blocks 201, 202, 203, 204, 205, 206, 216, 316, 317, 318, 319, and 320 of census tract 1603; block groups 1, 2, and 5 and blocks 414, 415, 416, 417, 418, and 419 of census tract 1604; and block groups 2, 3, 4, 5, and 6 and blocks 701, 702, 703, and 704 of census tract 1605.

Sec. 120. District 120 is composed of that part of Bexar County included in census tracts 1101, 1102, 1103, 1104, 1109, 1110, 1201, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, and 1401; block group 3 and blocks 101, 102, 103, 104, 108, 109, 110, 111, 112, 201, 202, 203, 204, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 401, 402, 403, 404, and 405 of census tract 1108; block groups 3, 4, 5, and 6 and blocks 209, 210, and 211 of census tract 1202; block group 8 of census tract 1205.01; block groups 1 and 9 and blocks 201, 202, 203, 204, 205, 206, 207, and 208 of census tract 1312; block groups 1 and 4 and blocks 206, 207, 208, and 209 of census tract 1313; blocks 905, 924, 925, and 926 of census tract 1314; blocks 127, 129, 134, 135, 136, 137, 902,

917, and 918 of census tract 1315, block groups 1 and 2 and blocks 301, 302, 304, 305, 306, 308, 310, 313, 314, 315, 316, 319, 320, 321, 322, and 323 of census tract 1902; and blocks 111, 121, 122, 123, 126, 127, 128, 140, and 141 of census tract 1903.

Sec. 121. District 121 is composed of that part of Bexar County included in census tracts 1205.02, 1213, 1214, 1215, 1216.01, 1216.02, 1217, 1316.01, 1316.02, 1317, 1318, and 1419; block groups 2, 3, 4, 6, and 7 of census tract 1205.01; blocks 215 and 216 of census tract 1209.02; block groups 1 and 3 and blocks 204, 205, 206, 207, 208, 211, 217, 915, 916, 917, 918, 919, 920, 921, and 922 of census tract 1212.01; block group 4 of census tract 1218; block group 1 of census tract 1219; blocks 103, 106, 107, 108, 109, 112, 113, 114, 115, 116, 118, 119, 120, 121, 122, 123, 124, 125, 126, 138, 139, 140, 141, 142, 144, 145, 146, 147, 904, 911, 912, 914, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, and 959 of census tract 1315; and blocks 901, 912, 913, 914, 915, 916, 919, 920, 921, 923, 927, 928, 929, 931, 932, 933, 934, 935, 936, 937, and 967 of census tract 1417.

Sec. 122. District 122 is composed of that part of Bexar County not included in District 42, 115, 116, 117, 118, 119, 120, 121, 123, or 124.

Sec. 123. District 123 is composed of that part of Bexar County included in census tracts 1808, 1809.01, 1809.02, 1810.01, 1810.02, 1811, 1910.01, 1910.02, 1911.01, 1911.02, 1912, and 1917; block group 6 and blocks 107, 108, 110, 112, and 122 of census tract 1802; blocks 101, 102, 104, 105, 106, 107, 108, 109, 110, 111, 112, 119, 120, 121, 210, 211, 212, 213, 214, 215, 216, and 217 of census tract 1806; block groups 1 and 3 of census tract 1812; block group 1 of census tract 1907; block groups 1, 2, 4, 5, 6, 7, and 8 and blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 314, 315, 316, and 317 of census tract 1909; blocks 102, 103, 104, 106, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 147, 148, 201, 202, 203, 204, and 205 of census tract 1913; blocks 108, 109, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 218, 219, 220, 222, 223, 224, 225, 227, 228, 229, 230, 232, 233, 234, 235, 236, 237, 238, 240, 242, 243, 244, 245, 246, 248, 249, 250, 251, 252, 253, 254, 255, 257, 297, 298, and 299 of census tract 1914 and that part of block 231 of census tract 1914 not within the Shavano Park city limits.

Sec. 124. District 124 is composed of that part of Bexar County included in census tracts 1805, 1807, 1813, 1814, 1815, 1816, 1817.01, 1817.02, 1818, 1819, 1820, 1821, 1915, and 1916; blocks 719, 720, 724, 726, 727, 728, 729, 730, 731, 734, 735, 736, 737, and 738 of census tract 1806; block group 2 of census tract 1812; blocks 101, 102, 103, 104, 105, 106, 107, and 226 of census tract 1914 and that part of block 231 of census tract 1914 within the Shavano Park city limits; block group 1 of census tract 1918; and enumeration district 1303.

Sec. 125. District 125 is composed of that part of Harris County included in census tracts 446.02, 447.01, 447.03, 448, 449, 450, 451.01, 451.02, 452.01, 452.02, 542.01, 542.02, 543, 544, 545.01, 545.02, 546, 547, 548, 549, 550, 551.01, 552, and 555.01.

Sec. 126. District 126 is composed of that part of Harris County included in census tracts 536.01, 537.01, 538.01, 538.02, 539, 540.01, 541, 551.02, 555.02, and 556.02.

Sec. 127. District 127 is composed of that part of Harris County included in census tracts 228.01, 228.02, 229, 230.01, 230.04, 231, 236, 237, 240.01, 241.01, 241.02, 241.03, 242, 243, 244.01, 244.02, 245.01, 245.02, 246, 247, 248, 533.01, 535, 536.02, and 537.02.

Sec. 128. District 128 is composed of that part of Harris County included in census tracts 249.01, 249.02, 249.03, 250, 251, 252, 253, 255, 256, 257, 260, 261, 262, 263, 264, 265, 266, 267.01, 267.02, 267.03, 268, 269.01, 269.02, 270, 271, 272, and 274.

Sec. 129. District 129 is composed of that part of Harris County included in census tracts 230.02, 230.03, 233, 234, 235, 254, 258, 259.01, 259.02, 273, 275, 360.01, 360.02, 360.03, 360.04, 361, 362, 363, 364, 365.01, 365.02, 365.03, 366.01, 366.02, 367, and 368.02.

Sec. 130. District 130 is composed of that part of Harris County included in census tracts 345.01, 368.01, 369, 370, 371.01, 371.02, 372, 373.01, 373.02, 373.03, 373.04, 374, and 375; and block group 5 and block 626 of census tract 359.01.

Sec. 131. District 131 is composed of that part of Harris County included in census tracts 327.01, 327.02, 328.02, 328.03, 334, 336, 337, 338, 340, 341, 342, 343.01, 343.02, 427.02, 428.01, 428.02, 430.01, 430.02, 431, and 432.

Sec. 132. District 132 is composed of that part of Harris County included in census tracts 317.01, 329.01, 331, 332, 333, 335.01, 335.02, 335.03, 339.01, 339.02, 339.03, 412.02, 413.01, 413.02, 413.03, 414.01, 414.02, 415.01, 415.02, 415.03, 415.04, 416.03, 416.04, 416.05, and 429.

Sec. 133. District 133 is composed of that part of Harris County included in census tracts 433, 434.01, 434.02, 436.01, 436.02, 436.03, 437.01, 437.02, 438.01, 438.06, and 446.01.

Sec. 134. District 134 is composed of that part of Harris County included in census tracts 423.01, 423.02, 423.03, 423.04, 423.05, 423.06, 423.07, 424.01, 424.02, 424.03, 424.04, 435.01, 435.02, 438.03, 438.04, and 438.05.

Sec. 135. District 135 is composed of that part of Harris County included in census tracts 408, 409, 410, 411, 416.01, 416.02, 417.01, 417.02, 418.01, 418.02, 419.01, 419.03, 419.04, 419.05, 419.06, 425.01, 425.02, 425.03, 425.04, 426.01, 426.02, and 427.01.

Sec. 136. District 136 is composed of that part of Harris County included in census tracts 422.01, 438.02, 439.01, 439.02, 440.01, 440.02, 440.03, 440.04, 440.05, 440.06, 441.01, 444.03, 444.04, 445.01, 445.02, 446.03, and 447.02.

Sec. 137. District 137 is composed of that part of Harris County included in census tracts 406, 419.02, 420.01, 420.02, 420.03, 421, 422.02, 422.03, 422.04, 441.02, 442.03, 442.04, 443.01, 443.03, 443.04, 443.05, 443.06, 444.01, and 444.02.

Sec. 138. District 138 is composed of that part of Harris County included in census tracts 401.01, 401.02, 402.01, 402.02, 403, 404.01, 404.02, 405.01, 405.02, 407.01, 407.02, 505.01, 505.02, 506.01, 506.02, 512, 513, 514.01, 514.02, 515.01, 515.02, 516.01, and 516.02.

Sec. 139. District 139 is composed of that part of Harris County included in census tracts 442.01, 442.02, 443.02, 510, 517.01, 517.02, 517.03, 517.04, 517.05, 518.01, 518.02, 518.03, 519.01, 519.02, 519.03, 520.01, 520.03, 523.01, 526.02, 526.03, 526.04, 527.01, 528, and 529.01.

Sec. 140. District 140 is composed of that part of Harris County included in census tracts 524, 525.01, 525.02, 525.03, 525.04, 526.01, 527.02, 527.03, 529.02, 530.01, 530.02, 530.03, 531.01, 531.02, 531.03, 534.01, 534.02, and 540.02.

Sec. 141. District 141 is composed of that part of Harris County included in census tracts 222.01, 222.02, 223.01, 240.02, 240.03, 509.01, 520.02, 521.01, 521.02, 521.03, 522.01, 522.02, 523.02, 523.03, 532.01, 532.02, 533.02, and 533.03.

Sec. 142. District 142 is composed of that part of Harris County included in census tracts 215.02, 215.03, 217.01, 217.02, 218.01, 218.02, 218.03, 223.02, 224.01, 224.02, 224.03, 224.04, 225.01, 225.02, 225.03, 225.04, 226.01, 226.02, 227, 238, and 239.

Sec. 143. District 143 is composed of that part of Harris County included in census tracts 201.01, 201.02, 204, 205.01, 205.02, 205.03, 206.01, 206.02, 207.01, 207.02, 207.03, 207.04, 208.01, 208.02, 208.03, 215.01, 216.01, 216.02, 218.04, 219, 220.01, 220.02, 221, 223.03, and 509.02.

Sec. 144. District 144 is composed of that part of Harris County included in census tracts 203.01, 203.02, 203.03, 209, 210.01, 210.02, 211, 212, 213.01, 213.02, 214.01, 214.02, 232, 310, 311, 312, 321.03, 322.01, 350.01, 352, and 354, and block group 9 of census tract 202.

Sec. 145. District 145 is composed of that part of Harris County included in census tracts 349.01, 349.02, 350.02, 350.03, 350.04, 351, 353.01, 353.02, 355.01, 355.02, 356.01, 356.02, 356.03, 356.04, 357.01, 357.02, 357.03, 358.01, and 358.02.

Sec. 146. District 146 is composed of that part of Harris County included in census tracts 322.02, 322.03, 322.04, 323.01, 323.02, 324.02, 324.03, 324.04, 326, 344, 345.02, 346, 347.01, 347.02, 347.03, 347.04, 348.01, 348.02, and 359.02; and block groups 3 and 4 and blocks 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, and 625 of census tract 359.01.

Sec. 147. District 147 is composed of that part of Harris County included in census tracts 315, 316.02, 317.02, 317.03, 317.04, 318.01, 318.02, 318.03, 318.04, 319.02, 320.01, 320.02, 320.03, 320.04, 324.01, 325.01, 325.02, 328.01, 329.02, 329.03, 330.01, 330.02, and 412.01.

Sec. 148. District 148 is composed of that part of Harris County included in census tracts 300.24, 303, 304.01, 304.02, 305.01, 305.02, 306, 307.01, 307.02, 308, 309.02, 309.03, 313.01, 313.02, 314.01, 314.02, 316.01, 319.01, 321.01, 321.02, and 400.25.

Sec. 149. District 149 is composed of that part of Harris County included in census tracts 121, 300.22, 300.23, 301.01, 301.02, 302, 309.01, 400.26, 501, 502, 503.01, 503.02, 504, 507.01, 507.02, 508, 509.03, and 511; and block groups 1, 2, 3, 4, 5, 6, 7, and 8 of census tract 202.

Sec. 150. District 150 is composed of Borden, Cottle, Dawson, Dickens, Foard, Garza, Howard, Kent, King, Knox, Lynn, Stonewall, and Wilbarger counties.

ARTICLE III

Sec. 1. This Act is effective beginning with the primary and general elections, for representatives of the 68th Legislature. This Act does not affect the membership, personnel, or districts of the 67th Legislature. If a vacancy occurs in the office of any representative to the 67th Legislature and a special election to fill the vacancy is necessary, the election shall be held in the district as it was constituted on January 1, 1981.

Sec. 2. In this Act, "census tract," "census enumeration district," and "census county division" mean those geographic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Twentieth Decennial Census of the United States, enumerated as of April 1, 1980. "Census block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract. "Census blocks" are subdivisions of "census block groups" as defined on census metropolitan maps.

Sec. 3. Chapter 727, Acts of the 64th Legislature, 1975 (Article 195a–4, Vernon's Texas Civil Statutes), and Chapters 712 and 774, Acts of the 66th Legislature, Regular Session, 1979 (Articles 195a–5 and 195a–6, Vernon's Texas Civil Statutes) are repealed.

Sec. 4. It is the intention of the Texas Legislature that if any counties, census tracts, blocks, or other geographic areas have erroneously been left out of this bill, as amended, any court reviewing this legislation include such area in the appropriate district as accomplished by the Supreme Court of Texas in *Smith v. Patterson,* 111 Tex. 525, 242 S.W. 749 (1922).

[Acts 1981, 67th Leg., p. 3296, ch. 864, eff. Aug. 31, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 247, ch. 26, §§ 1 to 4, eff. Nov. 10, 1981.]

CONGRESSIONAL DISTRICTS

Art. 197d. Repealed by Acts 1975, 64th Leg., p. 1393, § 27, eff. Sept. 1, 1975

See, now, art. 197f.

Art. 197e. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 42, ch. 2, art. III, § 2, eff. Nov. 10, 1981

See, now, art. 197f.

Art. 197f. Congressional Districts

ARTICLE I

Sec. 1. The congressional districts of the state are composed respectively of the counties or parts of counties as described in Article II, and each district is entitled to elect one member to the House of Representatives of the Congress of the United States.

ARTICLE II

Sec. 1. District 1 is composed of Bowie, Camp, Cass, Cherokee, Delta, Franklin, Harrison, Henderson, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, San Augustine, Shelby, Titus, and Upshur counties, and that part of Hunt County included in enumeration districts 575, 576, 577, 578T, 578U, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 593, 594, and 595A.

Sec. 2. District 2 is composed of Anderson, Angelina, Hardin, Houston, Jasper, Liberty, Nacogdoches, Newton, Orange, Polk, Sabine, San Jacinto, Trinity, Tyler, and Walker counties, and that part of Montgomery County included in census tracts 901.01, 901.03, 907.02, 908.01, and 908.03, and that part of census tract 901.02 not included in District 8.

Sec. 3. District 3 is composed of that part of Collin County included in census tracts 313.02, 316.01, 316.02, 316.04, 316.07, 317, 318.01, 318.02, 318.03, 319, 320.01, and 320.02; and that part of Dallas County included in census tracts 72, 73.02, 74, 75.01, 75.02, 76.01, 76.02, 76.03, 76.04, 77, 78.01, 78.04, 78.05, 78.06, 78.07, 78.08, 78.09, 94, 95, 96.03, 96.04, 96.05, 96.06, 96.07, 96.08, 96.09, 97.01, 97.02, 98.01, 98.02, 99, 130.02, 130.03, 130.04, 131.01, 131.02, 131.03, 132, 133, 134.01, 134.02, 135, 136.01, 136.04, 136.05, 136.06, 136.07, 136.08, 136.09, 136.10, 137.01, 137.02, 137.04, 137.05, 137.06, 137.07, 137.08, 138.01, 138.02, 139, 140.01, 140.02, 141.01, 141.02, 141.03, 141.04, 142, 143.01, 143.02, 143.03, 143.04, 144.01, 144.02, 145, 146, 147, 149, 150, 152.01, 152.02, 153.02, 190.10, 190.11, 190.12, 191, 192.01, 192.02, 192.03, 192.04, 192.05, 192.06, and 192.07.

Sec. 4. District 4 is composed of Fannin, Grayson, Gregg, Kaufman, Rains, Rockwall, Smith, Van Zandt, and Wood counties; and that part of Collin County included in census tracts 301, 302, 309, 310, 311, 312, and 313.01, and block groups 1, 2, and 3 of census tract 308; and that part of Hunt County not included in District 1.

Sec. 5. District 5 is composed of that part of Dallas County included in census tracts 1, 2.01, 2.02, 3, 5, 6.01, 6.03, 6.04, 7.02, 11.01, 11.02, 12, 13.01, 14, 71.01, 73.01, 79.02, 79.03, 79.04, 79.05, 80, 81, 82, 83, 84, 85, 90.01, 90.02, 91.01, 91.02, 92.01, 92.02, 116.02, 117, 118, 119, 120, 121, 122.02, 122.03, 122.04, 122.05, 123, 124, 125, 126, 127, 128, 129, 167.02, 168, 169.02, 169.03, 169.04, 170, 171, 172, 173.01, 173.02, 174, 175, 176.01, 176.02, 177, 178.01, 178.03, 178.04, 178.05, 179, 180, 181.04, 181.05, 181.06, 181.07, 181.08, 181.09, 181.10, 181.11, 181.12, 181.13, 181.14, 181.15, 182.01, 182.02, 183, 184.01, 184.02, 184.03, 185.01, 185.02, 186, 187, 188.01, 188.02, 189, 190.03, 190.04, 190.06, 190.07, 190.08, 190.09, 190.13, 190.14, 190.15, 193.01, 193.02, 194, 195.01, 195.02, 196, 197, and 198.

Sec. 6. District 6 is composed of Brazos, Ellis, Freestone, Grimes, Hill, Hood, Johnson, Leon, Limestone, Madison, Navarro, and Robertson counties; that part of Dallas County included in census tracts 165.03, 165.05, 165.07, 166.02, 166.03, and 166.04; that part of Montgomery County included in census tracts 902.01, 902.02, 902.03, 902.04, 902.05, 902.06, 902.07, 903.01, 903.02, 904, 905, 906.01, 906.02, 906.03, 907.01, 907.03, 908.02, 909, 910, 911.01, 911.02, 912.01, and 912.02.

Sec. 7. District 7 is composed of that part of Harris County included in census tracts 406, 420.01, 420.02, 420.03, 421, 422.01, 422.02, 422.03, 422.04, 423.01, 436.02, 437.01, 437.02, 438.01, 438.02, 438.03, 438.04, 438.05, 438.06, 439.01, 439.02, 440.01, 440.02, 440.03, 440.04, 440.05, 440.06, 441.01, 441.02, 442.01, 442.02, 442.03, 442.04, 443.01, 443.02, 443.03, 443.04, 443.05, 443.06, 444.01, 444.02, 444.03, 444.04, 445.01, 445.02, 446.01, 446.02, 446.03, 447.01, 447.02, 447.03, 448, 449, 450, 451.01, 451.02, 452.01, 452.02, 517.01, 517.02, 517.03, 517.04, 517.05, 519.01, 519.03, 526.01, 526.02, 526.03, 526.04, 527.01, 527.02, 527.03, 528, 529.01, 536.01, 536.02, 537.01, 538.01, 538.02, 541, 542.01, 542.02, 543, 544, 545.01, 545.02, 546, 547, 548, 549, 550, 551.01, 551.02, 552, 553, 554, 555.01, 555.02, 556.02, 557, and 558.02.

Sec. 8. District 8 is composed of that part of Harris County included in census tracts 210.02, 211, 212, 213.01, 213.02, 214.02, 215.01, 215.02, 217.01, 217.02, 222.01, 223.01, 223.02, 223.03, 224.01, 224.02, 224.03, 224.04, 225.01, 225.02, 225.03, 225.04, 226.01, 226.

02, 227, 228.01, 228.02, 229, 230.01, 230.02, 230.03, 230.04, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240.01, 240.02, 240.03, 241.01, 241.02, 241.03, 242, 243, 244.01, 244.02, 245.01, 245.02, 246, 247, 248, 249.01, 249.02, 249.03, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259.01, 259.02, 260, 261, 262, 263, 264, 265, 266, 267.01, 267.02, 267.03, 268, 269.01, 269.02, 270, 271, 272, 273, 274, 275, 521.01, 521.02, 521.03, 522.01, 522.02, 529.02, 530.01, 530.03, 532.01, 532.02, 533.01, 533.02, 533.03, 534.01, 535, 537.02, 539, 540.01, 540.02, 556.01, 558.01, 559.01, and 559.02; and that part of Montgomery County included in block group 9 and blocks 135, 136, 137, 138, 139, 140, 141, 142, 143, 145, 146, 147, 148, 149, 150, 151, 152, 154, 155, 158, 159, 160, 161, 162, 163, 164, 165, 166, and 167 of census tract 901.02.

Sec. 9. District 9 is composed of Chambers, Galveston, and Jefferson counties; and that part of Harris County included in census tracts 371.01, 371.02, 372, 373.01, 373.03, 373.04, 374, and 375.

Sec. 10. District 10 is composed of Bastrop, Blanco, Caldwell, Hays, and Travis counties; and that part of Burnet County included in enumeration districts 201, 202, 203, 204, 207, 209A, 209B, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222A, 222B, 222C, 222D, 222E, 222F, 222G, 222H, 223A, 223C, 224, and 225.

Sec. 11. District 11 is composed of Bell, Bosque, Brown, Coryell, Falls, Hamilton, Lampasas, McLennan, Milam, Mills, and San Saba counties; that part of Burnet County included in enumeration districts 200, 205, 206, 208, 210, 211, and 212; and that part of Williamson County included in census tracts 202, 203, 213, and 216.

Sec. 12. District 12 is composed of that part of Tarrant County included in census tracts 1001.01, 1001.02, 1002.01, 1002.02, 1003, 1004, 1005.01, 1005.02, 1006.01, 1006.02, 1007, 1008, 1009, 1010, 1011, 1012.01, 1012.02, 1013.02, 1014.01, 1014.02, 1014.03, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022.01, 1022.02, 1023.01, 1024.01, 1024.02, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036.01, 1036.02, 1037.01, 1037.02, 1038, 1039, 1040, 1041, 1043, 1044, 1045.01, 1045.02, 1045.03, 1046.01, 1046.02, 1046.03, 1046.04, 1046.05, 1047, 1048.01, 1048.02, 1049, 1050.01, 1050.04, 1051, 1052, 1053, 1058, 1059, 1060.01, 1060.02, 1060.03, 1061.01, 1061.02, 1062.01, 1062.02, 1063, 1064, 1065.01, 1066, 1067, 1101.01, 1101.02, 1102.01, 1102.02, 1103, 1104.01, 1104.02, 1105, 1106.01, 1106.02, 1107.01, 1107.02, 1108.01, 1108.02, 1111.01, 1111.02, 1112.02, 1114, 1132.03, 1132.04, 1132.05, 1132.06, 1133.01, 1133.02, 1134.03, 1134.04, 1134.05, 1134.06, 1136.06, 1136.07, 1136.08, 1138.01, 1138.02, 1139, 1140.01, 1140.02, 1141, 1142.01, and 1142.02.

Sec. 13. District 13 is composed of Archer, Armstrong, Baylor, Briscoe, Carson, Childress, Clay, Collingsworth, Cottle, Dallam, Dickens, Donley, Floyd, Foard, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Knox, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita, and Wilbarger counties.

Sec. 14. District 14 is composed of Aransas, Austin, Bee, Burleson, Calhoun, Colorado, DeWitt, Fayette, Goliad, Guadalupe, Jackson, Lavaca, Lee, Matagorda, Refugio, Victoria, Waller, Washington, and Wharton counties; that part of Brazoria County included in census tracts 617, 618, 619, and 620.01; that part of Gonzales County included in enumeration districts 225, 226, 227, 228, 231A, 232, 233, 234, 235T, 235U, 236, 237, 238T, 238U, 239, 240, 241, 242, 243A, and 243B; and that part of Williamson County included in census tracts 201, 204, 205, 206, 207, 208, 209, 210, 211, 212, 214, and 215.

Sec. 15. District 15 is composed of Cameron, Hidalgo, Starr, and Zapata counties.

Sec. 16. District 16 is composed of Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Reeves, Ward, and Winkler counties.

Sec. 17. District 17 is composed of Borden, Callahan, Coke, Coleman, Comanche, Concho, Crosby, Eastland, Erath, Fisher, Garza, Glasscock, Haskell, Howard, Jack, Jones, Lynn, Martin, Mitchell, Montague, Nolan, Palo Pinto, Parker, Runnels, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Taylor, Throckmorton, Wise, and Young counties; and that part of Cooke County included in census tracts 9901, 9902, and 9903, and enumeration districts 326, 327, 329A, 330A, 331, 332, 333A, 333U, 334A, 334B, 334C, 334D, 334E, 334F, and 335.

Sec. 18. District 18 is composed of that part of Harris County included in census tracts 121, 201.01, 201.02, 202, 203.01, 203.02, 203.03, 204, 205.01, 205.02, 205.03, 206.01, 206.02, 207.01, 207.02, 207.03, 207.04, 208.01, 208.02, 208.03, 209, 210.01, 214.01, 215.03, 216.01, 216.02, 218.01, 218.02, 218.03, 218.04, 219, 220.01, 220.02, 221, 222.02, 300.22, 300.23, 300.24, 301.01, 301.02, 302, 303, 304.01, 304.02, 305.01, 305.02, 306, 307.01, 307.02, 308, 309.01, 309.02, 309.03, 310, 311, 312, 313.01, 314.01, 314.02, 315, 316.01, 317.02, 317.03, 317.04, 318.01, 318.04, 319.01, 319.02, 320.01, 325.01, 400.25, 400.26, 401.01, 401.02, 402.01, 402.02, 403, 404.01, 404.02, 405.01, 405.02, 501, 502, 503.01, 503.02, 504, 505.01, 505.02, 506.01, 506.02, 507.01, 507.02, 508, 509.01, 509.02, 509.03, 510, 511, 512, 513, 514.01, 514.02, 515.01, 515.02, 516.01, 516.02, 518.01, 518.02, 518.03, 519.02, 520.01, 520.02, 520.03, 523.01, 523.02, 523.03, 524, 525.01, 525.02, 525.03, 525.04, 530.02, 531.01, 531.02, 531.03, and 534.02.

Sec. 19. District 19 is composed of Andrews, Bailey, Castro, Cochran, Dawson, Deaf Smith, Ector, Gaines, Hale, Hockley, Lamb, Lubbock, Parmer, Terry, And Yoakum counties.

Sec. 20. District 20 is composed of that part of Bexar County not included in District 21 or District 23.

Sec. 21. District 21 is composed of Bandera, Brewster, Comal, Crane, Crockett, Edwards, Gillespie, Irion, Kendall, Kerr, Kimble, Llano, McCulloch, Mason, Menard, Midland, Pecos, Presidio, Reagan, Real, Schleicher, Sutton, Terrell, Tom Green, Upton, and Val Verde counties; and that part of Bexar County included in census tracts 1203, 1204, 1206, 1207, 1208, 1209.01, 1210, 1211.02, 1212.01, 1212.02, 1810.01, 1811, 1812, 1818, 1908, 1911.01, 1911.02, 1912, 1913, 1914, 1915, 1916, and 1917, and blocks 319, 320, 321, 322, 323, 324, 325, 326, 327, and 328 of census tract 1909, and block group 1 and enumeration district 1303 of census tract 1918.

Sec. 22. District 22 is composed of Fort Bend County; that part of Brazoria County included in census tracts 601, 602.01, 602.02, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 620.02, 621, 622, 623, 624, 625.01, 625.02, 625.03, 626.01, 626.02, 627, 628, 629, 630, 631, and 632; and that part of Harris County included in census tracts 407.01, 407.02, 408, 409, 410, 411, 416.01, 416.02, 417.01, 417.02, 418.01, 418.02, 419.01, 419.02, 419.03, 419.04, 419.05, 419.06, 423.02, 423.03, 423.04, 423.05, 423.06, 423.07, 424.01, 424.02, 424.03, 424.04, 425.01, 425.02, 425.03, 425.04, 426.01, 426.02, 427.01, 427.02, 433, 434.01, 434.02, 435.01, 435.02, 436.01, and 436.03.

Sec. 23. District 23 is composed of Dimmit, Kinney, Maverick, Medina, Uvalde, Webb, and Zavala counties; and that part of Bexar County included in census tracts 1211.01, 1213, 1214, 1215, 1216.01, 1216.02, 1217, 1218, 1219, 1304, 1312, 1313, 1314, 1315, 1316.01, 1316.02, 1317, 1318, 1405, 1406, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1608, 1609, 1610, 1611, 1612, 1613, 1615, 1617, 1619, 1620, 1720, 1807, 1810.02, 1813, 1814, 1815, 1817.01, 1817.02, 1819, 1820, and 1821, block group 3 and blocks 207, 208, 209, and 210 of census tract 1311, blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 112, and 119 of census tract 1412, blocks group 2 and blocks 101, 104, 107, 108, 114, 115, 117, and 118 of census tract 1508, block groups 7 and 8, and blocks 502, 504, 505, 506, 507, 508, 518, 519, 521, 522, 523, 524, 525, 526, 527, 528, 616, 617, 618, 619, 620, 621, 622, 623, 624, and 625 of census tract 1511, blocks 911, 912, 914, 918, 920, 921, 925, 926, 927, and 928 of census tract 1618, block groups 3, 4, 6, and enumeration district 1306A of census tract 1719, block group 3 and blocks 225, 226, 227, 228, and 229 of census tract 1816, and block group 3 and enumeration district 1302 of census tract 1918.

Sec. 24. District 24 is composed of that part of Dallas County included in census tracts 4.01, 4.02, 4.03, 7.01, 8, 9, 10, 13.02, 15.01, 15.02, 16, 17.01, 17.02, 18, 19, 20, 21, 22.01, 22.02, 23, 24, 25, 26, 27.01, 27.02, 28, 29, 30, 31.01, 31.02, 32.01, 32.02, 33, 34, 35, 36, 37, 38, 39.01, 39.02, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59.01, 59.02, 60.01, 60.02, 61, 62, 63.01, 63.02, 64, 65, 67, 68, 69, 71.02, 86.01, 86.02, 87.01, 87.03, 87.04, 87.05, 88.01, 88.02, 89, 93.01, 93.03, 93.04, 100, 101, 102, 103, 104, 105, 106, 107, 108.01, 108.02, 108.03, 109, 110.01, 110.02, 111.01, 111.02, 112, 113, 114.01, 114.02, 115, 116.01, 148.01, 148.02, 151, 153.01, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165.01, 165.02, 165.06, 166.01, 167.01, 169.01, and 199.

Sec. 25. District 25 is composed of that part of Harris County included in census tracts 313.02, 316.02, 317.01, 318.02, 318.03, 320.02, 320.03, 320.04, 321.01, 321.02, 321.03, 322.01, 322.02, 322.03, 322.04, 323.01, 323.02, 324.01, 324.02, 324.03, 324.04, 325.02, 326, 327.01, 327.02, 328.01, 328.02, 328.03, 329.01, 329.02, 329.03, 330.01, 330.02, 331, 332, 333, 334, 335.01, 335.02, 335.03, 336, 337, 338, 339.01, 339.02, 339.03, 340, 341, 342, 343.01, 343.02, 344, 345.01, 345.02, 346, 347.01, 347.02, 347.03, 347.04, 348.01, 348.02, 349.01, 349.02, 350.01, 350.02, 350.03, 350.04, 351, 352, 353.01, 353.02, 354, 355.01, 355.02, 356.01, 356.02, 356.03, 356.04, 357.01, 357.02, 357.03, 358.01, 358.02, 359.01, 359.02, 360.01, 360.02, 360.03, 360.04, 361, 362, 363, 364, 365.01, 365.02, 365.03, 366.01, 366.02, 367, 368.01, 368.02, 369, 370, 373.02, 412.01, 412.02, 413.01, 413.02, 413.03, 414.01, 414.02, 415.01, 415.02, 415.03, 415.04, 416.03, 416.04, 416.05, 428.01, 428.02, 429, 430.01, 430.02, 431, and 432.

Sec. 26. District 26 is composed of Denton County; that part of Collin County included in census tracts 303, 304, 305, 306, 307, 314, 315, 316.03, 316.05, and 316.06, and block groups 4, 5, and 6 of census tract 308; that part of Cooke County included in enumeration districts 325, 328, 336, 337, 338A, 338B, 339T, 339U, 340T, and 340U; and that part of Tarrant County included in census tracts 1013.01, 1023.02, 1042.01, 1042.02, 1054.01, 1054.03, 1054.04, 1055.01, 1055.02, 1055.03, 1055.04, 1056, 1057.01, 1057.02, 1065.02, 1065.03, 1065.04, 1065.05, 1108.03, 1109.01, 1109.02, 1110.01, 1110.03, 1110.04, 1112.01, 1113.01, 1113.02, 1115.03, 1115.04, 1115.05, 1115.06, 1115.07, 1115.08, 1115.09, 1115.10, 1130, 1131, 1135.03, 1135.04, 1135.05, 1135.06, 1136.03, 1136.04, 1136.05, 1137.01, 1137.02, 1216.01, 1216.04, 1216.05, 1216.06, 1216.07, 1217.01, 1217.02, 1218, 1219.01, 1219.02, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, and 1229.

Sec. 27. District 27 is composed of Atascosa, Brooks, Duval, Frio, Jim Hogg, Jim Wells, Karnes, Kenedy, Kleberg, La Salle, Live Oak, McMullen, Nueces, San Patricio, Willacy, and Wilson counties; and that part of Gonzales County included in enumeration districts 229, 230, and 231B.

ARTICLE III

Sec. 1. In this Act, "census tract," "census enumeration district," and "census county division" mean those geographic areas outlined and identified as such on official place, county, and metropolitan map series maps prepared by the United States Department of Commerce Bureau of the Census for the Twentieth Decennial Census of the United States, enumerated as of April 1, 1980. "Census

block groups" are subdivisions of census tracts as defined on census metropolitan maps which differentiate block groups by the first digit of the block numbers assigned to city blocks within each tract. "Census blocks" are subdivisions of "census block groups" as defined on census metropolitan maps.

Sec. 2. Chapter 537, Acts of the 64th Legislature, 1975 (Article 197e, Vernon's Texas Civil Statutes), is repealed.

Sec. 3. Nothing in this Act affects the tenure in office of the present delegation in Congress, but this Act takes effect for the general election in 1982.

Sec. 4. It is the intention of the Texas Legislature that if any counties, census tracts, blocks, or other geographic areas have erroneously been left out of this bill, as amended, any court reviewing this legislation include such area in the appropriate district as accomplished by the Supreme Court of Texas in *Smith v. Patterson*, 111 Tex. 525, 242 S.W. 749 (1922).

[Added by Acts 1981, 67th Leg., 1st C.S., p. 37, ch. 2, eff. Nov. 10, 1981.]

SUPREME JUDICIAL DISTRICTS

Art. 198. Supreme Judicial Districts

This state shall be divided into fourteen (14) Supreme Judicial Districts, composed of the following named counties for the purpose of constituting and organizing a Court of Appeals in each of the several Supreme Judicial Districts, as follows, to wit:

First: Trinity, Walker, Grimes, Burleson, Washington, Waller, Harris, Chambers, Austin, Brazoria, Fort Bend, Galveston, Colorado and Brazos.

Second: Wichita, Clay, Montague, Wise, Tarrant, Cooke, Denton, Parker, Archer, Young, Jack and Hood.

Third: Milam, Lee, Bastrop, Caldwell, Hays, Travis, Williamson, Bell, Burnet, Blanco, Llano, San Saba, Lampasas, Mills, McCulloch, Runnels, Tom Green, Concho, Comal, Fayette, Coke, Sterling, Irion and Schleicher.

Fourth: Jim Wells, Val Verde, Guadalupe, Sutton, Edwards, Kinney, Maverick, Menard, Kimble, Kerr, Bandera, Uvalde, Zavala, Dimmit, Webb, LaSalle, Frio, Medina, Duval, McMullen, Atascosa, Bexar, Kendall, Wilson, Zapata, Karnes, Starr, Jim Hogg, Real, Brooks, Gillespie and Mason.

Fifth: Grayson, Collin, Dallas, Rockwall, Hunt, Kaufman and Van Zandt.

Sixth: Fannin, Lamar, Red River, Bowie, Delta, Hopkins, Franklin, Titus, Morris, Cass, Marion, Harrison, Gregg, Camp, Hunt, Wood, Upshur, Rusk and Panola.

Seventh: Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Foard, Hardeman, Wilbarger, Crosby, Lubbock, Hockley, Cochran, Yoakum, Terry, Lynn, Garza, Dickens, Kent and King.

Eighth: Crockett, Gaines, Andrews, Martin, Loving, Winkler, Midland, Glasscock, Reeves, Ward, Crane, Upton, Reagan, Terrell, Pecos, Brewster, Presidio, Jeff Davis, El Paso, Ector, Culberson and Hudspeth.

Ninth: San Jacinto, Montgomery, Liberty, Jefferson, Orange, Hardin, Newton, Jasper, Tyler, Polk and Angelina.

Tenth: McLennan, Coryell, Hamilton, Bosque, Johnson, Somervell, Falls, Limestone, Hill, Brazos, Madison, Robertson, Ellis, Leon, Freestone and Navarro.

Eleventh: Dawson, Howard, Mitchell, Scurry, Nolan, Fisher, Stonewall, Taylor, Jones, Haskell, Knox, Callahan, Schackelford, Throckmorton, Baylor, Coleman, Brown, Comanche, Eastland, Stephens, Erath, Palo Pinto and Borden.

Twelfth: Kaufman, Van Zandt, Rains, Hopkins, Wood, Upshur, Smith, Henderson, Anderson, Houston, Cherokee, Rusk, Nacogdoches, San Augustine, Sabine, Shelby, Panola and Gregg.

Thirteenth: Lavaca, Wharton, Gonzales, De Witt, Jackson, Matagorda, Victoria, Goliad, Calhoun, Bee, Refugio, Aransas, San Patricio, Nueces, Kleberg, Kenedy, Willacy, Hidalgo, Cameron and Live Oak.

Fourteenth: Trinity, Walker, Grimes, Burleson, Washington, Waller, Harris, Chambers, Austin, Brazoria, Fort Bend, Galveston, Colorado and Brazos.

[Amended by Acts 1981, 67th Leg., p. 761, ch. 291, § 1, eff. Sept. 1, 1981.]

JUDICIAL DISTRICTS

Art. 199. Judicial Districts

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

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

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

Second 9th Judicial District Court.—Montgomery, Polk, San Jacinto and Trinity Counties

[See Compact Edition, Volume 3 for text of 1 to 6]

Sec. 7. The District Attorney of the 258th Judicial District shall act as District Attorney for the Second 9th Judicial District in Trinity County.

[See Compact Edition, Volume 3 for text of 8 to 10A]

[Amended by Acts 1981, 67th Leg., p. 54, ch. 25, § 4, eff. April 8, 1981.]

10, 56.—Galveston County

The terms of the 10th and 56th Judicial Districts, which shall be composed of Galveston County, shall be continuous commencing on the first Monday in January and on the first Monday in July. Each term of court continues until the next succeeding term begins.

In all suits, actions or proceedings, it shall be sufficient for the address or designation to be merely the "District Court of Galveston County." The District Clerk of Galveston County shall docket successively on the dockets of the District Courts of the 10th, 56th, 122nd, and 212th Judicial Districts in Galveston County all civil cases, actions, causes, petitions, applications, or other civil proceedings so that the first case or proceeding filed on or after the effective date of this Act and every fourth such case or proceeding thereafter filed shall be docketed in the 10th Judicial District; and the second case or proceeding filed on or after the effective date of this Act and every fourth such case or proceeding thereafter filed shall be docketed in the 56th Judicial District; and the third case or proceeding filed on or after the effective date of this Act and every fourth such case or proceeding thereafter filed shall be docketed in the 122nd Judicial District; and the fourth case or proceeding filed on or after the effective date of this Act and every fourth such case or proceeding thereafter filed shall be docketed in the 212th Judicial District; and so on seriatim and in this manner all cases or proceedings filed shall be docketed in and divided equally among said four (4) Courts, one-fourth (¼) in each Court. Any case pending in either of said Courts may, at the discretion of the Judge thereof, be transferred from one (1) of said District Courts to the other, and so from time to time.

In event of the absence, sickness or disqualification of a Judge of any of such District Courts, any of the other Judges of the District Courts of Galveston County may act and preside over the Court of said Judge during his said absence, sickness or disqualification.

The Clerk of the District Court of said County, also known as the District Clerk of Galveston County, shall perform the duties of the Clerk of each of said four (4) District Courts. Vacancies in the office of said Clerk shall be filled as provided by general law.

[Amended by Acts 1979, 66th Leg., p. 1127, ch. 539, § 1, eff. Aug. 27, 1979.]

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

12.—Grimes, Walker, Leon, and Madison

Sec. 1. The Twelfth Judicial District shall be composed of the Counties of Grimes, Walker, Leon, and Madison.

Sec. 2. The Twelfth District Court shall hold two terms of court annually in each county in the district, which terms commence on the first Monday in January of each year and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

[Amended by Acts 1981, 67th Leg., p. 53, ch. 25, § 3, eff. April 8, 1981.]

[See Compact Edition, Volume 3 for text of 13 and 14]

15, 59.—Grayson

Sec. 1. Grayson County shall constitute the Fifteenth Judicial District and the Fifty-ninth Judicial District. The District Courts shall be held therein as follows:

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

FIFTY–NINTH DISTRICT: On the first Monday in January and continuing until and including the last Saturday before the first Monday in April; on the first Monday in April and continuing until and including the last Saturday before the first Monday in July; and on the first Monday in July and continuing until and including the last Saturday before the first Monday in October; on the first Monday in October and continuing until and including the last Saturday before the first Monday in January.

Sec. 2. The District Courts of the Fifteenth and Fifty-ninth Judicial Districts, in the County of Grayson, shall have concurrent jurisdiction with each other throughout the limits of Grayson County of all matters civil and criminal of which jurisdiction is given to the District Courts by the Constitution and laws of this State, provided, that the Judge of the Fifty-ninth Judicial District may impanel the Grand Jury in Grayson County when, in the discretion of said Court, it is deemed by him proper so to do. He may draw and impanel such grand jury for any terms of his Court as provided by law for other District Courts for impaneling grand juries.

Sec. 3. Either of the Judges of the District Courts of Grayson County, may in his discretion, transfer any case or cases, civil or criminal, that may at any time be pending in his Court, to the other District Court in Grayson County, by order or orders entered upon the minutes of the Court making such transfer; and where such transfer or transfers are made, the Clerk of said Court shall enter such case or cases upon the dockets of the Court to which such transfer or transfers are made, and when so entered upon the docket, the Judge of said Court shall try and dispose of said cases in the same manner as if such cases were originally in said Court. Either of the Judges of the District Courts of Grayson County

may, in their discretion, exchange benches, without formal order, and either of the Judges may, in his own courtroom, try and determine any case or proceeding pending in the other Court without having the case transferred or may sit in the other Court and there hear and determine any case there pending, and each judgment and order shall be entered in the minutes of the Court in which the case is pending. The Judges may try different cases in the same Court at the same time, and each may occupy his own courtroom or the room of the other Court. In case of absence, sickness, or disqualification of either of the Judges, the other Judge may hold Court for him. Either of the Judges may hear any part of a case or proceeding pending in either of those Courts and determine the same or may hear and determine any question in any case, and either Judge may complete the hearing and render judgment in the case. Either of the Judges may hear and determine motions, petitions for injunction, application for appointment of receivers, interventions, pleas of privilege, pleas in abatement, all dilatory pleas, motions for new trials, and all preliminary matters, questions, and proceedings and may enter judgment or order thereon in the Court in which the case is pending without having the case transferred to the Court of the Judge acting, and the Judge in whose Court the case is pending may thereafter proceed to hear, complete, and determine the case or other matter or any part thereof and render final judgment thereon. Either of the Judges may issue restraining orders and injunctions returnable to the other Judge or Court.

Sec. 4. The Clerk of the District Court of Grayson County and his successor in office shall be the Clerk of both the Fifteenth and Fifty-ninth District Courts in Grayson County, and shall perform all the duties pertaining to the clerkship of both of said Courts.

[Amended by Acts 1977, 65th Leg., p. 9, ch. 5, § 2, eff. April 1, 1977; Acts 1981, 67th Leg., p. 328, ch. 132, § 1, eff. May 13, 1981.]

16.—Denton

(a) The 16th Judicial District of Texas shall be composed of Denton County, and the terms of the District Court shall be held each year on the eighth Monday after the first Mondays in January and September, and on the twenty-second Monday after the first Monday in January.

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

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

[Amended by Acts 1981, 67th Leg., p. 1843, ch. 429, § 7, eff. Sept. 1, 1981.]

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

18.—Somervell and Johnson

(a). The 18th Judicial District of Texas shall be composed of Somervell and Johnson Counties and the terms of the District Court shall be held each year in both the County of Somervell and the County of Johnson on the first Mondays in January and July.

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

[See Compact Edition, Volume 3 for text of 18(b) to (d)]

[Amended by Acts 1979, 66th Leg., p. 105, ch. 65, § 1, eff. April 19, 1979.]

[See Compact Edition, Volume 3 for text of 19 to 21]

22, 207.—Hays, Caldwell and Comal

Sec. 1. The 22nd Judicial District and the 207th Judicial District shall be composed of the counties of Hays, Caldwell, and Comal, and the terms of the district courts are hereby designated and shall be held there in each year as follows:

In the County of Hays on the first Mondays in February, May, August, and November;

In the County of Caldwell on the first Mondays in March, June, September, and December; and

In the County of Comal on the first Mondays in April, July, October, and January.

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

[Amended by Acts 1979, 66th Leg., p. 263, ch. 137, § 1, eff. Aug. 27, 1979.]

23.—Brazoria, Matagorda, and Wharton

There shall be two terms of the 23rd Judicial District Court in each of the Counties of Brazoria, Matagorda, and Wharton, Texas.

In Brazoria County the first term shall be known as the April-September term and shall begin each year on the first Monday in April and shall continue until and including Saturday before the first Monday in October of each year; the second term of said court in Brazoria County, Texas, which shall be known as the October-March term, shall begin each year on the first Monday in October and shall continue until and including Saturday before the first Monday in the following April.

In Matagorda County the first term shall be known as the June-November term and shall begin each year on the first Monday in June and shall continue until and including Saturday before the first Monday in December; the second term, which shall be known as the December-May term, shall begin each year on the first Monday in December and shall continue until and including Saturday before the first Monday in the following June.

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

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

[Amended by Acts 1981, 67th Leg., p. 54, ch. 25, § 5, eff. April, 8, 1981.]

Section 6 of the 1981 amendatory act provides:

"The provisions of Section 5, Chapter 179, Acts of the 50th Legislature, Regular Session, 1947 (Article 199(130), Vernon's Texas Civil Statutes), do not apply to the 23rd District Court and the judge of the 23rd District Court in Fort Bend County."

[See Compact Edition, Volume 3 for text of 24 to 25]

26.—Williamson

The 26th Judicial District shall be composed of the County of Williamson, and the district court shall hold six terms of court each year beginning on the first Mondays in January, March, May, July, September, and November. Each term shall continue until the beginning of the next succeeding term.

Grand juries for Williamson County shall be organized by the 26th District Court at the January, May and September terms of said court; provided, that the judge of said court may, when deemed necessary, organize and impanel grand juries at any other term of said court by entering an order therefor.

[Amended by Acts 1981, 67th Leg., p. 58, ch. 25, § 16, eff. April 8, 1981.]

27.—Bell and Lampasas

(a) The 27th Judicial District shall be composed of the Counties of Bell and Lampasas, and the terms of the District Court shall be held therein each year as follows:

In the County of Bell on the first Mondays in January, April, July, and October of each year, and each term of court continues until the next succeeding term begins.

In the County of Lampasas on the first Mondays in March and September and may continue in session until the Saturday night immediately preceding the Monday for convening the next regular term of such court in such County.

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

[Amended by Acts 1975, 64th Leg., p. 224, ch. 83, §§ 1 & 2, eff. April 30, 1975; Acts 1977, 65th Leg., p. 321, ch. 154, § 2, eff. Aug. 29, 1977.]

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

29.—Palo Pinto

Sec. 1. The Twenty-ninth Judicial District of Texas shall be composed of the County of Palo Pinto, and the terms of the District Court shall be held therein each year on the first Monday in March of each year; on the first Monday after the third Saturday in June of each year; and on the first Monday after the fourth Saturday in October of each year; and each such terms of Court may continue in session to and including the Saturday immediately preceding the Monday for convening the next regular term of such Court in such County.

Sec. 2. The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court as deemed by him proper and expedient for the dispatch of business.

[Amended by Acts 1981, 67th Leg., p. 55, ch. 25, § 8, eff. April 8, 1981.]

[See Compact Edition, Volume 3 for text of 30 to 32]

33.—Mason, Blanco, San Saba, Llano and Burnet

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

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

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

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

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

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

Each term of court in each of such counties shall continue until the date herein fixed for the beginning of the next succeeding term. The judge of the district may hold as many sessions of court during each term as is deemed proper and expedient for the dispatch of business.

[Amended by Acts 1979, 66th Leg., p. 1163, ch. 563, § 1, eff. Sept. 1, 1979.]

Section 4 of the 1979 amendatory act provided:

"This Act takes effect only if the 66th Legislature, Regular Session, does not create two or more new judicial districts in the same Act. If no bill creating two or more new judicial districts by the 66th Legislature, Regular Session, becomes law, this Act takes effect September 1, 1979."

No such bill became law.

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

35.—Mills, Brown and Coleman

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

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

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

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

Each term of court in each of such counties may continue in session until the date herein fixed for the beginning of the next succeeding term therein.
[Amended by Acts 1977, 65th Leg., p. 321, ch. 154, § 1, eff. Aug. 29, 1977.]

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

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

[See Compact Edition, Volume 3 for text of 36 and 37]

38.—Medina, Uvalde, and Real

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

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

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

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

Each term of court in each of such counties shall continue until the date herein fixed for the beginning of the next succeeding term. The judge of the district may hold as many sessions of court during each term as is deemed proper and expedient for the dispatch of business.
[Amended by Acts 1981, 67th Leg., p. 1844, ch. 429, § 9, eff. Sept. 1, 1981.]

[See Compact Edition, Volume 3 for text of 38 to 42]

43.—Parker

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

(b) The District Court for the 43rd Judicial District shall have and exercise all jurisdiction now or hereafter prescribed by the constitution and general laws of this State for district courts. All civil cases and all criminal cases originally filed and now pending on the docket of the 43rd District Court, over which original jurisdiction is assigned to county courts in this state by the constitution and general laws of this State are hereby transferred to the County Court of Parker County.

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

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

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

(f) In addition to the compensation provided by law and paid by the state, the Judge of the 43rd Judicial District may receive additional compensation to be determined and fixed by the Commissioners Court in an amount not to exceed $7,800 annually, to be paid in equal monthly installments out of the general fund or officers' salary fund of Parker County, as compensation for all judicial and administrative services performed by him. The Commissioners Court of Parker County shall make proper budget provisions for the payment of this salary.
[Amended by Acts 1975, 64th Leg., p. 668, ch. 281, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 677, ch. 257, § 2, eff. May 25, 1977.]

[See Compact Edition, Volume 3 for text of 44 to 48]

49.—Webb and Zapata

Sec. 1. The 49th Judicial District is composed of the counties of Webb and Zapata.

Sec. 2. The 49th District Court shall have and exercise all jurisdiction now or hereafter prescribed by the Constitution and laws of this state for district courts.

Sec. 3. The terms of the 49th District Court shall be:

In the County of Zapata on the fourth Mondays in February, May, and September.

In the County of Webb on the third Mondays in March, June, and October.

Each term of court in each county may continue until the date fixed for the beginning of the next

succeeding term. The judge of the court, in his discretion, may hold as many sessions of court in any term of the court in any county as is deemed by him proper and expedient for the dispatch of business.
[Amended by Acts 1981, 67th Leg., p. 1844, ch. 429, § 10, eff. Sept. 1, 1981.]

[See Compact Edition, Volume 3 for text of 50 and 51]

52.—Coryell

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

Each term of court may continue until the date herein fixed for the beginning of the next succeeding term therein.
[Amended by Acts 1977, 65th Leg., p. 9, ch. 5, § 3, eff. April 1, 1977.]

[See Compact Edition, Volume 3 for text of 53 to 62]

63.—Val Verde, Terrell, Kinney, and Edwards

Sec. 1. The Sixty-third Judicial District shall be composed of the Counties of Val Verde, Terrell, Kinney and Edwards, and the terms of the District Court are hereby designated and shall be held therein each year as follows:

In the County of Val Verde on the first Monday in January and the first Monday in June;

In the County of Terrell on the first Monday in February and the third Monday in August;

In the County of Kinney on the first Monday in April and the first Monday in October; and

In the County of Edwards on the first Monday in May and the third Monday in October.

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

Sec. 2. The judge of said court, in his discretion, may hold as many sessions of Court in any term of the Court in any county as is deemed by him proper and expedient for the dispatch of business.
[Amended by Acts 1975, 64th Leg., p. 1341, ch. 500, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 1844, ch. 429, § 11, eff. Sept. 1, 1981.]

64.—Hale, Swisher and Castro

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

Sec. 6. The terms of the 64th Judicial District Court in each county of the district shall begin on the first Mondays in January and July of each year and be designated as the January and July Terms, respectively.

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

[Amended by Acts 1979, 66th Leg., p. 105, ch. 65, § 2, eff. April 19, 1979.]

[See Compact Edition, Volume 3 for text of 65 to 68]

69.—Moore, Hartley, Sherman and Dallam

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

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

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

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

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

Each term of Court in each of such counties may continue until the date herein fixed for the beginning of the next succeeding term therein.
[Amended by Acts 1977, 65th Leg., p. 10, ch. 5, § 4, eff. April 1, 1977.]

[See Compact Edition, Volume 3 for text of 70 to 75]

76.—Titus, Camp, and Morris

Sec. 1. (a) The 76th Judicial District of Texas shall be composed of the Counties of Titus, Camp, and Morris, and the terms of the District Court within those Counties shall be held as follows:

Beginning on the first Mondays in January, May, July, and November and beginning on the third Monday in September in Morris County; beginning on the first Mondays in February, August, September, October, and December in Titus County; and beginning on the first Mondays in March and April in Camp County. Each term of court continues in each county until the next succeeding term of the court begins.

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

[See Compact Edition, Volume 3 for text of 2 to 4]

Sec. 5. (a) The District Court of the 76th Judicial District in Titus, Camp, and Morris Counties shall exercise general jurisdiction over civil and criminal matters as is now, or may hereafter be provided by law.

(b) The 76th Judicial District Court in Camp, Morris, and Titus Counties shall have concurrent jurisdiction with the 276th Judicial District Court in the counties. The Judges of the 76th and 276th District Courts in Camp, Morris, and Titus Counties may transfer on their dockets any case to be tried in Camp, Morris, and Titus Counties with the consent of the Court to which transferred, and each may sit in the other Court to hear cases without transferring the case.

(c) The 76th District Court in each of the Counties of Camp and Morris shall have and exercise concurrent jurisdiction with the County Court over all matters of criminal jurisdiction, original and appellate, in cases over which under the constitution and laws of this state the County Court has jurisdiction. In each of the counties, matters and proceedings in the concurrent jurisdiction of the 76th District Court and the County Court may be filed in either Court and all cases of concurrent jurisdiction may be transferred between the 76th District Court and the County Court.

(d) All writs and processes issued and bonds and recognizances made in cases transferred are returnable to the Court to which transferred, as if originally issued there. The officers serving the 76th District Court in Camp, Morris, and Titus Counties shall serve in the same manner the 276th Judicial District Court in Camp, Morris, and Titus Counties.

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

[Amended by Acts 1975, 64th Leg., p. 1857, ch. 581, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 55, ch. 25, § 9, eff. April 8, 1981.]

Section 20 of the 1981 amendatory act provides:

"The county attorney in each of the Counties of Yoakum and Morris shall represent the state in all matters pending before the district court in his respective county. The duties of the District Attorney of the 76th Judicial District in the County of Morris are divested from him and invested in the county attorney. The District Attorney of the 76th Judicial District shall represent the state in all matters pending before the district court in the Counties of Titus and Camp and shall be elected from only the Counties of Titus and Camp.

[See Compact Edition, Volume 3 for text of 77 to 81]

82.—Falls County

Sec. 1. The 82nd Judicial District of the State of Texas is composed of the County of Falls. The terms of the District Court shall be held on the first Monday in the months of January, March, May, September and November and each term may continue until and including the Saturday next preceding the beginning of the next succeeding term. Grand juries shall be organized at the May and November terms of said court, and at such other terms as the judge of said district may determine and order.

Sec. 2. The District Court of the 82nd Judicial District shall have all the jurisdiction prescribed by the constitution and laws of this state for district courts and also shall have and exercise original and appellate jurisdiction in all civil and criminal matters and causes over which the county courts have original or appellate jurisdiction.

[Amended by Acts 1975, 64th Leg., p. 84, ch. 39, § 2, eff. April 8, 1975.]

[See Compact Edition, Volume 3 for text of 83 to 85]

86.—Kaufman and Rockwall

Sec. 1. The Eighty-sixth Judicial District of Texas shall be composed of the Counties of Kaufman and Rockwall, and the terms of the district Court are hereby designated and shall be held therein each year as follows:

In the County of Kaufman on the first Mondays in February and July.

In the County of Rockwall on the first Mondays in April and October.

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

Sec. 2. The Judge of said Court in his discretion may hold as many sessions of Court in any term of the Court in any County as is deemed by him proper and expedient for the dispatch of business.

[Amended by Acts 1981, 67th Leg., p. 1845, ch. 429, § 12, eff. Sept. 1, 1981.]

[See Compact Edition, Volume 3 for the text of 87 to 89]

90.—Stephens and Young

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

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

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

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

[See Compact Edition, Volume 3 for text of 91 to 103]

104.—Taylor

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

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

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

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

[See Compact Edition, Volume 3 for text of 105 to 111]

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

Sec. 1. The One Hundred and Twelfth Judicial District shall be composed of the Counties of Pecos, Upton, Sutton, Reagan, and Crockett, and the terms of the district court shall be held therein as follows:

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

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

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

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

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

Each term of court in each of such counties shall continue until the date herein fixed for the beginning of the next succeeding term. The judge of the district may hold as many sessions of court during each term as is deemed proper and expedient for the dispatch of business.

[Amended by Acts 1979, 66th Leg., p. 888, ch. 408, § 1, eff. Sept. 1, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act takes effect only if the 66th Legislature, Regular Session, does not create two or more new judicial districts in the same Act. If no bill creating two or more new judicial districts by the 66th Legislature, Regular Session, becomes law, this Act takes effect September 1, 1979."

No such bill became law.

[See Compact Edition, Volume 3 for text of 113 and 114]

115.—Upshur, Wood and Marion Counties

(a) The 115th District Court of Texas shall be composed of Upshur, Wood, and Marion Counties, and the terms of the Court shall be held as follows:

In the County of Upshur on the first Mondays in January and June of each year, and may continue in session until and including the Saturday immediately preceding the Monday for convening the next regular term of said Court in Upshur County.

In the County of Wood on the first Mondays in February and July, and may continue in session until and including the Saturday immediately preceding the Monday for convening the next regular term of said Court in Wood County.

In the County of Marion on the first Mondays in March and September, and may continue in session until and including the Saturday immediately preceding the Monday for convening the next regular term of said Court in Marion County.

The Judge of the 115th District Court in his discretion may hold as many sessions of Court in any term of the Court in any County as is deemed by him proper and expedient for the dispatch of business.

(b) The jurisdiction of the 115th District Court is concurrent with the jurisdiction of the 276th District Court in Marion County, and with the 114th District Court in Wood County. The Judges of the 114th and 115th District Courts in Wood County may transfer on their dockets any case to be tried in Wood County with the consent of the Court to which transferred, and each may sit in the other Court to hear cases without transferring the case. The Judges of the 115th and 276th District Courts in Marion County may transfer on their dockets any case to be tried in Marion County with the consent of the court to which transferred, and each may sit in the other court to hear cases without transferring the case. The 115th District Court in Marion County shall have and exercise concurrent jurisdiction with the County Court over all matters of criminal jurisdiction, original and appellate, in cases over which under the constitution and laws of this state the County Court has jurisdiction. In the County, matters and proceedings in the concurrent jurisdiction of the 115th District Court and the County Court may be filed in either Court and all cases of concurrent jurisdiction may be transferred between the 115th District Court and the County Court. All writs and processes issued and bonds and recognizances made in cases transferred are returnable to the court to which transferred, as if originally issued there.

(c) The officers serving the 276th District Court in Marion County shall serve in the same manner the 115th Judicial District Court in Marion County.

[Amended by Acts 1975, 64th Leg., p. 1857, ch. 581, § 2, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 56, ch. 25, § 10, eff. April 8, 1981.]

[See Compact Edition, Volume 3 for text of 116 to 120]

121.—Terry and Yoakum

(a) There is created the 121st Judicial District of Texas, to be composed of the Counties of Terry and Yoakum. The District Court of the 121st Judicial District shall have the jurisdiction provided by the Constitution and Laws of this State for District Courts.

(b) The terms of the District Court shall be held therein each year as follows:

In the County of Terry, beginning on the second Monday in May and the second Monday in November.

In the County of Yoakum, beginning on the second Monday in June and the second Monday in December.

Each term of court continues until the next succeeding term begins.

[Amended by Acts 1981, 67th Leg., p. 58, ch. 25, § 15, eff. April 8, 1981.]

122.—Galveston

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

Sec. 3. The terms of the District Court of the 122nd Judicial District in and for Galveston County shall be continuous commencing on the first Monday in January and the first Monday in July. Each term of the Court continues until the next succeeding term begins.

[See Compact Edition, Volume 3 for text of 4 to 9]

[Amended by Acts 1979, 66th Leg., p. 1128, ch. 539, § 2, eff. Aug. 27, 1979.]

[See Compact Edition, Volume 3 for text of 123 to 129]

130.—Brazoria, Fort Bend, Matagorda and Wharton

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

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

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

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

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

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

Acts 1981, 67th Leg., p. 54, ch. 25, § 6, provides:

"The provisions of Section 5, Chapter 179, Acts of the 50th Legislature, Regular Session, 1947 (Article 199(130), Vernon's Texas Civil Statutes), do not apply to the 23rd District Court and the judge of the 23rd District Court in Fort Bend County."

[See Compact Edition, Volume 3 for text of 131 to 134]

135.—DeWitt, Goliad, Jackson, Refugio, Calhoun and Victoria

Sec. 1. The 135th Judicial District of Texas shall consist of DeWitt, Goliad, Jackson, Refugio, Calhoun and Victoria counties.

Sec. 2. The present Judge of the 135th Judicial District shall continue to serve as Judge of the District for the remainder of the term to which he was elected and for which he has qualified and until his successor shall be duly elected and qualified. Thereafter such Judge shall be elected as provided by the Constitution and Laws of the State of Texas.

Sec. 3. There shall be two terms of the District Court of the 135th Judicial District in each county within its jurisdiction which commence on the first Monday in January and on the first Monday in July of each year.

Each term of court in each county continues until the next succeeding term begins.

Sec. 4. The district clerk of each of the respective Counties included in the Judicial District shall also be clerk of the District Court of the 135th Judicial District in such respective Counties. The district attorney of the 24th Judicial District shall represent the state in all cases before the 135th District Court in the Counties of Goliad, Jackson, Refugio, and DeWitt.

[Amended by Acts 1981, 67th Leg., p. 57, ch. 25, § 13, eff. April 8, 1981.]

[See Compact Edition, Volume 3 for text of 136 to 145]

146.—Bell

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

Sec. 3. The terms of the District Court of the 146th Judicial District shall be on the first Mondays in January, April, July, and October of each year, and each term of court continues until the next succeeding term begins.

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

[Amended by Acts 1975, 64th Leg., p. 224, ch. 83, §§ 1 & 2, eff. April 30, 1975.]

[See Compact Edition, Volume 3 for text of 147 to 153]

154.—Lamb

Sec. 1. There is created the 154th Judicial District of Texas to be composed of the County of Lamb.

Sec. 8. The terms of the 154th Judicial District Court shall begin on the first Mondays in January and July of each year designated as the January and July Terms, respectively.

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

[Amended by Acts 1981, 67th Leg., p. 58, ch. 25, § 17, eff. April 8, 1981.]

Section 19 of the 1981 amendatory act provides:

"The office of district attorney of the 154th Judicial District is abolished. The county attorney of Lamb County shall represent the state in all matters pending before the district court in Lamb County and perform all the duties of the district attorney.

[See Compact Edition, Volume 3 for text of 155 to 215]

216.—Kerr, Bandera, Kendall, Kimble, Gillespie, and Sutton

The name of the Second Thirty-eighth Judicial District of Texas is changed to the 216th Judicial District of Texas.

The 216th Judicial District shall be composed of the Counties of Kerr, Bandera, Kendall, and Gillespie, and the terms of the district court shall be held therein as follows:

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

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

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

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

Each term of court in each of such counties shall continue until the date herein fixed for the beginning of the next succeeding term. The judge of the district may hold as many sessions of court during each term as is deemed proper and expedient for the dispatch of business.

[Amended by Acts 1979, 66th Leg., p. 1163, ch. 563, § 2, eff. Sept. 1, 1979.]

Section 4 of the 1979 amendatory act provided:

"This Act takes effect only if the 66th Legislature, Regular Session, does not create two or more new judicial districts in the same Act. If no bill creating two

or more new judicial districts by the 66th Legislature, Regular Session, becomes law, this Act takes effect September 1, 1979."
No such bill became law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

235.—Cooke. See Article 199a, Sec. 3.028

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

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

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

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

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

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

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

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

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

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

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

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

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

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

250.—Travis. See Article 199a, Sec. 3.076

251.—Potter and Randall. See Article 199a, Sec. 3.077

252.—Jefferson. See Article 199a, Sec. 3.078

253.—Chambers and Liberty. See Article 199a, Sec. 3.079

254.—Dallas. See Article 199a, Sec. 3.080

255.—Dallas. See Article 199a, Sec. 3.081

256.—Dallas. See Article 199a, Sec. 3.082

257.—Harris. See Article 199a, Sec. 3.083

258.—Polk, San Jacinto and Trinity. See Article 199a, Sec. 3.084

259.—Jones and Shackelford. See Article 199a, Sec. 3.085

260.—Orange. See Article 199a, Sec. 3.086

261.—Travis. See Article 199a, Sec. 3.087

262.—Harris. See Article 199a, Sec. 3.088

263.—Harris. See Article 199a, Sec. 3.089

264.—Bell. See Article 199a, Sec. 3.090

265.—Dallas. See Article 199a, Sec. 3.091

266.—Erath and Hood. See Article 199a, Sec. 3.092

267.—Calhoun, DeWitt, Goliad, Jackson, Refugio and Victoria. See Article 199a, Sec. 3.093

268.—Fort Bend. See Article 199a, Sec. 3.094

269.—Harris. See Article 199a, Sec. 3.095

270.—Harris. See Article 199a, Sec. 3.096

271.—Wise and Jack. See Article 199a, Sec. 3.097

272.—Brazos. See Article 199a, Sec. 3.098

273.—Shelby, Sabine, and San Augustine. See Article 199a, Sec. 3.099

274.—Comal, Hays, Guadalupe and Caldwell. See Article 199a, Sec. 3.100

275.—Hidalgo. See Article 199a, Sec. 3.101

276.—Camp, Marion, Morris and Titus. See Article 199a, Sec. 3.102

277.—Williamson. See Article 199a, Sec. 3.103

278.—Grimes, Madison, Walker and Leon. See Article 199a, Sec. 3.104

279.—Jefferson. See Article 199a, Sec. 3.105

280.—Harris. See Article 199a, Sec. 3.106

281.—Harris. See Article 199a, Sec. 3.107

282.—Dallas. See Article 199a, Sec. 3.108

283.—Dallas. See Article 199a, Sec. 3.109

284.—Montgomery. See Article 199a, Sec. 3.110

285.—Bexar. See Article 199a, Sec. 3.111

286.—Cochran and Hockley. See Article 199a, Sec. 3.112

287.—Bailey and Parmer. See Article 199a, Sec. 3.113

288.—Bexar. See Article 199a, Sec. 3.114

289.—Bexar. See Article 199a, Sec. 3.115

290.—Bexar. See Article 199a, Sec. 3.116

291.—Dallas. See Article 199a, Sec. 3.117

292.—Dallas. See Article 199a, Sec. 3.118

293.—Dimmit, Maverick, and Zavala. See Article 199a, Sec. 3.119

294.—Wood and Van Zandt. See Article 199a, Sec. 3.120

295.—Harris. See Article 199a, Sec. 3.121
296.—Collin. See Article 199a, Sec. 3.122
297.—Tarrant. See Article 199a, Sec. 3.123
298.—Dallas. See Article 199a, Sec. 3.124
299.—Travis. See Article 199a, Sec. 3.125
331.—Travis. See Article 199a, Sec. 3.126
332.—Hidalgo. See Article 199a, Sec. 3.127
333.—Harris. See Article 199a, Sec. 3.128
334.—Harris. See Article 199a, Sec. 3.129

Art. 199a. Judicial Districts Act of 1969

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

SUBCHAPTER C. CREATION OF DISTRICTS

[See Compact Edition, Volume 3 for text of 3.001 and 3.002]

169.—Bell

[See Compact Edition, Volume 3 for text of 3.003(a)]

(b) The terms of the 169th District Court shall be on the first Mondays in January, April, July, and October of each year, and each term of court continues until the next succeeding term begins.

[See Compact Edition, Volume 3 for text of 3.004 to 3.013]

187.—Bexar

[See Compact Edition, Volume 3 for text of 3.014(a) and (b)]

(c) The term of court of the 187th District Court beginning on the first Monday in July, 1975, shall continue until the first Monday in September, 1975. Beginning on the first Monday in September, 1975, the court shall hold six terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in September, one term beginning on the first Monday in November, one term beginning on the first Monday in January, one term beginning on the first Monday in March, one term beginning on the first Monday in May, and one term beginning on the first Monday in July of each year. Each term shall continue until the business is disposed of.

[See Compact Edition, Volume 3 for text of 3.015 to 3.025]

198.—Kerr, Menard, Concho, Kimble, and McCulloch

Sec. 3.026. (a) The 198th Judicial District, composed of the Counties of Kerr, Menard, Concho, Kimble, and McCulloch, is created.

[See Compact Edition, Volume 3 for text of 3.026(b) to 3.027]

235.—Cooke

Sec. 3.028. The 235th Judicial District, composed of the County of Cooke, is hereby created.

199.—Collin

[See Compact Edition, Volume 3 for text of 3.028(a)]

(b) to (e) Repealed by Acts 1975, 64th Leg., p. 375, ch. 166, § 9, eff. Jan. 1, 1976.

[See Compact Edition, Volume 3 for text of 3.029 to 3.031]

205.—El Paso, Hudspeth and Culberson

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

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

[See Compact Edition, Volume 3 for text of 3.033 to 3.034]

207.—Comal, Hays and Caldwell

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

(c) The courts shall hold four terms each year beginning on the first Mondays in February, May, August, and November in Hays County, beginning on the first Mondays in March, June, September, and December in Caldwell County, and beginning on the first Mondays in April, July, October, and January in Comal County. Each term of court continues in each county until the next succeeding term begins.

208.—Harris

[See Compact Edition, Volume 3 for text of 3.036(a) and (b)]

(c) The term of court of the 208th District Court beginning on the first Monday in January, 1975, shall continue until the first Monday in August, 1975. Beginning on the first Monday in August, 1975, the court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

209.—Harris

[See Compact Edition, Volume 1 for text of 3.037(a) and (b)]

(c) The term of court of the 209th District Court beginning on the first Monday in January, 1975, shall continue until the first Monday in August, 1975. Beginning on the first Monday in August, 1975, the court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

210.—El Paso, Hudspeth and Culberson

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

[See Compact Edition, Volume 3 for text of 3.039 and 3.040]

213.—Tarrant

Sec. 3.041. (a) The 213th Judicial District, composed of the County of Tarrant, is hereby created.

(b) The terms of court of the 213th District Court begin on the first Monday in April, the first Monday in July, the first Monday in October, and the first Monday in January of each year. Each term of court continues until the next succeeding term convenes.

[See Compact Edition, Volume 3 for text of 3.042 and 3.043]

217.—Angelina

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

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

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

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

219.—Collin

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

220.—Hamilton, Comanche and Bosque

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

221.—Montgomery

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

222.—Deaf Smith and Oldham

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

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

(c) The salary of the official shorthand reporter shall be set by the district judge of this judicial district at a sum of not less than $15,000 per annum. In addition to a salary, the reporter shall receive allowances for his actual and necessary travel and hotel expenses, if any, while actually engaged in the discharge of his duties, not to exceed the amount allowed by the federal government while traveling by private conveyance and going to and returning from the place where such duties are discharged, traveling the nearest practical route. The expenses shall be paid by the respective counties of the judicial district for which they are incurred, each county paying the expense incidental to its own regular or special term of court. The expenses shall be paid to the official shorthand reporter by the commissioners court of the county out of the general fund of the county upon the sworn statement of the reporter, approved by the judge.

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

223.—Gray

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

224.—Bexar

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

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

225.—Bexar

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

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

226.—Bexar

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

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

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

227.—Bexar

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

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

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

228.—Harris

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

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

(c) The 228th District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

230.—Harris

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

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

(c) The 230th District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

231.—Tarrant

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

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

232.—Harris

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

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

(c) The 232nd District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

233.—Tarrant

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

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

234.—Harris

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

236.—Tarrant

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

237.—Lubbock

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

238.—Midland

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

239.—Brazoria

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

240.—Fort Bend

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

241.—Smith

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

242.—Hale, Swisher and Castro

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

243.—El Paso

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

244.—Ector

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

245.—Harris

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

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

246.—Harris

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

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

247.—Harris

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

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

248.—Harris

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

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

(c) The 248th District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

249.—Johnson and Somervell

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

1A.—Jasper, Newton and Tyler

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

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

250.—Travis

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

251.—Potter and Randall

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

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

252.—Jefferson

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

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

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

253.—Chambers and Liberty

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

(b) The 253rd District Court shall hold two terms of court each year beginning in Liberty County on the first Mondays in April and October of each year and beginning in Chambers County on the first Mondays in June and December of each year. Each term shall continue in each county until the beginning of the next succeeding term.

254.—Dallas

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

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

255.—Dallas

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

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

256.—Dallas

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

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

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

257.—Harris

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

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

258.—Polk, San Jacinto and Trinity

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

259.—Jones and Shackelford

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

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

260.—Orange

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

261.—Travis

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

262.—Harris

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

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

(c) The 262nd District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

263.—Harris

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

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

(c) The 263rd District Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning on the first Monday in August, one term beginning on the first Monday in November, one term beginning on the first Monday in February, and one term beginning on the first Monday in May of each year. Each term shall continue until the business is disposed of.

264.—Bell

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

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

265.—Dallas

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

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

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

266.—Erath and Hood

Sec. 3.092. The 266th Judicial District, composed of the Counties of Erath and Hood, is hereby created.

267.—Calhoun, Dewitt, Goliad, Jackson, Refugio and Victoria

Sec. 3.093. The 267th Judicial District, composed of the Counties of Calhoun, DeWitt, Goliad, Jackson, Refugio, and Victoria, is hereby created.

268.—Fort Bend

Sec. 3.094. The 268th Judicial District, composed of the County of Fort Bend, is hereby created.

269.—Harris

Sec. 3.095. The 269th Judicial District, composed of the County of Harris, is hereby created.

270.—Harris

Sec. 3.096. The 270th Judicial District, composed of the County of Harris, is hereby created.

271.—Wise and Jack

Sec. 3.097. The 271st Judicial District, composed of the Counties of Wise and Jack, is hereby created.

272.—Brazos

Sec. 3.098. (a) The 272nd Judicial District, composed of the County of Brazos, is hereby created.

(b) The terms of the 272nd District Court shall begin on the first Mondays in April and October of each year, and each term of court continues until the next succeeding term begins.

273.—Shelby, Sabine, and San Augustine

Sec. 3.099. (a) The 273rd Judicial District, composed of the Counties of Shelby, Sabine and San Augustine, is hereby created.

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

274.—Comal, Hays, Guadalupe and Caldwell

Sec. 3.100. (a) The 274th Judicial District, composed of the Counties of Comal, Hays, Guadalupe, and Caldwell, is hereby created.

(b) The terms of the 274th Judicial District shall begin on the second Tuesdays in February and August in Caldwell County; and begin on the second Tuesdays in May and November in Guadalupe County; and begin on the second Tuesdays in August and February in Comal County; and the second Tuesdays in December and June in Hays County. Each term of court continues in each county until the next succeeding term of the court begins.

(c) The jurisdiction of the 274th District Court is concurrent with the jurisdiction of the 22nd and the 207th District Courts in Comal, Hays, and Caldwell Counties and with the 25th and Second 25th in Guadalupe County.

275.—Hidalgo

Sec. 3.101. The 275th Judicial District, composed of the County of Hidalgo, is hereby created.

276.—Camp, Marion, Morris, and Titus

Sec. 3.102. (a) The 276th Judicial District, composed of the Counties of Camp, Marion, Morris, and Titus, is hereby created.

(b) The terms of the 276th Judicial District shall begin on the first Mondays in January, May, and July in Marion County; and begin on the first Mondays in February, March, and September in Morris County; and begin on the first Mondays in April, June, and November in Titus County; and begin on the first Mondays in October and December in Camp County. Each term of court continues in each county until the next succeeding term of the court begins.

(c) The jurisdiction of the 276th District Court is concurrent with the jurisdiction of the 115th District Court in Marion County and with the 76th District Court in Camp, Morris, and Titus Counties. The judges of the 276th and 76th District Courts in Camp, Morris, and Titus Counties may transfer on their dockets any case to be tried in Camp, Morris, and Titus Counties with the consent of the court to which transferred, and each may sit in the other court to hear cases without transferring the case.

(d) The 276th District Court in each of the Counties of Camp, Morris, and Marion shall have and exercise concurrent jurisdiction with the county court over all matters of criminal jurisdiction, original and appellate, in cases over which under the constitution and laws of this state the county court has jurisdiction. In each of the counties, matters and proceedings in the concurrent jurisdiction may be transferred between the 276th District Court and the county court.

277.—Williamson

Sec. 3.103. (a). The 277th Judicial District, composed of the County of Williamson, is hereby created.

(b) The 277th District Court shall hold six terms of court each year beginning on the first Mondays in January, March, May, July, September, and November. Each term shall continue until the beginning of the next succeeding term.

(c) The judge of the 277th District Court shall organize and impanel grand juries for Williamson County at the March, July, and November terms of the court and may, when deemed necessary, organize and impanel grand juries at any other term of the court by entering an order therefor.

278.—Grimes, Madison, Walker and Leon

Sec. 3.104. The 278th Judicial District, composed of the Counties of Grimes, Madison, Walker, and Leon, is hereby created.

279.—Jefferson

Sec. 3.105. (a) The 279th Judicial District, composed of the County of Jefferson, is hereby created.

(b) The 279th District Court shall give preference to family law matters.

280.—Harris

Sec. 3.106. The 280th Judicial District, composed of the County of Harris, is hereby created.

281.—Harris

Sec. 3.107. The 281st Judicial District, composed of the County of Harris, is hereby created.

282.—Dallas

Sec. 3.108. (a) The 282nd Judicial District, composed of the County of Dallas, is hereby created.

(b) The 282nd District Court shall give preference to criminal cases.

283.—Dallas

Sec. 3.109. (a) The 283rd Judicial District, composed of the County of Dallas, is hereby created.

(b) The 283rd District Court shall give preference to criminal cases.

284.—Montgomery

Sec. 3.110. The 284th Judicial District, composed of the County of Montgomery, is hereby created.

285.—Bexar

Sec. 3.111. (a) The 285th Judicial District, composed of the County of Bexar, is hereby created.

(b) The 285th District Court shall give preference to civil cases.

286.—Cochran and Hockley

Sec. 3.112. The 286th Judicial District, composed of the Counties of Cochran and Hockley, is hereby created.

287.—Bailey and Parmer

Sec. 3.113. (a) The 287th Judicial District, composed of the Counties of Bailey and Parmer, is hereby created.

(b) The 287th District Court shall hold two terms of court for each county beginning in Bailey County on the first Mondays in February and August of each year and beginning in Parmer County on the first Mondays in March and September of each year. Each term shall continue in each county until the beginning of the next succeeding term.

288.—Bexar

Sec. 3.114. (a) The 288th Judicial District, composed of the County of Bexar, is hereby created.

(b) The 288th District Court shall give preference to civil cases.

289.—Bexar

Sec. 3.115. (a) The 289th Judicial District, composed of the County of Bexar, is hereby created.

(b) The 289th District Court shall give preference to criminal cases.

(c) The 289th District Court shall hold six terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday in January, one the first Monday in March, one the first Monday in May, one the first Monday in July, one the first Monday in September, and one the first Monday in November of each year. Each term shall continue until the business is disposed of.

290.—Bexar

Sec. 3.116. (a) The 290th Judicial District, composed of the County of Bexar, is hereby created.

(b) The 290th District Court shall give preference to criminal cases.

(c) The 290th District Court shall hold six terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday in January, one the first Monday in March, one the first Monday in May, one the first Monday in July, one the first Monday in September, and one the first Monday in November of each year. Each term shall continue until the business is disposed of.

291.—Dallas

Sec. 3.117. (a) The 291st Judicial District, composed of the County of Dallas, is hereby created.

(b) The 291st District Court shall give preference to criminal cases.

292.—Dallas

Sec. 3.118. (a) The 292nd Judicial District, composed of the County of Dallas, is hereby created.

(b) The 292nd District Court shall give preference to criminal cases.

293.—Dimmit, Maverick, and Zavala

Sec. 3.119. The 293rd Judicial District, composed of the Counties of Dimmit, Maverick, and Zavala, is hereby created.

294.—Wood and Van Zandt

Sec. 3.120. (a) The 294th Judicial District, composed of the Counties of Wood and Van Zandt, is hereby created.

(b) The 294th District Court, in each of the Counties of Wood and Van Zandt, shall have and exercise concurrent jurisdiction with the county court over all matters of civil and criminal jurisdiction, original and appellate, in causes over which under the constitution and laws of this state the county court has jurisdiction. In each of the counties, matters and proceedings in the concurrent jurisdiction of the 294th District Court and the county court may be filed in either court and all cases of concurrent jurisdiction may be transferred between the 294th District Court and the county court. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

295.—Harris

Sec. 3.121. (a) The 195th Judicial District, composed of the County of Harris, is hereby created.

(b) The 295th Judicial District shall give preference to civil matters.

296.—Collin

Sec. 3.122. The 296th Judicial District, composed of the County of Collin, is hereby created.

297.—Tarrant

Sec. 3.123. (a) The 297th Judicial District, composed of the County of Tarrant, is hereby created.

(b) The 297th District Court shall give preference to criminal cases.

(c) The terms of court of the 297th District Court begin on the first Monday in April, the first Monday

in July, the first Monday in October, and the first Monday in January of each year. Each term of court continues until the next succeeding term convenes.

298.—Dallas

Sec. 3.124. (a) The 298th Judicial District, composed of the County of Dallas, is hereby created.

(b) The 298th District Court shall give preference to civil matters.

299.—Travis

Text of section added effective September 1, 1982

Sec. 3.125. The 299th Judicial District, composed of the County of Travis, is hereby created.

331.—Travis

Text of section added effective September 1, 1982

Sec. 3.126. The 331st Judicial District, composed of the County of Travis, is hereby created.

332.—Hidalgo

Text of section added effective January 1, 1983

Sec. 3.127. The 332nd Judicial District, composed of the County of Hidalgo, is hereby created.

333.—Harris

Text of section added effective January 1, 1983

Sec. 3.128. (a) The 333rd Judicial District, composed of the County of Harris, is hereby created.

(b) The 333rd District Court shall give preference to civil matters.

334.—Harris

Text of section added effective January 1, 1983

Sec. 3.129. (a) The 334th Judicial District, composed of the County of Harris, is hereby created.

(b) The 334th District Court shall give preference to civil matters.

SUBCHAPTER D. DISTRICT ATTORNEYS

220th Judicial District

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

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

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

259th Judicial District

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

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

258th Judicial District

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

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

266th Judicial District

Sec. 4.008. (a) The office of district attorney for the 266th Judicial District is created.

(b) The district attorney shall represent the state in all cases before the 266th District Court and shall perform the duties imposed and have the authority conferred on district attorneys by the general laws of this state.

286th Judicial District

Sec. 4.009. (a) The office of district attorney for the 286th Judicial District is created.

(b) The district attorney shall represent the state in all cases before the 286th District Court and shall perform the duties imposed and have the authority conferred on district attorneys by the general laws of this state.

287th Judicial District

Sec. 4.010. (a) The office of district attorney for the 287th Judicial District is created.

(b) The district attorney shall represent the state in all cases before the 287th District Court and shall perform the duties imposed and have the authority conferred on district attorneys by the general laws of this state.

271st Judicial District

Sec. 4.011. (a) The office of district attorney for the 271st Judicial District is created.

(b) The district attorney shall represent the state in all cases before the 271st District Court and shall perform the duties imposed and have all the authority conferred on district attorneys by the general law of the state.

293rd Judicial District

Sec. 4.012. (a) The office of district attorney for the 293rd Judicial District is created.

(b) The district attorney shall represent the state in all cases before the 293rd District Court and shall perform the duties imposed and have all the authori-

ty conferred on district attorneys by the general laws of the state.

[Amended by Acts 1975, 64th Leg., p. 224, ch. 83, § 3, eff. April 30, 1975; Acts 1975, 64th Leg., p. 342, ch. 144, §§ 1 and 2, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 375, ch. 166, § 9, eff. Jan. 1, 1975; Acts 1975, 64th Leg., p. 465, ch. 199, § 1, eff. May 15, 1975; Acts 1977, 65th Leg., p. 6, ch. 5, § 1, eff. April 1, 1977; Acts 1977, 65th Leg., p. 66, ch. 33, § 1, eff. March 29, 1977; Acts 1977, 65th Leg., p. 1314, ch. 519, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 2155, ch. 860, §§ 1 to 5, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 52, ch. 32, § 1, eff. April 6, 1979; Acts 1979, 66th Leg., p. 263, ch. 137, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 800, ch. 359, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1112, ch. 528, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1164, ch. 563, § 3, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 51, ch. 25, §§ 1, 2, eff. April 8, 1981; Acts 1981, 67th Leg., p. 1841, ch. 429, §§ 1, 6, 8, eff. Sept. 1, 1981, § 2, eff. Jan. 1, 1982, § 3, eff. April 1, 1982, § 4, eff. Sept. 1, 1982, § 5, eff. Jan. 1, 1983; Acts 1981, 67th Leg., p. 2266, ch. 547, § 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2515, ch. 664, § 1, eff. June 15, 1981.]

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

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

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

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

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

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

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

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

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

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

"(d) Within 20 days after the effective date of this section, the clerk of the county court in each of the counties of Jones and Shackelford shall file with the clerk of the district court in each of those counties all original papers in cases transferred to the district court and all judges' dockets and certified copies of interlocutory judgments or other orders entered in the minutes of the county court in cases so transferred. The district clerk in each county shall immediately docket the cases on the docket of the district court in each county. All the transferred cases shall stand on the docket of the court to which they are transferred in the same manner and place as each stands on the docket of the county court. It is not necessary that the district clerk refile any papers previously filed by the county clerk. The county clerk shall accompany the papers with a certified bill of cost and shall charge accrued fees due him against all cost deposits, with the remainder of the deposit paid to the district court as a deposit in the particular case for which it was deposited. Credit shall be given the litigants for all jury fees paid in the county court."

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

Acts 1979, 66th Leg., p. 1163, ch. 563, which by § 3 amended § 3.026(a) of this article, provided in § 4:

"This Act takes effect only if the 66th Legislature, Regular Session, does not create two or more new judicial districts in the same Act. If no bill creating two or more new judicial districts by the 66th Legislature, Regular Session, becomes law, this Act takes effect September 1, 1979."

No such bill became law.

ADMINISTRATIVE JUDICIAL DISTRICTS

Art. 200a. Administrative Judicial Districts

Numbers and Composition

Sec. 1. (a) The State of Texas is divided into nine (9) Administrative Judicial Districts

(b) The First Administrative Judicial District is composed of the counties of Bowie, Red River, Lamar, Fannin, Grayson, Collin, Hunt, Delta, Hopkins, Franklin, Titus, Morris, Camp, Cass, Marion, Harrison, Gregg, Upshur, Wood, Rains, Kaufman, Van Zandt, Dallas, Ellis, Henderson, Anderson, Houston, Cherokee, Nacogdoches, Rockwall, Panola, Shelby, Smith, and Rusk.

(c) The Second Administrative Judicial District is composed of the counties of San Augustine, Sabine, Jasper, Newton, Orange, Jefferson, Tyler, Hardin, Liberty, Chambers, Galveston, Harris, Brazoria, Matagorda, Wharton, Fort Bend, Waller, Montgomery, San Jacinto, Polk, Walker, Trinity, Grimes, Madison, Leon, Brazos, Freestone, Limestone, Burleson, Washington, Bastrop, Robertson, Lee, and Angelina.

(d) The Third Administrative Judicial District is composed of the counties of Johnson, Somervell, Bosque, Hill, Navarro, McLennan, Falls, Milam, Williamson, Travis, Austin, Fayette, Caldwell, Comal, Hays, Colorado, Lavaca, Gonzales, Guadalupe, Blanco, Burnet, San Saba, Llano, Mason, Bell, Lampasas, Coryell, Hamilton, and Comanche.

(e) The Fourth Administrative Judicial District is composed of the counties of Jackson, Calhoun, Aransas, Refugio, San Patricio, Bee, Live Oak, McMullen, Goliad, Victoria, De Witt, Karnes, Wilson, Atascosa, Frio, LaSalle, Dimmit, Webb, Zapata, and Bexar.

(f) The Fifth Administrative Judicial District is composed of the counties of Nueces, Kleberg, Kenedy, Jim Wells, Duval, Brooks, Starr, Hidalgo, Willacy, Cameron, and Jim Hogg.

(g) The Sixth Administrative Judicial District is composed of the counties of Maverick, Kinney, Edwards, Val Verde, Terrell, Kerr, Kendall, Bandera, Gillespie, Kimble, Real, Medina, Uvalde, Zavala, Sutton, Crockett, Pecos, Brewster, Jeff Davis, Presidio, Culberson, Hudspeth, El Paso, Upton, and Reagan.

(h) The Seventh Administrative Judicial District is composed of the counties of Lynn, Garza, Gaines, Dawson, Andrews, Martin, Loving, Winkler, Ector, Midland, Glasscock, Reeves, Ward, Crane, Sterling, Coke, Irion, Tom Green, Schleicher, Borden, Scurry, Howard, Mitchell, Nolan, Taylor, Callahan, Throckmorton, Haskell, Jones, Fisher, Stonewall, Kent, Runnels, Coleman, Brown, McCulloch, Concho, Shackelford, Mills, and Menard.

(i) The Eighth Administrative Judicial District is composed of the counties of Cooke, Denton, Montague, Clay, Wichita, Archer, Jack, Wise, Young, Stephens, Eastland, Erath, Hood, Palo Pinto, Parker, and Tarrant.

(j) The Ninth Administrative Judicial District is composed of the counties of Wilbarger, Baylor, Knox, King, Dickens, Motley, Cottle, Crosby, Lubbock, Hockley, Cochran, Bailey, Lamb, Hale, Floyd, Castro, Swisher, Briscoe, Parmer, Deaf Smith, Oldham, Hartley, Dallam, Sherman, Moore, Potter, Randall, Armstrong, Hansford, Ochiltree, Lipscomb, Hutchinson, Roberts, Hemphill, Carson, Gray, Wheeler, Donley, Collingsworth, Hall, Childress, Hardeman, Foard, Yoakum, and Terry.

Presiding Judge

Sec. 2. (a) It shall be the duty of the Governor, with the advice and consent of the Senate, to designate one of the regularly elected district judges, or a retired district judge, or an active or retired appellate judge with judicial experience on a district court, who, if retired, voluntarily retired from office, who resides within the district, and who has certified his willingness to serve, in each of said districts as Presiding Judge of the Administrative Judicial District. Adequate quarters for the operation of such District and preservation of records shall be provided in the courthouse of the county in which such Presiding Judge resides. Upon the death, resignation or expiration of the term of office of such Presiding Judge, the Governor shall thereafter immediately appoint or reappoint a Presiding Judge of the Administrative District, as in the first instances above. Presiding Judges of Administrative Judicial Districts shall serve for a term of four (4) years from date of qualification as such administrative judge.

(b) The Chief Justice of the Supreme Court is authorized to make assignments within an administrative judicial district and to otherwise perform the duties of the Presiding Judge of that district:

(1) on the death or resignation of the Presiding Judge, until a successor Presiding Judge is appointed; or

(2) on notification to the Chief Justice by the Presiding Judge, or other appropriate source, of the absence, disabling illness, or other incapacity of the Presiding Judge which prevents the performance of his official duties as Presiding Judge for a period of time, until the Presiding Judge is again able to perform these duties; or

(3) in a particular matter where the Presiding Judge disqualifies himself from performing the duties of Presiding Judge in that matter.

Sec. 3. Repealed by Acts 1979, 66th Leg., p. 1357, ch. 698, § 4, eff. Aug. 27, 1979.

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

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

Sec. 5a. Retired district judges, as defined by Article 6228(b) of the Revised Civil Statutes of Texas, as amended, who have consented to be subject to assignment, all regular district judges in this state, and all former district judges who were elected at a general election or appointed by the governor; who have not been defeated for reelection; who have not been removed from office by impeachment, the Supreme Court, the governor upon address of the legislature, the State Judicial Qualifications Commission, or by the legislature's abolishment of the judge's court; who are not more than 70 years of age; and who certify to the presiding judge a willingness to serve and to comply with the same prohibitions relating to the practice of law that are imposed on a retired judge by Section 7, Article 6228(b) of the Revised Civil Statutes of Texas, 1925, as amended or hereafter amended, may be assigned under the provisions of this Act by the presiding judge of the administrative judicial district wherein such assigned judge resides, and while so assigned, shall have all the powers of a judge thereof. When such district judge is so assigned by the presiding judge of an administrative judicial district to a court in the same administrative district, or to a court in another administrative district upon call of the presiding judge of such other administrative district and then reassigned as provided for in Section 6 of this Act, as amended, it shall be the duty of such judge so assigned or reassigned to serve in such court or administrative district to which he may be assigned, or reassigned unless for good cause presented by him in writing to the presiding judge of his administrative district, he shall be relieved of such assignment by such presiding judge; provided, however, after the presentation of a written statement declining such duty for good cause by such district judge, if the presiding judge refuses to relieve the district judge from the assignment, the district judge may, within five days after such refusal, petition the Chief Justice of the Supreme Court of the State of Texas to be relieved from such assignment for good cause, which said Chief Justice may at his discretion grant or refuse.

The compensation, salaries and expenses of such judges while so assigned or reassigned shall be paid in accordance with the laws of the state, except that the salary of such retired judges shall be paid out of moneys appropriated from the General Revenue Fund for such purpose in an amount representing the difference between all of the retirement benefits of such judge as a retired district judge and the salary and compensation from all sources of the judge of the court wherein he is assigned, and determined pro-rata for the period of time he actually sits as such assigned judge. On certification of the presiding judge of the administrative judicial district

that a former district judge has rendered services under the provisions of this Act, the former district judge shall be paid, out of county funds and out of money appropriated by the legislature for such purpose, for services actually performed, the same amount of compensation, salary, and expenses that the regular judge is entitled to receive from the county and from the state for such service.

Assignment of Retired District Judges to Domestic Relations or Juvenile Courts

Sec. 5b. A retired district judge, as defined by Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), may be assigned by the presiding judge of the administrative judicial district wherein the assigned judge resides to a domestic relations or juvenile court within the geographic limits of the respective administrative judicial district. A presiding judge may, with the consent of a retired district judge within his district, make an assignment outside of his judicial district with the specific authorization of the presiding judge of the district in which that assignment is made. The assignment shall be governed by all other provisions of this Act, except that the county wherein the domestic relations or juvenile court is located shall pay the salary stipulated in Section 5a of this Act.

Certification of State's Share of Compensation of Former Judges for Certain Services

Sec. 5c. It shall be the duty of the presiding judge of the administrative judicial district to certify the state's share to be paid former district judges for services authorized prior to, on, or after the effective date of this Act pursuant to Sections 5a and 5b of this article. The amount so certified shall be paid from an item in the Judiciary Section—Comptroller's Department—of the appropriations act providing for payment of salaries of district judges and criminal district judges.

Extended or Special Terms; Election Contests

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

Administrative Assistant; Duties

Sec. 7. (a) The Presiding Judge may employ, directly or through a contract with another governmental entity, an administrative assistant, on a full- or part-time basis, to aid and assist the Presiding Judge in carrying out the judge's duties under this Act. The administrative assistant shall receive the compensation from the State provided by the General Appropriations Act.

(b) The administrative assistant must possess the qualifications established by rule of the Supreme Court.

(c) Each administrative assistant shall perform the duties that are required by the Presiding Judge and by rules of administration, and shall conduct the correspondence for the Presiding Judge of the Administrative District, keep a record of all its proceedings, and a complete and accurate record of all cases pending in the several courts of the Administrative District, the time of their filing, the style and purposes of the causes, and their final disposition, and such other matters as may be prescribed by the council of judges herein referred to. For such purposes he is authorized, with the approval of the Presiding Judge, to purchase the necessary office equipment, stamps, stationery and supplies, and to employ additional personnel as authorized by the council of judges. Such cost shall be divided pro rata among the counties and paid by the counties on the certificate of the Presiding Judge. The administrative assistant shall, under the direction of the Presiding Judge of the Administrative District, make an annual report on the activities of the district and such special reports as may be provided by the rules of administration to the Supreme Court of Texas in the manner directed by that court.

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

Sec. 9. All of the aforesaid salaries, compensation, and expenses, and all other expenses authorized and incurred herein for the purpose of administering this Law, other than those provided by state appropriations, shall be paid by the several counties com-

posing the Administrative District out of the General Fund of said counties. Said salaries, compensations, expenses, and expenditures herein authorized are to be paid in proportion to the number of weeks provided by Law for holding District Court in the respective counties, on certificates of approval of the Presiding Judge of the Administrative Judicial District.

[See Compact Edition, Volume 3 for text of 10 and 10a]

Compensation for Performing Duties as Presiding Judge of Administrative Judicial Districts

Sec. 11.

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

(b) In addition to and cumulative of all other compensation, expenses, and perquisites authorized by law and this Act, the Presiding Judge of any Administrative Judicial District in Texas which has not less than forty nor more than fifty-nine district courts therein, when such Presiding Judge is a retired district judge or appellate judge, as provided in Section 2 of this Act, shall receive not less than $5,000.00 nor more than $15,000.00 per annum as compensation for performing duties as the Presiding Judge of such Administrative Judicial District. In addition to and cumulative of all other compensation, expenses, and perquisites authorized by law and this Act, the Presiding Judge of any Administrative Judicial District in Texas which has not less than sixty nor more than seventy-nine district courts therein, when such Presiding Judge is a retired district judge or appellate judge, as provided in Section 2 of this Act, shall receive not less than $5,000.00 nor more than $25,000.00 per annum as compensation for performing duties as the Presiding Judge of such Administrative Judicial District. Biennially the Council of Judges of such Administrative Judicial District shall fix the amount of such compensation by a majority vote of the judges. Each county comprising such Administrative Judicial District shall pay out of the officers salary fund or the general fund of the county the amount of salary apportioned to it as herein provided. The aforesaid salary or compensation and all other expenses incidental thereto, shall be paid annually by the said counties in such Administrative Judicial District to the Presiding Judge of such Administrative Judicial District, and by said judge placed in an Administrative Fund, from which fund said salary, and other expenses incidental thereto, shall be paid. Said salary shall be paid in twelve equal monthly payments. Said salary shall be apportioned according to the assessed property valuation of each judicial district comprising such Administrative Judicial District and after so apportioned the amount apportioned shall be apportioned to each county comprising the judicial district according to the assessed property valuation of the county.

(c) In addition to and cumulative of all other compensation, expenses, and perquisites authorized by law and this Act, the presiding judge of any administrative judicial district in Texas which has 80 or more district courts therein, when such presiding judge is a retired district or appellate judge, shall receive not less than $5,000 nor more than $30,000 per annum as compensation for performing duties as the presiding judge of such administrative judicial district. Biennially the council of judges of such administrative judicial district shall fix the amount of such compensation by a majority vote of the judges. Each county comprising such administrative judicial district shall pay out of the officers salary fund or the general fund of the county the amount of salary apportioned to it as herein provided. The aforesaid salary or compensation and all other expenses incidental thereto, other than those provided by state appropriations, shall be paid annually by the said counties in such administrative judicial district to the presiding judge of such administrative judicial district, and by said judge placed in an administrative fund from which fund said salary and other expenses incidental thereto shall be paid. Said salary shall be paid in 12 equal monthly payments. Said salary shall be apportioned according to the assessed property valuation of each judicial district comprising such administrative judicial district and after being so apportioned the amount apportioned shall be apportioned to each county comprising the judicial district according to the assessed property valuation of the county.

[Amended by Acts 1975, 64th Leg., p. 1193, ch. 450, §§ 1 and 2, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1911, ch. 614, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 248, ch. 115, § 1, eff. Aug. 29, 1975; Acts 1977, 65th Leg., p. 1060, ch. 389, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1194, ch. 460, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1988, ch. 794, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 192, ch. 101, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1126, ch. 538, § 1, eff. June 11, 1979; Acts 1979, 66th Leg., p. 1355, ch. 608, §§ 1 to 5, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 543, ch. 224, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 600, ch. 238, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 1871, ch. 448, § 1, eff. Aug. 31, 1981.]

TITLE 10

ARBITRATION

1. TEXAS GENERAL ARBITRATION ACT

Article

224–1. Notice in Agreements.

Art. 224. Validity of Arbitration Agreements

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. A court shall refuse to enforce an agreement or contract provision to submit a controversy to arbitration if the court finds it was unconscionable at the time the agreement or contract was made. Provided, however, that none of the provisions of this Act shall apply to:

(a) any collective bargaining agreement between an employer and a labor union;

(b) any contract for the acquisition by an individual person or persons (as distinguished from a corporation, trust, partnership, association, or other legal entity) of real or personal property, or services, or money or credit where the total consideration therefor to be paid or furnished by the individual is $50,000 or less, unless said individual and the other party or parties agree in writing to submit to arbitration and such written agreement is signed by the parties to such agreement and their attorneys;

(c) any claim for personal injury except upon the advice of counsel to both parties as evidenced by a written agreement signed by counsel to both parties. A claim for workers' compensation shall not be submitted to arbitration under this Act.

[Amended by Acts 1979, 66th Leg., p. 1708, ch. 704, § 1, eff. Aug. 27, 1979.]

Art. 224–1. Notice in Agreements

No agreement described in Article 224 shall be arbitrated unless notice that a contract is subject to arbitration under this Act is typed in underlined capital letters, or is rubber-stamped prominently, on the first page of the contract.

[Added by Acts 1979, 66th Leg., p. 1708, ch. 704, § 2, eff. Aug. 27, 1979.]

Art. 249. Judgment entered

In civil cases, at the expiration of ten days from the decision of the district court, upon exceptions taken to said award as aforesaid, judgment shall be entered in accordance with said decision, unless during the said ten days either party shall appeal therefrom to the court of appeals holding jurisdiction thereof. In such case, only such portions of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided. The determination of said court of appeals, upon said questions shall be final, and being certified by the clerk of said court of appeals, judgment pursuant thereto shall thereupon be entered by said district court. If exceptions to an award are finally sustained, judgment shall be entered setting aside the award; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment, when entered, shall have the same force and effect as judgment entered upon an award.

[Amended by Acts 1981, 67th Leg., p. 762, ch. 291, § 2, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides, in part:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

TITLE 10A

ARCHITECTS

Art. 249a. Regulation of Practice of Architecture

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

Board of Architectural Examiners Created; Qualifications; Term of Office; Vacancies

Sec. 2. There is hereby created a Board of Architectural Examiners to be known as the Texas Board of Architectural Examiners, and such Board shall consist of four (4) reputable practicing architects who have resided in the State of Texas and have been actively engaged in the practice of architecture for five (5) years next preceding their appointment, two (2) members who are licensed landscape architects under the laws of this State, and three (3) members of the general public who are not registered architects or licensed landscape architects and who do not have, other than as consumers, financial interests in the practice of architecture or landscape architecture. Members of the Board are appointed by the Governor of this State. Members hold office for staggered terms of six years. The terms of office of the appointees who fill the offices of incumbent members whose terms expire June 21, 1981, 1983, and 1985, shall expire January 31, 1987, 1989, and 1991, respectively. All succeeding members shall serve until January 31 of odd-numbered years. All vacancies occurring in the membership of said Board shall be filled by appointment by the Governor of this State for the unexpired term of such membership. All appointments to said Board shall be subject to confirmation by the Texas Senate.

Not more than one (1) member of said Board shall be a stockholder or owner of any interest in, nor be a member of the faculty, or board of trustees, or other governing board of, nor be an officer of, any school or college which teaches architecture or landscape architecture.

A member of said Board shall not be disqualified for, nor prohibited from, performing any work or rendering any service on any State, county, municipal, or other public building or work for a fee or other direct compensation because of membership on said Board.

Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

Failure of a Board member to attend at least one-half of the regularly scheduled meetings held each year automatically removes the member and creates a vacancy on the Board.

A member or employee of the Board may not be an officer, employee, or paid consultant of a professional society in the architecture and landscape architecture professions.

A member or employee of the Board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a professional society in the regulated profession.

Application of Sunset Act

Sec. 2a. The Board of Architectural Examiners is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

[1] Article 5429k.

Oath; Organization of Board; Bond of Secretary-Treasurer; Powers and Duties; Rules and Regulations; Open Meetings; Procedure

Sec. 3. (a). The members of the Texas Board of Architectural Examiners shall, before entering upon the discharge of their duties, qualify by subscribing to, before a Notary Public or other officer authorized by law to administer oaths, and filing with the Secretary of State, the Constitutional oath of office. They shall, as soon as organized, and annually thereafter in the month of January, elect from their number a chairman and vice-chairman. A secretary-treasurer of this Board shall be appointed by the Board and shall hold office at the pleasure of the Board. The secretary-treasurer may, but need not, be a Member of the Board. The secretary-treasurer, before entering upon his duties, shall make and file a bond of not less than Five Thousand Dollars ($5,000.00) with the State Comptroller. Said bond shall be payable to the Governor of this State for the benefit of said Board; shall be conditioned upon the faithful performance of the duties of such officer, and shall be in such form as may be approved by the Attorney General of this State; and shall be executed by a surety company, as surety, and be approved by the Texas Board of Architectural Examiners. The premium on the bond shall be paid from the Architects Registration Fund.

(b). The Board shall adopt all reasonable and necessary rules, regulations, and by-laws not inconsistent with the Texas Constitution, the laws of this State, and this Act for the performance of their duties in administering this Act. If the appropriate standing committees of both houses of the legisla-

ture acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements. The Board shall adopt a seal, which shall be used on official documents. The design of the seal shall be similar to the seal of other departments of the State, in that it shall contain the five-pointed star with a circular border, and within the border shall contain the words, "Texas Board of Architectural Examiners".

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

(e). The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Fees; Architects Registration Fund; Office; Employees; Compensation

Sec. 4.

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

(b). To aid the Board in performing its duties, the Board shall maintain an office in Austin, Travis County, Texas. The Board may employ an executive director to conduct the affairs of the Board under the Board's direction. The executive director shall receive a salary which the Board shall determine. The Board shall employ clerical help and assistants as are necessary for the proper performance of its work and may make expenditures for this purpose. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

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

Quorum; Meetings; Rules and Regulations; Enforcement; Complaints

Sec. 5.

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

(d). The Board may not promulgate rules restricting competitive bidding or advertising by licensees except to prohibit false, misleading, or deceptive practices.

(e). The Board shall keep an information file about each complaint filed with the Board relating to a licensee. If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally disposed of.

Meetings; Examinations; Fee; Certificate

Sec. 6.

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

(c). A person shall be notified of the results of an examination taken by the person within 30 days after the testing date. However, if an examination given under this Act is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination within two weeks after the Board's receipt of the results from the national testing service. In no event shall more than 90 days elapse between the testing date and notification of the results unless the Board notifies the examinees of the reason for the delay in notification. The Board shall send to the person not later than the 30th day after the day on which the request is received by the Board an analysis of the person's performance on the examination.

Qualifications of Applicants for Registration

Sec. 7. (a). An applicant for examination for registration as an architect in this State shall present a diploma from and be a graduate of a recognized university or college of architecture approved by the Board and shall also present evidence acceptable to the Board of such applicant's having had satisfactory experience in architecture, in the office or offices of one or more legally practicing architects, as prescribed in the rules and regulations adopted by the Board.

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

(c). The Board shall accept for examination, an applicant, although not a graduate as above required, who possesses all of the other qualifications and furnishes evidence acceptable to the Board of his having completed not less than eight years' satisfactory experience in architecture in the office or offices of one or more legally practicing architects, or any combination of architectural schooling and experience totaling eight years; provided, however, in accordance with its rules and regulations, the Board may permit such applicant to take the qualifying test for the examination after five years of such experience.

Licensees from Other States or Countries; Fees

Sec. 8. (a). The Texas Board of Architectural Examiners may, in its discretion in each instance, grant a certificate to practice architecture in this State to an architect who possesses a valid and current certificate or license to practice architecture in another State or territory of the United States of America or of another country, where the requirements and qualifications of such other jurisdiction were equal to or the equivalent of the requirements of the Texas Board of Architectural Examiners at the time of the granting of the certificate or license to practice architecture in the other jurisdiction. An applicant for a certificate under this section shall

possess all of the other qualifications prescribed in this Act for other applicants and shall make application in the same manner and form as any other applicant; and such applicant shall furnish the Board such documents and other evidence concerning his application and qualifications as will substantiate his qualifications.

[See Compact Edition, Volume 3 for text of 8(b) to 11]

Annual Registration and Fee; Certificate of Renewal; Failure to Renew; Suspension and Revocation

Sec. 12. All certificates of registration shall expire annually on a date set by the Board as part of a staggered renewal system and shall become invalid on that date unless renewed. It shall be the duty of the secretary-treasurer of the Board to notify every person registered under this Act of the date of expiration of his certificate and the amount of the fee that shall be required for its renewal for one (1) year. The notice shall be mailed at least one (1) month in advance of the date of the expiration of said certificate. Renewal may be effected by the payment of a fee to be set by the Board, but not to exceed Fifty Dollars ($50.00) for residents nor One Hundred Dollars ($100.00) for nonresidents. Upon receipt of the required fee within the time and in the manner prescribed by the Board the designated officer or employee of the Board shall issue to the registered architect a certificate of renewal of his registration certificate for the term of one (1) year. Failure to renew a certificate of registration by the expiration date established by the Board shall result in an increase of the renewal fee by Twenty Dollars ($20.00). If failure to renew shall continue for more than ninety (90) days after the date of expiration of the certificate of registration, such certificate to practice architecture in this State may be revoked and an entry of such revocation made in the official records of the Board; and thereafter the applicant may be required in the discretion of the Board in each case to take and satisfactorily pass such examination as may be prescribed by the Board, and if the applicant passes such examination successfully the fee to be paid upon the renewal of the registration certificate shall be, in such case, the sum not to exceed One Hundred Dollars ($100.00) as set by the Board. A registered architect, as herein defined, who is on active duty as a member of the Armed Forces of the United States of America subsequent to October 1, 1940, and who was at the time of his entry into said service or is now in good standing as a registered architect in this State, shall have his name continued on the list of registered architects and shall be exempt from the payment of any further fee during his service, as aforesaid, and until separated from the service; and when his active duty status ceases and he is separated from the service, he shall be exempt from payment of such fee for the then current fiscal year.

Expiration Dates of Registration; Proration of Fees

Sec. 12A. The board by rule shall adopt a system under which registrations expire on various dates during the year. The date for mailing notice of suspension and the period for reinstatement shall be adjusted accordingly. For the year in which the expiration date is changed, registration fees payable on September 30 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration fee is payable.

Contracts to Contain Certain Information; Public Information Program; Complaint Form

Sec. 12B. (a) In each written contract in which a licensee under this Act agrees to perform architectural services in this state, the licensee shall include the mailing address and telephone number of the board and a statement that the board has jurisdiction over individuals licensed under this Act.

(b) The board shall establish a public information program for the purpose of informing the public about the practice and regulation of architectural services in this state. As part of the program, the board shall prescribe and distribute in a manner that it considers appropriate a standard complaint form and shall make available to the general public and other appropriate state agencies the information compiled as part of the program. The program shall include information to inform prospective applicants for licensing under this Act about the qualifications and requirements for licensing.

Annual Financial Report by Board; Biennial Audit

Sec. 12C. (a) Before September 1 of each year, the board shall file a written report with the legislature and the governor in which the board accounts for all funds received and disbursed by the board during the preceding year.

(b) The state auditor shall audit the financial transactions of the board during each fiscal biennium.

[See Compact Edition, Volume 3 for text of 13 to 14]

[Amended by Acts 1975, 64th Leg., p. 792, ch. 305, § 1, eff. May 27, 1975; Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.023, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1384, ch. 619, §§ 1 to 7, eff. Sept. 1, 1979.]

Section 10 of the 1979 amendatory act provides as follows:

"(a) A person holding office as a member of the Texas Board of Architectural Examiners on September 1, 1979, continues to hold the office for the term for which the member was originally appointed.

"(b) The offices of the two landscape architect members of the Texas State Board of Landscape Architects whose terms expire August 31, 1981, or August 31, 1983, are transferred to the Texas Board of Architectural Examiners. The persons holding these offices continue to hold office as the landscape architect members of the architectural examiners board. The landscape architect member whose term on the landscape architects board would expire August 31, 1981, serves on the architectural examiners board for a term expiring June 21, 1981. The landscape architect member whose term on the landscape architects board would expire August 31, 1983, serves on the architectural examiners board for a term expiring June 21, 1983.

"(c) The governor shall appoint to the Texas Board of Architectural Examiners a public member for a term expiring June 21, 1985. The governor shall appoint to the architectural examiners board a public member to fill the office of an incumbent architect member whose term expires June 21, 1981, and a public member to fill the office of an incumbent architect member whose term expires June 21, 1983."

Art. 249c. Regulation of Practice of Landscape Architecture

Definitions

Sec. 1. As used in this Act:

(a) "Landscape architect" means a person licensed to practice or teach landscape architecture in this state as provided herein.

(b) "Landscape architecture" means the performance of professional services such as consultation, investigation, research, preparation of general development and detailed design plans, studies, specifications, and responsible supervision in connection with the development of land areas where, and to the extent that, the principal purpose of such service is to arrange and modify the effects of natural scenery for aesthetic effect, considering the use to which the land is to be put. Such services concern the arrangement of natural forms, features, and plantings, including the ground and water forms, vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements but shall not include any services or functions within the definition of the practice of engineering, public surveying, or architecture as defined by the laws of this state.

(c) "Board" means the Texas Board of Architectural Examiners.

(d) "Person" means a natural person except where otherwise specifically indicated.

(e) "Secretary" means the secretary-treasurer of the board as herein provided.

Exemptions

Sec. 2. (a) The provisions of this Act do not apply to nor affect laws relating to a professional engineer, building designer, land surveyor, nurseryman, or an architect (except landscape architect), respectively.

(b) Every agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, grader or cultivator of land and any person making plans for property owned by himself is exempt from registration under the provisions of this Act, provided however, none of the foregoing shall use the title or term "landscape architect" in any sign, card, listing, or advertisement or represent himself to be a "landscape architect" without complying with the provisions of this Act.

Staff

Sec. 3. The board may employ staff necessary to administer this Act.

Rules

Sec. 4. The board may adopt rules and prescribe forms necessary to administer this Act. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committees' statements.

Qualifications for Registration

Sec. 5. (a) From and after the effective date of this Act, no person shall represent himself as a landscape architect, as defined herein, unless such person has previously qualified to be licensed under this Act or satisfactorily passes the examination as may be prescribed by the board to be licensed as provided herein. The following persons shall be qualified for registration and receive a license: any person who is over the age 18 years and having or holding a degree from a school whose study of landscape architecture is approved by the board, or shall have had not less than seven years' actual experience in the office of a licensed landscape architect, may apply for examination and such application shall be accompanied by a fee not to exceed $100 as set by the board. The examination to be approved by the members of the board and given by the board at its office in Austin, Travis County, Texas, or such other place as the board may determine or designate.[1] The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability which will insure safety to the public welfare and the property rights.

(b) A person shall be notified of the results of an examination taken by the person within 30 days after the testing date. However, if an examination given under this Act is graded or reviewed by a national testing service, the board shall notify examinees of the results of the examination within two weeks after the board's receipt of the results from the national testing service. In no event shall more than 90 days elapse between the testing date and notification of the results unless the board notifies the examinees of the reason for the delay in notification. If requested in writing by a person who fails the examination, the board shall send to the person not later than the 30th day after the day on which the request is received by the board an analysis of the person's performance on the examination.

[1] So in enrolled bill.

Reciprocal Provisions

Sec. 6. The board shall certify for registration without examination an applicant who is legally registered as a landscape architect in any state or country whose requirements for registration are at least substantially equivalent to the requirements of this state. Such application shall be accompanied by a fee to be determined by the board.

Certificates of Registration

Sec. 7. All certificates of registration shall expire each year on the day set by the board as part of

a staggered renewal system and shall become invalid on that date unless renewed. It shall be the duty of the secretary-treasurer of the board to notify every person registered under this Act of that date of expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected by payment of the fee as prescribed and set by the board. Upon receipt of the required fee within the time and in the manner prescribed by the board, the designated officer or employee of the board shall issue to the licensed landscape architect a certificate of renewal of his registration certificate for the term of one year. Failure to renew a certificate of registration by the expiration date established by the board shall result in an increase of the renewal fee by $20. If failure to renew shall continue for more than 90 days after the date of expiration of the certificate of registration, the applicant must reapply for registration and must qualify under Section 5 of this Act. All renewal certificates shall carry the same registration number as the original certificate.

Expiration Dates of Certificates of Registration; Proration of Fee

Sec. 7A. The board by rule shall adopt a system under which certificates of registration expire on various dates during the year. The date for mailing notice of expiration and the period for renewal shall be adjusted if necessary. For the year in which the expiration date is changed, registration fees payable on August 31 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total of the registration fee is payable.

Revocation and Reissuance of Certificates

Sec. 8. (a) The board has the power to revoke the certificate of registration of any registrant who is charged with and found guilty of:

(1) Violations of provisions of this Act;

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

(3) Any gross negligence, incompetency, or misconduct in the practice of landscape architecture;

(4) Holding himself out to the public or any member thereof as an engineer or making use of the words "engineer," "engineered," "professional engineer," "P.E.," or any other terms tending to create the impression that such registrant is authorized to practice engineering or any other profession unless he is licensed under provisions of Texas Engineering Practice Act or the other applicable licensing law of this state.

(5) Holding himself out to the public or any member thereof as a surveyor or making use of the words "surveyor," "surveyed," "registered public surveyor," "R.P.S.," or any other terms tending to create the impression that such registrant is authorized to practice surveying or any other profession unless he is licensed under the provisions of the Registered Public Surveyors Act or the other applicable licensing law of this state.

(b) In determining the truth of any such charges the board shall proceed upon sworn information furnished it by any reliable resident of this state; such information shall be in writing and shall be duly verified by the person familiar with the facts therein charged, and three copies of the same shall be filed with the secretary of the board. Upon receipt of such information the board, if it deems the information sufficient to support further action on its part, shall make an order setting the charges therein contained for hearing at a specified time and place, and the secretary of the board shall cause a copy of the board's order and of the information contained in the written charges to be served upon the accused at least 30 days before the date appointed in the order for the hearing. The accused may appear in person or by counsel or both, at the time and place named in the order and make his defense to the same. The board shall have the power, through its chairman or secretary, to administer oaths and compel the attendance of witnesses before it as in civil cases in the district court, by subpoena issued over the signature of the secretary and the seal of the board.

Any person who may feel himself aggrieved by reason of the revocation of his certificate of registration of the board, as hereinabove authorized, shall have the right to file suit within 30 days of receiving notice of the board's order revoking his certificate or registration in the district court in the county of his residence or the county in which the alleged events relied upon, and grounds for revocation, took place, to annul or vacate the order of the board revoking the certificates of registration; said suit to be filed against the board as defendant, and service of process may be had upon its chairman or secretary. The only issues to be tried in such cause shall be whether such person has been guilty as originally found by the board, which issue shall be by trial de novo, as that term is commonly used in connection with an appeal from the justice of the peace court to the county court, and the substantial evidence rule shall not apply.

Restrictions on Advertising and Competitive Bidding

Sec. 8A. The board may not adopt rules restricting advertising or competitive bidding by licensees except to prohibit false, misleading, or deceptive practices by licensees.

Complaints

Sec. 8B. The board shall keep an information file about each complaint filed with the board relating to a licensee. If a written complaint is filed with the board relating to a licensee, the board, at least as frequently as quarterly, shall inform the complain-

ant of the status of the complaint until the complaint is finally disposed of.

Consumer Information

Sec. 8C. (a) In each written contract in which a licensee under this Act agrees to perform landscape architecture in this state, the licensee shall include the mailing address and telephone number of the board and a statement that the board has jurisdiction over individuals licensed under this Act.

(b) The board shall establish a public information program for the purpose of informing the public about the practice and regulation of landscape architecture in this state. As part of the program, the board shall prescribe and distribute in a manner that it considers appropriate a standard complaint form and shall make available to the general public and other appropriate state agencies the information compiled as part of the program. The program shall include information to inform prospective applicants for licensing under this Act about the qualifications and requirements for licensing.

Violations and Penalties

Sec. 9. After the effective date of this Act any person who represents himself to be a landscape architect in this state without being registered or exempted in accordance with the provisions of this Act, or any person presenting or attempting to use as his own, the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining or assisting in attaining for another a certificate of registration, or any person who shall violate any of the provisions of this Act, shall be fined not less than $25 nor more than $200. Each day of such violation shall be a separate offense.

The attorney general or his assistants shall act as legal advisor of the board and shall render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act, provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

Fees

Sec. 10. Every landscape architect shall pay an annual fee as set by the board as provided in Section 7 hereof. The fee shall be due and payable each year on the day set by the board.

All sums of money paid to the board under the provisions of this Act, shall be deposited in the treasury of the State of Texas, and placed in a special fund to be known as the Landscape Architects Fund, formerly known as the Texas State Board of Landscape Architect's and Irrigator's Fund, and may be used only for the administration of this Act.

[Amended by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.024, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1388, ch. 619, § 8, eff. Sept. 1, 1979.]

Section 9 of the 1979 amendatory act provides as follows:

"The Texas State Board of Landscape Architects is consolidated with the Texas Board of Architectural Examiners. The functions of and the records and other property in the custody of the landscape architects board are transferred to the architectural examiners board. Except as provided by Subsection (b), Section 10 of this Act [see note under art. 249a], the offices of the members of the landscape architects board are abolished."

Art. 249d. Construction Contracts; Indemnification of Architects or Engineers; Covenant

Any covenant or promise, in or in connection with or collateral to any contract or agreement made and entered into by any owner, contractor, subcontractor or supplier relative to the construction, alteration, repair or maintenance of a building, structure, appurtenance, road, highway, bridge, dam, levee, or other improvement to or on real property, including moving, demolition and excavating connected therewith, whereby a registered architect or registered engineer or his agents, servants or employees is indemnified or held harmless by the contractor who is to perform the work from liability for bodily injury or death to persons or damage to property of any person or expenses in connection therewith caused by or resulting from defects in plans, designs or specifications prepared, approved or used by such architect or engineer or negligence of such architect or engineer in the rendition or conduct of professional duties called for or arising out of the contract or agreement and the plans, designs or specifications which are a part thereof shall be deemed void as against public policy and wholly unenforceable; provided, however, that this Act shall not apply to a contract of insurance or workers' compensation agreement, nor to an owner of an interest in real property and persons employed solely by such owner, and this Act shall not prohibit nor render void or unenforceable any covenant or promise to indemnify or hold harmless such owner, and persons employed solely by such owner, or any covenant or promise to allocate, release, liquidate, limit, or exclude liability between an owner or other person for whose account a contract or agreement within the scope of this section is being performed on the one hand and a registered architect or registered engineer on the other hand, in connection with contracts and agreements of the class described above and further provided that this Act shall not apply to any contract or agreement whereby an architect or engineer or their agents, servants or employees is indemnified from liability for their negligent acts other than those described above or for the negligent acts of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

[Amended by Acts 1981, 67th Leg., p. 2162, ch. 504, § 1, eff. Aug. 31, 1981.]

TITLE 14

ATTORNEYS AT LAW

Article
304a. Application of Sunset Act.
305a. Medical Character and Fitness of Applicants.
305b. [Blank].
305c. District Committee on Admissions.
320c. Liability of Attorney for Costs in Civil Proceeding.

Art. 304. Board of Examiners

(a) The Board of Law Examiners shall consist of nine lawyers having the qualifications required of members of the Supreme Court. Members shall be biennially appointed by the Supreme Court and shall each hold office for two years and be subject to removal by the Supreme Court for incompetency or inattention to duty. Any appointment made shall be without regard to race, creed, sex, religion, or national origin.

(b) If a member of the Board has a financial interest, other than a remote financial interest, in a decision pending before the Board, the member is disqualified from participating in the decision.

(c) A person holding office as a member of the Board of Law Examiners on September 1, 1979, continues to hold office for the term for which the member was originally appointed. The terms of office of all succeeding members expire September 30 of odd-numbered years.

(d) No Board member or employee of the Board shall be an employee or paid consultant of a trade association in the field of Board interest.

(e) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the Board or serve as a member of the Board.

(f) The Board is subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes), the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes).

Examination questions that may be used in the future, examinations other than the one taken by the person requesting it, and deliberations and records relating to the moral character and fitness of applicant shall be exempted from the open meetings law and the open records law. Such records, however, shall be disclosed to individual applicants upon written request, unless the person supplying the information requests that it not be disclosed; provided, however, that the Board shall not inquire whether the person objects to disclosure or inform him of his right to do so.

[Amended by Acts 1977, 65th Leg., p. 320, ch. 153, § 1, eff. May 13, 1977; Acts 1979, 66th Leg., p. 1253, ch. 594, § 1, eff. Sept. 1, 1979.]

Art. 304a. Application of Sunset Act

The Board of Law Examiners is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished effective September 1, 1991.

[Added by Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.018, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1253, ch. 594, § 1, eff. Sept. 1, 1979.]

[1] Article 5429k.

Art. 305. Duties of Board

(a) Such Board, acting under instructions of the Supreme Court as hereinafter provided, shall pass upon the eligibility of all candidates for examination for license to practice law within this State, and examine such of these as may show themselves eligible therefor, as to their qualifications to practice law. Such Board shall not recommend any person for license to practice law unless such person shall show to the Board, in the manner to be prescribed by the Supreme Court, that he is of such moral character and of such capacity and attainment that it would be proper for him to be licensed.

(b) If requested in writing by any applicant for a license who takes and fails an examination administered by the Board, the Board shall furnish to the applicant an oral or written analysis of the applicant's performance on the examination. An oral analysis may be recorded by the applicant.

[Amended by Acts 1979, 66th Leg., p. 1253, ch. 594, § 1, eff. Sept. 1, 1979.]

Art. 305a. Moral Character and Fitness of Applicants

(a) The Board may conduct an investigation of the moral character and fitness of an applicant for a license.

(b) The Board may contract with public or private entities for investigative services relating to the moral character and fitness of applicants for licenses.

(c) The Board may not recommend the denial of a license and the Supreme Court may not deny a license to an applicant on the ground of a deficiency in the applicant's moral character or fitness unless:

(1) the Board finds a clear and rational connection between a character trait of the applicant and the likelihood that the applicant would injure a client or obstruct the administration of justice if the applicant is licensed to practice law; or

(2) the Board finds a clear and rational connection between the applicant's present mental or emotional condition and the likelihood that the applicant will not discharge properly the applicant's responsibilities to a client, a court, or the legal profession if the applicant is licensed to practice law.

(d) Each person intending to apply for admission to the bar of this state shall file with the secretary of the Board a Declaration of Intention to Study Law. The declaration shall be filed on a form provided by the Board. Forms provided by the Board for the filing of a Declaration of Intention to Study Law shall clearly identify those conditions of character and fitness provided in Subsection (e) of this article that may be investigated by the Board and that may result in the denial of the declarant's application to sit for the bar examination. Within 180 days after the filing of the declaration the Board shall notify the declarant whether or not it has determined he has acceptable character and fitness. If the Board determines he does not have acceptable character and fitness, the notice shall be accompanied by an analysis of the character investigation which specifies the results of that investigation in detail. The Board shall limit its investigation of the moral character and fitness of an applicant to those areas clearly related to the applicant's moral character and present fitness to practice law.

(e) All candidates to take the bar examination must file an application to take the examination with the secretary of the Board. Applications shall be filed not less than 180 days prior to the first day of the examination in which the applicant wishes to participate. The requirements of the application shall be limited to an affidavit, duly verified, setting forth the following statements that since the filing of his or her original declaration:

(1) the applicant has not been formally charged of any violation of law, excluding cases which have been dismissed for reasons other than technical defects in the charging instrument or in which he has been found not guilty, minor traffic violations, records of arrests or convictions expunged by court order, pardoned offenses, and records of arrests for and convictions of Class C misdemeanors;

(2) the applicant is not mentally ill;

(3) the applicant has not been charged with fraud in any legal proceeding; and

(4) the applicant has not been involved in civil litigation or bankruptcy proceedings that reasonably bear on the applicant's fitness to practice law.

(f) Based on the investigation of the preceding conditions of character and fitness performed after the filing of a Declaration of Intent to Study Law, the filing of an affidavit attesting to the preceding statements on application to take the bar exam, and its investigation into the accuracy of the statements in, or truth of statements omitted from the affidavit required by Subsection (e) of this section, the Board shall assess the applicant's fitness and moral character. If the Board determines the applicant does not possess the requisite good moral character and fitness, the Board shall furnish to the applicant an analysis of the character investigation that specifies the results of that investigation in detail within 150 days after the filing of the application.

[Added by Acts 1979, 66th Leg., p. 1253, ch. 594, § 2, eff. Sept. 1, 1979.]

Former art. 305a was repealed by Acts 1979, 66th Leg., p. 1253, ch. 594, § 2, effective September 1, 1979.

Art. 305b. [Blank]

Art. 305c. District Committee on Admissions

(a) For the purpose of aiding the Board in determining the good moral character and the fitness of each declarant to become a member of the profession, there is created a District Committee on Admissions in each of the state bar districts to investigate qualifications for admission to the bar at the time of filing the Declaration of Intent to Study Law only.

(b) A district committee is composed of at least 15 members appointed by the Supreme Court.

(c) Three members of a district committee must be at the time of their appointments representatives of the general public who do not have, other than as consumers, financial interests in the practice of law, three members must be at the time of their appointments lawyers who are licensed to practice law in the state, and the remaining members must be similarly qualified representatives of the general public or lawyers. In a bar district in which a law school approved by the Supreme Court is located, three members of the committee must be at the time of their appointments law students who are enrolled in a law school in the bar district that is approved by the Supreme Court.

(d) Except for the initial appointees, members of a district committee hold office for two-year terms expiring on January 21 of each odd-numbered year. The initial appointees serve for terms expiring on January 31, 1983.

(e) The Supreme Court shall appoint the chairman of each district committee.

(f) Five members of a district committee constitute a quorum.

(g) The district committee shall aid the Board in investigating the moral character and fitness of a person filing a Declaration of Intent to Study Law.

(h) The Supreme Court shall adopt rules requiring that persons filing Declaration of Intent to Study Law be treated uniformly and impartially by the district committees.

[Added by Acts 1979, 66th Leg., p. 1253, ch. 594, § 2, eff. Sept. 1, 1979.]

Art. 306. Authority of Supreme Court

(a) The Supreme Court is hereby authorized to make such rules as in its judgment may be proper to govern eligibility for such examination and the manner of conducting the same, covering, among other points, proper guarantee to insure:

1. Good moral character on the part of each candidate for license;

2. Adequate pre-legal study and attainment;

3. Adequate study of the law for at least two years, covering the course of study prescribed by the Supreme Court, or the equivalent of such course;

4. The legal topics to be covered by such study and by the examination given;

5. The times and places for holding the examination, the manner of conducting same, and the grades to be made by the candidates to entitle them to be licensed;

6. Any other such matters consistent with this Act as shall be desirable in order to make the issuance of a license to practice law evidence of good character, and fair capacity and real attainment and proficiency in the knowledge of law.

The completion of prescribed study in an approved law school as herein defined shall satisfy the law study requirements for taking the aforesaid examination. An approved law school is hereby defined as one which is approved by the Supreme Court for the period of time designated by such Court, and as maintaining the additional standards prescribed by the Court. No license to practice law in this state shall be issued by any court or authority except by the Supreme Court of this state, under the provisions of this title. The power granted to the Supreme Court by this Act shall not be delegated.

(b) The Supreme Court shall adopt rules necessary to administer its functions and to govern the administration of the Board's functions relating to the licensing of lawyers.

[Amended by Acts 1979, 66th Leg., p. 1253, ch. 594, § 1, eff. Sept. 1, 1979.]

Art. 308. Foreign Attorneys

(a) The Board shall recommend to the Supreme Court that it license and the Supreme Court shall issue a license to an applicant if the applicant has practiced law for three years and has a license to practice law issued by another state or territory or by the District of Columbia, and the licensing standards of the other state or territory or the District of Columbia are equivalent to or exceed those of this state.

(b) If the licensing standards of the other state or territory or the District of Columbia are not equivalent to or do not exceed those of this state, the Board may require that the applicant take the examination for a license to practice law. All such immigrant attorneys shall be required to furnish satisfactory proof as to good moral character and fitness.

[Amended by Acts 1979, 66th Leg., p. 1253, ch. 594, § 1, eff. Sept. 1, 1979.]

Art. 310. Fees

(a) The fee for any examination given by the Board shall be fixed by the Supreme Court, not to exceed $75 for each candidate, which shall be paid to the clerk of said court at the time the application for examination is made. The money thus obtained shall be used to pay all legitimate expenses incurred in holding the examination; and as compensation to the members of the Board, under such regulations as shall be determined by the Supreme Court. Provided that the compensation, not including reasonable and necessary actual expenses paid to any member of the Board, shall not exceed Fifteen Thousand Dollars ($15,000.00) per annum.

(b) The fee for an investigation of the moral character and fitness of each candidate is set by the Supreme Court, not to exceed $75. The candidate must pay the investigation fee to the Board at the time it is requested by the Board. If the fees collected from individuals for the investigation of moral character and fitness are in excess of the cost to the Board of conducting the investigation, the fees shall be proportionately decreased to insure that excessive fees are not collected by the Board.

(c) Fees received by the clerk or the Board shall be deposited in a fund established by the Supreme Court and may be used only to administer the functions of the Supreme Court and the Board relating to the licensing of lawyers as directed by the Court.

(d) The financial transactions of the board shall be audited annually by the State Auditor.

[Amended by Acts 1977, 65th Leg., p. 320, ch. 153, § 1, eff. May 13, 1977; Acts 1979, 66th Leg., p. 1253, ch. 594, § 1, eff. Sept. 1, 1979.]

Art. 311. Repealed by Acts 1979, 66th Leg., p. 1257, ch. 594, § 3, eff. Sept. 1, 1979

Art. 319. Officers not to Appear

No judge or clerk of the Supreme Court, Courts of Appeals or Criminal Appeals, or District Court, or sheriff or deputy, or constable, shall be allowed to appear and plead as an attorney at law in any Court of record in this State. No county judge or county clerk who is licensed to practice law shall be allowed to appear and practice as an attorney at law in any County or Justice Court, except in cases where the Court over which such judge presides, or over which such clerk is clerk has neither original nor appellate jurisdiction. No county clerk who is licensed to practice law shall be allowed to appear and practice as an attorney at law in any District Court, Court of Appeals, Court of Criminal Appeals, or the Supreme Court unless the Court of which such clerk is clerk has neither original nor appellate jurisdiction.

[Amended by Acts 1981, 67th Leg., p. 762, ch. 291, § 3, eff. Sept. 1, 1981.]

Art. 320a-1. State Bar Act

Short Title

Sec. 1. This Act may be cited as the State Bar Act.

General Powers

Sec. 2. The State Bar of Texas established under the laws of this state is continued as a public corporation and an administrative agency of the judicial department of government. It is designated as the State Bar. This legislation is in aid of the judicial department's powers under the constitution to regulate the practice of law and not to the exclusion of those powers. The Supreme Court of Texas, on behalf of the judicial department, shall exercise administrative control over the State Bar under this Act.

Purposes

Sec. 3. The purposes of the State Bar shall be to aid the courts in carrying on and improving the administration of justice; to advance the quality of legal services to the public; to foster and maintain on the part of those engaged in the practice of law high ideals and integrity, learning, competence in public service, and high standards of conduct; to provide proper professional services to the members of the State Bar; to encourage the formation and activities of the local bar associations; to provide forums for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform, and the relationship of the State Bar to the public and to publish information relating thereto; to the end that the public responsibilities of the legal profession may be more effectively discharged.

Seal; Suits and Contracts; Gifts

Sec. 4. The State Bar has an official seal which shall not be used for private purposes.

The State Bar may sue and be sued in its own name. For the purposes of carrying into effect and promoting objectives of this Act, the State Bar may enter into contracts and do all other acts incidental to the foregoing that are necessary or expedient for the administration of its affairs and the attainment of its purposes.

The State Bar may acquire by gift, bequest, devise, or otherwise any real or personal property or any interest in that property. The State Bar may acquire, hold, lease, encumber, and dispose of real and personal property in the exercise of its powers and the performance of its duties under this Act.

Property

Sec. 5. All property of the State Bar is declared to be held by the State Bar for the purposes expressed in Section 3 of this Act.

Indebtedness, Liability, or Obligation

Sec. 6. No indebtedness, liability, or obligation of the State Bar shall:

(1) create a debt or other liability of the state nor of any entity other than the State Bar or any successor public corporation;

(2) create any personal liability on the part of the members of the State Bar or the members of the board of directors or any authorized person issuing, executing, or delivering any evidence of the indebtedness, liability, or obligation;

(3) be created that cannot be paid from the receipts for the current year, except with the approval obtained by referendum of all members of the State Bar as provided in Section 8 of this Act.

Fiscal Powers

Sec. 7. (a) The executive director of the State Bar shall confer with the clerk of the Supreme Court and shall supervise the administrative staff of the State Bar in preparation of the annual budget.

The proposed budget shall be presented annually at a public hearing. Any member of the public may participate in the discussion of any item proposed to be included in the budget. The executive director of the State Bar shall preside at the hearing, or if unable to do so, the executive director may authorize any employee of the administrative staff or any officer or director of the state bar to represent him or her.

No less than 30 days prior to the time the hearing is held, the proposed budget as well as the time and place of the budget hearing shall be disseminated to the membership of the State Bar and to the public.

After the public hearing, the proposed budget shall be submitted to the board of directors for their consideration. The budget which is adopted by the board of directors shall be submitted to the Supreme Court for final review and approval. By action of the board of directors at a regular or special meeting, the budget may be amended subject to approval by the Supreme Court.

(b) The state auditor shall audit the financial transactions of the State Bar during each fiscal year with the expense of the audit to be borne by the State Bar. The auditors' report shall be published in the *Bar Journal.*

Rulemaking Powers

Sec. 8. (a) From time to time, either as the Supreme Court considers necessary or pursuant to a resolution of the board of directors of the State Bar or pursuant to a petition signed by at least 10 percent of the registered members of the State Bar, the Supreme Court may prepare and propose and adopt rules and regulations or amendments to the rules or regulations for the operation, maintenance, and conduct of the State Bar and the discipline of its members.

(b) When the Supreme Court has prepared and proposed the rules, regulations, or amendments to the rules or regulations, as set out above in Subsection (a), it shall submit by mail a copy of each rule and regulation in ballot form to each registered member of the State Bar for a vote. At the end of

30 days from the time the ballots are mailed, the court shall count the ballots that have been returned, provided that no election shall be valid unless a minimum of 51 percent of the members registered shall have voted at the election at which the rules, regulations, or amendments are adopted; and each of the rules and regulations that has received a majority of the votes cast shall be by the court declared and adopted and shall be promulgated by the court and shall become immediately effective. The vote shall be open to inspection by any member of the bar or public. No rule or regulation shall be promulgated that has not received a majority of votes cast in the manner provided above.

Administrative Provisions

Sec. 9. (a) The governing body of the State Bar shall be its board of directors on whom shall rest the duty of enforcing the provisions of this Act. Board of directors' meetings shall be conducted in compliance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

The board shall be composed of the officers of the State Bar, the president, president-elect, and immediate past president of the Texas Young Lawyers Association, not more than 30 members of the State Bar elected by the membership from their district as may be determined by the board, and six persons who are not licensed attorneys, who do not have, other than as consumers, a financial interest in the practice of law. Three of these six nonlawyer members shall be appointed by the Supreme Court of Texas and confirmed by the senate and the other three of the six nonlawyer members shall be appointed by the Supreme Court from a list of not less than 15 names to be submitted by the Governor of Texas, and these appointees shall be confirmed by the senate. The nonattorney members shall serve for staggered terms of the same duration as those of elected members of the board. An individual who has served more than half of a full term is not eligible again to be appointed to the board. In making the initial appointments, the Supreme Court of Texas shall appoint two of the persons for a term expiring in June, 1980, two of the persons for a term expiring in June, 1981, and two of the persons for a term expiring in June, 1982. Beginning with June, 1980, and annually thereafter, the Supreme Court shall appoint two nonlawyer directors for a term of the same duration as those of the elected members of the board, one of whom must be from a list of not less than five names submitted by the Governor of Texas. In making their appointments of these nonlawyer members, the Supreme Court and the governor shall endeavor to assure full and fair representation of the general public, including women, ethnic minorities, and retired persons. Any appointment made shall be without regard to race, creed, sex, religion, or national origin.

The officers of the State Bar shall consist of the president, president-elect, and immediate past president. The officers shall be elected in accordance with rules and regulations governing the election of State Bar officers and directors which the Supreme Court shall prepare and propose in accordance with Subsection (b) of Section 8 of this Act; provided, however, the election rules shall include a provision that permits any member's name to be printed on the ballot as a candidate for president-elect whenever a written petition, signed by at least one percent of the membership of the State Bar requesting the action, is filed with the executive director at least 30 days before the election ballots are to be mailed to the membership.

For purposes of electing directors or for the fulfillment of any other duty imposed on the State Bar by this Act or the State Bar Rules, the board shall from time to time reapportion the state into bar districts as conditions require, taking into account the purposes of the State Bar as defined in Section 3 of this Act. The reapportionment shall be subject to the Supreme Court's approval.

If any director should, as determined by the board of directors, become incapacitated from performing his duties as director, or if any director should be absent from any two consecutive regular meetings of the board of directors or from a total of four meetings, without cause deemed adequate by the board of directors, he may be removed by the board of directors at any regular meeting by resolution declaring his position vacant.

No board member or employee of the board shall be an employee or paid consultant of a trade association in the field of board interest.

(b) The executive director of the State Bar shall be elected by a majority vote of the board of directors and shall hold office during the pleasure of the board. The executive director may be elected as many times as the board of directors may choose. The executive director shall be responsible for the execution of the policies and directives of the board with reference to all activities of the State Bar, except the activities that may be made the responsibility of the general counsel by this Act or by the board. The executive director shall perform all duties usually required of a corporate secretary, including other duties as may be assigned to him or her by the board of directors. The executive director shall also act as the treasurer of the State Bar and shall receive from the clerk of the Supreme Court funds of the State Bar as provided by this Act. In this regard, the executive director shall be audited annually as provided in Subsection (b) of Section 7 of this Act. The executive director shall maintain the membership files and supervise the administrative staff of the State Bar in preparing the annual budget. He or she shall be required to execute a corporate surety bond in such amount as the board may direct, conditioned on faithful per-

formance of his or her duties, the premium for which shall be paid by the State Bar. The executive director shall have no vote on matters presented to the board of directors.

(c) The general counsel of the State Bar shall be elected by a majority vote of the board of directors and shall hold office during the pleasure of the board. The general counsel may be reelected as many times as the board may choose. He or she shall be a member of the State Bar.

The duties of the general counsel shall include all of those duties usually expected of and performed by a general counsel. It shall be the duty of the general counsel to standardize throughout all grievance districts the procedure, method, and practice for the processing of grievance complaints. It shall also be the duty of the general counsel to receive and maintain on behalf of the State Bar the files and records of the grievance committees that pertain to discipline. The general counsel shall expedite and coordinate the State Bar's grievance duties which are made mandatory by this Act. The general counsel on request of any grievance committee may investigate and prosecute grievance actions as provided in Section 12 of this Act. The general counsel on request of any unauthorized practice of law committee or by a grievance committee may investigate and prosecute suits to enjoin members, nonlicensees, and nonmembers of the State Bar from the practice of law. The general counsel's duties shall also include those matters delegated from time to time by the board of directors of the State Bar.

The general counsel may not be a lobbyist registered with the secretary of state.

(d) The executive director and the general counsel of the State Bar shall be subject to the Texas conflict of interest law, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9b, Vernon's Texas Civil Statutes).

(e) The executive director of the State Bar shall confer with the clerk of the Supreme Court as to the maintenance of correct membership files and in preparing the annual budget for review as provided in Subsection (a) of Section 7 of this Act. All membership fees shall be collected by the clerk of the Supreme Court and held by him or her until distributed to the State Bar for expenditure under the direction of the Supreme Court for the purpose of administering this Act.

The clerk of the Supreme Court, with the permission of the court, may employ a deputy to assist in discharging the duties imposed on him or her by this Act and any rules promulgated to administer this Act. The salary of the deputy shall be fixed by the board of directors and paid from the funds of the State Bar.

(f) All records of the State Bar, except for records pertaining to grievances and records pertaining to the Texas Board of Legal Specialization, shall be subject to the Texas open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes).

Membership; Fees

Sec. 10. (a) All persons who are enrolled as members of the State Bar on the effective date of this Act and any person who after the effective date of this Act shall be licensed to practice law in this state, shall constitute and be members of the State Bar, and shall be subject to the provisions of this Act and the rules adopted by the Supreme Court of Texas. All persons not members of the State Bar are prohibited from practicing law in this state except that the Supreme Court may promulgate rules and regulations prescribing the procedure for limited practice of law by attorneys licensed in another jurisdiction, bona fide law students, or nonlicensed graduate students who are attending or have attended a law school approved by the Supreme Court.

(b) Every person who after the effective date of this Act becomes licensed to practice law in this state shall enroll in the State Bar by registering his or her name with the clerk of the Supreme Court within 10 days of his or her admission to practice. Membership of the State Bar shall consist of four classes: active, inactive, emeritus, and associate.

Every licensed member of the State Bar is an active member until he or she requests to be enrolled as an inactive member.

The class of "inactive members" shall include those persons who are eligible for active membership but are not engaged in the practice of law in this state and have filed with the executive director and the clerk of the Supreme Court written notice requesting enrollment in the class of inactive members.

Inactive members are not entitled to hold office or vote in any election conducted by the State Bar or practice law. Those who are enrolled as inactive members at their request may on application and payment of fees required become active members.

The class of "emeritus members" shall include those persons who are either active or inactive members in good standing but who are at least 70 years of age and have filed a written notice requesting enrollment in the class of emeritus members. An emeritus member shall enjoy all the privileges of membership in the State Bar and shall not be required to pay membership dues for the years following the year in which he or she attains the age of 70.

The class of "associate members" may include those persons who are enrolled in law school in this state. Enrollment as an associate member shall be voluntary on the part of the enrollee. Associate members are not entitled to hold office or vote in

any election conducted by the State Bar or practice law, except as provided by rule promulgated by the Supreme Court. Dues for associate members shall be set by the board of directors.

(c) The Supreme Court is empowered and it shall be its duty to prescribe fees for members of the State Bar to be paid to the clerk of the court until distributed to the executive director as provided in Subsection (e) of Section 9 of this Act and expended by the board of directors under the direction of the Supreme Court for the purposes of administering this Act. Fees, except those fixed by the board for associate members, shall be prescribed in accordance with Subsections (a) and (b) of Section 8 rulemaking provisions of this Act. The fees shall be used exclusively for administering the public purposes provided by this Act.

Exclusive Jurisdiction of Supreme Court

Sec. 11. Rules and regulations governing the admission to the practice of law shall be within the exclusive jurisdiction of the Supreme Court. The officers and directors of the State Bar of Texas have no authority to approve or disapprove of any rule or regulation which governs admissions to the practice of law nor to regulate or administer said admissions standards.

Discipline

Sec. 12. (a) Any attorney admitted to practice in this state and any attorney specially admitted by a court of this state for a particular proceeding is subject to the disciplinary jurisdiction of the Supreme Court of Texas and its administrative agent, the State Bar of Texas.

(b) In furtherance of the court's powers to supervise the conduct of attorneys at law, the following grievance procedures are established. The Supreme Court shall, in accordance with Section 8 of this Act, prepare, propose, and adopt rules and regulations for disciplining, suspending, disbarring, and accepting resignations of attorneys as it considers necessary in addition to the minimum standards and procedures provided in this Act.

(c) Disciplinary jurisdiction shall be divided into grievance districts. Each bar district shall have one or more grievance committee districts. The board of directors, with the advice of the director of each bar district, shall determine whether the State Bar's grievance duties can be performed effectively by one committee for the entire bar district or whether the same should be divided into more than one grievance committee district. When a bar district contains more than one grievance committee, all the grievance committees within the district shall have concurrent jurisdiction of any complaint docketed by any of the committees within the district. The committee which originally dockets a complaint may, with the consent of another committee within the district, transfer a complaint to the other committee. The district director, in order to equalize the dockets, or for other good cause, may transfer complaints from one committee to another within the district.

(d) Each grievance committee shall consist of as many members as are deemed necessary by the board of directors for the expeditious transaction of its business.

(e) The president shall on recommendation of the director or directors for the district appoint the members of the grievance committee. Each member of the committee shall be a resident of the grievance committee district for which he or she is appointed. One-third of the total membership of each grievance committee shall be representative of the general public who are not licensed attorneys and who do not have, other than as consumers, a financial interest in the practice of law.

Annually the committee shall select its own chairperson.

Powers of Grievance Committees

Sec. 13. (a) The grievance committee shall exercise the powers and perform the duties conferred on it by this Act as well as any other powers and duties imposed by rules or regulations promulgated as provided herein by the Supreme Court.

The grievance committee shall consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention or on its own motion and take action with respect thereto as shall be appropriate under the disciplinary rules in effect from time to time in this state.

(b) The committee shall maintain records of all matters processed and the disposition thereof. Committee records are confidential and are not subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes). The final action of a committee resulting in a vote to publicly reprimand, suspend, or seek disbarment shall be made public; provided, however, that proceedings which result in a private reprimand shall remain confidential. Nothing shall prohibit the committee, with the consent of the accused attorney, from disclosing final action which clears the attorney of misconduct or which finds no jurisdiction or lack of probable cause to proceed. All records shall be forwarded to the general counsel and he shall maintain a permanent record of such actions, which will be public records for statistical purposes but which are subject to the provisions above concerning privacy.

(c) A "complaint" is defined as an allegation of attorney misconduct or attorney mental incompetency which, if established in fact, could subject the attorney to disciplinary action. Inquiries which do not allege an offense cognizable under the Code of Professional Responsibility or under this Act or which do not show probable cause of professional misconduct shall not be classified as complaints and

are not within the disciplinary jurisdiction of the grievance committee.

(d) Every inquiry which the committee determines to be a complaint as defined in this Act shall be docketed by the grievance committee. When docketed, the committee shall notify the general counsel of the State Bar, the complainant, and the accused attorney that the complaint has been scheduled for action by the committee, and the committee shall report periodically to the general counsel its progress in the matter.

(e) Every complaint as defined in this Act shall be acted on expeditiously by the grievance committee and the action shall be reported to the general counsel, the complainant, and the accused attorney. If the committee fails to take action on a complaint within a reasonable time, the general counsel shall report the committee's inaction to the president of the State Bar and the director or directors for the bar district which encompasses the grievance committee.

When notified by the general counsel of a committee's inaction, the president of the State Bar, with the advice of the board director for the district concerned, may transfer the complaint to another grievance committee in the bar district if there is one. The president may discharge a committee and appoint new members, if after consulting the board director for the district concerned the president determines that the committee should be reconstituted to assure the expeditious transaction of disciplinary business. Failure to report grievance matters to the general counsel shall be grounds for the discharge of a committee.

Grievance Oversight Committee

Sec. 14. There shall be created a grievance oversight committee which shall be responsible for reviewing the structure, function, and effectiveness of the grievance procedures which are implemented pursuant to this Act. It shall be composed of nine members to be appointed by the Supreme Court, six of whom shall be licensed members of the State Bar and three of whom shall not be licensed members of the State Bar of Texas. Of the six licensed members of the State Bar, three shall be members or former members of grievance committees. This committee shall report its findings annually to the Supreme Court, including any recommendations concerning needed changes in grievance procedures or structures.

The members of this committee shall serve staggered terms of three years each and the initial terms of office of the committee shall be as follows: three members for a term of one year, three members for a term of two years, and three members for a term of three years. The Supreme Court shall designate a chairperson of the committee who shall serve as chairperson for a period of one year. A majority of the total membership shall constitute a quorum of the committee. All necessary and actual expenses of the committee shall be provided for and paid out of the budget of the State Bar.

Disbarment Proceedings

Sec. 15. (a) The Supreme Court of Texas shall not adopt or promulgate any rule or regulation abrogating the right of trial by jury to either party to a disbarment action in the county of the residence of the accused attorney.

(b) Disbarment proceedings shall be instituted against a resident attorney in a district court located in the county of the attorney's residence; provided, however, that the accused attorney may make application for change of venue pursuant to Texas Rule of Civil Procedure 257. Nothing in this Act shall be construed to prohibit a grievance committee from investigating complaints of professional misconduct alleged to have occurred within the geographical area served by the committee, but any action must be filed in the county of that attorney's residence.

(c) All nonresident attorneys licensed by the Supreme Court are subject to the disciplinary rules and regulations governing resident members of the State Bar; provided, however, that venue in disbarment proceedings against nonresident members of the State Bar shall be in a district court located in Travis County, Texas, or in any county where the alleged misconduct occurred.

Disciplinary Proceedings

Sec. 16. (a) No attorney shall be suspended from practice, except by the attorney's concurrence under an order of suspension entered by the grievance committee, until such attorney has been convicted of the charge or charges for disbarment pending against him or her in a court of competent jurisdiction. Provided, however, that on proof of conviction of an attorney in any trial court of competent jurisdiction of any felony involving moral turpitude or of any misdemeanor involving the theft, embezzlement, or fraudulent misappropriation of money or other property, the district court of the county of the residence of the convicted attorney shall enter an order suspending the attorney from the practice of law during the pendency of any appeals from the conviction. An attorney who has been given probation after the conviction, whether adjudicated or unadjudicated, shall be suspended from the practice of law during the probation. On proof of final conviction of any felony involving moral turpitude or any misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property, the district court of the county of the residence of the convicted attorney shall enter a judgment disbarring him or her.

Either the grievance committee for the bar district or the general counsel shall have the authority to seek the enforcement of this section.

(b) In any action seeking to disbar an attorney for acts made the basis of a conviction for a felony involving moral turpitude or a misdemeanor involving theft, embezzlement, a fraudulent misappropriation of money or other property, the record of conviction shall be conclusive evidence of the guilt of the attorney for the crime of which he or she was convicted.

(c) Nothing in this Act shall be construed to prevent an attorney from being prosecuted in a disciplinary action after conviction for a criminal act based either on the weight of the conviction or on conduct by the attorney which led to his or her conviction.

Committees and Sections

Sec. 17. The board shall create from time to time committees and sections as it considers advisable and necessary to carry out the purposes of this Act. Nothing in this Act shall prevent the appointment of nonlawyers to the State Bar committees.

Committee on Professional Ethics

Sec. 18. (a) A professional ethics committee consisting of nine members of the State Bar to be appointed by the Supreme Court for a term of three years each is established. The initial terms of office of the committee shall be as follows: three members for terms of one year, three members for terms of two years, and three members for terms of three years. The Supreme Court shall designate a chairperson of the committee who shall serve as chairperson for a period of one year. A majority of the total membership shall constitute a quorum of the committee. All necessary and actual expenses of the committee shall be provided for and paid out of the budget of the State Bar. Nothing in this Act shall prevent the court from appointing members of the judicial department to the professional ethics committee.

(b) The standing committee on professional ethics shall:

(1) by the concurrence of a quorum of its members, express its opinion on the propriety of professional conduct, either on its own initiative or when requested to do so by a member of the State Bar of Texas, except that an opinion may not be issued on a question that is pending before a court of this state;

(2) the foregoing provision notwithstanding, the committee may meet in three member panels to express its opinion on behalf of the whole committee; provided, however, if the inquirer is dissatisfied with the panel's opinion, he or she may appeal it to the full committee for review;

(3) periodically publish its issued opinions to the legal profession in summary or complete form and on request provide copies of the opinions to members of the bar or public;

(4) on request advise or otherwise assist State Bar committees or local bar associations relating to the Code of Professional Responsibility;

(5) recommend appropriate amendments or clarifications of the Code of Professional Responsibility, if it considers them advisable; and

(6) adopt such rules as it considers appropriate relating to the procedures to be used in expressing opinions, effective when approved by the Supreme Court. Insofar as it is possible to do so, the committee shall disclose the rationale for its opinion and shall indicate whether it is based on ethical considerations or upon the disciplinary rules.

Opinions of the committee shall not be binding on the Supreme Court.

Unauthorized Practice of Law

Sec. 19. (a) For purposes of this Act, the practice of law embraces the preparation of pleadings and other papers incident to actions of special proceedings and the management of the actions and proceedings on behalf of clients before judges in courts as well as services rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined. This definition is not exclusive and does not deprive the judicial branch of the power and authority both under this Act and the adjudicated cases to determine whether other services and acts not enumerated in this Act may constitute the practice of law.

(b) The Supreme Court shall appoint an unauthorized practice of law committee for the State Bar to consist of nine members, three of whom shall be nonlawyers. Except as provided in this Act, members of the committee shall serve for a term of three years beginning with the effective date of this Act. All members of the committee shall be eligible for reappointment. The court shall designate each year which member shall act as chairperson. A majority of the committee shall constitute a quorum. All necessary and actual expenses of the committee should be provided for and paid out of the budget of the State Bar.

The court in making the first appointment shall appoint three members to serve an initial term of one year, three members to serve an initial term of two years, and three members to serve an initial term of three years. Thereafter, each appointed member shall serve a term of three years.

The unauthorized practice of law committee shall keep the court and the State Bar informed with respect to the unauthorized practice of law by lay persons and lay agencies and the participation of attorneys therein and concerning methods for the prevention thereof. The committee shall seek the elimination of the unauthorized practice by action and methods as may be appropriate for that purpose, including the filing of suits in the name of the

committee. Nothing in this Act shall prohibit the establishment of local Unauthorized Practice of Law committees to aid and assist this committee in carrying out its purpose.

Carry-Over Clause

Sec. 20. (a) All rules and regulations adopted and promulgated by the Supreme Court relating to the State Bar which are in force on the effective date of this Act shall constitute the rules governing the State Bar of Texas until and unless amended pursuant to Section 8 of this Act.

The foregoing provision notwithstanding, any rules and regulations which are in force on the effective date of this Act and which are in conflict with the provisions of this Act are repealed to the extent of the conflict.

(b) The officers and directors of the State Bar who have been elected and are serving on the effective date of this Act shall continue in office for the balance of their term.

(c) All dues and fees assessed and in effect on the effective date of this Act shall remain in force and effect until and unless amended pursuant to Section 8 of this Act.

(d) All bonds, notes, debentures, evidences of indebtedness, mortgages, deeds of trust, assignments, pledges, contracts, leases, agreements, or other contractual obligations owed to or by the State Bar of Texas on the effective date of this Act shall remain in force and effect in accordance with the terms of the obligation.

Application of Sunset Act

Sec. 21. The State Bar is subject to the Texas Sunset Act,[1] and unless continued in existence as provided by that Act the State Bar is abolished, and this Act expires effective September 1, 1991.

[1] Article 5429k.

[Amended by Acts 1975, 64th Leg., p. 120, ch. 56, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.019, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1081, ch. 510, § 1, eff. June 11, 1979.]

SUPREME COURT OF TEXAS

SENATE BILL 287
ORDER
Effective June 11, 1979

On June 11, 1979, the Governor signed into law, effective immediately, Senate Bill 287 which had passed the Senate by a vote of thirty of its members to one, and had passed the House by a vote of one hundred nineteen of its members to twenty-two. This statute continued the State Bar of Texas "as a public corporation and an administrative agency of the Judicial Department of government." The Legislature in Section Two of the statute stated that:

"This legislation is in aid of the Judicial Department's powers under the Constitution to regulate the practice of law and not to the exclusion of those powers. The Supreme Court of Texas, on behalf of the Judicial Department, shall exercise administrative control over the State Bar under this Act."

The Legislature has thus recognized that this Court is the primary responsibility for the administration of justice in the constitutional separation of powers between the three governmental branches.

This Court recognizes the actions of the Legislative and Executive Departments in aid of this Court's responsibilities regarding the legal profession, in declining any attempt to place funds of the Judicial Branch under control of the Legislative or Executive Branch, and in enacting Senate Bill 287 of the 66th Texas Legislative Session. The Court agrees that a unified Bar is the best method of regulating the legal profession and in assisting this Court in the administration of justice.

It is, however, the duty of this Court in the exercise of its own inherent power to regulate and control the practice of law and to provide for the proper administration of justice. It is therefore ordered:

1. The State Bar Act, Acts 1979, 66th Leg.Reg.Sess., ch. 510, p. 1081, Article 320a–1 Vernon's Texas Statutes, as supplemented by this order and subsequent orders, and all prior orders of this Court not in conflict herewith, shall govern the State Bar of Texas;

2. All rules, regulations and supplemental orders of this Court relating thereto, including the Rules Governing the State Bar of Texas and the Code of Professional Responsibility, which on the effective date of this order are in force, and which are not in conflict with the State Bar Act, as amended, shall continue to be the rules, regulations and orders governing the State Bar;

3. All officers and directors of the State Bar of Texas who are serving on the effective date hereof shall continue in office for their terms of office and until their successors are elected or appointed and qualified in accordance with the rules and regulations governing the State Bar of Texas;

4. All committees, sections and organizations of the State Bar in existence on the effective date of this order shall continue as they presently exist, until reconstituted in accordance with provisions of the State Bar Act as amended;

5. All dues and fees assessed and in effect on the effective date of this order, shall remain in full force and effect and the budget heretofore adopted for the Bar's fiscal year 1979–80 shall remain in full force and effect;

6. All persons who are enrolled as members of the State Bar on the date hereof and any person who, after the date hereof, shall be licensed to practice law in this State shall be members of the State Bar and subject to the rules and orders of this Court;

7. All persons not members of the State Bar are prohibited from practicing law in this State except for limited practice of law by attorneys licensed in other jurisdictions, law students and nonlicensed graduates of approved law schools in accordance with rules heretofore promulgated by this Court;

8. All property and contractual rights, titles, interests and obligations heretofore existing in the name of the State Bar of Texas are hereby continued and are confirmed;

9. The State Bar of Texas as a unified or integrated Bar is hereby continued and confirmed as an administrative agency of this Court and as a public corporation;

10. All complaints being investigated, all formal complaints voted by district grievance committees, all prosecutions begun and all appeals pending involving attorney misconduct, mental incompetency or the unauthorized practice of law shall proceed and shall not be abated or dismissed on account of the promulgation of this order or the passage of the State Bar Act.

This order is effective as of June 11, 1979, until further order of the Court.

IN CHAMBERS, on this the 19th day of June, 1979.

JOE R. GREENHILL
Chief Justice

ZOLLIE STEAKLEY
JACK POPE
SEARS McGEE
JAMES G. DENTON
SAM D. JOHNSON
CHARLES W. BARROW
ROBERT M. CAMPBELL
FRANKLIN SPEARS
Justices

Art. 320c. Liability of Attorney for Costs in Civil Proceeding

Regardless of any law or rule to the contrary, an attorney who is not a party to a civil proceeding is not liable for payment of costs incurred by any party to the proceeding.

[Acts 1975, 64th Leg., p. 1335, ch. 498, § 1, eff. Sept. 1, 1975.]

TITLE 14—APPENDIX

A. RULES GOVERNING THE STATE BAR OF TEXAS

ARTICLE V. OFFICERS

Sec. 1. Officers Named

The Officers of the State Bar of Texas shall be a President, a President-Elect, a General Counsel, and an Executive Director. The President and President-Elect shall each serve for a term of one year, and neither shall succeed himself in office.
[Feb. 8, 1977.]

Sec. 2. How President and President-Elect Elected

The State Bar shall elect annually from its membership a President-Elect in the manner and form provided in Article VI, Section 3, for the election of Directors, except that the election shall be for the entire state instead of by districts. The ballots cast at any such election shall be marked and returned by the voting members and thereafter canvassed and the results declared, as prescribed in said Section 3.

At its regular January meeting each year, the Board of Directors shall nominate by majority vote not fewer than two members of the State Bar as candidates for President-Elect for the ensuing year, which nominations shall be published in the Bar Journal and by all practicable means. All such names shall be printed on the official ballot.

Any other member's name shall be printed also on the ballot as a candidate for President-Elect when a petition in writing, signed by not fewer than 175 members requesting such action, is filed with the Executive Director on or before March 15th.

Every ballot for President-Elect shall be designated as "Official Ballot, State Bar of Texas." The ballots shall be mailed to members at the same time as ballots for the election of Directors are mailed, or a combined ballot may be used for both Officers and Directors.

The President-Elect shall automatically become President at the conclusion of his term as President-Elect.
[Feb. 8, 1977.]

Sec. 3. When Officers Assume Duties

The President-Elect and Directors shall take office immediately upon the adjournment of the annual meeting next after their election. The President shall take office immediately upon the adjournment of the annual meeting held at the close of his term as President-Elect.
[Feb. 8, 1977.]

Sec. 5. Duties of President and President-Elect

The President shall preside at all meetings of the State Bar, and in his absence or inability to act, or at his request, the President-Elect shall preside. Each shall perform such other duties as usually belong to his office. The President-Elect shall be an ex-officio member of all standing and special committees and shall have responsibility fo coordinating the work of the various committees and sections.
[Feb. 8, 1977.]

ARTICLE VI. BOARD OF DIRECTORS

Sec. 1. How Comprised

The Board shall consist of one Director elected from each of the Bar Districts of this State and any additional districts hereafter created. The President and President-Elect of the State Bar shall be ex-officio members of the Board with the same powers and duties as those of elected members.

At the first meeting after the Directors assume office, the Board shall elect one of its own number as Chairman. He shall serve for one year and shall preside at all meetings of the Board.
[Feb. 8, 1977.]

Sec. 2. Qualifications of Director; Vacancies; How Filled

Each elected Director shall be a resident of the District for which he is elected and upon removal from the District shall thereby automatically vacate his office. No member, except residents of Bexar, Dallas, Harris, Tarrant and Travis Counties, may be a candidate for Director if the county of his residence was the county of residence of the last preceding Director from that District. This prohibition shall not apply to a member appointed to fill a vacancy, if at the time of the next regular annual election following his appointment the combined service of himself and his predecessor as Director does not exceed eighteen calendar months.

If there be any vacancy, the President shall appoint some member who is a resident of the District in which the vacancy exists to serve until the next regular annual election of Directors. The appointed Director may be a resident of the same county as his predecessor only in the event that the predecessor served as a Director for less than eighteen months. This restriction shall not apply to residents of the four[1] populous counties above named.

Each last immediate retiring President shall be a member ex-officio of the Board of Directors for one year next succeeding his retirement.
[Feb. 27, 1973].

[1] So in rule; probably should read "five".

ARTICLE VIII. MEETINGS OF STATE BAR

Sec. 1. Time and Place of Annual Meeting

The annual meeting of the State Bar shall be held between June 1st and July 15th of each year at a time and place to be determined by vote of the Board of Directors at its regular January meeting preceding. The Board of Directors may at any regular or special meeting prior to the holding of an annual meeting change the date (within the above period of time) or the place of, or cancel, such annual meeting for that year.
[Feb. 8, 1977.]

ARTICLE X. FISCAL

Sec. 1. Budget Committee

There is hereby created a Budget Committee, and its membership shall consist of the President of the State Bar, who shall be ex-officio Chairman, the President-Elect, the Chairman of the Board, and two members of the Board of Directors to be appointed by the President, and who shall serve for one year.
[Feb. 8, 1977.]

Sec. 3. Bar Warrants; How and for What Purposes Drawn

No warrant on account of the State Bar of Texas shall be drawn against State Bar funds, nor paid out of the funds, unless the warrant is countersigned by the Executive Director or the President. The Executive Director shall see that no warrant is so drawn and issued except to pay some item of expense authorized in the annual budget, or some amendment thereto; and that no warrant is drawn, if its payment shall overdraw the amount allocated by the budget or its amendments to the payment of that item. Each warrant shall specify thereon what item of expenditure it is drawn to pay.

The Board of Directors and Officers of the State Bar shall be without authority to make any contract or incur any debt that cannot be paid from the receipts for the current year, except with the concurrent approval obtained by referendum of all members of the State Bar and the Supreme Court.

Any violation by the Executive Director of the terms of this Section, or neglect by him to perform the duties imposed by this Section, shall constitute a breach of trust and he shall be liable therefor on his bond to the State Bar.
[Feb. 8, 1977.]

B. CODE OF JUDICIAL CONDUCT

Adopted July 25, 1974

Effective September 1, 1974

Amended to November 9, 1976

Canon

1. A Judge Should Uphold the Integrity and Independence of the Judiciary.
2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in all his Activities.
3. A Judge Should Perform the Duties of his Office Impartially and Diligently.
4. A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.
5. A Judge Should Regulate his Extra-Judicial Activities to Minimize the Risk of Conflict with his Judicial Duties.
6. A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities.
7. A Judge Should Refrain from Political Activity Inappropriate to his Judicial Office.

Compliance With The Code of Judicial Conduct.

Effective Date of Compliance.

Canon 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in all his Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily in an adjudicative proceeding as a character witness.

Canon 3

A Judge Should Perform the Duties of his Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider *ex parte* or other private communications concerning a pending or impending proceeding.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas adjacent thereto during sessions of court or recesses between sessions (Estes vs. Texas, 381 U.S. 532; Sheppard vs. Maxwell, 384 U.S. 333), except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, or ceremonial proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

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

Amended Nov. 9, 1976.

B. Administrative Responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification. (Art. V, Sec. 11 Texas Constitution; Art. 15 V.A.T.S.; C.C.P. Art. 30.01).

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including, but not limited to, instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(b) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

Canon 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Canon 5

A Judge Should Regulate his Extra-Judicial Activities to Minimize the Risk of Conflict with his Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, political, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, delegate, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.

(3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Amended Nov. 9, 1976.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge should not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a "publicly owned business" is a business having more than ten owners.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds $100, the judge reports it in the same manner as he reports compensation in Canon 6C.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family; and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent,

grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Canon 6

A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his family. Any payment in excess of such an amount is compensation.

C. A judge shall file with the Judicial Qualifications Commission of this State on or before the last Friday of April of each year a financial report consisting of the following documents:

(a) A true copy of the most recent Federal income tax return filed by him.

(b) An affidavit which asserts compliance with Article 6252–9b, Vernon's Texas Civil Statutes, the financial disclosure law.

(c) A verified list of the names of the corporations, businesses or other financial undertakings in which he has an interest. If any of the above have no name, then a description of their nature shall be given.

(d) At the expiration of two years from the time a judge by reason of death, disability or other reason is no longer subject to recall to judicial service, the Commission shall destroy the documents filed by a judge in compliance with this Canon.

The copy of income tax return called for in subparagraph (a) above shall be transmitted in a sealed envelope, placed by the Commission in safekeeping, and shall be opened only during an investigation and pursuant to a majority vote of the full Commission duly assembled.

If the federal government has granted an extension of time for the filing of an income tax return, that fact shall be made known to the Judicial Qualifications Commission on or before the last Friday of April of the year in which the tax return is due. The judge shall in that case file the copy of his income tax return with the Judicial Qualifications Commission within ten days after he files his income tax return with the government.

The list of corporations and businesses in which the judge has a financial interest called for in subparagraph (c) above shall be transmitted in a separate sealed envelope, placed by the Commission in safekeeping, and shall not be opened or the contents thereof disclosed except in the manner hereinabove providing for the opening and examination of the documents called for in subparagraph (a) above, or as hereinafter provided.

At any time during or after the pendency of a cause, any party may request information as to whether the most recent list filed by the judge or judges before whom the cause is or was pending contains the name of any specific person or corporation or other business which is a party to the cause or which has a substantial, direct, or indirect financial interest in its outcome. Neither the making of the request nor the contents thereof shall be revealed by the Chairman to any judge or other person except at the instance of the individual making the request. If the request meets the requirements hereinabove set forth, the Chairman shall render a prompt answer thereto and thereupon return the report to safekeeping for retention in accordance with the provisions hereinabove stated. All such requests shall be verified and transmitted to the Chairman of the Commission on forms to be approved by it.

Canon 7

A Judge Should Refrain from Political Activity Inappropriate to his Judicial Office

A. Political Conduct in General. Any candidate for judicial office, including an incumbent judge, and others acting on his behalf, should refrain from all conduct which might tend to arouse reasonable

belief that he is using the power or prestige of his judicial position to promote his own candidacy.

B. Campaign Conduct:

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

(a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;

(b) should prohibit others subject to his direction or control from doing for him what he is prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office. Any statement of qualifications, record, or performance in office should be such as can withstand the closest scrutiny as to accuracy, candor and fairness.

Amended Nov. 9, 1976.

Compliance with the Code of Judicial Conduct

A. The following judges shall comply with this Code:

Those elected in a statewide election.

Justices of courts of civil appeals.

Commissioners of any appellate court.

District judges.

Judges of domestic relations courts.

Judges of juvenile courts.

Judges of county courts at law.

Provided, however, that Canon 6C(b) shall apply only to those judges who are subject to Article 6252–9b, Vernon's Texas Civil Statutes.

The Code shall not apply to county judges whether they are also judges of juvenile courts or not.

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

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

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

C. Judge Pro Tempore. A judge *pro tempore* is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge *pro tempore* is not required to comply with Canon 5C(2), (3), D, E, F, G, Canon 6C(a) and 6C(c).

(2) A person who has been a judge *pro tempore* should not act as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

D. Retired Judge. A retired judge who is eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5C(2), D, E, F, G, and Canon 6C(a) and 6C(c), but he should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. A retired judge who is not subject to recall for judicial service or who by reason of disability does not perform such services, which facts are shown to the satisfaction of the Judicial Qualifications Commission is excused from compliance with Canon 5C(2), D, E, F, G, Canon 6C(a) and 6C(c).

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

Effective Date of Compliance

A person to whom this Code become applicable should arrange his affairs as soon as reasonably possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

A. continue to act as an officer or director of a publicly owned business for a period not to exceed four (4) years from the effective date of this Code;

B. continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family.

TITLE 15

ATTORNEYS—DISTRICT AND COUNTY

1. DISTRICT ATTORNEYS

Article

326k–38b. 49th Judicial District Attorney.
326k–47a. 23rd Judicial District; Duties of District Attorney.
326k–64a. Representation of State in Oldham County District Court.
326k–75. Hays County Criminal District Attorney.
326k–76. Ford Bend County Criminal District Attorney.
326k–77. Rockwall County Criminal District Attorney.
326k–78. Van Zandt County Criminal District Attorney.
326k–79. Wood County Criminal District Attorney.
326k–80. Walker County Criminal District Attorney.
326k–81. Bastrop County Criminal District Attorney.
326k–82. 97th Judicial District Attorney.
326k–83. Jasper County Criminal District Attorney.
326k–84. Denton County Criminal District Attorney.
326k–85. Jackson County Criminal District Attorney.
326k–86. Caldwell County Criminal District Attorney.

3. GENERAL PROVISIONS

332b–1. Marion, Lamb, Terry, Yoakum, Cass, Lamar, Crosby, Robertson, and Ellis Counties; Compensation of Criminal District or County Attorney.
332b–2. County Attorney of Castro County; District Attorney of 64th Judicial District.
332b–3. County Attorney of Ochiltree County; District Attorney of 84th Judicial District.
332b–4. Professional Prosecutors Act.
332d. Prosecutors Coordinating Council.
332d–1. Application of Sunset Act.

4. PUBLIC DEFENDERS

341–2. Counties Having Four County and Four District Courts; Appointment and Compensation; Entitlement of Indigents.

1. DISTRICT ATTORNEYS

Art. 322. Districts Shall Elect

Sec. 1. The following Judicial Districts in this state shall each respectively elect a District Attorney, viz.: 1st, 2nd, 3rd, 5th, 7th, 8th, 9th, 12th, 21st, 22nd, 23rd, 24th, 25th, 27th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 38th, 39th, 46th, 47th, 49th, 50th, 51st, 52nd, 53rd, 63rd, 64th, 69th, 70th, 72nd, 75th, 76th, 79th, 81st, 83rd, 90th, 100th, and 106th.

Sec. 2. There shall also be elected a Criminal District Attorney for Dallas County, a Criminal District Attorney for Tarrant County, and one Criminal District Attorney for the Counties of Callahan and Taylor.

[Amended by Acts 1975, 64th Leg., p. 983, ch. 378, §§ 1 and 2, eff. June 19, 1975; Acts 1979, 66th Leg., p. 1129, ch. 540, § 2, eff. Aug. 27, 1979.]

Art. 326k–6. Investigators of District, Criminal District, or County Attorneys; Powers of Arrest and Process; Responsibility

Sec. 1. Any and all investigators appointed by a District Attorney, Criminal District Attorney, or County Attorney, as provided by law, shall have the same authority as the sheriff of the county to make arrests anywhere in the county, and to serve anywhere in the state, warrants, capiases, subpoenas in criminal cases, and all other processes in criminal cases issued by any District Court, County Court, or Justice Court in the State, but such investigators shall not be under the authority and direction of the sheriff, and shall only be under the authority and direction of the said District Attorney, Criminal District Attorney, or County Attorney; and such investigators shall not be allowed to draw any fees of any character for performing such duties.

Sec. 1–a. Said District Attorney, Criminal District Attorney, or County Attorney shall be responsible for the official acts of such investigators and they shall have power to require from such investigators, bond and security, and they shall have the same remedies against their investigators and the sureties of said investigators as any person can have against a District Attorney, Criminal District Attorney, or County Attorney and his sureties.

[Amended by Acts 1981, 67th Leg., p. 180, ch. 81, § 1, eff. Aug. 31, 1981.]

Art. 326k–28. Galveston County Criminal District Attorney

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

Representation of County Employees

Sec. 3a. The Criminal District Attorney of Galveston County may represent any county official or employee other than members of the commissioners court of Galveston County in any civil matter pending in any district court in Galveston County or in any inferior court in Galveston County which arises out of the performance of official duties by such official or employee.

[See Compact Edition, Volume 3 for text of 4 to 8]

[Amended by Acts 1979, 66th Leg., p. 1637, ch. 684, § 1, eff. Aug. 27, 1979.]

Art. 326k–29. Repealed by Acts 1979, 66th Leg., p. 1129, ch. 540, § 3, eff. Aug. 27, 1979

Art. 326k-29a. 105th Judicial District; Compensation of District Attorney

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

Supplemental Salary

Sec. 2. The supplemental salary to be paid the District Attorney of the 105th Judicial District shall be the sum of not more than $12,000, to be paid by the Commissioners Courts of the counties comprising the 105th Judicial District, which sum shall be paid to the District Attorney in addition to all compensation which he is authorized to receive by law from the State of Texas.

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

[Amended by Acts 1979, 66th Leg., p. 1129, ch. 540, § 1, eff. Aug. 27, 1979.]

Art. 326k-33. Harrison County Criminal District Attorney

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

Commission and Compensation; Private Practice of Law

Sec. 4. (a) The Criminal District Attorney of Harrison County, Texas, shall be commissioned by the Governor and shall be compensated for his services by the state in such manner and in such amount as may be fixed by the general law relating to the salary to be paid to district attorneys by the state. The Commissioners Court may pay the criminal district attorney any compensation it deems advisable but shall pay the criminal district attorney at least an amount necessary to provide him a total salary from the county and the state of not less than $16,000 per annum.

[See Compact Edition, Volume 3 for text of 4(b) to 8]

[Amended by Acts 1975, 64th Leg., p. 1385, ch. 533, § 1, eff. Sept. 1, 1975.]

Art. 326k-36a. 47th Judicial District Attorney

Representation of State

Sec. 1. The District Attorney of the 47th Judicial District shall represent the State of Texas in all criminal cases before all the district courts of Potter and Armstrong counties.

Appointment of Assistants, Investigators, Secretaries and Office Personnel

Sec. 2. The District Attorney of the 47th Judicial District may appoint such assistant district attorneys, investigators, secretaries, and other office personnel as necessary to the proper performance of his official duties. The number of assistants, investigators, secretaries, and other office personnel and the compensation paid are subject to the approval of the Commissioners Court of Potter County.

Salary

Sec. 3. The District Attorney of the 47th Judicial District may be paid a salary in an amount equal to the total salary paid from state and county funds to the Judge of the 47th Judicial District Court.

Payment of Salaries

Sec. 4. The Commissioners Court of Potter County is authorized to pay the salaries of the District Attorney of the 47th Judicial District and his office personnel from the officers salary fund, the general fund, any other available fund, or any combination thereof at the discretion of the commissioners court.

[Amended by Acts 1975, 64th Leg., p. 1874, ch. 590, § 1, eff. Sept. 1, 1975.]

Art. 326k-38a. Repealed by Acts 1975, 64th Leg., p. 251, ch. 100, § 6, eff. April 30, 1975

See, now, art. 326k-38b.

Art. 326k-38b. 49th Judicial District Attorney

Representation of State; Duties of Webb County Attorney

Sec. 1. The District Attorney of the 49th Judicial District shall represent the state in all criminal cases in the district court for the 49th Judicial District and shall represent the state in all criminal cases in Webb County. The County Attorney of Webb County shall continue to handle and prosecute all juvenile, child welfare, and mental health cases in Webb County and the other civil cases in Webb County where the State of Texas is a party, in addition to the other duties imposed by law on the office of county attorney.

Compensation

Sec. 2. The district attorney shall be compensated in such amount as may be fixed by general law relating to salaries paid to district attorneys by the state and, in addition, his compensation may be supplemented by the commissioners court of any one or more of the counties composing the 49th Judicial District in an amount to be fixed by the commissioners court. Also, the commissioners court of any county in the district may supplement the salary of the district attorney for the prosecution of misdemeanor cases in the county.

Assistants, Investigators and Secretaries; Compensation

Sec. 3. The commissioners court of any county in the district may provide the salary of any assistant district attorney, investigator, or secretary and may prescribe as a qualification for retaining the job that such personnel reside in the county. Assistant district attorneys and investigators, in addition to their salaries, may be allowed actual and necessary travel expenses incurred in the discharge of their duties, not to exceed the amount fixed by the district attorney and approved by the commissioners court. All claims for travel expenses may be paid from the general fund or any other available funds of the county.

Office Equipment and Expenses; Automobiles

Sec. 4. The commissioners court of any county in the district may furnish telephone service, typewriters, office furniture, office space, supplies, and such other items and equipment as are necessary to carry out the official duties of the district attorney's office, and to pay the expenses incident to the operation of the district attorney's office. The commissioners courts are further authorized to furnish automobiles for the use of the district attorney's office for the purpose of conducting the official duties of the office, and to provide the maintenance thereof.

Gifts and Grants

Sec. 5. The commissioners court of the county or the counties composing the district may accept gifts and grants from any foundation or association for the purpose of financing adequate and effective prosecution programs within the county or district. [Acts 1975, 64th Leg., p. 251, ch. 100, §§ 1 to 5, eff. April 30, 1975; Acts 1979, 66th Leg., p. 389, ch. 180, § 1, eff. May 15, 1979.]

Arts. 326k–41, 326k–41a. Repealed by Acts 1981, 67th Leg., p. 59, ch. 25, § 21, eff. April 8, 1981

Prior to repeal, art. 326k–41 was amended by Acts 1979, 66th Leg., p. 854, ch. 380, § 2.

Art. 326k–47a. 23rd Judicial District; Duties of District Attorney

Sec. 1. The district attorney of the 23rd Judicial District shall represent the state and perform the duties of district attorney in all the district courts in Matagorda and Wharton Counties.

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

[Amended by Acts 1979, 66th Leg., p. 1021, ch. 453, § 1, eff. June 7, 1979.]

Art. 326k–59. Victoria County Criminal District Attorney

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

Salary; Payment

Sec. 4. The criminal district attorney shall receive as compensation an annual salary from the State of Texas in such amount as may be fixed by the general laws of this state relating to the salary to be paid to the district attorneys of this state. In addition, the commissioners court may, in its discretion, supplement the salary paid by the state. The sum paid by the county shall be paid out of the officers' salary fund of Victoria County, if adequate; if inadequate, the commissioners court shall transfer the necessary funds from the general fund of the county to the officers' salary fund.

[See Compact Edition, Volume 3 for text of 5 to 8]

[Amended by Acts 1975, 64th Leg., p. 1951, ch. 642, § 1, eff. Sept. 1, 1975.]

Art. 326k–61. 85th Judicial District; District Attorney, Assistants and Personnel

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

Sec. 4. The district attorney is entitled to compensation for his services in an amount as may be fixed by the general law relating to the salary paid to district attorneys by the state. In addition to the salary paid the district attorney by the state, the Commissioners Court of Brazos County may supplement the salary of the district attorney in an amount to be fixed by the commissioners court.

Sec. 5. (a) The district attorney, with the approval of the Commissioners Court of Brazos County, may appoint such assistant district attorneys, investigators, stenographers, secretaries, clerks, and other personnel as he deems necessary to carry out the duties of his office.

(b) An assistant district attorney shall be licensed to practice law in this state and may perform for the state and the county all duties conferred and imposed by law on the district attorney. An investigator need not be licensed to practice law. An investigator shall have authority, under the direction of the district attorney, to make arrests and execute process in criminal cases and shall have all the rights and duties of a peace officer in criminal cases and in cases growing out of the enforcement of all laws.

(c) Each assistant district attorney, investigator, stenographer, secretary, clerk, and other personnel may be required by the district attorney to make bond in such amount as the district attorney may direct, and all personnel are subject to removal at the will of the district attorney. Each assistant district attorney and investigator, when appointed, shall take the constitutional oath of office.

(d) Salaries of the assistant district attorneys, investigators, stenographers, secretaries, clerks, and other personnel shall be fixed by the district attorney, subject to the approval of the Commissioners Court of Brazos County. In addition to their salaries, the district attorney and each assistant district attorney, investigator, stenographer, secretary, clerk, and other personnel shall be allowed the actual and necessary travel expenses incurred in the proper discharge of their duties, and other necessary expenses incident to carrying out the official duties of the district attorney and his office, subject to the approval of the district attorney and the commissioners court. The salaries and expenses may be paid by the county from county funds or from a grant or funds from other sources available for this purpose.

(e) The Commissioners Court of Brazos County is authorized to furnish telephone service, typewriters, office furniture, office space, law library, supplies, and such other items and equipment as are necessary to carry out the official duties of the district attorney's office and to pay the expenses incident to the

operation of the district attorney's office. The commissioners court is further authorized to furnish automobiles for the use of the district attorney's office for the purpose of conducting the official duties of the office and to provide the maintenance thereof. The commissioners court is further authorized to pay an automobile expense allowance to the district attorney, assistant district attorneys, investigators, stenographers, secretaries, clerks, and other personnel.

(f) The Commissioners Court of Brazos County may accept gifts and grants from any individual, partnership, corporation, trust, foundation, association, or political subdivision for the purpose of financing adequate and effective prosecution, crime prevention, or rehabilitation programs within the county or district, approved and administered by the district attorney.

[Amended by Acts 1975, 64th Leg., p. 364, ch. 156, §§ 1 and 2, eff. Sept. 1, 1975.]

Art. 326k-62. 42nd and 104th Judicial Districts; Criminal District Attorney

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

Election and Term

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

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

Duties

(d) The criminal district attorney shall perform in the 42nd and 104th Judicial Districts all duties required of district attorneys by general law, except that the county attorney of Callahan County shall represent the State of Texas in all matters pending before the district court in Callahan County. The criminal district attorney of the 42nd and 104th Judicial Districts shall also perform the duties of county attorney in Taylor County and shall assist the county attorney in Callahan County on his request or, in the event of his inability to act, on appointment by the judge of the district court in Callahan County. If there is no county attorney in Callahan County, the criminal district attorney of the 42nd and 104th Judicial Districts shall represent the State of Texas in all matters pending before the district court in Callahan County.

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

Compensation and Expenses

(f) The criminal district attorney is entitled to the compensation paid district attorneys by the state which is provided in the general appropriations act. The Commissioners Court of Taylor County shall supplement his state compensation in an amount not less than $4,000 a year. The criminal district attorney of the 42nd and 104th Judicial Districts is entitled to the expenses and allowances provided in the general appropriations act for district attorneys who serve more than one county. The county attorney of Callahan County shall receive from the state an annual salary of $5,000, and the Commissioners Court of Callahan County shall supplement the state salary. The Commissioners Court of Taylor County shall also determine and pay the salaries of all employees of the criminal district attorney. The commissioners court may reimburse the criminal district attorney and his employees for their reasonable and necessary expenses incurred while performing the duties of the office.

[Amended by Acts 1977, 65th Leg., p. 2158, ch. 860, § 9, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 2087, ch. 478, § 1, eff. Sept. 1, 1981.]

Art. 326k-64. Deaf Smith County Criminal District Attorney

[See Compact Edition, Volume 3 for text of 1 to 6]

Compensation and Expenses

Sec. 7. The criminal district attorney is entitled to the compensation paid district attorneys by the state which is provided for in the General Appropriations Act. The Commissioners Court of Deaf Smith County may supplement his state compensation. In addition, the District Attorney of Deaf Smith County, Texas, shall receive the same travel, office, and other necessary expenses as provided for district attorneys in the General Appropriations Act from the State of Texas.

[See Compact Edition, Volume 3 for text of 8 to 12]

[Amended by Acts 1975, 64th Leg., p. 578, ch. 234, § 1, eff. May 20, 1975.]

Art. 326k-64a. Representation of State in Oldham County District Court

Sec. 1. The County Attorney of Oldham County shall represent the State of Texas in all matters pending before the district court in Oldham County. The Criminal District Attorney of Deaf Smith County shall assist the county attorney in Oldham County on his request or, in the event of his inability to act, on appointment by the judge of the district court in Oldham County. If there is no county attorney in Oldham County, the Criminal District Attorney of Deaf Smith County shall represent the State of Texas in all matters pending before the district court in Oldham County on appointment by the judge of the district court in Oldham County.

Sec. 2. The Criminal District Attorney of Deaf Smith County shall be entitled to the expenses and allowances as provided in the General Appropriations Act for district attorneys who serve more than one county. The state shall pay Oldham County a sum equal to 30 percent of the salary paid to district attorneys by the state.

[Acts 1975, 64th Leg., p. 1965, ch. 649, §§ 1 and 2, eff. Sept. 1, 1975.]

Section 3 of the 1975 Act provided:

"There is appropriated out of the General Revenue Fund the sum of $7,000 for the fiscal year ending August 31, 1976, and the sum of $7,000 for the fiscal year ending August 31, 1977, for expenses and allowances to the Criminal District Attorney of Deaf Smith County as provided in Section 2 of this Act. There is appropriated out of the General Revenue Fund the sum of $6,990 for the fiscal year ending August 31, 1976, and the sum of $7,440 for the fiscal year ending August 31, 1977, as payment to Oldham County as provided in Section 2 of this Act."

Art. 326k–66. 69th Judicial District; Compensation of District Attorney; Assistants, Investigators and Stenographers

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

Compensation of Assistants, Investigators and Stenographers; Qualifications and Duties

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

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

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

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

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

Art. 326k–67. Collin County Criminal District Attorney

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

Qualifications; Oath; Bond; Private Practice of Law

Sec. 2. (a) The criminal district attorney shall possess the qualifications, take the oath, and give the bond required by the Constitution and laws of this state of district attorneys.

(b) The criminal district attorney shall not, after January 1, 1979, actively engage in the private practice of law while serving as criminal district attorney in and for Collin County.

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

[Amended by Acts 1975, 64th Leg., p. 1355, ch. 512, § 1, eff. Sept. 1, 1975.]

Art. 326k–68. Eastland County Criminal District Attorney

[See Compact Edition, Volume 3 for text of 1 to 6]

Commission; Compensation; Payment

Sec. 7. The Criminal District Attorney of Eastland County, Texas, shall be commissioned by the Governor. The Criminal District Attorney is entitled to the compensation paid district attorneys by the state as provided in the General Appropriations Act. The Commissioners Court of Eastland County may supplement his state compensation in an amount not to exceed $9,700 a year. The sum paid by the county shall be paid out to the Officers Salary Fund of Eastland County, if adequate; if inadequate, the Commissioners Court shall transfer the necessary funds from the General Fund of the county to the Officers Salary Fund.

[See Compact Edition, Volume 3 for text of 8 to 12]

[Amended by Acts 1975, 64th Leg., p. 393, ch. 172, § 1, eff. Sept. 1, 1975.]

Art. 326k–69. Lubbock County Criminal District Attorney

Creation of Office; Qualifications; Oath; Bond

Sec. 1. The office of the Criminal District Attorney for Lubbock County, Texas, is created. The Criminal District Attorney for Lubbock County shall be at least 25 years of age, a practicing attorney in this State for four years, and a resident of Lubbock County. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. He shall reside in Lubbock County during his term of office.

[See Compact Edition, Volume 3 for text of 2 to 10]

[Amended by Acts 1981, 67th Leg., p. 1850, ch. 433, § 1, eff. Aug. 31, 1981.]

Art. 326k–75. Hays County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Hays County is created.

Qualifications; Oath; Bond; Residence

Sec. 2. The Criminal District Attorney of Hays County shall be at least 25 years of age, a practicing attorney in this state for five years, and a resident of Hays County. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. He shall reside in Hays County during his term of office.

Duties; Fees, Commissions and Perquisites; District Attorney of 22nd Judicial District; Application of Act

Sec. 3. (a) It is the duty of the Criminal District Attorney of Hays County or his assistants to be in attendance on each term and all sessions of the district courts in Hays County and all sessions and terms of the inferior courts of Hays County held for the transaction of criminal business, and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on the district and county attorneys in the various counties and judicial districts of this state. He shall collect such fees, commissions, and perquisites as are provided by law for similar services rendered by district and county attorneys of this state.

(b) From and after the effective date of this Act, the District Attorney of the 22nd Judicial District shall only represent the State of Texas in the counties of Caldwell and Comal. The provisions of this Act apply only to Hays County and do not affect the office of district attorney or the duties and powers of the district attorney in the counties of Caldwell and Comal. The District Attorney of the 22nd Judicial District shall continue to fulfill the duties of district attorney in the counties of Caldwell and Comal, but his duties in the County of Hays are divested from him and invested in the Criminal District Attorney of Hays County.

Appointment; Election and Term

Sec. 4. (a) On the effective date of this Act, the governor shall appoint a criminal district attorney for Hays County, who shall hold office until the general election in 1976 and until his successor is duly elected and has qualified. At the general election in 1976, there shall be elected a criminal district attorney for Hays County for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, this officer shall be elected for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65 of the Texas Constitution.

(b) A vacancy occurring in the office of Criminal District Attorney of Hays County shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(c) From and after the effective date of this Act, the District Attorney of the 22nd Judicial District shall only stand for election and be elected from the counties of Caldwell and Comal. The present district attorney for the 22nd Judicial District shall continue in office as the district attorney in the counties of Caldwell and Comal until the general election in 1976 and until his successor is elected and qualified.

Compensation

Sec. 5. The Criminal District Attorney of Hays County shall be compensated for his services by the state in such a manner and in such amount as may be fixed by the general law relating to the salary to be paid to district attorneys by the state, and in addition his salary may be supplemented by the commissioners court in such amount as it deems advisable.

Abolition of County Attorney's Office

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

[Acts 1975, 64th Leg., p. 1038, ch. 402, eff. June 19, 1975.]

Art. 326k-76. Fort Bend County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Fort Bend County is created.

Powers and Duties

Sec. 2. The criminal district attorney or his assistants shall be in attendance on each term and all sessions of any district court in Fort Bend County. The criminal district attorney and his assistants shall represent the state in criminal and civil cases, unless otherwise provided by law, pending in the district courts and inferior courts having jurisdiction in Fort Bend County. He shall have and exercise, in addition to the specific powers given and duties imposed on him and his assistants by this Act, all powers, duties, and privileges within Fort Bend County conferred on district attorneys and county attorneys in the various counties and judicial districts of this state relative to criminal and civil matters for and in behalf of the county and the State of Texas.

Qualifications; Oath; Bond

Sec. 3. The criminal district attorney shall possess the qualifications, take the oath, and give the bond required by the constitution and laws of this state of district attorneys.

Assistants: Appointment; Compensation; Removal

Sec. 4. The criminal district attorney shall appoint assistant criminal district attorneys and other assistants necessary to the proper performance of his official duties, with the approval of the commissioners court. The assistants shall be paid a salary to be set and approved by the commissioners court and paid out of the general fund of the county. The assistants are subject to removal at the will of the criminal district attorney and are authorized to perform any duty conferred by law on the criminal district attorney.

Stenographers; Appointment; Compensation; Removal

Sec. 5. The criminal district attorney may appoint stenographers, who may or may not possess the qualifications prescribed by law for district and county attorneys, who shall perform the necessary stenographic work assigned by the criminal district attorney, and who shall receive as compensation a

salary set by the commissioners court payable out of the county funds. The stenographers are subject to removal at the will of the criminal district attorney.

Offices Expenses

Sec. 6. Fort Bend County is authorized to set aside each year a sum of money to be expended by the criminal district attorney in the preparation and conduct of criminal affairs of the office.

Compensation

Sec. 7. The criminal district attorney shall be compensated for his services by the state in such manner and amount as may be fixed by the general law relating to the salary to be paid to district attorneys by the state, and in addition, his salary may be supplemented by the commissioners court in such amount as it deems advisable.

Abolition of County Attorney's Office

Sec. 8. The office of County Attorney of Fort Bend County is abolished from and after the effective date of this Act.

Appointment; Election and Term; Vacancy; Private Practice of Law

Sec. 9. (a) On the effective date of this Act, the governor shall appoint a criminal district attorney for Fort Bend County, who shall hold office until the general election in 1976 and until his successor is duly elected and has qualified. At the general election in 1976, there shall be elected a criminal district attorney for Fort Bend County for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, this officer shall be elected for a regular four year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(b) Any vacancy occurring in the office of the Criminal District Attorney of Fort Bend County shall be filled by the Commissioners Court of Fort Bend County, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(c) After January 1, 1977, the Criminal District Attorney of Fort Bend County and any assistant criminal district attorneys may not actively engage in the private practice of law while serving as criminal district attorney or assistant criminal district attorney in and for Fort Bend County.

District Attorney of 23rd Judicial District

Sec. 10. (a) On the effective date of this Act the District Attorney of the 23rd Judicial District of Texas shall only represent the State of Texas in the counties of Wharton and Matagorda.

The provisions of this Act shall not affect the office of district attorney or the duties and powers of the district attorney in the counties of Wharton and Matagorda, and the District Attorney of the 23rd Judicial District shall continue to perform his duties in the counties of Wharton and Matagorda. This Act applies only to Fort Bend County. From the effective date of this Act, the duties of the District Attorney of the 23rd Judicial District in Fort Bend County are divested from him and invested in the Criminal District Attorney of Fort Bend County, who shall represent the state in all district courts having jurisdiction in Fort Bend County.

(b) From and after the effective date of this Act, the District Attorney of the 23rd Judicial District shall only stand for election and be elected from the counties of Wharton and Matagorda. The present district attorney of the 23rd Judicial District shall continue in office as the district attorney in the counties of Wharton and Matagorda until the general election in 1976 and until his successor is elected and has qualified.

Effective Date

Sec. 11. The effective date of this Act is September 1, 1975.

[Acts 1975, 64th Leg., p. 1333, ch. 497, eff. Sept. 1, 1975.]

Art. 326k-77. Rockwall County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Rockwall County is created.

Qualifications; Oath; Bond; Residence

Sec. 2. The Criminal District Attorney of Rockwall County shall be a practicing attorney in this state and a resident of Rockwall County. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. He shall reside in Rockwall County during his term of office.

Duties; Fees; Commissions and Perquisites

Sec. 3. It is the duty of the Criminal District Attorney of Rockwall County or his assistants to be in attendance on each term and all sessions of the district courts in Rockwall County and all sessions and terms of the inferior courts of Rockwall County held for the transaction of criminal business, and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on the district and county attorneys in the various counties and judicial districts of this state. He shall collect such fees, commissions, and perquisites as are provided by law for similar services rendered by district and county attorneys of this state.

Commission; Compensation; Payment; Private Practice of Law

Sec. 4. (a) The Criminal District Attorney of Rockwall County shall be commissioned by the governor and shall receive as compensation an annual salary payable in equal monthly installments. The salary shall include the amount equal to the amount paid district attorneys by the State of Texas and

shall be paid by the comptroller of public accounts as appropriated by the legislature. In addition, the Criminal District Attorney of Rockwall County may be paid in equal bimonthly installments out of the officers' salary fund of Rockwall County an amount which, when added to the amount paid by the State of Texas, equals an amount not to exceed 90 percent of the total salaries paid to the Judge of the 86th Judicial District by the State of Texas and Rockwall, Kaufman, and Van Zandt counties.

(b) The Criminal District Attorney of Rockwall County shall not engage in the private practice of law.

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

Sec. 5. The Criminal District Attorney of Rockwall County may appoint a staff composed of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel as are required for the proper and efficient operation and administration of the office. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount set by the criminal district attorney with the advice and consent of the commissioners court and shall be paid by the commissioners court in equal bimonthly installments from the officers' salary fund of Rockwall County. In addition to the salary provided the criminal district attorney, his assistants, investigators, stenographers, clerks, and other personnel, the Commissioners Court of Rockwall County may allow the criminal district attorney, his assistants, and investigators such necessary expenses as the commissioners court deems reasonable. The expenses shall be paid as provided by law for other such claims of expenses.

Oath of Assistants; Powers and Duties

Sec. 6. The assistant criminal district attorneys of Rockwall County shall take, on appointment, the constitutional oath of office. The assistant criminal district attorneys of Rockwall County are authorized to administer oaths, file information, examine witnesses before the grand jury, and generally perform any duty devolving on the Criminal District Attorney of Rockwall County and exercise any power and perform any duty conferred by law on the Criminal District Attorney of Rockwall County.

Abolition of County Attorney's Office

Sec. 7. The office of County Attorney of Rockwall County is abolished from and after the effective date of this Act.

Election and Term; Vacancy

Sec. 8. (a) At the general election in 1976, there shall be elected by the qualified voters of Rockwall County a Criminal District Attorney for Rockwall County for a two-year term beginning on January 1, 1977.

(b) At the general election in 1978 and every four years thereafter, the criminal district attorney shall be elected for a regular four-year term, as provided by the Texas Constitution.

(c) A vacancy occurring in the office of criminal district attorney shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

Effective Date

Sec. 9. Except as provided by Section 8 of this Act, the provisions of this Act take effect on January 1, 1977.

[Acts 1975, 64th Leg., p. 1923, ch. 625, eff. Jan. 1, 1977.]

Art. 326k-78. Van Zandt County Criminal District Attorney

Creation of Office

Sec. 1. The constitutional office of Criminal District Attorney of Van Zandt County is created to become effective on September 1, 1975.

Qualifications; Oath; Bond; Residence

Sec. 2. (a) The Criminal District Attorney of Van Zandt County shall be at least 25 years of age, a practicing attorney in this state for two years, and a resident of Van Zandt County. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. He shall reside in Van Zandt County during his term of office.

(b) If no person with the qualifications of age and experience required in Subsection (a) has filed for this office 30 days prior to the filing deadline these qualifications of age and experience will be waived for the election involved only.

Duties; Fees, Commissions and Perquisites

Sec. 3. It is the duty of the Criminal District Attorney of Van Zandt County or his assistants to be in attendance on each term and all sessions of the district courts in Van Zandt County and all sessions and terms of the inferior courts of Van Zandt County held for the transaction of criminal business and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on the district and county attorneys in the various counties and judicial districts of this state. He shall collect such fees, commissions, and perquisites as are provided by law for similar services rendered by district and county attorneys of this state.

Commission; Compensation; Payment

Sec. 4. The Criminal District Attorney of Van Zandt County shall be commissioned by the governor and shall receive as compensation an annual salary payable in equal monthly installments. The salary

shall include the amount equal to the amount paid district attorneys by the State of Texas and shall be paid by the comptroller of public accounts, as appropriated by the legislature. In addition, the Criminal District Attorney of Van Zandt County shall be paid in equal monthly or bimonthly installments, as determined by the Commissioners Court of Van Zandt County, out of the officers' salary fund of Van Zandt County an amount which, when added to the amount paid by the State of Texas, equals an amount not less than 90 percent of the total salaries paid to the Judge of the 86th Judicial District by the State of Texas and Kaufman, Van Zandt, and Rockwall counties.

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

Sec. 5. The Criminal District Attorney of Van Zandt County, for the purpose of conducting the affairs of his office, may appoint a staff composed of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel as the Commissioners Court of Van Zandt County may authorize. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount set by the criminal district attorney with the approval of the commissioners court and shall be paid by the commissioners court in equal monthly or bimonthly installments from the officers' salary fund of Van Zandt County. In addition to the salary provided the criminal district attorney, his assistants, investigators, stenographers, clerks, and other personnel, the Commissioners Court of Van Zandt County may allow the criminal district attorney, his assistants and investigators such necessary expenses as the commissioners court deems reasonable. The expenses shall be paid as provided by law for other such claims of expenses.

Oath of Assistants; Powers and Duties

Sec. 6. The assistant criminal district attorneys of Van Zandt County shall take, on appointment, the constitutional oath of office. The criminal district attorney and his assistants shall have the exclusive right and duty to represent the State of Texas in all criminal cases pending in any court of Van Zandt County, as well as perform other statutory or constitutional duties imposed on district and county attorneys of this state. The assistant criminal district attorneys of Van Zandt County are authorized to administer oaths, file information, examine witnesses before the grand jury, and generally perform any duty devolving upon the Criminal District Attorney of Van Zandt County and exercise any power and perform any duty conferred by law on the Criminal District Attorney of Van Zandt County.

Private Practice of Law

Sec. 7. The Criminal District Attorney of Van Zandt County and his assistants shall not engage in the private practice of law while serving as criminal district attorney or assistant criminal district attorney of Van Zandt County. This section becomes effective on September 1, 1975.

Abolition of County Attorney's Office

Sec. 8. The office of County Attorney of Van Zandt County is abolished from and after the effective date of this Act.

County Attorney Commissioned; Election and Term; Vacancy

Sec. 9. (a) On the effective date of this Act, the County Attorney of Van Zandt County shall be commissioned as the Criminal District Attorney of Van Zandt County. He shall fill the office of criminal district attorney until the general election in 1976 and until his successor is lawfully elected and has qualified. The person elected at the general election in 1976 shall fill the office of criminal district attorney until the general election in 1978 and until his successor is lawfully elected and has qualified.

(b) At the general election in 1978 and every four years thereafter, this officer shall be elected for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) Any vacancy occurring in the office of Criminal District Attorney of Van Zandt County after the office is filled initially by the County Attorney of Van Zandt County, as provided in Subsection (a) of this section, shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

[Acts 1975, 64th Leg., p. 1959, ch. 646, §§ 1 to 9, eff. Sept. 1, 1975.]

Section 10 of the 1975 Act provided:

"If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid."

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

Creation of Office

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

Justifications; Oath; Bond; Residence

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

(b) If no person with the qualifications of age and experience required in Subsection (a) has filed for this office 30 days prior to the filing deadline, these qualifications of age and experience will be waived for the election involved only.

Duties; Fees, Commissions and Perquisites

Sec. 3. It is the duty of the Criminal District Attorney of Wood County or his assistants to be in attendance on each term and all sessions of the district courts in Wood County and all sessions and terms of the inferior courts of Wood County held for the transaction of criminal business and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on the district and county attorneys in the various counties and judicial districts of this state. He shall collect such fees, commissions, and perquisites as are provided by law for similar services rendered by district and county attorneys of this state.

Commission; Compensation; Payment

Sec. 4. The Criminal District Attorney of Wood County shall be commissioned by the governor and shall receive as compensation an annual salary payable in equal monthly installments. The salary shall include the amount equal to the amount paid district attorneys by the State of Texas and shall be paid by the comptroller of public accounts, as appropriated by the legislature. In addition, the Criminal District Attorney of Wood County shall be paid in equal monthly or bimonthly installments, as determined by the Commissioners Court of Wood County, out of the officers' salary fund of Wood County an amount which, when added to the amount paid by the State of Texas, equals an amount not less than 90 percent of the total salaries paid to the Judge of the 115th Judicial District by the State of Texas and Marion, Wood, and Upshur counties.

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

Sec. 5. The Criminal District Attorney of Wood County, for the purpose of conducting the affairs of his office, may appoint a staff composed of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel as the Commissioners Court of Wood County may authorize. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount set by the criminal district attorney with the approval of the commissioners court and shall be paid by the commissioners court in equal monthly or bimonthly installments from the officers' salary fund of Wood County. In addition to the salary provided the criminal district attorney, his assistants, investigators, stenographers, clerks, and other personnel, the Commissioners Court of Wood County may allow the criminal district attorney, his assistants and investigators such necessary expenses as the commissioners court deems reasonable. The expenses shall be paid as provided by law for other such claims of expenses. The provisions contained in this section shall in no way limit the authority of the legislature to provide for assistant district attorneys, investigators, stenographers, secretaries, or any other staff out of state funds when the legislature deems such supplementation of staff to be necessary.

Oath of Assistants; Powers and Duties

Sec. 6. The assistant criminal district attorneys of Wood County shall take, on appointment, the constitutional oath of office. The criminal district attorney and his assistants shall have the exclusive right and duty to represent the State of Texas in all criminal cases pending in any court of Wood County, as well as perform other statutory or constitutional duties imposed on district and county attorneys of this state. The assistant criminal district attorneys of Wood County are authorized to administer oaths, file information, examine witnesses before the grand jury, and generally perform any duty devolving on the Criminal District Attorney of Wood County and exercise any power and perform any duty conferred by law on the Criminal District Attorney of Wood County.

Private Practice of Law

Sec. 7. The Criminal District Attorney of Wood County and his assistants shall not engage in the private practice of law while serving as criminal district attorney or assistant criminal district attorney of Wood County. This section becomes effective on January 1, 1978.

Abolition of County Attorney's Office

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

County Attorney Commissioned; Election and Term; Vacancy

Sec. 9. (a) On September 1, 1977, the County Attorney of Wood County shall be commissioned as the Criminal District Attorney of Wood County. He shall fill the office of criminal district attorney until the general election in 1978 and until his successor is lawfully elected and has qualified.

(b) At the general election in 1978 and every four years thereafter, this officer shall be elected for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) Any vacancy occurring in the office of Criminal District Attorney of Wood County after the office is filled initially by the County Attorney of Wood County, as provided in Subsection (a) of this section, shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

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

Section 10 of the 1977 Act provided:

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

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

Creation of Office; Qualifications; Oath; Bond; Residence

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

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

Powers and Duties; Private Practice of Law

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

(b) The criminal district attorney shall have and exercise, in addition to the specific powers given and duties imposed on him and his assistants by this Act, all powers, duties, and privileges within Walker County conferred on district attorneys and county attorneys in the various counties and judicial districts of this state relative to criminal and civil matters for and in behalf of the county and State of Texas.

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

Commission; Compensation; Payment

Sec. 3. The Criminal District Attorney of Walker County shall be commissioned by the governor. The Criminal District Attorney of Walker County shall receive as compensation an annual salary from the State of Texas in such amount as may be fixed by the general laws of this state relating to the salary to be paid to the district attorneys of this state. In addition, the commissioners court may, in its discretion, supplement the salary paid by the state. The sum paid by the county shall be paid out of the general fund of the county.

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

Sec. 4. The Criminal District Attorney of Walker County, for the purpose of conducting the affairs of his office, may appoint a staff composed of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel as the Commissioners Court of Walker County may authorize. The assistants, investigators, stenographers, clerks, and other personnel shall serve at the will of the criminal district attorney. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount set by the criminal district attorney with the approval of the commissioners court and shall be paid by the commissioners court in equal monthly installments from the general fund of Walker County. In addition to the salary provided the criminal district attorney, his assistants, investigators, stenographers, clerks and other personnel, the Commissioners Court of Walker County may allow the criminal district attorney, his assistants and investigators such necessary expenses as the commissioners court deems reasonable. The expenses shall be paid as provided by law for other such claims of expenses.

Oath of Assistants; Duties

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

Abolition of County Attorney's Office

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

Appointment; Election and Term; Vacancy

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

(b) At the general election in 1978 and every four years thereafter, this officer shall be elected to a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) Any vacancy occurring in the office of criminal district attorney for Walker County shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

District Attorney of 12th Judicial District

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

and Trinity, but his duties in the county of Walker are divested from him and invested in the Criminal District Attorney of Walker County.

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

Effective Date

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

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

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

Creation of Office; Qualifications; Oath; Bond

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

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

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

Duties; Fees, Commissions and Perquisites

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

Compensation; Payment; Private Practice of Law

Sec. 4. The Criminal District Attorney of Bastrop County shall receive as compensation an annual salary from the State of Texas in such amount as may be fixed by the general laws of this state relating to the salary to be paid to the district attorneys of this state. In addition, the commissioners court may, in its discretion, supplement the salary paid by the state. The sum paid by the county shall be paid out of the officers' salary fund of the county, if adequate, and if inadequate, the commissioners court shall transfer the necessary funds from the general fund of the county to the officers' salary fund. The criminal district attorney is prohibited from any private practice of law without regard to whether or not he receives any compensation therefor.

Assistants and Stenographers; Appointment and Compensation; Expenses

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

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

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

Oath of Assistants; Duties

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

District Attorney of 21st Judicial District

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

but his duties in the County of Bastrop are divested from him and invested in the Criminal District Attorney of Bastrop County.

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

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

Art. 326k–82. 97th Judicial District Attorney

Creation of Office

Sec. 1. There is hereby created the office of district attorney in the 97th Judicial District composed of Archer, Clay, and Montague Counties.

Duties

Sec. 2. The district attorney for the 97th Judicial District shall represent the state in all criminal cases in the district court for the 97th Judicial District and perform other duties provided by law governing district attorneys.

Qualifications; Oath; Bond

Sec. 3. The district attorney of the 97th Judicial District shall be a practicing attorney in this state and a resident of any county included in the 97th Judicial District from the time of appointment or filing for election until the end of his term of office. He shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state.

Compensation

Sec. 4. The district attorney shall receive compensation for his services in an amount as may be fixed by the general law relating to the salaries paid to district attorneys by the state.

Election; Term of Office

Sec. 5. On the effective date of this Act, the Governor of Texas shall appoint a district attorney of the 97th Judicial District, who shall serve until January 1 following the general election in 1980 and until his successor is duly elected and has qualified. Thereafter, beginning with the general election in 1980, he shall be elected every four years for a four-year term beginning January 1 following his election.

Staff; Appointment and Compensation

Sec. 6. The district attorney, with the approval of the commissioners courts of Archer, Clay, and Montague Counties, may appoint assistants, investigators, and office personnel as he deems necessary. The salary of each person appointed shall be set by the district attorney with the approval of the commissioners courts of Archer, Clay, and Montague Counties.

Payment of Compensation of Staff and Operating Expenses from County Funds

Sec. 7. The salary of each person appointed by the district attorney and the other operating expenses of the office of district attorney shall be paid from county funds by the commissioners courts of Archer, Clay, and Montague Counties.

[Acts 1979, 66th Leg., p. 729, ch. 322, §§ 1 to 7, eff. June 6, 1979.]

Section 8 of the 1979 Act provided:

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

Art. 326k–83. Jasper County Criminal District Attorney

Creation

Sec. 1. The constitutional office of criminal district attorney of Jasper County is created.

Qualifications

Sec. 2. The criminal district attorney shall be at least 25 years of age, a practicing attorney in this state for five years, and a resident of Jasper County. The criminal district attorney shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. The criminal district attorney shall reside in Jasper County during his or her term of office.

Duties

Sec. 3. It is the duty of the criminal district attorney or his or her assistants to be in attendance on each term and all sessions of the district courts in Jasper County and all sessions and terms of the inferior courts of Jasper County held for the transaction of criminal business and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on the district and county attorneys in the various counties and judicial districts of this state. The criminal district attorney shall collect the fees, commissions, and perquisites that are provided by law for similar services rendered by district and county attorneys of this state.

Compensation

Sec. 4. The criminal district attorney shall be commissioned by the governor and shall receive as compensation an annual salary payable in equal monthly installments. The salary shall include the amount equal to the amount paid district attorneys by the State of Texas and shall be paid by the comptroller of public accounts, as appropriated by the legislature. In addition, the criminal district attorney shall be paid in equal monthly or bimonthly installments, as determined by the Commissioners Court of Jasper County, an amount which, when

added to the amount paid by the state, equals at least 90 percent of the total salary paid to each of the judges of the district courts in Jasper County.

Staff

Sec. 5. The criminal district attorney, for the purpose of conducting the affairs of the office, may appoint a staff composed of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel that the commissioners court may authorize. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount recommended by the criminal district attorney and approved by the commissioners court and shall be paid by the commissioners court in equal monthly or bimonthly installments from the funds of the county. In addition to the salary provided the criminal district attorney, the assistants, investigators, stenographers, clerks, and other personnel, the commissioners court may allow the criminal district attorney and the assistants and investigators the necessary expenses that the commissioners court deems reasonable. The expenses shall be paid as provided by law for other such claims of expenses. The provisions of this section do not limit the authority of the legislature to provide for assistant district attorneys, investigators, stenographers, secretaries, or other staff out of state funds when the legislature deems such supplementation of staff to be necessary.

Assistant Criminal District Attorneys

Sec. 6. The assistant criminal district attorneys shall take, on appointment, the constitutional oath of office. The criminal district attorney and his or her assistants shall have the exclusive right and duty to represent the State of Texas in all criminal cases pending in any court of Jasper County, as well as to perform other statutory or constitutional duties imposed on district and county attorneys of this state. The assistant criminal district attorneys are authorized to administer oaths, file informations, examine witnesses before the grand jury, and generally perform any duty devolving on the criminal district attorney and exercise any power and perform any duty conferred by law on the criminal district attorney.

Practice of Law Prohibited

Sec. 7. The criminal district attorney shall not engage in the private practice of law or receive a fee for the referral of a case while serving as criminal district attorney.

Election; Vacancies

Sec. 8. (a) On the effective date of this Act, the governor shall appoint a criminal district attorney for Jasper County, with the advice and consent of the senate, who shall hold office until the next general election and until his or her successor is duly elected and has qualified. At the general election in 1982 and every four years thereafter, there shall be elected a criminal district attorney for a regular four-year term as provided by Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(b) A vacancy occurring in the office of criminal district attorney shall be filled by appointment by the governor, with the advice and consent of the senate, and the appointee shall hold office until the next general election and until his or her successor is elected and has qualified.

County Attorney Abolished

Sec. 9. The office of county attorney of Jasper County is abolished.

Duties of District Attorney

Sec. 10. On and after the effective date of this Act, the district attorney of the 1st Judicial District shall represent the state only in the counties of Newton, Sabine, and San Augustine and shall be elected only from the counties of Newton, Sabine, and San Augustine. The present district attorney shall continue in office as the district attorney in the counties of Newton, Sabine, and San Augustine until the general election in 1980 and until his or her successor is elected and has qualified.

[Acts 1979, 66th Leg., p. 1031, ch. 462, eff. Sept. 1, 1979.]

Art. 326k-84. Denton County Criminal District Attorney

Creation of Office; Qualifications; Oath; Bond

Sec. 1. (a) The constitutional office of criminal district attorney of Denton County is created.

(b) The criminal district attorney shall be at least 28 years of age, a practicing attorney in this state for five years, and a resident of Denton County for three years prior to his or her appointment or election. The criminal district attorney shall possess all of the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. The criminal district attorney shall reside in Denton County during his or her term of office.

Powers and Duties

Sec. 2. (a) The criminal district attorney or his or her assistants shall be in attendance on each term and all sessions of any district court in Denton County held for the transaction of criminal business and in attendance on each term and all sessions of the inferior courts of Denton County held for the transaction of criminal business, except the city court of an incorporated city. The criminal district attorney or his or her assistants shall exclusively represent the State of Texas in all criminal matters before these courts and shall represent Denton County in all matters before these courts or any other court where Denton County has pending business of any nature, matter, or interest. This Act does not prevent Denton County from obtaining other legal counsel in civil matters at any time it sees fit to do so.

(b) The criminal district attorney shall have and exercise, in addition to the specific powers given and duties imposed by this Act, all powers, duties, and privileges within Denton County that are conferred on district attorneys and county attorneys in various counties and judicial districts of this state relative to criminal and civil matters for and in behalf of the county and the state.

(c) The criminal district attorney shall collect the fees, commissions, and perquisites that are provided by law for similar services rendered by district and county attorneys of this state.

Compensation

Sec. 3. The criminal district attorney shall receive as compensation an annual salary from the state in the amount fixed by the general laws of this state relating to the salary to be paid to the district attorneys of this state. In addition, the commissioners court may, in its discretion, supplement the salary paid by the state. The sum paid by the county shall be paid out of the officer's salary fund of the county, if adequate, and if inadequate, the commissioners court shall transfer the necessary funds from the general funds of the county to the officer's salary fund. The criminal district attorney is prohibited from the private practice of law without regard to whether or not he or she receives compensation therefor.

Staff

Sec. 4. (a) The criminal district attorney, for the purpose of conducting the affairs of the office, may appoint the assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel that the Denton County Commissioners Court may authorize. All salaries of assistant criminal district attorneys, investigators, stenographers, clerks, and other personnel shall be an amount set by the criminal district attorney with the approval of the commissioners court and shall be paid by the commissioners court in equal monthly or bi-monthly installments from the officer's salary fund of Denton County.

(b) In addition to the salary provided the criminal district attorney and the assistants, investigators, stenographers, clerks, and other personnel, the commissioners court may allow the criminal district attorney and the assistants and investigators the necessary expenses that the commissioners court deems reasonable. The expenses shall be paid as provided by law for other claims of expenses. This section does not limit supplementation provided by the legislature for assistant district attorneys, investigators, stenographers, secretaries, or other staff out of state funds if the legislature deems such supplementation of staff to be necessary.

Assistant Criminal District Attorneys

Sec. 5. An assistant criminal district attorney will take the constitutional oath of office, shall be a person licensed to practice law in this state, and may perform any duty devolving on the criminal district attorney of Denton County.

Election and Terms; Vacancy

Sec. 6. (a) At the primary and general elections in 1980, there shall be elected, by the qualified voters of Denton County, a criminal district attorney for Denton County for a two-year term beginning January 1, 1981.

(b) At the general election in 1982 and every four years thereafter, the criminal district attorney shall be elected for a regular four-year term, as provided by Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy occurring in the office of criminal district attorney shall be filled by appointment by the governor and the appointee shall hold office until the next general election and until his or her successor is elected and has qualified.

County Attorney Abolished

Sec. 7. The office of county attorney of Denton County is abolished from and after the effective date of this Act.

Sec. 8. [Amends § 1 of art. 332b]

Effective date

Sec. 9. Except as provided by Subsection (a), Section 6, this Act takes effect on January 1, 1981. [Acts 1979, 66th Leg., p. 1148, ch. 553, §§ 1 to 7, 9, eff. Jan. 1, 1981.]

Art. 326k-85. Jackson County Criminal District Attorney

(a) The constitutional office of criminal district attorney of Jackson County is created.

(b) The criminal district attorney shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. The criminal district attorney shall reside in Jackson County during his term of office.

(c) It is the duty of the criminal district attorney or his assistants to be in attendance on each term and all sessions of the district courts in Jackson County and all sessions and terms of the inferior courts of Jackson County held for the transaction of criminal business and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform such other duties as may be conferred by law on the district and county attorneys in the various counties and judicial districts of this state. The criminal district attorney shall collect the fees, commissions, and perquisites that are provided by law for similar services rendered by district and county attorneys of this state.

(d) The criminal district attorney shall be commissioned by the governor and shall receive an annual salary from the state, to be paid by the comptroller of public accounts in equal monthly installments, in

an amount equal to the amount paid district attorneys by the state, as appropriated by the legislature. In addition, the commissioners court may, in its discretion, supplement the salary paid by the state.

(e) The criminal district attorney may appoint the staff required for the proper and efficient operation and administration of the office, as provided by general law.

(f) On the effective date of this Act, the governor shall appoint a criminal district attorney of Jackson County, who shall hold office until the next general election and until a successor is elected and has qualified. At the general election in 1982 and every four years thereafter, this officer shall be elected to a regular four-year term as provided by Article XVI, Section 65, of the Texas Constitution. A vacancy occurring in the office of the criminal district attorney of Jackson County shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until a successor is elected and has qualified.

(g) The office of county attorney of Jackson County is abolished.

(h) From and after the effective date of this Act, the district attorney of the 24th Judicial District shall continue to fulfill the duties of the district attorney in the counties of DeWitt, Goliad, and Refugio, but his duties in the County of Jackson are divested from him and invested in the criminal district attorney of Jackson County. From and after the effective date of this Act, the district attorney of the 24th Judicial District shall be elected only from the counties of DeWitt, Goliad, and Refugio.

[Acts 1981, 67th Leg., p. 1845, ch. 429, § 13, eff. Sept. 1, 1981.]

Art. 326k-86. Caldwell County Criminal District Attorney

(a) The constitutional office of criminal district attorney of Caldwell County is created.

(b) The criminal district attorney shall be at least 25 years of age, a practicing attorney in this state for 5 years, and a resident of Caldwell County. The criminal district attorney shall possess all the qualifications, take the oath of office, and give the bond required of district attorneys by the constitution and general laws of this state. The criminal district attorney shall reside in Caldwell County during his term of office.

(c) It is the duty of the criminal district attorney or the criminal district attorney's assistants to be in attendance on each term and all sessions of the district courts in Caldwell County and all sessions and terms of the inferior courts of Caldwell County held for the transaction of criminal business and exclusively to represent the State of Texas in all criminal matters pending before those courts and perform other duties as may be conferred by law on the district and county attorneys in the various counties and judicial districts of this state. The criminal district attorney shall collect the fees, commissions and perquisites that are provided by law for similar services rendered by district and county attorneys of this state.

(d) The criminal district attorney shall be commissioned by the governor and shall receive an annual salary from the state, to be paid by the comptroller in equal monthly installments in an amount equal to 90 percent of the compensation that is provided for a district judge in the General Appropriations Act. In addition, the commissioners court may, in its discretion, supplement the salary paid by the state.

(e) The criminal district attorney may appoint the staff required for the proper and efficient operation and administration of the office, as provided by general law.

(f) On the effective date of this Act, the governor shall appoint a criminal district attorney of Caldwell County, who shall hold office until the general election in 1982 and until a successor is elected and has qualified. At the general election in 1982 and every four years thereafter, this officer shall be elected to a regular four-year term as provided by Article XVI, Section 65, of the Texas Constitution. A vacancy occurring in the office of criminal district attorney of Caldwell County shall be filled by appointment by the governor, and the appointee shall hold office until the next general election and until a successor is elected and has qualified.

(g) The office of county attorney of Caldwell County is abolished.

(h) From and after the effective date of this Act, the district attorney of the 22nd Judicial District shall continue to fulfill the duties of the district attorney in Comal County and shall be elected only from Comal County, but his duties in Caldwell County are divested from him and invested in the criminal district attorney of Caldwell County.

[Acts 1981, 67th Leg., p. 1846, ch. 429, § 14, eff. Sept. 1, 1981.]

2. COUNTY ATTORNEYS

Art. 331j. Counties of 20,000 to 20,500; Secretary

The Commissioners Court of any county having a population of not less than twenty thousand (20,000) nor more than twenty thousand, five hundred (20,500), according to the last preceding federal census, may employ a secretary to the county attorney. The salary shall be paid out of the Officers' Salary Fund of the county in twelve (12) equal monthly installments.

[Amended by Acts 1981, 67th Leg., p. 559, ch. 237, § 1, eff. Sept. 1, 1981.]

Section 146 of the 1981 amendatory act provides:

"(a) This Act is not intended to revive a law that was impliedly repealed by a law enacted by the 66th Legislature or a previous legislature.

"(b) To the extent that a law enacted by the 67th Legislature, Regular Session, conflicts with this Act, the other law prevails, regardless of relative date of enactment or relative effective date."

Art. 331m. County Attorney of Terry County

The County Attorney of Terry County shall represent the State of Texas in all matters pending before the district court in Terry County.

[Amended by Acts 1979, 66th Leg., p. 854, ch. 380, § 1, eff. Aug. 27, 1979.]

3. GENERAL PROVISIONS

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

Sec. 1. Collin County and Orange County, in all of which counties there is either the office of criminal district attorney or the office of county attorney performing the duties of a district attorney, shall receive annually from the state an amount equal to the compensation paid by the state to district attorneys as authorized by Article V, Section 21, Constitution of Texas. Such compensation shall be paid into the salary fund of each county in 12 equal monthly installments.

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

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

[Amended by Acts 1975, 64th Leg., p. 1899, ch. 606, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1951, ch. 642, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1866, ch. 742, §§ 2, 3, eff. June 16, 1977; Acts 1979, 66th Leg., p. 1148, ch. 553, § 8, eff. Jan. 1, 1981; Acts 1979, 66th Leg., p. 1710, ch. 705, § 8, eff. Aug. 27, 1979.]

Sections 2 and 3 of Acts 1975, 64th Leg., ch. 606, provided:

"Sec. 2. There is hereby appropriated out of the general revenue fund the sum of $5,000 for each fiscal year of the biennium for each county attorney, beginning September 1, 1975, to fund the state's cost under this Act.

"Sec. 3. This Act shall become effective on September 1, 1975."

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

Art. 332b–1. Marion, Lamb, Terry, Yoakum, Cass, Lamar, Crosby, Robertson, and Ellis Counties; Compensation of Criminal District or County Attorney

In Marion County, Lamb County, Terry County, Yoakum County, Cass County, Lamar County, Crosby County, Robertson County, and Ellis County, in all of which counties there is either the office of criminal district attorney or the office of county attorney performing the duties of a district attorney, the official performing such services shall be compensated for his services by the State in such manner and in such amount as may be fixed by the general law relating to the salary to be paid to district attorneys by the State. The Commissioners Court may pay such official any compensation it deems advisable and shall pay such official sufficient compensation to insure that his total compensation is not less than the total compensation received by such official on the effective date of this amendment.

[Acts 1975, 64th Leg., p. 1853, ch. 578, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1866, ch. 742, § 1, eff. June 16, 1977; Acts 1979, 66th Leg., p. 1711, ch. 705, § 9, eff. Aug. 27, 1979; Acts 1981, 67th Leg. p. 58, ch. 25, § 18, eff. April 8, 1981; Acts 1981, 67th Leg., p. 932, ch. 346, § 2, eff. Sept. 1, 1981.]

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

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

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

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

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

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

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

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

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

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

Art. 332b–4. Professional Prosecutors Act

Purpose and Title

Sec. 1. This Act shall be known as the Professional Prosecutors Act and is enacted for the purpose of increasing the effectiveness of law enforcement in the State of Texas.

Definition

Sec. 2. In this Act, "district attorney" means each of the district attorneys for the 2nd, 3rd, 9th, 12th, 21st, 26th, 27th, 30th, 32nd, 34th, 36th, 38th, 39th, 43rd, 47th, 51st, 52nd, 63rd, 64th, 66th, 70th, 75th, 76th, 81st, 85th, 97th, 105th, 106th, 118th, 119th, 145th, 155th, 159th, 173rd, 196th, 198th, 216th, 220th, 235th, and 271st Judicial Districts; the criminal district attorney in each of the counties of Bastrop, Bee, Bexar, Brazoria, Caldwell, Eastland, Fort Bend, Galveston, Gregg, Harrison, Hays, Hidalgo, Jackson, Jefferson, Kaufman, Lubbock, McLennan, Navarro, Randall, Rockwall, Smith, Tarrant, Taylor, Upshur, Van Zandt, Walker, and Wood; the county attorney performing the duties of the district attorney in each of the counties of Cameron, Castro, Falls, Fannin, Freestone, Grayson, Limestone, Morris, Ochiltree, Red River, Rusk, and Willacy; and the county attorney or criminal district attorney, as the case may be, of Denton County.

Compensation

Sec. 3. Each district attorney governed by this Act shall receive from the state compensation equal to 90 percent of the compensation that is provided for a district judge in the General Appropriations Act. Each commissioners court may supplement the district attorney's state salary, but shall in no event pay the district attorney an amount less than the compensation it provides its highest paid district judge.

Expenses and Allowances

Sec. 4. Each district attorney governed by this Act shall receive not less than $22,500 per annum from the state to be used by the district attorney to help defray the salaries and expenses of the office but not to be used to supplement the district attorney's salary. Each district attorney shall submit annually a sworn account to the comptroller of public accounts showing how this money was spent during the year.

Limitations on Law Practice

Sec. 5. (a) A district attorney governed by this Act may not engage in the private practice of law, but may complete all civil cases that are not in conflict with the interest of any of the counties of the district in which the district attorney serves and that are pending in court on the effective date of this Act or are pending in court before the district attorney takes office. A district attorney may not accept a fee from an attorney to whom the district attorney has referred a case.

(b) Subsection (a) of this section also applies to an assistant of a district attorney governed by this Act if, from all funds received, the assistant district attorney receives a salary that is equal to or greater than 80 percent of the salary paid by the state to the district attorney under this Act.

Construction

Sec. 6. It is the purpose of this Act to increase funds available for use in prosecution. The commissioners court in each county that has a district attorney governed by this Act shall provide the funds necessary to effectuate the purpose of this Act and shall continue to provide funds for the office of the district attorney in an amount that is equal to or greater than the amount of funds provided for the office by the county on the effective date of this Act. This provision does not apply to local supplementation to the salary of the district attorney.

Effect on Art. 3912e

Sec. 7. Subsection (b), Section 13, Chapter 465, Acts of the 44th Legislature, 2nd Called Session, 1935 (Article 3912e, Vernon's Texas Civil Statutes), continues in force only as to those counties and those district attorneys that are not subject to this Act.
[Acts 1979, 66th Leg., p. 1709, ch. 705, §§ 1 to 7, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 931, ch. 346, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 1847, ch. 429, § 15, eff. Sept. 1, 1981.]

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

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

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

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

Sec. 4. Nothing in this Act requires a county official or employee to accept the legal counsel provided for him in this Act.
[Amended by Acts 1977, 65th Leg., p. 1116, ch. 414, § 1, eff. Aug. 29, 1977.]

Art. 332d. Prosecutor Council

Purpose of Act

Sec. 1. The Legislature of the State of Texas finds and declares that a uniform quality of prosecution will aid in improving the efficiency and effectiveness of the state's criminal justice system. The legislature recognizes that the prosecutor performs a

judicial function which has a significant effect on the executive branch and on law enforcement. To this end, it is the purpose of this Act to provide a centralized agency of the judicial department of government capable of delivering technical assistance, educational services, and professional development training to the prosecutors of Texas and their assistants and to improve the administration of criminal justice through professionalization of the prosecuting attorney's office.

Creation

Sec. 2. There is created the Prosecutor Council, hereinafter referred to as the "council."

Membership; "Prosecuting Attorney" Defined

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

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

(2) five incumbent, elected prosecuting attorneys to be elected by prosecuting attorneys, at least one each of whom shall be a county attorney, a district attorney, and a criminal district attorney.

(b) The supreme court shall promulgate rules for electing prosecutors to the council.

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

Terms

Sec. 4. The members of the council shall serve overlapping six-year terms. Initially, the governor shall appoint one citizen for two years, two citizens for four years, and one citizen for six years. Initially, two prosecuting attorneys shall be elected for two years, one prosecuting attorney shall be elected for four years and two prosecuting attorneys shall be elected for six years. The terms of the present members shall expire on December 31, 1981, and each member shall continue to serve until his successor has been appointed or elected.

Vacancies

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

Expenses

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

Meetings; Officers; Quorum; Executive Director

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

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

Duties

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

(1) develop and adopt minimum standards for the operation of prosecuting attorneys' offices;

(2) approve courses for in-service training and professional development of prosecuting attorneys, their assistants, and staff;

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

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

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

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

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

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

Powers

Sec. 9. The council may:

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

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

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

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

(5) pay the expenses of prosecutors and their staffs to attend professional development courses, to assist other prosecutors, to advise the council, and to perform the other activities that the council deems to be in the interest of improving the quantity of prosecution; and

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

Reprimand, Disqualification, or Removal from Office

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

(b) For purposes of this Act:

(1) "incompetency" means:

(A) gross ignorance or neglect of official duty;

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

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

(2) "misconduct" means:

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

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

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

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

(d) A prosecuting attorney is suspended from office when:

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

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

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

(e) A prosecuting attorney is removed from office upon final adjudication or conviction for any cause of action which was the basis for his suspension. The court entering the appropriate judgment as provided by Subsection (d) of this section shall include an order suspending the prosecuting attorney and removing him from office when the judgment becomes final.

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

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

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

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

(3) In the conduct of investigations or hearings, any member of the council or the master may administer oaths and issue subpoenas for the attendance of witnesses and to compel testimony and the production of books, records, papers, accounts, and documents relevant to any investigation or hearing. Orders for attendance of witnesses, testimony, or production of evidence shall be enforceable by contempt proceedings in the district court.

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

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

(6) In any investigation or hearing, the council or master may order the deposition of any person be

taken in accordance with the Texas Rules of Civil Procedure.

(h) Upon the appointment of a master, notice shall be given to the prosecuting attorney who is the subject of any complaint or investigation, specifying the matters under investigation and the complaint against him and setting a date for a hearing or for the taking of testimony for purposes of investigation.

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

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

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

(*l*) When a petition for removal is filed pursuant to this section, the judge of the court in which it is filed shall request the appointment of a special judge who shall hear the case. Upon appointment, the special judge shall appoint an attorney to prosecute the case, such counsel to be selected from a list of not less than five qualified attorneys submitted by the council.

(m) Upon disqualification or suspension of a prosecuting attorney, the duties of his office shall be performed by a prosecuting attorney pro tempore as provided by this Act. The prosecuting attorney pro tempore shall serve until the disqualification or suspension is lifted or until a successor has been appointed and qualified.

Prosecuting Attorney Pro Tempore

Sec. 10A. (a) A prosecuting attorney pro tempore shall be appointed by the body or person who has the authority to appoint the prosecuting attorney in the event of a vacancy.

(b) The prosecuting attorney pro tempore shall receive as compensation an amount not less than the compensation the disqualified or suspended prosecuting attorney was entitled to receive. Each governmental body shall pay that part of the compensation it paid the predecessor out of any available funds. This obligation shall take precedence over any other the governmental body may have.

Limitations; Intent of Legislative

Sec. 10B. No prosecuting attorney shall be reprimanded or removed for misconduct as defined by Section 10 of this Act occurring more than four years prior to the time of filing of a complaint with the council, but limitation will not run where fraud or concealment is involved until the misconduct is discovered or should have been discovered by reasonable diligence. The complaint shall be considered as filed when made in writing to the executive director of the council. It is the intention of the legislature that there continue to be no restrictions to the reprimand or removal of a prosecuting attorney other than those stated in this Act.

Severability

Sec. 11. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are declared to be severable.

Effect of Constitutional Amendment

Sec. 12. Repealed by Acts 1981, 67th Leg., p. 2652, ch. 709, § 4, eff. Aug. 31, 1981.

[Acts 1977, 65th Leg., p. 917, ch. 345, §§ 1 to 12, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2635, ch. 707, § 4(15), eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2649, ch. 709, §§ 1 to 4, eff. Aug. 31, 1981.]

Art. 332d–1. Application of Sunset Act

The Prosecutor Council is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless the Prosecutor Council is continued in existence as provided by that Act, the Prosecutor Council is abolished and this Act expires effective September 1, 1985.

[Acts 1981, 67th Leg., p. 2652, ch. 709, § 5, eff. Aug. 31, 1981.]

Sections 1 to 4 of the 1981 Act amended art. 332d.

4. PUBLIC DEFENDERS

Art. 341–2. Counties Having Four County and Four District Courts; Appointment and Compensation; Entitlement of Indigents

Findings and Purpose

Sec. 1. (a) Recent federal and state court decisions have emphasized the constitutional obligation of the state to afford needy persons the effective assistance of counsel in criminal actions. In some counties, the bar has partially met this obligation through creation of a nonprofit organization, primarily financed by federal grants, which provides counsel; in others, volunteers from the bar donate

their services to defend needy persons. And in still other counties, the courts concerned appoint counsel under Articles 26.04 and 26.05, Code of Criminal Procedure, 1965, as amended.

(b) The obligation to furnish competent counsel imposes a substantial burden on county financial resources. None of the alternative methods presently employed to furnish counsel has proved entirely satisfactory and the legislature finds that a county-wide public defender system, functioning either alone or in a combination with other methods, may better satisfy the constitutional and statutory obligations for providing counsel for the needy accused.

Appointment of Public Defender

Sec. 2. (a) The commissioners court of any county having four county courts and four district courts may appoint one or more attorneys to serve as a public defender to serve at its pleasure.

(b) To be eligible for appointment as a public defender, a person must:

(1) be a member of the State Bar of Texas;

(2) have practiced law at least three years; and

(3) be experienced in the practice of criminal law.

Compensation

Sec. 3. (a) The public defenders shall receive an annual salary to be fixed by the commissioners court and paid from the appropriate county fund.

(b) The provisions of Article 26.05, Code of Criminal Procedure, 1965, as amended, regarding daily appearance fees shall not apply to public defenders; however, all other provisions of Article 26.05, Code of Criminal Procedure, 1965, as amended, regarding fees and allowances shall apply to public defenders.

(c) A public defender may not engage in any criminal law practice other than that authorized in this Act and shall accept nothing of value, except as authorized in this Act, for any services rendered in connection with a criminal case.

(d) A violation of Subsection (c), Section 3 of this Act shall be cause for removal of the public defender by the judge who appointed him.

Entitlement to Representation

Sec. 4. (a) Any indigent person charged with a criminal offense or any indigent person who is a party in a juvenile delinquency proceeding shall be represented by a public defender in a county having at least four county courts and at least four district courts, if one has been appointed, or other practicing attorneys appointed by a court of competent jurisdiction. If an attorney, other than a public defender, is appointed, he shall be compensated as provided in Article 26.05, Code of Criminal Procedure, 1965, as amended.

(b) A public defender may inquire into the financial condition of any person whom he is appointed to represent and shall report any findings of the investigation to the court appointing him. The court may hold a hearing into the financial condition of the defendant and shall make a determination as to his indigency and to his entitlement to representation by a public defender.

Substitute Defender

Sec. 5. At any stage, including appeal or other postconviction proceedings, the court concerned may assign a substitute attorney. The substitute attorney shall be entitled to compensation as provided in Article 26.05, Code of Criminal Procedure, 1965, as amended.

[Acts 1979, 66th Leg., p. 1357, ch. 609, §§ 1 to 5, eff. Aug. 27, 1979.]

TITLE 16

BANKS AND BANKING

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

Article
342–103a. Application of Sunset Act.

Art. 342–102. Definitions

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

"Code"—The Texas Banking Code of 1943.

"Banking Department"—The Banking Department of Texas.

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

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

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

"Commissioner"—The Banking Commissioner of Texas.

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

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

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

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

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

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

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

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

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

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

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

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

"Capital"—The common capital stock.

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

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

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

"Bank Services"—Activities, such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and marking of checks, statements, notices and similar items or other clerical, bookkeeping, accounting, statistical or similar functions performed by a bank, that may be categorized as data processing and any services associated with the electronic transfer of funds.

"Processor"—A state or national bank, banking affiliate, corporation, or other business that performs bank services.

[Amended by Acts 1977, 65th Leg., p. 1614, ch. 631, § 1, eff. June 15, 1977; Acts 1981, 67th Leg., p. 2468, ch. 641, § 1, eff. June 15, 1981.]

[1] Effective 90 days after May 11, 1943, date of adjournment.
[2] Former art. 342 et seq.
[3] Former art. 542 et seq.

Art. 342–103a. Application of Sunset Act

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

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

[1] Article 5429k.

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

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

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

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

[1] Article 5429k.

CHAPTER TWO. THE BANKING DEPARTMENT OF TEXAS

Article

342–201a. Application of Sunset Act.
342–208a. Examination of Nonbanking Affiliates.

Art. 342–201. Banking Commissioner—Election—Qualification—Compensation

By and with the advice and consent of the Senate, the Finance Commission, by at least (5) affirmative votes, shall elect a Commissioner who shall serve at the pleasure of the Finance Commission, provided that the Commissioner first elected shall take office at the expiration of the term of office of the present Commissioner. Said Commissioner shall be an employee of the Finance Commission and subject to its orders and directions. The Commissioner shall have not less than ten (10) years experience in banking or bank supervision. The Commissioner shall receive such compensation as is fixed by the Finance Commission, but never to exceed the compensation now paid to the Governor of the State.

[Amended by Acts 1981, 67th Leg., p. 2210, ch. 513, § 1, eff. June 12, 1981.]

Art. 342–201a. Application of Sunset Act

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

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

[1] Article 5429k.

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

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

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

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

Art. 342–206. Oath and Bond of Commissioner and Other—Premiums

The Commissioner, the Deputy Commissioner, the Departmental Examiner, the Liquidating Supervisor, and each examiner, assistant examiner, and special agent, the Building and Loan Supervisor and each building and loan examiner and each other officer and employee specified by the Commissioner shall, before entering upon the duties of his office, take an oath of office and make a fidelity bond in the sum of One Hundred Thousand Dollars ($100,000), payable to the Governor of the State of Texas, and his successors in office, in individual, schedule or blanket form, executed by a surety appearing upon the list of approved sureties acceptable to the United States Government. Any bond provided under this article shall be on a form approved by the Finance Commission. The premiums for such bonds shall be paid out of the funds appropriated for the operation of the Banking Department.

[Amended by Acts 1981, 67th Leg., p. 1829, ch. 417, § 1, eff. June 11, 1981.]

[1] Article 5429k.

Art. 342–208. Examination—May Administer Oaths—Fees—Disposition

Text as amended by Acts 1981, 67th Leg., p. 468, ch. 199, § 1

The Commissioner shall examine each state bank annually and no more, unless the Commissioner deems additional examinations necessary to safeguard the interest of depositors, creditors, and stockholders, and to enforce the provisions of the Banking Code of 1943. The Commissioner may accept examinations of state banks by a federal agency in lieu of an examination required by this Article. The Commissioner, Deputy Commissioner, Departmental Examiner and each examiner may administer oaths and examine any person under oath upon any subject which he deems pertinent to the financial condition of any state bank. The Commissioner shall assess and collect a fee in connection with each examination, based on the bank's total assets, covering the cost of such examination, the equitable or proportionate cost of maintenance and operation of the Banking Department, and the enforcement of the provisions of the Banking Code of 1943, including but not limited to, the premium on the bond of the Commissioner and other officers and employees of the Banking Department, and such other fidelity or casualty insurance or coverage required or furnished pursuant to or in connection with the provisions of the Banking Code of 1943, together with all other expenses of the Banking Department, which fee shall in no event be less than Fifty Dollars ($50) for each examination so made. Such fees, together with any other fees, penalties or revenues collected by the Commissioner, pursuant to any law of this State, shall be retained by the Banking Department and shall be expended only for the expenses of said department.

[Amended by Acts 1981, 67th Leg., p. 468, ch. 199, § 1, eff. May 25, 1981.]

For text as amended by Acts 1981, 67th Leg., p. 2469, ch. 641, § 2, see art. 342–208, post

Art. 342-208. Examination—May Administer Oath—Fees—Disposition

Text as amended by Acts 1981, 67th Leg., p. 2469, ch. 641, § 2

The Commissioner shall examine each state bank three times each twenty-four months and no more, unless he deems additional examinations necessary to safeguard the interest of depositors, creditors, and stockholders, and to enforce the provisions of the Banking Code of 1943. The performance of bank services by a processor shall be subject to regulation and examination by the Commissioner to the same extent as if the services were being performed by the bank itself on its own premises. The Commissioner, Deputy Commissioner, Departmental Examiner and each examiner may administer oaths and examine any person under oath upon any subject which he deems pertinent to the financial condition of any state bank. The Commissioner shall assess and collect a fee in connection with each examination, based on the bank's total assets, covering the cost of such examination, the equitable or proportionate cost of maintenance and operation of the Banking Department, and the enforcement of the provisions of the Banking Code of 1943, including but not limited to, the premium on the bond of the Commissioner and other officers and employees of the Banking Department, and such other fidelity or casualty insurance or coverage required or furnished pursuant to or in connection with the provisions of the Banking Code of 1943, together with all other expenses of the Banking Department, which fee shall in no event be less than Fifty Dollars ($50) for each examination so made. Such fees, together with any other fees, penalties or revenues collected by the Commissioner, pursuant to any law of this State, shall be retained by the Banking Department and shall be expended only for the expenses of said department.

[Amended by Acts 1981, 67th Leg., p. 2469, ch. 641, § 2, eff. June 15, 1981.]

For text as amended by Acts 1981, 67th Leg., p. 468, ch. 199, § 1, see art. 342-208, ante

Art. 342-208a. Examination of Nonbanking Affiliates

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

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

Art. 342-209. Call Statements—Filing—Publication—Posting—Penalty

The Commissioner shall at least twice each year call upon each state bank to make and publish a statement of its financial condition as of the close of business on a date specified in such call. Such statements shall be upon such form and reflect such information as may be prescribed by the Commissioner; shall be sworn to by any one of the following: the president, vice-president, cashier, assistant cashier, secretary, or treasurer, and attested by at least three directors; and shall be filed with the Commissioner within the time specified in the call. Such statement shall be published within the time specified in the call in some newspaper of general circulation published in the county of the bank's domicile, or if no such newspaper is published in said county, then in a newspaper of general circulation published in an adjacent county, and a publisher's certificate reflecting such publication shall be filed with the Commissioner within the time specified in the call. A copy of the latest called statement shall be kept posted in the lobby of the banking house at a point accessible to the public. Any state bank which fails to file or publish such statement or to file such publisher's certificate, within the periods herein prescribed in the call, or to post such notice, shall be subject to a penalty not exceeding Five Hundred Dollars ($500) to be collected by suit by the Attorney General on behalf of the Commissioner.

[Amended by Acts 1981, 67th Leg., p. 1819, ch. 409, § 1, eff. Aug. 31, 1981.]

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

Art. 342-303. Repealed by Acts 1981, 67th Leg., p. 424, ch. 176, § 1, eff. May 20, 1981

Art. 342-304. Articles of Association

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

1. The name of the corporation.

2. The city or town and the county of its domicile.

3. Such of the powers listed in Article 1 of this Chapter as it shall choose to exercise.

4. The capital and the denomination and number of shares.

5. The number of directors.

6. The period of duration, which may be perpetual.

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

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

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

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

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

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

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

[Amended by Acts 1977, 65th Leg., p. 1965, ch. 784, § 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 430, ch. 182, § 1, eff. May 20, 1981.]

Art. 342-312. Amendment of Articles of Association—Rights of Stockholders upon Increase in Capital—Stock Option Plans

Subject to the provisions of this Code, any state bank may amend its articles of association for any lawful purpose.

If the owners of record of two-thirds of the capital stock, at any regular meeting of stockholders, or any special meeting called for that purpose, vote to amend the charter, the board of directors shall prepare, execute in the manner provided for the execution of articles of association, and file with the Commissioner an amendment to the articles of association. If the Commissioner finds that the amendment is not violative of law and does not prejudice the interest of depositors and creditors or the public, he shall approve such amendment and deliver to the bank a certified copy thereof, and said amendment shall thereupon become effective; provided, however, that if a state bank does not have the power to receive demand deposits, no amendments of its articles of association adopting any power provided under Subsection (a), (b), (c), (d), or (f) of Article 1 of this Chapter and no amendment changing the domicile of any state bank shall be effective until approved by the State Banking Board in the manner provided for the approval of an original application for charter. Any state bank may amend its articles of association to extend its corporate existence for a perpetual period or for any period of years.

Each stockholder of a state bank shall be entitled to his proportionate part of any increase of stock effected out of surplus funds or undivided profits, and shall be entitled to subscribe for his proportionate share of any capital increase to be paid in cash; provided, however, the bank may arrange for the disposition of fractional shares by those entitled

thereto or pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined. Each stockholder or his assignee, in event he elects to assign such rights of subscription, shall subscribe for and pay the amount of such subscription to the corporation within ten (10) days after the stockholders have adopted such amendment, otherwise the board of directors may allocate the unsubscribed or unpaid portion of the increase among the other stockholders or otherwise as they deem to the best interest of the bank.

With prior approval of the owners of record of two-thirds of the capital stock, shares of stock in a bank, which are created by a capital increase, may be allocated to and purchased by the bank out of its surplus which is not certified or out of its undivided profits to be held by the bank for fulfilling the requirements of an officer or employee stock option or bonus plan, whereby officers or employees, or both, of the bank are given options to purchase or a bonus of shares of the bank's capital stock at a specified price, subject to the following requirements and restrictions:

The number of shares so held shall not, at any time, exceed five percent (5%) of the total number of shares outstanding in the hands of other stockholders. Employee benefit plans, including employee stock option plans, stock bonus plans, restricted stock option or bonus plans, or any other plans, the sole purpose of which is to compensate employees of the bank for services rendered to the bank, authorized under this Article, may not extend beyond a period of ten years from the date of issuance. No officer or employee who owns or controls more than five percent (5%) of the bank's capital stock shall be eligible to participate or to continue participation in a stock option plan authorized by this Article.
[Amended by Acts 1979, 66th Leg., p. 624, ch. 289, § 1, eff. May 24, 1979; Acts 1981, 67th Leg., p. 1827, ch. 416, § 1, eff. Aug. 31, 1981.]

Art. 342–314. Change of Domicile

(a) A state bank may change its domicile to a location no more than thirty (30) miles from where it is located or to any place within the city of its domicile. No state bank may change its domicile to another location without receiving the prior approval of the State Banking Board.

(b) Applications for a change of domicile shall be granted by the State Banking Board only upon good and sufficient proof that all the following conditions exist:

(1) a public necessity exists for the bank at the proposed location;

(2) proposed capital structure is adequate;

(3) volume of business in the community where the bank is to be located is such as to indicate profitable operation of the bank at that location;

(4) the proposed officers and directors have sufficient banking experience, ability, and standing to render success of the bank probable; and

(5) the applicants are acting in good faith.

(c) If the proposed relocation of the bank would effect an abandonment of all or part of the community presently served by the bank, the bank must establish that the abandonment is consistent with the original determination of public necessity for the establishment of a bank at that location.
[Amended by Acts 1977, 65th Leg., p. 25, ch. 10, § 1, eff. March 10, 1977; Acts 1981, 67th Leg., p. 465, ch. 196, § 1, eff. May 25, 1981.]

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

Article
342–401a. Transfer of Stock—Review by Commissioner.
342–411a. Exemption from Securities Law.

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

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

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

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

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

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

(4) any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company, or to make any other major changes in its business or corporate structure or management;

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

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

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

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

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

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

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

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

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

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

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

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

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

F. This Article does not apply to:

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

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

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

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

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

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

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

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

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

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

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

[Added by Acts 1977, 65th Leg., p. 664, ch. 250, § 1, eff. May 25, 1977. Amended by Acts 1981, 67th Leg., p. 2644, ch. 707, § 4(35), eff. Aug. 31, 1981.]

[1] Articles 342–308, 342–309, 342–310.

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

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

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

Section 2 of the 1977 Act provided as follows:

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

Art. 342–405. Directors—Qualifications

No person shall serve as director of a state bank when (1) the bank holds a judgment against him, or (2) holds a charged-off note against him, or (3) he has been convicted of a felony.

[Amended by Acts 1981, 67th Leg., p. 3324, ch. 872, § 1, eff. June 18, 1981.]

Art. 342–407. Directors—Oath and Acceptance

Prior to taking office each director in a state bank shall take oath that he accepts the position as director; that he will not violate, nor knowingly permit any officer, director or employee of the bank to violate, the laws of the State of Texas in the conduct of the business of the bank; and that he will diligently perform his duties as director. Such affidavit shall be sworn and subscribed to before a notary public, spread upon the minutes of the directors' meeting, and a duplicate original thereof filed with the Commissioner.

[Amended by Acts 1981, 67th Leg., p. 1821, ch. 411, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3324, ch. 872, § 2, eff. June 18, 1981.]

Art. 342–409. Directors—Duties—Approval of Loans and Expenses—Election, Term and Compensation of Officers

Subject to the by-laws the board of directors of a state bank shall supervise the conduct of its business and may promulgate rules and regulations relative thereto and prescribe the duties and responsibilities of the officers and employees. At each regular meeting the board shall review and approve or disapprove each loan and investment made and item of expense incurred since the last meeting; and shall examine and take appropriate action upon the overdraft, suspense and bills of exchange accounts. The board may designate committees from among its members to perform these duties and approve or disapprove the committees' reports at each regular meeting. Such approval, disapproval or other action of the board shall be spread upon its minutes.

By a majority vote of its qualified members, the board shall elect a president, one or more vice presidents, and a cashier or secretary, and such other officers of the bank as may be prescribed by the by-laws or deemed necessary by the directors and fix their compensation; provided, however, that the president shall be a member of the board of directors. Each officer of the bank shall serve only during the pleasure of the board, and any contract for a fixed term of employment shall be void.

[Amended by Acts 1981, 67th Leg., p. 1820, ch. 410, § 1, eff. June 11, 1981.]

Art. 342–410. Directors, Officers and Employees—Liability—Reimbursement for Expenses

Except as otherwise provided by statute, directors and officers of state banks shall be liable for financial losses sustained by state banks to the extent that directors and officers of other corporations are now responsible for such losses in equity and common law. Any officer or director who does not approve of any act or omission of the board, and desires to relieve himself from any personal liability for such act or omission shall promptly announce his opposition to such act or omission and cause such opposition to be spread upon the minutes of the directors' meeting. If for any reason such opposition is not spread upon the minutes of the directors' meeting, he shall promptly report the facts to the Commissioner.

Any person may be indemnified or reimbursed by a state bank, through action of its board, for reasonable expenses actually incurred by him in connection with any action, suit or proceeding to which he is a party by reason of his being or having been a director, officer or employee of said bank. The board may authorize the purchase by the bank of insurance covering the indemnification of directors, officers or employees. If there is a compromise of such an action or threatened action, there shall be no indemnification or reimbursement for the amount paid to settle the claim or for reasonable expenses incurred in connection with such claim without the vote, or the written consent, of the owners of record of a majority of the stock of the bank. No such person shall be indemnified or reimbursed if he has been finally adjudged to have been guilty of, or liable for, willful misconduct, gross neglect of duty, or a criminal act. This article shall not bar any right or action to which such person would be entitled at common law or any other statute of this State.

[Amended by Acts 1975, 64th Leg., p. 650, ch. 270, § 1, eff. Sept. 1, 1975.]

Art. 342–411a. Exemption from Securities Law

A person who is an officer, director, or employee of a state bank or national bank domiciled in the state with less than five hundred (500) shareholders is exempt from the registration and licensing provisions of The Securities Act, as amended (Article 581–1 et seq., Vernon's Texas Civil Statutes), with respect to that person's participation in a sale or other transaction involving securities issued by the bank of which that person is an officer, director, or employee. An officer, director, or employee may not be compensated for services provided under this Article.

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

Acts 1979, 66th Leg., p. 348, ch. 160, amending various provisions of The Securities Act (art. 581–1 et seq.), provided in § 10:

"This Act does not affect Section 11.01, Texas Savings and Loan Act, as amended (Article 852a, Vernon's Texas Civil Statutes), or Article 11a, Chapter IV, The Texas Banking Code of 1943, as added (Article 342–411a, Vernon's Texas Civil Statutes)."

CHAPTER FIVE. LOANS AND INVESTMENTS

Article

342–512. Investment in a Bank.

Art. 342–501. Domicile—Furniture and Fixtures—Depreciation—Exception

(a) No state bank shall, without prior written consent of the Commissioner, invest an amount in excess of sixty per cent (60%) of its four primary capital accounts in a domicile (including land and building) and furniture and fixtures.

(b) A state bank shall assign to the portion of its domicile represented by the land on which the banking house is located an original book value of:

(1) the cost of the land when purchased; or

(2) if the land was contributed to the bank, the fair market value of the land at the time of the contribution as determined by the Commissioner.

(c) If the land representing a portion of a state bank's domicile was purchased by or contributed to the bank before January 1, 1982, the bank shall assign an original book value to the land in accordance with Section (b) of this article.

(d) A state bank may depreciate the portion of its domicile represented by the land on which the banking house is located.

(e) The portion of the domicile represented by the banking house shall be depreciated each year not less than two and one-half per cent (2½%) of its cost to the bank until that portion of the domicile is charged down to One Dollar ($1), and the furniture and fixtures shall be depreciated each year not less than ten per cent (10%) of their cost to the bank until said account is charged down to One Dollar ($1), provided that the Commissioner may permit a lesser percentage to be charged off during any year.

[Amended by Acts 1981, 67th Leg., p. 230, ch. 100, § 1, eff. Jan. 1, 1982.]

Art. 342-502. Other Real Estate—Depreciation—Exceptions

(a) No State bank shall acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the bank, or for the use of the bank in future expansion of its banking house.

(b) If a State bank acquires the real estate for use in future expansion of its banking house, or if it acquired real estate for that purpose before January 1, 1982, the bank shall:

(1) assign an original book value to the portion represented by land in accordance with Section (b), Article 1, of this Chapter; [1] and

(2) depreciate the portion represented by a building or other improvement in accordance with the requirements for a banking house provided by Section (e), Article 1, of this Chapter.

(c) If a State bank acquires real estate other than for the use in future expansion of its banking house, the bank may not assign an original book value to such real estate in excess of its reasonable value at the time of acquisition, and such real estate shall be depreciated each year ten per cent (10%) of such original book value until charged down to twenty-five per cent (25%) of its original book value; provided that the Commissioner may permit a lesser percentage to be depreciated during any year.

(d) The original book value of real estate acquired for future expansion of the banking house shall be included in determining whether the State bank has invested an amount in excess of sixty per cent (60%) of its four primary capital accounts in a domicile (including land and building) and furniture and fixtures under the provisions of Article 1 of this Chapter.

(e) If such real estate acquired for the use of the bank in future expansion of its banking house is not improved and occupied as a banking house within three (3) years from the date of its acquisition, the bank shall sell or otherwise dispose of such property; provided that the Commissioner may for good cause shown grant an extension of time for a period of one year or more.

[Amended by Acts 1981, 67th Leg., p. 230, ch. 100, § 2, eff. Jan. 1, 1982.]

[1] Article 342-501.

Art. 342-505. Repealed by Acts 1981, 67th Leg., p. 466, ch. 197, § 1, eff. May 25, 1981

Art. 342-505a. Repealed by Acts 1981, 67th Leg., p. 426, ch. 179, § 1, eff. May 20, 1981

Art. 342-506. Own Stock—Security—Acquisition—Disposition—Investment Certificates—Maturity

No state bank shall acquire a lien by pledge or otherwise on its shares of stock nor purchase or acquire title to such stock, except to prevent loss upon a loan or investment previously made in good faith. Provided, however, that with the approval of the owners of record of two-thirds of the capital stock, a bank may purchase and carry as treasury stock its own shares for the purpose of fulfilling the requirements of an officer or employee stock option or bonus plan authorized by Article 12, Chapter III of this code.[1]

The number of shares so held shall not, at any time, exceed five per cent (5%) of the total number of shares outstanding in the hands of the other stockholders.

If a state bank acquires a lien upon or title to its stock under the exception first provided for in this Article, it shall not permit such lien to continue for more than two (2) years, nor shall it hold title to such stock for more than one (1) year. Provided that the stock on which the bank has a lien plus the stock held by it as owner shall not exceed, in par value, the aggregate of all surplus accounts and undivided profits of said bank; provided, however, that any provision of this Code to the contrary notwithstanding, a state bank may make loans, charge or collect in advance interest thereon at a rate not exceeding that permitted by law, together with other charges permitted by this Code, and take as collateral thereof its investment certificates, issued simultaneously with the granting of the loans or otherwise, requiring weekly, semi-monthly, monthly or other regular periodic installments to be paid upon such certificates; such loans, subject to acceleration for specified causes, shall mature when

the withdrawal value of the investment certificate or certificates securing the same equals the face amount of the note evidencing the loans, and shall be comparable in form and principle of operation to sinking-fund loans which building and loan associations are now authorized to make under the laws of this State.

[Amended by Acts 1981, 67th Leg., p. 956, ch. 362, § 1, eff. June 10, 1981.]

[1] Article 342-312.

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

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

1. Liability as endorser or guarantor of commercial or business paper discounted by or assigned to the bank by the actual owner thereof who has acquired it in the ordinary course of business.

2. Indebtedness evidenced by banker's acceptances, bills of exchange or drafts drawn against actually existing values and secured by a lien upon goods in transit with shippers' order bills of lading or comparable instruments attached.

3. Indebtedness evidenced by notes or other paper secured by liens upon agricultural products, manufactured goods, or other chattels in storage in bonded warehouses or elevators with warehouse or elevator receipts attached, cotton yard tickets, signed by a bonded weigher, when the value of the security is not less than one hundred twenty-five per cent (125%) of the indebtedness, and the bank's interest therein is adequately insured against loss, with insurance policies or certificates of insurance attached.

4. Deposit in a reserve depository, or a Federal Reserve Bank.

5. Indebtedness of another state or national bank arising out of short-term loans when such loans are made out of the excess cash reserve funds of the lending bank and have settlement periods of less than one week.

6. Indebtedness arising out of the daily transaction of the business of any clearing house association in this State.

7. Bonds and other legally created general obligations of any State or of any county, city, municipality or political subdivision thereof and indebtedness of the United States of America, or any instrumentality or agency of the United States Government.

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

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

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

Any officer, director or employee of a state bank who knowingly violates or participates in the violation of any provision of this Article shall upon conviction be fined not more than Five Thousand Dollars ($5,000) or confined in the State penitentiary not more than five (5) years, or both.

[Amended by Acts 1977, 65th Leg., p. 1167, ch. 446, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 1823, ch. 413, § 1, eff. Aug. 31, 1981.]

Art. 342-508. Loan Fees Prohibited—Exception

No bank shall charge or collect any loan fee or any other charge, by whatever name called, for the granting of a loan unless authorized by law. Provided, however, a bank may require an applicant for a loan or discount to pay the cost of any abstract, attorney's opinion or title insurance policy, or other form of insurance, and filing or recording fees or appraisal fees. Expenses necessary or proper for the protection of the lender, and actually incurred in connection with the making of the loan may be charged. In all loan transactions in which the amount loaned is $100 or more and the loan period is one month or more, a bank may charge any borrower the reasonable value of services rendered in connection with the making of any loan, including the drawing of notes, the taking of acknowledgments and affidavits, the preparation of financial state-

ments, and the investigation or analysis of the financial responsibility of the borrower or any endorser, surety or co-signer, in an amount agreed upon, but not to exceed $15 for each loan transaction, which shall be in lieu of all interest and other charges which could otherwise be collected in connection with the loan. No bank shall induce or permit any person, or husband and wife, to be obligated directly or indirectly under more than one loan contract under this article at the same time for the purpose, or with the effect, of obtaining a higher authorized charge than would otherwise be permitted. The charge authorized herein shall not apply to any renewal or extension of an obligation on which the charge has been previously imposed; provided, however, that such renewal or extension may bear interest at the rate that is otherwise provided by law. The charge shall not apply to a loan transaction wherein the borrower applies all or a portion of the loan proceeds to discharge a prior loan made by the same lender to the same borrower and in connection with which the above charge was imposed.

[Amended by Acts 1977, 65th Leg., p. 1003, ch. 370, § 1, eff. Aug. 29, 1977.]

Art. 342-511. Repealed by Acts 1981, 67th Leg., p. 425, ch. 178, § 1, eff. May 20, 1981

Art. 342-512. Investment in a Bank

A state bank may invest its capital and certified surplus in another bank, except that:

(1) the investing bank may not acquire or retain ownership, control, or power to vote more than five percent of any class of voting securities of the other bank; and

(2) the investing bank may not invest more than five percent of its capital and certified surplus in the other bank.

[Added by Acts 1979, 66th Leg., p. 104, ch. 64, § 1, eff. April 19, 1979.]

CHAPTER SIX. SURPLUS, DIVIDENDS, LIABILITIES, UNINVESTED TRUST FUNDS, PREFERENCES, RESERVES, DEBENTURES AND WITHDRAWALS

Art. 342-602. Liability Limit—Exceptions

No state bank shall without the prior written consent of the Commissioner be indebted or liable for an amount in excess of its capital and certified surplus except on account of the following:

1. Money on deposit with or collected by it.

2. Bills of exchange, bankers acceptances, checks or drafts drawn against money actually on deposit to the credit of the bank or due to said bank.

3. Liability to stockholders on account of the capital stock, surplus and undivided profits.

4. Liabilities arising under or pursuant to the provisions of the Federal Deposit Insurance Corporation Act,[1] the Federal Reserve Act,[2] the Federal Agricultural Credit Act of 1923,[3] or pursuant to any or all amendments to any or all of said acts.

5. Indebtedness evidenced by investment certificates or certificates of indebtedness.

6. Liability on endorsement of notes, bills of exchange or other evidences of indebtedness actually owned by said bank and sold or endorsed with or without recourse, provided said sale or endorsement shall have been previously approved by the board of directors of said bank.

7. Liabilities to other banks arising out of short-term loan transactions when such liabilities are incurred for the purpose of fulfilling cash reserve requirements and have settlement periods of less than one week.

[Amended by Acts 1981, 67th Leg., p. 1822, ch. 412, § 1, eff. Aug. 31, 1981.]

[1] 12 U.S.C.A. § 1811 et seq.
[2] 12 U.S.C.A. § 221 et seq.
[3] 12 U.S.C.A. § 1151 et seq. (repealed).

Art. 342-606. Cash Reserve—Calculation—Reserve Depositaries—Amount Carried

Every State bank shall maintain a reserve which shall be established by regulation of the Commissioner.

Such reserve shall be kept in the vaults of the bank or on deposit with Federal Reserve banks or with banks incorporated by any state or the United States with not less than Fifty Thousand Dollars ($50,000) capital approved as reserve depositaries by the Commissioner or such investments authorized by the Commissioner. If a State bank shall fail to maintain the total reserves required by the regulation of the Commissioner, it shall be liable for and the Banking Commissioner may collect as a fee or penalty not more than Five Hundred Dollars ($500) per week for the period of such failure as may be prescribed from time to time by the Banking Section of the Finance Commission of Texas; and upon relation of the Banking Commissioner of default in such payment, the Attorney General shall institute a suit to recover such fees or penalties and for such other relief as in the judgment of the Attorney General is proper and necessary. No State bank shall deposit or loan an amount in excess of twenty per cent (20%) of its capital, certified surplus and deposits in any one reserve depositary.

[Amended by Acts 1981, 67th Leg., p. 1818, ch. 408, § 1, eff. June 11, 1981.]

Art. 342-607. Capital Notes or Debentures—Capital Defined

With the prior written approval of the Commissioner any state bank may, at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures, which shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors or the holders of investment certificates.

With the prior approval of the owners of record of two-thirds of the capital stock and the prior written approval of the Commissioner any state bank may issue and sell its convertible capital notes or debentures, which shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors or the holders of investment certificates.

The term "capital" as used in this article relating to solvency of state banks shall be construed to embrace the amount of outstanding capital notes and debentures legally issued by any state bank and sold by it to the Reconstruction Finance Corporation or any other corporation or individual. The capital stock of any such bank may be deemed to be unimpaired when the amount of capital notes and debentures as represented by cash or sound assets exceeds the impairment as found by the Commissioner. Before any such capital notes or debentures are retired or paid by the bank, any existing deficiency of its capital (disregarding the notes or debentures to be retired) must be paid in cash, to the end that the sound capital assets shall at least equal the capital stock of the bank. Provided, in the event the net profits are not sufficient to meet the interest and retirement payments on the capital notes or debentures issued prior to the effective date of this Act, the Commissioner may require the bank's stockholders to pay into the bank in cash an amount sufficient to meet the deficiency. Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of such bank, and shall not be held liable for assessments to restore impairment in the capital of such bank.
[Amended by Acts 1981, 67th Leg., p. 1826, ch. 415, § 1, eff. Aug. 31, 1981.]

CHAPTER EIGHT. LIQUIDATION

Art. 342–812. Powers of Commissioner—Sale of Assets, Compromises and Agreements

Pursuant to the order of the district court, entered with or without hearing, the Commissioner may sell any of the assets of a state bank in his hands for liquidation; may borrow money and pledge the whole or any part of such assets of such bank to secure the debt created; may compromise or compound any bad or doubtful claim held by or asserted against such bank; and may enter into any other kind or character of contract or agreement on behalf of such bank which he deems necessary or proper to the management, conservation or liquidation of its assets and all parties interested in the affairs of such bank shall be bound and precluded by the action of the Commissioner. Provided that said court, if it deems it advantageous or proper, may require notice and hearing before entering any order, and in that event shall, by order, fix the time and place of the hearing and prescribe the character of notice to be given thereof. Further provided that said court, in its discretion, and subject to such limitations as it may prescribe, may by general order authorize the Commissioner (a) to compound or compromise any claim or debt involving not more than Ten Thousand Dollars ($10,000) held by or asserted against the bank, and (b) to sell all chattels belonging to the bank.
[Amended by Acts 1981, 67th Leg., p. 1825, ch. 414, § 1, eff. June 11, 1981.]

CHAPTER NINE. GENERAL PROVISIONS

Article
342–903a. Unmanned Teller Machines.
342–903b. Connected Office Facilities.
342–912. Acquisition of Bank or Holding Company under Federal Law—Notice to Commissioner—Recommendations of Commissioners.
342–913. Acquisition of Nonbanking Institution under Federal Law—Notice to Commissioner—Order and Appeal.

Art. 342–903. Branch Banking Prohibited

No State, national or private bank shall engage in business in more than one place, maintain any branch office, or cash checks or receive deposits except in its own banking house or through unmanned teller machines as authorized in Article 3a.[1] For purposes of this article "banking house" means the building in whose offices the business of the bank is conducted and which is functionally one place of business, including (a) office facilities whose nearest wall is located within five hundred (500) feet of the nearest wall of the central building and is physically connected to the central building by tunnel, passageway or hallway providing direct access between the central building and the connected office facility or by closed circuit television or pneumatic tube or other physically connected delivery device, and (b) in addition, not more than one (1) drive-in/walk-up facility whose nearest boundary is located within three thousand five hundred (3,500) feet of the nearest wall of the central building but more than five hundred (500) feet therefrom, is within the same county as the central building, and is connected to the central building by tunnel, passageway or hallway providing direct access between the central building and the connected drive-in/walk-up facility or by closed circuit television, pneumatic tube or other physically connected delivery device. The entire banking house shall for all purposes under the law be considered one integral banking house. The term "drive-in/walk-up facility" as herein used shall mean a facility offering banking services solely to persons who remain outside of the facility during the transaction of business with the bank.

Any bank adversely affected by a violation of this article may, and the Attorney General, upon request of the Commissioner, shall bring suit in a court of competent jurisdiction to enjoin a violation of this article. The party who prevails in such proceeding

shall recover costs of suit and reasonable attorney's fees.

[Amended by Acts 1975, 64th Leg., p. 531, ch. 215, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2410, ch. 611, § 1, eff. Aug. 31, 1981.]

[1] Article 342–903a.

Section 2 of the 1981 amendatory act provides:

"This Act is not a validating act and does not authorize any automobile drive-in facility, drive-in/walk-up facility, or other facility that on or before the effective date of this Act violated Article 3, Chapter IX, The Texas Banking Code of 1943, as amended (Article 342–903, Vernon's Texas Civil Statutes), as it existed before being amended by this Act."

Art. 342–903a. Unmanned Teller Machines

Sec. 1. Subject to the provisions of this article, a bank or group of banks, for the convenience of customers, may install, maintain, operate, or utilize one or more unmanned teller machines at locations separate and apart from the banking house within the county or the city of the bank's domicile.

Sec. 2. As used in this article, the following terms shall have these meanings, unless otherwise clearly indicated by the context in which they are used:

(a) "Unmanned teller machine" means a machine, other than a telephone, capable of being operated solely by a customer, by which a customer may communicate to the bank:

(1) a request to withdraw money directly from the customer's account or from the customer's account pursuant to a line of credit previously authorized by the bank for the customer;

(2) an instruction to deposit funds into the customer's account with the bank;

(3) an instruction to transfer funds between one or more accounts maintained by the customer with the bank but not as between the customer's account and an account maintained in the bank or in some other financial institution by some other customer;

(4) an instruction to apply funds against an indebtedness of the customer to the bank; or

(5) a request for information concerning the balance of the account of the customer with the bank.

(b) "Bank" means a state, national, or private bank domiciled in this state.

Sec. 3. Authorization under this article for a bank to install, maintain, operate, or utilize one or more unmanned teller machines within the county or city of the bank's domicile does not preclude the use of bank or other personnel for the following purposes:

(a) to attend an unmanned teller machine on a temporary basis to instruct customers in the use of the machines; or

(b) to collect deposits or other funds placed in the machine, to replenish money dispensed by the machine, or to otherwise service, repair, or attend to the needs of an unmanned teller machine at frequent intervals.

Sec. 4. Banks shall have the right to share, under a written agreement, in the use of any unmanned teller machine that is located within the county or the city of the bank's domicile on a reasonable, nondiscriminatory basis and on the following conditions:

(a) any bank utilizing one or more unmanned teller machines may be required to meet necessary and reasonable technical standards and to pay charges for the use of the machines. The standards or charges imposed shall be reasonable, fair, equitable, and nondiscriminatory among banks. Any charges imposed shall not exceed an equitable proportion of both the cost of establishing the unmanned teller machines, including provisions for amortization of development costs and capital expenditures over a reasonable period of time, and the cost of operation and maintenance of the machine, plus a reasonable return on those costs, and those charges shall be related to the services provided to the bank or its customers.

(b) where more than one bank utilizes an unmanned teller machine and any bank uses, allows the use, or is allowed to use visual or oral data identifying itself, each bank sharing the machine shall receive equal prominence in the visual and oral data available to the public at or adjacent to the machine, and no advertising with regard to the machine shall suggest, imply, or claim that any particular bank has exclusive control over the use of the machine.

Sec. 5. Where the city in which a bank is domiciled lies in more than one county, the bank may install, maintain, operate, utilize, or share one or more unmanned teller machines within the corporate limits of the city in addition to machines in the county of its domicile.

Sec. 6. On written complaint by a bank that is utilizing or that seeks to utilize on unmanned teller machine that it is being denied the use of the machine on a reasonable, nondiscriminatory basis and that the machine is, therefore, not being operated in the best interests of the public, the State Banking Board shall have jurisdiction to determine whether or not the bank has been denied the right to utilize the machine under this article. After a hearing conducted by the board in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), the board may enter an order directing compliance with this article and prescribing the manner and means of complying with this article.

Sec. 7. In the event that operation of an unmanned teller machine is to be discontinued, notice of intent to discontinue shall be given to the State Banking Board not less than 60 days before the date

on which operation of the machine is to be discontinued, and a copy of that notice shall be sent to all institutions using the machine. The State Banking Board, on complaint by an affected bank or on its own motion, may delay discontinuance of an unmanned teller machine for a period of not more than 60 days past the proposed date of discontinuance if it finds that the banks sharing the unmanned teller machine would be unfairly prejudiced by discontinuance on the proposed date.

Sec. 8. Any person who violates this article or any order of the board issued pursuant to this article is subject to a civil penalty of not less than $50 nor more than $1,000 for each day of violation and for each act of violation. All civil penalties recovered under this article shall be paid to the Banking Department under Article 12, Chapter I of this code, as amended (Article 342–112, Vernon's Texas Civil Statutes), for the use of the State Banking Board in enforcing this article.

Sec. 9. Whenever it appears that a person has violated or is violating or is threatening to violate this article or any order of the State Banking Board issued pursuant to this article, the board may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat or for the assessment and recovery of the civil penalty provided by this article, or for both injunctive relief and civil penalty. At the request of the board, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief or for the recovery and receipt of a civil penalty, or for both injunctive relief and penalty.

A suit for injunctive relief or for recovery of a civil penalty, or for both, may be brought either in the county where the defendant resides, or in the county where the violation or threat of violation occurs. In any suit to enjoin a violation or threat of violation of this article or of any order of the board, the court may grant the State Banking Board, without bond or other undertaking, any prohibitory or mandatory injunction as the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

Sec. 10. Banks, under a written agreement, may share unmanned teller machines with savings and loan associations or credit unions on the following conditions:

(1) only those functions permitted for banks under Section 2 of this article are available to the customers of any savings and loan association or credit union using the unmanned teller machine or machines; and

(2) the unmanned teller machine or machines may be utilized by a savings and loan association or credit union for the use of their customers only within the county and the city where the savings and loan association or credit union is domiciled and has its principal place of business.

Sec. 11. Nothing in this article abridges, modifies, affects, or expands any authority under existing law for any savings and loan association or credit union to operate unmanned teller machines separate and apart from their principal places of business.

Sec. 12. This article does not apply to:

(1) an unmanned teller machine located at a bank's banking house; or

(2) the use of an unmanned teller machine, wherever located, solely to withdraw cash.

Sec. 13. The legislature finds that the Congress of the United States has amended the Consumer Protection Act, as amended (15 U.S.C. 1601 et seq.), through passage of the Electronic Fund Transfer Act [1] and that the Consumer Protection Act is sufficiently comprehensive to provide for the full and complete protection of the rights of consumers using unmanned teller machines in this state. The legislature further finds that it would not be in the best interest of the public of this state to have separate regulation of the consumer protection aspects of unmanned teller machines by both the state and federal governments. To ensure the continuing protection of consumers using the unmanned teller machines authorized by this article, the State Banking Board and the attorney general are directed to make a continuing study of the substantive and procedural provisions of the Consumer Protection Act of the regulations promulgated under that Act, and of the effectiveness of enforcement of that Act in this state and to report their findings and recommendations to the legislature on or before June 30, 1981, and on the same date every fourth year after 1981.

[Added by Acts 1979, 66th Leg., p. 1187, ch. 578, § 1.]

[1] U.S.C.A. § 1693 et seq.

Section 2 of the 1979 Act provided:

"This Act takes effect on the later of:

"(1) the 270th day after approval by the qualified voters of this state of an amendment to the Texas Constitution providing that the legislature may authorize banks to use unmanned teller machines within the county and the city of their domicile, on a shared basis, to serve the public convenience; or

"(2) December 31, 1980. If the constitutional amendment is not adopted, this Act has no effect."

Such a constitutional amendment was adopted at an election held November 4, 1980.

Art. 342-903b. Connected Office Facilities

For the purposes of Article 3 [1] and notwithstanding the provisions thereof, the term "banking house" may include, in addition to those facilities enumerated in Article 3, one (1) and only one (1) office facility whose nearest wall is located within seven hundred seventy-five (775) feet of the nearest wall of the central building and is physically connected to the central building by tunnel, passageway, or hallway providing direct access between the central building and the connected office facility or by closed circuit television or pneumatic tube or other physically connected delivery device.

[Added by Acts 1981, 67th Leg., p. 2454, ch. 632, § 1, eff. Aug. 31, 1981.]

[1] Article 342-903.

Section 2 of the 1981 Act provides:
"This Act is not a validating Act and does not authorize the use of any office facility, or other facility or structure, in existence on or before the effective date of this Act in violation of Article 3, Chapter IX, The Texas Banking Code of 1943, as amended (Article 342-903, Vernon's Texas Civil Statutes), as it existed before being modified by this Act."

Art. 342-904. Repealed by Acts 1981, 67th Leg., p. 2064, ch. 454, § 1, eff. Aug. 31, 1981

Art. 342-905. Repealed by Acts 1981, 67th Leg., p. 425, ch. 177, § 1, eff. Aug. 31, 1981

Art. 342-910a. Legal Holidays for Banks or Trust Companies—Alternative Legal Holidays for Banks or Trust Companies—Discrimination Prohibited

Sec. 1. Legal Holidays For Banks Or Trust Companies. Notwithstanding any existing provisions of law relative to negotiable or nonnegotiable instruments or commercial paper, but subject to the provisions of Section 2 of this article, only the following enumerated days are declared to be legal holidays for banking purposes on which each bank or trust company in Texas shall remain closed: Saturdays, Sundays, January 1, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, the 11th day of November, the fourth Thursday in November, and December 25.

When the dates July 4, November 11, or December 25 fall on Saturday, then the Friday immediately preceding such Saturday shall also be a legal holiday for banking purposes on which each bank or trust company in Texas shall remain closed. When the dates January 1, July 4, November 11, or December 25 fall on Sunday, then the Monday next following such Sunday shall also be a legal holiday for banking purposes on which each bank or trust company in Texas shall remain closed.

All such legal holidays shall be neither business days nor banking days under the laws of this State or the United States, and any act authorized, required or permitted to be performed at or by any bank or trust company on such days may be performed on the next succeeding business day and no liability or loss of right of any kind shall result therefrom to any bank or trust company.

Sec. 2. Alternative Legal Holidays For Banks Or Trust Companies. Any bank or trust company may elect to designate days on which it may close for general banking purposes pursuant to the provisions of this section, instead of Section 1 of this article, provided that any bank or trust company which has elected to be governed by this section shall remain closed on the following enumerated days, which days are declared to be legal holidays for banking purposes: Sundays, January 1, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, the 11th day of November, the fourth Thursday in November, and December 25. When the dates July 4, November 11, or December 25 fall on Saturday, then the Friday immediately preceding such Saturday shall also be a legal holiday for all banking purposes on which each bank or trust company shall remain closed. When the dates January 1, July 4, November 11, or December 25 fall on Sunday, then the Monday next following each Sunday shall also be a mandatory legal holiday for banking purposes on which each bank or trust company shall remain closed. Except as herein provided, any bank or trust company doing business in this state may, at its option, elect to be governed by this section and close for general banking purposes either on Saturday or on any other weekday of any week in the year in addition to mandatory legal holidays, provided:

(a) such day is designated at least 15 days in advance by adoption of a resolution concurred in by a majority of the board of directors thereof (or, if an unincorporated bank or trust company, by its owner or a majority of its owners, if there be more than one owner); and

(b) notice of the day or days designated in such resolution is posted in a conspicuous place in such bank or trust company for at least 15 days in advance of the day or days designated; and

(c) a copy of such resolution certified by the president or cashier of such bank or trust company is filed with the Banking Department of Texas.

The filing of such copy of resolution as aforesaid with the Banking Department of Texas shall be deemed to be proof in all courts in this state that such bank or trust company has duly complied with the provisions of this section. Any such election to so close shall remain in effect until a subsequent resolution shall be adopted and notice thereof posted and a copy thereof filed in the manner above provided.

If any bank or trust company elects to close for general banking purposes on Saturday or any other weekday as herein provided, it may, at its option, remain open on such day for the purpose of performing limited banking services. Notice of election to perform limited banking services shall be contained in the resolution and notices, above provided, with respect to closing for general banking purposes. Limited banking services may include such of the ordinary and usual services provided by the bank as the board of directors may determine, except the following: making loans, renewing or extending loans, certifying checks, and issuing cashier's checks.

Such day upon which such bank or trust company may elect to close for general banking purposes shall with respect to such institution be treated as a legal holiday for all purposes and not a business day; provided that if such bank shall elect to perform limited banking services on such day, the same shall not be deemed a legal holiday for the performance of limited banking services. Any bank or trust company which elects to close for general banking purposes on Saturday or any other weekday but

which elects to perform limited banking services shall not be subjected to any liability or loss of rights for performing limited banking services or refusing to perform any other banking services on such day.

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

[Amended by Acts 1975, 64th Leg., p. 14, ch. 11, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 210, ch. 103, §§ 1, 2, eff. Aug. 29, 1977.]

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

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

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

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

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

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

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

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

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

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

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

Sec. 4. The Administrative Procedure and Texas Register Act [1] governs proceedings under this article, except that the final order of the commissioner approving or disapproving the acquisition or activity shall be rendered within 30 days after the hearing is closed.

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

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

[1] Article 6252-13a.

Art. 342-951. Mortgage Banking Institutions—Supervision by Commissioner

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

Sec. 2. On or before February 1 of each year, any mortgage banking institution that meets the requirements of Section 1 shall file with the Banking Commissioner of Texas a statement of its condition as of the previous December 31. The statement of condition shall be filed in the form prescribed by the banking commissioner and shall be accompanied by a filing fee of $50. The statement of condition is for the information of the banking commissioner and his employees only and its contents shall not be made public except in the course of some judicial proceeding in this state.

Sec. 3. The banking commissioner shall annually examine or cause to be examined the books and accounts of any mortgage banking institution which meets the requirements of Section 1. The institution being examined shall pay the actual expenses incident to the examination and a fee of not more than $50 per day per person engaged in the examination. Such fees, together with all other fees, penalties and revenues collected by the banking department, shall be retained by the department and shall be expended only for the expenses of the department.

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

[Amended by Acts 1975, 64th Leg., p. 1369, ch. 523, §§ 3 and 4, eff. Sept. 1, 1975.]

MISCELLANEOUS LAWS

PREPAID FUNERAL SERVICES OR MERCHANDISE

Art. 548b. Sale of Prepaid Funeral Services or Funeral Merchandise

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

Handling of Funds Paid or Collected Under Contract

Sec. 5. All sums heretofore or hereafter paid or collected on contracts for prepaid funeral benefits entered into prior to the effective date of this Act shall be handled in accordance with the manner in which they have heretofore been handled. All sums paid or collected on such contracts entered into after the effective date of this Act (with the exception of those paid where a contract of insurance is created or those approved by the Department, as both are provided for in Section 1a of this Act) shall be handled in the following manner:

(1) The funeral home (or other entity collecting said funds) may retain as its own money, for the purpose of covering its selling expenses, servicing costs, and general overhead, an amount not to exceed one-half of all funds so collected or paid until it has received for its use and benefit an amount not to exceed ten percent of the total amount agreed to be paid by the purchaser of said prepaid funeral benefits as such total amount is reflected in the contract. No charges or assessments, except premiums collected on an insurance policy guaranteeing the payments on a prepaid funeral contract or the unpaid balance thereof, shall be collected from the purchaser other than those included in the total amount of said contract.

(2) All amounts paid or collected, with the exception of those permitted to be retained as set forth above, shall, within thirty days after such collection, be (a) deposited in a savings and loan association in this state, or (b) deposited in a state or national bank in this state, or (c) placed with the trust department in a state or national bank in this state, or in a trust company authorized to do business in this state, to be invested by such trust department or company in accordance with the terms and provisions of the Texas Trust Act.[1] Such deposits or trust accounts shall be carried in the name of the funeral home or other entity to whom the purchaser makes payment, but accounting records shall be maintained showing the amount deposited or invested with respect to any particular purchaser's contract.

(3) The date of death of the purchaser of such contract (or other individual who may be designated in the contract as the person for whose funeral such funds may be used) shall be the maturity date of the contract, and as soon as conveniently practicable after such maturity date and upon presentation of a certified copy of the death certificate of such person together with proper affidavits as may be required by the Department, such funds shall be released in fulfillment of the contract, and the funeral home (or other entity to the contract which has collected the funds) shall, if the amount so withdrawn does not equal one hundred percent of the total amount paid under such contract, make up the difference so that the amount available for funeral benefits shall equal one hundred percent of the total amount paid in under such contract. Any amounts accumulated at maturity on any particular contract in excess of one hundred percent of the amount paid in on such contract shall be available to the funeral home (or other entity collecting said funds) in making up the difference on any particular contract which at maturity did not have funds available equal to one hundred percent of the amount paid under such contract.

The seller may withdraw at any time funds out of accrued interest or income of the deposit accounts or trust accounts for the purpose of paying reasonable and necessary charges made by a savings and loan association, or bank, or trust department of a bank, or trust company, and trustee's fees made by a savings and loan association, or bank, or trust department of a bank, or trust company, with respect to such accounts, or

for the purpose of paying any taxes caused or created by reason of the existence of such deposit accounts or trust accounts.

Upon the maturity date of a contract as above provided and only after the funeral home has fully performed its obligations under said contract with the purchaser, or at the time of cancellation prior to maturity as provided in Subsection (4) herein, the seller may additionally withdraw from said deposit account (whether a trust or other funded account) any enhanced value, accrued interest, or accrued income of said contract. Such withdrawal shall be the proportionate part of the total enhanced value, accrued interest or accrued income, that the amount deposited under said contract bears to the total amount deposited from all unmatured contracts.

(4) In the event a purchaser under a contract should desire to cancel the contract prior to maturity, such cancellation may be accomplished by the purchaser giving fifteen days notice in writing to the Department and to the seller of the contract, and thereafter, upon written authorization from the Department, such purchaser may withdraw the funds in such depository being held for his use and benefit; provided, however, such purchaser shall be entitled to withdraw and receive only the actual amounts paid in by him less the amounts permitted to be retained as provided in Subsection (1) hereof. Purchaser may make no partial cancellations or withdrawals.

[1] Article 7425b–1 et seq.

[See Compact Edition, Volume 3 for text of 6 and 7]

Records Required; Examination; Fee

Sec. 8. Each organization which has outstanding contracts for prepaid funeral benefits shall maintain within this state such records as the Department may require to enable it to determine whether the organization is complying with the provisions of this Act. Such records shall be subject to annual examination by the Department or its agent and to such additional examinations as it deems necessary. The organization shall pay for the cost of examination, including the salary and traveling expenses paid to the person making the examination during the time spent in making the examination and in traveling to and returning from the point where the records are kept, and all other expenses necessarily incurred in the examination. The Banking Commissioner or his agent shall assess and collect a fee in connection with each examination, based on the organization's total outstanding contracts, covering the cost of such examination, the equitable or proportionate cost of maintenance and operation of the Banking Department, and the enforcement of the provisions of this Act; but the cost to the organization shall not be more than a total cost of $1,000 for each examination. Those organizations with less than 50 contracts outstanding shall be assessed an examination fee of $50 plus one-fourth of one percent of the dollar amount of the organization's outstanding contract funds on deposit, in trust, or vested in any other program subject to this Act. Those organizations with 50 or more contracts outstanding shall be assessed an examination fee of $100 plus one-fourth of one percent of the dollar amount of the organization's outstanding contract funds on deposit, in trust, or vested in any other program subject to this Act.

[See Compact Edition, Volume 3 for text of 9 to 10a]

[Amended by Acts 1981, 67th Leg., p. 469, ch. 200, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2402, ch. 608, § 1, eff. June 15, 1981.]

TITLE 17

BEES

Article

549a. Repealed.
565b. Repealed.

Arts. 549 to 565b. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Former art. 549a, subjecting the office of State Entomologist to the Sunset Act, was added by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.089.

Repealed art. 565b, relating to the labeling and sale of honey, honey products and imitation honey, was derived from Acts 1975, 64th Leg., p. 1872, ch. 588.

TITLE 19

BLUE SKY LAW—SECURITIES

Article
581-25-1. Receivership of Persons or Assets of Persons Acting as Dealers.
581-28-1. Adoption of Rules and Regulations.
581-35-1. Sale of Securities in Excess of Amount Registered; Fees.

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

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

F. The State Securities Board is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1983. [Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.066, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 581-4. Definitions

The following terms shall, unless the context otherwise indicates, have the following respective meanings:

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

E. The terms "sale" or "offer for sale" or "sell" shall include every disposition, or attempt to dispose of a security for value. The term "sale" means and includes contracts and agreements whereby securities are sold, traded or exchanged for money, property or other things of value, or any transfer or agreement to transfer, in trust or otherwise. Any security given or delivered with or as a bonus on account of any purchase of securities or other thing of value, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The term "sell" means any act by which a sale is made, and the term "sale" or "offer for sale" shall include a subscription, an option for sale, a solicitation of sale, a solicitation of an offer to buy, an attempt to sell, or an offer to sell, directly or by an agent or salesman, by a circular, letter, or advertisement or otherwise, including the deposit in a United States Post Office or mail box or in any manner in the United States mails within this State of a letter, circular or other advertising matter. Nothing herein shall limit or diminish the full meaning of the terms "sale," "sell" or "offer for sale" as used by or accepted in courts of law or equity. The sale of a security under conditions which entitle the purchaser or subsequent holder to exchange the same for, or to purchase some other security, shall not be deemed a sale or offer for sale of such other security; but no exchange for or sale of such other security shall ever be made unless and until the sale thereof shall have been first authorized in Texas under this Act, if not exempt hereunder, or by other provisions of law.

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

[Amended by Acts 1979, 66th Leg., p. 348, ch. 160, § 1, eff. May 15, 1979.]

Section 10 of the 1979 amendatory act provided:

"This Act does not affect Section 11.01, Texas Savings and Loan Act, as amended (Article 852a, Vernon's Texas Civil Statutes), or Article 11a, Chapter IV, The Texas Banking Code of 1943, as added (Article 342-411a, Vernon's Texas Civil Statutes)."

Art. 581-5. Exempt Transactions

Except as hereinafter in this Act specifically provided, the provisions of this Act shall not apply to the sale of any security when made in any of the following transactions and under any of the following conditions, and the company or person engaged therein shall not be deemed a dealer within the meaning of this Act; that is to say, the provisions of this Act shall not apply to any sale, offer for sale, solicitation, subscription, dealing in or delivery of any security under any of the following transactions or conditions:

A. At any judicial, executor's, administrator's, guardian's or conservator's sale, or any sale by a receiver or trustee in insolvency or bankruptcy.

B. The sale by or for the account of a pledge holder or mortgagee, selling or offering for sale or delivery in the ordinary course of business to liquidate a bona fide debt, of a security pledged in good faith as security for such debt.

C. (1) Sales of securities made by or in behalf of a vendor, whether by dealer or other agent, in the ordinary course of bona fide personal investment of the personal holdings of such vendor, or change in such investment, if such vendor is not engaged in the business of selling securities and the sale or sales are isolated transactions not made in the course of repeated and successive transactions of a like character; provided, that in no event shall such sales or offerings be exempt from the provisions of this Act when made or intended by the vendor or his agent, for the benefit, either directly or indirectly, of any company or corporation except the individual vendor (other than a

usual commission to said agent), and provided further, that any person acting as agent for said vendor shall be registered pursuant to this Act;

(2) Sales by or on behalf of any insurance company subject to the supervision or control of the Board of Insurance Commissioners of any security owned by such company as a legal and bona fide investment, provided that in no event shall any such sale or offering be exempt from the provisions of this Act when made or intended, either directly or indirectly, for the benefit of any other company as that term is defined in this Act.

D. The distribution by a corporation of securities direct to its stockholders as a stock dividend or other distribution paid out of earnings or surplus.

E. Any offer and any transaction pursuant to any offer by the issuer of its securities to its existing security holders (including persons who at the time of the transaction are holders of convertible securities or nontransferable warrants) if no commission or other remuneration (other than a stand-by commission) is paid or given directly or indirectly for soliciting any security holder in this State.

F. The issue in good faith of securities by a company to its security holders, or creditors, in the process of a bona fide reorganization of the company made in good faith, or the issue in good faith of securities by a company, organized solely for the purpose of taking over the assets and continuing the business of a predecessor company, to the security holders or creditors of such predecessor company, provided that in either such case such securities are issued in exchange for the securities of such holders or claims of such creditors, or both, and in either such case security holders or creditors do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued other than the securities of or claims against said company or its predecessor then held or owned by them.

G. The issue or sale of securities (a) by one corporation to another corporation or the security holders thereof pursuant to a vote by one or more classes of such security holders, as required by the certificate of incorporation or the applicable corporation statute, in connection with a merger, consolidation or sale of corporate assets, or (b) by one corporation to its own stockholders in connection with the change of par value stock to no par value stock or vice versa, or the exchange of outstanding shares for the same or a greater or smaller number of shares; provided that in any such case such security holders do not pay or give or promise and are not obligated to pay or give any consideration for the securities so issued or sold other than the securities of the corporation then held by them.

H. The sale of any security to any bank, trust company, building and loan association, insurance company, surety or guaranty company, savings institution, investment company as defined in the Investment Company Act of 1940,[1] small business investment company as defined in the Small Business Investment Act of 1958, as amended,[2] or to any registered dealer actually engaged in buying and selling securities; or the issue or sale of any investment contract in connection with an employees' stock bonus, annuity, pension, profit-sharing or similar employee benefit plan provided the securities purchased under the plan either would be exempt if sold by a registered dealer under Section 6 hereof or shall be qualified under Section 7 hereof or purchased in a transaction exempt under Section 5 hereof.

I. Provided such sale is made without any public solicitation or advertisements, (a) the sale of any security by the issuer thereof so long as the total number of security holders of the issuer thereof does not exceed thirty-five (35) persons after taking such sale into account; (b) the sale of shares of stock pursuant to the grant of an employees' restricted stock option as defined in the Internal Revenue Laws of the United States; or (c) the sale by an issuer of its securities during the period of twelve (12) months ending with the date of the sale in question to not more than fifteen (15) persons (excluding, in determining such fifteen (15) persons, purchasers of securities in transactions exempt under other provisions of this Section 5, purchasers of securities exempt under Section 6 hereof and purchasers of securities which are part of an offering registered under Section 7 hereof), provided such persons purchased such securities for their own account and not for distribution.

The issuer shall file a notice not less than five (5) days prior to the date of consummation of any sale claimed to be exempt under the provisions of clause (c), of this Subsection I, setting forth the name and address of the issuer, the total amount of the securities to be sold under this clause, the price at which the securities are to be sold, the date on which the securities are to be sold, the names and addresses of the proposed purchasers, and such other information as the commissioner may reasonably require, including a certificate of a principal officer of the issuer that reasonable information concerning the plan of business and the financial condition of the issuer has been furnished to the proposed purchasers. The commissioner may by order revoke or suspend the exemption under this clause (c) with respect to any security if he has reasonable cause to believe that the plan of business of the issuer of such security, the security, or the sale thereof would tend to work a fraud or deceit upon the purchaser or purchasers thereof, such order to be subject to review in the manner provided by Section 24 of this Act. The revocation or suspension of this exemption shall be inapplicable to the issuer until such issuer shall have received actual notice from the commissioner of such revocation or suspension.

J. Wherein the securities disposed of consist exclusively of notes or bonds secured by mortgage or vendor's lien upon real estate or tangible personal property, and the entire mortgage is sold or transferred with all of the notes or bonds secured thereby in a single transaction.

K. Any security or membership issued by a corporation or association, organized exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any stockholder, shareholder, or individual members, and where no commission or remuneration is paid or given or is to be paid or given in connection with the disposition thereof.

L. The sale by the issuer itself, or by a registered dealer, of any security issued or guaranteed by any bank organized and subject to regulation under the laws of the United States or under the laws of any State or territory of the United States, or any insular possession thereof, or by any savings and loan association organized and subject to regulation under the laws of this State, or the sale by the issuer itself of any security issued by any federal savings and loan association.

M. The sale by the issuer itself, or by a registered dealer, of any security either issued or guaranteed by the United States or by any territory or insular possession thereof, or by the District of Columbia, or by any state of the United States, or political subdivision thereof (including but not limited to any county, city, municipal corporation, district, or authority), or by any public or governmental agency or instrumentality of any of the foregoing.

N. The sale and issuance of any securities issued by any farmers' cooperative association organized under Article 5737 et seq., Revised Civil Statutes of Texas, 1925, as amended;[3] the sale and issuance of any securities issued by mutual loan corporations organized under Article 2500 et seq., Revised Civil Statutes of Texas, 1925;[4] and the sale of any securities issued by any farmers' cooperative society organized under Article 2514 et seq., Revised Civil Statutes of Texas, 1925.[5] Provided, however, this exemption shall not be applicable to agents and salesmen of any farmers' cooperative association, mutual loan corporation, or farmers' cooperative society when the sale of such securities is made to non-members, or when the sale of such securities is made to members or non-members and a commission is paid or contracted to be paid to the said agents or salesmen.

O. The sale by a registered dealer of outstanding securities provided that:

(1) Such securities form no part of an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer thereof; and

(2) Securities of the same class, of the same issuer, are outstanding in the hands of the public; and

(3) Such securities are offered for sale, in good faith, at prices reasonably related to the current market price of such securities at the time of such sale; and

(4) No part of the proceeds of such sale are paid directly or indirectly to the issuer of such securities; and

(5) Such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provision of this Act; and

(6) The right to sell or resell such securities has not been enjoined by any court of competent jurisdiction in this State by proceedings instituted by an officer or agency of this State charged with enforcement of this Act; and

(7) The right to sell such securities has not been revoked or suspended by the commissioner under any of the provisions of this Act, or, if so, revocation or suspension is not in force and effect; and

(8) At the time of such sale, the issuer of such securities shall be a going concern actually engaged in business and shall then be neither in an organization stage nor in receivership or bankruptcy; and

(9) Such securities or other securities of the issuer of the same class have been registered by qualification, notification or coordination under Section 7 of this Act; or at the time of such sale at least the following information about the issuer shall appear in a recognized securities manual or in a statement, in form and extent acceptable to the commissioner, filed with the commissioner by the issuer or by a registered dealer:

(a) A statement of the issuer's principal business;

(b) A balance sheet as of a date within eighteen (18) months of the date of such sale; and

(c) Profit and loss statements and a record of the dividends paid, if any, for a period of not less than three (3) years prior to the date of such balance sheet or for the period of existence of the issuer, if such period of existence is less than three (3) years.

The term "recognized securities manual" shall include the manuals published by Moody's Investment Service, Standard & Poor's Corporation, Best's Life Insurance Reports, and such other nationally distributed manuals of securities as may be approved for use hereunder by the commissioner.

The commissioner may issue a stop order or by order prohibit, revoke or suspend the exemption under this Subsection *O* with respect to any secur-

ity if he has reasonable cause to believe that the plan of business of the issuer of such security, the security, or the sale thereof would tend to work a fraud or deceit upon any purchaser or purchasers thereof, such order to be subject to review in the manner provided by Section 24 of this Act. Notice of any court injunction enjoining the sale, or resale, of any such security, or of an order revoking or suspending the exemption under this subdivision with respect to any security, shall be delivered or shall be mailed by certified or registered mail with return receipt requested, to any dealers believed to be selling, or offering for sale, securities of the type referred to in the notice; and the prohibitions of (6) and (7) above of this Subsection *O* shall be inapplicable to any dealer until he has received actual notice from the commissioner of such revocation or suspension.

Except for the manuals published by Moody's Investment Service, Standard & Poor's Corporation, and Best's Life Insurance Reports, the commissioner may for cause shown revoke or suspend the recognition hereunder of any manuals previously approved by the commissioner under this Subsection but no such action may be taken by the commissioner unless upon notice and opportunity for hearing as provided by Section 24 of this Act. Any interested party aggrieved by any decision of the commissioner pursuant to such hearing may appeal to the district court of Travis County, Texas, in the manner provided by Section 27 of this Act. A judgment sustaining the commissioner in the action complained of shall not bar after one year an application by the plaintiff for approval of its manual or manuals hereunder, nor shall a judgment in favor of the plaintiff prevent the commissioner from thereafter revoking such recognition for any proper cause which may thereafter accrue or be discovered.

P. The execution by a dealer of an unsolicited order for the purchase of securities, where the initial offering of such securities has been completed and provided that the dealer acts solely as an agent for the purchaser, has no direct or indirect interest in the sale or distribution of the security ordered, and receives no commission, profit, or other compensation from any source other than the purchaser.

Q. The sales of interests in and under oil, gas or mining leases, fees or titles, or contracts relating thereto, where (1) the total number of sales by any one owner of interests, whether whole, fractional, segregated or undivided in any single oil, gas or mineral lease, fee or title, or contract relating thereto, shall not exceed thirty-five (35) within a period of twelve (12) consecutive months and (2) no use is made of advertisement or public solicitation; provided, however, if such sale or sales are made by an agent for such owner or owners, such agent shall be licensed pursuant to this Act. No oil, gas or mineral unitization or pooling agreement shall be deemed a sale under this Act.

R. The sale by the issuer itself, or by a subsidiary of such issuer, of any securities which would be exempt if sold by a registered dealer under Section 6 (other than Subsection 6–E) of this Act.

S. The sale by or through a registered dealer of any option if at the time of the sale of the option

(1) the performance of the terms of the option is guaranteed by any broker-dealer registered under the federal Securities Exchange Act of 1934, as amended,[6] which guaranty and broker-dealer are in compliance with such requirements or regulations as may be approved or adopted by the board;

(2) the option is not sold by or for the benefit of the issuer of the security which may be purchased or sold upon exercise of the option;

(3) the security which may be purchased or sold upon exercise of the option is either (a) exempted under Subsection F of Section 6 of this Act or (b) quoted on the National Association of Securities Dealers Automated Quotation system and meets the requirements of Paragraphs (1), (6), (7), and (8) of Subsection *O* of Section 5 of this Act; and

(4) such sale is not directly or indirectly for the purposes of providing or furthering any scheme to violate or evade any provisions of this Act.

For purposes of this subsection the term "option" shall mean and include any put, call, straddle, or other option or privilege of buying or selling a specified number of securities at a specified price from or to another person, without being bound to do so, on or prior to a specified date, but such term shall not include any option or privilege which by its terms may terminate prior to such specified date upon the occurrence of a specified event.

T. Such other transactions or conditions as the board by rule, regulation, or order may define or prescribe, conditionally or unconditionally.

[Amended by Acts 1975, 64th Leg., p. 199, ch. 78, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 865, ch. 327, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 349, ch. 160, § 2, eff. May 15, 1979; Acts 1981, 67th Leg., p. 3198, ch. 839, § 1, eff. June 17, 1981.]

[1] 15 U.S.C.A. § 80a–1 et seq.
[2] 15 U.S.C.A. § 631 et seq.
[3] Repealed; see, now, Agriculture Code, § 52.001 et seq.
[4] Repealed; see, now, Agriculture Code, § 54.001 et seq.
[5] Repealed; see, now, Agriculture Code, § 51.001 et seq.
[6] 15 U.S.C.A. § 78a et seq.

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342–411a, see note under art. 581–4.

Art. 531–6. Exempt Securities

Except as hereinafter in this Act expressly provided, the provisions of this Act shall not apply to any of the following securities when offered for sale, or sold, or dealt in by a registered dealer or salesman of a registered dealer:

A to C. [Deleted]

D. Any security issued or guaranteed either as to principal, interest, or dividend, by a corporation

owning or operating a railroad or any other public service utility; provided, that such corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by the Railroad Commission of Texas, or by a public commission, agency, board or officers of the Government of the United States, or of any territory or insular possession thereof, or of any state or municipal corporation, or of the District of Columbia, or of the Dominion of Canada, or any province thereof; also equipment trust certificates or equipment notes or bonds based on chattel mortgages, leases or agreements for conditional sale of cars, motive power or other rolling stock mortgages, leased or sold to or furnished for the use of or upon a railroad or other public service utility corporation, provided that such corporation is subject to regulation or supervision as above; or equipment trust certificates, or equipment notes or bonds where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States, or of any state, territory or insular possession thereof, or of the District of Columbia, or the Dominion of Canada, or any province thereof, to secure the payment of such equipment trust certificates, bonds or notes.

E. Any security issued and sold by a domestic corporation without capital stock and not organized and not engaged in business for profit.

F. Securities which at the time of sale have been fully listed upon the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange or the New York Stock Exchange, or upon any recognized and responsible stock exchange approved by the Commissioner as hereinafter in this section provided, and also all securities senior to, or if of the same issues, upon a parity with, any securities so listed or represented by subscription rights which have been so listed, or evidence of indebtedness guaranteed by any company, any stock of which is so listed, such securities to be exempt only so long as the exchange upon which such securities are so listed remains approved under the provisions of this Section. Application for approval by the Commissioner may be made by any organized stock exchange in such manner and upon such forms as may be prescribed by the Commissioner, but no approval of any exchange shall be given unless the facts and data supplied with the application shall be found to establish:

(1) That the requirements for the listing of securities upon the exchange so seeking approval are such as to effect reasonable protection to the public;

(2) That the governing constitution, by-laws or regulations of such exchange shall require:

1st: An adequate examination into the affairs of the issuer of the securities which are to be listed before permitting trading therein;

2nd: That the issuer of such securities, so long as they be listed, shall periodically prepare, make public and furnish promptly to the exchange, appropriate financial, income, and profit and loss statements;

3rd: Securities listed and traded in on such exchange to be restricted to those of ascertained, sound asset or income value;

4th: A reasonable surveillance of its members, including a requirement for periodical financial statements and a determination of the financial responsibility of its members and the right and obligation in the governing body of such exchange to suspend or expel any member found to be financially embarrassed or irresponsible or found to have been guilty of misconduct in his business dealings, or conduct prejudicial of the rights and interests of his customers;

The approval of any such exchange by the Commissioner shall be made only after a reasonable investigation and hearing, and shall be by a written order of approval upon a finding of fact substantially in accordance with the requirements hereinabove provided. The Commissioner, upon ten (10) days notice and hearing, shall have power at any time to withdraw approval theretofore granted by him to any such stock exchange which does not at the time of hearing meet the standards of approval under this Act, and thereupon securities so listed upon such exchange shall be no longer entitled to the benefit of such exemption except upon the further order of said Commissioner approving such exchange.

G. [Deleted]

H. Negotiable promissory notes or commercial paper issued in good faith and in the usual course of carrying on and conducting the business of the issuer, provided that such notes or commercial paper mature in not more than twenty-four (24) months from the date of issue.

I. Notes, bonds, or other evidence of indebtedness or certificates of ownership which are equally and proportionately secured without reference of priority of one over another, and which, by the terms of the instrument creating the lien, shall continue to be so secured by the deposit with a trustee of recognized responsibility approved by the Commissioner of any of the securities specified in Subsection M of Section 5 or Subsection D of Section 6; such deposited securities, if of the classes described in Subsection M of Section 5, having an aggregate par value of not less than one hundred and ten per cent (110%) of the par value of the securities thereby secured, and if of class specified in Subsection D of Section 6, having an aggregate par value of not less than one hundred and twenty five per cent (125%) of the par value of the securities thereby secured.

J. Notes, bonds or other evidence of indebtedness of religious, charitable or benevolent corporations.

K. [Deleted]

[Amended by Acts 1979, 66th Leg., p. 354, ch. 160, § 3, eff. May 15, 1979.]

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

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

A. Qualification of Securities.

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

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

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

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

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

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

f. A detailed statement prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles, showing all the assets and all the liabilities of the issuer, said statement to reflect the financial condition of the issuer on a day not more than ninety (90) days prior to the date such statement is filed. Such statement shall list all assets in detail and shall show how the value of such assets was determined, that is, whether the value set forth in said statement represents the actual cost in money of such assets, or whether such value represents their present market value, or some other value than the actual cost in money, and shall show the present actual value of said assets; also, whether the value set forth in the statement is greater or less than the actual cost value in money and greater or less than the present market value of such assets. If any of the assets consist of real estate, then said statement shall show the amount for which said real estate is rendered for State and county taxes, or assessed for taxes. If any such assets listed shall consist of anything other than cash and real estate, same shall be set out in detail so as to give the Commissioner the fullest possible information concerning same, and the Commissioner shall have the power to require the filing of such additional information as he may deem necessary to determine whether or not the true value of said assets are reflected in the statement filed. Should any of the assets listed in said statement be subject to any repurchase agreement, or any other agreement of like character, by the terms of which the absolute ownership of, or title to said assets is qualified or limited in any way, then the terms and conditions of said agreement by which the absolute ownership of, or title to said assets is qualified or limited, as well as the amount and character of the assets subject thereto shall be fully stated. Said statement shall list all current liabilities, that is, all liabilities which will mature and become due

within one year from the date of such application, and shall list separately from such current liabilities, all other liabilities, contingent or otherwise, showing the amount of those which are secured by mortgage or otherwise, the assets of the issuer which are subject to such mortgage, and the dates of maturity of any such mortgage indebtedness. Such application shall also include a detailed profit and loss statement, prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles, which shall cover the last three (3) years' operations of the issuer, if such issuer has been in operation for three (3) years, but if not, said profit and loss statement shall cover the time that said issuer has been operating. If said issuer has not been operating, but is taking over a concern of any kind which has been previously operating, then a financial and profit and loss statement showing the operations of the concern thus taken over for a period of the last three (3) years next preceding the taking over of said concern shall be included in said statement; said profit and loss statement shall clearly reflect the amount of net profit or net loss incurred during each of the years shown.

B. Registration by Notification.

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Registration by Coordination.

(1) Any security for which a registration statement has been filed under the Federal Securities Act of 1933, as amended,[1] in connection with the same offering, may be registered by coordination. A registration statement under this section shall be filed with the Commissioner by the issuer or

any registered dealer and shall contain the following information and be accompanied by the following documents:

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

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

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

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

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

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

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

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

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

[Amended by Acts 1977, 65th Leg., p. 870, ch. 327, §§ 2 to 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 356, ch. 160, § 4, eff. May 15, 1979.]

[1] 15 U.S.C.A. § 77a et seq.

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

Art. 581-22. Regulation of Offers

A. Permitted Written, Pictorial, or Broadcast Offers. A written or printed offer (including a pictorial demonstration with any accompanying script) or a broadcast offer (i. e., an offer disseminated by radio, television, recorded telephone presentation, or other mass media) to sell a security may be made in this State if:

(1) a copy of the offer is filed with the Commissioner prior to its use in this State; and

(2) the person making or distributing the offer in this State is a registered dealer or a registered salesman of a registered dealer, as required by this Act; and

(3) either:

(a) the security is registered under Subsection B or C of Section 7 or a permit has been granted for the security under Section 10, or

(b) an application for registration under Subsection B or C of Section 7 or for a permit under Section 10 has been filed with the Commissioner; and

(4) if registration has not become effective under Subsection B or C of Section 7 or a permit has not been granted under Section 10, the offer prominently states on the first page of a written or printed offer or as a preface to any pictorial or broadcast offer either:

(a)

INFORMATIONAL ADVERTISING ONLY.

THE SECURITIES HEREIN DESCRIBED HAVE NOT BEEN QUALIFIED OR REGISTERED FOR SALE IN TEXAS. ANY REPRESENTATION TO THE CONTRARY OR CONSUMMATION OF SALE OF THESE SECURITIES IN TEXAS PRIOR TO QUALIFICATION OR REGISTRATION THEREOF IS A CRIMINAL OFFENSE.

or

(b) other language required by the United States Securities and Exchange Commission that in the Commissioner's opinion will inform investors that the securities may not yet be sold; and

(5) the person making or distributing the offer in this State;

(a) has not received notice in writing of an order prohibiting the offer under Subsection A or B of Section 23, or

(b) has received such notice but the order is no longer in effect; and

(6) payment is not accepted from the offeree and no contract of sale is made before registration is effective under Subsection B or C of Section 7 or a permit is granted under Section 10.

B. Permitted Oral Offers. An oral offer (not broadcast, i. e., not disseminated by radio, television, recorded telephone presentation, or other mass media) to sell a security may be made in this State in person, by telephone, or by other direct individual communication if:

(1) the person making the offer in this State is a registered dealer or a registered salesman of a registered dealer, as required by this Act; and

(2) either:

(a) the security is registered under Subsection B or C of Section 7 or a permit has been granted for the security under Section 10, or

(b) an application for registration under Subsection B or C of Section 7 or for a permit under Section 10 has been filed with the Commissioner; and

(3) the person making or distributing the offer in this State:

(a) has not received notice in writing of an order prohibiting the offer under Subsection A or B of Section 23, or

(b) has received such notice but the order is no longer in effect; and

(4) payment is not accepted from the offeree and no contract of sale is made before registration is effective under Subsection B or C of Section 7 or before a permit is granted under Section 10.

C. Effect of Compliance. An offer in compliance with Subsection A or B of Section 22 is not a violation of Section 7.

D. Effect of Noncompliance. An offer not in compliance with Subsection A or B of Section 22 is unlawful and a violation of this Act.

E. Applicability. Section 22 does not apply to transactions or securities exempt under Section 5 or Section 6.

F. Dealers Named in Offer. A dealer whose name is included in a written or printed or broadcast offer along with the name of a registered dealer is not deemed to make an offer in this State by that fact alone.

[Amended by Acts 1977, 65th Leg., p. 873, ch. 327, § 5, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 357, ch. 160, § 5, eff. May 15, 1979.]

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342–411a, see note under art. 581–4.

Art. 581–23. Cease-Desist Orders; Stop-Offer Notices; List of Securities Offered

Anything in this Act to the contrary notwithstanding,

A. If it appears to the commissioner at any time that the sale or proposed sale or method of sale of any securities, whether exempt or not, would not be in compliance with this Act or would tend to work a fraud on any purchaser thereof or would not be fair, just or equitable to any purchaser thereof, the commissioner may, after notice to the issuer, the registrant and the person on whose behalf such securities are being or are to be offered, by personal service or the sending of a confirmed telegraphic notice, and after opportunity for a hearing (at a time fixed by the commissioner) within 15 days after such notice by personal service or the sending of such telegraphic notice, if the commissioner shall determine at such hearing that such sale would not be in compliance with the Act or would tend to work a fraud on any purchaser thereof or would not be fair, just or equitable to any purchaser thereof, issue a written cease and desist order, prohibiting or suspending the sale of such securities or denying or revoking the registration of such securities. No dealer, agent or salesman shall thereafter knowingly sell or offer for sale any security named in such cease and desist order.

B. No person shall make an offer within this State after notice in writing has been given him by the commissioner that, in the commissioner's opinion, the same contains any statement that is false or misleading or otherwise likely to deceive a reader thereof.

C. The commissioner may, in the exercise of reasonable discretion hereunder, at any time, require a dealer to file with the commissioner a list of securities which he has offered for sale or has advertised for sale within this State during the preceding six months, or which he is at the time offering for sale or advertising, or any portion thereof.

[Amended by Acts 1979, 66th Leg., p. 359, ch. 160, § 6, eff. May 15, 1979.]

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342–411a, see note under art. 581–4.

Art. 581–25–1. Receiverships of Persons or Assets of Persons Acting as Dealers

A. Whenever it shall appear to the commissioner, either upon complaint or otherwise, that:

(1) any person or company, a substantial portion of whose business consists of acting as a dealer (as defined in Subsection C of Section 4 of this Act), whether or not duly registered by the commissioner as in this Act provided, shall have engaged in any act, transaction, practice, or course of business declared by Section 32 of this Act to be a fraudulent practice;

(2) such person or company shall have acted as a dealer in connection with such fraudulent practice; and

(3) the appointment of a receiver for such person or company, or the assets of such person or company, is necessary in order to conserve and protect the assets of such person or company for the benefit of customers, security holders, and other actual and potential claimants of such person or company the commissioner may request the attorney general to bring an action for the appointment of a receiver for such person or company or the assets of such person or company.

B. Upon request by the commissioner pursuant to Subsection A of this Section 25–1, and if it appears to the attorney general that the facts enumerated in Paragraphs (1) through (3) of Subsection A of this Section 25–1 exist with respect to any person or company, the attorney general may bring an action in the name and on behalf of the State of Texas for the appointment of a receiver for such person or company. The facts set forth in the petition for such relief shall be verified by the commissioner upon information and belief. Such action may be brought in a district court of any county wherein the fraudulent practice complained of has been committed in whole or part, or of any county wherein any defendant with respect to whom appointment of a receiver is sought has its principal place of business, and such district court shall have

jurisdiction and venue of such action; this provision shall be superior to any other provision of law fixing jurisdiction or venue with regard to suits for receivership. In any such action the attorney general may apply for and on due showing be entitled to have issued the court's subpoena requiring the forthwith appearance of any defendant and his employees, salesmen, or agents and the production of documents, books, and records as may appear necessary for any hearing, to testify and give evidence concerning matters relevant to the appointment of a receiver.

C. In any action brought by the attorney general pursuant to Subsection B of this Section 25–1, the court, upon a proper showing by the attorney general of the existence of the facts enumerated in Paragraphs (1) through (3) of Subsection A of this Section 25–1 with respect to any person or company, may appoint a receiver for such person or company or the assets of such person or company. If such receiver is appointed without notice to and opportunity to be heard for such person or company, such person or company shall be entitled to apply in writing to the court for an order dissolving the receivership, and, if such application is made within 30 days after service upon such person or company of the court's order making such appointment, shall be entitled to a hearing thereon upon 10 days written notice to the attorney general.

D. No person shall be appointed a receiver pursuant to this Section 25–1 unless such person be found by the court, after hearing the views of the attorney general, the commissioner, and, if deemed by the court to be practicable, the person or company against whom such relief is sought, to be qualified to discharge the duties of receiver giving due consideration to the probable nature and magnitude of the duties of receiver in the particular case. No bond for receivership shall be required of the commissioner or attorney general in any proceeding under this Section 25–1 but the court shall require a bond of any receiver appointed hereunder, conditioned upon faithful discharge of the receiver's duties, in an amount found by the court to be sufficient giving due consideration to the probable nature and magnitude of the duties of receiver in the particular case.

E. The remedy of receivership provided by this Section 25–1 shall be in addition to any and all other remedies afforded the commissioner or the attorney general by other provisions of statutory or decisional law of this state, including, without limitation of the generality of the foregoing, any such provision authorizing receiverships.

[Acts 1975, 64th Leg., p. 199, ch. 78, § 4, eff. Sept. 1, 1975.]

Art. 581–27. Petition to District Court of Travis County on Complaint of Decision of Commissioner

Any dealer, salesman or applicant aggrieved by any decision of the Commissioner may file within thirty (30) days thereafter in the District Court of Travis County, Texas, a petition against the Commissioner, officially as defendant, alleging therein in brief detail the action and decision complained of. Upon service of a summons upon the Commissioner, returnable within ten (10) days from its date, the Commissioner shall, on or before the return day, file an answer in which he shall allege, by way of defense, the grounds for his decision. The Commissioner shall also, on or before the return day of such summons, certify to said District Court the record of the proceedings to which the petition refers. Such record shall include the testimony taken therein, the finding of fact, if any, of the Commissioner based upon such testimony, a copy of all orders made by the Commissioner in the proceedings, and a copy of the action or decision of the Commissioner which the petition calls upon the court to reverse. The cost of preparing and certifying such record shall be paid to the Commissioner by the petitioner and taxed as a part of the cost in the case, to be paid as directed by the court upon the final determination of the case.

All appeals to the District Court shall be tried by such court as a trial de novo as that term is used in an appeal from Justice of the Peace Court to a County Court, as if there had been no previous determination or hearing on the matters in controversy, and under no circumstances shall the substantial evidence rule as interpreted by the courts of Texas ever be applied to appeals taken under this Act.

From the decision of the District Court an appeal may be taken to the Court of Appeals by either party as in other cases, and no bond shall be required by the Commissioner.

A judgment sustaining the refusal of the Commissioner to grant or renew a registration as a dealer or as an agent or salesman of any dealer, shall not bar, after one (1) year, a new application by the plaintiff for registration, nor shall a judgment in favor of the plaintiff prevent the Commissioner from thereafter revoking or refusing to renew such registration for any proper cause which may thereafter accrue or be discovered. The court shall have full power to dispose of all costs.

[Amended by Acts 1981, 67th Leg., p. 763, ch. 291, § 4, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

Art. 581–28. Subpoenas or Other Process in Investigations by Commissioner

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

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

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

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

Each witness required to attend before the Commissioner shall receive, for each day's attendance, the sum of Two Dollars ($2.00), and shall receive in addition the sum of Ten Cents (10¢) for each mile traveled by such witness by the usual route going to and returning from the place where his presence is required. All disbursements made in the payment of such fees shall be included in and paid in the same manner as is provided for the payment of other expenses incident to the administration and enforcement of this Act as hereinafter provided.

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

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

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

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

Art. 581–28–1. Adoption of Rules and Regulations

A. For purposes of this Section 28–1, the term "rule and regulation" shall mean any statement by the board of general and future applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of the board. The term includes the amendment or repeal of a prior rule or regulation, but does not include statements concerning only the internal management of the board not affecting private rights or procedures or forms or orders adopted or made by the board or the commissioner pursuant to other provisions of this Act.

B. The board may, from time to time, in accordance with the provisions of this Section 28–1, make or adopt such rules and regulations as may be necessary to carry out and implement the provisions of this Act, including rules and regulations governing registration statements, applications, notices, and reports, and defining any terms, whether or not used in this Act, insofar as the definitions are not inconsistent with the purposes fairly intended by the policy and provisions of this Act. For the purpose of adoption of rules and regulations, the board may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes. The board may, in its discretion, waive any requirement of any rule or regulation in situations where, in its opinion, such requirement is not necessary in the public interest or for the protection of investors.

C. No rule or regulation may be made or adopted unless the board finds, after notice and opportunity for comment in accordance with the provisions of this Section 28–1, that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Act.

D. The board may, by rule or regulation adopted in accordance with this Section 28–1, delegate to the commissioner or the deputy commissioner such of the authority granted to the board under this Section 28–1 to hold hearings for adoption of rules and regulations and to make or adopt rules and regulations, or to waive the requirements thereof, as it may, from time to time, deem appropriate. All rules and regulations made or adopted by the commissioner or the deputy commissioner pursuant to such delegated authority shall be made or adopted in accordance with this Section 28–1.

E. No provision of this Act imposing any liability or penalty applies to any act done or omitted in good faith in conformity with any rule or regulation of the board, notwithstanding that the rule or regulation may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

F. In exercising the power granted by this Section 28–1 to make or adopt rules and regulations, the board shall be bound by and shall follow the provisions of any administrative procedure act or other like act of general applicability to state boards, commissions, or departments having statewide jurisdiction, heretofore or hereafter adopted by the legislature of this state, with respect to procedures for adoption, filing, and taking effect, availability, and declaratory judgments on the validity or applicability of rules and regulations; provided, however, that, if there is no such act of general applicability, the board shall be bound by and shall follow the provisions of Subsections G through L of this Section 28–1 with respect to such matters.

G. A notice of any proposed rule or regulation shall be published in a newspaper of general circulation in Travis County and shall set forth the full text of any proposed rule or regulation or a summary thereof indicating the place where copies of the full text of such proposed rule or regulation may be obtained, the date on which the board intends its action to be effective, the place or places to which any person may mail or at which any person may deposit written data, views or arguments relating to the proposed action and the final date by which such data, views or arguments must be received for consideration by the board, which date shall not be earlier than 30 days from the date on which notice was first published in accordance with this Section 28–1.

H. The board, at its discretion, may call a hearing to take public testimony concerning a proposed rule or regulation. If the board calls a hearing, a notice setting forth the time, place, and nature of the hearing shall be published in a newspaper of general circulation in Travis County at least 20 days prior to the hearing date. All hearings shall be public.

I. After consideration of all relevant matters presented to the board, the board may make any modifications to the proposed rule or regulation that it shall find necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Act and the rule or regulation as originally promulgated. The board may then promulgate the rule or regulation, as modified, provided that it shall not be effective until at least 45 days after the date the notice of proposed action was first published pursuant to Subsection G of this Section 28–1. Notice of the adoption of any proposed rule or regulation shall be published in a newspaper of general circulation in Travis County and shall set forth the full text of the rule or regulation, as adopted, or a summary thereof indicating the place where copies of the full text of the rule or regulation may be obtained.

J. At the time of publication of any notice published pursuant to Subsections G, H, or I of this Section 28–1, the board shall mail a copy of such notice to each person who has requested in writing that copies of such notices be mailed to him and who has paid to the board the fee, if any, prescribed by the board therefor. The failure of the board to mail a copy of any notice to any person or persons or the failure of any person or persons to receive any such copy shall not affect the validity of any rule or regulation adopted by the board pursuant to this Section 28–1 or of any proceedings in connection therewith or pursuant thereto.

K. The board shall maintain a copy of all rules and regulations in effect, for public inspection, at the principal office of the board.

L. The validity of any rule or regulation adopted pursuant to the power granted by Subsection B of this Section 28–1 may be determined in any proceeding brought pursuant to any other section of this Act to which the board or the commissioner is a party; otherwise, the validity of any such rule or regulation may be determined only in an action for declaratory judgment in the District Court of Travis County, and not elsewhere, and then only if it is alleged that the rule or regulation, or its threatened application, interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff. The board shall be made a party to any such declaratory judgment action. A declaratory judgment may be rendered whether or not the plaintiff has requested the board to pass upon the validity or applicability of the rule or regulation in question.

[Acts 1975, 64th Leg., p. 199, ch. 78, § 2, eff. Sept. 1, 1975.]

Art. 581-29. Penal Provisions

Any person who shall:

A. Sell, offer for sale or delivery, solicit subscriptions or orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities without being a registered dealer or salesman or agent as in this Act provided shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than $5,000 or imprisonment in the penitentiary for not more than 10 years, or by both such fine and imprisonment.

B. Sell, offer for sale or delivery, solicit subscriptions to and orders for, dispose of, invite orders for, or who shall deal in any other manner in any security or securities issued after September 6, 1955, unless said security or securities have been registered or granted a permit as provided in Section 7 of this Act, shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than $5,000 or imprisonment in the penitentiary for not more than 10 years, or by both such fine and imprisonment.

C. In connection with the sale, offering for sale or delivery of, the purchase, offer to purchase, invitation of offers to purchase, invitations of offers to sell, or dealing in any other manner in any security or securities, whether or not the transaction or security is exempt under Section 5 or 6 of this Act, directly or indirectly (1) engage in any fraud or fraudulent practice, or (2) employ any device, scheme, or artifice to defraud, or (3) knowingly make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or (4) engage in any act, practice or course of business which operates or will operate as a fraud or deceit upon any person, is guilty of a felony and upon conviction shall be imprisoned for not more than 10 years, or fined not more than $5,000, or both.

D. Sell or offer for sale any security or securities named or listed in a notice in writing given him by the commissioner under the authority of Section 23A of this Act shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than $1,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

E. Knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under this Act, whether or not such document or proceeding relates to a transaction or security exempt under the provisions of Sections 5 or 6 of this Act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than $1,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

F. Knowingly make any false statement or representation concerning any registration made under the provisions of this Act shall be deemed guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of not more than $1,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

G. Make an offer within this State as to any security that is not in compliance with the requirements set forth in Section 22 of this Act shall be deemed guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine of not more than $1,000 or imprisonment in the penitentiary for not more than two years, or by both such fine and imprisonment.

[Amended by Acts 1979, 66th Leg., p. 359, ch. 160, § 7, eff. May 15, 1979.]

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

Art. 581-33. Civil Liabilities

A. Liability of Sellers.

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

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

B. Liability of Buyers. A person who offers to buy or buys a security (whether or not the security or transaction is exempt under Section 5 or 6 of this

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

C. Liability of Nonselling Issuers Which Register.

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

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

D. Rescission and Damages. For this Section 33:

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

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

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

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

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

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

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

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

F. Liability of Control Persons and Aiders.

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

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

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

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

H. Statute of Limitations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The offer shall state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The offer shall state:

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

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

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

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

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

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

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

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

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

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

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

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

M. Saving of Existing Remedies. The rights and remedies provided by this Act are in addition to any other rights (including exemplary or punitive damages) or remedies that may exist at law or in equity.

[Amended by Acts 1977, 65th Leg., p. 344, ch. 170, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 361, ch. 160, § 8, eff. May 15, 1979.]

[1] 15 U.S.C.A. § 77f.

Section 2 of the 1977 amendatory act provided:

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

For effect of the 1979 amendatory act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

Art. 581-34. Actions for Commission; Allegations and Proof of Compliance

No person or company shall bring or maintain any action in the courts of this state for collection of a commission or compensation for services rendered in the sale or purchase of securities, as that term is herein defined, without alleging and proving that such person or company was duly licensed under the provisions hereof and the securities so sold were duly registered under the provisions hereof at the time the alleged cause of action arose; provided, however, that this section or provision of this Act shall not apply (1) to any transaction exempted by Section 5 of this Act, nor (2) to the sale or purchase of any security exempted by Section 6 of this Act.

[Amended by Acts 1975, 64th Leg., p. 199, ch. 78, § 3, eff. Sept. 1, 1975.]

Art. 581-35. Fees

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

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

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

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

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

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

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

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

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

Art. 581-35-1. Sale of Securities in Excess of Amount Registered; Fees

An offeror who sells securities in this State in excess of the aggregate amount of securities registered may, while such registration is still effective, apply to register the excess securities by paying three times the difference between the initial fee paid and the fee required under Subsection E of Section 35 for the securities sold to persons within this State, plus the amendment fee prescribed by Subsection D of Section 35. Registration of the excess securities, if granted, shall be effective retroactively to the date of the existing registration.

[Added by Acts 1979, 66th Leg., p. 361, ch. 160, § 9, eff. May 15, 1979.]

For effect of the 1979 Act on arts. 852a, § 11.01, and 342-411a, see note under art. 581-4.

TITLE 20

PURCHASING AND GENERAL SERVICES COMMISSION

CHAPTER ONE. GENERAL PROVISIONS

Article
601a. Repealed.
601b. State Purchasing and General Services Act.
606a. Repealed.

Arts. 601, 601a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former art. 601, see, now, art. 601b, §§ 2.01 to 2.03 and 2.06.

Article 601a, relating to application of the Sunset Act, was added by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.144. See, now, art. 601b, § 2.07.

Art. 601b. State Purchasing and General Services Act

ARTICLE 1. GENERAL PROVISIONS

Short Title

Sec. 1.01. This Act may be cited as the State Purchasing and General Services Act.

Definitions

Sec. 1.02. In this Act:

(1) "Commission" means the State Purchasing and General Services Commission.

(2) "State agency" means:

(A) "any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of this state;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Civil Judicial Council; or

(C) a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

ARTICLE 2. ADMINISTRATIVE PROVISIONS

Commission

Sec. 2.01. The State Purchasing and General Services Commission is established.

Membership

Sec. 2.02. The commission is composed of three members appointed by the governor with the advice and consent of the senate.

Terms

Sec. 2.03. Members of the commission hold office for staggered terms of six years, with a member's term expiring on January 31 of each odd-numbered year.

Officers; Meetings; Quorum

Sec. 2.04. (a) The governor annually shall appoint a chairman from among the commission members.

(b) The commission shall meet at least once each month. The commission may meet at other times at the call of the chairman or as provided by the commission's rules.

(c) Two members of the commission constitute a quorum.

Expenses

Sec. 2.05. A member of the commission is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the commission.

Executive Director; Staff

Sec. 2.06. (a) The commission shall employ an executive director who shall serve at the pleasure of the commission. He shall execute a bond payable to the state in such sum as the commission may deem necessary, to be approved by the commission and conditioned upon the faithful performance of his duties. Premiums for said bond also shall be payable from such appropriations for the commission as are authorized by the legislature. The executive director must have demonstrated executive and organizational ability.

(b) The executive director shall manage the affairs of the commission subject to and under the direction of the commission. All direction of the commission to the executive director shall be made at an open meeting of the commission and made a part of the minutes of the commission. A member of the commission may not grant any authority to the executive director or any other employee by power of attorney.

(c) The executive director may employ a staff necessary to administer the functions of the commission.

Application of Sunset Act

Sec. 2.07. The commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the commission is abolished and this Act expires effective September 1, 1991.

ARTICLE 3. PURCHASING

Establishment of Purchasing System

Sec. 3.01. (a) The commission shall purchase, lease, rent, or otherwise acquire all supplies, materials, services, and equipment for all state agencies, and shall institute and maintain an effective and economical system for purchasing all such supplies, materials, services, and equipment.

(b) "Services," as used in this article, means the furnishing of skilled or unskilled labor or professional work but does not include:

(1) professional services covered by the Professional Services Procurement Act (Article 664–4, Vernon's Texas Civil Statutes);

(2) services of an employee of a state agency;

(3) consulting services or services of a private consultant as defined by Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252–11c, Vernon's Texas Civil Statutes); or

(4) services of public utilities.

Limits of Authority

Sec. 3.02. The commission's authority does not extend to purchases of supplies, materials, services, or equipment:

(1) for resale;

(2) for auxiliary enterprises;

(3) for organized activities relating to instructional departments of institutions of higher learning and similar activities of other state agencies; or

(4) from gifts or grants other than federal grants.

Purchases or Lease of Computers

Sec. 3.021. If a state agency requests the commission to purchase or lease automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated and if the purchase or lease is of a type that requires the Automated Information Systems Advisory Council to prepare a report, the commission may not make an award for the purchase or lease of the software, hardware, or services until the report has been filed as required by law or until 60 days after receipt of the proposal and any supporting information by the council as prescribed by law, whichever is earlier, or the completion of an agreed extension period.

Purchase of Motor Vehicles for School Districts

Sec. 3.03. The commission shall purchase all motor vehicles used for transporting school children, including buses, bus chassis, and bus bodies, tires, and tubes, for school districts participating in the Foundation School Program as provided by Subchapter F, Chapter 21, Texas Education Code.[1]

[1] Education Code, § 21.161 et seq.

Mental Health and Mental Retardation Community Centers

Sec. 3.04. Community centers for mental health and mental retardation services that are receiving state grants-in-aid under the provisions of Article 4 of the Texas Mental Health and Mental Retardation Act [1] may purchase drugs and medicines through the commission.

[1] Article 5547–201 et seq.

Purchases by the Legislature

Sec. 3.05. Either house of the legislature, or any agency, council, or committee of the legislature, including the Legislative Budget Board, the Texas Legislative Council, the State Auditor's Office, and the Legislative Reference Library, may utilize the purchasing services of the commission for purchasing supplies, materials, services, equipment, and those items covered by Article XVI, Section 21, of the Texas Constitution.

Delegation of Authority to State Agencies

Sec. 3.06. The commission may delegate purchasing functions to a state agency.

Emergency Purchases

Sec. 3.07. The commission shall provide for emergency purchases by a state agency and may set a monetary limit on the amount of each emergency purchase.

Purchases Less than a Specified Monetary Amount

Sec. 3.08. (a) State agencies are delegated the authority to purchase supplies, materials, and equipment if the purchase does not exceed $500. The commission by rule shall prescribe procedures for these purchases, and by rule may delegate to state agencies the authority to purchase supplies, materials, or equipment if the purchase exceeds $500. Competitive bidding, whether formal or informal, is not required for a purchase by a state agency if the purchase does not exceed $100, or a greater amount prescribed by rule of the commission.

(b) Supplies or materials purchased under this section may not include:

(1) items for which contracts have been awarded under the contract purchase procedure, unless the quantity purchased is less than the minimum quantity specified in the contract;

(2) any item required by statute to be purchased from a particular source; or

(3) scheduled items that have been designated for purchase by the commission.

(c) Large purchases may not be divided into small lot purchases in order to meet the specified dollar limits.

(d) Agencies making purchases under this section must attempt to obtain at least three competitive bids from sources which normally offer for sale the merchandise being purchased.

Review of Specifications

Sec. 3.09. (a) The commission shall review the specifications and conditions of purchase of any supplies, materials, equipment, or services desired to be purchased.

(b) If the commission finds that specifications and conditions of a purchase request have been drawn to describe a product which is proprietary to one vendor and does not include language which permits an equivalent product to be supplied, it shall require written justification of the requested specifications or conditions, signed by the agency head or the chairman of the governing body. For an institution of higher education, the written justification may be signed by the person designated by the president or governing body as purchasing officer for the institution. The written justification shall contain the following:

(1) explanation of the need for the specifications;

(2) the reason competing products are not satisfactory; and

(3) other information requested by the commission.

(c) If a resubmission with written justification is to be required by the commission, it shall notify the requesting state agency of that fact within 10 days after the date of receipt of the purchase request.

(d) If the commission, after considering all factors, takes exception to the justifications, it shall purchase the supplies, materials, services, or equipment as requested and report the reasons for its exceptions to the agency head or the chairman of the governing body, the state auditor, the Legislative Budget Board, and the governor.

(e) The commission shall issue an invitation to bid to vendors within 20 days after the date of receipt of the written justification required.

(f) The commission shall not delay processing a purchase requisition by submitting the specifications and conditions to the systems/administrative services division of the state auditor's office for comment or recommendation prior to issuing the invitation to bid to vendors.

Purchase Methods

Sec. 3.10. In purchasing supplies, materials, services, and equipment the commission may use, but is not limited to, the contract purchase procedure, the multiple award contract procedure, and the open market purchase procedure. The commission shall have the authority to combine orders in a system of schedule purchasing, and it shall at all times try to benefit from purchasing in bulk. All purchases of and contracts for supplies, materials, services, and equipment shall, except as provided herein, be based whenever possible on competitive bids.

Contract Purchase Procedure

Sec. 3.11. (a) Notice. Notice inviting bids shall be published at least once in at least one newspaper of general circulation in the state and at least seven days preceding the last day set for the receipt of bids. The newspaper notice shall include a general description of the articles to be purchased, and shall state where bid blanks and specifications may be secured, and the time and place for opening bids.

(b) Bidders List. The commission shall maintain a bidders list and shall add or delete names from the list by the application and utilization of applicable standards set forth in Subsection (e) of this section. Bid invitations shall be sent only to those who have expressed a desire to bid on the particular types of items which are the subject of the bid invitation. Use of the bidders list shall not be confined to contract purchases but it may be used by the commission as it may find desirable in making any purchase.

(c) Bid Deposits. When deemed necessary bid deposits in amounts to be set by the commission shall be prescribed in the public notices and the invitation to bid. The commission shall establish and maintain records of bid deposits and their disposition with the cooperation of the state auditor, and upon the award of bids or rejection of all bids, bid deposits shall be returned to unsuccessful bidders making bid deposits. The commission may accept a bid deposit in the form of a blanket bond from any bidder.

(d) Bid Opening Procedure. Bids shall be submitted to the commission, sealed, and identified as bids on the envelope. Bids shall be opened at the time and place stated in the public notices and the invitation to bid. The state auditor or a member of his staff may be present at any bid opening. A tabulation of all bids received shall be available for public inspection under regulations to be established by the commission.

(e) Award of Contract. The commission shall award contracts to the bidder submitting the lowest and best bid conforming to the specifications required. Complying with the specified time limit for submission of written data, samples, or models on or before bid opening time is essential to the materiality of a bid, provided, however, that the commission shall have the authority to waive this provision if the failure to comply is beyond control of the bidder. In determining who is the lowest and best bidder, in addition to price, the commission shall consider:

(1) the quality, availability, and adaptability of the supplies, materials, equipment, or contractual services, to the particular use required;

(2) the number and scope of conditions attached to the bid;

(3) the ability, capacity, and skill of the bidder to perform the contract or provide the service required;

(4) whether the bidder can perform the contract or provide the service promptly, or within the time required, without delay or interference;

(5) the character, responsibility, integrity, reputation, and experience of the bidder;

(6) the quality of performance of previous contracts or services;

(7) the previous and existing compliance by the bidder with laws relating to the contract or service;

(8) any previous or existing noncompliance by the bidder with specification requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information;

(9) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service; and

(10) the ability of the bidder to provide future maintenance, repair parts, and service for the use of the subject of the contract.

(f) Rejection of Bids. If a bid is submitted in which there is a material failure to comply with the specification requirements, such bid shall be rejected and the contract awarded to the bidder submitting the lowest and best bid conforming to the specifications, provided, however, the commission shall in any event have the authority to reject all bids or parts of bids when the interest of the state will be served thereby.

(g) Bid Record. When an award is made, a statement of the basis for placing the order with the successful bidder and the factors considered in determining the lowest and best bid shall be prepared by the purchasing division and filed with other papers relating to the transaction.

(h) Tie Bids. In case of tie bids, quality and service being equal, the contract shall be awarded under rules and regulations to be adopted by the commission.

(i) Performance Bonds. The commission may require a performance bond before entering a contract in such amount as it finds reasonable and necessary to protect the interests of the state. Any bond required under this subsection shall be conditioned that the bidder will faithfully execute the terms of the contract into which he has entered. Any bond required shall be filed with the commission and recoveries may be had thereon until it is exhausted.

Open Market Purchase Procedure

Sec. 3.12. (a) When the commission determines that any purchases of supplies, materials, equipment, or services may be made most effectively in the open market, such purchases may be made without newspaper advertising.

(b) Minimum Number of Bids. All open market purchases shall, whenever possible, be based on at least three competitive bids, and shall be awarded to the lowest and best bidder in accordance with the standards set forth under this article.

(c) Notice Inviting Bids. The commission shall solicit bids by:

(1) direct mail request to prospective vendors; or

(2) telephone or telegraph.

(d) Recording. The commission shall keep a record of all open market orders and bids submitted thereon, and a tabulation of the bids shall, under rules and regulations to be established by the commission, be open to public inspection; provided, they shall always be open to inspection by the state auditor or his representatives.

(e) Agency Review. If a state agency requests that it be allowed to review the bids on a purchase request, the commission shall forward copies of the bids received or make the same available to the requesting agency along with the commission's recommended award. If, after review of the bids and evaluation of the quality of products offered in the bids, the state agency determines that the bid selected by the commission is not in its opinion the lowest and best bid, it may file with the commission a written recommendation, complete with justification, that the award be made to the bidder determined to be the lowest and best bid. The commission shall give consideration to, but is not bound by, the agency recommendation in making the award.

(f) Statement of Award. A statement of the basis for placing the order with the successful bidder and the factors considered in determining the lowest and best bid shall be prepared by the purchasing division and filed with other papers relating to the transaction.

Compliance with Antitrust Laws

Sec. 3.13. A bidder offering to sell supplies, materials, services, or equipment to the state shall certify on each bid submitted that neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state codified in Section 15.01, et seq., Business & Commerce Code, or the federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. The attorney general shall prepare the certification statement which is to be made a part of the bid form.

Invoice

Sec. 3.14. The contractor or seller of supplies and/or services contracted for by the commission shall render an invoice to the ordering agency at the address shown on the purchase order. The invoice shall be prepared and submitted under such rules and regulations as the commission shall provide.

Invoice; Check of Goods or Services

Sec. 3.15. (a) As soon as supplies, materials, or equipment are received by a state agency they shall be inspected by the agency to see if they correspond in every particular with those covered by the contract under which they were purchased, and if the invoice is correct, the agency shall certify that such is true and transmit to the commission the original invoice and appropriate purchase voucher forms. As soon as an invoice is received for services rendered to any state agency, the agency shall determine if such services correspond in every particular with those services contracted for and that the invoice is correct, and shall certify that such is true and transmit to the commission the original invoice and appropriate purchase voucher forms. The state agency shall complete the procedures for transmittal of the invoice and purchase voucher to the commission promptly after receipt of the supplies, materials, or equipment or performance of the services or receipt of the invoice for the supplies, materials, equipment, or services, whichever is later.

(b) If the commission finds such invoice and purchase voucher forms correct, it shall approve and transmit same to the state comptroller. The commission shall complete the procedures for transmittal of the invoice and purchase voucher to the state comptroller within eight days after receipt of the invoice and purchase voucher. The commission is not required to process vouchers in payment of telephone service within eight days but shall process them as expeditiously as possible.

Invoice; Payment

Sec. 3.16. When an invoice and purchase voucher have been approved by the agency and the commission, and have been approved by the comptroller, the comptroller shall draw a warrant upon the state treasury for the amount due on the invoice or for so much thereof as has been allowed, and it shall be charged against the state agency. The comptroller shall complete the procedures for drawing the warrant within eight days after receipt of the invoice and purchase voucher.

Specifications and Standards Program; Test and Inspection Program

Sec. 3.17. The commission shall have the authority to establish and maintain a specifications and standards program to coordinate the establishment and maintenance of uniform standards and specifications for materials, supplies, and equipment purchased by the commission. The commission shall enlist the cooperation of other state agencies in the establishment, maintenance, and revision of uniform standards and specifications and shall encourage and foster the use of standard specifications in order that the most efficient purchase of materials, supplies, and equipment may be continuously accomplished. The commission may also establish and maintain a program of testing and inspecting to ensure that materials, supplies, services, and equipment meet specifications, and may make contracts for testing. If any state agency determines that any supplies, materials, services, or equipment received do not meet specifications, it shall promptly notify the commission in writing detailing the reasons why the supplies, materials, services, or equipment do not meet the specifications of the contract. The commission shall immediately determine whether or not the reported supplies, materials, services, or equipment meet specifications. The sole power to determine whether materials, supplies, services, and equipment meet specifications shall rest with the commission. When the commission finds that contract specifications or conditions have not been complied with, it shall take action, with the assistance of the attorney general, if necessary, against the defaulting contractor.

Usage Figures

Sec. 3.18. The commission shall maintain usage figures on the consumption and use of supplies, materials, services, and equipment purchased for state agencies, institutions, boards, and commissions, and shall furnish using agencies upon request usage and consumption figures maintained. The commission is directed to cooperate with the state budget officers and the state auditor in the preparation of usage and consumption figures of supplies, materials, services, and equipment.

Conflict of Interest

Sec. 3.19. No member of the commission or any employee or appointee of the commission shall be interested in, or in any manner connected with, any contract or bid for furnishing supplies, materials, services, and equipment of any kind to any agency of the State of Texas. Neither shall any member or employee or appointee, under penalty of dismissal, accept or receive from any person, firm, or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift, or otherwise, any money or other thing of value whatever, nor shall he receive any promise, obligation, or contract for future reward or compensation from any such party.

Preference for Products of Retarded or Handicapped Persons

Sec. 3.20. The products of workshops, organizations, or corporations whose primary purpose is training and employing mentally retarded or physically handicapped persons shall be given preference if they meet state specifications as to quantity, quality, and price.

Purchase and Use of Paper Containing Recycled Fibers

Sec. 3.21. The commission shall contract for paper containing the highest percent of recycled fibers for all purposes for which paper with recycled fibers may be used and to the extent that such paper is available at a reasonable price through normal commercial channels to supply the needs of the state. All agencies which purchase through the commission are directed to place orders for papers containing recycled fibers to the highest extent of their needs

and to the extent that such paper is available through purchasing procedures of the commission.

Exemption of Goods or Services of Blind Persons

Sec. 3.22. The provisions of this article with respect to competitive bids are not applicable to state purchases of blind-made goods or services offered for sale to state agencies as a result of efforts made by the Texas Committee on Purchases of Blind-Made Goods and Services acting in accordance with legislation applicable to the committee if the goods or services meet state specifications as to quantity and quality and the cost is not in excess of the fair market price of like items.

Contracts with Department of Corrections

Sec. 3.23. The commission is hereby authorized to make contracts with the Texas Department of Corrections for the purchase of supplies, equipment, services, and materials for use by other state agencies.

Advance Payments to State or Federal Agencies

Sec. 3.24. All state agencies are authorized to make advance payments to federal and other state agencies for merchandise purchased from such agencies when advance payments will expedite the delivery of the merchandise.

Contracts for Printing Laws

Sec. 3.25. (a) The commission shall, at the opening of each regular session of the Texas legislature, award a special contract for printing the general and special laws and resolutions to be passed by each regular or special session of the current legislature, the contract to be separate and apart from all other contracts for public printing. The general and special laws shall be printed in separate volumes upon order of the commission. The contracts for the printing shall be prepared by the commission and shall provide such penalties as will assure the delivery of the laws within the contract time limit. The printer shall be required to begin delivery of completed books within a reasonable time after the printing is completed and binding commenced, which limit shall be set out in the call for bids made by the commission. An appropriation shall be made by the legislature to pay the cost of compiling, indexing, and printing all such laws and resolutions.

(b) There shall also be placed in the contract a stipulation requiring the printer to have the proof read and corrected before submitting such proof to the state. The comptroller shall not issue a warrant to the printer in payment for the printing of such laws and resolutions unless and until the printer, if an individual, or if a corporation, partnership, or association, the vice-president, secretary, or manager of same has made a sworn affidavit that he has complied with this section.

(c) Such laws and resolutions shall be compiled and printed under the direction of the secretary of state, who shall within 26 days, excluding Sundays, after adjournment of the legislature furnish the printer all copy therefor, the delivery of the first copy to the printer to begin as the bills are signed by the governor; provided that copy for the index shall be given to the printer within five days after the printer has furnished all page proofs of the laws to the secretary of state.

(d) The secretary of state shall distribute the printed laws of each session of the legislature as follows: (1) one copy to the governor, (2) one copy to the lieutenant governor, (3) three copies to each of the heads of all departments, (4) one copy to each of the judges of the several courts throughout the state, (5) one copy to each district and county attorney in the state, and (6) one copy to each member of the legislature.

Prohibition of Reproduction or Disposition of Matter Printed Under Public Contract

Sec. 3.26. (a) Except under contract or agreement with the state as hereinafter provided authorizing them so to do, it shall be unlawful for any person, firm, corporation, or association of persons doing any printing, under contract, for the State of Texas, to reproduce, print, or prepare or to sell or furnish any such printing or printed matter or any reprint, reproduction, or copy of same, or plate, type, mat, cut, or engraving from which such printing contract was executed, except the amount and number of copies contracted to be printed and furnished to the State of Texas under such contract.

(b) Any printing done under contract for any department, the legislature, or either branch thereof, any board, commission, court, officer or agent of the State of Texas, as well as any such work done directly for the state, shall for the purposes of this article be deemed to have been done for the State of Texas.

(c) With the consent of the commission and the governor, any person, firm, corporation, or association may print extra copies and sell them at a price fixed by the commission, whenever in the opinion of the commission and the governor the printed matter should be distributed in such manner for the benefit of the public. Any such contract for the printing and sale of such extra copies shall be approved by the attorney general.

(d) Any person, firm, corporation, or association of persons violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $100 nor more than $1,000, and in the event the violation is by a natural person or the agent or employee of a person, corporation, firm, or association, the punishment may be by jail sentence not to exceed 30 days in addition to such fine. The conviction of an agent or employee shall not bar conviction of the principal also.

Surplus War Materials

Sec. 3.27. The commission is authorized and directed to purchase for any county or any other political subdivision of this state such surplus war materials or surplus goods, merchandise, equipment, or other wares from the federal government or its agencies as may be offered for sale by them, provided the county or other political subdivision shall request the commission to make such purchase, and provided it shall deposit with the commission sufficient funds to cover payment therefor.

Preference to Texas and United States Products

Sec. 3.28. (a) The commission and all state agencies making purchases of supplies, materials, or equipment shall give preference to those produced in Texas or offered by Texas bidders, the cost to the state and quality being equal.

(b) If supplies, materials, or equipment produced in Texas or offered by Texas bidders are not equal in cost and quality, then supplies, materials, or equipment produced in other states of the United States of America shall be given preference over foreign-made products, the cost to the state and quality being equal.

Purchase of Passenger Vehicles

Sec. 3.29. A state agency may not purchase or lease a vehicle designed or used primarily for the transportation of persons, including a station wagon, that has a wheel base longer than 113 inches or that has more than 145 SAE horsepower. This provision does not apply to the purchase or lease of a vehicle to be used primarily for criminal law enforcement or a bus, motorcycle, pickup, van, truck, three-wheel vehicle, tractor, or ambulance.

Authority to Pay Charges

Sec. 3.30. The commission or a state agency may pay a restocking charge, cancellation fee, or other similar charge if the commission determines that the charge is justifiable.

ARTICLE 4. PUBLIC BUILDINGS AND GROUNDS

Custodianship of State Property

Sec. 4.01. (a) The commission shall have charge and control of all public buildings, grounds and property of the state, and is the custodian of all public personal property, and is responsible for the proper care and protection of such property from damage, intrusion, or improper usage. The commission is expressly directed to take any steps necessary to protect public buildings against any existing or threatened fire hazards. The commission is authorized to provide for the allocation of space in any of the public buildings to the departments of the state government for the uses authorized by law, and is authorized to make any repairs to any such buildings or parts thereof necessary to the serviceable accommodation of the uses to which such buildings or space therein may be allotted.

(b) The allocation of any space affecting the quarters of either house of the legislature must have the approval of the speaker of the house of representatives or the lieutenant governor, the approval being for the quarters allocated to the particular house affected.

(c) The provisions of Subsection (a) of this section pertaining to charge and control of public buildings and grounds do not apply to buildings and grounds of:

(1) institutions of higher education, as defined by Section 61.003, Texas Education Code, as amended;

(2) state agencies to which control has been specifically committed by law; and

(3) state agencies that have demonstrated ability and competence to maintain and control their buildings and grounds and to which the commission delegates that authority.

Lease of Public Grounds

Sec. 4.02. (a) All public grounds belonging to the State of Texas under the charge and control of the commission may be leased for agricultural or commercial purposes. Lease proposals shall be advertised once a week for four consecutive weeks in at least two newspapers, one of which shall be published in the city where the property is located, or the nearest daily paper thereto, and the other in some paper with state-wide circulation. Each lease shall be subject to the approval of the attorney general of Texas, both as to substance and as to form. The money derived from the lease of such property, less the expense for advertising and leasing, shall be deposited in the state treasury to the credit of the General Revenue Fund except that if land leased belongs to any eleemosynary institution, that money must be deposited to the credit of said institution in the same manner that the special fund is now deposited or may hereafter be ordered deposited by the legislature.

(b) The commission shall adopt proper forms and regulations, rules, and contracts, as will, in its best judgment, protect the interest of the state. The commission may reject any and all bids.

Charge of Capitol

Sec. 4.03. The commission during the recess of the legislature shall have charge and control of the halls, chambers, and committee rooms of the state capitol building except as hereinafter provided. Before the assembling of each session of the legislature, the commission shall prepare the different rooms for the use of the legislature.

Use of Rooms in Capitol for Private Purposes

Sec. 4.04. No room, apartment, or office in the state capitol building shall be used at any time by any person as a bedroom or for any private purposes whatever. This section shall not apply to the offices and living quarters occupied by the lieutenant governor and the speaker of the house of representatives.

Inspection of State Property

Sec. 4.05. The commission shall frequently inspect all the public buildings and property of the state at the capitol, and all other buildings and property of the state at such regular intervals as may be necessary to keep constantly informed of the condition of the same.

Repair and Improvement of State Buildings

Sec. 4.06. When needed improvements or repairs of buildings and offices are called to the attention of the commission by the heads of departments or offices, the commission shall provide for such repairs or improvements, and they shall be made under its direction.

Maintenance of Sewers and Utility Conduits

Sec. 4.07. The commission shall give special attention to the effective maintenance of sewers and utility conduits.

Plans of Public Buildings

Sec. 4.08. The commission shall prepare and keep in its offices a copy of the plans of all public buildings and improvements thereto under its charge showing the exact location of all water, gas, and sewerage pipes and electrical wiring.

Report about Improvements and Repairs

Sec. 4.09. The commission shall biennially on December 1st make a report to the governor showing all improvements and repairs that have been made with an itemized account of receipts and expenditures, and showing the condition of all property under its control with an estimate of needed improvements and repairs.

State Cemetery

Sec. 4.10. (a) The commission shall control, superintend, and beautify the grounds of the State Cemetery and shall preserve the grounds and everything pertaining thereto and protect the property from depreciation and injury. The commission shall procure and erect, at the head of each grave which has no permanent monument, an obelisk of marble upon which shall be engraved the name of the dead therein buried.

(b) The persons eligible for burial in the State Cemetery are as follows:

(1) present and former members of the Texas Legislature;

(2) present and former elective state officials;

(3) present and former state officials who have been appointed by the governor and confirmed by the senate;

(4) persons specified by a governor's proclamation; and

(5) persons specified in a concurrent resolution adopted by the legislature.

(c) Grave spaces shall be allotted for a person eligible for burial and for his or her spouse, together with his or her unmarried child or children, which child or children shall be buried alongside his, her, or their parent or parents, provided that such child on the effective date of this Act or at the time of his or her death is a resident in any state eleemosynary institution. Children other than those hereinabove made eligible for burial may not be included. The size of a grave plot may not be longer than eight feet nor wider than five feet times the number of persons of one family authorized hereunder to be buried alongside one another.

(d) No monument or statue may be erected that is taller than any existing monument or statue in the State Cemetery on the effective date of this Act.

(e) No trees, shrubs, or flowers may be planted in the State Cemetery without written permission from the commission.

(f) Burial of persons on state property may take place only in the State Cemetery or in a cemetery maintained by a state eleemosynary institution, and no other state property, including the capitol grounds, may be used as an interment site.

(g) Allotment and location of the necessary number of grave plots authorized shall be made by the commission upon application of the person primarily eligible hereunder or by his or her spouse, or by the executor or administrator of his or her estate.

French Embassy

Sec. 4.11. The property known as the French Embassy is set aside for the uses and purposes of the Daughters of the Republic of Texas and they are authorized to take full charge of said building and use it as they may see proper. The French Embassy shall be the property of the state, and the title of said property shall remain in custody of the commission.

Protection of State Buildings and Grounds; Regulation of Parking

Sec. 4.12. (a) It shall be unlawful for any person to trespass upon the grass plots or flowerbeds, or to damage or deface any of the buildings, or cut down, deface, mutilate, or otherwise injure any of the statues, monuments, memorials, trees, shrubs, grasses, or flowers on the grounds or commit any other trespass upon any property of the state, real or personal, located on the grounds of the state capitol, the governor's mansion, or other property owned by the State of Texas known as the capitol complex, in the area bounded on the south by Tenth Street, on the north by Martin Luther King Boulevard, on the west by Lavaca Street, and on the east by Trinity Street in the City of Austin; or on any other state-owned property under the charge and control of the commission whether or not located in the City of Austin.

(b) It is an offense to park a vehicle in a place other than a space marked and designated for parking by the commission or to block or impede traffic on the driveways of property owned or leased by the state in the area described in Subsection (a) of this

section. The commission may regulate the flow and direction of traffic in the capitol complex and may erect the structures necessary to implement this authority.

(c)(1) When the legislature is in session, the commission shall assign and mark, for unrestricted use by members and administrative staff of the legislature, the reserved parking spaces in the capitol complex requested by the respective houses of the legislature. A request for parking spaces reserved pursuant to this subsection shall be limited to spaces in the capitol driveways and the additional spaces in state parking lots proximately located to the capitol.

(2) When the legislature is not in session, the commission shall, at the request of the respective legislative bodies, assign and mark the spaces requested for use by members and administrative staff of the legislature, in the areas described in Subsection (c)(1) of this section.

(3) The commission shall assign and mark reserved parking spaces on the capitol driveways for the governor, lieutenant governor, speaker of the house, and secretary of state for their unrestricted use.

(4) The commission may assign parking spaces to elected state officials and appointed heads of state agencies who occupy space in state buildings located within the bounds set forth in Subsection (a) of this section.

(5) If spaces are available, the commission shall assign parking spaces to handicapped state employees. All remaining parking facilities under charge and control of the commission in the area described in Subsection (a) of this section may be made available by the commission for use by the state employees working for agencies housed within that area as pursuant to Subsection (c)(7) of this section.

(6) The commission may designate and mark parking spaces for state-owned vehicles and visitor and business parking within the bounds set forth in Subsection (a) of this section.

(7) The legislature may establish in the General Appropriations Act a charge for parking, or may also establish in said Act that no charge be made for parking, or both, in any part or all of a state-owned or state-leased area located within the bounds set forth in Subsection (a) of this section. In each biennium such a charge is established, the commission shall collect the charge. The legislature may also establish in said Act that parking in any part or all of such area be made available by the commission on either an open lot parking basis or an individual space assignment basis, or both. However, to the extent the legislature does not make provision in each biennium for any part or all of the area within the bounds set forth in Subsection (a) of this section either as to parking charges or the prohibition thereof, or as to the basis upon which parking facilities are to be utilized, the commission may establish and collect a reasonable monthly parking charge for parking within the bounds set forth in Subsection (a) of this section, except those parking spaces assigned to the respective houses of the legislature on the capitol driveways, and may make available parking facilities in said area on either an open lot parking basis or an individual space assignment basis, or both.

(8) A person who parks an unauthorized vehicle in a space assigned under the provisions of this section commits an offense.

(9) The provisions of this subsection do not apply to the property or the parking facility under the management and control of the Texas Employment Commission and located within the bounds set forth in Subsection (a) of this section.

(d) The commission is hereby authorized to request the State Department of Highways and Public Transportation to assist it in the marking and designation of such parking spaces as the commission shall deem necessary and to maintain the painting of lines and curb markings and furnish such directional or informational signs as the commission shall deem necessary in the area described in Subsection (a) of this section. The Department of Public Safety shall provide advice and assistance to the commission when requested and shall at all times have at least one commissioned officer assigned to duty in the capitol area.

(e) It shall be unlawful to operate a motor vehicle upon any property owned by the State of Texas within the bounds set forth in Subsection (a) of this section at a speed in excess of 15 miles per hour. All laws regulating traffic upon highways and streets shall apply to the operation of motor vehicles within the prescribed areas, except as modified hereby.

(f) All of the general and criminal laws of the state are declared to be in full force and effect within the areas regulated by this section.

(g) The commission is authorized to employ security officers for the purpose of carrying out the provisions of this section and may commission such security officers as it deems necessary as peace officers. When so commissioned, said officers are hereby vested with all the powers, privileges, and immunities of peace officers; provided, that each security officer shall take and file the oath required of peace officers and shall execute and file with the commission a good and sufficient bond in the sum of $1,000 payable to the governor of this state and his successors in office with two or more good and sufficient sureties conditioned that he will fairly and faithfully perform all of the duties as may be required of him by law, and that he will fairly and impartially enforce the law of this state and that he will pay over any and all money, or turn over any and all property, to the proper person legally entitled to the same, that may come into his possession by virtue of such office. Said bond shall not be void for the first recovery but may be sued on from time to time in the name of any person injured until the whole

amount thereof is recovered. It shall be unlawful and constitute a misdemeanor punishable as provided in this section for any person or persons to impersonate any of said officers.

(h) The powers and duties conferred on the commission by this section may, at the request of a state agency, be exercised on any property owned or leased by the state. The cost of any service performed by the commission under this subsection, for a requesting agency, when performed outside the areas described in Subsection (a) of this section, shall be reimbursed to the commission by that agency pursuant to a contract executed in accordance with The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes).

(i) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $200. The penalties for violation of any of the other criminal laws of the state shall be as now provided by law.

(j) In connection with traffic and parking violations only, the officers authorized to enforce the provisions of this section shall have the authority to issue and use traffic tickets and summons of the type now used by the city of Austin and/or the Texas Highway Patrol with such changes as are necessitated thereby to be prepared and furnished by the commission. Upon the issuance of any such traffic ticket or summons the same procedures shall be followed as now prevail in connection with the use of parking and traffic violation tickets by the city of Austin and the Texas Highway Patrol. Nothing herein shall restrict the application and use of regular arrest warrants.

(k) The primary responsibility for enforcing the provisions of this section shall be with the commission, which shall have authority to promulgate rules and regulations not inconsistent with this section or other provisions of law as it may deem necessary to carry out the provisions of this section. Whenever the commission shall have promulgated such a rule or regulation and has posted signs in any of the regulated areas giving notice thereof, it shall be unlawful for any person to violate any of the provisions of such signs and shall constitute a misdemeanor punishable as provided in this section.

(*l*) The judge of the municipal court and/or any justice of the peace in Austin are each hereby separately vested with all jurisdiction necessary to hear, try, and determine criminal cases involving violations hereof where punishment does not exceed a fine of $200.

(m) Nothing herein contained shall be construed to abridge the authority of the commission to grant permission to use the capitol grounds and any grounds adjacent to any state building for such use as may be provided by preexisting law.

Pass Keys to Rooms in the Capitol

Sec. 4.13. Any person who shall make or have made or keep in his possession a pass or master key to the rooms and apartments in the state capitol, unless authorized to do so, shall be fined not exceeding $100.

Consent of Legislature Required for Construction

Sec. 4.14. (a) It shall be unlawful, without the prior express consent of the legislature, for any officer of this state or any employee thereof or any other person to construct, build, erect, or maintain any building, structure, memorial, monument, statue, concession, or any other structure including creation of parking areas or the laying of additional paving on any of the grounds that surrounded the state capitol on January 1, 1955, and which grounds were then bounded by Eleventh, Brazos, Thirteenth and Colorado Streets, in the city of Austin, Texas, whether such land lay inside or outside the fence enclosing part of the grounds; provided, however, that paved access and underground utility installations may be constructed and maintained.

(b) Any officer or employee of this state, or other person violating Subsection (a) of this section, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less that $100 nor more than $1,000, or imprisoned in the county jail of Travis County for a period of time not to exceed one year, or by both such fine and imprisonment.

(c) Any officer of this state who is subject to removal from office by means of impeachment shall be subject to such removal for violation of Subsection (a) of this section and any other officer or any employee of the state who shall violate Subsection (a) of this section shall be dismissed immediately from any employment by the state.

ARTICLE 5. BUILDING CONSTRUCTION ADMINISTRATION

Acquisition, Construction, Etc.

Sec. 5.01. (a) Under such terms and conditions as may be provided by law, the commission may acquire necessary real and personal property, modernize, remodel, build, and equip buildings for state purposes, and make contracts necessary to carry out and effectuate the purposes herein mentioned in keeping with appropriations authorized by the legislature. The commission shall not sell or dispose of any real property of the state except by specific authority from the legislature.

(b) In acquiring real property for the use of state agencies, the commission shall give first consideration to any structures that have been designated Recorded Texas Historic Landmarks as provided by Section 12, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes), or that have been listed in the National Register of Historic

Places established by 16 U.S.C. Section 470a (1974), or that have been designated landmarks by the local governing authority, if the structure meets requirements and specifications and the cost is not substantially higher than other available structures that meet requirements and specifications.

Contracts; Analyses

Sec. 5.02. (a) The commission is authorized to take any action and enter into any contracts to obtain sites which it deems necessary in order to provide for the orderly future development of the state building program insofar as appropriations permit.

(b) The commission may call upon the State Department of Highways and Public Transportation to make appropriate tests and analyses of the natural materials at the site of each building constructed under the terms of this article to insure that foundations of said buildings will be adequate for the life of the buildings.

Eminent Domain

Sec. 5.03. The commission shall have and may exercise the power of eminent domain under the general laws to obtain sites for buildings.

Title, Initial Occupants

Sec. 5.04. The commission shall obtain title for the state and retain control of the real property acquired for sites and of the buildings located thereon. The initial occupants of buildings shall be those state agencies determined by the commission or the legislature. This section shall apply to all new state buildings constructed heretofore or that may be constructed hereafter in Austin by the commission.

Assistance from Agencies

Sec. 5.05. The commission shall have the authority to call on any department of state government to assist it in carrying out the provisions of this article.

Monuments, Memorials

Sec. 5.06. Monuments or memorials for the Texas heroes of the Confederate States of America and the Texas War for Independence, or to commemorate any other event or person of historical significance to Texans and the State of Texas may be erected on land owned or acquired by the state or, if suitable contracts can be made for permanent preservation of such monuments or memorials, on private property or on land owned by the federal government or by other states. The locating and marking of graves of such Texans is hereby authorized. The commission is further authorized to maintain and shall be responsible for the continuing maintenance of the monuments and memorials erected by the State of Texas to commemorate the Centenary of Texas Independence. Before erection of any new monument or memorial the commission shall obtain the approval of the Texas Historical Commission as to the form, dimensions, substance of, and inscriptions or illustrations upon such monuments or memorials.

Contracts with Historical Commission

Sec. 5.07. The commission is authorized to negotiate and contract with the Texas Historical Commission for the purpose of assisting and advising the commission with regard to the proper memorials and monuments to be erected, repaired, and removed to new locations, the selection of sites therefor, and the locating and marking of graves.

Acquisition of Historic Buildings, Etc.

Sec. 5.08. The commission is authorized to acquire by gift, devise, purchase, or by its general power of eminent domain, any lands on which are situated historic buildings, sites, or landmarks of statewide historical significance associated with historic events or personalities, or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological sites, sites including fossilized footprints, inscriptions made by human agency, or any other archaeological, paleontological, or historical feature, within the limits of the State of Texas. The right of eminent domain conferred above as relating to historical sites, buildings, and structures shall not be exercised except upon a proper showing that it is necessary to prevent destruction or deterioration of the historical site, building, or structure. The commission is authorized to request from the Texas Historical Commission a certification or authentication of the worthiness of preservation of the features listed above.

Archives

Sec. 5.09. The commission may, in its discretion, provide for the storage and display of the archives of Texas.

Construction in Other Cities

Sec. 5.10. (a) The commission is authorized and empowered to select and purchase sites in any of the cities of Texas on which to construct state office buildings and adjoining parking lots where such are deemed necessary to house state departments and agencies in said cities, and is further authorized and empowered to plan, construct, and initially equip state office buildings together with adjoining parking space on each such site selected and purchased.

(b) The commission is further authorized and empowered to enter into lease agreements with departments, commissions, boards, agencies, and other instrumentalities of the State of Texas, political subdivisions of the State of Texas, and the federal government or its instrumentalities concerning the space in the office building which is the subject of this article. The commission is specifically denied the power to lease space in said building to individuals, private corporations or associations, partnerships, or any other private interests.

Grant of Easements and Rights-of-way

Sec. 5.11. The commission is authorized and empowered to grant such permanent and temporary easements and rights-of-way over and on lands of any state agency on any project administered by the commission as shall be necessary to insure the efficient and expeditious construction, improvement, renovation, use, and operation of such state agency project building or facility.

Definitions

Sec. 5.12. The following terms whenever used or referred to in this article shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) "Using agency" means any instrumentality of the state which shall occupy and make use of a state-owned or state-leased building, and for the purpose of this article the commission shall be considered as the using agency for the state capitol, the governor's mansion and for all other state-owned buildings maintained by the commission.

(2) "Commission" means the State Purchasing and General Services Commission.

(3) "Project" means any building construction project, other than those specifically excluded by Sections 5.13 and 5.14 of this article, which shall be financed in whole or in part by specific appropriation, bond issue or federal funds. The term "project" shall include the construction of any building or any structure or any facility or utility appurtenant thereto, including original equipment and original furnishings thereof, and of any addition to, alteration, rehabilitation, or repair of any existing building or any structure, or any facility or utility appurtenant thereto.

(4) "Project analysis" refers to work done prior to legislative appropriation for a project for the purpose of developing a reliable estimate of the cost of a project to be requested of the legislature.

(5) "Cost of a project" includes, but shall not be limited to, the cost of all real estate, properties, rights and easements acquired, utility services, site development, the cost of construction and the initial furnishing and equipment thereof, all architectural and engineering and legal expenses, the cost of surveys and plans and specifications, and such other expenses, including those incurred by the commission, as are necessary or incident to determining the feasibility or practicability of any project.

(6) "Construction" means and includes acquisition, construction, and reconstruction.

(7) "Rehabilitation" means and includes renewal, restoration, extension, enlargement, and improvement.

(8) "Equipment" and "furnishings" mean and include any equipment and furnishings whatsoever as may be necessary and required for the use of a project.

(9) "Architect/engineer" means a person registered as an architect pursuant to Chapter 478, Acts of the 45th Legislature, Regular Session, 1937, as amended (compiled as Article 249a of Vernon's Texas Civil Statutes), and/or a person registered as a professional engineer pursuant to Chapter 404, Acts of the 45th Legislature, Regular Session, 1937, as amended (compiled as Article 3271a of Vernon's Texas Civil Statutes), employed to provide professional architectural or engineering services and having overall responsibility for the design of a project. The term "architect/engineer" standing by itself may, unless the context clearly indicates otherwise, mean either an architect/engineer employed by the commission on a salary basis or an architect/engineer in private practice retained for a specific project under a contractual agreement with the commission. The term "private architect/engineer" shall specifically and exclusively refer to a registered architect or a registered engineer in private practice retained for a specific project under a contractual agreement with the commission.

(10) "Stage construction" means the construction of a project in phases, each phase resulting in one or more buildings or structures which individually or together shall be capable of use regardless of whether subsequent phases of the project are authorized or not.

Application of Article

Sec. 5.13. (a) Except as otherwise provided by this article, this article shall apply to all building construction projects as herein defined which may be undertaken by the state, with the following exceptions:

(1) all projects constructed by and for the State Department of Highways and Public Transportation;

(2) all projects constructed by and for state institutions of higher education;

(3) all projects constructed by and for the Texas Department of Corrections;

(4) pens, sheds, and ancillary buildings constructed by and for the Texas Department of Agriculture for the processing of livestock prior to export;

(5) all projects of repair and rehabilitation, except major renovations, of buildings and grounds on the commission inventory;

(6) all projects constructed by the Parks and Wildlife Department; and

(7) repair and rehabilitation projects of any other using agency, provided all labor for such projects is provided by the regular maintenance forces of the using agency under specific legislative authorization, and provided further, that such projects do not require the advance preparation of working plans and/or drawings.

(b) Nothing in this section shall be construed as prohibiting the commission from undertaking a project excluded by this section under an interagency agreement originated by the appropriate using agency, and provided further, that nothing in this section shall be construed as exempting any agency or institution from the requirements of Section 5.31 of this article.

(c) In addition to the exclusions enumerated in this section, the commission may, by regulation, exclude repair and rehabilitation projects involving the use of contract labor, provided such projects do not require the advance preparation of working plans and drawings.

Additional Exclusions

Sec. 5.14. In addition to the projects excluded by Section 5.13 of this article, it is specifically provided that nothing in this article shall apply to:

(1) projects constructed by or under the supervision of any public authorities created by the laws of this state; or

(2) state-aided local government projects of any character whatsoever.

Administration

Sec. 5.15. (a) The commission is designated as the administering agency and shall exercise the powers and duties conferred upon it by this article. The commission shall be the coordinating authority for the construction of any multiagency state office buildings which the legislature may authorize.

(b) The commission shall, subject to the provisions of the appropriations act and such general laws as may apply, employ professional, technical, and clerical personnel.

(c) The commission shall appoint a director of planning and construction who shall be a registered architect or a registered professional engineer and shall have proven administrative ability and experience in the fields of building design and construction. The director shall be the full-time executive and administrative officer of the commission which shall delegate to him such power, authority, and duties as it may deem necessary and proper.

(d) The commission may assign a qualified professional employee to any using agency where the volume of construction projects is such that the commission and the using agency agree that full-time coordination between the commission and the using agency is desirable. The commission and the using agency shall mutually agree upon the qualifications and duties of such assigned employees and the salary and related expenses of such assigned employees shall be charged against the projects of the using agency to which they are assigned. Such assignments shall be terminated whenever in the opinion of the commission they are no longer required.

(e) The commission may promulgate rules and regulations necessary to implement the powers, duties, and responsibilities imposed upon it by this article. The rules and regulations shall be binding on all state agencies upon being filed with the secretary of state. The commission shall prepare and publish a manual to assist using agencies in complying with the provisions of this article and the rules and regulations of the commission. Copies of the manual shall be distributed to all using agencies and shall be available to architects, engineers, contractors, and others who may need and request a copy of it.

(f) Legal representation of the commission shall be performed by the Attorney General of Texas. This provision shall not restrict the attorney general from employing special assistants to assist in the performance of duties arising by virtue of the provisions of this article in those instances where the attorney general deems such employment necessary.

(g) Venue of all suits for any breach of contract entered into pursuant to the provisions of this article shall be in Travis County, Texas.

(h) The commission may waive, suspend, or modify any provision of this article which shall be in conflict with any federal statute or any rule, regulation, or administrative procedure of any federal agency where such waiver, suspension, or modification shall be essential to the receipt of federal funds for any project. In the case of any project wholly financed from federal funds, any standards required by the enabling federal statute or required by the rules and regulations of the administering federal agency shall be controlling.

Project Analysis

Sec. 5.16. (a) Each using agency of the state which shall desire any project, other than those specifically excluded by Sections 5.13 and 5.14 of this article, shall prepare and submit to the commission a general description of the project. The commission shall cause all such projects to be studied and shall initiate the preparation of a project analysis for all new construction projects and for all other projects where, in the opinion of the commission, the cost of preparing a project analysis is justified.

(b) A project analysis may be prepared by a private architect/engineer employed by the commission or, at its discretion, by the commission's staff. A private architect/engineer employed for the purpose of preparing a project analysis shall be selected by the method set forth in Section 5.22 of this article and shall be paid from the State Building Construction Planning Fund established by Section 5.24 of this article. The contract to prepare a project analysis shall specify that the analysis shall become the property of the commission.

(c) A project analysis shall consist of (1) a complete description of the facility or project together with a justification of such facility or project prepar-

ed by the using agency, (2) a detailed estimate of the amount of space needed to meet the needs of the using agency and to allow for realistic future growth, (3) a description of the proposed facility prepared by an architect/engineer and including schematic plans and outline specifications describing the type of construction and probable materials to be used, sufficient to establish the general scope and quality of construction, (4) an estimate of the probable cost of construction, (5) a description of the proposed site of the project and an estimate of the cost of site preparation, and (6) an overall estimate of the cost of the project. All estimates involved in the preparation of a project analysis shall be carefully and fully documented and incorporated into the project analysis.

Throughout the preparation of the project analysis, the commission and any private architect/engineer employed by the commission shall work closely and cooperatively with the using agency to the end that the project analysis shall fully reflect the needs of the using agency.

The using agency shall use the cost of the project as determined by such project analysis as the basis of its request to the budget offices of this state.

(d) In the case of projects where, in the opinion of the commission, the cost of a project analysis is not justified or required, the commission shall, in cooperation with the using agency, develop a realistic estimate of the cost of the project. When necessary, the commission shall arrange for an on-site inspection and analysis of the proposed project by a member of its staff. The using agency shall be informed of the cost estimate so developed and shall use such estimate as the basis of its request to the budget offices of this state.

(e) On or before a date to be specified by the budget agencies of this state in each year immediately preceding a regular session of the legislature, the commission shall submit to the budget agencies a report listing all projects requested pursuant to this section. The list shall contain (1) a brief and specific justification of each project as prepared by the using agency, (2) a summary of the project analysis where one was made or a statement briefly describing the cost-estimating method used for projects for which a project analysis was not made, (3) a project cost estimate developed in accordance with the provisions of this section, with sufficient detail given to afford the budget agencies, the governor, and the legislature the widest possible latitude in developing policy in regard to each such project request, (4) an estimate, prepared by the commission with the cooperation of the using agency and with the cooperation of the private architect/engineer employed, of the annual cost of maintaining the completed project including the estimated cost of utility services, and (5) an estimate, prepared by the using agency, of the annual cost of staffing and operating the completed project exclusive of maintenance cost. Where appropriate, the commission, with the approval of the using agency, may indicate the feasibility of stage construction of a requested project and may indicate the degree to which funds would be required in the next biennium if the project were undertaken in stages.

(f) Whenever any using agency shall request three or more projects, it shall designate its priority rating for each project. The budget agencies shall, with the cooperation of the commission, develop detailed instructions to implement this priority system and the commission's report shall show the designated priority of each project to which a priority rating has been assigned.

Legislative Authorizations and Appropriations

Sec. 5.17. (a) The legislature shall authorize and appropriate for such projects as it may approve. Project appropriations shall be made directly to the using agency except in those instances where the project is to be constructed by the commission in which case the appropriation shall be made to the commission.

(b) The appropriation of funds by the legislature for the construction of a project shall be construed by the commission and the using agency as an expression of legislative intent that the project be completed within the limits of the funds actually appropriated. In the event that the funds appropriated are less than the amount originally requested or if, for any reason, the funds appropriated are less than the amount required for the project as originally submitted to the budget agencies, the commission and the using agency shall jointly confer on ways and means whereby the project cost can be brought within the bounds of the funds appropriated and shall, in such conferences, make every effort to comply with legislative intent with regard to modification of the project from the original request. In the event that it is impossible to modify the project to bring the cost within the amount appropriated, the commission shall notify the using agency that it considers such project as cancelled.

When authorized by the act appropriating funds for a project, the using agency may appeal the decision of the commission to the governor by submitting a request that the project be undertaken as stage construction or that the funds available for such project be supplemented by the transfer of funds appropriated to the same using agency for other projects of equal or lower priority or from the unused contingency reserves of any project of the same using agency. The governor shall, after obtaining the advice of the Legislative Budget Board, rule on such request and if the ruling shall favor the agency, the commission shall proceed with the project.

(c) The legislature may, by specific provision, provide for stage construction of a project and in such event the commission shall proceed with the project through the specifically authorized stage.

Fine Arts Projects

Sec. 5.18. (a) Any using agency which requests a project analysis by the commission, if the cost of the project is estimated to exceed $250,000, may stipulate that a percentage of the original project cost estimate not to exceed one percent shall be used for fine arts projects at or near the site of the building construction project, such as murals, fountains, mosaics, and other aesthetic improvements.

(b) If the expenditures for fine arts are authorized and appropriated by the legislature, the commission shall consult and cooperate with the Texas Commission on the Arts and Humanities for advice in determining how to utilize the portion of the appropriation to be used for fine arts projects.

(c) It is the intent of the legislature that emphasis be placed on works by living Texas artists whenever feasible. Consideration shall be given to artists of all ethnic origins.

(d) Nothing in this section is intended to limit, restrict, or otherwise prohibit the commission from including expenditures for fine arts in its original project cost estimate.

Fine Arts Projects Exempt Agencies

Sec. 5.19. (a) Any using agency exempt under Section 5.13 of this article and any county, city, or other political subdivision of this state undertaking a public construction project estimated to cost in excess of $250,000 may designate that a percentage not to exceed one percent of the cost of a public construction project shall be used for fine arts projects at or near the site of the construction project.

(b) The agency or the governing body of a political subdivision may consult and cooperate with the Texas Commission on the Arts and Humanities for advice in determining how to utilize the portion of the cost set aside for fine arts purposes.

(c) The Texas Commission on the Arts and Humanities shall place emphasis on works by living Texas artists whenever feasible, and when consulting with the governing body of a political subdivision, shall place emphasis on works by artists who reside in or near the political subdivision. Consideration shall be given to artists of all ethnic origins.

Preliminary Plans, Working Plans; Specifications

Sec. 5.20. (a) Preliminary plans and outline specifications and working plans and specifications for all projects shall be prepared either by a private architect/engineer selected and appointed by the commission in accordance with Section 5.22 of this article, or by the professional staff of the commission, provided, however, that a private architect/engineer shall be appointed for any new construction project estimated to cost in excess of $100,000 and for any new construction project for which the using agency requests that a private architect/engineer be selected and appointed. In either case, plans and specifications shall be approved by the commission, and shall not be accepted or used by the using agency without such approval. The commission shall see that plans and specifications (1) are clear and complete; (2) permit execution of the project with appropriate economy and efficiency; and (3) conform with the requirements set forth in the project analysis previously prepared.

(b) The commission shall appoint a design advisory panel to advise the commission and the using agency on the design concept and aesthetic merits of plans submitted by an architect/engineer, provided, however, that the final decision on such matters shall rest with the commission. The design advisory panel shall consist of five persons, two of whom shall be selected from a list of nominees submitted by the Texas Society of Architects, two of whom (one a structural engineer and the other a mechanical-electrical engineer) shall be selected from a list of nominees submitted by the Texas Society of Professional engineers, and one of whom shall be neither an architect nor an engineer and who shall serve as chairman of the panel. Members of the panel shall serve for two years and shall be eligible for reappointment and the commission shall promulgate regulations to provide for an orderly rotation of membership which may specify a shorter term of office for the original appointees. The members of the panel shall serve without compensation, but may be reimbursed for their necessary and actual expenses out of the appropriations to the commission. No member of the panel shall, during the period of his service, advise on any project in which he is employed, retained, or in any manner financially interested. The panel shall have no responsibility for reviewing the plans and specifications other than to the extent set forth in this subsection.

(c) Following final approval of the working plans and specifications and their acceptance by the using agency, the commission shall cause to be advertised in not less than two newspapers of general circulation for bids or proposals for performance of the construction and related work on the project. Subject to the applicable provisions of other law respecting the award of state contracts, the contract or contracts shall be awarded to the qualified bidder making the lowest and best bid; but no contract shall be awarded for a sum in excess of the amount which the comptroller shall certify to be available for such project. The commission shall have the right to reject any and all bids.

(d) Before a contract is awarded for the major repair or renovation of a state structure which has been designated by the Texas Historical Commission as a Recorded Texas Historic Landmark, the commission shall forward to the Texas Historical Commission a copy of the bids received and an evaluation of the qualifications of the bidders. The Texas Historical Commission shall review the bids and qualifications of the bidders and recommend to the commission the bidder to which the award should be

made. Based on the recommendation of the Texas Historical Commission, the commission may award the contract to a bidder other than the lowest bidder.

(e) Upon notice and on itemized statements by the commission:

(1) the comptroller shall transfer from each project appropriation to the State Building Construction Planning Fund created by Section 5.24 of this article an amount certified by the commission as sufficient to reimburse the planning fund for prior expenditures on behalf of the project; and

(2) the comptroller shall reserve from each project appropriation an amount estimated by the commission to be sufficient to cover contingencies over and above all amounts obligated by contract or otherwise, for planning, engineering, and architectural work, site acquisition and development, and construction, equipment, and furnishings contracts. The amount so reserved shall be used only upon the following conditions:

(A) that the architect/engineer or the contractor recommend and justify the proposed contingency expenditures by submitting a change order request;

(B) that the proposed change order request be approved by the architect/engineer;

(C) that the proposed change order request be approved by the using agency which shall make formal request for the allocation of funds from the contingency reserve; and

(D) that the director of planning and construction shall investigate the nature of the change order and concur in the necessity of the proposed expenditure or refuse same within 15 days after receiving the request.

In the event the director shall refuse to concur in a proposed contingency expenditure, the using agency may appeal to the commission and the findings of the commission shall be final. The commission shall promulgate regulations setting forth the procedures for such appeals.

If an approved change order shall result in a reduction of construction cost, the contingency reserve shall be increased by the amount of such reduction.

(f) The comptroller of public accounts shall issue warrants in payment of progress payments as well as final payments on construction under this article upon the written approval of the commission.

(g) Any equipment and furnishings not constructed or installed under the construction contract or contracts shall be acquired through regular purchasing channels of the state.

Project Construction Inspection

Sec. 5.21. The commission shall be responsible for protecting the interests of the state during the actual construction of each project covered by the provisions of this article. Construction inspection shall fall into three categories: detailed inspection, general inspection, and professional inspection, as defined and provided for in this section.

(1) Detailed inspection shall mean the close, technical, on-site examination of the materials, structure, and equipment, and surveillance of the workmanship and methods used to insure reasonably that the project is accomplished in compliance with information given by the contract documents and good construction practices by one or more full-time personnel at the project site. The commission shall be the sole judge of when detailed inspection is required and shall base its decision on the size and complexity of the project.

The full cost of detailed inspection shall be a charge against the project.

Detailed inspection shall be exercised by a project construction inspector who shall be appointed by the architect/engineer with the approval of the commission.

The project construction inspector shall:

(A) become thoroughly conversant with the drawings, specifications, details, and general conditions for executing the work;

(B) keep such records of the work as the architect/engineer and the commission may specify and require and make such reports to the architect/engineer with copies to the commission and the using agency as the architect/engineer and the commission may specify and require and maintain copies of these records and reports at the site of construction together with the plans, specifications, shop drawings, change orders, and correspondence dealing with the project;

(C) endeavor to see that the requirements of the contract documents are being carried out by the contractor;

(D) endeavor to see that all authorized changes are properly incorporated in the work and that no changes are made unless properly authorized;

(E) notify the architect/engineer if conditions encountered at the project are at variance with the contract documents and comply with the directives of the architect/engineer in endeavoring to correct these conditions;

(F) review shop drawings in relation to their adaptability to job conditions and advise the architect/engineer in respect thereto;

(G) endeavor to see that materials and equipment furnished are in accordance with the specifications;

(H) see that records are kept, on construction plans, of the principal elements of mechanical and electrical systems;

(I) see that accurate records are kept of all underground utility installations (including existing installations uncovered in the process of con-

struction) at the project site so that the information may be recorded on site plans or drawings which may be established and maintained by the commission and/or the using agency;

(J) keep a daily written log of all significant happenings on the job, the log to include the number of workers that worked that particular day and weather conditions that existed during the day;

(K) observe and give prompt written notice to the construction contractor's representative and the architect/engineer of any noncompliance on the part of the contractor's representative with any contract documents and notify the architect/engineer and the commission of any failure to take corrective measures promptly;

(L) initiate, attend, and participate in progress meetings and inspections with the contractor;

(M) review every contractor's invoice against the value of partially completed or completed work and the materials stored at the project site prior to its being forwarded to the architect/engineer and promptly notify the architect/engineer of any discrepancy between his review of the work and the invoice; and

(N) be responsible to the architect/engineer for the proper administration of the duties enumerated herein and comply with other instructions and assignments of the architect/engineer.

(2) General inspection shall mean the examination and inspection of the project at periodic intervals by employees of the commission. On projects where a project construction inspector is employed by an architect/engineer, the general inspector shall work with and through the project construction inspector and the architect/engineer. On all other projects, the general inspector shall work with and through the architect/engineer and shall exercise such detailed inspection functions as the commission may require. The cost of general inspection shall be a charge against the project.

(3) Professional inspection shall mean the periodic examination of all elements of the project to reasonably insure that these meet the performance and design features and the technical and functional requirements of the contract documents. Professional inspection shall be exercised by the architect/engineer or his authorized representative who shall:

(A) assist the commission in obtaining proposals from contractors and in awarding and preparing construction contracts, be responsible for the interpretation of the contract documents and any changes made thereto, and provide such interpretation of the plans and specifications as may be required during the construction phase;

(B) check and approve samples, schedules, shop drawings, and other submissions only for conformance with the design concept of the project and for compliance with the information given by contract documents;

(C) approve or disapprove all change order requests and, subject to the provisions of Section 5.20 of this article, prepare all change orders;

(D) assemble all written guarantees required of the contractors;

(E) make periodic visits to the site of the project to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the contract documents, the amount of time that such on-site inspections shall entail to be determined by dividing the total compensation for professional services, exclusive of payments for detailed inspection, by 100 with the result being expressed as the number of hours to be devoted to on-site inspections, project conferences with the contractor and others, and travel to and from such inspections and conferences;

(F) make a written inspection report after each visit to the project and send a copy of such report to the contractor and to the commission;

(G) keep the commission informed of the progress of the work and endeavor to guard against defects and deficiencies in the work of contractors;

(H) determine periodically the amount owing to the contractors and recommend payment of such amounts to the commission, the recommendation to constitute a representation to the commission that, based upon observations and other pertinent data, the work has progressed to the point indicated and also to constitute a representation to the commission on the part of the architect/engineer that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the plans, specifications, and contract documents; and

(I) conduct inspections to determine the dates of substantial and final completion and notify the commission and the using agency of findings in this respect.

(4) In the event that the commission requires full-time detailed inspection of the construction of a project, the architect/engineer shall select, subject to the commission's approval, the project construction inspector and shall be responsible for the proper administration of the duties enumerated under Subdivision (1) of this section. He shall pay the salary of the project construction inspector and shall be reimbursed for all such salary costs plus expenses of overhead directly applicable to such salary.

(5) Nothing in Subdivision (3) shall be construed as requiring the architect/engineer to assume responsibility for or to guarantee the complete adherence of the contractor to the plans and specifications and contract documents nor shall anything in Subdivision (3) be construed as requiring that the architect/engineer shall be liable for defects in construction.

(6) It is the responsibility of the architect/engineer to furnish the professional inspection of a project and when a private architect/engineer is employed, the fee paid such architect/engineer shall be deemed to cover professional inspection, provided, however, that such fee shall not be deemed to cover the additional cost of detailed inspection over and above the administrative duties specifically encompassed by Subdivision (4) of this section. In projects where the commission's staff serves as architect/engineer, the commission shall be responsible for professional supervision and the cost of such supervision shall be a charge against the project.

Selection of Architects/Engineers

Sec. 5.22. (a) The commission shall establish and maintain a file of all qualified private architects/engineers who express an interest in state building construction projects. The file shall contain such information as the commission shall deem essential and desirable together with brochures and exhibits submitted by each private architect/engineer. Each private architect/engineer may submit additional brochures, exhibits, and information as he may deem necessary and that may be in accordance with his ethical practice in order that his file shall be current at all times. The files shall be open to the inspection of any using agency.

(b) Ultimate responsibility for the selection of a private architect/engineer employed for any project covered by the provisions of this article shall be vested in the commission. In recognition of the close working relationship which must exist between the architect/engineer and the using agency, the commission shall request the using agency to make recommendations regarding private architects/engineers and the using agency which desires to take advantage of such opportunity shall submit to the commission the names of three private architects/engineers designating its order of preference. The commission shall consider the using agency recommendations in order of preference and shall not reject such recommendations without good and sufficient reason set forth in writing to the using agency. In the event that the commission rejects all of the using agency recommendations, the using agency shall prepare and submit a new list.

(c) If the using agency does not choose to submit recommendations, it shall request the commission to proceed to select a private architect/engineer in accordance with the generally accepted standards for such selection and in conformity with the ethical standards of the professional societies of such architects/engineers.

Compensation of Architects/Engineers

Sec. 5.23. Private architects/engineers employed by the commission shall be compensated in accordance with the following provisions:

(1) the compensation for new projects and rehabilitation projects shall be established by the commission on the basis of studies of the compensation paid within the state by private clients for projects of comparable size and complexity, provided that such compensation shall not exceed the minimum recommended for similar projects by the Texas Society of Architects in instances where the private architect/engineer is an architect or the minimum recommended by the Texas Society of Professional Engineers in instances where the private architect/engineer is an engineer. The compensation established by the commission shall be deemed to cover all professional services to be rendered by the private architect/engineer including professional inspection as that term is defined in Section 5.21 of this article. On any project where the commission requires detailed inspection, as defined by Section 5.21 of this article, the compensation shall be increased by the actual cost of providing such detailed inspection;

(2) the compensation for preparation of a project analysis as required by Section 5.16 of this article shall not exceed one percent of the estimated cost of construction. In the event the project is approved by the legislature in substantially the form originally requested and the same private architect/engineer is employed for the subsequent phases of design, the compensation paid under this subdivision shall be deducted from the compensation paid under the provisions of Subdivision (1) of this section; and

(3) the state shall furnish detailed information on space requirements and relationships and the justification for, use of, and general requirements to be met by the project. The state shall furnish a complete site survey and soil analysis.

Planning Fund

Sec. 5.24. There is hereby created in the state treasury a special fund to be known as the State Building Construction Planning Fund which shall be used to make payments for engineering, architectural, and other planning expenses necessary to make a project analysis in accordance with the provisions of Section 5.16 of this article. The commission shall authorize all payments made from the planning fund. The payments shall be a first charge against the project for which they were drawn and the amount so paid shall be credited to and transferred to the planning fund at such time as the legislature may approve the project and appropriate funds for its construction.

Final Inspection

Sec. 5.25. (a) The commission shall be responsible for directing final payment for work done on each project. If upon final inspection of any project it shall be found that the plans, specifications, contract, or change orders for the project shall not have been fully complied with, the commission shall, until such compliance shall have been effected or adjustments satisfactory to it shall have been made, refuse to direct such payment.

(b) The final inspection shall consist of an on-site inspection by the architect/engineer, a representative of the commission, a representative of the using agency, and a representative or representatives of the contractor or contractors. The final inspection shall be scheduled by the commission upon notification by the architect/engineer within 10 days after the architect/engineer has notified the commission that the contract has been performed according to the plans and specifications.

(c) Upon completion of the project the commission shall release the same to the using agency. The commission shall be responsible for making an inspection of the project prior to the expiration of the guarantee period to observe any defects which may appear within one year after completion of the contract. The commission shall give prompt written notice to the contractor of defects which are due to faulty materials and workmanship. Nothing in this subsection shall be construed as requiring the contractor to assume responsibility for or guarantee any defects other than those due to faulty materials or workmanship or failure on his part to adhere to the contract documents.

Uniform General Conditions

Sec. 5.26. (a) The commission shall adopt and maintain a uniform set of general conditions to be incorporated into all building construction contracts executed by the State of Texas, including those pertaining to projects otherwise excluded from the provisions of this article by Section 5.13 but not including those excluded by Section 5.14 of this article.

(b) The commission shall cause the uniform general conditions of state building construction contracts to be reviewed whenever in its opinion such review is desirable, but in no event less frequently than once every five years. The review shall be made by a committee appointed by the commission consisting of the director of planning and construction who shall serve ex officio as chairman of the committee and who shall vote only in the event of a tie; two persons appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Architects; two persons appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Professional Engineers; and two persons appointed by the commission from a list of nominees submitted to it by the Chairman of the Executive Council of the Texas Associated General Contractors Chapters; and two persons appointed by the commission from the list of nominees submitted to it by the Executive Secretary of the Mechanical Contractors Associations of Texas, Incorporated. Members of any review committee appointed pursuant to this subsection shall serve without compensation but may be reimbursed for their necessary and actual expenses.

Energy Conservation Standards

Sec. 5.27. (a) In addition to the uniform set of general conditions provided for in Section 5.26 of this article, the commission shall adopt and publish energy conservation design standards that all new state buildings, including buildings of state-supported institutions of higher education, are required to meet. These standards shall include both performance and procedural standards for maximum energy conservation allowed by the latest and most effective technology consistent with the requirements of public health and safety regulations and economic considerations.

(b) The standards shall be promulgated in terms of energy consumption allotments and shall take into consideration the various classes of building uses. Performance standards shall allow for design flexibility since only the total allotment of energy is prescribed.

(c) Procedural standards shall be directed toward specific design and building practices that produce good thermal resistance and low air leakage and toward requiring practices in the design of mechanical and electrical systems which conserve energy. The procedural standards shall address, when applicable, the following items:

(1) insulation;

(2) lighting, according to the lighting necessary for the tasks for which each area is intended to be used;

(3) ventilation;

(4) the potential use of new systems for saving energy in ventilation, climate control, and other areas; and

(5) any other item which the commission deems appropriate.

Energy Conservation Standards by Other Entities

Sec. 5.28. (a) The boards of regents and boards or governing bodies of state agencies, commissions, and institutions exempted by Section 5.13 of this article shall adopt and publish energy conservation design standards as provided in Section 5.27 of this article for all new buildings under their authority. The standards shall be consistent with those promulgated by the commission for other state buildings and be prepared in cooperation and consultation with the commission and the Governor's Energy Advisory Council.

(b) The commission shall assist the boards and governing bodies of state agencies, commissions, and institutions subject to the provisions of Subsection (a) of this section with the preparation of energy conservation standards by providing technical assistance and advice.

Model Energy Conservation Codes

Sec. 5.29. The commission, after consultation with the Governor's Energy Advisory Council and

the Texas Department of Community Affairs, shall prepare model energy conservation building codes and make them available for use by cities in enacting or amending their ordinances.

Energy Conservation Manual

Sec. 5.30. (a) The commission shall produce and publish an energy conservation manual for potential use by designers, builders, and contractors of residential and nonresidential buildings. The manual shall be furnished on request at a reasonable price sufficient to cover the costs of printing and help defray research costs in establishing design standards. The manual shall contain the following:

(1) guidelines for energy conservation established by the commission;

(2) forms, charts, tables, and other data to assist designers and builders in meeting the guidelines;

(3) design suggestions for meeting or exceeding the guidelines; and

(4) any other information which the commission finds will assist persons to become familiar with the latest technologies that they might use in meeting the guidelines.

(b) The manual shall be updated periodically as significant new energy conservation information becomes available.

Compilation of Construction and Maintenance Information

Sec. 5.31. (a) For the purpose of providing the governor, the legislature, and the budget offices of the state with current information on the status of state-owned buildings, and for the purpose of obtaining up-to-date information on construction costs, the commission shall biennially obtain from all using agencies a list of all state-owned buildings showing the year of completion, the general type of construction, size, usage, and general condition of each. In addition the commission shall, for all buildings completed from and after the effective date of this Act, obtain from all using agencies data showing the total cost of the project and the cost of construction together with such data as may be necessary to enable a meaningful comparison to be made on the cost of buildings of like nature.

(b) For the purpose of obtaining up-to-date information on maintenance data, the commission shall obtain biennially from all using agencies information on the cost of heating, cooling, and maintaining all buildings owned by the state.

(c) The commission shall summarize its findings in a report to be made available to the governor, the legislature, and the budget offices of this state. All state agencies, departments, and institutions shall cooperate with the commission in providing the information necessary for said report.

Solar Energy Use

Sec. 5.32. (a) Any construction of a new state building included in the exceptions prescribed by Section 5.13 of this article is not exempt from this section.

(b) In this section:

(1) "Solar energy" means radiant energy from the sun that may be collected and converted into useful thermal, mechanical, or electrical energy. The term includes biomass energy that is created in living plants through photosynthesis.

(2) "Solar energy device" means a solar collector or solar storage mechanism that collects, stores, or distributes solar energy.

(3) "Solar collector" means an assembly, structure, or design, including passive elements, used to absorb, concentrate, convert, reflect, or otherwise capture or redirect solar energy for subsequent use as thermal, mechanical, or electrical energy.

(4) "Solar storage mechanism" means equipment, components, or elements designed and used to store, for subsequent use, solar energy captured by a solar collector, in the form in which the energy will eventually be used or in an intermediate form. The term includes thermal, electrochemical, chemical, electrical, and mechanical storage mechanisms.

(c) During the planning phase of the proposed construction of a new state building, the commission or, if the construction is included in the exceptions prescribed by Section 5.13 of this article, the governing body of the appropriate agency or institution shall determine the economic feasibility of incorporating solar energy devices for space heating, cooling, water heating, and interior lighting into the building's design and proposed energy system. Economic feasibility for each function shall be determined by comparing the estimated cost of energy procurement using conventional design practices and energy systems with the estimated cost of using solar energy devices during the economic life of the proposed new building.

(d) If the use of solar energy devices for a particular function is determined to be economically feasible under Subsection (c) of this section, the commission or governing body shall include the use of solar energy devices for that function in the construction plans.

ARTICLE 6. LEASE OF SPACE FOR STATE AGENCIES

Definitions

Sec. 6.01. In this article:

(1) "Commission" means the State Purchasing and General Services Commission.

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

Determinations and Standards

Sec. 6.02. (a) When a state agency needs space to carry on its functions, the head of the agency or

his or her designee shall submit a written request for the space to the commission.

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

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

Sharing Space

Sec. 6.03. The commission may consolidate the requests for space of two or more state agencies with similar needs and obtain space and allocate space so that it can be shared by the agencies.

Preference for State-owned Space

Sec. 6.04. In filling a request for space, the commission shall give a preference to available state-owned space.

Leasing Space from Other Sources

Sec. 6.05. (a) When state-owned space is not available and a state agency has verified that it has sufficient funds available to cover a lease of space, the commission may lease space for the agency from another source according to the provisions of this section and the specifications submitted by the state agency.

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

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

(d) When competitive bidding is used, the commission shall take into consideration moving costs, the cost of time lost in moving, and other factors in determining the lowest and best bid.

The commission shall forward copies of all bids received to the leasing agency along with the commission's recommended award. If, after review of the bids and evaluation of all factors involved, the leasing agency determines that the bid selected by the commission is not in its opinion the lowest and best bid, it may file with the commission a written recommendation, complete with justification and full explanation of all factors considered in arriving at the recommendation, that the award be made to a bidder other than the commission's recommended bidder.

The commission shall give full consideration to the agency recommendation and if it does not agree with the agency recommendation, it shall notify the agency in writing. The agency and the commission shall attempt to reach an agreement on the award.

If agreement is not reached within 30 days, all bids and pertinent documents shall be transmitted to the governor who shall designate the bidder to which the award shall be made.

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

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

(g) The lease contract may provide for an original term not to exceed 10 years and may include options to renew for as many terms, not to exceed 10 years each, that the commission considers to be in the state's best interest, and when the contract contains no option to renew, the lease may be renewed once according to the same provisions that were in the original contract for a term not to exceed one year, on agreement of the parties.

(h) A lease contract is contingent on the availability of funds appropriated by the legislature to cover the provisions of the lease.

(i) The obligation of the lessor to provide lease space and of the commission to accept the space becomes binding on the award of the contract.

(j) In leasing space for the use of state agencies, the commission shall give first consideration to any structures that have been designated Recorded Texas Historic Landmarks as provided by Section 12, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes), or that have been listed in the National Register of Historic Places established by 16 U.S.C. Section 470a (1974), or that have been designated landmarks by the local governing authority, if the structure meets requirements and specifications and the cost is not substantially higher than other available structures that meet requirements and specifications.

Elimination of Barriers to Handicapped Persons in State Buildings

Sec. 6.06. The commission may not enter a lease contract under this article unless it complies with the provisions of Article 7 of this Act.

Remedial Action against Lessor

Sec. 6.07. When a state agency occupies lease space and is aware of circumstances concerning the space which require remedial action against the lessor, the agency shall notify the commission, and the commission may investigate the circumstances and the lessor's performance under the contract. When the commission requests the assistance of the attorney general in protecting the state's interest under a lease contract, the attorney general shall assist the commission.

Certification of Funds

Sec. 6.08. At least 60 days before the beginning of each fiscal biennium during the term of a lease contract entered into under this article, the state agency occupying the leased space shall certify to the commission that funds are available to cover the lease.

Option to Purchase

Sec. 6.09. When the commission considers it advisable, the commission may lease space for a state agency by a contract which contains an option for the commission to purchase the space subject to the legislature's appropriation of funds for the purchase. A lease contract containing the option shall show the amount that will be accumulated by the commission and credited toward the purchase at various periods during the term of the lease and the purchase price of the property at the beginning of each fiscal biennium during the term of the lease.

Records

Sec. 6.10. In order to efficiently maintain a space management system, the commission shall maintain records of the amount and cost of space under lease by the commission and may collect other information that it considers necessary. All state agencies shall cooperate with the commission in securing this information.

Exemptions

Sec. 6.11. The provisions of this article do not apply to the acquisition of district office space for members of either house of the legislature or space to be used by the Texas Employment Commission.

Rules

Sec. 6.12. The commission shall promulgate rules necessary to administer its functions under this article.

ARTICLE 7. ARCHITECTURAL BARRIERS

Policy

Sec. 7.01. The provisions of this article are to further the policy of the State of Texas to encourage and promote the rehabilitation of handicapped or disabled citizens and to eliminate, insofar as possible, unnecessary barriers encountered by aged, handicapped, or disabled persons, whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly restricted when such persons cannot readily use public buildings.

Application

Sec. 7.02. (a) The standards and specifications adopted under this article shall apply to all buildings and facilities used by the public which are constructed in whole or in part by the use of state, county, or municipal funds, or the funds of any political subdivision of the state. To such extent as is not contraindicated by federal law or beyond the state's power of regulation, these standards shall also apply to buildings and facilities constructed in this state through partial or total use of federal funds. All buildings and facilities constructed in this state, or substantially renovated, modified, or altered, after the effective date of this article from any one of these funds or any combination thereof shall conform to each of the standards and specifications adopted under this article except where the governmental department, agency, or unit concerned shall determine, after taking all circumstances into consideration, that full compliance with any particular standard or specification is impracticable. Where it is determined that full compliance with any particular standard or specification is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the commission. If it is determined that full compliance is not practicable, there shall be substantial compliance with the standard or specification to the maximum extent practical, and the written record of the determination that it is impractical to comply fully with a particular standard or specification shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.

(b) These standards and specifications shall be adhered to in those buildings and facilities under construction on the effective date of this article, unless the authority responsible for the construction shall determine that the construction has reached a state where compliance is impractical. This article shall apply to temporary or emergency construction as well as permanent buildings.

(c) These standards and specifications shall be adhered to in all buildings leased or rented in whole or in part for use by the state under any lease or rental agreement entered into on or after January 1, 1972. To such extent as is not contraindicated by federal law or beyond the power of the state's regulation, these standards shall also apply to buildings or facilities leased or rented for use by the state through partial or total use of federal funds. Facilities which are the subject of lease or rental agreements on January 1, 1972, will not be required to meet standards and specifications for the term of the existing lease or rental agreement but must be brought into compliance before a lease or rental agreement is renewed. Where it is determined by the governmental department, agency, or unit concerned that full compliance with any particular standard is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the commission. If it is determined that full compliance is not practical, there shall be substantial compliance with the standard or specification to the maximum extent practical, and the written record of the determination that it is impractical to comply fully with a particular standard or specification shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.

(d) Except as otherwise provided in Subsection (e) of this section, these standards and specifications shall be adhered to in certain privately financed buildings, building elements, and improved areas which are open to pubic use for education, employment, transportation, or acquisition of goods and services, and which are constructed on or after January 1, 1978, in counties with a population of 45,000 or more. Such facilities include the following:

(1) shopping centers which contain in excess of five separate mercantile establishments; compliance with accessibility standards and specifications relative to toilet rooms shall not apply unless the shopping center elects to have public toilet rooms;

(2) passenger transportation terminals;

(3) theaters and auditoriums having a seating capacity for 200 or more patrons;

(4) hospitals and related medical facilities which provide direct medical service to patients;

(5) nursing homes and convalescent centers;

(6) buildings containing an aggregate total of 20,000 or more square feet of recognizable office floor space;

(7) funeral homes; and

(8) commercial business and trade schools.

(e) The commission shall have the authority to waive or modify accessibility standards and specifications when application of such standards and specifications is considered by the commission to be irrelevant to the nature, use, or function of a building or facility covered by this article. The commission shall not waive or modify any standard or specification when such action would result in a significant impairment of the acquisition of goods and services by handicapped persons or substantially reduce the potential for employment of handicapped persons. All evidence supporting waiver or modification determinations made by the commission shall be made a matter of record and become part of the file system maintained by the commission.

Scope

Sec. 7.03. (a) This article is concerned with nonambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of coordination, and aging.

(b) It is intended to make all buildings and facilities covered by this article accessible to, and functional for, the physically handicapped to, through, and within their doors, without loss of function, space, or facilities where the general public is concerned.

Definitions

Sec. 7.04. For the purpose of this article the following terms have the meanings as herein set forth:

(1) "Nonambulatory disabilities" means impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheelchairs.

(2) "Semiambulatory disabilities" means impairments that cause individuals to walk with difficulty or insecurity. Individuals using braces or crutches, amputees, arthritics, spastics, and those with pulmonary and cardiac ills may be semiambulatory. The listing here made is illustrative and shall not be construed as being exhaustive.

(3) "Sight disabilities" means total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to danger.

(4) "Hearing disabilities" means deafness or hearing handicaps that might make an individual insecure in a public area because he is unable to communicate or hear warning signals.

(5) "Disabilities of coordination" means faulty coordination or palsy from brain, spinal, or peripheral nerve injury.

(6) "Aging" means those manifestations of the aging processes that significantly reduce mobility, flexibility, coordination, and perceptiveness but are not accounted for in the aforementioned categories.

Responsibilities for Enforcement

Sec. 7.05. (a) The responsibility for administration and enforcement of this article shall reside primarily in the commission, but the commission shall have the assistance of appropriate state rehabilitation agencies in carrying out its responsibilities under this article. State agencies involved in extending direct services to disabled or handicapped persons are authorized to enter into interagency contracts with the commission to provide such additional funding as might be required to insure that service objectives and responsibilities of such agencies are achieved through the administration of this article. In enforcing this article the commission shall also receive the assistance of all appropriate elective or appointive state officials. The commission shall from time to time inform professional organizations and others of this law and its application.

(b) The commission shall have all necessary powers to require compliance with its rules and regulations and modifications thereof and substitutions therefor, including powers to institute and prosecute proceedings in the district court to compel such compliance, and shall not be required to pay any entry or filing fee in connection with the institution of such proceedings. The commission or a handicapped person who seeks injunctive relief to obtain compliance with the rules and regulations shall first notify a person responsible for the building and allow that person 90 days to bring the building into compliance. The commission shall have the authority to extend the 90-day period when circumstances justify such extension.

(c) The commission is authorized to promulgate such rules and regulations as might reasonably be required to implement and enforce this article. The standards and specifications to be adopted by the commission under this article shall be consistent in effect to those adopted by the American National Standards Institute, Inc. (or its federally recognized successor in function), and the commission shall publish the standards and specifications in a readily accessible form for the use of interested parties.

(d) All plans and specifications for construction of buildings subject to the provisions of this article shall be submitted to the commission for review and approval prior to bidding and award of contract in accordance with rules and regulations adopted by the commission. Likewise, any substantial modification of approved plans shall be resubmitted to the commission for review and approval.

(e) The commission may review plans and specifications, make inspections, and issue certifications that structures not otherwise covered by this article are free of architectural barriers and in compliance with the provisions of this article. The commission is authorized to charge a fee, not to exceed $100, for review of plans and specifications, inspection, and certification of each privately owned building or facility.

(f) With respect to buildings and facilities that are under the jurisdiction and control of The University of Texas Board of Regents, the responsibility for administration and enforcement of this article shall reside in such governing board, and in the discharge of such responsibility the governing board shall have the same responsibilities, duties, powers, and authority that are herein imposed on and delegated to the commission with respect to all other buildings and facilities covered by this article.

ARTICLE 8. PROPERTY ACCOUNTING

Property Accounting System

Sec. 8.01. (a) All real and personal property belonging to the state shall be accounted for by the head of the agency which has possession of the property.

(b) The commission shall administer the property accounting system. The state auditor shall administer the property responsibility system. The commission shall issue rules and regulations and a manual of instruction and prescribe such records, reports, and forms necessary to accomplish the objects of this article subject to the approval of the state auditor. The state auditor is directed to cooperate with the commission in the exercise of the commission's rule-making powers herein granted by giving technical assistance and advice.

(c) The commission shall maintain a complete and accurate set of centralized records of state property. Where the commission finds that an agency has demonstrated its ability and competence to maintain complete and accurate detailed records of the property it possesses without the detailed supervision by the commission, it may direct that the detailed records be kept at the principal office of such agency. Where the commission issues such order, it shall keep only summary records of the property of such agency and the agency shall keep such detailed records as the commission directs and furnish the commission with such reports at such times as directed by the commission.

(d) Each agency head shall cause each item of state property possessed by his agency to be marked so as to identify it. The agency head shall follow the instructions issued by the commission in marking state property.

Responsibility for Property Accounting

Sec. 8.02. (a) All state agencies shall comply with the provisions of this article and keep the property records required.

(b) All real property owned by the state shall be accounted for by the agency which possesses the property. Except as herein provided, each agency shall maintain a record of each item of real property it possesses that shall include the following information, to be furnished upon request to the commission as part of the agency's annual inventory under Section 8.03(f) of this Act:

(1) a description of each item of property by reference to a volume number, and page or image number or numbers of the official public records of real property in a particular county, or where not applicable, by a legal description;

(2) the date of purchase of the property, where applicable;

(3) the purchase price of the property, where applicable;

(4) the name of the agency holding title to the property for the state; and

(5) a description of the uses of the property.

However, where the description of real property required by this subsection would be excessively voluminous, as in the case of highway right-of-way or park land, the commission may direct the agency in possession of that real property to furnish such description only in summary form, as agreed to by the commission and the agency involved. In addition, the real property administered by the General Land Office shall be accounted for by that office and not by the system prescribed herein, and the real property administered by the permanent funds established by the legislature and people shall be accounted for by the agency now charged with its administration and not by the system prescribed herein. Neither the General Land Office nor the agency charged with administration of the permanent funds may be required to furnish the commission with the records described in this subsection.

(c) All personal property owned by the state shall be accounted for by the agency that possesses the

property. The commission shall by regulation define what is meant by personal property for the purposes of this article, but such definition shall not include nonconsumable personal property having a value of $250 or less per unit. In promulgating such regulations, the commission shall take into account the value of the property, its expected useful life, and if the cost of record keeping bears a reasonable relationship to the cost of the property on which records are kept. The commission shall consult with the state auditor in making such regulations and the auditor shall cooperate with the commission in the exercise of this rulemaking power by giving technical assistance and advice.

(d) All medical, surgical, and technical equipment and supplies provided by the Texas Department of Health to local public health units, local public health laboratories, state institutions, and nonprofit institutions, contributing to the promotion and maintenance of public health by the usage of such medical, surgical, and technical equipment and supplies shall be accounted for by that department and not by the system prescribed in this article. The Texas Department of Health shall maintain at all times a complete record of such medical, surgical, and technical equipment and supplies provided and such records shall be verified by the state auditor and available to the federal auditors for the agency of the federal government making such grants for assistance in the purchase of such medical, surgical, and technical equipment and supplies.

Property Manager; Property Inventory

Sec. 8.03. (a) Each agency head is responsible for the proper custody, care, maintenance, and safekeeping of the state property possessed by his agency.

(b) Each agency head shall designate either himself or one of his employees as property manager. The commission shall be informed in writing by the agency head of the name of the property manager and shall be informed of any changes. Where the commission finds that convenience and efficiency will be served, it may permit more than one property manager to be appointed by the agency head.

(c) The property manager shall maintain the required records on all property possessed by the agency and shall be the custodian of all such property.

(d) No person shall entrust state property to any state official or employee or to anyone else to be used for other than state purposes.

(e) When an agency's property is entrusted to some person other than the property manager, the property manager shall require a written receipt for such property executed by the person receiving custody of the property. When the possession of property of one agency is entrusted to another agency on loan, such transfer shall be done only when authorized in writing by the agency head who is lending such property and the written receipt shall be executed by the agency head who is borrowing such property. The property manager is relieved of the responsibility for property which is the subject of such a receipt.

(f) Each agency shall make a complete physical inventory of all property in its possession once a year. The inventory shall be taken on the date prescribed for the agency by the commission.

(g) The agency head shall forward a signed statement describing the method by which the inventory was verified, along with a copy of such inventory, within 45 days after the inventory date for the agency.

(h) The commission shall supervise the property records of each agency so that the records accurately reflect the property currently possessed by the agency. The commission shall prescribe the methods whereby items of property are deleted from the property records of the agency. Property that has become surplus or obsolete and no longer serviceable and has been turned over to the commission for disposal under the laws relating thereto shall be deleted from the records of that agency upon the authorization of the commission. Property that is missing from the agency or property that is disposed of directly by the agency in a legal manner shall be deleted from the commission's records upon the authorization of the state auditor.

Change of Property Managers

Sec. 8.04. When there is a change in agency heads or property managers, the incoming agency head or property manager shall execute a receipt for all agency property accounted for to the outgoing agency head or property manager. A copy of such receipt shall be delivered to the commission, the state auditor, and the outgoing agency head or property manager. No further warrants in favor of the outgoing agency head or property manager shall be drawn or paid until the state auditor has certified that the agency property has been properly accounted for. The state auditor may make this certification without requiring that a physical inventory be taken.

Liability for Property Loss

Sec. 8.05. Where agency property disappears, whether through theft or other cause, as a result of the failure of the agency head, property manager, or agency employee entrusted with the property in writing to exercise reasonable care for its safekeeping, such person shall be pecuniarily liable to the state for the loss thus sustained by the state. Where agency property deteriorates as a result of the failure of the agency head, property manager, or agency employee entrusted with the property in writing to exercise reasonable care to maintain and service the property, such person shall be pecuniarily liable to the state for the loss thus sustained by the state. Where agency property is damaged or destroyed as a result of an intentional wrongful act or of a negligent act of any state official or employee, such person shall be pecuniarily liable to the state

for the loss thus sustained by the state. The liability prescribed by this section may be found to attach to more than one person in a particular instance; in such cases, the liability shall be joint and several.

Reporting to State Auditor

Sec. 8.06. When any state property has been lost, destroyed, or damaged through the negligence or fault of any state official or employee, the agency head responsible for such property shall immediately report such loss, destruction, or damage to the state auditor. Upon learning in any manner of such property loss, destruction, or damage, the state auditor shall investigate the matter. If the investigation discloses that an injury has been sustained by the state through the fault of a state official or employee, the state auditor shall make written demand upon such state official or employee for reimbursement to the state for the loss so sustained.

Legal Action to Recover Monetary Loss of Property

Sec. 8.07. In case the demand made by the state auditor for reimbursement for property loss, destruction, or damage is refused or disregarded by the state official or employee upon whom such demand is made, the state auditor shall report the facts to the attorney general. If, after an investigation of the facts, the attorney general finds that legal liability may be adjudged against the state official or employee, he shall take such legal action to recover the monetary loss of the state property occasioned by the loss, damage, or destruction as in his opinion may be deemed necessary. Venue for all such suits instituted against a state official or employee shall lie in the courts of appropriate jurisdiction of Travis County.

Failure to Keep Records

Sec. 8.08. When any agency fails to keep the records required under the provisions of this article or fails to take the annual physical inventory, the commission shall so inform the comptroller and the comptroller may refuse to draw any warrants on behalf of such agency.

Transfer of Personal Property

Sec. 8.09. (a) Any state agency is authorized to transfer any personal property of the state under its control or jurisdiction to any other state agency with or without reimbursement between the agencies; provided, however, that the provisions of this article shall not apply to any real property.

(b) When any personal property under the control or jurisdiction of one state agency is transferred to the control or jurisdiction of any other state agency, such transfers shall be immediately and simultaneously reported to the commission by the transferor and the transferee on forms prescribed by the commission, and it shall adjust the inventory records of the agencies involved in making the transfer. Whenever any transfer is made with reimbursement from funds deposited in the state treasury, the transferee shall issue a voucher payable to the transferor, and the comptroller of public accounts shall issue warrants for reimbursement.

Distribution of This Article

Sec. 8.10. Each agency head shall distribute a copy of this article to each official and employee of his agency and shall give a copy to each new employee of the agency.

ARTICLE 9. SURPLUS AND SALVAGE PROPERTY

Definitions

Sec. 9.01. As used in this article:

(1) "Comptroller" means the comptroller of public accounts.

(2) "Auditor" means the state auditor.

(3) "Property" means personal property, and does not mean real property, or any interest in real property. Personal property affixed to real property may be sold under this law if its removal and disposition is to carry out a lawful objective under this law or any other law.

(4) "Surplus property" means any personal property which is in excess of the needs of any state agency and which is not required for its foreseeable needs. Surplus property may be used or new but possesses some usefulness for the purpose for which it was intended or for some other purpose.

(5) "Salvage property" means any personal property which through use, time, or accident is so depleted, worn out, damaged, used, or consumed that it has no value for the purpose for which it was originally intended.

(6) "Political subdivision" means a county, municipality, school district, or junior college district.

Establishment of Procedures

Sec. 9.02. The commission shall establish and maintain procedures for the transfer, sale, or disposal of surplus and salvage property no longer needed by state agencies.

Mailing Lists of Political Subdivisions

Sec. 9.03. The commission shall maintain a mailing list, renewable annually, of political subdivision purchasing agents or other officers performing similar functions who have asked for information on surplus or salvage equipment or material the state may have available.

Disposition of Surplus or Salvage Property

Sec. 9.04. (a) All state agencies that determine they have surplus or salvage property shall inform the commission of the kind, number, location, condition, original cost or value, and date of acquisition of the property.

(b) When a state agency reports to the commission that it has surplus or salvage equipment or

material, the commission shall inform other state agencies and political subdivisions of the existence, kind, number, location, and condition of the equipment or material.

(c) When notified of surplus or salvage property, a state agency may negotiate directly with the reporting state agency for an interagency transfer of the property at a mutually agreed upon value. If a transfer is made, the participating agencies shall report the transaction to the comptroller and the commission. The comptroller shall debit and credit the proper appropriations and the commission shall adjust the state inventory records if inventoried property is transferred.

(d) A political subdivision shall notify the commission within 30 days from the date of the notice if it desires to negotiate for surplus or salvage equipment or material.

(e) If no state agency negotiates an interagency transfer of the equipment or material within 30 days from the date of the notice, and if the commission determines that the equipment or material will not satisfy a state need, the commission may authorize the sale or transfer of surplus or salvaged equipment or material to any political subdivision which has expressed a desire to negotiate.

(f) The commission shall adopt rules and regulations to govern occasions when more than one political subdivision expresses a desire to negotiate for the same surplus or salvage equipment or material. The commission may adopt other necessary rules and regulations to govern the sale or transfer of surplus or salvage equipment and material to political subdivisions.

(g) If no state agency negotiates an interagency transfer of the equipment or material within 30 days from the date of the notice and no political subdivision has expressed a desire to negotiate, or if one or more political subdivisions has expressed a desire to negotiate but is unable to negotiate a sale or transfer of the equipment or material within 40 days from the date of the notice, the commission may offer the equipment or material to the organization known as the Texas Partners of the Alliance, a registered agency with the Advisory Committee on Voluntary Foreign Aid with the approval of the Partners of the Alliance office of the Agency for International Development. The equipment or material shall be offered at its fair market value as determined by mutual agreement between the commission and the Texas Partners of the Alliance.

(h) If the Texas Partners of the Alliance do not accept the offer within 60 days, or if the commission and the Texas Partners of the Alliance cannot agree on the fair market value of the equipment or material, the commission shall sell or dispose of the equipment or material as otherwise provided by this article.

Alternative Disposition of Surplus or Salvage Property

Sec. 9.05. (a) If surplus or salvage property is not disposed of under the provisions of Section 9.04 of this article, the commission shall sell the property by competitive bid or auction or delegate to the state agency having possession of the property the authority to sell the property on a competitive bid basis.

(b) If the value of any property or lot of property to be sold is estimated to be over $1,000, the sale shall be advertised at least one time in at least one newspaper of general circulation in the vicinity where the property is located by the commission or the state agency delegated authority to sell the property.

(c) When the commission sells any surplus or salvage property it shall report the item sold and the sale price to the agency that declared such property as surplus or salvage.

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

(e) The proceeds from the sale of any surplus or salvage property less the cost of advertising the sale shall be deposited to the credit of the item of appropriation to the agency for whom the sale was made. A portion of the proceeds from the sale of any surplus or salvage property equal to the cost of advertising the sale shall be deposited in the state treasury to the credit of the item of appropriation to the commission from which such cost was expended.

Destruction of Surplus or Salvage Property

Sec. 9.06. If the commission cannot sell or dispose of any property reported to it as surplus or salvage it may order the property destroyed as worthless salvage and report the destruction to the declaring agency. The destruction of salvage shall authorize the commission to remove reported property from the state inventory if on the state inventory. Authorization by the commission to delete salvage items not its own from the state inventory shall not be required. It is not the intention of this section to alter, enlarge, or amend the law providing for the deletion from inventory upon the authorization of the auditor of property that is missing from any agency.

Maximum Return from Disposition of Surplus or Salvage Property

Sec. 9.07. The commission shall at all times try to realize the maximum return to the state in the sale and disposal of surplus and salvage property. It shall maintain a list of prospective buyers of surplus and salvage property and it may in all cases reject any or all offers if it finds rejection to be in the best interests of the state. It shall cooperate with all state agencies in a continuing program of surplus and salvage property evaluation to minimize losses

from accumulations and it shall cooperate at all times with the auditor in surplus and salvage property analysis.

Obtaining Good Title to Surplus or Salvage Property

Sec. 9.08. Any purchaser of surplus or salvage property at a sale made by the commission or by any agency under authorization of the commission shall obtain good title to any property purchased if the purchaser has in good faith complied with the conditions of the sale and the applicable rules and regulations of the commission.

Rules, Reports, Forms

Sec. 9.09. The commission is authorized to promulgate rules and regulations and prescribe reports and forms necessary to accomplish the purposes of this article subject to the approval of the state auditor.

Disposition of Property by Legislature

Sec. 9.10. The provisions of this article do not apply to the disposition of surplus property by either house of the legislature pursuant to a system of disposition provided for in the rules and regulations of the administration committee of each house. If surplus property of either house is sold, proceeds of the sale shall be deposited in the state treasury to the credit of the expense fund of that house.

Purchase of Legislative Chairs

Sec. 9.11. A legislator may purchase the executive chair used by the legislator on the floor of the legislature if:

(1) the legislator has not been reelected; and

(2) the legislator pays into the state treasury the commission's estimate of the fair market value of replacement equipment.

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

Property Used as Trade-in

Sec. 9.12. A state agency may offer surplus or salvage property as a trade-in on new property of the same general type when such exchange is in the best interests of the state.

Exemption

Sec. 9.13. For purposes of this article the terms "surplus" and "salvage" shall not apply to products and by-products of research, forestry, agricultural, livestock, and industrial enterprises in excess of that quantity required for consumption by the producing agency when such agencies have a continuing and adequate system of marketing research and sales, the efficiency of which shall be certified to the commission by the state auditor. A qualifying agency shall furnish the commission with a copy of the rules and regulations and latest revisions thereof promulgated by the policy-making body of each agency or institution for the guidance and administration of the programs enumerated herein. When requested by such agency or institution to do so, the commission shall dispose of the property as provided for in this article.

Authorization of Agencies to Dispose of Property

Sec. 9.14. The commission may authorize an agency to dispose of surplus or salvage property where the agency demonstrates to the commission its ability to make such disposition under the rules and regulations set up by the commission, as provided for herein. State eleemosynary institutions and institutions and agencies of higher learning shall be excepted from the terms of this article.

Disposition of Wastepaper

Sec. 9.15. The commission shall establish and maintain in each public building under its control facilities for collecting separately from all other wastes all the wastepaper disposed of in that building. The commission shall sell the wastepaper for recycling purposes to the highest bidder.

ARTICLE 10. TELECOMMUNICATIONS SERVICES

Definitions

Sec. 10.01. In this article:

(1) "Telecommunications services" means intercity communications facilities or services, provided that any dedicated circuits included as part of the consolidated system are considered to begin and end at the main connecting frame. "Telecommunications services" does not include single agency point-to-point radio systems or facilities or services of criminal justice information communication systems.

(2) "Consolidated telecommunications systems" means the network of telecommunications services serving the government of the State of Texas.

(3) "Centrex System" means the centralized telephone service utilized for the capitol complex in Austin.

System of Telecommunications Services

Sec. 10.02. (a) The commission shall plan, establish, and manage the operation of a system of telecommunications services for all state agencies. Each agency shall identify its particular telecommunications services requirements and the site at which the service shall be provided.

(b) The commission shall fulfill the telecommunications requirements of each state agency to the extent possible and to the extent that funds are appropriated or available for this purpose.

(c) The commission may negotiate rates and execute contracts with telecommunications service utilities for services, lease transmission facilities on a competitive bid basis if possible, and develop, establish, and maintain carrier systems necessary to the operation of the telecommunications system.

(d) All contracts with telecommunications carriers shall contain the provision that the commission or any participating agency may obtain any data relating to the costs to the state of parallel tolls.

Policies and Guidelines

Sec. 10.03. (a) In order to insure efficient utilization of telecommunications systems at minimum cost to the state, the commission shall promulgate and disseminate to all agencies appropriate policies, guidelines, operating procedures, and telephone directories.

(b) Each agency shall comply with the policies, guidelines, and operating procedures promulgated. The commission, with the advice of the state auditor, shall maintain records relating to the consolidated telecommunications system as necessary to enable the commission to analyze the cost effectiveness of the system to the state agencies, and shall advise the legislature at each session as to the cost effectiveness of the system. If, in the opinion of the commission, the total cost of the system reaches a level which would justify total state ownership and operation of the system, the commission shall recommend to the legislature the implementation of such action.

Balancing Technological Advancements and Existing Facilities

Sec. 10.04. In the planning, design, implementation, and operation of the telecommunications systems and facilities, the commission shall maintain an appropriate balance between the adoption of technological advancements and the efficient utilization of existing facilities and services in order to avoid misapplication of state funds and degradation or loss of the integrity of existing systems and facilities.

Sharing of Services or Facilities

Sec. 10.05. Telecommunications facilities and services, to the extent feasible and desirable, shall be provided on an integrated or shared basis, or both, to avoid waste of state funds and manpower.

Payment for Services

Sec. 10.06. (a) The commission shall develop a system of billings and charges for services provided in operating and administering the consolidated telecommunications system, which allocates the total state cost to each entity serviced based on proportionate usage.

(b) The comptroller of public accounts shall establish in the state treasury a revolving account for the administration of this article. The account shall be used as a depository for funds received from entities served and as a source of funds to purchase, lease, or otherwise acquire services, supplies, and equipment, and to pay salaries, wages, and other costs directly attributable to the provisions and operations of the system.

(c) In order to provide an adequate cash flow as may be necessary for purposes of this article, using state agencies and other entities, upon proper notification, shall make monthly payments into the telecommunications revolving fund account from appropriated or other available funds. The legislature may appropriate funds for the operation of the system directly to the commission. In that case the revolving fund shall be used to receive funds due from local government entities and other agencies to the extent that their funds are not subject to legislative appropriation.

Contract with Entities Other than State Agencies

Sec. 10.07. The commission may contract with each house of the legislature, legislative agencies, counties, cities, districts, and other political subdivisions and agencies not within the definition of "state agency," for utilization of the state telecommunications system.

Designated Agent

Sec. 10.08. The commission is designated as the agency of this state responsible for obtaining telecommunications services.

Centrex System

Sec. 10.09. (a) The commission shall provide the centrex system for state agencies, each house of the legislature, and legislative agencies in the capitol complex and other state agencies which elect to subscribe to such service.

(b) Each using entity shall make monthly payments to the commission when assessed by the commission.

(c) Each using entity shall arrange for its telephone equipment directly with the supplying telephone company.

(d) The commission shall prepare and issue a revised centrex telephone directory in February of each year.

ARTICLE 11. MISCELLANEOUS PROVISIONS

Transfer of Powers and Duties; References

Sec. 11.01. (a) All powers, duties, and functions granted or assigned to the State Board of Control by laws not repealed by this Act, other than powers, duties, and functions previously transferred to other agencies, are transferred to the commission.

(b) Any reference in the statutes to the State Board of Control means the State Purchasing and General Services Commission.

(c) Any reference in the statutes to The State Purchasing Act of 1957 means Article 3 of this Act.

Messenger Service

Sec. 11.02. (a) The commission shall operate a messenger service for handling unstamped written communications between state agencies, including the legislature and legislative agencies, located in Austin. All such agencies in the capitol complex shall utilize the service, and other state agencies shall utilize the service to the maximum extent feasible.

(b) State warrants may be delivered upon agreement between the state comptroller, the commission, and the agency concerned.

(c) United States mail may be delivered to and from the post office located in the capitol complex on agreement of the commission and the agency concerned.

Business Machine Repair

Sec. 11.03. (a) The commission shall maintain a facility for the repair of office machines and shall offer the service to state agencies, including the legislature and legislative agencies, located in Austin.

(b) Using agencies shall make payment to the commission for repair services by vouchers prepared and submitted to the using agency by the commission.

(c) No privately-owned machines shall be serviced by the commission.

Central Supply Store

Sec. 11.04. (a) The commission shall operate a central supply store where state agencies, including the legislature and legislative agencies, can secure small supply items.

(b) The commission shall submit a purchase voucher to each using agency after the close of each month covering supply items purchased.

(c) Purchases from the central supply store may be made only by state agencies.

ARTICLE 98. AMENDMENTS

Secs. 98.01 to 98.04. [Amends art. 6252–11c]

ARTICLE 99. FINAL PROVISIONS

Board Abolished

Sec. 99.01. The State Board of Control is abolished.

Transfer of Personnel, Property, Etc.

Sec. 99.02. All personnel, records, and property of the State Board of Control are transferred to the State Purchasing and General Services Commission.

Initial Appointments to Commission

Sec. 99.03. In making the initial appointments to the commission, the governor shall designate one member for a term expiring January 31, 1981, one for a term expiring January 31, 1983, and one for a term expiring January 31, 1985.

Application

Sec. 99.04. Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252–11c, Vernon's Texas Civil Statutes), as amended by this Act, does not apply to any contract that a state agency entered or renewed before the effective date of this Act. A contract entered or renewed before the effective date of this Act is governed by Chapter 454, Acts of the 65th Legislature, Regular Session, 1977, as it existed when the contract was entered or renewed, and that law is continued in effect for this purpose as if this Act were not in force.

Repealer

Sec. 99.05. The following articles and acts, as compiled in Vernon's Texas Civil Statutes, are repealed: 601, 601a, 602, 606, 606a, 630, 630a, 630b, 630c, 634½, 634a–1, 635, 655, 657, 658, 658a, 664–1, 664–2, 664–3, 665, 665a, 665b, 666, 666a, 666a–2, 666b, 667, 668, 669, 673, 674, 675, 676, 678, 678b, 678c, 678e, 678e–1, 678e–2, 678f, 678f–1, 678g, 678h, 678i, 678m, 678m.1, 678m–1, 678m–2, 678m–3, 678m–4, 678m–5, 688, 688a, 689, 689a, 690–695, 6252–6, and 6252–6a.

[Acts 1979, 66th Leg., p. 1908, ch. 773, §§ 1.01 to 99.05, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 499, ch. 207, §§ 1, 2, eff. May 28, 1981; Acts 1981, 67th Leg., p. 2265, ch. 546, §§ 1 to 3, eff. June 12, 1981; Acts 1981, 67th Leg., p. 2278, ch. 555, §§ 1, 2, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2705, ch. 737, § 16, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 3060, ch. 805, §§ 1 to 4, eff. Aug. 31, 1981.]

Acts 1981, 67th Leg., p. 2266, ch. 546, § 4, provides:

"Section 3 of this Act applies only to a charge based on failure to complete performance of a contract made on or after the effective date of this Act."

Acts 1981, 67th Leg., p. 2279, ch. 555, § 3 provides:

"This Act does not apply to the construction of a new building if the final written plans were completed before the effective date of this Act."

Art. 602. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, §§ 2.04 and 2.05.

Arts. 606, 606a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Former art. 606a, the State Telecommunications Consolidation Act of 1975, was derived from Acts 1975, 64th Leg., p. 875, ch. 333. See, now, art. 601b, § 10.01 et seq.

CHAPTER TWO. DIVISION OF PUBLIC PRINTING

Arts. 630 to 630c. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former art. 630, see, now, art. 601b, § 3.25.
For subject matter of former art. 630c, see, now, art. 601b, § 3.26.

CHAPTER THREE. PURCHASING DIVISION

Article
664–5. Repealed.
664–6. Repealed.

Art. 634½. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, § 3.23.

Art. 634a–1. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, § 3.03.

Art. 635. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, § 3.13.

Art. 655. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, § 3.14.

Arts. 657 to 658a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former arts. 657 and 658, see, now, art. 601b, §§ 3.15 and 3.16.

For subject matter of former art. 658a, see, now, art. 601b, § 3.24.

Arts. 664–1 to 664–3. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Prior to repeal, art. 664–3 was amended by:

Acts 1975, 64th Leg., p. 1927, ch. 626, §§ 11, 12.

Acts 1975, 64th Leg., p. 2393, ch. 734, §§ 17, 18.

Acts 1977, 65th Leg., p. 707, ch. 266, § 1.

Acts 1979, 66th Leg., p. 2429, ch. 803, § 10.

For subject matter of former arts. 664–1 and 664–2, see, now, art. 601b, §§ 3.27 and 3.28.

For subject matter of former art. 664–3, see, now, art. 601b, § 3.01 et seq.

Art. 664–5. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

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

The repealed article, relating to a pilot program for purchase of blind-made products and services was derived from:

Acts 1975, 64th Leg., p. 2391, ch. 734, § 16.

Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.103.

Acts 1979, 66th Leg., p. 676, ch. 301, § 3.

Acts 1979, 66th Leg., p. 2429, ch. 803, §§ 1 to 9.

Art. 664–6. Repealed by Acts 1979, 66th Leg., p. 679, ch. 301, § 8(a), eff. May 31, 1979; Acts 1979, 66th Leg., p. 2052, ch. 803, § 10, eff. Aug. 27, 1979

The repealed article, relating to purchase of blind-made goods and services by state agencies, departments, and institutions, was derived from Acts 1975, 64th Leg., p. 1925, ch. 626, §§ 1 to 10, as amended by Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.104.

Art. 664–7. Purchasing Program for Counties

Definition

Sec. 1. In this Act, "local government" means a county, city, town, special district, school district, junior college district, or other legally constituted political subdivision of the state.

Purchasing Program

Sec. 2. (a) The State Purchasing and General Services Commission shall establish a program by which the commission performs purchasing services for local governments. The services shall include:

(1) the extension of state contract prices to participating local governments when the commission considers it feasible;

(2) solicitation of bids on items desired by local governments if the solicitation is considered feasible by the commission and is desired by the local government; and

(3) provision of information and technical assistance to local governments about the purchasing program.

(b) The commission may charge a participating local government an amount not to exceed the actual costs incurred by the commission in providing purchasing services to the local government under the program.

(c) The commission may adopt rules and procedures necessary to administer the purchasing program.

Local Government Participation

Sec. 3. (a) A local government may participate in the purchasing program of the commission by filing with the commission a resolution adopted each year by the governing body of the local government requesting that the local government be allowed to participate and stating that the local government:

(1) will designate an official to act for the local government in all matters relating to the program, including the designation of specific contracts in which the local government desires to participate, and that the governing body will direct the decisions of the representative;

(2) will purchase from the contracts made under this subsection, except in emergencies;

(3) will be responsible for payment directly to the vendor under each contract; and

(4) will be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

(b) A local government that purchases an item under a state contract satisfies any state law requiring the local government to seek competitive bids for the purchase of the item.

[Acts 1979, 66th Leg., p. 726, ch. 320, §§ 1, 2, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 626, ch. 248, § 2, eff. May 28, 1981.]

CHAPTER FOUR. PUBLIC BUILDINGS AND GROUNDS DIVISION

Article

678i. Repealed.

Arts. 665 to 666. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former art. 665, see, now, art. 601b, § 4.01.

For subject matter of former art. 665b, see, now, art. 601b, § 9.15.

Prior to repeal, art. 666 was amended by Acts 1975, 64th Leg., p. 934, ch. 348, § 1.

For subject matter of former art. 666, see, now, art. 601b, § 9.01 et seq.

Art. 666a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, § 4.02.

Arts. 666a-2 to 669. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Prior to repeal, art. 666b was amended by Acts 1977, 65th Leg., p. 1412, ch. 572, § 1. See, now, art. 601b, § 6.01 et seq.

For subject matter of former arts. 667 to 669, see, now, art. 601b, §§ 4.03 to 4.05, respectively.

Arts. 673 to 676. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former arts. 673 to 676, see, now, art. 601b, §§ 4.06 to 4.09, respectively.

Art. 678. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

See, now, art. 601b, § 4.10.

Arts. 678b, 678c. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former art. 678b, see, now, art. 601b, § 4.11.

Art. 678d-1. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

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

Arts. 678e to 678i. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Prior to repeal, art. 678e was amended by Acts 1975, 64th Leg., p. 861, ch. 329, §§ 1, 2; Acts 1977, 65th Leg., p. 1912, ch. 763, § 1. See, now, art. 601b, § 4.12.

For subject matter of former art. 678e-2, see, now, art. 601b, § 4.13.

For subject matter of former art. 678f, see, now, art. 601b, § 5.12 et seq.

For subject matter of former art. 678f-1, see, now, art. 601b, § 4.14.

Prior to repeal, art. 678g was amended by Acts 1975, 64th Leg., p. 1950, ch. 641, § 1; Acts 1977, 65th Leg., p. 1916, ch. 767, §§ 1, 2. See, now, art. 601b, § 7.01 et seq.

For subject matter of former art. 678h, see, now, art. 601b, §§ 5.18 and 5.19.

Former art. 678i, the Energy Conservation in Buildings Act, was derived from Acts 1975, 64th Leg., p. 235, ch. 89, §§ 1 to 7. See, now, art. 601b, §§ 5.27 to 5.30.

CHAPTER FOUR A. STATE BUILDING COMMISSION

Article

678m.1. Repealed.

Arts. 678m to 678-2. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Prior to repeal, art. 678m was amended by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.146. See, now, art. 601b, §§ 5.01 to 5.09.

Former art. 678m.1, relating to abolition of the State Building Commission and transfer of powers and duties to the State Board of Control, was derived from Acts 1977, 65th Leg., p. 1914, ch. 766.

Arts. 678m-3 to 678m-5. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

For subject matter of former arts. 678m-4 and 678m-5, see, now, art. 601b, §§ 5.10 and 5.11.

CHAPTER SIX. DIVISION OF ESTIMATES AND APPROPRIATIONS

Arts. 688 to 689a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Art. 689a-11. Commissioners' Court to Hold Hearings and Approve Budget in Certain Counties

The Commissioners' Court in each county shall each year provide for a public hearing on the county budget—which hearing shall take place on some date to be named by the Commissioners' Court subsequent to August 15th and prior to the levy of taxes by said Commissioners' Court. Public notice shall be given that on said date of hearing the budget as prepared by the County Judge will be considered by the Commissioners' Court. Said notice shall name the hour, the date and the place where the hearing shall be conducted. Any taxpayer of such county shall have the right to be present and participate in said hearing. At the conclusion of the hearing, the budget as prepared by the County Judge shall be acted upon by the Commissioners' Court. The Court shall have authority to make such changes in the budget as in their judgment the law warrants and the interest of the taxpayers demand. When the budget has been finally approved by the Commissioners' Court, the budget, as approved by the Court shall be filed with the Clerk of the County Court, and taxes levied only in accordance therewith, and no expenditure of the funds of the county shall thereafter be made except in strict compliance with the budget as adopted by the Court. Except that emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget, may from time to time be authorized by the Court as amendments to the original budget. In all cases where such amendments to the original budget is made, a copy of the order of the Court amending the budget shall be filed with the Clerk of the County Court, and attached to the budget originally adopted.

Provided, however, that in all counties of this State containing a population in excess of three hundred and fifty thousand (350,000), according to the last preceding United States census, the provisions hereof shall not apply to the making of such county budgets, and in such counties all matters pertaining to the county budget shall be governed by existing law.

[Amended by Acts 1981, 67th Leg., p. 325, ch. 130, § 1, eff. May 13, 1981.]

Art. 689a-13. Budget Officers and Preparation of Budget in Cities and Towns

The Mayor of every incorporated city, town or village shall serve as the budget officer for the Board of Commissioners or Council of such city,

town or village, except that any such city or town as shall have a City Manager form of Government, the City Manager shall serve as the budget officer. Such Mayor or City Manager shall prepare each year a budget to cover all proposed expenditures of the Government of said city or town for the succeeding year. Such budget shall be carefully itemized so as to make as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes for the preceding year. The budget must also be so prepared as to show as definitely as possible each of the various projects for which appropriations are set up in the budget, and the estimated amount of money carried in the budget for each of such projects. The budget shall also contain a complete financial statement of the city, town or village, showing all outstanding obligations of such city, town or village, the cash on hand to the credit of each and every fund, the funds received from all sources during the previous year, the funds available from all sources during the ensuing year, the estimated revenue available to cover the proposed budget, and the estimated rate of tax which will be required.

If a city or town in this State has already set up in its charter definite requirements which provide for the preparation each year of a budget of all expenditures of said city and a public hearing on said budget, then the charter provisions of said city as to the time of public hearings and the method of preparation of the budget shall govern, provided that when said budget has been finally prepared and approved, that a copy of said budget, together with all amendments thereto, shall be filed with the County Clerk, the same as this Act requires other budgets to be filed.

[Amended by Acts 1981, 67th Leg., p. 326, ch. 130, § 2, eff. May 13, 1981.]

Art. 689a–15. Hearings on City or Town Budgets, Approval and Filing

The Board of Commissioners or Council of every such city, town or village, shall each year provide for a public hearing on such budget, which hearing shall take place on some date to be fixed by such Board of Commissioners or Council, not less than fifteen days subsequent to the time such budget is filed as provided in Section 15 [1] hereof, and prior to the time said Board of Commissioners or Council of such city, town or village makes its tax levy. Public notice of the hour, date and place of such hearing shall be given, or caused to be given by such Board of Commissioners, or Council, and any taxpayer of such city, town or village shall have the right to be present and participate in such hearing. At the conclusion of such hearing, the budget as prepared by the Mayor or City Manager shall be acted upon by the said Board of Commissioners or Council. The Board of Commissioners, or Council shall have the authority to make such changes in the budget as in their judgment the law warrants and the best interests of the taxpayers of such city, town or village demands. When the budget has been finally approved by such Board of Commissioners, or Council, the budget as so approved shall be filed with the Clerk of such city, town or village, and taxes levied only in accordance therewith, and no expenditure of the funds of such city, town or village shall thereafter be made except in strict compliance with such adopted budget, except that in case of grave public necessity, emergency expenditures to meet unusual and unforeseen conditions, which could not, by reasonable diligent thought and attention, have been included in the original budget, may from time to time be authorized by such Board of Commissioners, or Council, as amendments to the original budget. In all cases where such amendment to the original budget is made, a copy of the order or resolution of the Board of Commissioners or Council amending such budget shall be filed with the Clerk of such city, town or village, and attached to the budget originally adopted. Immediately after the adoption of said budget or any amendment thereto, the Mayor or City Manager, as the case may be, shall file or cause to be filed, a true copy of said approved budget, and all amendments thereto, in the office of the County Clerk of the County in which said municipality is situated.

[Amended by Acts 1981, 67th Leg., p. 326, ch. 130, § 3, eff. May 13, 1981.]

[1] Article 689a–14.

Arts. 690 to 695. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

CHAPTER SEVEN A. CHILD WELFARE

Article

695a–2 to 695a–5. Repealed.

Arts. 695a to 695a–5. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing these articles, enacts the Human Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Human Resources Code.

Prior to repeal, art. 695a was amended by:

Acts 1975, 64th Leg., p. 403, ch. 179, § 1.

Acts 1975, 64th Leg., p. 2404, ch. 736, § 8.

Acts 1975, 64th Leg., p. 2407, ch. 739, § 1.

Former art. 695a–2, relating to the Interstate Compact on the Placement of Children, was derived from Acts 1975, 64th Leg., p. 2166, ch. 697.

Former art. 695a–3, the Child Care Licensing Act, was derived from Acts 1975, 64th Leg., p. 2240, ch. 708.

Former art. 695a–4, relating to administration of federally established day care programs, was derived from Acts 1975, 64th Leg., p. 2369, ch. 729.

Former art. 695a–5, relating to placement of children from another state, was derived from Acts 1975, 64th Leg., p. 2402, ch. 736.

TITLE 20A

BOARD AND DEPARTMENT OF PUBLIC WELFARE

Article
695m. Expired.
695n. Employment Incentive Act.
695o. AFDC Education and Employment Act.
695p. Shelter Centers for Victims of Family Violence.
695q. Repealed.
695r. Retirement villages and long-term or life care facilities; disclosures.

Arts. 695c, 695c–1. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing these articles, enacts the Human Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Human Resources Code.

Prior to repeal, art. 695c was amended by:

Acts 1975, 64th Leg., p. 746, ch. 292, § 1.

Acts 1975, 64th Leg., p. 1124, ch. 424, § 1.

Acts 1975, 64th Leg., p. 1273, ch. 476, § 56.

Acts 1975, 64th Leg., p. 1343, ch. 502, §§ 1 to 3.

Acts 1975, 64th Leg., p. 1937, ch. 634, § 1.

Acts 1975, 64th Leg., p. 2250, ch. 708, § 26.

Acts 1977, 65th Leg., p. 81, ch. 38, § 2.

Acts 1977, 65th Leg., p. 188, ch. 94, § 1.

Acts 1977, 65th Leg., p. 637, ch. 235, § 1.

Acts 1977, 65th Leg., p. 751, ch. 281, § 11.

Acts 1977, 65th Leg., p. 1371, ch. 543, §§ 1, 2.

Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.109.

Acts 1979, 66th Leg., p. 1648, ch. 689, § 1.

Acts 1979, 66th Leg., p. 2010, ch. 787, § 1.

Section 1 of Acts 1979, 66th Leg., p. 1648, ch. 689, eff. June 13, 1979, amended former § 7–B of art. 695c. Section 2 of said Act provided:

"This Act does not affect offenses committed under Section 7–B, The Public Welfare Act of 1941, as added (Article 695c, Vernon's Texas Civil Statutes), before the effective date of this Act. Such an offense is covered by the law in effect on the date that the offense was committed, and the former law is continued in effect for the prosecution of the offense."

Art. 695c–2. Repealed by Acts 1973, 63rd Leg., p. 1458, ch. 543, § 3, eff. Jan. 1, 1974

Acts 1973, 63rd Leg., p. 881, ch. 398, § 1, added a § 9 to this article, providing a penalty for failure to report. Said § 9 was repealed by Acts 1975, 64th Leg., p. 1273, ch. 476, § 57. See, now, Family Code, § 34.07.

Art. 695c–3. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

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

Art. 695f. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

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

Art. 695g. Federal Old Age and Survivors Insurance Coverage for County and Municipal Employees

Definitions

Sec. 1. The following definitions of words and terms shall apply as used in this Act:

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

(d) The term "State Agency" means the Employees Retirement System of Texas.

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

(i) The term "State working days" includes all days of the year excluding weekends, and State or National holidays.

Administration of Act

Sec. 2. The Employees Retirement System of Texas is designated the State Agency to administer the provisions of this Act. The Executive Director of the department shall act for it and shall direct and administer its functions under this Act.

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

Rules and Regulations; Terms of Agreements

Sec. 5. The Employees Retirement System of Texas is authorized and directed to promulgate all reasonable rules and regulations it deems necessary to govern applications for and eligibility to participate in this program, and it shall prescribe the terms of the agreements necessary to carry out the provisions of this Act and to insure financial responsibility on the part of participating counties, municipalities or other political subdivisions of the State.

[See Compact Edition, Volume 3 for text of 6 to 7]

Contributions; Reports; Delinquencies

Sec. 8. (a) Each county, municipality or other political subdivision as to which a plan has been approved may and shall pay to the State Agency, with respect to employees' wages, contributions in the amounts and at the rates specified by the applicable agreement entered into pursuant to the Federal-State agreement. Counties, municipalities or other political subdivisions required to make such payments are authorized, in consideration of the employees' retention in or entry upon employment, to

impose upon its employees as to services which are covered by an approved plan, a contribution with respect to wages in keeping with applicable State and Federal requirements. Contributions so collected shall be paid to the State Agency in partial discharge of the liability of the county, municipality or political subdivision, but failure to deduct contributions from employees' wages shall not relieve the employee or the employer of liability for the contribution. If more or less than the correct amount of any contribution is paid or deducted, adjustments or refunds shall be made in the manner and at the time prescribed by the State Agency. Matching contributions by the employing counties, municipalities or other political subdivisions as prescribed by the approved plan in keeping with Federal requirements shall be paid from the respective sources of funds from which covered employees receive their compensation.

(b) Monthly reports and contributions shall be received by the State Agency on or before the sixth State working day of the month in which the report and contributions are required to be submitted to the Federal Social Security Administration. Quarterly reports and contributions are due and must be received by the State Agency on or before the 15th State working day of the month preceding the month in which the report and contributions are due to the Federal Social Security Administration. Contributions received after the day payment is due and wage reports received after the due date are delinquent and the reporting entity shall pay interest for each and every calendar day of delinquency including the day the delinquent contributions and reports are received by the State Agency. The interest rate shall be at the same rate as the interest rate charged by the Federal Social Security Administration for delinquent payment of contributions. Interest on delinquent contributions shall be deposited in the Social Security Administration Fund.

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

Social Security Fund; Social Security Administration Fund

Sec. 12. (a) There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, to be known as the Social Security Fund, which shall be administered as directed by the State Agency exclusively for the purposes of this Act. The State Treasurer shall be treasurer and custodian of the fund. He shall administer such fund in accordance with the directions of the State Agency, and the Comptroller shall issue warrants upon it in accordance with such regulations as the State Agency shall prescribe. The State Agency shall deposit all moneys collected under the provisions of this Act, except moneys to defray administrative expenses at the State level, in the Social Security Fund. All moneys so deposited with the State Treasurer in the Social Security Fund shall be held in trust, separate and apart from all public moneys or funds of this State. The State Agency is vested with full power, authority, and jurisdiction over the fund and may perform any and all acts necessary to the administration thereof and to pay the amounts required to be paid to the appropriate Federal authorities and any refunds or adjustments necessary under this Act.

(b) The State Agency shall deposit all moneys collected under the provisions of this Act from participating counties, municipalities or other political subdivisions to defray the cost of administering this program at the State level in a special fund to be known as the Social Security Administration Fund. The State Treasurer shall be treasurer and custodian of the fund, which shall be held separate and apart from all public moneys or funds of this State. The State Treasurer shall administer this fund in accordance with the directions of the State Agency. Moneys deposited in either of these special funds shall be disbursed upon warrants issued by the Comptroller of Public Accounts pursuant to sworn vouchers executed by the State Agency acting through the executive director of personnel of the agency to whom he expressly delegates this function. These funds will not be State funds and will not be subject to legislative appropriation. This fund may be used to pay interest assessed as a penalty by the Federal Social Security Administration because of delinquent payment of contributions.

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

[Amended by Acts 1975, 64th Leg., p. 965, ch. 366, § 1(a), eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1476, ch. 645, §§ 1 to 3, eff. Aug. 27, 1979.]

Art. 695h. Federal Old Age and Survivors Insurance Coverage for State Employees

Definitions

Sec. 1. The following definitions of words and terms shall apply as used in this Act:

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

(d) The term "State Agency" means the Employees Retirement System of Texas.

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

(h) The term "State working days" includes all days of the year excluding weekends, and State or National holidays.

Administration of Act

Sec. 2. The Employees Retirement System of Texas is designated the State Agency to administer the provisions of this Act. The Executive Director of the Department shall act for and shall direct and administer its functions under this Act. He is further instructed to negotiate the best possible contract for the employees of the State of Texas.

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

Contributions by State Agency from Social Security Trust Fund

Sec. 4. The State Agency is authorized to pay contributions as required by these agreements from the Social Security Trust Fund established by Chapter 500, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 695g, Vernon's Texas Civil Statutes). The payment of contributions by the state under the program may not be considered compensation under any law of this State.

Contributions by State Employees

Sec. 5. (a) Except as provided by Subsection (b) of this section, the State is required to pay all contributions under this program except that portion of the employee tax which would be imposed by the Federal Insurance Contributions Act [1] if such services constituted employment within the meaning of that Act that is in excess of 5.85 percent of wages, such wages not to exceed $16,500 in a calendar year. Except as provided by this subsection, any contributions in excess of 5.85 percent of wages, such wages not to exceed $16,500 in any calendar year, are the obligation of the employee. The Legislature may provide in the General Appropriations Act for the State payment of employee contributions under this program in excess of the amounts required by this subsection. The Legislature may provide for payment at any rate equal to or greater than 5.85 percent of wages and payment computed on any wage base equal to or greater than $16,500 a calendar year. If the Legislature provides for State payment of employee contributions in excess of the amounts required by this subsection, a State employee is obligated to pay only the difference between the amount the Legislature provides and the amount required by federal law.

(b) Subsection (a) of this section does not apply to State-paid judges. The State is not required to pay any contributions of State-paid judges under the Federal Insurance Contributions Act. However, the Legislature may provide in the General Appropriations Act for the State payment of State-paid judges' contributions under the Federal Insurance Contributions Act at any rate and on any amount of State-paid compensation that it considers appropriate. There is imposed on the services of State-paid judges which are covered by an agreement with the Secretary of Health and Human Services a contribution with respect to wages (as defined in Section 1(a) of this Act) equal to the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that Act. Any contributions in excess of the State payment, if any, prescribed by the General Appropriations Act are the obligations of the State-paid judges.

(c) Such contributions shall be paid to the Social Security Trust Fund from the respective funds from which covered employees receive their compensation.

(d) The Comptroller of Public Accounts may prorate the State's projected contribution to each employee over the portion of the calendar year that the employee's salary is subject to the Federal Insurance Contributions Act to equalize monthly contributions from the employee during the portion of the year that the salary continues to be subject to FICA taxes.

[1] 26 U.S.C.A. § 3101 et seq.

Collection of Contributions

Sec. 6.

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

(b) The collection of the State's contribution shall be made as follows:

(1) After September 1, 1978, and after the date of the establishment of Social Security coverage for State employees, there is hereby allocated and appropriated to the Social Security Trust Fund, in accordance with this Act, from the several funds from which the employees benefited by this Act receive their respective salaries, a sum equal to the amount of the contribution to be paid by the State as provided in Sections 4 and 5 of this Act for employees whose compensation is paid from funds in the State Treasury. The State Agency shall certify to the State Comptroller of Public Accounts at the end of each month the total amount of the State's monthly contributions for employees whose salaries are paid from funds in the State Treasury. The State Comptroller after receipt of the certification shall pay the amount to the State Treasurer as custodian of the Social Security Trust Fund. The State Treasurer shall deposit the amounts so received in the Social Security Trust Fund.

(2) Thereafter, on or before the first day of November next preceding each Regular Session of the Legislature, the State Agency shall certify to the Governor for review and adoption the amount necessary to pay the contributions of the State of Texas for the ensuing biennium. This amount shall be included in the budget of the State which the Governor submits to the Legislature. The State Agency shall send a copy to the State Comptroller of Public Accounts of the certification to the Governor.

(3) All moneys hereby allocated and appropriated by the State to the Social Security Trust Fund shall be paid to the Fund in monthly installments.

(4) In those instances in which State employees are paid from funds not in the State Treasury, the department head at the end of each month shall certify to the proper disbursing officer the total amount of the State's contributions based upon compensation paid the employees. The disbursing officer shall pay that amount to the State Treasurer as custodian of the Social Security Trust Fund. The State Treasurer shall deposit the amounts in the Social Security Trust Fund. A

copy of the department heads' certification in these instances shall be given to the State Agency at the same time the original is certified to the disbursing officer. These copies shall be on forms prescribed by the State Agency.

Monthly reports and contributions shall be received by the State Agency on or before the sixth State working day of the month in which the report and contributions are required to be submitted to the Federal Social Security Administration. Quarterly reports and contributions are due and must be received by the State Agency on or before the 15th State working day of the month preceding the month in which the report and contributions are due to the Federal Social Security Administration. Contributions received after the day payment is due and wage reports received after the due date are delinquent and the reporting entity shall pay interest for each and every calendar day of delinquency including the day the delinquent contributions and reports are received by the State Agency. The interest rate shall be at the same rate as the interest rate charged by the Federal Social Security Administration for delinquent payment of contributions. Interest on delinquent contributions shall be deposited in the State Social Security Administration Fund.

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

State Social Security Administration Fund

Sec. 8. There is hereby created a special fund, separate and apart from all public moneys or funds of this State, to be known as the State Social Security Administration Fund. The State Treasurer shall be treasurer and custodian of the fund and shall administer it in accordance with directions from the State Agency. Money deposited in this fund shall be disbursed upon warrants issued by the Comptroller of Public Accounts pursuant to sworn vouchers executed by the State Agency acting through the executive director or personnel of the agency to whom he expressly delegates this function. This fund may be used to pay interest assessed as a penalty by the Federal Social Security Administration because of delinquent payment of contributions.

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

[Amended by Acts 1975, 64th Leg., p. 965, ch. 366, § 1(b), eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 907, ch. 341, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1978, 65th Leg., 2nd C.S., p. 1, ch. 1, § 1, eff. Aug. 4, 1978; Acts 1979, 66th Leg., p. 1478, ch. 645, §§ 4 to 6, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 3188, ch. 834, § 1, eff. Sept. 1, 1981.]

Arts. 695j to 695k. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing these articles, enacts the Human Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Human Resources Code.

Prior to repeal, art. 695j–1 was amended by:

Acts 1977, 65th Leg., p. 325, ch. 156, § 1.

Acts 1977, 65th Leg., p. 641, ch. 238, § 1.

Acts 1977, 65th Leg., p. 1139, ch. 430, § 1.

Acts 1979, 66th Leg., p. 1987, ch. 783, §§ 1, 2.

Prior to repeal, art. 695k was amended by:

Acts 1975, 64th Leg., p. 1817, ch. 553, § 1.

Acts 1977, 65th Leg., p. 307, ch. 141, § 1.

Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.101.

Acts 1979, 66th Leg., p. 1674, ch. 699, § 1.

Art. 695k–1. Contribution of Funds to Local Organizations Cooperating With the Governor's Committee on Aging; Counties of 26,100 to 26,350

In all counties of the State of Texas having a population of not less than 26,100 and not more than 26,350, according to the last preceding federal census, any such county, or any city or town located in any such county, may cooperate with the Governor's Committee on Aging[1] in carrying out the purposes of such committee on a local level by contributing funds to any local organization the functions of which, in whole or in part, are to cooperate with such committee, and which does operate with the approval and sanction of the Governor's Committee on Aging, as set out in Chapter 320, Acts of the 59th Legislature, Regular Session, 1965 (Article 695k, Vernon's Texas Civil Statutes). The fact that the buildings, facilities, services, or programs operated by such organization may be in part for other community activities or benefits shall not prohibit the contributing of such funds provided the Governor's Committee on Aging has approved that part of the program applying to the aging.

[Amended by Acts 1981, 67th Leg., p. 559, ch. 237, § 2, eff. Sept. 1, 1981.]

[1] Name changed to Texas Department on Aging. See Acts 1981, 67th Leg., p. 2391, ch. 599, § 2.

Art. 695*l*. Repealed by Acts 1981, 67th Leg., p. 88, ch. 47, § 1, eff. Aug. 31, 1981

Prior to repeal, this article was amended by Acts 1975, 64th Leg., p. 936, ch. 349, § 1.

Art. 695m. Expired

The expired article, derived from Acts 1977, 65th Leg., p. 280, ch. 135, related to pilot multipurpose service centers for displaced homemakers, and provided for its own expiration on August 31, 1981.

Art. 695n. Employment Incentive Act

Short Title

Sec. 1. This Act may be cited as the Employment Incentive Act.

Definitions

Sec. 2. In this Act:

(1) "AFDC" means aid to families with dependent children authorized by The Public Welfare Act of 1941.[1]

(2) "AFDC recipient" means a person who receives or who the State Department of Public Welfare has determined is eligible to receive AFDC payments.

[1] Article 695c.

Employment Program

Sec. 3. The Texas Employment Commission, after consultation with the State Department of Public Welfare, shall establish an employment program designed to assist and encourage AFDC recipients in obtaining employment. The commission shall adopt the rules necessary to implement the employment program consistent with this Act and applicable federal law.

Registration

Sec. 4. (a) Except as provided in Subsection (b) of this section, each AFDC recipient shall register with the commission in the employment program established under Section 3 of this Act.

(b) An AFDC recipient is not required to register if he is in the class of individuals that is exempt from registering for manpower services, training, and employment under Section 402, Title IV–A of the federal Social Security Act (42 U.S.C. Section 602) and rules adopted pursuant to that law.

Duty of Registrant

Sec. 5. Each registrant shall:

(1) report to the commission for interview at the reasonable request of the commission;

(2) furnish the commission with information it requests that is reasonably related to placing the registrant in suitable employment;

(3) apply for suitable employment as directed by the commission;

(4) accept any offer of suitable employment; and

(5) continue in suitable employment obtained after registration until:

(A) the work becomes unsuitable;

(B) he becomes exempt from the registration requirement as provided in Section 4 of this Act; or

(C) he is terminated from the employment due to circumstances beyond his control.

Review of Registrants; Notification of Welfare Department

Sec. 6. (a) The commission shall establish a system of periodic review to determine whether registrants comply with Section 5 of this Act. In each case reviewed, the commission shall determine whether the registrant without good cause failed to comply. Before making its decision, the commission shall give the registrant an opportunity for an adjudicative hearing.

(b) In determining suitability of employment, the commission shall consider the facts and circumstances relative to the particular registrant, including but not limited to his health, his training and education, the degree of risk to his health and safety, his experience and prior earnings, his prospects of securing work in his customary occupation, and the commuting distance and expense.

(c) Employment is not suitable if the commission determines that:

(1) the compensation, work hours, or other conditions of work are substantially less favorable to the registrant than those prevailing for similar work in the locality;

(2) as a condition of employment the registrant is required to join, resign from, or refrain from joining a labor organization;

(3) the work site is subject to a strike or lockout at the time of the offer of employment;

(4) the degree of risk to the registrant's health or safety is unreasonable;

(5) the registrant is physically or mentally unfit to perform the work;

(6) the commuting distance is unreasonable; or

(7) the employment fails to satisfy standards established under applicable federal law.

(d) If the final decision of the commission is that a registrant failed to comply with Section 5 of this Act without good cause, the commission promptly shall give the Commissioner of Public Welfare written notice of the decision. However, if the registrant appeals the decision, the commission shall delay notification pending the final outcome of the appeal.

Loss of AFDC Eligibility; Reinstatement

Sec. 7. (a) If a registrant has failed to comply with Section 5 of this Act without good cause as determined by the commission, the registrant is ineligible to receive AFDC payments. The ineligibility takes effect on the date the commission's decision on the matter becomes final.

(b) AFDC ineligibility resulting from the application of Subsection (a) of this section continues until the registrant's eligibility is reinstated by the commission.

(c) On application by a registrant for reinstatement of AFDC eligibility in the manner prescribed by rule of the commission, the commission shall determine whether to reinstate eligibility.

(d) The commission shall reinstate AFDC eligibility if it finds that the registrant, after having lost eligibility under Subsection (a) of this section, obtained employment of at least 30 hours a week. Before making its decision, the commission shall give the registrant an opportunity for an adjudicative hearing.

(e) On reinstatement of a registrant's AFDC eligibility, the commission shall give the Commissioner of Public Welfare written notice of the reinstatement.

Deduction for Unsuccessful Appeal

Sec. 8. (a) If the final outcome of a registrant's appeal of a decision made by the commission under Section 6 of this Act upholds the commission's decision, the department of public welfare shall deduct the amount of AFDC payments made to the registrant during the pendency of the appeal from any future AFDC payments made to the registrant.

(b) In each case in which a deduction is required under Subsection (a) of this section, the commission shall give the Commissioner of Public Welfare written notice of the time elapsed between the rendering of the commission's decision and the reviewing court's judgment.

Hearings

Sec. 9. The commission, a hearing examiner appointed by the commission, or an appeal tribunal established under the Texas Unemployment Compensation Act (Article 5221b–22b, Vernon's Texas Civil Statutes) may conduct an adjudicative hearing held under this Act.

Venue of Appeal

Sec. 10. Venue in an appeal of a decision made by the commission under this Act is in the district court of the county in which the registrant resides.

Sec. 11. [Adds § 19–B to art. 695c]

Delayed Effective Date

Sec. 12. Sections 5 through 11 of this Act take effect March 1, 1978. Otherwise, this Act takes effect September 1, 1977.

Sunset Provision

Sec. 13. Unless reenacted, the provisions of this Act shall be without effect after August 31, 1987. [Acts 1977, 65th Leg., p. 749, ch. 281, §§ 1 to 4, 12, 13, eff. Sept. 1, 1977. Amended by §§ 5 to 11, eff. March 1, 1978.]

Art. 695o. AFDC Education and Employment Act

Text of article effective until August 31, 1983

Short Title

Sec. 1. This Act may be cited as the AFDC Education and Employment Act.

Findings and Purposes

Sec. 2. The legislature finds and declares as follows:

(1) There are more that 90,000 households receiving assistance through the AFDC program. More than 9 of the 10 (96%) AFDC households are headed by women. The State of Texas spends more than substantial funds in providing approximately $3,600 annually in assistance and services, which include: financial grants, food stamps, day care, medical services, and administrative overhead. Past efforts directed at assisting AFDC heads of families to be economically self-sufficient have had limited effect in reducing the welfare rolls.

(2) AFDC caretakers have many handicaps when entering the job market. Lacking marketable skills, they are relegated to low-paying jobs. Thus, there is often an economic disincentive to go to work. The vast majority of AFDC caretakers are unable to earn enough income to offset child-care and transportation expenses. Because of sexual and racial discrimination, job availability is limited to a narrow range of career choices, many of which do not offer as much as the federally established minimum wage. A majority of AFDC caretakers have not attained an adequate education. Chances of effective employment are reduced.

(3) A viable solution is a Texas AFDC Employment and Education Pilot Project established by this Act. This pilot project will provide the necessary experience and basis to give new direction to Texas and national AFDC welfare policies. It is the intention of this legislation to provide assistance to AFDC recipients in obtaining employment experience and skills training from postsecondary vocational training institutions, community colleges, universities, C.E.T.A. (the federal Comprehensive Employment and Training Act), skills centers, industry, on-the-job training, and other related employment, education, and social service agencies.

AFDC Education and Employment Pilot Project

Sec. 3. (a) The AFDC Education and Employment Pilot Project is established. The pilot project is administered by the State Department of Public Welfare, and the department shall adopt the rules necessary for its implementation consistent with this Act.

(b) The purpose of the pilot project is to develop an effective means of assisting and encouraging persons who are receiving AFDC assistance to become self-sufficient members of society by providing them with vocational and general educational opportunities and with assistance in obtaining and retaining employment. In this Act, "AFDC" means aid to families with dependent children authorized under The Public Welfare Act of 1941, as amended (Article 695c, Vernon's Texas Civil Statutes).[1]

(c) The pilot project is financed with state money, to the extent provided by legislative appropriation, and with any federal money obtained for the purpose. The department may also accept private grants and donations for the pilot project.

(d) To qualify for participation in the pilot project, a person must be eligible to receive AFDC assistance from the department.

[1] Repealed; see, now, Human Resources Code.

Education Component

Sec. 4. (a) As a component of the pilot project, the department shall develop an education program designed to provide occupational and general education for persons participating in the pilot project, using, to the extent practicable, community colleges, colleges, universities, and other educational institutions in this state that elect to participate in the education program. Participation of an educational institution in the education program is subject to the approval of the department. The department shall consult with participating educational institutions in developing curricula for the education program.

(b) The department may reimburse participating educational institutions for all or any part of the costs of providing educational services under the program established by this section.

(c) In developing the education program, the department shall emphasize training in skills or trades that offer the opportunity for earning power in excess of the federal minimum wage, as illustrated by, but not limited to, welding, carpentry, electronics, data processing, paraprofessional work, and machinist trades.

Employment Component

Sec. 5. (a) As a component of the pilot project, the department, after consultation with the Texas Employment Commission, shall develop an employment program designed to assist persons participating in the pilot project in obtaining and retaining employment and to provide them with on-the-job training.

(b) The department shall establish a number of pilot sites in both rural and urban areas of the state to administer the program on a local level. The department may contract with private nonprofit corporations to administer the site offices.

(c) The site offices may contract with employers, prospective employers, or labor unions to provide on-the-job training or apprenticeships for project participants. In placing project participants in positions in which they receive on-the-job training, the site offices shall emphasize training in the kind of skills and trades specified in Section 4(c) of this Act.

(d) The site offices may contract or enter into cooperative agreements with other publicly financed employment programs to provide job-placement services.

(e) In staffing the site offices, the department or nonprofit corporation shall employ, to the greatest extent practicable, persons who are eligible to receive AFDC assistance from the department and who have the knowledge and experience required for the positions.

(f) Each site office shall attempt to place each participant in employment commensurate with his ability, training, and experience.

Welfare Services Continued

Sec. 6. Within any limitations imposed under federal law, child care, health services, transportation, and other welfare services to which a person was entitled at the time he became a participant in the pilot project are continued after he obtains employment for the period of time and to the extent the department determines necessary to allow the person to adjust to the demands of a self-sufficient life. The department by rule shall establish standards for determining when and to what extent the services are discontinued.

Advisory Committee

Sec. 7. (a) The Commissioner of Public Welfare, with approval of the State Board of Public Welfare, shall appoint eight persons to serve as members of an advisory committee for the pilot project. Vacancies on the advisory committee are filled in the same manner.

(b) In making the appointments to the advisory committee, the commissioner shall give consideration to the ethnic and sexual makeup of the state in an effort to achieve fair representation and shall attempt to appoint at least one person from business, labor, local government, and the general public.

(c) Advisory committee members serve for the duration of the pilot project and receive no compensation.

(d) The advisory committee shall elect a chairman from among its members. The commissioner shall designate one member to serve as chairman until the committee elects a chairman. The committee meets at the call of the chairman at the place specified in the call.

(e) Each member of the advisory committee is entitled to reimbursement for actual and necessary traveling and lodging expenses incurred in attending meetings of the committee.

(f) The advisory committee shall monitor and evaluate the pilot project and report to the department in the manner prescribed by department rule. The committee may include recommendations in its report.

(g) The department shall provide technical and administrative assistance to the advisory committee.

Annual Report

Sec. 8. The department shall prepare an annual report evaluating the pilot project.

Expiration

Sec. 9. This Act expires August 31, 1983.

[Acts 1977, 65th Leg., p. 1659, ch. 655, eff. Aug. 29, 1977.]

Art. 695p. Repealed by Acts 1981, 67 Leg., p. 3316, ch. 867, § 3, eff. Sept. 1, 1981

The repealed article, relating to shelter centers for victims of family violence, was derived from Acts 1979, 66th Leg., p. 182, ch. 98, §§ 1 to 10.

See, now, Human Resources Code, § 51.001 et seq.

Art. 695q. Repealed by Acts 1979, 66th Leg., p. 2443, ch. 842, art. 2, § 24, eff. Sept. 1, 1979

The repealed article, relating to foster care payments, was derived from Acts 1979, 66th Leg., p. 1199, ch. 583, §§ 1 to 5.

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

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

Art. 695r. Retirement Villages and Long-Term or Life Care Facilities; Disclosures

Definitions

Sec. 1. In this Act:

(1) "Care" means furnishing shelter, food, clothing, medical attention, nursing services, medical services, entertainment, or other personal advantage or attention, except to an individual related by consanguinity or affinity.

(2) "Department" means the Texas Department of Human Resources.

(3) "Entrance fee" means an initial or deferred payment of a sum of money or property that assures the member a place in a facility for one or more years or for life.

(4) "Facility" means an adult foster care facility, retirement home, retirement village, home for the aged, or a place that undertakes to provide care to an individual for more than one year and requires an entrance fee, but does not include an institution or part of a facility that the department has determined is regulated by Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes).

(5) "Life interest" means a life lease, life membership, life estate, or other similar agreement between a purchaser and a facility by which the purchaser pays a fee for the right to occupy a space in the facility for life.

(6) "Long-term lease" means an agreement between a purchaser and a facility whereby the purchaser pays a fee for the right to occupy a space in the facility for at least one year, but for less than the life of the purchaser.

(7) "Member" means a purchaser of, nominee of, or a subscriber to, a life interest or long-term lease in a facility, which may not be construed to give that individual a part ownership of the facility or voting rights in the operation of the facility.

(8) "Offer" or "offer to sell" includes an attempt to offer to dispose of or solicitation of an offer to buy for value a life interest or long-term lease.

(9) "Person" means an individual, corporation, partnership, joint venture, association, joint stock company, trust, or unincorporated organization.

(10) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(11) "Sale" or "sell" includes a contract or agreement of sale of, contract to sell, or disposition of, a life interest or long-term lease in a facility.

Offer or Sale

Sec. 2. (a) An offer or sale of a life interest or long-term lease is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or, if the purchase is made in this state or the facility is or will be operated in this state.

(b) An offer to sell is made in this state when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed. An offer to sell is accepted in this state when acceptance is communicated to the offeror in this state. An acceptance is communicated to the offeror in this state when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed.

(c) An offer to sell is not made in this state merely because a publisher circulates or there is circulated on his behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that has had more than two-thirds of its circulation outside this state during the past 12 months, or a radio or television program originating outside this state is received in this state.

Disclosure Statement

Sec. 3. (a) A person may not offer to sell or sell a life interest or long-term lease in this state unless the facility files with the department a disclosure statement that sets forth:

(1) the name and address of the facility and the name and address of an affiliated parent or subsidiary corporation or partnership;

(2) information concerning incorporation as prescribed by the department;

(3) a statement of whether the facility or an affiliate, parent, or subsidiary is a religious, nonprofit, or proprietary organization;

(4) information concerning the identity and experience of persons affiliated with the facility as prescribed by the department;

(5) a statement of whether a person identified in the disclosure statement:

(A) has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

(B) is subject to a currently effective injunctive or restrictive order or federal or state administrative order relating to business activity or health care as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license to operate a foster care facility, nursing home, retirement home, or home for the aged;

(6) financial information of the facility, and financial information of a parent or subsidiary corporation or partnership affiliated with more than two facilities anywhere in the United States, updated at least semiannually, including:

(A) a summary balance sheet for each entity;

(B) a narrative explaining material facts relating to the balance sheet;

(C) a statement of use of proceeds; and

(D) a pro forma balance sheet for each entity where the department considers it appropriate;

(7) a feasibility study unless waived by the department;

(8) the level of participation in medicare or medicaid programs, or both;

(9) a statement of all fees required of members, including a statement of the entrance fee charged, the monthly service charges, and the proposed application of the proceeds of the entrance fee by the facility, and the plan by which the amount of the initial fee is determined if the initial fee is not the same in all cases;

(10) changes or increases in fees;

(11) the location and description of physical property or properties essential for and proposed to be used or being used in connection with the facility's agreements to furnish care;

(12) a statement describing the services provided and the extent to which medical care is furnished;

(13) a statement describing the health and financial conditions required for a person to continue as a member;

(14) a statement setting forth the conditions on which the facility may relet a member's room;

(15) a statement of the terms under which a life interest or long-term lease may be canceled by the member or the facility during the first six months of residence, and the basis for establishing the amount of refund of the entrance fee;

(16) a statement of the terms under which a life interest or long-term lease may be canceled by the member after the first six months of residency and the basis for establishing the amount of refund of the entrance fee;

(17) a statement describing the circumstances under which the member will be permitted to remain in the facility in the event of possible financial difficulties of the member;

(18) a statement of the fees that will be charged if the resident marries while at the facility, and a statement of terms concerning the entry of a spouse to the facility and the consequences if the spouse does not meet the requirements for entry;

(19) a statement of the terms under which a life interest or long-term lease is canceled by the death of the member and the basis for establishing the amount of refund, if any, of the entrance fee;

(20) other material information required by the department;

(21) other material information the person wishes to include;

(22) a copy of the lease or membership agreement proposed to be used and all amendments to that agreement; and

(23) a statement in bold type of not less than 12-point that registration does not constitute approval, recommendation, or endorsement by the department.

(b) A statement required by this Act shall be signed and verified by the chief operating officer of the facility.

(c) A person commits an offense if the person:

(1) knowingly fails to file a disclosure statement as required by this section;

(2) knowingly makes an untrue statement of a material fact in a disclosure statement required by this section; or

(3) knowingly omits a material fact required to be set forth in a disclosure statement by this section.

(d) An offense under this section is a Class A misdemeanor.

Amendments, Revised Statements, and Financial Information

Sec. 4. (a) A facility shall notify the department promptly in writing of a material change in the information contained in the application as originally submitted or amended. The department may further define by rule what is a material change for the purposes and circumstances under which a revised disclosure statement is required.

(b) A facility shall file with the department semiannual financial statements and other financial information or reports that the department reasonably requires.

Furnishing Statement to Individual

Sec. 5. (a) On receiving a request from an individual, the department or a facility shall furnish to the individual a copy of the disclosure statement that the facility most recently filed with the department in accordance with Section 3 of this Act, including the amendments required by Section 4 of this Act.

(b) A person commits an offense if the person knowingly fails to furnish a disclosure statement in accordance with this section.

(c) An offense under this section is a Class A misdemeanor.

Rules

Sec. 6. The department shall adopt rules to implement this Act.

[Acts 1981, 67th Leg., p. 2733, ch. 747, eff. Aug. 31, 1981.]

TITLE 22

BONDS—COUNTY, MUNICIPAL, ETC.

CHAPTER ONE. GENERAL PROVISIONS AND REGULATIONS

Article
715b. Bond Registration Act.
717k–5. Validation of Contracts, Warrants and Refunding Bonds Authorized by Counties, Cities of Towns.
717k–6. Bond Procedures Act of 1981.
717*l*–1. County Bond; Taxation to Pay; Surveys, Maps and Plats.
717m–1. Declaratory Judgment Concerning Validity of Securities.
717n–1. Counties over 1,000,000; Issuance of Certificates of Indebtedness for Certain Purposes.
717*o*. Local Government Sport Centers.
717p. River Authorities Engaged in Distribution and Sale of Electrical Energy.

Art. 704. Time of Election; Notice of Election

The time and place or places of holding said election shall be designated in the election order, and such election shall be held not less than fifteen (15) nor more than ninety (90) days from the date of such order. Notice of said election shall be given by posting a substantial copy of the election order at three (3) public places in such county, city, or town, and also at the county courthouse if for a county election and at the city hall if for a city or town election. Such notice shall also be published on the same day in each of two (2) successive weeks in a newspaper of general circulation published within said county, city, or town, the date of the first publication to be not less than fourteen (14) days prior to the date set for said election. The provisions of this Article shall control over any city charter provisions to the contrary. Except as herein provided, the manner of holding said election shall be governed by the laws governing general elections. [Amended by Acts 1977, 65th Leg., p. 1395, ch. 561, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 58, ch. 36, § 1, eff. Aug. 27, 1979.]

Art. 715b. Bond Registration Act

Citation of Act

Sec. 1. This Act may be cited as the "Bond Registration Act."

Definitions

Sec. 2. As used in this Act:

(1) "Comptroller" means the comptroller of public accounts.

(2) "Fully registrable" means, with reference to the public securities, that the principal of and interest on such securities are payable only to the registered owner thereof, the principal thereof being payable upon presentation of the securities at the place of payment and the interest thereon being payable to the registered owner at the most recent address of said registered owner shown on the books of the registrar.

(3) "Issuer" means the State of Texas, any department, board, agency, or instrumentality of the State of Texas, any municipal corporation, any political subdivision, any district, authority, or any other political corporation of the State of Texas having the authority to issue public securities.

(4) "Public securities" means bonds, notes, certificates of obligation, certificates of indebtedness, or other obligations for the payment of money lawfully issued by an issuer.

(5) "Registered owner" means the payee named in a fully registrable public security, his legal representative or successor.

(6) "Registrar" means the comptroller of public accounts or a commercial bank meeting the requirements of this Act which is named as registrar in the proceedings authorizing public securities.

Form of Public Securities; Denomination

Sec. 3. (a) Any issuer may provide in the proceedings authorizing the issuance of public securities that such public securities may be in a form:

(1) having appertaining thereto coupons and being unregistrable;

(2) having appertaining thereto coupons and being registrable as to principal only; or

(3) being fully registrable. Such proceedings may provide that public securities of the same issue or series may be of one or more of such types and may be exchangeable in whole or in part for one or more of such types.

(b) Any issuer may also provide in the proceedings authorizing the issuance of public securities that such public securities shall be in a form having initially appertaining thereto coupons and being permitted to become fully registrable in accordance with Section 5 of this Act.

(c) Public securities may be issued in any denomination or denominations, provided that if such public securities are authorized to be in a denomination or denominations in excess of $1,000, they shall be in a denomination or denominations that are multiples of $1,000.

Registrar of Securities; Rules and Regulations

Sec. 4. If the proceedings authorizing public securities provide that such securities can be fully registrable, the registrar therefor shall be the comptroller or a banking corporation or association at which the principal of such public securities shall be payable. They may be registered under such reasonable rules and regulations not inconsistent herewith as such proceedings may provide.

Comptroller as Registrar: Attachment or Removal of Coupons

Sec. 5. If the comptroller of public accounts is named the registrar in proceedings authorizing the issuance of public securities, in accordance with such proceedings such public securities may be originally issued with coupons appertaining thereto and subsequently become fully registrable by the removal by the comptroller of the coupons appertaining thereto upon the presentation of the securities to the comptroller, and may be originally issued fully registrable and subsequently become public securities with coupons appertaining thereto by attachment of the coupons appertaining thereto by the comptroller upon presentation of such securities to the comptroller. Such attachment and removal may occur successively from time to time. No matured coupon will be attached or reattached by the comptroller.

Exchange or Change in Form of Securities

Sec. 6. (a) If the proceedings authorizing the issuance of public securities provide or have heretofore provided that such public securities having appertaining thereto coupons or being fully registrable may be exchanged or such public securities change form by attachment or removal of coupons in accordance with Section 5 hereof, and such public securities on initial issuance are approved by the attorney general in accordance with law and registered by the comptroller, upon exchange or their change in form by attachment or removal of coupons in accordance with this Act, it shall not be necessary for the attorney general to again approve and it shall not be necessary for the comptroller to again register such public securities, resulting from such exchange or change in form, but the public securities resulting from such exchange or change in form shall as a matter of law be considered as having been approved by the attorney general and registered by the comptroller.

(b) If such public securities are exchanged, the registrar shall cause to be placed on the public securities received in exchange an appropriate inscription manually signed verifying that the public securities received in exchange are in lieu of the public securities presented for exchange.

Change of Registered Owner or Address; Replacement for Damaged, Destroyed, Lost or Stolen Bonds: Form and Identity Changes

Sec. 7. (a) If the comptroller is named as registrar in the proceedings authorizing the issuance of public securities, upon the change on the registration books of the registrar of the registered owner or his address, the comptroller shall notify all places of payment with reference to such change or changes.

(b) In the event application is made to the comptroller for the replacement of damaged, destroyed, lost, or stolen bonds, pursuant to Chapter 334, Acts of the 59th Legislature, Regular Session, 1965 (Article 715a, Vernon's Texas Civil Statutes), and any such bond or bonds as described in said application do not appear in the comptroller's records in the form and bear the identity as originally registered by the comptroller, the applicant for such replacement shall furnish the comptroller a chronology of the changes from the original, registered form and identity as to enable the comptroller, under regulations promulgated by him to effect such purpose, to trace the changes in form and identity by such chronology, of such bond or bonds into the original, registered form and identity.

Cost and Expenses for Registration and Exchange of Securities

Sec. 8. Where the proceedings authorizing public securities provide for public securities to be fully registrable whether initially or through exchange or conversion, such proceedings shall provide to the extent the issuer is to pay the cost and expenses in connection with the registration and exchange of such public securities including the fees of the registrar therein named. The comptroller shall adopt reasonable regulations for his performing the services provided for herein, and shall publish a schedule of fees for performing such services.

Cumulative Effect; Conflicting Provisions

Sec. 9. (a) The provisions of this Act shall be cumulative of all laws or parts of laws, general or special, and specifically are not intended to qualify the Texas Uniform Commercial Code or limit the negotiability of public securities as provided therein.

(b) In the event of conflict between the provisions of this Act and the provisions of any city charter the provisions of this Act shall prevail.

Severability

Sec. 10. If any provision of this Act or the application thereof to any person, political subdivision, or circumstances is held invalid, such invalidity shall not affect any other provision or application of this Act, which can be given effect without the invalid provisions or application, and to this end the provisions of the Act are declared to be severable. [Acts 1975, 64th Leg., p. 1132, ch. 431, § 1, eff. June 19, 1975.]

Art. 717j-1. Texas Uniform Facsimile Signature of Public Officials Act

Definitions

Section 1. As used in this Act:

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

(d) "Authorized officer" means any official of this state, its political subdivisions, or any department,

agency, or other instrumentality of this state or its political subdivisions whose signature to a public security, eligible contract, instrument of payment or certificate of assessment is required or permitted.

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

(f) "Eligible contract" means any written contract, purchase order, surety bond, or other written evidence of agreement and any application, certificate, approval, or other document related thereto (other than a public security or instrument of payment) executed, authenticated, certified, or endorsed for or on behalf of any home-rule city with a population of 1,200,000 or more, according to the last preceding or any future federal census.

Facsimile Signature

Sec. 2. If the use of a facsimile signature is authorized by the board, body, or officer empowered by law to authorize the issuance of the public securities, instruments of payment or certificates of assessment, or, in the case of an eligible contract, if the use of a facsimile signature is authorized by the governing body of the city, any authorized officer may execute, authenticate, certify, or endorse, or cause to be executed, authenticated, certified, or endorsed with a facsimile signature in lieu of his manual signature:

(a) Any public security, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed;

(b) Any instrument of payment;

(c) Any certificate of assessment; and

(d) Any eligible contract.

In any suit or legal action instituted against the officer whose name is affixed under the provisions of this Act, it shall not be a defense that such name was affixed to any public security, eligible contract, instrument of payment or certificate of assessment, as herein defined, without his authority or consent. Upon compliance with this Act by the authorized officer, his facsimile signature has the same legal effect as his manual signature.

However, as to a public security required to be registered by the Comptroller of Public Accounts of the State of Texas, only his signature or that of a deputy designated in writing to act for the Comptroller is required to be manually subscribed to such public security or to a certificate thereon.

Facsimile Seal

Sec. 3. When the seal of this state, its political subdivisions, or any department, agency, or other instrumentality of this state or its political subdivisions is required in the execution, authentication, certification, or endorsement of a public security, eligible contract, instrument of payment or certificate of assessment, the authorized officer may cause the seal to be printed, engraved, lithographed, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

Penalty

Sec. 4. Any person who with intent to defraud uses on a public security, an eligible contract, an instrument of payment or a certificate of assessment:

(a) A facsimile signature, or any reproduction of it, of any authorized officer; or

(b) Any facsimile seal, or any reproduction of it, of this state, its political subdivisions, or any department, agency, or other instrumentality of this state or its political subdivisions shall upon conviction be confined in the penitentiary not less than two nor more than seven years.

[See Compact Edition, Volume 3 for text of 5 to 8]

[Amended by Acts 1981, 67th Leg., p. 623, ch. 246, §§ 1, 2, eff. Sept. 1, 1981.]

Art. 717k. State, County, Municipality or Political Subdivision; Issuer of Bonds, Notes, etc.

[See Compact Edition, Volume 3 for text of 1 to 7]

Alternate Procedures; Issuance and Sale of Refunding Bonds; Deposits in Connection with Payment or Redemption of Revenue Obligations

Sec. 7A. Notwithstanding any provision of this Act or any other law to the contrary, any issuer may, at its option, in lieu of making any deposit with the State Treasurer hereunder, deposit proceeds from the sale of refunding bonds issued hereunder, and/or any other available funds or resources, directly with any place of payment (paying agent) for any obligations payable from revenues (other than ad valorem tax revenues) which it wishes to refund, or to pay or redeem in whole or in part without the issuance of refunding bonds, or with the trustee under any trust indenture, deed of trust, or similar instrument securing such revenue obligations, in an amount sufficient to provide for the payment and/or redemption of any such revenue obligations of the issuer, including assumed obligations, which are to be refunded, or to be paid or redeemed in whole or in part without the issuance of refunding bonds; and such deposit, if made on or before such payment and/or redemption date, shall constitute the making of firm banking and financial arrangements for the discharge and final payment or redemption of the revenue obligations being refunded, or being paid or redeemed in whole or in part without the issuance of refunding bonds; and any issuer is authorized to enter into an escrow or similar agreement with any such place of payment (paying agent) or trustee with respect to the safekeeping, investment, reinvestment, administration, and disposition of any such deposit, upon such terms and conditions as the parties may agree, provided that such deposits may be invested and reinvested only in direct obligations

of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America, and which may be in book entry form, and which shall mature and/or bear interest payable at such times and in such amounts as will be sufficient to provide for the scheduled payment and/or redemption of such revenue obligations, and further provided that if any such revenue obligations are scheduled to be paid and/or redeemed on a date later than the next succeeding scheduled interest payment date thereon, the issuer shall be required to enter into an appropriate escrow or similar agreement as described above. Notwithstanding any provisions of this Act or any other law to the contrary, refunding bonds may be issued under this Act to refund any revenue obligations which are scheduled to mature, or which are subject to redemption prior to maturity, not more than 20 years from the date of the refunding bonds, and refunding bonds issued under this Act may be sold at public or private sale, under such procedures, at any price (at a premium, at par, or at a discount), upon such terms, and bear interest at such rate or rates, and mature not more than 40 years after their date, all as shall be determined within the discretion of the governing body of the issuer; provided that Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as now or hereafter amended (Article 717k–2, Vernon's Texas Civil Statutes), which pertains generally to the sale price and interest rates of all public securities, shall be applicable to said refunding bonds; and any issuer is further authorized to pledge to the payment of any refunding bonds issued hereunder (i) any surplus income to be available from the investment or reinvestment of any deposit made as authorized in this Section 7A and/or (ii) any other available revenues, income, or resources. The refunding bonds also may be issued in an additional amount sufficient to pay the costs and expenses of issuing said bonds and sufficient to fund any debt service reserve, contingency, or other similar fund deemed necessary or advisable by the issuer.

[See Compact Edition, Volume 3 for text of 8 and 9]

[Amended by Acts 1979, 66th Leg., p. 2182, ch. 832, § 1, eff. June 14, 1979.]

Art. 717k–2. Public Securities; Issuance by Public Agencies; Interest Rate

Sec. 1. As used in this Act, unless the context otherwise requires:

(a) The term "public agency" shall mean and include the State of Texas, any department, board, agency, or instrumentality of the State of Texas, any municipal corporation, any political subdivision, any district, any body politic and corporate of the State of Texas, and solely for the purposes of this Act and not for any other purposes of law, any nonprofit corporation or other not-for-profit entity that has been determined to be an instrumentality of or is acting on behalf of any of the foregoing.

(b) The term "public securities" shall mean any bonds, notes, or other obligations payable from taxes, or revenues, or both, which any public agency is now or hereafter may be authorized to issue pursuant to provisions of law other than this Act.

(c) The term "net interest cost" with reference to an issue or series of public securities shall mean the total of all interest to accrue and come due thereon through the final scheduled maturity date thereof, plus any discount or minus any premium included in the price paid therefor. The term "discount" with reference to an issue or series of public securities shall mean the principal amount (par value) of such issue or series plus any accrued interest to the date of delivery minus the total sum of money paid to the issuer. The term "premium" with reference to an issue or series of public securities shall mean the total sum of money paid to the issuer for such an issue or series minus the principal amount (par value) thereof, and also minus any accrued interest to the date of delivery. The term "bond years" with reference to each separate bond, note, or other obligation constituting part of an issue or series of public securities shall mean the figure obtained by dividing the principal amount (par value) of each such bond, note, or other obligation by one-thousand (1000) and multiplying such quotient by the number of years from the date interest commences to accrue thereon to its scheduled maturity date. If any portion of an issue or series of public securities is subject to a mandatory redemption prior to scheduled maturity which at the time of delivery of such public securities is scheduled to occur on a date or dates certain, net interest cost and bond years shall be calculated as if the face amount of bonds, notes, or other obligations required to be redeemed on each such earlier date were scheduled to mature on such earlier date and net interest cost shall include any premium required to be paid on any such mandatory redemption date.

(d) The term "net effective interest rate" with reference to an issue or series of public securities shall mean the figure obtained by dividing the amount of the net interest cost of such issue or series by the aggregate total number of bond years of all bonds, notes, or other obligations constituting such issue or series, and then dividing such quotient by ten (10) and expressing the result as a rate of interest in per cent per annum.

Sec. 2. (a) The maximum rate of interest for any issue or series of public securities shall be a net effective interest rate of 15 percent, and any public agency is hereby authorized to issue and sell any issue or series of its public securities at any price or prices and bearing interest at any rate or rates (provided that the net effective interest rate does not exceed 15 percent), as shall be determined within the discretion of the governing body of the public

agency, subject to the exceptions hereinafter provided.

(b) Any public securities authorized by an election held before the effective date of the 1981 amendment of this section may be issued, sold, and bear interest as provided in Subsection (a) of this section except that public securities heretofore authorized by an election required by the Constitution of Texas shall not be issued at an interest rate greater than authorized at such election unless a further election is held resulting favorably to the issuance of such previously voted public securities at a price and at a rate authorized by Subsection (a) of this section. Elections for that purpose shall be called and held, and notice thereof given, in the same manner as provided by law applicable to the previous election authorizing such public securities.

Sec. 3. The provisions of this Act concerning sale price and the maximum rates of interest which public securities may bear shall apply to all public securities notwithstanding the provisions or restrictions of any general or special law or charter to the contrary, but shall not apply to any public securities whose maximum rate of interest or maximum net effective interest rate is, at the time of issuance thereof, otherwise specifically fixed by the Constitution.

Sec. 4. If an issue or series of public securities is issued in exchange for property, labor, services, materials, or equipment pursuant to provisions of law other than this Act, such public securities may bear interest at any rate or rates, as shall be determined within the discretion of the governing body of the public agency, subject to the exceptions hereinafter provided, provided that the maximum interest rate shall not exceed 15 percent.

[Amended by Acts 1977, 65th Leg., p. 1951, ch. 776, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1439, ch. 631, §§ 1, 2, eff. June 13, 1979; Acts 1981, 67th Leg., p. 135, ch. 61, § 1, eff. April 15, 1981.]

Art. 717k-5. Validation of Contracts, Warrants and Refunding Bonds Authorized by Counties, Cities or Towns

Sec. 1. In every instance where the commissioners court of a county or the governing board of a city, including home-rule cities, or town in this state has entered into contracts for, or has determined the advisability thereof by giving notice of intention to issue interest-bearing time warrants in payment therefor, the construction of public works or improvements, the purchase of land or interests in land, or for the purchase of materials, supplies, equipment, labor, supervision, wages, salaries, or professional or personal services, and has heretofore adopted orders or ordinances to authorize the issuance of scrip or time warrants to pay or evidence the indebtedness of such county or city, including home-rule cities, or town for the cost of such public works or improvements, land, material, supplies, equipment, labor, supervision, wages, salaries, or professional or personal services, all such contracts, scrip and time warrants, and the proceedings adopted by the commissioners court or governing body, as the case may be, relating thereto are hereby in all things validated, ratified, confirmed, and approved. All scrip warrants and time warrants heretofore issued by the commissioners court or governing body, as the case may be, in payment of work done by such county or city, including home-rule cities, or town and paid for by the day as the work progressed, and for materials and supplies purchased in connection with such work and for professional or personal services rendered to the county, city, or town, and each of these are hereby in all things validated, ratified, confirmed, and approved and all such warrants shall be payable in accordance with their respective terms. It is expressly provided, however, that this Act shall neither apply to nor validate, ratify, or confirm any contract, scrip warrant, or time warrant executed or issued by any county with a population in excess of 350,000, according to the last preceding federal census, or any contract, scrip warrant, or time warrant, the validity of which is involved in litigation at the time this Act becomes effective if the question is ultimately determined against the validity thereof.

Sec. 2. All proceedings, governmental acts, orders, ordinances, resolutions, and other instruments heretofore adopted or executed by a commissioners court or governing body of a city, including home-rule cities, or town, and of all officers and officials thereof authorizing the issuance of or pertaining to refunding bonds for the purpose of refunding scrip or time warrants issued by any county or city, including home-rule cities, or town and all such warrants and all refunding bonds, heretofore issued for such purpose, and each of these are hereby in all things validated, ratified, approved, and confirmed. Such refunding bonds now in process of being issued and authorized by proceedings, ordinances, and resolutions heretofore adopted may be issued, irrespective of the fact that the commissioners court or governing body in giving the notice of intention to issue refunding bonds may not have in all respects complied with statutory provisions. It is expressly provided, however, that this Act shall neither apply to nor validate, ratify, or confirm any proceedings, governmental acts, orders, resolutions, or other instruments, or bonds executed, adopted, or issued by any county with a population in excess of 350,000, according to the last preceding federal census, or any proceedings, governmental acts, orders, ordinances, resolutions, or other instruments, or bonds, the validity of which is involved in litigation at the time this Act becomes effective if the question is ultimately determined against the validity thereof; nor shall this Act be construed as validating any proceedings which may have been nullified by a final judgment of a court of competent jurisdiction.

Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act or application thereof to any person or circumstance is held invalid such holding shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares it would have passed such remaining portions despite such invalidity.

[Acts 1975, 64th Leg., p. 1195, ch. 452, §§ 1 to 3, eff. June 19, 1975.]

Art. 717k-6. Bond Procedures Act of 1981

Definitions; Short Title

Sec. 1. (a) The term "issuer" as used in this Act means and includes any department, board, authority, agency, subdivision, municipal corporation, district, public corporation, political subdivision, body politic, or instrumentality of the State of Texas of every kind or type whatsoever, and any nonprofit corporation acting for or on behalf of any of the foregoing.

(b) The term "bonds" as used in this Act means and includes all bonds, certificates, notes, and other obligations authorized to be issued by any issuer by any statute, city home-rule charter, or the Texas Constitution.

(c) This Act may be cited as the "Bond Procedures Act of 1981."

Construction; Effect of Approval and Registration

Sec. 2. This Act shall not be construed as granting any original or independent power to any issuer to issue any bonds, but shall be applicable and available to any issuer and the governing body thereof with respect to certain terms, provisions, and details of the issuance of any bonds authorized by any other statute, city home-rule charter, or the Texas Constitution, including either original bonds, refunding bonds, exchanged or converted bonds, or any combination of the foregoing, and in fixing the terms, conditions, and details of any bonds otherwise authorized to be issued. If any statutory, charter, or constitutional provisions authorizing any bonds provide for the approval thereof by the attorney general of Texas and the registration thereof by the comptroller of public accounts of the State of Texas, then any such bonds shall be submitted to the attorney general for approval, and if the attorney general determines that they have been issued in accordance with law, he shall approve them and thereafter they shall be registered by the comptroller of public accounts, and after such approval and registration such bonds and any contracts, proceeds from which are pledged to the payment thereof, shall be incontestable in any court or other forum for any reason, and shall be binding obligations in accordance with their terms for all purposes.

Issuance and Execution

Sec. 3. The governing body of any issuer is authorized to issue bonds with or without interest coupons, in any denomination, payable at such time or times in such amount or amounts or installments, at such place or places, in such form, under such terms, conditions, and details, in such manner, redeemable prior to maturity at any time or times, bearing no interest, or bearing interest at any rate or rates (either fixed, or variable, or floating according to any clearly stated formula, calculation, or method) not to exceed the maximum net effective interest rate allowed by law, and the bonds and interest coupons, if any, may be signed or otherwise executed in such manner, with manual or facsimile signatures, and with or without a seal, all of the foregoing as shall be specified by the governing body of the issuer in the resolution, order, ordinance, or other proceedings authorizing the issuance of the bonds. In the event any officer or officers whose signatures are on any bonds or interest coupons appertaining thereto cease to be such officer or officers before the delivery thereof to the purchaser, such signature or signatures shall nevertheless be valid and sufficient for all purposes and the successor or successors in office of any such officer or officers shall be fully authorized to complete the execution, authentication, and/or delivery of said bonds and interest coupons to the purchaser or the purchasers thereof.

Form; Registration

Sec. 4. The governing body of any issuer is authorized to issue bonds and the interest coupons appertaining thereto, if any, in such form or forms, with provision for registering such bonds as to principal or as to principal and interest, or with provision for changing the form or forms of such bonds and interest coupons, if any, in such manner as shall be specified by the governing body of the issuer in the resolution, order, ordinance, or other proceedings authorizing the bonds.

Series or Single Issuance; Terms and Conditions

Sec. 5. The governing body of any issuer is authorized to issue bonds constituting a series of any number of bonds, or a single bond, payable in one stated amount or in stated installments to the bearer, or to a registered or a named payee, or to the order of, or to the successors or assigns of, such registered or named payee, and provision may be made for the conversion of any bond or interest coupon, upon the request or demand of the bearer or owner, into coupon bonds, payable to the bearer, registrable as to principal or as to principal and interest, or into fully registered bonds without interest coupons, or into any other form, in any denomination, in an aggregate principal amount equal to the unpaid principal amount of the bond or bonds being converted, bearing interest, if any, at the same rate or rates as the bond or bonds being converted, and having such other characteristics, and upon further terms and conditions, and in such manner as may be specified by the governing body of the issuer in the resolution, order, ordinance, or other proceedings authorizing the bonds.

Change or Conversion

Sec. 6. (a) When the procedures for changing or converting any bond or bonds are set forth in the resolution, order, ordinance, or other proceedings authorizing the issuance thereof, no additional resolutions, orders, or ordinances need be adopted or passed by the governing body of the issuer so as to accomplish such change or conversion, and the appropriate officials of such issuer, upon the request or demand of the bearer or owner of such bond or bonds as provided therein, if required or necessary, shall have the appropriate new bonds and interest coupons, if any, printed, executed, and exchanged for the bond or bonds being changed or converted, in the manner prescribed in such proceedings. Except as provided in Section 6(b) hereof, in the event that any bond or bonds being changed or converted was or were approved by the attorney general of the State of Texas and registered by the comptroller of public accounts of the State of Texas, then any bond or bonds to be exchanged for any such bond or bonds being changed or converted shall be submitted to the attorney general of the State of Texas for examination, and if he finds that it or they have been printed, executed, and issued as provided by law and by the resolution, order, ordinance, or other proceedings authorizing the issuance of such bond or bonds being changed or converted, then he shall approve them, and thereupon they shall be registered by the comptroller of public accounts, and after such approval and registration they shall be valid and incontestable for all purposes. However, the comptroller of public accounts shall not register any such new bond or bonds until any bond or bonds being changed or converted shall have been surrendered to and canceled by the comptroller of public accounts, and upon such surrender and cancellation, the comptroller of public accounts shall register and deliver the new bond or bonds in exchange for the bond or bonds being changed or converted.

(b) The governing body of any issuer may provide and covenant for the conversion of any form of bond or interest coupon into any other form or forms of bond or interest coupon, and for reconversion of bonds and interest coupons into any other form, and may provide procedures for the replacement of lost, stolen, destroyed, or mutilated bonds or interest coupons, all in such manner as may be prescribed by the governing body of the issuer in the resolution, order, ordinance, or other proceedings authorizing the issuance of the bonds. Notwithstanding the foregoing provisions of Section 6(a) of this Act, if the duty of replacement, conversion, or reconversion of any bonds or interest coupons is imposed upon a corporate trustee under a trust agreement or trust indenture securing the bonds, or upon a place of payment (paying agent) for the bonds or interest coupons, the replacement, converted, or reconverted bonds or interest coupons need not be reapproved by the attorney general or reregistered by the comptroller of public accounts as provided in Section 6(a), and all such replacement, converted, or reconverted bonds and interest coupons shall be valid, incontestable, and enforceable in the same manner and with the same effect as the bonds originally issued.

Use of Proceeds

Sec. 7. An issuer may use the proceeds of bonds which, in whole or part, are payable from and secured by the revenues derived from the operation or ownership of any project or facilities, if the issuer is otherwise authorized by law to secure and pay such bonds from such revenues, for paying interest thereon during the period of the acquisition or construction of any project or facilities to be provided through the issuance thereof, and for one year thereafter, for paying expenses of operation and maintenance of such project or facilities during the estimated period of the acquisition or construction of such project or facilities and for one year thereafter, for funding debt service reserve, contingency, and other funds relating to the bonds, and for paying the costs and expenses of the issuance of the bonds; and such proceeds may be placed on time deposit or invested in any obligations authorized by law for the investment of funds of such issuer until needed, all to the extent, and in the manner provided, in the resolution, order, or ordinance authorizing their issuance.

Validation of Prior Proceedings and Issuance

Sec. 8. All bonds heretofore issued and delivered by the governing body of any issuer and all proceedings authorizing same, are hereby validated, ratified, and confirmed in all respects.

Bonds as Negotiable Instruments, Investment Securities, and Security for Deposits

Sec. 9. All bonds issued by an issuer shall constitute negotiable instruments, and are investment securities governed by Chapter 8, Texas Uniform Commercial Code,[1] notwithstanding any provisions of law or court decision to the contrary, and are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the sinking fund of cities, towns, villages, school districts, and other political subdivisions or public agencies of the State of Texas. Said bonds also are eligible to secure deposits of any public funds of the state or any political subdivision or public agency of the state, and are lawful and sufficient security for the deposits to the extent of their market value, when accompanied by any unmatured coupons attached to the bonds.

[1] Business and Commerce Code, § 8.101 et seq.

Liberal Construction

Sec. 10. This Act shall be construed liberally to effectuate the legislative intent and the purposes of the Act, and all powers herein granted shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers.

Severability

Sec. 11. In case any one or more of the sections, provisions, clauses, or words of this Act or the application of such sections, provisions, clauses, or words to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of the Act or the application of such sections, provisions, clauses, or words to any other situation or circumstance, and it is intended that the Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

[Acts 1981, 67th Leg., p. 3217, ch. 845, eff. June 17, 1981.]

Art. 717l–1. Counties over 2,200,000; Contracts to Destroy Paid Bonds, Interest Coupons, and Evidences of Indebtedness

The commissioners court of a county having a population of more than 2,200,000, according to the most recent federal census, may contract with its depository or another entity that acts as the paying agent for the bonds, interest coupons, or other evidences of indebtedness issued by the county, for the destruction of any bonds, interest coupons, or other evidences of indebtedness that have been issued and paid by the county. The commissioners court may establish the terms of the contract as it considers appropriate. However, the contract may not authorize the destruction of a bond, interest coupon, or other evidence of indebtedness before the expiration of two years from the date of its payment or before the expiration of three months from the date the depository or other paying agent files with the commissioners court a list identifying the bond, interest coupon, or other evidence of indebtedness to be destroyed.

[Acts 1981, 67th Leg., p. 1815, ch. 405, § 1, eff. Aug. 31, 1981.]

Art. 717m. Repealed by Acts 1979, 66th Leg., p. 881, ch. 400, § 14(a), eff. June 6, 1979

Section 14(b) of the 1979 repealing act provided:

"Subsection (a) of this section does not affect any proceeding under the repealed law pending on the effective date of this Act. Such a proceeding is covered by the law under which it was instituted, and the repealed law is continued in effect for that purpose."

Art. 717m–1. Declaratory Judgment Concerning Validity of Securities

Definitions

Sec. 1. The following words, as used in this Act, shall have the following meanings unless the context clearly requires otherwise:

(1) "Public agency" means any board, authority, agency, department, commission, political subdivision, municipal corporation, district, public corporation, body politic, or instrumentality of the State of Texas including, without limitation, any county, home-rule charter city, general law city, town, or village, any state-supported educational institution of higher learning, any school, junior college, hospital, water, sewerage, waste disposal, pollution, road, navigation, levee, drainage, conservation, reclamation, or other district or authority, and any other type of political or governmental entity of the State of Texas.

(2) "Securities" means all interest-bearing obligations, including, without limitation, any bonds, notes, bond anticipation notes, warrants, certificates, or other evidences of indebtedness, whether general or special, whether negotiable or nonnegotiable in form, whether in bearer or registered form, whether in temporary or permanent form, whether with or without interest coupons, and regardless of the source of payment, whether from taxes, revenues, or both, or otherwise.

Declaratory Judgment

Sec. 2. Any public agency may, prior to or after the issuance and delivery of any securities, institute a proceeding in rem in district court by filing a petition as provided by this Act, for the purpose of obtaining a declaratory judgment as to the authority of the public agency to issue and deliver the securities and as to the legality and validity of all proceedings, including all actions and expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting any securities, including, in appropriate cases, the validity of the election, if any, at which the securities were authorized, and the organization or boundaries, if any, of the public agency, any assessments or taxes levied or to be levied, and the lien of the taxes, the validity of any contract or contracts executed or proposed to be executed with respect to the securities, the levy of rates, fees, charges, or tolls, and of proceedings or other remedies for the collection of such taxes, rates, fees, charges, or tolls, the legality and validity of the pledge of any taxes, revenues, receipts, or property, or encumbrance thereon to secure said securities, and as to the legality and validity of the securities and proceedings. The petition may be filed in any district court of Travis County, Texas, or, at the option of the public agency, in any district court of the county in which the public agency maintains its principal office, as a class action against the taxpayers, property owners, and residents, if any, of the public agency, and all nonresidents, if any, owning property therein, and/or all others having or claiming any right, title, or interest in any property or funds to be affected by the proceedings and/or the issuance of the securities, or interested or affected in any way thereby, or by the proceedings, including all actions and expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities.

Content of Petition

Sec. 3. The petition for declaratory judgment shall briefly set out, by proper allegations, references, or exhibits, the public agency's authority for issuing the securities, the holding of an election and

the results of the election where an election is required, copies of or pertinent excerpts from any proceedings, including any essential actions and expenditure of funds, taken or made and/or proposed to be taken or made in connection with the securities, the amount or proposed maximum amount and purpose of the securities, the rate or rates of interest or proposed maximum rate of interest they are to bear, and, in case it is desired to adjudicate the organization or validity of the public agency, the authority for and proceedings had in the creation of the public agency, or in changing its boundaries, if any, or any other pertinent matters.

Notice to Taxpayers and Attorney General, etc.

Sec. 4. The judge of the district court where the petition is filed shall, on filing and presentation of the petition, immediately make and issue an order in general terms in the form of a notice directed to all taxpayers, property owners, and residents, if any, of the public agency, and all nonresidents, if any, owning property therein, and all others having or claiming any right, title, or interest in any property or funds to be affected by the proceedings and/or the issuance of the securities, or interested or affected in any way thereby, or by the proceedings, including all actions and expenditure of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities, requiring, in general terms and without naming them, all the persons and the Attorney General of Texas to appear for hearing and trial at 10 a. m. on the first Monday after the expiration of 20 days from the date of issue of the order, and show cause why the prayers of the petition should not be granted and the proceedings and the securities validated and confirmed as therein prayed. The notice shall give a general description of the nature of the petition but need not set forth the entire petition or the attached exhibits. A copy of the petition, together with any exhibits attached, and a copy of said order, shall be served on the attorney general at least 20 days before the time fixed in the order for hearing and trial as aforesaid; provided, that the attorney general may waive the service when he has been furnished a certified copy of the petition, order, and a transcript of all pertinent proceedings relating to the matters set forth in the petition. The attorney general shall carefully examine the petition, and if it appears or there is reason to believe that the petition is defective, insufficient, or untrue, or, if, in his opinion, the proceedings or the securities are or will be invalid or unauthorized, the defense shall be made thereto as he may deem proper. The records of the public agency pertaining to the proceedings or the securities shall be open to inspection at reasonable times to any party to the suit. Any officer, agent, or employee having charge, possession, custody, or control of any of the books, papers, or records of the public agency shall, on demand of the attorney general, exhibit for examination the books, papers, or records and shall, without cost, furnish duly authenticated copies which pertain to the proceedings or the securities, or which may affect the legality of the same, as may be demanded of him. It is specifically provided, however, that if the attorney general does not question the validity of the proceedings or the securities or the security or provisions for the payment thereof, the attorney general may so allege, and on a finding by the court to that effect, the attorney general may be dismissed as a party and the court shall proceed to a final determination of the cause. If the cause is filed in any court other than in Travis County, the public agency shall pay any mileage and travel expenses of the attorney general or his assistant in the same amount as is allowable by the state to officials for travel on other official business. The claim for the expenses shall be filed in duplicate with the clerk of the court in which the cause is pending and shall be taxed as costs against the public agency.

May Enjoin Other Proceedings

Sec. 5. On motion of the petitioner, whether before or after the date set for hearing as provided in Section 4 of this Act, the judge may enjoin the commencement, prosecution, or maintenance by any person or entity of any other action or proceeding contesting the validity of the organizational proceedings or boundary changes of the public agency, or the validity of the securities described in the petition or the validity of any proceedings, including all actions and expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities, or the validity of the taxes, assessments, tolls, fees, rates, or other levies authorized to be imposed or made for the payment of the securities or the interest on the securities, or the validity of any pledge of any revenues, receipts, or property, or encumbrances thereon, to secure payment, and may order a joint hearing or trial before him of all issues then pending in any other action, cause, or proceedings in any court in the State of Texas, and may order all actions or proceedings consolidated with the suit for declaratory judgment pending before him as authorized by this Act, and may enter orders as are necessary or proper to effect the consolidation, and which will avoid unnecessary costs or delays or multiplicity of suits, and all interlocutory orders shall be final and not be appealable.

Published Notice

Sec. 6. Prior to the date set for hearing and trial as provided in Section 4 of this Act, the clerk of the court where the petition is filed shall give notice by causing a substantial copy of the order issued pursuant to Section 4 of this Act to be published in a newspaper of general circulation in Travis County, and in a newspaper of general circulation in the county where the public agency maintains its principal office, and if any public agency, other than the State of Texas, has defined boundaries, in a newspaper of general circulation in each county in which the public agency has territory. The notice shall be so published once in each of two consecutive calen-

dar weeks, with the date of the first publication to be not less than 14 days prior to the date set for hearing and trial. On the giving of the notice and the publication of the order, all taxpayers, property owners, and residents, if any, of the public agency, and all nonresidents, if any, owning property therein, and all others having or claiming any right, title, or interest in any property or funds to be affected in any way by the securities, or the proceedings, including all actions and expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities, shall be considered as and are thereby made parties defendant to the proceedings, and the court shall have jurisdiction of them to the same extent as if individually named as defendants in the petition and personally served with process in the cause.

Admission of Parties

Sec. 7. Any property owner, taxpayer, citizen, or person affected by or interested in the proceedings or the issuance of the securities may become a named party to the proceedings by pleading to the petition on or before the time set for hearing and trial as provided in Section 4 of this Act, or thereafter by intervention on leave of court. At or after the time and at the place designated in the order for hearing and trial, the judge shall proceed to hear and determine all questions of law and fact in the proceedings and may enter orders as to the proceedings, and as to any necessary adjournments as will enable him properly to try and determine the questions and to render a final judgment with the least possible delay. Any party to the proceedings shall be entitled to a jury trial on any issue of fact where required by the Texas Constitution. Rule 254 of the Texas Rules of Civil Procedure and Section 1, Chapter 7, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 2168a, Vernon's Texas Civil Statutes), shall not apply to any proceedings or appeals authorized by this Act. Except as otherwise provided in this Act, the applicable Texas Rules of Civil Procedure and all applicable statutes shall govern the proceedings and appeals held and conducted pursuant to this Act.

Bond

Sec. 8. At any time prior to entry of final judgment in the proceedings, the public agency may ask the court for an order that any opposing party or intervenor, except the attorney general, be dismissed unless the opposing party or intervenor shall post a bond with sufficient surety, approved by the court, payable to the public agency for the payment of all damages and costs which may accrue by reason of the delay as will be occasioned by the continued participation of the opposing party or intervenor in the proceedings in the event that the public agency finally prevails and obtains substantially the judgment prayed for in its petition. The court shall then issue an order directed to the opposing party or intervenor, which order, together with a copy of the motion, shall be served on the opposing party or intervenor, or on his attorney of record, personally or by registered mail, requiring the opposing party or intervenor to appear at the time and place, not sooner than 5 nor later than 10 days after entry of the order, as the court may direct, and show cause why the motion should not be granted. Motions with respect to more than one opposing party or intervenor may be heard together if so directed by the court. Unless at the hearing on the motion the opposing party or intervenor establishes facts which, in the judgment of the court would entitle him to a temporary injunction against the issuance of the securities, the court shall grant the motion of the public agency and in its order the court shall fix the amount of the bond to be posted by the opposing party or intervenor in an amount found by the court to be sufficient to cover all damages and costs which may accrue by reason of the delay as will be occasioned by the continued participation of the opposing party or intervenor in the proceedings in the event that the public agency finally prevails and obtains substantially the judgment prayed for in its petition. The court in its discretion may receive evidence at the hearing or any adjournment with respect to the amount of the damages and costs, which shall include but not be limited to anticipated increases in interest rates and in construction and financing costs. If more than one opposing party or intervenor is a participant in the proceedings, the court in its discretion may allocate the amount of the bond among the opposing parties or intervenors according to the extent or degree of their participation in the proceedings, but may fix the amount of the bond to be posted by a particular opposing party or intervenor only if a motion as described in this section was made and granted as to the opposing party or intervenor. In the event a bond with sufficient surety is not filed by the opposing party or intervenor within 10 days after entry of the order of the court fixing the amount of the bond, the opposing party or intervenor shall be dismissed by the court. The dismissal shall constitute a final judgment of the court, unless an appeal was taken as provided by this Act. No court shall have further jurisdiction of any action to the extent the action involves any issue which was or could have been raised in the proceedings, except to the extent that the issue may have been raised by an opposing party or intervenor as to whom no motion was made hereunder. An order of the court fixing the amount of the bond to be posted by an opposing party or intervenor or denying the motion of a public agency or dismissing a party for failure to file a bond may be appealed as provided in Section 9 of this Act. The court to which any appeal is taken may modify the order of the lower court and may enter the modified order as the final order. In the event no appeal is taken or if the appeal is taken and the order of the lower court is affirmed or affirmed as modified, and no bond is posted pursuant to this section within 10 days after entry of the appropriate order, no court shall have further juris-

diction of any action to the extent it shall involve any issue which was or could have been raised in the proceedings, except to the extent that the issue may have been raised in the proceedings by an opposing party or intervenor as to whom no motion was made hereunder. It is further provided that, on motion of the public agency, the court shall proceed without delay to hearing and trial on the merits of the public agency's petition, regardless of the pendency of an appeal from any order entered pursuant to this section.

Appeal

Sec. 9. Any party to the cause, whether the public agency, a defendant, intervenor, or otherwise, dissatisfied with any order entered paramount to Section 8 of this Act, or with the judgment in the declaratory judgment action, may appeal therefrom to the appropriate court of civil appeals after the entry of the order or judgment, or the order or judgment shall become final. The appeal shall take priority over all other cases, causes, or matters pending in the court of civil appeals, except habeas corpus, and it shall be mandatory that the court of civil appeals assure the priority and act thereon and render its final order or judgment therein with the least possible delay. The Supreme Court shall have authority to review, by writ of error or other authorized procedure, all questions of law arising out of the orders and judgments of the courts of civil appeals in the cases, in the manner, time, and form applicable in other civil causes where a decision of the court of civil appeals is not final, but any such review shall take priority over all other cases, causes, or matters pending in the Supreme Court, except habeas corpus, and it shall be mandatory that the Supreme Court assure the priority and review and act thereon and render its final order or judgment therein with the least possible delay. Also, Rule 499a, Texas Rules of Civil Procedure, shall apply to proceedings in the district court, but any direct appeal thereunder shall take priority over all others cases, causes, and matters pending in the Supreme Court, except habeas corpus, and it shall be mandatory that the Supreme Court assure the priority and review and act thereon and render its final order or judgment with the least possible delay.

Effect of Judgment

Sec. 10. In the event the judgment of the district court determines that the public agency has or had authority to undertake the proceedings and/or to issue the securities upon the terms set forth in the petition for declaratory judgment hereunder, and adjudicates the legality of all proceedings, including all actions and expenditures of funds, taken or made and/or proposed to be taken or made in connection with or relating to the securities, and no appeal is taken within the time above prescribed, or if taken and the judgment of the district court is affirmed, the judgment shall, as to all matters adjudicated, or which could have been raised in the proceedings, be forever binding and conclusive against the public agency, the attorney general, the comptroller of public accounts, and all parties to the cause, whether mentioned in and served with the notice of the proceedings, or included in the description, "all taxpayers, property owners, and residents, if any, of the public agency, and all nonresidents, if any, owning property therein, and all others having or claiming any right, title, or interest in any properties or funds to be affected by the proceedings and/or the issuance of the securities, or interested or affected in any way thereby, or by the proceedings, including all actions and expenditures of funds, taken or made and/or proposed to be taken or made in connection with or affecting the securities," and shall constitute a permanent injunction against the institution by any person or entity of any action or proceedings contesting the validity of the proceedings and/or securities described in the petition, or the validity of provisions made for the payment of the same, or of interest thereon, or any matters adjudicated by the judgment, or which could have been raised in the proceedings.

Securities: Printed Statement

Sec. 11. Securities adjudged valid as provided by this Act may, at the option of the public agency, have stamped, printed, or written on the securities the following statement:

"This obligation was validated and confirmed by a judgment entered _____ (date when the judgment was entered and the court in which it was entered and the style and number of the cause in said court), which perpetually enjoins the institution of any suit, action, or proceeding involving the validity of this obligation, or the provision made for the payment of the principal thereof and interest thereon."

The certificate may be signed by the clerk, secretary, or other official of the public agency, and the signature may be by facsimile if authorized by the governing body of the public agency.

Costs

Sec. 12. The costs in each proceeding under this Act shall be paid by the public agency, except that in cases where a taxpayer, citizen, or other person or entity appears and contests the proceedings or intervenes therein, the court may tax the whole or any part of the costs against such party or parties as the court shall determine to be equitable and just; provided, that in no event shall any costs be taxed against the attorney general.

Cumulative Effect

Sec. 13. The procedure prescribed in this Act is cumulative of all other methods permitted under law for declaratory judgments and for approval and validation of proceedings and/or securities and shall not have the effect of repealing any such laws; but this Act shall be wholly sufficient authority within

itself for the acts and procedures authorized in this Act, without reference to any other laws or any restrictions or limitations contained therein, except as specifically provided in this Act. To the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law, the provisions of this Act shall prevail and control. The procedures authorized by this Act may be invoked only by a public agency, and when so invoked may be employed concurrently with, or after use of other means of declaratory judgment, approval, or validation, and may be invoked before or after the attorney general has approved the securities and/or before or after the securities are authorized or delivered and outstanding, and may be invoked regardless of the pendency of any other suit, action, cause, or proceeding in any court pertaining to the matters sought to be adjudicated. This Act shall not have the effect of repealing the existing right of a public agency to apply for, and of the Supreme Court to issue, writs of mandamus to the attorney general for the approval of bonds, in appropriate cases, and the Supreme Court is specifically authorized to consider and issue such writs when appropriate, and it is declared that the remedy is necessary and desirable in the public interest as a matter of public policy of the State of Texas.

[Acts 1979, 66th Leg., p. 874, ch. 400, §§ 1 to 13, eff. June 6, 1979. Amended by Acts 1981, 67th Leg., p. 2635, ch. 707, § 4(16), eff. Aug. 31, 1981.]

Art. 717n-1. Counties over 1,000,000; Issuance of Certificates of Indebtedness for Certain Purposes

Authorization

Sec. 1. Any county having a population in excess of 1,000,000, according to the most recent Federal Census, is authorized, subject to the limitations contained in this Act, to issue certificates of indebtedness:

(1) in the amount of not more than $2,000,000 for the purpose of constructing, enlarging, furnishing, equipping and repairing county buildings and other permanent improvements; and

(2) in the amount of not more than $3,500,000 for the purchase of right-of-way in participation with the Texas Highway Department in connection with designated state highways and for the construction of curbs, gutters and drainage facilities for such designated highways.

(3) If bonds are not issued under this Act by January 1, 1980, this Act will no longer be in effect.

Maturity; Interest; Negotiability; County Registration; Amount

Sec. 2. Such certificates shall be authorized by order of the commissioners court and shall mature in not to exceed 35 years from their date. Interest may be evidenced by coupons. Said certificates shall be sold for cash, and they shall be fully negotiable. Said certificates shall be signed by the county judge, attested by the county clerk, and registered by the county treasurer. Certificates shall not be issued under this Act in excess of $5,500,000.

Tax Levy and Assessment

Sec. 3. When such certificates are issued, it shall be the duty of the commissioners court to levy and have assessed and collected a tax under Article VIII, Section 9 of the Constitution, sufficient to pay the principal of and the interest on the certificates as such principal and interest become due.

Approved by Attorney General; Registration

Sec. 4. The certificates and the record relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if they have been issued in accordance with the constitution and this Act, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, who shall endorse his certificate of registration thereon, and thereafter they shall be incontestable.

Legal and Authorized Investments; Security for Deposits

Sec. 5. The certificates of indebtedness shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, savings and loan associations, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such certificates shall be eligible to secure the deposit of any and all public funds of the State of Texas, and of any and all public funds of cities, towns, villages, counties, school districts, and other political subdivisions of the State of Texas; and such certificates shall be lawful and sufficient security for said deposits to the extent of their face value or to the extent of their market value, whichever value is the smaller, when accompanied by all unmatured coupons appurtenant thereto.

[Acts 1975, 64th Leg., p. 1873, ch. 589, §§ 1 to 5, eff. Sept. 1, 1975.]

Art. 717o. Local Government Sport Centers

Definitions

Sec. 1. In this Act:

(1) "Local government" means a county, an incorporated city or town, or an independent school district.

(2) "Ordinance," in the case of an independent school district, means "resolution," and in the case of a county means "order."

(3) "Sport center" means a facility used for sporting activities and events, including auxiliary facilities such as parking areas and restaurants.

Application of Act

Sec. 2. A local government may take advantage of this Act only if all or most of its territory is located in a county that has a population of more than 650,000, according to the last preceding federal census.

General Authority

Sec. 3. (a) A local government may construct, acquire, lease, improve, enlarge, and operate one or more sport centers under this Act.

(b) Two or more local governments acting jointly may do anything authorized by this Act to be done by a single local government. When two or more local governments act jointly, joint action by all local governments involved is necessary to perform any official act. Two or more local governments may act jointly under this subsection only if each of them is authorized individually to take advantage of this Act and all or most of the territory of each of them is located in the same county or in adjacent counties.

(c) A local government or combination of them acting under this Act may contract with any public or private entity including a coliseum advisory board or similar body, for the performance of any function authorized under this Act other than the performance of an official governmental act that is required to be done by the governing body of a local government.

Issuance of Revenue Bonds

Sec. 4. For any purpose authorized under Section 3 of this Act, the governing body of a local government may issue revenue bonds from time to time in one or more series to be payable from and secured by liens on all or part of the revenue derived from a facility authorized under this Act.

Terms and Conditions of Bonds

Sec. 5. (a) The bonds may be issued to mature serially or otherwise within not to exceed 40 years from their date, and provision may be made for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under any terms or conditions that may be set forth in the resolution authorizing the issuance of the bonds.

(b) The bonds, and any interest coupons appertaining thereto, are negotiable instruments within the meaning and for all purposes of the Texas Uniform Commercial Code. The bonds may be issued registrable as to principal alone or as to both principal and interest, and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and may be sold in such manner, at such price, and under such terms, and said bonds shall bear interest at such rates, all as shall be determined and provided in the ordinance authorizing the issuance of the bonds.

(c) If so provided in the bond ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during and after the period of the acquisition or construction of any facilities to be provided through the issuance of the bonds, for paying expenses of operation and maintenance of facilities authorized under this Act, for creating a reserve fund for the payment of the principal of and interest on the bonds, and for creating any other funds. The proceeds of the bonds may be placed on time deposit or invested, until needed, all to the extent, and in the manner provided, in the bond ordinance.

Rentals, Rates, and Charges

Sec. 6. The local government is authorized to fix and collect fees, rentals, rates, and charges for the occupancy, use, or availability of all or any of its property, buildings, structures, or other facilities authorized under this Act in such amounts and in such manner as may be determined by the governing body of the local government.

Pledges

Sec. 7. (a) The local government may pledge all or any part of the revenues, income, or receipts from such fees, rentals, rates, and charges to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged fees, rentals, rates, and charges shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds, and, to the extent required by the ordinance authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds, and for the payment of operation, maintenance, and other expenses in connection with the facilities authorized under this Act.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property relating to the facilities authorized under this Act owned or to be acquired by the local government, and by chattel mortgages, liens, or security interests on any personal property appurtenant to that real property. The governing body of the local government may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence the indebtedness.

(c) The local government may also pledge to the payment of the bonds all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

(d) No holder of any bond or bonds issued under this Act shall ever have the right to demand payment thereof out of any funds raised or to be raised by taxation.

Public Purpose

Sec. 8. The acquisition, purchase, construction, improvement, enlargement, equipment, operation, and maintenance of any property, buildings, structures, or other facilities authorized under this Act are public purposes and proper functions of local governments.

Refunding Bonds

Sec. 9. (a) Any bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for that purpose, under any terms or conditions, as are determined by ordinance of the governing body of the local government. All appropriate provisions of this Act are applicable to refunding bonds, and the refunding bonds shall be issued in the manner provided in this Act for other bonds. The refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest, and redemption premium, if any, of bonds to be refunded, at maturity or on any redemption date.

(b) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds being refunded in accordance with the provisions of the ordinance authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(c) Bonds issued at any time by a local government under this Act also may be refunded in the manner provided by any other applicable law.

Approval and Registration of Bonds

Sec. 10. All bonds issued under this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If the bonds recite that they are secured by a pledge of revenues or rentals from a contract or lease, a copy of the contract or lease and the proceedings relating to it shall be submitted to the attorney general also. If he finds that the bonds have been authorized and any contract or lease has been made in accordance with law, he shall approve the bonds and the contract or lease, and thereupon the bonds shall be registered by the comptroller of public accounts. After approval and registration the bonds and any contract or lease relating to them are incontestable in any court or other forum for any reason, and are valid and binding obligations for all purposes in accordance with their terms.

Authorized Investments and Security for Deposits

Sec. 11. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the state and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. The bonds also are eligible and lawful security for all deposits of public funds of the state and all agencies, subdivisions, and instrumentalities of it, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

Cumulative Effect

Sec. 12. This Act is cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized by it without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided. When any bonds are issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any other law, the provisions of this Act shall prevail and control. A local government has the right to use the provisions of any other laws, not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied; granted by this Act.

[Acts 1975, 64th Leg., p. 1198, ch. 454, §§ 1 to 12, eff. June 19, 1975.]

Art. 717p. River Authorities Engaged in Distribution and Sale of Electrical Energy

Sec. 1. Any river authority which is engaged in the distribution and sale of electric energy to the public shall have the power and is hereby authorized to issue from time to time revenue bonds, notes, or other obligations for any purpose or purposes authorized by law relating to the generation, transmission, or distribution of electricity. Such revenue bonds, notes, or other obligations may either be (1) sold for cash, at public or private sale, at such price or prices as the board of directors of the river authority shall determine; provided that the net effective interest rate shall not exceed the maximum from time to time authorized by law, or (2) issued on such terms as the board of directors shall determine in exchange for property of any kind, real, personal, mixed, or any interests therein which the board shall deem necessary or convenient for any such lawful purpose or purposes; provided that any property acquired through the exchange of revenue bonds, notes, or other obligations shall be certified in writing prior to such exchange as being for value equal to or in excess of the par value of the bonds, notes, or other obligations by an independent appraisal which is kept on file by the river authority as a public record and a copy filed with the auditor of the State of Texas, or (3) issued in exchange for like principal amounts of other obligations of the river authority,

matured or unmatured, or (4) sold to the State of Texas or any agency thereof, the United States of America, or any agency or corporation created or designated by the State of Texas or United States of America in exchange for cash equal in amount to the principal amount of the bonds so sold.

Sec. 2. This Act is cumulative of the other acts governing river authorities relating to the issuance of revenue bonds and, this Act is full authority for any such river authority to issue and sell bonds or other debt instruments under its provisions without reference to the provisions of any other law, and no other general or special law or specific act or provision thereof which limits, restricts, or imposes additional requirements on the matters authorized by this Act shall apply to any action or proceeding unless expressly provided to the contrary herein.

Sec. 3. This Act does not apply to or affect any litigation instituted prior to the effective date of this Act which questions the legality of any acts taken or proceedings had by any such river authority prior to said effective date.

[Acts 1981, 67th Leg., p. 621, ch. 245, eff. May 28, 1981.]

2. COMPENSATION BONDS

Art. 767g. Commissioners' Court Authorized to Levy Tax to Pay Road District Bonds

That taxes, in an amount sufficient to pay the principal of, and interest upon, any such bonds now outstanding, or hereafter issued, as aforesaid, shall be annually assessed and collected by the County Commissioners' Court of each County in which any such district, subdivision or precinct is situated, and express authority so to do is hereby delegated and granted to such Commissioners' Courts.

[Amended by Acts 1979, 66th Leg., p. 2315, ch. 841, § 4(d), eff. Jan. 1, 1982.]

CHAPTER SEVEN. MUNICIPAL BONDS

Art. 835*l*. Harbor, Wharf and Dock Facilities; Cities and Towns of 5,000 or Less on Gulf or Connecting Waters

Sec. 1. Any city or town in this State, having five thousand (5,000) or less inhabitants, located on the coast of the Gulf of Mexico, or on any channel, canal, bay, or inlet connected with the Gulf of Mexico, organized and operating under the general law, shall have the authority to purchase, by condemnation or otherwise, construct, own, maintain, improve, repair, operate, or lease any wharf, pier, pavilion, dock, harbor or boat basin, and such other facilities as may be deemed advisable in connection therewith, including ferries, marinas, elevated platforms, parking facilities, restaurants, hotels, motels, clubs, or other commercial establishments and municipal buildings.

Sec. 2. Any such city or town may issue its negotiable bonds for the purposes above enumerated and may provide for the payment of the principal of and interest on such bonds from the income of such facilities including income from leasing any or all of such facilities or land after deducting the reasonable cost of the operation and maintenance thereof, or such city or town may issue its negotiable bonds for such purposes in the manner now provided for the issuance of other municipal bonds payable from an ad valorem tax levied on all the taxable property within such city or town.

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

[Amended by Acts 1979, 66th Leg., p. 1907, ch. 772, § 7, eff. June 13, 1979.]

TITLE 24

BUILDING—SAVINGS AND LOAN ASSOCIATIONS

Art. 852a. Savings and Loan Act

[See Compact Edition, Volume 3 for text of 1.01 to 3.07]

CHAPTER FOUR. CORPORATE POWERS OF ASSOCIATES

[See Compact Edition, Volume 3 for text of 4.01 to 4.04]

Power to Act Under Federal Self-Employed Retirement Plans

Sec. 4.05. Any association and any Federal association (insofar as its charter and applicable Federal rules and regulations permit) may exercise all powers necessary to qualify as a trustee or custodian for retirement plans meeting the requirements of 26 U.S.C. sec. 401(d) or sec. 408 or any similar plans permitted or recognized by Federal law and may invest any funds held in such capacities in the savings accounts of the institution if the trust or custodial retirement plan does not prohibit such investment.

[See Compact Edition, Volume 3 for text of 5.01 to 7.05]

CHAPTER EIGHT. SUPERVISION AND REGULATION, BOOKS AND RECORDS, ACCOUNTING PRACTICES, STATEMENTS, REPORTS, AUDITS, EXAMINATIONS, VIOLATIONS, RECEIVERSHIP

[See Compact Edition, Volume 3 for text of 8.01 to 8.12]

Commissioner Shall Order Discontinuance of Violations

Sec. 8.13. If the Commissioner as a result of any examination or investigation of the affairs of an association finds that such association is violating or has violated or is about to violate any provision of its charter or bylaws or any law, or willfully violates any rule or regulation governing its operations to an extent which would tend to cause a substantial reduction in net worth or is engaging in, or has engaged in, or if the Commissioner has reasonable cause to believe that the association is about to engage in an unsafe and unsound practice or practices, he shall deliver a formal written order to the board of directors of the association in which the facts known to the Commissioner are set forth with an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the association, its directors, officers, employees, or agents to take affirmative action to correct the conditions resulting from any such violation or practice. Such order shall become final 10 days after the same has been delivered unless the association shall within such time request a hearing before the Commissioner in regard to such order, at which hearing any pertinent evidence relating to said order or the facts stated therein may be presented. Such hearing shall be promptly held, and the Commissioner, on the basis of the evidence presented and any matters of record in his office, shall thereupon either continue such order in effect, modify the same, or set it aside. An unsafe and unsound practice with respect to an association is such action or inaction as is likely to cause insolvency or substantial dissipation of assets or earnings or to otherwise prejudice its ability to timely satisfy withdrawal requests of savings account holders.

Commissioner May Remove Directors and Officers Participating in Violations

Sec. 8.14. Whenever in the opinion of the Commissioner, any director or officer of an association has committed any violation of law, rule, or regulation, or refused to comply with a cease and desist order which has become final, or has engaged or participated in any unsafe or unsound practice or practices in connection with the association, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and it appears that the association has suffered or probably will suffer substantial financial loss or other damage or that its ability to timely satisfy withdrawal requests of savings account holders could be seriously prejudiced thereby, the Commissioner may require that any such director or officer be removed from the office. Prior to entering an order of removal, the Commissioner shall deliver a full statement of the acts and conduct to which he objects to the board of directors of the association and the person or persons concerned and of his intention to enter a removal order. Such order shall become final within 10 days after such delivery unless within such time a hearing is requested. The Commissioner shall promptly hold a hearing if timely request is made at which any pertinent evidence relating to the matters set forth in such statement may be presented. After such hearing the Commissioner, on the basis of the evidence presented at such hearing, may proceed to enter an order for the immediate removal of the director or officer affected, a reprimand of the indi-

viduals and association concerned or a dismissal of the entire matter. If no hearing is requested within the time specified, the Commissioner may proceed to enter an order of removal on the basis of the facts set forth in his original statement.

Enforcement of Cease and Desist and Removal Orders

Sec. 8.15. In the case of violation or threatened violation of or failure or refusal to obey a final cease and desist order or a removal order, the Commissioner may apply to a district court of Travis County for an order enjoining the association, its directors, officers, employees, or agents from violating, failing or refusing to obey such order. The court shall grant such injunction upon a showing of substantial evidence to support the findings of fact in the Commissioner's order. No bond for injunction shall be required of the Commissioner.

Receivership

Sec. 8.16. If, in the judgment of the Commissioner, the public interest requires it, he may apply to a district court of the county in which the home office of the association is located for the appointment of a receiver for such association. Such court shall appoint a receiver as applied for if it finds substantial evidence to support any one or more of the following circumstances or conditions alleged to exist by the Commissioner in his application:

(1) that the association is insolvent in that the cash value of its assets realizable in a reasonable time is less than the total of its obligations to its creditors and the amount of its savings liability;

(2) that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices;

(3) that the association is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its net worth over the preceding 36 months (for this purpose, net worth shall be computed after the establishment of such valuation reserves and other reserves against possible losses as have been required by any supervisory authority having jurisdiction over the association or would be required under generally accepted accounting principles applicable to savings and loan associations) and has failed to restore such net worth reduction as ordered by the Commissioner;

(4) that the association and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any final cease and desist order issued by the Commissioner, or any agreement between the association and the Commissioner;

(5) that the association, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs of the association by the Commissioner or other duly authorized personnel of the Savings and Loan Department.

All proceedings in regard to such applications shall be governed by the laws of this State applicable to receiverships generally. The Commissioner, or his deputy or a Savings and Loan Examiner shall be appointed by the court as a receiver. The receiver, upon appointment by the court, shall immediately take charge of the affairs of the association, subject to the direction of the court, and proceed to conduct the business of the association or to take such steps as may be necessary to conserve the assets and protect the rights of the creditors of the association and its members as may be ordered by the court. The official who is appointed receiver shall receive no additional compensation for such service. If the association is an institution insured by the Federal Savings and Loan Insurance Corporation, said corporation may be tendered appointment as receiver or co-receiver. If it accepts such appointment, it may, nevertheless, make loans on the security of or purchase at public or private sale any part or all of the assets of the association of which it is receiver or co-receiver, provided such loan or purchase is approved by such court. The directors, officers and attorneys of an association in office at the time of the initiation of any proceeding under this Section are expressly authorized to contest any such proceedings and shall be reimbursed for reasonable expenses and attorney's fees by the association or from its assets, the amount of which shall be fixed by the court.

[See Compact Edition, Volume 3 for text of 8.17]

Voluntary Supervisory Control

Sec. 8.18. If in connection with any cease and desist order the Commissioner requests the consent of the board of directors of the association to the placing of the association under supervisory control of the Commissioner, and a majority of such board affirmatively consents to such request, the Commissioner may appoint a supervisory agent to supervise and monitor the operations of the association during the period of supervision to which consent was given. During the period of supervision, the association, its directors, and officers shall act in accordance with such instructions and directions as may be given by the Commissioner through the supervisory agent and shall not act or fail to act except in compliance with such cease and desist order without the prior approval of the supervisor or the Commissioner. The cost incident to such supervision shall be fixed by the Commissioner and paid by the association.

[See Compact Edition, Volume 3 for text of 9.01 to 9.06]

CHAPTER TEN. CONVERSION, REORGANIZATION, MERGER AND CONSOLIDATION, VOLUNTARY LIQUIDATION

[See Compact Edition, Volume 3 for text of 10.01 and 10.02]

Reorganization, Merger, and Consolidation

Sec. 10.03. Pursuant to a plan adopted by the board of directors and approved by the Commission-

er as equitable to the members of the association and as not impairing the usefulness and success of other properly conducted associations, an association shall have power to reorganize or to merge or consolidate with another association or Federal association; provided, that the plan of such reorganization, merger or consolidation shall be approved by a majority of the total vote the members are entitled to cast. Approval may be voted at either an annual meeting or at a special meeting called to consider such action. In all cases the corporate continuity of the resulting corporation shall possess the same incidents as that of an association which has converted in accordance with this Act. In the case of prior common ownership, the association in the proposed merger possessing the largest assets shall be designated as the home office. Any order of the Commissioner approving the reorganization, merger, or consolidation of any association with another association or Federal association shall become final 10 days after the same has been delivered unless an association within the vicinity of the reorganizing, merging, or consolidating associations shall within such time request a public hearing before the Commissioner in regard to such order, objecting to such order on the basis that the reorganization, merger, or consolidation would materially constrict the ability of the objecting association to compete in its vicinity. Such hearing shall be promptly held, and the Commissioner on the basis of the evidence presented shall thereupon either continue such order in effect, modify the same, or set it aside.

[See Compact Edition, Volume 3 for text of 10.04]

CHAPTER ELEVEN. MISCELLANEOUS

Exemption from Securities Laws

Sec. 11.01. Savings accounts, certificates, and other evidences of interests in the savings liability of associations subject to this Act and of Federal associations are not "securities" for any purpose under The Securities Act, as amended (Article 581–1, et seq., Vernon's Texas Civil Statutes). Securities of these associations other than interests in the savings liability of the associations are not subject to the registration requirements of The Securities Act, as amended. Any person whose principal occupation is that of an officer of an association is exempt from the registration and licensing provisions of The Securities Act, as amended, with respect to that person's participation in a sale or other transaction involving securities of the association of which the person is an officer.

[See Compact Edition, Volume 3 for text of 11.02 to 11.17]

Disclosure of Examiners—Penalty

Sec. 11.18. The Commissioner and any examiner, inspector, deputy, assistant or clerk, appointed or acting under the provisions of this Act, failing to keep secret any facts or information regarding an association obtained in the course of an examination or by reason of his official position, except when the public duty of such officer required him to report upon or take official action regarding the affairs of the association so examined, or who wilfully makes a false official report as to the condition of such association, shall be removed from his position or office and shall be fined not more than Five Hundred Dollars ($500), or imprisoned in the county jail for not more than one (1) year, or both. Reports of examinations made to the Commissioner shall be regarded as confidential and not for public record or inspection, except that for good reason same may be made public by the Commissioner, but copies thereof may, upon request of the association, be furnished to the Federal Home Loan Bank Board or to the Federal Home Loan Bank for the purpose of meeting the requirements of the Federal Home Loan Bank Act. Nothing herein shall prevent the proper exchange of information relating to associations and the business thereof with the representatives of savings and loan departments of other states, but in no case shall the private business or affairs of any individual association be disclosed. Any official violating any provision of this Section, in addition to the penalties herein provided, shall be liable, with his bondsmen, to the person or corporation injured by the disclosure of such secrets. The foregoing provisions shall not apply to any facts or information or to any reports of investigations obtained or made by the Commissioner or his staff in connection with any applications for a charter under this Act or in connection with any hearing held by the Commissioner under this Act, and any such facts, information or reports may be included in the record of the appropriate hearing. Notwithstanding the foregoing, the Commissioner shall report promptly to the Savings and Loan Section of the Finance Commission when either a cease and desist or removal order under Sections 8.13 and 8.14 of this article has been issued to an association. The Commissioner shall furnish such information about the association as the section members shall require in executive session.

Permanent Reserve Fund Stock to be Called Capital Stock

Sec. 11.19. The stock issued by an association under the authority of Section 2.02 shall hereafter be called "Capital" stock rather than "Permanent Reserve Fund" stock and the term "Permanent Reserve Fund" wherever such term appears in the Texas Savings and Loan Act, as amended (Article 852a, Vernon's Texas Civil Statutes), is hereby changed to "Capital."

Savings and Loan Section to Adopt Rules and Regulations for Reporting Change of Control of Associations

Sec. 11.20. The Savings and Loan Section of the Finance Commission shall adopt and promulgate

such rules and regulations as may be required to effectively cause the timely reporting to the Commissioner of any change in the control of an association occurring by reason of change in ownership of voting stock or holdings of voting rights in the association. A report shall be required whenever any person, partnership, trust, or group of associated persons acquires, receives, or becomes holder of:

(a) 25 percent or more of the outstanding shares of any class of voting stock of an association or of the voting rights thereto;

(b) 25 percent or more of the outstanding voting rights of an association; or

(c) any appointment, designation, or right or substitution with respect to 25 percent or more of the outstanding voting rights of the institution.

[Amended by Acts 1975, 64th Leg., p. 54, ch. 30, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 401, ch. 177, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 642, ch. 239, §§ 1 to 5, eff. May 25, 1977.]

Section 6 of the 1977 amendatory act provided:

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

Acts 1979, 66th Leg., p. 348, ch. 160, eff. May 15, 1979, amended various provisions of The Securities Act (art. 581–1 et seq.).

Section 10 of the 1979 Act provided:

"This Act does not affect Section 11.01, Texas Savings and Loan Act, as amended (Article 852a, Vernon's Texas Civil Statutes), or Article 11a, Chapter IV, The Texas Banking Code of 1943, as added (Article 342–411a, Vernon's Texas Civil Statutes)."

TITLE 25

CARRIERS

6. REGULATION OF MOTOR CARRIERS

Art. 911a. Motor Bus Transportation and Regulation by Railroad Commission

Definitions

Sec. 1.

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

(c) The term "Motor Bus Company" when used in this Act means every corporation or persons as herein defined, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating or managing any motor propelled passenger vehicle not usually operated on or over rails, and engaged in the business of transporting persons for compensation or hire over the public highways within the State of Texas, whether operating over fixed routes or fixed schedules, or otherwise. However, the term "Motor Bus Company" as used in this Act shall not include:

(1) corporations or persons, their lessees, trustees, or receivers, or trustees appointed by any court whatsoever, insofar as they own, control, operate, or manage motor propelled passenger vehicles operated wholly within the limits of any incorporated town or city, and the suburbs thereof, whether separately incorporated or otherwise; or

(2) corporations or persons to the extent that they own, control, operate, or manage vehicles used for van-pooling or any other nonprofit ride-sharing arrangement by which a group of people share the expense of operating or owning and operating a vehicle in which they commute to and from work with one member of the group serving as driver in exchange for transportation to and from work and reasonable personal use of the vehicle.

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

Regulations by Commission

Sec. 4(a). The Commission is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate the public service rendered by every motor bus company operating over the highways in this State, to fix or approve the maximum, or minimum, or maximum and minimum, fares, rates or charges of, and to prescribe all rules and regulations necessary for the government of, each motor bus company; to prescribe the routes, schedules, service and safety of operations of each such motor bus company; to require the filing of such annual or other reports and of such other data by such motor bus company as the Commission may deem necessary. To ensure nondiscriminatory rates, charges, and classifications for all shippers and users of regulated transportation services for which the Commission prescribes rates, charges, and classifications, the Commission shall establish collective ratemaking procedures for all commodities and services for which it prescribes rates, charges, and classifications. Those procedures must assure that respective revenues and costs of carriers engaged in the transportation of the particular commodity or service for which rates are prescribed are ascertained. Failure on the part of any carrier to comply with this subsection or the rules and regulations adopted under it may result in suspension or cancellation of the carrier's operating authority by the Commission.

[See Compact Edition, Volume 3 for text of 4(b) to 11]

Identification Plates on Busses

Sec. 11–A. (a) It shall be unlawful for any motor bus company, as hereinbefore defined, to operate any motor bus within this State unless there shall be in the cab of the motor bus a cab card to be furnished by the Commission. The cab card shall be so designed as to identify the vehicle as being a motor bus authorized to operate under the terms of this law, and the rules and regulations of the Commission, and shall bear the certificate number, vehicle unit number, and permanent vehicle identification number. Cab cards shall be issued annually and placed in the cab of each motor bus not later than September first of each year. The Commission is authorized to collect from the applicant a fee of One ($1.00) Dollar for each cab card issued and said fee shall be deposited in the State Treasury to the credit of the "Motor Transportation Fund."

(b) A motor bus covered by this section must have in a conspicuous place on each side of the power unit in plainly legible print the name of the carrier, the unit number of the vehicle, and the number of the certificate or permit authorizing the service. These identifying marks must be in letters and numbers not less than two (2) inches in height and one-fourth (¼) inch in width.

[See Compact Edition, Volume 3 for text of 12 to 19]

[Amended by Acts 1981, 67th Leg., p. 68, ch. 30, § 1, eff. April 10, 1981; Acts 1981, 67th Leg., p. 294, ch. 118, § 1, eff. May 13, 1981; Acts 1981, 67th Leg., p. 2622, ch. 705, § 1, eff. Sept. 1, 1981.]

Art. 911b. Motor Carriers and Regulation by Railroad Commission

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

Exceptions to Definition of Terms "Motor Carrier", "Contract Carrier" and "Transporting Property for Compensation or Hire"

Sec. 1a.

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

(3) The term "transporting property for compensation or hire" defined in Section 1(j) of this Act does not include furnishing of equipment and drivers during the same period of time by separate persons to a person who is not a common carrier, contract carrier, or specialized motor carrier for his use in bona fide private carriage in furtherance of a primary nontransportation business, provided that the person furnishing the equipment is in the bona fide business of leasing or renting motor vehicle equipment without drivers for compensation to the general public and has complied with the provisions of Section 2(a), (b), and (c) of Chapter 209, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701c–1, Vernon's Texas Civil Statutes), and provided further that said equipment is furnished under a bona fide written lease or rental agreement providing for the exclusive use and possession of said equipment for a minimum of seven consecutive days, and provided further that the person to whom the equipment and drivers are furnished directs, supervises, and controls the drivers and the use of the equipment, including maintaining all dispatch records and maintaining and filing all safety records and reports required by the United States Department of Transportation, the Texas Department of Public Safety, and the commission. The person to whom the drivers are furnished may pay the drivers' compensation or any required taxes or workman's compensation insurance payments directly to the person furnishing the drivers.

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

Transportation of Cornish Hens or Commercial Broilers

Sec. 1d. Provided, however, that in any proceeding in which or in connection with which the Commission specifically finds that the public interest requires that specialized motor carriers of Cornish hens and/or commercial broilers or other specified special commodities should be permitted to commence new certificated operations or to perform new certificated services under existing conditions and without prior approval by the Commission of rates, fares and charges for such new service, then, in such event, and pursuant to such finding, such new certificated operations or new certificated services may be commenced and performed under existing conditions and absent prior approval by the Commission of applicable rates, fares and charges. The term "Cornish hen" means a chicken which is approximately five weeks of age and the term "commercial broiler" means a chicken which is seven to eight weeks of age.

[See Compact Edition, Volume 3 for text of 1¼ to 3]

Supervision and Regulation by Commission

Sec. 4. (a) The commission is hereby vested with power and authority and it is hereby made its duty to supervise and regulate the transportation of property for compensation or hire by motor vehicle on any public highway in this State, to fix, prescribe or approve the maximum or minimum or maximum and minimum rates, fares and charges of each motor carrier in accordance with the specific provisions herein contained, to prescribe all rules and regulations for the government of motor carriers, to prescribe rules and regulations necessary for the safety of operations of each of such motor carriers, to require the filing of such monthly, annual or other reports and other data of motor carriers as the Commission may deem necessary, to prescribe the schedules and services of motor carriers operating as common carriers, and to supervise and regulate motor carriers in all matters affecting the relationship between such carriers and the shipping public whether herein specifically mentioned or not. To ensure nondiscriminatory rates, charges, and classifications for all shippers and users of regulated transportation services for which the Commission prescribes rates, charges, and classifications, the Commission shall establish collective ratemaking procedures for all commodities and services for which it prescribes rates, charges, and classifications. Those procedures must assure that respective revenues and costs of carriers engaged in the transportation of the particular commodity or service for which rates are prescribed are ascertained. Failure on the part of any carrier to comply with this subsection or the rules and regulations adopted under it may result in suspension or cancellation of the carrier's operating authority by the Commission.

[See Compact Edition, Volume 3 for text of 4(c) to 5]

Certificates of Convenience and Necessity; Issuance to Specialized Motor Carrier; Application; Filing Fee

[See Compact Edition, Volume 3 for text of 5(a) to 5(g)]

(h) Repealed by Acts 1981, 67th Leg., p. 2622, ch. 705, § 2, eff. Sept. 1, 1981.

Seasonal Agricultural License

Sec. 5b. (a) A person transporting eligible agricultural commodities in their natural state for com-

pensation or hire is not required to obtain a certificate of convenience and necessity if he holds a seasonal agricultural license issued by the Commission. A person holding a seasonal agricultural license may transport eligible agricultural commodities only from the place where the commodities are produced and harvested to the first processor. A holder of a seasonal agricultural license may also transport cotton and cottonseed from a cotton gin to the next processor or point of storage. This transportation may not exceed a distance of seventy-five (75) miles, and must be in intrastate commerce. Agricultural commodities in their natural state include those commodities produced and harvested on a farm which must be transported to storage or a first processor, but do not include the manufactured products of agricultural commodities, nor do they include livestock, milk, wool, mohair, or timber in its natural state.

(b) The Commission may issue a seasonal agricultural license to a person who files an application meeting the requirements of this Act if the motor vehicles to be used in the transportation are not used for carrying any other property or passengers for compensation.

(c) The Commission may issue seasonal agricultural licenses without notice, hearing, or proof of public convenience and necessity. Each license is valid for one hundred twenty (120) days from the date of issuance unless a shorter period is requested by the applicant.

(d) An application for a seasonal agricultural license must include:

(1) the applicant's full name and address;

(2) a complete list of all motor vehicles proposed to be used, including the make, unit number, and identification number of each vehicle; and

(3) a sworn statement by the applicant that he will transport under the license only those agricultural commodities eligible to be transported under this section and will transport them only in intrastate commerce.

(e) A seasonal agricultural license may not be sold, assigned, inherited, or otherwise transferred.

(f) An application for a seasonal agricultural license must be accompanied by a Twenty-five Dollar ($25) filing fee, which shall be retained by the Commission whether or not the license is granted. This fee covers up to five (5) motor vehicles. If the license is to cover more than five (5) motor vehicles, the applicant shall pay at the time the license is issued an additional fee of Five Dollars ($5) for each motor vehicle in excess of five (5) to be operated under the license.

(g) The issuance of seasonal agricultural licenses is exempt from the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) and from the requirements of Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes).

(h) The Commission shall issue to each licensee an identification card for each motor vehicle covered by the license. The card must be displayed within the cab of the vehicle. The card shall include the license number and the name and address of the owner of the license. A person may not use an identification card after the license has expired. The Commission shall prescribe the form for the identification card and may include additional information on the card.

(i) This section does not apply to any person transporting in the person's own vehicle agricultural commodities in their natural state, which that person owns, to and from the area of production and to and from the market or place of storage thereof.

[See Compact Edition, Volume 3 for text of 6 to 15]

Penalty for Violation of Act

Sec. 16.

[See Compact Edition, Volume 3 for text of 16(a) to 16(d)]

(e) The Commission shall prescribe an identification card which must be displayed within the cab of each motor vehicle, setting out the certificate or permit number and giving the name and address of the owner of said certificate or permit. This card must be attached to the document of authority that states the route or territory over which the vehicle is authorized to operate. It shall be unlawful for the owner of said certificate or permit, his agent, servant or employee, or any other person to use or display said identification card after said certificate or permit has been cancelled or disposed of. The identification card provided for herein may be in such form and contain such information as required by the Railroad Commission.

[See Compact Edition, Volume 3 for text of 16(f) to 16(k)]

Filing Fee Accompanying Application

Sec. 17.

[See Compact Edition, Volume 3 for text of 17(a) and 17(b)]

(c) All fees except fees allocated to the state highway fund accruing under the terms of this Act and all fines and penalties collected under the provisions of this Act shall be payable to the State Treasury at Austin and credited to the General Revenue Fund out of which all warrants and expenditures necessary in administering and enforcing this Act shall be paid.

Identification Plate on Motor Vehicles

Sec. 18. (a) It shall be unlawful for any motor carrier as hereinbefore defined to operate any motor vehicle within this State unless there shall be in the cab of the motor vehicle a cab card to be furnished

by the Commission. The cab card shall be designed so as to identify the vehicle as being a vehicle authorized to operate under the terms of this law and shall bear the certificate or permit number, vehicle unit number, and permanent vehicle identification number. It shall be the duty of the Commission to provide the cab card and each motor vehicle operating in this State shall carry it as soon as it is received. The cab card shall be issued annually thereafter and placed in each motor vehicle not later than September 1st of each year, or as soon thereafter as possible. The Commission shall be authorized to collect from the applicant a fee of one dollar ($1) for each cab card issued, and all fees for cab cards shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(b) A motor vehicle covered by this section must have in a conspicuous place on each side of the power unit in plainly legible print the name of the carrier, the unit number of the vehicle, and the number of the certificate or permit authorizing the service. These identifying marks must be in letters and numbers not less than two (2) inches in height and one-fourth (¼) inch in width.

Reciprocity

Sec. 18a. Motor carriers of property for hire residing or domiciled outside of the State of Texas, who have authority from the Interstate Commerce Commission to transport property for hire to, from or between points in Texas, and whose operations in this State are limited to the transportation of property for hire in interstate or foreign commerce only under such authority, shall not be required to pay the special fees provided for in Sections 7, 17(a), 18 and Section 5a(g) of this Act; provided, however, this exemption from the payment of said fees shall not apply unless the States in which such foreign motor carriers reside or are domiciled shall likewise extend to motor carriers residing or domiciled in Texas exemption from the payment of the same or similar fees or expenses in their respective States; such exemptions from the payment of such fees in Texas shall be effective when the governmental agency or the authorized representative thereof of such foreign States having jurisdiction over the operations of motor carriers for hire shall certify in writing to the Railroad Commission of Texas that the exemption from the payment of such fees and expenses by such Texas carriers has been granted, and is in full force and effect. Provided, further, however, that this exemption shall not apply to the payment of filing fees for applications for certificates or permits to operate in this State.

Nonresident motor carriers covered by this section are not required to display upon a vehicle external identification other than that required by the Interstate Commerce Commission.

Commission May Employ Experts, Assistants, Etc.; Payment of Expenses

Sec. 19. The Commission shall have power to employ and appoint from time to time such experts, assistants, and other help, in addition to its present force, as may be deemed necessary to enable it at all times to properly administer and enforce this Act. Such persons and employees of the Commission shall be paid for the service rendered such sums as may be fixed and prescribed by the Commission in monthly installments, and no employee of the Commission shall ask or receive any fee from any person for the taking of acknowledgments or any other service except as herein provided, and such salaries, wages and all fees that may be paid to witnesses and officers shall be paid out of the General Revenue Fund by the State Treasurer on warrants of the Comptroller of Public Accounts on order or voucher approved by the Commission or the Chairman thereof. All actual and necessary traveling expenses of the members of the Commission and employees shall also be paid out of said Fund in the same manner as recurring operating expenses (including travel expense) when such accounts shall have been itemized and sworn to by the Commission or employee incurring the expenses and approved by the Commission or the Chairman thereof; provided, however, that when audits or inspections of records and accounts are made at out-of-state locations pursuant to the provisions of Section 13b of this Act, the Commission may, in its discretion, direct that all actual and necessary traveling expenses of the members of the Commission, its agents or representatives shall be paid by the inspected carrier. These traveling expenses shall be itemized and sworn to by the Commission or employee, representative or agent of the Commission incurring the expenses and approved by the Commission or the Chairman thereof. The amount of the necessary expenses shall be paid to the Railroad Commission of Texas and shall be deposited with the State Treasurer to the account of the General Revenue Fund.

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

Repeal of Conflicting Laws; Construction

Sec. 23. All laws and parts of laws in conflict herewith are hereby expressly repealed. Provided, however, that nothing in this act shall be construed as giving legislative sanction to any act that would violate the provisions of the Anti-Trust Laws of Texas except as otherwise provided in this Act. [Amended by Acts 1975, 64th Leg., p. 1976, ch. 657, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 598, ch. 215, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2038, ch. 816, § 1, eff. July 16, 1977; Acts 1979, 66th Leg., p. 1874, ch. 757, § 1, eff. June 13, 1979; Acts 1981, 67th Leg., p. 69, ch. 30, §§ 2, 3, eff. April 10, 1981; Acts 1981, 67th Leg., p. 145, ch. 65, §§ 4 to 6, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2622, ch. 705, § 3, eff. Sept. 1, 1981.]

Prior to repeal, § 5a(h) of this article was amended by Acts 1981, 67th Leg., p. 145, ch. 65, § 3.

TITLE 26

CEMETERIES

Article
931c. Abandonment of Lots in Private Cemeteries.

Art. 912a-1. Definitions

Words used in this Act in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; "writing" includes "printing" and "typewriting"; "oath" includes "affirmation." When used in this Act, the following terms shall, unless the context otherwise indicates, have the following respective meanings:

The term "cemetery", within the meaning of this title, is hereby defined as a place dedicated to and used and intended to be used for the permanent interment of the human dead. It may be either a burial park, for earth interments; a mausoleum for vault or crypt interments, a crematory, or crematory and columbarium for cinerary interments, or a combination of one or more thereof.

The term "perpetual care cemetery" shall mean a cemetery for the benefit of which a perpetual care fund shall have been established in accordance with the provisions of this Act.

The term "nonperpetual care cemetery" shall mean a cemetery for the benefit of which no perpetual care fund has been established in accordance with the provisions of this Act.

The term "perpetual care" shall mean to keep the sod in repair, to keep all places where interments have been made in proper order, and to care for trees and shrubs, providing for the administration of perpetual care funds in instances wherein those administering such funds fail or refuse to act.

"Burial Park" means a tract of land which has been dedicated to the purposes of and used, and intended to be used, for the interment of the human dead in graves.

"Grave" means a space of ground in a burial park intended to be used for the permanent interment in the ground of the remains of a deceased person.

"Mausoleum" means a structure or building of most durable and lasting fireproof construction used, or intended to be used, for the permanent interment in crypts and vaults therein of the remains of deceased persons.

"Crypt" or "Vault" as herein used means the chamber in a mausoleum of sufficient size to inter the uncremated remains of a deceased person.

"Lawn Crypts" or "Garden Crypts," sometimes called cryptoriums, means subsurface concrete and reinforced steel receptacles installed in multiple units, for burial of the remains of a deceased person in a casket.

"Columbarium" means a structure or room or other space in a building or structure of most durable and lasting fireproof construction or a plot of earth, containing niches, used, or intended to be used, to contain cremated human remains.

"Crematory" means a building or structure containing one or more furnaces used, or intended to be used, for the reduction of bodies of deceased persons for cremated remains.

"Crematory and columbarium" means a building or structure of most durable and lasting fireproof construction containing both a crematory and columbarium, used, or intended to be used, for the permanent interment therein by inurnment of the remains of deceased persons.

"Niche" is a recess in a columbarium, used, or intended to be used, for the permanent interment of the cremated remains of one or more deceased persons.

"Lot" or "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association, or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and shall apply with like effect to one, or more than one, adjoining graves; one, or more than one, adjoining crypts or vaults; or one, or more than one, adjoining niches.

"Temporary receiving vault" as herein used means a vault in a structure of most durable and lasting construction used and intended to be used for the temporary deposit therein for a reasonable time only of the remains of a deceased person.

"Interment" means the permanent disposition of the remains of a deceased person by cremation, inurnment, entombment or burial.

"Cremation" as herein used means the interment of a body of a deceased person by reduction to cremated remains in a crematory and the deposit of the cremated remains in a grave, vault, crypt, or niche.

"Inurnment" means placing the cremated remains in an urn and permanently depositing the same in a niche.

"Entombment" means the permanent interment of the remains of a deceased person in a crypt or vault.

"Remains" means the body of a deceased person.

"Cremated remains" means remains of a deceased person after incineration in a crematory.

"Cemetery business," "cemetery businesses" and "cemetery purposes" are herein used interchangeably and shall mean any and all business and purposes requisite or necessary for or incident to establishing, maintaining, managing, operating, improving, and conducting a cemetery and the interring of the human dead, and the care, preservation and embellishment of cemetery property.

The terms "cemetery association" and "association" are herein used interchangeably and shall mean any corporation now or hereafter organized, or any association not operated for a profit, which is or shall be authorized by its articles to conduct any one or more or all of the businesses of a cemetery.

"Directors" as herein used, means the board of directors, board of trustees, or other governing body of the cemetery association.

The term "plot owner," "owner," or "lot proprietor" as used herein means any person in whose name a burial plot stands, as owner of the exclusive right of sepulture therein, in the office of the association, or who holds from such association a conveyance of the exclusive right of sepulture, or a certificate of ownership of the exclusive right of sepulture, in a particular lot, plot, or space.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 1, eff. Sept. 1, 1975.]

Art. 912a–3. Receipt and Disbursement of Filing Fees, Examination Fees, Penalties and Revenues

At the time of the filing of the statement of its perpetual care fund each cemetery filing same which serves a city the population of which is twenty-five thousand (25,000) inhabitants or less according to the last preceding Federal Census shall pay to the Banking Commissioner of Texas each year a filing fee of Fifty Dollars ($50.00), and each cemetery filing same which serves a city the population of which is greater than twenty-five thousand (25,000) inhabitants according to the last preceding Federal Census shall pay to the Banking Commissioner of Texas each year a filing fee of One Hundred Dollars ($100.00). Filing fees, examination fees, penalties and other revenues collected under this Act shall be received and disbursed by the Banking Department of Texas as provided by and in accordance with Article 12 of Chapter I, the Texas Banking Code of 1943, as amended,[1] in the administration and enforcement of the laws relating to the operation of perpetual care cemeteries and to the creation, investment, and expenditure of cemetery perpetual care funds and for investigations either on its own initiative or on complaints made by others with reference to the operation of perpetual care cemeteries and the creation, investment, and expenditure of cemetery perpetual care funds; provided, that a reasonable part of the amount transferred each year of the biennium by the Banking Department to the General Revenue Fund, to cover the cost of governmental service rendered by other departments, may be made up from fees, penalties and other revenues collected under the provision of this Act.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 2, eff. Sept. 1, 1975.]

[1] Article 342–112.

Art. 912a–15. Establishment and Maintenance of Perpetual Care

Every cemetery association which has established and is now maintaining, operating or conducting a perpetual care cemetery and every association which shall hereafter establish, maintain, operate or conduct a perpetual care cemetery within this state, pursuant to this Act, shall establish with a trust company or a bank with trust powers, no two (2) of the directors of which shall be directors of the cemetery association for the benefit of which such fund is established, an endowment fund of which the income only can be used for the general perpetual care of its cemetery and to place its cemetery under perpetual care; provided, however, that if there is no such trust company or bank with trust powers, qualified and willing to accept such trust funds at the regular fees established by the Texas Trust Act,[1] located within the county within which such cemetery association is located, then and only then, such endowment fund may be established with a Board of Trustees composed of three (3) or more persons, no two (2) of the trustees of which shall be directors of such cemetery association. The principal of such fund for perpetual care shall never be voluntarily reduced, but shall remain inviolable and shall forever be maintained separate and distinct by the trustee or trustees from all other funds. Any such trustee or trustees and the perpetual care trust operated by them shall in all respects be governed by the provisions of the Texas Trust Act. The principal of such fund shall be invested, from time to time reinvested, and kept invested as required by law for the investment of such funds, and the net income arising therefrom shall be used solely for the general care and maintenance of the property entitled to perpetual care in the cemetery for which the fund is established, and shall be applied in such manner as the Board of Directors may from time to time determine to be for the best interest of the cemetery for which such fund is established, but shall never be used for improvement or embellishment of unsold property to be offered for sale. In the event the Board of Directors shall fail to generally care for and maintain that portion of the cemetery entitled to perpetual care, as hereinbefore provided, any five (5) or more lot owners in said cemetery whose lots are

entitled to perpetual care shall have the right by suit for mandatory injunction or for a Receiver to take charge of and expend said net income, filed in the District Court of the county in which the cemetery is located, to compel the expenditure either by the Board of Directors or by such Receiver of the net income from the perpetual care fund for the purpose hereinabove set forth.

If a cemetery association is operating a cemetery without provision for perpetual care, and if it is authorized by law and wishes to operate said cemetery as a perpetual care cemetery, it shall so notify the Banking Commission of the State of Texas and shall, in accordance with the foregoing provisions hereof, establish a perpetual care fund equal to the amount which would have theretofore have been paid into such a fund, in accordance with provisions of this Act, if such cemetery had been operated as a perpetual care cemetery from and after the date of the first sale of burial space therein, or the minimum amount provided in Section 29 of this Act,[2] whichever is the greater. If the amount of the perpetual care fund so established is the minimum amount provided in Section 29 of this Act, such cemetery association or corporation shall be entitled to a credit against amounts hereafter required by the provisions of this Act to be paid by it unto such perpetual care fund equal to the excess of the amount of such perpetual care fund, as originally established by it, over what would have been the amount thereof if its amount had been determined without regard to Section 29 of this Act.

In establishing its perpetual care trust fund the association may from time to time adopt plans for the general care, maintenance and embellishment of its cemetery.

A cemetery association which has established a perpetual care fund may also take, receive, and hold therefor and as a part thereof or as an incident thereto any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it therefor.

The perpetual care trust fund authorized by this Section and all sums paid therein or contributed thereto are, and each thereof is hereby, expressly permitted and shall be and be deemed to be for charitable and eleemosynary purposes. Such perpetual care shall be deemed to be a provision for the discharge of a duty due from the person or persons contributing thereto to the persons interred and to be interred in the cemetery and likewise a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming places of disorder, reproach, and desolation in the communities in which they are situated. No payment, gift, grant, bequest, or other contribution for such general perpetual care shall be or be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating said trust, nor shall said fund or any contribution thereto be or be deemed to be invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

Each perpetual care cemetery shall deposit in its perpetual care trust fund an amount equivalent to such amount as may have been stipulated in any contract under which perpetual care property was sold prior to March 15, 1934, plus a minimum of twenty cents (20¢) per square foot of ground area sold or disposed of as perpetual care property after March 15, 1934, until such fund reaches a minimum of One Hundred Thousand Dollars ($100,000.00), after which each such cemetery shall deposit an amount equivalent to a minimum of ten cents (10¢) per square foot of ground area sold or disposed of as perpetual care property after March 15, 1934, until September 3, 1945. Each such cemetery shall deposit in its perpetual care trust fund an amount equivalent to a minimum of twenty cents (20¢) per square foot of ground area sold or disposed of as perpetual care property after September 3, 1945, until July 1, 1963. A minimum of Fifteen Dollars ($15.00) per each crypt interment right for mausoleum interment sold or disposed of as perpetual care property and a minimum of Five Dollars ($5.00) per each niche interment right for columbarium interment sold or disposed of as perpetual care property between March 15, 1934, and July 1, 1963, shall also be placed in such perpetual care trust fund. From and after July 1, 1963, until September 1, 1975, each such cemetery shall deposit in its perpetual care trust fund an amount equivalent to a minimum of fifty cents (50¢) per square foot of ground area sold or disposed of as perpetual care property between said dates. A minimum of Forty Dollars ($40.00) per each crypt interment right for mausoleum interment sold or disposed of as perpetual care property, except that on crypts accessible only through another crypt the minimum requirement shall be Twenty Dollars ($20.00) per each such crypt, and a minimum of Ten Dollars ($10.00) per each niche interment right for columbarium interment sold or disposed of subsequent to July 1, 1963, shall also be placed in such perpetual care trust fund. Such minimum requirements shall apply to all property in which the exclusive right of sepulture has been sold and paid for, whether used for interment purposes or not.

After July 1, 1963, each agreement for the sale of burial space in a perpetual care cemetery shall set out separately the part of the aggregate amount agreed to be paid by the purchaser which is to be deposited in the perpetual care trust fund. If the aggregate amount agreed to be paid by the purchaser is payable in installments, all amounts paid thereon shall be applied, first, to the part thereof not required to be deposited in the perpetual care trust fund, to the extent thereof, and the remainder shall, when received by the seller, be deposited in the perpetual care trust fund. Any funds required to be deposited in its perpetual care trust fund by a seller

of burial space shall be so deposited not later than ten (10) days after the end of the calendar month during which they are received. If the seller shall fail to so deposit such funds within the time required hereunder, it shall be liable for and the Banking Commissioner shall collect as a penalty the sum of Ten Dollars ($10.00) per day for the period of such failure, and, upon the relation of the Banking Commissioner of the refusal of the seller to pay to the Banking Commissioner such penalty, the Attorney General shall institute a suit to recover said penalty and for costs and such other relief by the state as in the judgment of the Attorney General is proper and necessary. No cemetery shall hereafter operate as a perpetual care, permanent maintenance, or free care cemetery until the provisions hereof are complied with.

The amount to be deposited in the perpetual care trust fund shall be separately shown on the original purchase agreement and a copy thereof shall be delivered to the purchaser. In the sale of burial space, no commission shall be paid a broker or salesman on the amount to be deposited in the fund.

Notwithstanding any other provision of the laws of the State of Texas or any provision in a trust agreement executed for the purpose of providing perpetual care for a cemetery, such trust agreement may, by agreement entered into between the cemetery association and the trustee or trustees acting under such trust agreement, be amended so as to include any provision which is not inconsistent with any provision in this Act.

From and after September 1, 1975, each such cemetery shall deposit in its perpetual care trust fund an amount equivalent to a minimum of seventy-five cents (75¢) per square foot of ground area sold or disposed of as perpetual care property after said date. A minimum of Fifty Dollars ($50.00) per each crypt interment right for mausoleum interment sold or disposed of as perpetual care property, except that on crypts accessible only through another crypt the minimum requirement shall be Twenty-Five Dollars ($25.00) per each such crypt, and a minimum of Fifteen Dollars ($15.00) per each niche interment right for columbarium interment sold or disposed of subsequent to September 1, 1975, shall also be placed in such perpetual care trust fund. The amount of money to be placed in the perpetual care trust fund for lawn crypts shall be the same as crypts in an aboveground mausoleum.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 3, eff. Sept. 1, 1975.]

[1] Article 7425b-1 et seq.
[2] Article 912a-29.

Art. 912a-28. Articles of Incorporation; Requisites and Contents

No perpetual care cemetery shall ever be organized without its Articles of Incorporation filed with the Secretary of State showing the subscriptions and payment in cash of its full Capital Stock, the designation of the location of its cemetery property, and a certificate showing the deposit of its Perpetual Care and Maintenance Guarantee Fund as provided in Section 29 of this Act.[1] The minimum amount of such Capital shall be in accordance with the following schedule: Those serving a town or city having a population of less than fifteen thousand (15,000), Fifteen Thousand Dollars ($15,000); those serving a city having a population of fifteen thousand (15,000) but not more than twenty-five thousand (25,000) inhabitants, Thirty Thousand Dollars ($30,000); those serving a city of twenty-five thousand (25,000) or more inhabitants, Fifty Thousand Dollars ($50,000).

Nothing contained in this Section 28[2] shall apply to cemetery corporations chartered prior to the effective date of this Act, provided, however, that any corporation which amends its charter shall be required to comply with the minimum requirements set forth in this Section 28.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 4, eff. Sept. 1, 1975.]

[1] Article 912a-29.
[2] This article.

Art. 912a-29. Perpetual Care and Maintenance Guarantee Fund; Minimum; Necessity and Requisites

Any Corporation chartered under this Act desiring to operate a Perpetual Care Cemetery, before being chartered must establish a minimum Perpetual Care and Maintenance Guarantee Fund, according to the following schedule:

Cemeteries with a Capital Stock of Fifteen Thousand Dollars ($15,000) must deposit with the trustee, as provided by law, a Perpetual Care and Maintenance Guarantee Fund of Fifteen Thousand Dollars ($15,000) in cash.

Those with a Capital Stock of Thirty Thousand Dollars ($30,000), a Perpetual Care and Maintenance Guarantee Fund of Thirty Thousand Dollars ($30,000) in cash; and,

Those with a Capital Stock of Fifty Thousand Dollars ($50,000), or more, a Perpetual Care and Maintenance Guarantee Fund of Fifty Thousand Dollars ($50,000) in cash.

The Perpetual Care and Maintenance Guarantee Fund shall be permanently set aside and deposited in trust with the Trustee, as is provided in Section 15 of the Perpetual Care Cemetery Code.[1] Upon all sales made of lots, spaces, crypts, mausoleum space and columbariums, the deposits as required by law, to be placed in trust for the Perpetual Care and Maintenance of the Cemetery, shall be allowed as a credit against the original Perpetual Care and Maintenance Guarantee Fund to the full amount of the original deposit. The Corporation thereafter shall continue to deposit in the Perpetual Care Fund, the minimum amount required by law, and such additional amount as may be required by the Rules and

Regulations and/or the Trust Agreement or contract of said Cemetery Corporation or Association, for the Perpetual Care and Maintenance of the Cemetery.

Nothing contained in this Section 29 [2] shall apply to cemetery corporations chartered prior to the effective date of this Act, provided, however, that any corporation which amends its charter shall be required to comply with the minimum requirements set forth in this Section 29.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 5, eff. Sept. 1, 1975.]

[1] Article 912a-15.
[2] Article 912a-29.

Art. 912a-31. Examinations of Cemetery Associations' Perpetual Care Trust Funds and Records; Fees and Expenses

It shall be the duty of the Banking Commissioner to examine, or cause to be examined, each of such perpetual care cemetery associations annually or as often as necessary, for which the examined association shall pay to the Commissioner a fee not to exceed One Hundred Dollars ($100.00) per day or fraction thereof, for each examiner, the total fee not to exceed Four Hundred Dollars ($400.00) for any one regular examination, for those cemeteries whose annual deposits, as required by law, to their perpetual care trust fund, are less than Seven Thousand, Five Hundred Dollars ($7,500.00); for those cemeteries whose annual deposits, as required by law, to their perpetual care trust fund are Seven Thousand, Five Hundred Dollars ($7,500.00) or more, the fee shall not exceed Two Hundred Dollars ($200.00) per day or fraction thereof for each examiner, the total fee not to exceed Eight Hundred Dollars ($800.00) for any one regular examination.

If in any case the conditions existing in any such association are found to be such as to necessitate an additional examination or a prolonged audit to ascertain the true status of its affairs, the whole expense of such additional examination or such prolonged audit shall be defrayed by such association.

[Amended by Acts 1975, 64th Leg., p. 86, ch. 40, § 6, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2093, ch. 839, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 467, ch. 198, § 1, eff. Aug. 31, 1981.]

Art. 931c. Abandonment of Lots in Private Cemeteries

Application

Sec. 1. This Act applies to unoccupied lots or portions of lots, for which adequate perpetual care has not been provided, in private cemeteries that are operated by nonprofit organizations.

Definitions

Sec. 2. In this Act:

(1) "Governing body" means the person or persons within a nonprofit organization who are responsible for conducting the business of a cemetery.

(2) "Nonprofit organization" means an organization described in Section 501(c)(3), Internal Revenue Code of 1954, as amended (26 U.S.C.A. 501(c)(3)).

(3) "Private cemetery" means a cemetery that is not owned or operated by the United States, the state, or a political subdivision of the state.

Decree of Abandonment

Sec. 3. (a) After furnishing the notice required by Section 5 of this Act, the governing body of a cemetery may petition a court of competent jurisdiction for an order declaring that a cemetery lot or a portion of a lot has been abandoned.

(b) If the court determines that an unoccupied cemetery lot or portion of a lot has been abandoned, the ownership of or right of sepulture in the cemetery lot reverts to the cemetery.

Presumption of Abandonment

Sec. 4. A cemetery lot is presumed to be abandoned if for 10 consecutive years an owner or an owner's successors in interest fail:

(1) to maintain the lot in a condition consistent with other lots in the cemetery; or

(2) to pay the assessments for maintenance, if any, levied by the cemetery.

Notice of Intent to Claim Abandonment

Sec. 5. (a) More than 90 but not more than 120 days before filing a petition under Section 3 of this Act, the governing body of a cemetery shall furnish written notice of its claim to the owner of the lot, or, if the owner is deceased or his address is unknown, to the successors in interest of the owner.

(b) The notice required by this section may be delivered in person or by prepaid United States mail, sent to the last known address of the owner or the owner's successors in interest.

(c) If after reasonable effort the governing body of a cemetery cannot locate or ascertain the identity of an owner or an owner's successors in interest, the governing body shall publish the notice required by this section once each week for four consecutive weeks in a newspaper of general circulation in the county in which the cemetery is located.

Rebuttal of Presumption

Sec. 6. (a) An owner or an owner's successors in interest may rebut a presumption of abandonment under Section 4 of this Act by:

(1) delivering to the governing body of the cemetery or by filing with the court, as appropriate, written notice claiming ownership of or right of sepulture in the lot; and

(2) paying the cemetery for past due maintenance charges on the lot, if any, plus interest at the maximum legal rate.

(b) A notice provided by this section for the rebuttal of a presumption is made by delivery in person or by prepaid United States mail, properly addressed. If the notice is mailed, delivery is effective on the date the notice is postmarked.

Effect of Reversion

Sec. 7. (a) If under Section 3 of this Act title to a cemetery lot or portion of a lot reverts to a cemetery, the cemetery may sell and convey title to the lot or portion of the lot.

(b) After deducting its reasonable expenses, including court costs and legal fees, related to its reacquisition of an abandoned cemetery lot, a cemetery shall deposit the funds realized from the sale of the lot into an account to be used solely for the perpetual care of the cemetery.

Laws in Conflict

Sec. 8. To the extent that Article 912a–11, 912a–12, or 912a–13, Vernon's Texas Civil Statutes, conflicts with this Act, this Act controls.

[Acts 1981, 67th Leg., p. 2624, ch. 706, eff. Aug. 31, 1981.]

TITLE 28

CITIES, TOWNS AND VILLAGES

CHAPTER ONE. CITIES AND TOWNS

Article

966i. Incorporation of Certain Areas Containing 8,000 or More Inhabitants and at Least 10,000 Acres.
969c-2. Possession and Control of Unkept or Abandoned Cemeteries Within Home-Rule City in County of 500,000.
974d-20. Validation of Consolidation of Certain Cities.
974d-21. Validations of Incorporation, Boundary Lines and Governmental Proceedings; Exceptions.
974d-22. Validation of Incorporation, Charters and Amendments of Cities over 5,000; Boundary Lines; Governmental Proceedings; Revenue Bonds; Exceptions.
974d-23. Validation of Consolidation and Governmental Proceedings of Certain Cities.
974d-24. Validation of Annexations and other Proceedings of Municipalities of 20,000 or Less.
974d-25. Validation of Boundary Actions of Cities within Counties of 1,000,000 or More.
974d-26. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Exceptions.
974d-27. Validation of Assumption of Municipal Control of Certain Schools.
974d-28. Validation of Incorporation and Boundary Lines.
974d-29. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Cities and Towns of 1,000 or Less.
974d-30. Validation of Incorporation and Boundary Lines; Exceptions.
974d-31. Validation of Consolidation and Governmental Proceedings of Certain Cities and Towns.
974d-32. Validation of Incorporation and Governmental Proceedings; Cities and Towns of 200 or More.
974d-33. Validation of Incorporation, Boundary Lines, and Governmental Proceedings; Exceptions.
974f-1. Annexation of Streets, Highways and Alleys by Cities of 17,850 to 17,900.
974f-2. Annexation of Adjacent Streets, Highways and Alleys by Cities of 4,350 to 4,375.
974f-3. Annexation of Adjacent Street, Highway, or Alley by City of Wickett.

Art. 964. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 966i. Incorporation of Certain Areas Containing 8,000 or More Inhabitants and at Least 10,000 Acres

Sec. 1. Any unincorporated area having a population, according to the last preceding federal census, of 8,000 inhabitants or more, and located wholly within boundaries of a district created pursuant to Article XVI, Section 59, of the Texas Constitution, which district furnishes water and sewer services to householders, contains at least 10,000 acres, and portions of which district are located within the corporate boundaries of two or more municipalities, may be incorporated as a city or town, with all of the powers, rights, immunities, and privileges mentioned and described in the provisions of this title relating to cities and towns, in the manner described in Article 966, Revised Civil Statutes of Texas, 1925, for incorporating cities and towns, provided, however, that the application to become incorporated shall be signed by at least 500 resident electors.

Sec. 2. The application to become incorporated shall be filed in the office of the county judge of the county in which the unincorporated area is located. Within 10 days after receipt of a map or plat of the boundaries of the unincorporated area, verification by the county tax assessor and collector that the requisite number of resident electors have signed the application to become incorporated, and certification by a registered professional engineer that the area described in the application contains at least 8,000 inhabitants and is located wholly within the boundaries of a district created pursuant to Article XVI, Section 59, of the Texas Constitution, which district furnishes water and sewer services to householders, contains at least 10,000 acres, and portions of which district are located within the corporate boundaries of two or more municipalities, the county judge shall order that an election be held for the purpose of submitting the question of incorporation to a vote of the people, in the manner prescribed by Article 966, Revised Civil Statutes of Texas, 1925.

Sec. 3. Notwithstanding any provision of this Act or any other law to the contrary, the application for incorporation, the order calling the incorporation election, the conduct and canvassing of said election, and, in the event of the passage of the election, the entry by the county judge upon the records of the commissioners court that the inhabitants of the city or town are incorporated within the boundaries thereof, and all subsequent actions of the incorporated city or town shall be valid, binding, and enforceable notwithstanding the absence of compliance with any requirement or requirements of the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes).

Sec. 4. The provisions of this Act shall not take effect until January 1, 1978. If, however, the unincorporated area described in Section 1 of this Act has been annexed by the principal city of the county wherein the unincorporated area lies or if annexation proceedings have been initiated by the principal city after January 1, 1977, then all provisions of this Act shall be held void.

Sec. 5. If any provision of this Act or its application to any person or circumstance is held to be invalid for any reason, the invalidity does not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1977, 65th Leg., p. 2077, ch. 828, §§ 1 to 5, eff. Jan. 1, 1978.]

Art. 969c. Cemeteries

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

Donation for Maintenance and Upkeep of Neglected and Unkept Cemeteries

Sec. 2A. A person, association, foundation, or corporation interested in the maintenance and upkeep of neglected and unkept cemeteries under the possession and control of a city may make donations to the permanent and perpetual trust fund to be used to beautify and maintain the whole cemetery or burial grounds generally.

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

[Amended by Acts 1977, 65th Leg., p. 1388, ch. 555, § 7, eff. Aug. 29, 1977.]

Art. 969c–1. Termination of Perpetual Trust Funds for Cemeteries of Municipalities in Counties of 120,000 to 128,000

Sec. 1. This Act shall apply to all municipalities whether created by general law, special act, or under the home rule charter, in counties having a population of not less than 120,000 and not more than 128,000, according to the last preceding federal census.

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

[Amended by Acts 1981, 67th Leg., p. 559, ch. 237, § 3, eff. Sept. 1, 1981.

Art. 969c–2. Possession and Control of Unkept or Abandoned Cemeteries

Sec. 1. An incorporated city, town or village having a cemetery within its boundaries or within its extraterritorial jurisdiction which threatens or endangers the health, safety, comfort, or welfare of the public may, by resolution of its governing body, take possession and control of the cemetery on behalf of the public health, safety, comfort, and welfare of present and future generations.

Sec. 2. The resolution shall specify that 60 days after giving notice of a declaration of intent to take possession and control, the city in which the cemetery is located will remove or repair any fences, walls, or improvements, and will straighten and reset any memorial stones or embellishments that are found to be a threat or danger to the health, safety, comfort, or welfare of the public and take proper steps to restore and maintain the premises in orderly and decent condition. Notice shall be given by mail to all persons shown by the records in the county clerk's office to have an interest in the cemetery and to all interested persons by publication in a newspaper of general circulation in the city.

Sec. 3. Sixty days after giving notice, the city may remove or repair any fences, walls, or improvements, and will straighten and reset any memorial stones or embellishments that are found to be a threat or danger to the health, safety, comfort, or welfare of the public and restore the premises to decent condition. Thereafter, the city shall maintain the cemetery so that it will not endanger the health, safety, comfort, or welfare of the public. Provided, however, no additional burial spaces will be offered for sale.

Sec. 4. A cemetery in the possession and control of a city under the provisions of this Act shall remain open to the public. A person who has an interest in a grave or burial lot or who has a kinship within the third degree of affinity or consanguinity to those interred may care for a grave or burial lot in the cemetery.

Sec. 5. No city nor officer or employee of the city shall be liable in civil damages or be criminally liable for acts performed in a good faith administration of this Act.

Sec. 6. The provisions of this Act are cumulative of all other remedies and provisions of the law relating to cemeteries, including the care, maintenance, ownership, operation, and control of cemeteries, perpetual trust funds to maintain cemeteries, and the abatement of nuisances and removal of cemeteries. The provisions of this Act do not apply to a perpetual care cemetery incorporated under the laws of this state or to a private family cemetery.

[Acts 1977, 65th Leg., p. 1387, ch. 555, §§ 1 to 6, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 429, ch. 196, §§ 1, 2, eff. May 17, 1979.]

Art. 970a. Municipal Annexation Act

[See Compact Edition, Volume 3 for text of 1 to 5]

Fire Fighting Services in Industrial Districts

Sec. 5A. (a) A city may provide for adequate fire fighting services in that part of its extraterritorial jurisdiction designated under Section 5 of this Act as an industrial district. A city may provide for adequate fire fighting services by:

(1) directly furnishing fire fighting service which is paid for by the property owners of the district;

(2) contracting for the fire fighting service, whether or not all or part of the cost of the service is paid for by the property owners of the district; or

(3) the property owners providing for their own service under a contract with the city.

(b) A property owner who provides for his own fire fighting service under provisions of this Act shall not be required to pay any part of the cost of fire fighting services provided by the city to other property owners within the district.

Notice and Hearing—Annexation Proceedings

Sec. 6. Before any city may institute annexation proceedings, the governing body of such city shall provide an opportunity for all interested persons to be heard at two public hearings to be held not more than forty (40) days nor less than twenty (20) days prior to institution of such proceedings. At least one (1) public hearing shall be held within the area proposed to be annexed. Notice of such hearings shall be published in a newspaper having general circulation in the city and in the territory proposed to be annexed. The notice for each hearing shall be published at least once in such newspaper not more than twenty (20) days nor less than ten (10) days prior to that hearing. Additional notice by certified mail should be given to railroad companies then serving the city and on the city's tax roll where the right-of-way thereof is included in the territory to be annexed. Annexation of territory by a city shall be brought to completion within ninety (90) days of the date on which the governing body of such city institutes annexation proceedings or be null and void. Provided, however, any period of time during which a city is restrained or enjoined from annexing any such territory by a court of competent jurisdiction shall not be computed in such 90-day limitation period.

Limitation on Annexations

Sec. 7.

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

B–1.

Text of subd. (a) as amended by Acts 1977, 65th Leg., p. 1002, ch. 369, § 1

(a) No home rule or general law city may annex any area, whether publicly or privately owned, unless the width of such area at its narrowest point is at least 500 feet, except that a city having a population of twelve thousand (12,000) inhabitants or less may annex an area that is less than 500 feet in width if the corporate limits of the city are contiguous with the property on at least two sides; and except that adjacent cities may accomplish mutually agreeable adjustments in their boundaries of areas that are less than 500 feet in width.

Text of subd. (a) as amended by Acts 1977, 65th Leg., p. 1719, ch. 686, § 1

(a) No home rule or general law city may annex any area, whether publicly or privately owned, unless the width of such area at its narrowest point is at least 500 feet, except that a city having a population of twelve thousand (12,000) inhabitants or less may annex an area that is less than 500 feet in width if the corporate limits of the city are contiguous with the property on at least two sides, provided, however, that the provisions of this paragraph (a) shall not apply to any annexation initiated upon written petition of the owner or owners or of a majority of the qualified voters of the area to be annexed.

[See Compact Edition, Volume 3 for text of 7, B–1(b) to 7, D]

Annexation of Municipal Reservoir

Sec. 7a. A. A general law city may annex a reservoir owned by the city and used to supply water to the city, any land adjoining the reservoir that is subject to an easement for flood control purposes in favor of the city, and the right-of-way of any public roads or highways connecting the reservoir to the city by the most direct route, even though part of the annexed area is outside the city's extraterritorial jurisdiction or is narrower than five hundred (500) feet, if:

(1) none of the annexed territory is more than five (5) miles from the city's corporate limits;

(2) no part of the annexed territory is in another city's extraterritorial jurisdiction; and

(3) the annexed area, excluding road or highway right-of-way, is less than six hundred (600) acres.

B. The provisions of this Act limiting the amount of territory a city may annex in a calendar year do not apply to an annexation covered by this section. Territory may be annexed under this section without the consent of the owners or residents of the annexed area.

Annexation of Municipal Airport

Sec. 7b. (a) A city may annex an airport owned by the city and the right-of-way of any public roads or highways connecting the airport to the city by the most direct route, even though the annexed area is outside the city's extraterritorial jurisdiction and within another city's extraterritorial jurisdiction or is narrower than five hundred (500) feet, if:

(1) none of the annexed territory is more than eight (8) miles from the annexing city's corporate limits; and

(2) the city within whose extraterritorial jurisdiction the airport to be annexed is located agrees to the annexation.

(b) The provisions of this Act limiting the amount of territory a city may annex in a calendar year do not apply to an annexation covered by this Section. Territory may be annexed under this Section without the consent of the owners or residents of the annexed area.

(c) The annexation of territory outside the extraterritorial jurisdiction of the annexing city under this Section does not expand the extraterritorial jurisdiction of the annexing city.

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

Petition for Annexation or Services

Sec. 9. The petition for annexation provided for in Subsection A of Section 8 of this Article and the petition requesting the availability of services provided for in Subsection B of Section 8 of this Article shall be made by the voters and landowners signing and presenting to the city secretary or clerk a written petition requesting annexation or requesting such services. The signatures to the petition need not be appended to one paper, but each signer shall sign his or her name in ink or indelible pencil, and each signer signing the petition as a voter shall sign his or her name as it appears on the most recent official list of registered voters and each voter shall note on such petition his or her residence address and the precinct number and voter registration number that appear on his or her voter registration certificate. Each landowner signing the petition shall note thereon opposite his or her name the approximate total acreage he or she owns within the territory. The petition shall describe the territory to be annexed or the territory to which such services are requested to be made available and have attached to it a plat of the territory. Prior to circulating the petition for annexation or such services among the voters and landowners, notice of the petition shall be given by means of posting for ten (10) days a copy of the petition in three (3) public places in the territory and by publishing it for one (1) issue in a newspaper of general circulation serving the territory at least fifteen (15) days prior to the circulation of the petition. Proof of posting and publication of the notice shall be made by attaching to the petition presented to the city secretary or clerk: (1) the sworn affidavit of any voter who signed the petition, stating the places where and the dates when the petition was posted; and (2) the sworn affidavit of the publisher of the newspaper setting forth the name of the newspaper and the issue and date when the notice was published; (3) in addition, there shall be attached to the petition the sworn affidavit of three (3) or more voters signing the petition, if there be that many, stating the total number of voters residing in the territory and the approximate total acreage within the territory.

Disannexation

Sec. 10. A. Prior to the publication of notice of a hearing required under Section 6 of this Act, the governing body of the city proposing the annexation shall direct its planning or other appropriate department to prepare a service plan that provides for the extension of municipal services into each area to be annexed. For purposes of this Section, providing services includes having services provided by any method or means by which the city extends municipal services to any other area of the city.

B. The service plan shall include:

(1) a program under which the city will provide police protection, fire protection, solid waste collection, maintenance of water and waste water facilities, maintenance of roads and streets (including lighting), the maintenance of parks, playgrounds, and swimming pools, and the maintenance of any other publicly owned facility, building, or service within each particular area within sixty (60) days after the effective date of the annexation of that particular area; and

(2) a program under which the city will initiate the acquisition or construction of any capital improvements necessary for providing municipal services for the particular area, the construction to begin within two and one-half (2½) years of the effective date of the annexation of the particular annexed area, and the acquisition or construction of the facilities to be accomplished by purchase, lease, or other contract or by the city's succeeding to the powers, duties, assets, and obligations of conservation and reclamation districts, as may be authorized or required by law. No moneys received from the sale of bonds or evidenced by other instruments of indebtedness may be allocated to the annexed area for a period of one hundred and eighty (180) days.

C. In no event shall a service plan provide fewer services or a lower level of services in the area to be annexed than were in existence in that area at the time immediately preceding the annexation. However, it is not the intent of this Act to require that a uniform level of services be provided to all areas of the city where differing characteristics of topography, land utilization, and population density are considered as a sufficient basis for providing differing service levels. Nothing in this Act shall be construed to limit or repeal home-rule charter provisions providing for annexation for limited purposes other than ad valorem taxation.

D. In the event that only a part of the area to be annexed is actually annexed, the governing body shall direct its planning or other appropriate department to prepare a revised service plan for the part actually to be annexed.

E. The proposed service plan shall be made available for inspection and explained to the inhabitants of the area to be annexed at the public hearings held under Section 6 of this Act. The plan may be amended through negotiation at those hearings but cannot have provision of any service deleted from it. On the completion of the public hearings, the service plan shall be attached to the ordinance annexing the area and approved as part of that ordinance. On approval by the governing body of the annexing city, the plan shall be construed as a contractual obligation, not subject to amendment or repeal unless the governing body determines at the hearings required by this subsection that changed conditions or subsequent occurrences make the plan unworkable or obsolete. If the governing body determines that all or part of a plan is unworkable or obsolete, the governing body may amend the plan to conform to changed conditions or subsequent occurrences. An amended service plan shall provide for services comparable to or better than those established in the

service plan before amendment, and before any amendment is adopted, the governing body must first provide an opportunity for all interested persons to be heard at public hearings called and held in the manner provided in Section 6 of this Act. Service plans shall be valid for ten (10) years. Renewal shall be at the discretion of the city.

F. From and after the effective date of this Act, any city annexing a particular area shall provide or cause to be provided such area with services in accordance with the service plan required under this Section. In the event a city fails or refuses to provide or cause to be provided such services within the time specified in the service plan for that area or in this Act, a majority of the qualified voters residing within such particular annexed area may petition the governing body of such city to disannex such particular annexed area. Should the governing body of such city fail or refuse to disannex such particular annexed area within sixty (60) days after receipt of a valid petition, any one or more of the signers of such petition may file in a district court in the county in which such annexed area is principally located an action requesting that the particular annexed area be disannexed. Upon the filing of an answer in such cause by the governing body of the annexing city, and upon application of either party, the case shall be advanced and heard without further delay, all in accordance with the Texas Rules of Civil Procedure. Upon hearing of the case, if the district court finds that a valid petition was filed with the city, and that the city failed to perform its obligations in accordance with a service plan or failed to perform in good faith, it shall enter an order disannexing such particular annexed area.

G. When any such area is disannexed under this Section, it shall not again be annexed within five (5) years of such disannexation, and, if it is again annexed within seven (7) years of disannexation, the period for implementation of a service plan shall not exceed one (1) year from reannexation.

Text of subsec. H (former subsec. C) as amended by Acts 1981, 67th Leg., p. 3207, ch. 842, § 2.

H. The request and petition for disannexation provided for in Subsection F of this Section shall be made by the qualified voters signing and presenting to the city secretary a written petition requesting disannexation. The signatures to the petition need not be appended to one paper, but each signer shall sign his or her name in ink or indelible pencil, and each signer signing the petition as a qualified voter shall sign his or her name as it appears on the official copy of the current voter registration list and each qualified voter shall note on such petition his or her residence address and the precinct number and serial number that appear on his or her voter registration certificate that may be provided for by law. The petition shall describe the particular annexed area to be disannexed and have attached to it a plat, map, or other likeness of the annexed area. Prior to circulating the petition for disannexation among the qualified voters, notice of the petition shall be given by means of posting for ten (10) days a copy of the petition in three (3) public places in the annexed area and by publishing it for one (1) time in a newspaper or newspapers of general circulation serving the annexed area at least fifteen (15) days prior to the circulation of the petition. Proof of posting and publication of the notice shall be made by attaching to the petition presented to the city secretary: (1) the sworn affidavit of any qualified voter who signed the petition stating the places where and the dates when the petition was posted, and (2) the sworn affidavit of the publisher of the newspaper or newspapers setting forth the name of the newspaper or newspapers and the issue and date in which the notice was published.

Text of Subsec. C as amended by Acts 1981, 67th Leg., p. 3142, ch. 827, § 4

C. The request and petition for disannexation provided for in Subsection A of this Section of this Act shall be made by the qualified voters and landowners signing and presenting to the city secretary a written petition requesting disannexation. The signatures to the petition need not be appended to one paper, but each signer shall sign his or her name in ink or indelible pencil, and each signer signing the petition as a qualified voter shall sign his or her name as it appears on the most recent official list of registered voters, and each qualified voter shall note on such petition his or her residence address and the precinct number and voter registration number that appear on his or her voter registration certificate. Each landowner signing the petition shall note thereon opposite his or her name the approximate total acreage he or she owns within the particular annexed area. The petition shall describe the particular annexed area to be disannexed and have attached to it a plat of the particular annexed area. Prior to circulating the petition for disannexation among the qualified voters and landowners, notice of the petition shall be given by means of posting for ten (10) days a copy of the petition in three (3) public places in the particular annexed area and by publishing it for one (1) issue in a newspaper or newspapers of general circulation serving the particular annexed area at least fifteen (15) days prior to the circulation of the petition. Proof of posting and publication of the notice shall be made by attaching to the petition presented to the city secretary: (1) the sworn affidavit of any qualified voter who signed the petition stating the places where and the dates when the petition was posted, and (2) the sworn affidavit of the publisher of the newspaper or newspapers setting forth the name of the newspaper or newspapers and the issue and date in which the notice was published. In addition, there shall be attached to the petition the sworn affidavit of three (3) or more qualified voters signing the petition, if there be that many, stating the total number of qualified voters residing in the particular annexed area and the approximate total acreage within such particular annexed area.

Annexation of Certain Political Subdivisions

Sec. 11. A. In this Section, "water or sewer district" means any district or authority created by authority of either Article III, Section 52, Subsection (b), Subdivisions (1) and (2), or Article XVI, Section 59, of the Texas Constitution, proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district, but does not include a district or authority if its primary function is the wholesale distribution of water.

B. A city may not annex territory within the boundaries of a water or sewer district unless it annexes the entire portion of the district that is outside the city's boundaries. This restriction does not apply to the annexation of territory in a water or sewer district if the water or sewer district is wholly or partly inside the extraterritorial jurisdiction of more than one city.

C. An annexation subject to Subsection B of this Section is exempt from the provisions of this Act limiting annexation authority to territory within a city's extraterritorial jurisdiction if:

(1) immediately before the annexation, at least half the area of the water or sewer district is inside the city's boundaries or its area of extraterritorial jurisdiction; and

(2) the city does not, in the annexation proceeding, annex any territory outside its extraterritorial jurisdiction except the part of the water or sewer district that is outside its extraterritorial jurisdiction.

D. Territory annexed in an annexation subject to Subsection B of this Section is included in computing the amount of territory the city may annex in a calendar year under Subsections B and C, Section 7 of this Act. If the area to be annexed exceeds the amount of territory the city otherwise would be permitted to annex, the city may nevertheless make the annexation, but it may make no other annexations in the remainder of the calendar year except annexations subject to Subsection B of this Section and annexations of territory that are excluded in the computation of territory a city may annex in a calendar year under Subsection B, Section 7 of this Act.

Annexation of Municipal Utility District

Sec. 12. (a) This section applies to any municipal utility district:

(1) that is located entirely within the extraterritorial jurisdiction of a single general-law city; and

(2) that has a common boundary with at least one home-rule city.

(b) A home-rule city having a common boundary with a district covered by this section may annex the territory of the district if:

(1) the annexation is approved by a majority of the qualified voters voting on the question at an election held under this section;

(2) the annexation is completed before the first anniversary of the date of the election; and

(3) all the territory of the district is annexed.

(c) Territory annexed in an annexation subject to this section is included in computing the amount of territory the city may annex in a calendar year under Subsections B and C, Section 7 of this Act. If the area to be annexed exceeds the amount of territory the city otherwise would be permitted to annex, the city may nevertheless make the annexation, but it may make no other annexations in the remainder of the calendar year except annexations subject to this section and annexations of territory that are excluded in the computation of territory a city may annex in a calendar year under Subsection B, Section 7 of this Act.

(d) Annexation of the territory of the district as authorized by this section is exempt from provisions of this Act:

(1) prohibiting a city from annexing territory outside its extraterritorial jurisdiction;

(2) prohibiting annexation of territory narrower than 500 feet at the narrowest point; and

(3) prohibiting reduction of the extraterritorial jurisdiction of a city without the written consent of the city's governing body.

(e) If the district is composed of two or more tracts, at least one of which is not contiguous to the home-rule city, the fact that the annexation will result in one or more parts of the home-rule city not being contiguous to the rest of the city does not affect the home-rule city's authority to carry out the annexation.

(f) The extraterritorial jurisdiction of a home-rule city is not expanded by the annexation of territory under this section.

(g) The board of directors of the district may order an election under this section. The board shall conduct the election in the territory comprised of the district and the general-law city, and any person qualified to vote in the city or district is eligible to vote at the election.

(h) The board shall set the date of the election for the first authorized uniform election date that falls on or after the 30th day after the date of the order. If a state law prescribing uniform election dates is not then in effect, the board shall set the election for a date that falls on or after the 30th, but before the 60th, day after the date of the order.

(i) The board of directors shall give notice of the election, conduct the election, and canvass the returns in the same manner as would be the case in an election for members of the board of directors of the district if the district included the entire territory in which the election is held. The board of directors shall establish the election precincts and designate the polling place for each precinct. Territory inside the city and territory in the district but outside the city may be included in the same precinct. The

board of directors shall appoint an absentee voting clerk to serve the entire territory covered by the election. The place for conducting the absentee voting may be anywhere in the territory covered by the election.

(j) The ballot shall be prepared to permit voting for or against the proposition: "Authorizing the city of (name of home-rule city) to annex the unincorporated territory of the (name of district)."

(k) Promptly after the board of directors declares the result of the election, it shall:

(1) have a certified copy of the resolution declaring the result of the election mailed or delivered to the mayor and city secretary of each of the two affected cities; and

(2) if the election results in authorizing annexation of the district by the home-rule city, have a certified copy of the resolution filed in the deed records of each county in which the district is located.

(*l*) During the time that an election under this section is pending, the general-law city may not annex territory in the district. For purposes of this requirement, an election is pending during the period that begins on the date on which the board of directors of the district adopts an election order and that ends on the date on which the board of directors declares the result of the election. If on the date on which the election order is adopted the general-law city has instituted but not completed proceedings to annex territory in the district, the general-law city may complete the annexation proceedings while the election is pending. If proceedings are completed while the election is pending, the annexation, to the extent it includes territory in the district, takes effect only if the election results in the defeat of the proposition, in which case it takes effect as to the affected territory on the date on which the result of the election is officially declared.

(m) If the proposition is approved, the period during which the general-law city is prohibited from annexing territory in the district is extended to end on the first anniversary of the date of the election.

(n) If a district holds an election under this section, the district may not hold another election under this section on a date earlier than the first anniversary of the date of the first election, except that if an election is held on a uniform election date prescribed by law, a second election may be held on the corresponding uniform election date of the following year.

[Amended by Acts 1975, 64th Leg., p. 1865, ch. 585, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 313, ch. 147, § 1, eff. May 13, 1977; Acts 1977, 65th Leg., p. 1002, ch. 369, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1392, ch. 558, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1443, ch. 587, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1719, ch. 686, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1986, ch. 782, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 164, ch. 74, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3141, ch. 827, §§ 3, 4, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3207, ch. 842, §§ 1, 2, eff. Aug. 31, 1981.]

Art. 974a. Platting and Recording Subdivisions or Additions

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

Inapplicability to Certain Tracts Abutting Aircraft Runway

Sec. 1A. The requirement of this Act that a plat be made and recorded does not apply to an owner of a tract of land that is located entirely within an incorporated city or town having a population of 5,000 or fewer persons, according to the most recent federal census, that is divided into parts, all of which are larger than 2½ acres, and that abuts or otherwise attaches to any part of an aircraft runway.

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

Sec. 3. It shall be unlawful for the County Clerk of any county in which such land lies to receive or record any such plan, plat or replat, unless and until the same shall have been approved by the City Planning Commission of any city affected by this Act, if said city has a City Planning Commission and if it has no City Planning Commission, unless and until the said plan, plat, or replat shall have been approved by the governing body of such city. If a city has a City Planning Commission, the governing body may, by ordinance, additionally require approval of said plan, plat, or replat by the governing body. If such land lies outside of and within five (5) miles of more than one (1) city affected by this Act, then the requisite approval shall be by the City Planning Commission or governing body, or both, as the case may be, of such of said cities having the largest population; provided, however, that the governing body of any city having the largest population may enter into an agreement with any other city or cities affected, or the governing body of the largest city may enter into an agreement with any other city within five (5) miles conferring the power of approval within stated portions of the area upon such other city; but any such agreement shall be revocable by either city at the end of twenty (20) years after the date of the agreement or at the end of such shorter period of time as may be agreed upon. A copy of any such agreement shall be filed with the County Clerk, and during the time the agreement continues in force he shall not receive or record any such plan, plat or replat unless it has been approved by the City Planning Commission or the governing body, or both, as the case may be, of the city or cities upon which the power of approval is conferred by the agreement. Any person desiring to have a plan, plat or replat approved as herein provided, shall apply therefor to and file a copy with the Commission, if there be one, or with the governing body if there is no Commission. The Commission, or governing body, as the case may be, shall act upon same within thirty (30) days from the filing date. If said plat be not disapproved within thirty (30) days from said filing date, it shall be deemed to have been approved by the Commission, or the governing body if there is no Commission. If a city with a Commission has required that approval be given by the governing

body, then the governing body shall act upon the same within thirty (30) days after the approval by the Commission, or after the approval by reason of nonaction. If said plat be not disapproved by the governing body within said thirty (30) days, it shall be deemed to have been approved by the governing body. A certificate showing the filing dates hereunder and the failure to take actions thereon within the periods herein prescribed shall on demand be issued by the City Planning Commission or governing body, as the case may be, of such city, and said certificate shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. If the plan, plat, or replat is approved, such Commission or governing body shall indicate such finding by certificate endorsed thereon, signed by the Chairman or presiding officer of said Commission or governing body and attested by its Secretary, or signed by a majority of the members of said Commission or of the Governing Body when appropriate under this Act. Such Commission or governing body shall keep a record of such applications and the action taken thereupon, and upon demand of the owners of any land affected, shall certify its reasons for the action taken in the matter.

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

Vacation of Plat or Plan; Recording Replat or Resubdivision Without Vacation

Sec. 5. (a) Any such plan, plat or replat may be vacated by the proprietors of the land covered thereby at any time before the sale of any lot therein by a written instrument declaring the same to be vacated, duly executed, acknowledged and recorded in the same office as the plat to be vacated, provided the approval of the City Planning Commission or governing body of such city, as the case may be, shall have been obtained as above provided, and the execution and recordation of the instrument shall operate to destroy the force and effect of the recording of the plan, plat or replat so vacated. In cases where lots have been sold, the plan, plat or replat, or any part thereof, may be vacated upon the application of all the owners of lots in said plat and with the approval, as above provided, of the City Planning Commission or governing body of said city, as the case may be. The County Clerk of the county in whose office the plan or plat thus vacated has been recorded shall write in plain, legible letters across the plan or plat so vacated the word "Vacated," and also make a reference on the same to the volume and page in which said instrument of vacation is recorded.

(b) In the event there is not compliance with Subsection (a) of this section, a replat or resubdivision of a plat, or a portion thereof, but without vacation of the immediate previous plat, is hereby expressly authorized to be recorded and shall be deemed valid and controlling, when approved, after a public hearing, by the City Planning Commission or other appropriate governing body, as the case may be, when:

(1) it has been signed and acknowledged by only the owners of the particular property which is being resubdivided or replatted;

(2) it has been approved by the City Planning Commission or other appropriate governing body, as the case may be, after a public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard;

(3) it does not attempt to alter, amend or remove any covenants or restrictions; and

(4) there is compliance, when applicable, with Subsections (c) and (d) of this section.

(c) The following additional requirements for approval shall apply, in any resubdivision or replatting of a subdivision, without vacating the immediate previous plat, if any of the proposed area to be resubdivided or replatted was within the immediate preceding five years limited by any interim or permanent zoning classification to residential use for not more than two residential units per lot, or if any lot in the immediate previous subdivision was limited by deed restriction to residential use for not more than two residential units per lot:

(1) Notice of such City Planning Commission or appropriate governing body hearing shall be given in advance in the following manner:

(A) publication at least 15 days in advance of hearing being published in an official paper or a paper of general circulation in the county in which such governing body is located; and

(B) written notice (with a copy of Subdivision (2) of this subsection attached thereto) of such public hearing forwarded by the City Planning Commission or appropriate governing body to owners (as the ownerships appear on the last approved ad valorem tax roll of such governing body) of all lots in the immediate preceding subdivision plat not less than 15 days prior to the date of such hearing; such notice may be served by depositing the same, properly addressed and postage paid, in a post office or postal depository within the boundaries of such governing body; provided, however, if such immediate preceding subdivision plat shall contain more than 100 lots, such notice shall be mailed only to those owners of lots which are located within 500 feet of the lot or lots which are sought to be replatted or resubdivided.

(2) The City Planning Commission or other appropriate governing body shall require in any resubdivision or replatting to which this subsection applies written approval of 66⅔ percent of:

(A) the owners of all lots in such plat; or

(B) the owners of all lots in such plat within 500 feet of the property sought to be replatted or resubdivided if such immediate preceding plat contains more than 100 lots.

The provisions of Subdivision (2) of this subsection shall, however, apply only if 20 percent, or

more, of the owners, to whom notice is required to be given, of the lots in such plat a portion of which is sought to be replatted or resubdivided file with the City Planning Commission or other appropriate governing body written protest of such replatting or resubdivision prior to or at the hearing referred to in the notice of the proposed replatting or resubdivision. In computing percentages of ownership, each lot in such subdivision shall be considered equal to all other lots regardless of size or number of owners, and the owners of each lot shall be entitled to cast only one vote per lot.

(3) Provided, however, compliance with Subdivision (1) or (2) of this subsection shall not be required for approval of a replatting or resubdividing of a portion of a prior plat if all of the proposed area sought to be replatted or resubdivided was designated or reserved for usage other than for single or duplex family residential usage by notation on the last legally recorded plat or in the legally recorded restrictions applicable to such plat.

(d) Notwithstanding any other provision of this section, the City Planning Commission or other appropriate governing body of a city is authorized to approve and issue an amending plat which is signed by the applicants only, and which is for one or more of the purposes set forth in the following Subdivisions (1) through (8), both inclusive, and such approval and issuance shall not require notice, hearing, or approval of other lot owners. This subsection shall apply only if the sole purpose of the amending plat is:

(1) to correct an error in any course or distance shown on the prior plat;

(2) to add any course or distance that was omitted on the prior plat;

(3) to correct an error in the description of the real property shown on the prior plat;

(4) to indicate monuments set after death, disability, or retirement from practice of the engineer or surveyor charged with responsibilities for setting monuments;

(5) to show the proper location or character of any monument which has been changed in location or character or which originally was shown at the wrong location or incorrectly as to its character on the prior plat;

(6) to correct any other type of scrivener or clerical error or omission as previously approved by the City Planning Commission or governing body of such city; such errors and omissions may include, but are not limited to, lot numbers, acreage, street names, and identification of adjacent recorded plats;

(7) to correct an error in courses and distances of lot lines between two adjacent lots where both lot owners join in the application for plat amendment and neither lot is abolished, provided that such amendment does not attempt to remove recorded covenants or restrictions and does not have a material adverse effect on the property rights of the other owners in the plat; or

(8) to relocate a lot line in order to cure an inadvertent encroachment of a building or improvement on a lot line or on an easement.

[See Compact Edition, Volume 3 for text of 6 to 10]

[Amended by Acts 1975, 64th Leg., p. 1289, ch. 482, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 149, ch. 67, §§ 1, 2, eff. April 22, 1981.]

Sections 3 to 5 of the 1981 amendatory act provide:

"Sec. 3. This Act shall be applicable to all subdivision plats (or replats) recorded on, after, or prior to the effective date of this Act.

"Sec. 4. All subdivisions, resubdivisions, plats, plans, or replats heretofore approved by the City Planning Commission or other governing body of any city in the State of Texas and which said plat, plan, or replat is filed for record in the office of the county clerk of the county in which the real property included within such subdivision, resubdivision, plat, plan, or replat is located, on the effective date of this Act are in all respects validated as of the date of the original filing of the plat, plan, or replat; provided, however this validation shall in no manner, term, or respect invalidate, alter, impair, or affect any restrictive covenants which would have otherwise been applicable to any subdivision or any portion thereof.

"Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect the other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 974d-20. Validation of Consolidation of Certain Cities

Sec. 1. In each instance where an election has heretofore been held in each of two adjoining incorporated cities within the same county in this state on the question of the consolidation or merger of the two cities under one government, and a majority of the voters of each city who participated in the election voted in favor of the proposition submitted to them, and thereafter the officers of the smaller city turned over to the officers of the larger city the record books and assets of the smaller city and the officers of the larger city entered upon the performance of their duties as officers of the consolidated city, and the consolidated city is now functioning or attempting to function as a validly constituted municipality, the consolidation is hereby validated in all respects as of the date of the consolidation or attempted consolidation. All proceedings involved in the consolidation are hereby validated, and the consolidation shall not be held invalid by reason of the fact that the election proceedings in either or both of the elections may not have been in accordance with law in regard to the prerequisites for ordering the election, the time of holding the election, the wording of the ballot proposition, the registration of the results, or any other procedure.

Sec. 2. All governmental proceedings performed by the governing body and other officers of a consolidated city which is within the terms of this Act are hereby validated as of the date of the proceedings against any claim of invalidity because of any defect in the consolidation proceedings or because of any purported authorization for or utilization of advisory services of former officers of the smaller city during a period following the consolidation.

Sec. 3. This Act does not apply to any proceedings or actions the validity of which is involved in litigation on the effective date of this Act if such litigation is ultimately determined against the validity thereof; nor does it apply to any proceedings which may have been nullified by a final judgment of a court of competent jurisdiction before the effective date.

[Acts 1975, 64th Leg., p. 373, ch. 164, eff. May 8, 1975.]

Art. 974d–21. Validations of Incorporation, Boundary Lines and Governmental Proceedings; Exceptions

Sec. 1. The incorporation proceedings of all cities and towns incorporated or attempted to be incorporated under the general laws before the effective date of this Act, which have functioned or attempted to function as incorporated cities or towns since their incorporation or attempted incorporation, are validated in all respects as of the date of the incorporation or attempted incorporation. The incorporation proceedings may not be held invalid because they were not performed in accordance with law.

Sec. 2. The boundary lines of the cities and towns, including any extensions by annexation before June 3, 1975, are validated in all respects, except that the incorporation in or extension of a boundary line by annexation into the extraterritorial jurisdiction of another city or town, in violation of the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), is not validated by this Act.

Sec. 3. All governmental proceedings performed by the governing bodies of the cities and towns since their incorporation are validated in all respects as of the date of the proceedings.

Sec. 4. The provisions of this Act shall not apply to any city or town now involved in litigation questioning any of the acts or proceedings, other than incorporation proceedings or boundary extensions, hereby validated if such litigation is ultimately determined against the legality thereof; nor shall this Act be construed as validating any proceeding which may have been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1975, 64th Leg., p. 1848, ch. 576, eff. Sept. 1, 1975.]

Art. 974d–22. Validation of Incorporation, Charters and Amendments of Cities over 5,000; Boundary Lines; Governmental Proceedings; Revenue Bonds; Exceptions

Sec. 1. The incorporation proceedings of cities and towns (including home-rule cities) heretofore incorporated or attempted to be incorporated under the general laws of the State of Texas, and which have functioned or attempted to function as incorporated cities or towns since the date of such incorporation or attempted incorporation, are hereby in all respects validated as of the date of such incorporation or attempted incorporation; and the incorporation of such cities and towns shall not be held invalid by reason of the fact that the election proceedings or incorporation proceedings may not have been in accordance with law.

Sec. 2. That each charter, and amendment to a charter adopted by any city of more than 5,000 inhabitants in this state, or where such city has amended or attempted to amend or adopt such charter, since the enactment of Chapter 147, Acts of the Regular Session of the 33rd Legislature of the State of Texas, 1913, and as thereafter amended, relating to home rule, and all of the amendments and proceedings had under same, and that all bonds issued under any amendment where said bonds issued under any amendment have been approved by the attorney general and registered with the comptroller of public accounts are hereby fully validated, ratified, and confirmed and are hereby declared to be in full force and effect as is adopted in strict compliance with all of the requirements of said Chapter 147, Acts of the 33rd Legislature, and as thereafter amended, and the general laws of Texas relating thereto.

Sec. 3. The boundary lines of all such cities and towns, including both the boundary lines covered by the original incorporation proceedings and any subsequent extensions thereof, are hereby in all things validated.

Sec. 4. All governmental proceedings performed by the governing bodies of all such cities and towns and all officers thereof since their incorporation or attempted incorporation are hereby in all respects validated as of the date of such proceedings.

Sec. 5. Where any city in the state which operated under the general law or pursuant to a home-rule charter has heretofore at an election submitted to the qualified electors who own taxable property in said city and who have duly rendered the same for taxation propositions for the issuance of the bonds of such city for the purposes stated in such propositions, such bonds being payable from the revenues stated in such proposition or payable from ad valorem taxes to be levied therefor, and such propositions having carried by the vote of a majority of the persons voting in such election, all of the proceedings heretofore had by such city, including all proceedings had and acts done in connection with the calling and holding of the election, despite any failure or failures in such proceedings to comply with the pertinent statutes and all proceedings heretofore had by any such city to authorize the issuance of revenue bonds under the provisions of Section 11 of Article 2368a, Vernon's Texas Civil Statutes (irrespective of the location of the improvements to be constructed or acquired with bond proceeds), are hereby ratified, validated, and confirmed. The governing body of each such city is authorized to adopt

all proceedings necessary or desirable to complete the issuance of such bonds. All of such proceedings relating to the authorization of bonds shall be submitted to the Attorney General of Texas, and when such bonds have been or are hereafter approved by the Attorney General of Texas and registered by the Comptroller of Public Accounts, they shall be incontestable.

Sec. 6. The provisions of this Act shall not apply to any city or town now involved in litigation questioning the legality of the incorporation or extension of boundaries or any of the acts or proceedings hereby validated if such litigation is ultimately determined against the legality thereof; nor shall this Act be construed as validating any proceeding which may have been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1975, 64th Leg., p. 1897, ch. 605, eff. Sept. 1, 1975.]

Art. 974d–23. Validation of Consolidation and Governmental Proceedings of Certain Cities

Sec. 1. In each instance where an election has heretofore been held in each of two incorporated cities adjoining at a place within the same county in this state on the question of the consolidation or merger of the two cities under one government, and a majority of the voters in each city who participated in the election voted in favor of the proposition submitted to them, and thereafter the officers of the smaller city turned over to the officers of the larger city the record books and assets of the smaller city and the officers of the larger city entered upon the performance of their duties as officers of the consolidated city, and the consolidated city is now functioning or attempting to function as a validly constituted municipality, the consolidation is hereby validated in all respects as of the date of the consolidation or attempted consolidation. All proceedings involved in the consolidation are hereby validated, and the consolidation shall not be held invalid by reason of the fact that the election proceedings in either or both of the elections may not have been in accordance with law in regard to the prerequisites for ordering the election, the time of holding the election, the wording of the ballot proposition, the registration of the results, or any other procedure.

Sec. 2. All governmental proceedings performed by the governing body and other officers of a consolidated city which is within the terms of this Act are hereby validated as of the date of the proceedings against any claim of invalidity because of any defect in the consolidation proceedings or because of any purported authorization for or utilization of advisory services of former officers of the smaller city during a period following the consolidation.

Sec. 3. Nothing in this Act shall relieve the consolidated city from legal claims or actions which may have existed against the smaller city prior to consolidation.

Sec. 4. This Act does not apply to any proceedings or actions the validity of which is involved in litigation on the effective date of this Act if such litigation is ultimately determined against the validity thereof, nor does it apply to any proceedings which may have been nullified by a final judgment of a court of competent jurisdiction before the effective date.

[Acts 1977, 65th Leg., p. 1010, ch. 374, eff. June 10, 1977.]

Art. 974d–24. Validation of Annexations and Other Proceedings of Municipalities of 20,000 or Less

Sec. 1. This Act applies only to incorporated cities, towns, or villages operating under general law or under a home-rule charter and having a population of 20,000 or less, according to the last preceding federal census.

Sec. 2. In any case where a city, town, or village covered by this Act extended its boundaries by annexing adjacent territory, the annexation and boundary lines and all related proceedings are validated, without regard to any procedural irregularity that may have occurred. All governmental acts and proceedings of the city, town, or village since the annexation are validated.

Sec. 3. This Act does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation, if the litigation ultimately results in the matter being held invalid; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 1229, ch. 475, eff. Aug. 29, 1977.]

Art. 974d–25. Validation of Boundary Actions of Cities within Counties of 1,000,000 or More

Sec. 1. This Act shall apply to all incorporated cities and towns within the boundaries of any county of this state with a population of 1,000,000 persons or more, according to the last preceding federal census.

Sec. 2. All elections, election orders, election proceedings, ordinances, resolutions, petitions, and agreed court judgments heretofore held, ordered, enacted, or completed involving annexation or the relinquishment of extraterritorial jurisdiction by cities within counties having a population of 1,000,000 persons or more, according to the last preceding federal census, are hereby in all things fully validated, confirmed, and approved, regardless of any irregularities or omissions in such ordinances, petitions, resolutions, elections, or other proceedings.

Sec. 3. The ordinances of all cities and towns in the class described in Section 1 of this Act fixing and prescribing the corporate limits extended by the annexation or attempted annexation of adjacent territory are hereby validated and confirmed.

Sec. 4. The boundary lines of all cities and towns within the classification described in Section 1 of this Act, including both the boundary lines covered by the original incorporation proceedings and any subsequent extensions thereof, are hereby in all things validated.

Sec. 5. The provisions of this Act shall not apply to any city or town now involved in litigation questioning the legality of the incorporation or extension of boundaries hereby validated if such litigation is ultimately determined against the legality thereof; nor shall this Act be construed as validating any proceedings which may have been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 1882, ch. 748, eff. June 16, 1977.]

Art. 974d–26. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Exceptions

Sec. 1. The incorporation proceedings of all cities and towns incorporated or attempted to be incorporated under the general laws before the effective date of this Act, which have functioned or attempted to function as incorporated cities or towns since their incorporation or attempted incorporation, are validated in all respects as of the date of the incorporation or attempted incorporation. The incorporation proceedings may not be held invalid because they were not performed in accordance with law.

Sec. 2. The boundary lines of such cities and towns, including any subsequent extensions of such boundaries by annexation, and the reduction or contraction of such boundaries by the discontinuation and disannexation of territory are validated in all respects, except that the extension of a boundary line by annexation into the extraterritorial jurisdiction of another city or town or the incorporation of a city or town in the extraterritorial jurisdiction of another city or town without that city's or town's consent, in violation of the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), is not validated by this Act.

Sec. 3. All governmental proceedings performed by the governing bodies of the cities and towns since their incorporation including annexations, disannexations, and apportionment of extraterritorial jurisdiction and notices and attempted notices required therefor are validated in all respects as of the date of the proceedings.

Sec. 4. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation ultimately results against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 2075, ch. 826, eff. Aug. 29, 1977.]

Art. 974d–27. Validation of Assumption of Municipal Control of Certain Schools

Sec. 1. If an incorporated city or town has assumed control of the public free schools within its corporate limits and if that assumption was approved by a majority of the property taxpaying voters of the city or town voting at an election held for that purpose, the election, the assumption, and all governmental acts and proceedings performed in the election and assumption and in governing the municipal school district are validated in all respects as of the date of the act or proceeding. The acts and proceedings may not be held invalid by reason of the fact that they may not have been performed in accordance with law.

Sec. 2. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation is ultimately resolved against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 2081, ch. 831, eff. June 16, 1977.]

Art. 974d–28. Validation of Incorporation and Boundary Lines

Purpose; Construction of Act

Sec. 1. This Act is to protect the public interest in confirmed and dependable boundaries and jurisdictions of municipalities. It shall be given the most comprehensive and liberal construction possible to achieve its remedial purpose.

Applicability

Sec. 2. This Act applies to any city, town, or village that incorporated or attempted to incorporate under general law before January 1, 1975, and that has functioned or attempted to function as an incorporated municipality since the date of the incorporation or attempted incorporation, including such a municipality that has adopted a home-rule charter.

Incorporation Proceedings

Sec. 3. The incorporation proceedings of each municipality covered by this Act are validated in all respects as of the date on which they occurred. The proceedings may not be held invalid because the election or other proceedings related to the incorporation were not in accordance with law.

Boundary Lines

Sec. 4. (a) The original boundary lines of each municipality covered by this Act and any extension of those boundaries adopted before January 1, 1975, are validated in all respects, even though the action adopting the original boundaries or an extension of them was not in accordance with law.

(b) Without limiting the generality of Subsection (a) of this section, it is expressly provided that an attempted annexation that occurred before January 1, 1975, may not be held invalid because it did not

comply with the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), or any other applicable law, or because the territory the municipality attempted to annex was not contiguous or adjacent to the then existing boundaries of the municipality, or because the municipality was not petitioned for annexation by the owners or residents of the annexed territory.

Exceptions

Sec. 5. This Act does not apply to:

(1) any matter that on the effective date of this Act is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) any matter that on the effective date of this Act has been held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1979, 66th Leg., p. 1043, ch. 473, eff. Aug. 27, 1979.]

Art. 974d-29. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Cities and Towns of 1,000 or Less

Validation of the Incorporation of Certain Cities and Towns

Sec. 1. If any city or town with a population of 1,000 or less, according to the most recent federal census, that previously incorporated or attempted to incorporate under general law with the aldermanic form of government is now functioning or attempting to function as an incorporated city or town within three or more counties, its incorporation or attempted incorporation is in all respects validated as of the date that it occurred. The incorporation may not be held invalid because the incorporation election or other incorporation proceedings were not in accordance with law or because of a failure to properly define the limits of the city or town.

Validation of Boundary Lines

Sec. 2. The areas and boundary lines of each city and town covered by this Act, including the boundary lines and any subsequent extension of them, are validated in all respects. The incorporation of the city or town or any subsequent extension of its corporate limits may not be held invalid because of the inclusion in the limits of more territory than is authorized by the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes).

Validation of Proceedings and Acts

Sec. 3. All governmental proceedings and acts performed since the incorporation or attempted incorporation by the governing bodies or other officers of the cities and towns covered by this Act are in all respects validated as of the date of each proceeding and act.

Quo Warranto Proceedings

Sec. 4. This Act does not apply to any city or town now involved in quo warranto proceedings questioning the legality of its incorporation or extension of boundaries or the legality of any of the acts or proceedings validated by this Act if the litigation is ultimately determined against the legality of the matter.

[Acts 1979, 66th Leg., p. 1191, ch. 579, §§ 1 to 4, eff. June 13, 1979.]

Art. 974d-30. Validation of Incorporation and Boundary Lines; Exceptions

Incorporation Proceedings

Sec. 1. The incorporation proceedings of all cities and towns incorporated or attempted to be incorporated under the general laws before the effective date of this Act, which have functioned or attempted to function as incorporated cities or towns since their incorporation or attempted incorporation, are validated in all respects as of the date of the incorporation or attempted incorporation. The incorporation proceedings may not be held invalid because they were not performed in accordance with law.

Boundaries

Sec. 2. The boundary lines of the cities and towns, including any subsequent extensions of the boundaries by annexation, and the reduction or contraction of the boundaries by the discontinuation and disannexation of territory are validated in all respects, except that the extension of a boundary line by annexation into the extraterritorial jurisdiction of another city or town or the incorporation of a city or town in the extraterritorial jurisdiction of another city or town without that city's or town's consent, in violation of the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), is not validated by this Act.

Pending and Completed Litigation

Sec. 3. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation ultimately results against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1979, 66th Leg., p. 1897, ch. 767, §§ 1 to 3, eff. June 13, 1979.]

Art. 974d-31. Validation of Consolidation and Governmental Proceedings of Certain Cities and Towns

Application

Sec. 1. This Act applies to any incorporated city or town that before the effective date of this Act consolidated with or attempted to consolidate with another incorporated city or town under the general laws and since the consolidation or attempted consolidation has been included as part of a consolidated city or town functioning or attempting to function as a validly constituted municipality.

Proceedings Validated

Sec. 2. (a) The governmental acts and proceedings of a city or town covered by this Act relating to the consolidation or attempted consolidation of the city or town with another city or town are validated as of the dates they occurred. The acts and proceedings may not be held invalid because they were not performed in accordance with law.

(b) The governmental acts and proceedings of the consolidated city or town since the consolidation are validated as of the dates they occurred.

Effect on Prior Claims

Sec. 3. This Act does not relieve the consolidated city or town from legal claims or actions that may have existed against a participating city or town before consolidation.

Effect on Litigation

Sec. 4. This Act does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1981, 67th Leg., p. 454, ch. 189, eff. Aug. 31, 1981.]

Art. 974d-32. Validation of Incorporation and Governmental Proceedings; Cities and Towns of 200 or More

Incorporation Proceedings

Sec. 1. The incorporation proceedings of all cities and towns having a population of 200 or more, according to the most recent federal census, that incorporated or attempted to incorporate under the general laws of this state before the effective date of this Act (including any municipality that later adopted a home-rule charter) and that have functioned or attempted to function as incorporated cities or towns since their incorporation or attempted incorporation, are validated in all respects as of the date of the incorporation or attempted incorporation. The incorporation proceedings may not be held invalid because they were not performed in accordance with law.

Governmental Proceedings

Sec. 2. All governmental proceedings performed by the governing bodies of such cities and towns since their incorporation are validated in all respects as of the date of the proceedings.

Pending and Completed Litigation

Sec. 3. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation ultimately results against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1981, 67th Leg., p. 2426, ch. 618, eff. Aug. 31, 1981.]

Art. 974d-33. Validation of Incorporation, Boundary Lines, and Governmental Proceedings; Exceptions

Incorporation Proceedings

Sec. 1. The incorporation proceedings of all cities and towns initially incorporated or attempted to be incorporated under the general laws after 1950, which have functioned or attempted to function as incorporated cities or towns since their incorporation or attempted incorporation, are validated in all respects as of the date of the incorporation or attempted incorporation. The incorporation proceedings may not be held invalid because they were not performed in accordance with law.

Boundaries

Sec. 2. The boundary lines of such cities and towns, including any subsequent extensions of the boundaries by annexation, and the reduction or contraction of the boundaries by the discontinuation and disannexation of territory are validated in all respects, except that the extension of a boundary line by annexation into the extraterritorial jurisdiction of another city or town or the incorporation of a city or town in the extraterritorial jurisdiction of another city or town without that city's or town's consent, in violation of the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), is not validated by this Act.

Governmental Proceedings

Sec. 3. All governmental proceedings performed by the governing bodies of such cities and towns since their incorporation are validated in all respects as of the date of the proceedings.

Pending and Completed Litigation

Sec. 4. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation ultimately results against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction nor any matter which occurred after May 23, 1980.

[Acts 1981, 67th Leg., p. 2694, ch. 732, eff. June 16, 1981.]

Art. 974f-1. Annexation of Streets, Highways, and Alleys by Cities of 17,850 to 17,900

Sec. 1. Any city incorporated and operating under the general laws of this State, having not less than 17,850 inhabitants nor more than 17,900 inhabitants according to the last preceding federal census may, by ordinance duly passed and enacted by its governing body, annex streets, highways, and alleys contiguous and adjacent to the city limits, and incorporate such streets, highways, and alleys within the corporate limits of the city.

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

[Amended by Acts 1981, 67th Leg., p. 559, ch. 237, § 4, eff. Sept. 1, 1981.]

Art. 974f–2. Annexation of Adjacent Streets, Highways, and Alleys by Cities of 4,350 to 4,375

Sec. 1. Any city incorporated and operating under the general laws of this state, having a population of not less than 4,350 but less than 4,375 according to the last preceding federal census may, by ordinance duly passed and enacted by its governing body, annex streets, highways, and alleys contiguous and adjacent to the city limits, and incorporate those streets, highways, and alleys within the corporate limits of the city.

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

[Amended by Acts 1981, 67th Leg., p. 560, ch. 237, § 5, eff. Sept. 1, 1981.]

Art. 974f–3. Annexation of Adjacent Street, Highway, or Alley by City of Wickett

Sec. 1. The city of Wickett by ordinance may annex a street, highway, or alley adjacent to the city limits.

Sec. 2. Not later than the 10th day before the city enacts an annexation ordinance under Section 1 of this Act, the city shall publish notice of the proposed annexation in a newspaper of general circulation in the city. The notice shall generally describe the street, highway, or alley to be annexed.

[Acts 1981, 67th Leg., p. 2528, ch. 669, eff. June 15, 1981.]

Art. 976a. Zoning Ordinances Upon Annexation

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

Sec. 2. Repealed by Acts 1977, 65th Leg., p. 2000, ch. 798, § 1, eff. June 16, 1977.

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

[Amended by Acts 1977, 65th Leg., p. 2000, ch. 798, § 1, eff. June 16, 1977.]

CHAPTER TWO. OFFICERS AND THEIR ELECTION

Article

980a. Election of Governing Body on Place System in Cities of 5,960 to 5,970.
988a. Purchases by City, Town, or County From Cooperative Association of Which Officer is Member.

Art. 980a. Election of Governing Body on Place System in Cities of 5,960 to 5,970

The governing body of a city with a population larger than 5,960 but smaller than 5,970, according to the last preceding federal census, may, by ordinance, provide that the members of the governing body shall be elected on the place system rather than the precinct system.

[Amended by Acts 1981, 67th Leg., p. 560, ch. 237, § 6, eff. Sept. 1, 1981.]

Art. 988. Limitations of Councilmen

No member of the city council shall hold any other employment or office under any city government while that member is a member of any city council or appointed board or commission thereunder, unless herein otherwise provided. No member of the city council or any member of any board or commission appointed by the city council, or any other officer of the corporation, shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the city treasury, or by an assessment levied by an ordinance or resolution of the city council, except as expressly authorized by law. No member of the city council, or any other officer of the corporation, may be the surety of any person having a contract, work or business with said city, for the performance of which security may be required, nor be the surety on the official bond of any city officer.

[Amended by Acts 1981, 67th Leg., p. 2230, ch. 527, § 2, eff. June 12, 1981.]

Art. 988a. Purchases by City, Town, or County From Cooperative Association of Which Officer is Member

An incorporated city or town or a county may purchase equipment or supplies from a cooperative association to which one or more members of its governing body or of an appointed board or commission thereunder belongs if no member of the governing body, board, or commission will receive a pecuniary benefit from the purchase except as is reflected in an increase in dividends distributed generally to members of the cooperative association.

[Acts 1981, 67th Leg., p. 2229, ch. 527, § 1, eff. June 12, 1981.]

CHAPTER THREE. DUTIES AND POWERS OF OFFICERS

Article

999d. Purchase of Liability Insurance for Certain Municipal Employees.
999e. Automobile Liability Coverage for Peace Officers and Fire Fighters.
999f. Salary Continuation Payments to Municipal Employees; Subrogation.

Art. 999d. Purchase of Liability Insurance for Certain Municipal Employees

A municipality may insure the officers and employees of the fire and police departments and other municipal employees who drive emergency vehicles against liability to third persons arising from and out of the use and operation of automobiles, motor trucks, and other motor vehicles used as municipal emergency medical, fire, or police vehicles in the line of duty by procuring policies for that purpose with insurance companies authorized to do business in this state. All insurance taken out by a municipality shall be on forms approved by the State Board of Insurance. No municipality may purchase liability

insurance in excess of $20,000 because of bodily injury to or death of one person in any one accident, $100,000 because of bodily injury to or death of two or more persons in any one accident, and $5,000 because of injury to or destruction of property of others in any one accident.
[Acts 1975, 64th Leg., p. 970, ch. 369, § 1, eff. June 19, 1975.]

Art. 999e. Automobile Liability Coverage for Peace Officers and Fire Fighters

Sec. 1. (a) The state and every incorporated city or town shall provide for insuring peace officers and fire fighters in its employ against liability to third persons arising out of the operation, maintenance, or use of any motor vehicle owned or leased by the state, city or town.

(b) The state and any incorporated city or town may elect to be self-insured or to reimburse the actual cost of extended automobile liability insurance endorsements obtained by its peace officers and fire fighters on the individually owned automobile liability insurance policies of such peace officers and fire fighters. Such extended endorsement shall be in amounts not less than those required under this Act and shall extend the coverage to include the operation and use of city vehicles by such peace officers or fire fighters in the scope of their employment. Provided, however, that the state and any incorporated city or town which elects to use the reimbursement method authorized under this subsection may require that all peace officers and fire fighters who operate and use motor vehicles present proof that an extended coverage endorsement has been purchased and that such extended coverage is current.

Sec. 2. Liability coverage provided pursuant to the requirements of this Act shall be in amounts not less than the amounts required by the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes), to provide proof of financial responsibility.

Sec. 3. "Motor vehicle" means any motor vehicle for which motor vehicle automobile insurance is written under the provisions of Subchapter A, Chapter 5, Insurance Code, as amended.
[Acts 1977, 65th Leg., p. 1394, ch. 560, §§ 1 to 3, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2483, ch. 646, § 1, eff. Aug. 31, 1981.]

Art. 999f. Salary Continuation Payments to Municipal Employees; Subrogation

If an incorporated city, town, or village pays benefits to a municipal employee under a salary continuation program when the employee is injured, the municipality is subrogated to the employee's right of recovery for personal injuries caused by the tortious conduct of a third party other than another employee of the same municipality. The subrogation extends only to the extent of payments made by the municipality. That a municipal employee has a cause of action against a third party for personal injuries is not a ground for the municipality to deny benefits under a salary continuation program.
[Acts 1977, 65th Leg., p. 1129, ch. 423, § 1, eff. June 15, 1977.]

Art. 1001. Treasurer, Duties, etc.

The treasurer shall give bond in favor of the city in such amount, and in such form as the city council may require, with sufficient security to be approved by the city council, conditioned for the faithful discharge of his duties. He shall receive and securely keep all moneys belonging to the city, and make all payments for the same upon the order of the mayor, attested by the secretary under the seal of the corporation. No order shall be paid unless the said order shall show upon its face that the city council has directed its issuance, and for what purpose. He shall render a full and correct statement of his receipts and payments to the city council, at their first regular meeting in every quarter and whensoever, at other times, he may be required by them so to do. He shall do and perform such other acts and duties as the city council may require. He shall receive such compensation as the city council shall fix.
[Amended by Acts 1977, 65th Leg., p. 1716, ch. 683, § 2, eff. Aug. 29, 1977.]

Art. 1003. Qualifications of Appointee

No person other than an elector resident of the city shall be appointed to any office by the city council. This article does not apply to the appointment of a city health officer appointed under Article 4425, Revised Civil Statutes of Texas, 1925, as amended, by the board of aldermen of an incorporated town or village containing fewer than 10,000 inhabitants.
[Amended by Acts 1977, 65th Leg., p. 891, ch. 335, § 1, eff. May 30, 1977.]

CHAPTER FOUR. THE CITY COUNCIL

Article
1010a. Cities of 1,200,000 or More, Salary and Expenses of Elected Officials.
1015g–5. Eligible City Operating International Toll Bridge over Rio Grande; Acquisition, Construction, Operation, and Financing.
1015n. Dilapidated Structures; Authority of Certain Cities and Towns.
1023a. Auditing of Records and Accounts; Annual Statements.

Art. 1010a. Cities of 1,200,000 or More; Salary and Expenses of Elected Officials

Sec. 1. The city council of an incorporated city having a population of 1,200,000 or more, according to the last preceding or any future federal census, may set the salary and expenses to be paid elected city officials. Said ordinance shall not take effect until the succeeding term, and the salary of a state

district court judge of the county in which the city is located shall be the comparative salary; provided that a councilman's salary shall not exceed 40 percent of the comparative salary; the comptroller's salary shall not exceed the comparative salary; and the mayor's salary shall not exceed 150 percent of the comparative salary.

Sec. 2. (a) The city council may not adopt an ordinance under this Act unless the procedures prescribed by this section are followed.

(b) Before adopting an ordinance the city council shall publish notice in a newspaper of general circulation in the city. Notice must be published for two consecutive weeks immediately preceding the week in which the meeting is to be held and at which the proposed ordinance is to be considered. The notice must include a general description of the proposed ordinance, a statement that a public hearing will be held before the ordinance is adopted, a statement of the time and place of the hearing, and a statement that any interested person may appear and testify at the hearing.

(c) The city council must hold a public hearing before taking up an ordinance for consideration.

(d) An ordinance must be approved by a majority vote of the membership of the city council.

(e) A certified copy of an ordinance must be filed with the city secretary within 10 days after enactment, and it is effective on the first day of the succeeding term unless the ordinance prescribes a later effective date.

Sec. 3. (a) The city council may submit an ordinance adopted under this Act to the voters for their approval in the same fashion as charter amendments as provided in Article 1170, Revised Civil Statutes of Texas, 1925, as amended.

(b) After an election held under this Act, a two-year period of time must elapse prior to the calling of another election on the same proposition.

[Acts 1977, 65th Leg., p. 2079, ch. 829, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 1011e. Changes

(a) Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a written protest against such change, signed by the owners of 20 per cent or more either of the area of the lots or land included in such proposed change, or of the lots or land immediately adjoining the same and extending 200 feet therefrom, such amendment shall not become effective except by the favorable vote of three-fourths of all members of the legislative body of such municipality. The legislative body of a municipality may also provide by ordinance that a vote of three-fourths of all its members is required to overrule a recommendation of the zoning commission that a proposed amendment, supplement, or change be denied.

(b) The provisions of the previous section relative to public hearing and official notice shall apply equally to all changes or amendments.

(c) In addition to the notice required by Subsection (b) of this section, a general law municipality without a Zoning Commission must provide notice of a proposed change to each property owner who would be entitled to notice under Section 6 of this Act if the municipality had a Zoning Commission. Notice must be given in the same manner as is required for notice to property owners under Section 6 of this Act. The legislative body may not adopt a change until after the 30th day after the day that notice required by this subsection is given.

[Amended by Acts 1977, 65th Leg., p. 1308, ch. 516, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1869, ch. 754, § 1, eff. Aug. 27, 1979.]

Art. 1011f. Zoning Commission

(a) In order to avail itself of the powers conferred by this Act, the legislative body of a home-rule city shall, and the legislative body of a general law municipality may, appoint a commission, to be known as the Zoning Commission.

(b) If a Zoning Commission is appointed, it shall recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such Commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such legislative body shall not hold its public hearings or take action until it has received the final report of such Commission; provided, however, that any city or town, by ordinance, may provide for the holding of any public hearing of the legislative body, after published notice required by Section 4 of this Act, jointly with any public hearing required to be held by the Zoning Commission, but such legislative body shall not take action until it has received the final report of such Zoning Commission. Where a City Plan Commission already exists, it may be appointed as the Zoning Commission. Written notice of all public hearings before the Zoning Commission on proposed changes in classification shall be sent to owners of real property lying within two hundred (200) feet of the property on which the change in classification is proposed, such notice to be given, not less than ten (10) days before the date set for hearing, to all such owners who have rendered their said property for city taxes as the ownership appears on the last approved city tax roll. Such notice may be served by depositing the same, properly addressed and postage paid, in the city post office. Where property lying within two hundred (200) feet of the property proposed to be changed is located in territory which was annexed to the city after the final date for making the renditions which are included on the last approved city tax roll, notice to such owners shall be given by publication in the manner provided in Section 4 of this Act.

(c) Any other law that refers to a municipal Zoning Commission or Planning Commission shall be construed as referring to the legislative body in the case of a general law municipality that exercises zoning power without appointment of a Zoning Commission.

[Amended by Acts 1979, 66th Leg., p. 1869, ch. 754, § 1, eff. Aug. 27, 1979.]

Art. 1011g. Board of Adjustment

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

(o) Repealed by Acts 1981, 67th Leg., p. 2646, ch. 707, § 4(54), eff. Aug. 31, 1981.

[Amended by Acts 1981, 67th Leg., p. 2646, ch. 707, § 4(54), eff. Aug. 31, 1981.]

Art. 1011i. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

Art. 1011m. Regional Planning Commissions

[See Compact Edition, Volume 3 for text of 1 to 5]

Provision of Legal Services

Sec. 5A. (a) A person who provides legal services to a Regional Planning Commission and/or who is a member of the governing body of a Regional Planning Commission may not:

(1) provide legal representation before or to such Regional Planning Commission on behalf of a governmental unit any part of which is located within the boundaries of the Regional Planning Commission; or

(2) be a shareholder, partner, or employee of a law firm that provides such legal services to the governmental unit.

(b) A person who violates Subsection (a) of this section may not receive any compensation or reimbursement for expenses from the Regional Planning Commission or governmental unit.

[See Compact Edition, Volume 3 for text of 6 to 9]

[Amended by Acts 1981, 67th Leg., p. 2726, ch. 742, § 1, eff. Sept. 1, 1981.]

Art. 1015g. Toll Bridges Over International Boundary Rivers, Powers Respecting

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

Tolls and Charges

Sec. 3. Any such city or town thus acquiring any such toll bridge shall have power, to be exercised by its Governing Body as expressed by Ordinance, to fix and to enforce and collect tolls and charges for the use thereof, and for the passage or transportation of persons or property, passengers, vehicles, freight and commodities, over and across such toll bridge. Such tolls and charges shall be fixed from time to time by the Governing Body of any such city or town, and collected under its direction, in accordance with the provisions and requirements of any permits or franchises granted or extended by any governmental authority in respect of or applicable thereto; and, subject to the provisions and requirements of any such permits or franchises, shall be just and reasonable and non-discriminatory, as determined by such Governing Body of any such city or town, and with no free service until the bonds herein provided to be issued to acquire such properties, together with the interest thereon, and all duties and obligations incident thereto or arising therefrom are first fully paid, met, and discharged; and, subject to the provisions and requirements of any such permits and franchises, shall be sufficient to produce revenues adequate:

(a) to pay all expenses necessary to the maintenance and operation of such toll bridge, and to comply with the requirements and make all payments necessary under the provisions of any such permits and franchises therefor;

(b) to pay the interest on and the principal of all bonds and/or warrants issued under this Act when and as the same shall become due and payable;

(c) to pay all sinking fund and/or reserve fund payments agreed to be made in respect of any such bonds and/or warrants, and payable out of such revenues, when and as the same shall become due and payable; and

(d) to fulfill the terms of any agreements made with the holders of such bonds and/or warrants and/or with any person in their behalf;

(d–1) to recover a reasonable rate of return on invested capital;

(e) out of the revenues which may be received in excess of those required for the purposes specified in subparagraphs (a), (b), (c), (d), and (d–1) above, the Governing Body of any such city or town may in its discretion use such excess revenues for any or all of the following:

(1) to establish a reasonable depreciation and emergency fund;

(2) to retire by purchase and cancellation or redemption any outstanding bonds or outstanding warrants issued under the authority of this Act and amendments thereto;

(3) to provide needed budgetary support to local government for legitimate public purposes and for the general welfare;

(4) to apply the same to accomplish the purposes of this Act and amendments thereto.

(f) it is the intention of this Act that the tolls and charges herein provided for shall be those necessary to fulfill all obligations imposed by this Act and amendments thereto, and shall be sufficient to produce revenues to comply with the

above subparagraphs (a), (b), (c), (d), (d–1), and (e). Nothing herein shall be construed as depriving the State of Texas or the United States of America, or other appropriate agencies having jurisdiction, of power to regulate and control tolls and charges to be collected for such purposes, or to provide for bridges over any such river to be used free of any tolls or charges, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds and/or warrants issued hereunder that the State will not limit or alter the power hereby vested in any such city or town or the Governing Body thereof to establish and collect such tolls and charges as will produce revenues sufficient to pay the items specified in subparagraphs (a), (b), (c), (d), (d–1), and (e) of this Section 3 of this Act, or exercise it powers in any way to impair the rights or remedies of the holders of the bonds and/or warrants, or of any person in their behalf, until the bonds and/or warrants, together with the interest thereon, with interest on unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders and/or warrant holders and all other obligations of any such city or town in connection with such bonds and/or warrants are fully met and discharged.

(g) this section shall apply to international toll bridges now in existence and owned by a city or that may be acquired or controlled by a city in the future.

[See Compact Edition, Volume 3 for text of 4 to 19]

[Amended by Acts 1977, 65th Leg., p. 366, ch. 180, § 1, eff. Aug. 29, 1977.]

Art. 1015g–5. Eligible City Operating International Toll Bridge over Rio Grande; Acquisition, Construction, Operation, and Financing

Applicability of Act

Sec. 1. This Act applies only to incorporated cities and towns whose corporate limits are at any point within 15 miles from the part of the Rio Grande that forms the border between Texas and the Republic of Mexico. In this Act, "eligible city" means a city to which this Act applies.

Acquisition of Toll Bridge, etc.; Contracts

Sec. 2. (a) Each eligible city is authorized for any public purpose to acquire, purchase, construct, improve, enlarge, equip, operate, and maintain one or more toll bridges over the part of the Rio Grande that forms the border between Texas and the Republic of Mexico.

(b) In this Act, "toll bridge" includes:

(1) the physical properties constituting all or part of a toll bridge;

(2) the permits, grants, franchises, rights, and privileges of every kind granted or extended by the United States, the Republic of Mexico, or any state or political subdivision of those nations for or in regard to the construction, maintenance, or operation of a toll bridge or for the collection of tolls or other charges for use of the toll bridge;

(3) the lands, rights-of-way, easements, leaseholds, and contractual or other interests of any kind in lands in either of those nations held or used for or in any manner incident to the construction, maintenance, or operation of a toll bridge or approaches to a toll bridge or for the use or occupancy of any buildings, structures, appurtenances, appliances, roads, streets, railroads, parks, grounds, or conveniences or facilities of any kind related or in any manner incident to a toll bridge;

(4) the buildings, structures, appurtenances, appliances, equipment, conveniences, and facilities of any kind held or used for or in any manner incident to the construction, maintenance, and operation of a toll bridge and the leases and contracts of any kind for the use or occupancy of those lands, buildings, structures, conveniences, appliances, and facilities; and

(5) the rights and properties of any kind incident to or used for the construction, maintenance, or operation of a toll bridge.

(c) An eligible city may make and enter into, carry out, observe, and perform any and all contracts, agreements, and undertakings required by the United States or the Republic of Mexico or any departments, officers, governmental agencies, or public authorities of either nation for the purpose of engaging in the activities authorized by this Act.

Revenue Bonds Authorized; Interim Financing

Sec. 3. (a) For the purpose of providing funds to acquire, purchase, construct, improve, enlarge, or equip a toll bridge or a part of a toll bridge or related buildings, structures, or other facilities for any public purpose, the governing body of an eligible city may issue revenue bonds from time to time in one or more issues or series to be payable from and secured by liens on and pledges of all or any part of any of the revenues, income, or receipts derived by the eligible city from its ownership and operation of any portion of a toll bridge or bridges over the Rio Grande and from its ownership and operation of any other property, buildings, structures, activities, operations, or facilities.

(b) Pending the issuance of revenue bonds pursuant to this Act, an eligible city may use money that is not required by law to be used for other purposes for expenditures in connection with a toll bridge or bridges or may issue notes for those expenditures. If an eligible city uses its money for this purpose, the money may be repaid out of proceeds of the revenue bonds issued under this Act. If notes of the city are issued for this purpose, the notes shall have

the characteristics deemed appropriate by the governing body of the city, may bear the rate or rates of interest, may be payable from sources available to pay, and may be secured in the same manner as revenue bonds issued under this Act or payable from the proceeds of refunding bonds issued under this Act or from both revenue bonds and refunding bonds.

Issuance of Bonds and Notes; Negotiability

Sec. 4. (a) The bonds issued pursuant to this Act may be issued to mature serially or otherwise not more than 50 years from the date of issue, and provision may be made for the subsequent issuance of additional parity bonds or subordinate lien bonds under any terms or conditions that may be set forth in the ordinance authorizing the issuance of the bonds.

(b) The bonds and notes and interest coupons appertaining to the bonds or notes are negotiable instruments within the meaning of and for the purposes provided by the Texas Uniform Commercial Code; however, the bonds may be issued registrable as to principal alone or as to both principal and interest. The bonds and notes shall be executed; may be made redeemable prior to maturity; may be issued in the form, denominations, and manner and under the terms, conditions, and details; may be sold in the manner, at the price, and under the terms; and shall bear interest at the rates provided by the ordinance authorizing issuance of the bonds or notes.

(c) If provided in the bond ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during the period of the acquisition or construction of any facilities to be provided through the issuance of bonds, paying expenses of operation and maintenance of any facilities, creating a reserve fund for the payment of the principal of and interest on the bonds, and creating any other funds and may be placed on time deposit or invested, until needed, all to the extent and in the manner provided by the bond ordinance.

Tolls and Charges

Sec. 5. Each eligible city may fix and collect tolls, rentals, rates, and charges for the occupancy, use, and availability of all or any of its toll bridges in the amounts and in the manner as may be determined by the city's governing body.

Security for Bonds

Sec. 6. (a) An eligible city may pledge all or any part of its revenues, incomes, or receipts from tolls, rentals, rates, and charges, or other resources to the payment of bonds issued pursuant to this Act, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged tolls, rentals, rates, and charges shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds and to the extent required by the ordinance authorizing issuance of the bonds to provide for the payment of expenses in connection with the bonds and for the payment of operation, maintenance, and other expenses in connection with the toll bridge or bridges.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property owned by the eligible city and by chattel mortgages or liens on any personal property appurtenant to the real property. The governing body of the eligible city may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence the debt.

(c) An eligible city may pledge to the payment of the bonds all or any part of any grant, donation, revenue, or income received or to be received from the United States or any other public or private source whether pursuant to an agreement or otherwise.

Use of Property by Federal Government

Sec. 7. It is hereby found, determined, and declared that the acquisition, purchase, construction, improvement, enlargement, or equipping by an eligible city of any property, buildings, structures, or other facilities for lease to the United States government for use in performing federal governmental functions in the city or in performing federal governmental functions at or near and relating to its toll bridge, even though the toll bridge and the federal facilities relating to the toll bridge are not located in the city, is and constitutes a public purpose and a proper municipal function. Any property, buildings, structures, or other facilities acquired, purchased, constructed, improved, enlarged, or equipped in whole or in part with proceeds from the sale of bonds issued pursuant to this Act may be leased or rented by an eligible city to the United States under the terms and conditions and for the period agreed to by the parties.

Payment of Bonds and Notes; Taxability

Sec. 8. Bonds and notes issued pursuant to this Act are payable solely from the revenues, income, receipts, or other resources of the issuing city, as provided in this Act, and the bonds and notes are not tax obligations of the eligible city.

Refinancing

Sec. 9. (a) Bonds or notes issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for the purpose and under the terms, conditions, and details prescribed by ordinance of the governing body of the eligible city. All pertinent and appropriate provisions of this Act are applicable to refunding bonds, and they shall be issued in the manner provided for other bonds authorized under this Act. Refunding bonds may be sold and delivered in amounts sufficient to pay the principal, interest, and redemption premium, if any, of bonds and notes to be refunded at maturity or on any redemption date.

(b) Refunding bonds may be issued to be exchanged for the bonds and notes being refunded. If refunding bonds are issued under this subsection, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds or notes being refunded in accordance with the ordinance authorizing the refunding bonds. An exchange may be made in one delivery or in several installment deliveries.

(c) Bonds and notes issued at any time pursuant to this Act may be refunded in the manner provided by any other applicable law in addition to that provided by this section.

Approval and Registration

Sec. 10. All bonds and notes issued pursuant to this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If he finds that the bonds and notes have been authorized in accordance with law, he shall approve them, and on approval the bonds and notes shall be registered by the comptroller of public accounts. After approval and registration, the bonds and notes are incontestable in any court or other forum for any reason and shall be valid and binding obligations in accordance with their terms for all purposes.

Bonds and Notes as Lawful Investments and Deposit Security

Sec. 11. (a) Bonds and notes issued pursuant to this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, and trustees, and for all interest and sinking funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic.

(b) The bonds and notes when accompanied by any unmatured interest coupons appurtenant to them are eligible and lawful security to the extent of their market value for any deposits of public funds of the state or any agency, subdivision, or instrumentality of the state, including a county, city, town, village, school district or other type of district, public agency, or body politic.

Act Cumulative and Wholly Sufficient

Sec. 12. This Act is cumulative of all other law on the subject, and this Act is wholly sufficient authority within itself for the issuance of the bonds and notes and the performance of the other acts and procedures authorized hereby without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds or notes are being issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any other law, the provisions of this Act shall prevail and control; provided, however, that any eligible city shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

[Acts 1979, 66th Leg., p. 759, ch. 332, §§ 1 to 12, eff. Aug. 27, 1979.]

Art. 1015j–1. Promotional Advertising for Growth and Development in Cities of Not More Than 500,000; Board of Development; Appropriations and Expenditures Authorized; Appointment of Manager

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

Sec. 3a. To assist it in carrying out the provisions of this Act, the governing body may appoint a person to manage the promotion, development, tourism, and convention activities of the city, or it may designate a city official to carry out that function. The person appointed or designated shall serve ex officio as the secretary of the board of development.

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

[Amended by Acts 1975, 64th Leg., p. 1988, ch. 661, § 1, eff. June 19, 1975.]

Art. 1015m. Repealed by Acts 1977, 65th Leg., p. 2087, ch. 835, § 9, eff. Aug. 29, 1977

See, now, art. 6701g–2.

Art. 1015n. Dilapidated Structures; Authority of Certain Cities and Towns

(a) A city or town incorporated or operating under Chapters 1–10, Title 28, Revised Civil Statutes of Texas, 1925, as amended, may adopt an ordinance that requires the demolition or repair of a building that is dilapidated, substandard, unfit for human habitation, or a hazard to the health, safety, and welfare of the citizens.

(b) The ordinance must:

(1) establish minimum standards for continued use and occupancy that apply to all buildings regardless of date of construction;

(2) provide for proper notice to the owner; and

(3) provide for a public hearing.

(c) After a hearing, if the building is found to be in violation of the standards set out in the ordinance, the city may direct that the building be repaired or removed within a reasonable time.

(d) After the expiration of the allotted time, the city may remove the building at its own expense. If a city incurs removal expenses under this Act, it has a lien against the property to which the building was attached. The lien is extinguished if the property owner reimburses the city for the removal expenses. The lien may not be enforced by forced sale.

[Acts 1977, 65th Leg., p. 1402, ch. 566, § 1, eff. Aug. 29, 1977.]

Art. 1016. Streets and Alleys, etc.

Any city or town incorporated under the general laws of this State shall have the exclusive control and power over the streets, alleys, and public grounds and highways of the city or town, and to abate and remove encroachments or obstructions thereon; to open, alter, widen, extend, establish, regulate, grade, clean and otherwise improve said streets; to put drains or sewers therein, and prevent encumbering thereof in any manner, and to protect same from encroachment or injury; and to regulate and alter the grade of premises; to require the filling up and raising of same; and, upon submission of a petition signed by all of the owners of real property abutting a street or alley, the governing body of any such city or town shall also have the power, by ordinance, to vacate and abandon and close any such street or alley.

[Amended by Acts 1979, 66th Leg., p. 477, ch. 218, § 1, eff. Aug. 27, 1979.]

Section 3 of the 1979 amendatory act provided:

"The amendment of Articles 1016 and 1019, Revised Civil Statutes of Texas, 1925, as amended, by this Act does not apply to a petition submitted to a municipal governing body under Article 1016 before the effective date of this Act. Such a petition and all action taken with respect to it are subject to those statutes as they existed when the petition was submitted. The former law is continued in effect for purposes of this section."

Art. 1019. Special Election

No public square or park shall be sold until the question of such sale has been submitted to a vote of the qualified voters of the city or town, and approved by a majority of the votes cast at such election.

[Amended by Acts 1979, 66th Leg., p. 477, ch. 218, § 2, eff. Aug. 27, 1979.]

Section 3 of the 1979 amendatory act provided:

"The amendment of Articles 1016 and 1019, Revised Civil Statutes of Texas, 1925, as amended, by this Act does not apply to a petition submitted to a municipal governing body under Article 1016 before the effective date of this Act. Such a petition and all action taken with respect to it are subject to those statutes as they existed when the petition was submitted. The former law is continued in effect for purposes of this section."

Arts. 1022, 1023. Repealed by Acts 1977, 65th Leg., p. 1716, ch. 683, § 3, eff. Aug. 29, 1977

See, now, art. 1023a.

Art. 1023a. Auditing of Records and Accounts; Annual Statements

(a) Each incorporated city, town, and village in this state, hereinafter referred to as "city," including any city operating under a special charter, or home-rule city operating under a charter adopted or amended pursuant to Article XI, Section 5, of the Texas Constitution, or city operating under the general laws of this state, shall have its records and accounts audited and a financial statement based on such audit prepared annually. Any such city whose records and accounts are not audited annually by a person or officer prescribed by statute or charter provision, or by a person in the regular employ of such city, must engage at its own expense a Texas Certified Public Accountant or a public accountant holding a permit to practice from the Texas State Board of Public Accountancy to conduct the audit and to prepare the financial statement required herein.

(b) The annual financial statement of such city, together with the auditor's opinion thereon, shall be filed in the office of the city secretary or clerk of such city within 120 days of the close of the city's fiscal year and shall be a public record.

Amendment

(c) A city that provides a continuing, organized program of service retirement, disability retirement, or death benefits for any of its officers or employees shall include in its annual financial statement a valuation of the financial assets and liabilities of the program as shown in the most recent actuarial valuation of the program. This subsection does not apply to a program for which the only funding agency is a life insurance company, a program providing only workers' compensation benefits, or a program administered by the city as a member of the Texas Municipal Retirement System.

[Acts 1977, 65th Leg., p. 1716, ch. 683, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 2113, ch. 817, § 15, eff. Sept. 1, 1979.]

Section 4 of the 1977 Act provided as follows:

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

CHAPTER FIVE. TAXATION

Article
1066d. Repealed.
1066e. Tax Increment Financing Act of 1981.
1066f. Property Redevelopment and Tax Abatement Act.

Arts. 1027a to 1027k. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 1028a. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 1030. Repealed by Acts 1981, 67th Leg., p. 3149, ch. 827, § 15, eff. Aug. 31, 1981

Arts. 1036 to 1038. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 1041. Powers of Council

The city council may provide, by ordinance, for the prompt collection of all taxes, except ad valorem taxes, that are assessed, levied and imposed under this title, and is authorized to sell or cause to be sold real as well as personal property, and may make such rules and regulations, and pass all ordinances as

they may deem necessary to the levying, laying, imposing, assessing and collecting of any tax herein provided.

[Amended by Acts 1979, 66th Leg., p. 2315, ch. 841, § 4(e), eff. Jan. 1, 1982.]

Arts. 1042 to 1044. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Prior to repeal, art. 1042b was amended by Acts 1975, 64th Leg., p. 663, ch. 278, § 1.

Arts. 1045 to 1066. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 1066b. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Prior to repeal, this article was amended by Acts 1977, 65th Leg., p. 1679, ch. 662, § 1.

Art. 1066c. Local Sales and Use Tax Act

Title of Act; Definitions

Sec. 1. This Act is known and may be cited as the "Local Sales and Use Tax Act," and the following words shall have the following meanings unless a different meaning clearly appears from the context:

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

C. Limited Sales, Excise, and Use Tax Act. "Limited Sales, Excise, and Use Tax Act" means Chapter 151, Tax Code, as amended before or after the effective date of this Act.

Authority to Adopt Tax; Imposition and Rate; Election and Ballots; Canvass of Returns; Results of Election; City Boundaries; Tax Schedule and Bracket System Formula for Joint Collection of Taxes; Standards

Sec. 2.

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

B. The sales tax portion of any local sales and use tax adopted under this Section is hereby imposed at the rate of one percent (1%) on the receipts from the sale at retail of all taxable items within any city adopting such tax which items are subject to taxation by the State of Texas under the provisions of the Limited Sales, Excise and Use Tax Act, as enacted, and as heretofore or hereafter amended, and at the rate of one percent (1%) on the receipts from the sale at retail within the city of gas and electricity for residential use as defined by the State Limited Sales, Excise and Use Tax Act.

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

L. In each city in which a local sales and use tax has been imposed in the manner provided by this Act, every retailer selling gas or electricity for residential use shall add the tax imposed by this Act to his sales price and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. The amount of the tax on the sale at retail of gas and electricity for residential use shall be calculated by multiplying the amount of the tax by the sales price. Any fraction of one cent ($.01) which is less than one-half of one cent ($.005) shall not be collected. Any fraction of one cent ($.01) of tax equal to one-half of one cent ($.005) or more shall be collected by the retailer as a whole cent ($.01) of tax. The Comptroller may publish a schedule based on the above formula for cities imposing a tax on the sale at retail of gas and electricity for residential use.

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

Excise Tax; Combined Rate of Excise Tax; Imposition, Rate and Collection of Tax

Sec. 4. A. Except as provided in Subsection D of this Section, in every city where the local sales and use tax has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use, or other consumption within such city of tangible personal property purchased, leased, or rented from any retailer on or after the effective date for collection of the sales tax portion of the local sales and use tax for storage, use or other consumption in such city at the rate of one percent (1%) of the sales price of the property or, in the case of leases or rentals, of said lease or rental price. Except as provided in Subsection E of this Section, the local use tax is not owed to and may not be collected by, for, or in behalf of a city if no excise tax on the storage, use, or other consumption of an item of tangible personal property is owed to or collected by the State under the Limited Sales, Excise and Use Tax Act or if the tangible personal property is first stored, used, or consumed within a city or area that has not adopted the local sales or use tax.

B. Except as provided in Subsection D of this Section, in each city where the local sales and use tax has been imposed as provided in Section 2 of this Act, the excise tax imposed under the State Limited Sales, Excise and Use Tax Act on the storage, use, or other consumption of tangible personal property and the excise tax imposed by this Section of this Act shall be added together to form a combined rate of excise tax which is equal to the sum of the two taxes. The tax imposed by this Section of this Act shall be collected by the Comptroller on behalf of and for the benefit of such city. The bracket system formula prescribed in Subsection K of Section 2 of this Act shall be applicable to the collection of the excise tax imposed under this Section.

C. The provisions of the Limited Sales, Excise, and Use Tax Act relating to the administration and collection of the storage and use tax portion of the

state tax is applicable to the collection of the tax imposed by this Section, provided that in Subchapter D of Chapter 151, Tax Code,[1] the name of the city where the local sales and use tax has been adopted shall be substituted for that of the State where the words "this State" are used to designate the taxing authority or to delimit the tax imposed.

D. In every city where the local sales and use tax has been adopted under this Act, there is imposed an excise tax on the storage, use or other consumption within the city of gas and electricity for residential use purchased, leased or rented from any retailer on or after the effective date for collection of the sales tax portion of the local sales and use tax for storage, use or other consumption within the city at the rate of one percent (1%) of the sales price of the gas and electricity for residential use, or in the case of leases or rentals, of the lease or rental price. In every city where the local sales and use tax has been adopted under this Act, the excise tax imposed by this Section shall be calculated as provided in Subsection L, Section 2 of this Act and shall be collected by the Comptroller on behalf of and for the benefit of the city in the same manner as if the use, storage or other consumption of gas and electricity for residential use were not exempt under the Limited Sales, Excise and Use Tax Act.

E. If a sale of tangible personal property is consummated within the State but not within a city that has adopted the taxes imposed by this Act and the tangible personal property is shipped directly into or brought by the purchaser or lessee directly into a city that has adopted the taxes imposed by this Act, the tangible personal property is subject to the local use tax imposed by the city under Subsection A of this Section. The use is considered consummated at the location where the item is first stored, used, or otherwise consumed after the intrastate transit has ceased.

F. If the tangible personal property is shipped from outside this State to a customer within this State, the tangible personal property is subject to the use tax imposed by Subsection A of this Section and not the sales tax imposed by Subsection B, Section 2 of this Act. The use is consummated at the first point in this State where the property is stored, used, or otherwise consumed after interstate transit has ceased. Tangible personal property delivered to a point in this State is presumed to be for storage, use, or other consumption at that point until the contrary is established.

[1] Tax Code, § 151.101 et seq.

Residential Gas and Electricity; Exemption and Reimposition of Tax

Sec. 4A. Effective October 1, 1979, there are exempted from the taxes imposed by this Act the receipts from the sale, production, distribution, lease or rental of, and the use, storage, or other consumption within the city of gas and electricity for residential use within a city adopting the taxes imposed by this Act unless prior to May 1, 1979, the governing body of the city, by a majority vote of the membership of the governing body, votes to continue the taxes authorized by this Act on the sale, production, distribution, lease or rental of, and the use, storage, or other consumption of gas and electricity for residential use. At any time before or after October 1, 1979, the governing body of a city that has adopted the tax authorized by this Act may, by a majority vote of the membership of the governing body, exempt from the taxes imposed by this Act the receipts from the sale, production, distribution, lease or rental of, and the use, storage, or other consumption within the city of gas and electricity for residential use. The governing body of a city that has adopted the tax authorized by this Act and provided for the exemption authorized or required by this section may, by a majority vote of the governing body, reimpose the taxes on the sale, production, distribution, lease or rental of, and the use, storage, or other consumption in the city of gas and electricity for residential use. If a majority of the governing body votes for the exemption authorized by this section or for the reimposition of the tax under this section, the results of the vote must be entered in the minutes of the city. Thereafter the city secretary shall forward to the comptroller by United States Registered or Certified Mail a copy of the ordinance. On actual receipt by the comptroller of the notification, there shall elapse one whole calendar quarter prior to the exemption or reimposition becoming effective. The exemption or reimposition shall take effect beginning on the first day of the calendar quarter next succeeding the elapsed quarter. If the governing body of a city, by a majority vote of the governing body, votes to exempt from the taxes authorized by this Act the receipts from the sale, production, distribution, lease, or rental of, and the use, storage, or other consumption of gas and electricity for residential use and forwards to the comptroller by United States Registered or Certified Mail postmarked on or before September 10, 1978, a certified copy of the ordinance, the exemption is effective on October 1, 1978, except that the exemption does not apply to sales of gas and electricity for residential use made during a retailer's regular monthly billing period for a consumer if the regular monthly billing period for the consumer begins before October 1, 1978, but shall apply to each regular monthly billing period beginning on or after October 1, 1978.

Comptroller; Administration, Collection, Enforcement and Operation of Tax; Reports

Sec. 5. (a) On and after the effective date of any tax imposed under the provisions of this Act, the Comptroller shall perform all functions incident to the administration, collection, enforcement, and operation of the tax, and the Comptroller shall collect, in addition to the Limited Sales, Excise and Use Tax for the State of Texas, an additional tax under the authority of this Act of one percent (1%) on the receipts from the sale at retail or on the sale price or

lease or rental price on the storage, use, or other consumption of all taxable items within such city which property is subject to the State Limited Sales, Excise and Use Tax Act, and an additional tax of one percent (1%) on the receipts on the sale at retail or on the sale price or lease or rental price on the storage, use, or other consumption of gas and electricity for residential use within the city as provided in this Act unless exempted as provided in Section 4A of this Act. The tax imposed hereunder and the tax imposed under the Limited Sales, Excise and Use Tax Act shall be collected together, if both are imposed, and reported upon such forms and under such administrative rules and regulations as may be prescribed by the Comptroller not inconsistent with the provisions of this Act. On and after the effective date of any proposition to abolish such local sales and use tax in any city, the Comptroller shall comply therewith as provided in this Act.

[See Compact Edition, Volume 3 for text of 5(b) to 5(d)]

Provisions Governing Collection of Tax

Sec. 6. The following provisions shall govern the collection by the Comptroller of the tax imposed by this Act:

A. All applicable provisions contained in Subtitles A and B and Chapter 151 of Title 2, Tax Code,[1] shall apply to the collection of the tax imposed by this Act, except as modified in this Act.

B. (1) For the purposes of the local sales and use tax, "place of business of the retailer" means an established outlet, office, or location operated by the retailer, his agent, or employee for the purpose of receiving orders for taxable items. The term "place of business of the retailer" includes any location at which three or more orders are received by the retailer in a calendar year. A warehouse, storage yard, or manufacturing plant may not be considered a "place of business of the retailer" unless three or more orders are received by the retailer in a calendar year at such warehouse, storage yard, or manufacturing plant. Each "place of business of the retailer" must have a permit issued by the Comptroller in accordance with Article 20.021, Title 122A, Taxation–General, Revised Civil Statutes of Texas, 1925, as amended.[2] For the purpose of determining the proper local sales tax imposed by this Act, a retail sale, lease, or rental is consummated as provided in Paragraphs (a), (b), (c), and (d) of this subdivision, regardless of where transfer of title or possession or segregation in contemplation of transfer of title or possession of the taxable item occurs unless the tangible personal property sold, leased, or rented is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination.

(a) If a retailer has only one place of business within this State, all retail sales, leases, and rentals of the retailer are consummated at that place of business, except as provided in Subdivision (d) of this Subsection.

(b) If a retailer has more than one place of business in this State, the retailer's place of business where the purchaser or lessee takes possession of and removes an item of tangible personal property is the place of business where the sale, lease, or rental of that item is consummated. If, however, the retailer ships or delivers the tangible personal property to a point designated by the purchaser or lessee, then the retailer's place of business from which the tangible personal property is shipped or delivered to the purchaser or lessee is the place of business where the sale, lease, or rental is consummated.

(c) If neither possession of tangible personal property is taken at nor shipment or delivery of the tangible personal property is made from the retailer's place of business within this State, the sale, lease, or rental is consummated at the retailer's place of business within the State where the order is received or if the order is not received at a place of business of the retailer, at the place of business from which the retailer's salesman who took the order operates.

(d) When transfer of possession of tangible personal property occurs at or shipment or delivery originates from a location within the State other than a place of business of the retailer, the sale, lease, or rental is consummated at the location within this State to which the tangible personal property is shipped or delivered or at which possession is taken by the customer when:

(i) the retailer is an itinerant vendor and has no place of business, or

(ii) the retailer's place of business where the purchase order is initially received or from which the retailer's salesman who took the order operates is outside the State, or

(iii) the purchaser places the order directly with the retailer's supplier and the property is shipped or delivered directly to the purchaser by the supplier.

(e) The sale of natural gas or electricity is consummated at the point of delivery to the consumer.

(2) For the purpose of the excise tax imposed by this Act on any retailer holding tangible personal property purchased on a resale certificate and which property becomes subject to the excise tax by reason of use or other consumption of the property, the use or other consumption of the property is consummated at the place where the property is stored or kept at the time of or just prior to its use or consumption, unless the tangible personal property is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination.

(3) For the purpose of determining the proper local use tax imposed by this Act, a holder of a direct payment permit issued by the Comptroller under the Limited Sales, Excise, and Use Tax Act who becomes liable for local use tax by reason of storage, use, or other consumption of taxable items purchased in this State under a direct payment exemption certificate, shall allocate the tax to the city in which the taxable item was first removed from the permit holder's storage, or if not stored, the place at which the items are first used or consumed by the permit holder after transportation. As used in this paragraph, storage, use, or other consumption may not include a temporary delay or interruption necessary and incident to the transportation or further fabrication, processing, or assembling of taxable items within this State for delivery to the permit holder. A charge for processing, fabrication, or further assembly in a city that has adopted the local use tax shall be subject to the local use tax. If a taxable item is first stored, used, or consumed within a city that has not adopted the tax imposed by this Act or outside of a city, no local use tax is due.

C. (1) All exemptions granted to agencies of government, organizations, persons, and to the sale, storage, use, and other consumption of certain articles and items taxable under the provisions of Subchapter H, Limited Sales, Excise and Use Tax Act,[3] are hereby made applicable to the imposition and collection of the tax imposed by this Act, except as specifically provided in Section 151.317(b) of that Act.

[See Compact Edition, Volume 3 for text of 6C(2)]

D. The same sales tax permit, exemption certificate, and resale certificate required by the Limited Sales, Excise, and Use Tax Act for the administration and collection of the State Limited Sales, Excise, and Use Tax shall satisfy the requirements of this Act, and no additional permit or exemption certificate or resale certificate shall be required; except that the Comptroller may prescribe a form of exemption certificate for an exemption from the tax imposed by this Act as a result of a prior contract under Subsection C of this Section.

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

F. The penalties provided in the Limited Sales, Excise, and Use Tax Act for violations of that Act are hereby made applicable to violations of this Act.

[1] Tax Code, §§ 101.001 et seq., 111.001 et seq., and 151.001 et seq.
[2] Repealed; see, now, Tax Code.
[3] Tax Code, § 151.301 et seq.

[See Compact Edition, Volume 3 for text of 7 to 11]

Delinquent Taxes; Collection Suits; Notice and Limitations; Parties; Seizure and Sale of Property

Sec. 12. A. In any city where the Local Sales and Use Tax has been imposed, if any person is delinquent in the payment of the amount required to be paid by him under this Act or in the event a determination has been made against him for taxes and penalty under this Act, the limitation for bringing suit for the collection of such delinquent tax and penalty shall be the same as that provided in the Limited Sales, Excise, and Use Tax Act. Where any person is delinquent in payment of taxes under this Act, the Comptroller shall notify the Tax Collector of the city to which delinquent taxes are due under this Act by United States Registered Mail or Certified Mail and shall send a copy of the notice to the Attorney General. The city, acting through its attorney, may join in any suit brought by the Attorney General as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such city. The notice sent by the Comptroller to the tax collector of the city showing the delinquency of a taxpayer for the local sales and use tax constitutes a certification of the amount owed and is prima facie evidence of the determination of the tax and of the delinquency of the amounts of local sales and use tax set forth in the notice.

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

C. (1) A city that has adopted the tax authorized by this Act may bring suit for the collection of sales, excise, or use taxes imposed by this Act which have been certified as provided in Subsection A of this Section and are owed to the city under this Act if at least 60 days before the filing of the suit, written notice by certified mail of the tax delinquency and of the intention to file suit is given to the taxpayer, the Comptroller, and the Attorney General and if neither the Comptroller nor the Attorney General disapproves the suit by written notice to the city.

(2) The Comptroller or Attorney General may disapprove the institution of tax suit by a city if:

(i) negotiations between the State and the taxpayer are being conducted for the purpose of the collection of delinquent taxes owed to the State and the city seeking to bring suit;

(ii) the taxpayer owes substantial taxes to the State and there is a reasonable possibility that the taxpayer may be unable to pay the total amount owed in full;

(iii) the State will bring suit against the taxpayer for the collection of all sales, excise, and use taxes due under the Limited Sales, Excise, and Use Tax Act and this Act; or

(iv) the suit involves a critical legal question relating to the interpretation of State law or a provision of the Texas or United States Constitution in which the State has an overriding interest.

(3) A notice of disapproval to a city must give the reason for the determination of the Comptroller or Attorney General. A disapproval is final and not subject to review. A city, after one (1) year from the date of the disapproval, may proceed again as provided in paragraph (1) of Subsection C of this

Section, even though the liability of the taxpayer includes taxes for which the city has previously given notice and the Comptroller or Attorney General has previously disapproved the suit.

(4) In any suit under this Subsection for the collection of city tax, a judgment for or against the taxpayer does not affect any claim against the taxpayer by another city or the State unless the State is a party to the action.

(5) A copy of the final judgment in favor of a city in a case in which the State is not a party shall be abstracted by the city and a copy of the judgment together with a copy of the abstract shall be sent to the Comptroller. The city shall collect the taxes awarded to it under the judgment as provided by Section 151.608(e), Limited Sales, Excise, and Use Tax Act, and is responsible for the renewal of the judgment before the expiration of the 10-year period. If a collection is made by a city on a judgment, notice of the amount collected shall be sent by certified mail to the Comptroller. The Comptroller may prescribe a form for the notice to be used by cities.

[See Compact Edition, Volume 3 for text of 13 and 14]

[Amended by Acts 1975, 64th Leg., p. 44, ch. 23, § 1, eff. March 20, 1975; Acts 1978, 65th Leg., 2nd C.S. p. 5, ch. 2, art. 2, §§ 3 to 8, eff. Oct. 1, 1978; Acts 1979, 66th Leg., p. 98, ch. 59, § 6, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1400, ch. 624, art. 1, §§ 1 to 3, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1404, ch. 624, art. 2, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 1769, ch. 389, §§ 6 to 13, eff. Jan. 1, 1982.]

Section 6 of art. 1 of Acts 1979, 66th Leg., p. 1404, ch. 624, subsequently repealed by Acts 1981, 67th Leg., p. 3197, ch. 838, § 1, eff. Aug. 31, 1981, provided:

"Paragraph (1), Subsection B, Section 6, Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), as amended by this article, expires August 31, 1981."

Acts 1981, 67th Leg., p. 3197, ch. 838, § 1, repealed the amendment of § 6, subsec. B, par. (1) of this article by Acts 1979, 66th Leg., p. 1404, ch. 624, art. 2, § 1.

Section 1 of Acts 1981, 67th Leg., p. 1490, ch. 389, enacted Title 2 of the Tax Code.

Art. 1066d. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 52, ch. 4, § 5

Under § 4 of the 1981 repealing act, the repeal of this article was effective upon adoption of the constitutional amendment proposed by Acts 1981, 67th Leg., 1st C.S., S.J.R. No. 8, which was approved by the voters at an election held November 3, 1981.

Section 2(b) of the 1981 repealing act provides:

"A tax incremental district approved by a city or town pursuant to Chapter 695, Acts of the 66th Legislature, Regular Session, 1979 (Article 1066d, Vernon's Texas Civil Statutes), may be designated by ordinance adopted by the governing body of the city or town as a reinvestment zone under this Act. No other act is necessary for the newly designated zone to exercise powers or perform duties as provided by this Act."

Section 5 of the 1981 repealing act provides, in part: "The repeal does not affect the continuation of tax incremental districts designated as reinvestment zones as provided by SECTION 2 of this Act."

The repealed article, relating to rehabilitation and development of blighted areas, tax incremental districts, and bonds and notes was derived from Acts 1979, 66th Leg., p. 1661, ch. 695, §§ 1 to 12.

See, now, art. 1066e.

Art. 1066e. Tax Increment Financing Act of 1981

Short Title

Sec. 1. This Act may be cited as the Texas Tax Increment Financing Act of 1981.

Definitions

Sec. 2. In this Act:

(1) "Captured appraised value" means the amount by which the current appraised value of taxable real property located in the boundaries of a reinvestment zone exceeds its tax increment base.

(2) "Federally assisted new community" means a federally assisted area that has received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act [1] and a portion of that federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974, as amended.[2]

(3) "Project costs" means expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the city or town that are listed in a project plan as costs of public works or public improvements in a reinvestment zone, plus other costs incidental to the expenditures or obligations, diminished by any income, special assessments, or other revenues, other than tax increments, received or reasonably expected to be received by the city or town in connection with the implementation of the project plan, not pledged to secure payment of the tax increment bonds. Project costs include:

(A) capital costs, including the actual costs of the construction of public works or public improvements, new buildings, structures, and fixtures; the actual costs of the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures; and the actual costs of the acquisition of equipment and the clearing and grading of land;

(B) financing costs, including all interest paid to holders of evidences of indebtedness or other obligations issued to pay for project costs and any premium paid over the principal amount of the obligations because of the redemption of the obligations prior to maturity;

(C) real property assembly costs; that is, the deficit incurred by the sale or lease as lessor by the city or town of property within a reinvestment zone for less than the cost of the property to the city or town;

(D) professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;

(E) imputed administrative costs, including reasonable charges for the time spent by employees of the city or town in connection with the implementation of a project plan;

(F) relocation costs;

(G) organizational costs, including the costs of conducting environmental impact studies or other studies, the costs of publicizing the creation of a reinvestment zone, and the cost of imple-

menting the project plan for the reinvestment zone;

(H) interest prior to and during construction and for one year after completion of construction whether or not capitalized;

(I) the amount of any contributions made for the implementation of the project plan; and

(J) payments made at the discretion of the governing body of the city or town that the city or town finds necessary or convenient to the creation of a reinvestment zone or to the implementation of the project plans for the reinvestment zone.

(4) "Project plan" means the plan for the development or redevelopment of a reinvestment zone approved as provided by this Act, including all amendments to the plan approved as provided by this Act.

(5) "Taxing unit" refers to a taxing unit as defined by Subdivision (12), Section 1.04, Property Tax Code.

(6) "Tax increment" means the amount of property taxes levied for a year on the captured appraised value.

(7) "Tax increment base" means the total appraised value of all taxable real property in a reinvestment zone for the year in which the zone was designated a reinvestment zone as provided by this Act.

(8) "Tax increment fund" means a fund into which all tax increments are paid, and all revenues from the sale of tax increment finance bonds or notes are deposited, and from which money is disbursed to pay project costs for the zone or to satisfy claims of holders of tax increment bonds or notes issued for the zone.

[1] 12 U.S.C.A. § 1749aa et seq.
[2] 42 U.S.C.A. § 5307(a)(1).

Criteria for a Reinvestment Zone

Sec. 3. (a) An incorporated city or town may promote development or redevelopment of a contiguous geographic area within its jurisdiction through tax increment financing under this Act. The incorporated city or town must adopt an ordinance in order to designate an area a reinvestment zone for tax increment financing.

(b) To be designated as a reinvestment zone an area must:

(1) substantially impair or arrest the sound growth of a city or town, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use by reason of the presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures; predominance of defective or inadequate sidewalk or street layout; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; unsanitary or unsafe conditions; deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; the existence of conditions that endanger life or property by fire or other cause; or any combination of these factors or conditions; or

(2) be predominately open and, because of obsolete platting or deterioration of structures or site improvements, substantially impair or arrest the sound growth of the city or town; or

(3) be in a federally assisted new community located within a city or town or in an area immediately adjacent to the federally assisted new community; or

(4) be located wholly within an area which meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974, as amended.[1]

[1] 42 U.S.C.A. § 5318.

Hearings; Procedure

Sec. 4. (a) Prior to adoption of an ordinance providing for a reinvestment zone for tax increment financing a city or town must hold a public hearing on the adoption of the zone and its benefits to the city or town and to property in the zone. At the hearing interested parties may speak for or against the creation, the boundaries of the reinvestment zone, and the concept of tax increment financing. Notice of the hearing must be published in a newspaper having general circulation in the city or town not later than seven days before the date of the hearing.

(b) A city or town must provide a reasonable opportunity for an owner of property to protest the inclusion of his property in the zone.

(c) The ordinance must:

(1) describe the boundaries of the reinvestment zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone;

(2) create a board of directors for the zone, specify the number of members of the board as provided by Section 6 of this Act, and appoint the initial members of the board;

(3) provide that the zone takes effect on January 1 of the year following the year in which the zone is approved by adoption of the ordinance and provide a date for termination of the zone;

(4) assign a name to the district for identification purposes. The first district created shall be known as "Reinvestment Zone Number One, City or Town of [ ]" with each subsequently created zone assigned the next consecutive number;

(5) establish a "Tax Increment Fund," for the zone; and

(6) contain findings that:

(A) improvements in the zone will enhance significantly the value of all the taxable real

property in the zone, although the ordinance need not identify the specific parcels enhanced in value, and will be of general benefit to the city or town;

(B) the area meets the requirements set out in Section 3 of this Act.

Restrictions

Sec. 5. (a) A reinvestment zone may not be created if more than 10 percent of the property in the zone, excluding that dedicated to public use, is used for residential purposes, or if the total appraised value of taxable real property in the zone according to the most recent appraisal rolls of the city or town and the total appraised value of taxable real property in existing zones according to the most recent appraisal rolls of the city or town exceeds 15 percent of the current total appraised value of taxable real property in the city or town and in the industrial districts created by the city or town.

(b) The boundaries of a zone may not be changed to include within the zone property more than 10 percent of which, excluding property dedicated to public use, is used for residential purposes, or to include more than 15 percent of the current total appraised value of taxable real property in the city or town and in the industrial districts created by the city or town.

(c) For purposes of this section property is used for residential purposes if it is occupied by a house which has less than five living units.

Board of Directors

Sec. 6. (a) The number of members of the board of directors may not be fewer than five nor more than 15.

(b) Members of the board of directors are appointed by the governing body of the city or town for terms of two years unless longer terms are provided pursuant to Article XI, Section 11, Texas Constitution. Terms of members may be staggered. A vacancy on the board is filled for the unexpired term by appointment of the governing body of the city or town.

(c) To be eligible for appointment to the board of directors of a zone, an individual must:

(1) be a qualified voter of the city or town; or

(2) be at least 18 years old and own real property in the zone, without regard to whether he or she resides in the city or town.

(d) After the board of directors has existed for one year, the governing body of the city or town by ordinance may abolish the board and assume the board's powers, duties, and functions. An ordinance under this subsection may be adopted only on the affirmative vote of at least three-fourths of the members of the governing body of the city or town.

(e) Each year the governing body of the city or town shall appoint one member of the board of directors to serve as chairman of the board for a term of one year that begins on January 1 of the following year. The board of directors may elect a vice-chairman to preside in the absence of the chairman or when there is a vacancy in the position of chairman. The board may elect other officers as it sees fit.

Recommendations and Powers

Sec. 7. The board of directors shall make recommendations to the governing body of the city or town concerning administration of this Act in the zone. In addition to the powers delegated to the board of directors under other provisions of this Act, the governing body of the city or town by ordinance may delegate to the board any powers and duties with regard to the implementation of the project plan for the zone that the governing body considers advisable.

Project Plan

Sec. 8. (a) The board of directors of a reinvestment zone must prepare and adopt a project plan for the zone and must submit the plan to the governing body of the city or town. The plan must include a statement listing the kind, number, and location of all proposed public works or public improvements in the zone, an economic feasibility study, a detailed list of estimated project costs, and a description of the methods of financing all estimated project costs and the time when related costs or monetary obligations are to be incurred. The plan must also include a map showing existing uses and conditions of real property in the zone and a map showing proposed improvements to and uses of real property in the zone. Proposed changes of zoning ordinances, the master plan, building codes, and city ordinances must also be included in the plan along with a list of estimated nonproject costs and a statement of a method of relocating persons to be displaced as a result of implementation of the plan.

(b) The governing body of the city or town must approve a project plan after its adoption by the board. The approval must be by ordinance that finds that the plan is feasible and conforms to the master plan, if any, of the city or town.

(c) The board of directors of the zone at any time may adopt an amendment to the project plan. The amendment takes effect on approval by the governing body of the city or town. Approval must be by ordinance.

Powers of Cities or Towns

Sec. 9. A city or town may exercise any power necessary and convenient to carry out this Act, including the power to:

(1) create reinvestment zones and to describe the boundaries of the zones;

(2) cause project plans to be prepared, to approve and implement the plans, and otherwise achieve the purposes of the plan;

(3) acquire real property by purchase, condemnation, or other means to implement project plans;

(4) issue tax increment bonds or notes;

(5) deposit tax increments into the tax increment fund;

(6) enter into agreements, including agreements with bondholders, determined by the governing body of the city or town to be necessary or convenient to implement project plans and achieve their purposes. The agreements may include conditions, restrictions, or covenants that either run with the land or by other means regulate or restrict the use of land; and

(7) consistent with a project plan for a reinvestment zone adopted by the governing body of the city or town, acquire blighted, deteriorated, deteriorating, undeveloped, inappropriately developed real property, or other property in a blighted area or in a federally assisted new community in the zone for the preservation or restoration of historic sites, beautification or conservation, or the provision of public works or public facilities or other public purposes; or acquire, construct, reconstruct, or install public works, facilities, and sites or other public improvements, including utilities, streets, street lights, water and sewer facilities, pedestrian malls and walkways, parks, flood and drainage facilities, and parking facilities.

Collection of Tax Increments

Sec. 10. (a) For purposes of this Act, the tax collector for the city or town shall have the sole authority and duty to collect property taxes levied by the city or town and all other taxing units on taxable real property in a reinvestment zone and for allocating the taxes and tax increments in the manner required by this Act.

(b) Commencing with the first payment of taxes levied by the city or town or other taxing units subsequent to the time a reinvestment zone takes effect, receipts from taxes after deducting costs of collection shall be allocated and paid over as follows:

(1) There shall first be allocated and paid over the amount of real property tax produced from the tax increment base to each city or town and to each other taxing unit.

(2) There shall next be allocated and paid over to the city or town and to each other taxing unit any property taxes produced from the tax increments which are, by contract executed prior to the designation of the area as a reinvestment zone, required to be paid over by the city or town or other political subdivision.

(3) There shall next be deposited into the tax increment fund established for the zone all tax increments produced from the captured appraised value of taxable real property in the zone.

Tax Increment Bonds or Notes

Sec. 11. (a) A city or town may issue tax increment bonds or notes, the proceeds of which may be used to pay project costs for a reinvestment zone on behalf of which the bonds or notes were issued or to satisfy claims of holders of the bonds or notes. The city or town may issue refunding bonds or notes for the payment or retirement of tax increment bonds or notes previously issued by it. Tax increment bonds shall be made payable, as to both principal and interest, solely from the tax increment fund established by the city or town for the reinvestment zone. A city or town may provide in its contract with the owners or holders of the tax increment bonds that it will pay into the tax increment fund all or any part of the revenue or money produced or received as a result of the operation or sale of a facility acquired, improved, or constructed pursuant to a project plan, to be used to pay principal and interest on the tax increment bonds and, if a city or town so agrees, the owners or holders of the tax increment bonds may have a lien or mortgage on any facility acquired, improved, or constructed with the proceeds of the tax increment bonds. Tax increment bonds issued pursuant to this Act shall be issued by ordinance of the city or town without any additional approval other than the approval of the Attorney General of the State of Texas.

(b) Tax increment bonds or notes, together with interest on and income from the bonds or notes, shall be exempt from all taxes. The bonds or notes shall be authorized by ordinance of the governing body of the city or town and may be issued in one or more series. They shall bear a date or dates, be payable upon demand or mature at a time or times, bear interest at a rate or rates, be in a denomination or denominations, be in a form (either coupon or registered), carry conversion or registration privileges, have a rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, and be subject to terms of redemption (with or without premium), be secured in a manner, and have other characteristics as may be provided by the ordinance approving the bonds or notes or by the trust indenture or mortgage issued in connection with the bonds or notes. Any provision of any law to the contrary notwithstanding, any bonds or notes issued pursuant to this Act shall be fully negotiable. In a suit, an action, or other proceeding involving the validity or enforceability of a bond or note issued under this Act or the security for a bond or note issued under this Act, a bond or note reciting in substance that it had been issued by the city or town for a reinvestment zone shall be conclusively deemed to have been issued for that purpose, and the development or redevelopment of the zone shall be conclusively deemed to have been planned, located, and carried out as provided by this Act.

(c) All banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and

other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries may legally invest any sinking funds, money, or other funds belonging to them or within their control in tax increment bonds or notes issued by a city or town pursuant to this Act. The bonds or notes shall be authorized security for all public deposits. Any persons, political subdivisions, and officers, public or private, are authorized to use any funds owned or controlled by them for the purchase of any tax increment bonds or notes. This Act does not relieve any person of the duty to exercise reasonable care in selecting securities.

(d) Tax increment bonds or notes shall be payable only out of the tax increment fund. The governing body of the city or town may irrevocably pledge all or a part of the fund for payment of the bonds or notes. The part of the fund pledged in payment may thereafter be used only for the payment of the bonds or notes or interest on the bonds or notes until the bonds or notes have been fully paid. A holder of the bonds or notes or of coupons issued on the bonds shall have a lien against the fund for payment of the bonds or notes and interest thereon and may either at law or in equity protect and enforce such lien.

(e) Tax increment bonds or notes issued under this Act shall not be general obligations of the city or town, nor in any event shall they give rise to a charge against the general credit or taxing powers of the city or town or be payable other than as provided by this Act. Any tax increment bonds or notes issued under this Act shall so state these restrictions on their face.

(f) Tax increment bonds or notes issued under this Act shall not be included in any computation of the debt of the issuing city or town.

(g) Tax increment bonds or notes may not be issued in an amount exceeding the total costs of implementing the project plan for the zone for which they were issued. The bonds or notes shall mature within 20 years of their date of issue.

Annual Reports

Sec. 12. (a) On or before July 1 of each year, the governing body of the city or town shall submit to the chief executive officer of every taxing unit that levies property taxes on taxable real property in the district a report on the status of the zone. The report shall include the following information:

(1) the amount and source of revenue in the tax increment fund established for the reinvestment zone;

(2) the amount and purpose of expenditures from the fund;

(3) the amount of principal and interest due on any outstanding bonded indebtedness;

(4) the tax increment base and the current captured appraised value retained by the zone; and

(5) the captured appraised value shared by the city or town and other taxing units, the total in tax increments received, and any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the governing body of the city or town.

(b) A copy of this report shall be forwarded to the attorney general.

Termination of a Reinvestment Zone

Sec. 13. A reinvestment zone shall terminate at the time designated in the ordinance creating the zone or at an earlier time designated by a subsequent ordinance, but in any event the zone shall terminate at such time as all project costs and tax increment bonds, and the interest thereon, have been paid in full.

Tax Increment Fund

Sec. 14. (a) Money shall be disbursed from the tax increment fund for a reinvestment zone only to satisfy the claims of holders of tax increment bonds or notes issued for the reinvestment zone or to pay project costs for the zone.

(b) Subject to an agreement with the holders of tax increment bonds or notes, money in a tax increment fund may be temporarily invested in the same manner as other funds of the city or town.

(c) After all project costs and all tax increment bonds or notes issued for a reinvestment zone have been paid, and subject to any agreement with bondholders, if there is any money in the fund, it shall be paid over to the city or town and other taxing units levying taxes on property within the zone in amounts that reflect the respective share of total tax increments resulting from taxable real property in a reinvestment zone that were deposited in the fund during the fund's existence.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 45, ch. 4, § 1.]

Sections 2 to 4 of the 1981 Act provide:

"Sec. 2. (a) A reinvestment zone designated pursuant to this Act may not incur tax increments before January 1, 1982.

"(b) A tax incremental district approved by a city or town pursuant to Chapter 695, Acts of the 66th Legislature, Regular Session, 1979 (Article 1066d, Vernon's Texas Civil Statutes), may be designated by ordinance adopted by the governing body of the city or town as a reinvestment zone under this Act. No other act is necessary for the newly designated zone to exercise powers or perform duties as provided by this Act.

"Sec. 3. This Act expires December 31, 1991. A reinvestment zone established before that date may continue in existence beyond that date as provided by the ordinance creating the zone.

"Sec. 4. This Act takes effect only if the constitutional amendment proposed by S.J.R. No. 8, 67th Legislature, 1st Called Session, 1981, is adopted."

The constitutional amendment proposed by Acts 1981, 67th Leg., 1st C.S., S.J.R. No. 8, was approved by the voters at an election held November 3, 1981.

Art. 1066f. Property Redevelopment and Tax Abatement Act

Short Title

Sec. 1. This Act may be cited as the Property Redevelopment and Tax Abatement Act.

Agreements for Property Tax Abatement for Property in Need of Improvements

Sec. 2. (a) The governing body of an incorporated city or town shall agree in writing with the owner of taxable real property located in an area designat-

ed as a reinvestment zone under Section 3 of this Act, but not located within an improvement project financed by tax increment bonds, to exempt from taxation all or part of the value of the property for any period not in excess of 15 years, subject to the rights of holders of outstanding bonds of the city or town, on the condition that the owner of the property make specified improvements or repairs to the property in conformity with the comprehensive plan, if any, of the city or town. Written agreements with property owners located within a reinvestment zone shall contain identical terms regarding the share of value of the property that is to be exempt from the taxation under the agreement and the duration of the exemption.

(b) An agreement under Subsection (a) of this section must include provisions for:

(1) listing the kind, number, and location of all proposed improvements of the property;

(2) access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreements;

(3) limiting the uses of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect; and

(4) recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement.

(c) An agreement under Subsection (a) or (d) of this section may include, at the option of the city or town, provisions for:

(1) improvements or repairs by the city to streets, sidewalks, and utility services or facilities associated with the property, except that the agreement may not provide for lower charges or rates than are made for other services or properties of a similar character;

(2) an economic feasibility study, including a detailed list of estimated improvement costs, a description of the methods of financing all estimated costs, and the time when related costs or monetary obligations are to be incurred;

(3) a map showing existing uses and conditions of real property in the reinvestment zone;

(4) a map showing proposed improvements and uses in the reinvestment zone; and

(5) proposed changes of zoning ordinances, the master plan, the map, building codes, and city ordinances.

(d) If an area is designated a reinvestment zone, every taxing unit that includes inside its boundaries property that is contained inside the boundaries of the reinvestment zone may execute a written agreement with the owner of any property on which the property taxes are abated due to an agreement under Subsection (a) of this section. Such an agreement must contain terms identical to those contained in the agreement with the city or town regarding the share of the property that is to be exempt from taxation under the agreement, the duration of the exemption, and the provisions included in the agreement pursuant to Subsections (b) and (c) of this section. If a taxing unit fails to execute such an agreement, the taxing unit is limited to taxing any property that is the subject of an agreement under Subsection (a) of this section at the same value at which the property was taxed in the year preceding the execution of the agreement with the city or town, for a period of time equal to twice the duration of the agreement with the city or town.

Designation of Reinvestment Zones

Sec. 3. (a) To be designated as a reinvestment zone, an area must:

(1) substantially impair or arrest the sound growth of a city or town, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use by reason of the presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures; predominance of defective or inadequate sidewalk or street layout; faulty lot layout in relation to size, accessibility, or usefulness; unsanitary or unsafe conditions; deterioration of site or other improvements; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; the existence of conditions that endanger life or property by fire or other cause; or any combination of these factors or conditions; or

(2) be predominantly open and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impair or arrest the sound growth of the city or town; or

(3) be in a federally assisted new community located within a home-rule city or in an area immediately adjacent to the federally assisted new community; or

(4) be located wholly within an area which meets the requirements for federal assistance under Section 119 of the Housing and Community Development Act of 1974.[1]

(b) For the purposes of Subdivision (3) of Subsection (a) of this section, a federally assisted new community is a federally assisted area that received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act[2] and a portion of the federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974.[3]

(c) The governing body of an incorporated city or town may designate, by boundaries, as a reinvestment zone any area within the taxing jurisdiction of the city or town that the governing body finds to satisfy the requirements of Subsection (a) of this section, subject to the limitations set forth by Section 4 of this Act. The governing body of an incorporated city or town shall designate a reinvestment zone eligible for residential property tax abatement, or commercial-industrial tax abatement, or tax incentive financing as provided for in S. B. No. 16, 67th Legislature, 1st Called Session, 1981.[4]

[1] 42 U.S.C.A. § 5318.
[2] 12 U.S.C.A. § 1749aa et seq.
[3] 42 U.S.C.A. § 5307(a)(1).
[4] Article 1066e.

Limitations on the Designation of an Area

Sec. 4. (a) An area of a reinvestment zone for residential tax abatement or commercial-industrial tax abatement may be included in overlapping or coincidental residential and commercial-industrial zones. In that event, the zone in which the property should be considered for the purpose of execution of an agreement under this Act shall be determined by the comprehensive zoning ordinance, if any, of the city or town.

(b) Designation of a zone for residential or commercial-industrial tax abatement expires five years after the date of the designation and may be renewed for periods not to exceed five years. The expiration of the designation does not affect existing agreements under this Act.

(c) Property in a reinvestment zone that is owned or leased by a member of the governing body of the city or town or by a member of a zoning or planning board or commission of the city or town is excluded from property tax abatement or tax increment financing.

(d) In a city or town having a comprehensive zoning ordinance, an improvement, development, or redevelopment taking place pursuant to an agreement under Section 2 of this Act must conform to that comprehensive zoning ordinance.

Hearings, Procedure

Sec. 5. (a) The designation of a reinvestment zone under this Act must be made by an ordinance of the city or town that describes the boundaries of the reinvestment zone and the eligibility of the zone for residential or commercial-industrial tax abatement or for tax increment financing.

(b) An ordinance designating an area as a reinvestment zone may not be adopted until the governing body of the city or town has held a public hearing on the designation and has found that the improvements sought are feasible and practical and would be a benefit to the land to be included in the zone and to the municipality after an agreement entered into in accordance with Section 2 of this Act has expired. At the hearing, interested persons are entitled to speak and present evidence for or against the designation. Notice of the hearing must be published in a newspaper having general circulation in the city or town not later than seven days before the date of the hearing.

(c) To be effective, an agreement made under Section 2 of this Act must be approved by the affirmative vote of a majority of the members of the governing body of the city, town, or taxing unit at a regularly scheduled meeting of the governing body. On approval by the governing body, the agreement may be executed as are other contracts made by the city, town, or taxing unit.

Modification or Termination of Agreement

Sec. 6. (a) An agreement made under Section 2 of this Act may be modified by the parties to the agreement to include other provisions that could have been included in the original agreement or to delete provisions that were not necessary to the original agreement at any time during the period of the agreement by the same procedure by which the original agreement was approved and executed. The original agreement may not be amended to extend beyond 15 years from the date of the original agreement.

(b) An agreement made under Section 2 of the Act may be terminated by the mutual consent of the parties in the same manner that the agreement was approved and executed.

[Acts 1981, 67th Leg., 1st C.S., p. 53, ch. 5, §§ 1 to 6.]

CHAPTER NINE. STREET IMPROVEMENTS

Article
1105b–4. Validation of Assessments and Reassessments for Street, Sewer and Water Improvements.
1105b–5. Validation of Certain Governmental Acts and Proceedings Regarding Pavement Contracts.

Art. 1105b–4. Validation of Assessments and Reassessments for Street, Sewer and Water Improvements

Sec. 1. In this Act, "highway" has the meaning given it in Section 2, Chapter 106, Acts of the 40th Legislature, 1st Called Session, 1927, as amended (Article 1105b, Vernon's Texas Civil Statutes).

Sec. 2. This Act applies to:

(1) the levy of assessments or reassessments against property abutting a highway or portion of one and against the owners of the property for improvements to the highway or portion of it, where the city acted or purported to act under the authority of Chapter 106, Acts of the 40th Legislature, 1st Called Session, 1927, as amended (Article 1105b, Vernon's Texas Civil Statutes);

(2) the levy of assessments or reassessments against benefitted property and the owners of the property for improvements to a sanitary sewer system or water system or both within the limits of the city levying the assessments or reassess-

ments, where the city acted or purported to act under the authority of Chapter 192, Acts of the 58th Legislature, 1963, as amended (Article 1110c, Vernon's Texas Civil Statutes); and

(3) the levy or purported levy of assessments or reassessments as described in Subdivision (1) of this section in conjunction with the levy of assessments or reassessments as described in Subdivision (2) of this section, in a joint proceeding where the city has acted or purported to act under the authority of Section 18, Chapter 192, Acts of the 58th Legislature, 1963 (Article 1110c, Vernon's Texas Civil Statutes).

Sec. 3. Where a city acting through its governing body before the effective date of this Act levied or purported to levy an assessment or reassessment against property and the owners of property as described in Section 2 of this Act, all proceedings of the city relating to the levy or purported levy are validated, ratified, and confirmed as of the time they took place and in accordance with their terms, and the proceedings shall have the full force and effect as is provided under the law under which the city acted or purported to act. The liens created or purported to be created by the levies or purported levies are also validated, ratified, and confirmed, and they shall be effective from and after the respective times provided by the assessment proceedings, except a lien purported to be created against property that at the time was exempt under the Texas Constitution from a lien of special assessment or reassessment for local improvements is not validated, ratified, or confirmed by this Act.

Sec. 4. All assignable certificates of special assessment relating to a proceeding validated by this Act are also validated.

Sec. 5. This Act does not apply to a matter that on the effective date of this Act is involved in litigation in a court of competent jurisdiction instituted for the purpose of attacking the validity of the matter if the litigation is ultimately determined against the validity of the matter.

[Acts 1975, 64th Leg., p. 1306, ch. 490, §§ 1 to 5, eff. Sept. 1, 1975.]

Art. 1105b–5. Validation of Certain Governmental Acts and Proceedings Regarding Paving Contracts

Sec. 1. In any case where an incorporated city or town has contracted on behalf of itself and an independent school district and the county in which the city or town is located for the seal coating of roads or parking areas of the governmental entities by a private contractor, all governmental acts and proceedings and all transactions relating to the contract are validated, notwithstanding the failure of any one or more of the governmental entities to comply with all legal requirements concerning the awarding of the contract.

Sec. 2. This Act does not apply to:

(1) any act, transaction, or proceeding that occurred before September 1, 1975;

(2) any matter that on the effective date of this Act has been declared invalid by a final judgment of a court of competent jurisdiction; or

(3) any matter involved in litigation on the effective date of this Act if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 1820, ch. 729, §§ 1, 2, eff. Aug. 29, 1977.]

CHAPTER TEN. PUBLIC UTILITIES

1. CITY OWNED UTILITIES

Article
1110f. Sewage; Joint Collection, Transportation, Treatment, and Disposal; Public Utility Agencies.

2. ENCUMBERED CITY SYSTEM

1111d. Payment of Principal and Interest.
1113b. Accounts and Records on Other Than Cash Basis.
1118n–12. Refunding Certain Bonds and Other Obligations of Cities, Towns, and Villages.
1118y. Regional Transportation Authorities.

1. CITY OWNED UTILITIES

Art. 1109j. Contracts with Water Districts or Non-profit Corporations for Water, Sewer or Drainage Services

Authorization

Sec. 1. Any city or town, whether operating under the General Law or under its special or home rule charter, is authorized to enter into a contract with a district organized under the authority of Article XVI, Section 59 of the Constitution of Texas or any corporation or corporations organized to be operated without profit, and any such district or corporation is authorized to enter into a contract with any such city or town, under the terms of which such district, corporation or corporations will acquire for the benefit of and convey to the city or town one or more water supply or treatment systems, water distribution systems, sanitary sewer collection or treatment systems or works or improvements necessary for the drainage of lands in the city, either singularly or together, and in connection with such acquisition make such improvements, enlargements and extensions of and additions to the existing facilities of such city or town as may be provided for in such contract.

Payments for Water, Sewer or Drainage Services; Purchase of Systems; Pledge of Revenues

Sec. 2. When any such contract shall provide that the city or town shall become the owner of such water, sewer or drainage system or systems upon completion of construction or at such time as all debt incurred by such district or corporation in the acquisition, construction, improvement or extension of

such system or systems is paid in full, such city or town shall be authorized to make payments to such district or corporation for water, sewer or drainage services to part or all of the inhabitants of such city or town. Such contract may provide for purchase by the city or town of such system or systems by periodic payments to such district or corporation by the city or town in amounts which, together with the net income of the district or corporation, will be sufficient to pay the principal of and interest on the bonds of the district or corporation as they become due. Such contract may provide that any payments under this Section 2 shall be payable from and secured by a pledge of a specified portion of the revenues of the water system, the sewer system or the drainage system or systems of the city or town or may provide for the levying of a tax to make such payments, or may provide for such payments to be made from a combination of such revenues and taxes.

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

[Amended by Acts 1977, 65th Leg., p. 1307, ch. 515, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 1109k. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

Art. 1110f. Sewage; Joint Collection, Transportation, Treatment, and Disposal; Public Utility Agencies

Purpose

Sec. 1. The purpose of this Act is to clarify the authority of public entities that are lawfully authorized to engage in the collection, transportation, treatment, and disposal of sewage, to join together as cotenants or coowners, or by concurrent resolution or ordinance, to create a public utility agency, to engage in the planning, financing, acquiring, constructing, owning, operating, and maintaining of facilities so that each public entity will owe all of the duties, will have and be secure in all of the rights, powers, and liabilities, and shall be entitled to all of the privileges and exemptions attributable to its undivided interest as a cotenant or coowner should the entities elect not to create a public utility agency, as provided by law with respect to an entire interest in facilities planned, financed, acquired, constructed, owned, operated, and maintained by it alone. These alternatives are to serve as a means of achieving economies of scale by providing essential sewage systems to the public and promoting the orderly economic development of the state while providing environmentally sound protection of future wastewater needs of the state and its inhabitants. The provisions of this Act shall be liberally construed to effectuate these purposes but shall not be construed to otherwise enlarge, change, or modify in any way the rights, powers, or authority of any public or private entity under existing law. Nothing in this Act shall be construed to alter, change, abrogate, or otherwise affect the existing contracts in force at the time this Act takes effect.

Definitions

Sec. 2. As used in this Act:

(1) "Public entity" means any county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

(2) "Private entity" means any entity other than a public entity solely involved in financing, constructing, operating, and maintaining sewer facilities.

(3) "Facilities" means facilities necessary or incidental to the collection, transportation, treatment, or disposal of sewage, including plant sites, rights-of-way, and real and personal property and equipment and rights of every kind useful in connection with collection, transportation, treatment, or disposal of sewage.

(4) "Public utility agency" or "agency" means any agency created under this Act by two or more public entities for the purpose of planning, financing, constructing, owning, operating, and maintaining facilities for the purpose of achieving economies of scale in providing sewer services.

Public Utility Agency

Sec. 3. (a) To more readily accomplish the purposes of this Act, two or more public entities, by concurrent ordinances, may create an agency to be known as a public utility agency. The agency shall be without taxing power, and shall be a separate agency, a political subdivision of the state, and body politic and corporate exercising all of the powers that are conferred by Chapter 10, Title 28, Revised Civil Statutes of Texas, 1925, as amended,[1] and this Act on a public entity. No agency is authorized to engage in any utility business other than the collection, transportation, treatment, or disposal of sewage for the participating public entities that are joint owners with the agency of a facility located within the state. A public entity, at the time of the passage of the concurrent ordinance, must be one that has the authority to engage in the collection, transportation, treatment, or disposal of sewage, but the entity may subsequently dispose of its facilities. Before the passage of a concurrent ordinance to create a public utility agency, the governing body of each public entity shall have notice of its intention to adopt the ordinance published in a newspaper of general circulation within the county in which the public entity is domiciled once a week for two consecutive weeks, the date of the first publication to be at least 14 days before the date set for the passage of the concurrent ordinance. The notice shall state

the date, time, and place that the governing body proposes to pass the ordinance and that on the effective date of the concurrent ordinances the public entities adopting them shall have created a public utility agency. If, prior to the day set for the passage of a concurrent ordinance, 10 percent of the qualified electors of the particular public entity present a petition to the governing body requesting that a referendum election be called, the ordinance shall not become effective until a majority of the qualified electors of the entity voting in the election have approved the ordinance. The election shall be called and held in conformity with the Texas Election Code, as amended, Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,[2] and this Act. Except as provided in this Act, a concurrent ordinance shall not be subject to a referendum election.

(b) Public entities that establish a public utility agency may, by concurrent ordinances, provide for the re-creation of the agency by the addition or deletion or both of a public entity so long as there is no impairment of obligation of any existing obligation of the agency.

(c) Concurrent ordinances are ordinances or resolutions adopted by the governing bodies of more than one public entity that contain identical provisions with respect to the creation or re-creation of a public utility agency.

[1] Article 1106 et seq.
[2] Article 701 et seq.

Rights and Powers of Participating Public Entities

Sec. 4. (a) Each participating public entity may use its funds in planning, acquiring, constructing, owning, operating, and maintaining its undivided interest and may share in the facilities and may issue bonds and other securities to raise funds for these purposes in the same manner and to the same extent and subject to the same conditions that would apply if the undivided interest of the public entity were an entire interest in the facilities.

(b) Each participating public entity may acquire for the use and benefit of all participating public entities by purchase or through the exercise of the power of eminent domain, land, easements, and property for the purpose of jointly owned facilities and may transfer or convey the land, easements, and property, or interests in it, or may otherwise have the land, easements, and property, or interests in it, become vested in other participating public entities to the extent and in the manner agreed between those entities. In all cases in which a participating public entity exercises the power of eminent domain conferred by this Act, the public entity shall be controlled by the law governing the condemnation of property by incorporated cities and towns in this state, and the power of eminent domain conferred by this Act shall include the power to take the fee title in land condemned, excluding mineral interests, except that no participating public entity has the right or power to take by the exercise of the power of eminent domain any facilities or interest in any facilities belonging to any other public or private entity.

(c) Each participating public entity is entitled to the same constitutional and statutory exemption from ad valorem taxes and other taxes, including but not limited to excise, sales, and use taxes, attributable to the participating public entity's interest in the ownership of the jointly owned facilities and the purchase, sale, lease, or use of properties or services in connection with the construction, maintenance, repair, or operation of the jointly owned facilities to the extent that the public entity would have been exempt from the tax of its undivided interest were an entire interest in the facilities and in property and services used or acquired in connection therewith. Each exempt public entity shall be entitled to exemption certificates and other certificates and statements as provided by law to evidence or make effective the exemption.

(d) Public entities that create a public utility agency or provide for re-creation by addition or deletion of a public entity shall by concurrent ordinances:

(1) define the boundaries of the agency to include the territory within the jurisdictional limits of the public entities as changed from time to time;

(2) designate the name of the agency;

(3) designate the number of directors that will constitute the board of directors of the agency and their initial term; and

(4) specify the manner in which the directors shall be appointed, provided that each public entity is entitled to appoint at least one director.

(e) Directors shall serve by places, and the concurrent ordinances shall specify the director for each place and his successors that the governing body of the particular public entity may appoint and the method of each appointment. Directors shall serve without compensation but are entitled to $50 a day for each day spent in attending meetings of the board and a like amount per diem when authorized by resolution of the board, plus actual expenses incurred in attending the meetings. An employee, officer, or member of the governing body of a public entity may serve as a director of the agency, but directors, officers, and employees may have no personal interest, other than may exist as an employee, officer, or member of the governing body of a public entity, in any contract executed by the agency.

(f) The agency may make contracts, leases, and agreements with and accept grants and loans from the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities, and political subdivisions, and public or private corporations and persons and may generally perform all acts necessary for the full exercise of the powers vested in the agency. Each agency

may contract with those public entities creating the agency for the collection, transportation, treatment, and disposal of sewage, and the authority to contract for these services shall also extend to private entities under terms and conditions the agency's board of directors may consider appropriate. The agency may sell, lease, convey, or otherwise dispose of any right, interest, or property that is, in its judgment, not needed for the efficient operation and maintenance of its facilities. The responsibility of the management, operation, and control of the properties belonging to the agency shall be vested in the board of directors.

(g) The agency, in contracting with any public or private entity for wastewater collection, transmission, treatment, or disposal services, must charge rates sufficient to produce revenues adequate:

(1) to pay all expenses of operation and maintenance;

(2) to pay all interest and principal due on bonds issued as they become due and payable;

(3) to pay the principal of and interest on any legal debt of the agency;

(4) to pay all sinking and reserve fund payments as they become due and payable; and

(5) to fulfill the terms of any agreements made with the holders of any bonds.

The agency may also establish a reasonable depreciation and emergency fund. Payments made pursuant to contracts with the agencies are to constitute an operating expense of the public or private entity served as a result of the contracts unless otherwise prohibited by a previously outstanding obligation of the purchasing entity.

(h) The State of Texas reserves its power to regulate and control the rates and charges by the agency, but pledges and agrees with the purchasers and successive holders of the obligations issued under this Act that the state will not limit or alter the powers vested in the agency to establish and collect rates and charges that will produce revenues sufficient to pay for those items set forth in Subsection (g) of this section, as well as any other obligations of the agency in connection therewith, until they are fully met and discharged.

(i) To the payment of obligations issued by it, the agency may pledge the revenues of all or part of its facilities, including or not including those facilities later acquired, as the agency may determine, but the expense of operation and maintenance, including salaries, labor, materials, and repairs necessary to render efficient service, of the facilities whose revenues are encumbered and pledged shall be a first lien on and charge against the revenues.

(j) The agency may issue revenue bonds or notes, also referred to as obligations in this Act, from time to time, for the accomplishment of its purposes within the interest rate limitations of Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k–2, Vernon's Texas Civil Statutes).

(k) From the proceeds of the sale of obligations of the agency, the agency may set aside amounts for payments into the interest and sinking fund and reserve funds, and for interest and operating expenses during construction and development, as may be specified in the authorizing proceedings. Bond proceeds may be invested, pending their use for the purpose for which issued, in securities or interest-bearing certificates or in time deposits specified in the authorizing proceedings.

(*l*) Prior to delivery, obligations authorized to be issued under this Act and the records relating to their issuance shall be submitted to the attorney general for examination, and if he finds that they have been issued in accordance with the constitution and this Act and that they will be binding special obligations of the agency issuing them, he shall approve them, and they shall be registered by the state comptroller. After their approval, registration, sale, and delivery to the purchaser, the bonds are incontestable.

(m) Refunding bonds or notes may be issued for the purpose and in the manner provided by general law, including without limitation Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k–3, Vernon's Texas Civil Statutes), as amended.

(n) All obligations issued by an agency pursuant to this Act shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies and shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas, and the obligations shall be lawful and sufficient security for those deposits to the extent of the principal amount of the obligations or their value on the market, whichever is the lesser, when accompanied by all unmatured coupons, if any, appurtenant thereto.

(*o*) The agency may adopt and from time to time amend rules to govern the operation of the agency, its employees, facilities, and service, but contracts for the construction of improvements that involve the expenditure of more than $20,000 shall be awarded by the agency only after notice of intent to receive competitive bids has been published once a week for two consecutive weeks in a newspaper of general circulation within the county in which the agency is domiciled. The date of the first publication shall be at least 14 days before the date set for the receipt of bids.

(p) The bonds or notes shall be signed by the presiding officer or the assistant presiding officer of

the agency, shall be attested by its secretary, and shall bear the seal of the agency. The signatures may be printed or lithographed on the bonds and notes if authorized by the agency, and the seal may be impressed on the bonds or notes or may be printed or lithographed on the bonds or notes. The agency may adopt or use for any purpose the signature of any person who has been an officer, notwithstanding the fact that he may have ceased to be an officer at the time that bonds or notes are delivered to a purchaser or purchasers. The bonds or notes shall mature serially or otherwise in not to exceed 40 years from their respective dates of issuance and may be sold, within interest rate limitations provided in this Act, at a public or private sale at a price or under terms determined by the agency to be the most advantageous reasonably obtainable, within the discretion of the agency. The bonds may be made callable prior to maturity at times and prices approved by the agency and may be in coupon form with or without provisions for registration as to principal or may be registrable as to both principal and interest.

(q) Bonds and notes issued under the provisions of this Act and coupons, if any, representing interest on bonds and notes shall, when delivered, be deemed and construed to be a security within the meaning of Chapter 8, Investment Securities, Uniform Commercial Code.

(r) The provisions of this section do not limit the general scope and application of Section 3 of this Act.

Interpretation and Construction of Act

Sec. 5. (a) This Act shall be liberally construed to carry out its purposes and shall be the full and complete authority for the creation and operation of public utility agencies and the performance of the public duties imposed on them. Insofar as this Act is inconsistent with any other laws, including Chapter 10, Title 28, Revised Civil Statutes of Texas, 1925, as amended, or other laws regulating the affairs of municipal corporations, or with any home-rule charter provisions, this Act shall control.

(b) This Act shall be liberally construed to effectuate its purposes, but nothing in this Act shall have the effect of or be construed as altering, amending, or repealing the statutory purposes provided by any statute enacted by the Texas Legislature pertaining to the creation, establishment, or operation or regulation under the Water Code, as amended, or other applicable law, of a public entity that may become a coowner of a public utility agency under the provisions of this Act.

[Acts 1979, 66th Leg., p. 411, ch. 190, §§ 1 to 5, eff. Aug. 27, 1979.]

2. ENCUMBERED CITY SYSTEM

Art. 1111d. Payment of Principal and Interest

Sec. 1. An incorporated city with a population of 75,000 or more according to the last preceding federal census, in issuing revenue bonds under Articles 1111 through 1118 of this chapter, as part of the cost of constructing new electric utility plan facilities may set aside and use a portion of the proceeds from the sale of the bonds, to the extent provided in the ordinance authorizing their issuance:

1. to pay interest on bonds, the proceeds of which are for the construction of the facilities, to the first interest payment date following the date the new electric utility facilities are estimated to become operational; and

2. to establish or supplement a reserve fund created for the benefit of the holders of the bonds.

Sec. 2. Bond proceeds, interest and sinking funds, and reserve funds, pending their use for their intended purposes, may be invested in any securities, interest-bearing certificates, or time deposits as are specified in the proceedings authorizing the issuance of the bonds.

Sec. 3. This article is full authority for the exercise of the powers granted. It controls over any other state law or any provision of a city charter.

[Added by Acts 1977, 65th Leg., p. 1273, ch. 495, § 1, eff. Aug. 29, 1977.]

Art. 1112. Vote, etc.

Sec. 1. Except as provided in Section 2 of this article, no such light, water, sewer or natural gas systems, parks and/or swimming pools, shall be sold without authorization by a majority vote of the qualified voters of such city or town; nor shall same be encumbered for more than Ten Thousand Dollars ($10,000) unless authorized in like manner, except for money for acquisitions, extensions, construction, improvement, or repair of such systems and facilities, or to refund any existing indebtedness lawfully created for such purposes. Such vote to sell or encumber such systems or facilities shall be ascertained at an election, which shall be held in accordance with the laws applicable to the issuance of municipal bonds by such cities and towns. The encumbrances authorized herein shall be applicable only to bonds payable from revenues derived from said system.

Sec. 2. A city with a population of more than 1,200,000, according to the last preceding federal census, may sell an unencumbered natural gas system owned by it without an election as required by Section 1 of this article.

[Amended by Acts 1977, 65th Leg., p. 1910, ch. 762, § 1, eff. Aug. 29, 1977.]

Art. 1113b. Accounts and Records on Other Than Cash Basis

In lieu of keeping its accounts and records on facilities under this chapter on a cash basis, a municipality may keep such accounts and records or any other accounts and records of the municipality on another basis, in all instances, however, to the extent

the same is permitted or required under generally accepted accounting principles for governmental entities. In no event shall a change in accounting methods affect a change in any then existing contractual covenant with respect to the power to issue additional obligations payable from such facilities. [Added by Acts 1981, 67th Leg., p. 119, ch. 57, § 1, eff. Aug. 31, 1981.]

Art. 1118a. Mortgage of Gas, Water, Light or Sewer Systems by Cities and Towns

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

Sec. 2. (a) Except as provided in Subsection (b) of this section, no such system or systems shall ever be sold until such sale is authorized by a majority vote of the qualified voters of such city; nor shall same be encumbered for more than Five Thousand ($5,000.00) Dollars except for purchase money or to refund any existing indebtedness or for repair or reconstruction, unless authorized in like manner. Such vote where required shall be ascertained at an election of which notice shall be given in like manner as and which shall be held in like manner as in the cases of the issuance of municipal bonds by such city.

(b) A city with a population of more than 1,200,000, according to the last preceding federal census, may sell an unencumbered natural gas system owned by it without an election as required by Subsection (a) of this section.

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

[Amended by Acts 1977, 65th Leg., p. 1911, ch. 762, § 2, eff. Aug. 29, 1977.]

Art. 1118n-11. Refunding Certain Outstanding Interest Bearing Obligations

Issuer Defined

Sec. 1. The term "issuer," as used in this Act shall mean and include any city in the State of Texas which owns the water, sewer and electric utility systems serving such city and which operates all such utilities as a combined system and has issued and has outstanding revenue bonds payable from the revenues of such combined system.

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

Bonds Payable from Water, Sewer, and Electric Utility Revenues

Sec. 2A. (a) This section applies only to refunding bonds payable solely from the net revenues of the issuer's combined water, sewer, and electric utility systems.

(b) The requirements of Section 2 of this Act that the obligations to be refunded must have stated maturity dates or be callable prior to maturity not more than 10 years from the date of delivery of the refunding bonds and that the refunding must enable the issuer to issue additional obligations it could not otherwise have issued do not apply to the issuance of refunding bonds covered by this section.

(c) The requirement in Section 4 of this Act that the refunding bonds be sold for not less than par value is not applicable to refunding bonds covered by this section.

(d) As to refunding bonds covered by this section, if obligations to be refunded are not callable at the time of refunding but will be subject to redemption before maturity, the issuer may provide in the refunding proceedings for redeeming those obligations before maturity, and if it does so, the issuer need deposit with the State Treasurer under this Act no more than is necessary to provide for payment of the principal and interest on those obligations as they are redeemed.

[Amended by Acts 1977, 65th Leg., p. 1284, ch. 504, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1707, ch. 703, § 1, eff. June 13, 1979.]

The 1977 Act provides in § 2 as follows:

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

Art. 1118n-12. Refunding Certain Bonds and Other Obligations of Cities, Towns, and Villages

Definitions

Sec. 1. (a) The term "Issuer," as used in this Act, shall mean each city, town, and village in the state which at any time has outstanding bonds or other obligations which are secured solely by a pledge of the net revenues of, or by a pledge of the net revenues of and a mortgage on, its electric light and power system or its electric light and power system and gas system.

(b) The term "Board," as used in this Act, shall mean the city council, city commission, board of commissioners, board of aldermen, or other group which is the governing body of an issuer.

Authority to Issue Refunding Bonds; Security; New Bonds; Maturity; Negotiability; Conversion; Election not Required

Sec. 2. The board of any issuer is authorized to issue refunding bonds to refund all or any part of any outstanding bonds or other interest bearing obligations secured solely by a pledge of the net revenues of, or by a pledge of the net revenues of and a mortgage on, the issuer's electric light and power system or its electric light and power system and gas system, and any interest coupons appertaining thereto. One or more outstanding issues and any part of one or more outstanding issues of bonds or other interest bearing obligations, and any interest coupons appertaining thereto, may be refunded under this Act; provided that when part of one or more of these issues is being refunded, the board must demonstrate to the satisfaction of the attorney general, prior to his approval of the bonds as required in this Act, that adequate pledged resources are estimated to be available, based on then current conditions, to provide for the payment, when due, of the unrefunded part of the issue or issues. The

refunding bonds, and the interest and redemption premium, if any, may be secured by first or subordinate liens on and pledges of, and made payable from, the same source as the obligations being refunded and may be secured by first or subordinate liens on, and pledges of, and made payable from, any other revenues, income, or property, and other, different, or additional source or resources, of the board or the issuer, or any combination of those sources or resources, except any taxes, all within the sole discretion of and in the manner provided by the board; and the refunding bonds additionally may be secured by mortgages, deeds of trust, trust indentures, trust agreements, or other instruments evidencing liens on any real, personal, or mixed property; and the refunding bonds may be issued in combination with new bonds, and with provision for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under the terms or conditions and with the security, set forth in the proceedings authorizing the issuance of the refunding bonds, all as determined within the discretion of the board; provided, however, that no bonds shall be issued contrary to the provisions of the Texas Constitution. If and when the board desires to issue refunding bonds in combination with new bonds for any purpose or purposes for which the issuer is then authorized by any law or home rule charter provision to issue revenue bonds or other interest bearing obligations, the new bonds may be issued for any purpose or purposes under the provisions of, and be secured and payable as provided in, this Act, and the provisions of this Act shall be fully applicable thereto without regard to any other requirements, in the manner provided by the board in the proceedings authorizing the bonds. All bonds issued under the provisions of this Act may be issued to mature serially or otherwise in not to exceed 50 years from their date, and may be issued to bear interest at any rate or rates, all within the discretion of the board. The bonds and any interest coupons appurtenant thereto, are negotiable instruments within the meaning of the Uniform Commercial Code, except that the bonds and the interest thereon may be made payable to a named payee or made registrable as to principal alone or as to both principal and interest, and may be payable at any place or places, and may be made redeemable prior to maturity, may provide for capitalized interest during construction and thereafter, capitalized operating and maintenance expenses, and capitalized reserve and contingency funds, and may be issued in the form, denominations, and manner, and under the terms, conditions, and details, and may be executed, as provided by the board in the proceedings authorizing the issuance of the bonds. The board may provide and covenant for the conversion of any form of bond into any other form or forms of bond, and for reconversion of bonds into any other form. The board may provide procedures for the replacement of lost, stolen, destroyed, or mutilated bonds or interest coupons in the manner prescribed by the board in the proceedings authorizing the issuance of the bonds. If the duty of replacement, conversion, or reconversion of bonds is imposed upon a corporate trustee under a trust agreement or trust indenture, or upon a place of payment (paying agent) for the bonds, the replacement, converted, or reconverted bond need not be re-approved by the attorney general or reregistered by the comptroller of public accounts as provided in Section 3 of this Act. Otherwise, all replacement, converted, or reconverted bonds must be so approved and registered as provided in Section 3 of this Act, in accordance with the procedures established in the proceedings authorizing the issuance of the bonds. All bonds issued under the provisions of this Act may be issued without any election or referendum in connection with their issuance or the creation of any encumbrance in connection with their issuance.

Approval by Attorney General; Registration; Incontestability

Sec. 3. All bonds permitted to be issued under the provisions of this Act, and the appropriate and applicable proceedings authorizing the issuance, shall be submitted to the attorney general for examination. If he finds that the bonds have been authorized in accordance with this Act, he shall approve them, and then they shall be registered by the comptroller of public accounts; and after the approval and registration, the bonds shall be incontestable in any court, or other forum, for any reason, and shall be valid and binding obligations in accordance with their terms for all purposes.

Bonds as Legal and Authorized Investments

Sec. 4. All bonds issued under the provisions of this Act are investment securities governed by Chapter 8, Uniform Commercial Code, and are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the sinking funds of cities, towns, villages, school districts, and other political subdivisions or public agencies of the state. The bonds also are eligible to secure deposits of any public funds of the state or any political subdivision or public agency of the state, and are lawful and sufficient security for the deposits to the extent of their market value, when accompanied by any unmatured coupons attached to the bonds.

Exchanges

Sec. 5. The refunding bonds authorized by this Act may be issued in exchange for, and upon surrender and cancellation of, any obligations being refunded, and in that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the obligations being refunded, in accordance with the provisions of the proceedings authorizing the refunding bonds, and any exchange may be made in one or in several installment deliveries. However, instead of issuing the refunding bonds to be exchanged for any obligations being refunded, the board shall be authorized, in its discretion, to issue refunding bonds to be sold

for cash in principal amounts necessary to provide all or any part of the money required to pay the principal of and interest on any obligations being refunded, as they mature and come due, and to provide all or any part of the money required to redeem any obligations being refunded, prior to maturity, on any future date or dates upon which the obligations have been called for such redemption, within the discretion of the board, including principal, any required redemption premium, and the interest to accrue on the obligations to the redemption date or dates, together with an amount sufficient to pay all expenses related to the issuance of the bonds and the expenses of paying the obligations being refunded under this Act; and also to provide any amounts deemed necessary or required by the board to fund or provide for deposits into any debt service reserve funds, interest and sinking funds, or other funds created in the proceedings authorizing the bonds, and to provide amounts to pay interest on all bonds issued under the provisions of this Act for the period prescribed by the board, and to provide any other amounts deemed required by the board. All bonds issued under the provisions of this Act, excepting any exchange refunding bonds, may be sold for cash in the manner, under the procedures, at public or private sale, and at the price or prices, as shall be determined solely within the discretion of the board. If any of the obligations being refunded through the sale of refunding bonds under this Act are subject to redemption prior to maturity, they may, at the option and within the discretion of the board, be called for redemption on any future date or dates upon which they are redeemable, within the discretion of the board, and the proceedings pertaining to the call shall be submitted to the attorney general along with the proceedings authorizing the issuance of the refunding bonds. When the board has authorized any of the refunding bonds and any new bonds in combination with the refunding bonds to be sold for cash under the provisions of this Act, the refunding bonds and any new bonds in combination with the refunding bonds shall be registered by the comptroller of public accounts after they are approved by the attorney general, without any surrender, exchange, or cancellation of any obligations being refunded.

Deposit of Proceeds with State Treasurer; Duties

Sec. 6. When any refunding bonds issued under the provisions of this Act are sold and delivered to the purchaser, the board immediately shall have deposited with the state treasurer, from the proceeds of the sale, and any other funds available for that purpose, the amount which will be required to pay the principal of and interest on the obligations being refunded as they mature and come due, and the amount which will be required to redeem prior to maturity any obligations being refunded, on the date or dates upon which these obligations have been called for redemption, including principal, any required redemption premium, and the interest to accrue on those obligations to the redemption date or dates, together with an additional amount to pay the state treasurer for his services and to reimburse him for his expenses in performing his duties under this Act, equal to one-twentieth of one percent of the principal or par amount of the obligations being refunded, and one-eighth of one percent of the interest to accrue thereon, but not to exceed a total of $1,000 in connection with each issue of refunding bonds issued under this Act, plus an additional amount of money sufficient to pay the service charges of the place or places of payment of the obligations for paying and redeeming them. The state treasurer may rely on a certificate or other instrument or document which shall be filed with him by the issuer showing clearly the date or dates upon which the principal matures and interest comes due on the obligations being refunded, and the amounts thereof, and the date or dates, if any, on which the obligations have been called for redemption prior to maturity, together with the redemption price, and the place or places of payment of the obligations being refunded, and the charges to be made by the place or places of payment for paying and redeeming the obligations. It shall be the duty of the state treasurer to make the appropriate required part of the deposits available at the place or places of payment, in current and immediately available funds, on or before, but not later than, each maturity date, due date, or redemption date, respectively, of the obligations being refunded, in order to pay the required amounts on each date, plus the service charges of the place or places of payment.

Investment of Proceeds

Sec. 7. It is provided, however, that instead of depositing money with the state treasurer as required by Section 6 of this Act, except for the money to be paid to him for his services and expenses, which in all events shall be deposited in cash, the board may, at its option, unless the board determines, in its sole discretion, that money is required to be deposited, immediately invest all or any part of the proceeds from the sale of the refunding bonds, and any other necessary available funds, in direct obligations of the United States of America, or in obligations the payment of the principal of and interest on which are unconditionally guaranteed by the United States of America, or in obligations which, in the opinion of the Attorney General of the United States of America, are general obligations of the United States of America and backed by its full faith and credit, which investments will mature, and bear interest payable, at such times and in such amounts as will provide, without any reinvestment, not less than the amount of money, in addition to any money initially deposited for that purpose, required for the payment of the principal of and interest on the obligations being refunded, as they mature and come due, and for the payment of the redemption price of any obligations being refunded and redeemed prior to maturity, on the date or dates

on which the obligations being refunded have been called for redemption, including principal, any required redemption premium, and the interest to accrue on the obligations to the redemption date or dates, together with the additional amount required to pay the service charges of the place or places of payment of the obligations for paying and redeeming them. The board shall deposit all of the investments immediately with the state treasurer. In calculating the amount of the investments required to be so deposited, the issuer and the state treasurer shall rely on receiving both the principal and interest, if any, scheduled to mature and accrue or come due on the investments, to the extent that the principal and interest are scheduled to mature and accrue or come due prior to the date or dates of the maturities, due dates, or redemption date or dates, respectively, of the obligations being refunded; and the amount which otherwise would be required to be deposited, if no interest or increase were scheduled to accrue or come due, may, at the option of the board, be reduced accordingly. It shall be the duty of the state treasurer to accept the deposits of investments and to collect promptly, when due and payable, all principal of and interest on the investments, but he shall not reinvest them. It is further provided that the aforesaid investments shall be made in a manner that the proceeds from them, without any reinvestment, will be available for deposit, and shall be deposited, by the state treasurer, in the place or places of payment, in current and immediately available funds, in the required amounts, on or before, and not later than, each maturity date, due date, or redemption date, respectively, of the obligations being refunded.

Duties of Treasurer as to Handling and Safekeeping of Proceeds

Sec. 8. It shall be the duty of the state treasurer, ex officio, in his official capacity of public office, to accept and keep safely all deposits of money and investments made under this Act, and all proceeds from said investments; but no part of such deposits of money and investments, or proceeds therefrom, excepting the amount paid to him for his services and expenses, shall constitute a part of the state treasury, or be used by or for the state or for the benefit of any creditor of the state, and shall not be commingled with the general revenue fund of the state or any other special funds or accounts held by the state treasurer. The state treasurer shall keep and maintain each such deposit of money and investments, and proceeds from them, excepting the amount paid to him for his services and expenses, separate and apart from all other deposits, money, funds, accounts, and investments, and each such deposit of money and investments, and proceeds from them, shall be kept and held in escrow and in trust by the state treasurer, for and on behalf of, and charged with an irrevocable first lien and pledge in favor of, the holders of the obligations to be paid the deposits, and the deposits of money and investments, and proceeds from them, shall be used only for the purposes provided in this Act. Each deposit of money and investments, and proceeds from them shall be public funds, and legal title shall be in the state treasurer, in his official capacity as trustee, until paid out as provided in this Act, but equitable title shall be in the issuer, until paid out. The writ of mandamus and all other legal and equitable remedies shall be available to any bondholder, the issuer, or any other party at interest to require the state treasurer to perform his functions and duties under this Act. The surety bond or bonds given by the state treasurer in connection with the proper performance of his duties of office, excepting any special bonds given to protect funds of the United States shall protect and be construed as protecting all the deposits of money and investments, and proceeds from them. The state treasurer shall not in any way invest or reinvest any money deposited with him or received by him from investments deposited with him under this Act. In the event that any surplus funds should be on hand with the state treasurer in connection with any deposit of money or investments, or proceeds from them, the surplus shall be returned to the issuer.

Place of Payment

Sec. 9. If there is more than one place of payment for any obligations being refunded under this Act, the state treasurer shall make all deposits required under this Act at the place of payment located in the state, if there is one, or if there is more than one place of payment located in the state, or if no place of payment is located in the state, then at the one of the places of payment having the largest capital and surplus. It shall be the statutory duty of the place of payment, and the state treasurer shall instruct it, to make the appropriate financial arrangements so that the necessary required current funds will be available, to the extent necessary, at the other places of payment, to pay or redeem the obligations when due; provided that this section shall not apply in the event the board proceeds under Section 10 of this Act.

Alternative Place of Deposit

Sec. 10. It is further provided, however, that in the alternative to making the deposit of money or investments with the state treasurer in connection with refunding bonds issued and sold under this Act, and notwithstanding any provisions of this Act to the contrary, the board shall have the option of making the deposit of money or investments with any place of payment (paying agent), wherever located, for the obligations being refunded, or, at the option of the board, with any trustee under any trust indenture, trust agreement, deed of trust, or other instrument, securing the obligations being refunded. In that case the place of payment or trustee shall, to the extent practicable, substantially perform the applicable and pertinent functions and duties provided in this Act for the state treasurer, to the extent appropriate and practical, and the place

of payment or trustee shall be substituted for the state treasurer under this Act to the extent appropriate and practical, except as otherwise provided by this section. Such deposits of money and investments shall be held for safekeeping, in escrow, in trust for, and charged with an irrevocable first lien and pledge in favor of, and for the benefit of, the holders of the obligations being refunded, and the issuer and the place of payment or trustee, may execute an appropriate trust or escrow agreement on the terms and conditions, and for the consideration agreeable to the parties to the agreement. The agreement may provide that any deposits of money may be invested in direct obligations of the United States of America, or obligations the payment of principal of and interest on which are unconditionally guaranteed by the United States of America, or obligations which, in the opinion of the Attorney General of the United States of America, are general obligations of the United States of America and backed by its full faith and credit, or may be placed in interest bearing time deposits secured at all times by an equal amount in market value of any of the federal obligations named above. The agreement further shall provide for deposits with the place or places of payment (paying agent or agents) to pay or redeem the obligations being refunded when due, and may provide that at any time the amount of money and investments held in escrow exceeds the amount required for purposes of this Act, the excess shall be transferred and delivered to the issuer, or as directed by the board, to be used for any lawful purpose, including the payment of revenue bonds issued pursuant to this Act or otherwise, all at the option of the board.

Rights of Holders of Obligations

Sec. 11. The holder or holders of any obligations being refunded by any refunding bonds sold pursuant to this Act shall never have the right to demand or receive payment of them prior to the scheduled date or dates of the maturities, due dates, or redemption date or dates, respectively, of the obligations being refunded, and the holder or holders shall not be paid for them prior to the date or dates, unless the board specifically and affirmatively provided for and authorized the earlier payment of the obligations in the proceedings authorizing the refunding bonds.

Discharge and Final Payment or Redemption of Obligations; Subordination to Refunded Obligations

Sec. 12. When the initial deposit of money or investments is made with the state treasurer or with a place of payment (paying agent) or trustee in accordance with this Act for any obligations being refunded under this Act, the deposit shall constitute the making of firm banking and financial arrangements for the discharge and final payment or redemption of the obligations being refunded, and although the obligations being refunded continue to be obligations of the issuer, automatically they become obligations of the issuer secured solely by and payable solely from the deposit and the proceeds from them; and on making the deposit, all previous encumbrances, including all liens, pledges, mortgages, deeds of trust, trust indentures, or trust agreements, existing in connection with the obligations being refunded, whether in connection with revenues, real, personal, and mixed property, or any other source of security or payment, automatically terminate and are finally discharged and released, as a matter of law, and the encumbrances shall be of no further force or effect; and although the obligations being refunded will remain outstanding, they shall be regarded as being outstanding only for the purpose of receiving the funds provided by the issuer for their payment or redemption under this Act, and they shall not be regarded as being outstanding in ascertaining the power of the issuer to issue bonds, or in calculating any limitations in connection therewith, or for any other purpose. It is further provided, however, notwithstanding the foregoing provisions of this section, that the board may, in the alternative to the foregoing provisions of this section, provide in the proceedings authorizing the issuance of the refunding bonds that the refunding bonds are subordinate to the obligations being refunded, but only in the manner and to the extent provided in the authorizing proceedings; and, except for any specific provisions to the contrary in the authorizing proceedings, the foregoing provisions of this section are fully applicable.

Cumulative and Prevailing Effects of Act; Use of Other Laws

Sec. 13. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized hereby, without reference to any other laws, or home rule charter provisions, or any restrictions or limitations contained therein; and to the extent of any conflict or inconsistency between any provision of this Act and any provision of any other law, including any law passed at the current session of the legislature, or any home rule charter provision, the provisions of this Act shall prevail and control; provided, however, that the board shall have the right to use the provisions of any other laws or home rule charter provisions not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act. This Act shall be liberally construed so as to permit the accomplishment of the purposes of this Act.

[Acts 1977, 65th Leg., p. 1632, ch. 642, §§ 1 to 13, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 120, ch. 58, §§ 1, 2, eff. Aug. 31, 1981.]

Art. 1118w. Mass Transportation Systems; Power to Own, Acquire, Construct, Operate, Etc.; Federal Grants and Loans; Revenue Bonds

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

Management; Lease of System

Sec. 11. During the time any such system is encumbered either as to its revenues or as to both its

physical properties and revenues, or whether or not such system is encumbered during any period established by ordinance of the governing body of such city, the management and control of such system may by the terms of the instrument evidencing such encumbrance or by the terms of such ordinance, be placed with the governing body of such city, or may be placed with a board of trustees to be named in such instrument or such ordinance, consisting of not less than three (3) nor more than nine (9) members, one (1) of whom shall be the mayor of such city. The compensation of such trustees shall be fixed by such instrument or such ordinance, but shall never exceed two per cent (2%) of the gross receipts of such system in any one (1) year. The terms of office of such board of trustees, their powers and duties, the manner of exercising same, the election of their successors, and all matters pertaining to their organization and duties may be specified in such instrument or such ordinance. In all matters where such instrument or such ordinance is silent, the laws and rules controlling the governing body, of such city shall govern said board of trustees so far as applicable. The governing body of any such city or any board of trustees in whose management and control any such system may be placed, with the approval of the governing body of such city, evidenced by adoption of a resolution, in lieu of operating any such system, shall have power and authority to enter into any lease or other contractual arrangement for the operation of same by any privately owned and operated corporation in consideration of such rentals either guaranteed or contingent, based on revenues or gross profits or net profits, or any other basis of compensation, which may be determined to be reasonable by such governing body or such board as the case may be; providing however, that any such lease or contractual arrangement between such city and private corporation, shall be preceded by a public notice and request for the submission of bids in the manner required by law for the taking of bids for public construction contracts, and said city shall accept the best bid submitted, taking into consideration the rental to be paid, the experience and financial responsibility of the corporations submitting such bids.

[Amended by Acts 1975, 64th Leg., p. 1187, ch. 445, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 803, ch. 298, § 1, eff. May 28, 1977; Acts 1979, 66th Leg., p. 198, ch. 108, § 1, eff. May 9, 1979.]

Art. 1118x. Metropolitan Rapid Transit Authorities

Findings

Sec. 1. The legislature finds that:

(a) A dominant part of the state's population is located in its rapidly expanding metropolitan areas which generally cross the boundary lines of local jurisdictions and often extend into two or more counties;

(b) The concentration of population in such areas is accompanied by a corresponding concentration of motor vehicles which are generally powered by internal combustion engines that emit pollutants into the air, which emissions result in increasing dangers to the public health and welfare, including damage to and deterioration of property as well as harm to persons, and hazards to air and ground transportation;

(c) Such concentration of motor vehicles places an undue burden on existing streets, freeways and other traffic ways, resulting in serious vehicular traffic congestion that retards mobility of persons and property and adversely affects the health and welfare of the citizens and the economic life of the areas;

(d) The proliferation of the use of motor vehicles for passenger transportation in such areas is caused in substantial part by the absence or inefficiency and high cost of mass transit services available to the citizens of such areas, and it is in the public interest to encourage and provide for efficient and economical local mass rapid transit systems in such areas for the benefit and convenience of the people and for the purpose of improving the quality of the ambient air therein and reducing vehicular traffic congestion; and

(e) The inalienable right of all natural persons to use the air for natural purposes does not vest in any person the right to pollute the air by artificial means, but such artificial use is subject to regulation and control by the state.

Definitions

Sec. 2. The following words and terms, wherever used and referred to in this Act, have the following respective meanings, unless a different meaning clearly appears from the context:

(a) "Metropolitan area" means any area within the State of Texas having a population density of not less than 250 persons per square mile and containing not less than 51 percent of the incorporated territory comprising a city having a population of at least 325,000 inhabitants according to the last preceding or any future federal census, and in which there may be situated other incorporated cities, towns and villages and the suburban areas and environs thereof; provided, however, that bicounty metropolitan areas as subsequently defined herein, are not included or in any way affected by this Act.

[See Compact Edition, Volume 3 for text of 2(b) to 2(g)]

Creation of Rapid Transit Authority

Sec. 3. (a) The governing body of a principal city in a metropolitan area may, on its own motion, shall, as provided in Subsection (b) of this section, and shall, upon being presented with a petition so requesting signed by not less than 5,000 qualified voters residing within such metropolitan area, insti-

tute proceedings to create a rapid transit authority in the manner prescribed in this section.

(b) Such governing body shall by ordinance or resolution fix a time before December 31, 1985, and a place for holding a public hearing on the question of creating an authority. The governing body also shall by ordinance or resolution, after receipt of a petition as provided in Subsection (a) of this section, and may, on its own motion, fix a time and place for holding a public hearing on a proposal to create an authority. The ordinance or resolution shall define the boundaries of the area proposed to be included in such authority. The initial territory included in an authority shall be all the territory included in the county in which the major portion of the principal city is situated, plus any additional territory that is an adjacent county and is included in the ordinance or resolution.

(c) Notice of the time and place of such public hearing, including a description of the area proposed to be included in such authority, shall be published once a week for two consecutive weeks in a newspaper of general circulation in such metropolitan area, the first publication to be not less than 15 days prior to the date fixed for such hearing. The governing body of any principal city shall furnish to the Texas Mass Transportation Commission or any successor thereof, a copy of the notice described herein.

(d) The governing body of the principal city shall conduct said hearing at the time and place specified in such notice, and may continue such hearing from day to day and from time to time until completed. Any interested person may appear and offer evidence for or against the creation of the proposed authority, and may present evidence as to whether or not the creation of such proposed authority and the construction and operation of a mass transit system in such metropolitan area

(1) would be of benefit to persons and property situated within the boundaries of the proposed authority,

(2) would be of public utility, and

(3) would be in the public interest, as well as any other facts bearing upon the creation of such an authority and the construction and operation of such system.

(e) If, after hearing the evidence adduced at such hearing, the governing body of the principal city finds that the creation of such an authority, and the operation of such a system, would be of benefit to persons and property situated within the boundaries of the proposed authority, would be of public utility, and would be in the public interest, such governing body shall adopt an ordinance creating the authority and prescribing the territory to be included, but the actual territory included in the authority is subject to the results of the election provided for in this Act. The authority shall bear a name to be designated in the ordinance creating the authority and when so created and confirmed at an election held for that purpose, shall have and may exercise the powers authorized by this Act.

(f) After such hearing by the governing body of the principal city, it shall submit the proposed plan to the governor's interagency transportation council for their review and comment.

Transit Authority Board

Sec. 4. (a)(1) Until such time as the composition of the board is changed in accordance with other provisions of this Act, the management, control, and operation of an authority and its properties shall be vested in a board composed of five members, who shall be appointed by the governing body of the principal city and shall serve for a term of two years.

(2) In metropolitan areas where the principal city's population exceeds 1,200,000 according to the last preceding federal census or any federal census hereafter, the management, control, and operation of an authority and its properties shall be vested in a board composed of seven members, five of whom shall be appointed by the mayor of the principal city subject to confirmation by the governing body of the principal city, one of whom shall be appointed by the commissioners court of the county of the principal city, and one of whom shall be appointed jointly by the mayors of all incorporated municipalities within the county of the principal city except the principal city. Each member shall serve a term of two years. Upon confirmation, the board's composition shall remain the same except to the extent that it conflicts with the requirements of Section 6B of this Act. Until a confirmation and tax election are held, the principal city shall fund the board for purposes of research and planning.

(b) All vacancies on the board, whether by death or resignation shall be filled for the remainder of the term in the manner provided for the original appointment. On expiration of the terms of office of the members of the board, all or any may be reappointed or another person may be appointed to replace a member for the succeeding term.

(c) Each member of the board shall be reimbursed for his necessary and reasonable expenses incurred in the discharge of his duties. Each member of a board in a metropolitan area in which the principal city's population exceeds 600,000, according to the most recent federal census, is entitled to $50 for each meeting of the board attended, not to exceed five meetings in a calendar month. The principal city shall pay, from taxes or other funds, the sums provided by this subsection for attendance at meetings held before the authority has received any revenues, and shall reimburse members for necessary and reasonable expenses incurred by the members or the board prior to receipt of revenues by the authority, but the authority, after receiving revenues, shall reimburse the principal city for all payments and reimbursements made as provided in this subsection.

(d) The members of the board, who shall be resident citizens and qualified voters of the authority, shall elect from among their number a chairman, a vice-chairman and a secretary, except that if the board is constituted in the manner provided in Subsection (c) of Section 6B of this Act, the chairman shall be selected as specified in that subsection. The board may appoint such assistant secretaries, either members or nonmembers of the board, as it deems necessary. The secretary and assistant secretaries shall, in addition to keeping the permanent records of all proceedings and transactions of the authority, perform such other duties as may be assigned to them by the board. No member of the board or officer of the authority shall be pecuniarily interested or benefitted, directly or indirectly, in any contract or agreement to which the authority is a party.

(e)(1) Any member of the board may be removed from office by a majority vote of the remaining members of the board for inefficiency, neglect of duty or malfeasance in office; provided, however, that the board shall furnish to such member a statement in writing of the nature of the charges as grounds for such removal, and the member, before the 11th day after receipt of the statement may request a hearing before the board and opportunity to be heard in person or through counsel. After any such hearing, if the board by a majority vote finds that the charges are true, it shall confirm its decision to remove the member.

(2) In addition to the method of removal of board members provided by Subsection (e)(1) of this section, board members of an authority whose principal city has a population of more than 1,200,000, according to the most recent federal census, are subject to removal by the recall procedure provided by subsection (e)(2).

(i) The qualified voters of the authority by petition may require that an election be held to determine whether a member of the board is to be removed from office. A petition is valid if it states that it is intended to require an election in the authority on the question of removing an identified board member, if it is signed by qualified voters equal in number to at least 10 percent of the number of registered voters of the authority according to the most recent official list of registered voters, if the signatures are collected within a period of 90 days prior to the date on which the petition is presented to the board, and if it is submitted to the board before the first day of the final six months of the term of the member whose removal is sought.

(ii) After receiving a petition, the board shall submit it to the secretary of state, who, not later than the 10th day after the day he or she receives the petition, shall determine whether or not the petition is valid and shall notify the board of the finding. If the secretary of state fails to act within the time allowed, the petition is treated as if it had been found valid.

(iii) If the board receives notice from the secretary of state that the petition is valid or if the secretary of state has failed to act within the time allowed, the board shall order that an election be held in the authority on a date not fewer than 25 nor more than 35 days after the last day on which the petition could have been approved or disapproved. A state law requiring local elections to be held on a specified date does not apply to the election unless a specified date falls within the time permitted by this section. At the election, the ballots shall be prepared to permit voting for or against the proposition: "The removal of (name of officer) from the rapid transit authority board by recall."

(iv) If a majority of the qualified voters voting on the question in the election favor the proposition, the member is removed, and the office immediately becomes vacant. The appointing authority that appointed the member removed by recall shall fill the vacancy not later than the 30th day after the day of removal.

(v) A member removed by recall is not eligible for reappointment to fill the vacancy and is not eligible for appointment to any other position on the board for a length of time after the day of removal equal to the length of a normal term of a member of the board.

(f) The board shall hold at least one regular meeting during each month for the purpose of transacting the business of the authority. Upon written notice, the chairman or the general manager may call special meetings as may be necessary. The board, when organized, shall by resolution spread upon the minutes, set the time, place and day of the regular meetings, and shall likewise adopt rules and regulations and such bylaws as it may deem necessary for the conduct of its official meetings. A majority of the members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and action may be taken by the authority upon a vote of a majority of the board members present unless the bylaws require a larger number for a particular action.

(g) The board shall notice and hold its meetings pursuant to Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), except that the board shall have notices of its meetings posted on a bulletin board located at a place convenient to the public at its administrative offices and a bulletin board located at a place convenient to the public at the county courthouse of the most populous county in which the principal city is located.

Confirmation and Tax Election

Sec. 5. (a) After the original board is organized, at such time as it deems implementation of the authority to be feasible, it shall call a confirmation and tax election in accordance with the provisions of this section.

(b) Before ordering an election the board shall by order entered in its minutes determine the nature and rate of any tax that it desires to levy.

(c) Before ordering an election, the board shall notify the commissioners court of each county included in whole or part within the initial territory of the authority of its intention to do so. Within 30 days after receipt of the notice, each commissioners court by order shall create not more than five designated election areas in the unincorporated portion of the appropriate county. Each designated election area's outer boundaries, to the extent practicable, shall coincide with a boundary of a county voting precinct so that insofar as practicable no county voting precinct is divided between two different designated election areas. The total area of all designated election areas shall include all of the unincorporated area within the initial territory of the authority.

(d) When the board orders a confirmation and tax election, it shall submit to the qualified voters within the authority the following proposition:

"Shall the creation of (name of authority) be confirmed and shall the levy of the proposed tax be authorized?"

(e) Except as otherwise provided in this Act, notice of the election shall be given in accordance with the general election laws. The notice of the election shall include a description of the nature and rate of the proposed tax. A copy of the notice of the election and any other election held under the provisions of this Act shall be furnished to the State Department of Highways and Public Transportation or its successor and to the comptroller of public accounts.

(f) The election shall be conducted so that votes are separately tabulated and canvassed and that the result is declared in separate units of election within the authority, as follows:

(1) the portion of the principal city inside the initial limits of the authority plus any incorporated cities or towns which are wholly located within the perimeter of the outer boundary of the principal city constitutes a unit of election;

(2) each designated election area created by a commissioners court constitutes a unit of election;

(3) every other incorporated city or town wholly located within the initial limits of the authority shall constitute a unit of election.

(g) Immediately after the election, the presiding judge of each election precinct shall return the results to the board, which shall canvass the returns and declare the results separately with respect to each unit of election. In those units of election where a majority of the votes cast is in favor of the confirmation of the creation of the authority and the levy of the proposed tax, the authority shall continue to exist and be comprised of those units. In those units of election where a majority of the votes cast is against the confirmation of the creation of the authority and the levy of the proposed tax, the authority shall cease to exist. Unless the vote is favorable in the unit of election which includes the principal city, the authority shall cease to exist in its entirety. If the votes cast are such that the authority will continue to exist, the board shall enter the results on its minutes and adopt an order declaring that the creation of the authority is confirmed and describing the territory which comprises the authority. A certified copy of the order shall be filed with the State Department of Highways and Public Transportation or its successor, and with the comptroller of public accounts, and in the deed records of each county in which the authority is located. The order shall include the date of the election, the proposition voted on, the number of votes cast for and against the proposition in each election unit, and the number of votes by which the proposition was approved in each election unit in which it was approved and shall be accompanied by a map of the authority clearly showing the boundaries of the authority.

(h) If the votes cast at the confirmation and tax election are such that the authority ceases to exist in its entirety, the board shall enter an order so declaring and file a certified copy of the order with the State Department of Highways and Public Transportation or its successor and with the comptroller of public accounts, and the authority shall be dissolved.

(i) The cost of the confirmation and tax election shall be paid by the principal city.

(j) If the election results in the confirmation of an authority, the authority shall, within the limits confirmed, be authorized to function in accordance with the terms of this Act, and the board may levy and collect the proposed tax within those limits.

(k) If the continued existence of an authority is not confirmed by election within three years after the effective date of the ordinance creating the authority, the authority ceases to exist on the expiration of the three years.

Election Contest

Sec. 5A. (a) If the validity of any election held under authority of this Act or the result of the election based on the returns thereof shall be contested, the election contest shall be filed and tried as provided in the Election Code of the State of Texas; provided that the contestant shall notify the comptroller of public accounts by United States registered mail or certified mail within 10 days after filing the contest by mailing a copy of such notice of contest to the comptroller showing the style of the contest, the date filed, the case number, and the court in which the same is pending; and provided further that no such contest shall be heard unless the comptroller is timely notified as provided in this subsection.

(b) Upon receipt of a notice of contest, the date upon which such local sales and use tax shall become effective in any authority as a result of the election shall be suspended. When a final judgment shall be entered in the election contest, the presiding officer of the board shall so notify the comptroller by United States registered mail or certified mail and shall enclose a certified copy of the final judgment. If the judgment sustains the validity of the election or the result of the election so that the local sales and use tax status under this Act of the authority is changed, the comptroller shall place in effect the tax in the authority, substituting the notice of final judgment and the date on which it is received for the notice of the result of the election. This section applies only to elections held and election contests filed after the effective date of this Act.

Effective Date—Local Sales and Use Tax

Sec. 5B. Upon actual receipt by the comptroller of public accounts of notification of adoption of a local sales and use tax containing the information required by Subsection (g) of Section 5, there shall elapse one whole calendar quarter prior to the adoption of a local sales and use tax becoming effective. Thereafter, the adoption shall be effective beginning on the first day of the next calendar quarter following the elapsed calendar quarter.

Powers of the Authority

Sec. 6. (a) The authority, when created and confirmed, shall constitute a public body corporate and politic, exercising public and essential governmental functions, having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including, but not limited to, the following powers granted in this section.

(b) The authority shall have perpetual succession.

(c) The authority may sue and be sued in all courts of competent jurisdiction and may institute and prosecute suits without giving security for costs and may appeal from a judgment or judgments without giving supersedeas or cost bond.

(d) The authority may acquire by grant, purchase, gift, devise, lease, or otherwise, and may hold, use, sell, lease or dispose of, real and personal property of every kind and nature whatsoever, and licenses, patents, rights and interests necessary, convenient or useful for the full exercise of any of its powers pursuant to the provisions of this Act. Before an authority acquires an interest in real property for more than $20,000, the board of the authority shall cause the property to be appraised by two appraisers working independently of each other.

(e) The authority shall have the power to acquire, construct, complete, develop, own, operate and maintain a system or systems within its boundaries, and both within and without the boundaries of incorporated cities, towns and villages and political subdivisions, and for such purposes shall have the right to use the streets, alleys, roads, highways and other public ways and to relocate, raise, reroute, change the grade of, and alter the construction of, any street, alley, highway, road, railroad, electric lines and facilities, telegraph and telephone properties and facilities, pipelines and facilities, conduits and facilities, and other properties, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance and operation of the system, or to cause each and all of said things to be done at the authority's sole expense. The authority shall not proceed with any action to change, alter or damage the property or facilities of the state, its municipal corporations, agencies or political subdivisions or of owners rendering public services, or which shall disrupt such services being provided by others, or to otherwise inconvenience the owners of such property or facilities, without having first obtained the written consent of such owners or unless the authority shall have first obtained the right to take such action under its power of eminent domain as herein specified. In the event the owners of such property or facilities desire to handle any such relocation, raising, change in the grade of, or alteration in the construction of such property or facilities with their own forces, or to cause the same to be done by contractors of their own choosing, the authority shall have the power to enter into agreements with such owners providing for the necessary relocations, changes or alterations of such property or facilities by the owners and/or such contractors and the reimbursement by the authority to such owners of the costs incurred by such owners in making such relocations, changes or alterations and/or in causing the same to be accomplished by such contractors.

(f) In the event the authority, in exercising any of the powers conferred by this Act, makes necessary the relocation, adjustment, raising, lowering, rerouting or changing the grade of or altering the construction of any street, alley, highway, overpass, underpass, or road, any railroad track, bridge or other facilities or properties, any electric lines, conduits or other facilities or properties, any telephone or telegraph lines, conduits or other facilities or properties, any gas transmission or distribution pipes, pipelines, mains or other facilities or properties, any water, sanitary sewer or storm sewer pipes, pipelines, mains or other facilities or properties, any cable television lines, cables, conduits or other facilities or properties, or any other pipelines and any facilities or properties relating thereto, any and all such relocations, adjustments, raising, lowering, rerouting or changing of grade or altering of construction shall be accomplished at the sole cost and expense of the authority, and all damages which may be suffered by the owners of such property or facilities shall be borne by the authority.

(g) The authority shall have the right of eminent domain to acquire lands in fee simple and any interest less than fee simple in, on, under and above lands, including, without limitation, easements,

rights-of-way, rights of use of air space or subsurface space, or any combination thereof; provided that such right shall not be exercised in a manner which would unduly interfere with interstate commerce or which would authorize the authority to run its vehicles on railroad tracks which are used to transport property.

(h) Eminent domain proceedings brought by the authority shall be governed by the provisions of Title 52, Eminent Domain, Revised Civil Statutes of Texas, 1925, as they now exist or hereafter may be amended,[1] insofar as such provisions are not inconsistent with this Act. Proceedings for the exercise of the power of eminent domain shall be commenced by the adoption by the board of a resolution declaring the public necessity for the acquisition by the authority of the property or interest therein described in the resolution, and that such acquisition is necessary and proper for the construction, extension, improvement or development of the system and is in the public interest. The resolution of the authority shall be conclusive evidence of the public necessity of such proposed acquisition and that such real or personal property or interest therein is necessary for public use. At least 30 days before adopting a resolution under this subsection, however, a board shall hold a public hearing on the question of acquisition of the property or interest for which eminent domain proceedings are being considered. The board shall hold the hearing at a place convenient to residents of the area in which the property is located. The board shall cause notice of the hearing to be published in a newspaper of general circulation in the county in which the property is located at least once each week for two weeks before the date of the hearing.

(i) The authority shall have the power to enter into agreements with any other public utility, private utility, communication system, common carrier, or transportation system for the joint use of their respective facilities, installations and properties of whatever kind and character within the authority and to establish through routes, joint fares or transfer of passengers.

(j) The authority shall establish and maintain rates, fares, tolls, charges, rents or other compensation for the use of the facilities of the system acquired, constructed, operated or maintained by the authority which shall be reasonable and nondiscriminatory and which, together with receipts from taxes collected by the authority, shall be sufficient to produce revenues adequate:

(1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of the authority;

(2) to pay the interest on and principal of all bonds issued by the authority under this Act which are payable in whole or in part from such revenues, when and as the same shall become due and payable;

(3) to pay all sinking fund and reserve fund payments agreed to be made in respect of any such bonds, and payable out of such taxes and revenues, when and as the same shall become due and payable; and

(4) to fulfill the terms of any agreements made with the holders of such bonds or with any person in their behalf.

(k) It is the intention of this Act that taxes levied and the rates, fares, tolls, charges, rents and other compensation for the use of the facilities of the system shall not be in excess of what may be necessary to fulfill the obligations imposed upon the authority by this Act. Nothing herein shall be construed as depriving the State of Texas of its power to regulate and control such taxes, rates, fares, tolls, charges, rents and other compensation, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds issued hereunder that the state will not limit or alter the powers hereby vested in the authority to establish and collect such taxes, rates, fares, tolls, charges, rents and other compensation as will produce revenues sufficient to pay the items specified in Subdivisions (1), (2), (3) and (4), Subsection (j) of this subsection, or in any way to impair the rights or remedies of the holders of the bonds, or of any person in their behalf, until the bonds, together with the interest thereon, with interest on unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders and all other obligations of the authority in connection with such bonds, are fully met and discharged.

(*l*) The authority may make contracts, leases and agreements with, and accept grants and loans from, the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities and political subdivisions, and public or private corporations and persons, and may generally perform all acts necessary for the full exercise of the powers vested in it. The authority may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement. Any revenue bond indenture may provide limitations upon the exercise of the powers stated in this section and such limitations shall apply so long as any of the revenue bonds issued pursuant to such indenture are outstanding and unpaid.

(m) The authority may sell, lease, convey or otherwise dispose of any of its rights, interests or properties which are not needed for, or, in the case of leases, which are not inconsistent with, the efficient operation and maintenance of the system. It may sell, lease, or otherwise dispose of, at any time, any surplus materials or personal or real property not needed for its requirements or for the purpose of carrying out its power under this Act.

(n) The authority shall by resolution make all rules and regulations governing the use, operation

and maintenance of the system and shall determine all routings and change the same whenever it is deemed advisable by the authority.

(o) The authority shall have power to lease the system or any part thereof to, or contract for the use or operation of the system or any part thereof by, any operator; provided, however, that a lease of the entire system shall be subject to the written consent and approval of the governing body of the principal city.

(p) The acquisition of any land or interest therein pursuant to this Act, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities, and the exercise of any other powers herein granted an authority, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity.

(q) The authority may contract with any city, county, or other political subdivision for the authority to provide public transportation services to any area outside the boundaries of the authority on such terms and conditions as may be agreed to by the parties.

[1] Article 3264 et seq.

Addition of Territory

Sec. 6A. (a) Territory may be added to an authority only according to the provisions of this section.

(b) The governing body of any incorporated city or town located in whole or in part within a county in which the authority is situated may hold an election on the question of whether the city or town shall be annexed to the authority. If a majority of the qualified voters in the city or town votes for annexation, the governing body shall certify the results of the election to the board of the authority, and the city or town shall become a part of the authority, except as provided in Subsection (f) of this section.

(c) The commissioners court of a county in which the authority is situated in whole or in part or that is adjacent to a county in which the authority is situated in whole or in part may hold an election in any one or more of the designated election areas, formed for the election by order of the commissioners court, on the question of whether the area in which the election is held shall be annexed to the authority. The boundaries of a designated election area shall coincide, to the extent practicable, with a boundary of a county voting precinct, so that insofar as practicable no county voting precinct is divided. If a majority of the qualified voters in any area where such an election is held votes in favor of annexation, the commissioners court shall certify the results of the election to the board of the authority, and the area shall become a part of the authority, except as provided in Subsection (f) of this section.

(d) If a city or town which is a part of an authority lawfully annexes additional territory which is not a part of the authority, the annexed territory becomes a part of the authority.

(e)(1) At the time territory is added to an authority under the provisions of this section, any tax other than a local sales and use tax which the board of the authority has already been authorized to levy applies to the added territory.

(2) If an authority in which a local sales and use tax has been imposed changes or alters its boundaries, the presiding officer of the board shall forward to the comptroller of public accounts by United States registered mail or certified mail a certified copy of the order adding territory to the authority or of the order canvassing the returns and declaring the result of the election. The order shall reflect the effective date of the tax and shall be accompanied by a map of the authority clearly showing the territory added or detached. Upon receipt of the order and map, the tax imposed by Section 11B of this Act shall be effective in the added territory on the first day of the next succeeding quarter. However, if the comptroller notifies the presiding officer of the board in writing within 10 days after receipt of the order and map that he requires more time, the comptroller shall be entitled to delay implementation one whole calendar quarter. Thereafter, the tax shall be effective in the added territory on the first day of the next calendar quarter following the elapsed quarter.

(f) Territory in which an election is held as provided in Subsections (b) or (c) of this section becomes a part of the authority on the 31st day after the election, if the voters approve the addition as provided in Subsections (b) or (c), and unless the board of the authority notifies the appropriate governing body in writing before that date that the addition, because it is not contiguous to the existing authority, would create a fiscal hardship on the authority.

Composition of the Board

Sec. 6B. (a) If less than 50 percent of that part of the population of the county (the county in which not less than 51 percent of the incorporated area of the principal city is situated) which is outside the corporate limits of the principal city resides within the limits of the authority, the board of the authority shall consist of the original five members or their successors plus one additional member to be appointed jointly by the mayors of all incorporated municipalities except the principal city within the authority as confirmed, and one other additional member to be appointed by the commissioners court of the county described in this subsection.

(b) If more than 50 percent but less than 75 percent of the population of the county described in Subsection (a) of this section outside the corporate limits of the principal city resides within the limits of the authority, the board of the authority consists of the original five members or their successors, plus

two additional members to be appointed jointly by the mayors of all incorporated municipalities, except the principal city, located within the authority, and two other members appointed by the commissioners court of the county. Population figures shall be computed on the basis of the last preceding United States census.

(c) If 75 percent or more of the population of the county described in Subsection (a) of this section outside the corporate limits of the principal city resides within the limits of the authority, the board consists of 11 members, including the original five members or their successors, two additional members appointed jointly by the mayors of all incorporated municipalities except the principal city located within the authority, three other additional members appointed by the commissioners court of the county, and one member, who serves as chairman, who is appointed by the other ten members.

(d) When this Act requires that the mayors of municipalities except the principal city appoint a member of the board, the mayor of the municipality of greatest population among the municipalities shall serve as chairman of an appointment board composed of the mayors of all appropriate municipalities and shall, by notice in writing to all members, call meetings of the appointment board as necessary to make the appointments. Appointments shall be made within 60 days after a position comes into existence or becomes vacant. If the boundaries of the authority at any time include unincorporated areas of a county other than the county described in Subsection (a) of this section, the county judge of the appropriate county is entitled to serve on the appointment board, with powers equal to the other members of the board, as if the unincorporated area of the county were a municipality and the county judge of that county were the mayor of the municipality.

(e) The terms of office of any members of the board appointed after the confirmation and tax election and after the effective date of this Act are four years, except that in order to provide staggered terms, the terms of office of one-half of the first members appointed by an appointing agency after the effective date of this Act, if an even number is to be appointed by an agency, and a bare majority of the first members appointed by the agency, if an odd number greater than one is to be appointed by an agency, are two years. In addition, the appointing agency may shorten the initial terms to make the expiration dates coincide with those of the previously existing positions. To be eligible for appointment to the board, a person must be a qualified voter residing within the boundaries of the authority. No member of the board may serve more than two consecutive four-year terms.

(f) Vacancies on the board are filled by appointment by the same agency that made the original appointments for the vacant positions. Each member of the board whose term expires shall continue to serve until his successor has been appointed.

(g) In the event the membership of the board must be increased under the provisions of this section, the board as previously constituted may continue to act as the governing board of the authority until the additional members have been appointed and seated.

Station or Terminal Complexes

Sec. 6C. (a) The acquisition of any land or any interest in land pursuant to this Act; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities; and the exercise of any other powers granted an authority, including without limitation the rights, powers, and authority relating to station or terminal complexes as provided in this section, are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity for public use and public benefit.

(b) The authority shall have the right, power, and authority to acquire by grant, purchase, gift, devise, lease, or eminent domain proceedings and to own lands in fee simple and any interest less than fee simple in, on, under, and above lands, including, without limitation, easements, rights-of-way, rights of use of air space or subsurface space or any combination thereof, adjacent or accessible to stations and other mass transit facilities, developed or to be developed by the authority, that may be required for or in aid of the development of one or more station or terminal complexes, as part of its mass transit system and may sell, lease, or otherwise transfer the same, or any part thereof, to individuals, corporations, or governmental entities, subject to the restrictions provided in this section.

(c) Any lands or interests in land acquired for a station or terminal complex must be part of or contained within a station or terminal complex designated as part of the system within a comprehensive transit plan approved by resolution of the board. Before a station or terminal complex may be included in the system, the board must find and determine that the proposed station or terminal complex will encourage and provide for efficient and economical mass transit service, will facilitate access to mass transit service and provide other mass transit purposes, will reduce vehicular congestion and air pollution in the metropolitan area, and is reasonably essential to the successful operation of the system. The board may amend its comprehensive transit plan to include other station or terminal complexes upon making these findings.

(d) Any station or terminal complex shall include adequate provisions for the transfer of passengers between the various modes of transportation available to the complex. A complex may include provisions for commercial, residential, recreational, institutional, and industrial facilities, except that no land or interests in land that is more than 1,500 feet in

distance from the center point of the complex or that has not been included in a master plan of development adopted by the board may be acquired for the facilities. Land or an interest in land more than 1,500 feet in distance from the center point of the complex may not be acquired by eminent domain proceedings, and the board shall designate the center point prior to the commencement of eminent domain proceedings. If a proposed station or terminal complex is to be located within the city limits or extraterritorial jurisdiction of a city or town, the governing body of the city or town must approve the location of the complex as to conformity with the comprehensive or general plan of the city or town by motion, resolution, or ordinance duly adopted.

(e) The authority may sell, lease, or otherwise transfer lands or interests in land acquired within a station or terminal complex, and may enter into contracts with respect to it, in accordance with the comprehensive transit plan approved by the board, subject to such covenants, conditions, and restrictions, including covenants running with the land and obligations to commence construction within a specified time, as the board may deem to be in the public interest or necessary to carry out the purposes of this section, all of which shall be incorporated into the instrument transferring or conveying title or right of use. Any lease, sale, or transfer shall be at fair value, taking into account the use designated for the land in the comprehensive transit plan for the system and the restrictions on, and the covenants, conditions, and obligations assumed by, the purchaser, lessee, or transferee. However, if the authority offers the property for sale, the original owner from whom the property was acquired by eminent domain proceedings or through threat of eminent domain proceedings has the first right to repurchase at the price at which it is offered to the public.

(f) No station or mass transit facility may be considered a "station or terminal complex" governed by this section unless it has been designated as such in the comprehensive transit plan pursuant to the specific authority granted by this section.

Withdrawal From an Authority

Sec. 6D. (a) The governing body of an incorporated city or town that is included within the territory of an authority and that has a population more than 90 percent of which resides outside the county in which the majority of the population of the principal city resides may on any date from April 1, 1980, to September 1, 1980, hold an election on the question of whether the city or town shall withdraw from the authority. If a majority of the qualified voters in the city or town voting on the question votes to withdraw from the authority, the governing body shall certify the results of the election to the board of the authority, and the city or town shall withdraw from the authority.

(b) The board shall enter the results on its minutes and adopt an order declaring the withdrawal of the city or town. A certified copy of the order shall be filed with the State Department of Highways and Public Transportation or its successor and the comptroller of public accounts and in the deed records of each county in which the authority is located. The order shall reflect the date of the election, the proposition voted on, the total number of votes cast for and against the proposition in each election unit, the number of votes by which the proposition was approved in each election unit and shall be accompanied by a map of the authority clearly showing the boundaries of the authority.

(c) Upon actual receipt of the comptroller of public accounts of notification of the withdrawal of a city or town, there shall elapse one whole calendar quarter prior to the withdrawal becoming effective. Thereafter, the withdrawal shall be effective beginning on the first day of the next calendar quarter following the elapsed calendar quarter.

Local Government Approval Committee

Sec. 6E. The rates, fares, tolls, charges, rents, and other compensation established by an authority in a metropolitan area whose principal city has a population of less than 1,200,000, according to the most recent federal census, may not take effect until they are approved by a majority vote of a committee composed of:

(a) five members of the city council of the principal city who are chosen for this committee by the members of that body;

(b) three members of the commissioners court of the county that includes the largest portion of the incorporated area of the principal city, who are chosen for this committee by the members of that court; and

(c) three mayors of incorporated municipalities, except the principal city, located within the authority who are chosen for this committee jointly by the mayors of all incorporated municipalities, except the principal city, located within the authority.

Bonds and Notes

Sec. 7.

[See Compact Edition, Volume 3 for text of 7(a) and (b)]

(c) In order to secure the payment of such bonds or notes, such authority shall have full power and authority to encumber and pledge all or any part of the revenue realized from any tax which the authority is authorized to levy, and all or any part of the revenues of its rapid transit system or systems, and to mortgage and encumber all or any part of the properties thereof, and everything pertaining thereto acquired or to be acquired and to prescribe the terms and provisions of such bonds and notes in any manner not inconsistent with the provisions of this Act. If not prohibited by the resolution or indenture

relating to outstanding bonds or notes, any such authority shall have full power and authority to encumber separately any item or items of real estate or personalty, including motorbuses, transit cars and other vehicles, machinery and other equipment of any nature, and to acquire, use, hold or contract for any such property under any lease arrangement, chattel mortgage or conditional sale, including, but not limited to, transactions commonly known as equipment trust transactions. Nothing herein shall be construed as prohibiting any such authority from encumbering any one or more rapid transit systems for the purpose of purchasing, building, constructing, enlarging, extending, repairing or reconstructing, another one or more of said systems and purchasing necessary property, both real, personal and mixed, in connection therewith.

[See Compact Edition, Volume 3 for text of 7(d) to (g)]

(h) Bonds payable solely from revenues may be issued by resolution of the board, but no bonds, except refunding bonds, payable wholly or partially from taxes, may be issued until authorized by a majority vote of the qualified voters of the authority voting in an election called and held for that purpose.

(i) Notwithstanding the provisions of Section 7, the authority, acting by board order or resolution, has the power to issue short-term bonds or notes secured by revenues or taxes for any purpose; provided that the repayment of the bonds or notes must be satisfied out of revenues or taxes received during the period from the date of issuance to the last day of the fiscal year in which the bonds or notes are issued. Any such short-term bonds or notes need not be approved by the Attorney General of Texas nor registered by the Comptroller of Public Accounts of the State of Texas.

Motor Vehicle Emission Taxes

Sec. 8. (a) Subject to approval at an election, the board of an authority shall be authorized to levy and cause to be collected motor vehicle emission taxes as herein provided. No increase in taxes as originally authorized may be levied unless the increase is approved at an election. Such taxes shall be collected by the county tax assessor-collector of each county, situated in whole or in part within the authority from each motor vehicle owner whose residence is within such county and within the authority. Not later than November 1 of each year, the board shall certify to the county tax assessor-collector of each county situated in whole or in part within the authority's boundaries the rate of tax prescribed for each class of motor vehicles for the ensuing tax year. At the time the owner of a motor vehicle applies each year to the State Highway Department through the county tax assessor-collector of the county in which he resides for the registration of each such vehicle owned or controlled by him for the ensuing or current motor vehicle registration year or unexpired portion thereof, such owner shall pay to the county tax assessor-collector the motor vehicle emission taxes due or to become due to such authority on such motor vehicle for the ensuing or current tax year at the applicable rate prescribed by the board. The county tax assessor-collector shall refuse to issue a registration license for a motor vehicle until the emission tax thereon for the period covered by such registration license has been paid.

[See Compact Edition, Volume 3 for text of 8(b) to 11]

General Powers of Taxation

Sec. 11A. (a) In addition to or in lieu of the motor vehicle emission taxes provided for in this Act, the board of an authority may levy and collect any kind of tax, other than an ad valorem tax on property, which is not prohibited by the Texas Constitution.

(b) No tax of any kind may be levied and collected by the board until a proposition proposing the tax has first been submitted to and approved by a majority of the qualified electors of an authority voting at an election held by the board for that purpose. A separate proposition must be submitted for each kind of tax proposed, and propositions may be submitted in the alternative with provision for the method of determining the results of the election. Each proposition must include a brief statement of the nature of the proposed tax. The notice of the election must include a statement or description of the basis of or rate at which the tax is proposed to be levied. Any subsequent increase in a tax must also be approved at an election.

(c) Prior to an election to authorize a tax other than motor vehicle emission taxes or a sales and use tax, the board shall adopt a complete tax code and rules and regulations providing for the nature and amount of any tax with provisions for complete administration and enforcement, including the time and manner of payment, exemptions, liens, interest, penalties, discounts for advance payment, refunds for erroneous payment, fees for collection, collection procedures, manner of enforcement, required returns, registration and reports of taxpayers, the duties and responsibilities of tax officers and taxpayers, the delegation to tax officers to make additional rules and regulations and determinations and to obtain records as may be appropriate, and every other provision which may be determined to be desirable, including incorporation of any tax laws and remedies for the administration and enforcement that are available to the state or any political entities under general law.

(d) A tax code and rules and regulations may be amended by the board from time to time after an election approving a tax, but no amendment may increase the amount of a tax unless the increase is approved at an election.

(e) The board of an authority by order may decrease the local sales and use tax rate or may call an election to increase or decrease the local sales and use tax rate. In addition, the qualified voters of an authority by petition may require that an election be held on the question of increasing the tax rate. A petition is valid if it is by qualified voters of the authority equal in number to at least 10 percent of the number of registered voters of the authority according to the most recent official list of registered voters.

(f) After receiving a petition, the board shall submit the petition to the secretary of state for validation. The secretary of state shall rule on the validity of the petition not later than the 30th day after the day he or she receives the petition and shall notify the board of the ruling. If the secretary of state finds the petition valid or fails to act within the time allowed, the board shall call an election. The authority shall pay the costs of determining the validity of a petition, if any, and of the election.

(g) At the election, the ballots shall be prepared to permit voting for or against the following proposition: "The increase (decrease) of the local sales and use tax rate to (percentage)." The increase or decrease in the tax rate shall be effective if it is approved by a majority of the votes cast by voters residing within the boundaries of the territory of the authority at the date of the election. A notice of the election and a certified copy of the order canvassing the election results shall be sent to the State Department of Highways and Public Transportation or its successor and the comptroller of public accounts and shall be filed in the deed records of each county in which the authority is located in the same manner as provided for a confirmation and tax election by Section 5 of this Act.

(h) If there is an increase or decrease in the rate of a local sales and use tax already levied, the new rate takes effect on the first day of the next calendar quarter after actual notification to the comptroller of public accounts. However, if the comptroller notifies the presiding officer of the board in writing within 10 days after receipt of the order that he or she requires more time to implement collection and reporting procedures, the comptroller may delay implementation for one whole calendar quarter. Thereafter, the new tax rate takes effect on the first day of the next calendar quarter following the elapsed quarter.

Local Sales and Use Tax

Sec. 11B. (A) Subject to approval at a tax election in accordance with this Act, the board of an authority shall be authorized to levy, collect and impose a local sales and use tax for the benefit of the authority, the sales tax portion of which shall not exceed one percent on receipts from the sale of all taxable items within the authority area which are subject to taxation under the provisions of the Limited Sales, Excise and Use Tax Act,[1] as enacted and as heretofore or hereafter amended. The provisions of this section shall be applicable to the levy, imposition and collection of such tax. The permissible rates for a local sales and use tax levied under this Act are:

(1) one-quarter of one percent;

(2) one-half of one percent;

(3) three-quarters of one percent; and

(4) one percent.

(B)(a) The following words and terms shall have the following respective meanings unless a different meaning clearly appears from the context:

(1) "Authority area" means the geographical limits of the authority.

(2) "Comptroller" means the Comptroller of Public Accounts of Texas.

(3) "Local Sales and Use Tax" means any sales and use tax imposed by a city within the authority area under the Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes).

(b) Every retailer within the authority area shall add the tax imposed by the Limited Sales, Excise and Use Tax Act, any applicable Local Sales and Use Tax and the tax imposed under the authority of this Act to his sale price, and when added, the combined tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. The combined taxes on the transaction shall be determined by multiplying the amount of the sale by the total of the combined applicable tax rates. Any fraction of one cent which is less than one-half of one cent of tax shall not be collected. Any fraction of one cent of tax equal to one-half of one cent or more shall be collected by the retailer as a whole cent of tax. Provided, however, that any retailer who can establish to the satisfaction of the comptroller that 50 percent or more of his receipts from the sale of taxable items arise from individual transactions where the total sales price when multiplied by the combined rates of the taxes imposed under the Limited Sales, Excise and Use Tax Act, any applicable Local Sales and Use Tax, and this section equals an amount that is less than one-half of one cent may exclude the receipts from such sales when reporting and paying the tax imposed under this Act, the Limited Sales, Excise and Use Tax Act, and any applicable Local Sales and Use Tax. No retailer shall avail himself of this provision without prior written approval of the comptroller. The comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the comptroller shall be deemed to be a failure and refusal to pay the taxes imposed

by this Act, the Limited Sales, Excise and Use Tax Act and any applicable Local Sales and Use Tax, and the retailer shall be subject to assessment for both taxes, penalties and interest as provided for in this Act, the Limited Sales, Excise and Use Tax Act, and any applicable Local Sales and Use Tax.

(c)(1) In every authority area where the tax authorized by this Act has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use or other consumption within such authority area of taxable items purchased, leased, or rented from any retailer on or after the effective date for collection of the sales tax portion of the sales and use tax for storage, use or other consumption in such authority area at the same rate as the sales tax levied under this Act of the sales price of the taxable item or, in the case of leases or rentals, of said lease or rental price. Except as provided in Subparagraph (4) of this paragraph, the use tax imposed by this section is not owed to and may not be collected by, for, or in behalf of an authority if no excise tax on the storage, use, or other consumption of an item of tangible personal property is owed to or collected by the state under the Limited Sales, Excise and Use Tax Act or if the tangible personal property is first stored, used, or consumed within an authority or area that has not adopted the sales and use tax imposed by this section.

(2) In each authority where the tax authorized by this Act has been imposed as provided in this Act, the excise tax imposed under the Limited Sales, Excise and Use Tax Act and any applicable excise tax under the Local Sales and Use Tax Act on the storage, use or other consumption of taxable items and the excise tax imposed by this Act shall be added together to form a combined rate of excise tax which is equal to the sum of the applicable taxes. The tax imposed by this section shall be collected by the comptroller on behalf of and for the benefit of such authority. The formula prescribed in paragraph (b) of this subsection shall be applicable to the collection of the excise tax imposed under this section.

(3) The provisions of the Limited Sales, Excise and Use Tax Act shall be applicable to the collection of the tax imposed by this paragraph (c), provided that in Subchapter D of Chapter 151, Tax Code,[2] the name of the authority where the sales and use tax authorized by this Act has been adopted shall be substituted for that of the state where the words "this state" are used to designate the taxing authority or to delimit the tax imposed.

(4) If a sale of tangible personal property is consummated within the state but not within an authority that has adopted the taxes imposed by this section and the tangible personal property is shipped directly into or brought by the purchaser or lessee directly into an authority that has adopted the taxes imposed by this section, the tangible personal property is subject to the use tax imposed by the authority under Subparagraph (1) of this paragraph. The use is considered consummated at the location where the item is first stored, used, or otherwise consumed after the intrastate transit has ceased.

(5) If the tangible personal property is shipped from outside this state to a customer within this state, the tangible personal property is subject to the use tax imposed by Subparagraph (1) of this paragraph and not the sales tax imposed by Subsection (A) of this section. The use is consummated at the first point in this state where the property is stored, used, or otherwise consumed after interstate transit has ceased. Tangible personal property delivered to a point in this state is presumed to be for storage, use, or other consumption at that point until the contrary is established.

(6) There are exempted from the sales taxes imposed by this article receipts from any sale of tangible personal property which, pursuant to the contract of sale, is shipped to a point outside the authority area by the retailer by means of:

(a) facilities operated by the retailer;

(b) delivery by the retailer to a carrier for shipment to a consignee at such point; or

(c) delivery by the retailer to a customs broker or forwarding agent for shipment outside the authority.

If the tangible personal property exempted under this subparagraph or under Paragraph (F) of Section 16(f)(2) of Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes), is shipped or delivered directly to a purchaser in another authority that has adopted the taxes imposed under either article, the tangible personal property is subject to the use tax imposed by Subsection (A) of this section.

(d)(1) On and after the effective date of any tax imposed under the provisions of this Act, the comptroller shall perform all functions incident to the administration, collection, enforcement and operation of the tax, and the comptroller shall collect, in addition to the taxes imposed by the Limited Sales, Excise and Use Tax Act, an additional tax under the authority of this Act specified by the authority, but not to exceed one percent on the receipts from the sale at retail or on the sale price or lease or rental price on the storage, use or other consumption of all taxable items within such authority area, which items are subject to the Limited Sales, Excise and Use Tax Act. The tax imposed hereunder and the tax imposed under the Limited Sales, Excise and Use Tax Act and any applicable Local Sales and Use Tax shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the comptroller not inconsistent with the provisions of this Act. On and after the effective date of any proposition to abolish such Local Sales and Use Tax in any authority area, the comptroller shall comply therewith.

(2) The comptroller shall make to the authority substantially the same reports as to taxes within the authority area as are made to cities under Subsections 5(b), (c) and (d) of the Local Sales and Use Tax Act.

(e) The following provisions shall govern the collection by the comptroller of the tax imposed by this Act:

(1) All applicable provisions contained in Title 2, Tax Code,[3] shall apply to the collection of the tax imposed by this Act, except as modified in this Act.

(2) The provisions contained in Section 6 of the Local Sales and Use Tax Act shall apply to the levy, imposition and collection of the tax imposed by this Act except as modified herein.

(3) The penalties provided in Title 2, Tax Code, for violation of that title, are hereby made applicable to violations of this Act.

(4) The sales and use tax collected by the comptroller under this Act shall be deposited, held, accounted for and transmitted for the authority as provided in Section 7 of the Local Sales and Use Tax Act.

(f) Each authority's share of all sales and use tax collected under this Act by the comptroller shall be transmitted to the treasurer or the officer performing the functions of such office of such authority by the comptroller payable to the authority periodically as promptly as feasible. Transmittals required under this Act shall be made at least twice in each state fiscal year. Before transmitting such funds, the comptroller shall deduct two percent of the sum collected from each such authority during such period as a charge by the state for its services specified in this Act, and the amounts so deducted shall be deposited by the comptroller in the State Treasury to the credit of the General Revenue Fund of the state. The comptroller is authorized to retain in the suspense account of any authority a portion of the authority's share of the tax collected under this Act. Such balance so retained in the suspense account shall not exceed five percent of the amount remitted to the authority. The comptroller is authorized to make refunds from the suspense account of any authority for overpayments made to such accounts and to redeem dishonored checks and drafts deposited to the credit of the suspense account of such authority. When any authority shall abolish such tax, the comptroller may retain in the suspense account of such authority for a period of one year five percent of the final remittance to each such authority at the time of termination of collection of such tax in such authority to cover possible refunds for overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of such tax in such authority, the comptroller shall remit the balance in such accounts to the authority and close the account.

(g) The comptroller may promulgate reasonable rules and regulations, not inconsistent with the provisions of this Act, to implement the enforcement, administration and collection of the taxes authorized herein.

(h)(1) In any authority where the sales and use tax authorized by this Act has been imposed, if any person is delinquent in the payment of the amount required to be paid by him under this Act or in the event a determination has been made against him for taxes and penalty under this Act, the limitation for bringing suit for the collection of such delinquent tax and penalty shall be the same as that provided by the Limited Sales, Excise and Use Tax Act. Where any person is delinquent in payment of taxes under this Act, the comptroller shall notify the authority to which delinquent taxes are due under this Act by United States registered mail or certified mail and shall send a copy of the notice to the attorney general. The authority, acting through its attorney, may join in any suit brought by the attorney general as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such authority. The notice sent by the comptroller to the authority showing the delinquency of a taxpayer constitutes a certification of the amount owed and is prima facie evidence of the determination of the tax and of the delinquency of the amounts of sales and use tax set forth in the notice.

(2) Where property is seized by the comptroller under the provisions of any law authorizing seizure of the property of a taxpayer who is delinquent in payment of the tax imposed by the Limited Sales, Excise and Use Tax Act, and where such taxpayer is also delinquent in payment of any tax imposed by this Act, the comptroller shall sell sufficient property to pay the delinquent taxes and penalty due any authority under this Act in addition to that required to pay any amount due the state under the Limited Sales, Excise and Use Tax Act and due any city under the Local Sales and Use Tax Act. The proceeds from such sale shall first be applied to all sums due the state, then all sums due any city under the Local Sales and Use Tax Act, and the remainder, if any, shall be applied to all sums due such authority.

(3) An authority that has adopted the tax authorized by this Act may bring suit for the collection of sales, excise, or use taxes imposed by this Act which have been certified as provided in subparagraph (1) of this paragraph and are owed to the authority under this Act if at least 60 days before the filing of the suit, written notice by certified mail of the tax delinquency and of the intention to file suit is given to the taxpayer, the comptroller, and the attorney general and if neither the comptroller nor the attorney general disapproves the suit by written notice to the authority.

(4) The comptroller or attorney general may disapprove the institution of tax suit by an authority if:

(i) negotiations between the state and the taxpayer are being conducted for the purpose of the collection of delinquent taxes owed to the state and the authority seeking to bring suit;

(ii) the taxpayer owes substantial taxes to the state and there is a reasonable possibility that the taxpayer may be unable to pay the total amount owed in full;

(iii) the state will bring suit against the taxpayer for the collection of all sales, excise and use taxes due under the Limited Sales, Excise and Use Tax Act and this Act; or

(iv) the suit involves a critical legal question relating to the interpretation of state law or a provision of the Texas or United States Constitution in which the state has an overriding interest.

(5) A notice of disapproval to an authority must give the reason for the determination of the comptroller or attorney general. A disapproval is final and not subject to review. An authority, after one year from the date of the disapproval, may proceed again as provided in subparagraph (3) of this paragraph even though the liability of the taxpayer includes taxes for which the authority has previously given notice and the comptroller or attorney general has previously disapproved the suit.

(6) In any suit under this paragraph for the collection of the authority tax, a judgment for or against the taxpayer does not affect any claim against the taxpayer by a city or the state unless the state is a party to the action.

(7) A copy of the final judgment in favor of an authority in a case in which the state is not a party shall be abstracted by the authority and a copy of the judgment together with a copy of the abstract shall be sent to the comptroller. The authority shall collect taxes awarded to it under the judgment as provided by Section 151.608(e), Limited Sales, Excise and Use Tax Act, and is responsible for the renewal of the judgment before the expiration of the 10-year period. If a collection is made by an authority on a judgment, notice of the amount collected shall be sent by certified mail to the comptroller. The comptroller may prescribe a form for the notice to be used by authorities.

[1] Tax Code, § 151.001 et seq.
[2] Tax Code, § 151.101 et seq.
[3] Tax Code, § 101.001 et seq.

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

Annual Budget

Sec. 12A. Prior to the commencement of a fiscal year, the board shall adopt an annual operating budget which specifies major expenditures by type and amount. Before the board adopts its annual operating budget, it shall conduct a public hearing and shall make the proposed annual operating budget available to the public at least 14 days prior to the hearing. An annual operating budget must be adopted before the authority conducts business in a fiscal year. The authority may not make operating expenditures in excess of the total budgeted operating expenditures for a fiscal year unless the board amends the operating budget by order after public notice and hearing.

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

Tort Claims

Sec. 13A. Any authority established hereunder shall be within the definition of "unit of government" as defined by the Texas Tort Claims Act, as amended (Article 6252–19, Vernon's Texas Civil Statutes), and all operations of an authority are deemed to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act.

Contracts for Construction, Goods, or Services

Sec. 14. (a) Contracts for more than $5,000 for the construction of improvements or the purchase of material, machinery, equipment supplies and all other property except real property, shall be let on competitive bids after notice published once a week for two consecutive weeks, the first publication to be at least 15 days before the date fixed for receiving bids, in a newspaper of general circulation in the area in which the authority is located. The board may adopt rules governing the taking of bids and the awarding of such contracts and providing for the waiver of this requirement in the event of emergency. This subsection does not apply to personal and professional services or to the acquisition of existing transit systems.

(b) The board of an authority may not let a contract (1) that is not subject to competitive bidding requirements, (2) that is for more than $10,000 and (3) that is for the purchase of real property or for consulting or professional services, unless an announcement that a contract is being considered is posted in a prominent place in the principal office of the authority for at least two weeks before the contract is awarded. This subsection does not apply to the acquisition of existing transit systems.

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

County Authority to Contract with Authority

Sec. 15A. A commissioners court may contract with an authority for the authority to provide public transportation services to any unincorporated area outside the boundaries of the authority for a term and on those conditions as are determined to be desirable by the commissioners court and the board. The county may levy and collect taxes or pledge and encumber other receipts or revenues as may be required to make any payments to the authority under the provisions of the contract.

Elections

Sec. 15B. (a) This section governs all elections ordered by the board except elections held under the provisions of Section 5 of this Act.

(b) Notice of an election ordered by the board shall be given by publication once a week for three consecutive weeks with the first publication in a newspaper with general circulation in the authority at least 21 days before the election.

(c) A resolution calling an election and the notice of the election are sufficient if the date and hours of the election, the voting places within voting precincts for the election, and the propositions to be voted on are specified. The board may define and declare voting precincts, determine the manner of absentee voting, and prescribe the election officers.

(d) As soon as practicable after an election, the board shall canvass the returns of the election and declare the results.

(e) Where not otherwise provided in this section, the general election laws apply.

[See Compact Edition, Volume 3 for text of 16 and 17]

Eligibility of Excepted Areas for Federal Funds

Sec. 17A. Ratification by referendum of a regional authority under the terms of this Act by less than all incorporated cities within the metropolitan area as defined herein shall not affect in any way the eligibility of such excepted incorporated cities to receive federal transit grants under the National Mass Transportation Assistance Act of 1974,[1] or any subsequent federal statutes.

[1] See 49 U.S.C.A. § 1601b et seq.

[See Compact Edition, Volume 3 for text of 18 and 19]

[Amended by Acts 1975, 64th Leg., p. 2273, ch. 712, §§ 1 to 10, eff. June 21, 1975; Acts 1977, 65th Leg., p. 2168, ch. 863, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 99, ch. 59, § 7, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1403, ch. 624, §§ 4, 5, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1427, ch. 629, §§ 1 to 15, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1522, ch. 656, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 1772, ch. 389, §§ 14 to 16, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 3197, ch. 838, § 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3261, ch. 858, §§ 1 to 4, eff. Aug. 31, 1981.]

Section 1 of Acts 1981, 67th Leg., p. 1490, ch. 398, enacted Title 2 of the Tax Code.

Acts 1981, 67th Leg., p. 3263, ch. 858, § 5, provides:

"Section 4 of this Act applies to rates, fares, tolls, charges, rents, and other compensation established on or after the effective date of this Act."

Art. 1118y. Regional Transportation Authorities

Findings

Sec. 1. The legislature finds that:

(1) An increasing proportion of the state's population is located in its rapidly expanding metropolitan areas;

(2) The concentration of population in such areas is accompanied by a corresponding concentration of motor vehicles that emit pollutants into the air and consume great quantities of limited energy resources;

(3) Such concentration of motor vehicles places an undue burden on existing streets, freeways, and other traffic ways, resulting in serious vehicular traffic congestion that retards mobility of persons and property and adversely affects the health and welfare of the citizenry; and

(4) Mobility for all citizens, which must include alternatives to the private passenger motor vehicle, is essential to the continued growth and maintenance of economic vitality of these metropolitan areas.

Definitions

Sec. 2. In this Act, unless the context requires otherwise:

(1) "Authority" means a regional transportation authority created pursuant to this Act.

(2) "County of a principal city" means a county in which the majority of the territory of a principal city is situated.

(3) "Creating entities" means the principal city and/or county of the principal city or any contiguous city as provided in Section 24.

(4) "Executive committee" means the directors of the authority who serve as the governing body of the authority.

(5) "General transportation services" means services that complement the public transportation system, including but not limited to parking garages, special transportation services for the elderly and the handicapped, medical transportation services, assistance in street modifications as necessary to accommodate the public transportation system, and construction of new general aviation facilities or renovation or purchase of existing facilities not served by certificated air carriers in order to relieve air traffic congestion at existing facilities.

(6) "Interim executive committee" means the executive committee selected before the confirmation election for the purpose of guiding the establishment of a permanent authority and creating a service plan.

(7) "Interim subregional board(s)" means the subregional board(s) organized to serve before the holding of the confirmation election.

(8) "Metropolitan area" means a federal standard metropolitan statistical area having a population of more than 500,000, not more than 60 percent of which reside in cities of more than 300,000.

(9) "Population" means the population of a city or area as the context may require, according to the last preceding federal census or if there has been no federal census within the preceding five years, then according to the latest population estimates of the appropriate metropolitan planning organization.

(10) "Principal city" means a city having a population of at least 300,000.

(11) "Public transportation" means the conveyance of passengers and hand-carried packages or

baggage of passengers by means of any mode of transportation other than a privately owned vehicle.

(12) "Public transportation system" means all real and personal property owned or held by an authority for public transportation or general transportation service purposes, including but not limited to land, interest in land, buildings, structures, rights-of-way, easements, franchises, rail lines, bus lines, mass transportation facilities, rapid transit facilities, stations, platforms, terminals, rolling stock, garages, shops, equipment and facilities (including vehicle parking areas and facilities and other facilities necessary or convenient for the beneficial use and access of persons and vehicles to public transportation), control houses, signals and land, facilities and equipment for the protection and environmental enhancement of all the facilities.

(13) "Service plan" means an outline of the service that would be provided by the authority to those units of election confirming the authority in an election.

(14) "Subregion" means a principal city, the county of the principal city, and any city or unit of election included within the boundaries of a subregion by the creating entity of that subregion and which is confirmed at an election.

(15) "Subregional board" means the board created to represent a subregion pursuant to Sections 6 and 7 of this Act.

(16) "Unit of election" means any one of the following:

(A) a principal city;

(B) a designated unincorporated area created by the commissioners court of a county of a principal city;

(C) any other incorporated city located within the territory of an authority.

Creation of a Regional Transportation Authority

Sec. 3. A regional transportation authority to provide public transportation and general transportation services may be created in a metropolitan area. The process for creating an authority must be initiated by one of the following methods:

(1) The governing body of a principal city and/or county of the principal city from each subregion may agree to initiate the process to create an authority on their own motions. The principal city and/or the county of the principal city in each subregion may become the creating entity. If the creating entity in one subregion initiates the process and a creating entity in the other subregion does not initiate the process within 60 days, the first subregion may proceed on its own.

(2) If a petition requesting creation of an authority signed by at least five percent of the registered voters of the creating entity is presented, the creating entity or entities receiving the petitions shall initiate the process for creating the authority. If the creating entity in one subregion initiates the process and a creating entity in the other subregion does not initiate the process within 60 days, the first subregion may proceed on its own. The entity to which a petition is presented has the primary responsibility for initiating the authority within a subregion. The principal city and county of the principal city of either subregion, however, may by mutual agreement share the responsibility or shift it to the other entity.

Initiating Procedure

Sec. 4. (a) The process shall be initiated by a resolution or order of each creating entity containing the following provisions:

(1) a description of the boundaries of the territory proposed to be included in the subregion(s) of the authority;

(2) designation of the time(s) and place(s) agreed upon by the creating entity or entities for holding public hearings on the proposal to create the authority.

(b) The boundaries of the proposed authority shall include all territory in the county or counties of the principal city or cities and any additional territory in adjacent counties having more than 52,000 population that is included in the resolution(s) or order(s). A unit of election that has the majority of its population in a county of a principal city shall be included in the subregion of that principal city for the purposes of the initiating procedure.

(c) Notice of the time and place of the public hearings, including a description of the area proposed to be included in the authority, shall be published once a week for two consecutive weeks in a newspaper of general circulation in each of the county or counties of the principal city or cities, the first publication to be not less than 30 days prior to the date fixed for the hearing. The creating entities shall submit to the State Highways and Public Transportation Commission and the comptroller of public accounts a copy of this notice.

(d) The creating entity or entities shall conduct the hearings at the time and place specified in the notice and may continue the hearings from day to day and from time to time until completed. Any interested person may appear and offer evidence concerning the boundaries and creation of the authority, operation of a regional transportation system, and whether creation of an authority would be of public utility and in the public interest as well as any other facts bearing upon the creation of an authority.

(e) The governing body of each city located within the boundaries of the proposed authority may by resolution confirm the participation of its city in the process established in Sections 5, 6, 7, 8, and 9 of this Act to develop an initial service plan and rate of tax

prior to the confirmation election. If a governing body fails to so confirm within 60 days after the process has been initiated by the creating entity or entities, the creating entity or entities and those governing bodies that have so confirmed may proceed on their own without the participation of the nonconfirming governing bodies.

(f) The commissioners court of each county in which unincorporated areas are located within the boundaries of the proposed authority may by order confirm the participation of the unincorporated areas in the process established in Sections 5, 6, 7, 8, and 9 of this Act to develop an initial service plan and rate of tax prior to confirmation election. If a commissioners court fails to so confirm within 60 days after the process has been initiated by the creating entity or entities, the creating entity or entities and those commissioners courts that have so confirmed may proceed on their own without the participation of the nonconfirming commissioners courts.

(g) After hearing the evidence presented at the hearings, but no earlier than 75 days after the process has been initiated by the creating entity or entities, the creating entity or entities shall each adopt the resolution or order designating the name of the authority, listing the names of the cities whose governing bodies and the unincorporated areas whose county commissioners courts have confirmed initial inclusion in the authority, and authorizing appointment of the interim subregional boards and interim executive committee. If one creating entity fails to adopt this resolution or order within 60 days of the action of the other creating entity, the first creating entity may proceed on its own.

(h) After the hearing, the results of the hearing and the boundaries set by the creating entities shall be submitted to the State Highways and Public Transportation Commission and the comptroller of public accounts.

Regional Transportation Authority Executive Committee

Sec. 5. (a) The control and operation of a regional transportation authority and its property shall be vested in an executive committee comprised of 11 members selected as follows:

(1) seven members from the membership of the subregional board in the subregion containing a principal city having a population greater than 800,000; and

(2) four members from the membership of the subregional board in the subregion containing a principal city having a population of less than 800,000.

(b) Before the confirmation election, the subregional boards shall select their representatives to the executive committee from their membership by a vote of the members. After the confirmation election, the subregional boards shall select their representatives in the same manner and those representatives shall serve at the pleasure of the subregional boards with the confirmation of the appointments made each September 1. To remain on the executive committee a person must maintain membership on a subregional board. A vacancy on the executive committee shall be filled in the same manner as original appointments.

(c) Following the confirmation election each member of the subregional board shall be entitled to the sum of $50 for each meeting of the executive committee or subregional board attended and shall be reimbursed for necessary and reasonable expenses incurred in the discharge of duties.

(d) The members of the executive committee shall elect from among their number a chairman, vice-chairman, and a secretary. The executive committee may appoint such assistant secretaries, either members or non-members of the executive committee, as it deems necessary. The secretary and assistant secretary or secretaries shall in addition to keeping the permanent records of all proceedings and transactions of the authority perform such other duties as may be assigned to them by the executive committee. No member of the executive committee or officer of the authority shall be pecuniarily interested or benefited directly or indirectly in any contract or agreement to which the authority is a party.

(e) The executive committee shall hold at least one regular meeting during each month for the purpose of transacting the business of the authority. Upon written notice, the chairman may call special meetings as may be necessary. The executive committee when organized shall by resolution set the time, place, and day of the regular meetings and shall adopt rules, regulations, and bylaws as it may deem necessary for the conduct of its official meetings. Eight members shall constitute a quorum of the executive committee for the purpose of conducting its business and exercising its powers, and action may be taken by the authority upon a vote of a majority of the executive committee members present unless the bylaws require a larger number for a particular action.

(f) The executive committee shall receive recommendations for the annual budget from each of the subregional boards and shall obtain approval from each subregional board of the final annual budget as it pertains to that board's subregion. The executive committee shall make its proposed annual budget available to the governing bodies of the cities within the authority at least 30 days prior to adoption of the final annual budget.

Subregional Board in a Subregion Having a Principal City With Population in Excess of 800,000

Sec. 6. (a) The subregional board in a subregion having a principal city with population in excess of 800,000 shall be organized in accordance with this section.

(b) The commissioners court of the county of the principal city shall appoint one member.

(c) The remaining members of the subregional board shall be apportioned according to the ratio which the population of each incorporated city bears to the total population of the territory included within the subregion. Any combination of cities aggregating a total population of 60,000 shall be entitled to one member on the interim subregional board. Following the confirmation election, any combination of cities who have voted confirmation of the authority may aggregate a population of at least 60,000 for the purpose of appointing one member to the initial subregional board. In establishing the interim subregional board, if the results of the 1980 federal census are unavailable, the most recent population estimates of the appropriate metropolitan planning organization will be used.

(d) No city will be entitled to appoint more than 65 percent of the board members. If it would be so entitled pursuant to Subsection (c) of this section, it will be limited to 65 percent and the remaining members will be apportioned among the other cities in the subregion according to the provisions of Subsection (c) of this section.

(e) Prior to 60 days following the date for establishment of the board or restructuring of the board pursuant to Subsection (f) of this section, any two or more cities lacking a specifically designated board member may combine to be treated as a single city for purposes of Subsection (c) of this section, but no combination will be entitled to appoint more than one member of the board.

(f) Every five years as of the first day of September following the date the census data or population estimates become available, or when a city or an unincorporated area withdraws from or joins in the authority, the board shall be restructured pursuant to Subsections (c) and (h) of this section, if warranted by the withdrawal or addition of cities or unincorporated areas, or by population changes or changes in combinations established pursuant to Subsection (e) of this section.

(g) The members of the board shall serve at the pleasure of the governing body of each appointing governmental entity. The governing body shall confirm its board appointment to begin terms on the first day of September each year.

(h) The total number of members comprising the board shall be governed by the total population of the territory included in the subregion. Specifically, the board size shall be determined by the following formula:

Total Population in Subregion	Total Members on Subregional Board
Less than 1,000,000	15
1,000,000 to 1,400,000	21
1,400,000 plus	25

(i) Should a city be entitled to more than one board member, the governing body may appoint a number of members less than those allocated, who will be entitled to the same number of votes as the number of members allocated, but a member so appointed shall not cast divided votes.

(j) Sixty-five percent of the members constitutes a quorum for the purpose of conducting business and actions may be taken upon a majority vote of the members present so long as there is a quorum.

Subregional Board in a Subregion Having a Principal City with Population Less than 800,000

Sec. 7. (a) The subregional board in a subregion having a principal city with population less than 800,000 shall be organized in accordance with this section.

(b) The interim subregional board shall be comprised of nine members appointed as follows:

(1) four members appointed by the governing body of the principal city;

(2) four members appointed by the commissioners court of the county of the principal city; and

(3) one member appointed by the governing body of a city having a population in excess of 100,000.

(c) The permanent subregional board shall be comprised of nine members appointed as follows:

(1) If the entire county of the principal city is confirmed as all or part of the authority, the permanent subregional board shall be appointed in the same manner as the interim subregional board.

(2) If less than the entire county of the principal city is confirmed as all or part of the authority the permanent subregional board shall be appointed as follows:

(A) The commissioners court of the county of the principal city shall appoint at least one member to represent the unincorporated areas and incorporated cities of the county which are not otherwise represented on the subregional board.

(B) The remaining members shall be apportioned to the incorporated cities confirmed as all or part of the subregion according to the ratio which the population of each unit of election bears to the total population of the area confirmed as the subregion. Units of election which fail to receive at least one member shall be aggregated with the county to determine population represented by the county, and appropriate additional members, if any, shall be so apportioned to the county. Units of election which are entitled to one or more members shall have the number of members rounded to the nearest whole number to determine actual apportionment.

(d) Six members of the subregional board shall constitute a quorum of the board for the purpose of

conducting business and action may be taken by a majority vote of the members present so long as there is a quorum.

Membership, Terms, Meetings, and Responsibilities of Subregional Boards

Sec. 8. (a) Members of subregional boards must be registered voters residing within the boundaries of the authority. They shall serve at the pleasure of the appointing local governing bodies. Reaffirmation of the appointments will be required each September 1. Vacancies shall be filled in the same manner as original appointments.

(b) A subregional board shall elect from among its membership a chairman, vice-chairman, and secretary. The board may appoint such assistant secretaries, either members or nonmembers of the board, as it deems necessary. The secretary and assistant secretary or secretaries shall in addition to keeping the permanent records of all proceedings and transactions of the board perform such other duties as may be assigned to them by the board. No member of a subregional board shall be pecuniarily interested or benefited directly or indirectly in any contract or agreement to which the authority is a party.

(c) A subregional board when organized shall by resolution set the time, place, and day of the regular meetings and shall likewise adopt rules and regulations and such bylaws as it may deem necessary for the conduct of its official meetings and special meetings called by written notice of the chairman or vice-chairman.

(d) The subregional boards shall:

(1) develop, recommend, and approve the annual budget for the appropriate subregion and shall make recommendations for the overall budget; and

(2) make recommendations to the executive committee for operation of services provided by the authority.

Confirmation Election

Sec. 9. (a) After the interim executive committee has organized, it shall develop a service plan and a rate of tax that it desires to levy. After the interim executive committee approves a service plan and a rate of tax that it desires to levy, the governing body of each city acting on behalf of the city and the commissioners court in the county of each unincorporated area acting on behalf of the unincorporated area may by resolution or order approve the service plan and rate of tax. If any governing body or commissioners court fails to so approve within 45 days after the interim executive committee has approved a service plan and rate of tax, the city or the unincorporated area upon whose behalf the governing body or commissioners court acts shall not participate in the service plan nor in a confirmation election that shall be called by the interim executive committee in accordance with the provisions of this section; provided, however, that if the governing body of the principal city of a subregion does not approve the service plan and rate of tax, the interim executive committee shall not call a confirmation election in that subregion.

(b) Not earlier than 60 days after the interim executive committee has approved a service plan and rate of tax, the interim executive committee shall:

(1) finally approve a service plan and rate of tax after modifying its approved service plan and rate of tax only to reflect the nonparticipation of certain cities or unincorporated areas in the service plan; and

(2) notify the commissioners court of each county included in whole or in part within the initial boundaries of the authority of its intention to call a confirmation election. Within 30 days after receipt of the notice, each commissioners court by order shall create not more than five designated units of election in the unincorporated portion of the appropriate county. Each designated unit of election shall have outer boundaries, to the extent practicable, that coincide with a boundary of a county voting precinct so that insofar as practicable no county voting precinct is divided between two different designated election areas.

(c) When the executive committee orders a confirmation election, it shall submit to the qualified voters of cities and unincorporated areas participating in the election within the authority the following proposition:

Shall the creation of (name of authority) be confirmed and shall the levy of the proposed tax, not to exceed (rate), be authorized?

(d) Except as otherwise provided in this Act, notice of the election shall be given in accordance with the general election laws. The notice of the election shall include a description of the nature and rate of the proposed tax. A copy of the notice of the election and any other election held pursuant to this Act shall be furnished to the State Highways and Public Transportation Commission and the comptroller of public accounts.

(e) The election shall be conducted so that votes are separately tabulated and canvassed in each participating unit of election within the authority.

(f) Immediately after the election, the presiding judge of each election precinct shall return the results to the executive committee, which shall canvass the returns and declare the results separately with respect to each unit of election. In those units of election where a majority of the votes cast is in favor of the confirmation of the creation of the authority and the levy of the proposed tax, the authority shall continue to exist; except that unless the vote is favorable in the unit of election which includes the principal city, or in contiguous units of election where the population when aggregated in all the units exceeds 300,000, the authority shall cease to exist in that subregion. If the votes cast

are such that the authority will continue to exist in either or both subregions, the executive committee shall enter the results on its minutes and adopt an order declaring that the creation of the authority is confirmed and describing the territory which comprises the authority. All units of election approving the authority and proposed tax shall be included in the authority if their subregion is included, unless the executive committee of the authority notifies the appropriate governing body in writing that it is excepted from the authority and proposed tax because it is not contiguous to the existing authority and would create a fiscal hardship on the authority. A certified copy of the order adopted by the executive committee shall be filed with the State Highways and Public Transportation Commission and the comptroller of public accounts. The order shall reflect the date of the election, the proposition voted on, the total number of votes cast for and against the proposition in each unit of election, and the number of votes by which the proposition was approved in each election unit and shall be accompanied by a map of the authority clearly showing the boundaries of the authority.

(g) If the votes cast are such that the authority ceases to exist in its entirety, the executive committee shall enter an order so declaring and file a certified copy of the order with the State Highways and Public Transportation Commission and the comptroller of public accounts, and the authority shall be dissolved.

(h) The cost of the confirmation election shall be paid by the creating entity or entities.

(i) If the election results in the confirmation of an authority, the authority shall, within the limits confirmed, be authorized to function in accordance with the terms of this Act, and the executive committee may levy and collect the proposed tax within those limits. In no event shall the tax authorized under this Act be levied in any unit of election which has failed to confirm the authority.

(j) If the continued existence of an authority is not confirmed by election within three years after the effective date of the resolution(s) or order(s) initiating the process to create the authority, the authority ceases to exist on the expiration of the three years.

(k) For a period of one year following a confirmation election, the governing body of any unit of election may on its own volition or shall, upon receipt of a petition containing signatures of at least 20 percent of the registered voters within that unit of election, call an election and offer the following proposition: "Shall the (name of authority) be dissolved in (unit of election)?" Should the majority of voters voting in the election vote to dissolve the authority within the unit of election, the authority shall cease to exist within the unit of election as of 12:00 midnight on the date of the canvass of the election and all financial obligations of that unit of election will cease to accrue at that time. The financial obligation shall be computed on a per capita basis for the entire year and taxes will continue to be collected until such time as all financial obligations of the unit of election are paid, at which time the taxes collected to support the authority shall cease within that unit of election.

(*l*) Should the governing body within a unit of election call an election on its own volition or upon petition as provided in Subsection (k) of this section for the purpose of dissolving the authority within the unit of election more than 12 months after the confirmation election, at least 12 months' notice of intent to hold the election must be provided to the executive committee, the State Department of Highways and Public Transportation and the comptroller of public accounts.

Powers of the Authority

Sec. 10. (a) The authority when created and confirmed shall constitute a public body corporate and politic, exercising public and essential governmental functions, having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including but not limited to the following powers granted in this section.

(b) The authority shall have perpetual succession.

(c) The authority may sue and be sued in all courts of competent jurisdiction and may institute and prosecute suits without giving security for costs and may appeal from a judgment or judgments without giving supersedeas or cost bond.

(d) The authority may acquire by grant, purchase, gift, devise, lease, or otherwise and may hold, use, sell, lease, or dispose of real and personal property of every kind and nature whatsoever and licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of any of its powers pursuant to the provisions of this Act.

(e) The authority shall have the power to acquire, construct, complete, develop, plan, own, operate, and maintain a system or systems within its boundaries and both within and without the boundaries of incorporated cities, towns, and villages and political subdivisions and for such purposes shall have the right to use the streets, alleys, roads, highways, and other public ways and to relocate, raise, reroute, change the grade of, and alter the construction of any street, alley, highway, road, railroad, electric lines and facilities, telegraph and telephone properties and facilities, cable television lines and facilities, pipelines and facilities, conduits and facilities, and other properties, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance, and operation of the system or to cause each and all of said things to be done at the authority's sole expense. The authority shall not proceed with any action to change, alter, or damage the property or facilities of the state, its municipal corporations, agencies, or political subdivisions or of owners of such property or

facilities, without having first obtained the written consent of such owners or unless the authority shall have first obtained the right to take such action under its power of eminent domain as herein specified. In the event the owners of such property or facilities desire to handle any such relocation, raising, change in the grade of, or alteration in the construction of such property or facilities with their own forces or to cause the same to be done by contractors of their own choosing, the authority shall have the power to enter into agreements with such owners providing for the necessary relocations, changes, or alterations of such property or facilities by the owners and/or such contractors and the reimbursement by the authority to such owners of the costs incurred by such owners in making such relocations, changes, or alterations and/or in causing the same to be accomplished by such contractors.

(f) In the event the authority in exercising any of the powers conferred by this Act makes necessary the relocation, adjustment, raising, lowering, rerouting, or changing the grade of or altering the construction of any street, alley, highway, or road; any railroad track, bridge, or other facilities or properties; any electric lines, conduits, or other facilities or properties; any gas transmission or distribution pipes, pipelines, mains, or other facilities or properties; any water, sanitary sewer, or storm sewer pipes, pipelines, mains, or other facilities or properties; any telegraph and telephone lines or other facilities or properties; any cable television lines, cables, conduits, or other facilities or properties; or any other pipelines and any facilities or properties relating thereto, any and all such relocations, adjustments, raising, lowering, rerouting, or changing of grade or altering of construction shall be accomplished at the sole cost and expense of the authority, and all damages which may be suffered by the owners of such property or facilities shall be borne by the authority.

(g) The authority shall have the right of eminent domain to acquire lands in fee simple and any interest less than fee simple in, on, under, and above lands, including without limitation easements, rights-of-way, rights of use of air space or subsurface space, or any combination thereof; provided that this right shall not be exercised without the approval of each proposed acquisition in a city by the governing body of that city and the approval of each proposed acquisition in an unincorporated area by the commissioners court of the county of that unincorporated area; and provided further that such right shall not be exercised in a manner which would unduly impair the then existing neighborhood character of property surrounding or adjacent to the property sought to be condemned or unduly interfere with interstate commerce or which would authorize the authority to run its vehicles on railroad tracks which are used to transport property.

(h) Eminent domain proceedings brought by the authority shall be governed by the provisions of Title 52, Eminent Domain, Revised Civil Statutes of Texas, 1925, as they now exist or hereafter may be amended,[1] insofar as such provisions are not inconsistent with this Act. Proceedings for the exercise of the power of eminent domain shall be commenced by the adoption by the executive committee of a resolution declaring the public necessity for the acquisition by the authority of the property or interest therein described in the resolution, and that such acquisition is necessary and proper for the construction, extension, improvement, or development of the system and is in the public interest. The resolution of the authority and the approval of the resolution by the appropriate governing body or commissioners court shall be conclusive evidence of the public necessity of such proposed acquisition and that such real or personal property or interest therein is necessary for public use.

(i) The authority shall have the power to enter into agreements with any other public utility, private utility, communication system, common carrier, or transportation system for the joint use of their respective facilities, installations and properties within the authority and to establish through routes, joint fares, or transfer of passengers.

(j) The authority shall establish and maintain rates, fares, tolls, charges, rents, or other compensation for the use of the facilities of the system acquired, constructed, operated, or maintained by the authority which shall be reasonable and nondiscriminatory and which together with grants and receipts from taxes collected by the authority shall be sufficient to produce revenues adequate:

(1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of the authority;

(2) to pay the interest on and principal of all bonds issued by the authority under this Act which are payable in whole or in part from such revenues, when and as the same shall become due and payable;

(3) to pay all sinking fund and reserve fund payments agreed to be made in respect of any such bonds, and payable out of such taxes and revenues, when and as the same shall become due and payable; and

(4) to fulfill the terms of any agreements made with the holders of such bonds or with any person in their behalf.

(k) It is the intention of this Act that taxes levied and the rates, fares, tolls, charges, rents, and other compensation for the use of the facilities of the system shall not be in excess of what may be necessary to fulfill the obligations imposed upon the authority by this Act. Nothing herein shall be construed as depriving the State of Texas of its power to regulate and control such taxes, rates, fares, tolls, charges, rents, and other compensation; provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of

the bonds issued hereunder that the state will not limit or alter the powers hereby vested in the authority to establish and collect such taxes, rates, fares, tolls, charges, rents, and other compensation as will produce revenues sufficient to pay the items specified in Subdivisions (1), (2), (3), and (4), Subsection (j) of this section or in any way to impair the rights or remedies of the holders of the bonds or of any person in their behalf until the bonds, together with the interest thereon, with interest on unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders and all other obligations of the authority in connection with such bonds are fully met and discharged.

(*l*) The authority may make contracts, leases, and agreements with and accept grants and loans from the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities, and political subdivisions, and public or private corporations and persons and may generally perform all acts necessary for the full exercise of the powers vested in it. The authority may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement. Any revenue bond indenture may provide limitations upon the exercise of the powers stated in this section and such limitations shall apply so long as any of the revenue bonds issued pursuant to such indenture are outstanding and unpaid.

(m) The authority may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties which are not needed for or, in the case of leases, which are not inconsistent with the efficient operation and maintenance of the system. It may sell, lease, or otherwise dispose of at any time any surplus materials or personal or real property not needed for its requirements or for the purpose of carrying out its power under this Act.

(n) The authority shall by resolution make all rules and regulations governing the use, operation, and maintenance of the system and shall determine all routings and change the same whenever it is deemed advisable. The authority shall encourage to the maximum extent feasible the participation of private enterprise.

(*o*) The authority shall have the power to lease the system or any part thereof to or contract for the use or operation of the system or any part thereof by any operator.

(p) The acquisition of any land or interest therein pursuant to this Act, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities, and the exercise of any other powers herein granted an authority are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity.

(q) The authority may contract with any city, county, or other political subdivision for the authority to provide public transportation services to any area outside the boundaries of the authority on such terms and conditions as may be agreed to by the parties.

(r) The authority shall have the power to acquire, construct, complete, develop, plan, own, operate, and maintain a public transportation system and general transportation services within its boundaries and both within and without the boundaries of incorporated cities, towns, and villages and political subdivisions. The powers of the authority may be approved all or in part by referenda proposed by the executive committee. These powers as they relate to a public transportation system and general transportation services are identical to those outlined in other subsections of this section.

(s) The executive committee of the authority may establish a security force and provide for the employment of security personnel. The executive committee may commission any employee of the security force established under this Act as a peace officer if he is certified as qualified to be a peace officer by the Commission on Law Enforcement Officer Standards and Education. Any person commissioned as a peace officer under this Act shall give an oath and such bond for the faithful performance of his duties as the executive committee may require. The bond shall be approved by the executive committee and made payable to the authority. It shall be filed with the executive committee. Any peace officer commissioned under this Act shall be vested with all the rights, privileges, obligations, and duties of any other peace officer in this state while he is on the property under the control of the authority or in the actual course and scope of his employment.

(t) Any and all law enforcement police powers granted pursuant to this section shall be subordinate to the law enforcement police power of an incorporated city wherein the power is attempted to be exercised.

[1] Article 3264 et seq.

Addition of Territory

Sec. 11. (a) Territory may be added to an authority only according to the provisions of this section.

(b) The governing body of an incorporated city or town located in whole or in part within a county in which the authority is situated may hold an election on the question of whether the city or town shall be annexed to the authority. If a majority of the qualified voters in the city or town votes for annexation, the governing body shall certify the results of the election to the executive committee of the authority, and the city or town shall become a part of the authority, except as provided in Subsection (f) of this section. Should a principal city of another subregion or the other subregion choose to join the authority, the procedures outlined in Sections 3 and

4 of this Act shall apply. Following the conduct of an election as directed by Section 9 of this Act, a subregional board will be established according to either Section 6 or Section 7 of this Act. The executive committee existing before the additional subregional board is created will be modified to conform with Section 5 of this Act.

(c) A city of 150,000 to 170,000 according to the last preceding decennial census located in a county with a principal city having a population of less than 800,000 according to the last preceding decennial census may join a separate authority upon otherwise complying with the terms of this Act. In such event thereafter, should a separate authority be established in a county with a principal city of less than 800,000 population according to the last preceding decennial census, any city within such county which has voted to participate with any authority created pursuant to this Act shall have the following options at that time: to remain a part of the earlier created authority, to join the new authority in the county in which the city is located, or to participate with both authorities. Provided that any such city wherein capital improvements have been previously made at its request by an authority must upon its transfer to a different authority or participation with more than one authority continue to honor reimbursement obligations resulting from such improvements.

(d) The commissioners court of a county in which the authority is situated in whole or in part or that is adjacent to a county in which the authority is situated in whole or in part may hold an election for unincorporated areas in any one or more of the designated election areas formed for the election by order of the commissioners court on the question of whether the unincorporated area in which the election is held shall be annexed to the authority. The boundaries of a designated election area shall coincide to the extent practicable with the boundary of a county voting precinct so that insofar as practicable no county voting precinct is divided. If a majority of the qualified voters in any area where such an election is held votes in favor of annexation, the commissioners court shall certify the results of the election to the executive committee of the authority, and the unincorporated area shall become a part of the authority, except as provided in Subsection (f) of this section.

(e) If a city or town which is a part of an authority lawfully annexes additional territory which is not a part of the authority, the annexed territory becomes a part of the authority.

(f)(1) If an authority adds territory or alters its boundaries, the presiding officer of the executive committee shall forward to the comptroller of public accounts by United States registered mail or certified mail a certified copy of the order adding territory to the authority or of the order canvassing the returns and declaring the result of the election. The order shall reflect the effective date of the tax and shall be accompanied by a map of the authority clearly showing the territory added or detached.

(2) Upon receipt of the order and map, the tax imposed and authorized to be collected under Section 16 of this Act shall be effective in the added territory on the first day of the next succeeding quarter. However, if the comptroller notifies the presiding officer of the executive committee in writing within 10 days after receipt of the order and map that he requires more time, the comptroller shall be entitled to delay implementation one whole calendar quarter. Thereafter the tax shall be effective in the added territory on the first day of the next succeeding calendar quarter following the elapsed quarter.

(g) Territory in which an election is held as provided in Subsection (b) or (d) of this section becomes a part of the authority on the 31st day after the election, if the voters approve the addition as provided in Subsection (b) or (d) of this section, and unless the executive committee of the authority notifies the appropriate governing body in writing before that date that the addition, because it is not contiguous to the existing authority, would create a fiscal hardship on the authority.

(h) Separate subregional authorities created pursuant to this Act may voluntarily merge upon a subsequent agreement between them.

Separate Subregional Authority

Sec. 12. In the event one subregion should establish a regional transportation authority, the remaining subregion may establish a separate regional transportation authority pursuant to this Act. In a separate subregion with a principal city of less than 800,000, the tax rate shall be approved by the commissioners court before confirmation election as provided in Section 9 of this Act.

Composition of the Executive Committee

Sec. 13. If the existence of the authority is confirmed in both subregions, then the executive committee shall be organized as provided in Section 5 of this Act. If a creating entity in only one subregion initiates the process or if the existence of the authority is confirmed in only one subregion or separate subregion, then the board for that subregion shall become the executive committee and governing body of the authority, and members of the executive committee shall be selected in the manner prescribed for selection of the members of the board for the subregion that comprises the authority.

Station or Terminal Complexes

Sec. 14. (a) The acquisition of any land or any interest in land pursuant to this Act; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of the authority's system and facilities; and the exercise of any other powers granted an authority, including without limitation the rights, powers, and authority relating to station or terminal complexes as provided in this section, are declared to be public and governmental functions, exercised for a public purpose, and

matters of public necessity for public use and public benefit.

(b) The authority shall have the right, power, and authority to acquire by grant, purchase, gift, devise, lease, or eminent domain proceedings and to own lands in fee simple and any interest less than fee simple in, on, under, and above lands, including without limitation easements, rights-of-way, rights of use of air space or subsurface space or any combination thereof adjacent or accessible to stations and other public or general transportation facilities developed or to be developed by the authority that may be required for or in aid of the development of one or more station or terminal complexes, as part of its transportation system and may sell, lease, or otherwise transfer the same or any part thereof to individuals, corporations, or governmental entities, subject to the restrictions provided in this section.

(c) Any lands or interests in land acquired for a station or terminal complex must be part of or contained within a station or terminal complex designated as part of the system within a comprehensive service plan approved by resolution of the executive committee. Before a station or terminal complex may be included in the system, the executive committee must find and determine that the proposed station or terminal complex will encourage and provide for efficient and economical public transportation service, will facilitate access to public transportation service and provide other public transportation purposes, will reduce vehicular congestion and air pollution in the metropolitan area, and is reasonably essential to the successful operation of the system. The executive committee may amend its comprehensive service plan to include other station or terminal complexes upon making these findings.

(d) Any station or terminal complex shall include adequate provisions for the transfer of passengers between the various modes of transportation available to the complex. A complex may include provisions for commercial, residential, recreational, institutional, and industrial facilities, except that no lands or interests in land more than 1,500 feet in distance from the center point of the complex may be acquired for the facilities by eminent domain proceedings, and the executive committee shall designate the center point prior to the commencement of eminent domain proceedings. If a proposed station or terminal complex is to be located within the city limits or extraterritorial jurisdiction of a city or town, the governing body of the city or town must approve the location of the complex as to conform with the comprehensive or general plan of the city or town by motion, resolution, or ordinance duly adopted.

(e) The authority may sell, lease, or otherwise transfer lands or interests in land acquired within a station or terminal complex and may enter into contracts with respect to it in accordance with the comprehensive service plan approved by the executive committee, subject to such covenants, conditions, and restrictions, including covenants running with the land and obligations to commence construction within a specified time, as the executive committee may deem to be in the public interest or necessary to carry out the purposes of this section, all of which shall be incorporated into the instrument transferring or conveying title or right of use. Any lease, sale, or transfer shall be at fair value taking into account the use designated for the land in the comprehensive service plan for the system and the restrictions on and the covenants, conditions, and obligations assumed by the purchaser, lessee, or transferee. However, if the authority offers the property for sale, the original owner from whom the property was acquired by eminent domain proceedings or through threat of eminent domain proceedings has the first right to repurchase at the price at which it is offered to the public.

(f) No station or public transportation facility may be considered a "station or terminal complex" governed by this section unless it has been designated as such in the comprehensive service plan pursuant to the specific authority granted by this section.

Bonds and Notes

Sec. 15. (a) The authority shall have no power to assess, levy, or collect ad valorem taxes on property, nor to issue any bonds or notes secured by ad valorem tax revenues. The authority, however, shall have the full power to issue bonds and notes from time to time and in such amounts as it shall consider necessary or appropriate for the acquisition, purchase, construction, reconstruction, repair, equipping, improvement, or extension of the transportation system and all properties thereof whether real, personal, or mixed. All such bonds and notes shall be fully negotiable and may be made redeemable before maturity at the option of the issuing authority at such price or prices and under such terms and conditions as may be fixed by the issuing authority in the resolution authorizing such bonds or notes and may be sold at public or private sale whichever the executive committee may deem more advantageous.

(b) Prior to delivery, all bonds and notes authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if he finds that they have been issued in accordance with the constitution and this Act and that they will be binding obligations of the authority, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration and the sale and delivery of the bonds to the purchaser, they shall be incontestable.

(c) In order to secure the payment of such bonds or notes, such authority shall have full power and authority to encumber and pledge all or any part of

the revenue realized from any tax which the authority is authorized to levy and all or any part of the revenues of its transportation system and to mortgage and encumber all or any part of the properties thereof and everything pertaining thereto acquired or to be acquired and to prescribe the terms and provisions of such bonds and notes in any manner not inconsistent with the provisions of this Act. If not prohibited by the resolution or indenture relating to outstanding bonds or notes, any such authority shall have full power and authority to encumber separately any item or items of real estate or personalty, including motorbuses, transit cars and other vehicles, machinery, and other equipment of any nature, and to acquire, use, hold, or contract for any such property under any lease arrangement, chattel mortgage, or conditional sale, including but not limited to transactions commonly known as equipment trust transactions. Nothing herein shall be construed as prohibiting an authority from encumbering any one or more transportation systems for the purpose of purchasing, building, constructing, enlarging, extending, repairing, or reconstructing another one or more of said systems and purchasing necessary property, both real, personal, and mixed, in connection therewith.

(d) Refunding bonds or notes may be issued for the purposes and in the manner provided by general law, including without limitation Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k–3, Vernon's Texas Civil Statutes), as presently enacted or hereafter amended.

(e) Whenever the revenues of any public transportation system or general transportation services shall be encumbered under this Act, the expense of operation and maintenance, including all salaries, labor, materials, and repairs necessary to render efficient service and every proper item of expense, shall always be a first lien and charge against such revenues. The fares charged for transportation of passengers by any system may be based upon a zone system of determining fares or other fare classification determined by such authority to be reasonable.

(f) All such bonds and notes shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies. Such bonds and notes shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political subdivisions of the State of Texas, and such bonds and notes shall be lawful and sufficient security for said deposits to the extent of the principal amount thereof or their value on the market, whichever is the lesser, when accompanied by all unmatured coupons appurtenant thereto.

(g) If revenue bonds are to be issued by an authority to acquire any existing transportation system or any part thereof and the owner thereof is willing to accept said revenue bonds in lieu of cash, then in that event the revenue bonds may be exchanged for the property or for the stock of a corporation owning the property to be dissolved simultaneously.

(h) Bonds payable solely from revenues may be issued by resolution of the executive committee, but no bonds, except refunding bonds, payable wholly or partially from taxes may be issued until authorized by a majority vote of the qualified voters of the authority voting in an election called and held for that purpose.

Local Sales and Use Tax

Sec. 16. (a) Subject to approval at a confirmation election in accordance with this Act, the executive committee is authorized to levy, collect, and impose a local sales and use tax for the benefit of the authority, the sales tax portion of which shall not exceed one percent of receipts from the sale at retail of all taxable items within the authority area which are subject to taxation under the provisions of the Limited Sales, Excise and Use Tax Act, as enacted and as heretofore or hereafter amended.[1] The tax rate may be levied or collected only as a quarter of one percent, a half of one percent, three-quarters of one percent, or one percent. The provisions of this section shall be applicable to the levy, imposition, and collection of the tax.

(b) The following words and terms shall have the following respective meanings unless a different meaning clearly appears from the context:

(1) "Authority area" means the geographical limits of the authority.

(2) "Comptroller" means the Comptroller of Public Accounts of Texas.

(3) "Local sales and use tax" means any sales and use tax imposed by a city within the authority area under the Local Sales and Use Tax Act (Article 1066c, Vernon's Texas Civil Statutes).

(c) The executive committee by filing a certified copy of the order with the comptroller may authorize and direct the comptroller to collect a rate of tax that is lower than the rate approved by the voters at the confirmation election.

(d) The executive committee shall not increase the tax rate above the rate approved by the voters at the confirmation election without first receiving a majority vote in favor of the increase at an authority-wide election.

(e) Upon actual receipt by the comptroller of notification of adoption, increase, or decrease of a local sales and use tax containing the information required by Subsection (f) of Section 9 of this Act, there shall elapse one whole calendar quarter prior to the adoption, increase, or decrease of a local sales and use tax becoming effective. Thereafter the adoption, increase, or decrease shall be effective

beginning on the first day of the next calendar quarter following the elapsed calendar quarter.

(f)(1) Every retailer within the authority area shall add the tax imposed by the Limited Sales, Excise and Use Tax Act, any applicable local sales and use tax, and the tax imposed under the authority of this Act to his sale price, and when added, the combined tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. The combined taxes on the transaction shall be determined by multiplying the amount of the sale by the total of the combined applicable tax rates. Any fraction of one cent which is less than one-half of one cent of tax shall not be collected. Any fraction of one cent of tax equal to one-half of one cent or more shall be collected by the retailer as a whole cent of tax. Provided, however, that any retailer who can establish to the satisfaction of the comptroller that 50 percent or more of his receipts from the sale of taxable items arise from individual transactions where the total sales price when multiplied by the combined rates of the taxes imposed under the Limited Sales, Excise and Use Tax Act, any applicable local sales and use tax, and this section equals an amount that is less than one-half of one cent may exclude the receipts from such sales when reporting and paying the tax imposed under this Act, the Limited Sales, Excise and Use Tax Act, and any applicable local sales and use tax. No retailer shall avail himself of this provision without prior written approval of the comptroller. The comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the comptroller shall be deemed to be a failure and refusal to pay the taxes imposed by this Act, the Limited Sales, Excise and Use Tax Act, and any applicable local sales and use tax, and the retailer shall be subject to assessment for both taxes, penalties and interest as provided for in this Act, the Limited Sales, Excise and Use Tax Act, and any applicable local sales and use tax.

(2)(A) In every authority area where the tax authorized by this Act has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use, or other consumption within such authority area of taxable items purchased, leased, or rented from any retailer on or after the effective date for collection of the sales tax portion of the sales and use tax for storage, use, or other consumption in such authority area at the same rate as the sales tax levied under this Act of the sales price of the taxable item or, in the case of leases or rentals, of said lease or rental price. Except as provided in Paragraph (D) of this subdivision, the use tax imposed by this section is not owed to and may not be collected by, for, or in behalf of an authority if no excise tax on the storage, use, or other consumption of an item of tangible personal property is owed to or collected by the state under the Limited Sales, Excise and Use Tax Act or if the tangible personal property is first stored, used, or consumed within an authority or area that has not adopted the sales and use tax imposed by this section.

(B) In each authority where the tax authorized by this Act has been imposed as provided in this Act, the excise tax imposed under the Limited Sales, Excise and Use Tax Act and any applicable excise tax under the Local Sales and Use Tax Act on the storage, use, or other consumption of taxable items and the excise tax imposed by this Act shall be added together to form a combined rate of excise tax which is equal to the sum of the applicable taxes. The tax imposed by this section shall be collected by the comptroller on behalf of and for the benefit of such authority. The formula prescribed in Subdivision (1) of this subsection shall be applicable to the collection of the excise tax imposed under this section.

(C) The provisions of the Limited Sales, Excise and Use Tax Act shall be applicable to the collection of the tax imposed by this Subdivision (2), provided that in Subchapter D, Chapter 151, Tax Code,[2] the name of the authority where the sales and use tax authorized by this Act has been adopted shall be substituted for that of the state where the words "this state" are used to designate the taxing authority or to delimit the tax imposed.

(D) If a sale of tangible personal property is consummated within the state but not within an authority that has adopted the taxes imposed by this section and the tangible personal property is shipped directly into or brought by the purchaser or lessee directly into an authority that has adopted the taxes imposed by this section, the tangible personal property is subject to the use tax imposed by the authority under Paragraph (A) of this subdivision. The use is considered consummated at the location where the item is first stored, used, or otherwise consumed after the intrastate transit has ceased.

(E) If the tangible personal property is shipped from outside this state to a customer within this state, the tangible personal property is subject to the use tax imposed by Paragraph (A) of this subdivision and not the sales tax imposed by Subdivision (1) of this subsection. The use is consummated at the first point in this state where the property is stored, used, or otherwise consumed after interstate transit has ceased. Tangible personal property delivered to a point in this state is presumed to be for storage, use, or other consumption at that point until the contrary is established.

(F) There are exempted from the sales taxes imposed by this article receipts from any sale of tangible personal property which, pursuant to the con-

tract of sale, is shipped to a point outside the authority area by the retailer by means of:

(a) facilities operated by the retailer;

(b) delivery by the retailer to a carrier for shipment to a consignee at such point; or

(c) delivery by the retailer to a customs broker or forwarding agent for shipment outside the authority.

If the tangible personal property exempted under this paragraph or under Subparagraph (6) of Section 11B(B)(c) of Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 1118x, Vernon's Texas Civil Statutes), is shipped or delivered directly to a purchaser in another authority that has adopted the taxes imposed by either article, the tangible personal property is subject to the use tax imposed by Subdivision (1) of Subsection (f) of this section.

(3)(A) On and after the effective date of any tax imposed under the provisions of this Act, the comptroller shall perform all functions incident to the administration, collection, enforcement, and operation of the tax, and the comptroller shall collect, in addition to the taxes imposed by the Limited Sales, Excise and Use Tax Act, an additional tax under the authority of this Act specified by the authority, but not to exceed one percent on the receipts from the sale at retail or on the sale price or lease or rental price on the storage, use, or other consumption of all taxable items within such authority area, which items are subject to the Limited Sales, Excise and Use Tax Act. The tax imposed hereunder and the tax imposed under the Limited Sales, Excise and Use Tax Act and any applicable local sales and use tax shall be collected together and reported upon such forms and under such administrative rules and regulations as may be prescribed by the comptroller not inconsistent with the provisions of this Act. On and after the effective date of any proposition to abolish such local sales and use tax in any authority area, the comptroller shall comply therewith.

(B) The comptroller shall make to the authority substantially the same reports as to taxes within the authority area as are made to cities under Subsections 5(b), (c), and (d) of the Local Sales and Use Tax Act.

(4) The following provisions shall govern the collection by the comptroller of the tax imposed by this Act:

(A) All applicable provisions contained in Title 2, Tax Code,[3] shall apply to the collection of the tax imposed by this Act, except as modified in this Act.

(B) The provisions contained in Section 6 of the Local Sales and Use Tax Act shall apply to the levy, imposition, and collection of the tax imposed by this Act, except as modified herein.

(C) The penalties provided in Title 2, Tax Code, for violations of that Act are hereby made applicable to violations of this Act.

(D) The sales and use tax collected by the comptroller under this Act shall be deposited, held, accounted for, and transmitted for the authority as provided in Section 7 of the Local Sales and Use Tax Act.

(5) The authority's share of all sales and use tax collected under this Act by the comptroller shall be transmitted to the treasurer or the officer performing the functions of such office of such authority by the comptroller payable to the authority periodically as promptly as feasible. Transmittals required under this Act shall be made at least twice in each state fiscal year. Before transmitting such funds, the comptroller shall deduct two percent of the sum collected from the authority during such period as a charge by the state for its services specified in this Act, and the amounts so deducted shall be deposited by the comptroller in the State Treasury to the credit of the General Revenue Fund of the state. The comptroller is authorized to retain in the suspense account of an authority a portion of the authority's share of the tax collected under this Act. Such balance so retained in the suspense account shall not exceed five percent of the amount remitted to the authority. The comptroller is authorized to make refunds from the suspense account of an authority for overpayments made to such accounts and to redeem dishonored checks and drafts deposited to the credit of the suspense account of the authority. When an authority shall abolish such tax, the comptroller may retain in the suspense account of the authority for a period of one year five percent of the final remittance to the authority at the time of termination of collection of such tax in the authority to cover possible refunds for overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of such tax in the authority, the comptroller shall remit the balance in such accounts to the authority and close the account.

(6) The comptroller may promulgate reasonable rules and regulations, not inconsistent with the provisions of this Act, to implement the enforcement, administration, and collection of the taxes authorized herein.

(7)(A) In an authority where the sales and use tax authorized by this Act has been imposed, if any person is delinquent in the payment of the amount required to be paid by him under this Act or in the event a determination has been made against him for taxes and penalty under this Act, the limitation for bringing suit for the collection of such delinquent tax and penalty shall be the same as that provided by the Limited Sales, Excise and Use Tax Act. Where any person is delinquent in payment of taxes under this Act, the comptroller shall notify the authority to which delinquent taxes are due under this Act by United States registered mail or certified mail and shall send a copy of the notice to the attorney general. The authority, acting through its

attorney, may join in any suit brought by the attorney general as a party plaintiff to seek a judgment for the delinquent taxes and penalty due such authority. The notice sent by the comptroller to the authority showing the delinquency of a taxpayer constitutes a certification of the amount owed and is prima facie evidence of the determination of the tax and of the delinquency of the amounts of sales and use tax set forth in the notice.

(B) Where property is seized by the comptroller under the provisions of any law authorizing seizure of the property of a taxpayer who is delinquent in payment of the tax imposed by the Limited Sales, Excise and Use Tax Act and where such taxpayer is also delinquent in payment of any tax imposed by this Act, the comptroller shall sell sufficient property to pay the delinquent taxes and penalty due an authority under this Act in addition to that required to pay any amount due the state under the Limited Sales, Excise and Use Tax Act and due any city under the Local Sales and Use Tax Act. The proceeds from such sale shall first be applied to all sums due the state, then all sums due any city under the Local Sales and Use Tax Act, and the remainder, if any, shall be applied to all sums due the authority.

(C) An authority that has adopted the tax authorized by this Act may bring suit for the collection of sales, excise, or use taxes imposed by this Act which have been certified as provided in Paragraph (A) of this subdivision and are owed to the authority under this Act if at least 60 days before the filing of the suit written notice by certified mail of the tax delinquency and of the intention to file suit is given to the taxpayer, the comptroller, and the attorney general and if neither the comptroller nor the attorney general disapproves the suit by written notice to the authority.

(D) The comptroller or attorney general may disapprove the institution of tax suit by an authority if:

(i) negotiations between the state and the taxpayer are being conducted for the purpose of the collection of delinquent taxes owed to the state and the authority seeking to bring suit;

(ii) the taxpayer owes substantial taxes to the state and there is a reasonable possibility that the taxpayer may be unable to pay the total amount owed in full;

(iii) the state will bring suit against the taxpayer for the collection of all sales, excise, and use taxes due under the Limited Sales, Excise and Use Tax Act and this Act; or

(iv) the suit involves a critical legal question relating to the interpretation of state law or a provision of the Texas Constitution or the United States Constitution in which the state has an overriding interest.

(E) A notice of disapproval to an authority must give reason for the determination of the comptroller or attorney general. A disapproval is final and not subject to review. An authority, after one year from the date of the disapproval, may proceed again as provided in Paragraph (C) of this subdivision even though the liability of the taxpayer includes taxes for which the authority has previously given notice and the comptroller or attorney general has previously disapproved the suit.

(F) In any suit under this subdivision for the collection of the authority tax, a judgment for or against the taxpayer does not affect any claim against the taxpayer by a city or the state unless the state is a party to the action.

(G) A copy of the final judgment in favor of an authority in a case in which the state is not a party shall be abstracted by the authority and a copy of the judgment together with a copy of the abstract shall be sent to the come authority shall collect taxes awarded to it under the judgment as provided by Section 151.608(e), Limited Sales, Excise and Use Tax Act and is responsible for the renewal of the judgment before the expiration of the 10-year period. If a collection is made by an authority on a judgment, notice of the amount collected shall be sent by certified mail to the comptroller. The comptroller may prescribe a form for the notice to be used by an authority.

[1] Tax Code, § 151.001 et seq.
[2] Tax Code, § 151.101 et seq.
[3] Tax Code, § 101.001 et seq.

Differential Tax Rates

Sec. 17. The executive committee by filing a certified copy of the order and a map of the authority clearly showing the boundaries of the subregions with the comptroller may authorize and direct the comptroller to collect a different rate of tax in each subregion as long as neither rate is greater than the rate approved by the voters at the confirmation election. In a subregion with a principal city of less than 800,000, the tax rate shall be approved by the commissioners court before the confirmation election as provided in Section 9 of this Act.

Management

Sec. 18. (a) The responsibility for the operation and control of the properties belonging to an authority shall be vested in its executive committee. The executive committee may:

(1) appoint and prescribe compensation for a general manager who shall employ persons, firms, partnerships, or corporations deemed necessary by the executive committee for the conduct of the affairs of the authority, including but not limited to bookkeepers, engineers, financial advisers, and operating or management companies and in accordance with executive committee policy, prescribe the duties, tenure, and compensation of each; all employees may be removed by the general manager;

(2) appoint auditors and attorneys and prescribe the duties, tenure, and compensation of each;

(3) become a subscriber under the Texas Workers' Compensation Act with any old-line legal-re-

serve insurance company authorized to write policies in the State of Texas;

(4) adopt a seal for the authority;

(5) invest funds of the authority in direct or indirect obligations of the United States, the state, or any county, city, school district, or other political subdivision of the state; funds of the authority may be placed in certificates of deposit of state or national banks or savings and loan associations within the state provided that they are secured in the manner provided for the security of the funds of counties of the State of Texas; the executive committee by resolution may provide that an authorized representative of the authority may invest and reinvest the funds of the authority and provide for money to be withdrawn from the appropriate accounts of the authority for the investments on such terms as the executive committee considers advisable;

(6) fix the fiscal year for the authority;

(7) establish a complete system of accounts for the authority and each year shall have prepared an audit of its affairs by an independent certified public accountant or a firm of independent certified public accountants which shall be open to public inspection; and

(8) designate one or more banks to serve as the depository for the funds of the authority.

(b) All funds of the authority shall be deposited in the depository bank or banks unless otherwise required by orders or resolutions authorizing the issuance of the authority's bonds or notes.

(c) To the extent that funds in the depository bank or banks are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided by law for the security of funds of counties of the State of Texas.

(d) The executive committee by resolution may authorize a designated representative to supervise the substitution of securities pledged to secure the authority's funds.

Rules and Regulations

Sec. 19. (a) The executive committee may adopt and enforce reasonable rules and regulations:

(1) to secure and maintain safety and efficiency in the operation and maintenance of its facilities;

(2) governing the use of the authority's facilities and services by the public and the payment of fares, tolls, and charges; and

(3) regulating privileges on any land, easement, right-of-way, rolling stock, or other property owned or controlled by the authority.

(b) A condensed substantive statement of the rules and regulations shall be published after adoption once a week for two consecutive weeks in a newspaper with general circulation in the area in which the authority is located which notice shall advise that the full text of the rules and regulations is on file in the principal office of the authority where it may be read by any interested person. Such rules and regulations shall become effective 10 days after the second publication.

Competitive Bids

Sec. 20. Contracts for more than $2,000 for the construction of improvements or the purchase of material, machinery, equipment, supplies, and all other property, except real property, shall be let on competitive bids after notice published once at least 15 days before the date fixed for receiving bids in a newspaper of general circulation in the area in which the authority is located. The executive committee may adopt rules governing the taking of bids and the awarding of such contracts. This section shall not apply to personal and professional services or to the acquisition of existing transit systems.

County Authority to Contract with Authority

Sec. 21. A commissioners court may contract with an authority for the authority to provide public transportation services to any unincorporated area outside the boundaries of the authority for a term and on those conditions as are determined to be desirable by the commissioners court and the executive committee. The county may levy and collect taxes or pledge and encumber other receipts or revenues as may be required to make any payments to the authority under the provisions of the contract.

Elections

Sec. 22. (a) This section governs all elections ordered by the executive committee except elections held under the provisions of Section 9 of this Act.

(b) Notice of an election ordered by the executive committee shall be given by publication once a week for three consecutive weeks with the first publication in a newspaper with general circulation in the authority at least 21 days before the election.

(c) A resolution calling an election and the notice of the election are sufficient if the date and hours of the election, the voting places within voting precincts for the election, and the propositions to be voted on are specified. The executive committee may define and declare voting precincts, determine the manner of absentee voting, and prescribe the election officers.

(d) As soon as practicable after an election, the executive committee shall canvass the returns of the election and declare the results.

(e) Where not otherwise provided in this section, the general election laws apply.

Exemptions from Taxes

Sec. 23. The property, revenues, and income of the authority and the interest bonds and notes issued by the authority shall be exempt from all taxes levied or to be levied by the State of Texas, its political subdivisions, counties, or municipal corporations.

Incorporated City May Provide Services

Sec. 23A. Nothing contained in this Act shall preclude an incorporated city from providing general transportation services or public transportation services.

Subregional Transportation Authorities in Contiguous Cities

Sec. 24. (a) Nothing contained in this Act shall require any city with a population in excess of 150,000, according to the most recent federal census and with boundaries contiguous to a principal city with a population less than 800,000 according to the most recent federal census, or any city with boundaries contiguous to a principal city and with boundaries extending into two or more adjacent counties, two of which counties include a principal city, to be a part of or participate in the regional transportation authority provided herein. Such cities shall be called "contiguous cities."

(b) Nothing contained in this Act shall prohibit any such contiguous city from establishing a subregional transportation authority.

(c)(1) Within 60 days after initiation of the process provided in Section 3 of this Act by a principal city or a county of the principal city or within 60 days after a confirmation election or any election to dissolve the authority, in which a majority of the votes cast in such contiguous city either fail to confirm the creation of the authority or approve the dissolving of the authority, any such contiguous city may elect by resolution of its governing body not to participate in the regional transportation authority established by a principal city or county of a principal city.

(2) In the event such contiguous city shall elect not to participate in the regional transportation authority provided in this Act, its boundaries shall be excluded from the regional transportation authority proposed or created by the principal city or county of the principal city and shall not be included in the initiating process of said principal city or county of the said principal city as provided in Section 4 of this Act and the confirmation procedure of Section 9 of this Act.

(d) Any such contiguous city may create a subregional transportation authority by one of the following methods:

(1) The governing body of a contiguous city may initiate the process to create a subregional transportation authority on its own motion.

(2) If a petition requesting creation of a subregional transportation authority signed by at least five percent of the registered voters of the contiguous city is presented, the governing body of the contiguous city shall initiate the process for creating the subregional transportation authority.

(e) The subregional transportation authorities created in any two or more contiguous cities may establish a joint subregional transportation authority by contract. A subregional transportation authority or joint subregional transportation authorities may enter into contracts with a regional transportation authority.

(f) Except as it may conflict with the intent of this Section 24, the initiating procedure for a subregional transportation authority shall be the same as that provided in Section 4 of this Act. Where the word "principal city" is used therein, it shall mean contiguous city and where the word "authority" is used therein, it shall mean the subregional transportation authority.

(g)(1) The management, control, and operation of a subregional transportation authority and its property shall be vested in an executive committee comprised of five members selected by the governing body of the contiguous city.

(2) The members of the executive committee shall elect from among their number a chairman, a vice-chairman, and a secretary. The executive committee may appoint such assistant secretaries, either members or nonmembers of the executive committee, as it deems necessary. The secretary and assistant secretary shall, in addition to keeping the permanent records of all proceedings and transactions of the subregional transportation authority, perform such other duties as may be assigned to them by the executive committee. No member of the executive committee or officer of the subregional transportation authority shall be pecuniarily interested or benefited directly or indirectly in any contract or agreement to which the authority is a party.

(3) The executive committee shall hold at least one regular meeting during each month for the purpose of transacting the business of the subregional transportation authority. Upon written notice, the chairman may call special meetings as may be necessary. The executive committee, when organized, shall by resolution set the time, place, and day of the regular meetings and shall adopt rules, regulations, and bylaws as it may deem necessary for the conduct of its official meetings. Four members shall constitute a quorum of the executive committee for the purpose of conducting its business and exercising its powers, and action may be taken by the subregional transportation authority upon a vote of a majority of the executive committee members present unless the bylaws require a larger number for a particular action.

(4) The executive committee shall receive recommendations for the annual budget from the governing body of the contiguous city and shall obtain approval of the final annual budget from said contiguous city.

(h)(1) After the interim executive committee has organized, developed a service plan, and determined the rate of tax that it desires to levy, it shall call a confirmation election in accordance with the provisions of this section.

(2) Where the executive committee orders a confirmation election, it shall submit to the qualified

voters within the subregional transportation authority the following proposition:

"Shall the creation of (name of authority) be confirmed and shall the levy of the proposed tax be authorized?"

(3) Except as otherwise provided in this Act, notice of the election shall be given in accordance with the general election laws. The notice of the election shall include a description of the nature and rate of the proposed tax. A copy of the notice of the election and any other election held pursuant to this Act shall be furnished to the State Highways and Public Transportation Commission.

(4) Immediately after the election, the presiding judge of each election precinct within the contiguous city shall return the results to the executive committee, which shall canvass the returns and declare the results of the election and adopt an order declaring the creation of the subregional transportation authority.

(5) If the votes cast are such that the subregional transportation authority ceases to exist in its entirety, the executive committee shall enter an order so declaring and file a certified copy of the order with the State Highways and Public Transportation Commission, and the authority shall be dissolved.

(6) The cost of the confirmation election shall be paid by the creating entity.

(7) If the election results in the confirmation of a subregional transportation authority, the authority shall, within the limits confirmed, be authorized to function in accordance with the terms of this Act, and the executive committee may levy and collect the proposed tax within those limits.

(8) If the continued existence of a subregional transportation authority is not confirmed by election within three years after the effective date of the resolution(s) or order(s) initiating the process to create the subregional transportation authority, the subregional transportation authority ceases to exist on the expiration of the three years.

(9) For a period of one year following a confirmation election, the governing body of any contiguous city may on its own volition or shall, upon receipt of a petition containing signatures of at least 20 percent of the registered voters within the contiguous city call an election and offer the following proposition: "Shall the (name of authority) be dissolved in city?" Should the majority of voters voting in the election vote to dissolve the subregional transportation authority within the contiguous city, the subregional transportation authority shall cease to exist within the city as of 12 midnight on the date of the canvass of the election and all financial obligations of that unit of election will cease to accrue at that time. The financial obligation shall be computed on a per capita basis for the entire year and taxes will continue to be collected until such time as all financial obligations of the contiguous city are paid, at which time the taxes collected to support the subregional transportation authority shall cease within the contiguous city.

(i) The following sections of this Act shall not apply to subregional transportation authorities:

Sections 5, 6, 7, 8, 9, 11, and 12.

(j) Sections 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 shall be applicable to the subregional transportation authorities. Whenever the term "authority" is used, it shall mean subregional transportation authority.

(k)(1) If a city or town which is a part of an authority lawfully annexes additional territory which is not a part of the subregional transportation authority, the annexed territory becomes a part of the subregional transportation authority.

(2) At the time territory is added to a subregional transportation authority under the provisions of this section, any tax which the board of the subregional transportation authority has already been authorized to levy applies to the added territory.

Eligibility of Excepted Areas for Federal Funds

Sec. 25. Ratification by referendum of an authority under the terms of this Act by less than all incorporated cities within the metropolitan area as defined herein shall not affect in any way the eligibility of such excepted incorporated cities to receive federal transit grants under the Surface Transportation Assistance Act of 1978 or any subsequent federal statutes.

Severability Clause

Sec. 26. If any word, phrase, clause, paragraph, sentence, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, or provision. It is provided, however, that the provisions of Subsection (b) of Section 4 of this Act are not severable in whole or in part.

[Acts 1979, 66th Leg., p. 1610, ch. 683, §§ 1 to 26, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 431, ch. 183, §§ 1 to 9, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 560, ch. 237, § 7, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 1774, ch. 389, §§ 17 to 19, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 3197, ch. 838, § 3, eff. Aug. 31, 1981.]

Section 1 of Acts 1981, 67th Leg., p. 1490, ch. 389, enacted Title 2 of the Tax Code.

3. CITY REGULATION

Art. 1119. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

Arts. 1121, 1122. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

Art. 1124. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

Art. 1125 to 1132. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

CHAPTER ELEVEN. TOWNS AND VILLAGES

Article

1134d. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Towns and Villages Involved in Litigation Resulting in Agreed Judgment.
1146A. Appointment of Health Officer.

Art. 1134d. Validation of Incorporation, Boundary Lines and Governmental Proceedings; Towns and Villages Involved in Litigation Resulting in Agreed Judgment

Scope of Act

Sec. 1. This Act applies to any municipality originally incorporated or attempted to have been incorporated under Chapter 11, Title 28, Revised Civil Statutes of Texas, 1925, as amended (Article 1133, et seq., Vernon's Texas Civil Statutes), which after the date of its incorporation or attempted incorporation was party to a suit in the district court in which another city, town, or village was a party and the issue was raised that the incorporation or attempted incorporation violated the territory or extraterritorial jurisdiction of the other city, town, or village, and the suit resulted in the entry of an agreed judgment upholding the validity of the incorporation or attempted incorporation and providing for the adjustment of boundaries and areas of extraterritorial jurisdiction for the two municipalities, which judgment was either not appealed or not reversed on appeal.

Proceedings Validated

Sec. 2. The following are validated as of the dates on which they occurred:

(1) the incorporation or attempted incorporation of a municipality covered by this Act;

(2) the boundary lines of the municipality covered by the original incorporation or attempted incorporation proceedings;

(3) any governmental proceedings of the municipality relating to the adoption or attempted adoption of the provisions of Chapters 1 through 10, Title 28, Revised Civil Statutes of Texas, 1925, as amended (Article 961, et seq., Vernon's Texas Civil Statutes);

(4) all adjustments in the boundaries and areas of extraterritorial jurisdiction of the municipality that were carried out in accordance with the agreed judgment or the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), whether the proceedings were carried out before or after an adoption or attempted adoption by the municipality of the provisions of Chapters 1 through 10, Title 28, Revised Civil Statutes of Texas, 1925, as amended;

(5) any proceedings of the municipality carried out after an adoption or attempted adoption by the municipality of the provisions of Chapters 1 through 10, Title 28, Revised Civil Statutes of Texas, 1925, as amended, relating to the issuance of general obligation bonds, the issuance of which was approved by a majority of the qualified voters of the municipality voting on the question in an election; and

(6) all other governmental acts or proceedings of the municipality.

Exclusions

Sec. 3. This Act does not apply to any matter that on the effective date of this Act:

(1) has been declared invalid by a final judgment of a court of competent jurisdiction; or

(2) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1978, 65th Leg., 2nd C.S., p. 9, ch. 3, §§ 1 to 3, eff. Aug. 14, 1978.]

Art. 1145. Quorum May Pass By-laws

The mayor shall be the president of the board of aldermen. At the first meeting of each new board of aldermen or as soon as practicable, the board shall elect one alderman to serve as president pro tempore for a term of one year and to perform the duties of the mayor in the event of the mayor's failure, inability, or refusal to act. The mayor shall, with three of the aldermen, constitute a quorum for the transaction of business. In the mayor's absence, any four of the aldermen constitute a quorum. The quorum has the power to appoint any alderman as a presiding officer at any meeting at which the mayor and president pro tempore are absent. The quorum shall have power to enact such by-laws and ordinances not inconsistent with the laws and constitution of this State as shall be deemed proper for the government of the corporation.

[Amended by Acts 1975, 64th Leg., p. 644, ch. 265, § 1, eff. Sept. 1, 1975.]

Art. 1146A. Appointment of Health Officer

If the board of aldermen appoints a city health officer under Article 4425, Revised Civil Statutes of Texas, 1925, as amended, the appointee is not required to be a resident of the city.

[Added by Acts 1977, 65th Leg., p. 891, ch. 335, § 2, eff. May 30, 1977.]

Art. 1148. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

CHAPTER THIRTEEN. HOME RULE

Article
1174a–10. Validation of Adoption of Charter; Governmental Acts and Proceedings.
1174a–11. Validation of Amendment of Charter; Governmental Acts and Proceedings.
1182j. Cultural and Related Parking Facilities in Cities of 1,200,000 or More.

Art. 1167. Submission Of Charter

The charter so framed by said commission shall be submitted to the qualified voters of said city at an election to be held at a time fixed by the charter commission not less than forty nor more than ninety days after the completion of the work of the charter commission; provision for which shall be made by the governing body of the city in so far as not prescribed by the general law. Not less than thirty days prior to such election, that governing body shall cause the city clerk or city secretary to mail a copy of the proposed charter to each qualified voter in said city as appears from the list of registered voters maintained as required by law by the registrar of voters for each county in which the city is located. In preparing the charter the commission shall, as far as practicable, segregate each subject so that the voter may vote "Yes" and "No" on the same.
[Amended by Acts 1981, 67th Leg., p. 2286, ch. 558, § 1, eff. Sept. 1, 1981.]

Art. 1174a–10. Validation of Adoption of Charter; Governmental Acts and Proceedings

Applicability

Sec. 1. This Act applies to any incorporated city or town that before the effective date of this Act adopted or attempted to adopt a home-rule charter and since the adoption or attempted adoption has functioned as a home-rule city.

Proceedings Validated

Sec. 2. (a) All governmental acts and proceedings of a municipality covered by this Act regarding the adoption of a home-rule charter are validated as of the dates on which they occurred.

(b) All governmental acts and proceedings of the municipality since adoption or attempted adoption of the charter are validated as of the dates on which they occurred.

Effect on Litigation

Sec. 3. This Act does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1979, 66th Leg., p. 1552, ch. 668, eff. Aug. 27, 1979.]

Art. 1174a–11. Validation of Amendment of Charter; Governmental Acts and Proceedings

Application

Sec. 1. This Act applies to any home-rule city that before August 24, 1980, amended or attempted to amend its charter and since the amendment or attempted amendment has functioned or attempted to function under the charter as amended.

Proceedings Validated

Sec. 2. (a) The governmental acts and proceedings of a home-rule city covered by this Act relating to the amendment or attempted amendment of the city's charter are validated as of the dates they occurred. The acts and proceedings may not be held invalid because they were not performed in accordance with law.

(b) The governmental acts and proceedings of the city occurring since the amendment of the charter and before the effective date of this Act are validated as of the dates they occurred, except that the extension of a boundary line by annexation into the extraterritorial jurisdiction of another city or town without that city or town's consent, in violation of the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), is not validated by this Act.

Effect on Litigation

Sec. 3. This Act does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by a final judgment of a court of competent jurisdiction.

[Acts 1981, 67th Leg., p. 2219, ch. 521, eff. Aug. 31, 1981.]

Art. 1175. Enumerated Powers

Cities adopting the charter or amendment hereunder shall have full power of local self-government, and among the other powers that may be exercised by any such city the following are hereby enumerated for greater certainty:

[See Compact Edition, Volume 3 for text of 1 to 34]

35. A home-rule city may require all buildings to be constructed in accordance with energy conservation standards included in the building code, if any.

36. A home-rule city may adopt an ordinance which requires the demolition or repair of buildings which are dilapidated, substandard, or unfit for human habitation and which constitute a hazard to the health, safety, and welfare of the citizens. The ordinance must establish minimum standards for continued use and occupancy of structures, and these standards shall apply to buildings regardless of when

they were constructed. The ordinance must provide for proper notice to the owner and a public hearing. After the hearing, if the building is found to be substandard, the city may direct that the building be repaired or removed within a reasonable time. After the expiration of the allotted time the city has the power to remove the building at the expense of the city and assess the expenses on the land on which the building stood or to which it was attached and may provide for that assessment, the mode and manner of giving notice, and the means of recovering the removal expenses.

[Amended by Acts 1975, 64th Leg., p. 235, ch. 89, § 8, eff. Jan. 1, 1976; Acts 1975, 64th Leg., p. 627, ch. 258, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 905, ch. 413, § 1, eff. June 6, 1979.]

Sections 1 to 7 of Acts 1975, 64th Leg., ch. 89, were classified as art. 678i; § 9 thereof provided: "This Act takes effect on January 1, 1976."

Art. 1181. Franchises

No charter or any amendment thereof framed or adopted under this charter, shall ever grant to any person, firm or corporation any right or franchise to use or occupy the public streets, avenues, alleys or grounds of any such city, but the governing authority of any such city shall have the exclusive power and authority to make any such grant of any such franchise or right to use and occupy the public streets, avenues, alleys, and grounds of the city. If, at any time, before any ordinance granting a franchise takes effect, a petition shall be submitted to the governing authority signed by 10 percent of the bona fide qualified voters of the city or, in a city having a population of more than 1.2 million according to the last federal census, signed by a lesser number of qualified voters if so provided by city charter, then the governing body shall submit the question of granting such franchise to a vote of the qualified voters of the city, at the next succeeding election date authorized by Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code).

[Amended by Acts 1981, 67th Leg., p. 10, ch. 9, § 1, eff. March 4, 1981.]

Section 2 of the 1981 amendatory act provides:

"Articles 1181 and 1182, Revised Civil Statutes of Texas, 1925, as amended by this Act, apply only to a grant of a franchise that occurs on or after the effective date of this Act. The grant of a franchise before the effective date of this Act is covered by the law in effect on the date the franchise was granted, and the former law is continued in effect for this purpose."

Art. 1182. Franchise Election

Whenever said ordinance is submitted at any election, notice thereof shall be published at least twenty days successively in a daily newspaper in said city prior to the holding of said election. The ballot used at said election shall briefly describe the franchise to be voted on and the terms thereof and shall be prepared to permit voting for or against the proposition: "Granting of a franchise." If a majority of those voting at said election shall vote in favor of granting a franchise, the governing body upon canvassing the returns shall so declare and said franchise shall take effect in accordance with its terms. No franchise shall extend beyond the period fixed for its termination.

[Amended by Acts 1981, 67th Leg., p. 10, ch. 9, § 1, eff. March 4, 1981.]

Art. 1182c–4. Bonds, Issuance by Cities in Lieu of Unissued Bonds of Abolished Conservation and Reclamation District

Sec. 1. This Act shall apply to all incorporated cities, including home-rule cities, and those operating under general laws or special charters, which have heretofore abolished or may hereafter abolish or which have heretofore annexed, or hereafter may annex, all the land within one or more conservation and reclamation districts created under Article XVI, Section 59, of the Texas Constitution, including water control and improvement districts, freshwater supply districts, or municipal utility districts and have abolished or may abolish such districts as provided by applicable law, including but not limited to Article 1182c–1, Vernon's Texas Civil Statutes (Chapter 128, Acts of the Fiftieth Legislature of Texas, Regular Session, 1947), as same has been, or may hereafter be, amended. In the event any such district had, prior to such abolition, voted bonds for the purpose of providing waterworks, sanitary sewer or drainage facilities, any or all, which bonds were not issued, sold and delivered prior to such abolition, the governing body of such city shall be authorized to issue and sell bonds of said city in an amount not exceeding the amount of such voted but unissued district bonds, for the purpose of carrying out the purpose or purposes for which said district bonds were voted. Such bonds shall be authorized by ordinance adopted by the governing body of said city in which provision shall be made for the levy of taxes upon all taxable property within said city for the payment of principal and interest thereon when due. Said bonds shall be sold for not less than par and accrued interest, shall mature, bear interest, be subject to approval by the Attorney General of Texas and registration by the Comptroller of Public Accounts as provided by law for other general obligation bonds of such city, and when so approved, registered, and sold, shall be incontestable.

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

[Amended by Acts 1979, 66th Leg., p. 1884, ch. 761, § 1, eff. Aug. 27, 1979.]

Art. 1182c–5. Cities Which Have Annexed Territory Within Water Control and Improvement, Fresh Water Supply or Municipal Utility Districts

Application of Act; Succession to Powers, Duties, Assets and Obligations of Districts

Sec. 1. (a) This Act shall apply to all incorporated cities and towns, including Home Rule Cities and those operating under General Laws or special charters (hereinafter called "city" or "cities"), which now or hereafter contain within their city or corporate limits (by virtue of annexation of territory or origi-

nal incorporation, either or both) any part of the territory within one (1) or more water control and improvement districts, freshwater supply districts or municipal utility districts (hereinafter called "district" or "districts"), which districts were organized for the primary purpose of providing such municipal functions as the supply of fresh water for domestic or commercial uses, or the furnishing of sanitary sewer service, any or all, when the balance of the territory comprising such district or districts lies in another city or cities so that the entire district lies wholly within two (2) or more cities. Such cities shall succeed to the powers, duties, assets and obligations of such district or districts in the manner and to the extent hereinafter provided. Nothing herein shall prohibit any city from continuing to operate utility facilities within any such district in which such facilities are, or were, owned and operated by such city at the time that the part of the territory of the district became, or becomes, a part of or included within the boundaries of such city.

(b) This Act shall also apply when the balance of the territory comprising a district or districts, other than a district created by a special act of the Legislature, lies in another city or cities and in unincorporated territory so that the entire district lies wholly within two (2) or more cities and in unincorporated territory. In this latter case dissolution of the district may be effected by the procedure in Section 2 hereof. This subsection shall not apply to a district created by a special act of the Legislature.

Abolition of Districts; Distribution of Assets; Assumption of Obligations

Sec. 2. (a) Such district may be abolished by mutual agreement between the district and the cities wherein such district lies. Subject to the provisions of Section 4 of this Act, such agreement shall provide for the distribution among such cities of all the properties and assets of the district and for the pro rata assumption by such cities of all the debts, liabilities and obligations of the district, said distribution and assumption to be predicated or based upon the pro rata value of the properties and assets of the district going to such cities, respectively, to the entire value of such properties and assets. The determination of the value of such properties and assets may be on an original cost basis, a reproduction cost basis, or a fair market value basis or by any other valuation method agreed upon by the parties which reasonably reflects the value of the properties, assets, debts, liabilities, and obligations of the district. Such agreement shall designate the date upon which the district shall be abolished, and the agreement shall be approved by ordinance adopted by the governing body of each of the cities and by order or resolution adopted by the governing board of the district, and the same shall be so approved prior to the date designated in the agreement for such abolition, distribution, and assumption.

(b) In the event a district, other than a district created by a special act of the Legislature, lies wholly within two (2) or more cities and in unincorporated territory, said district may be abolished by mutual agreement between the district and all of the cities wherein portions of the district lie. Subject to the provisions of Section 4 of this Act, the agreement of dissolution shall provide for the distribution of assets and liabilities as stated in Subsection (a) hereof. The agreement shall also include a distribution among one (1) or more of the cities of the pro rata assets and liabilities lying outside the limits of the contracting cities, in unincorporated territory. In addition, the agreement shall also include provisions for service to customers in unincorporated areas previously within the service area of the abolished district. In this connection, the city providing service to customers in unincorporated areas is specifically authorized to charge its usual and customary fees and assessments to such customers and to new customers outside its incorporated limits. The agreement shall be approved by ordinance adopted by the governing body of each city and by order or resolution adopted by the governing board of the district, and the agreement shall have this approval before the date designated in the agreement for abolition, distribution, and assumption.

[See Compact Edition, Volume 3 for text of 2A to 6]

[Amended by Acts 1979, 66th Leg., p. 126, ch. 75, §§ 1, 2, eff. April 26, 1979.]

Art. 1182j. Cultural and Related Parking Facilities in Cities of 1,200,000 or More

Definition

Sec. 1. In this Act, "city" means a home-rule city having a population of at least 1,200,000 according to the last preceding federal census.

Cultural and Parking Facilities; Promotion

Sec. 2. (a) In addition to the authority provided by the provisions of any other law of this state, a city is hereby authorized to acquire sites for and establish, acquire, lease as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate, or maintain (any or all) cultural facilities, such as opera houses, ballet and symphony halls, theaters or similar buildings, or any building or buildings combining same, and to acquire sites for and establish, acquire, lease as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate, or maintain (any or all) parking facilities, including areas and structures, or any combination thereof, located at or in the immediate vicinity of such cultural facilities, to be used in connection with such cultural facilities and otherwise for off-street parking or storage of motor vehicles or other conveyances.

(b) Further, a city is hereby authorized to expend funds derived from that portion of the mixed beverage tax revenues hereinafter authorized for (i) the

advertising and promotion of events to take place in such cultural facilities and the attraction of events to such facilities either by such city or through contracts with persons or organizations selected by such city and (ii) the encouragement, promotion, improvement, and application of the cultural arts, including but not limited to opera, ballet, symphony, and theater, and the arts related to the presentation, performance, execution, and exhibition of these major art forms.

Issuance of Bonds: Pledge of Revenues

Sec. 3. (a) A city is hereby authorized to issue revenue bonds to provide all or part of the funds to provide the cultural facilities and parking facilities in order to accomplish the purposes of this Act as described in Subsection (a) of Section 2 hereof.

(b) Such revenue bonds may be issued when duly authorized by an ordinance passed by the governing body of a city and shall be secured by a pledge of and be payable from all or any designated part of the revenues of such cultural facilities or such parking facilities, as may be provided in the ordinance or ordinances authorizing the issuance of such bonds. To the extent that such revenues may have been pledged to the payment of revenue or refunding bonds which are still outstanding, the pledge securing the proposed bonds shall be inferior to such previous pledge or pledges. Within the discretion of the governing body of such city, and subject to any limitations contained in previous pledges, in addition to the pledge of revenues, a lien may be given on all or any part of the physical properties and facilities constructed or acquired out of the proceeds of the sale of such bonds.

(c) When any of the revenues of such cultural facilities or parking facilities are pledged to the payment of bonds issued under this Act, it shall be the duty of the governing body of the city to cause to be fixed, maintained, and enforced charges for services rendered by the facilities and properties, the revenues of which have been pledged, at rates and amounts at least sufficient to comply with and carry out the covenants and provisions contained in the ordinance or ordinances authorizing the issuance of such bonds.

(d) If a city leases as lessee any one or more of such cultural facilities or parking facilities, such city shall have authority to pledge to the lease payments required to be made by such city all or any part of the revenues of such cultural facilities or parking facilities.

Pledge of Mixed Beverage Tax Receipts

Sec. 4. (a) By official action of its governing body a city is hereby authorized to pledge for the purposes provided herein a portion of that part of the receipts of the mixed beverage tax presently collected by the Texas Alcoholic Beverage Commission (the "commission") pursuant to the Alcoholic Beverage Code (the "code") which is remitted to such city pursuant to Section 205.03 of the code. The total amount of any such portion of such receipts so pledged shall not exceed the sum of 1½ percent of the gross receipts of each permittee, as defined in the code, located within the city from the sale, preparation, or service of mixed beverages, as defined in the code, or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with alcoholic beverages and consumed on the premises of the permittee.

(b) All ordinances heretofore passed and adopted by the governing body of any city so pledging mixed beverage tax revenues which authorized the issuance of any bonds heretofore issued that are secured in whole or in part by a pledge of any portion of the mixed beverage tax presently collected by the commission and reimbursed to the city are hereby in all respects validated and held to be enforceable as of their respective dates of passage and adoption.

(c) In the event that at the time of any remittance of mixed beverage tax revenues by the Comptroller of Public Accounts of the State of Texas pursuant to Section 205.03 of the code the amount collected by the commission from permittees in a city having acted to pledge a portion of mixed beverage tax as provided in Subsection (a) of this section shall be less than the total amount required to be collected from such permittees by Chapter 202 of the code, then the amount to be pledged under this section shall be an amount equal to the total amount actually collected from permittees in such city multiplied by a fraction in which the numerator is the amount of the mixed beverage tax receipts authorized to be pledged pursuant to this section during the quarterly period for which such remittance is to be made and the denominator is the total of the amount of the receipts required to be collected from all permittees in such city pursuant to Chapter 202 of the code during such period.

Use of Revenues

Sec. 5. (a) The revenues derived from that portion of mixed beverage tax revenues authorized to be pledged by this Act shall be used for the purposes described in Section 2 of this Act, which shall include but not be limited to the pledge of such revenues to the payment of bonds which are issued for the purposes described in Subsection (a) of Section 2 of this Act.

(b) Any amounts received by a city from that portion of the mixed beverage tax revenues authorized to be pledged by this Act and pledged to the payment of bonds pursuant to Subsection (a) of this section which are in excess of the amounts required by the ordinance or ordinances under which such bonds are issued may be used for any other purpose described in Section 2 of this Act. Any amounts remaining after such application of funds may be determined by the governing body of a city to be

excess fund and may be used by such city for any lawful purposes, provided that any such use does not violate the provisions of any ordinance passed by the governing body of such city in connection with the issuance of bonds for the payment of which such portion of the mixed beverage tax revenues are pledged.

Source of Funds for Payment of Bonds

Sec. 6. The owners and holders of any bonds issued pursuant to the Act shall never have the right to demand payment of either the principal of or interest on such bonds out of any funds raised or to be raised by taxation, except for that portion of the mixed beverage tax authorized herein if pledged.

Form of Bonds; Interim Certificates or Receipts; Approval and Registration of Bonds

Sec. 7. All bonds shall be signed by the manual or facsimile signatures of the mayor of the city and the city secretary or city clerk and shall bear the manual or facsimile seal of the city thereon. Such bonds may be payable at such times, may be in one or more series, may bear such date or dates, may mature at such time or times, may bear interest at any rate or rates permitted by the constitution and the laws of the State of Texas, may be payable in such medium of payment at such place or places, may be subject to such terms or redemption at such premiums, may contain such terms, covenants, and conditions, and may be in such form, either coupon or registered, as the ordinance of the governing body of the city may provide. The bonds may be sold at public or private sale in such manner and upon such terms as may be provided in such ordinance. Pending the preparation of definitive bonds, interim receipts or certificates in such form and with such provisions as may be provided in such ordinance may be issued to the purchaser or purchasers of bonds sold pursuant to this Act. All bonds issued hereunder and the record relating to their issuance shall be submitted to the Attorney General of the State of Texas for his examination as to the validity thereof. If he finds that the bonds have been authorized in accordance with law, he shall approve them, and thereupon they shall be registered by the comptroller. After the approval and registration of such bonds by the comptroller, they shall be incontestable in any court or other forum for any reason and shall be valid and binding obligations in accordance with their terms for all purposes.

Ordinances

Sec. 8. In the ordinance or ordinances authorizing the issuance of any revenue or refunding bonds authorized hereunder, the city may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund or funds, reserve fund or funds, and other funds and may make additional covenants with respect to the bonds and the pledged revenues and the operation and maintenance of those facilities, the revenues of which are pledged, including provision for the operation or for the leasing of all or any part of such facilities and the use or pledge of money derived from such operation contracts and leases as it may deem appropriate. Such ordinance or ordinances may also prohibit the further issuance of bonds or other obligations payable from the pledged revenues or may reserve the right to issue additional bonds to be secured by a pledge of and payable from such revenues on a parity with, or subordinate to, the lien and pledge in support of the bonds being issued, subject to such conditions as are set forth in said ordinance or ordinances. Such ordinance or ordinances may contain other provisions and covenants, as the city may determine, not prohibited by the Constitution of Texas or by this Act, and the city may adopt and cause to be executed any other proceedings or instruments necessary or convenient in the issuance of any of such bonds.

Appropriation or Set Aside of Bond Proceeds

Sec. 9. From the proceeds of sale of any bonds issued under the provisions of the Act, the city may appropriate or set aside an amount for the payment of interest and administrative and operating expenses expected to accrue during the period of construction, an amount or amounts to be deposited into the reserve fund or funds as may be provided in the bond ordinance or ordinances, as well as an amount necessary to pay all expenses incurred and to be incurred in the issuance, sale, and delivery of the bonds.

Refunding Bonds

Sec. 10. Refunding bonds may be issued for the purposes and in the manner provided by general law, including without limitation Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k–3, Vernon's Texas Civil Statutes), as presently enacted or hereafter amended.

Bonds as Investment Securities and to Secure Deposits

Sec. 11. All bonds issued under this Act shall be investment securities under the terms of Section 8 of the Business & Commerce Code and shall be legal and authorized investments for banks, savings banks, trust companies, buildings and loan associations, insurance companies of every kind or type, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for such deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

Construction With Other Laws

Sec. 12. This Act is cumulative of all existing laws of the State of Texas, but to the extent that such existing laws may be in conflict or inconsistent with the provisions of this Act, the provisions of this Act shall govern and prevail; and this Act shall take precedence over any and all conflicting or inconsistent city charter provisions.

Severability

Sec. 13. If any provisions of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provisions or applications, and to this end the provisions of this Act are declared to be severable. [Acts 1981, 67th Leg., p. 2574, ch. 687, eff. Aug. 31, 1981.]

CHAPTER FOURTEEN. CITIES ON NAVIGABLE WATERS

Article

1187g. City of Port Arthur; Lake Sabine; Regulation.

Art. 1187f. Harbor and Port Facilities; Cities and Towns Over 5,000 on Gulf or Connecting Waters; Bonds

Application of Act; Authority of City

Sec. 1. This Act apply to every incorporated city or town (including Home Rule Cities) located on the coast of the Gulf of Mexico, or any channel, canal, bay or inlet connected therewith, having a population of more than five thousand (5,000) inhabitants according to the Federal Census last preceding the taking of any action by such city under the provisions of this Act. Every such city or town owning and operating port facilities (referred to hereinafter as "city") is hereby empowered and authorized to build, construct, purchase, acquire, lease as lessee, improve, enlarge, extend, repair, maintain, replace, develop, operate, lease, or cause to be built, constructed, improved, enlarged, extended, repaired, maintained, developed, or operated, any and all improvements and facilities which the governing body thereof deems to be necessary or convenient for the proper operation of the ports or harbors of such city. Without in any way limiting the generalization of the foregoing, it is expressly provided that such improvements and facilities mentioned above shall include lands, interests in lands, properties, wharves, piers, docks, roadways, belt railways, warehouses, grain elevators, transport facilities, handling facilities, storage facilities, ship repair facilities, dumping facilities, bunkering facilities, floating plans and facilities, lightering facilities, towing facilities, any other facilities which a navigation district is or may be authorized to provide by general law or specific act, any and all equipment and supplies, and all other structures, buildings, and facilities which the governing body deems to be necessary or convenient for the proper operation of the ports or harbors of such city. The improvements and facilities mentioned in this Section 1 are hereinafter referred to as the "improvements and facilities." Any city may construct improvements and facilities on land acquired by purchase, lease, or otherwise and may convey such land, or interest therein, or such improvements and facilities by lease as lessor, sublease as sublessor or sale by installment or otherwise upon terms and conditions as the city may determine to be advantageous.

Tax Bonds and Revenue Bonds; Election

Sec. 2. For the purpose of providing funds for any of the improvements and facilities provided in Section 1 hereof, the governing body of the city shall have the power and authority to issue from time to time tax bonds or revenue bonds of said city, either or both; provided, however, that no bonds payable from ad valorem taxes, except refunding bonds, shall be issued unless and until they have been authorized at an election at which a majority of the persons qualified to vote and voting at said election have voted in favor thereof, said election to be called and held under the provisions of and in accordance with Chapter 1 of Title 22, Revised Civil Statutes of Texas, 1925, as the same is now or may hereafter be amended.[1] Notwithstanding the provisions or restrictions of any general or special law or charter to the contrary, no election shall be required to authorize the issuance under this Act of bonds payable solely from revenues if such bonds do not constitute a debt of the city or a pledge of its faith and credit and if the owner or holder of any such bond shall never have the right to demand payment out of any funds raised or to be raised by taxation.

[1] Article 701 et seq.

Pledge of Revenues; Collection of Fees and Charges; Payment of Interest and Principal; Sale of Revenue Bonds

Sec. 3. Revenue bonds may be issued secured solely by a pledge of and payable from the net revenues derived from the operation of all or any designated part or parts of the improvements and facilities then in existence or to be improved, constructed, or otherwise acquired, with the duty of the city to charge and collect fees, tolls, and charges, so long as any of the revenue bonds or interest thereon are outstanding and unpaid, sufficient to pay all maintenance and operation expenses of the improvements and facilities (the net revenues of which are pledged), the interest on such bonds as it accrues, the principal of such bonds as it matures, and to make any and all other payments as may be prescribed in the bond ordinance and other proceedings authorizing and relating to the issuance of such bonds. If a city ordinance adopted under Section 7 of this Act places management and control of the improvements, facilities, and properties under a board of trustees while revenue bonds and the interest on them remain outstanding or unpaid, the board of trustees, if authorized by Home Rule Charter, may fix charges, authorize expenditures, prepare budgets, and otherwise manage and control the pledged revenues. "Net revenues" as used herein

shall mean the gross revenues derived from the operation of those improvements and facilities the net revenues of which are pledged to the payment of the bonds less (a) the reasonable expenses of maintaining and operating said improvements and facilities, and said maintenance and operation expenses shall include, among other things, necessary repair, upkeep, and insurance of said improvements and facilities, and (b) if the city is operating under a Home Rule Charter, any annual payment of the city as may be set out in said Charter. Revenue bonds issued hereunder may be sold at public or private sale, notwithstanding the provisions or restrictions of any general or special law or Charter to the contrary.

Revenue Bonds; Public or Private Sale; Security; Sale of Improvements and Facilities

Sec. 3A. Notwithstanding anything to the contrary in Section 3 or 7, revenue bonds may be issued secured solely by a pledge of all or any part of the revenue from any leases, subleases, sales or contracts of sale entered into by city with respect to the improvements and facilities to be financed with such revenue bonds and such revenue bonds may be additionally secured by a trust indenture and by a mortgage or deed of trust lien or security interest upon such improvements and facilities. In connection with the issuance of such revenue bonds, the city may lease as lessor, sublease as sublessor or sell to any person, firm, corporation, partnership, political subdivision of the State of Texas, or agency of the United States of America, all or any part of any improvements and facilities to be constructed or acquired with the proceeds of such revenue bonds, said lease, sublease, sale or contract of sale to contain such terms and provisions (including in the case of a lease, but not by way of limitation, provisions to sell the improvements and facilities at the termination of said lease and provisions relating to management and operation of the improvements and facilities by the lessee thereof) as the city may determine to be advantageous to the city. The terms of said lease or contract of sale may provide that the lessee or purchaser of the improvements and facilities is contractually unconditionally obligated to make payments to the city for use or purchase of the facilities or improvements in amounts adequate to timely pay principal, interest, and premium on the revenue bonds of the city issued to finance the construction or acquisition of said facilities and improvements. Revenue bonds issued hereunder may be sold at public or private sale, notwithstanding the provisions or restrictions of any general or special law or charter to the contrary.

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

Outstanding Bonds; Unpaid Interest

Sec. 7. While any revenue bonds issued under the provisions of this Act or any interest thereon remain outstanding and unpaid, the management and control of such improvements and facilities (and the physical properties comprising the same) and of the income and revenue from them, including the authority to fix charges, prepare budgets, and authorize expenditures, by the terms of the ordinance authorizing the issuance of such bonds may be placed in the hands of the governing body of the city or may be placed in the hands of a board of trustees to be named in such ordinance, consisting of not more than seven (7) members, one (1) of whom shall be a member of the governing body of such city; provided, if the city is operating under a Home Rule Charter and said Charter contains provisions requiring that the improvements and facilities be managed or controlled by a board of trustees, then the provisions of such Charter shall be followed. The compensation of the members of the board of trustees, the terms of office of such members, their powers and duties, the manner of exercising the same, the election or appointment of their successors, and all matters pertaining to their organization and duties shall be specified in said ordinance; provided, if the city is operating under a Home Rule Charter as mentioned above and the Charter contains provisions relating to any of the foregoing matters mentioned in this sentence, it is expressly provided that the provisions of such ordinance relating to such matters shall be in accordance with and governed by the Charter provisions. In all matters where such ordinance or Charter are silent, the laws and rules governing the governing body of the city shall govern said board of trustees so far as applicable.

Refunding Bonds; Approval and Registration

Sec. 8.

[See Compact Edition, Volume 3 for text of 8(a) and (b)]

(c) Refunding bonds (both tax refunding bonds and revenue refunding bonds) shall be authorized by ordinance of the governing body of the city, and shall be executed and mature as is provided in this Act for original bonds. They shall be approved by the Attorney General of the State of Texas as in the case of original bonds, and shall be registered by the Comptroller of Public Accounts of the State of Texas upon surrender and cancellation of the bonds to be refunded; but in lieu thereof, the ordinance authorizing their issuance may provide that they shall be sold at public sale if they are tax refunding bonds and at public or private sale if they are revenue refunding bonds and the proceeds thereof deposited in the place or places where the underlying bonds are payable, or with the State Treasurer, in which case the refunding bonds may be issued in an amount sufficient, not only to pay the principal of the underlying bonds, but also to pay the interest on the underlying bonds to their option or maturity dates, and the Comptroller of Public Accounts shall register them without the surrender and cancellation of the underlying bonds. In those situations where the proceeds of revenue refunding bonds are deposit-

ed in the place or places where the underlying bonds are payable, or with the State Treasurer, they shall be so deposited under an escrow agreement so that such proceeds and, at the option of such city, any interest earned from the investment of such proceeds as hereinafter provided, will be available for the payment of the interest on and principal of said underlying bonds as such interest and principal respectively become due; and such escrow agreement may provide that such proceeds may, until such time as the same are needed to pay interest and principal as the same become due, be invested in direct obligations of the United States of America, in which instances the interest earned on such investments may be pledged to the payment of the principal of and interest on the underlying bonds, the refunding bonds or shall be considered as revenues of the improvements and facilities.

[See Compact Edition, Volume 3 for text of 8(d) and (e)]

Applicability of Statutes; Mortgage of Properties

Sec. 9. Insofar as the same may be applicable, the provisions of Articles 1111 to 1118, Revised Civil Statutes of Texas, 1925, together with all amendments thereof and additions thereto, shall apply to revenue bonds issued under the provisions of this Act, and any city covered by this Act shall have, with respect to revenue bonds issued hereunder, all the powers granted by said Statutes. However, where the provisions of said Statutes are in conflict or inconsistent with the provisions of this Act, the provisions of this Act shall govern and prevail. Further, it is expressly provided that the city shall have no power or authority to mortgage or encumber the physical properties of the improvements and facilities being financed in whole or in part by bonds payable from ad valorem taxes, unless authorized at the election required by Section 2 of this Act.

[See Compact Edition, Volume 3 for text of 10 to 12]

[Amended by Acts 1975, 64th Leg., p. 874, ch. 332, § 1, eff. June 6, 1975; Acts 1977, 65th Leg., p. 149, ch. 73, §§ 1, 2, eff. April 25, 1977; Acts 1979, 66th Leg., p. 478, ch. 219, § 1, eff. May 17, 1979; Acts 1979, 66th Leg., p. 1904, ch. 772, §§ 1 to 4, eff. June 13, 1979.]

Sections 5 and 6 of the 1979 amendatory act provided:

"Sec. 5. The provisions of Sections 60.038, 61.116, and 61.117 of the Water Code, relating to the disposition of lands or flats heretofore purchased from the State of Texas under Article 8225, Revised Civil Statutes of Texas, 1925, or granted by the State of Texas in any general or special act, shall continue to be applicable to the disposition of such lands or flats by any city acting under the authority of Chapter 341, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 1187f, Vernon's Texas Civil Statutes).

"Sec. 6. In case any one or more of the sections, provisions, clauses, or words of this Act, or the application thereof to any situation or circumstance, shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act, or the application thereof to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein."

Art. 1187g. City of Port Arthur; Lake Sabine; Regulation

Sec. 1. The governing body of the City of Port Arthur, with respect to the waters of Lake Sabine within the corporate limits of the city, may designate or otherwise regulate by ordinance certain areas of said lake as bathing, fishing, swimming, recreational, or otherwise restricted areas and may make rules and regulations relating to same.

Sec. 2. Notwithstanding any law or regulation of any state agency permitting the taking of crabs or other sea or water life by the use of traps, the governing body of the City of Port Arthur, with respect to the waters of Lake Sabine within the corporate limits of the city, may designate or otherwise regulate by ordinance the location and placement of traps within said lake.

Sec. 3. Repealed by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2(1), eff. Jan. 1, 1982.

Sec. 4. The governing body of the City of Port Arthur may, by ordinance, regulate, notwithstanding any other state law or regulation, the speed of boats within and upon Lake Sabine within corporate limits of the city.

Sec. 5. In the event any one or more of the sections or provisions of this Act, or the application of such sections or provisions to any situation, circumstances, or persons, shall for any reason be held to be unconstitutional, such unconstitutionality shall not affect any other sections or provisions of this Act, or the application of such sections or provisions to any situation, circumstances, or persons, and it is intended that this Act shall be construed as if such sections or provisions had not been included herein for any constitutional application.

[Acts 1977, 65th Leg., p. 1788, ch. 716, §§ 1 to 5, eff. Aug. 29, 1977.]

CHAPTER SIXTEEN. MUNICIPAL COURT

GENERAL PROVISIONS

Article
1199a. Temporary Replacement.
1200e. Panels or Divisions of Municipal Court; Temporary or Relief Judges.
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1200bb. Midland.
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GENERAL PROVISIONS

Art. 1196. Judge of the Municipal Court

Such court shall be presided over by a judge to be known as the "judge of the municipal court" and such alternate judges who, in cities, towns or vil-

lages incorporated under special charter shall be selected under the provisions of the charter concerning the election or the appointment of the judges to preside over the municipal court. All such provisions are hereby made applicable to the judges of the municipal court herein provided for. All other statutory references to the "recorder" shall be construed to mean the "judges of the municipal court."
[Amended by Acts 1977, 65th Leg., p. 1135, ch. 426, § 2, eff. Aug. 29, 1977.]

Art. 1196(a). Home Rule Cities; Judge of Municipal Court

The Municipal Court in any city heretofore or hereafter incorporated, which city has adopted or amended its Charter, or which may hereafter adopt or amend the same, under Article 11, Section 5, of the Constitution of the State of Texas, commonly known and referred to as the "Home Rule Amendment", shall be presided over by a judge to be known as the "Judge of the Municipal Court", or other title as such official may be called in the charter of any such city, and who shall be selected under the provisions of the City Charter or ordinance concerning the election or appointment of the judge to preside over the Municipal Court.

All judges now holding office and presiding over any such Municipal Court in any such city and heretofore appointed or elected in accordance with the provisions of the Charter or ordinance of such city are hereby declared to be the duly constituted, appointed or elected judge of such Court and shall hold office until his successor shall have been duly selected in accordance with the provisions hereof and shall have qualified according to law.
[Amended by Acts 1977, 65th Leg., p. 1993, ch. 796, § 1, eff. June 16, 1977.]

Sections 3 and 4 of the 1977 Act provided as follows:

"Sec. 3. If any section, subsection, subdivision, paragraph, sentence, clause, phrase, or word of this Act is for any reason held to be invalid or unconstitutional in its application to particular persons or circumstances, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 4. This Act shall be cumulative as to all laws, charter provisions, and ordinances relating to the municipal court in home-rule cities in this state."

Art. 1199a. Temporary Replacement

While a municipal judge is temporarily unable to act for any reason, the governing body of the city, town, or village may appoint a person meeting the qualifications for such position to sit for the regular municipal judge. The appointee shall have all the powers and duties of the office and shall receive the same compensation as is payable to the regular municipal judge while he is so acting.
[Added by Acts 1977, 65th Leg., p. 1135, ch. 426, § 1, eff. Aug. 29, 1977.]

Art. 1200e. Panels or Divisions of Municipal Court; Temporary or Relief Judges

(a) In lieu of one judge for the municipal court in a home-rule city, as provided in Article 1196(a), Vernon's Texas Civil Statutes, the municipal court in any such city may by charter or ordinance be divided into two or more panels or divisions, one of which shall be presided over by a presiding judge, and each additional panel or division shall be presided over by an associate judge who shall be a magistrate with the same powers as those conferred on the presiding judge. Each such panel or division of the municipal court, when established, shall have and exercise concurrent jurisdiction with the other panels or divisions of such court within the corporate limits of the city establishing them, and such jurisdiction shall be the same as is now or hereafter may be conferred upon all municipal courts by the general laws of this state. Such panels or divisions of the municipal court may be in concurrent and continuous session, either day or night.

(b) Except as otherwise provided by the charter of such city, the governing body of the city establishing panels or divisions for such court may by ordinance:

(1) prescribe the qualifications of the persons to be eligible to appointment as judge or judges of said court or of its panels or divisions;

(2) provide that such court, its panels or divisions, and the judges thereof may transfer cases from one panel or division to another, and that any judge or any of such panels or divisions may exchange benches and preside over any of the panels or divisions of such court;

(3) provide for a municipal court clerk who shall be clerk for all of the panels or divisions of such municipal court, together with such number of deputies as may be needed. The clerk and the deputies under his direction and supervision shall keep minutes of the proceedings of said court and its panels and divisions, if any, administer oaths, issue all process, and generally perform all the duties of the clerk of a court as prescribed by law for a county clerk insofar as the same may be applicable;

(4) provide that complaints shall be filed with such municipal court clerk in such manner as to provide for an equal distribution among the panels or divisions of such court.

(c) Any such city may provide by charter or ordinance for the appointment of one or more temporary or relief judges to sit for the regular judge of the municipal court or for the presiding judge or any of the associate judges of such court, while such judge or judges, any or all, are temporarily unable to act for any reason. Such temporary or relief judge shall possess the same qualifications required of the judge for whom he is sitting. Any temporary or relief judge shall have all the powers and duties of the judge for whom he is sitting while so acting.

(d) Except as modified by the terms of this Act, the procedure before such court and its panels or divisions, if any, and appeals therefrom shall be governed by the general law applicable to all municipal courts.
[Added by Acts 1977, 65th Leg., p. 1993, ch. 796, § 2, eff. June 16, 1977.]

Sections 3 and 4 of the 1977 Act provided as follows:

"Sec. 3. If any section, subsection, subdivision, paragraph, sentence, clause, phrase, or word of this Act is for any reason held to be invalid or unconstitutional in its application to particular persons or circumstances, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"Sec. 4. This Act shall be cumulative as to all laws, charter provisions, and ordinances relating to the municipal court in home-rule cities in this state."

Art. 1200f. Continuing Legal Education of Municipal Court Judges

Judges not Licensed as Attorneys

Sec. 1. Each municipal court judge in the State of Texas who is not a licensed attorney in this state may complete successfully within one year from the date he is first elected or appointed, or if he is in office on the effective date of this Act, within one year from the effective date of this Act, a 24-hour course in the performance of his duties. Thereafter, he may complete a minimum of eight hours each year. The course may be completed in an accredited state-supported school of higher education or in a continuing education course, program, seminar, or law school or law enforcement school approved by the Texas Judicial Council.

Judges Licensed as Attorneys

Sec. 2. Each municipal court judge in the State of Texas who is a licensed attorney and in good standing with the State Bar may complete successfully within one year from the date he is first elected or appointed, or if he is in office on the effective date of this Act, within one year from the effective date of this Act, an eight-hour course in the performance of his duties. Thereafter, he may complete an eight-hour course each year. The course may be completed in an accredited state-supported school of higher education or in a continuing education course, program, or seminar approved by the Texas Judicial Council.

Administration of Act

Sec. 3. The Texas Judicial Council shall have general supervisory authority over the administration of this Act. The Texas Judicial Council shall accredit courses, programs, and seminars which will satisfy the educational requirements of this Act and shall discover and encourage the offering of the courses, programs, and seminars. The Texas Judicial Council may make and adopt rules and regulations not inconsistent with this Act governing the conduct of business and the performance of its duties.

Written Reports; Waivers or Extensions

Sec. 4. (a) On or before March 15 of each year, each municipal court judge in the state shall make a written report in duplicate to the Texas Judicial Council in the manner and form that the Texas Judicial Council shall prescribe to satisfy the Texas Judicial Council that the judge has completed the minimum number of hours of course work during the preceding or prior calendar year as a student.

(b) In individual cases, the Texas Judicial Council on proper application may grant waivers or extensions of the minimum educational or reporting requirements.

Failure to Meet Requirements

Sec. 5. If an active municipal court judge fails to complete the minimum educational or reporting requirements to the satisfaction of the Texas Judicial Council, the council shall report the failure of the judge to comply to the governor, the attorney general, and the city attorney of the municipality in which the delinquent judge presides.

[Acts 1977, 65th Leg., p. 1122, ch. 418, eff. Aug. 29, 1977.]

Art. 1200g. Proceedings Outside Corporate Limits; Municipalities of 700 or Less

The municipal court of a city, town, or village with a population of 700 or less, according to the most recent federal census, may conduct the proceedings of the court outside of the corporate limits of the municipality if the proceedings are conducted within the corporate limits of a contiguous incorporated municipality.

[Acts 1981, 67th Leg., p. 538, ch. 221, § 1, eff. May 28, 1981.]

PARTICULAR MUNICIPAL COURTS

Art. 1200aa. Wichita Falls

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

Criminal Jurisdiction; Writs; Terms; Exchange of Benefits

Sec. 2. (a) Municipal courts in Wichita Falls shall have concurrent jurisdiction in all criminal cases arising under the charter and ordinances of the city and shall also have concurrent jurisdiction in all criminal cases arising under the laws of the State of Texas and arising within the territorial limits of the city, in which punishment is by fine only, and where the maximum of such fine may not exceed $200.

(b) The judge of a municipal court may grant writs of mandamus, injunction, attachment, and all other necessary writs necessary to the enforcement of the jurisdiction of the court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court.

(c) Municipal courts shall hold no terms and may sit at any time for the transaction of the business of the courts.

(d) Where more than one municipal court is established by the governing body of the city, the judges of the municipal courts may, at any time, exchange benches and may, at any time, sit and act for and with each other in any case, matter, or proceeding pending in their courts; and any and all acts thus performed by any of the judges shall be valid and binding upon all parties to such cases, matters, and proceedings.

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

Complaints by City Attorney, Assistant or Deputy

Sec. 5. All proceedings in municipal courts shall be commenced upon original complaint approved for filing by the city attorney of the city, his assistant or deputy, and filed with the court clerk, provided, however, that parking tickets, including red meter tickets, need not be signed by the city attorney, his assistant or deputy, unless a complaint is tried in court. All such complaints shall be prepared under the direction of the city attorney, his assistant or deputy.

[See Compact Edition, Volume 3 for text of 6 to 8]

Costs

Sec. 9. No court costs shall be assessed or collected by any municipal court in any case tried in the courts, except warrant fees or capias fees as authorized by the Code of Criminal Procedure, 1965, for corporation courts and fees for the Criminal Justice Planning Fund as authorized by Chapter 935, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1083, Code of Criminal Procedure, 1965).

[See Compact Edition, Volume 3 for text of 10 and 11]

Complaint; Form

Sec. 12. Proceedings in municipal courts shall be commenced by complaint which shall begin: "In the name and by authority of the State of Texas"; and shall conclude "Against the peace and dignity of the State." All complaints shall be prepared under the direction of the city attorney, his assistant or deputy, and may be signed by any credible person upon information and belief sworn to before the city attorney, or his assistant or deputy, or the clerk of the court or his deputy, each of whom, for that purpose, shall have power to administer oaths. The complaint shall be in writing and shall state:

(1) The name of the accused, if known, and if unknown, shall describe him as accurately as practicable;

(2) The offense with which he is charged in plain and intelligible words;

(3) It must appear that the place where the offense is charged to have been committed is within the jurisdiction of the municipal court; and

(4) It must show, from the date of the offense stated therein that the offense is not barred by limitations. All pleadings in the municipal courts shall be in writing and filed with the clerk of such courts.

Right to Jury Trial; Selection of Jurors

Sec. 13.

[See Compact Edition, Volume 3 for text of 13(a) and (b)]

(c) In lieu of the preceding method of jury selection, the judges of the municipal courts of Wichita Falls may adopt a plan for the selection of persons for jury service with the aid of mechanical or electronic means. If such a plan is adopted, the laws relating to the selection of petit juries by jury wheel shall not apply. Any such plan so adopted shall conform to the following requirements:

(1) The names taken for jury purposes shall be of registered voters in the City of Wichita Falls.

(2) It shall provide a fair, impartial, and objective method of selecting persons for jury service with the aid of mechanical or electronic equipment.

(3) It shall designate the clerk of the court as the official to be in charge of the selection process and shall define his duties.

(4) It shall specify that a true and complete written list showing the names and addresses of the persons summoned to begin jury services on a particular date shall be filed of record with the clerk of the court at least 10 days prior to the date such persons are to begin jury service.

[See Compact Edition, Volume 3 for text of 14 to 20]

Motion for New Trial; Time; Filing

Sec. 21. A motion for a new trial must be made within 10 days after the rendition of judgment and sentence, and not afterward. Such motion must be in writing and filed with the clerk of the municipal court.

[See Compact Edition, Volume 3 for text of 22 to 34]

Briefs; Filings

Sec. 35. The defendant shall file his brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the clerk of the appellate court, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his brief with the clerk of the appellate court within 15 days after the defendant files his brief with the clerk. Each party, on filing his brief with the clerk of the appellate court, shall cause a true copy of his brief to be delivered to the opposing party.

[See Compact Edition, Volume 3 for text of 36 to 39]

Appeals to Court of Appeals; Applicability of Code of Criminal Procedure; Record

Sec. 40. Appeals to the Court of Appeals from the decision of the court having jurisdiction of appeals from municipal courts, when permitted by law,

shall be governed by the Code of Criminal Procedure of Texas, except that when an appeal is permitted by law, the transcript, briefs, and statement of facts filed in the court having jurisdiction of appeals from municipal courts shall constitute the transcript, briefs, and statement of facts before the Court of Appeals or as the rules of the court of criminal appeals may provide in such cases.

[See Compact Edition, Volume 3 for text of 41 to 44.]

[Amended by Acts 1977, 65th Leg., p. 1076, ch. 393, §§ 1 to 7, eff. June 15, 1977; Acts 1981, 67th Leg., p. 764, ch. 291, § 5, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 1200bb. Midland

Creation; Formation by Ordinance

Sec. 1. There is created in the city of Midland a court of record to be known as the "City of Midland Municipal Court," to be held in that city if the governing body of the city of Midland, by ordinance, finds and determines that the formation of a municipal court of record is necessary in order to provide a more efficient disposition of appeals arising from the municipal court.

The authority of the governing body of the city of Midland to create a municipal court of record in the city of Midland includes the authority to establish, in the manner set forth in this section, more than one municipal court of record if the governing body determines that it is necessary in order to dispose of the cases arising in the city. If more than one municipal court of record is created, the judges of the municipal courts may at any time exchange benches and sit and act for and with each other in a case, matter, or proceeding pending in a municipal court, and any and all acts thus performed by a judge are valid and binding on all parties to the case, matter, and proceeding.

The municipal court of record authorized in this section is referred to in this Act as the "municipal court."

Application of Other Laws Regarding Municipal Courts

Sec. 2. The general laws of the state regarding municipal courts, and regarding justice courts on matters where there is no law for municipal courts, and the valid charter provisions and ordinances of the city of Midland relating to the municipal court apply to the municipal court authorized in this Act, unless the laws, charter provisions, and ordinances are in conflict or inconsistent with the provisions of this Act.

Judge; Qualifications

Sec. 3. The municipal court shall be presided over by a judge, who shall be a licensed attorney in good standing in this state and a citizen of the United States and of this state. He need not be a resident of the city at the time of his appointment, but he shall maintain his residence in the city during his tenure of office. He shall devote his entire time to the duties of his office and shall not engage in the private practice of law while in office. He shall be appointed by the governing body of the city. He shall be paid a salary to be determined by the governing body of the city. The salary shall not be based on or in any way contingent on the fines, fees, or costs collected by the municipal court.

If more than one municipal court is created by the governing body of the city, a judge shall be appointed for each court and the governing body of the city shall designate a judge to be the presiding judge.

Court Clerk

Sec. 4. The governing body of the city shall provide a clerk of the municipal courts, and such deputy clerks, warrant officers, and other municipal court personnel, including at least one bailiff for each court, as are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep the records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the municipal court judge.

Court Reporter

Sec. 5. For the purpose of preserving a record in the cases tried before the municipal court, the city shall provide a court reporter, who shall be appointed by the municipal court judge and whose compensation shall be determined by the governing body of the city. The qualifications of the court reporter shall be determined by the judge, or if there is more than one judge, by the presiding judge.

The record of proceedings may be preserved by the court reporter by written notes, transcribing equipment, recording equipment, or any combination of them. The court reporter is not required to take testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

Ordinances; Judicial Notice

Sec. 6. The municipal court shall take judicial notice of the ordinances of the city.

Appeal; Appellate Courts

Sec. 7. A defendant has the right of appeal from a judgment of conviction in the municipal court under the rules prescribed in this Act. The County Court of Midland County has jurisdiction over the appeals from the municipal court.

Appeals on the Record; No De Novo Appeals

Sec. 8. Each appeal from a conviction in the municipal court shall be determined by the appellate court solely on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo.

Motion for New Trial

Sec. 9. In order to perfect an appeal, a written motion for new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after it is filed. The motion for new trial shall be presented to the court within 10 days after the filing of the original or amended motion, and shall be determined by the court within 20 days after the filing of the original or amended motion. For good cause shown the time for filing or amending may be extended by the court. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant. For purposes of appeal, a point of error not distinctly set forth in the motion for new trial shall be considered as waived.

Notice of Appeal

Sec. 10. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his motion for new trial, the notice of appeal may be given orally in open court upon the overruling of the motion for new trial; otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled.

Appeal Bond

Sec. 11. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial is overruled. If the defendant is in custody, he shall be committed to jail unless he posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for a less sum than $100. The bond shall recite that in the cause the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if the court is in session, and if the court is not in session, then at its next session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 12. The record on appeal in a case appealed from the municipal court consists of a transcript and, where necessary to the appeal, a statement of facts.

Contents of Transcript

Sec. 13. (a) The municipal court clerk, upon written request from the defendant, shall prepare under his hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court that shall always include the following:

(1) the complaint;

(2) material docket entries made by the court;

(3) the jury charge and verdict, if the trial is by jury;

(4) the judgment;

(5) the motion for new trial;

(6) the notice of appeal;

(7) all written motions and pleas and orders of the court; and

(8) bills of exception, if any are filed.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court if so instructed in writing by either the defendant or the prosecuting attorney.

Bills of Exception

Sec. 14. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the Court of Appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts; Agreed Statement; Designated Items and Payment

Sec. 15. (a) A statement of facts, when included in the record on appeal, shall consist of:

(1) a transcription of all or any part of the municipal court proceedings in the case that are shown by the notes of the court reporter to have occurred before, during, or after the trial if such transcription is requested of the court reporter by the defendant; or

(2) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney; or

(3) a partial transcription and the agreed statement of the facts of the case proven at the trial.

(b) The court reporter shall transcribe any portion of his notes of the court proceedings in the case at the request of the defendant. The defendant shall pay for the transcription. The cost to the defendant for the transcription shall not exceed the fees or charges normally being made by court reporters in the county for similar transcriptions. The municipal court shall order the court reporter to make the transcriptions without charge to the defendant if the court finds, after hearing in the response to affidavit by the defendant, that he is too poor to pay or give security for the transcriptions.

Filing of Transcript and Statement of Facts; Time Limits; Completion and Approval of Record; Transfer of Record to Clerk of Appellate Court

Sec. 16. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

(1) the statement of facts;

(2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 13 of this Act; and

(3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the Court of Appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward it to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

Brief on Appeal: Contents and Filing

Sec. 17. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the Court of Appeals, except that the points of error on appeal shall be confined to those points of error set forth in the defendant's motion for new trial.

(b) The defendant shall file his brief with the clerk of the appellate court within fifteen days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his brief with the clerk of the appellate court within 15 days after the defendant files his briefs with the clerk. Each party, on filing his brief with the clerk of the appellate court, shall cause a true copy of his brief to be delivered to the opposing party.

Procedure on Appeal; Review or Error

Sec. 18. The appellate court shall hear and determine appeals from the municipal court at the earliest practical time it may be done, with due regard to the rights of parties and proper administration of justice, and no affirmance or reversal of a case shall be determined on mere technicalities or on technical errors in the preparation and filing of the record on appeal. Oral arguments before the appellate court shall be under the rules which the appellate court may determine, and the parties may submit the case on the records and briefs without oral arguments.

Disposition on Appeal; Presumptions; Decision

Sec. 19. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume (1) that the venue was proven in the court below; (2) that the jury was properly impaneled and sworn; (3) that the defendant was arraigned and that he pleaded to the complaint; and (4) that the court's charge was certified by the municipal court judge before it was read to the jury; unless such matters were made an issue in the trial court, or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. If an assignment of error is overruled no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings; Filing of Record; Enforcement of Judgment

Sec. 20. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, he shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a capias for the defendant, or issue an execution against his property.

New Trial

Sec. 21. If the appellate court awards a new trial to the defendant, the cause shall stand as it would have stood if a new trial had been granted by the municipal court.

Appeals to the Court of Appeals; Record

Sec. 22. When a judgment is affirmed by the appellate court, the defendant shall have the right to appeal to the Court of Appeals if the fine assessed against the defendant in the municipal court exceeded $100. The appeals to the Court of Appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the Court of Appeals except that:

(1) the record and briefs on appeal in the appellate court, plus the transcript of proceedings in the appellate court, shall constitute the record and briefs on appeal to the Court of Appeals unless the rules of the Court of Criminal Appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the Court of Appeals.

Sec. 23. All laws in conflict or inconsistent with the provisions of this Act are hereby conformed to the provisions of this Act.

[Acts 1975, 64th Leg., p. 228, ch. 87, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 764, ch. 291, § 6, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 1200cc. Cities Over 1,200,000

Creation of Municipal Courts of Record; Vacation of Additional Municipal Courts

Sec. 1. (a) A municipal court of record is created in any city with a population of more than 1,200,000 as determined by the last preceding federal census.

(b) Additional municipal courts of record may be created and judges for such courts may be authorized in any city with a population of more than 1,200,000 as determined by the last preceding federal census by action of the governing body of the city through a legally adopted ordinance that specifies that the condition of dockets in the other municipal courts of the city is such as to require additional municipal courts in order to properly dispose of the cases on the dockets of these courts, and that enumerates the number of additional municipal courts necessary to properly dispose of those cases. Municipal courts that are in existence on the effective date of this Act and that were created pursuant to any Article in Title 28, Revised Civil Statutes of Texas, 1925, as amended,[1] shall on such date become municipal courts of record and may, subject to meeting other requirements provided by law for municipal courts, continue their operation under the authority of this Act without passage of such ordinance.

(c) After the establishment of an additional municipal court or courts, if the governing body of the city determines that the continued existence of some or all of the additional municipal courts is not required in order to properly dispose of cases on the dockets of all the municipal courts, the governing body shall by legally adopted ordinance declare the offices of some or all of the additional municipal judges vacated at the end of the term or terms for which such judge or judges were last selected. In that event, any cases pending in a vacated municipal court shall be transferred to the proper court having jurisdiction of the offense.

[1] Article 961 et seq.

Jurisdiction

Sec. 2. Municipal courts created under the provisions of this Act shall have jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which the city is situated in criminal cases arising within such territorial limits under the criminal laws of this state in which punishment is only by fine not exceeding $200.

Judges; Additional Judges; Presiding Judge; Qualifications

Sec. 3. (a) Municipal courts shall be presided over by judges to be known as "municipal judges."

(b) The city shall provide by charter or by ordinance for the selection of its municipal judges, provided the selection shall be for a definite term in office of not less than two nor more than four years, whose duration within these limits shall be determined by charter, ordinance, or the method prescribed in Article XI, Section 11, of the Texas Constitution. Any definite term or indefinite period in office that a municipal judge has begun on the effective date of this Act shall terminate no later than four years after such effective date. A municipal judge may continue in office after the end of his term for not more than 90 days or until his successor is selected and qualified, whichever occurs first.

(c) If there is more than one municipal judge in the city the mayor and city council of the city shall appoint one of the judges to be the presiding municipal judge of the city. If the city has a municipal judge who is either its only municipal judge or its only municipal judge who is not serving in a temporary or part-time capacity, such judge shall be the presiding municipal judge for all purposes of this Act.

(d) The presiding judge shall:

(1) maintain a central docket for all cases filed in the geographical limits of the city over which the municipal courts of the city have jurisdiction;

(2) provide for the distribution of cases from the central docket to the individual municipal judge in order that the business of the courts will be continually equalized and distributed among them;

(3) temporarily assign various judges of the municipal courts to exchange benches for other such judges and to sit and act for each other in any case, matter, or proceeding pending in their courts, when necessary for the expeditious disposition of the business of the courts;

(4) cause all dockets, books, papers, and other records of the municipal courts to be permanently kept and permit these records to be available for inspection at all reasonable times by any interested party;

(5) cause to be maintained as part of the records of the municipal courts an index of municipal-court judgments such as county clerks are required by law to prepare for criminal cases arising in county courts;

(6) where necessary for the proper functioning of the municipal courts, provide for the preservation by microfilm of the records under the custody of county clerks; and

(7) supervise and have control over all of the operations and clerical functions of the administrative section or department of such municipal courts and be responsible for the supervision of all clerical personnel of the administrative department of such municipal court.

(e) A judge of a municipal court created under the provisions of this Act shall be a licensed attorney in good standing in this state. No person may serve in the office of municipal judge while he holds any other office or employment in the government of such city, and the holding of such other office or employment by any person serving in the office of municipal judge shall create an immediate vacancy in the judicial office.

Salary

Sec. 4. A municipal judge is entitled to compensation by the city on a salary basis. The amount of the salary shall be determined by the governing body of the city and may not be diminished during the judge's term of office. The salary may not be based, directly or indirectly, on fines, fees, or costs that the municipal judge is required by law to collect during his term of office. The governing body shall predetermine the salary of the municipal judge prior to his appointment, if he is appointed, or at least two weeks prior to the deadline for filing for election, if he is elected.

Vacancies; Temporary Replacements; Removal

Sec. 5. (a) When a vacancy in the office of municipal judge occurs, the governing body of the city shall appoint a person meeting the qualifications required by law for such position to fill the office of municipal judge for the unexpired term of the judge serving in that office prior to the vacancy.

(b) While a municipal judge is temporarily unable to act for any reason, the governing body of the city may appoint a person meeting the qualifications required by law for such position to sit for the regular municipal judge. The appointee shall have all the powers and duties of the office and shall receive the same compensation as is payable to the regular municipal judge while he is so acting.

(c) A municipal judge may be removed from office only under the procedures outlined in Article V, Section 1–a, of the Texas Constitution.

Court Facilities

Sec. 6. The governing body of the city shall provide such courtrooms, juryrooms, offices and office furniture, libraries, legal books and materials, and other supplies and facilities as the governing body determines are necessary for the proper operation of the municipal courts.

Appeals; Appellate Courts

Sec. 7. A defendant has the right of appeal from a judgment of conviction in the municipal court under the rules prescribed in this Act. The county criminal court of such county where said court is situated shall have jurisdiction over the appeals from the municipal court.

Appeals on the Record; No De Novo Appeals

Sec. 8. Each appeal from a conviction in the municipal court shall be determined by the appellate court solely on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo.

Motion for New Trial

Sec. 9. In order to perfect an appeal, a written motion for new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after the filing of the original or amended motion. For good cause shown the time for filing or amending may be extended by the court. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant. For purposes of appeal, a point of error not distinctly set forth in the motion for new trial shall be considered as waived.

Notice of Appeal

Sec. 10. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his motion for new trial, the notice of appeal may be given orally in open court upon the overruling of the motion for new trial; otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled.

Appeal Bond

Sec. 11. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial is overruled. If the defendant is in custody, he shall be committed to jail unless he posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for a less sum than $50. The bond shall recite that in the cause the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if the court is in session, and if the court is not in session, then at its next session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 12. The record on appeal in a case appealed from the municipal court consists of a transcript and, where necessary to the appeal, a statement of facts, which may be prepared by a certified court reporter of such court or from mechanical recordings of the proceedings or from video-tape recordings of the proceedings. If the court finds, after hearing in response to affidavit by defendant that he is unable to pay or give security for the record on appeal, the court will order the reporter to make such transcription without charge to the defendant.

Contents of Transcript

Sec. 13. (a) The municipal court clerk, upon written request from the defendant, shall prepare under his hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court that shall include the following:

(1) the complaint;

(2) material docket entries made by the court;

(3) the jury charge and verdict, if the trial is by jury;

(4) the judgment;

(5) the motion for new trial;

(6) the notice of appeal;

(7) all written motions and pleas and orders of the court; and

(8) bills of exception, if any are filed.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court prepared from mechanical recordings or video-tape recordings of the proceedings.

Bills of Exception

Sec. 14. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the Court of Appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts; Agreed Statement; Designated Items and Payment

Sec. 15. A statement of facts, when included in the record on appeal, shall consist of:

(a) a transcription of all or any part of the municipal court proceedings, in the case, as provided herein, that are shown by the notes of the court reporter to have occurred before, during, or after the trial if such transcription is requested of the court reporter by the defendant; or

(b) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney; or

(c) a partial transcription and the agreed statement of the facts of the case proven at the trial; or

(d) a transcription of all or any part of the municipal court proceedings in the case that are prepared from the mechanical recordings or video-tape recordings of said proceedings.

Filing of Transcript and Statement of Facts; Time Limits; Completion and Approval of Record; Transfer of Record to Clerk of Appellate Court

Sec. 16. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

(1) the statement of facts;

(2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 13 of this Act; and

(3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the Court of Appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward it to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

Brief on Appeal: Contents and Filing

Sec. 17. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the Court of Appeals.

(b) The defendant shall file his brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of

facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his brief with the clerk of the appellate court within 15 days after the defendant files his brief with the clerk. Each party, on filing his brief with the clerk of the appellate court, shall cause a true copy of his brief to be delivered to the opposing party.

Disposition on Appeal; Presumptions; Decision

Sec. 18. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume (1) that the venue was proven in the court below; (2) that the jury was properly impaneled and sworn; (3) that the defendant was arraigned and that he pleaded to the complaint; and (4) that the court's charge was certified by the municipal court judge before it was read to the jury; unless such matters were made an issue in the trial court, or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. If an assignment of error is overruled no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings; Filing of Record; Enforcement of Judgment

Sec. 19. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, he shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a capias for the defendant, or issue an execution against his property.

New Trial

Sec. 20. If the appellate court awards a new trial to the defendant, the cause shall stand as it would have stood if a new trial had been granted by the municipal court.

Appeals to the Court of Appeals; Record

Sec. 21. When a judgment is affirmed by the appellate court, the defendant shall have the right to appeal to the Court of Appeals if the fine assessed against the defendant in the municipal court exceeded $100. The appeals to the Court of Appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the Court of Appeals except that:

(1) the record and briefs on appeal in the appellate court, plus the transcript of proceedings in the appellate court, shall constitute the record and briefs on appeal to the Court of Appeals unless the rules of the Court of Criminal Appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the Court of Appeals.

Court Personnel

Sec. 22. (a) Each municipal judge in his discretion is authorized to appoint a court reporter to transcribe the trial proceedings, including testimony, voir dire examination, objections, and final arguments and shall appoint a court reporter when the defendant or the state requests it prior to trial. Each reporter shall be a sworn officer of the court when transcribing testimony and shall be well skilled in his profession. Each reporter shall be compensated by the city in such manner as the governing body of the city shall determine.

(b) It shall be the duty of the clerk to perform such clerical duties, insofar as they are applicable, as are prescribed by law for the municipal judge and for the county clerk of a county court at law.

(c) The governing body of the city shall provide the municipal courts with such other municipal court personnel as the governing body determines is necessary for the proper operation of the court. Such personnel shall perform their duties under the direction and control of the municipal judge to whom assigned. The governing body shall determine the salaries of such personnel.

Seal

Sec. 23. The governing body of the city shall provide each municipal court with a seal with a star of five points in the center and the words "Municipal Court in _____, Texas." The impress of the seal shall be attached to all papers, except subpoenas, issued out of the court and shall be used by each municipal judge or his clerk to authenticate all official acts of the clerk and the municipal judge.

Effective Date

Sec. 24. This Act is effective beginning January 1, 1976.

Repealer

Sec. 25. To the extent that any local, special, or general law, including Acts of the 64th Legislature, Regular Session, 1975, conflicts with any provision of this Act, that law is repealed.

[Acts 1975, 64th Leg., p. 1299, ch. 489, eff. Jan. 1, 1976. Amended by Acts 1977, 65th Leg., p. 357, ch. 175, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 765, ch. 291, § 7, eff. Sept. 1, 1981.]

Section 2 of the 1977 amendatory act provided: "All acts or charter provisions in conflict herewith are expressly repealed."

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 1200dd. Sweetwater

Creation; Formation by Ordinance

Sec. 1. There is created in the city of Sweetwater a court of record to be known as the "City of Sweetwater Municipal Court," to be held in that city if the governing body of the city of Sweetwater, by ordinance, finds and determines that the formation of a municipal court of record is necessary in order to provide a more efficient disposition of appeals arising from the municipal court.

The authority of the governing body of the city of Sweetwater to create a municipal court of record in the city of Sweetwater includes the authority to establish, in the manner set forth in this section, more than one municipal court of record if the governing body determines that it is necessary in order to dispose of the cases arising in the city. If more than one municipal court of record is created, the judges of the municipal courts may at any time exchange benches and sit and act for and with each other in a case, matter, or proceeding pending in a municipal court, and any and all acts thus performed by a judge are valid and binding on all parties to the case, matter, and proceeding.

The municipal court of record authorized in this section is referred to in this Act as the "municipal court."

Application of Other Laws Regarding Municipal Courts

Sec. 2. The general laws of the state regarding municipal courts, and regarding justice courts on matters where there is no law for municipal courts, and the valid charter provisions and ordinances of the city of Sweetwater relating to the municipal court apply to the municipal court authorized in this Act, unless the laws, charter provisions, and ordinances are in conflict or inconsistent with the provisions of this Act.

Judge; Qualifications

Sec. 3. The municipal court shall be presided over by a judge, who shall be a licensed attorney in good standing in this state and a citizen of the United States and of this state. He need not be a resident of the city at the time of his appointment, but he shall maintain his residence in the city during his tenure of office. He shall be appointed by the governing body of the city. He shall be paid a salary to be determined by the governing body of the city. The salary shall not be based on or in any way contingent on the fines, fees, or costs collected by the municipal court.

If more than one municipal court is created by the governing body of the city, a judge shall be appointed for each court and the governing body of the city shall designate a judge to be the presiding judge.

Court Clerk

Sec. 4. The governing body of the city shall provide a clerk of the municipal courts, and such deputy clerks, warrant officers, and other municipal court personnel, including at least one bailiff for each court, as are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep the records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the municipal court judge.

Court Reporter

Sec. 5. For the purpose of preserving a record in the cases tried before the municipal court, the city shall provide a court reporter, who shall be appointed by the municipal court judge and whose compensation shall be determined by the governing body of the city. The qualifications of the court reporter shall be determined by the judge, or if there is more than one judge, by the presiding judge.

The record of proceedings may be preserved by the court reporter by written notes, transcribing equipment, recording equipment, or any combination of them. The court reporter is not required to take testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

Ordinances; Judicial Notice

Sec. 6. The municipal court shall take judicial notice of the ordinances of the city.

Appeal; Appellate Courts

Sec. 7. A defendant has the right of appeal from a judgment of conviction in the municipal court under the rules prescribed in this Act. The County Court of Nolan County has jurisdiction over the appeals from the municipal court.

Appeals on the Record; No De Novo Appeals

Sec. 8. Each appeal from a conviction in the municipal court shall be determined by the appellate court solely on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo.

Motion for New Trial

Sec. 9. In order to perfect an appeal, a written motion for new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after it is filed. The motion for new trial shall be presented to the court within 10 days after the filing of the original or amended motion, and shall be determined by the court within 20 days after the filing of the original or amended motion. For good cause shown the time for filing or amending may be extended by the court. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant. For purposes of appeal, a point of error not distinctly set forth in the motion for new trial shall be considered as waived.

Notice of Appeal

Sec. 10. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his motion for new trial, the notice of appeal may be given orally in open court upon the overruling of the motion for new trial; otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled.

Appeal Bond

Sec. 11. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial is overruled. If the defendant is in custody, he shall be committed to jail unless he posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for a less sum than $100. The bond shall recite that in the cause the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if the court is in session, and if the court is not in session, then at its next session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 12. The record on appeal in a case appealed from the municipal court consists of a transcript and, where necessary to the appeal, a statement of facts. If the court finds, after hearing in response to affidavit by defendant that he is unable to pay or give security for the record on appeal, the court will order the reporter to make such transcription without charge to the defendant.

Contents of Transcript

Sec. 13. (a) The municipal court clerk, upon written request from the defendant, shall prepare under his hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court that shall always include the following:

(1) the complaint;

(2) material docket entries made by the court;

(3) the jury charge and verdict, if the trial is by jury;

(4) the judgment;

(5) the motion for new trial;

(6) the notice of appeal;

(7) all written motions and pleas and orders of the court; and

(8) bills of exception, if any are filed.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court if so instructed in writing by either the defendant or the prosecuting attorney.

Bills of Exception

Sec. 14. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the Court of Appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statements of Facts; Agreed Statement; Designated Items and Payment

Sec. 15. (a) A statement of facts, when included in the record on appeal, shall consist of:

(1) a transcription of all or any part of the municipal court proceedings in the case that are shown by the notes of the court reporter to have occurred before, during, or after the trial if such transcription is requested of the court reporter by the defendant; or

(2) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney; or

(3) a partial transcription and the agreed statement of the facts of the case proven at the trial.

(b) The court reporter shall transcribe any portion of his notes of the court proceedings in the case at the request of the defendant. The defendant shall pay for the transcription. The cost to the defendant for the transcription shall not exceed the fees or charges normally being made by court reporters in the county for similar transcriptions. The municipal court shall order the court reporter to make the transcriptions without charge to the defendant if the court finds, after hearing in the response to affidavit by the defendant, that he is too poor to pay or give security for the transcriptions.

Filing of Transcript and Statement of Facts; Time Limits; Completion and Approval of Record; Transfer of Record to Clerk of Appellate Court

Sec. 16. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

(1) the statement of facts;

(2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 13 of this Act; and

(3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the Court of Appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward it to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

Brief on Appeal: Contents and Filing

Sec. 17. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the Court of Appeals, except that the points of error on appeal shall be confined to those points of error set forth in the defendant's motion for new trial.

(b) The defendant shall file his brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his brief with the clerk of the appellate court within 15 days after the defendant files his briefs with the clerk. Each party, on filing his brief with the clerk of the appellate court, shall cause a true copy of his brief to be delivered to the opposing party.

Procedure on Appeal; Review or Error

Sec. 18. The appellate court shall hear and determine appeals from the municipal court at the earliest practical time it may be done, with due regard to the rights of parties and proper administration of justice, and no affirmance or reversal of a case shall be determined on mere technicalities or on technical errors in the preparation and filing of the record on appeal. Oral arguments before the appellate court shall be under the rules which the appellate court may determine, and the parties may submit the case on the records and briefs without oral arguments.

Disposition on Appeal; Presumptions; Decision

Sec. 19. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume (1) that the venue was proven in the court below; (2) that the jury was properly impaneled and sworn; (3) that the defendant was arraigned and that he pleaded to the complaint; and (4) that the court's charge was certified by the municipal court judge before it was read to the jury; unless such matters were made an issue in the trial court, or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. If an assignment of error is overruled no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings; Filing of Record; Enforcement of Judgment

Sec. 20. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, he shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a capias for the defendant, or issue an execution against his property.

New Trial

Sec. 21. If the appellate court awards a new trial to the defendant, the cause shall stand as it would have stood if a new trial had been granted by the municipal court.

Appeals to the Court of Appeals; Record

Sec. 22. When a judgment is affirmed by the appellate court, the defendant shall have the right to appeal to the Court of Appeals if the fine assessed against the defendant in the municipal court exceeded $100. The appeals to the Court of Appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the Court of Appeals except that:

(1) the record and briefs on appeal in the appellate court, plus the transcript of proceedings in the appellate court, shall constitute the record and briefs on appeal to the Court of Appeals unless the

rules of the Court of Criminal Appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the Court of Appeals.

Conflicting Laws Conformed

Sec. 23. All laws in conflict or inconsistent with the provisions of this Act are hereby conformed to the provisions of this Act.

[Acts 1977, 65th Leg., p. 1233, ch. 477, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 766, ch. 291, § 8, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 1200ee. El Paso

Establishment of Municipal Courts

Sec. 1. The city of El Paso may, by ordinance legally adopted, provide for the establishment of municipal courts as needed. The judges of the additional courts shall have the same qualifications, and be selected in the same manner, as is provided for the judges of the existing municipal courts in the charter of the city, or as may be provided in any future charter or charter amendment. If the charter of the city requires the election of the judge by vote of the people, the governing body may designate a person as judge of each newly created court until the next regular city election. The courts may be in concurrent or continuous session, either day or night.

Jurisdiction

Sec. 2. Each municipal court shall have and exercise concurrent jurisdiction within the corporate limits of the city, and the jurisdiction shall be the same as is now or may be hereafter conferred on all municipal courts by the general laws of this state.

Administration

Sec. 3. Except as otherwise provided by the charter of the city, the governing body of the city may provide by ordinance:

(1) the qualifications of persons eligible for appointment as judge;

(2) that a judge of any of these courts may transfer cases from one court to any other of these courts and may exchange benches and preside over any other of these courts;

(3) that there shall be a municipal court clerk who is clerk of all of the municipal courts, together with such number of deputies as may be needed; and

(4) that complaints shall be filed with the municipal court clerk in a manner to provide for an equal distribution of cases among the courts.

Procedures

Sec. 4. Except as modified by the terms of this Act, the procedure before the courts and appeals therefrom shall be governed by the general law applicable to all municipal courts.

[Acts 1977, 65th Leg., p. 1748, ch. 697, eff. Aug. 29, 1977.]

Art. 1200ee–1. El Paso Courts of Record

Municipal Courts of Record

Sec. 1. The governing body of the city of El Paso may by ordinance establish the city's existing municipal courts as municipal courts of record in accordance with this Act. Additional municipal courts of record may be created and judges for such courts may be authorized by ordinance upon a finding that an additional court or courts is necessary to properly dispose of the cases arising in the city.

Jurisdiction

Sec. 2. (a) Municipal courts created under the provisions of this Act shall have jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which the city is situated in criminal cases arising within such territorial limits under the criminal laws of this state in which punishment is only by fine not exceeding $200. Municipal courts shall also have jurisdictior over cases arising outside the territorial limits of the city as provided in Article 1175, Revised Civil Statutes of Texas, 1925, as amended.

(b) The municipal court of record shall take judicial notice of all ordinances of the city.

Judges

Sec. 3. (a) Municipal courts shall be presided over by judges to be known as "municipal judges."

(b) The city shall provide by charter or by ordinance for the selection of its municipal judges, provided the selection shall be for a definite term in office of not less than two nor more than four years, whose duration within these limits shall be determined by charter, ordinance, or the method prescribed in Article XI, Section 11, of the Texas Constitution. Any definite term or indefinite period in office that a municipal judge has begun on the effective date of this Act shall terminate no later than four years after effective date. A municipal judge may continue in office after the end of his term for not more than 90 days or until his successor is selected and qualified, whichever occurs first.

(c) The judges or substitute judges of the municipal courts may at any time exchange benches and may at any time sit and act for or with each other in any case, matter, or proceeding pending in their

courts. Any and all such acts performed by any of the judges shall be valid and binding upon all parties to such cases, matters, and proceedings.

(d) If there is more than one municipal judge in the city the mayor and city council of the city shall appoint one of the judges to be the presiding municipal judge of the city. If the city has a municipal judge who is either its only municipal judge or its only municipal judge who is not serving in a temporary or part-time capacity, such judge shall be the presiding municipal judge for all purposes of this Act.

(e) The presiding judge shall:

(1) maintain a central docket for all cases filed in the geographical limits of the city over which the municipal courts of the city have jurisdiction;

(2) provide for the distribution of cases from the central docket to the individual municipal judge in order that the business of the courts will be continually equalized and distributed among them;

(3) temporarily assign various judges or substitute judges of the municipal courts to exchange benches for other such judges and to sit and act for each other in any case, matter, or proceeding pending in their courts, when necessary for the expeditious disposition of the business of the courts;

(4) cause all dockets, books, papers, and other records of the municipal courts to be permanently kept and permit these records to be available for inspection at all reasonable times by any interested parties;

(5) cause to be maintained as part of the records of the municipal courts an index of municipal court judgments such as county clerks are required by law to prepare for criminal cases arising in county courts; and

(6) where necessary for the proper functioning of the municipal courts, provide for the preservation by microfilm of the records of such courts, subject to the same requirements provided by law for the preservation by microfilm of records under the custody of county clerks.

(f) A judge of the municipal court created under the provisions of this Act shall be a licensed attorney in good standing in the practice of law in this state, a citizen of the United States and of this state. He need not be a resident of the city at the time of his appointment, but he shall maintain his residence within the city during his tenure of office. No person may serve in the office of municipal judge while he holds any other office or employment in the government of such city, and the holding of such other office or employment by any person serving in the office of municipal judge shall create an immediate vacancy in the judicial office.

Salary

Sec. 4. A municipal judge is entitled to compensation by the city on a salary basis. The amount of the salary shall be determined by the governing body of the city and may not be diminished during the judge's term of office. The salary may not be based, directly or indirectly, on fines, fees, or costs that the municipal judge is required by law to collect during his term of office.

Vacancies; Temporary Replacements; Removal

Sec. 5. (a) When a vacancy in the office of municipal judge occurs, the governing body of the city shall appoint a person meeting the qualifications required by law for such position to fill the office of municipal judge for the unexpired term of the judge serving in that office prior to the vacancy.

(b) A municipal judge may be removed from office for cause to the same extent and under the same rules that judges of the county courts may be removed from office.

Court Facilities

Sec. 6. The governing body of the city shall provide such courtrooms, jury rooms, offices and office furniture, libraries, legal books and materials, and other supplies and facilities as the governing body determines are necessary for the proper operation of the municipal courts.

Court Clerk

Sec. 7. The governing body of the city shall provide a clerk of the municipal courts, and such deputy clerks, warrant officers, and other municipal court personnel, including at least one bailiff for each court, as are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep the records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the municipal court judge.

Court Reporter; Use of Transcripts, etc.

Sec. 8. For the purpose of preserving a record in cases tried before the municipal court, the city shall provide a court reporter whose qualifications and compensation shall be determined by the governing body of the city.

(a) The record of proceedings may be preserved by written notes, transcribing equipment, recording equipment, or any combination of these methods. The court reporter is not required to take or record testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

(b) Testimony, exhibits, or evidence given by any witness in the course of any proceeding in a municipal court of record shall be solely for the

purposes of such proceeding or appeal therefrom and, in any other civil proceeding, evidence relating to such testimony, exhibits, evidence, or reproductions thereof shall be privileged and not admissible for any purpose.

Prosecutions by City Attorney

Sec. 9. All prosecutions in municipal courts shall be conducted by the city attorney of the city, or his assistant or deputy.

Complaint; Form

Sec. 10. Proceedings in municipal courts shall be commenced by complaint filed by the city attorney or his assistant or deputy, which shall begin: "In the name and by the authority of the State of Texas"; and shall conclude "Against the peace and dignity of the State." All complaints shall be prepared under the direction of the city attorney and may be signed by any credible person upon information and belief sworn to before the city attorney, or his assistant or deputy, who, for that purpose shall have power to administer the oath. The complaint shall be in writing and shall state:

(1) The name of the accused, if known, and if unknown, shall describe him as accurately as practicable;

(2) The offense with which he is charged in plain and intelligible words;

(3) It must appear that the place where the offense is charged to have been committed is within the jurisdiction of the municipal court; and

(4) It must show, from the date of the offense stated therein that the offense is not barred by limitations. All pleadings in the municipal courts shall be in writing and filed with the clerk of such courts.

Right to Jury Trials

Sec. 11. Every person brought before the municipal courts and charged with an offense shall be entitled to be tried by a lawful jury of six persons.

Appeals: Appellate Courts

Sec. 12. A defendant has the right of appeal from a judgment or conviction in the municipal court under the rules prescribed in this Act. The county courts at law of El Paso County shall have jurisdiction over the appeals from the municipal courts, and all appeals from convictions in the municipal court shall be prosecuted in county court by the city attorney or his assistants or deputy.

No De Novo Appeals

Sec. 13. Each appeal from a conviction in the municipal court shall be determined by the appellate court on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. Appellate courts may consider unassigned error in the interest of justice. No appeal from the municipal court may be to a trial de novo in the county court.

Motion for New Trial

Sec. 14. In order to perfect an appeal, a written motion for a new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after the filing of the original or amended motion. For good cause shown the time for filing or amending may be extended by the court, not to exceed 90 days. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant.

Notice of Appeal

Sec. 15. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his motion for a new trial, the notice of appeal may be given orally in open court upon the overruling of the motion for new trial; otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled. For good cause shown the time for giving notice of appeal may be extended by the court, not to exceed 90 days.

Appeal Bond

Sec. 16. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial has been overruled. If the defendant is in custody, he shall be committed to jail unless he posts the required appeal bond. The appeal bond shall be in an amount not more than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for less sum than $50. The bond shall recite that in the cause the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if the court is in session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 17. The record on appeal in a case appealed from the municipal court consists of a transcript and, where necessary to the appeal, a statement of facts, which may be prepared by a certified court reporter of such court and from mechanical recordings of the proceedings or from videotape recordings of the proceedings. If the court finds, after hearing in response to affidavit by defendant that he is unable to pay or give security for the record on appeal, the court will order the reporter to make such transcription without charge to the defendant.

Contents of Transcripts

Sec. 18. (a) The municipal court clerk, upon written request from the defendant or his attorney, shall prepare under his hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court and shall include the following:

(1) the complaint;

(2) material docket entries made by the court;

(3) the jury charge and verdict, if the trial is by jury;

(4) the judgment;

(5) the motion for a new trial;

(6) the notice of appeal;

(7) all written motions and pleas and orders of the court; and

(8) bills of exception, if any are filed.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court prepared from mechanical recordings or videotape recordings of the proceedings.

Bills of Exception

Sec. 19. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the court of appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts; Agreed Statement; Designated Items and Payment

Sec. 20. A statement of facts, when included in the record on appeal, shall consist of:

(a) a transcription of all or any part of the municipal court proceedings, in the case, as provided herein, that are shown by the notes of the court reporter to have occurred before, during, or after the trial if such transcription is requested of the court reporter by the defendant; or

(b) a brief statement of the facts of the case proven at trial, as agreed to by the defendant and the prosecuting attorney; or

(c) a partial transcription and the agreed statement of the facts of the case proven at the trial; or

(d) a transcription of all or any part of the municipal court proceedings in the case that is prepared from the mechanical recordings or videotape recordings of said proceedings.

Filing of Transcript and Statement of Facts; Time Limits; Completion and Approval of Record; Transfer of Record to Clerk of Appellate Court

Sec. 21. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

(1) the statement of facts;

(2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 18 of this Act; and

(3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the court of appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward it to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

New Trials

Sec. 22. It shall be the duty of the trial court to decide from the briefs of the parties whether defendant should be permitted to withdraw his notice of appeal and be granted a new trial by the court. The court may grant a new trial at any time prior to the record being filed with the appellate court clerk.

Brief on Appeal: Contents and Filing

Sec. 23. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the court of appeals.

(b) The defendant shall file his brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his brief with the clerk of the appellate court within 15 days after the defendant files his brief with the clerk. Each party, on filing his brief with the clerk of the appellate court, shall cause a true copy of his brief to be delivered to the opposing party and to the municipal court judge.

Court Rules

Sec. 24. The county courts at law of El Paso County may make and enforce all necessary rules of practice and procedure for appeals from the municipal courts, not inconsistent with the law, for the government of said courts so as to expedite the dispatch of appeals in said courts.

Disposition on Appeal; Presumptions; Decision

Sec. 25. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume (1) that the venue was proven in the court below; (2) that the jury was properly impaneled and sworn; (3) that the defendant was arraigned and that he pleaded to the complaint; and (4) that the court's charge was certified by the municipal court judge before it was read to the jury; unless such matters were made an issue in the trial court, or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment or error presented. If an assignment or error is overruled, no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings; Filing of Record; Enforcement of Judgment

Sec. 26. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, he shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a capias for the defendant, or issue an execution against his property.

Effect of Order of New Trial by Appellate Court

Sec. 27. If the appellate court awards a new trial to the defendant, the cause shall stand as if a new trial had been granted by the municipal court.

Appeals to the Court of Appeals: Records

Sec. 28. When a judgment is affirmed by the appellate court, the defendant shall have the right to appeal to the court of appeals if the fine assessed against the defendant in the municipal court exceeded $100. The appeals to the court of appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the court of appeals except that:

(1) the record and briefs on appeal in the appellate court shall constitute the record and briefs on appeal to the court of appeals unless the rules of the court of criminal appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the court of appeals.

Seal

Sec. 29. The governing body of the city shall provide each municipal court with a seal with a star of five points in the center and the words "Municipal Court in El Paso, Texas." The impress of the seal shall be attached to all papers, except subpoenas, issued out of the court and shall be used by each municipal judge or his clerk to authenticate all official acts of the clerk and the municipal judge.

Effective Date

Sec. 30. This Act is effective September 1, 1979.

Repealer

Sec. 31. To the extent that any local, special, or general law, including Act of the Legislature, Regular Session, conflict with any provisions of this Act, that law is repealed.

[Acts 1979, 66th Leg., p. 893, ch. 410, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 767, ch. 291, § 9, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 1200ff. Repealed by Acts 1979, 66th Leg., p. 822, ch. 369, § 45, eff. Aug. 27, 1979

The repealed article, relating to municipal courts of record in Fort Worth, was derived from Acts 1977, 65th Leg., p. 1798, ch. 725, §§ 1 to 41. See, now, art. 1200ff–1.

Art. 1200ff–1. Fort Worth

Creation; Formation by Ordinance; Additional Courts

Sec. 1. There are created municipal courts of record in the city of Fort Worth to be held in that city if the governing body of the city, by legally adopted ordinance, finds and determines that the conditions of the dockets of the other courts of the county are such as to require the formation of such municipal courts in order to properly dispose of the cases arising in the city. The governing body of the city may by ordinance determine the number of municipal courts that are required in order to dispose of the cases arising in the city, in which case the governing body of the city may establish as many municipal courts as it considers necessary, and the ordinance establishing the municipal courts shall designate the municipal courts as Municipal Court No. 1, Municipal Court No. 2, and as each municipal court is established, it shall be designated with the next succeeding number. Municipal courts of record shall not exist concurrently with municipal courts that are not courts of record in the city of Fort Worth.

Jurisdiction; Writs; Terms; Exchange of Benches

Sec. 2. (a) Municipal courts created under the provisions of this Act shall have jurisdiction within

the territorial limits of the city in all criminal cases arising under the ordinances of the city and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which the city is situated in criminal cases arising within such territorial limits under the criminal laws of this state in which punishment is only by fine not exceeding $200. Municipal courts shall also have jurisdiction over cases arising outside the territorial limits of the city under the ordinances authorized by Subdivision 19, Article 1175, Revised Civil Statutes of Texas, 1925, as amended.

(b) The judge of a municipal court may grant writs of mandamus, injunction, attachment, and all other writs necessary to the enforcement of the jurisdiction of the court, and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court.

(c) Municipal courts shall hold no terms and may sit at any time for the transaction of the business of the courts.

(d) The judges of the municipal courts may, at any time, exchange benches and may, at any time, sit and act for and with each other in any case, matter, or proceeding pending in their courts, and any acts thus performed by any of the judges shall be valid and binding on all parties to such cases, matters, and proceedings.

Jurisdiction Conformed

Sec. 3. The jurisdiction of all courts exercising criminal jurisdiction is conformed to the terms and provisions of this Act.

Judges; Qualifications; Election; Compensation; Vacancies; Bond and Oath

Sec. 4. (a) Each municipal court shall be presided over by a judge, who shall be known as the "municipal judge," who shall be a licensed attorney in good standing with two or more years of experience in the practice of law in this state and in the county in which the municipal court is located and a citizen of the United States and of this state. The judge shall be a resident of the city at the time of the election and shall maintain his or her residence within the city during the judge's tenure of office. Each municipal judge shall be elected by the qualified voters of the city for a term of two years, unless the city by charter amendment provides for a four-year term as provided by Article XI, Section 11, of the Texas Constitution. The governing body of the city may, by the procedure provided by Subsection (c) of this section, designate a qualified person to serve as judge of each municipal court of record created by it until the next regular municipal election.

(b) Municipal judges shall receive a salary, to be set by the governing body of the city, which may not be diminished during their terms of office. A municipal judge may not be removed from office during the term for which the judge was elected except for cause to the same extent and under the same rules that judges of the county courts may be removed from office.

(c) A vacancy in the office of municipal judge by death, resignation, creation of a new court, or otherwise shall be filled by appointment by a majority of the governing body, and the person appointed shall serve only until the next regular municipal election, at which time his or her successor shall be elected. An appointee may succeed himself or herself, if elected, as may judges regularly elected.

(d) A majority of the governing body of the city may appoint any number of qualified persons to act in the place of any municipal judge absent because of illness, family death or illness, continuing legal or judicial education programs, or otherwise. In the absence of a judge, the chief judge or his or her designate shall call on one of those persons to serve, and while serving the selectee shall have all the powers and discharge all the duties of the office and shall receive the same compensation that is payable to the regular municipal judge.

(e) Municipal judges shall execute a bond and take the oath of office as required by law relating to county judges.

(f) The chief judge of the municipal courts shall be the senior municipal judge in length of continuous service as judge.

Criminal Complaints

Sec. 5. All proceedings in municipal courts shall be commenced on original complaint filed by the city attorney of the city or the assistant city attorneys. All such complaints shall be prepared under the direction of the city attorney or his or her assistants.

Filing of Original Papers

Sec. 6. The clerk of the municipal courts, under the direction of the chief judge, shall file the original complaint and the original of all judgments, orders, motions, or other papers and proceedings in each case in a folder for permanent record. No separate minute book for the court is required, but the original papers filed with the clerk shall constitute the records of the courts. The clerk of the municipal courts shall cause to be noted on the outside of each case folder the following information:

(1) the style of the action;

(2) the nature of the offense charged;

(3) the date the warrant was issued and return made thereon;

(4) the time when the examination or trial was had, and if a trial, whether it was by a jury or before the judge of the court;

(5) the trial settings;

(6) the verdict of the jury, if any;

(7) the judgment of the court, if any;

(8) the motion for a new trial, if any, and the decision thereon;

(9) if an appeal was taken; and

(10) the time when and the manner in which the judgment and sentence were enforced.

Clerk; Duties

Sec. 7. The clerk of the municipal courts shall be appointed by the city manager with the consent of the governing body of the city and shall perform all duties in accordance with state statutes, the city charter, and city ordinances. It shall be the duty of the clerk or the clerk's deputies to keep the records of proceedings of the courts and to issue all processes and generally to do and perform the duties now prescribed by law for clerks of county courts exercising criminal jurisdiction insofar as the same may be applicable.

Court Reporter; Evidence Inadmissible in Civil Proceeding

Sec. 8. (a) For the purpose of preserving a record in all cases tried before the municipal courts, the judge of each court shall appoint an official court reporter, who shall be well-skilled in the profession and have the qualifications required of a court reporter in the courts as provided by the general laws of Texas. The reporter shall be a sworn officer of the court and shall hold the office at the pleasure of the judge at a salary to be fixed by the governing body of the city. The judge or judges of the courts may appoint the deputy official court reporters that are deemed necessary to promptly and efficiently dispose of the business of the courts. The court reporter shall perform duties under the direction and control of the municipal judge or judges. The court reporter shall take testimony in any case when a party or the judge requests it and no testimony shall be taken unless it is requested by a party or the judge.

(b) The testimony, exhibits, or evidence given by a witness in the course of a proceeding in the municipal courts shall be solely for the purpose of such proceeding or appeal therefrom, and in any other civil proceeding, evidence relating to such testimony, exhibits, evidence, or reproductions thereof shall be privileged and not admissible for any purpose.

Court Costs

Sec. 9. No court costs shall be assessed or collected by any municipal court in any case tried in the courts, except warrant fees, capias fees, and other fees authorized for municipal courts.

Service of Process

Sec. 10. All processes issuing out of municipal courts may be served by a policeman or warrant officer of the city or by any peace officer under the same rules as are provided for service by sheriffs and constables of process issuing out of a county court so far as applicable.

Prosecutor; Bailiff

Sec. 11. All prosecutions in municipal courts shall be conducted by the city attorney of the city or the assistant city attorneys. The chief of police of the city shall, in person or by designated officer or deputy, attend the court and perform the duties of a bailiff.

Form of Complaint

Sec. 12. Proceedings in municipal courts shall be commenced by complaint filed by the city attorney, or his or her assistants, which shall begin: "In the name and by authority of the State of Texas" and shall conclude "against the peace and dignity of the state." All complaints shall be prepared under the direction of the city attorney or his or her assistants and may be signed by any credible person on information and belief, sworn to before a notary public, the city attorney, an assistant city attorney, the clerk of the court, or any deputy clerk, each of whom, for that purpose, shall have power to administer the oath. The complaint shall be in writing and shall state:

(1) the name of the accused, if known, and if unknown, shall describe him or her as accurately as practicable;

(2) the offense with which the accused is charged in plain and intelligible words;

(3) facts showing that the place where the offense is charged to have been committed is within the jurisdiction of the municipal court; and

(4) facts showing, from the date of the offense stated therein, that the offense is not barred by limitations. All pleadings in the municipal courts shall be in writing and filed with the clerk of such courts.

Jury Trial; Selection of Jurors

Sec. 13. (a) Every person brought before the municipal courts and charged with an offense shall be entitled to be tried by a lawful jury of six persons. The municipal judge may set certain days of each week or month for the trial of jury cases. Juries for the court shall be selected by the following procedure. On the implementation of this Act by the governing body of the city and between the 1st and 15th days of August of each year thereafter, the tax assessor and collector of the city, or one of his or her deputies, and the city secretary, or one of his or her assistants, shall meet together and select, from the list of qualified jurors in the city, the jurors for service in the municipal courts for the ensuing year. The list of jurors shall be taken from the voters registration list of the city. The officers shall place on separate cards of uniform size and color the names of all persons who are known to be qualified jurors under the law residing in the city, placing also on the cards, whenever possible, the post office address of each juror so selected. The cards containing the names shall be deposited in a jury wheel to be provided for that purpose by the governing body of the city. The wheel shall be constructed of any durable material, shall be so constructed as to revolve freely on its axle, and may be equipped with

a motor to revolve the wheel so as to thoroughly mix the cards. The wheel shall be locked at all times, except when in use as hereinafter provided, by the use of two separate locks so arranged that the key to one will not open the other lock. The wheel and the clasps into which the locks are fitted shall be arranged so that the wheel cannot be opened unless both of the locks are unlocked. The keys to the locks shall be kept, one by the city secretary and the other by the clerk of the municipal courts. The city secretary and the clerk of the municipal courts shall not open the wheel or permit it to be opened by any person except at the time and in the manner and by the persons herein specified. The city secretary and clerk shall keep the wheel when not in use in a safe and secure place where it cannot be tampered with.

(b) Not less than 10 days before January 1, April 1, July 1, and October 1 of each year, the clerk of the municipal courts, or one of the clerk's deputies, and the city secretary, or one of the secretary's assistants, in the presence and under the direction of one of the municipal judges shall draw from the wheel containing the names of jurors, after the wheel has been turned and the cards thoroughly mixed, one by one the names of jurors to provide the number directed by the judges for each week of the three months next ensuing for which a jury may be required, and shall record the names as they are drawn on a separate sheet of paper for each week for which jurors may be required. At the drawing, no persons other than those above named shall be permitted to be present. The officers attending the drawing shall not divulge to any person the name of any person that may be drawn as a juror. If at any time during the next three months and prior to the next drawing date it appears that the list already drawn will be exhausted before the expiration of three months, additional lists for as many additional weeks as the judges may direct will be drawn in the same manner. The several lists of names so drawn shall be certified under the hand of the clerk of the municipal courts, or the deputy doing the drawing, and the municipal judge in whose presence the names were drawn, to be the lists drawn by him or her for that quarter and shall be sealed in separate envelopes endorsed "List no. _____ of the petit jurors drawn on the ____ day of _____, 19___, for the Municipal Courts of _____." The clerk doing the drawing shall write his or her name across the seals of the envelopes and deliver them to the judge, who shall inspect the envelopes to see that they are properly endorsed and shall then deliver them to the clerk or the clerk's deputy, and the clerk shall then immediately file them away in some safe and secure place in his or her office under lock and key. When the names are drawn for jury service, the cards containing the names shall be sealed in separate envelopes endorsed "Cards containing the names of jurors list no. _____ of the petit jurors drawn on the _____ day of _____, 19___, for the Municipal Courts of _____." Each envelope shall be retained unopened by the clerk until after the jury selected from the corresponding list has been impaneled. After the jurors so impaneled have served four or more days, the envelope containing the cards bearing the names of the jurors on that list shall then be opened by the clerk or the clerk's deputy. Those cards bearing the names of persons who have not been impaneled and who have not served as many as four days shall be immediately returned to the wheel by the clerk or the deputy, and the cards bearing the names of the persons serving as many as four days shall be put in a box provided for that purpose for the use of the officers who shall next select the jurors from the wheel. If any of the lists drawn are not used, the clerk or the deputy shall open the envelopes containing the cards bearing the names of the unused lists immediately after the expiration of the three-month period and return the cards to the wheel. A juror serving on a jury in the court shall receive not less than $10 for each day and for each fraction of a day the juror attends the court as a juror, and in no event less than that paid in county courts.

(c) In lieu of the preceding method of jury selection, a majority of the judges of the municipal courts of the city may adopt a plan binding on all such judges for the selection of persons for jury service with the aid of mechanical or electronic means. If such a plan is adopted, the foregoing provisions of this section dealing with the selection of petit juries by jury wheel shall not apply. A plan so adopted shall include the following requirements:

(1) the names taken for jury purposes shall be names of registered voters in the city;

(2) provision of a fair, impartial, and objective method of selecting persons for jury service;

(3) designation of the clerk of the court as the official to be in charge of the jury selection process and providing the duties of the clerk in that process; and

(4) specification that a true and complete written list showing the names and addresses of the persons summoned to begin jury service on a particular date shall be filed with the clerk of the court at least 10 days prior to the date the persons are to begin jury service.

(d) In lieu of either of the foregoing methods of petit jury selection, a majority of the judges of the municipal courts of the city may adopt a plan binding on all the judges for the selection of persons for jury panels from a central jury pool maintained by the county in which the city is located to provide petit juries for the district courts, county courts, county courts at law, and justice courts of the county, if any such pool exists. If such a plan is adopted, the provisions of this section dealing with the selection of petit juries by jury wheel or mechanical or electronic means do not apply. A plan so adopted shall include the following requirements:

(1) the persons taken from the central jury pool shall be registered voters in the city;

(2) provision of a fair, impartial, and objective method of selecting persons for jury panels from the pool;

(3) designation of the clerk of the municipal courts as the official to be in charge of the selection process from such pool, except that the clerk may, with permission from such county employee, appoint the county employee in charge of the central jury pool as the clerk's deputy for this purpose; and

(4) provision for compensation to the county for juror fees paid by the county to jury panel members selected from the central jury pool for municipal court jury panels, if the fees are paid to the selectees by the county rather than by the city.

Judicial Notice

Sec. 14. Municipal courts shall take judicial notice of all the city ordinances and the corporate limits of that city in all cases tried in the courts.

Rules of Procedure

Sec. 15. Except as modified by this Act, the trial of cases before municipal courts shall be governed by the Code of Criminal Procedure, 1965, applicable to county courts.

Bonds

Sec. 16. All bonds taken in proceedings in the courts shall be payable to the State of Texas for the use and benefit of the city.

Judgment and Sentence

Sec. 17. The judgment and sentence, in case of conviction before municipal courts, shall be in the name of the State of Texas, and shall recover from the defendant the fine and costs for the use and benefit of the city. Except when otherwise ordered by the court, the court shall require that the defendant remain in custody of the chief of police of such city until the fine and costs are paid and shall order that execution issue to collect the fines and penalties.

Appellate Courts

Sec. 18. Appeals from municipal courts shall be heard by the county courts having appellate criminal jurisdiction.

No Appeal by State

Sec. 19. The state shall have no right of appeal.

Right of Appeal

Sec. 20. A defendant has the right of appeal from a judgment of conviction in a municipal court under the rules hereinafter described, and a motion for a new trial shall be prerequisite to the right of appeal from a municipal court.

Motion for New Trial

Sec. 21. A motion for a new trial must be made within five days after the rendition of judgment and sentence and not thereafter. Such motion must be in writing and filed with the clerk of the court.

No New Trial for State

Sec. 22. In no case shall the state be entitled to a new trial.

Notice of Appeal; Bond

Sec. 23. After an order overruling a motion for new trial, an appeal may be taken by paying the $10 fee for preparation of the transcript which shall be noted on the docket of the court. The fee must be paid within 10 days after the order overruling the motion for a new trial is rendered. An appeal may not be taken until the required bail bond has been given and approved by the court. The bail bond must be filed with the court within 10 days after the order of the court refusing a new trial has been rendered and not afterwards.

Bail on Appeal

Sec. 24. In appeals from the judgments and sentence of a municipal court, the defendant shall, if the defendant is in custody, be committed to jail unless the defendant gives bail, to be approved by the judge of the municipal court in an amount not less than double the amount of fine and costs adjudged against him or her, payable to the State of Texas for the use and benefit of the city. Bail shall not in any case be for a sum less than $100. The bond shall recite that in the cause the defendant shall make personal appearance before the court to which the appeal is taken instanter, if the court is in session, and if the court is not in session, then at its next session, and there remain from day to day and answer in the cause.

Perfecting Appeal

Sec. 25. Appeals from municipal courts may be perfected by filing the bail bond provided for in Section 24 of this Act on approval by the municipal court.

Record and Briefs on Appeal

Sec. 26. In view of the crowded conditions of the dockets of the courts, the record and briefs on appeal in a case appealed from a municipal court shall be limited so far as possible to the questions relied on for reversal.

Elements of the Record

Sec. 27. The record on appeal in a case appealed from a municipal court shall consist of a transcript.

Assignments of Error

Sec. 28. The motion for a new trial in a case appealed from a municipal court shall constitute the assignments of error on appeal. A ground of error not distinctly set forth in a motion for new trial shall be considered as waived.

Stipulation of Record on Appeal

Sec. 29. The city attorney, or the assistant city attorney, and the defendant, or the defendant's attorney, by written stipulation filed with the clerk of the municipal courts may designate the parts of the record, proceedings, and evidence to be included in the record on appeal.

Contents of Transcript

Sec. 30. The clerk of the municipal courts, under written instructions of the defendant, or the defendant's attorney, shall, after payment of the $10 preparation fee, prepare under his or her hand and seal of the court for transmission to the appellate court a true copy of the proceedings in the municipal court, and, unless otherwise designated by agreement of the parties, shall include the following: (1) the complaint on which the trial was had; (2) the order of the court on any motions or exceptions; (3) the judgment of the court and the verdict of the jury; (4) any findings of fact or conclusions of law by the court; (5) the judgment of the court; (6) the motion for new trial and the order of the court thereon; (7) the notice of appeal; (8) any statement of the defendant or the city attorney as to the matter to be included in the record; (9) the bail bond; (10) the certified bill of costs; (11) any statement of facts; and (12) any signed paper designated as material by the defendant, or the defendant's attorney, or the city attorney or assistant city attorney. The defendant, or the defendant's attorney, may file with the clerk and deliver or mail to the city attorney, or assistant city attorney, a copy of the written instruction, and the city attorney, or assistant city attorney, may file and deliver or mail a written direction to the clerk to include in the transcript additional portions of proceedings in the trial court.

Statement of Facts

Sec. 31. (a) The statement of facts shall, except as hereinafter provided, consist of a transcription of the testimony of witnesses and bills of exception. The statement of facts shall be prepared by the court reporter of the municipal court at the request of any party or the court. The court reporter shall immediately notify all parties in writing that the request has been made. Copies of the statement of facts shall be provided all parties by the reporter and one copy shall be filed by the reporter with the clerk of the municipal courts to be forwarded immediately to the clerk of the appellate court. The transcription shall be in narrative form unless written notice of objection to narrative form is made by a party within five days of receiving notice that the transcription was requested.

(b) All matters not essential to the decision or the questions presented in the motion for new trial shall be omitted from a statement of facts. Formal parts of all exhibits and more than one copy of any document appearing in the transcript or the statement of facts may be excluded. All documents may be abridged by omitting or abbreviating a formal portion thereof.

(c) It shall be unnecessary for the statement of facts to be approved by the trial court or judge thereof when agreed to by the defendant, or the defendant's attorney, and the city attorney, or assistant city attorney.

(d) The cost of preparation of the statement of facts shall be paid by the requesting party, unless the requesting party is the State of Texas or the city. The cost, if paid by the defendant, is recovered by the defendant if the case is overturned or dismissed on appeal.

Agreed Statement of Case

Sec. 32. The defendant, or the defendant's attorney, and the city attorney, or assistant city attorney, may agree on a brief statement of the case and on the facts proven as will enable the appellate court to determine where there is error in the judgment of the trial court. Such statements shall be copied into the transcript in lieu of the proceedings themselves.

Date for Filing Record

Sec. 33. The transcript and statement of facts shall be filed with the clerk of the municipal courts within 60 days from the date of the payment of the $10 fee for preparation of the transcript and shall be promptly forwarded by the clerk of the municipal courts to the clerk of the court to which the appeal is taken.

Fee for Preparation of Record

Sec. 34. The defendant shall pay a fee of $10 to the clerk of the municipal courts for the preparation of the transcript. If the case is reversed on appeal, the $10 fee shall be refunded to the defendant.

Date for Filing Brief

Sec. 35. Briefs shall be filed with the clerk of the court to which an appeal is taken within 10 days of the filing of the transcript and statement of facts in the municipal court. At the same time, a true copy of the brief shall be provided to opposing counsel.

Hearing Appeals; Oral Arguments

Sec. 36. The court to which the appeal is taken shall hear and determine appeals from municipal courts at the earliest time it may be done, with due regard to the rights of parties and proper administration of justice. Oral arguments before the court shall be under such rules as the court may determine, and the parties may submit the case on the records and briefs without oral argument.

Disposition on Appeal

Sec. 37. A county court having jurisdiction of appeals from municipal courts may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require. Unless such matters were made an issue in the municipal court, or it affirmatively appears to the contrary from the transcript or statement of facts, the court shall presume that the venue was proven in the court below, that the jury was properly impaneled and sworn, that the defendant was arraigned and that he or she pleaded to the complaint, and that the court's charge was certified by the

judge and filed by the clerk before it was read to the jury. In each case decided by the court having jurisdiction of appeals, the court shall deliver a written opinion either sustaining or overruling each assignment of error presented. If an assignment of error is overruled, no reason need be given by the court, but cases relied on by the court may be cited. If an assignment of error is sustained, the court shall set forth the reasons for such decision. Copies of the decision of the court shall be mailed by the clerk of the court to the parties and the judge of the municipal court as soon as rendered by the court.

Certificate of Appellate Proceedings; Enforcement of Judgment

Sec. 38. When the judgment of the court having jurisdiction of appeals from municipal courts becomes final, the clerk of the court shall make out a proper certificate of the proceedings had and the judgment rendered and mail the certificate to the clerk of the municipal courts from which the appeal was taken. When the record is received by the clerk of the municipal courts, the clerk shall file it with the papers in the case and note it on the docket of the municipal court. Where the judgment has been affirmed, no proceedings need be had after filing the record in the municipal court to enforce the judgment of the court, except forfeiture of the bond of the defendant, issuance of a capias for the defendant, or an execution against the defendant's property.

Award of New Trial

Sec. 39. Where the appeal court awards a new trial to the defendant, the cause shall stand as it would have stood if a new trial had been granted by the municipal court.

Appeal to Court of Appeals

Sec. 40. Appeals to the Court of Appeals from the decision of the court having jurisdiction of appeals from municipal courts, when permitted by law, shall be governed by the Code of Criminal Procedure, 1965, except that when an appeal is permitted by law, the transcript, briefs, and statement of facts filed in the court having jurisdiction of appeals from municipal courts shall constitute the transcript, briefs, and statement of facts before the Court of Appeals or as the rules of the Court of Criminal Appeals may provide in such cases.

Facilities of Court; Salaries

Sec. 41. (a) The municipal courts shall be held in the city at a place or places within the corporate limits of the city as may be designated by the governing body of the city.

(b) The governing body of the city shall provide suitable quarters for the courts, and all costs of providing courtrooms and office space for the courts, the clerk, and court reporters shall be paid for by the governing body of the city. All salaries paid to the judges, the clerk, court reporters, and employees of the municipal courts shall be paid by the governing body of the city.

Disposition of Fines, Fees, Costs, and Bonds

Sec. 42. All fines, fees, costs, and cash bonds in municipal courts shall be paid to the clerk of the municipal courts. The clerk of the municipal courts shall deposit all fines, fees, costs, and cash bonds directly into the general fund of the city.

Classification of Personnel

Sec. 43. The judges of municipal courts, the clerk and deputy clerks of the courts, and the court reporters of the municipal courts shall not be considered to be classified employees under civil service, charter, or ordinance provisions. However, the governing body of the city may provide by ordinance that all other employees of the municipal courts may be hired and paid as classified employees under the city civil service, charter, or ordinance provisions. The judges, clerk, deputy clerks, and court reporters may be authorized or required by the governing body of the city to participate in the retirement program of the city. The judges, clerk, deputy clerks, and court reporters of municipal courts shall receive the same vacation, sick leave, and other benefits as are provided for other nonclassified employees of the city under such regulations as may be provided by the governing body.

Vacation of Unnecessary Court

Sec. 44. After the establishment of municipal courts, if the governing body of the city shall, by legally adopted ordinance, find and determine that the condition of the dockets of the other courts of the county is such as not to require the existence of one or more municipal courts in order to properly dispose of the cases arising in the city, then the offices of municipal judge, clerk of the municipal courts, court reporters, and other employees of the courts may be declared vacated as of the end of the term for which the municipal court judges were last elected or appointed. In that event, any case pending in the municipal courts shall be transferred to the proper court having jurisdiction of the offense. [Acts 1979, 66th Leg., p. 811, ch. 369, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 768, ch. 291, § 10, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 1200gg. Lubbock

Creation

Sec. 1. The governing body of the City of Lubbock may by ordinance establish the city's existing municipal courts as municipal courts of record in accordance with this Act. Additional municipal courts of record may be created and one or more

judges for each court may be authorized by ordinance on a finding that an additional court or courts or additional judges are necessary to properly dispose of the cases arising in the city.

Jurisdiction; Writs

Sec. 2. (a) Municipal courts created under the provisions of this Act shall have jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which the city is situated in criminal cases arising within such territorial limits under the criminal laws of this state in which punishment is only by fine not exceeding $200. Municipal courts shall also have jurisdiction over cases arising outside the territorial limits of the city under the ordinances authorized by Subdivision 19, Article 1175, Revised Civil Statutes of Texas, 1925, as amended.

(b) The municipal court of record shall take judicial notice of all ordinances of the city.

(c) The judge of a municipal court may grant writs of mandamus, injunction, attachment, and all other necessary writs necessary to the enforcement of the jurisdiction of the court and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court.

Judges

Sec. 3. (a) Each municipal court shall be presided over by one or more judges to be known as "municipal judges."

(b) Each municipal judge shall be elected by the qualified voters of the city for a term of two years, unless the city by charter amendment provides for a four-year term as provided by Article XI, Section 11, of the Texas Constitution. The governing body of the city may appoint a person or persons with the qualifications required for a judge to serve as the judge or judges authorized for each newly created municipal court of record until the next regular city election.

(c) The judges or substitute judges of the municipal courts may at any time exchange benches and may at any time sit and act for or with each other in any case, matter, or proceeding pending in their courts. An act performed by any of the judges shall be valid and binding on all parties to the cases, matters, and proceedings.

(d) if there is more than one municipal judge in the city, the governing body of the city shall appoint one of the judges to be the presiding municipal judge of the city. If the city has a municipal judge who is either its only municipal judge or its only municipal judge who is not serving in a temporary or part-time capacity, that judge shall be the presiding municipal judge for all purposes of this Act.

(e) The presiding judge shall:

(1) maintain a central docket for all cases filed in the geographical limits of the city over which the municipal courts of the city have jurisdiction;

(2) provide for the distribution of cases from the central docket to the individual municipal judges in order that the business of the courts will be continually equalized and distributed among them;

(3) request the jurors needed for cases that are set for trial by jury in the municipal courts of record, which, as provided by Section 11(b) of this Act, shall be transferred to and serve in the municipal court as if summoned for the municipal court to which they are transferred;

(4) temporarily assign various judges or substitute judges of the municipal courts to exchange benches and to sit and act for each other in any case, matter, or proceeding pending in their courts when necessary for the expeditious disposition of the business of the courts;

(5) cause all dockets, books, papers, and other records of the municipal courts to be permanently kept and permit these records to be available for inspection at all reasonable times by any interested parties;

(6) cause to be maintained as part of the records of the municipal courts an index of municipal court judgments such as county clerks are required by law to prepare for criminal cases arising in county courts; and

(7) where necessary for the proper functioning of the municipal courts, provide for the preservation by microfilm of the records of the courts, subject to the same requirements provided by law for the preservation by microfilm of records under the custody of county clerks.

(f) A judge of a municipal court created under the provisions of this Act shall have been a licensed attorney in good standing in the practice of law in this state for a period of five years, shall be a citizen of the United States and of this state, and shall be required to satisfy the same residency requirements as those pertaining to a member of the city council of the City of Lubbock. No person may serve in the office of municipal judge while he or she holds any other office or employment in the government of the city, and the holding of the other office or employment by a person serving in the office of municipal judge shall create an immediate vacancy in the judicial office.

Salary

Sec. 4. A municipal judge is entitled to compensation by the city on a salary basis. The amount of the salary shall be determined by the governing body of the city and may not be diminished during the judge's term of office. The salary may not be based, directly or indirectly, on fines, fees, or costs that the municipal judge is required by law to collect during his or her term of office.

Vacancies; Temporary Replacements; Removal

Sec. 5. (a) When a vacancy in the office of municipal judge occurs, the governing body of the city

shall appoint a person meeting the qualifications required by law for the position to fill the office of municipal judge for the unexpired term of the judge serving in that office prior to the vacancy. If a judge is temporarily unable to act for any reason, the governing body may appoint a person meeting the qualifications for the position to serve during the absence of the judge with all the powers and duties of the office and shall provide for the person's compensation.

(b) A municipal judge may be removed from office for cause to the same extent and under the same rules that judges of the county courts at law may be removed from office. A municipal judge is answerable to the governing body of the city only on budgetary matters.

(c) Each municipal judge shall comply with the same provisions for filing a financial statement as are required of other judges by Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9b, Vernon's Texas Civil Statutes).

Court Facilities

Sec. 6. The governing body of the city shall provide the courtrooms, jury rooms, offices and office furniture, libraries, legal books and materials, and other supplies and facilities that the governing body determines are necessary for the proper operation of the municipal courts.

Court Clerk

Sec. 7. The governing body of the city shall provide a clerk of the municipal courts and the deputy clerks, warrant officers, and other municipal court personnel that are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep the records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction, insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the presiding municipal judge.

Court Reporter

Sec. 8. (a) For the purpose of preserving a record in cases tried before the municipal court, the city shall provide a court reporter with the qualifications provided by law for official court reporters, whose compensation shall be determined by the chief administrative officer of the city on the recommendation of the presiding municipal judge.

(b) The record of proceedings may be preserved by written notes, transcribing equipment, recording equipment, or any combination of these methods. The court reporter is not required to take or record testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

Prosecutions by City Attorney

Sec. 9. All prosecutions in municipal courts shall be conducted by the city attorney of the city or his or her assistant or deputy.

Complaint

Sec. 10. (a) Proceedings in municipal courts shall be commenced by complaint, which shall begin: "In the name and by the authority of the State of Texas"; and shall conclude: "Against the peace and dignity of the State"; and if the offense is only covered by an ordinance, it may also conclude: "Contrary to the said ordinance." The municipal judge shall charge the jury in accordance with Subsection (a) of Section 11 of this Act. Complaints before the court may be sworn to before any officer authorized to administer oaths or before the municipal judge, clerk of the court, city secretary, or city attorney or his or her assistant or deputy, each of whom, for that purpose, shall have power to administer oaths. The complaint shall be in writing and shall state:

(1) the name of the accused, if known, and if unknown, shall describe the accused as accurately as practicable;

(2) the offense with which the accused is charged in plain and intelligible words;

(3) the place where the offense is charged to have been committed, which must appear to be within the jurisdiction of the municipal court; and

(4) the date of the offense which, as stated, must show that the offense is not barred by limitations.

(b) All pleadings in the municipal courts shall be in writing and filed with the clerk of the courts.

Right to Jury

Sec. 11. (a) Every person brought before the municipal courts and charged with an offense is entitled to be tried by a jury of six persons, unless waived according to law. The jury shall decide all questions of fact or credibility of witnesses. The court shall determine all matters of law and shall charge the jury on the law.

(b) When requested by the clerk of the municipal courts, the officials in the county who draw the names of jurors from the county jury wheel for the county's central jury system shall draw from the same jury wheel, and in the same manner, the names of jurors to compose as many lists for service in the municipal courts as the clerk of the municipal courts requested. The jury lists drawn for the municipal courts shall be delivered to the clerk of the municipal court. The governing body of the city shall establish the necessary procedures for the summoning and impaneling of jury panels by the municipal courts and for the payment of the jurors. A juror serving in the municipal court shall receive the same pay for each day or fraction of a day that he or she serves as jurors receive for service in the other

courts of Lubbock County, as provided by Article 2122, Revised Civil Statutes of Texas, 1925, as amended.

(c) A juror in the municipal courts shall have the same qualifications as jurors in the other courts in Lubbock County as provided by Article 2133, Revised Civil Statutes of Texas, 1925, as amended, except that a juror in municipal court shall also be a registered voter in the City of Lubbock. Jurors in the municipal courts are subject to the same law governing exemption and excuse from jury service as the jurors in the other courts in the county.

Appeals; Appellate Courts

Sec. 12. (a) In this Act, "appellate courts" means the county courts at law in Lubbock County.

(b) A defendant has the right of appeal from a judgment or conviction in the municipal court under the rules prescribed in this Act. The appellate courts have jurisdiction over the appeals from the municipal courts, and all appeals from convictions in the municipal court shall be prosecuted in the appellate court by the city attorney or his or her assistants or deputies.

No De Novo Appeals

Sec. 13. Each appeal from a conviction in the municipal court shall be determined by the appellate court on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo.

Motion for New Trial

Sec. 14. In order to perfect an appeal, a written motion for a new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction and may be amended by leave of court at any time before it is acted on within 20 days after the filing of the original or amended motion. For good cause shown, the time for filing or amending may be extended by the court, not to exceed 90 days. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion, if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant.

Notice of Appeal

Sec. 15. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his or her motion for a new trial, the notice of appeal may be given orally in open court on the overruling of the motion for new trial. Otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled. For good cause shown, the time for giving notice of appeal may be extended by the court, not to exceed 90 days.

Appeal Bond

Sec. 16. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial has been overruled. If the defendant is in custody, the defendant shall be committed to jail unless he or she posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for a sum less than $50. The bond shall recite that in the cause the defendant was convicted and has appealed and be conditioned that the defendant shall make his or her personal appearance before the court to which the appeal is taken instanter, if the court is in session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 17. The record on appeal in a case appealed from the municipal court consists of a transcript and where necessary to the appeal, a statement of facts, which shall be prepared by a court reporter of the court from the reporter's record of the proceeding, mechanical recordings of the proceedings, or from videotape recordings of the proceedings. If the court finds, after hearing in response to an affidavit by defendant, that the defendant is unable to pay or give security for the record on appeal, the court will order the reporter to make the transcription without charge to the defendant.

Contents of Transcripts

Sec. 18. (a) The municipal court clerk, on written request from the defendant or the defendant's attorney, shall prepare under the clerk's hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court and shall include copies of the following:

(1) the complaint;

(2) material docket entries made by the court;

(3) the jury charge and verdict, if the trial is by jury;

(4) the judgment;

(5) the motion for a new trial;

(6) the notice of appeal;

(7) all written motions and pleas and orders of the court;

(8) bills of exception, if any are filed; and

(9) the appeal bond.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court prepared by mechanical recordings or videotape recordings of the proceedings.

Bills of Exception

Sec. 19. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure, 1965, as amended, governing the preparation of bills of exception and their inclusion in the record on appeal to the court of appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts

Sec. 20. A statement of facts, when included in the record on appeal, shall consist of:

(1) a transcription of all or any part of the municipal court proceedings in the case, as provided in this Act, that are shown by the notes of the court reporter to have occurred before, during, or after the trial, if such a transcription is requested of the court reporter by the defendant;

(2) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney;

(3) a partial transcription and the agreed statement of the facts of the case proven at the trial; or

(4) a transcription of all or any part of the municipal court proceedings in the case that are prepared from the mechanical recordings or videotape recordings of the proceedings.

Completion, Approval, and Transfer of Record

Sec. 21. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

(1) the statement of facts;

(2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 18 of this Act; and

(3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the court of appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward the record to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

New Trials

Sec. 22. It is the duty of the trial court to decide from the briefs of the parties whether the defendant should be permitted to withdraw his or her notice of appeal and be granted a new trial by the court. The court may grant a new trial at any time prior to the record being filed with the appellate court clerk.

Brief on Appeal

Sec. 23. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the court of appeals.

(b) The defendant shall file his or her brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the appellate court clerk, and the defendant or the defendant's attorney shall certify in the brief to the posting of such by United States mail with proper postage affixed and addressed to the office of the prosecuting attorney. The prosecuting attorney shall file his or her brief with the clerk of the appellate court within 15 days after the defendant files the defendant's brief with the clerk. Each party, on filing his or her brief with the clerk of the appellate court, shall cause a true copy of the brief to be delivered to the opposing party and to the municipal court judge.

Court Rules

Sec. 24. (a) Except as modified by this Act, the trial of cases before municipal courts shall be governed by the Code of Criminal Procedure, 1965, as amended.

(b) The municipal courts may make and enforce all necessary rules of practice and procedure, not inconsistent with the law, so as to expedite the trial of cases in the courts.

(c) The county courts at law of Lubbock County may make and enforce all necessary rules of practice and procedure for appeals from municipal courts, not inconsistent with the law, so as to expedite the dispatch of appeals from the municipal courts.

Disposition on Appeal

Sec. 25. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume that the venue was proven in the court below, that the jury was properly impaneled and sworn, that the defendant was arraigned and pleaded to the complaint, and that the court's charge was certified by the municipal court judge before it was read to the jury, unless such matters were made an issue in the trial court or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. The appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of

the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings

Sec. 26. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, the clerk shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a capias for the defendant, or to issue an execution against the defendant's property.

Order of New Trial by Appellate Court

Sec. 27. If the appellate court awards a new trial to the defendant, the cause shall stand as if a new trial had been granted by the municipal court.

Appeal to the Court of Appeals

Sec. 28. When a judgment is affirmed by the appellate court, the defendant has the right to appeal to the Court of Appeals if the fine assessed against the defendant in the municipal court exceeded $100. The appeal to the Court of Appeals shall be governed by provisions in the Code of Criminal Procedure, 1965, as amended, relating to direct appeals from county and district courts to the Court of Appeals except that:

(1) the record and briefs on appeal in the appellate court shall constitute the record and briefs on appeal to the Court of Appeals unless the rules of the Court of Criminal Appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the Court of Appeals.

Seal

Sec. 29. The governing body of the city shall provide each municipal court with a seal with a star of five points in the center and the words "Municipal Court in Lubbock, Texas." The impress of the seal shall be attached to all papers, except subpoenas, issued out of the court and shall be used by each municipal judge or the clerk to authenticate all official acts of the clerk and the municipal judge. [Acts 1979, 66th Leg., p. 741, ch. 329, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 769, ch. 291, § 11, eff. Sept. 1, 1981.]

Section 30 of the 1979 Act provided:

"The residency requirements for a judge of a municipal court of record do not apply to a person serving as a municipal judge in the City of Lubbock on the effective date of this Act until the first regular city election after the establishment of the municipal courts of record."

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 1200hh. Longview

Creation; Formation by Ordinance

Sec. 1. (a) There is created in the city of Longview a court of record to be known as the "City of Longview Municipal Court," to be held in that city if the governing body of the city of Longview, by ordinance, finds and determines that the formation of a municipal court of record is necessary in order to provide a more efficient disposition of appeals arising from the municipal court.

(b) The authority of the governing body of the city of Longview to create a municipal court of record in the city of Longview includes the authority to establish, in the manner set forth in this section, more than one municipal court of record if the governing body determines that it is necessary in order to dispose of the cases arising in the city. If more than one municipal court of record is created, the judges of the municipal courts may at any time exchange benches and sit and act for and with each other in a case, matter, or proceeding pending in a municipal court, and any and all acts performed by a judge are valid and binding on all parties to the case, matter, and proceeding.

(c) The municipal court of record authorized in this section is referred to in this Act as the "municipal court."

Application of Other Laws Regarding Municipal Courts

Sec. 2. The general laws of the state regarding municipal courts and regarding justice courts on matters where there is no law for municipal courts, and the valid charter provisions and ordinances of the city of Longview relating to the municipal court apply to the municipal court authorized in this Act, unless the laws, charter provisions, and ordinances are in conflict or inconsistent with the provisions of this Act.

Judge; Qualifications

Sec. 3. (a) The municipal court shall be presided over by a judge, who shall be a licensed attorney in good standing in this state and a citizen of the United States and of this state. The judge need not be a resident of the city. The judge shall devote as much of his or her time to the duties of the office as the office shall require. The judge shall be appointed by the governing body of the city and shall be paid a salary to be determined by the governing body of the city. The salary shall not be based on or be in any way contingent on the fines, fees, or costs collected by the municipal court.

(b) If more than one municipal court is created by the governing body of the city, a judge shall be

appointed for each court and the governing body of the city shall designate a judge to be the presiding judge.

Court Clerk

Sec. 4. The governing body of the city shall provide a clerk of the municipal courts and the deputy clerks, warrant officers, and other municipal court personnel that are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction, insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the municipal court judge.

Court Reporter

Sec. 5. (a) For the purpose of preserving a record in the cases tried before the municipal court, the city shall provide a court reporter, who shall be appointed by the municipal court judge and whose compensation shall be determined by the governing body of the city. The qualifications of the court reporter shall be as provided by law for official court reporters.

(b) The record of proceedings may be preserved by the court reporter by written notes, transcribing equipment, recording equipment, or any combination of them. The court reporter is not required to take testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

Jury Selection

Sec. 6. The names of the prospective jurors for trials in the Longview Municipal Court of Record shall be drawn from a jury wheel maintained by the District Court of Gregg County, Texas, or from a jury wheel maintained by the clerk of the Longview Municipal Court of Record, with names of Longview voter registration rolls of Gregg County and Harrison County, Texas.

Ordinances; Judicial Notice

Sec. 7. The municipal court shall take judicial notice of the ordinances of the city.

Appeal; Appellate Courts

Sec. 8. A defendant has the right of appeal from a judgment of conviction in the municipal court under the rules prescribed in this Act. The County Court of Gregg County has jurisdiction over the appeals from the municipal court.

Appeals on the Record; No De Novo Appeals

Sec. 9. Each appeal from a conviction in the municipal court shall be determined by the appellate court solely on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo.

Motion for New Trial

Sec. 10. In order to perfect an appeal, a written motion for new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after it is filed. The motion for new trial shall be presented to the court within 10 days after the filing of the original or amended motion, and shall be determined by the court within 20 days after the filing of the original or amended motion. For good cause shown, the time for filing or amending may be extended by the court. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant. For purposes of appeal, a point of error not distinctly set forth in the motion for new trial shall be considered as waived.

Notice of Appeal

Sec. 11. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on the motion for new trial, the notice of appeal may be given orally in open court on the overruling of the motion for new trial. Otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled.

Appeal Bond

Sec. 12. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial is overruled. If the defendant is in custody, the defendant shall be committed to jail unless he or she posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of the fine and costs adjudged against the defendant. However, the bond may not in any case be for a sum less than $100. The bond shall recite that in the cause the defendant was convicted and has appealed, and be conditioned that the defendant shall make his or her personal appearance before the court to which the appeal is taken instanter, if the court is in session, and if the court is not in session, then at its next session, and there remain from day to day to answer in the cause.

Record on Appeal

Sec. 13. The record on appeal in a case appealed from the municipal court consists of a transcript and, where necessary to the appeal, a statement of facts.

Contents of Transcript

Sec. 14. (a) The municipal court clerk, on written request from the defendant, shall prepare under the clerk's hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court that shall always include the following:

(1) the complaint;

(2) material docket entries made by the court;

(3) the jury charge and verdict, if the trial is by jury;

(4) the judgment;

(5) the motion for new trial;

(6) the notice of appeal;

(7) all written motions and pleas and orders of the court; and

(8) bills of exception, if any are filed.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court if so instructed in writing by either the defendant or the prosecuting attorney.

Bills of Exception

Sec. 15. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the court of appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts

Sec. 16. (a) A statement of facts, when included in the record on appeal, shall consist of:

(1) a transcription of all or any part of the municipal court proceedings in the case that are shown by the notes of the court reporter to have occurred before, during, or after the trial if such a transcription is requested of the court reporter by the defendant;

(2) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney; or

(3) a partial transcription and the agreed statement of the facts of the case proven at the trial.

(b) The court reporter shall transcribe any portion of the reporter's notes of the court proceedings in the case at the request of the defendant. The defendant shall pay for the transcription. The cost to the defendant for the transcription shall not exceed the fees or charges normally being made by court reporters in the county for similar transcriptions. The municipal court shall order the court reporter to make the transcriptions without charge to the defendant if the court finds, after hearing in the response to an affidavit by the defendant, that the defendant is unable to pay or give security for the transcriptions.

Completion, Approval, and Transfer of Record

Sec. 17. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

(1) the statement of facts;

(2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 14 of this Act; and

(3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a), of this section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the court of appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward it to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

Brief on Appeal

Sec. 18. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the court of appeals, except that the points of error on appeal shall be confined to those points of error set forth in the defendant's motion for new trial.

(b) The defendant shall file the defendant's brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his or her brief with the clerk of the appellate court within 15 days after the defendant files the defendant's brief with the clerk. Each party, on filing his or her brief with the clerk of the appellate court, shall cause a true copy of the brief to be delivered to the opposing party.

Procedure on Appeal

Sec. 19. The appellate court shall hear and determine appeals from the municipal court at the earliest practical time it may be done, with due regard to the rights of parties and proper administration of justice, and no affirmance or reversal of a case shall be determined on mere technicalities or on technical errors in the preparation and filing of the record on appeal. Oral arguments before the appellate court shall be under the rules which the appellate court may determine, and the parties may submit the case on the records and briefs without oral arguments.

Disposition on Appeal

Sec. 20. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or

remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume that the venue was proven in the court below, that the jury was properly impaneled and sworn, that the defendant was arraigned and pleaded to the complaint, and that the court's charge was certified by the municipal court judge before it was read to the jury, unless such matters were made an issue in the trial court or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In the case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. If an assignment of error is overruled, no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings

Sec. 21. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, the clerk shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a capias for the defendant, or issue an execution against the defendant's property.

New Trial

Sec. 22. If the appellate court awards a new trial to the defendant, the cause shall stand as it would have stood if a new trial had been granted by the municipal court.

Appeal to the Court of Appeals

Sec. 23. When a judgment is affirmed by the appellate court, the defendant has the right to appeal to the court of appeals if the fine assessed against the defendant in the municipal court exceeded $100. The appeal to the court of appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the court of appeals except that:

(1) the record and briefs on appeal in the appellate court, plus the transcript of proceedings in the appellate court, shall constitute the record and briefs on appeal to the court of appeals unless the rules of the court of criminal appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the court of appeals.

[Acts 1979, 66th Leg., p. 830, ch. 374, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 770, ch. 291, § 12, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

Art. 1200ii. San Antonio

Creation

Sec. 1. The governing body of the city of San Antonio may by ordinance establish the city's existing municipal courts as municipal courts of record in accordance with this Act. Additional municipal courts of record may be created and one or more judges for each court may be authorized by ordinance on a finding that an additional court or courts, or additional judges, are necessary to properly dispose of the cases arising in the city.

Jurisdiction; Writs

Sec. 2. (a) Municipal courts created under the provisions of this Act shall have jurisdiction within the territorial limits of the city in all criminal cases arising under the ordinances of the city and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which the city is situated in criminal cases arising within such territorial limits under the criminal laws of this state in which punishment is only by fine not exceeding $200. Municipal courts shall also have jurisdiction over cases arising outside the territorial limits of the city under the ordinances authorized by Subdivision 19, Article 1175, Revised Civil Statutes of Texas, 1925, as amended.

(b) The municipal court of record shall take judicial notice of all ordinances of the city.

(c) The judge of a municipal court may grant writs of mandamus, injunction, attachment, and all other necessary writs necessary to the enforcement of the jurisdiction of the court, and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court.

(d) The general laws of the state regarding municipal courts and regarding justice courts on matters where there is no law for municipal courts, and the valid charter provisions and ordinances of the city of San Antonio relating to the municipal court apply to the municipal court authorized in this Act, unless the laws, charter provisions, and ordinances are in conflict or inconsistent with the provisions of this Act.

Judges

Sec. 3. (a) Each municipal court shall be presided over by one or more judges to be known as "municipal judges."

(b) Notwithstanding any provision of the charter or an ordinance of the city, each municipal judge shall be elected by the qualified voters of the city for a term of two years. The governing body of the city may appoint a person or persons, with the qualifications required for a judge, to serve as the judge or judges authorized for each newly created municipal court of record until the next regular city election.

(c) The judges or substitute judges of the municipal courts may at any time exchange benches and may at any time sit and act for or with each other in any case, matter, or proceeding pending in their courts. An act performed by any of the judges shall be valid and binding on all parties to the cases, matters, and proceedings.

(d) If there is more than one municipal judge in the city, the municipal judges shall determine which of them shall serve as presiding judge of the city. In the event the judges are unable to determine which of them shall serve as presiding judge, after notification of such impasse, the governing body of the city shall appoint one of the judges to be the presiding municipal judge of the city. If the city has a municipal judge who is either its only municipal judge or its only municipal judge who is not serving in a temporary or part-time capacity, that judge shall be the presiding municipal judge for all purposes of this Act.

(e) The presiding judge shall:

(1) maintain a central docket for all cases filed in the geographical limits of the city over which the municipal courts of the city have jurisdiction;

(2) provide for the distribution of cases from the central docket to the individual municipal judges in order that the business of the courts will be continually equalized and distributed among them;

(3) request the jurors needed for cases that are set for trial by jury in the municipal courts of record, which, as provided by Section 11(b) of this Act, shall be transferred to and serve in the municipal court as if summoned for the municipal court to which they are transferred;

(4) temporarily assign various judges or substitute judges of the municipal courts to exchange benches and to sit and act for each other in any case, matter, or proceeding pending in their courts when necessary for the expeditious disposition of the business of the courts;

(5) cause all dockets, books, papers, and other records of the municipal courts to be permanently kept and permit these records to be available for inspection at all reasonable times by any interested parties;

(6) cause to be maintained as part of the records of the municipal courts an index of municipal court judgments such as county clerks are required by law to prepare for criminal cases arising in county courts; and

(7) where necessary for the proper functioning of the municipal courts, provide for the preservation by microfilm of the records of the courts, subject to the same requirements provided by law for the preservation by microfilm of records under the custody of county clerks.

(f) A judge of a municipal court created under the provisions of this Act shall be a licensed attorney in good standing with two or more years of experience in the practice of law in the state and a citizen of the United States and of this state. No person may serve in the office of municipal judge while he or she holds any other office or employment in the government of the city, and the holding of the other office or employment by a person serving in the office of municipal judge shall create an immediate vacancy in the judicial office.

Salary

Sec. 4. A municipal judge is entitled to compensation by the city on a salary basis. The amount of the salary shall be determined by the governing body of the city and may not be diminished during the judge's term of office. The salary may not be based, directly or indirectly, on fines, fees, or costs that the municipal judge is required by law to collect during his or her term of office.

Vacancies; Temporary Replacements; Removal

Sec. 5. (a) When a vacancy in the office of municipal judge occurs, the governing body of the city shall appoint a person meeting the qualifications required by law for the position to fill the office of municipal judge for the unexpired term of the judge serving in that office prior to the vacancy. If a judge is temporarily unable to act for any reason, the governing body may appoint a person meeting the qualifications for the position to serve during the absence of the judge with all the powers and duties of the office and shall provide for the person's compensation.

(b) A municipal judge may be removed from office for cause to the same extent and under the same rules that judges of the county courts may be removed from office. A municipal judge is answerable to the governing body of the city only on budgetary matters.

Court Facilities

Sec. 6. The governing body of the city shall provide the courtrooms, jury rooms, offices and office furniture, libraries, legal books and materials, and other supplies and facilities that the governing body determines are necessary for the proper operation of the municipal courts.

Court Clerk

Sec. 7. The governing body of the city shall provide a clerk of the municipal courts, and the deputy clerks, warrant officers, and other municipal court personnel that are necessary for the proper operation of the municipal courts. It is the duty of the clerk to keep the records of proceedings of the municipal courts and to issue all processes and generally to perform the duties now prescribed by law for clerks of the county courts at law exercising criminal jurisdiction, insofar as the same may be applicable. The clerk of the municipal courts and all other personnel shall perform the duties of the office under the direction and control of the presiding municipal judge.

Court Reporter

Sec. 8. (a) For the purpose of preserving a record in cases tried before the municipal court, the city shall provide a court reporter with the qualifications provided by law for official court reporters, whose compensation shall be determined by the chief administrative officer of the city on the recommendation of the presiding municipal judge.

(b) The record of proceedings may be preserved by written notes, transcribing equipment, recording equipment, or any combination of these methods. The court reporter is not required to take or record testimony in cases where neither the defendant, the prosecutor, nor the judge demands it.

Prosecutions by City Attorney

Sec. 9. All prosecutions in municipal courts shall be conducted by the city attorney of the city, or his or her assistant or deputy.

Complaint

Sec. 10. (a) Proceedings in municipal courts shall be commenced by complaint, which shall begin: "In the name and by the authority of the State of Texas"; and shall conclude: "Against the peace and dignity of the State"; and if the offense is only covered by an ordinance, it may also conclude: "Contrary to the said ordinance." The municipal judge shall charge the jury in accordance with Section 11(a) of this Act. Complaints before the court may be sworn to before any officer authorized to administer oaths or before the municipal judge, clerk of the court, city secretary, or city attorney or his or her assistant or deputy, each of whom, for that purpose, shall have power to administer oaths. The complaint shall be in writing and shall state:

(1) the name of the accused, if known, and if unknown, shall describe the accused as accurately as practicable;

(2) the offense with which the accused is charged in plain and intelligible words;

(3) the place where the offense is charged to have been committed, which must appear to be within the jurisdiction of the municipal court; and

(4) the date of the offense which, as stated, must show that the offense is not barred by limitations.

(b) All pleadings in the municipal courts shall be in writing and filed with the clerk of the courts.

Right to Jury

Sec. 11. (a) Every person brought before the municipal courts and charged with an offense is entitled to be tried by a jury of six persons, unless waived according to law. The jury shall decide all questions of fact or credibility of witnesses. The court shall determine all matters of law and shall charge the jury on the law.

(b) Each juror in the municipal courts shall be a resident of the city of San Antonio.

Appeals; Appellate Courts

Sec. 12. (a) In this Act, "appellate courts" means the county courts at law in Bexar County.

(b) A defendant has the right of appeal from a judgment or conviction in the municipal court under the rules prescribed in this Act. The appellate courts have jurisdiction over the appeals from the municipal courts, and all appeals from convictions in the municipal court shall be prosecuted in the appellate court by the city attorney or his or her assistants or deputies.

No De Novo Appeals

Sec. 13. Each appeal from a conviction in the municipal court shall be determined by the appellate court on the basis of errors pointed out in the defendant's motion for new trial and presented in the transcript and statement of facts prepared from the municipal court proceedings leading to the conviction. No appeal from the municipal court may be by trial de novo in the county court.

Motion for New Trial

Sec. 14. In order to perfect an appeal, a written motion for a new trial must be filed by the defendant no later than the 10th day after the rendition of the judgment of conviction, and may be amended by leave of court at any time before it is acted on within 20 days after the filing of the original or amended motion. For good cause shown, the time for filing or amending may be extended by the court, not to exceed 90 days. An original or amended motion shall be deemed overruled by operation of law at the expiration of the 20 days allowed for determination of the motion, if it is not acted on by the court within that time. The motion shall set forth the points of error complained of by the defendant.

Notice of Appeal

Sec. 15. In order to perfect an appeal, the defendant shall give timely notice of appeal. In the event the defendant requests a hearing on his or her motion for a new trial, the notice of appeal may be

given orally in open court on the overruling of the motion for new trial. Otherwise, the notice of appeal shall be in writing and filed with the municipal court no later than the 10th day after the motion for new trial is overruled. For good cause shown, the time for giving notice of appeal may be extended by the court, not to exceed 90 days.

Appeal Bond

Sec. 16. If the defendant is not in custody, an appeal may not be taken until the required appeal bond has been filed with and approved by the municipal court. The appeal bond must be filed no later than the 10th day after the motion for new trial has been overruled. If the defendant is in custody, the defendant shall be committed to jail unless he or she posts the required appeal bond. The appeal bond shall be in an amount not less than double the amount of fine and costs adjudged against the defendant. However, the bond may not in any case be for a sum less than $50. The bond shall recite that in the cause the defendant was convicted and has appealed and be conditioned that the defendant shall make his or her personal appearance before the court to which the appeal is taken instanter, if the court is in session, and there remain from day to day and answer in the cause.

Record on Appeal

Sec. 17. The record on appeal in a case appealed from the municipal court consists of the transcript and, where necessary to the appeal, a statement of facts, which shall be prepared by a court reporter of the court from the reporter's record of the proceedings, mechanical recordings of the proceedings, or from videotape recordings of the proceedings. The defendant shall pay for the transcription. The municipal court shall order the court reporter to make the transcriptions without charge to the defendant if the court finds, after hearing in the response to affidavit by the defendant, that he is too poor to pay or give security for the transcriptions. If the case is reversed on appeal, the cost shall be refunded to the defendant.

Contents of Transcripts

Sec. 18. (a) The municipal court clerk, on written request from the defendant or the defendant's attorney, shall prepare under the clerk's hand and seal of the court for transmission to the appellate court a true transcript of the proceedings in the municipal court and shall include the following:

(1) the complaint;

(2) material docket entries made by the court;

(3) the jury charge and verdict, if the trial is by jury;

(4) the judgment;

(5) the motion for a new trial;

(6) the notice of appeal;

(7) all written motions and pleas and orders of the court;

(8) bills of exception, if any are filed; and

(9) the appeal bond.

(b) The municipal court clerk may include in the transcript additional portions of the proceedings in the municipal court prepared by mechanical recordings or videotape recordings of the proceedings.

Bills of Exception

Sec. 19. Either party may include bills of exception in the transcript on appeal, subject to complying with the applicable provisions of the Code of Criminal Procedure governing the preparation of bills of exception and their inclusion in the record on appeal to the court of appeals, except that the bills of exception shall be filed with the municipal court clerk within 60 days after the giving or filing of the notice of appeal.

Statement of Facts

Sec. 20. A statement of facts, when included in the record on appeal, shall consist of:

(1) a transcription of all or any part of the municipal court proceedings in the case, as provided in this Act, that are shown by the notes of the court reporter to have occurred before, during, or after the trial, if such a transcription is requested of the court reporter by the defendant;

(2) a brief statement of the facts of the case proven at the trial, as agreed to by the defendant and the prosecuting attorney;

(3) a partial transcription and the agreed statement of the facts of the case proven at the trial; or

(4) a transcription of all or any part of the municipal court proceedings in the case that are prepared from the mechanical recordings or videotape recordings of the proceedings.

Fee for Preparation of Transcript

Sec. 21. The defendant shall pay a fee of $50 to the clerk of the municipal court for the preparation of the transcript at the time of the request for the transcript, subject to the provisions of Section 17 of this Act. If the case is reversed on appeal, the $50 fee shall be refunded to the defendant.

Completion, Approval, and Transfer of Record

Sec. 22. (a) Within 60 days of the giving or filing of the notice of appeal, the parties shall file with the municipal court clerk:

(1) the statement of facts;

(2) a written designation of all matter that is to be included in the transcript in addition to matter required to be in the transcript by Section 18 of this Act; and

(3) any matter designated to be included in the transcript that is not then in the custody of the municipal court clerk.

(b) On completing the record as designated by the parties in Subdivision (2), Subsection (a) of this

section, the municipal court judge shall approve the record in the manner provided by law for record completion notification and approval in appeals to the court of criminal appeals.

(c) On the municipal court judge's approval of the record, the municipal court clerk shall promptly forward the record to be filed with the appellate court clerk, who shall notify the defendant and the prosecuting attorney that the record has been filed.

New Trials

Sec. 23. It is the duty of the trial court to decide from the briefs of the parties whether the defendant should be permitted to withdraw his or her notice of appeal and be granted a new trial by the court. The court may grant a new trial at any time prior to the record being filed with the appellate court clerk.

Brief on Appeal

Sec. 24. (a) A brief on appeal from the municipal court shall present points of error in the same manner required by law for a brief on appeal to the court of appeals.

(b) The defendant shall file his or her brief with the clerk of the appellate court within 15 days from the date of the filing of the transcript and statement of facts with the appellate court clerk, who shall notify the prosecuting attorney of the filing. The prosecuting attorney shall file his or her brief with the clerk of the appellate court within 15 days after the defendant files the defendant's brief with the clerk. Each party, on filing his or her brief with the clerk of the appellate court, shall cause a true copy of the brief to be delivered to the opposing party and to the municipal court judge.

Court Rules

Sec. 25. (a) Except as modified by this Act, the trial of cases before municipal courts shall be governed by the Code of Criminal Procedure, 1965.

(b) The municipal courts may make and enforce all necessary rules of practice and procedure, not inconsistent with the law, so as to expedite the trial of cases in the courts.

(c) The county courts at law of Bexar County may make and enforce all necessary rules of practice and procedure for appeals from municipal courts, not inconsistent with the law, so as to expedite the dispatch of appeals from the municipal courts.

Disposition on Appeal

Sec. 26. (a) The appellate court may affirm the judgment of the municipal court, or may reverse or remand for a new trial, or may reverse and dismiss the case, or may reform or correct the judgment, as the law and the nature of the case may require.

(b) The appellate court shall presume that the venue was proven in the court below, that the jury was properly impaneled and sworn, that the defendant was arraigned and pleaded to the complaint, and that the court's charge was certified by the municipal court judge before it was read to the jury, unless such matters were made an issue in the trial court or it affirmatively appears to the contrary from the transcript or statement of facts.

(c) In each case decided by the appellate court, the court shall deliver a written opinion or order either sustaining or overruling each assignment of error presented. If an assignment of error is overruled, no reason need be given by the appellate court, but cases relied on by the court may be cited. If an assignment of error is sustained, the appellate court shall set forth the reasons for the decision. Copies of the decision of the appellate court shall be mailed by the clerk of the appellate court to the parties and the judge of the municipal court as soon as the decision is rendered by the appellate court.

Certificate of Appellate Proceedings

Sec. 27. When the judgment of the appellate court becomes final, the clerk of the appellate court shall make out a proper certificate of the proceedings had and the judgment rendered and shall mail the certificates to the clerk of the municipal court. When the certificate is received by the clerk of the municipal court, the clerk shall file it with the papers in the case and note it on the docket. If the judgment has been affirmed, no proceeding need be had after filing the certificate in the municipal court to enforce the judgment of the court, except to forfeit the bond of the defendant, to issue a capias for the defendant, or issue an execution against the defendant's property.

Order of New Trial by Appellate Court

Sec. 28. If the appellate court awards a new trial to the defendant, the cause shall stand as if a new trial had been granted by the municipal court.

Appeal to the Court of Appeals

Sec. 29. When a judgment is affirmed by the appellate court, the defendant has the right to appeal to the court of appeals if the fine assessed against the defendant in the municipal court exceeded $100. The appeal to the court of appeals shall be governed by provisions in the Code of Criminal Procedure relating to direct appeals from county and district courts to the court of appeals except that:

(1) the record and briefs on appeal in the appellate court shall constitute the record and briefs on appeal to the court of appeals unless the rules of the court of criminal appeals provide otherwise; and

(2) the record and briefs shall be filed directly with the court of appeals.

Seal

Sec. 30. The governing body of the city shall provide each municipal court with a seal with a star of five points in the center and the words "Municipal Court of San Antonio, Texas." The impress of the seal shall be attached to all papers, except subpoe-

nas, issued out of the court and shall be used by each municipal judge or the clerk to authenticate all official acts of the clerk and the municipal judge.

Sec. 31. [Amends § 2 of Code of Criminal Procedure, art. 42.13]

Severability

Sec. 32. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and as to all other persons and circumstances shall be valid and of full force and effect, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision, and to this end the provisions of this Act are declared to be severable.

[Acts 1979, 66th Leg., p. 944, ch. 428, §§ 1 to 30, 32, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 771, ch. 291, § 13, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides:

"This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction. At least 1,800 appeals including death penalty appeals pending in the Court of Criminal Appeals prior to September 1, 1981, shall be retained by that court for disposition in accordance with laws in effect prior to the effective date of this Act, and for that purpose, all laws repealed or amended by this Act shall remain in force and effect for those appeals pending in the Court of Criminal Appeals. The remaining appeals pending in the Court of Criminal Appeals shall be transferred to the various courts of appeals on which the number of judges is increased by the 67th Session of the legislature; provided, no more than 75 nondeath penalty appeals shall be transferred for each newly created judgeship and such a transfer shall not be made until such justice assumes office."

CHAPTER EIGHTEEN. ARTIFICIAL LIGHTING SYSTEM

Art. 1236. Proceedings

There shall be attached to the plaintiff's petition an affidavit of the truth of the matters therein alleged, except such matters as are alleged on information and belief, that said suit is brought in good faith and not to injure or delay the city or the contractor or any owner of real estate abutting on the improvement. Unless the provisions of this article are complied with by the plaintiff or plaintiffs, such suit shall be dismissed on motion of any defendant and in that event plaintiff or plaintiffs shall be barred and estopped to the same extent as if suit had not been brought. In any case where a suit is brought as above provided, then the performance of the work may be suspended at the election of either the city or contractor until such suit shall be finally determined in the court of original jurisdiction or any appellate court to which the same may be taken by appeal or writ of error. Every appeal or writ of error shall be perfected within thirty days from the adjournment of the term of court of original jurisdiction at which final judgment was rendered in such suit; and no appeal or writ of error to review the judgment of said court may thereafter be taken or sued out by either party. Any such suit shall be entitled to precedence in the courts of this State of appellate jurisdiction, and shall be heard and determined as promptly as practicable.

[Amended by Acts 1981, 67th Leg., p. 2627, ch. 707, § 4(1), eff. Aug. 31, 1981.]

CHAPTER NINETEEN. ABOLITION OF CORPORATE EXISTENCE

Art. 1241a. Procedure for Abolition of Cities and Towns

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

Petition and Election

Sec. 2. When four hundred of the qualified voters resident in any such city, town, or village desire the abolishment of such corporation, they may petition the mayor to that effect, who shall thereupon order an election to be held in such city, town, or village on the same date provided by law for the next general election for mayor therein. If a majority of the qualified voters resident in any such city, town, or village is less than four hundred in number, then the mayor shall order an election as above provided upon the presentation to him of a petition signed by two-thirds of the resident voters of such city, town, or village.

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

[Amended by Acts 1975, 64th Leg., p. 648, ch. 267, § 1, eff. Sept. 1, 1975.]

CHAPTER TWENTY. MISCELLANEOUS PROVISIONS

Article

1269h–3. Validation of Land Acquisition for County Airport Expansion.
1269j–4.12. Public Improvement District Assessment Act of 1977.
1269j–4.15. Park Purposes; Acquisition and Improvement of Property by Cities of 1,200,000 or More.
1269j–5.3. Airport Revenue Bonds; Cities of 1,200,000 or More or 400,000 or More; Proceeds.
1269j–10. Emergency Medical Technicians or Paramedics; Educational Incentive Pay.
1269*l*–5. Housing Rehabilitation Act.

Art. 1264. Current Expenses

Any incorporated city or town in this State, whether incorporated under the general laws of this State, or incorporated by special charter adopted in the manner provided by law, and having a population of 161,000 or more according to the preceding Federal census, may, through its governing body, provide for the payment of its current expenses for any current fiscal year, or for any portion of such fiscal year, by the issuance of warrants drawn against the current revenues of said city or town for such fiscal year, in the manner following:

1. Such warrants shall be dated and numbered consecutively as they are issued, and shall become a lien upon all or any designated portion of the revenues of said city or town for such fiscal year, available for the payment thereof, and shall be

paid either consecutively according to their respective dates and numbers as funds for the payment thereof become available or on any date or dates within such fiscal year on which, in the estimate of the governing body, sufficient revenues for the payment thereof will be available for such purpose.

2. Such warrants may be issued in one or more installments in an aggregate principal amount in any fiscal year not to exceed the greatest amount by which the proposed expenditures for such fiscal year are estimated by the governing body to exceed the funds and estimated revenues available for the payment thereof at any time during such fiscal year. Such warrants may be issued at a discount and/or bear interest at any rate or rates permitted by law and may be sold at public or private sale for price or prices, all within the discretion of the governing body as may be provided in the ordinance authorizing the issuance and sale thereof.

3. In no event shall the governing body provide for the issuance of warrants pursuant to this Act in excess of eighty per cent of the estimated revenues of said city or town for such fiscal year, after the deduction of all interest upon the bonded indebtedness of such city or town to be paid out of the revenues for such fiscal year, and such sums as may be required to be paid into any sinking fund or into any special fund or any special trust fund of said city or town out of its revenues for such fiscal year.

4. Such warrants and any coupons representing interest thereon shall be deemed and construed to be a negotiable instrument and a "security" within the meaning of Chapter 8, Investment Securities, Uniform Commercial Code, Business & Commerce Code, as amended.

5. All warrants issued pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, trust companies, building and loan associations, savings and loan associations, and insurance companies and shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts or other political subdivisions of the State of Texas, and such obligations shall be lawful and sufficient security for said deposits to the extent of the principal amount thereof when accompanied by all unmatured coupons, if any, appurtenant thereto.

Sec. 2. The fact that the cities and towns described in this Act are in urgent need of the powers hereby granted by this Act and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

[Amended by Acts 1981, 67th Leg., p. 3222, ch. 847, § 1, eff. June 17, 1981.]

Art. 1267. Oil, Gas or Mineral Lands

Sec. 1. Cities and towns chartered or organized under the general laws of Texas, or by special Act or charter, which may own oil, gas or mineral lands, shall have the power and right to lease such oil, gas or mineral lands for the benefit of such town or city in such manner and upon such terms and conditions as the governing body of such town or city may determine, but shall not lease for such purposes any street or alley or public square in said town or city; and no well shall be drilled within the thickly settled portion of any city or town, nor within two hundred feet of any private residence.

Sec. 2. If any portion of this Act is held unconstitutional by a court of competent jurisdiction, the remaining portion shall nevertheless be valid the same as if the invalid portion had not been a part hereof. A lease executed pursuant to the provisions of this Act shall not be deemed to be a sale within the meaning of the laws of this state relating to the sale of city land. The provisions of this Act shall be cumulative of all other laws which are by their terms expressly applicable to city land, and any such laws which are not by their terms expressly so applicable shall not be construed as affecting the right and power granted to towns and cities by this Act.

[Amended by Acts 1975, 64th Leg., p. 806, ch. 312, § 1, eff. May 27, 1975.]

Art. 1268. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

Art. 1269h-3. Validation of Land Acquisition for County Airport Expansion

Sec. 1. Where any county before the effective date of this Act has acquired land for the expansion of a county airport established under Chapter 83, Acts of the 41st Legislature, 1st Called Session, 1929, as amended (Article 1269h, Vernon's Texas Civil Statutes), and the acquisition was by purchase, gift, exchange, or a combination of those methods, the acquisition of the land and all transactions and proceedings related to it are validated in all respects.

Sec. 2. This Act does not apply to a matter that on the effective date of this Act is involved in litigation in a court of competent jurisdiction if the litigation ultimately results in a determination that the matter is invalid, nor does it apply to a matter that has been declared invalid by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 626, ch. 231, §§ 1, 2, eff. May 24, 1977.]

Art. 1269j–4.1. Public Improvements in City, Town or Village; Bonds; Occupancy Tax

Applicability of Act

Sec. 1. In this Act, "city" means a home-rule city or a city, town, or village incorporated under general law.

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

Occupancy Tax Authorized

Sec. 3a. (a) Any such city is hereby authorized to levy by ordinance a tax upon the cost of occupancy of any sleeping room furnished by any hotel, where the cost of occupancy is at the rate of $2 or more per day. Such tax may not exceed four percent of the consideration paid by the occupant of the sleeping room to the hotel.

(b) A city imposing the tax authorized by this section may permit the person required to collect the tax to deduct and withhold from the person's payment to the city, as reimbursement for the cost of collecting the tax, an amount not to exceed one percent of the amount of tax collected and required to be reported to the city. The city may provide for forfeiture of reimbursement for the failure to pay the tax or to file reports as required by the city.

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

Disposition of Revenue

Sec. 3c. (a) The revenue derived from any occupancy tax authorized or validated by this Act may only be used for:

(1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities including, but not limited to, civic center convention buildings, auditoriums, coliseums, civic theaters, museums, and parking areas or facilities for the parking or storage of motor vehicles or other conveyances located at or in the immediate vicinity of the convention center facilities;

(2) the furnishing of facilities, personnel and materials for the registration of convention delegates or registrants;

(3) for advertising for general promotional and tourist advertising of the city and its vicinity and conducting a solicitation and operating program to attract conventions and visitors either by the city or through contracts with persons or organizations selected by the city;

(4) the encouragement, promotion, improvement, and application of the arts, including music (instrumental and vocal), dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, and exhibition of these major art forms;

(5) historical preservation and restoration.

(b) Any city which levies and collects an occupancy tax which is authorized or validated by this Act may pledge a portion of the revenue derived therefrom to the payment of the bonds which the city may issue pursuant to the provisions of Section 3 of this Act, if such bonds are issued solely for one or more of the purposes set forth in the preceding subsection; provided that any city which levies and collects a tax of not more than three percent shall reserve a portion of the tax revenue equal to at least one-half of one percent of the cost of occupancy of hotel rooms, and any city which levies and collects a tax in excess of three percent shall reserve a portion of the tax revenue equal to at least one percent of the cost of the occupancy of hotel rooms for the purpose of advertising and conducting solicitation programs to acquaint potential users with public meeting and convention facilities, and for promotion of tourism and advertising of the city and its vicinity either by the city or through contract with persons or organizations selected by the city.

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

Special Provisions for Certain Eligible Cities

Sec. 3e. (a) For purposes of this section:

(1) "Eligible city" means any city that has a population of at least 1,200,000, according to the most recent federal census, and that pursuant to an ordinance adopted by its governing body has approved and adopted a capital improvement plan for convention and exposition facilities for such city.

(2) "Convention and exposition facilities" means public structures, such as civic centers, civic center buildings, auditoriums, exhibition halls, coliseums, or other city buildings, that are suitable for use as convention and exposition facilities, and parking facilities located at or in the immediate vicinity of such public structures to be used in connection with those public structures for off-street parking or storage of motor vehicles or other conveyances.

(b) Subject to the limitations described in Subsections (c), (d), and (e) of this section, each eligible city may:

(1) levy by ordinance on the cost of occupancy of any sleeping room furnished by any hotel, in which the cost of occupancy is at the rate of $2 or more per day, (A) a tax not to exceed four percent of the consideration paid by the occupant of the sleeping room to the hotel during the period beginning with the calendar quarter following the quarter in which this section is enacted and ending on December 31, 1983, and (B) a tax not to exceed six percent of the consideration paid by the occupant of the sleeping room to the hotel beginning with the first calendar quarter following December 31, 1983; and

(2) pledge to the payment of revenue bonds and revenue refunding bonds issued pursuant to this Act all or any portion of the revenues derived from the occupancy tax described in subdivision (1) of this subsection, notwithstanding any provision to the contrary contained in Subsection (b) of Section 3c of this Act, and all or any portion of any other revenues of such eligible city as the governing body thereof shall determine in the ordinance authorizing the issuance of such bonds.

(c) As a condition precedent to the issuance by an eligible city of any revenue bonds secured in whole or in part from the revenues derived from the occupancy tax described in Subdivision (1) of Subsection (b) of this section, an eligible city shall certify that the average annual debt service on all such bonds outstanding prior to the date of issuance, and in the process of issuance, secured in whole or in part by the pledge of revenues derived from the occupancy tax described in Subdivision (1) of Subsection (b) of this section, and which were issued for purposes other than convention and exposition facilities, shall not exceed the sum of the maximum annual revenues that such city could derive from such occupancy tax under the sections of this Act other than this section plus any other revenues pledged to the payment of such bonds.

(d) Consistent with the requirements of Subsection (b) of Section 3c of this Act, any city which levies and collects a tax in excess of four percent under the provisions of this section shall reserve that portion of the tax revenues which are derived from the percentage of the tax in excess of four percent solely for the purposes described in Subdivision (1) of Subsection (a) of Section 3c of this Act and for the purpose of security refunding bonds issued in connection therewith.

(e) The taxing authority granted under this section is in lieu of and not in addition to the taxing authority granted under Section 3a of this Act. Accordingly, any eligible city which levies and collects a tax under this section is prohibited from levying and collecting a tax under Section 3a of this Act.

(f) An eligible city imposing the tax authorized by this section may permit the person required to collect the tax to deduct and withhold from the person's payment to the city, as reimbursement for the cost of collecting the tax, an amount not to exceed one percent of the tax collected.

(g) Revenue received under this section not in excess of four percent may be used by the city as provided by Section 3c of this Act.

Sec. 3f. (a) In this section, "eligible coastal city" means a home-rule city that borders on the Gulf of Mexico and that has a population of less than 75,000, according to the most recent federal census. The definitions contained in Section 3d of this Act apply to this section.

(b) In lieu of the taxes authorized by Section 3a of this Act, an eligible coastal city may levy by ordinance on the cost of occupancy of any sleeping room furnished by any hotel, in which the cost of occupancy is $2 or more a day, a tax not to exceed seven percent of the consideration paid by the occupant of the sleeping room to the hotel.

(c) A city that levies and collects an occupancy tax authorized by this section may pledge a portion of the revenue equal to not more than one percent of the cost of the occupancy of hotel rooms to the payment of the bonds which the city may issue pursuant to the provisions of Section 3 of this Act. The city is authorized to establish, acquire, lease as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate, or maintain (any or all) public improvements such as civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that serve the purpose of attracting visitors and tourists to the city and to establish, acquire, lease as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate, or maintain (any or all) structures, parking areas, or facilities located at or in the immediate vicinity of these public improvements to be used in connection with the public improvements for off-street parking or storage of motor vehicles or other conveyances. Any lease under this subsection shall be on the terms and conditions the city deems appropriate.

(d) If the tax authorized by this section is levied by the city at a rate of four percent or more, an amount of revenue equal to at least three percent of the cost of the occupancy of hotel rooms shall be reserved for the purpose of advertising and conducting solicitation programs to acquaint potential users with public meeting and convention facilities and for promotion of tourism and advertising of the city and its vicinity either by the city or through contract with persons or organizations selected by the city.

(e) If the tax authorized by this section is levied by the city at a rate of five percent or more, an amount of revenue equal to at least one percent of the cost of the occupancy of hotel rooms shall be reserved for beach patrol, lifeguard services, and marine water safety under the provisions of Senate Bill 713, Acts of the 67th Legislature, Regular Session, 1981.[1]

(f) If the tax authorized by this section is levied by the city at a rate of six percent or more, an amount of revenue equal to at least one percent of the cost of occupancy of hotel rooms shall be reserved for public beach cleaning funds for use as matching funds for state funds available to clean and maintain public beaches.

(g) This section does not permit the impairment of any bonds issued under the provisions of this Act and all revenue previously pledged to the payment of those bonds shall continue to be reserved for the payment of the principal and interest on those bonds.

[1] Chapter 59, adding, art. 6869.1, § 1, subsecs. (g), (h).

[See Compact Edition, Volume 3 for text of 4 to 10]

[Amended by Acts 1975, 64th Leg., p. 43, ch. 22, § 1, eff. March 20, 1975; Acts 1977, 65th Leg., p. 41, ch. 25, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 183, ch. 90, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 960, ch. 366, § 2, eff. Oct. 1, 1981; Acts 1981, 67th Leg., p. 3046, ch. 796, § 1, eff. Aug. 31, 1981.]

Section 3 of Acts 1981, 67th Leg., p. 960, ch. 366, provides:

"This Act takes effect October 1, 1981, and applies to taxes collected on or after that date."

Art. 1269j-4.12. Public Improvement District Assessment Act of 1977

Title and Applicability

Sec. 1. (a) This Act shall be known as the Public Improvement District Assessment Act of 1977. The powers granted hereunder may be exercised by any incorporated city or town in which the governing body has called and held an election in accordance with the guidelines for holding bond elections under Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,[1] and at which was submitted, and a majority of the qualified voters voting thereat favorably adopted, the following proposition.

"Shall the governing body of the City of ____ be authorized to exercise the powers granted to cities under the Public Improvement District Assessment Act of 1977."

(b) In this Act the "city" means any authorized city to which this Act is applicable under Subsection (a) above.

[1] Article 701 et seq.

Authorized Public Improvements

Sec. 2. (a) The governing body of a city may undertake improvement projects that confer a special benefit on a definable part of the city. The governing body may levy and collect special assessments on property in the area, based on the benefit conferred by the improvement project, to pay all or part of its cost.

(b) A public improvement project may include:

(1) landscaping; the erection of distinctive lighting and signs; the improvement, widening, narrowing, closing, or rerouting of streets or sidewalks; the construction or improvement of pedestrian malls; the establishment or improvement of parks; the erection of fountains; the acquisition and installation of articles of sculpture; and the acquisition, construction, or improvement of off-street parking facilities;

(2) other improvements similar to those described in Subdivision (1) of this subsection; and

(3) the acquisition of real property in connection with an authorized improvement.

Act is Alternative

Sec. 3. This Act is a complete alternative to other methods by which a city may finance public improvements by assessing property owners.

Financing Combined Improvements

Sec. 4. An improvement project on two or more streets or two or more types of improvements in, on, or adjacent to the same street or streets may be included in one proceeding and financed as one improvement.

Petition for Improvement

Sec. 5. (a) A petition for any improvement authorized to be financed under this Act may be filed with the city secretary or other officer who performs the function of city secretary. The petition must state:

(1) the general nature of the proposed improvement;

(2) the estimated cost of the improvement;

(3) the boundaries of the proposed assessment district;

(4) the proposed method of assessment;

(5) the proposed apportionment of cost between the improvement district and the city as a whole; and

(6) that the persons signing the petition request the making of the improvement.

(b) The petition is sufficient if signed by:

(1) at least two-thirds of the owners of record of property liable for assessment under the proposal; or

(2) the record owners of property composing at least two-thirds of the area liable for assessment under the proposal.

(c) When a petition which meets the requirements of this section is filed, the governing body of the city may make findings by resolution as to the advisability of the improvement, the estimated cost, the method of assessment, and the apportionment of cost between the improvement district and the city as a whole.

Feasibility Report, Etc.

Sec. 6. (a) Before holding a hearing on the advisability of a proposed improvement, the governing body of a city may require that a feasibility report be made to assist in determining whether an improvement should be made as proposed or otherwise or whether it should be made in combination with other improvements authorized by this Act. The governing body may also require that a preliminary estimate of the cost of the improvement or combination of improvements be made. The governing body may use the services of employees of the city to make the report or estimate, or it may employ consultants.

(b) The governing body may also take other preliminary steps prior to the hearing or before ordering an improvement or letting a contract that will be of assistance in determining the feasibility and desirability of an improvement.

Hearing as to Advisability

Sec. 7. (a) No contract may be let or work ordered or authorized for an improvement financed under this Act unless the governing body of the city first by resolution orders that a public hearing be held on the advisability of the improvement and gives notice of the hearing as required by this section.

(b) Notice of the hearing shall be given by not less than four publications in a newspaper of general circulation in the city. The four publications must be at least a week apart and the final publication must be at least three days before the date of the hearing. The notice shall include the following information:

(1) the time and place of the hearing;

(2) the general nature of the proposed improvement;

(3) the estimated cost of the improvement;

(4) the boundaries of the proposed assessment district;

(5) the proposed method of assessment; and

(6) the proposed apportionment of cost between the improvement district and the city as a whole.

(c) The hearing may be adjourned from time to time until the governing body makes findings by resolution as to the advisability of the improvement, the nature of the improvement, the estimated cost, the boundaries of the improvement district, the method of assessment, and the apportionment of cost between the district and the city as a whole.

(d) The area of the improvement district to be assessed according to the findings of the governing body may be less than the area proposed in the notice of the hearing, but it may not include any property not within the original proposed boundaries unless there is an additional hearing, preceded by the required notice.

May Order Improvements

Sec. 8. (a) At any time within six months after the final adjournment of the hearing on the advisability of an improvement, the governing body of the city by a majority vote of all members may adopt a resolution authorizing the improvement in accordance with its finding as to the advisability of the improvement. The authorization takes effect when it has been published one time in a newspaper of general circulation in the city. Actual construction of the improvement may not begin until 20 days after the authorization takes effect.

(b) An improvement may not be commenced if, within 20 days after the authorization takes effect, written protests signed by at least two-thirds of the owners of record of property within the improvement district or the owners of record of at least two-thirds of the total area of the district are filed with the city secretary or other officer who performs the function of city secretary.

(c) Any person may withdraw his name from a protest at any time before the governing body convenes its meeting to determine the sufficiency of the protest.

Assessment Plan

Sec. 9. (a) The portion of the cost of an improvement to be assessed against the property in the improvement district shall be apportioned by the governing body of the city based on the special benefits accruing to the property because of the improvement.

(b) The cost may be assessed equally per front foot or per square foot against all property within the district; it may be assessed against property according to the value of the property as determined by the governing body of the city, with or without regard to structures or other improvements on the property; or it may be assessed on the basis of any other reasonable assessment plan that results in imposing equal shares of the cost on property similarly benefitted.

(c) The governing body may establish by ordinance reasonable classifications and formulas for the apportionment of the cost between the city and the area to be assessed and the methods of assessing the special benefits for various classes of improvements.

Apportionment of Costs

Sec. 10. (a) An assessment plan must provide that at least 20 percent of the cost of an improvement be paid by special assessments against property in the improvement district.

(b) If any property in the improvement district is exempt from the payment of the special assessment, the assessment that would otherwise be levied against that property shall be paid by the city as a whole. Assessments paid by the city as a whole under this subsection are counted as having been paid by special assessment for the purpose of Subsection (a) of this section.

Preparing Assessment Roll; Notice; Etc.

Sec. 11. (a) When the total cost of an improvement is determined, the governing body shall cause the assessments against each parcel of land within the benefit district to be determined in accordance with the manner of assessment set forth in the resolution as to the advisability of the improvement. The governing body shall also cause a proposed assessment roll to be prepared.

(b) The proposed assessment roll shall be filed with the city secretary or other officer who performs the function of city secretary and be open for public inspection. The governing body shall direct the secretary to publish notice that the governing body will meet to consider the proposed assessments at a public hearing. The notice must be published in a newspaper of general circulation in the city at least 10 days before the hearing and shall state the date,

time, and place of the hearing, the general nature of the improvement, the cost of the improvement, the boundaries of the assessment district, and that written or oral objections will be considered at the hearing.

(c) At the time the assessment roll is filed with the city secretary or other officer, the city secretary or other officer shall also mail to the owners of property liable for assessment, at their last known address, a notice of the hearing which contains all the information required of the notice published in a newspaper. The failure of a property owner to receive the notice does not invalidate the proceedings.

Assessments: Hearing, Levy, Payment

Sec. 12. (a) At the hearing on proposed assessments or at any adjournment of the hearing, the governing body shall hear and pass on all objections to each proposed assessment. The governing body may amend the proposed assessments as to any parcel. When all objections have been heard and action has been taken with regard to them, the governing body by ordinance shall levy the assessments as special assessments on the property. The governing body by ordinance shall specify the method of payment of the assessments and may provide that they be payable in not more than 20 equal annual installments.

(b) All assessments bear interest at a rate specified by the governing body, which may not exceed six percent per annum. Interest on the assessment between the effective date of the ordinance levying the assessment and the date the first installment is payable shall be added to the first installment. The interest for one year on all unpaid installments shall be added to each subsequent installment until paid. An assessment or any reassessment is a lien against the property until it is paid. The owner of any property assessed may pay the entire assessment against any lot or parcel with accrued interest to the date of the payment at any time.

Supplemental Assessments

Sec. 13. After notice and hearing in the manner required for original assessments, the governing body may make supplemental assessments to correct omissions or mistakes in the assessment relating to the total cost of the improvement.

Reassessments and New Assessments

Sec. 14. If an assessment against a parcel of land is set aside by a court of competent jurisdiction, found excessive by the governing body, or determined to be invalid by the governing body on the written advice of counsel, the governing body may make a reassessment or new assessment as to the parcel.

Separate Improvement Funds

Sec. 15. A separate improvement fund shall be created in the city treasury for each improvement or combination of improvements. The proceeds from the sale of bonds, temporary notes and time warrants, and any other sums appropriated to the fund by the governing body shall be credited to the fund. The fund may be used solely to pay the costs incurred in the making of the improvement. When the improvement is completed, the balance shall be transferred to the fund established for the retirement of the bonds.

Special Improvement Fund

Sec. 16. (a) A city proposing to make an improvement to be financed under the authority of this Act may establish by ordinance a special improvement fund in the city treasury. The city may levy annually a tax of not to exceed 10 cents on each $100 valuation of the assessed taxable property of the city for the purpose of the fund.

(b) The fund may be used to pay the costs of planning any improvement authorized by this Act and for preparing preliminary plans, studies, and engineering reports preparatory to the consideration of the feasibility of an improvement and to pay the initial cost of the improvement when ordered by the governing body until temporary notes, time warrants, or improvement bonds have been issued and sold.

(c) The fund shall be reimbursed from the proceeds of the issuance of improvement bonds and shall never exceed one percent of the total assessed property valuation of the city for the preceding year or $200,000, which ever is less.

(d) The fund need not be budgeted for expenditure during any year, but the amount of the fund shall be stated in the city's annual budget. All grants-in-aid or contributions made to the city for planning and preparation of plans for improvements which are authorized under this Act may be credited to the special improvement fund, and the amount of the aid or contribution shall not be considered in calculating the limitation on the fund imposed by Subsection (c) of this section.

Payment of Costs

Sec. 17. (a) The cost of any improvement made under the authority of this Act shall be paid in accordance with this section.

(b) All costs payable by the city as a whole may be paid from general funds available for the purpose or from other available general improvement funds.

(c) Costs payable by special assessments which have been paid in full shall be paid from those assessments.

(d) Costs payable by special assessments to be paid in installments and costs made payable by the city as a whole but not payable from available general funds or other available general improvement funds shall be paid by the issuance and sale of revenue or general obligation bonds.

(e) During the progress of an improvement the governing body may issue temporary notes or time warrants of the city to pay costs of the improvements and on the completion of the work issue revenue or general obligation bonds.

(f) The costs of more than one improvement may be paid from a single issue and sale of bonds without other consolidation proceedings prior to the bond issue.

General Obligation Bonds

Sec. 18. A city may issue general obligation bonds under the provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,[1] to pay all or part of the costs covered by Section 17(d) of this Act.

[1] Article 701 et seq.

Issuance of Revenue Bonds

Sec. 19. For the payment of all or part of the costs covered by Section 17(d) of this Act, the governing body may issue revenue bonds from time to time in one or more series to be payable from and secured by liens on all or part of the revenue derived from improvements authorized under this Act, including installment payments of special assessments.

Terms and Conditions of Bonds

Sec. 20. (a) Revenue bonds may be issued to mature serially or otherwise within not more than 40 years from their date, and provision may be made for the subsequent issuance of additional parity bonds or subordinate lien bonds under any terms or conditions that may be set forth in the ordinance authorizing the issuance of the bonds.

(b) The bonds and any interest coupons appertaining thereto are negotiable instruments within the meaning and for all purposes of the Texas Uniform Commercial Code. The bonds may be issued registrable as to principal alone or as to both principal and interest, and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and may be sold in such manner, at such price, and under such terms, and said bonds shall bear interest at such rates, all as shall be determined and provided in the ordinance authorizing the issuance of the bonds.

(c) If so provided in the bond ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during and after the period of the acquisition or construction of any improvement to be provided through the issuance of the bonds, for creating a reserve fund for the payment of the principal of and interest on the bonds, and for creating any other funds. The proceeds of the bonds may be placed on time deposit or invested, until needed, all to the extent, and in the manner provided, in the bond ordinance.

Pledges

Sec. 21. (a) The governing body may pledge all or any part of the income from improvements financed under this Act, including the installment payments described in Section 17(d) of this Act, to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged income shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds, and, to the extent required by the ordinance authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds, and for the payment of operation, maintenance, and other expenses in connection with the improvements authorized under this Act.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property relating to the facilities authorized under this Act owned or to be acquired by the city and by chattel mortgages, liens, or security interests on any personal property appurtenant to that real property. The governing body may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence the indebtedness.

(c) The governing body may also pledge to the payment of the bonds all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

Refunding Bonds

Sec. 22. (a) Any revenue bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for that purpose, under any terms or conditions, as are determined by ordinance of the governing body of the local government. All appropriate provisions of this Act are applicable to refunding bonds, and the refunding bonds shall be issued in the manner provided in this Act for other bonds. The refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest, and redemption premium, if any, of bonds to be refunded, at maturity or on any redemption date.

(b) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds being refunded in accordance with the provisions of the ordinance authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(c) General obligation bonds issued under this Act also may be refunded in the manner provided by law.

Approval and Registration of Bonds

Sec. 23. (a) All revenue bonds issued under this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If the bonds recite that they are secured by a pledge of revenues or rentals from a contract or lease, a copy of the contract or lease and the proceedings relating to it shall be submitted to the attorney general also. If he finds that the bonds have been authorized and any contract or lease has been made in accordance with law, he shall approve the bonds and the contract or lease, and thereupon the bonds shall be registered by the comptroller of public accounts. After approval and registration the bonds and any contract or lease relating to them are incontestable in any court or other form for any reason and are valid and binding obligations for all purposes in accordance with their terms.

(b) General obligation bonds issued under this Act shall be approved and registered as provided by law.

Authorized Investments and Security for Deposits

Sec. 24. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loans associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the state and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. The bonds also are eligible and lawful security for all deposits of public funds of the state and all agencies, subdivisions, and instrumentalities of it, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

[Acts 1977, 65th Leg., p. 1205, ch. 467, eff. Aug. 29, 1977.]

Art. 1269j–4.15. Park Purposes; Acquisition and Improvement of Property by Cities of 1,200,000 or More

Applicability of Act

Sec. 1. This Act shall be applicable to all incorporated cities, including home-rule cities, having a population of 1,200,000 or more according to the last preceding federal census.

Acquisition, Construction and Improvement of Property; Operating Contracts

Sec. 2. Any such city is authorized to acquire by purchase, lease, or otherwise, any or all, property (real, personal, or mixed) and to construct or otherwise acquire, improve, and equip any property for park purposes, including, but not by way of limitation: establishing, acquiring, leasing, or contracting as lessee or lessor, purchasing, constructing, improving, enlarging, equipping, repairing, operating, or maintaining (any or all) golf courses, clubhouses, and pro shops, tennis courts, and facilities, swimming pools, marinas, recreation centers, rugby fields, baseball fields, zoos, clarification lakes or pools, park transportation systems and equipment, theaters, bicycle trails, multipurpose shelters, service facilities, and any other recreational facilities, all or any (hereinafter called "Facility" or "Facilities"), together with all necessary water, sewer, and drainage facilities, and to establish, acquire, lease, or contract as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate, or maintain (any or all) structures, parking areas, or parking facilities to be used in connection with such Facilities for parking and storage of motor vehicles or other conveyances; and provided that any of such leases or contracts may be on such terms and conditions as said city shall deem appropriate. Also, such city shall have authority to enter into a contract or agreement under which the Facilities may be operated on behalf of the city, such operating contracts or agreements to contain such terms or conditions as said city shall deem appropriate. Each and all of the foregoing purposes are hereby found and declared to be public purposes and proper municipal functions.

Revenue Bonds Authorized

Sec. 3. For any purpose or purposes authorized under Section 2 of this Act, the governing body of the city may issue its revenue bonds from time to time in one or more series to be payable from and secured by liens on all or part of the revenues derived from any Facility or Facilities.

Issuance of Bonds; Proceeds From Sale of Bonds; Ad Valorem Tax

Sec. 4. (a) Said bonds may be issued when authorized by ordinance duly adopted by the city's governing body and may mature serially or otherwise within not to exceed 40 years from their date or dates, and provision may be made for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under any terms or conditions that may be set forth in the ordinance authorizing the issuance of the bonds.

(b) Said bonds, and any interest coupons appertaining thereto, shall be deemed and construed to be a "Security" within the meaning of Chapter 8, Investment Securities, Business & Commerce Code.[1] The bonds may be issued registrable as to principal alone or as to principal and interest and shall be executed and may be made redeemable prior to maturity and may be issued in such form, denominations, and manner and under such terms, conditions, and details and may be sold in such manner, at such price, and under such terms, and such bonds shall bear interest at such rates, all as shall be determined and provided in the ordinance authorizing the issuance of the bonds.

(c) If so provided in said ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during and after the period of the acquisition, construction, or improvement of any Facility, for paying expenses of operation and maintenance of said Facilities, for creating a reserve fund for the payment of the principal of and interest on the bonds, and for establishing any other funds. The proceeds of sale of the bonds may be placed on time deposit or invested, until needed, all to the extent and in the manner provided in the bond ordinance.

(d) Any such city shall also be authorized to levy and pledge to the payment of the operation and maintenance of any Facility or Facilities, either as a supplement to the pledge of revenues for such purpose or in lieu thereof, a continuing annual ad valorem tax at a rate on each $100 valuation of taxable property within said city sufficient for such purposes, all as may be provided in said ordinance authorizing the issuance of such bonds; provided, that such taxes shall be within any constitutional or charter limit for cities included by this Act; and provided further, that no part of any moneys raised by such taxes shall ever be used for the payment of the interest on or principal of any bonds issued hereunder. The proceeds of any such taxes thus pledged shall be utilized annually to the extent required by or provided in the ordinance for operation and maintenance of such Facilities, and such city in its discretion may covenant in such ordinance that certain costs of operating and maintaining such Facilities, as may be enumerated therein, or all of such costs will be paid by the city from the proceeds of such tax.

[1] Business and Commerce Code, § 8.101 et seq.

Fees, Rentals, Rates and Charges

Sec. 5. Each such city shall be authorized to fix and collect fees, rentals, rates, and charges for the occupancy, use, or availability of all or any of the Facilities in such amounts and in such manner as may be determined by the governing body of the city.

Pledge of Revenues, Income or Receipts; Mortgages or Deeds of Trust

Sec. 6. (a) The city may pledge all or any part of the revenues, income, or receipts from such fees, rentals, rates, and charges to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged fees, rentals, rates, and charges shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds, and, to the extent required by the ordinance authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds, and for the payment of operation, maintenance, and other expenses in connection with the Facilities.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property relating to the Facilities owned or to be acquired by the city and by chattel mortgages, liens, or security interests on any personal property appurtenant to that real property. The governing body of the city may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrances to evidence the indebtedness.

(c) The city may also pledge to the payment of the bonds all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

Refunding Bonds

Sec. 7. (a) Any bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for that purpose under any terms or conditions as are determined by ordinance of the governing body of the city. All appropriate provisions of this Act are applicable to refunding bonds, and the refunding bonds shall be issued in the manner provided in this Act for other bonds. The refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest, and redemption premium, if any, of bonds to be refunded, at maturity or on any redemption date.

(b) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds being refunded in accordance with the provisions of the ordinance authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(c) Bonds issued at any time by a city under this Act also may be refunded in the manner provided by any other applicable law.

Examination, Approval and Registration of Bonds

Sec. 8. All bonds issued under this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If the bonds recite that they are secured by a pledge of revenues or rentals from a contract or lease, a copy of the contract or lease and the proceedings relating to it shall be submitted to the attorney general also. If he finds that the bonds have been authorized and any contract or lease has been made in accordance with law, he shall approve the bonds and the contract or lease, and thereupon the bonds shall be registered by the comptroller of public accounts. After approval and registration, the bonds and any contract or lease relating to them are incontestable for any reason and are valid and binding obligations for all purposes in accordance with their terms.

Legal and Authorized Investments; Security for Deposit of Public Funds

Sec. 9. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the state and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. The bonds also are eligible and lawful security for all deposits of public funds of the state and all agencies, subdivisions, and instrumentalities of it, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

Cumulative Effect; Conflicting Provisions

Sec. 10. This Act is cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized by it without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided. When any bonds are issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any law or home-rule charter provision, the provisions of this Act shall prevail and control. A city shall have the right to use the provisions of any other laws, not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

Severability

Sec. 11. In case any one or more of the sections, provisions, clauses, or words of this Act or the application thereof to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act or the application thereof to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

[Acts 1975, 64th Leg., p. 640, ch. 264, eff. Sept. 1, 1975.]

Art. 1269j–4.2. Coliseums or Stadiums of Counties in Excess of 500,000; Sale to Certain Cities

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

Sec. 5. If the city council of any city which has acquired and owns a stadium or coliseum under the authority granted in this Act shall affirmatively find that escalating burdens and costs of operating its stadium or coliseum have caused continued ownership to cease to be economically feasible, resulting in increasing and unnecessary burdens on the taxpayers of the city, then, the city council, after giving at least 14 days' notice of and holding a public hearing on the question, may sell such stadium or coliseum to another public or private entity upon such terms and conditions as the city council may approve, and such city shall have all power necessary and appropriate to complete such sale in accordance with the terms of the sale.

[Amended by Acts 1981, 67th Leg., p. 2459, ch. 635, § 1, eff. June 15, 1981.]

Art. 1269j–4.3. Parking Facilities; Revenue Bonds; Gulf Coast Cities of 60,000 to 75,000 or 110,000 to 120,000

Application to Certain Cities

Sec. 1. This Act shall apply to every incorporated city or town (including Home Rule Cities) located on the Coast of the Gulf of Mexico, or any channel, canal, bay or inlet connected therewith, having a population of more than sixty thousand (60,000) and less than seventy-five thousand (75,000) inhabitants or having a population of more than one hundred ten thousand (110,000) and less than one hundred twenty thousand (120,000) inhabitants according to the last preceding federal census.

[See Compact Edition, Volume 3 for text of 2 to 10]

[Amended by Acts 1981, 67th Leg., p. 560, ch. 237, § 8, eff. Sept. 1, 1981.]

Art. 1269j–4.4. Sea Life Park and Oceanarium; Certificates of Indebtedness

[See Compact Edition, Volume 3 for text of 1 to 6]

Abandonment; Sale or Lease

Sec. 6a. In the event it shall be determined by proper findings of the governing body of any such city or town that the continuation of property wholly or partially financed under this Act as a sea life park and oceanarium has ceased to be economically feasible, that continuation for such purpose would be unprofitable, and that such purpose should be abandoned, then such governing body may by ordinance abandon such purpose and sell or lease such land and facilities for such other purpose or purposes as the governing body may deem appropriate and in the interest of the citizens thereof after notice and publication as provided in Chapter 455, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 5421c–12, Vernon's Texas Civil Statutes); provided that if any of such land shall be sold, then same shall be sold to the highest and best bidder as required for other land owned by any such city or town. If any part or all of the land is to be leased

for another purpose, then the lease shall be for such term, terms and renewal terms and shall contain such other provisions as may be agreed by the governing body, provided that the rentals derived by the city from such source shall be applied to the same purposes required by any ordinances authorizing the issuance of bonds secured in whole or in part by the revenues derived from the sea life park and oceanarium prior to the abandonment of that purpose.

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

[Amended by Acts 1979, 66th Leg., p. 401, ch. 188, § 1, eff. May 15, 1979.]

Art. 1269j-4.8. Off-Street Parking Facilities, Terminals, and Stations; Revenue Bonds; Cities Over 650,000

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

Sec. 2. A city subject to this Act may acquire, lease as lessor or lessee, construct, improve, enlarge, equip, and operate off-street parking facilities, and may acquire, lease as lessor or lessee, construct, improve, enlarge, equip, and operate terminals, stations, and related properties and facilities for the use of passengers, commuters, travelers, shippers, and other members of the public and by companies or individuals engaged in the business of transporting the general public, goods, cargo, parcels, mail, commodities, or freight by bus, truck, or rail.

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

Sec. 5. (a) Each eligible city shall be authorized to fix and collect fees, rentals, rates, and charges for the occupancy, use, or availability of all or any of its property, buildings, structures, or other facilities described in Section 2 of this Act in such amounts and in such manner as may be determined by the governing body of the city.

(b) The city may contract with any public or private entity for the performance of any function related to the facilities described in Section 2 of this Act, and may, as lessor, lease any of such properties or facilities to any public or private entity upon such terms, for such rentals, revenues and payments, and for such period or periods of years as shall be approved by the governing body of the city.

(c) Any of the properties and facilities described in Section 2 of this Act may be developed in conjunction with other public or private developments pursuant to agreements with the owners thereof upon such terms as may be approved by the city. The city may negotiate and include as a part of any such agreement such provisions as it may deem appropriate providing for the use, lease, or sale of any part of the subsurface, or airspace above the surface, of the city's property as the city may find to be surplus and not necessary for the purposes of such properties and facilities.

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

Sec. 7. The acquisition, purchase, construction, improvement, enlargement, equipment, operation, and maintenance by a city of any property, buildings, structures, or other facilities described in Section 2 of this Act, whether on land already owned by the city or hereafter acquired, is a public purpose and a proper municipal function.

[See Compact Edition, Volume 3 for text of 8 to 12]

[Amended by Acts 1981, 67th Leg., p. 2747, ch. 750, § 1, eff. June 16, 1981.]

Art. 1269j-5.1. Airport Revenue Bonds

Sec. 1. This Act shall be applicable to all incorporated cities, including Home Rule Cities.

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

[Amended by Acts 1975, 64th Leg., p. 46, ch. 24, § 1, eff. March 20, 1975.]

Art. 1269j-5.3. Airport Revenue Bonds; Cities of 1,200,000 or More or 400,000 or More; Proceeds

Sec. 1. This Act applies to any city having a population of 1,200,000 or more, according to the most recent federal census. Until January 1, 1984, this Act also applies to any city having a population of 400,000 or more, according to the most recent federal census, and located adjacent to the international border with Mexico.

Sec. 2. (a) If a city covered by this Act issues revenue bonds to finance the construction or acquisition of buildings, improvements, or facilities at one or more airports owned and operated by the city, to be leased by the city to a private entity pursuant to a lease agreement under which the lessee is obligated to maintain the buildings, improvements, or facilities solely at its expense and is unconditionally obligated throughout the term of the bonds to make payments of net rent, which are pledged to the payment of the bonds, in amounts and at times as are sufficient to provide for the timely payment of all principal, interest, redemption premiums, and other costs and expenses arising or to arise in connection with the payment of the bonds, the city may spend or agree to spend all or any portion of the proceeds of the bonds without inviting, advertising for, or otherwise requiring competitive bids for the construction or acquisition of the buildings, improvements, or facilities or requiring or obtaining payment or performance bonds in connection with the construction or acquisition.

(b) This Act does not apply to the expenditure of the proceeds of bonds unless the bonds provide by their own terms that:

(1) they are payable solely from net rents as provided by Subsection (a) of this section; and

(2) they may not be repaid in any circumstances from tax revenues.

(c) This Act does not apply to the expenditure of the proceeds of bonds that create or provide for the creation of a lien against real property owned by the city.

(d) This Act does not affect the obligation of the city to obtain competitive bids or require a payment or performance bond in connection with a contract for the construction of a building, improvement, or facility if the contract is awarded by the city.

(e) Any expenditure of or agreement to spend proceeds of bonds covered by this Act for the construction of buildings, improvements, or facilities must be conditioned on the payment of not less than the rate of per diem wages for work of a similar character in the city as ascertained and established by the governing body of the city as provided by Chapter 45, General Laws, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 5159a, Vernon's Texas Civil Statutes).

[Acts 1979, 66th Leg., p. 2057, ch. 805, eff. June 13, 1979. Amended by Acts 1981, 67th Leg., p. 470, ch. 201, § 1, eff. May 25, 1981.]

Section 2 of the 1981 amendatory act provides:

"In case any one or more of the sections, provisions, clauses, or words of this Act, or the application thereof to any situation or circumstance, shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act, or the application thereof to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein."

Art. 1269j-10. Emergency Medical Technicians or Paramedics; Educational Incentive Pay

A city, town, or other political subdivision that employs emergency medical technicians or paramedics may pay educational incentive pay to employees holding certificates from the Texas Department of Health as emergency medical technicians or as paramedics. The incentive pay shall be in addition to any other form of compensation provided by law.

[Acts 1979, 66th Leg., p. 862, ch. 385, § 1, eff. Aug. 27, 1979.]

CHAPTER TWENTY-ONE. HOUSING

Article

1269l-4. Community Development Act of 1975.
1269l-6. Housing Agency Act.
1269l-7. Housing Finance Corporations Act.
1269l-8. State Ceiling, Allocation, and Local Share of Housing Bonds.

1269k. Housing Authorities Law

[See Compact Edition, Volume 3 for text of 1 to 13]

Notice of Proposed Housing Projects

Sec. 13a. (a) A housing authority may not authorize the construction of a housing project unless the commissioners of the authority hold a public meeting about the proposed project prior to that site being approved for the housing project. The commissioners shall hold the meeting at the closest available facility to the site of the proposed project. At least a majority of the commissioners must attend the meeting. The commissioners shall give any person who owns or leases real property within a one-fourth mile radius of the site of the proposed housing project the opportunity to comment on the proposed project.

(b) In addition to any other notice required by law, the commissioners shall post notice of the date, hour, place, and subject of the meeting at least 30 days before the scheduled day of the meeting on a bulletin board at a place convenient to the public in the county courthouse of the county in which the proposed project is to be located and on a bulletin board at a place convenient to the public in the city hall if the proposed project is to be located within the boundaries of an incorporated city. The commissioners shall have a copy of the notice published in a newspaper or newspapers that individually or collectively provide general circulation to the county in which the proposed project is to be located. The notice must be published one time at least 30 days before the scheduled day of the meeting. The commissioners shall mail a notice containing the same information 30 days before the date of the meeting to any person who owns real property within one-fourth of a mile radius of the site of the proposed project. The commissioners may rely on the most recent county tax roll for the names and addresses of the owners. The commissioners shall also have posted at the proposed project site 30 days before the date of the meeting a sign having dimensions no smaller than four feet by four feet and bearing in eight-inch letters a caption stating "Site of Proposed Housing Project." The sign shall be located at a point on the proposed project site visible from a regularly travelled thoroughfare and shall state the nature of the project, the location of the project, the names and addresses of all governmental entities involved in the development of the proposed project, and the date, time, and place of the public meeting.

(c) An incorporated city or town or other political subdivision of the State may not issue a permit, certificate, or other authorization for the construction or occupancy of a housing project under this Act unless the housing authority has complied with the requirements of this section.

[See Compact Edition, Volume 3 for text of 14 to 23b]

Area of Operation of County or Regional Housing Authorities

Sec. 23c. (a) The area of operation of a regional housing authority shall include all of the counties for which such regional housing authority is created and established except that portion of the counties which lies within the territorial boundaries of any city. Provided that a county or regional housing authority shall not undertake any housing project or projects within the boundaries of any city unless a resolution

shall have been adopted by the governing body of such city (and also by any housing authority which shall have been theretofore established and authorized to exercise its powers in such city) declaring that there is a need for the county or regional housing authority to exercise its powers within such city.

(b) The area of operation of a regional housing authority shall be increased from time to time to include one or more additional counties not already within a regional housing authority (except in such portion or portions of such additional county or counties which lie within the territorial boundaries of any city) if the Commissioners Court of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority and the Commissioners Court of each such additional county or counties each adopt a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority as provided by Subsection (g) of this section. Those resolutions may not be adopted if there is a county housing authority created for any such additional county which has any obligations outstanding unless:

(1) all obligees of any such county housing authority and parties to the contracts, bonds, notes, and other obligations of any such county housing authority agree with such county housing authority and the regional housing authority to the substitution of such regional housing authority in lieu of such county housing authority on all such contracts, bonds, notes, or other obligations; and

(2) the commissioners of such county housing authority and the commissioners of such regional housing authority adopt resolutions consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as provided by Subdivision (2) of Subsection (e) of this section.

(c) If one or more of the obligees whose agreement is required by Subdivision (1) of Subsection (b) of this section before adoption of a resolution are unknown, the county housing authority shall cause notice to be published in a newspaper of general national circulation. The notice must set forth:

(1) the name of the county housing authority;

(2) the name of the regional housing authority;

(3) a statement that the county and regional housing authorities propose that on all contracts, bonds, notes, and other obligations of the county housing authority, the regional housing authority will be substituted for the county housing authority and that the existence of the county housing authority will be terminated; and

(4) an address where objections to the substitution may be sent.

(d) For the purposes of Subsection (b) of this section, failure to receive an objection to the substitution of the regional housing authority on the obligations of the county housing authority before the 31st day after the day on which notice is published in accordance with Subsection (c) of this section is equivalent to consent to the substitution given by the unknown obligees of the county housing authority.

(e) When all resolutions required by Subsection (b) of this section are adopted in accordance with this section:

(1) the county housing authority created for each county over which the area of operation of the regional housing authority is being extended ceases to exist except to wind up its affairs and to execute a deed to the regional housing authority in accordance with Subsection (f) of this section;

(2) all rights, contracts, agreements, obligations, and property of such county housing authority shall be in the name of and vest in such regional housing authority;

(3) all obligations of such county housing authority shall be the obligations of such regional housing authority; and

(4) all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they may have been asserted, enforced, and prosecuted against such county housing authority.

(f) When any real property of a county housing authority vests in a regional housing authority as provided by Subdivision (2) of Subsection (e) of this section, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed with the clerk of the county where such real property is located. This subsection does not affect the vesting of property in the regional housing authority as provided by Subdivision (2) of Subsection (e) of this section.

(g) The Commissioners Court of each of the counties in the regional housing authority, the commissioners of the regional housing authority and the Commissioners Court of each such additional county or counties shall by resolution declare that there is a need for the addition of such county or counties to the regional housing authority, if:

(1) the Commissioners Court of each such additional county or counties finds that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford; and

(2) the Commissioners Court of each of the counties then included in the area of operation of the regional housing authority, the commissioners

of the regional housing authority and the Commissioners Court of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit to carry out the purposes of this Housing Authorities Law if the area of operation of the regional housing authority shall be increased to include such additional county or counties.

(h) In connection with the issuance of bonds or the incurring of other obligations, a regional housing authority may covenant as to limitations on its right to adopt resolutions relating to the increase of its area of operation.

(i) In determining whether dwelling accommodations are unsafe or insanitary under this section or Section 23b of this Act, the Commissioners Court of a county shall take into consideration the safety and sanitation of dwellings, the light and air space available to the inhabitants of such dwellings, the degree of overcrowding, the size and arrangement of the rooms and the extent to which conditions exist in such dwellings which endanger life or property by fire or other causes.

(j) No governing body of a county shall adopt any resolution authorized by this section or Section 23b of this Act unless a public hearing has first been held. The clerk of such county shall give notice of the time, place, and purpose of the public hearing at least ten days prior to the day on which the hearing is to be held, in a newspaper published in such county, or if there is no newspaper published in such county, then in a newspaper published in the State and having a general circulation in such county. Upon the date fixed for such public hearing an opportunity to be heard shall be granted to all residents of such county and to all other interested persons.

[See Compact Edition, Volume 3 for text of 23d to 25]

[Amended by Acts 1981, 67th Leg., p. 630, ch. 251, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2167, ch. 507, § 1, eff. June 12, 1981.]

Section 2 of Acts 1981, 67th Leg., p. 630, ch. 251, provides:

"Section 13a, as added by this Act to Chapter 462, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 1269k, Vernon's Texas Civil Statutes), does not affect the construction or occupation of a housing project that was authorized by a housing authority before the effective date of this Act."

Art. 1269*l*-3. Urban Renewal Law

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

Definitions

Sec. 4. The following terms wherever used or referred to in this Act, shall have the following meanings, unless a different meaning is clearly indicated by the context.

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

(x) When this Act is applied to a county, "mayor" means county judge, "city council" means the commissioners court, and the "city" means county, unless the context clearly requires otherwise.

(y) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

(z) "Captured Market Value" means any amount by which the current market value of property within the boundaries of an urban renewal project area exceeds its market value at the time such urban renewal project was designated in accordance with the requirements of this Act.

(aa) "Taxable Property" means all real taxable property, but shall not include personal property or intangible property.

(bb) "Tax Assessor-Collector" means the tax assessor-collector of the municipality.

(cc) "Taxing Entity" means any governmental unit, including the State and its political subdivisions, but not including municipalities, authorized by law to levy taxes on property located within an urban renewal project area.

(dd) "Tax Increment" means that amount of property taxes levied and collected each year on property within an urban renewal project area in excess of the amount levied and collected on such property during the year prior to the date of adoption of the urban renewal project plan. A tax increment is calculated by multiplying the total in property taxes levied and collected by the municipality and all other taxing entities on the taxable property within an urban renewal project area in any year by a fraction having a numerator equal to that year's market value of all taxable property in such area minus the tax incremental base and a denominator equal to that year's market value of all taxable property in such area.

(ee) "Tax Incremental Base" means the aggregate market value of all taxable property within an urban renewal project area on the date of approval of the urban renewal project plan in accordance with the requirements of this Act.

(ff) "Tax Increment Fund" means a fund into which all tax increments produced from the captured market value of property located within an urban renewal project area are paid, and from which moneys are disbursed to pay costs with respect to such project or to satisfy claims of holders of tax increment bonds issued with respect to such project.

Finding of Necessity; Powers of Counties

Sec. 5. (a) No city shall exercise any of the powers conferred upon cities by this Act until after the City Council shall have adopted a resolution, after giving notice and ordering an election on the question of whether the City Council shall adopt such resolution, finding that: (1) one or more slum or

blighted areas exist in such city; and (2) the rehabilitation, conservation, or slum clearance and redevelopment, or a combination thereof, of such area or areas is necessary in the interest of public health, safety, morals or welfare of the residents of such city. Such notice shall be published at least twice in the newspaper officially designated by the City Council and shall state that on a date certain, which date shall be stated in the notice and shall be not less than sixty (60) days after the publication of the first of such notices, the City Council will consider the question of whether or not it will order an election to determine if it should adopt such a resolution. On the date specified in the notice to consider such question the City Council may, on its own motion, call an election to determine whether it shall adopt such a resolution and shall, in any event, call such election if there has been presented to it during such period a petition that such election be held, signed by at least five per cent (5%) of the legally qualified voters residing in such city and owning taxable property within the boundaries thereof, duly rendered for taxation. If it be determined to call such an election, at least thirty (30) day's notice thereof shall be given. Notwithstanding any other provisions of this Act, no powers granted by this Act shall be exercised by any city until an election shall have been held as herein provided with a majority of the votes cast at such election being cast in favor of the exercise of such powers by such city. Only qualified voters residing in said city, owning taxable property within the boundaries thereof, who have duly rendered the same for taxation, shall be entitled to vote at such election. If a majority of those voting at such election shall vote in favor of the adoption of such resolution, the City Council shall then be authorized to adopt it. If a majority of those voting at such election shall vote against the adoption of such resolution, the City Council shall not adopt it and such resolution shall not again be proposed within the period of one (1) year.

(b) Any county that has a population of more than 700,000, according to the last preceding federal census, may exercise all powers provided for cities under this Act. Those powers may be exercised only with respect to areas of the county not inside the corporate limits of a city or town. The county may not exercise any power under this Act unless the commissioners court adopts a resolution as provided in Subsection (a) of this section, the adoption of which has been first approved at an election. The election shall be held throughout the county in the same way an election is held in a city under Subsection (a) of this section. The adoption of a resolution is not approved unless a majority of the voters voting on the question in the entire county as well as in each incorporated city and town in the county approves adoption. In cities only partly in the county, only voters residing in the county may vote.

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

Approval of Tax Increment Financing

Sec. 5b. A city may not use the tax increment method of financing prescribed by Sections 22a, 22b, 22c, and 22d of this Act unless a majority of the qualified voters of the city voting on the question, who own taxable property within the city that is duly rendered for taxation, approve that method of financing in an election held by the city. At an election held under this section, the ballots shall provide for voting for or against the proposition: "Use of tax increment financing for urban renewal purposes." An election under this section may be held in conjunction with an election held under Section 5 or 5a of this Act. This referendum shall not be necessary if the constitutional amendment on tax increment financing is approved by the voters.

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

Preparation and Approval of Urban Renewal Plan

Sec. 7.

[See Compact Edition, Volume 3 for text of 7(a) to 7(h)]

(i) Upon approval of an urban renewal plan by the city and approval of the tax increment method of financing as required under Section 5b of this Act, a fund, to be known as the "Tax-increment Fund" shall be established by the adoption of a resolution by the City Council.

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

Powers

Sec. 9. A city shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Act, including the following powers in addition to others herein granted:

(a) To conduct preliminary surveys to determine if the undertakings and carrying out of urban renewal projects is feasible.

(b) To undertake and carry out urban renewal projects within its area of operation.

(c) To make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this Act.

(d) To provide or arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct and reconstruct streets, utilities, parks, playgrounds, and other public improvements necessary for carrying out urban renewal projects.

(e) To acquire by purchase, lease, option, gift, grant, or bequest, devise, eminent domain or otherwise, any real property (or personal property for its administrative purposes) together with any improvements thereon, necessary or incidental to an

urban renewal project; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the city against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purpose of this Act.

(f) To invest any urban renewal project funds held in reserves or sinking funds or any such funds not required for immediate disbursements, in property or securities in which banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to Section 15 of this Act at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be cancelled.

(g) To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the Federal Government, the State, County or other public body or from any sources, public or private, for the purposes of this Act, and to give such security as may be required and to enter into and carry out contracts in connection therewith. A city may include in any contract for financial assistance with the Federal Government for an urban renewal project such provisions and conditions imposed pursuant to Federal Law as the city may deem reasonable and appropriate and which are not inconsistent with the purposes of this Act.

(h) Within its area of operation, to make or have made all plans necessary to the carrying out of the purposes of this Act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend such plans. The city is authorized to develop, test and report methods and techniques and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight, and to apply for, accept and utilize grants of funds from the Federal Government for such purposes.

(i) To prepare plans and provide reasonable assistance for the relocation of persons (including families, business concerns, and others) displaced from an urban renewal project area to the extent essential for acquiring possession of and clearing such area or parts thereof to permit the carrying out of the urban renewal project.

(j) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this Act, and to levy taxes and assessments for such purposes; to close, vacate, plan or replan streets, roads, sidewalks, ways or other places; to plan or replan, zone or rezone any part of the city and to make exceptions from building regulations; and to enter into agreements with an urban renewal agency vested with urban renewal powers under Section 15 of this Act (which agreements may extend over any period, notwithstanding any provision or rule or law to the contrary), restricting action to be taken by such city pursuant to any of the powers granted by this Act; provided, however, that no taxes or assessments shall be levied under authority or for the purposes of this Act unless and until such levy shall first have been submitted to a vote of the property-owning taxpayers of said city, and said proposition shall have received a majority of the votes cast as being "for" such levy.

(k) Within its area of operation to organize, coordinate and direct the administration of the provisions of this Act as they apply to such city in order that the objective of remedying slum and blighted areas and preventing the causes thereof within such city may be most effectively promoted and achieved, and to establish such new office or offices of the city or to reorganize existing offices in order to carry out such purpose most effectively.

(*l*) To issue tax increment bonds.

(m) To exercise all or any part or combination of powers herein granted.

[See Compact Edition, Volume 3 for text of 10 to 22]

Computation of Tax Increments

Sec. 22a. (a) For purposes of this Act, the market value of property located within an urban renewal project area shall be determined by the tax assessor-collector, and only the tax assessor-collector, during the time such project exists. Provided, however, that such determination shall require the concurrence of the comptroller; and provided, further, that any property owner aggrieved by a determination of the tax assessor-collector shall have the same right of appeal provided by law to owners of property not affected by this Act.

(b) At the time an urban renewal project is designated by the governing body, the tax assessor-collector shall, with the concurrence of the comptroller, certify to the governing body the market value of property within the boundaries of such district. Property taxable at the time the urban renewal project is designated shall be included at its most recently determined market value; property exempt from taxation at the time the redevelopment district was designated shall be included at zero.

(c) The tax assessor-collector shall, within one year of the time an urban renewal project is designated, and annually thereafter, certify to the governing body the amount of the captured market value of property within the boundaries of the district and the amount of tax increments produced from such captured market value.

(d) For any years in which taxes are to be paid into the tax increment fund required under Subsec-

tion (i), Section 7 of this Act, any captured market value with respect to an urban renewal project shall not be considered by any taxing entity in computing any debt limitation or for any other purpose except in determining the amount to be paid into the tax increment fund.

Allocation of Tax Collections and Tax Increments

Sec. 22b. (a) For purposes of this Act, the tax assessor-collector shall have the sole authority and the duty to collect the taxes levied by the city and all other taxing entities on property located within an urban renewal project and for allocating taxing and tax increments in the manner required by this Act.

(b) Commencing with the first payment of taxes levied by the city or other taxing entities subsequent to the time an urban renewal project is designated, receipts from such taxes shall be allocated and paid over as follows:

(1) There shall first be allocated and paid over in such amounts as belong to each respectively, to the city and to each other taxing entity, all of the property taxes collected which are produced from the tax incremental base.

(2) There shall next be deposited into the tax increment fund established for such project all tax increments produced from the captured market value of property located within the project.

Tax Increment Bonds

Sec. 22c. (a) A city shall, in addition to any other powers vested in it, have the power to issue tax increment bonds, the proceeds of which may be used to pay redevelopment costs with respect to the urban renewal project on behalf of which the bonds were issued or to satisfy claims of holders of such bonds. Upon approval of two-thirds of the resident property taxpayers who are qualified electors of the city, such city shall also have the power to issue refunding bonds for the payment or retirement of tax increment bonds previously issued by it. Such tax increment bonds shall be made payable, as to both principal and interest, solely from tax increments allocated to and paid into the tax increment fund established by the city in accordance with this Act, or from any private sources, or contributions or other financial assistance from the State or United States Government, or by any combination of these methods.

(b) Tax increment bonds issued under this Act, together with interest thereon and income therefrom, shall be exempt from all taxes. The period of maturity of tax increment bonds is limited to a maximum of 20 years from the date of issuance. Bonds issued under this Act shall be authorized by resolution or ordinance of the governing body and may be issued in one or more series, and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto. Such bonds may be sold at not less than par at public sales held after notice published prior to such sale in a newspaper having a general circulation in the city and in such other medium of publication as the governing body may determine or may be exchanged for other bonds on the basis of par. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this Act shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any bond issued under this Act or the security therefor, any such bond reciting in substance that it has been issued by the city in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purposes and the urban renewal project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this Act.

(c) All banks, trust companies, bankers, savings banks and institutions, buildings and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any tax increment bonds issued by a city pursuant to this Act. Such bonds shall be authorized security for all public deposits. Any persons, political subdivisions and officers, public or private, are authorized to use any funds owned or controlled by them for the purchase of any such bonds. Nothing in this Act with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

(d) Tax increment bonds shall be payable only out of the tax increment fund created pursuant to Subsection (i), Section 7 of this Act. The City Council may irrevocably pledge all or a part of such fund to the payment of such bonds or notes. Such fund or the designated part thereof may thereafter be used only for the payment of such bonds and interest thereon until the same have been fully paid; and a holder of such bonds or of any coupons appertaining thereto shall have a lien against such fund for payment of such bonds or notes and interest thereon and may either at law or in equity protect and enforce such lien.

(e) To increase the security and marketability of tax increment bonds, the city may create a lien for the benefit of the bondholders upon any public improvements or public works financed thereby or the revenues therefrom, or make such covenants and do any and all such acts as may be necessary or convenient or desirable in order to additionally secure such bonds or tend to make the bonds more marketable according to the best judgment of the City Council.

(f) Moneys shall be disbursed from the tax increment fund only to satisfy the claims of holders of tax increment bonds issued in aid of the urban renewal project with respect to which the fund was established, or to pay project costs. "Project costs" means any expenditure made or estimated to be made or monetary obligations incurred or estimated to be incurred by the city which are listed in an urban renewal project, plus any costs incidental thereto, diminished by any income or revenues other than tax increments, received or reasonably expected to be received by the city in connection with the implementation of such plan. Such project costs include, but are not limited to:

(1) capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures; the acquisition of equipment; and the clearing and grading of land;

(2) financing costs, including, but not limited to, all interest paid to holders of tax increment bonds issued to pay for project costs and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity;

(3) professional service costs, including, but not limited to, costs incurred for architectural, planning, engineering or legal services;

(4) imputed administrative costs, including, but not limited to, reasonable charges for the time spent by employees of the city in connection with the implementation of an urban renewal plan; or

(5) organizational costs, including, but not limited to, the cost of conducting studies and the cost of informing the public with respect to the creation of urban renewal projects and the implementation of project plans.

(g) Subject to any agreement with the holders of tax increment bonds, moneys in a tax increment fund may be temporarily invested in the same manner as other municipal funds.

(h) After all project costs and all tax increment bonds issued with respect to an urban renewal project have been paid or the payment thereof provided for, and subject to any agreement with bondholders, if there remain in such fund any moneys, they shall be paid over to the city and other taxing entities levying taxes on property within such project in such amounts as belong to each respectively.

(i) Tax increment bonds issued under this Act shall not be general obligations of the city, nor in any event shall they give rise to a charge against its general credit or taxing powers, or be payable other than as provided by this Act; and any tax increment bonds issued under this Act shall so state on their face.

(j) Tax increment bonds issued under this Act shall not be included in any computation of the debt of the issuing city.

(k) Tax increment bonds may not be issued in an amount exceeding the aggregate costs of implementing the urban renewal plan for the project in aid of which they were issued, and such bonds shall mature over a period not exceeding twenty (20) years from the date thereof.

Annual Report

Sec. 22d. (a) On or before July 1 each year, the City Council shall submit to the chief executive officer of every taxing entity a report on the status of such district. The report shall include the following information:

(1) the amount and source of revenue in the tax increment fund established in accordance with the requirements of this Act;

(2) the amount and purpose of expenditures from the fund;

(3) the amount of principal and interest due on any outstanding bonded indebtedness;

(4) the tax incremental base and the current captured market value retained by the project; and

(5) the captured market value shared by the city and other taxing entities, the total in tax increments received, and any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the City Council.

(b) On or before July 1 of each year, the City Council shall cause to be published in a newspaper of general circulation in the city a statement showing:

(1) the tax increment received and expended during the previous year;

(2) the original market value and captured market value of all property located within the urban renewal project;

(3) the amount in outstanding indebtedness incurred in aid of the urban renewal project; and

(4) any additional information the City Council deems necessary.

[Amended by Acts 1975, 64th Leg., p. 107, ch. 47, §§ 1, 2, eff. April 15, 1975; Acts 1977, 65th Leg., p. 2126, ch. 850, §§ 1 to 5, eff. Aug. 29, 1977.]

Section 6 of the 1977 amendatory act provided:

"Except to the extent otherwise specifically provided in this Act, if any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 1269l–4. Community Development Act of 1975

Short Title

Sec. 1. This Act may be cited as the "Texas Community Development Act of 1975."

Public Purposes

Sec. 2. It is hereby found and declared that the activities specified in this Act contribute to the development of viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities for persons of low and moderate income in that the activities are directed toward the following specific objectives:

(a) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community;

(b) the elimination of conditions that are detrimental to the public health, safety, and welfare;

(c) the expansion and improvement of the quantity and quality of community services that are essential for the development of viable urban communities;

(d) a more rational use of land and other natural resources, the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers, and the restoration and preservation of properties of special value for historic, architectural, or aesthetic reasons;

(e) the reduction of the isolation of income groups in communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of law and moderate income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income; and

(f) the alleviation of physical and economic distress through the stimulation of private investment and community revitalization in slum or blighted areas.

Definitions

Sec. 3. In this Act:

(a) "Community Development Program" means a planned and publicized program of work or activities designed to:

(1) improve the living and economic conditions of primarily low and moderate income persons;

(2) benefit low or moderate income neighborhoods;

(3) aid in the prevention or elimination of slums or blight; or

(4) aid or assist any federally assisted new community or meet other community development needs having a particular urgency, including any of the activities or functions specified for a community development program under this Act including federally assisted new communities.

(b) "Governing body" means the governing body of any municipality in this state.

(c) "Municipality" means any city, town, or village incorporated under the laws of this state.

(d) "Texas Urban Renewal Law" means Chapter 298, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 1269l–3, Vernon's Texas Civil Statutes).

Powers of Municipalities; Limitations

Sec. 4. (a) Any municipality is hereby authorized to implement a community development program upon adoption by the governing body of an ordinance or resolution enacting the same.

(b) A community development program implemented by any municipality may include the following activities:

(1) the acquisition of real property, including air rights, water rights, and other interests therein which is blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; appropriate for rehabilitation or conservation activities; appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities or the guidance of urban development; to be used for the provision of public works, facilities, and improvements eligible for assistance under this Act, or to be used for other public purposes;

(2) the acquisition, construction, reconstruction, or installation of public works, facilities, and sites or other improvements, including neighborhood facilities, senior centers, historic properties, utilities, streets, street lights, water and sewer facilities, foundations and platforms for air rights sites, pedestrian malls and walkways and parks, playgrounds, and recreation facilities, flood and drainage facilities, and parking facilities, solid waste disposal facilities, and fire protection services and facilities which are located in or which serve designated community development areas;

(3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, and rehabilitation of buildings and improvements, including assistance and financing public or private acquisition for rehabilitation and the rehabilitation of privately owned properties when incidental to other activities;

(5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by program activities under this Act;

(7) disposition, through sale, lease, donation or otherwise, of any real property acquired pursuant to this Act or its retention for public purposes;

(8) provision of public services not otherwise available in areas where other activities authorized under this Act are being carried out, if such services are determined to be necessary or appropriate to support such other activities, and/or if such services are directed toward improving the community's public services and facilities, including those concerned with the employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas, and coordinating public and private development programs;

(9) payment of the nonfederal share required in connection with a federal grant-in-aid program undertaken as part of a local community development program;

(10) payment of the cost of completing a project funded under Title I of the federal Housing Act of 1949 [1] or federally assisted new communities assisted in the form of loan guarantees under Title X of the National Housing Act[2] and a portion of the federally assisted area has received grants under Section 107(A)(1) of the Housing and Community Development Act of 1974, as amended;[3]

(11) relocation payments and assistance for individuals, families, businesses, organizations, and farm operations displaced by activities assisted under this Act;

(12) activities necessary to develop a comprehensive community development plan, and to develop a policy-planning-management capacity, so that recipients of assistance under this Act may more rationally and effectively determine their needs, set long-term goals and objectives, devise programs and activities to meet these goals and objectives, evaluate the progress of such programs in accomplishing these goals and objectives, and carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(13) payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provisions of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities;

(14) activities that are carried out by public or private entities if the activities are necessary or appropriate to meet the needs and objectives of the community development plan, including:

(A) acquisition of real property;

(B) acquisition, construction, reconstruction, rehabilitation, or installation of public facilities, site improvements, utilities, commercial or industrial buildings or structures, or other commercial or industrial real property improvements; and

(C) planning; and

(15) grants to neighborhood-based nonprofit organizations, local development corporations, or entities organized to carry out neighborhood revitalization or community economic development projects or federally assisted new communities.

(c) Any municipality may provide for and implement programs to provide financing for the acquisition, construction, improvement, or rehabilitation of privately owned buildings and improvements through the use of loans and grants from federal money remitted to a municipality at interest rates and on the terms and conditions as the municipality shall determine; except that municipalities are prohibited from providing municipal property or municipal funds for private purposes the programs or financing shall be in keeping with an approved community development plan that has been determined by the municipality to be a public purpose. Any program established for financing the acquisition, construction, improvement, or rehabilitation of buildings and improvements from federal funds may prescribe procedures under which the owner(s) of such building(s) or improvement(s) shall agree to partially or fully reimburse the municipality for the cost of such acquisition, construction, improvement, or rehabilitation.

[1] 42 U.S.C.A. § 1450 et seq.
[2] 12 U.S.C.A. § 1749aa et seq.
[3] 42 U.S.C.A § 5307(a)(1).

Required Procedures

Sec. 5. Prior to the exercise of powers established under Section 4 of this Act, the governing body of any municipality shall:

(a) identify areas of the municipality in which predominantly low and moderate income persons dwell, or that are blighted or slum areas or federally assisted new communities, and set out within the community development program areas of the municipality where community development activities, building rehabilitation, or the acquisition of privately owned buildings or land are proposed to be undertaken; and

(b) adopt, by resolution or ordinance, a plan under which citizens may publicly comment on the proposed community development program; and

(c) conduct public hearings on the proposed community development program at least 15 days prior to its final adoption by the governing body; and

(d) adopt the provisions of the community development program by resolution or ordinance.

Limitations on Powers

Sec. 6. For the purpose of implementing any of the activities enumerated in Section 4 of this Act, compliance with Section 5 shall be sufficient; provided, however, that this Act does not grant a municipality implementing any of the activities enumerated in Section 4 the power of condemnation for the purpose of rehabilitating or removing buildings or for the purpose of acquiring real property of any kind for the purpose of resale. Nothing in this Act shall be construed to grant municipalities the authority to implement an urban renewal project under the terms and provisions of the Texas Urban Renewal Law without an enabling referendum passed by the voters or to exercise powers of eminent domain as granted by the Texas Urban Renewal Law. In order to exercise such powers, the municipality must have adopted the provisions of the Texas Urban Renewal Law in the manner prescribed by such Act and the power will be exercised by the designated urban renewal agency in that municipality.

Continuation of Urban Renewal

Sec. 7. This Act shall not be construed to alter or change the status, operations, contracts, or obligations of any existing urban renewal agency adopted pursuant to the Texas Urban Renewal Law, nor should any provisions of this Act be construed as to prevent the governing body of any municipality from adopting the provisions of and authority granted under the Texas Urban Renewal Law.

Scope

Sec. 8. The powers of municipalities described in this Act are granted in addition to all other powers of municipalities, and are intended to be cumulative thereof.

Validation of Previous Proceedings

Sec. 9. All ordinances or resolutions heretofore passed and adopted by the governing body of any such municipality implementing a community development program as defined and authorized by this Act are hereby validated as of the date of such ordinance or resolution, and are declared fully enforceable to the same extent as if such ordinance or resolution had been passed in accordance with laws duly enacted by the legislature of this state specifically providing for the passage and adoption of such ordinances or resolutions. All governmental proceedings and acts heretofore performed by the governing bodies of such municipalities and all officers thereof in implementing a community development program as authorized by this Act are hereby ratified as of the date of such proceedings and acts.

Applicability to "New Towns"

Sec. 10. Nothing in this Act shall be construed to authorize the use of the powers or federal funds referred to herein to establish any "new town" or "new town in town" pursuant to Title IV of the Housing and Urban Development Act of 1968 (42 U.S.C.A. 3901 et seq.), Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C.A. 4501 et seq.), or Section 107(a) of the Housing and Urban Development Act of 1974 (42 U.S.C.A. 5307).

Severability

Sec. 11. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1975, 64th Leg., p. 2058, ch. 677, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 3193, ch. 837, §§ 1 to 4, eff. Aug. 31, 1981.]

Art. 1269l-5. Housing Rehabilitation Act

Short Title

Section 1. This Act may be cited as the Texas Housing Rehabilitation Act.

Legislative Findings

Sec. 2. The legislature finds that:

(1) a substantial amount of housing in the State of Texas is deteriorating and does not conform to accepted minimum standards applicable to structures for human habitation;

(2) deteriorating housing contributes to the decline of residential areas in urban and rural communities throughout this state, and such housing causes reductions in the taxable values of cities, counties, and other units of local government;

(3) declining residential areas require large-scale public investment to mitigate the effect of slums, health and safety problems, and retard the development of socially and economically disruptive conditions within affected communities;

(4) many owners of deteriorating housing cannot afford to make needed repairs and improvements without expending more than a reasonable portion of their incomes for housing, and some homeowners are financially unable to afford to spend any amount whatsoever to upgrade the quality of their dwellings;

(5) existing programs sponsored by public and private agencies to facilitate the rehabilitation of housing owned by persons of low and moderate income are inadequate to meet current and future needs, and a cooperative state-local government housing rehabilitation program therefore is clearly warranted; and

(6) unless the problem of deteriorating housing and other problems associated with the decline of residential areas are affirmatively addressed by the legislature, the health, safety, and welfare of the residents of such areas, as well as the citizens

of the State of Texas generally, will be detrimentally affected.

Policy; Purpose

Sec. 3. It is the policy of the state and the purpose of this Act to provide a means by which the further deterioration of housing and the decline of residential areas in urban and rural communities throughout the State of Texas can be arrested and prevented. The legislature therefore declares that all of the purposes of this Act are public purposes and uses for which public money may be borrowed, expended, and loaned.

Definitions

Sec. 4. In this Act:

(1) "Borrower" means a household whose loan application is approved by a local government.

(2) "Department" means the Texas Department of Community Affairs.

(3) "Direct housing rehabilitation cost" means the amount contracted for between borrowers and contractors in a contract approved by a local government.

(4) "Fund" means the Texas Housing Rehabilitation Loan Fund.

(5) "Household" means a person or persons owning housing in an area designated under this Act.

(6) "Housing" means a structure which is situated on a permanent foundation and which consists of from one to four family units used exclusively for residential purposes.

(7) "Local agency" means a nonprofit organization whose principal purpose is to improve housing conditions or a local housing authority, urban renewal agency, or other public entity.

(8) "Local government" means a county, city, town, or village.

(9) "Rehabilitation" means the repair, renovation, or other improvement of housing with the object of making such housing decent, safe, sanitary, and more habitable.

Housing Rehabilitation Loan Fund

Sec. 5. (a) Funds for the implementation and administration of this Act shall be provided by the General Appropriations Act. A special account in the state treasury, to be known as the Texas Housing Rehabilitation Loan Fund is hereby created. Funds appropriated by the legislature for housing rehabilitation loans, together with any funds received from other sources for the purpose of making loans under this Act, must be placed in the fund. All repayments received from borrowers for loans made from the fund, income from the transfer of interests in property acquired in connection with rehabilitation loans made from the fund, and interest earned on deposits and investments of the fund shall be credited to the fund. It is the intent of this Act that the housing rehabilitation loan fund operate as a revolving fund whereby all appropriations and payments made thereto may be applied and reapplied to the purposes of this Act.

(b) The state treasurer shall invest and disburse money from the fund upon the written authorization of the executive director of the department. The department shall administer the fund as a revolving loan fund for carrying out the purposes of this Act and may designate separate accounts in the fund and the purposes for which the accounts are to be used.

(c) Money in the fund may be used only for:

(1) financing loans made pursuant to this Act, including the administrative charge provided for in Subsection (c) of Section 12 of this Act; and

(2) paying expenses incurred by the department in connection with the acquisition or disposal of real property under this Act.

Area Rehabilitation Plan

Sec. 6. (a) In order to qualify households within its boundaries for rehabilitation loans under this Act, a local government must designate a specific area, or areas, in conformity with standards established by the department, and must prepare an area rehabilitation plan for each designated area in the form prescribed by the department.

(b) An area rehabilitation plan must provide relevant information concerning the area and must include the following elements:

(1) a description of the physical, social, and economic characteristics of the area(s);

(2) a description of housing conditions in the area(s);

(3) an assessment of the need for housing rehabilitation loans in the area(s), such assessment to be expressed in terms of numbers and characteristics of households and average and total loan amounts;

(4) a description of methods by which the local government will determine whether the rehabilitation of housing in the area(s) is economically feasible;

(5) a description of methods by which rehabilitation work will be supervised and methods by which compliance with departmental regulations governing materials, fixtures, and rehabilitation contracts will be ensured;

(6) a description of methods and procedures that will be used to enforce local housing, building, fire, and related codes, or if such codes have not been enacted, a description of methods and procedures for enforcing the standards promulgated by the department;

(7) an assessment of the need for additional public improvements and public services in the area(s), together with a description of the specific

means by which these improvements and services will be provided; and

(8) a description of methods by which private investment to improve conditions in the area(s) will be encouraged.

(c) An area rehabilitation plan must be approved by resolution or order of the governing body of the local government and submitted to the department for review. The department shall determine whether the designated area meets the standards established by the department and whether the plan contains all the prescribed elements. If so, the department must accept the plan. Upon acceptance of the plan, households in the designated area are qualified to apply for housing rehabilitation loans. If an area does not meet the department's standards or a plan does not contain all the prescribed elements, the department shall return the plan to the local government with a list of deficiencies. No loans may be made within a designated area unless the deficiencies are corrected and the plan is resubmitted and accepted by the department.

Authority of the Department

Sec. 7. The department has all the powers necessary or appropriate to carry out the purposes of this Act. The department may:

(1) acquire interests in property necessary to and in connection with the making of rehabilitation loans under this Act as set forth in Section 8 of this Act;

(2) make contracts and agreements with the federal government, other agencies of the state, any other public agency, or any other person, association, corporation, local government, or other entity in exercising its powers and performing its duties under this Act;

(3) make regulations governing the disposition or further encumbrance by the borrower of property subject to a lien in connection with a rehabilitation loan;

(4) expend funds appropriated by the legislature to employ staff and for travel, supplies, materials, and equipment or to contract for services necessary to carry out its powers and duties under this Act;

(5) provide technical assistance to local governments; and

(6) seek and accept funding from any public or private source.

Interests in Property; Disposition

Sec. 8. (a) The department may not construct residential housing, nor may the department acquire residential housing except in connection with the enforcement of a lien under this Act, and then only by a foreclosure of a mortgage, a sale under a deed of trust, or by a voluntary conveyance from a borrower in full or partial settlement of a rehabilitation loan.

(b) If the department acquires residential housing in the enforcement of a lien, it must, within six months of such acquisition, offer the housing for public sale or auction. Notice of the public sale or auction must be provided by the department by publication once each week for three consecutive weeks prior to the day of the sale or auction in a newspaper of general circulation in the county in which the housing is located. The notice must contain a description of the property and must specify procedures for submitting competitive bids and the time and location of the public sale or auction. The department may reject any or all bids.

(c) If a sale cannot be effected by public sale or auction, the department may enter negotiations with any party for the expeditious sale of the housing. First priority must be given to selling the housing to a purchaser that will be required to pay ad valorem taxes on the property. If it is not practicable to sell it to such a purchaser, the department shall attempt to sell it to a purchaser that is exempt from ad valorem taxes but will make payments in lieu of taxes on the property. If neither type of purchaser is available, the department may sell it to any purchaser.

Regulations and Standards

Sec. 9. (a) The department shall adopt regulations for making and servicing housing rehabilitation loans, and for the foreclosure of defaulted loans. The regulations must require that each loan be evidenced by a promissory note payable to the state and secured by a valid lien on real property in this state.

(b) The department shall establish:

(1) standards by which households within the boundaries of a local government may qualify for loans;

(2) standards and procedures for the administration of this Act by local governments and local agencies;

(3) standards for the selection of contractors and for contracts between borrowers and contractors performing rehabilitation work under this Act; and

(4) standards for materials and fixtures used in performing rehabilitation work under this Act.

(c) The department shall set minimum and maximum interest rates for loans made under this Act.

(d) The department shall adopt minimum housing, building, fire, and related code standards for application in designated areas for which a rehabilitation plan has been accepted and no such local government standards are in effect.

Administration by Department

Sec. 10. (a) The department shall audit the local administration of rehabilitation loans under this Act to determine if good faith efforts are being made to comply with the applicable area rehabilitation plan

and the regulations, standards, and guidelines adopted by the department.

(b) If in any fiscal year anticipated rehabilitation loans exceed estimated available funds, the department shall allocate the estimated available funds for that fiscal year among the local governments that have filed area rehabilitation plans, taking into account the probable amount of rehabilitation loans to be made by each local government.

(c) Upon receipt of notification of approval of a loan application by a local government, the director shall authorize the state treasurer to disburse the approved amount from the fund to the local government unless:

(1) the department has found that the local government is currently not making good faith efforts to substantially comply with the applicable area rehabilitation plan or the regulations, standards, and guidelines adopted by the department; or

(2) the remaining portion of the fund allocated to the local government under Subsection (b) of this section is insufficient to allow payment of the approved amount.

Loan Eligibility

Sec. 11. (a) The department shall establish eligibility guidelines for local governments to use in determining whether households qualify for housing rehabilitation loans under this Act. In establishing these guidelines, the department shall take into account:

(1) household gross income;

(2) household income available for housing needs;

(3) household size;

(4) the value and condition of the housing to be rehabilitated; and

(5) the ability of households to compete successfully in the private housing market and to pay the amounts at which private enterprise is providing sanitary, decent, and safe housing.

(b) The department shall not approve any loan unless it finds that the benefit to an area designated pursuant to the requirements of Section 6 of this Act will exceed the financial commitment of the department and that the approval of the particular loan will be of benefit to the state and its taxpayers.

General Powers and Duties of Local Governments

Sec. 12. (a) A local government may approve or disapprove loan applications from households according to the eligibility guidelines and regulations of the department. Upon approval of a loan application, the local government shall notify the department of the amount of the approved loan.

(b) A local government shall fix the interest rate for each loan within the minimum and maximum rates established by the department and shall fix the term of each loan and any other necessary conditions pertaining to the repayment of the loan pursuant to this Act and the regulations of the department.

(c) A local government may impose an administrative charge of not more than three percent of the direct housing rehabilitation cost and may deduct the charge from the amount loaned to borrowers.

(d) A local government may contract with any public or private entity for servicing rehabilitation loans.

(e) The governing body of a local government may designate a local agency or agencies to carry out any of the powers and duties of the local government under this Act. Any power or duty that a governing body delegates to a local agency may be withdrawn by the governing body at any time.

(f) A local government engaged in housing rehabilitation under this Act shall carry on a program of general education designed to inform residents in designated areas of methods for maintaining their housing and of the availability of housing rehabilitation loans.

Loan Conditions

Sec. 13. (a) Rehabilitation loans must be used primarily to make housing comply with state, county, or municipal building, housing maintenance, fire, health, or similar codes and standards applicable to housing.

(b) No loan made under this Act may exceed an amount which, when added to all other existing indebtedness secured by the property, would exceed the market value of the rehabilitated property as determined by the local government. No loan may exceed the total of the approved direct housing rehabilitation cost together with the administrative charge provided for in Subsection (c) of Section 12 of this Act.

(c) The term of a loan made under this Act may not exceed 20 years. It must be repaid by installments and must be secured as required by this Act and the regulations of the department. The local government may allow deferment of payments or adjust the interest rate or term of the note if the borrower is unable to make the required payments.

(d) A borrower must agree that if he voluntarily destroys, moves, or relinquishes ownership of the rehabilitated housing within one year after completion of the rehabilitation, the loan is immediately due and payable, together with an interest surcharge sufficient to make the total interest paid equivalent to an amount determined by prevailing interest rates for rehabilitation loans from private sources at the time of the sale. If the local government finds that the borrower must sell due to financial hardship or similar circumstances, the interest surcharge may be waived by the local government with the consent of the department.

(e) The department may take title by foreclosure to any project where such acquisition is necessary to protect any loan previously made therefor by the department and to pay all costs arising out of such foreclosure.

Rehabilitation Contracts

Sec. 14. (a) A borrower and contractor may not enter into a contract for rehabilitation work to be financed under this Act unless the proposed contract has first been approved by the local government in accordance with standards established by the department. The local government shall supervise all work performed under the contract. The contractor is not entitled to payment until the work has been approved by the local government, and the borrower is not liable to the contractor for any work not approved by the local government.

(b) Any contract involving the expenditure of more than $3,000 for housing rehabilitation construction or other work financed by means of loan funds applied by the department may be made only after advertising in the manner provided by Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes). The provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds, shall apply to construction contracts.

Pledge of State Credit Prohibited

Sec. 15. The department shall have no power at any time to borrow money, incur pecuniary obligations, or in any manner to pledge the credit or taxing power of the State of Texas or any of its political subdivisions.

Transfer of Encumbered Property

Sec. 16. Upon sale or gift of the encumbered property, or upon the death of the borrower, the local government may, subject to approval of the department, declare all or part of any deferred payments due and payable, declare the balance of the loan due and payable, or allow the buyer, donee, or other successor in title of the borrower to assume the loan if the buyer, donor, or successor qualifies under the provisions of Section 11 of this Act. [Acts 1977, 65th Leg., p. 2020, ch. 808, eff. Aug. 29, 1977.]

Art. 1269l-6. Housing Agency Act

Short Title

Sec. 1. This Act shall be known and may be cited as the Texas Housing Agency Act.

Definitions

Sec. 2. In this Act the following words, as used in this Act, shall have the meanings set forth below, unless the context clearly requires otherwise:

(a) "Act" means the Texas Housing Agency Act.

(b) "Agency" means the Texas Housing Agency created by the Act.

(c) "Board" means the board of directors of the agency.

(d) "Bond" means any type of interest-bearing obligation, including, without limitation, any bond, note, bond anticipation note, or other evidence of indebtedness, whether general or special, whether negotiable or nonnegotiable in form, whether in bearer or registered form, whether in temporary or permanent form, whether with or without interest coupons, and regardless of the source of payment.

(e) "Director" means a member of the board.

(f) "Federal government" means the United States of America or any department, division, agency, or instrumentality, corporate or otherwise, of the United States of America.

(g) "Federally insured mortgage" means a mortgage loan for residential housing which is insured or guaranteed by the federal government or for which there is a commitment to insure or guarantee the mortgage by the federal government.

(h) "Federal mortgage" means a mortgage loan for residential housing made by the federal government or for which there is a commitment by the federal government to make the mortgage loan.

(i) "Housing development costs" means the total of all costs incurred in financing, creating, or purchasing any housing development, including but not limited to a single-family dwelling, which is approved by the agency as reasonable and necessary. The costs may include but are not limited to:

(1) the value of land and any buildings on the land owned by the sponsor or the cost of land acquisition and any buildings on the land, including payments for options, deposits, or contracts to purchase properties on the proposed housing sites;

(2) cost of site preparation, demolition, and development;

(3) any expenses relating to the issuance of bonds;

(4) fees paid or payable in connection with the planning, execution, and financing of the housing development, such as those to the architects, engineers, attorneys, accountants, and the agency;

(5) cost of necessary studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction;

(6) cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, and apparatus related to the real property;

(7) cost of land improvements, including without limitation, landscaping and off-site improve-

ments, whether or not the costs have been paid in cash or in a form other than cash;

(8) necessary expenses in connection with initial occupancy of the housing development;

(9) a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor;

(10) an allowance established by the agency for working capital and contingency reserves and reserves for any anticipated operating deficits during the first two years of occupancy; and

(11) the cost of the other items, including tenant relocation, if tenant relocation costs are not otherwise being provided for, as the agency shall determine to be reasonable and necessary for the development of the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during construction.

(j) "Housing development" or "housing project" means any real or personal property, project, building, structure, facilities, work, or undertaking, whether existing, new construction, remodelling, improvement, or rehabilitation, which meets or is designed to meet minimum property standards prescribed by the agency and which is financed pursuant to the provisions of this Act for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for persons and families of low income and families of moderate income in need of housing. The term may include buildings, structures, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other nonhousing facilities, such as administrative, community, and recreational facilities the agency determines to be necessary, convenient, or desirable appurtenances. "Housing development" and "housing project" include both single-family dwellings and multifamily dwellings in rural and in urban areas.

(k) "Housing sponsor" means individuals, including persons and families of low income or families of moderate income, joint ventures, partnerships, limited partnerships, trusts, firms, corporations, and cooperatives, approved by the agency as qualified either to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development, subject to the regulatory powers of the agency and other terms and conditions set forth in this Act. In economically depressed or blighted areas or in federally assisted new communities located within a home-rule city, "housing sponsor" may include a person or persons or family or families whose income exceeds the amount constituting moderate income if at least 90 percent of the total mortgage amount available under a mortgage revenue bond issue is designated for persons and families of low income or families of moderate income.

(*l*) "Land development" means the process of acquiring land for residential housing construction and making, installing, or constructing nonresidential improvements, including, without limitation, waterlines and water supply installations, sewer lines and sewage disposal installations, steam, gas, and electric lines and installations, roads, streets, curbs, gutters, and sidewalks, whether on or off the site, which the agency deems necessary or desirable for housing developments to be financed by the agency.

(m) "Mortgage" means a mortgage, mortgage deed, deed of trust, or other instrument which constitutes a lien:

(1) on real property; or

(2) on a leasehold under a lease having a remaining term which at the time the mortgage is acquired does not expire until after the maturity date of the interest-bearing obligation secured by the mortgage.

(n) "Mortgage lender" means any bank or trust company, savings bank, mortgage company, mortgage banker, credit union, national banking association, savings and loan association, building and loan association, life insurance company, or other financial institution authorized to transact business in the state that is approved as a mortgage lender by the agency.

(*o*) "Mortgage loan" means an interest-bearing obligation secured by a deed of trust, a mortgage, bond, note, or other instrument which is a first lien on real property in the state.

(p) "Municipality" means any city, town, or village in this state.

(q) "Persons and families of low income" means persons and families determined by the board to require assistance as is made available by this Act because of insufficient personal or family income taking into consideration, without limitation, such factors as:

(1) the amount of the total income of such persons and families available for housing needs;

(2) the size of the family;

(3) the cost and condition of housing facilities available;

(4) the ability of the persons and families to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing; and

(5) standards established for various federal programs determining eligibility based on income.

(r) "Family of moderate income" means a family:

(1) that is determined by the board to require assistance, taking into account the factors listed in Subdivision (q) of this section; and

(2) that does not qualify as a family of low income.

(s) "Public agency" means any board, authority, agency, department, commission, political subdivision, municipal corporation, district, public corporation, body politic, or instrumentality of the state including, without limitation, any county, home-rule charter city, general-law city, town, or village, any housing authority, any state-supported educational institution of higher learning, any school, junior college, hospital, water, sewerage, waste disposal, pollution, road, navigation, levee, drainage, conservation, reclamation, or other district or authority, and any other type of political or governmental entity of the state.

(t) "Real property" means all land, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including leasehold interests, terms for years, and liens by way of judgment, mortgage, or otherwise.

(u) "Reserve fund" means the Texas Housing Agency Reserve Fund which may be created pursuant to this Act and which may be established by the agency with the State Treasurer of the State of Texas out of proceeds from the sale of the agency's bonds or other resources, as additional security for the agency's bonds.

(v) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction, reconstruction, remodelling, improvement, or rehabilitation of land, buildings, and improvements thereto, for residential housing, and such other nonhousing facilities as may be incidental or appurtenant thereto.

(w) "State" means the State of Texas.

(x) "Economically depressed or blighted area" means: (i) an area that has been determined by the agency to be a qualified census tract or an area of chronic economic distress pursuant to the requirements of Section 103A, Internal Revenue Code of 1954 (26 U.S.C. Section 103A), or (ii) an area established within a city that has a substantial number of substandard, slum, deteriorated, or deteriorating structures, that suffers from a high relative rate of unemployment, or (iii) that has been designed and included in a tax increment district created under Chapter 695, Acts of the 66th Legislature, Regular Session, 1979 (Article 1066d, Vernon's Texas Civil Statutes). To establish an economically depressed or blighted area, pursuant to the provisions of (ii) or (iii) of this subsection, the governing body of the city must hold a public hearing and find that the area substantially impairs or arrests the sound growth of the city, or that it constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use. The governing body of a city holding such a hearing must give notice as provided by Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), except that notice must be published not less than 10 days before the day of the hearing.

(y) "Federally assisted new communities" shall mean those federally assisted areas which have received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act [1] and a portion of the federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974, as amended.[2]

[1] 12 U.S.C.A. § 1749aa et seq.
[2] 42 U.S.C.A. § 5307(a)(1).

Creation of the Agency

Sec. 3. (a) There is hereby created and established a public and official governmental agency of the state, to be known as the Texas Housing Agency, and the state shall act by and through the agency in carrying out all powers and duties conferred by this Act. The exercise by the agency of all powers and duties conferred by this Act shall constitute and be deemed and held to be an essential public and official governmental function and purpose of the state, acting by and through the agency, in promoting the general welfare and prosperity of the state and all of its citizens.

(b) The agency is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the agency is abolished and this Act expires effective September 1, 1991.

Primary Purpose of the Agency: Declaration of Policy

Sec. 4. It is hereby declared:

(a) that there exists within both rural and urban areas of this state a shortage of sanitary and safe residential housing at prices or rentals which persons and families of low income and families of moderate income can afford; that this shortage has contributed to and will contribute to the creation and persistence of substandard living conditions and is inimical to the health, welfare, and prosperity of the residents and communities of this state;

(b) that it is imperative that the supply of residential housing for such persons and families and for persons and families displaced by public actions or natural disaster be increased;

(c) that private enterprise and investment are unable, without financial assistance, to provide in sufficient quantities the needed construction or rehabilitation of sanitary and safe residential

housing at prices or rentals which persons and families of low income and families of moderate income can afford and to provide sufficient long-term mortgage financing for residential housing for occupancy by such persons and families;

(d) that private enterprise and investment be encouraged to develop land and to build and to rehabilitate residential housing for such persons and families, and that private financing be supplemented by financing as provided in this Act in order to help prevent the creation and recurrence of substandard living conditions and to assist in their permanent elimination throughout this state. It is further declared that in order to provide a fully adequate supply of sanitary and safe dwelling accommodations at rents, prices, or other costs which such persons or families can afford, the legislature finds that it is necessary to create and establish a housing finance agency for the purpose of encouraging the investment of private capital and stimulating the acquisition, construction, and rehabilitation of residential housing to meet the needs of such persons and families through the use of public financing, to provide construction and mortgage loans, and to make provision for the purchase of mortgage loans and otherwise. It is hereby further declared to be necessary and in the public interest that such housing finance agency provide for predevelopment costs, temporary financing, incidental land development expenses, and residential housing acquisition, construction, or rehabilitation by housing sponsors for sale or rental to persons and families of low income and families of moderate income; and further, to provide mortgage financing, including, without limitation, long-term federally insured mortgages to eligible housing sponsors; and further, to increase the acquisition, construction, and rehabilitation of low income housing through the purchase from mortgage lenders authorized to transact business within the state of first mortgage loans for residential housing for persons and families of low income and families of moderate income in this state; and further, to provide technical, consultative, and project assistance services to private sponsors, to assist in coordinating federal, state, regional, and local public and private efforts and resources, to guarantee to the extent provided herein the repayment of certain loans secured by residential mortgages, and to preserve the quality of life in this state. It is hereby further declared that all of the foregoing are public purposes and uses for which public money may be borrowed, expended, advanced, loaned, granted, or appropriated, and that such activities serve a public purpose in improving or otherwise benefitting the people of this state; that the necessity of enacting the provisions of this Act is in the public interest and is hereby so declared as a matter of express legislative determination.

Appointment and Removal of Directors

Sec. 5. (a) The board of directors of the agency which is and constitutes a "board" of the state, within the meaning of Article XVI, Section 30a, of the Texas Constitution and which shall have such powers and duties as are prescribed in this Act shall consist of nine members, entitled directors. Each director occupies one of the nine places on the board designated as Places 1 through 9.

(b) The nine regular directors shall be appointed by the governor with the advice and consent of the senate.

(c) Except for the initial appointees, directors hold office for staggered terms of six years, with the terms of three directors expiring on January 31 of each odd-numbered year. Each director shall hold office until a successor is appointed and has qualified.

(d) The directors initially appointed to occupy Places 1, 4, and 7 shall serve terms expiring on January 31, 1981. The directors initially appointed to occupy Places 2, 5, and 8 shall serve terms expiring on January 31, 1983. The directors initially appointed to occupy Places 3, 6, and 9 shall serve terms expiring on January 31, 1985.

(e) Each director is eligible for reappointment.

(f) Any vacancy on the board is filled by appointment by the governor with the advice and consent of the senate. A vacancy, except for expiration of term, is filled for the unexpired term only. If a vacancy occurs while the senate is not in session, the governor may make the appointment subject to confirmation by the senate when convened.

(g) To be eligible for appointment as a director, a person must be a qualified voter of the state and not hold any other public office. The governor shall make appointments so that the places on the board are occupied by persons having the following experience:

(1) Place 1—a person with experience in housing development administration;

(2) Place 2—a person with experience in commercial banking;

(3) Place 3—a person with experience in real estate operations;

(4) Place 4—a person with experience in home building;

(5) Place 5—a person with experience in apartment construction or ownership;

(6) Place 6—a person with experience in mortgage banking;

(7) Place 7—a person with experience in savings and loan operations;

(8) Place 8—a person with experience in municipal or county government;

(9) Place 9—a person with experience in housing problems of persons and families of low income and families of moderate income.

General Provisions Relating to the Board

Sec. 6. (a) The directors do not receive any compensation but each director is entitled to reimbursement for actual expenses incurred in performing duties of office to the extent authorized by the board.

(b) The board shall employ an executive administrator of the agency. The administrator may attend all meetings and participate in all proceedings of the board, but may not vote.

(c) The executive director of the Texas Department of Community Affairs, shall, as part of his or her regular duties of office, serve, ex officio, as the chairman of the board, who shall preside at meetings of the board and perform such other duties as are prescribed by the board and this Act, except that he or she shall not have a vote.

(d) The board shall elect one of the directors as vice-chairman to perform the duties of the chairman when the chairman is not present or is incapable of performing duties. The board shall elect a secretary to be the official custodian of the minutes, books, records, and seal of the board and to perform other duties as prescribed by the board. The board shall elect a treasurer to perform duties prescribed by the board. The offices of secretary and treasurer may be held by one person, and the holder of each of these offices need not be a director. The board may appoint one or more persons who are not directors to be assistant secretaries who may perform any duty of the secretary.

(e) A majority of the regular members of the board of directors constitutes a quorum. The board shall act and proceed by and through resolutions adopted by the board. The affirmative vote of at least five directors is necessary to adopt a resolution.

(f) The vice-chairman, secretary, and treasurer of the board shall be elected at the first meeting of the board after all directors shall have been appointed, taken the oath required by Article XVI, Section 1, of the Texas Constitution, and otherwise qualified for office. Thereafter, officers of the board shall be elected at the first meeting of the board on or following January 31 of each odd-numbered year, or at any time necessary to fill a vacancy.

(g) The board shall hold regular meetings at times specified by resolution of the board and may hold special meetings when called by the chairman, the administrator, or three of the directors.

(h) Prior to the issuance of bonds, each director shall execute a surety bond in the penal sum of $25,000, conditioned on the faithful performance of the duties of director, executed by a surety company authorized to transact business in this state, approved by the attorney general, and filed with the secretary of state. The surety bonds shall be kept in force at all times thereafter and the costs shall be paid by the agency.

(i) A director, chairman of the board, or administrator is not liable personally for any bonds issued or contracts executed by the agency.

Powers of the Administrator and the Board

Sec. 7. (a) The administrator of the agency shall exercise and perform all powers, duties, and functions prescribed by this Act except those prescribed in Subsection (b) of this section or otherwise required to be exercised by the board. The administrator, with the advice and consent of the board, shall appoint a deputy administrator of the agency. The administrator may employ any other employees necessary for the discharge of the duties of the agency, in such number and for such time as may be necessary for the performance of such duties and functions and to remove same, subject to the annual budget and the provisions of any resolution authorizing the issuance of the agency's bonds.

(b) The board shall have the following specific duties and powers, in addition to any other specific duties and powers assigned to the board in this Act:

(1) in its discretion, authorize all bonds of the agency;

(2) make rules, not inconsistent with this Act, governing the administration of the agency and its programs;

(3) adopt procedures for approving loans, purchases of loans, and commitments to purchase loans under this Act;

(4) adopt underwriting standards for loans made or purchased by the agency;

(5) adopt minimum property standards for housing developments financed under this Act;

(6) establish interest rates and amortization schedules for loans made or purchased by the agency;

(7) establish a schedule of fees and penalties authorized by this Act, including but not limited to application, processing, loan commitment, origination, servicing, and administrative fees;

(8) establish eligibility criteria for persons and families of low income and families of moderate income to participate in and benefit from the agency's programs;

(9) compile a list of approved mortgage lenders;

(10) approve an annual report of the agency; and

(11) approve an annual budget pursuant to Section 18 of this Act.

General Powers of the Agency

Sec. 8. (a) The agency is hereby granted, has, and may exercise all powers necessary or appropriate to carry out, achieve, or effectuate the purposes of this Act, including, without limitation, the following powers:

(1) to sue and be sued, and plead and be impleaded, in its own name; and it is specifically enacted that the agency is and constitutes a separate governmental agency and a body politic and corporate of this state, acting for and on behalf of this state;

(2) to adopt an official seal and alter same when deemed advisable;

(3) to adopt and enforce bylaws and rules for the conduct of its affairs not inconsistent with bylaws and this Act;

(4) to acquire, hold, invest, deposit, use and dispose of its revenues, income, receipts, funds, and money from every source and to select its depository or depositories, subject only to the provisions of this Act and any covenants with respect to the agency's bonds;

(5) to acquire, own, rent, lease, accept, hold, or dispose of any real, personal, or mixed property, or any interest therein, in performing its duties and exercising its powers under this Act, by purchase, exchange, gift, assignment, transfer, foreclosure, sale, lease, or otherwise, including rights or easements and to hold, manage, operate, or improve real, personal, or mixed property, except that:

(A) the agency may not construct or acquire any housing development unless acquired through foreclosure of mortgages or sales under deeds of trust;

(B) the agency shall make a diligent effort to sell a housing development so acquired to a purchaser who will be required to pay ad valorem taxes on the housing development or, if such a purchaser cannot be found, to any other purchaser; and

(C) in any event the agency shall sell a housing development so acquired within three years after the date of acquisition unless the board adopts a resolution stating that a purchaser for the housing development cannot be found after diligent search by the agency, in which case the agency shall continue to try to find a purchaser and shall sell the housing development when a purchaser is found;

(6) to sell, assign, lease, encumber, mortgage, or otherwise dispose of any real, personal, or mixed property, or any interest therein, or any deed of trust or mortgage lien interest owned by it or under its control, custody, or in its possession, and release or relinquish any right, title, claim, lien, interest, easement, or demand however acquired, including any equity or right of redemption in property foreclosed by it, and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding the provisions of any other law; and to lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities from private parties to effectuate the purposes of this Act;

(7) to request and accept any appropriations, grants, allocations, subsidies, rent supplements, guaranties, aid, contributions, services, labor, materials, gifts, or donations from the federal government, the state, any public agency, or any other sources;

(8) to maintain an office or offices throughout the state and appoint and determine the duties, tenure, qualifications, and compensation of its officers, employees, agents, professional advisors, and counselors, including, without limitation, financial consultants, accountants, attorneys, architects, engineers, real estate consultants, appraisers, housing construction and financing experts, as are determined necessary or advisable; it is the intention of this Act that the programs of the agency be coordinated with the programs of the Texas Department of Community Affairs with respect to their design and implementation in order to avoid duplication of governmental housing programs;

(9) to make, enter into, and enforce contracts and agreements with the federal government, the state, any public agency, or any person, firm, corporation, or other entity in performing its duties and exercising its powers under this Act; to make and enter into all contracts, agreements, and other arrangements with mortgage lenders; to designate mortgage lenders to act for and in behalf of the agency, with respect to originating, servicing, and processing mortgage loans of the agency, under the terms and conditions agreed on between the parties; and to provide, contract, or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication;

(10) to issue its bonds, to provide for and secure the payment of the bonds, and to provide for the rights of the holders of the bonds, in the manner and to the extent permitted by this Act and the Texas Constitution; and to purchase, hold, cancel, or resell or otherwise dispose of any of its bonds, subject to any restrictions in any resolution authorizing the issuance of its bonds;

(11) to fix, charge, and collect fees and charges in connection with loans made or other services provided by the agency pursuant to this Act;

(12) to do anything authorized by this Act, through its directors, officers, or employees, or by contracts with the federal government, the state, any public agency, or any person, firm, corporation, or other entity;

(13) to invest its money in any bonds, obligations, or other securities or place such money in demand or time deposits, whether or not evidenced by certificates of deposit unless otherwise provided by this Act or a resolution authorizing the issuance of its bonds;

(14) to do all things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied by this Act;

(15) to conduct hearings and to take testimony and proof, under oath or affirmation, at public hearings, on any matter necessary to carry out the purposes of this Act;

(16) to procure and pay premiums on insurance of any type whatsoever, in amounts and from insurers as the board deems necessary or advisable;

(17) to encourage individual or cooperative home ownership among persons and families of low income and families of moderate income in this state; and

(18) to investigate housing conditions and the means for improving those conditions and determine where slum or blighted areas exist.

(19) The Texas Housing Agency may target the proceeds from housing bonds issued by it to any geographic area or areas of the state. The Texas Housing Agency is also authorized to make loans to mortgage lenders or to public agencies, the proceeds of which will be used to make loans for multifamily housing developments which will be substantially occupied by persons and families of low income or families of moderate income.

Powers Relative to Making Mortgage Loans and Construction Loans to Housing Sponsors

Sec. 9. In addition to all other powers, the agency shall have the following specific powers:

(a) The agency may make, undertake commitments to make, and participate in the making of mortgage loans, including, without limitation, federally insured mortgage loans, and/or make temporary loans and advances in anticipation of permanent mortgage loans to housing sponsors to finance the purchase, construction, remodeling, improvement, or rehabilitation of housing developments for residential housing designed and planned for persons and families of low income and/or families of moderate income, upon the terms and conditions set forth in this Act.

(b) The agency may make and publish rules respecting making mortgage loans pursuant to this Act, the regulations of borrowers, the construction of ancillary commercial facilities, and resale and disposition of any real property, or any interest therein, financed by the agency.

(c) The agency may enter into agreements and contracts with housing sponsors and mortgage lenders under the provisions of this Act with respect to making or participating in making mortgage loans for residential housing for persons and families of low income and/or families of moderate income.

(d) The agency may institute any action or proceeding against any housing sponsor receiving a loan under the provisions hereof, or owning any housing development hereunder in any court of competent jurisdiction in order to enforce the provisions of this Act, the terms and provisions of any agreement or contract between the agency and such recipients of loans under the provisions hereof, including, without limitation, provisions as to rental or carrying charges and income limits as applied to tenants or occupants, or to foreclose its mortgage, or to protect the public interest, persons and families of low income or families of moderate income, stockholders, or creditors of the sponsor. In connection with any such action or proceeding the agency may apply for the appointment of a trustee or receiver to take over, manage, operate, and maintain the affairs of a housing sponsor. The agency through such agent as it shall designate is hereby authorized to accept appointment as trustee or receiver of any such sponsor when so appointed by a court of competent jurisdiction.

Loan Terms and Conditions

Sec. 10. Loans made by the agency under the preceding section shall be subject to the following terms and conditions:

(a) The agency shall not process an application for a loan for a housing development unless the applicant is a housing sponsor and the application is submitted and recommended by a mortgage lender.

(b) The ratio of loan to total housing development cost and the amortization period of loans made under this Act which are insured or guaranteed by the federal government are governed by the federal government mortgage insurance commitment or federal guarantee for each housing development, except the amortization period may not exceed 40 years.

(c) A mortgage loan not insured by the federal government may not exceed 95 percent of the total housing development cost as determined by the agency. The amortization period of the loan shall be determined in accordance with regulations formulated and published by the agency, except the amortization period may not exceed 40 years.

(d) A mortgage loan made under this Act may be prepaid to maturity after the period of years and under the terms and conditions decided upon by the board.

(e) The agency may set the interest rates at which it makes loans and commitments therefor. The interest rates shall be established by the board in its sole discretion so as to produce at least the amounts required, together with other available funds, to pay for the agency's costs of operation and to meet its covenants with and responsibilities to the holders of its bonds. In addition to such interest charges the agency shall make and collect such fees and charges, including but not limited to reimbursement of the agency's financing costs, service charges, insurance premiums, and mortgage insurance premiums, as the agency determines to be reasonable.

(f) In considering an application for a loan, the agency shall give first priority to applications for

well-planned and well-designed housing developments. The agency shall also give consideration to:

(1) the comparative need for housing for persons and families of low income and families of moderate income in the area to be served by the proposed housing development;

(2) the ability of the applicant to carry out, operate, manage, and maintain the proposed housing development;

(3) the existence of zoning, protective covenants, or regulations that adequately protect the proposed housing development against detrimental future uses that could cause undue depreciation in the value of the housing development; and

(4) the availability in urban areas of adequate parks, recreational areas, utilities, schools, transportation, and parking.

(g) Each mortgage loan shall be evidenced by a mortgage or deed of trust note or bond and by a mortgage or deed of trust that constitutes a first lien on the housing development and on all the real property constituting the site of or relating to the housing development, and that contains provisions and is in a form required by the agency. The note or bond and mortgage or deed of trust may contain exculpatory provisions relieving the borrower or its principal from personal liability if agreed upon by the agency.

(h) Each mortgage loan is subject to an agreement between the agency and the housing sponsor that subjects the sponsor and its principals or stockholders to limitations established by the agency as to rentals and other charges, builders' and developers' profits and fees, and the disposition of its property and on all of the real property constituting the site of or relating to the housing development.

(i) As a condition of each loan, the agency may at any time during the construction, rehabilitation, or operation of a housing development:

(1) enter upon and inspect the housing development, including all parts thereof, for the purpose of investigating the physical and financial condition thereof, and its construction, rehabilitation, operation, management, and maintenance and to examine all books and records with respect to capitalization, income, and other matters relating thereto and to make such charges as may be required to cover the cost of such inspections and examinations;

(2) order alterations, changes, or repairs necessary to protect the security of the agency's investment in a housing development or the health, safety, and welfare of the occupants; and

(3) order any managing agent, housing development manager, or owner of a housing development to do whatever is necessary to comply with the provisions of applicable laws, ordinances, or rules of the agency or the terms of any agreement concerning the housing development or to refrain from doing any acts in violation thereof and in this regard the agency shall be a proper party to file a complaint and to prosecute thereon for any violations of laws or ordinances as set forth herein.

(j) A housing sponsor may not make distributions in any one year with respect to a housing development financed by the agency in excess of that which shall be prescribed by rules of the agency of the housing sponsor's equity in the development. The principals or stockholders of a housing sponsor may not at any time earn, accept, or receive a return greater than that which shall be prescribed by rules of the agency per annum of their investment in a housing development financed by the agency. A housing sponsor's equity in a housing development consists of the difference between the mortgage loan and the total housing development cost. The agency shall establish the sponsor's equity at the time of the making of the final mortgage advance and, for the purposes of this subsection, that figure remains constant during the life of the agency's mortgage or deed of trust on the development, except for additional equity investment made by the sponsor with the agency's approval or at its order.

Purchase and Sale of Mortgage Loans

Sec. 11. (a) The agency may purchase and take assignments from mortgage lenders or the federal government of notes and mortgages evidencing loans for the construction, remodeling, improvement, or rehabilitation, purchase, leasing, or refinancing of housing developments for persons and families of low income and families of moderate income.

(b) The agency may sell, at public or private sale, with or without public bidding, a mortgage or other obligation held by the agency.

Terms of the Purchase and Sale of Mortgage Loans

Sec. 12. (a) No mortgage loan purchased from a mortgage lender is eligible for purchase by the agency unless the mortgage lender certifies that:

(1) the mortgage loans transferred to the agency are for housing developments for persons or families of low income or for families of moderate income; or

(2) the proceeds of the sale or the equivalent have been or will be invested in mortgage loans that benefit persons and families of low income and families of moderate income or invested in short-term obligations pending the making of such mortgage loans.

(b) When the agency purchases a mortgage loan from a mortgage lender, it shall pay a purchase price equal to the outstanding principal balance, except that discount from the principal balance or the pay-

ment of a premium may be employed to effect a fair rate of return consistent with the obligations of the agency and the purposes of this Act. In addition to payment of the outstanding principal balance, the agency shall pay the accrued interest due to the date on which the mortgage loan is delivered against payment.

(c) Mortgage loans purchased or sold under this section may include mortgage loans that are insured, guaranteed, or assisted by the federal government, or for which there is commitment by the federal government to insure, guarantee, or assist the mortgage loan.

(d) The agency shall adopt rules governing the purchase and sale of mortgage loans and the application of the proceeds thereof, including rules governing:

(1) procedures for submitting requests or inviting proposals for the purchase and sale of mortgage loans;

(2) restrictions as to the number of family units, location, or other qualifications of residences to be financed by residential mortgage loans, and income limits of persons and families of low income or families of moderate income occupying the residence;

(3) restrictions as to the interest rates on mortgage loans or the return realized by mortgage lenders;

(4) requirements for commitments by mortgage lenders with respect to mortgage loans;

(5) schedules of fees and charges necessary for expenses and reserves of the agency;

(6) resale of the housing development; and

(7) any other matters related to the powers of the agency to purchase and sell mortgage loans.

(e) The agency shall review each mortgage loan purchased by the agency to determine if the loan meets the conditions of this Act, the rules of the agency, and any commitment made with the mortgage lender to purchase mortgage loans. The agency may require the substitution of another mortgage loan when it determines that a loan does not comply with this Act, its rules, or a commitment made with the mortgage lender. Subsections (b), (c), (d), (e), and (g) of Section 10 of this Act apply to the purchase of mortgage loans.

(f) The agency may not purchase an obligation that is more than two years old.

Supervising Housing Sponsors

Sec. 13. The agency shall have the power to supervise housing sponsors of housing developments that are rented or leased to tenants, including limited profit housing sponsors, and their real and personal property, in the following respects:

(a) The agency may prescribe uniform systems of accounts and records for housing sponsors and may require housing sponsors to make reports and certifications of their expenditures and to answer specific questions on forms and at such times as may be necessary for the purposes of this Act.

(b) The agency, through its agents or employees, may enter upon and inspect the land, buildings, and equipment of a housing sponsor, including all parts thereof, and may examine all records showing the capital structure, income, expenditures, and other payments of a housing sponsor.

(c) The agency may supervise the operation and maintenance of a housing development and may order repairs as necessary to protect the public interest or the health, welfare, or safety of the housing development occupants.

(d) The agency shall approve and may alter from time to time a schedule of rents and charges for a housing development.

(e) The agency shall determine standards for and shall control tenant and management selection by a housing sponsor.

(f) The agency may require a housing sponsor to pay the agency fees and charges for the costs of regulating the housing sponsor, including, without limitation, the costs of examination, inspection, supervision, and auditing the housing sponsor.

(g) The agency may order a housing sponsor to do or to refrain from doing what is necessary to comply with the provision of law, the rules of the agency, and the terms of a contract or agreement to which the housing sponsor is a party.

(h) The agency shall regulate the retirement of any capital investment or the redemption of stock of a limited profit housing sponsor if the retirement or redemption, when added to any dividend or other distribution, exceeds in any one fiscal year the permitted percentage, as shall be prescribed by rules of the agency, of the original face amount of the limited profit housing sponsor's investment or equity in any housing development.

(i) The agency shall make rules specifying the categories of cost allowable in the construction, reconstruction, remodelling, improvement, or rehabilitation of a housing development. The agency shall require a housing sponsor to certify the actual housing development costs on completion of the housing development, subject to audit and determination by the agency, except that the agency may accept, in lieu of certification of housing development costs, other assurances of the housing development costs, in any form or manner whatsoever, that will enable the agency to determine with reasonable accuracy the amount of the housing development costs.

(j) This section does not apply to any housing development for which persons or families of low income or families of moderate income receive a mortgage loan hereunder and which initially is intended for occupancy by such persons or families.

Admission to Housing Developments

Sec. 14. (a) Admission to housing developments that are rented or leased to tenants financed under this Act is limited to persons or families of low income and families of moderate income.

(b) The agency shall periodically examine the income of any person or family who are tenants residing in a housing development. The agency or, with the approval of the agency, the housing sponsor of a housing development may terminate the tenancy or interest of any person or family whose gross income exceeds the income level prescribed for admission by more than 25 percent for a period of six months or more. No tenancy or interest of any person or family in any housing development may be terminated except on reasonable notice and opportunity to obtain suitable alternate housing in accordance with rules of the agency. A person or family whose gross income would not otherwise permit continued occupancy of a dwelling unit may, with the approval of the agency, continue to occupy a dwelling unit on payment of a surcharge to the housing sponsor in accordance with a schedule of surcharges fixed by the agency.

(c) If a person or family who resides in a cooperative housing development must move from the housing development because of excessive income, the person or family must be discharged from liability of any note, bond, or other evidence of indebtedness and reimbursed, in accordance with the rules of the agency, for all sums paid to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy or on account of the acquisition of title for that purpose.

(d) This section does not apply to any housing development for which persons or families of low income or families of moderate income receive a mortgage loan hereunder and which initially is intended for occupancy by such persons or families.

Procedure Prior to Financing of Housing Developments Undertaken by Housing Sponsors

Sec. 15. Notwithstanding any other provision of this Act, the agency is not empowered to finance any housing development undertaken by a housing sponsor unless, prior to the financing of any housing development hereunder, the agency finds that:

(1) the housing development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices which persons or families of low income or families of moderate income can afford;

(2) the housing sponsor or sponsors undertaking the proposed housing development in this state will supply well-planned and well-designed housing for persons or families of low income or families of moderate income and that such sponsors are financially responsible;

(3) the financing of the housing development pursuant to the provisions of this Act will constitute a public purpose and will provide a public benefit; and

(4) the housing development will be undertaken within the authority conferred by this Act upon the agency and the housing sponsor or sponsors.

Exemption from Taxation

Sec. 16. The property of the agency, its income, and operations are exempt from all taxes and assessments imposed by the state and all public agencies on property acquired or used by the agency under the provisions of this Act. The agency may, under its terms, conditions, and rules, make payments to public agencies in lieu of ad valorem taxes on any property which the agency has acquired through foreclosure or sale under a deed of trust. It shall be the policy of the agency to make these payments in lieu of taxes whenever practicable with any money lawfully available for this purpose, subject to the provisions, requirements, and restrictions of any bond resolution.

Fiscal Year; Annual Report; Audit

Sec. 17. The agency shall operate on a fiscal year beginning September 1 and ending August 31. The agency shall have an audit of its books and accounts for each fiscal year by the state auditor or by a certified public accountant. The cost of the audit is an expense of the agency. A copy of the audit shall be filed with the governor and the legislature on or before January 1 of each year, except if the audit is being made by the state auditor and is not available by January 1, it shall be filed as soon as it is available. Also, on or before January 1 of each year, the agency shall prepare a report of its activities for the preceding fiscal year for the governor and the legislature. The report shall set forth a complete operating and financial statement.

Annual Budget

Sec. 18. (a) On or before August 1 of each year, the administrator shall file with the board a proposed annual budget for the succeeding fiscal year. The budget shall set forth the general categories of expected expenditures out of revenues and income of the agency, and the amount on account of each, and may include a provision or reserve for contingencies or over expenditures. On or before September 1 in each year, the board shall consider the proposed annual budget and shall approve it or change it as the board determines necessary or advisable. Copies of the annual budget certified by the chairman of the board shall be filed promptly with the governor and the legislature. The annual budget is not effective until it is filed.

(b) If for any reason the agency does not adopt the annual budget before September 2, the budget for the preceding year shall remain in effect until a new budget is adopted.

(c) The agency may adopt an amended annual budget for the current fiscal year, but the amended annual budget may not supersede a prior budget until it is filed with the governor and the legislature.

(d) All expenses incurred in carrying out the provisions of the Act shall be payable solely from revenues or funds provided or to be provided pursuant to the provisions of this Act, and nothing in this Act shall be construed to authorize the agency to incur any indebtedness or liability on behalf of or payable by the State of Texas, except as provided in this Act, or as otherwise provided by law.

Selection of Depository

Sec. 19. (a) The agency shall choose a depository for its revenues and funds, other than appropriated funds, after inviting bids for favorable interest rates. The agency shall publish notice in at least one newspaper of general circulation in the state at least 14 days before the last day set for the receipt of the bids. The notice shall state the types of deposits planned, the last day on which bids will be received, and the time and place for opening bids.

(b) Sealed bids that are identified as bids on the envelope must be submitted to the agency before the deadline for receiving bids. The state auditor or a member of the auditor's staff must be present at the bid opening. The agency shall provide a tabulation of all submitted bids for public inspection.

(c) The agency shall choose the depository submitting the bid with the most favorable interest rate.

(d) If covenants related to the agency's bonds specify one or more depositories or set out a method of selecting depositories different from the method prescribed by this section, the covenants prevail with respect to the funds to which they apply.

Agency Records

Sec. 20. (a) The agency shall keep complete records and accounts of its business transactions according to generally accepted methods of accounting.

(b) The agency shall keep complete minutes of its meetings. The agency accounts, minutes, and other records shall be kept at its principal office.

Issue of Housing Finance Agency Bonds

Sec. 21. (a) The board of directors of the agency by resolution from time to time may provide for the issuance of negotiable bonds as authorized by the Texas Constitution. The bonds shall be on a parity and shall be called Texas Housing Bonds. The board may issue them in one or several installments and shall date the bonds of each issue.

(b) In addition to the authority to issue general obligation bonds as provided in Subsection (a) of Section 21 of this Act, the agency may issue its revenue bonds for the purpose of providing money with which to carry out, achieve, or effectuate any purpose, power, or duty of the agency under this Act. The agency's bonds may be issued from time to time in one or more series or issues, payable as to principal, interest, and redemption premium, if any, from and secured by a first lien or a subordinate lien on and pledge of all or any part of the revenues, income, or other resources of the agency including, without limitation, the repayments of mortgage loans, the earnings from investment or deposit of the reserve fund and other funds of the agency, the fees, charges, and any other amounts or payments received pursuant to this Act, and any appropriations, grants, allocations, subsidies, rent supplements, guaranties, aid, contribution, or donations from the federal government.

(c) Also, the agency may issue its bonds, which may be designated as "bond anticipation notes," which may be made payable as to principal, interest, and redemption premium, if any, solely from the proceeds from the sale of the agency's definitive refunding bonds if or when issued and delivered for the purpose of refunding such bond anticipation notes or payable as to principal, interest, and redemption premium, if any, from such definitive refunding bonds and any other revenues, income, or resources of the agency, and the agency may covenant that it will issue, sell, and deliver such definitive refunding bonds in such manner as will provide the money necessary to pay any required part of the principal of and interest and redemption premium, if any, on the bond anticipation notes when due; provided that such bond anticipation notes may be refunded in any other manner permitted by the Act.

(d) The payment of the principal of and the interest and redemption premium, if any, on the agency's bonds additionally may be secured by a first lien or a subordinate lien on and pledge of all or any part of the assets and real, personal, or mixed property of the agency (including mortgages and obligations securing same, and investments), and the reserve fund, or other reserves or funds of the agency.

(e) All bonds issued by the agency shall be authorized by resolution of the board and may be secured by mortgages or deeds of trust on property, and/or by trust agreements or trust indentures administered by one or more corporate trustees, in such manner as may be prescribed by the board; and the substantial form of any such mortgage, deed of trust, trust agreement, or trust indenture shall be set forth in and constitute a part of the resolution authorizing the issuance of the bonds. Any resolution authorizing the issuance of the bonds of the agency may provide that part of the proceeds from the sale thereof may be used for paying the costs and expenses of issuing the bonds, for paying interest on the bonds during such period as may be prescribed by the board, and for paying or repaying operation and maintenance expenses of the agency to the extent and for the period of time specified in said resolution, and also for the funding, increasing, or restoring any depletions of the reserve fund or other reserves or funds for any purposes.

(f) The agency may provide for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under such terms or conditions as may be set forth in the resolution authorizing the issuance of the bonds.

(g) The agency also may issue its bonds for the specific purpose of providing all or any part of the money required for funding or increasing the reserve fund or other reserves or funds of the agency.

Interest on Bonds

Sec. 22. The agency's bonds may be issued to bear interest at any rate or rates as shall be determined by the board.

Form; Denomination; Place of Payment

Sec. 23. (a) The agency's bonds may be issued as serial bonds, or as term bonds, or any combination of each as shall be determined by the board.

(b) The agency's bonds may be issued in coupon form payable to bearer, or in fully registered form, or as coupon bonds payable to bearer but registrable as to principal alone, or as to both principal and interest, or in any other form.

(c) The agency's bonds may be payable at any place or places, may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and shall be executed, all as provided by the board in the resolution authorizing the issuance of said bonds.

(d) The agency's bonds may be sold in such manner, at such price, and under such terms and conditions, as shall be determined by the board.

Maturity of Bonds

Sec. 24. The agency's bonds may mature within any period as shall be determined by the board.

Redemption Before Maturity; Conversion

Sec. 25. (a) The board may provide and covenant for the conversion of any form of bond into any other form or forms of bond, and for reconversion of bonds into any other form.

(b) If the duty of replacement, conversion, or reconversion of bonds is imposed upon a place of payment (paying agent) of any bonds, or upon a corporate trustee under a trust agreement or trust indenture, the replacement, converted, or reconverted bond need not be reapproved by the attorney general or reregistered by the comptroller of public accounts as provided in Section 27 of this Act. Otherwise, all replacement, converted, or reconverted bonds must be so approved and registered as provided in Section 27 of this Act, in accordance with the procedures established in the resolution authorizing the bonds.

Agency's Bonds not Obligations of the State

Sec. 26. (a) The agency's bonds are solely obligations of the agency and are payable solely from funds of the agency, and this Act and the agency's bonds are not and do not create or constitute in any way an obligation, a debt, or a liability of the state, or create or constitute a pledge, giving, or lending of the faith or credit or taxing power of the state except bonds authorized by the Texas Constitution and as provided in Subsection (a) of Section 21 of this Act.

(b) Each bond of the agency not authorized by Subsection (a) of Section 21 of this Act shall contain on its face a statement to the effect that the state is not obligated to pay the principal thereof or interest thereon; and that neither the faith or credit nor the taxing power of the state is pledged, given, or loaned to such payment.

(c) However, the state hereby pledges to and agrees with the holders of any bonds issued under this Act that the state will not limit or alter the rights hereby vested in the agency to fulfill the terms of any agreements made with the said holder thereof or in any way impair the rights and remedies of such holders until such bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The agency is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds.

Approval of Bonds; Registration

Sec. 27. All bonds issued by the agency and the appropriate proceedings authorizing their issuance shall be submitted to the Attorney General of the State of Texas for examination. If the attorney general finds that such bonds have been authorized in accordance with this Act, the attorney general shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas.

Execution of Bonds

Sec. 28. The bonds authorized by Subsection (a) of Section 21 of this Act shall be executed on behalf of the board as general obligations of the state in the following manner: the chairman of the board shall sign the bonds; the board shall impress its seal on the bonds; the governor shall sign the bonds; and the secretary of state shall attest the bonds and impress on them the state seal.

Facsimile Signatures and Seals

Sec. 29. The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which the board in executing the bonds and appurtenant coupons may use facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals. Interest coupons may be signed by the facsimile signatures of the chairman of the board of the agency.

Signature of Former Officer

Sec. 30. If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on any coupon ceases to be an officer before the bond is delivered, the signature is valid and sufficient for all purposes as if the officer

had remained in office until the delivery had been made.

Bonds Incontestable

Sec. 31. (a) After approval by the attorney general and registration by the comptroller of public accounts, the bonds shall be incontestable in any court or other forum for any reason and shall be valid and binding obligations in accordance with their terms for all purposes.

(b) In addition, general obligation bonds issued as provided in Subsection (a) of Section 21 of this Act and after approval and registration as provided in this Act shall constitute general obligations of the state.

Reserve Fund

Sec. 32. (a) There may be created and established by the agency, with the State Treasurer of the State of Texas, a separate and special fund to be entitled the Texas Housing Agency Reserve Fund. The reserve fund may be used for the purpose of paying principal of and interest, and redemption premium, if any, on any of the agency's bonds secured by the reserve fund, or any account therein, in order to prevent or cure a default, if, when, and to the extent the revenues, income, and receipts of the agency are insufficient for such payment, and for such other purposes as are provided in any resolution authorizing the issuance of the agency's bonds. The agency may establish separate accounts within the reserve fund to secure and be applicable only to the agency's bonds for which they are established.

(b) It shall be an additional duty of the State Treasurer, in the State Treasurer's official capacity, ex officio, to accept the reserve fund, as custodian thereof, in accordance with the provisions of this section; but the reserve fund shall not be commingled with the General Revenue Fund of the state or any other special funds or accounts in the State Treasury, and the reserve fund shall not constitute or be a part of the State Treasury. The reserve fund and any account therein shall be kept and maintained separate and apart from all other money, funds, deposits, and accounts and shall be kept and held in escrow and in trust by the State Treasurer, for and on behalf of, and charged with an irrevocable lien and pledge in favor of, the holders of the agency's bonds secured thereby; and the reserve fund shall be used only as provided in this Act. Legal title to the reserve fund shall be in the agency unless or until paid out as herein provided, but the State Treasurer, as custodian, shall administer the reserve fund strictly and solely as provided in this Act and the agency's bond resolutions, and the State Treasurer shall take no action with respect to the reserve fund other than that specified in this Act and in said bond resolutions.

(c) Out of proceeds from the sale and delivery of its first series or issue of bonds which are secured by the reserve fund, or from any other source available to it, the agency may provide for depositing into the reserve fund, or an account therein, such amount as is specified in the bond resolution, and thereafter the reserve fund, or such accounts therein, shall be increased to, when necessary, and maintained at, said amount with respect to all bonds at any time outstanding which are secured by the reserve fund, or such account therein. The board is authorized to establish the procedures for funding, increasing, and maintaining the reserve fund, or any account therein, and the operation and use of, and the priorities of bondholders in connection with, the reserve fund, or any account therein, in the resolutions authorizing the issuance of its bonds. The State Treasurer shall be furnished certified copies of said bond resolutions, and the State Treasurer shall comply therewith.

(d) Amounts in the reserve fund, or any account therein, at any time in excess of the amount then required to be on hand therein, whether by reason of investment or deposit earnings or otherwise, shall be paid by the State Treasurer directly to, or upon the order of, the agency, upon written request by the agency, or disposed of and disbursed by the State Treasurer as provided in any bond resolution of the agency.

(e) The State Treasurer shall place the money in the reserve fund, or any account therein, in demand or time deposits, or invest said money in any direct obligations of, or obligations the payment of the principal of and interest on which are guaranteed by, the federal government, and such deposits and/or investments shall be made by the State Treasurer at the places and in the amounts and manner as provided in written instructions from the agency as to the procedures and details thereof, or as provided in any bond resolution of the agency. If said money is placed in demand or time deposits, such deposits shall be secured at all times by the same type of obligations as those in which the reserve fund may be invested. Earnings from such deposits and investments shall be credited to the reserve fund, or the account therein from which the money was deposited or invested, or disposed of as provided in any bond resolution. Said investments shall be sold promptly by the State Treasurer if and when necessary to prevent or cure any default in connection with the agency's bonds, as provided in this Act and the resolutions authorizing such bonds.

(f) The State Treasurer's surety bond required by law, and conditioned that the State Treasurer will faithfully execute the duties of the treasurer's office, shall be applicable to and cover the execution of the State Treasurer's duties with respect to the reserve fund as required by this Act.

(g) Notwithstanding the foregoing provisions of this section, the agency may or may not, at its option, create or fund the reserve fund and may issue its bonds which are not secured by the reserve fund, or any account therein, but which may be secured by any other or separate reserve fund or

account to be kept at any place, or secured in any other manner provided in the agency's bond resolutions.

Payment Enforceable by Mandamus

Sec. 33. The writ of mandamus and all other legal and equitable remedies shall be available to any party at interest to require the agency, the State Treasurer, and any other party to carry out its or their agreements and to perform its or their functions and duties under this Act, the Texas Constitution, or the agency's bond resolutions.

Refunding Bonds

Sec. 34. (a) Any bonds issued by the agency may be refunded, or otherwise refinanced, by the issuance by the agency of refunding bonds for such purpose, under such terms, conditions, and details as shall be determined by the board.

(b) All pertinent and appropriate provisions of this Act shall be applicable to such refunding bonds, and they may be issued in the manner provided herein for other bonds authorized under this Act; provided that such refunding bonds may be sold and delivered in amounts sufficient to provide for the payment of the principal, interest, and redemption premium, if any, of any bonds to be refunded, at maturity or on any redemption date, in accordance with such procedures as shall be determined by the board, and the comptroller of public accounts shall register such refunding bonds without the necessity of cancelling the bonds being refunded.

(c) Also, such refunding bonds may be issued to be exchanged for the bonds being refunded thereby. In any case where refunding bonds are to be exchanged, the comptroller of public accounts shall register the refunding bonds and deliver the same to the holder or holders of the bonds being refunded thereby, in accordance with the provisions of the resolution authorizing the refunding bonds; and any such exchange may be made in one delivery or in several installment deliveries.

(d) Bonds issued by the agency also may be refunded in the manner provided by any other applicable statute, including Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended, and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Articles 717k and 717k–3, Vernon's Texas Civil Statutes).

Bonds Negotiable Instruments

Sec. 35. Notwithstanding any statute to the contrary, each bond and interest coupon issued and delivered by the agency is and constitutes a negotiable instrument within the meaning and for all purposes of the Texas Uniform Commercial Code,[1] except that said bonds may be registered or subject to registration as permitted by this Act.

Payment of Agency's Obligations

Sec. 36. It is the duty of the board to establish and collect sufficient fees and charges for services and facilities and to utilize all other available sources of revenues, income, and receipts, in order to pay all expenses of operation and maintenance of the agency, to pay the principal of and interest on its bonds, and to create and maintain the reserve fund and any other reserves or funds as provided in each resolution authorizing the issuance of its bonds. In any resolution authorizing the issuance of the agency's bonds the board may prescribe systems, methods, routines, and procedures under which the agency shall function, consistent with this Act.

Validity of Liens and Pledges

Sec. 37. Each lien on or pledge of revenues, income, or other resources of the agency, or on the assets of the agency, or on the reserve fund, or other reserves or funds of the agency, as authorized by this Act, shall be valid and binding from the time of payment for and delivery of the bonds authorized by the resolution of the board creating or confirming any such lien or pledge. All such liens and pledges shall be fully effective as to items then on hand or thereafter received, and said items shall be subject to such liens or pledges without any physical delivery thereof or further act. All such liens and pledges shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the agency or other party, irrespective of whether such parties have notice thereof. Neither any resolution authorizing the issuance of bonds of the agency nor any other instrument by which any such lien or pledge is created or confirmed need be filed or recorded except in the records of the agency, and except that each bond resolution of the agency shall be submitted to the Attorney General of the State of Texas as required by Section 27 of this Act.

Bonds not Taxable

Sec. 38. As set forth in this act the agency will be performing an essential governmental function in the exercise of the powers conferred upon it by this Act, and the bonds of the agency issued pursuant to this Act, and the interest and income therefrom, including any profit made on the sale thereof, and all its fees, charges, gifts, grants, revenues, receipts, and other money received or pledged to pay or secure the payment of such bonds shall at all times be free from taxation and assessments of every kind by this state and by all public agencies.

Authorized Investments

Sec. 39. (a) All bonds issued by the agency under this Act shall be legal and authorized investments for all:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) building and loan associations;
(5) savings and loan associations;
(6) insurance companies of all kinds and types;
(7) fiduciaries;
(8) trustees;
(9) guardians; and
(10) sinking and other public funds of the state, cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

Security for Deposit of Funds

Sec. 40. All bonds also shall be eligible and lawful security for all deposits of public funds of the state and all public agencies, to the extent of the par or market value of said bonds, whichever is greater, when accompanied by any unmatured interest coupons appurtenant thereto.

Mutilated, Lost, Stolen, Destroyed Bonds

Sec. 41. The board may provide procedures for the replacement of any mutilated, lost, stolen, or destroyed bond or interest coupon.

No Gain Allowed

Sec. 42. Neither the administrator, chairman of the board, nor any director of the agency, for purposes of personal pecuniary gain, shall have or attempt to have any pecuniary interest in any transaction to which the agency is a party.

No Discrimination

Sec. 43. No person in the state shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Act.

Liberal Construction of the Act

Sec. 44. This Act shall be construed liberally to effectuate the legislative intent and the purposes of this Act, and all powers herein granted shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers.

Cumulative Effect of the Act; Conflicting Laws

Sec. 45. This Act shall be cumulative of all other laws, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized hereby, without reference to any other laws or any restrictions, approvals, or limitations contained therein, except as herein specifically provided; and to the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law, the provisions of this Act shall prevail and control; provided, however, that the board shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

Severability Clause

Sec. 46. In case any one or more of the sections, provisions, clauses, or words of this Act or the application of such sections, provisions, clauses, or words to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act or the application of such sections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

Appropriation

Sec. 47. If the General Appropriation Act for the fiscal biennium ending on August 31, 1981, contains an appropriation for the administration of this Act, the validity of the appropriation is not affected by the fact that it refers to the Texas Housing Agency as the Texas Housing Finance Authority.

Authority to Issue General Obligation Bonds Contingent

Sec. 48. Subsection (a) of Section 21 of this Act, to the extent it authorizes the issuance of general obligation bonds, takes effect if and when the Texas Constitution is amended to permit the issuance of such bonds as contemplated by that provision of this Act.

[Acts 1979, 66th Leg., p. 2122, ch. 823, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 3232, ch. 852, § 4(a), (b), eff. June 17, 1981.]

Section 4(c) of the 1981 amendatory act provides:

"The terms used in Section 4 of this Act shall have the same meaning as defined in the Texas Housing Agency Act (Article 1269l-6, Vernon's Texas Civil Statutes)."

Art. 1269l-7. Housing Finance Corporations Act

Short Title, Captions, Sections, Subsections, and Paragraphs

Sec. 1. A. This Act shall be known and may be cited as the "Texas Housing Finance Corporations Act."

B. The division of this Act into sections, subsections, and paragraphs and the use of captions in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Act.

Definitions

Sec. 2. Wherever used in this Act, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall be given the following respective interpretations:

"Bonds" means the revenue bonds authorized under this Act and includes notes and any and all other limited obligations payable as provided hereunder.

"City" means any city or town of this state presently existing or hereafter created, whether existing or created by general law or pursuant to a home-rule charter.

"Corporation" means any public nonprofit corporation organized pursuant to the provisions of this Act.

"County" means any county of the State of Texas.

"Development costs" means and includes the sum total of all reasonable or necessary costs incidental to the providing, acquisition, construction, reconstruction, rehabilitation, repair, alteration, improvement, and extension of a residential development, including, without limitation, the following: the cost of studies and surveys; plans and specifications; architectural and engineering services; financial advisory, mortgage banking and administrative services; underwriting fees; legal, accounting, marketing, and other special services relating to residential development or incurred in connection with the issuance and sale of bonds; necessary application and other fees to federal, state, and local government agencies for any requisite approvals for construction, for assisted financing or otherwise; financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings; the relocation of utilities, public ways, and parks; the construction of recreational, cultural, and commercial facilities; rehabilitation, reconstruction, repair, or remodeling of existing buildings and all other necessary and incidental expenses, including trustee and rating agency fees and an initial bond and interest reserve together with interest on bonds issued to finance a residential development to a date 12 months subsequent to the estimated date of completion; any premiums for mortgage insurance or insurance with respect to bonds; and such other expenses as the corporation may deem appropriate to effectuate the purposes of this Act.

"Economically depressed or blighted area" means: (i) an area that has been determined by the issuer to be a qualified census tract or an area of chronic economic distress pursuant to the requirements of Section 103A, Internal Revenue Code of 1954 (26 U.S.C. Sec. 103A), or (ii) an area established within a city that has a substantial number of substandard, slum, deteriorated, or deteriorating structures, that suffers from a high relative rate of unemployment, or (iii) that has been designed and included in a tax increment district created under Chapter 695, Acts of the 66th Legislature, Regular Session, 1979 (Article 1066d, Vernon's Texas Civil Statutes). To establish an economically depressed or blighted area, pursuant to the provisions of (ii) or (iii) of this subsection, the governing body of the city must hold a public hearing and find that the area substantially impairs or arrests the sound growth of the city, or that it constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use. The governing body of a city holding such a hearing must give notice as provided by Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), except that notice must be published not less than 10 days before the day of the hearing.

"Federally assisted new communities" shall mean those federally assisted areas which have received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act [1] and a portion of the federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974, as amended.[2]

"Governing body" means, with reference to a local governmental unit, as herein defined, the council, commission, commissioners court, or similar body charged by law with the governance of a local governmental unit.

"Home" means real property and improvements thereon located within a local governmental unit (but as to a county, not within a city within the county without approval of the governing body of the city if the population of the city exceeds 20,000 as determined by the corporation's rules or regulations, resolutions relating to the issuance of bonds, or financing documents relating to such issuance) consisting of not more than four connected dwelling units, including but not limited to condominium units, owned by one mortgagor who occupies or intends to occupy one of such units.

"Home mortgage" means an interest-bearing loan to a mortgagor, or a participation therein, for the purpose of purchasing, improving, or constructing a home, evidenced by a promissory note, secured by a mortgage, mortgage deed, deed of trust, or other instrument which constitutes a lien on such home, and which is guaranteed or insured by the United States or any agency, department, or instrumentality thereof, or by any private mortgage insurance or surety company, to the extent that such loan exceeds 80 percent of the lesser of (i) the appraised value of the home at the time of its making or (ii) the sales price of such home. Such guaranty or insurance shall not be required on home mortgages if the principal of and interest on the corporation's bonds issued to make or purchase such home mortgages or to make loans to lending institutions are guaranteed or insured by an agency, department or instrumentality of the United States government or any insurance or surety company authorized to issue municipal bond insurance.

"Lending institution" means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, mortgage company, credit union, life insurance company, or other financial institution or governmental agency which customarily provides service or otherwise aids in the financing of mortgages on single family residential housing or multifamily residential housing located in the local governmental unit, or any holding company for any of the foregoing.

"Local governmental unit" means any city or county.

"Mortgagor" means a person or persons of low or moderate income whose adjusted gross aggregate income, together with the adjusted gross aggregate income of all persons who intend to reside with such person or persons in one dwelling unit, did not, for the immediately preceding taxable year, exceed the maximum amount established as constituting moderate income by the corporation's rules or regulations, resolutions relating to the issuance of bonds, or financing documents relating to such issuance. In economically depressed or blighted areas or in federally assisted new communities located within a home-rule city, "mortgagor" may include a person or persons whose adjusted gross aggregate income exceeds the amount constituting moderate income if at least 90 percent of the total mortgage amount available under a home mortgage revenue bond issue is designated for persons of low or moderate income.

"Person" means any individual, partnership, copartnership, firm, company, corporation, lending institution, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or its legal representative, agent, or assigns, but shall, when used with reference to a mortgagor or owner of a home, mean a natural person or a trust for the benefit of such natural person.

"Residential development" means the acquisition, construction, reconstruction, rehabilitation, repair, alteration, improvement, or extension of any land, interest in land, building, structure, facility, system, fixture, improvement, addition, appurtenance, machinery, or equipment or any combination thereof, all real and personal property deemed necessary in connection therewith, and all real and personal property or improvements functionally related and subordinate thereto, substantially (at least 90 percent) for use by or intended to be occupied substantially (at least 90 percent) by persons of low and moderate income whose adjusted gross income, together with the adjusted gross income of all persons who intend to reside with such persons in one dwelling unit, did not, for the immediately preceding taxable year, exceed the maximum amount established as constituting moderate income by the corporation's rules or regulations, resolutions relating to the issuance of bonds, or financing documents relating to such issuance, for the purpose of obtaining decent, safe, and sanitary housing, and in connection therewith nonhousing facilities which are an integral part of or functionally related to such residential development. Any such residential development shall be located within the local governmental unit.

[1] 12 U.S.C.A. § 1749aa et seq.
[2] 42 U.S.C.A. § 5307(a)(1).

Purpose of Act—Liberal Construction

Sec. 3. It is hereby determined and declared that the purpose of this Act is to provide a means of financing the cost of residential ownership and development that will provide decent, safe, and sanitary housing for residents of local governmental units at prices they can afford; it is further determined and declared that such residential ownership and development will (a) provide for and promote the public health, safety, morals, and welfare; (b) relieve conditions of unemployment and encourage the increase of industry and commercial activity and economic development so as to reduce the evils attendant upon unemployment; (c) provide for efficient and well-planned urban growth and development including the elimination and prevention of potential urban blight and the proper coordination of industrial facilities with public services, mass transportation, and residential development; (d) assist persons of low and moderate income in acquiring and owning decent, safe, and sanitary housing which they can afford; and (e) preserve and increase ad valorem tax bases of local governmental units; and the foregoing are hereby determined and declared to lessen the burdens of government and to be public purposes and functions; and it is the intent of the legislature by the passage of this Act to authorize local governmental units to create and utilize public nonprofit corporations to issue obligations to accomplish such public purposes. This Act shall be liberally construed in conformity with its intention.

Application to Governing Body of Local Governmental Unit

Sec. 4. A. Whenever any number of individuals, not less than three, each of whom shall be a citizen of the State of Texas, of the age of 18 years or more and residents of the local governmental unit, shall file with the governing body of the local governmental unit an application in writing seeking the incorporation of a housing finance corporation under the provisions of this Act, the governing body shall proceed to consider such application. If the governing body shall by appropriate resolution duly adopted find and determine that it is wise, expedient, necessary, or advisable that the corporation be formed and shall approve the form of articles of incorporation proposed to be used in organizing the corporation, then articles of incorporation for the corporation may be filed as hereinafter provided. No corporation may be formed unless such application shall have first been filed with the governing body of the local governmental unit and the governing body shall have adopted a resolution as provided in this section. The approval of the articles of incorporation of one corporation shall not preclude the approval by the governing body of the local governmental unit of the articles of incorporation of other corporations with names or designations sufficient to distinguish them from any corporation theretofore incorporated; provided that the governing body of the local governmental unit shall not permit the existence of more than one corporation created on its behalf which has the power to make or acquire home mortgages, or make loans to lending institutions, the proceeds of which will be used to make home mortgages or to make loans on residential developments.

B. Corporations acting on behalf of more than one local governmental unit may be created as set forth in this subsection. Not less than three residents of each local governmental unit on whose behalf the corporation is to be formed who are of the age of 18 years or more, and citizens of the state shall file with the governing body of each local governmental unit on whose behalf the corporation is to be formed (the sponsoring local governmental units) an application in writing seeking the incorporation of a joint housing finance corporation under the provisions of this Act.

If the governing body of each sponsoring local governmental unit shall by appropriate resolution duly adopted find and determine that it is wise, expedient, necessary, or advisable that the joint corporation be formed and shall approve the form of articles of incorporation proposed to be used in organizing the joint corporation, then articles of incorporation for the joint corporation may be filed as hereinafter provided. No joint corporation may be formed unless such application shall have first been filed with the governing body of each proposed sponsoring local governmental unit and the governing body of each such unit shall have adopted a resolution as provided in this subsection. The approval of the articles of incorporation of one joint corporation shall not preclude the approval by the governing body of the local governmental unit of the articles of incorporation of other corporations with names or designations sufficient to distinguish them from any corporation theretofore incorporated; provided, however, (without affecting the power of corporations heretofore created) a local governmental unit that creates a joint corporation may not thereafter create a corporation that has power to make home mortgages or make loans to lending institutions, the proceeds of which will be used to make home mortgages or to make loans on residential developments.

Incorporators or directors of a joint corporation shall reside in one of the sponsoring local governmental units. Initial directors of a joint corporation shall be appointed by all sponsoring local governmental units. Succeeding directors appointed to the board shall be appointed by one or more of the sponsoring local governmental units as provided in the articles of incorporation or the bylaws.

All sponsoring local governmental units of a joint corporation shall be deemed to be one local governmental unit for purposes of this Act. When action of the governing body of a local governmental unit is required, this Act shall be construed to mean action by the governing body of each sponsoring local governmental unit of a joint corporation. A joint corporation shall have all powers granted to corporations pursuant to this Act. A joint corporation shall be deemed to be acting on behalf of all sponsoring local governmental units as provided in the articles of incorporation. Net earnings of a joint corporation and funds and properties of a joint corporation upon dissolution shall be disbursed to the sponsoring local governmental units as provided in the articles of incorporation. Joint corporations may not operate in more than one State planning region.

Articles of Incorporation—Contents

Sec. 5. A. The articles of incorporation of a housing finance corporation shall set forth:

(1) the name of the corporation;

(2) a statement that the corporation is a public nonprofit corporation;

(3) the period of duration, which may be perpetual;

(4) a statement that the corporation is organized solely to carry out the purposes of this Act;

(5) a statement that the corporation is to have no members;

(6) any provision, not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws, for the regulation of the internal affairs of the corporation;

(7) the street address of its initial registered office (which shall be within the local governmental unit) and the name of its initial registered agent at such street address;

(8) the number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors together with a recital that each of them resides within the local governmental unit;

(9) the name and street address of each incorporator together with a recital that each of them resides within the local governmental unit;

(10) a recital that a resolution approving the form of the articles of incorporation has been duly adopted by the governing body of the local governmental unit and the date of the adoption of such resolution.

B. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act; provided, however, that the articles of incorporation may prohibit the exercise by the corporation of any power or powers enumerated in this Act.

C. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

Incorporators

Sec. 6. Three or more residents of the local governmental unit, of the age of 18 years or more, may

act as incorporators of a corporation by signing, verifying, and delivering in duplicate to the secretary of state articles of incorporation for such corporation. An incorporator may be a member of the governing body, an officer, or an employee of the local governmental unit.

Filing of Articles of Incorporation—Effect of Issuance of Certificate of Incorporation

Sec. 7. A. Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to this Act, he shall, when a fee of $25 has been paid:

(1) endorse on each duplicate original the word "Filed," and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of incorporation to which he shall affix the other duplicate original.

B. The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state, shall be delivered to the incorporators or their representatives.

C. Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the local governmental unit and the incorporators have been complied with, and that the corporation has been duly incorporated under this Act. The corporation shall constitute a public instrumentality and nonprofit corporation under the name set out in the articles of incorporation. The corporation does not and will not constitute a county, city, or other political corporation or subdivision of the state, but the corporation is authorized to issue bonds and to carry out the public purposes for which it is incorporated on behalf of and for the benefit of the general public, the governmental unit, and the state.

Amendment of Articles of Incorporation—Articles of Amendment

Sec. 8. A. The articles of incorporation may at any time and from time to time be amended so as to make any changes therein and add any provisions thereto which might have been included in the articles of incorporation in the first instance. Any such amendment shall be effected in either of the following manners: (i) the members of the board of directors of the corporation shall file with the governing body of the local governmental unit an application in writing seeking permission to amend the articles of incorporation, specifying in such application the amendment proposed to be made, such governing body shall consider such application and, if it shall by appropriate resolution duly find and determine that it is wise, expedient, necessary, or advisable that the proposed amendment be made and shall authorize the same to be made, and shall approve the form of the proposed amendment, then the board of directors of the corporation may amend the articles of incorporation by adopting such amendment at a meeting of the board of directors and delivering articles of amendment to the secretary of state, or (ii) the governing body of the local governmental unit may, at its sole discretion, and at any time, alter or change the structure, organization, programs, or activities of the corporation (including the power to terminate the corporation) subject to any limitation on the impairment of contracts entered into by the corporation, by adopting an amendment to the articles of incorporation of the corporation at a meeting of the governing body of the local governmental unit and delivering articles of amendment to the secretary of state.

B. The articles of amendment shall be executed in duplicate by the corporation by its president or by a vice-president and by its secretary or an assistant secretary, or by the local governmental unit by its presiding officer and secretary or clerk, shall be verified by one of the officers signing such articles, and shall set forth:

(1) the name of the corporation;

(2) if the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read. If the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added;

(3) the date of the meeting of the board of directors, or of the governing body of the local governmental unit, at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors, or of the members of the governing body of the local governmental unit, in office.

Filing of Articles of Amendment—Effect of Certificate of Amendment

Sec. 9. A. Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when a fee of $25 has been paid:

(1) endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in his office;

(3) issue a certificate of amendment to which he shall affix the other duplicate original.

B. The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be delivered to the corporation or its representative.

C. Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

D. No amendment shall affect any existing cause of action in favor of or against the corporation, or any pending suit to which the corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against the corporation under its former name shall abate for that reason.

Board of Directors

Sec. 10. The corporation shall have a board of directors in which all powers of the corporation shall be vested and which shall consist of any number of directors all of whom shall be residents of the local governmental unit. A director may be a member of the governing body, an officer, or an employee of the local governmental unit. The initial board of directors shall be named in the articles of incorporation approved by the local governmental unit and shall hold office for such period as may be specified in the articles of incorporation. Thereafter, directors shall be appointed by the governing body of the local governmental unit in the manner and for the terms provided in the articles of incorporation or the bylaws. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified. A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or bylaws. Any vacancy occurring in the board of directors shall be filled by appointment by the governing body of the local governmental unit in the manner provided in the articles of incorporation or the bylaws. A majority of the directors shall constitute a quorum, and when a quorum is present action may be taken by a majority vote of the directors present. Meetings of the board of directors, regular or special, may be held within or without the state. Regular meetings may be held with or without notice as prescribed in the bylaws. Special meetings shall be held upon such notice as is prescribed in the bylaws. The officers of the corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such times and in such manner and for such terms as may be prescribed in the articles of incorporation or the bylaws.

Organization Meeting

Sec. 11. After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers, and for such other purposes as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting.

Registered Office and Registered Agent

Sec. 12. The corporation shall maintain a registered office and registered agent in accordance with the provisions of Article 2.05, Texas Non-Profit Corporation Act.[1] The corporation may change its registered office and registered agent in accordance with the provisions of Article 2.06, Texas Non-Profit Corporation Act.[2] Process may be served on the corporation in accordance with the provisions of Article 2.07, Texas Non-Profit Corporation Act.[3]

[1] Article 1396–2.05.
[2] Article 1396–2.06.
[3] Article 1396–2.07.

Powers of Corporation

Sec. 13. A corporation organized under this Act shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

(1) to have perpetual succession by its corporate name, unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain and defend, in its corporate name;

(3) to have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed on, affixed to, or in any manner reproduced upon, instruments of any nature required to be executed by its proper officers;

(4) to purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with, real or personal property, or any interest therein, wherever situated, as the purposes of the corporation shall require, or as shall be donated to it;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, political subdivision of a state, territory, government district, or of any instrumentality thereof;

(7) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and

other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(8) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(9) to elect or appoint officers and agents of the corporation for such period of time as the corporation may determine and define their duties and fix their compensation;

(10) to make, alter, amend, and repeal bylaws, not inconsistent with its articles of incorporation or with this Act, for the administration and regulation of the affairs of the corporation;

(11) to make donations for the public welfare or for charitable, scientific, or educational purposes;

(12) to plan, conduct research, study, develop, and promote the establishment of residential development;

(13) to acquire, and contract and enter into advance commitments to acquire, by assignment or otherwise, home mortgages owned by lending institutions at such purchase prices and upon such other terms and conditions as shall be determined by the corporation or such other person as it may designate as its agent;

(14) to make, and contract and enter into advance commitments to make, home mortgages; provided, however, that such home mortgages shall be originated and serviced by lending institutions;

(15) to make and execute contracts with lending institutions for the origination, administration, and servicing of home mortgages and to pay the reasonable value of services rendered under those contracts;

(16) to make loans to lending institutions under terms and conditions which, in addition to other provisions as determined by the corporation, shall require the lending institutions to use substantially all of the net proceeds thereof, directly or indirectly, for the making of home mortgages in an aggregate principal amount substantially equal to the amount of such net proceeds; provided that such loans to lending institutions shall be fully secured in the same manner as deposits of public funds of the local governmental unit to the extent not secured by home mortgages;

(17) to establish, by rules or regulations, in resolutions relating to any issuance of bonds, or in any financing documents relating to such issuance, such standards and requirements applicable to the making or purchase of home mortgages or the making of loans to lending institutions as the corporation deems necessary or desirable, including but not limited to: (i) the time within which lending institutions must make commitments and disbursements for home mortgages; (ii) the location and other characteristics of homes to be financed by home mortgages; (iii) the terms and conditions of home mortgages to be made or acquired; (iv) the amounts and types of insurance coverage required on homes, home mortgages, and bonds; (v) the representations and warranties of lending institutions confirming compliance with such standards and requirements; (vi) restrictions as to interest rate and other terms of home mortgages or the return realized therefrom by lending institutions; (vii) the type and amount of collateral security to be provided to assure repayment of any loans from the corporation and to assure repayment of bonds; and (viii) any other matters related to the making or purchase of home mortgages or the making of loans to lending institutions as shall be deemed relevant by the corporation;

(18) to require from each lending institution from which home mortgages are proposed to be purchased or to which loans are made, the submission of evidence satisfactory to the corporation of the ability and intention of such lending institution to make home mortgages, and the submission, within the time specified by the corporation for making disbursements for home mortgages, of evidence satisfactory to the corporation of the making of home mortgages and of compliance with any standards and requirements established by the corporation;

(19) to issue its bonds to defray, in whole or in part, the development costs of any residential development; to issue its bonds the aggregate principal amount of which issued in any calendar year shall not exceed the total of (a) the costs of issuance of such bonds, any reserves or capitalized interest required by the resolution or resolutions authorizing the bonds, plus any bond discounts, and (b) the greater of (i) $20,000,000, (ii) a figure determined by multiplying $150 times the population of the local governmental unit as determined by the corporation's rules or regulations, resolutions relating to the issuance of bonds, or financing documents relating to such issuance, which determination shall be conclusive, or (iii) an amount equal to 25 percent of the total dollar amount of the market demand for home mortgages during such calendar year as determined by the corporation's rules or regulations, resolutions relating to the issuance of bonds, or financing documents relating to such issuance, which determination shall be conclusive, to defray, in whole or in part, the costs of purchasing, or funding the making of, home mortgages including, but not limited to, the costs of studies and surveys, insurance premiums, financial advisory, mortgage banking and administrative services, underwriting fees, legal, accounting, and marketing services incurred in connection with the issuance and sale of such bonds, including bond and interest reserve accounts, capitalized interest accounts, and trustee, custodian, and rating agency fees; and to

designate appropriate names for such bonds. The corporation need not acquire or hold title to or any interest in a residential development or home mortgage;

(20) to rent, lease, sell, or otherwise dispose of any residential development or home mortgages, in whole or in part, or to loan sufficient funds to any person to defray, in whole or in part, the development costs of any residential development or the costs of purchasing home mortgages, so that the rents or other revenues to be derived with respect to the residential development or home mortgages, together with any insurance proceeds, reserve accounts and earnings thereon shall be designed to produce revenues and receipts at least sufficient to provide for the prompt payment at maturity of principal, interest, and redemption premiums, if any, upon all bonds issued to finance such costs;

(21) to pledge all or any part of the revenues, receipts, or resources of the corporation, including the revenues and receipts to be received from any residential development or home mortgages to the punctual payment of bonds authorized under this Act, and the interest and redemption premiums, if any, thereon;

(22) to mortgage, pledge, or grant security interests in any residential development, home mortgages, notes, or other property in favor of the holder or holders of bonds issued therefor;

(23) to sell and convey any residential development or home mortgages, including, without limitation, the sale and conveyance thereof subject to a mortgage, pledge, or security interest, if any, as provided in the resolution relating to the issuance of the bonds for such prices and at such times as the board of directors of the corporation may determine;

(24) to issue its bonds to refund in whole or in part at any time bonds theretofore issued by the corporation under authority of this Act;

(25) to apply for and accept on its own behalf or on behalf of any person, advances, loans, grants, contributions, guarantees, rent supplements, mortgage assistance, and any other form of financial assistance from the federal government, the state, any county or city, or any other public or quasi-public body, corporation or foundation, or from any other source, public or private, including any person, for any of the purposes of this Act, and to include in any contract for financial assistance such conditions as it may deem reasonable and appropriate and which are not inconsistent with the purposes of this Act;

(26) to make and execute contracts and other instruments necessary or convenient to the exercise of any of the powers granted herein;

(27) whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

Bonds of Corporation

Sec. 14. The exercise of any or all powers granted by this Act may be authorized and the bonds may be authorized to be issued under this Act for the purposes set forth in this Act, by resolution of the board of directors of the corporation, which shall take effect immediately upon adoption. The bonds shall bear interest at such rate or rates as authorized by the provisions of Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k–2, Vernon's Texas Civil Statutes), may be payable at such times, may be in one or more series, may bear such date or dates, may mature at such time or times, may be payable in such medium of payment at such place or places, may carry such registration privileges, may be subject to such terms of redemption at such premiums, may be executed in such manner, may contain such terms, covenants, and conditions, and may be in such form, either coupon or registered, as such resolution may provide. The bonds may be sold at public or private sale in such manner and upon such terms as may be provided in such resolution. Pending the preparation of definitive bonds, interim receipts, or certificates in such form and with such provisions as may be provided in such resolution, may be issued to the purchaser or purchasers of bonds sold pursuant to this Act.

Covenants in Bonds

Sec. 15. Any resolution authorizing the issuance of bonds under this Act may contain covenants as to (a) the use and disposition of the proceeds of the bonds and the revenues and receipts from any residential development or home mortgages for which the bonds are to be issued, including the creation and maintenance of reserves; (b) the issuance of other or additional bonds relating to any residential development or any rehabilitation, improvements, renovations, enlargements, or additions thereto; (c) the maintenance and repair of such residential development or any homes; (d) the insurance to be carried on any residential development, home, home mortgage, or bonds and the use and disposition of insurance moneys; (e) the appointment of one or more banks or trust companies within or outside the State of Texas, having the necessary trust powers, as trustee and/or custodian for the benefit of the bondholders, paying agent, or bond registrar; (f) the appointment of one or more mortgage bankers to provide requisite administrative and mortgage servicing functions to assure the proper administration, for the benefit of the bondholders, of the corporation's portfolio of home mortgage loans; (g) the investment of any funds held by such trustee or custodian; (h) the maximum interest rate payable on any home mortgage; and (i) the terms and conditions upon which the holders of the bonds or any portion thereof or any trustees therefor, are entitled to the appointment of a receiver by a court of competent jurisdiction, and said terms and conditions may provide that the receiver may enter and

take possession of the residential development or home mortgages, or any part thereto, and maintain, lease, sell, or otherwise dispose of such development or mortgages, prescribe rentals or other payments, and collect, receive, and apply all income and revenues thereafter arising therefrom. Any resolution authorizing the issuance of bonds under this Act may provide that the principal of and interest on any bonds issued under this Act shall be secured by a mortgage, pledge, security interest, insurance agreement, or indenture of trust covering such residential development or home mortgages for which the bonds are issued and may include any improvements or extensions thereafter made. Such mortgage, pledge, security interest, insurance agreement, or indenture of trust may contain such covenants and agreements to properly safeguard the bonds as may be provided for in the resolution authorizing such bonds and shall be executed in the manner as may be provided for in the resolution. The provisions of this Act and any such resolution and any such mortgage, pledge, security interest, or indenture of trust shall constitute a contract with the holder or holders of the bonds and continue in effect until the principal of, the interest on, and the redemption premiums, if any, on the bonds so issued have been fully paid or provision made therefor, and the duties of the corporation and its corporate authorities and officers under this Act and any such resolution and any such mortgage, pledge, security interest, or indenture of trust shall be enforceable as provided therein by any bondholder by mandamus, foreclosure of any such mortgage, pledge, security interest, or indenture of trust or other appropriate suit, action, or proceeding in any court of competent jurisdiction; provided the resolution or any mortgage, pledge, security interest, or indenture of trust under which the bonds are issued may provide that all such remedies and rights to enforcement may be vested in a trustee (with full power of appointment) for the benefit of all the bondholders, which trustee shall be subject to the control of such number of holders or owners of any outstanding bonds as provided therein.

Signature of Officers on Bonds—Validity of Bonds

Sec. 16. The bonds shall bear the manual or facsimile signatures of such officers of the corporation as may be designated in the resolution authorizing such bonds, and such signatures shall be the valid and binding signatures of the officer of the corporation, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon have ceased to be officers of the corporation issuing such bonds. The validity of the bonds is not dependent on nor affected by the validity or regularity of any proceedings relating to the residential development or home mortgages for which the bonds are issued. The resolution authorizing the bonds may provide that the bonds shall contain a recital that they are issued pursuant to this Act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

Lien of Bonds

Sec. 17. Bonds issued under this Act may be secured by a pledge of or lien upon all or any part of the revenues, receipts, or resources of the corporation, including the revenues and receipts derived from the residential development or home mortgages or from any notes or other obligations of lending institutions with respect to which the bonds have been issued, and the board of directors may provide in the resolution authorizing such bonds for the issuance of additional bonds to be equally and ratably secured by a lien upon such revenues and receipts or may provide that the lien upon such revenues and receipts is subordinate. Subordinate lien bonds also may be issued unless prohibited in any bond resolution.

Liability for Bonds

Sec. 18. All bonds issued under and pursuant to this Act shall be limited obligations of the corporation payable solely out of the revenues, receipts, and resources pledged to their payment. No holder of any bonds issued under this Act has the right to compel the local governmental unit to pay the bonds, the interest or redemption premium, if any, thereon, and the bonds shall not constitute an indebtedness or obligation of the local governmental unit or any other county, city, or other municipal or political corporation or subdivision of the state or of the state, or a loan of credit of any of them, within the meaning of any constitutional or statutory provision, nor shall the bonds be construed to create any moral obligation on the part of the local governmental unit or any other county, city, or other municipal or political corporation or subdivision of the state or of the state, with respect to the payment of such bonds, and all such entities are hereby prohibited from making any payments with respect to said bonds. It shall be plainly stated on the face of each bond that it has been issued under the provisions of this Act and that it does not constitute an indebtedness or obligation of the local governmental unit or any other county, city, or other municipal or political corporation or subdivision of the state or of the state, or a loan of credit of any of them, within the meaning of any constitutional or statutory provisions.

Investment of Funds

Sec. 19. The corporation, or any trustee or custodian on behalf of the corporation, may invest any funds held by it as provided in the resolution authorizing the issuance of the bonds.

Exception from Construction and Bidding Requirements for Public Buildings

Sec. 20. The acquisition, construction, or rehabilitation of a private residential development or a home shall not be subject to any requirements relating to public buildings, structures, grounds, works,

or improvements imposed by the laws of the State of Texas or any other similar requirements, and any requirement of competitive bidding or restriction imposed on the procedure for award of contracts for such purpose or the lease, sale, or other disposition of property of the local governmental unit is not applicable to any action taken under authority of this Act.

Exemption from Taxation

Sec. 21. It is hereby determined that the creation of the corporation is in all respects for the benefit of the people of the state, for the improvement of their health and welfare, and for the promotion of the economy, and that said purposes are public purposes and the corporation, being a public instrumentality and nonprofit corporation, will be performing an essential governmental function on behalf of and for the benefit of the general public, the local governmental unit, and the state. Accordingly, the corporation and all properties at any time owned by it and the income therefrom and all bonds issued by it, and their transfer, and the income therefrom shall be exempt from the franchise tax, license and recording fees, and all other taxes imposed by the State of Texas or any political subdivision thereof as public property used for public purposes. However, a corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

Bonds and Coupons are Securities

Sec. 22. Bonds issued under the provisions of this Act, and coupons, if any, representing interest thereon, shall when delivered be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code, as amended (Chapter 8, Title 1, Business & Commerce Code), and shall be exempt securities under the Texas Securities Act, as amended (Article 581–1 et seq., Vernon's Texas Civil Statutes). No contract under this Act shall be a security within the meaning of the Texas Securities Act.

Bonds are Legal and Authorized Investments and Security

Sec. 23. Bonds issued under the provisions of this Act shall be and are hereby declared to be legal and authorized investments for any banks; savings banks; trust companies; building and loan associations; insurance companies; fiduciaries; trustees and guardians; and sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas, and they shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmatured coupons, if any, appurtenant thereto.

Nonliability of Local Governmental Unit and the State

Sec. 24. The local governmental unit and the state shall not in any event be liable in any manner for or with respect to the bonds of the corporation, and none of the corporation's agreements or obligations shall be construed to constitute an agreement, obligation, or indebtedness of the local governmental unit or the state within the meaning of any constitutional or statutory provision whatsoever.

Nonprofit Corporation—Disposition of Earnings

Sec. 25. The corporation shall be a public nonprofit corporation. No dividends shall ever be paid, and no part of the net earnings of the corporation shall be distributed to, or enure to the benefit of, its directors or officers, or other private person, association, or corporation, except in reasonable amounts for services rendered, and except that in the event the board of directors of the corporation shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation, then any net earnings of the corporation thereafter accruing shall be paid to the local governmental unit on behalf of which the corporation was organized; provided, however, that nothing herein contained shall prevent the board of directors from transferring all or any part of its properties in accordance with the terms of any contract or agreement entered into by the corporation.

Books and Records

Sec. 26. The corporation shall keep correct and complete books and records of account and shall keep minutes of proceedings of its board of directors.

Completion of Corporate Purpose—Dissolution

Sec. 27. Whenever the board of directors of the corporation shall by resolution determine that the purposes for which the corporation was formed have been substantially complied with and all bonds theretofore issued and all obligations theretofore incurred by the corporation have been fully paid, then the directors of the corporation shall thereupon execute and file for record in the office of the secretary of state a certificate of dissolution reciting such facts and declaring the corporation to be dissolved. Such certificate of dissolution shall be executed under the corporate seal of the corporation. Upon the filing of such certificate of dissolution the corporation shall stand dissolved, the title to all funds and properties owned by it at the time of such dissolution shall vest in the local governmental unit, and possession of such funds and properties shall forthwith be delivered to such local governmental unit.

Powers not Restricted—Law Complete in Itself

Sec. 28. Neither this Act nor anything herein contained shall be construed as a restriction or limitation upon any powers which the corporation might otherwise have under any laws of this state, but shall be construed as cumulative of any such powers. No proceedings, notice, or approval shall be required

for the organization of the corporation or the issuance of any bonds or any instrument as security therefor, except as herein provided, any other law to the contrary notwithstanding; provided, that nothing herein shall be construed to deprive the state and its governmental subdivisions of their respective police powers over properties of the corporation, or to impair any power thereover of any official or agency of the state and its governmental subdivisions which may be otherwise provided by law.

Residential Development Sites

Sec. 29. Any local governmental unit may transfer any residential development site to a corporation by sale or lease. Such transfer may be authorized by a resolution of the governing body of the local governmental unit without submission of the question to the voters, and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law. Such project site may be within or without the local governmental unit or partially within and partially without the local governmental unit.

Powers Additional to Those Granted by Other Laws—Severability

Sec. 30. The powers conferred by this Act shall be in addition and supplementary to, and the limitations by this Act shall not affect the powers conferred by any other general, special, or local law. If any one or more sections or provisions of this Act, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid, the remaining provisions of this Act and the application thereof to persons or circumstances other than those to which it is held to be invalid, shall not be affected thereby, it being the intention of this legislature to enact the remaining provisions of this Act notwithstanding such invalidity.

[Acts 1979, 66th Leg., p. 2186, ch. 835, eff. June 14, 1979. Amended by Acts 1981, 67th Leg., p. 1776, ch. 389, § 23, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 3237, ch. 852, § 8, eff. June 17, 1981.]

Section 1 of Acts 1981, 67th Leg., p. 1490, ch. 389, enacted Title 2 of the Tax Code.

Art. 1269l-8. State Ceiling, Allocation, and Local Share of Housing Bonds

Definitions

Sec. 1. In this Act:

(1) "Executive director" means the executive director of the Texas Department of Community Affairs of the State of Texas.

(2) "Housing bonds" means bonds that are issued by the Texas Housing Agency or a housing finance corporation and that are subject to the state ceiling imposed by Section 103A, Internal Revenue Code of 1954, as amended (26 U.S.C. Section 103A).

(3) "Housing finance corporation" means a corporation created under the Texas Housing Finance Corporations Act (Article 1269l-7, Vernon's Texas Civil Statutes).

(4) "Local population" means the population in the local governmental unit or units on whose behalf the housing finance corporation is created as determined in the 1980 decennial census. If two local governmental units which overlap have created housing finance corporations that have the power to issue bonds to provide financing for home mortgages, prior to the sale of housing bonds by either corporation there shall be excluded from the population of the larger local governmental unit that portion of the population of any smaller local governmental unit having a population as determined in the 1980 decennial census of 20,000 or more which is within the larger local governmental unit, unless the smaller local governmental unit assigns its authority to issue bonds prior to September 1, 1981, or June 1 of 1982 or 1983, based upon its population, to the larger local governmental unit.

(5) "Local share" means the product which results from multiplying the state ceiling by 70 percent.

(6) "State ceiling" means the state ceiling imposed on housing bonds for each calendar year by Section 103A, Internal Revenue Code of 1954, as amended (26 U.S.C. Section 103A).

(7) "State population" means the population of the state as determined by the 1980 decennial census.

(8) "State share" means the product which results from multiplying the state ceiling by 30 percent.

Determination of State Ceiling

Sec. 2. The state ceiling shall be determined for each calendar year by the board of directors of the Texas Housing Agency on or before July 1, 1981, and on or before February 1 of the calendar years 1982 and 1983 based upon such evidence as the board of directors shall determine.

Allocation of State Ceiling

Sec. 3. (a) There is hereby allocated to the Texas Housing Agency for the calendar years 1981, 1982, and 1983, the state share of the state ceiling.

(b) Subject to the receipt of a reservation certificate there is hereby allocated jointly to housing finance corporations and the Texas Housing Agency for the calendar years 1981, 1982, and 1983, the local share of the state ceiling.

(c) The allocation made by Subsection (b) of this section is not available to the Texas Housing Agency in a calendar year until it has exhausted its allocation under Subsection (a) of this section for that year.

Amendments to Texas Housing Agency Act

Sec. 4. [Amends §§ 2 and 8(a) of art. 1269l–6].

Reservation of Local Share

Sec. 5. (a) Upon the determination of the state ceiling in each calendar year, a housing finance corporation or the Texas Housing Agency in accordance with the terms of Section 3 of this Act, may reserve a portion of the local share by filing a reservation request, accompanied by a bond purchase contract executed by the issuer and the purchaser of such bonds, with the executive director. Such reservation request must be on such forms as the executive director may prescribe and must contain the following information: (i) identify the issuer of the bonds; (ii) identify the series of bonds which are the subject of the bond purchase contract; (iii) state the execution date of the bond purchase contract; and (iv) state the aggregate amount of the bonds.

(b) Prior to September 1, 1981, and June 1 of 1982 and 1983, the maximum amount of the local share which may be reserved by a housing finance corporation may not exceed $100 times the local population of such housing finance corporation, except (i) if the local population is 200,000 or more but less than 300,000, the maximum amount of the local share which may be reserved prior to the foregoing dates may not exceed $150 times the local population, (ii) if the local population is 100,000 or more but less than 200,000, the maximum amount of the local share which may be reserved prior to the foregoing dates may not exceed $200 times the local population, and (iii) if the local population is less than 100,000, the maximum amount of the local share which may be reserved prior to the foregoing dates may not exceed $300 times the local population. In each calendar year following the applicable dates set forth in the preceding sentence, reservation of the local share shall not be restricted other than as otherwise provided by the laws of the State of Texas.

(c) Any reservation of a portion of the local share shall lapse and no longer be effective upon the expiration of 45 days following the date of filing the reservation request with the executive director, if prior thereto the issuer has failed for whatever reason to file with the executive director a certificate evidencing that the bonds for which the reservation was filed have been delivered and paid for along with the final official statement or disclosure document relating to the housing bonds.

Reservation Certificate

Sec. 6. (a) Upon the filing of a reservation request complying with Section 5 of this Act, the executive director shall promptly issue a reservation certificate. The executive director shall issue certificates according to the order in which the requests are filed. If two or more reservation requests are filed on the same date, certificates shall be issued in the order of the date of execution of the bond purchase contracts. If both the date of filing of the requests and the date of execution of the bond purchase contracts are the same, the executive director shall issue certificates in an order determined by lot, unless otherwise agreed by the affected housing finance corporations or the Texas Housing Agency.

(b) Each reservation certificate must contain the following information: (i) the local share; (ii) the name of the issuer; (iii) the amount and identity of the bonds sold by the issuer under the bond purchase contract of which the certificate applies; (iv) the date of execution of the bond purchase contract; and (v) the aggregate amount of the local share reserved by all issuers in the current calendar year for which reservation requests have been received and certificates have been issued which have not expired, including the bonds for which the certificate was issued.

Specification of Forms

Sec. 7. The executive director may prescribe forms for use in connection with any filing required under this Act.

Amendment to Definitions in Housing Finance Corporations Act

Definitions

Sec. 9. Except as otherwise provided herein, the terms used in this Act shall have the same meaning as in the Texas Housing Finance Corporations Act (Article 1269l–7, Vernon's Texas Civil Statutes).

Severability

Sec. 10. The powers conferred by this Act shall be in addition and supplementary to, and the limitations by this Act shall not affect the powers conferred by any other general, special, or local law. If any one or more sections or provisions of this Act, or the application thereof to any person or circumstance, shall ever be held by any court of competent jurisdiction to be invalid, the remaining provisions of this Act and the application thereof to persons or circumstances other than those to which it is held to be invalid, shall not be affected thereby, it being the intention of this legislature to enact the remaining provisions of this Act notwithstanding such invalidity.

[Acts 1981, 67th Leg., p. 3231, ch. 852, §§ 1 to 3, 5 to 7, 9, 10, eff. June 17, 1981.]

CHAPTER TWENTY-TWO. CIVIL SERVICE

FIREMEN AND POLICEMEN

Article

1269s. Defense of Civil Suits Against Peace Officers.

Art. 1269m. Firemen's and Policemen's Civil Service in Cities Over 10,000

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

Definitions

Sec. 2. By the term "Fireman" is meant any member of the Fire Department appointed to such position in substantial compliance with the provisions of Sections 9, 10 and 11 of this Act, or entitled to Civil Service Status under Section 24 of this Act. The term includes firemen who perform fire suppression, fire prevention, fire training, fire safety education, fire maintenance, fire communications, fire medical emergency technology, fire photography, or fire administration. By the term "Policeman" is meant any member of the Police Department appointed to such position in substantial compliance with the provisions of Sections 9, 10 and 11 of this Act, or entitled to Civil Service Status under Section 24 of this Act. By the term "Commission" as used herein is meant the Firemen's and Policemen's Civil Service Commission. The term "Director" means Director of Firemen's and Policemen's Civil Service.

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

Investigations and Inspections

Sec. 5a. The Commission may make investigations concerning, and report upon all matters touching, the enforcement and effect of the provisions of this Act, and the rules and regulations prescribed hereunder; and shall ascertain whether this Act and all such rules and regulations are being obeyed. Such investigations may be made by the Commission or by any Commissioner designated by the Commission for that purpose. In the course of such investigation the Commission or designated Commissioner shall have the power to administer oaths, subpoena and require the attendance of witnesses and the producing by them of books, papers, documents, and accounts pertaining to the investigation, and also to cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the court of original and unlimited jurisdiction to civil suits of the United States; and the oaths administered hereunder and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by a magistrate in his judicial capacity; and the failure upon the part of any person so subpoenaed to comply with the provisions of this Section shall be deemed a violation of this Act, and punishable as such.

Public Records

Sec. 5b. The Commission shall keep records of all hearings or cases that come before it. Commission decisions shall be signed by the concurring Commissioners. All rules, opinions, directives, decisions, and orders issued by the Commission shall be written and are public records that shall be retained on file by the Commission.

[See Compact Edition, Volume 3 for text of 6 and 7]

Classification of Firemen and Policemen; Educational Incentive Pay

Text of section as amended by Acts 1979, 66th Leg., p. 152, ch. 83, § 1

Sec. 8. The Commission shall provide for the classification of all firemen and policemen. Such classification shall be provided by ordinance of the City Council, or legislative body. Said City Council, or legislative body, shall prescribe by ordinance the number of positions of each classification.

No classification now in existence, or that may be hereafter created in such cities, shall ever be filled except by examination held in accordance with the provisions of this law. All persons in each classification shall be paid the same salary and in addition thereto be paid any of the following types of pay that they may be entitled to: (1) longevity pay; (2) seniority pay; (3) educational incentive pay; or (4) assignment pay. This shall not prevent the Head of such Department from designating some person from the next lower classification to fill a position in a higher classification temporarily, but any such person so designated by the Head of the Department shall be paid the base salary of such higher position plus his own longevity pay during the time he performs the duties thereof. The temporary performance of the duties of any such position by a person who has not been promoted in accordance with the provisions of this Act shall never be construed to promote such person. All vacancies shall be filled by permanent appointment from eligibility lists furnished by the Commission within ninety (90) days after such vacancy occurs.

Firemen and policemen shall be classified as above provided, and shall be under civil service protection except the Chief or Head of such Fire Department or Police Department, by whatever name he may be known.

Said Chiefs or Department Heads shall be appointed by the Chief Executive, and confirmed by the City Council or legislative body except in cities where the Department Heads are elected. In those cities having elective Fire and Police Commissioners the appointments for Chiefs and Heads of those Departments shall be made by the respective Fire or Police Commissioners in whose Department the vacancy exists, and such appointments shall be confirmed by the City Council or legislative body.

Said City Council or legislative body may authorize educational incentive pay in addition to regular pay for policemen and firemen within each classification, who have successfully completed courses in an accredited college or university, provided that such courses are applicable toward a degree in law

enforcement-police science and include the core curriculum in law enforcement or are applicable toward a degree in fire science. An accredited college or university, as that term is used herein, shall mean any college or university accredited by the nationally recognized accrediting agency and the state board of education in the state wherein said college or university is located and approved or certified by the Texas Commission on Law Enforcement Officer Standards and Education as teaching the core curriculum or its equivalent or, in the case of fire science degree courses, approved or certified by the Texas Commission on Fire Protection, Personnel Standards, and Education. Core curriculum in law enforcement, as used herein, shall mean those courses in law enforcement education as approved by the Coordinating Board, Texas College and University System and the Texas Commission on Law Enforcement Officer Standards and Education.

Classification of Firemen and Policemen; Educational Incentive Pay

Text of section as amended by Acts 1979, 66th Leg., p. 1857, ch. 753, § 3

Sec. 8. The Commission shall provide for the classification of all firemen and policemen. Such classification shall be provided by ordinance of the City Council, or legislative body. Said City Council, or legislative body, shall prescribe by ordinance the number of positions of each classification.

No classification now in existence, or that may be hereafter created in such cities, shall ever be filled except by examination held in accordance with the provisions of this law. All persons in each classification shall be paid the same salary and in addition thereto be paid any longevity, seniority, educational incentive pay, or certification pay that he may be entitled to. This shall not prevent the Head of such Department from designating some person from the next lower classification to fill a position in a higher classification temporarily, but any such person so designated by the Head of the Department shall be paid the base salary of such higher position plus his own longevity pay during the time he performs the duties thereof. The temporary performance of the duties of any such position by a person who has not been promoted in accordance with the provisions of this Act shall never be construed to promote such person. All vacancies shall be filled by permanent appointment from eligibility lists furnished by the Commission within sixty (60) days after such vacancy occurs. If no list is in existence, the vacancies shall be filled from a list which the Commission shall provide within ninety (90) days after the vacancy occurs.

Firemen and policemen shall be classified as above provided, and shall be under civil service protection except the Chief or Head of such Fire Department or Police Department, by whatever name he may be known.

Said Chiefs or Department Heads shall be appointed by the Chief Executive, and confirmed by the City Council or legislative body except in cities where the Department Heads are elected. In those cities having elective Fire and Police Commissioners the appointments for Chiefs and Heads of those Departments shall be made by the respective Fire or Police Commissioners in whose Department the vacancy exists, and such appointments shall be confirmed by the City Council or legislative body.

The City Council or legislative body of a city may authorize educational incentive pay in addition to regular pay for a fireman or policeman who has successfully completed courses at an accredited college or university if the criteria for the educational incentive pay is clearly established, is in writing, and is applied equally to all firemen or policemen meeting the criteria. If all firemen or policemen are afforded an opportunity to qualify themselves for certification, certification pay may be authorized by the City Council or legislative body of the city in addition to regular pay for those firemen meeting the requirements for certification set by the Commission on Fire Protection Personnel Standards and Education or policemen meeting the requirements for certification set by the Commission on Law Enforcement Officer Standards and Education.

Sec. 8A. Repealed by Acts 1979, 66th Leg., p. 1856, ch. 753, § 12, eff. Sept. 1, 1979.

Cities of 1,200,000 or More; Assignment Pay

Sec. 8B. (a) In any city having a population of 1,200,000 or more, according to the most recent federal census, the city council or legislative body may authorize assignment pay for emergency ambulance attendants in an amount and payable under conditions as set by ordinance. The assignment pay shall be in addition to the regular pay received by members of the fire department. The chief of the fire department is not eligible for the assignment pay authorized by this section.

(b) In this section:

(1) "Emergency ambulance attendant" means a member of the fire department who provides emergency medical care and emergency transportation for members of the public.

(2) "Helicopter personnel" means a member of the police department who pilots helicopters or rides as an observer in helicopters.

(3) "Bomb squad personnel" means a member of the police department who is assigned to the bomb squad and actually participates in the detection, handling, or disarming of explosive devices or materials.

(4) "Special weapons and tactics personnel" means a member of the police department who is assigned to the special weapons and tactics squad and actually performs the duties and responsibilities of the special weapons and tactics squad.

(c) In any city having a population of 1,200,000 or more according to the most recent federal census, the city council or legislative body may authorize assignment pay for helicopter personnel, bomb squad personnel, and special weapons and tactics personnel. Assignment pay shall be in an amount and payable under conditions as set by ordinance. The assignment pay shall be in addition to the regular pay received by members of the police department. The chief of the police department is not eligible for the assignment pay authorized by this section.

Sec. 8C. (a) In this section, "field training officer" means a member of the police department who is assigned to the field training officers program and actually performs the duties and responsibilities of the field training officers program.

(b) The city council or legislative body of a city that adopts this Act may authorize assignment pay for field training officers. Assignment pay shall be in an amount and payable under conditions as set by ordinance. The assignment pay shall be in addition to the regular pay received by members of the police department. The chief of the police department is not eligible for the assignment pay authorized by this section.

Examination for Eligibility Lists

Sec. 9. The Commission shall make provisions for open, competitive and free examinations for persons making proper application and meeting the requirements as herein prescribed. All eligibility lists for applicants for original positions in the Fire and Police Departments shall be created only as a result of such examinations, and no appointments shall ever be made for any position in such Departments except as a result of such examination, which shall be based on the applicant's knowledge of and qualifications for fire fighting and work in the Fire Department, or for police work and work in the Police Department, as shown by competitive examinations in the presence of all applicants for such position, and shall provide for thorough inquiry into the applicant's general education and mental ability. Fire Department entrance examinations may be given at different locations if all applicants are given the same examination and examined in the presence of other applicants. An applicant may not take the examination more than once for each eligibility list. An applicant may not take an examination unless at least one (1) other applicant being tested is present.

An applicant who has served in the armed forces of the United States and who received an honorable discharge shall receive five (5) points in addition to his competitive grades.

The Commission shall keep all eligibility lists for applicants for original positions in the Fire Department or Police Department in effect for not less than six (6) months nor more than twelve (12) months unless the names of all applicants have been referred to the appropriate Department. The Commission shall give a new examination at the end of the twelve (12) month period or sooner, if applicable, or if all names on the list have been referred to the appropriate Department. The Commission shall determine how long each eligibility list shall remain in effect within the six (6) to twelve (12) month period and shall include this information on the eligibility announcement.

Appropriate physical examinations shall be required of all applicants for beginning or promotional positions, and the examinations shall be given by a physician appointed by the Commission and paid by such city; and in the event of rejection by such physician, the applicant may call for further examination by a board of three (3) physicians appointed by the Commission, but at the expense of the applicant, whose findings shall be final. The age and physical requirements shall be set by the Commission in accordance with provisions of this law and shall be the same for all applicants.

No person shall be certified as eligible for a beginning position with a Fire Department who has reached his thirty-sixth birthday. No person shall be certified as eligible for a beginning position with a Police Department who has reached his thirty-sixth birthday unless the applicant has at least five (5) years prior experience as a peace officer. No person shall be certified as eligible for a beginning position with a Police Department who has reached his forty-fifth birthday.

All police officers and firemen coming under this Act must be able to intelligently read and write the English language.

When a question arises as to whether a fireman or policeman is sufficiently physically fit to continue his duties, the employee shall submit a report from his personal physician to the Commission. If the Commission, the head of the Department, or the employee questions the report, the Commission shall appoint a physician to examine the employee and to submit a report to the Commission, to the head of the Department, and to the employee. If the appointed physician's report disagrees with the report of the employee's personal physician, the Commission shall appoint a board of three (3) physicians to examine the employee. Their findings as to the employee's fitness for duty shall determine the issue. The cost of the services of the employee's personal physician shall be paid by the employee. All other costs shall be paid by the city.

A fireman or policeman who has been certified by a physician selected by a firemen's or policemen's relief or retirement fund as having recovered from a disability for which he has been receiving a monthly disability pension shall, with the approval of the Commission and if otherwise qualified, be eligible for reappointment to the classified position that he held as of the date that he qualified for a monthly disability pension.

[See Compact Edition, Volume 3 for text of 10 and 11]

Probationary and Full-fledged Firemen and Policemen

Sec. 12. (a) A person who has received appointment to the Fire Department or Police Department hereunder, shall serve a probationary period of one (1) year from date of employment with the Department as a Fireman, Policeman, or trainee in an academy.

(b) In any city having a population of 1,200,000 or more, according to the most recent federal census, a person who has received appointment to the Police Department and has ended his service with the Department for any reason shall serve a probationary period of six (6) months from date of reappointment. A reappointed officer is not entitled to full civil service protection until the officer has served the full probationary period after reappointment. For purposes of determining classification, pay status, and eligibility for promotion of the reappointed officer, the probationary period after reappointment is counted as if the reappointed officer were not on probation.

(c) During such probationary period, it shall be the duty of the Fire Chief or head of the Fire Department or Police Chief or head of the Police Department to discharge all Firemen or Policemen whose appointments where not regular, or not made in compliance with the provisions of this Act, or of the rules or regulations of the Commission, and to eliminate from the payrolls any such probationary employee. When Firemen or Policemen, however, have served the full probationary period, having been appointed in substantial compliance with Sections 9, 10, and 11 of this Act and not otherwise, they shall automatically become full-fledged civil service employees and shall have full civil service protection. All positions in the Fire Department, except that of Chief or head of the Department, and in the Police Department, except that of Chief or head of the Department, shall be classified by the Commission and the positions filled from the eligibility lists as provided herein.

(d) All offices and positions in the Fire Department or Police Department shall be established by ordinance of the City Council or governing body, provided however that the failure of a City Council or governing body to establish a position by ordinance shall not result in the loss of Civil Service benefits under this Act by any person appointed to such position in substantial compliance with the provisions of Sections 9, 10, and 11 of this Act, or entitled to Civil Service Status under Section 24 of this Act.

Employee Organization Membership Requirements Prohibited

Sec. 12A. An employee who is on probation may not be prohibited from joining or required to join an employee organization. Joining or not joining an employee organization is not a ground for retention or nonretention of an employee who is serving a probationary period.

Notice of Examinations

Sec. 13. At least ten (10) days in advance of any entrance examination and at least thirty (30) days in advance of any examination for promotion, the Commission shall cause to be posted on a bulletin board located in the main lobby of the city hall, and the office of the Commission, and in plain view, a notice of such examination, and said notice shall show the position to be filled or for which examination is to be held, with date, time, and place thereof, and in case of examination for promotion, copies of such notice shall be furnished in quantities sufficient for posting in the various stations or subdepartments in which position is to be filled. No one under eighteen (18) years of age shall take any entrance examination, and appointees to the Police and Fire Department shall not have reached their thirty-sixth birthday for entrance into the Fire Department or Police Department. The results of each examination for promotion shall be posted on a bulletin board located in the main lobby of the city hall by the Commission within twenty-four (24) hours after such examination.

Promotions; Filling Vacancies

Sec. 14. The Commission shall make rules and regulations governing promotions and shall hold promotional examinations to provide eligibility lists for each classification in the Police and Fire Departments, which examinations shall be held substantially under the following requirements:

Text of subsection A as amended by Acts 1979, 66th Leg., p. 544, ch. 258, § 1

A. (1) All promotional examinations shall be open to all policemen who have held a continuous position for two (2) years or more immediately prior to the examination in the classification immediately below in salary of that classification for which the examination is to be held. In police departments that have adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, all promotional examinations shall be open to a policeman who has held a continuous position for two (2) years or more immediately prior to the examination at the next lower paygrade, if it exists, in the classification for which the promotional examination is being offered. When there is not a sufficient number of members in the next lower position with two (2) years service in that position to provide an adequate number of persons to take the examination, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held.

(2) All promotional examinations shall be open to all firemen who have ever held a continuous position for two (2) years or more in the classification immediately below in salary of that classification for which the examination is to be held. In fire depart-

ments that have adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, all promotional examinations shall be open to a fireman who has ever held a continuous position for two (2) years or more at the next lower paygrade, if it exists, in the classification for which the promotional examination is being offered. This section shall be construed so as to allow the lateral crossover between classes. When there is not a sufficient number of members in the next lower position with two (2) years service in that position to provide an adequate number of persons to take the examination, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held.

Text of subsection A as amended by Acts 1979, 66th Leg., p. 1860, ch. 753, § 7

A. (1) All promotional examinations shall be open to all policemen who have held a continuous position for two (2) years or more immediately prior to the examination in the classification immediately below, in salary, that classification for which the examination is to be held. In police departments that have adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, all promotional examinations shall be open to a policeman who has held a continuous position for two (2) years or more immediately prior to the examination at the next lower paygrade, if it exists, in the classification for which the promotional examination is being offered. When there is not a sufficient number of members in the next lower position with two (2) years' service in that position to provide an adequate number of persons to take the examination, the Commission shall open the examination to members in that position with less than two (2) years' service. If there is still an insufficient number, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held.

(2) All promotional examinations shall be open to all firemen who have ever held a continuous position for two (2) years or more in the classification immediately below, in salary, that classification for which the examination is being held. In fire departments that have adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, all promotional examinations shall be open to a fireman who has ever held a continuous position for two (2) years or more at the next lower paygrade, if it exists, in the class for which the promotional examination is being offered. This section may not be construed to prohibit lateral crossover between classes. If there are not enough members in the next lower position with two (2) years' service in that position to provide an adequate number of persons to take the examination, the Commission may open the examination to members in that position with less than two (2) years' service. If there is still an insufficient number, the Commission may extend the examination to the members in the second lower position in salary to that for which the examination is to be held with two (2) years' service in that position.

B. Each fireman shall be given one (1) point for each year of seniority in his Department, but never to exceed ten (10) points. Each policeman shall be given one (1) point for each year of seniority as a classified police officer in his Department, but never to exceed ten (10) points.

C. The Commission may formulate proper procedure and rules for semi-annual efficiency reports and grade of each member of the Police or Fire Departments. If the Commission compiles efficiency reports for members of the Police or Fire Department, the Commission shall provide a copy of a member's efficiency report to the member. Any fireman or policeman may, within ten (10) days after receiving his efficiency report, make a statement in writing about the efficiency report. The statement shall be placed in his personnel file with the efficiency report.

D. (1)(a) All applicants shall be given an identical examination in the presence of each other, which promotional examination shall be entirely in writing and no part of which shall be by oral interview, and all of the questions asked therein shall be prepared and composed in such a manner that the grading of the examination papers can be promptly completed immediately after the holding of the examination and shall be prepared so as to test the knowledge of the applicants concerning information and facts, and all of said questions shall be based upon material which is a reasonably current publication and has been made reasonably available to all members of the Fire or Police Department involved and shall be based upon the duties of the position sought and upon any study courses given by such Departmental Schools of Instruction. All promotional examination questions must be taken from sources that are listed in a notice that is posted by the Commission at least thirty (30) days before the date of the examination. Firemen or policemen may suggest source materials for promotional examinations. The notice required by Section 13 of this Act may include the name of each source used and the number of questions taken from each source. The Commission may include the chapter of each source. When one of the applicants taking an examination for promotion has completed his answers, the grading of such examination shall begin, and all of the examination papers shall be graded as they are completed, at the place where the examination is given and in the presence of any applicants who wish to remain during the grading.

(b) The Director is responsible for the preparation and security of all promotional examinations. The fairness of the competitive promotional examinations is the responsibility of the Commission, the Director, and any municipal employee involved in the preparation or administration of the examina-

tion. A person who knowingly or intentionally reveals any part of a promotional examination to an unauthorized person or a person who knowingly or intentionally receives from an unauthorized person any part of a promotional examination commits a misdemeanor and shall be fined not less than One Thousand Dollars ($1,000) or imprisoned for not more than one (1) year in the county jail or both.

(2) The grade which shall be placed on the eligibility list for each policeman applicant shall be computed by adding such policeman applicant's points for seniority to his grade on such written examination. Grades on such written examinations shall be based upon a maximum grade of one hundred (100) points and shall be determined entirely by the correctness of each applicant's answers to such questions. The minimum passing score for the written examination is seventy (70) points.

(3) The grade which shall be placed on the eligibility list for each fireman applicant shall be computed by adding the fireman applicant's points for seniority to his grade on the written examination. Grades on the written examination shall be based on a maximum grade of one hundred (100) points and shall be determined entirely by the correctness of each fireman applicant's answers to the questions. The minimum passing score for the written examination is seventy (70) points.

(4) Each applicant shall have the opportunity to examine the source materials, his examination, and his answers thereto together with the grading thereof and if dissatisfied shall, within five (5) working days, appeal the same to the Commission for review in accordance with the provisions of this Act.

(5) No fireman shall be eligible for promotion unless he has served in such Department for at least two (2) years at any time prior to the day of such promotional examination in the next lower position or other positions specified by the Commission, and no person with less than four (4) years' actual service in such Department shall be eligible for promotion to the rank of captain or its equivalent. No policeman shall be eligible for promotion unless the policeman has served in the Department for at least two (2) years immediately preceding the date of the promotional examination in the next lower position or other positions specified by the Commission, and no person with less than four (4) years' actual service in the Department shall be eligible for promotion to the rank of captain or its equivalent. Provided, however, that the requirement of two (2) years' service in the Fire Department at any time prior to the day of promotional examination shall not be applicable to those persons recalled on active military duty for a period not to exceed twenty-four (24) months. The Police Department's requirement of two (2) years' service immediately preceding the date of the promotional examination does not apply to persons recalled to active military duty for a period not to exceed twenty-four (24) months. Such persons shall be entitled to have time spent on active military duty considered as duty in the Department concerned. However, any person whose absence for active military duty exceeds twelve (12) months, shall be required to serve ninety (90) days upon returning to the Department before he shall become eligible to participate in a promotional examination, such period of time to be considered essential for bringing him up to date on equipment and techniques.

(6) No person shall be eligible for appointment as Chief or Head of the Fire Department of any city coming under the provisions of this Act who is not eligible for certification by the Commission on Fire Protection Personnel Standards and Education at the intermediate level or its equivalent as determined by that Commission and who has not served at least five (5) years as a fully paid fireman. No person may be eligible for appointment as Chief or Head of the Police Department who is not eligible for certification by the Commission on Law Enforcement Officer Standards and Education at the intermediate level or its equivalent as determined by that Commission and who has not served as a bona fide law enforcement officer for five (5) years.

E. (1) Upon written request by the Heads of the Departments for a person to fill a vacancy in any classification, the Commission shall certify to the Head of the Department the three (3) names having the highest grades on such eligibility list for such classification for the vacancy requested to be filled. If fewer than three (3) names remain on the eligibility list, all the names must be submitted to the Head of the Department, and the Head of such Department shall appoint the person having the highest grade, except where such Head of the Department shall have a valid reason for not appointing such highest name, and in such cases he shall, before such appointment, file his reasons in writing, for rejection of the higher name or names, with the Commission, which reasons shall be valid and subject to review by the Commission upon the application of such rejected person.

(2) The name of each person on the eligibility lists shall be submitted to the Head of the Department three (3) times; and if passed over three (3) times with written reasons filed thereafter and not set aside by the Commission, he shall thereafter be dropped from the eligibility list. All promotional eligibility lists shall remain in existence for one (1) year unless exhausted, and at the expiration of one (1) year they shall expire and new examinations may be given.

F. The Commission shall proceed to hold examinations to create eligibility lists within ninety (90) days after a vacancy in any classification occurs, or new positions are created, unless an eligibility list is in existence. If an eligibility list exists, the Commission shall certify within ten (10) days after notification of the vacancy to the Head of the Department the names of persons eligible to fill all promotional positions. The certified names must come from the

eligibility list which exists on the date the vacancy occurs.

G. In the event any new classification is established either by name or by increase of salary, the same shall be filled by competitive examination in accordance with this law.

Crossover Promotions

Sec. 14A. (a) In any city in this state having a population of 1,200,000 or more inhabitants, according to the last preceding federal census, all members of the police department, who shall be employed by such department with duties in a specialized technical area, to wit: (1) technical class, which includes but is not limited to criminal laboratory analysis and interpretations, and the technical criminal aspects of identification and photography, or (2) communications class, which includes but is not limited to the technical operations of police radio communications, shall be eligible for promotions within their respective classes.

(b) In no event shall the members of the technical class, communications class, or uniformed and detective class be eligible for promotion to a position outside of their respective class. This section shall be construed so as to preclude the lateral crossover by promotion of members of the technical and communications classes into the uniformed and detective class of the department; also to preclude the lateral crossover by promotion of members of the uniformed and detective class into the technical and communications classes of the department. In the event a member of one class desires to change classes, such may be accomplished upon qualification and only by entry into the new class at the lowest entry level of that class.

(c) This section shall not operate so as to prevent the chief of police, assistant chiefs of police, and deputy chiefs of police or their equivalent, by whatever name or title they may be called, from exercising the full sanctions, powers, duties, and authority of their respective offices in the supervision, management, and control over the uniformed and detective class, technical class, and communications class.

(d) All provisions of this article regarding eligibility lists, examinations, appointments, and promotions shall apply to members of the technical class and communications class, uniform class and detective class. However, said provisions shall apply only to the appointment and promotion of a member of a particular class to a new position within such class.

[See Compact Edition, Volume 3 for text of 15 and 16]

Purpose of Law; Hearings

Sec. 16a. It is hereby declared that the purpose of the Firemen and Policemen's Civil Service Law is to secure to the cities affected thereby efficient Police and Fire Departments, composed of capable personnel, free from political influence, and with permanent tenure of employment as public servants. The members of the Civil Service Commissions are hereby directed to administer the civil service law in accordance with this purpose; and when sitting as a board of appeals for a suspended or aggrieved employee who has invoked any review procedures under the provisions of this Act, they are to conduct such hearing fairly and impartially under the provisions of this law and are to render a fair and just decision, considering only the evidence presented before them in such hearing.

Procedure before Commission

Sec. 17. In order for a Fireman or Policeman to appeal to the Commission from any action for which an appeal or review is provided under the terms of this Act, it shall only be necessary for him to file within ten (10) days with the Commission an appeal setting forth the basis of his appeal. The appeal shall include a statement denying the truth of the charge as made, a statement taking exception to the legal sufficiency of such charges, a statement alleging that the recommended action does not fit the offense or alleged offense, or any combination of the statements, and in addition, a request for a hearing by the Commission. In all hearings, appeals, and reviews of every kind and character, wherein the Commission is performing an adjudicatory function, the employee shall have the right to be represented by council or any person of his choice. The employee may request the Commission to subpoena any books, records, documents, papers, accounts, or witnesses that the employee considers pertinent to his case. The request to have materials subpoenaed must be made at least ten (10) days before the date of the hearing. If the Commission does not subpoena the requested material, at least three (3) days prior to the hearing date, it shall make a written report to the employee stating the reason it will not subpoena the requested material, and this report shall be read into the public records of the Commission hearing. The witnesses may be placed under the rule. All such proceedings shall be public. The Commission shall consider only evidence submitted at the hearing. The Commission shall have the authority to issue subpoenas and subpoenas duces tecum for the attendance of witnesses and for the production of documentary material. The Commission shall maintain a permanent public record of all proceedings with copies available at cost.

Appeal to District Court

Sec. 18. In the event any Fireman or Policeman is dissatisfied with any decision of the Commission, he may, within ten (10) days after the rendition of such final decision, file a petition in the District Court, asking that the decision be set aside, and such case shall be tried de novo. The court in such actions may grant such legal or equitable relief as may be appropriate to effectuate the purposes of this Act, including reinstatement or promotion with back pay where an order of suspension, dismissal, or demotion is set aside. The court may award reason-

able attorney's fees to the prevailing party and assess court costs against the nonprevailing party. If the court finds for the fireman or policeman, the court shall order the city to pay lost wages to the fireman or policeman.

[See Compact Edition, Volume 3 for text of 19]

Disciplinary Suspensions

Sec. 20. The head of either the Fire or Police Department shall have the power to suspend any officer or employee under his jurisdiction or supervision for disciplinary purposes, for reasonable periods, not to exceed fifteen (15) days; provided, that in every such case, the department head shall file with the Commission within one hundred and twenty (120) hours, a written statement of action, and the Commission shall, upon appeal from the suspended officer or employee, hold a public hearing under Section 17 of this Act. The Commission shall determine whether just cause exists therefor. In the event the department head fails to file said statement with the Commission within one hundred and twenty (120) hours, the suspension shall be void and the employee shall be entitled to his full salary. The Commission shall have the power to reverse the decision of the department head and to instruct him immediately to restore such employee to his position and to repay the employee for any lost wages. If the Commission finds that the period of disciplinary suspension should be reduced, it may order a reduction in the period of suspension. In the event such department head refuses to obey the order of the Commission, then the provisions with reference to salaries of the employees and to the discharge of the department head as well as the other provisions of Section 16, pertaining to such refusal of the department head, shall apply.

[See Compact Edition, Volume 3 for text of 21 and 22]

Military Leave of Absence

Sec. 22a. The Civil Service Commission on written application of a member of the fire or police department shall grant military leave of absence without pay to such member to enable him to enter military service of the United States in any of its branches. Such leave of absence may not exceed the compulsory military service or the basic minimum enlistment period for that branch of service. The Commission shall grant a leave of absence to a member of the fire or police department for initial training or annual duty in military reserves or the national guard. The Civil Service Commission shall grant such leave retroactively back to the commencement of the Korean War. Any such member receiving military leave of absence hereunder shall be entitled to be returned to the position in the department held by him at the time the leave of absence is granted, upon the termination of his active military service, provided he receives an Honorable Discharge and remains physically and mentally fit to discharge the duties of that position; and further provided he makes application for reinstatement within ninety (90) days after his discharge. Upon being returned to said position, such member shall receive full seniority credit for the time spent in the military service. During the absence from the department of any such member to whom military leave of absence shall have been granted by the Civil Service Commission the position in the department held by such member shall be filled in accordance with the other provisions of the Firemen's and Policemen's Civil Service Act subject to the person filling such position being replaced by the member to whom military leave of absence has been granted upon his return to active duty with the department. Any person so replaced and remaining with the department and by reason of such replacement being returned to a position lower in grade or compensation shall have a preferential right for subsequent appointment or promotion to the same or similar position of that from which he has been replaced over any eligibility list for such position, provided he remains physically and mentally fit to discharge the duties of such position.

[See Compact Edition, Volume 3 for text of 23 to 25]

Penalties

Sec. 25a. Any chief executive of a city who knowingly or intentionally fails or refuses to appoint the Civil Service Commissioners provided by Section 3 of this Act within sixty (60) days after the city has adopted this Act commits a misdemeanor and shall be fined not less than One Hundred Dollars ($100) nor more than Two Hundred Dollars ($200). Each day after the 60-day deadline that the chief executive fails or refuses to make an appointment constitutes a separate offense. A chief executive or any city official who knowingly or intentionally refuses to implement this Act or attempts to obstruct the enforcement of this Act commits a misdemeanor and shall be fined not less than One Hundred Dollars ($100) nor more than Two Hundred Dollars ($200) for each offense.

Sick and Injury Leaves of Absence

Sec. 26. Permanent and temporary employees in the classified service shall be allowed a total of sick leave with full pay computed upon a basis of one and one-fourth (1¼) full working days allowed for each full month employed in a calendar year, so as to total fifteen (15) working days to an employee's credit each twelve (12) months.

Employees shall be allowed to accumulate fifteen (15) working days of sick leave with pay in one (1) calendar year.

Sick leave with pay may be accumulated without limit and may be used while an employee is unable to work because of any bona fide illness. In the event that the said employee can conclusively prove

that the illness was incurred while in performance of his duties, an extension of sick leave in case of exhaustion of time shall be granted.

In the event that a Fireman or Policeman for any reason leaves the classified service, he shall receive, in a lump sum payment, the full amount of his salary for the period of his accumulated sick leave, provided that if the Fireman or Policeman has more than ninety (90) working days of accumulated sick leave, the employer may limit the payment to that sum equal to the sum that the employee would have been paid had he been allowed to use the ninety (90) days of accumulated sick leave during the last six (6) months of employment. Provided, however, that such payments shall not be based upon more than ninety (90) working days of accumulated sick leave. The lump-sum payment provided in this section is calculated as follows: the employee is compensated for the accumulated time at the highest permanent classification of pay for which the employee was eligible during the last six (6) months of employment. The employee is paid for the same period of time the employee would have been paid if the sick leave had been taken but excluding additional holidays and any sick leave or vacation time which the employee might have accrued during the ninety (90) working days.

If an active Fireman or Policeman dies as a result of a line of duty injury or line of duty illness, the entire amount of his accumulated sick leave shall be paid as provided in this section. Provided, that in order to facilitate the settlement of the accounts of deceased employees of the Fire or Police Departments, all unpaid compensation due such employee at the time of his death shall be paid to the person or persons surviving at the date of death, in the following order or precedence and such payments shall be a bar to recovery by any other person of amounts so paid.

First, to the beneficiary or beneficiaries designated by the employee in writing to receive such compensation filed with the Civil Service Commission prior to the employee's death;

Second, if there be no such beneficiary, to the widow or widower of such employee;

Third, if there be no such beneficiary or surviving spouse, to the child or children of such employee, and descendants of deceased children, by representation;

Fourth, if none of the above, to the parents of such employee, or the survivor of them;

Fifth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased employee, or if there be none, to the person or persons determined to be entitled thereto under the laws of descent and distribution of the State of Texas.

Provided that all such cities coming under the provisions of this Act shall provide injury leaves of absence and line of duty illness leaves of absence for Firemen and Policemen with full pay for periods of time commensurate with the nature of the line of duty illness or injuries for at least one (1) year. At the expiration of said one-year period, the City Council or governing body may extend such line of duty illness or injury leave, at full or reduced pay, provided that in cities that have a Firemen's or Policemen's Pension Fund, that if said injured employee's salary should be reduced below sixty per cent (60%) of his regular monthly salary, said employee shall have the option of being retired on pension until able to return to duty.

If there are no pension benefits available to an employee who is temporarily disabled by a line of duty injury or illness and the year at full pay and any extensions which may have been granted by the employer have expired, the employee may use accumulated sick leave, vacation time, and other accrued benefits before being temporarily placed on leave.

If an employee is temporarily disabled by an injury or illness not related to the employee's line of duty, the employee may use all sick leave, vacation time, and any other time the employee may have accumulated before being placed on temporary leave.

After recovery from a temporary disability, a Fireman or Policeman shall be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Another Fireman or Policeman may voluntarily do the work of an injured or ill Fireman or Policeman until the Fireman or Policeman returns to duty.

[See Compact Edition, Volume 3 for text of 26(a)]

Termination of Service, Lump Sum Payments: Cities of 1,200,000 or More, Accumulated Sick Leave; Cities of 650,000 or More, Accumulated Vacation Leave

Sec. 26(b). (a) In any city in this State having a population of one million, two hundred thousand (1,200,000) or more inhabitants, according to the last preceding federal census, a fireman or policeman who leaves the classified service for any reason or the beneficiaries of any fireman or policeman who loses his life as a result of a line of duty injury or illness shall receive in a lump sum payment the full amount of his salary for the period of his accumulated sick leave. Sick leave shall be accumulated without limit.

(b) In any city in this State having a population of six hundred and fifty thousand (650,000) or more inhabitants, according to the last preceding federal census, a fireman or policeman who leaves the classified service for any reason shall receive in a lump sum payment the full amount of his salary for the period of his accumulated vacation leave, provided that such payment shall be based upon not more than sixty (60) working days of accumulated vacation leave. Any fireman or policeman who leaves the classified service or loses his life as the result of a line of duty injury or illness or the beneficiaries of such fireman or policeman shall be paid the full amount of his salary for the total number of his working days of accumulated vacation leave.

[See Compact Edition, Volume 3 for text of 27]

Adoption of Act by Vote or Otherwise

Sec. 27(a). Provided, however, that the provisions of this Act as amended by this House Bill No.

79, passed at the Fifty-fifth Regular Session of the Legislature, shall not apply to any city unless such city has already adopted and has in effect the provisions of this Act before the effective date of this amending Act, or unless first determined at an election at which the adoption or rejection of this Act shall be submitted. Upon receiving a petition signed by qualified voters in said city in number not less that ten per cent (10%) of the total number voting in the last preceding municipal election, the governing body of said city shall call and hold an election within sixty (60) days after said petition has been filed with governing body. If at said election a majority of the votes cast shall favor the adoption of this Act, said governing body shall put such Act into effect within thirty (30) days after the beginning of the first fiscal year of said city after said election. The question shall be submitted for the vote of the qualified electors as follows:

FOR the adoption of the Firemen's and Policemen's Civil Service Act.

AGAINST the adoption of the Firemen's and Policemen's Civil Service Act.

When any election has been held in a city, at which election the adoption or rejection of Chapter 325, Acts of the Fiftieth Legislature, 1947, (Vernon's Annotated Civil Statutes, Article 1269m) has been submitted, whether such election has been held prior to the effective date of this amending Act or subsequent thereto, a petition for another such election shall not be filed for at least one (1) year subsequent to the election so held; and said petition for any such election after the first election shall be signed by qualified voters in said city in number not less than twenty per cent (20%) of the total number voting in the last preceding municipal election; and any such election after the first election shall be held at the next general municipal election to be held in such city after the filing of such petition.

This Act may be adopted to apply only to a Fire Department or a Police Department. If the Act, as adopted, is to be limited to one or the other department, the ballot question shall be printed to reflect which department will be covered by this Act.

[See Compact Edition, Volume 3 for text of 27(b) to 28(a)]

[Amended by Acts 1975, 64th Leg., p. 302, ch. 131, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 484, ch. 207, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1963, ch. 648, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 134, ch. 63, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 176, ch. 86, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1130, ch. 424, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1140, ch. 431, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2073, ch. 824, § 1, Aug. 29, 1977; Acts 1979, 66th Leg., p. 152, ch. 83, §§ 1, 2, eff. April 26, 1979; Acts 1979, 66th Leg., p. 544, ch. 258, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1856, ch. 753, §§ 1 to 12, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 525, ch. 215, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2630, ch. 707, § 4(7), eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2677, ch. 728, § 1, eff. Aug. 31, 1981.]

Acts 1977, 65th Leg., ch. 63, which by § 1 added § 14A to this article, provided in §§ 2 and 3:

"Sec. 2. All prior laws shall be deemed to have been superseded by the provisions hereof and, to the extent that any other law is in conflict with or inconsistent with the provisions hereof, the provisions of this Act shall take precedence and be effective. This section shall apply to each and every section of this Act.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Acts 1977, 65th Leg., ch. 86, which by § 1 amended § 26(b) of this article, provided in § 2:

"This Act shall take effect on August 1, 1977."

However, since the Act did not receive the requisite two-thirds record vote in each house, it became effective on August 29, 1977, 90 days after adjournment.

Acts 1981, 67th Leg., p. 2677, ch. 728, § 2, provided:

"The entitlement of field training officers to assignment pay is effective for the first full calendar month that begins on or after the effective date of this Act."

Art. 1269p. Hours of Labor and Vacation of Firemen and Policemen in Certain Cities

[See Compact Edition, Volume 3 for text of 1 to 6]

Cities Over 10,000; Overtime

Sec. 6A. It shall be unlawful for any city having more than ten thousand (10,000) inhabitants, according to the last preceding Federal Census, to require any policeman to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen.

Provided, however, that in any such city having more than ten thousand (10,000) inhabitants, in the event of an emergency, policemen may be required to work more than the number of hours in the normal work week of the majority of other city employees; and in the event policemen are ordered to work a greater number of hours than the number of hours in such normal work week of other city employees, such policemen shall be compensated for any such overtime at a rate equal to one and one-half times the compensation paid to such policemen for regular hours unless a policeman decides, with the approval of the city governing body, to accept compensatory time equal to one and one-half times the number of overtime hours.

Provided, further that in cases where a majority of policemen working for a city sign a written waiver of the prohibition against cities requiring any policeman to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen, a city may adopt a work schedule for policemen requiring any policeman to work more hours than the number of hours in the normal work week of the majority of the employees of said city other than firemen and policemen, so long as no policeman works more hours during any calendar month than the number of hours in the normal work month of the majority of the employees of said city other than firemen and policemen without overtime pay. An emergency

shall be defined as any unexpected happening or event; or unforeseen situation or crisis that calls for immediate action and requires the police chief or head of the department to order policemen to work overtime.

[See Compact Edition, Volume 3 for text of 6B to 9]

[Amended by Acts 1979, 66th Leg., p. 1045, ch. 475, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1062, ch. 492, § 1, eff. June 7, 1979; Acts 1981, 67th Leg., p. 1861, ch. 440, § 1, eff. June 11, 1981.]

Art. 1269s. Defense of Civil Suits Against Peace Officers

Sec. 1. An incorporated city or town or special purpose district shall provide a peace officer employed by it with legal counsel without cost to the peace officer, on the officer's request, to defend the officer against a suit for damages by a party other than a governmental entity if the claim involves an official act of the peace officer in the scope of the officer's authority. The city, town, or special purpose district may provide counsel already employed by it or may employ and pay private counsel to defend the officer against the claim. In this Act, "peace officer" has the meaning given in Article 2.12, Code of Criminal Procedure, 1965, as amended.

Sec. 2. If the municipality or district fails to provide counsel as required by Section 1 of this Act, the officer may recover from it the reasonable attorney's fees incurred in defending the suit if the trier of fact finds that the fees were incurred in defending a suit covered by Section 1 of this Act and determines that the officer is without fault or finds that the officer acted with a reasonable good faith belief that his actions were proper.

[Acts 1979, 66th Leg., p. 1078, ch. 507, §§ 1, 2, eff. Aug. 27, 1979.]

TITLE 29A

COMMISSIONERS ON UNIFORM LAWS

Art. 1273b. Commission on Uniform State Laws

Appointment of Commission

Sec. 1. A Commission is hereby created to be known as the Commission on Uniform State Laws which shall consist of six recognized members of the bar who shall be appointed by the Governor for staggered terms of six years, with the terms of two members expiring on September 30 of each even-numbered year; and in addition thereto, any residents of this state who because of long service in the cause of the uniformity of state legislation shall have been elected life members of the National Conference of Commissioners on Uniform State Laws.

Application of Sunset Act

Sec. 1a. The Commission on Uniform State Laws is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

[1] Article 5429k.

[See Compact Edition, Volume 3 for text of 2 to 4]

[Amended by Acts 1977, 65th Leg., p. 341, ch. 168, § 1, eff. May 20, 1977; Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.078, eff. Aug. 29, 1977.]

Section 2 of Acts 1977, 65th Leg., ch. 168, amending § 1 of this article, provided:

"In making the initial appointments following the effective date of this Act, the governor shall designate two members for terms expiring September 30, 1978, two for terms expiring September 30, 1980, and two for terms expiring September 30, 1982."

TITLE 30

COMMISSION MERCHANTS

Arts. 1281 to 1286. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Art. 1286a. Failure to Remit Promptly

Repeal

This article was probably impliedly repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, enacting the Agriculture Code.

See, now, Agriculture Code, § 147.063.

Arts. 1286b to 1287–1. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Art. 1287–2. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), (2)(C), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

Art. 1287–3. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

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

Prior to repeal, art. 1287–3, was amended by Acts 1977, 65th Leg., p. 1042, ch. 386, §§ 1 to 10.

Without reference to repeal by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), art. 1287–3 was amended by Acts 1981, 67th Leg., p. 3185, ch. 832, §§ 1 to 4.

For text of Acts 1981, 67th Leg., p. 3185, ch. 832, see the italicized notes following Agriculture Code, §§ 101.019, 103.002, 103.003, 103.013.

TITLE 31

CONVEYANCES

Article

1293b. Attorney's Fees in Breach of Restrictive Covenant Actions.
1293c. Invalidity of Deed Restriction Requiring Wood Shingles.

Art. 1293b. Attorney's Fees in Breach of Restrictive Covenant Actions

(a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow a prevailing party who asserted the action for breach of a restrictive covenant, reasonable attorney's fees, in addition to his costs and claim.

(b) To determine reasonable attorney's fees, the court shall consider:

(1) the time and labor required;

(2) the novelty and difficulty of the questions;

(3) the expertise, reputation, and ability of the attorney; and

(4) any other factor.

[Acts 1977, 65th Leg., p. 2167, ch. 862, § 1, eff. Aug. 29, 1977.]

Art. 1293c. Invalidity of Deed Restriction Requiring Wood Shingles

To the extent that a deed restriction applicable to a structure on residential property requires the use of a wood shingle roof, it is void.

[Acts 1979, 66th Leg., p. 2184, ch. 833, § 1, eff. Aug. 27, 1979.]

Art. 1301a. Condominium Act

[See Compact Edition, Volume 3 for text of 1 to 16]

Sec. 17. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

[See Compact Edition, Volume 3 for text of 18 to 21]

Sec. 22. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

[See Compact Edition, Volume 3 for text of 23 to 25]

[Amended by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.]

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing §§ 17 and 22 of this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

TITLE 33

COUNTIES AND COUNTY SEATS

CHAPTER THREE. CORPORATE RIGHTS AND POWERS

Article

1578a. Contracts with United States for Improvements in Counties of 240,000 to 260,000.
1581d–1. Airstrips; Counties of 24,600 to 24,700.
1581g–2. County Industrial Commissions.
1581h. Unclaimed Funds in Custody of County or Precinct Officer.

Art. 1578a. Contracts with United States for Improvements in Counties of 240,000 to 260,000

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

Sec. 2. The provisions of this Act shall apply only to counties having a population in excess of 240,000 inhabitants and less than 260,000 inhabitants, according to the latest preceding or any future federal census.

[Amended by Acts 1981, 67th Leg., p. 561, ch. 237, § 9, eff. Sept. 1, 1981.]

Art. 1580. Agents to Contract for County

Counties of 74,000 or more

Acts 1939, 46th Leg., Spec.Laws, p. 602, § 1 as amended by Acts 1939, 46th Leg., Spec.Laws, p. 605, § 1; Acts 1947, 50th Leg., p. 491, ch. 288, § 1; Acts 1949, 51st Leg., p. 713, ch. 376, § 1; Acts 1955, 54th Leg., p. 815, ch. 302, § 1; Acts 1957, 55th Leg., p. 382, ch. 185, § 1; Acts 1959, 56th Leg., p. 913, ch. 418, § 1; Acts 1965, 59th Leg., p. 343, ch. 161, § 1; Acts 1969, 61st Leg., 2nd C.S., p. 166, ch. 24, § 1; Acts 1971, 62nd Leg., p. 2550, ch. 837, § 1; Acts 1975, 64th Leg., p. 748, ch. 294, § 1, read as follows:

"Section 1. (a) In all counties of this state having a population of seventy-four thousand (74,000) or more inhabitants according to the last preceding Federal Census, a majority of a Board composed of the judges of the District Courts and the County Judge of such county, may appoint a suitable person who shall act as the county purchasing agent for such county, who shall hold office, unless removed by said judges, for a period of two (2) years, or until his successor is appointed and qualified, who shall execute a bond in the sum of Five Thousand Dollars ($5,000), payable to said county, for the faithful performance of his duties.

"(b) It shall be the duty of such agent to make all purchases for such county of all supplies, materials and equipment required or used by such county or by a subdivision, officer, or employee thereof, excepting such purchases as may by law be required to be made by competitive bid, and to contract for all repairs to property used by such county, its subdivisions, officers, and employees, except such as by law are required to be contracted for by competitive bid. All purchases made by such agent shall be paid for by warrants drawn by the county auditor on the county treasurer of such county as in the manner now provided by law.

"(c) It shall be unlawful for any person, firm or corporation, other than such purchasing agent, to purchase any supplies, materials and equipment for, or to contract for any repairs to property used by, such county or subdivision, officer, or employee thereof, and no warrant shall be drawn by the county auditor or honored by the county treasurer of any such county for any purchases except by such agent and those made by competitive bid as now provided by law; provided that the county purchasing agent may lawfully cooperate with the purchasing agent for any incorporated city or cities in such county to purchase such items in volume as may be necessary, and the County Treasurer shall honor any warrant drawn by the county auditor to reimburse any city purchasing agent making such purchase for the county.

"(d) On the first day of July of each year, such purchasing agent shall file with the county auditor and each of said judges of such county an inventory of all property of the county and of each subdivision, officer, or employee thereof then on hand, and it shall be the duty of the county auditor to examine carefully such inventory and to make an accounting for all property purchased or previously inventoried and not appearing in such inventory.

"(e) In order to prevent unnecessary purchases, such agent shall have authority and it shall be his duty to transfer county supplies, materials and equipment from any subdivision, department, officer, or employee of the county when such supplies, materials, or equipment are not actually needed or used by such division, department, officer, or employee that may require such supplies and materials, or the use of such equipment and such agent shall furnish to the county auditor a list of such supplies, materials, and equipment so transferred.

"(f) Such agent shall receive as compensation for his services a salary of not less than Five Thousand Dollars ($5,000) per year, payable in equal monthly installments. The salary of the county purchasing agent shall be paid out of the General Fund and/or the Road and Bridge Fund of such county by warrants drawn on the county treasurer and shall be set by the Board as designated in Section 1(a) of this Act.

"(g) Said agent may have assistants to aid in the performance of his duties as county purchasing agent.

"(h) Said agent and said assistants may have such help, equipment, supplies and traveling expenses with the approval of said Board of judges, as they may deem advisable, the amount of said expenses to be approved by said Board."

Art. 1581d–1. Airstrips; Counties of 24,600 to 24,700

Sec. 1. This Act shall apply in any county having a population of not less than twenty-four thousand, six hundred (24,600) nor more than twenty-four thousand, seven hundred (24,700), according to the last preceding federal census.

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

[Amended by Acts 1981, 67th Leg., p. 561, ch. 237, § 10, eff. Sept. 1, 1981.]

Art. 1581g. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 1581g–1. County Industrial Commissions in Certain Counties

The county judge of any county having a population of not less than 13,300 nor more than 13,350, or not less than 22,600 nor more than 23,000, or not less than 17,900 nor more than 18,100, or not less than 14,650 nor more than 14,800, according to the last preceding federal census, may appoint a County Industrial Commission to consist of at least seven residents of the county and who are currently serving or have served in the past on the Industrial Foundation Committee, Commissioners Court, City Council or school boards, who have exhibited interest in the industrial development of the county to serve for a term of two years. The county is hereby authorized to pay the necessary expenses of such commission. Such commission shall investigate, study, and undertake ways and means of promoting and encouraging the prosperous development of business, industry, and commerce within said county. Such Commission shall promote and encourage the location and development of new businesses and industries in such county as well as the maintenance and expansion of existing businesses. Such commission shall cooperate with, and utilize the services of, the Texas Industrial Commission. The data obtained shall be available to the commissioners court.

[Amended by Acts 1981, 67th Leg., p. 561, ch. 237, § 11, eff. Sept. 1, 1981.]

Art. 1581g-2. County Industrial Commissions

Establishment of Commission

Sec. 1. (a) The county judge of any county may appoint a County Industrial Commission.

(b) The commission shall consist of at least seven residents of the county who have exhibited interest in the industrial development of the county. Members serve for a term of two years.

Expenses

Sec. 2. The county may pay the necessary expenses of the commission.

Duties of Commission

Sec. 3. The County Industrial Commission shall investigate and undertake ways and means of promoting the prosperous development of business, industry, and commerce within the county. The commission shall promote the location and development of new businesses and industries in the county as well as the maintenance and expansion of existing businesses.

Cooperation with Texas Industrial Commission

Sec. 4. The commission shall cooperate with and utilize the services of the Texas Industrial Commission.

[Acts 1979, 66th Leg., p. 2017, ch. 791, §§ 1 to 4, eff. June 13, 1979.]

Art. 1581h. Unclaimed Funds in Custody of County or Precinct Officer

Definition

Sec. 1. In this Act, "person" includes any private legal entity.

Funds Covered by Act

Sec. 2. (a) This Act applies to any funds in the custody or control of a county or precinct officer, including a court, that a person is entitled to receive on demand. That a court must enter an order directing that the funds be paid or that an officer must perform a ministerial act for them to be paid does not remove the funds from the coverage of this Act.

(b) This Act does not apply to a claim, the validity of which is unquestioned, if there is a controversy regarding the amount of funds a person is entitled to receive.

Notice

Sec. 3. (a) If a county or precinct officer has custody or control of funds covered by this Act, he has no knowledge of any controversy about who is entitled to receive the funds, and the person entitled to receive them does not claim them within one year after becoming entitled to them, the officer shall give the person a written notice stating:

(1) that the officer holds funds belonging to the person;

(2) the amount of the funds; and

(3) that the funds will become subject to escheat to the county if the person does not claim them within the time prescribed by law.

(b) Except as provided by Subsection (d) of this section, the officer shall send the notice to the person at the person's last known address by certified mail, delivery restricted to addressee. If no address is available or if the letter is returned undelivered, the officer shall publish the notice in a newspaper of general circulation in the county once a week for at least two consecutive weeks.

(c) The cost of postage, if notice is given by mail, and the cost of newspaper publication, if notice by publication is required, shall be deducted from the funds to which the notice applies. If notice by publication is given for more than one item of funds in a single advertisement, an equal share of the cost of the advertisement shall be paid from each item of funds.

(d) If the cost that would be assessable for giving notice equals or exceeds the funds to which the notice applies, notice shall be given by posting it at the courthouse at or near the place where notices of meetings of public bodies are posted. The notice must remain posted for at least 14 consecutive days.

Petition for Escheat

Sec. 4. (a) If funds are not claimed within four years after notice is given, they are subject to escheat to the county served by the county or precinct officer having custody or control of the funds.

(b) When funds become subject to escheat to the county, the county attorney, or the criminal district attorney in a county without a county attorney, shall file a sworn petition in the district court stating the amount of the unclaimed funds, the name of the person entitled to receive them, and the facts or circumstances causing the funds to be subject to escheat. The petition shall request that the funds be escheated to the county and that a writ of possession for the funds be issued in behalf of the county.

Citation

Sec. 5. Citation is issued and served in the manner provided by law for civil suits generally.

Citation by Publication

Sec. 6. Citation in each case shall also be issued by publication, in the manner provided by law for other civil suits. The citation shall direct any person who may have a claim for the funds to appear and answer. The citation shall contain a brief statement of the contents of the petition.

Appearance by Claimants

Sec. 7. The defendant and any other person claiming an interest in the funds may appear and plead to the proceedings.

Default Judgment

Sec. 8. Judgment shall be rendered by default in behalf of the county if no person appears and pleads in the time prescribed by law.

Trial

Sec. 9. The court shall try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally.

Judgment for County

Sec. 10. If it appears from the facts found that the funds are subject to escheat, judgment shall be rendered that the county recover the funds, and, in the discretion of the court, recover the costs against the defendant. A writ of possession shall issue in the manner applicable to other judgments for the recovery of personal property. The writ of possession shall specify the exact amount of the unclaimed funds in the custody or control of the county or precinct officer.

Costs Against County

Sec. 11. Court costs may not be charged against the county unless the defendant obtains a favorable judgment. The costs incurred by the defendant may be charged against the county in the manner applicable to civil suits generally.

Appeal

Sec. 12. A party who has appeared in the proceedings, including the county attorney or criminal district attorney on behalf of the county, may appeal the judgment.

Disposition of Funds

Sec. 13. The funds recovered by the county under this Act shall be delivered to the county treasurer, who shall deposit them to the credit of the county general fund.

[Acts 1979, 66th Leg., p. 727, ch. 321, §§ 1 to 5, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 2256, ch. 541, §§ 1 to 5, eff. June 12, 1981.]

Section 6 of the 1981 amendatory act provided:

"If on the effective date of this Act a county or precinct officer holds funds covered by Chapter 321, Acts of the 66th Legislature, Regular Session, 1979 (Article 1581h, Vernon's Texas Civil Statutes), as amended by this Act, that have been in his custody or control for at least one year, he has no knowledge of any controversy about who is entitled to receive the funds, and the funds have not been claimed by the person entitled to receive them, the officer shall give the notice required by Section 3 of that law within 90 days after the effective date of this Act."

CHAPTER FIVE. COUNTY SEATS

Article

1605a–2. Office Buildings Outside County Seat in Counties of 25,000 to 25,050.
1605a–4. Branch Offices for Tax Assessors and Collectors in Counties of 38,200 to 39,000.
1605a–5. Auxiliary Courthouses and Facilities.

Art. 1605. Location of Offices

(a) The County Judge, Sheriff, Clerks of the District and of the County Courts, County Treasurer, Assessor and Collector of Taxes, County Surveyor and County Attorney of the several counties of this State, shall keep their offices at the county seats of their respective counties; provided, however, that in all counties having a city or cities, other than the county seats, within their boundaries, having a population of five thousand (5,000) and over, and in counties of over three hundred fifty thousand (350,000), according to the last Federal Census, the Assessor and Collector of Taxes when authorized by order of the Commissioners Court may maintain a branch office in said city or cities, and may appoint one or more Deputies for said offices, and the salaries to be paid said Deputies together with the office rent and other expenses incidental to maintaining said offices shall be considered as a part of the necessary expenses of the Assessor and Collector of Taxes and shall be paid in the manner now provided by law for the payment of the expenses of the Assessor and Collector of Taxes; and provided further that in all counties having a population of more than seventy thousand (70,000), according to the last Federal Census, and containing one or more cities or towns, other than the county seat, which has in excess of one thousand (1,000) inhabitants, according to the last Federal Census, said Tax Assessor and Collector with the consent and approval of the Commissioners Court may maintain a branch office and may appoint a Deputy Tax Collector in each such town or city, who shall have the right to collect taxes from all persons who desire to pay their taxes to him, and to issue a valid receipt therefor. Such Deputy shall enter into such bond, payable to the County Judge of the County, as the Tax Assessor and Collector and Commissioners Court of the county may require. The period of time such branch offices shall be maintained, and the salary of such Deputy Collector and the period of time he shall hold such office shall be fixed by the Commissioners Court and such Deputy Collector shall be subject to all of the terms and provisions of the law relating to Deputy Tax Collectors. The Tax Collector shall remain liable on his bonds for all taxes collected by such Deputy, and nothing herein shall be construed as a limitation on the liability of the bonds of either the Tax Collector or such Deputy. Nothing contained herein shall be construed as making it mandatory upon the Assessor and Collector of Taxes and the Commissioners Courts of such counties to maintain such branch offices and appoint such Deputies, but the establishment of such branch offices and the appointment shall wholly be within the discretion of the Commissioners Courts of such counties. When such branch office or offices are established and a Deputy or Deputies are appointed hereunder, the salary or salaries to be paid and expense necessary to maintain said office or offices shall be considered as a part of the necessary expenses of the Assessor and Collector of Taxes, and shall be paid as now provided by law for the payment of the expenses of the Assessor and Collector of Taxes.

(b) If any branch office is established under this Article or under any other law permitting the estab-

lishing of subcourthouses, office buildings, or branch offices and if the Assessor and Collector of Taxes maintains at least one (1) full-time, permanent employee at the subcourthouse, office building, or branch office, boat certificates of number and boat and outboard motor certificates of title shall be issued or the applications for those certificates shall be accepted as provided by Subchapters B and B–1, Chapter 31, Parks and Wildlife Code, as amended,[1] at the subcourthouse, office building, or branch office.

[Amended by Acts 1979, 66th Leg., p. 1354, ch. 607, § 6, eff. Aug. 27, 1979.]

[1] Parks and Wildlife Code, §§ 31.021 et seq. and 31.045 et seq.

Art. 1605a. Branch Office Buildings in Cities of 15,000 or More Outside County Seat

Sec. 1. The Commissioners Court of each county of this State shall have the power and the authority to provide, maintain, and repair an office building and/or jail in one or more cities, other than the county seat, having a population of Fifteen Thousand (15,000) or more, according to the last preceding federal census in the same manner as the Commissioners Court may now provide for and maintain a courthouse and jail at the county seat, and upon the acquisition or construction of such office building, the Commissioners Court may authorize, in the same manner as authorized by Article 1605, the maintaining of branch offices in each of said cities, except the District Clerk, County and District Judges, County Clerk, and County Treasurer, provided that all officers shall keep all original records at the county seat, and deputies may be provided as authorized in Article 1605. The Commissioners Court shall have the care and custody of such buildings and may place such limitations as it may see fit on the authorization and maintenance of branch offices.

Sec. 2. Said office building and/or jail may be provided for, maintained and repaired by the issuance of bonds as is provided by Chapters 1 and 2, Title 22, Revised Civil Statutes, 1925, and all amendments thereto,[1] or to provide, maintain, the repair the same through the issuance of evidences of indebtedness in the same manner as courthouses and jails at the county seats, and the taxes may be levied therefor in the same manner and subject to the same limitations as for courthouses and jails at the county seat; provided, however, that the cost of any such office building and/or jail shall not exceed more than two percent of the taxable values of the county for the last preceding year.

Sec. 3. All acts heretofore taken and proceedings heretofore adopted by the Commissioners Court in any county providing for the purchasing of a site and erecting and equipping an office building for county officers in any city other than the county seat of such county, all evidences of indebtedness heretofore authorized to finance the same, and all tax levies heretofore made in behalf of such evidences of indebtedness are in all things confirmed, approved and validated; provided, however, nothing in this Act shall validate any evidence of indebtedness the validity of which is in question in a court of competent jurisdiction on the effective date of this Act if the ultimate decision of the court is against the validity thereof.

[Amended by Acts 1975, 64th Leg., p. 645, ch. 266, § 1, eff. May 20, 1975.]

[1] Article 701 et seq.

Art. 1605a–2. Office Buildings Outside County Seat in Counties of 25,000 to 25,050

Sec. 1. In all counties having a population of more than 25,000 but less than 25,050, according to the last preceding federal census, the Commissioners Court of each said county shall have the power and authority to construct, operate and maintain an office building and/or jail at a city other than the county seat in the same manner as such Commissioners Court may not provide for and maintain a court house and jail at the county seat. The Commissioners Court may authorize the maintenance of a branch office of the county tax assessor and collector, a jail, and a justice court in such buildings. However, all county officers shall keep all original records at the county seat. The Commissioners Court shall have the care and custody of such buildings and may place such limitations as it may see fit on the authorization and maintenance of such facilities. When authorized to maintain such branch office, the assessor and collector of taxes may appoint one or more deputies for said offices. The expenses incidental to maintaining said facilities shall be considered as a part of the necessary expenses of the county. Said deputy assessor-collectors shall have the right to collect taxes from all persons who desire to pay their taxes to them, and to issue a valid receipt therefor. Such deputy shall enter into such bond, payable to the County Judge of the county, as the tax assessor and collector and Commissioners Court of the county may require. The period of time such branch offices shall be maintained, and the salary of such deputy collector and the period of time he shall hold such office shall be fixed by the Commissioners Court and such deputy collector shall be subject to all of the terms and provisions of the law relating to deputy tax collectors. The tax collectors shall remain liable on his bonds for all taxes collected by such deputy, and nothing herein shall be construed as a limitation on the liability of the bonds of either the tax collector or such deputy. Nothing contained herein shall be construed as making it mandatory upon the assessor and collector of taxes and the Commissioners Courts of such counties to maintain such branch offices and appoint such deputies, but the establishment of such branch offices and the appointment shall wholly be within the discretion of the Commissioners Courts of such counties. When such branch office or offices are established and a deputy or deputies are appointed hereunder, the salary or salaries to be paid and expense

necessary to maintain said office or offices shall be considered as a part of the necessary expenses of the assessor and collector of taxes, and shall be paid as now provided by law for the payment of the expenses of the assessor and collector of taxes.

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

[Amended by Acts 1981, 67th Leg., p. 561, ch. 237, § 12, eff. Sept. 1, 1981.]

Art. 1605a–4. Branch Offices for Tax Assessors and Collectors in Counties of 38,200 to 39,000

Sec. 1. In any county which has a population of not less than 38,200 inhabitants but not more than 39,000 inhabitants according to the last preceding federal census, the Commissioners Court may provide for, operate, and maintain a branch office for the county tax assessor and collector for any length of time the commissioners consider necessary.

[See Compact Edition, Volume 3 for text of 2 to 5]

[Amended by Acts 1981, 67th Leg., p. 562, ch. 237, § 13, eff. Sept. 1, 1981.]

Art. 1605a–5. Auxiliary Courthouses and Facilities

Auxiliary Courthouses and Facilities

Sec. 1. (a) The commissioners court of a county may provide one or more of the following facilities in any part of the city, town, or village designated as the county seat, including a part of the municipality added to the municipality after it became the county seat, but not including a part of the municipality that is outside the county:

(1) auxiliary courthouses;

(2) jails;

(3) parking garages;

(4) district, county, and precinct administrative and judicial offices and courtrooms; or

(5) any facility related to the administration of civil or criminal justice.

(b) The authority of the commissioners court to provide a facility under this Act includes the authority to acquire necessary sites and to purchase, construct, equip, or enlarge one or more facilities, as well as to repair and maintain the facilities provided.

(c) The commissioners court by order may designate a facility acquired or constructed under this Act as a courthouse of the county, but an auxiliary facility provided under this Act may not replace the courthouse at the county seat.

Holding of Court

Sec. 2. (a) Any district, county, or other court required by law to hold its terms at the county seat may hold its terms at a court facility provided under this Act, even though the facility is located in a part of the municipality designated as the county seat that was added to the municipality after it became the county seat.

(b) This section does not apply to the terms of the commissioners court.

Offices

Sec. 3. Any district, county, or precinct officer who is required by law to maintain an office at the county seat may maintain an office and keep official records at a facility provided under this Act, but the officer must continue to maintain an office at the county seat.

Auxiliary Courts within the County

Sec. 4. In addition to auxiliary courthouses and facilities within a municipality designated as the county seat, the commissioners court of a county may authorize specific geographic locations within the county and outside the limits of a municipality designated as the county seat as auxiliary courts for purposes of conducting nonjury proceedings and may designate those locations as auxiliary county seats for such purposes.

Previous Actions Validated

Sec. 5. If before the effective date of this Act the commissioners court of a county undertook to provide a facility covered by this Act or to acquire land for a facility covered by this Act, and the location of the proposed facility or the land was in a part of the city, town, or village designated as the county seat that was not a part of the municipality when it was designated as the county seat, all governmental acts and proceedings of the commissioners court relating to that undertaking, including any evidences of indebtedness authorized and any tax levies made for the evidences of indebtedness, are validated. This section does not apply to any matter that, on the effective date of this Act:

(1) is involved in litigation, if the litigation ultimately results in the matter being held invalid by a final judgment of a court of competent jurisdiction; or

(2) has been held invalid by a final judgment of a court of jurisdiction.

Effect on Other Laws

Sec. 6. (a) This Act does not limit authority of a commissioners court under any other law with regard to providing facilities of the type covered by this Act.

(b) To the extent this Act conflicts with Article 1602 or 1605, Revised Civil Statutes of Texas, 1925, as amended, or any other statute, this Act prevails.

[Acts 1979, 66th Leg., p. 382, ch. 174, §§ 1 to 6, eff. May 15, 1979.]

CHAPTER SEVEN. COUNTY HOME RULE

Art. 1606c. Office of County Fire Marshal

[See Compact Edition, Volume 3 for text of 1 to 6]

Right of Entry; Investigation of Dangerous Conditions; Order

Sec. 7. He shall have the authority to enter and examine any and all buildings or structures where a fire has occurred, in the performance of his duties of office, day or night, and examine any adjacent buildings or premises, but this authority shall be exercised with reason and discretion and with a minimum burden upon the persons living in said buildings. It shall be his duty when called upon, or when he has reason to believe that it is in the interest of safety and fire-prevention, to enter any premises and inspect the same, and if he find that because of inflammable substance being present, dangerous or dilapidated walls, ceilings or other parts of the structure existing, improper lighting, heating or other facilities being used that endanger life, health or safety, or if because of chimneys, wiring, flues, pipes, mains or stoves, or any substance he shall find stored in any building, he believes that the safety of said building or that of its occupants is endangered and that it will likely promote or cause fire or combustion, he shall be empowered to order the said situation rectified forthwith and the owner or occupant of the said structure shall comply with the orders of the said County Fire Marshal or shall be adjudged guilty of contempt of said order and of a Class B misdemeanor; and each recurring refusal to so rectify such conditions shall be deemed as a separate offense and violation of such order.

[See Compact Edition, Volume 3 for text of 8 and 9]

[Amended by Acts 1977, 65th Leg., p. 133, ch. 62, § 1, eff. Aug. 29, 1977.]

TITLE 34

COUNTY FINANCES

1. GENERAL PROVISIONS

Article
1641e. Biennial Independent Audit of Books, Records and Accounts in Counties of 160,000 to 170,000.
1644c–1. Authority to Borrow Money in Counties of 8,300 to 8,600.
1644e. Fiscal Year.
1644f. Contracts for Deposit of Public Funds in Counties of Less Than 200,000.

2. COUNTY AUDITOR

1645a–10. Auditors in Counties of 2,000,000 or More; Election by Judges; Term of Office.
1645e–3. Compensation of County Auditors in Certain Counties.
1645e–4. Compensation of Auditor in Rusk County.
1657a. Relieving Clerk of Certain Duties Prescribed by Article 1657 in Counties Over 2,000,000.
1659a. Counties of 900,000 or More; Bids for Supplies or Materials; Advertisement; Filing.
1659b. Counties of 800,000 to 900,000; Bids for Supplies or Materials; Advertising; Filing.
1666b. Budget Officers in Counties Over 1,200,000.

1. GENERAL PROVISIONS

Art. 1641e. Biennial Independent Audit of Books, Records and Accounts in Counties of 160,000 to 170,000

Sec. 1. In every county in the State of Texas having a population of not less than 160,000 inhabitants nor more than 170,000 inhabitants according to the last preceding federal census, a biennial independent audit shall be made of all books, records, and accounts of the district, county, and precinct officers, agents or employees, including regular auditors of the counties and all governmental units of the county hospitals, farms, and other institutions of the county, and all matters pertaining to the fiscal affairs of the county.

[See Compact Edition, Volume 3 for text of 2 to 6]

[Amended by Acts 1981, 67th Leg., p. 562, ch. 237, § 14, eff. Sept. 1, 1981.]

Art. 1644c–1. Authority to Borrow Money in Counties of 8,300 to 8,600

Sec. 1. All counties of this State having a population of more than eight thousand, three hundred (8,300) but less than eight thousand, six hundred, (8,600) according to the last preceding United States Census, are hereby expressly authorized and empowered to borrow money from any source, public or private, in any amount not to exceed the aggregate principal amount of One Hundred and Sixty-five Thousand Dollars ($165,000). By the term "aggregate principal amount" is meant the total of the sums so borrowed by any county under the provisions of this Act, and not the balance owing and due by any county at any one time.

[See Compact Edition, Volume 3 for text of 2 to 6]

[Amended by Acts 1981, 67th Leg., p. 562, ch. 237, § 15, eff. Sept. 1, 1981.]

Art. 1644e. Fiscal Year

Sec. 1. The commissioners court of a county at a regular meeting may adopt an order making the fiscal year of the county a one-year period beginning on October 1 of each year.

Sec. 2. The fiscal year of a county is a calendar year unless the commissioners court has adopted a fiscal year that begins on October 1 pursuant to Section 1 of this Act.

Sec. 3. If the commissioners court of a county adopts a fiscal year that begins on October 1, it may revert to a fiscal year based on a calendar year by adopting an order to that effect at a regular meeting.

Sec. 4. If a law prescribes a certain date or month each year for taking action with regard to a county budget, and the law is based on the assumption that the county fiscal year is a calendar year, in counties that have a fiscal year that begins on October 1 the law shall be construed as prescribing a date or month three months earlier than the date or month specified in the law.

[Acts 1975, 64th Leg., p. 1928, ch. 627, §§ 1 to 4, eff. Sept. 1, 1975.]

Art. 1644f. Contracts for Deposit of Public Funds in Counties of Less Than 200,000

The commissioners court of any county with a population of less than 200,000 is hereby authorized at the February regular term thereof to enter into a contract with any banking corporation, association, or individual banker in such county for the depositing of the public funds of such county in such bank or banks; provided, however, that such commissioners court is required at the February regular term thereof next following each general election to enter into such contracts for the depositing of public funds. Notice that such contracts will be made by the commissioners court shall be published by and over the name of the county judge once each week for at least 20 days before the commencement of

such term in some newspaper published in said county, and if no newspaper be published therein, then in any newspaper published in the nearest county. In addition thereto, notice shall be published by posting same at the courthouse door of said county.
[Acts 1979, 66th Leg., p. 1660, ch. 694, § 1, eff. Aug. 27, 1979.]

2. COUNTY AUDITOR

Art. 1645. Appointment in Certain Counties; Term of Office; Compensation

Sec. 1. In any county having a population of 10,000 inhabitants or over according to the last preceding Federal Census, there shall be appointed every two years an auditor of accounts and finances, the title of said office to be County Auditor, who shall hold his office for two years and who shall receive as compensation for his services an annual salary from the County General Fund of not more than the amount allowed or paid the Assessor-Collector of Taxes in his county, such salary of the County Auditor to be fixed and determined by the District Judge or District Judges making such appointment and having jurisdiction in the county, a majority ruling, said annual salary to be paid monthly out of the General Fund of the county. The action of the District Judge or District Judges in determining and fixing the salary of the County Auditor shall be made by order and recorded in the minutes of the District Court of the county and the Clerk thereof shall certify the same for observance to the Commissioners Court which shall cause the same to be recorded in its minutes.

Sec. 2. In addition to the procedure for the appointment of a County Auditor prescribed by Article 1646, a County Auditor may be appointed in a county in which the office is not required under Section 1 of this article if the District Judge or District Judges having jurisdiction in the county, by majority vote, determine that the county's financial circumstances warrant the appointment. The provisions of Section 1 of this article relating to salary and term of office apply to a County Auditor appointed under this section. A County Auditor appointed under this section shall qualify for office and perform the duties of a County Auditor as provided by law.

Sec. 3. At least once every two years, the Commissioners Court of a county not having the office of County Auditor shall have conducted an independent audit of the books, records, and accounts of the county's officers, agents, and employees and of any other matters relating to the county's fiscal affairs.
[Amended by Acts 1979, 66th Leg., p. 870, ch. 395, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2616, ch. 701, § 1, eff. Aug. 31, 1981.]

Section 2 of the 1981 amendatory act provides:

"A county auditor serving a county in which the office is no longer required because of this Act serves until the day his term expires unless he is reappointed under Article 1646 or Section 2 of Article 1645, Revised Civil Statutes of Texas, 1925."

Art. 1645a–10. Auditors in Counties of 2,000,000 or More; Election by Judges; Term of Office

Sec. 1. In any county having a population of 2,000,000 or more, according to the last preceding federal census, the district judges having jurisdiction in the county, shall nominate candidates for the office of county auditor. Each judge may nominate as many candidates as he wishes. The office of county auditor shall be filled by the candidate receiving a two-thirds vote of the district judges having jurisdiction in the county at a meeting held for that purpose and the vote of a district judge shall not be counted unless he is present at the meeting.

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

[Amended by Acts 1981, 67th Leg., p. 563, ch. 237, § 16, eff. Sept. 1, 1981.]

Art. 1645a–11. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 1645e–3. Compensation of County Auditors in Certain Counties

In all counties with a population of more than 97,000 but not more than 99,000, or more than 111,000 but not more than 121,000, or more than 128,000 but not more than 128,400, according to the last preceding federal census, the annual salary of the county auditor shall be in an amount determined by the district judge or judges having authority to appoint the county auditor, and shall not exceed the annual salary of the county judge.
[Acts 1975, 64th Leg., p. 1243, ch. 466, § 1, eff. June 19, 1975. Amended by Acts 1981, 67th Leg., p. 563, ch. 237, § 17, eff. Sept. 1, 1981.]

Art. 1645e–4. Compensation of Auditor in Rusk County

The county auditor of Rusk County is entitled to compensation as determined by the district judge or judges having jurisdiction in the county, but the compensation may not exceed the total compensation the county judge receives from all sources.
[Acts 1977, 65th Leg., p. 1420, ch. 578, § 1, eff. Aug. 29, 1977.]

Art. 1650a. Mileage Expenses

The commissioners court may reimburse the county auditor for expenses incurred in traveling to and from the county seat in his personal automobile to perform his official duties and to attend conferences and seminars relating to the performance of his official duties. However, the commissioners court may not reimburse the auditor for expenses incurred in traveling between his personal residence and county office, or for expenses incurred in any other travel of a personal nature. The commissioners court by order shall fix the rate of reimbursement at a reasonable rate. Reimbursement shall be made monthly from the appropriate county funds on submission of sworn expense reports by the county auditor.

In all counties having a population of 2,000,000 or more according to the last preceding or any future federal census, the commissioners court may reimburse the county auditor and his assistants for expenses incurred in traveling to and from the county seat in their personal automobiles to perform official duties and to attend conferences and seminars relating to the performance of official duties. However, the commissioners court may not reimburse the auditor or his assistants for expenses incurred in traveling between their personal residence and county office, or for expenses incurred in any other travel of a personal nature. The commissioners court by order shall fix the rate of reimbursement at a reasonable rate. Reimbursement shall be made monthly from the appropriate county funds on submission of sworn expense reports by the county auditor and his assistants.

[Amended by Acts 1975, 64th Leg., p. 1190, ch. 447, § 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 1104, ch. 520, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 563, ch. 237, § 18, eff. Sept. 1, 1981.]

Art. 1651. General Duties

The Auditor shall have a general oversight of all the books and records of all the officers of the county, district or state, who may be authorized or required by law to receive or collect any money, funds, fees, or other property for the use of, or belonging to, the county; and he shall see to the strict enforcement of the law governing county finances.

[Amended by Acts 1979, 66th Leg., p. 194, ch. 103, § 1, eff. Aug. 27, 1979.]

Art. 1657a. Relieving Clerk of Certain Duties Prescribed by Article 1657 in Counties over 2,000,000

In counties containing a population in excess of 2,000,000 inhabitants according to the last preceding federal census, the county clerk is relieved of all duties prescribed by Article 1657, Revised Civil Statutes of the State of Texas, 1925. The county treasurer shall prepare a triplicate receipt for all moneys received, retain one copy of the receipt, and transmit the original and duplicate to the county auditor and the depositor, respectively. The county auditor shall prescribe for the county treasurer a system for receiving and depositing all moneys received; provided that such system shall not be inconsistent with the provisions of this Act.

[Amended by Acts 1981, 67th Leg., p. 564, ch. 237, § 19, eff. Sept. 1, 1981.]

Art. 1659. Bids for Material

Supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners court, has submitted the lowest and best bid. The county auditor shall advertise the bidding at least once a week for two consecutive weeks in at least one newspaper published and circulated in the county. The advertisements shall state where the specifications are to be found, and shall give the time and place for receiving the bids. Publication of the first advertisement shall precede the last day for receiving bids by at least 14 days. All such competitive bids shall be kept on file by the county auditor as a part of the records of his office, and shall be subject to inspection by any one desiring to see them. Copies of all bids received shall be furnished by the county auditor to the county judge and to the commissioners court; and when the bids received are not satisfactory to the said judge or county commissioners, the auditor shall reject said bids and readvertise for new bids. In cases of emergency, purchases not in excess of $1,000 may be made upon requisition to be approved by the commissioners court without advertising for competitive bids.

[Amended by Acts 1977, 65th Leg., p. 331, ch. 161, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1437, ch. 582, § 1, eff. Aug. 29, 1977.]

Art. 1659a. Counties of 900,000 or More; Bids for Supplies or Materials; Advertisement; Filing

In all counties having a population of nine hundred thousand (900,000) or more, according to the last preceding or any future Federal Census, supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the Commissioners Court, has submitted the lowest and best bid. Where the total expenditure for any such purchase or any such contract shall exceed Two Thousand Dollars ($2,000), advertisements for bids for such supplies and material, according to specifications giving in detail what is needed, shall be made by the county purchasing agent once each week for two (2) successive weeks in a daily newspaper published and circulated in the county. Such advertisements shall state where the specifications are to be found, and shall state the time and place for receiving such bids. All bids shall be publicly opened on the day and time appointed. A copy of such competitive bids shall be kept on file after opening by the county auditor as a part of the records of his office, and shall be subject to inspection by anyone desiring to see them. All bids received shall be furnished by the county purchasing agent to the Commissioners Court; and when the bids received are not satisfactory to the Commissioners Court, the Commissioners Court shall reject that bid or bids and readvertise for new bids.

In the event of an emergency which precludes the obtaining of bids in accordance with the foregoing provisions, or in the case of a public calamity, where it becomes necessary to appropriate supplies or other

materials to preserve the property of the county, or to relieve the necessity of its citizens, the Commissioners Court may by order specifically setting forth the nature of the emergency or public calamity permit the purchase of supplies, road and bridge materials, or any other materials without first taking bids in the manner described above.

All bids taken pursuant to the provisions of this article which shall exceed the amount of Two Thousand Dollars ($2,000) may be secured by a certified check, cashiers check, or a bid bond, in the amount of 5 percent of the amount of the bid, payable to the county and conditioned in the case of a bid bond that the successful bidder will supply the materials or supplies described in the bid. In addition, if so described in the specifications to which the bid is directed, a bidder shall condition the bid bond which shall be required in the specifications upon the further condition that the successful bidder will enter into a performance bond for the supplying of the supplies, road and bridge materials, or any other materials, if awarded the contract for which the bid is submitted. The bond, if one is required by the Commissioners Court, shall be in a sum equal to the amount of money to be paid by the county under the contract and shall be executed by a surety company authorized to do business in Texas and having an agent within the county, and having a capital stock of $100,000 or more. All bonds which may be tendered hereunder shall be filed with the office of the County Clerk.

[Amended by Acts 1975, 64th Leg., p. 1120, ch. 420, § 1, eff. June 19, 1975; Acts 1981, 67th Leg., p. 564, ch. 237, § 20, eff. Sept. 1, 1981.]

Art. 1659b. Counties of 800,000 to 900,000; Bids for Supplies or Materials; Advertising; Filing

In all counties having a population of not less than 800,000 nor more than 900,000, according to the last preceding federal census, and having an assessed valuation of $800,000,000 or more, supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners court, has submitted the lowest and best bid. Where the total expenditure for any such purchase or any such contract shall exceed $1,000, advertisements for bids for such supplies and material, according to purchasing specifications giving in detail what is needed, shall be made by the purchasing agent, if the county has no purchasing agent then by the county auditor, once each week for two successive weeks in a daily newspaper published and circulated in the county. Such advertisements shall state where the specifications are to be found, and shall give the time and place for receiving such bids. Where the amount to be expended shall be $1,000, or less, it shall not be necessary to advertise for bids, but sealed bids shall be asked from as many as three persons, firms, or corporations, or as many more as shall offer to bid, based on written specifications filed with the purchasing agent or auditor as the case may be, at least 48 hours before the time of opening said sealed bids. All such competitive bids shall be kept on file by the purchasing agent or auditor, as the case may be, as a part of the records of his office, and shall be subject to inspection by anyone desiring to see them. Copies of all bids received shall be furnished by the purchasing agent or auditor to the commissioners court; and when the bids received are not satisfactory to the commissioners court, the purchasing agent or auditor shall reject said bids and readvertise for new bids, where the amount to be expended exceeds $1,000, or ask for new bids, where the amount to be expended shall be $1,000 or less. In cases of emergency, purchases or contracts not in excess of $1,000 may be made upon requisition to be approved by the commissioners court, without advertising for competitive bids or asking for competitive bids.

[Amended by Acts 1981, 67th Leg., p. 565, ch. 237, § 21, eff. Sept. 1, 1981.]

Art. 1666a. Budget; Counties Over 225,000

Repeal of Conflicting Laws

Acts 1977, 65th Leg., p. 1278, ch. 500, classified as art. 1666b, and providing for a budget officer in certain counties over 1,200,000, provides in § 12 that to the extent that any provisions of the Act conflict with provisions in this article, such provisions in this article are repealed to the extent of the conflict.

Art. 1666b. Budget Officer in Certain Counties Over 1,200,000

Authorization to Appoint

Sec. 1. In the preparation of the county budget, the commissioners court in counties having a population in excess of 1,200,000, as shown by the last preceding United States Census, may appoint a budget officer to prepare a county budget for the current fiscal and calendar year.

Abolition of Office

Sec. 2. A county which has established an office of county budget officer may abolish such office only by formal action of the commissioners court taken after February 1 and before June 1, at which time the county auditor shall assume all lawful responsibilities as the chief budget officer of the county.

Preparation of Budget

Sec. 3. Such budget shall be carefully itemized so as to make possible as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes for the preceding year.

The budget shall be so prepared as to show with reasonable accuracy each of the various projects for which appropriations are set up in the budget and the estimated amount of money carried in the budget for each of such projects.

Contents of Budget

Sec. 4. The county budget officer shall obtain from the county auditor the necessary information so that the budget will contain a complete financial statement of the county showing all outstanding obligations of the county, the cash on hand to the credit of every and each fund of the county government, the funds received from all sources during the previous year, the funds and revenue estimated by the auditor to be received from all sources during the previous year, the funds and revenue estimated by the auditor to be received from all sources during the ensuing year, together with a statement of all accounts and contracts on which sums are due to or by the county as of December 31 of the year preceding, except taxes and court costs.

Limitation on Payments; Budget Available for Public Inspection

Sec. 5. Until a budget has been adopted by the commissioners court, no payments shall be made during the current year except for emergencies and for obligations legally incurred prior to January 1 of such year for salaries, utilities, materials, and supplies. A copy of the budget shall be filed with the clerk of the county court and the county auditor, and it shall be available for inspection to the public.

Public Hearings; Changes in Budget

Sec. 6. The commissioners court in each county shall provide for a public hearing on the county budget, which hearing shall take place on some date to be named by the commissioners court within seven calendar days after the filing of the budget and prior to January 31 of the current year. Public notice shall be given that on the date of said hearing the budget as prepared by the county budget officer will be considered by the commissioners court. Said notice shall name the hour, the date, and the place the hearing shall be conducted and shall be published once in a newspaper of general circulation in said county. Any taxpayer of such county shall have the right to be present and participate in said hearing. At the conclusion of the hearing, the budget as prepared by the county budget officer shall be acted upon by the commissioners court. The court shall have authority to make such changes in the budget as in its judgment the facts and the law warrant and the interest of the taxpayers demand, provided the amounts budgeted for current expenditures from the various funds of the county shall not exceed the balances in said funds as of January 1, plus the anticipated revenue for the current year for which the budget is made as estimated by the county auditor.

Filing of Budget Upon Final Approval

Sec. 7. Upon final approval of the budget by the commissioners court, a copy of such budget as approved shall be filed with the county auditor, the clerk of the court, and the state auditor, and no expenditures of the funds of the county shall thereafter be made except in strict compliance with said budget. Said court may upon proper application transfer an existing budget surplus during the year to a budget of like kind and fund, but no such transfer shall increase the total of the budget.

Obtaining Necessary Information

Sec. 8. In the preparation and/or monitoring of the budget, the county budget officer shall have authority to require of the county auditor or any district, county, or precinct officer of the county such information as may be necessary to properly prepare and/or monitor the budget.

Assistance to Commissioners Court

Sec. 9. The county budget officer may also assist the commissioners court in the performance of their duties with regard to the efficiency and effectiveness of county operations.

Employment of Personnel

Sec. 10. The commissioners court of counties covered by this Act are hereby authorized to appoint and employ such other persons they deem necessary to assist the county budget officer in the performance of his duties.

County Auditor to Retain Certain Duties

Sec. 11. All duties heretofore conferred upon county auditors by Chapter 1, page 144, General Laws, Acts of the 46th Legislature, 1939, as amended (Article 1666a, Vernon's Texas Civil Statutes), not expressly conferred upon the county budget officer by this Act shall continue to be the duties of the county auditor and shall be performed by the county auditor.

Conflicting Provisions Repealed

Sec. 12. To the extent that any provisions of this Act conflict with provisions in Chapter 1, page 144, General Laws, Acts of the 46th Legislature, 1939, as amended (Article 1666a, Vernon's Texas Civil Statutes), concerning the preparation of the county budget, such provisions in Article 1666a, Vernon's Texas Civil Statutes, are repealed to the extent of the conflict.

[Acts 1977, 65th Leg., p. 1278, ch. 500, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 22, ch. 17, § 1, eff. March 24, 1981.]

TITLE 35

COUNTY LIBRARIES

1. COUNTY FREE LIBRARIES

Article
1682a. Repealed.

1. COUNTY FREE LIBRARIES

Arts. 1682, 1682a. Repealed by Acts 1981, 67th Leg., p. 2846, ch. 764, § 2, eff. Sept. 1, 1981

Section 3 of the 1981 repealing act provided:

"The State Board of Library Examiners is abolished and its records and other property are transferred to the Texas State Library and Archives Commission."

Former art. 1682a, relating to application of Sunset Act, was added by Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.030.

Art. 1683. County Librarian

Upon the establishment of a county free library the Commissioners Court shall biennially appoint a County Librarian who shall hold office for a term of two (2) years subject to removal for cause after a hearing by said Court. No person shall be eligible to the office of County Librarian unless prior to his appointment he has received from the Texas State Library and Archives Commission a certificate of qualification for office; and when any County Librarian has heretofore received a certificate of qualification for office from the Texas State Library and Archives Commission, and has served as County Librarian for any county in this State, said Librarian may be employed or reemployed by any county as Librarian without further examination and issuance of certificate from said Texas State Library and Archives Commission. The County Librarian shall, prior to entering upon the duties of his office, file with the county Clerk the official oath and make a bond upon the faithful performance of his duties with sufficient sureties approved by the County Judge of the county of which the Librarian is to be the County Librarian, in such sum as the Commissioners Court may determine.

[Amended by Acts 1981, 67th Leg., p. 2845, ch. 764, § 1, eff. Sept. 1, 1981.]

Art. 1694. Contract with Established Library

Instead of establishing a separate county free library, upon petition of a majority of the voters of the county, the commissioners court may contract for library privileges from some already established library. Such contract shall provide that such established library shall assume the functions of a county free library within the county with which the contract is made, including incorporated cities and towns therein, and shall also provide that the librarian of such established library shall hold or secure a county librarian's certificate from the Texas State Library and Archives Commission. Said court may contract to pay annually into the library fund of said established library such sum as may be agreed upon, to be paid out of the county library fund. Either party to such contract may terminate the same by giving six months notice of intention to do so. Property acquired under such contract shall be subject to division at the termination of the contract upon such terms as are specified in such contract.

[Amended by Acts 1981, 67th Leg., p. 2845, ch. 764, § 1, eff. Sept. 1, 1981.]

2. LAW LIBRARY

Arts. 1697 to 1702. Repealed by Acts 1977, 65th Leg., p. 271, ch. 131, § 2, eff. May 11, 1977

See, now, art. 1702h.

Arts. 1702a–1 to 1702b–5. Repealed by Acts 1977, 65th Leg., p. 271, ch. 131, § 2, eff. May 11, 1977

See, now, art. 1702h.

Arts. 1702c to 1702g. Repealed by Acts 1977, 65th Leg., p. 271, ch. 131, § 2, eff. May 11, 1977

See, now, art. 1702h.

Art. 1702h. County Law Libraries in All Counties

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

Establishment on Initiative of Commissioners Court; Appropriations

Sec. 2. The Commissioners Court of any county may establish and provide for the maintenance of such County Law Library on its own initiative, and appropriate a sum not to exceed $20,000 to establish properly such library, and shall appropriate each year such sum as may be necessary to properly maintain and operate such County Law Library, which shall be established, maintained and operated at the county seat.

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

Costs; Law Library Fund

Sec. 4. For the purpose of establishing County Law Libraries after the entry of such order, there shall be taxed, collected, and paid as other costs, a sum set by the Commissioners Court not to exceed $10 in each civil case, except suits for delinquent taxes, hereafter filed in every county or district

court; provided, however, that in no event shall the county be liable for said costs in any case. Such costs shall be collected by the clerks of the respective courts in said counties and paid by said clerks to the County Treasurer to be kept by said Treasurer in a separate fund to be known as the "County Law Library Fund." Such fund shall not be used for any other purpose.

[See Compact Edition, Volume 3 for text of 5 and 6]

Administration of Fund; Rules; Space and Shelving

Sec. 7. Such fund shall be administered by the Commissioners Court, or under its direction, for the purchase and lease of library materials, the maintenance of the Law Library, and the acquisition of all furniture, shelving and equipment necessary thereto, in a place convenient and accessible to the Judges and litigants of such county. The Commissioners Court shall provide suitable space for housing the law library and may, with the advice of the committee referred to in section 5 of this Act, use funds collected under this Act for the acquisition of such space. Priority in the use of such funds shall be given to providing books, periodicals, other library materials, and staff for the law library. The Commissioners Court of the counties affected by this Act shall make rules for the use of books in said library.

[See Compact Edition, Volume 3 for text of 8 and 9]

[Amended by Acts 1977, 65th Leg., p. 270, ch. 131, § 1, eff. May 11, 1977; Acts 1979, 66th Leg., p. 234, ch. 121, § 1, eff. May 9, 1979.]

Arts. 1702i, 1702j. Repealed by Acts 1977, 65th Leg., p. 271, ch. 131, § 2, eff. May 11, 1977

Prior to repeal, art. 1702j was amended by Acts 1975, 64th Leg., p. 1901, ch. 609, § 1.

See, now, art. 1702h.

TITLE 37

COURT—SUPREME

CHAPTER ONE. JUDGES

Art. 1715. Judges

The Supreme Court shall consist of the Chief Justice and eight Justices, any five of whom shall constitute a quorum. The concurrence of five Justices shall be necessary to a decision of a case. Three Justices shall be elected every two years by the qualified voters of the state at a general election and shall hold their offices six years, or until their successors are elected and qualified. In case of a vacancy in the Supreme Court, the Governor shall fill such vacancy until the next general election, and at such election the vacancy for the unexpired term shall be filled by election by the qualified voters of the State.

[Amended by Acts 1981, 67th Leg., p. 772, ch. 291, § 14, eff. Sept. 1, 1981.]

Art. 1716. Qualifications

No person shall be eligible to serve in the office of Chief Justice or Justice of the Supreme Court unless the person is licensed to practice law in this state and, at the time of election, is a citizen of the United States and of this State, has attained the age of thirty-five years, and has been a practicing lawyer, or a lawyer and judge of a court of record together, at least ten years.

[Amended by Acts 1981, 67th Leg., p. 772, ch. 291, § 15, eff. Sept. 1, 1981.]

Art. 1717. Disqualification

When the Court or any five of its members shall be disqualified to hear and determine any cause in said Court, or when the Justices of said Court shall be equally divided in opinion by reason of the absence or disqualification of one of its members, the same shall be certified by the Chief Justice to the Governor who shall immediately commission the requisite number of persons possessing the qualifications prescribed for Justices of the Supreme Court to try and determine said cause.

[Amended by Acts 1981, 67th Leg., p. 772, ch. 291, § 16, eff. Sept. 1, 1981.]

CHAPTER THREE. TERMS AND JURISDICTION

Art. 1728. Appellate Jurisdiction

The Supreme Court shall have appellate jurisdiction, except in criminal law matters, co-extensive with the limits of the State, extending to all questions of law arising in the following cases when same have been brought to the Court of Appeals from appealable judgment of trial courts:

1. Those in which the judges of the Courts of Appeals may disagree upon any question of law material to the decision.

2. Those in which one of the Courts of Appeals holds differently from a prior decision of another Court of Appeals, or of the Supreme Court upon any question of law material to a decision of the case.

3. Those involving the construction or validity of statutes necessary to a determination of the case.

4. Those involving the revenues of the State.

5. Those in which the Railroad Commission is a party.

6. In any other case in which it is made to appear that an error of substantive law has been committed by the Court of Appeals which affects the judgment, but excluding those cases in which the jurisdiction of the Court of Appeals is made final by statute.

[Amended by Acts 1981, 67th Leg., p. 773, ch. 291, § 17, eff. Sept. 1, 1981.]

Art. 1729. Writ of Error or Certificate

All causes mentioned in the preceding article may be carried to the Supreme Court either by writ of error or by certificate from the Court of Appeals, but the Court of Appeals may certify any question of law arising in any such case at any time they may choose, whether before or after the decision of the case in said Court.

[Amended by Acts 1981, 67th Leg., p. 773, ch. 291, § 18, eff. Sept. 1, 1981.]

Art. 1733. May Issue Writs

The Supreme Court or any Justice thereof, shall have power to issue writs of procedendo, certiorari and all writs of quo warranto or mandamus agreeable to the principles of law regulating such writs, against any district judge, or Court of Appeals or justices thereof, or any officer of the State Government, except the Governor or the Court of Criminal Appeals or the judges thereof.

[Amended by Acts 1981, 67th Leg., p. 773, ch. 291, § 19, eff. Sept. 1, 1981.]

Art. 1735a. Mandamus in Connection with Elections and Political Party Conventions

The Supreme Court or any court of appeals shall have jurisdiction and authority to issue the writ of mandamus, or any other mandatory or compulsory writ or process, against any public officer or officer of a political party, or any judge or clerk of an election, to compel the performance, in accordance with the laws of this state, of any duty imposed upon them, respectively, by law, in connection with the holding of any general, special, or primary election or any convention of a political party. Any proceeding seeking to obtain such a writ shall be conducted in accordance with the rules pertaining to original proceedings in the court wherein the petition is filed. When presented to a court of appeals, any petition pertaining to an election on an office or proposition which is voted on by the voters of the entire state shall be presented to the court of the supreme judicial district in which the respondent resides, or in which one of the respondents resides, if there is more than one, and any petition pertaining to an election on an office or proposition which is voted on by the voters of only a portion of the state shall be presented to the court of a supreme judicial district in which the territory covered by the election or a portion thereof is located. A petition presented to a court of appeals which pertains to a precinct or county convention shall be presented to the court of the supreme judicial district in which the precinct or county is located; a petition pertaining to a district convention shall be presented to the court of a supreme judicial district in which the district or a portion thereof is located; and a petition pertaining to a state convention shall be presented to the court of a supreme judicial district in which the respondent resides, or in which one of the respondents resides, if there is more than one.

[Amended by Acts 1981, 67th Leg., p. 773, ch. 291, § 20, eff. Sept. 1, 1981.]

Art. 1738. Transfer of Causes

The Supreme Court may, at any time, order cases transferred from one Court of Appeals to another, when, in the opinion of the Supreme Court, there is good cause for such transfer. And the Courts of Appeals to which such cases shall be transferred shall have jurisdiction over all such cases so transferred, without regard to the District in which the cases were originally tried and returnable upon appeal. Provided that the Justices of the Court to which such cases are transferred shall, after due notice to the parties or their counsel, hear oral argument on such cases at the place from which the cases have been originally transferred. All opinions, orders and decisions in such transferred cases shall be delivered, entered and rendered at the place where the Court to which such cases are transferred regularly sits as the law provides. The actual and necessary travelling and living expenses of the Justices of said Courts in hearing oral arguments at the place from which such cases are transferred shall be borne by the state, and for payment thereof the Legislature shall make appropriation. If requested by all parties or their attorneys, a transferred case may be heard in the regular place of the court to which said case has been transferred.

[Amended by Acts 1981, 67th Leg., p. 774, ch. 291, § 21, eff. Sept. 1, 1981.]

CHAPTER FOUR. WRIT OF ERROR

Art. 1748. Designation of Appeals Justices

The Chief Justice of the Supreme Court or any two Justices thereof may, by a writing recorded in the minutes of the Supreme Court, designate three of the Justices of the Courts of Appeals to act as hereinafter provided. Such powers may be exercised from time to time in the same manner as long as reason therefor may exist, and the personnel of the designated Justices of the Courts of Appeals may be changed as often as may be advisable, by relieving one, or more, and designating another, or others, in order to interfere as little as possible with the work of the Courts of Appeals. Not more than one Justice shall be designated to serve at any one time from any one of these courts.

[Amended by Acts 1981, 67th Leg., p. 774, ch. 291, § 22, eff. Sept. 1, 1981.]

Art. 1749. Justices to Assemble

The Justices of the Courts of Appeals so designated, upon receiving notice thereof, shall assemble together at Austin and take up, consider and act upon applications for writs of error as may be so referred to them, by granting, refusing or dismissing the same in accordance with the practice of the Supreme Court; and then such designated Justices may make such orders and give such directions, incidental to the consideration and disposition of the application.

[Amended by Acts 1981, 67th Leg., p. 775, ch. 291, § 23, eff. Sept. 1, 1981.]

Art. 1752. Supreme Court May Also Act

The Supreme Court shall still have power to act upon applications for writs of error, when deemed by it expedient. In any cause in which the Justices of the Courts of Appeals shall have disagreed or shall have declared void a statute of the State, the application for writ of error shall be passed upon by the Supreme Court.

[Amended by Acts 1981, 67th Leg., p. 775, ch. 291, § 24, eff. Sept. 1, 1981.]

Art. 1753. Powers

The powers herein conferred upon the Justices of the Supreme Court and of the Courts of Appeals are declared to be incidental to the offices held by them respectively.

[Amended by Acts 1981, 67th Leg., p. 775, ch. 291, § 25, eff. Sept. 1, 1981.]

TITLE 38

COURT OF CRIMINAL APPEALS

Article
1811aa. Application of Sunset Act.

Art. 1801. Judges

(a) The Court of Criminal Appeals shall consist of eight judges and one presiding judge. The judges shall have the same qualifications and receive the same salaries as the justices of the Supreme Court, and the presiding judge shall have the same qualifications and receive the same salary as the Chief Justice of the Supreme Court. The presiding judge and the Judges shall be elected by the qualified voters of the state at a general election and shall hold their offices for a term of six years. In case of a vacancy in the office of a judge of the Court of Criminal Appeals, the governor shall, with the advice and consent of the Senate, fill said vacancy by appointment until the next succeeding general election.

(b) For the purpose of hearing cases, the Court of Criminal Appeals may sit in panels of three judges, the designation thereof to be under rules established by the court. In a panel of three judges, two judges shall constitute a quorum and the concurrence of two judges shall be necessary for a decision. The presiding judge, under rules established by the court, shall convene the court en banc for the transaction of all other business and may convene the court en banc for the purpose of hearing cases. The court must sit en banc during proceedings involving capital punishment and other cases as required by law. When convened en banc, five judges shall constitute a quorum and the concurrence of five judges shall be necessary for a decision.

[Amended by Acts 1981, 67th Leg., p. 775, ch. 291, § 26, eff. Sept. 1, 1981.]

Art. 1802. Presiding Judge

All writs and processes issuing from said court shall bear test in the name of the presiding judge and the seal of the court.

[Amended by Acts 1981, 67th Leg., p. 776, ch. 291, § 27, eff. Sept. 1, 1981.]

Art. 1804. Term of Court

The Court of Criminal Appeals may sit for the transaction of business at any time during the year and each term shall begin and end with each calendar year.

[Amended by Acts 1981, 67th Leg., p. 776, ch. 291, § 28, eff. Sept. 1, 1981.]

Art. 1807. Mandate

When the court from which an appeal has or may be taken has been or shall be deprived of jurisdiction over any case pending such appeal, and when such case has or may be determined by a court of appeals or the Court of Criminal Appeals, the mandate of said appellate court shall be directed to the court to which jurisdiction has been, or may be, given over such case.

[Amended by Acts 1981, 67th Leg., p. 776, ch. 291, § 29, eff. Sept. 1, 1981.]

Art. 1811. State Prosecuting Attorneys

The Court of Criminal Appeals shall appoint an attorney to represent the State in all proceedings before said Court, to be styled "State Prosecuting Attorney," who shall take and subscribe the official oath, hold office for a term of two (2) years and until his successor is appointed and qualified, and who shall have had at least five (5) years experience as a practicing attorney in this State in criminal cases. The State Prosecuting Attorney may also appoint one or more Assistant State Prosecuting Attorneys. Assistant State Prosecuting Attorneys shall have the same duties and the same term of office as the State Prosecuting Attorney. For good cause, the Court of Criminal Appeals shall have power to remove from office State Prosecuting Attorneys. District and county attorneys may provide assistance to the State Prosecuting Attorney in representing the State before the Court of Criminal Appeals. The State Prosecuting Attorney may provide assistance to district and county attorneys in representing the State before the Courts of Appeals when requested to do so by the district or county attorney. The State Prosecuting Attorney may also represent the State in any stage of a criminal case before the Courts of Appeals when, in his judgment, the interests of the State so require.

[Amended by Acts 1977, 65th Leg., p. 675, ch. 256, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 776, ch. 291, § 30, eff. Sept. 1, 1981.]

Art. 1811aa. Application of Sunset Act

The office of State Prosecuting Attorney is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.142, eff. Aug. 29, 1977.]

[1] Article 5429k.

TITLE 39

COURTS OF APPEALS

CHAPTER ONE. TERMS AND JURISDICTION

Article
1817b. Thirteenth Supreme Judicial District, Places Where Business Transacted.
1817c. Place for Transaction of Business by Sixth Supreme Judicial District.
1817d. Eighth Supreme Judicial District, Places Where Business Transacted.

Art. 1812. Membership

(a) Each Court of Appeals shall consist of a Chief Justice and, in each respective district, the following number of Associate Justices:

(1) First	8
(2) Second	5
(3) Third	2
(4) Fourth	6
(5) Fifth	12

(i) The transition from a six judge court to a 13 judge court shall be as follows:

(1) September 1, 1981. Six additional justices shall be added by appointment by the Governor with the advice and consent of the Senate making a total at that time of 12 justices. The justices elected to this position in 1982 shall serve an initial term to end December 31, 1984, or when their successors have qualified.

(2) January 1, 1983. One additional justice shall be added by appointment by the Governor with the advice and consent of the Senate making a total at that time of 13 justices. The justice elected to this position in 1984 shall serve an initial term to end December 31, 1984, or when his successor has qualified.

(ii) In no event shall the total justices authorized by this Act exceed a total of 13 justices in this particular court.

(6) Sixth	2
(7) Seventh	3
(8) Eighth	3
(9) Ninth	2
(10) Tenth	2
(11) Eleventh	2
(12) Twelfth	2
(13) Thirteenth	5
(14) Fourteenth	8

(b) Each Court of Appeals shall sit in panels of not less than three Justices. A majority of a panel shall be a quorum for the transaction of business, and the concurrence of a majority of a panel shall be necessary for a decision. If more than one panel is used, the Justices of the court shall periodically rotate among the panels as provided by rules established by the respective courts. Permanent civil and criminal panels without rotation shall not be established. The Chief Justice of each respective court, under rules established by the court, shall convene the court en banc for the transaction of all other business and may convene the court en banc for the purpose of hearing cases. When convened en banc, a majority of the membership of the court shall constitute a quorum and the concurrence of a majority of the court sitting en banc shall be necessary for a decision. Effective September 1, 1982, the Court of Appeals for the Third Supreme Judicial District shall consist of a Chief Justice and five Associate Justices and may sit in panels of not less than three Justices.

(c) When additional Justices of a Court of Appeals are elected and qualified, they shall draw lots for their terms of office, as provided by law for Justices of the Courts of Appeals after the initial creation of such courts.

(d) A Justice of the Court of Appeals may be assigned temporarily to another Court of Appeals by the Chief Justice of the Supreme Court regardless of whether a vacancy exists in the Court of Appeals to which he is assigned. A qualified retired Justice may be assigned to a Court of Appeals for active service regardless of whether a vacancy exists.

[Amended by Acts 1977, 65th Leg., p. 1531, ch. 624, § 1; Acts 1981, 67th Leg., p. 776, ch. 291, § 31, eff. Sept. 1, 1981.]

Section 2 of the 1977 amendatory act provided:

"This Act takes effect on approval by the qualified voters of this state of an amendment to the Texas Constitution providing that each court of civil appeals shall consist of a chief justice and not less than two associate justices."

S.J.R. No. 45 proposing such amendment was approved by the voters in an election held November 7, 1978.

Art. 1813. Election and Term of Office; Special Commissioner Appointed When Justice Disabled or Called into Active Military Service

(a) The Justices of each Court of Appeals shall be elected at the general election by the qualified voters of their respective districts. Upon their qualification, after the first election after the creation of any Court of Appeals, the Justices shall draw lots for the terms of office; those drawing number one (1) shall hold for the term of two (2) years; those

drawing number two (2) shall hold for a term of four (4) years; and those drawing number three (3) shall hold office for six (6) years. Each of said offices shall be filled by election at the next general election before the respective terms expire; and the person elected shall thereafter hold his office for six (6) years.

(b) After any Justice of any Court of Appeals has become totally disabled to discharge any of the duties of his office, by reason of illness, physical or mental, and has remained in such condition continuously for a period of not less than one (1) year, and if it is probable that such illness will be permanent, and is of such a nature that it will probably continue to incapacitate such Justice for the balance of his term of office, it shall be the duty of the other Justices of the Court of which such incapacitated Justice is a member to certify such facts to the Governor. Upon receipt of such certificate by the Governor, he shall make proper investigation touching the matters therein contained and if he shall determine that the facts contained in such certificate are true, and that a necessity exists therefor, he shall forthwith appoint a Special Commissioner having the requisite qualifications of a member of such Court to assist the same. Such Special Commissioner, when so appointed, may sit with such Court, hear arguments on submitted cases, and write opinions thereon if directed to do so by the Court; and said opinions, if adopted by the Court, shall become thereupon the opinions of the Court.

(c) The Commissioner herein provided for, when appointed by the Governor, shall receive the same compensation as the regular Justices of the Court of Appeals, and he shall serve until the death or expiration of the term of the disabled member; provided that in no event shall the term of service continue for a longer time than two (2) years under the same appointment; and provided further, that in the event the disabled Justice shall recover from his disability, the term of such Special Commissioner shall immediately end. In the event of such recovery, a majority of the Justices of said Court shall certify such fact to the Governor, and such certificate shall be conclusive evidence of the recovery of said disabled Justice.

(d) Whenever any Justice of any Court of Appeals is called or ordered into the active military service of the United States, it shall be the duty of the other Justices of the Court of which such Justice is a member, to certify that fact to the Governor. Upon receipt of such certificate by the Governor, he shall make proper investigation touching the matters therein contained, and if he shall determine that the facts contained in such certificate are true, and that a necessity exists therefor, he shall forthwith appoint a Special Commissioner having the requisite qualifications of a member of such Court to assist the same. Such Special Commissioner, when so appointed, may sit with such Court, hear arguments on submitted cases, and write opinions thereon if directed to do so by the Court; and said opinions, if adopted by the Court, shall become thereupon the opinions of the Court.

(e) Such Special Commissioner, when so appointed by the Governor, shall receive the same compensation as the regular Justices of the Court of Appeals, and shall serve until the Justice who has been so called or ordered into the active military service of the United States is discharged from such military service, or until the expiration of the term of office of such Justice; provided that in no event shall the term of service of such Special Commissioner continue for a longer period than two (2) years under the same appointment; and provided further that when such Justice so called or ordered into the active military service of the United States is discharged from such active military service, the term of such Special Commissioner shall immediately end. When the active military service of such Justice shall have terminated, the other Justices of such Court of Appeals shall certify that fact to the Governor, and their certificate shall be conclusive evidence of the facts so certified.

(f) Nothing in this Act shall be considered as giving any members of any Court of Appeals, or the Governor, the power or authority to remove or suspend any member of the Court of Appeals from office, or to in any manner interfere with him in his Constitutional rights and powers.

[Amended by Acts 1981, 67th Leg., p. 778, ch. 291, § 32, eff. Sept. 1, 1981.]

Art. 1814. Qualifications of Judges

No person shall be eligible to serve in the office of Justice of a Court of Appeals unless the person is licensed to practice law in this state and at the time of election is a citizen of the United States and of this state, has attained the age of thirty-five years, is a resident of the district from which he is elected, and has been a practicing lawyer, or a lawyer and judge of a court of record together, at least ten years.

[Amended by Acts 1981, 67th Leg., p. 779, ch. 291, § 33, eff. Sept. 1, 1981.]

Art. 1816. Terms of Court

The term of each Court of Appeals of the State of Texas shall begin and end with each calendar year.

[Amended by Acts 1981, 67th Leg., p. 779, ch. 291, § 34, eff. Sept. 1, 1981.]

Art. 1817. Location of Courts

A Court of Appeals shall be held at the following places, respectively:

1. In the First Supreme Judicial District, in the city of Houston;
2. In the Second Supreme Judicial District, in the city of Forth Worth;
3. In the Third Supreme Judicial District, in the city of Austin;

4. In the Fourth Supreme Judicial District, in the city of San Antonio;

5. In the Fifth Supreme Judicial District, in the city of Dallas;

6. In the Sixth Supreme Judicial District, in the city of Texarkana;

7. In the Seventh Supreme Judicial District, in the city of Amarillo;

8. In the Eighth Supreme Judicial District, in the city of El Paso;

9. In the Ninth Supreme Judicial District, in the city of Beaumont;

10. In the Tenth Supreme Judicial District, in the city of Waco;

11. In the Eleventh Supreme Judicial District, in the city of Eastland;

12. In the Twelfth Supreme Judicial District, in the city of Tyler;

13. In the Thirteenth Supreme Judicial District, in the city of Corpus Christi; and

14. In the Fourteenth Supreme Judicial District, in the city of Houston.

The cities of Beaumont and Waco, and Eastland County, respectively, shall furnish and equip suitable rooms for the respective Courts of Appeals therein, and the justices thereof, and the County of Harris shall furnish and equip suitable rooms in Houston for the Courts of Appeals for the First and Fourteenth Supreme Judicial Districts, and for the justices thereof, all without cost or expense to the state. The city of Tyler and Smith County and the city of Corpus Christi and Nueces County, respectively, shall furnish and equip suitable rooms and a library for the respective Courts of Appeals located therein, and for the justices thereof, all without cost or expense to the state.

[Amended by Acts 1981, 67th Leg., p. 779, ch. 291, § 35, eff. Sept. 1, 1981.]

Art. 1817a. First and Fourteenth Judicial Districts, Places Where Business Transacted: Dockets Equalized

Sec. 2. The Courts of Appeals for the First and the Fourteenth Supreme Judicial Districts may transact their business either at the city of Galveston or the city of Houston, as the court shall determine it necessary and convenient; providing, that all cases originating in Galveston County may be heard and tried in such county. Subject to the provisions of Article 1738, Revised Civil Statutes of Texas, 1925, as amended, the clerks of the First and the Fourteenth Supreme Judicial Districts shall also from time to time equalize by lot or chance the dockets of the two courts. 1967 Acts 60th Leg. p. 1954

[Amended by Acts 1981, 67th Leg., p. 780, ch. 291, § 36, eff. Sept. 1, 1981.]

Art. 1817b. Thirteenth Supreme Judicial District, Places Where Business Transacted

The Court of Appeals for the Thirteenth Supreme Judicial District may transact its business at the county seat of any of the counties within its district, as the Court shall determine is necessary and convenient, providing that all cases originating in Nueces County shall be heard and transacted in such county.

[Added by Acts 1975, 64th Leg., p. 2357, ch. 726, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 780, ch. 291, § 37, eff. Sept. 1, 1981.]

Section 2 of the 1975 Act provided: "All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

Art. 1817c. Place for Transaction of Business by Sixth Supreme Judicial District

The Court of Appeals for the Sixth Supreme Judicial District may transact its business either in the city of Texarkana or in the courthouse building of the county seat of any of the counties within its district, as the court determines is necessary or convenient, except that all cases originating in Bowie County shall be heard and transacted in the city of Texarkana.

[Added by Acts 1981, 67th Leg., p. 1873, ch. 449, § 1, eff. June 11, 1981.]

Art. 1817d. Eighth Supreme Judicial District, Places Where Business Transacted

The Court of Civil Appeals for the Eighth Supreme Judicial District may transact its business at the county seat of any of the counties within its district, as the court shall determine it necessary and convenient, providing that all cases originating in El Paso County shall be heard and transacted in said county.

[Acts 1981, 67th Leg., p. 864, ch. 308, § 1, eff. June 8, 1981.]

Section 2 of the 1981 Act provides:

"All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

Art. 1819. Civil Jurisdiction Defined

The appellate jurisdiction of the Courts of Appeals shall extend to all civil cases within the limits of their respective districts of which the District Courts and County Courts have or assume jurisdiction when the amount in controversy or the judgment rendered shall exceed One Hundred Dollars ($100) exclusive of interest and costs; provided, however, that if any Court of Appeals having jurisdiction of a cause, matter or controversy requiring immediate action shall, by reason of the illness or absence or unavailability of such number of judges that reduces the membership of the court below three (3), be unable to take such immediate action, then the nearest available Court of Appeals may take such action as may be required in regard to said cause, matter or controversy under such rules as the Supreme Court may prescribe.

[Amended by Acts 1981, 67th Leg., p. 780, ch. 291, § 38, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

Art. 1820. Judgment Conclusive on Facts

The judgments of the Courts of Appeals in civil cases shall be conclusive in all cases on the facts of the case.

[Amended by Acts 1981, 67th Leg., p. 781, ch. 291, § 39, eff. Sept. 1, 1981.]

Art. 1821. Judgment Conclusive on Law

Except as herein otherwise provided, the judgments of the Courts of Appeals in civil cases shall be conclusive on the law and facts, nor shall a writ of error be allowed thereto from the Supreme Court in the following cases, to wit:

1. Any civil case appealed from the County Court or from a District Court, when, under the Constitution a County Court would have had original or appellate jurisdiction to try it, except in probate matters, and in cases involving the Revenue Laws of the State or the validity or construction of a Statute.

2. All cases of slander.

3. All cases of divorce.

4. All cases of contested elections of every character other than for State officers, except where the validity of a Statute is questioned by the decision.

5. In all appeals from interlocutory orders appointing receivers or trustees, or such other interlocutory appeals as may be allowed by law.

6. In all other cases as to law and facts except where appellate jurisdiction is given to the Supreme Court and not made final in said Courts of Appeals.

It is provided, however, that nothing contained herein shall be construed to deprive the Supreme Court of jurisdiction of any civil case brought to the Court of Appeals from an appealable judgment of the trial court in which the judges of the Courts of Appeals may disagree upon any question of law material to the decision, or in which one of the Courts of Appeals holds differently from a prior decision of another Court of Appeals or of the Supreme Court upon a question of law, as provided for in Subdivisions (1) and (2) of Article 1728.

[Amended by Acts 1981, 67th Leg., p. 781, ch. 291, § 40, eff. Sept. 1, 1981.]

Art. 1824a. May Issue Writs of Habeas Corpus

Whenever any person is restrained in his liberty within a supreme judicial district, the court of appeals of such district, or any of the justices thereof, shall have concurrent jurisdiction with the supreme court to issue the writ of habeas corpus whenever it appears that such restraint of liberty is by virtue of any order, process, or commitment issued by any court or judge on account of the violation of any order, judgment, or decree theretofore made, rendered, or entered by such court or judge in a divorce case, wife or child support case, or child custody case. Said court or any justice thereof, pending the hearing of application for such writ, may admit to bail any person to whom the writ of habeas corpus may be so granted.

[Amended by Acts 1981, 67th Leg., p. 781, ch. 291, § 41, eff. Sept. 1, 1981.]

CHAPTER TWO. CLERKS AND EMPLOYES

Article

1831a. Thirteenth Supreme Judicial District; Reproduction Recording and Retention of Records.
1831b. Reproduction, Recording, and Retention of Records.

Art. 1827. Appointment of Clerk

Each Court of Appeals shall appoint for a term of two years one Clerk who shall reside within a county which is a part of the Supreme Judicial District of the Court of Appeals making the appointment. Such appointment shall be recorded in the minutes of the court. Whenever the necessity occurs, the court may appoint a Clerk Pro Tem.

[Amended by Acts 1981, 67th Leg., p. 782, ch. 291, § 42, eff. Sept. 1, 1981.]

Art. 1830. Seal of Court

Each clerk shall procure a seal for the use of the court, which shall have a star of five points with "Court of Appeals of the State of Texas" engraved thereon.

[Amended by Acts 1981, 67th Leg., p. 782, ch. 291, § 43, eff. Sept. 1, 1981.]

Art. 1831. Records and Judgments

Each clerk shall file and carefully preserve all records certified to his court and all papers relative thereto; docket all causes in the order in which they are filed; record the proceedings of said court, except opinions, and certify their judgments to the proper courts. He shall annually have bound in one or more volumes, to be preserved as a permanent record, the original opinions of the judges of said court, shall number the pages thereof consecutively, prepare and attach to each volume an index showing the style, number and page where each opinion is found, also prepare a general index showing the volume and page where each opinion can be found; the expense of which shall be paid out of the fund provided by the Legislature for the purchase of record books for said court.

He may, after ascertaining that any civil case filed in said court has been finally disposed of for a period of ten years, destroy all records filed in said court in connection therewith except indexes, original opinions, and records of the minutes.

[Amended by Acts 1981, 67th Leg., p. 782, ch. 291, § 44, eff. Sept. 1, 1981.]

Art. 1831a. Thirteenth Supreme Judicial District; Reproduction Recording and Retention of Records

Plan for Reproduction

Sec. 1. The clerk of the court of appeals for the Thirteenth Supreme Judicial District may, pursuant to his duty to preserve: (1) all records certified to his court, (2) all papers relative thereto, (3) all orders and opinions of the judges of said court, and (4) all other documents of or proceedings in said court, provide a plan for the reproduction by microfilm or other process which correctly and legibly reproduces or which forms a medium of copying or reproducing all such records for which the said clerk is or may become responsible by law. The plan shall be in writing and shall include provisions for maintenance, retention, security, and retrieval of all records so microfilmed or otherwise duplicated.

Requirements of Plan

Sec. 2. Any such plan shall provide for the following requirements:

(1) All original instruments and records shall be recorded and released into the file system within a specified minimum time period after presentation to the clerk.

(2) Original paper records may be used during the pendency of any proceeding.

(3) The plan shall include setting standards for organizing, identifying, coding, and indexing so that the image produced during the microfilming or other duplicating process can be certified as a true and correct copy of the original and may be retrieved rapidly.

(4) All materials used in the microfilming or other process which correctly and legibly reproduces or which forms a medium of copying or reproducing all records, as herein authorized, and all processes of development, fixation, and washing of said photographic duplicates shall be of quality approved for permanent photographic records by the United States Bureau of Standards.

(5) The plan shall provide for permanent retention of the records and shall provide security provisions to guard against physical loss, alterations, and deterioration.

Adoption of Plan

Sec. 3. The clerk may present such plan in writing to the justices of the court of appeals for the Thirteenth Supreme Judicial District. If a majority of such justices determine that the plan meets the requirements set forth in Section 2 of this Act, they shall so inform the clerk in writing, and the clerk may adopt the plan. The decision of the justices shall be entered in the minutes of said court, and thereafter all reproductions of original documents of said court made in accordance with the plan shall be considered to be the original records for all purposes and shall be so accepted by courts and administrative agencies in this state. All transcripts, exemplifications, copies, or reproductions on paper or on film of an image or images of any microfilmed or otherwise duplicated record shall be deemed to be certified copies of the original for all purposes.

Destruction of Original Records

Sec. 4. Upon certification of the clerk to the librarian of the state that all requirements have been met and are on record as provided by this plan, the clerk may destroy all records which have been filed with or left in the possession of the clerk in any hearing or proceeding in the court, including all original documents generated by the court in connection with said hearing or proceeding, after one year has elapsed following the time at which the judgment of said court of appeals has become final and times for appeal have expired without having perfected appeal, or mandate which is finally decisive of such matters has been issued, further providing, that after these requirements are reached and prior to actual destruction of the instruments and records by the clerk, any party or parties or the state librarian by petitioning the court may move for the return of such documents and records.

Repealer

Sec. 5. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

[Acts 1975, 64th Leg., p. 1364, ch. 520, §§ 1 to 5, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 782, ch. 291, § 45, eff. Sept. 1, 1981.]

Art. 1831b. Reproduction, Recording, and Retention of Records

Plan for Reproduction

Sec. 1. The clerks of the courts of appeals may, pursuant to their duty to preserve: (1) all records certified to their courts, (2) all papers relative thereto, (3) all orders and opinions of the judges of those courts, and (4) all other documents of or proceedings in those courts, provide a plan for the reproduction by microfilm or other process which correctly and legibly reproduces or which forms a medium of copying or reproducing all records for which the clerks are or may become responsible by law. The plan shall be in writing and shall include provisions for maintenance, retention, security, and retrieval of all records so microfilmed or otherwise duplicated.

Requirements of Plan

Sec. 2. The plan shall provide for the following requirements:

(1) All original instruments and records shall be recorded and released into the file system within a specified minimum time period after presentation to the clerks.

(2) Original paper records may be used during the pendency of any proceeding.

(3) The plan shall include setting standards for organizing, identifying, coding, and indexing so that the image produced during the microfilming or other duplicating process can be certified as a true and correct copy of the original and may be retrieved rapidly.

(4) All materials used in the microfilming or other process which correctly and legibly reproduces or which forms a medium of copying or reproducing all records as authorized by this Act, and all processes of development, fixation, and washing of the photographic duplicates shall be of quality approved for permanent photographic records by the United States Bureau of Standards.

(5) The plan shall provide for permanent retention of the records and shall provide security provisions to guard against physical loss, alterations, and deterioration.

Adoption of Plan

Sec. 3. The clerk or clerks may present the plan in writing to the justices of the court of appeals. If a majority of such justices determine that the plan meets the requirements set forth in Section 2 of this Act, they shall so inform the clerks in writing, and the clerks may adopt the plan. The decision of the justices shall be entered in the minutes of the court, and thereafter all reproductions of original documents of the court made in accordance with the plan shall be considered to be the original records for all purposes and shall be so accepted by courts and administrative agencies in this state. All transcripts, exemplifications, copies, or reproductions on paper or on film of an image or images of any microfilmed or otherwise duplicated record shall be deemed to be certified copies of the original for all purposes.

Destruction of Original Records

Sec. 4. Upon certification of the clerk to the librarian of the state that all requirements have been met and are on record as provided by this plan, the clerk may destroy all records which have been filed with or left in the possession of the clerk in any hearing or proceeding in the court, including all original documents generated by the court in connection with the hearing or proceeding, after one year has elapsed following the time at which the judgment of the court of appeals has become final and times for appeal have expired without having perfected appeal, or mandate which is finally decisive of such matters has been issued, further providing, that after these requirements are reached and prior to actual destruction of the instruments and records by the clerk, any party or parties or the state librarian by petitioning the court may move for the return of the documents and records.

[Acts 1977, 65th Leg., p. 342, ch. 169, §§ 1 to 4, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 783, ch. 291, § 46, eff. Sept. 1, 1981.]

Art. 1833. Deputy Clerks

With the approval of the court, each clerk may appoint such deputies as may be provided by the appropriations act of the legislature. Each deputy shall give bond to the clerk for the faithful discharge of his duty.

[Amended by Acts 1981, 67th Leg., p. 784, ch. 291, § 47, eff. Sept. 1, 1981.]

Art. 1834. Disposition of Costs

Each clerk of a Court of Appeals shall collect and pay into the State Treasury all costs collected by him, under such regulations as the Comptroller may prescribe and the justices of said Court approve.

[Amended by Acts 1981, 67th Leg., p. 784, ch. 291, § 48, eff. Sept. 1, 1981.]

Art. 1836a. Purchase of Law Books From Fees

Sec. 1. Deleted by Acts 1981, 67th Leg., p. 785, ch. 291, § 49, eff. Sept. 1, 1981.

Purchase of Law Books from Fees

Sec. 1–a. The Clerks of the Courts of Appeals shall be and are hereby authorized to purchase additional law books for the use of said Courts out of the fees collected by said Courts; such expenditures shall not exceed annually the specific amounts of such fees additionally authorized for such purpose in the General Appropriation Acts of the Legislature made biennially for the support and maintenance of the Judiciary Department of the State Government. Provided, however, that all such fees collected by any clerk or other officer of any Court of Appeals within this State shall be deposited in the State Treasury to the credit of the court so collecting and depositing same, and the expenditures out of said fund for the foregoing purposes shall be upon a warrant drawn upon the State Treasury by the State Comptroller, as may be provided for in the General Appropriation Bill for the Judiciary of this State.

[Amended by Acts 1981, 67th Leg., p. 785, ch. 291, § 49, eff. Sept. 1, 1981.]

Arts. 1836b, 1836c. Repealed by Acts 1981, 67th Leg., p. 785, ch. 291, §§ 50, 51, eff. Sept. 1, 1981

CHAPTER THREE. PROCEEDINGS

Art. 1839. Repealed by Acts 1981, 67th Leg., p. 785, ch. 291, § 52, eff. Sept. 1, 1981

Art. 1850. Repealed by Acts 1981, 67th Leg., p. 785, ch. 291, § 53, eff. Sept. 1, 1981

CHAPTER FOUR. CERTIFICATION OF QUESTIONS

Art. 1851a. Repealed by Acts 1981, 67th Leg., p. 785, ch. 291, § 54, eff. Sept. 1, 1981

TITLE 40

COURTS—DISTRICT

Chapter Article
4A. Family District Courts 1926a

CHAPTER TWO. DISTRICT CLERK

Article
1899b. Recording Proceedings of More Than One Court.
1899c. Record of Drug-Related Convictions and Periodic Notification of Licensing Boards.

Art. 1897. Bond, Oath, and Insurance

Bond and Oath

Sec. 1. Each district clerk shall, before entering upon the duties of his office, give bond either with two or more good and sufficient sureties or with a surety company authorized to do business in Texas as a surety to be approved by the commissioners court in an amount equal to not less than $5,000 nor less than 20 percent of the maximum amount of fees collected in any year during the previous term of office immediately preceding the term of office for which the bond is to be given, but in no event to exceed $100,000, conditioned for the faithful discharge of the duties of his office. Said clerk shall also take and subscribe the official oath which shall be endorsed on the bond, and the bond and oath so taken and approved shall be filed and recorded in the office of the county clerk.

Deputies and Employees; Bond

Sec. 2. Each district clerk shall obtain a surety bond covering his deputy or a schedule surety bond or a blanket surety bond covering his deputies, if more than one, and all employees of his office. Each deputy and each employee shall be covered for the same conditions and in the same amount as the district clerk.

Beneficiaries of Bonds

Sec. 3. The bond covering the district clerk shall be made payable to the governor and the bond or bonds covering the deputies and the employees of the district clerk shall be made payable to the governor for the use and benefit of the district clerk.

Errors and Omissions Insurance

Sec. 4. (a) Each district clerk shall obtain an errors and omissions insurance policy, covering the district clerk and the deputy or deputies of the district clerk against liabilities incurred through errors and omissions in the performance of the official duties of said district clerk and the deputy or deputies of said district clerk; with the amount of the policy being in an amount equal to a maximum amount of fees collected in any year during the previous term of office immediately preceding the term of office for which said insurance policy is to be obtained, but in no event shall the amount of the policy be for less then $10,000 or more than $700,000.

(b) Commissioners courts of each county may establish a contingency fund for the purpose of providing coverage to the extent required by this article where it is determined by the district clerk that insurance coverage is unavailable to provide such coverage. District clerks of those counties where a contingency fund is established may collect an additional filing fee to be determined by the commissioners court in an amount not to exceed $5 for each suit filed. When the contingency fund has reached an amount equal to that required by Subsection (a) of this section, the contingency fee shall no longer be collected.

Burglary, Theft, Robbery, etc. Insurance

Sec. 5. Each district clerk shall obtain an insurance policy to cover any loss due to burglary, theft, robbery, counterfeit currency, and destruction, with the amount of policy being in an amount not to exceed $20,000.

Payment of Premiums

Sec. 6. The premiums for the bonds and the insurance policies required by this article to be given or to be obtained by the district clerk of each county shall be paid by the commissioners court of the county out of the general fund of the county. [Amended by Acts 1979, 66th Leg., p. 1506, ch. 650, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2071, ch. 462, § 1, eff. June 11, 1981.]

Art. 1899b. Recording Proceedings of More Than One Court

Combining the Minutes: Civil and Criminal Separate

Sec. 1. (a) All district clerks who have duties in more than one district court are authorized to combine all the minutes of the civil business of the several courts into one record book.

(b) All aforesaid district clerks are also authorized to combine the criminal minutes in the same manner.

(c) The civil minutes are to be kept in a book separate from the criminal minutes.

Manner of Entry

Sec. 2. Entry of all business in the minutes of both the civil book and the criminal book are to be made sequentially, regardless of the district court from which the business originates.

[Added by Acts 1975, 64th Leg., p. 1183, ch. 441, § 1, eff. June 19, 1975.]

Art. 1899c. Record of Drug-Related Felony Convictions and Periodic Notification of Licensing Boards

Sec. 1. Each district clerk shall maintain, in addition to other required records, a current listing of the full names of all persons convicted of felonies under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), in the county in which the district clerk holds office. Such listing shall include the names of all persons whose convictions are on appeal or have not become final, as well as those who have received suspended sentences or probation following an adjudication or plea of guilt, but shall not include the name of any defendant whose prosecution is deferred during a period of probation with no plea or adjudication of guilt.

Sec. 2. At least once each calendar month, the district clerk shall send two certified copies each to the Texas State Board of Medical Examiners, the Texas State Board of Podiatry Examiners, the State Board of Dental Examiners, the State Board of Pharmacy, and the State Board of Veterinary Medical Examiners, of all names added to the listing maintained pursuant to Section 1 of this article since the last previous such transmittal of certified copies.

[Added by Acts 1981, 67th Leg., p. 110, ch. 52, § 11, eff. Sept. 1, 1981.]

CHAPTER THREE. POWERS AND JURISDICTION

Article

1916a. Exchange of Benches by Judges of the 51st and 119th Judicial Districts.
1918a. Court Coordinator System in Counties over 700,000.
1918b. Masters in Suits Affecting Parent-Child Relationship and Certain Contempt Proceedings.
1918c. Magistrates in District Courts of Dallas County.

Art. 1903. Joint Clerk; Separation of County and District Clerk Offices; Election

Sec. 1. Except as provided by Section 2 of this Article, in counties having a population of less than eight thousand (8,000) according to the last preceding Federal Census, there shall be elected a single clerk who shall perform the duties of the district clerk and the county clerk, unless a majority of the qualified voters of the county who participate in a special election, called by the Commissioners Court for that purpose, vote to keep the offices of county and district clerk separate. The Commissioners Court may submit to the qualified voters of such counties, at an election held at least thirty (30) days before any regular primary election immediately preceding the expiration of the constitutional term of office of said clerk, the question of whether the offices of district and county clerk shall be separate or joint. The same question may again be submitted immediately prior to the expiration of each subsequent constitutional term of office of the separate clerk. Notice of such special election shall be published in a newspaper of general circulation in the county at least twenty (20) days prior to such election. No special election as provided herein shall prevent any county clerk, district clerk or joint clerk from serving the full term of office to which he was elected.

Sec. 2. The Commissioners Court of a county having a population of more than seven thousand, six hundred (7,600) and less than eight thousand (8,000), according to the most recent federal census, shall determine whether the county is to have a separate district clerk and county clerk or is to have a single clerk to perform the duties of the district clerk and county clerk. However, the commissioners court may not take any action to prevent a district clerk, county clerk, or joint clerk from serving the full term of office to which he was elected.

[Amended by Acts 1981, 67th Leg., p. 2527, ch. 668, § 1, eff. June 15, 1981.]

Art. 1907. Repealed by Acts 1975, 64th Leg., p. 2197, ch. 701, § 7, eff. June 21, 1975

See, now, Probate Code, § 5.

Art. 1911a. Contempt; Power of Courts; Penalties

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

Work-Release Sentence for Child Nonsupport

Sec. 4. Section 5, Article 42.03, Code of Criminal Procedure, 1965, as amended, and Section 14.12, Family Code, as amended, apply when a person is punished by confinement for contempt of court for disobedience of court order to make periodic payments for the support of a child.

[Amended by Acts 1977, 65th Leg., p. 2076, ch. 827, § 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2537, ch. 674, § 4, eff. Sept. 1, 1981.]

Art. 1916a. Exchange of Benches by Judges of the 51st and 119th Judicial Districts

Sec. 1. The provisions of this Act authorize the exchange of benches without formal order by the judges of the 51st Judicial District and the 119th Judicial District and are applicable in each county in those districts, including the counties in which the districts do not overlap.

Sec. 2. The judges of those courts may, in their discretion, exchange benches from time to time, and any of the judges may, in his own courtroom, try and determine any case or proceeding pending in any of the other courts without having the case transferred, or may sit in any of the other courts and there hear and determine any case there pending, and each judgment and order shall be entered in the minutes of the court in which the case is pending. The judges may try different cases filed in the same court at the same time and each may occupy his own courtroom or the room of any other court. In case of absence, sickness, or disqualification of any of those judges, any of the other of those judges may hold court for him. Any of the judges may hear any part of any case or proceeding pending in any of those courts and determine the same or may hear and determine any question in any case, and any other of those judges may complete the hearing and render judgment in the case. Any of those judges may hear and determine motions, petitions for injunction, application for appointment of receivers, interventions, pleas of privilege, pleas in abatement, all dilatory pleas, motions for new trials and all preliminary matters, questions, and proceedings and may enter judgment or order thereon in the court in which the case is pending without having the case transferred to the court of the judge acting, and the judge in whose court the case is pending may thereafter proceed to hear, complete, and determine the case or other matter or any part thereof and render final judgment thereon. Any of the judges of those courts may issue restraining orders and injunctions returnable to any of the other judges or courts.

[Acts 1977, 65th Leg., p. 656, ch. 246, §§ 1, 2, eff. May 25, 1977.]

Art. 1918a. Court Coordinator System in Counties over 700,000

The criminal district courts and the district courts of general jurisdiction giving preference to criminal cases in counties with a population in excess of 700,000 according to the last preceding federal census may establish and maintain a court coordinator system. The district courts shall, by rule, designate the duties to be performed by the coordinators to improve criminal justice and expedite the processing of criminal cases through the district courts. The court coordinators in each county shall cooperate with administrative judges and state agencies having duties in the area of the operation of the courts to promote uniform and efficient administration of justice in the state. The court coordinators serve by appointment of the district courts and at the pleasure of the district courts, and shall receive reasonable compensation to be determined by the judges of those courts, not to exceed 70 percent of the salary paid by the state to the judges of those courts. The district courts may appoint appropriate staff and supporting personnel according to the needs of each local jurisdiction. The commissioners court of each county shall provide from the fines and fees collected by these courts the necessary funding for the court coordinator system on order and directive of the district courts to be served, provided that if said fines or fees are insufficient to provide the total funding for this program the county shall provide the additional funds needed.

[Acts 1975, 64th Leg., p. 589, ch. 240, § 1, eff. May 20, 1975.]

Art. 1918b. Masters in Suits Affecting Parent-Child Relationship and Certain Contempt Proceedings

Appointment of Master

Sec. 1. (a) The judge of a district court, court of domestic relations, or other court having jurisdiction of suits affecting the parent-child relationship under Title 2, Family Code, as amended,[1] may appoint a master to perform the duties authorized by this Act if the commissioners court of a county in which the court has jurisdiction authorizes the employment of a master. Except as provided by Subsection (d) of this section, the master shall be appointed by the judge and serves at the will of the judge.

(b) If the court exercises jurisdiction in more than one county, the master may serve only in a county in which the commissioners court has authorized the master's appointment.

(c) If more than one district court, court of domestic relations, or other court having jurisdiction of suits affecting the parent-child relationship has jurisdiction in a county, the commissioners court may authorize the appointment of a master for each court or may authorize one or more masters to share service with two or more courts.

(d) If a master serves more than one court, the master's appointment must be made with the unanimous approval of all the judges under whom the master serves, and the master's services may be terminated by a majority vote of all the judges for whom the master serves.

[1] Family Code, § 11.01 et seq.

Qualifications of Master

Sec. 2. To be eligible for appointment as a master under this Act, a person must be a resident of Texas and must be licensed to practice law in this state.

Compensation of Master

Sec. 3. The master is entitled to a salary as determined by the commissioners court of the county in which he or she serves. If the master serves in more than one county, the master's salary shall be determined by agreement of the commissioners courts of the counties. The salary shall be paid from the county fund available for payment of officers' salaries.

Referral of Cases to Master

Sec. 4. (a) The judge of a court having a master appointed as provided in this Act may refer to the master any civil case involving motions:

(1) for contempt for the failure or refusal to pay child support, temporary support, or separate maintenance or for failure or refusal to comply with court orders concerning the possession of or access to children who have been the subjects of suits affecting the parent-child relationship; or

(2) to modify the decree in a suit affecting the parent-child relationship providing for the support, conservatorship, or possession of or access to a child.

(b) To refer a case to a master, the judge shall issue an order of referral specifying the duties of the master.

Powers of Master

Sec. 5. (a) Except as provided by Subsection (b) of this section, a master to whom a case is referred may:

(1) conduct hearings;

(2) hear evidence;

(3) compel the production of relevant evidence;

(4) rule on the admissibility of evidence;

(5) issue summons for the appearance of witnesses;

(6) examine witnesses;

(7) swear witnesses for the hearing;

(8) make findings of fact on the evidence;

(9) formulate conclusions of law;

(10) recommend the judgment to be made in the case;

(11) regulate all proceedings in a hearing before the master; and

(12) do all acts and take all measures necessary and proper for the efficient performance of the duties required in the order of referral.

(b) The order of referral may limit the powers of the master and direct the master to report only on specific issues, do particular acts, or receive and report on evidence only. The order may set the time and place for the hearing, prescribe a closing date for the hearing, and provide for a date for the filing of the master's report.

Witnesses Appearing Before Master

Sec. 6. (a) A witness appearing before the master is subject to the penalties of perjury if the witness is duly sworn.

(b) If a witness after being duly summoned fails to appear or having appeared refuses to answer questions, on certification of the refusal to the referring court, the court may issue attachment against the witness and may fine or imprison the witness.

Findings; Notice

Sec. 7. On the conclusion of the hearing in each case, the master shall transmit to the referring judge all papers relating to the case, together with the findings and a statement that notice of the findings and of the right to a hearing before the judge has been given to all adult principals, minors, or parents, guardians, or custodians of any minor whose case has been heard by the master. This notice may be given at the hearing or otherwise as the referring court directs.

Action on Master's Report

Sec. 8. After the master's report is filed, the referring court may adopt, modify, correct, reject, or reverse the master's report or recommit it for further information, as the court may deem proper and necessary in the particular circumstances of the case. If judgment has been recommended, the court in its discretion may approve the recommendation and hear further evidence before rendition of judgment.

Hearing

Sec. 9. Adult principals or a minor child or his parents, guardians, or custodians are entitled to a hearing by the judge of the referring court if within three days after receiving notice of the findings of the master they file a request with the court for a hearing. The referring court may allow the hearing at any time.

Decree Upon Adoption by Court

Sec. 10. If no hearing before the judge of the referring court is requested or the right to such hearing is waived, the findings and recommendations of the master become the decree of the court when adopted by an order of the judge.

Notice of Time and Place of Hearing

Sec. 11. Prior to the hearing by the master, the parties litigant shall be given due notice as provided by law of the time and place of the hearing.

Jury Trial

Sec. 12. In a proceeding in which a jury trial has been demanded, the master shall refer the case back to the referring court for a full hearing before the court and jury, subject to the usual rules of the court in such cases.

[Acts 1979, 66th Leg., p. 1771, ch. 719, §§ 1 to 12, eff. Aug. 27, 1979.]

Section 13 of the 1979 Act provided:

"In the event of the passage of S.B. No. 785 [vetoed] and H.B. No. 467, [this article] 66th Legislature, Regular Session, 1979, the provisions of S.B. No. 785 shall apply to the district courts in Dallas County."

Art. 1918c. Magistrates in District Courts of Dallas County

Appointment of Magistrates

Sec. 1. (a) The judges of the district courts of Dallas County that give preference to criminal cases and the judges of the criminal district courts of Dallas County may appoint magistrates to perform the duties authorized by this Act. Each magistrate shall be appointed by the judges and serves at the will of the judges.

(b) The judges of the district courts designated in Subsection (a) of this section may appoint magis-

trates only with the consent and approval of the Commissioners Court of Dallas County.

(c) The judges may authorize one or more magistrates to share service with two or more courts as the judges deem appropriate and necessary.

(d) Each magistrate's appointment must be made with the unanimous approval of all the judges under whom the magistrate serves, and the magistrate's services may be terminated by a majority vote of all the judges for whom the magistrate serves.

Qualifications of Magistrates

Sec. 2. To be eligible for appointment as a district court magistrate under this Act, a person must be a resident of Texas and must be licensed to practice law in this state, for at least four years.

Compensation of Magistrates

Sec. 3. Each district court magistrate for criminal cases is entitled to a salary to be determined by the Commissioners Court of Dallas County, which salary shall not be less than the salary authorized to be paid to masters for family law cases appointed under Chapter 719, Acts of the 66th Legislature, Regular Session, 1979 (Article 1918b, Vernon's Texas Civil Statutes). The salary shall be paid from the county fund available for payment of officers' salaries.

Referral of Cases to Magistrates

Sec. 4. (a) The judge of a court having a magistrate appointed as provided by this Act may refer to the magistrate any criminal case for proceedings involving:

(1) negotiated pleas of guilty before the court;

(2) bond forfeitures;

(3) pretrial motions;

(4) postconviction writs of habeas corpus;

(5) conducting examining trials;

(6) any other matters that the judge deems necessary and proper, except as otherwise provided by Subsection (b) of this section.

(b) In no event may a judge refer to a magistrate a criminal case permitting the magistrate to preside over a trial on the merits, either with or without a jury.

(c) To refer a case to a magistrate, the judge shall issue an order of referral specifying the duties of the magistrate.

Powers of Magistrates

Sec. 5. (a) Except as provided by Subsections (b) and (c) of this section, a magistrate to whom a case is referred may:

(1) conduct hearings;

(2) hear evidence;

(3) compel the production of relevant evidence;

(4) rule on the admissibility of evidence;

(5) issue summons for the appearance of witnesses;

(6) examine witnesses;

(7) swear witnesses for the hearing;

(8) make findings of fact on the evidence;

(9) formulate conclusions of law;

(10) rule on pretrial motions;

(11) recommend the rulings, orders, or judgment to be made in the case;

(12) regulate all proceedings in a hearing before the magistrates; and

(13) do all acts and take all measures necessary and proper for the efficient performance of the duties required in the order of referral.

(b) The order of referral may limit the powers of the magistrate and direct the magistrate to report only on specific issues, do particular acts, or receive and report on evidence only. The order may set the time and place for the hearing, prescribe a closing date for the hearing, and provide for a date for the filing of the magistrate's findings.

(c) A magistrate appointed under this Act to whom a case is referred may not enter a ruling on any issue of law or fact of which the determination thereon could result in dismissal or require the dismissal of a pending criminal prosecution. A magistrate may, however, make findings, conclusions, and recommendations on such issues, within the scope of the order of referral.

(d) An order of referral may designate proceedings for more than one case over which the magistrate shall preside, may direct the magistrate to call the court's docket, and may set forth general powers and limitations of authority of the magistrate applicable to all such cases.

(e) Upon the request of either party to the case to be considered, a court reporter shall be provided by the court to record the proceedings before the magistrate.

Witnesses Appearing Before Magistrates

Sec. 6. A witness appearing before a magistrate is subject to the penalties of perjury if the witness is duly sworn. If a witness after being duly summoned fails to appear or having appeared refuses to answer questions, on certification of the refusal to the referring court, the court may issue attachment against the witness and may fine or imprison the witness.

Adoption of Action by Magistrates

Sec. 7. (a) On the conclusion of the proceedings, the magistrate shall transmit to the referring court all papers relating to the cases involved, together with the findings, conclusions, orders, recommendations, or other actions taken.

(b) The referring court may modify, correct, reject, or reverse any action taken by the magistrate, or recommit it for further information, as the court may deem proper and necessary in the particular circumstances of the case.

(c) If no modification, correction, rejection, reversal, or recommittal is made by the referring court, the actions taken by the magistrate become the decree of the court.

(d) The referring court shall, at the conclusion of each term during which the services of a magistrate are used, enter a decree upon the minutes adopting the actions of the magistrate with respect to all cases of which the court approves of the magistrate's actions. The court shall determine whether or not the nonprevailing party is able to defray the costs of the magistrate and, if it is determined that the party can, shall tax as costs the fees of the magistrate, against the nonprevailing party.

Judicial Immunity

Sec. 8. The magistrate shall enjoy the full judicial immunity of a district judge.

Savings Provisions

Sec. 9. Nothing in this Act is intended to violate any provision of the Constitution of the United States or the Constitution of Texas, and all acts done under this Act shall be done in a manner that conforms to the constitutions. If any word, phrase, paragraph, subparagraph, sentence, clause, part, portion, or provision of this Act or the application thereof to any person, situation, or circumstances is held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the legislature declares that this Act would have been enacted without the invalid or unconstitutional word, phrase, paragraph, subparagraph, sentence, clause, part, portion, or provision. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes, powers, rights, functions, and authorities set forth in this Act. [Acts 1981, 67th Leg., p. 2546, ch. 678, eff. Aug. 31, 1981.]

CHAPTER FOUR A. FAMILY DISTRICT COURTS

Art. 1926a. Family District Court Act

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1.01. This Act may be cited as the Family District Court Act.

Purpose

Sec. 1.02. (a) This Act substitutes district courts of general jurisdiction, to be called family district courts, for the existing domestic relations courts and special juvenile courts. It also restructures existing juvenile boards in certain counties and provides for the future creation and organization of juvenile boards in other counties. Subchapter A contains general provisions applicable to all family district courts, now or later created, and Subchapter B creates the new family district courts. Subchapter C contains temporary provisions.

(b) This Act is designed so that future legislatures may create new family district courts by adding a section to Subchapter B without repeating the general provisions of Subchapter A relating to jurisdiction, terms, personnel, facilities, and administration of all family district courts.

Jurisdiction

Sec. 1.03. (a) A family district court has the jurisdiction and power provided for district courts by the constitution and laws of this state. Its jurisdiction is concurrent with that of other district courts in the county in which it is located.

(b) A family district court shall have primary responsibility for cases involving family law matters. These matters include but are not limited to:

(1) adoptions;

(2) birth records;

(3) divorce and marriage annulment;

(4) child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency;

(5) parent and child; and

(6) husband and wife.

(c) This Act does not limit the jurisdiction of other district courts nor relieve them of responsibility for handling cases involving family law matters.

Terms of Court

Sec. 1.04. The terms of a family district court begin on the first Monday in January and the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Judge

Sec. 1.05. (a) A family district court judge's qualifications and term of office are the same as those prescribed by the constitution and laws of this state for district judges. A family district court judge is elected in the same manner as a district judge.

(b) A family district court judge is entitled to the same compensation and allowances provided by the state and county for the other district judges in his county.

Court Officials, Personnel, and Facilities

Sec. 1.06. (a) Each family district court judge may appoint an official court reporter. The reporter must have the qualifications prescribed by law for that office and is entitled to the same compensation, fees, and allowances provided by law for other official court reporters in the county.

(b) The district attorney, criminal district attorney, or county attorney, and the sheriff and district clerk shall serve each family district court in his county in the same manner he serves the district court or courts of his county.

(c) The commissioners court of the county in which a family district court is located shall provide

the physical facilities and the deputy clerks, bailiffs, and other personnel necessary to operate the family district court.

County Juvenile Board

Sec. 1.07. (a) Except as otherwise provided in this section, when a family district court is created in a county, that county's juvenile board is composed of the county judge, the family district court judge or judges, the district judge or judges whose jurisdiction includes the county, and the judges of all other courts in the county having jurisdiction over juvenile matters. Except in counties where there is only one family district court judge, the members of the juvenile board shall select a family district court judge to serve as chairman of the board. The juvenile board has the powers and duties prescribed by law.

(b) The juvenile board shall appoint a chief juvenile probation officer who shall serve as the chief administrative officer of the family district court at the pleasure of the juvenile board. Subject to approval of the juvenile board, the chief juvenile probation officer shall select as many assistant probation officers and other personnel as are necessary to perform the duties assigned him by the juvenile board.

(c) The commissioners court may compensate juvenile board members for their duties performed on the juvenile board beyond such compensation as is otherwise provided for by law, and this compensation is in addition to all other compensation paid by the state or county to district, family district, and county judges. On recommendation of the juvenile board, the commissioners court shall also:

(1) fix the compensation of the chief juvenile probation officer and the members of his staff; and

(2) provide the physical facilities necessary to operate the juvenile board.

(d) The creation of a family district court in a county also creates a juvenile board in that county if one does not exist.

(e) This Act does not affect the composition or organization of any juvenile board existing on the effective date of the Act, except that the judges of the courts of domestic relations and of the juvenile courts are replaced by the family district court judges.

Sec. 1.08. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(13), eff. Sept. 1, 1981.

SUBCHAPTER B. CREATING FAMILY DISTRICT COURTS

300th District Court

Sec. 2.01. On the effective date specified in Section 3.02 of this Act, the 300th Judicial District is created. Its boundaries are coextensive with the boundaries of Brazoria County, and its court, which replaces the Court of Domestic Relations for Brazoria County, is the 300th District Court. The 300th District Court may be called the Family District Court for the 300th Judicial District.

301st District Court

Sec. 2.02. On the effective date specified in Section 3.02 of this Act, the 301st Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Court of Domestic Relations for Dallas County, is the 301st District Court. The 301st District Court may be called the Family District Court for the 301st Judicial District.

302nd District Court

Sec. 2.03. On the effective date specified in Section 3.02 of this Act, the 302nd Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Court of Domestic Relations No. 2 for Dallas County, is the 302nd District Court. The 302nd District Court may be called the Family District Court for the 302nd Judicial District.

303rd District Court

Sec. 2.04. On the effective date specified in Section 3.02 of this Act, the 303rd Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Court of Domestic Relations No. 3 for Dallas County, is the 303rd District Court. The 303rd District Court may be called the Family District Court for the 303rd Judicial District.

304th District Court

Sec. 2.05. On the effective date specified in Section 3.02 of this Act, the 304th Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Juvenile Court of Dallas County, is the 304th District Court. The 304th District Court may be called the Family District Court for the 304th Judicial District.

305th District Court

Sec. 2.06. On the effective date specified in Section 3.02 of this Act, the 305th Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Juvenile Court No. 2 of Dallas County, is the 305th District Court. The 305th District Court may be called the Family District Court for the 305th Judicial District.

306th District Court

Text of section as amended by Acts 1979, 66th Leg., p. 784, ch. 345, § 8

Sec. 2.07. On the effective date specified in Section 3.02 of this Act, the 306th Judicial District is created. Its boundaries are coextensive with the boundaries of Galveston County, and its court, which

replaces the Court of Domestic Relations for Galveston County, is the 306th District Court. The 306th District Court may be called the Family District Court for the 306th Judicial District. All juvenile matters and proceedings in Galveston County shall be filed originally with the district clerk on the docket of the 306th District Court. Upon order of the judge of the 306th District Court, the district clerk shall transfer the juvenile matter or proceeding to the docket of the court designated therein. Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

306th District Court

Text of section as amended by Acts 1979, 66th Leg., p. 1643, ch. 686, § 15

Sec. 2.07. On the effective date specified in Section 3.02 of this Act, the 306th Judicial District is created. Its boundaries are coextensive with the boundaries of Galveston County, and its court, which replaces the Court of Domestic Relations for Galveston County, is the 306th District Court. The 306th District Court may be called the Family District Court for the 306th Judicial District. All juvenile matters and proceedings in Galveston County shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall transfer juvenile matters and proceedings to the other courts so that the County Courts Nos. 1 and 2, the Probate and County Court and the 306th District Court will rotate trying all juvenile cases and holding detention hearings and other associated matters during a three-month period of each year, beginning with the County Court No. 1 during the first quarter of each year, the County Court No. 2 during the second quarter, the Probate and County Court during the third quarter, and the 306th District Court during the fourth quarter, except that the judge of the 306th District Court upon his own order may retain jurisdiction of or transfer to one of the other courts, that is, County Courts Nos. 1 and 2 and the Probate and County Court, any such case as the judge of the 306th District Court may determine serves the needs of justice.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

307th District Court

Sec. 2.08. On the effective date specified in Section 3.02 of this Act, the 307th Judicial District is created. Its boundaries are coextensive with the boundaries of Gregg County, and its court, which replaces the Court of Domestic Relations for Gregg County, is the 307th District Court. The 307th District Court may be called the Family District Court for the 307th Judicial District.

308th District Court

Sec. 2.09. On the effective date specified in Section 3.02 of this Act, the 308th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations for Harris County, is the 308th District Court. The 308th District Court may be called the Family District Court for the 308th Judicial District.

309th District Court

Sec. 2.10. On the effective date specified in Section 3.02 of this Act, the 309th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations No. 2 for Harris County, is the 309th District Court. The 309th District Court may be called the Family District Court for the 309th Judicial District.

310th District Court

Sec. 2.11. On the effective date specified in Section 3.02 of this Act, the 310th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations No. 3 for Harris County, is the 310th District Court. The 310th District Court may be called the Family District Court for the 310th Judicial District.

311th District Court

Sec. 2.12. On the effective date specified in Section 3.02 of this Act, the 311th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations No. 4 for Harris County, is the 311th District Court. The 311th District Court may be called the Family District Court for the 311th Judicial District.

312th District Court

Sec. 2.13. On the effective date specified in Section 3.02 of this Act, the 312th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Court of Domestic Relations No. 5 for Harris County, is the 312th District Court. The 312th District Court may be called the Family District Court for the 312th Judicial District.

313th District Court

Sec. 2.14. On the effective date specified in Section 3.02 of this Act, the 313th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Juvenile Court for Harris County, is the 313th District Court. The 313th District Court may be called the Family District Court for the 313th Judicial District.

314th District Court

Sec. 2.15. On the effective date specified in Section 3.02 of this Act, the 314th Judicial District is created. Its boundaries are coextensive with the

boundaries of Harris County, and its court, which replaces the Juvenile Court No. 2 for Harris County, is the 314th District Court. The 314th District Court may be called the Family District Court for the 314th Judicial District.

315th District Court

Sec. 2.16. On the effective date specified in Section 3.02 of this Act, the 315th Judicial District is created. Its boundaries are coextensive with the boundaries of Harris County, and its court, which replaces the Juvenile Court No. 3 for Harris County, is the 315th District Court. The 315th District Court may be called the Family District Court for the 315th Judicial District.

316th District Court

Sec. 2.17. On the effective date specified in Section 3.02 of this Act, the 316th Judicial District is created. Its boundaries are coextensive with the boundaries of Hutchinson County, and its court, which replaces the Court of Domestic Relations for Hutchinson County, is the 316th District Court. The 316th District Court may be called the Family District Court for the 316th Judicial District.

317th District Court

Sec. 2.18. On the effective date specified in Section 3.02 of this Act, the 317th Judicial District is created. Its boundaries are coextensive with the boundaries of Jefferson County, and its court, which replaces the Court of Domestic Relations for Jefferson County, is the 317th District Court. The 317th District Court may be called the Family District Court for the 317th Judicial District.

318th District Court

Sec. 2.19. On the effective date specified in Section 3.02 of this Act, the 318th Judicial District is created. Its boundaries are coextensive with the boundaries of Midland County, and its court, which replaces the Court of Domestic Relations for Midland County, is the 318th District Court. The 318th District Court may be called the Family District Court for the 318th Judicial District.

319th District Court

Sec. 2.20. On the effective date specified in Section 3.02 of this Act, the 319th Judicial District is created. Its boundaries are coextensive with the boundaries of Nueces County, and its court, which replaces the Court of Domestic Relations for Nueces County, is the 319th District Court. The 319th District Court may be called the Family District Court for the 319th Judicial District.

320th District Court

Sec. 2.21. On the effective date specified in Section 3.02 of this Act, the 320th Judicial District is created. Its boundaries are coextensive with the boundaries of Potter County, and its court, which replaces the Court of Domestic Relations for Potter County, is the 320th District Court. The 320th District Court may be called the Family District Court for the 320th Judicial District.

321st District Court

Sec. 2.22. On the effective date specified in Section 3.02 of this Act, the 321st Judicial District is created. Its boundaries are coextensive with the boundaries of Smith County, and its court, which replaces the Court of Domestic Relations for Smith County, is the 321st District Court. The 321st District Court may be called the Family District Court for the 321st Judicial District.

322nd District Court

Sec. 2.23. On the effective date specified in Section 3.02 of this Act the 322nd Judicial District is created. Its boundaries are coextensive with the boundaries of Tarrant County, and its court, which replaces the Court of Domestic Relations No. 1 for Tarrant County, is the 322nd District Court. The 322nd District Court may be called the Family District Court for the 322nd Judicial District.

323rd District Court

Sec. 2.24. On the effective date specified in Section 3.02 of this Act, the 323rd Judicial District is created. Its boundaries are coextensive with the boundaries of Tarrant County, and its court, which replaces the Court of Domestic Relations No. 2 for Tarrant County, is the 323rd District Court. The 323rd District Court may be called the Family District Court for the 323rd Judicial District.

324th District Court

Sec. 2.25. On the effective date specified in Section 3.02 of this Act, the 324th Judicial District is created. Its boundaries are coextensive with the boundaries of Tarrant County, and its court, which replaces the Court of Domestic Relations No. 3 for Tarrant County, is the 324th District Court. The 324th District Court may be called the Family District Court for the 324th Judicial District.

325th District Court

Sec. 2.26. On the effective date specified in Section 3.02 of this Act, the 325th Judicial District is created. Its boundaries are coextensive with the boundaries of Tarrant County, and its court, which replaces the Court of Domestic Relations No. 4 for Tarrant County, is the 325th District Court. The 325th District Court may be called the Family District Court for the 325th Judicial District.

326th District Court

Sec. 2.27. On the effective date specified in Section 3.02 of this Act, the 326th Judicial District is created. Its boundaries are coextensive with the boundaries of Taylor County, and its court, which replaces the Court of Domestic Relations for Taylor County, is the 326th District Court. The 326th District Court may be called the Family District Court for the 326th Judicial District.

327th District Court

Sec. 2.28. On the effective date specified in Section 3.02 of this Act, the 327th Judicial District is created. Its boundaries are coextensive with the boundaries of El Paso County, and its court, which replaces the Court of Domestic Relations for El Paso County, is the 327th District Court. The 327th District Court may be called the Family District Court for the 327th Judicial District.

328th District Court

Sec. 2.29. On the effective date specified in Section 3.02 of this Act, the 328th Judicial District is created. Its boundaries are coextensive with the boundaries of Fort Bend County, and its court, which replaces the Court of Domestic Relations of Fort Bend County, is the 328th District Court. The 328th District Court may be called the Family District Court for the 328th Judicial District.

329th District Court

Sec. 2.30. On the effective date specified in Section 3.02 of this Act, the 329th Judicial District is created. Its boundaries are coextensive with the boundaries of Wharton County, and its court, which replaces the Court of Domestic Relations of Wharton County, is the 329th District Court. The 329th District Court may be called the Family District Court for the 329th Judicial District.

330th District Court

Sec. 2.31. On the effective date specified in Section 3.02 of this Act, the 330th Judicial District is created. Its boundaries are coextensive with the boundaries of Dallas County, and its court, which replaces the Court of Domestic Relations No. 4 of Dallas County, is the 330th District Court. The 330th District Court may be called the Family District Court for the 330th Judicial District.

SUBCHAPTER C. TEMPORARY PROVISIONS

Appointment

Sec. 3.01. The first judge of a family district court created in this Act is appointed by the governor.

Effective Date

Sec. 3.02. Subchapter B of this Act shall become effective immediately.

Transfer of Pending Cases, Process, and Writs

Sec. 3.03. When a family district court is created:

(1) all cases pending in the replaced court are transferred to the family district court which replaces it; and

(2) all process and writs pending in or issued by the replaced court are transferred to the family district court which replaces it and are returnable to that family district court.

Repealer

Sec. 3.04. (a) Each act creating or providing for a court replaced by a family district court under this Act is repealed on the date the family district court is created.

(b) The following acts are repealed on the dates provided in Subsection (a) of this section:

(1) Chapter 426, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 2338–3, Vernon's Texas Civil Statutes);

(2) Chapter 23, Acts of the 55th Legislature, 1st Called Session, 1957, as amended (Article 2338–3a, Vernon's Texas Civil Statutes);

(3) Chapter 325, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 2338–5, Vernon's Texas Civil Statutes);

(4) Chapter 49, Acts of the 54th Legislature, 1955, as amended (Article 2338–7, Vernon's Texas Civil Statutes);

(5) Chapter 157, Acts of the 55th Legislature, Regular Session, 1957 (Article 2338–7a, Vernon's Texas Civil Statutes);

(6) Chapter 16, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 2338–8, Vernon's Texas Civil Statutes);

(7) Chapter 511, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 2338–9, Vernon's Texas Civil Statutes);

(8) Chapter 13, Acts of the 56th Legislature, 3rd Called Session, 1959, as amended (Article 2338–9a, Vernon's Texas Civil Statutes);

(9) Chapter 31, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 2338–10, Vernon's Texas Civil Statutes);

(10) Chapter 242, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 2338–11, Vernon's Texas Civil Statutes);

(11) Chapter 299, Acts of the 58th Legislature, 1963, as amended (Article 2338–11a, Vernon's Texas Civil Statutes);

(12) Chapter 443, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 2338–13, Vernon's Texas Civil Statutes);

(13) Chapter 159, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 2338–14, Vernon's Texas Civil Statutes);

(14) Section 2, Chapter 212, Acts of the 59th Legislature, Regular Session, 1965 (Section 2, Article 6819a–39, Vernon's Texas Civil Statutes);

(15) Chapter 6, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 2338–15, Vernon's Texas Civil Statutes);

(16) Chapter 278, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 2338–15a, Vernon's Texas Civil Statutes);

(17) Chapter 64, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 2338–16, Vernon's Texas Civil Statutes);

(18) Chapter 44, Acts of the 58th Legislature, 1963, as amended (Article 2338–17, Vernon's Texas Civil Statutes);

(19) Chapter 289, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 2338–18, Vernon's Texas Civil Statutes);

(20) Chapter 307, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 2338–19, Vernon's Texas Civil Statutes);

(21) Chapter 537, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 2338–20, Vernon's Texas Civil Statutes);

(22) Chapter 780, Acts of the 60th Legislature, Regular Session, 1967 (Article 2338–9b, Vernon's Texas Civil Statutes);

(23) Chapter 781, Acts of the 60th Legislature, Regular Session, 1967 (Article 2338–15b, Vernon's Texas Civil Statutes);

(24) Chapter 465, Acts of the 61st Legislature, Regular Session, 1969 (Article 2338–11b, Vernon's Texas Civil Statutes);

(25) Chapter 761, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 2338–15c, Vernon's Texas Civil Statutes);

(26) Chapter 786, Acts of the 61st Legislature, Regular Session, 1969 (Article 2338–9c, Vernon's Texas Civil Statutes);

(27) Chapter 673, Acts of the 61st Legislature, Regular Session, 1969 (Article 2338–18a, Vernon's Texas Civil Statutes);

(28) Chapter 844, Acts of the 62nd Legislature, Regular Session, 1971 (Article 2338–21, Vernon's Texas Civil Statutes);

(29) Chapter 100, Acts of the 63rd Legislature, Regular Session, 1973 (Article 2338–22, Vernon's Texas Civil Statutes);

(30) Chapter 201, Acts of the 63rd Legislature, Regular Session, 1973 (Article 2338–23, Vernon's Texas Civil Statutes); and

(31) Chapter 207, Acts of the 63rd Legislature, Regular Session, 1973 (Article 2338–9b.1, Vernon's Texas Civil Statutes).

(c) Chapter 393, Acts of the 52nd Legislature, 1951 (Article 2338–4, Vernon's Texas Civil Statutes), and Chapter 434, Acts of the 53rd Legislature, Regular Session, 1953 (Article 2338–6, Vernon's Texas Civil Statutes), are repealed.

(d) All other laws or parts of laws in conflict with this Act are repealed to the extent of the conflict.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Effective Date

Sec. 4.00. This Act takes effect on September 1, 1977.

[Acts 1977, 65th Leg., p. 2144, ch. 859 eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 157, ch. 85, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 784, ch. 345, § 8, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1643, ch. 686, § 15, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(13), eff. Sept. 1, 1981.]

Acts 1981, 67th Leg., ch. 453, repealing § 1.08 of this article, enacted Title 110B, Public Retirement Systems.

CHAPTER FIVE. CRIMINAL DISTRICT COURTS

TARRANT COUNTY

1926–45. Criminal District Court No. 4 of Tarrant County

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

(c) The terms of court of the Criminal District Court No. 4 of Tarrant County begin on the first Monday in April, the first Monday in July, the first Monday in October, and the first Monday in January of each year. Each term of court continues until the next succeeding term convenes.

[Amended by Acts 1981, 67th Leg., p. 2266, ch. 547, § 1, eff. June 12, 1981.]

JEFFERSON COUNTY

Art. 1926–63. Criminal Judicial District of Jefferson County

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

Sec. 4. (a) The Criminal District Attorney of Jefferson County shall be commissioned by the Governor and may receive as compensation a salary in an amount not more than the total salary, including all supplements, paid to the highest paid district judge in the district. The salary shall be fixed by the Commissioners Court of Jefferson County, to be paid out of the Officer's Salary Fund of Jefferson County if adequate; if inadequate the Commissioners Court shall transfer necessary funds from the General Fund of the County to the Officer's Salary Fund.

(b) Jefferson County shall receive annually from the State of Texas under the provisions of this Act an amount equal to the amount paid district attorneys by the State of Texas, and shall be paid by the comptroller of public accounts as appropriated by the legislature in 12 equal installments. Such funds shall be paid into the salary fund of Jefferson County.

(c) The Criminal District Attorney of Jefferson County shall not engage in the private practice of law in that he shall not appear and practice as an attorney at law in any court of record in this state except in behalf of the State of Texas or Jefferson County as herein provided.

[See Compact Edition, Volume 3 for text of 5 and 6]

[Amended by Acts 1975, 64th Leg., p. 1821, ch. 557, § 1, eff. Sept. 1, 1975.]

TITLE 41

COURTS—COUNTY

CHAPTER ONE. THE COUNTY JUDGE

Article

1933a. Appointment of Special County Judges in Certain Counties.
1934b. Court Administrator System for County Courts in Certain Countries.
1934c. Court Manager and Coordinator System for Courts Having Criminal Jurisdiction in Counties Over 1,500,000.
1934d. Ministerial Practices and Procedures in Courts Having Criminal Jurisdiction in Counties Over 1,500,000.

Art. 1933a. Appointment of Special County Judges in Certain Counties

Application and Construction of Act

Sec. 1. The provisions of this Act apply only to counties in which there is no statutory county court at law or statutory probate court, and in which all duties of the county court devolve upon the county judge. The provisions hereof are cumulative of all other provisions of law for appointment or election of special county judges, and existing provisions are repealed hereby only to the extent of any conflict.

Pending Matter

Sec. 2. The county judge may at any time appoint a special county judge, with respect to any pending matter, whether of civil or criminal nature, in accordance with the provisions following:

(a) Such action may be taken on the motion of any counsel of record in such pending matter, or on the court's own motion.

(b) All counsel of record are entitled to notice and hearing on such motion.

(c) If the county judge finds that good cause exists therefor, he shall appoint a special county judge, at his discretion, except: (1) the person so appointed must be a duly licensed attorney at law; (2) the person so appointed must be the person agreed upon by all counsel of record in the pending matter, if they are able to so agree; and (3) due consideration shall be given by the court to such recommendations as may be made by the attorneys of such court for the further implementation of this Act and the accomplishment of the purposes hereof.

(d) The motion for, and order appointing, the special county judge, shall be noted in the docket, and may be reduced to writing and filed among the papers in the pending cause.

(e) Thereafter, the special county judge, while sitting in the matter in which he is so appointed, shall have and exercise all powers of a county judge in relation to the matter involved.

Absence of County Judge or Excessive Case Load

Sec. 3. (a) The county judge may appoint a retired judge to sit as a special county judge during a period when the county judge is absent by reason of physical incapacitation or absence from the county. The special county judge shall sit in all matters that may be docketed on any of the court's dockets and shall have and exercise all powers of a county judge in relation to the matters involved. The cumulative time a special county judge or special county judges appointed under this subsection may sit shall not exceed a total of 15 working days during a calendar year without the consent of the commissioners court.

(b) If a county judge finds that the dockets of the county court reflect a case load which the judge deems to be in excess of that which can be disposed of properly in a manner consistent with the efficient administration of justice, the judge, acting with the consent of the commissioners court, may appoint a retired judge as a special county judge to share the bench for such periods of time as may be authorized by the commissioners court. The special county judge shall sit in such matters as the county judge may authorize and shall have and exercise all powers of a county judge in relation to the authorized matters.

(c) The order appointing a special county judge under this section shall be noted in the docket of the county court.

(d) A retired judge appointed under this section shall be a former judge who, prior to the appointment, has served at least eight years as the county judge of a county in this state or who has served as a district judge of this state, and who has qualified for the judicial retirement system.

Compensation

Sec. 4. A special county judge who is appointed under this Act shall be compensated by the commissioners court at the rate of 1/365 of the annual salary of the county judge for each day that the judge sits as special county judge.

Powers Not Exercisable

Sec. 5. A special county judge who is appointed under this Act may not exercise any of the powers of the county judge as member and presiding officer of the commissioners court or relating to the general administration of county business.

[Acts 1975, 64th Leg., p. 1251, ch. 475, §§ 1, 2, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 147, ch. 66, §§ 1 to 5, eff. April 22, 1981.]

Section 3 of the 1975 Act, the emergency provision, provides, in part: "The purpose of this Act is to improve the administration of justice in county courts, in view of the problems inherent in the crowded condition of the dockets of constitutional county courts, in the numerous and diverse nature of other nonjudicial duties devolving upon county judges, and in the fact county judges are not required to be licensed attorneys although confronted by questions of increasing legal complexity. * * *"

Art. 1934a–17. Stenographer or Secretary in Counties of 144,000 to 155,000; Salary

In any county in the State having a population of not less than one hundred forty-four thousand (144,000) inhabitants and not more than one hundred fifty-five thousand (155,000), according to the last preceding federal census, the County Judge, with the approval of the Commissioners Court, shall be, and is hereby authorized to appoint a stenographer or secretary.

[Amended by Acts 1981, 67th Leg., p. 565, ch. 237, § 22, eff. Sept. 1, 1981.]

Art. 1934b. Court Administrator System for County Courts in Certain Counties

Sec. 1. County criminal courts or county courts at law having jurisdiction in both criminal and civil actions and proceedings in counties having more than one county criminal court or more than one county court at law having jurisdiction in both criminal and civil actions and proceedings may establish and maintain a court administrator's system if approved by the commissioners court. Upon approval, Sections 2, 3, and 4 of this Act shall apply.

Sec. 2. The county criminal courts or the county courts at law having jurisdiction in both criminal and civil actions and proceedings shall, by rule, designate the duties to be performed by the court administrator. The court administrator shall cooperate with the administrative judges and state agencies having duties relating to the operation of the courts to perform uniform and efficient administration of justice.

Sec. 3. (a) The court administrator shall be appointed by the judges of the county criminal courts or the judges of the county courts at law having jurisdiction in both criminal and civil actions and proceedings and shall serve at the pleasure of those courts. The court administrator shall receive reasonable compensation to be determined by the commissioners court not to exceed 70 percent of the salary paid by the county to the judges of those courts.

(b) The judges of those courts shall appoint appropriate staff and supporting personnel according to the needs of each local jurisdiction.

Sec. 4. The commissioners court of each county shall provide from the fines collected by these courts the necessary funding for the court administration system on order and directive of the courts to be served by the court administrator. If the fines are insufficient to provide the total funding for this program, the county shall provide the additional funds needed.

[Acts 1977, 65th Leg., p. 1624, ch. 638, §§ 1 to 4, eff. June 15, 1977.]

Art. 1934c. Court Manager and Coordinator System for Courts Having Criminal Jurisdiction in Counties Over 2,000,000

Courts having the same jurisdiction over criminal justice that are now or may be hereafter vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas in counties with a population in excess of 2,000,000 according to the last preceding federal census may establish and maintain a court manager and coordinator system. The courts shall, by rule, designate and set out the qualifications of and duties to be performed by the court manager and coordinators to improve criminal justice and expedite the processing of criminal cases through the county courts. The court manager and coordinators in each such county shall cooperate with state agencies having duties in the operation of the courts to promote uniform and efficient justice in the state. Nothing in this Act shall be construed to diminish the statutory duties and powers conferred on the clerk of the court, sheriff, district attorney, or any officer of the court. The court manager and coordinators shall serve by and at the pleasure of the courts, and shall receive reasonable compensation, to be determined by the judges of the courts, not more than 60 percent for the court manager and 50 percent for the coordinators of the salary paid to the judges of the courts. The courts may appoint a court manager, coordinators, appropriate staff, and supporting personnel according to the needs of each local jurisdiction. The commissioners court of each such county shall provide from the fines collected by these courts the necessary funding for the court manager and coordinator system on order and directive of the courts to be served provided that if the said fines are insufficient to provide the total funding for this program the county shall provide the additional funds needed.

[Acts 1977, 65th Leg., p. 1891, ch. 752, § 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 566, ch. 237, § 23, eff. Sept. 1, 1981.]

Art. 1934d. Ministerial Practices and Procedures in Courts Having Criminal Jurisdiction in Counties Over 2,000,000

Sec. 1. The judges of courts having the same jurisdiction over criminal matters that are now or may be vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas in counties with a population in excess of 2,000,000 according to the last preceding federal census and in which there are nine or more such courts may select from their number a presiding judge.

(a) The presiding judge shall be selected by a vote of two-thirds of the judges of such courts, for a term of six months, and shall serve until his successor is selected. The selection of such presiding judge may be cancelled and another presiding judge selected to

serve the unexpired term of the regularly selected presiding judge by a vote of two-thirds of the judges of such courts. Selection of the presiding judge shall be during the month immediately preceding the term such judge is to serve. Each judge of courts included in this Act shall enter on the minutes of his court an order reciting each selection of a presiding judge.

(b) The presiding judge shall have the following duties and responsibilities pertaining to courts included in this Act:

(1) The presiding judge shall preside at any session of the judges of the courts and be ex officio member of all committees created by the judges in session pertaining to the common goal of the courts in achieving more equal and efficient justice and orderly dispatch of business.

(2) The presiding judge shall be the chief administrator of the office of county court manager and county court coordinators; pretrial release services in all misdemeanor cases; and all other court-related ministerial services in all misdemeanor cases as promulgated by the judges having jurisdiction thereof.

(c) In the event that the judge of any court governed by the provisions of this Act is absent, or is for any cause disabled from presiding, the presiding judge of the courts may appoint a special judge whose qualifications shall be the same as the qualifications of the regular judge, and while serving the special judge shall have the same duties and powers as the regular judge. The provisions of Articles 30.04, 30.05, and 30.06, Code of Criminal Procedure, 1965, relating to the oath, compensation, and record of appointment of certain special judges shall apply to the appointment of a special judge under this section.

Sec. 2. The judges of courts included in this Act may also adopt rules, not inconsistent with the Code of Criminal Procedure and the Texas Rules of Civil Procedure for practice and procedure in such courts. A rule may be adopted by a two-thirds vote of the judges and upon adoption shall be entered verbatim on the minutes of each of the courts. The clerk of the court shall supply copies of the rules so adopted to every interested person.

[Acts 1977, 65th Leg., p. 1892, ch. 753, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 566, ch. 237, § 24, eff. Sept. 1, 1981.]

CHAPTER TWO. COUNTY CLERK

Art. 1937. Bond, Oath and Insurance

Sec. 1. Each county clerk shall, before entering upon the duties of his office, give bond either with four or more good and sufficient sureties or with a surety company authorized to do business in Texas as a surety, to be approved by the Commissioners Court in an amount equal to not less than Five Thousand Dollars ($5,000) nor less than twenty per cent (20%) of the maximum amount of fees collected in any year during the previous term of office immediately preceding the term of office for which the bond is to be given, but in no event to exceed Five Hundred Thousand Dollars ($500,000), conditioned for the faithful discharge of the duties of his office. Said clerk shall also take and subscribe the official oath which shall be endorsed on the bond, and the bond and oath so taken and approved shall be recorded in the county clerk's office, and deposited in the office of the clerk of the District Court. A certified copy of such bond may be put in suit in the name of the county for the use of the party injured.

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

Sec. 4. Each county clerk shall obtain an errors and omissions insurance policy, covering the county clerk and the deputy or deputies of the county clerk against liabilities incurred through errors and omissions in the performance of the official duties of said county clerk and the deputy or deputies of said county clerk; with the amount of the policy being in an amount equal to a maximum amount of fees collected in any year during the previous term of office immediately preceding the term of office for which said insurance policy is to be obtained, but in no event shall the amount of the policy be for less than Ten Thousand Dollars ($10,000) or more than Five Hundred Thousand Dollars ($500,000).

Sec. 5. The premiums for the bonds and the errors and omissions policies required by this Act to be given, or to be obtained, by the county clerk of each county shall be paid by the Commissioners Court of the county out of the general fund of the county.

[Amended by Acts 1979, 66th Leg., p. 872, ch. 397, § 1, eff. Aug. 27, 1979.]

Art. 1941(a). Microfilm Records of County Clerks

[See Compact Edition, Volume 3 for text of 1 to 5]

Checking and Proving Microfilm Records; Return of Original Instruments; Disposition of Printed Records

Sec. 6. (a) Each county clerk and county recorder and clerk of county courts, whenever the original paper record is not retained in the files of the county clerk, shall inspect and check each filmed image on each roll of microfilm, or each filmed image of the discrete group of filmed images against the original instrument of writing, legal document, paper or record for accuracy and clarity. A county clerk may reproduce from microfilm onto paper records each filmed image on each roll of microfilm, or each filmed image of the discrete group of filmed images, for the purpose of inspecting and checking each filmed image for accuracy and clarity. Should a microfilm image be defective in any respect, the original instrument of writing, legal document, paper or record, from which said defective filmed

image was made, shall be remicrofilmed on a subsequent roll of microfilm, or on a subsequent discrete image or images of a subsequent discrete group of individual images, to obtain acceptable images on microfilm. A record need not be reproduced if it is transferred to the custody of the state librarian pursuant to state law.

(b) Notwithstanding anything to the contrary provided by any other statute or statutes, when an instrument of writing, legal document, paper, or record has been microfilmed and said microfilm has been proven satisfactory by inspecting and checking as provided herein, said clerk is hereby authorized to, and shall, return each such instrument of writing, legal document, paper or record, excepting those involved in or relating to court matters and proceedings, to the party or parties who filed it.

[See Compact Edition, Volume 2 for text of 6(c) to (d)]

[Amended by Acts 1977, 65th Leg., p. 1201, ch. 463, § 9, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 538, ch. 254, § 1, eff. Aug. 27, 1979.]

CHAPTER THREE. POWERS AND JURISDICTION

Art. 1949. Jurisdiction

The county court shall have concurrent jurisdiction with the justice court in civil cases when the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest.

[Amended by Acts 1979, 66th Leg., p. 846, ch. 377, § 2, eff. June 6, 1979.]

CHAPTER FIVE. MISCELLANEOUS PROVISIONS

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER

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1970–31.2. County Court of Dallas County at Law No. 5.
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1970–298d. County Court at Law No. 2 of McLennan County.

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GRAYSON COUNTY

1970–332a. County Court at Law No. 2 of Grayson County.

HIDALGO COUNTY

1970–341a. County Court at Law No. 2 of Hidalgo County.
1970–341b. County Court at Law No. 3 of Hidalgo County.

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1970–342b. County Court No. 2 of Galveston County.

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1970–348a. County Court at Law No. 2 of Smith County.

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1970–350a. County Court at Law No. 2 of Bell County.

DENTON COUNTY

1970–352a. County Court at Law No. 2 of Denton County.

VICTORIA COUNTY

1970–356a. County Court at Law No. 2 of Victoria County.

BRAZOS COUNTY

1970–359. County Court at Law of Brazos County.

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1970–360. County Court at Law of Webb County.

NACOGDOCHES COUNTY

1970–361. County Court at Law of Nacogdoches County.

COLLIN COUNTY

1970–362. County Court at Law of Collin County.
1970–362a. County Court at Law No. 2 of Collin County.

MONTGOMERY COUNTY

1970–363. County Court at Law No. 1 of Montgomery County.
1970–363a. County Court at Law No. 2 of Montgomery County.

FORT BEND COUNTY

Article

1970–364. County Court at Law of Fort Bend County.

HOUSTON COUNTY

1970–365. County Court at Law of Houston County.

HENDERSON COUNTY

1970–366. County Court at Law of Henderson County.

WALKER COUNTY

1970–367. County Court at Law of Walker County.

COMAL COUNTY

1970–368. County Court at Law of Comal County.

TOM GREEN COUNTY

1970–369. County Court at Law of Tom Green County.

MIDLAND COUNTY

1970–370. County Court at Law of Midland County.

RANDALL COUNTY

1970–371. County Court at Law of Randall County.

REEVES COUNTY

1970–372. County Court at Law of Reeves County.

VAL VERDE COUNTY

1970–373. County Court at Law of Val Verde County.

WISE COUNTY

1970–374. County Court at Law of Wise County.

GREGG COUNTY

1970–375. County Court at Law of Gregg County.

MEDINA COUNTY

1970–376. County Court at Law of Medina County.

ANDERSON COUNTY

1970–377. County Court at Law of Anderson County.

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER

DALLAS COUNTY

Art. 1970-31.2 County Court of Dallas County at Law No. 5

Sec. 1. On January 1, 1979, there is created a county court to be held in Dallas County to be known as "County Court of Dallas County at Law No. 5." The seal of the court shall be the same as provided by law for county courts, except the seal shall contain the words "County Court of Dallas County at Law No. 5."

Sec. 2. The court hereby created shall have exclusive, concurrent civil jurisdiction of all cases, original and appellate, over which by the laws of the State of Texas the existing County Courts of Dallas County at Law Nos. 1, 2, 3, and 4 have original and appellate jurisdiction. In addition thereto, it is specifically provided that the County Courts of Dallas County at Law Nos. 1, 2, 3, 4, and 5 shall have concurrent and coextensive and equal jurisdiction over all civil, administrative, and ministerial acts and over the filing and disposition of all proceedings in eminent domain matters. The judge of any county court at law of Dallas County may sit for the judge of any other county court at law of Dallas County when such judge is unavailable for the performing of any of the administrative acts in connection with eminent domain proceedings, but the performing of the same shall not transfer the cause or proceedings from the court for which the act was performed. All civil cases appealed from the several justice courts of Dallas County shall be filed by the county clerk in the several county courts of Dallas County at law consecutively as the appeal cases are received by the clerk from the several justices of the peace in the county, except in cases wherein the judge of any one of the county courts at law has granted a writ of certiorari, in which case the same shall be docketed in the court so granting the writ and shall not be transferred from that court.

Sec. 3. The County Court of Dallas County at Law No. 5 shall be known as the "E" Court. The county clerk shall number consecutively all cases filed in the county courts of Dallas County at law affixing immediately following the number of all cases the letter A, B, C, D, or E, according to which county court of Dallas County at law the case is assigned, and each case so filed shall be filed in rotation in each of the county courts of Dallas County at law with the letter designation being used to denote the court in which the case is filed. The judge of any one of the county courts of Dallas County at law shall have the power to transfer to any of the other of those courts any case pending on the docket of the court, except where a writ of certiorari has been granted, provided that the cases so transferred shall be for the purpose of equalizing the dockets of each of the county courts of Dallas County at law. Each of the judges of those courts shall together at least once a year transfer cases from one to another in order to equalize the dockets.

Sec. 4. All of the county courts of Dallas County at law and the respective judges thereof shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, and supersedeas and all other writs and processes necessary to the enforcement of their jurisdiction, and also power to punish for contempt under such provisions as are or may be provided by the general laws governing county courts throughout the state.

Sec. 5. The terms of the County Court of Dallas County at Law No. 5 shall be held six times each year on the first Monday in January, March, May, July, September, and November, and each term shall continue until the business is disposed of.

Sec. 6. (a) The judge of the County Court of Dallas County at Law No. 5 shall be a licensed attorney in this state, informed in the laws of the

state, and shall have resided in and shall have been actively engaged in the practice of law in Dallas County for a period of not less than four years prior to his election or appointment. The commissioners court shall fix the salary of each of the judges of the county courts of Dallas County at law at not less than $1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments.

(b) At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Dallas County a judge of the court created in the Act for regular terms of four years beginning on January 1, 1979, as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy in the office of judge shall be filled by appointment by the Commissioners Court of Dallas County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

Sec. 7. After this court is created, it shall be the duty of the judges of the county courts of Dallas County at law to transfer immediately from their dockets a portion of the civil cases pending on their dockets to the court hereby created, which shall be done by beginning with the oldest case pending on the docket of each court and transferring cases without reference to whether any particular case is pending on the jury or nonjury docket of that court.

Sec. 8. In case of disqualification, an overcrowded docket, sickness, or absence from the county of any of the judges of the County Courts of Dallas County at Law Nos. 1, 2, 3, 4, and 5, any other judge of those courts may exchange benches with that judge, and, when exchanging benches with any of the other judges of the county courts at law, shall have all of the power and jurisdiction of the court and judge for whom he is sitting while exchanging benches and may sign orders, judgments, and decrees or other process of any kind as "Judge Presiding" when acting for a disqualified or absent judge on request, or in an emergency without request, or for any other good cause shown. This authority is in addition to the provisions hereinabove made for performing administrative matters for each other.

Sec. 9. Except as otherwise provided in this Act, all laws applicable to County Courts of Dallas County at Law Nos. 1, 2, 3, and 4 shall be applicable to County Court of Dallas County at Law No. 5.
[Acts 1977, 65th Leg., p. 1730, ch. 690, eff. Aug. 29, 1977.]

Art. 1970–31.10. County Criminal Court of Dallas County, Creation, Jurisdiction, etc.

[See Compact Edition, Volume 3 for text of 1 to 8]

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the county criminal court of Dallas County, Texas, the seal of said court shall be the same as provided for county courts except that the seal shall contain the words "The county criminal court, Dallas County, Texas." The sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the judge thereof. The Judge of the County Criminal Court of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 10 to 13]

[Amended by Acts 1975, 64th Leg., p. 1348, ch. 507, § 1, eff. Sept. 1, 1975.]

Art. 1970–31.11. County Criminal Court No. 2 of Dallas County

[See Compact Edition, Volume 3 for text of 1 to 8]

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court of Dallas County, Texas, the seal of said court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court, Number Two, Dallas County, Texas." The sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the Judge thereof. The Judge of the County Criminal Court Number Two of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 10 to 13]

[Amended by Acts 1975, 64th Leg., p. 1348, ch. 507, § 2, eff. Sept. 1, 1975.]

Art. 1970–31.12. County Criminal Court No. 3 of Dallas County

[See Compact Edition, Volume 3 for text of 1 to 8]

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court, Number Three, of Dallas County, Texas, the seal of said court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court, Number Three, Dallas County, Texas." The sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the Judge thereof. The Judge of the County Criminal Court Number Three of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of

the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 10 to 13–A]

[Amended by Acts 1975, 64th Leg., p. 1349, ch. 507, § 3, eff. Sept. 1, 1975.]

Art. 1970–31.13. County Criminal Court No. 4 of Dallas County

[See Compact Edition, Volume 3 for text of 1 to 8]

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court Number Four of Dallas County, Texas; and the seal of said court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court Number Four, Dallas County, Texas." The Sheriff of Dallas County, Texas, shall, in person or by deputy, attend said court when required by the judge thereof. The Judge of the County Criminal Court Number Four of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 10 to 14]

[Amended by Acts 1975, 64th Leg., p. 1349, ch. 507, § 4, eff. Sept. 1, 1975.]

Art. 1970–31.14. County Criminal Court No. 5 of Dallas County

[See Compact Edition, Volume 3 for text of 1 to 8]

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court Number Five of Dallas County, Texas; and the seal of said court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court Number Five, Dallas County, Texas." The sheriff of Dallas County, Texas, shall, in person or by deputy, attend said court when required by the judge thereof. The Judge of the County Criminal Court Number Five of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 10 to 14]

[Amended by Acts 1975, 64th Leg., p. 1349, ch. 507, § 5, eff. Sept. 1, 1975.]

Art. 1970–31.15. County Criminal Courts Nos. 6 and 7 of Dallas County

Sec. 1. On September 1, 1977, there are created two courts to be held in Dallas County to be known and designated as the "County Criminal Court Number 6 of Dallas County, Texas," and the "County Criminal Court Number 7 of Dallas County, Texas."

Sec. 2. The County Criminal Courts Nos. 6 and 7 of Dallas County shall have and the same are vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is now vested in the county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas, except as provided in Section 3 of this Act.

Sec. 3. Each of the County Criminal Courts Nos. 6 and 7 of Dallas County, or the judge thereof, shall have the power to issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws in cases where the offense charged is within the jurisdiction of that court or any court or tribunal inferior to that court and shall also have power to punish for contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state.

Sec. 4. The terms of the County Criminal Courts Nos. 6 and 7 of Dallas County and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms shall be held not less than four times each year and the Commissioners Court of Dallas County shall fix the time at which the courts shall hold their terms until the same may be changed according to law.

Sec. 5. As soon as practicable after the creation of these courts, there shall be appointed by the Commissioners Court of Dallas County in accordance with the law a judge of each court created in this Act, who shall be well informed in the laws of the state and who shall hold his office until the next succeeding general election and until his successor shall have duly qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Dallas County a judge of each of the county criminal courts of Dallas County created in this Act for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. No person shall be eligible for judge of a court created in this Act unless he shall be a citizen of the United States and of this state, who shall have been a practicing lawyer of this state or a judge of a court in this state for four years next preceding his appointment or election and who shall have resided in the county of Dallas for two years next preceding his appointment or election.

Sec. 6. Each judge of a court created in this Act shall execute a bond and take the oath of office as required by the law relating to county judges.

Sec. 7. A special judge of each of the courts created in this Act may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Sec. 8. The county clerk of Dallas County shall be the clerk of the courts created in this Act. The seals of the County Criminal Courts Nos. 6 and 7 of

Dallas County shall be the same as provided for county courts, except that the seals shall contain the words "The County Criminal Court, Number Six, Dallas County, Texas," and the words "The County Criminal Court, Number Seven, Dallas County, Texas," respectively. The sheriff of Dallas County shall in person or by deputy attend each court created in this Act when required by the judge thereof. The judge of each court created in this Act shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Sec. 9. The judge of each court created in this Act shall collect the same fee provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury. The commissioners court shall fix the salary of each of the judges of the county criminal courts of Dallas County at not less than $1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments out of the county treasury by the commissioners court. The judge shall devote his entire time to the duties of his office and shall not engage in the practice of the law while in office.

Sec. 10. The judge of each court created in this Act may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Sec. 11. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of each court created in this Act shall appoint an official shorthand reporter, who shall be well-skilled in his profession, shall be a sworn officer of the court, and who shall hold his office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of stenographers for the district courts shall and are hereby made to apply, in all their provisions insofar as they are applicable, to the official shorthand reporters herein authorized to be appointed, and the reporters shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are provided for the stenographers of district courts of this state and shall also be governed by any other laws covering the stenographers of the district courts of this state. The official shorthand reporter of each of these courts shall not be required to take testimony in cases where neither party litigant nor the judge demands it. Where the testimony is taken by the reporter, a fee of $3 shall be taxed by the clerk as costs in the case to be paid into the county treasury of Dallas County.

Sec. 12. As soon as practicable after the creation of these courts, the clerk of the county criminal courts of Dallas County may transfer to the dockets of the courts created by this Act any of the criminal cases then pending in the County Criminal Court or the County Criminal Court No. 2, 3, 4, or 5 of Dallas County, and thereafter the judge of any of these courts may in his discretion transfer any cause or causes that may at any time be pending in his court to the other courts by an order or orders entered in the minutes of his court, and the judge of the court to which such transfer or transfers are made shall dispose of the cause or causes in the same manner as if the cause or causes were originally instituted in his court.

Sec. 13. The judges of the County Criminal Court of Dallas County and the County Criminal Courts Nos. 2, 3, 4, 5, 6, and 7 may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending and try or otherwise dispose of same.

[Acts 1977, 65th Leg., p. 1727, ch. 689, eff. Aug. 29, 1977.]

Art. 1970–31.16. County Criminal Court No. 8 of Dallas County

Creation

Sec. 1. There is created a court to be held in Dallas County to be known and designated as "County Criminal Court No. 8 of Dallas County, Texas."

Jurisdiction

Sec. 2. The County Criminal Court No. 8 shall have and is vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is now vested in the county courts having jurisdiction in civil and criminal cases under the constitution and laws of Texas.

Writ Power

Sec. 3. The County Criminal Court No. 8, or the judge thereof, shall have the power to issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws in cases where the offense charged is within the jurisdiction of the court or any court or tribunal inferior to the court and shall also have power to punish for contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state.

Terms

Sec. 4. The terms of the County Criminal Court No. 8 and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms shall be held not less than four times each year and the Commissioners Court of Dallas County shall fix the times at which the court shall hold its terms until the same may be changed according to law.

Judge

Sec. 5. (a) No person is eligible for judge of the County Criminal Court No. 8 unless the person is a citizen of the United States and of this state who shall have been a practicing lawyer of this state or a

judge of a court in this state for four years next preceding the appointment or election and who shall have resided in the county of Dallas for two years next preceding the appointment or election.

(b) At the primaries and general election in 1980, there shall be elected by the qualified voters of Dallas County a judge of the County Criminal Court No. 8 for a two-year term beginning on January 1, 1981. At the general election in 1982, the judge shall be elected by the qualified voters of the county for a four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy in the office shall be filled by appointment by the Commissioners Court of Dallas County, and the appointee shall hold office until the next general election and until his or her successor is duly elected and qualified.

Bond and Oath

Sec. 6. The judge of the County Criminal Court No. 8 shall execute a bond and take the oath of office as required by the law relating to county judges.

Special Judge

Sec. 7. A special judge of the County Criminal Court No. 8 may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Court Officials and Seal

Sec. 8. The county clerk of Dallas County shall be the clerk of the County Criminal Court No. 8. The seal of the court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court, Number Eight, Dallas County, Texas." The sheriff of Dallas County shall in person or by deputy attend the court when required by the judge. The judge of the County Criminal Court No. 8 shall have an administrative assistant to aid the judge in the performance of his or her duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Fees and Compensation

Sec. 9. The judge of the County Criminal Court No. 8 shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by the judge monthly into the county treasury. The judge of the court shall receive a salary as fixed by the commissioners court at an amount that is at least equal to the sum that is $1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments out of the county treasury by the commissioners court. The judge shall devote his or her entire time to the duties of the office and shall not engage in the practice of the law while in office.

Removal

Sec. 10. The judge of the County Criminal Court No. 8 may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Court Reporter

Sec. 11. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of the County Criminal Court No. 8 shall appoint an official court reporter, who shall have the qualifications provided by law, shall be a sworn officer of the court, and shall hold the office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of official court reporters for the district courts shall apply in all provisions, insofar as they are applicable, to the official court reporter herein authorized to be appointed. The reporter shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are provided for the official court reporters of district courts of this state and shall be governed by any other laws covering the official court reporters of the district courts of this state. The official court reporter of this court shall not be required to take testimony in cases where neither party litigant nor the judge demands it. Where the testimony is taken by the reporter, a fee of $3 shall be taxed by the clerk as costs in the case, the $3, when collected, to be paid into the county treasury of Dallas County.

Transfer of Cases

Sec. 12. As soon as practicable after this Act takes effect, the clerk of the County Criminal Courts of Dallas County may transfer to the docket of the County Criminal Court No. 8 any of the criminal cases then pending in those courts, and thereafter the judge of any of those courts may in the judge's discretion transfer any cause or causes that may at any time be pending in his or her court to the other courts by an order or orders entered in the minutes of that judge's court, and the judge of the court to which such transfer or transfers are made shall dispose of the cause or causes in the same manner as if the cause or causes were originally instituted in his or her court.

Exchange of Benches

Sec. 13. The judges of the County Criminal Courts of Dallas County may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same.

Effective Dates

Sec. 14. Except as provided by Subsection (b) of Section 5 of this Act, this Act takes effect on January 1, 1981.

[Acts 1979, 66th Leg., p. 1656, ch. 692, eff. Jan. 1, 1981.]

Art. 1970–31.17. County Criminal Court No. 9 of Dallas County

Creation

Sec. 1. There is created a court to be held in Dallas County to be known and designated as "County Criminal Court No. 9 of Dallas County, Texas."

Jurisdiction

Sec. 2. The County Criminal Court No. 9 shall have and is vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is now vested in the county courts having jurisdiction in civil and criminal cases under the constitution and laws of Texas.

Writ Power

Sec. 3. The County Criminal Court No. 9, or the judge thereof, shall have the power to issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws in cases where the offense charged is within the jurisdiction of the court or any court or tribunal inferior to the court and shall also have power to punish for contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state.

Terms

Sec. 4. The terms of the County Criminal Court No. 9 and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms shall be held not less than four times each year and the Commissioners Court of Dallas County shall fix the times at which the court shall hold its terms until the same may be changed according to law.

Judge

Sec. 5. (a) No person is eligible for judge of the County Criminal Court No. 9 unless the person is a citizen of the United States and of this state who shall have been a practicing lawyer of this state or a judge of a court in this state for four years next preceding the appointment or election and who shall have resided in the county of Dallas for two years next preceding the appointment or election.

(b) At the primaries and general election in 1980, there shall be elected by the qualified voters of Dallas County a judge of the County Criminal Court No. 9 for a two-year term beginning on January 1, 1981. At the general election in 1982, the judge shall be elected by the qualified voters of the county for a four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy in the office shall be filled by appointment by the Commissioners Court of Dallas County, and the appointee shall hold office until the next general election and until his or her successor is duly elected and qualified.

Bond and Oath

Sec. 6. The judge of the County Criminal Court No. 9 shall execute a bond and take the oath of office as required by the law relating to county judges.

Special Judge

Sec. 7. A special judge of the County Criminal Court No. 9 may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Court Officials and Seal

Sec. 8. The county clerk of Dallas County shall be the clerk of the County Criminal Court No. 9. The seal of the court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court, Number Nine, Dallas County, Texas." The sheriff of Dallas County shall in person or by deputy attend the court when required by the judge. The judge of the County Criminal Court No. 9 shall have an administrative assistant to aid the judge in the performance of his or her duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Fees and Compensation

Sec. 9. The judge of the County Criminal Court No. 9 shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by the judge monthly into the county treasury. The judge of the court shall receive a salary as fixed by the commissioners court at an amount that is at least equal to the sum that is $1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments out of the county treasury by the commissioners court. The judge shall devote his or her entire time to the duties of the office and shall not engage in the practice of the law while in office.

Removal

Sec. 10. The judge of the County Criminal Court No. 9 may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Court Reporter

Sec. 11. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of the County Criminal Court No. 9 shall appoint an official court reporter, who shall have the qualifications provided by law, shall be a sworn officer of the court, and shall hold the office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of official court reporters for the district courts shall apply in all provisions, insofar as they are applicable, to the official court reporter herein authorized to be appointed. The reporter shall be entitled to the same fees and salary and shall per-

form the same duties and shall take the same oath as are provided for the official court reporters of district courts of this state and shall be governed by any other laws covering the official court reporters of the district courts of this state. The official court reporter of this court shall not be required to take testimony in cases where neither party litigant nor the judge demands it. Where the testimony is taken by the reporter, a fee of $3 shall be taxed by the clerk as costs in the case, the $3, when collected, to be paid into the county treasury of Dallas County.

Transfer of Cases

Sec. 12. As soon as practicable after this Act takes effect, the clerk of the County Criminal Courts of Dallas County may transfer to the docket of the County Criminal Court No. 9 any of the criminal cases then pending in those courts, and thereafter the judge of any of those courts may in the judge's discretion transfer any cause or causes that may at any time be pending in his or her court to the other courts by an order or orders entered in the minutes of that judge's court, and the judge of the court to which such transfer or transfers are made shall dispose of the cause or causes in the same manner as if the cause or causes were originally instituted in his or her court.

Exchange of Benches

Sec. 13. The judges of the County Criminal Courts of Dallas County may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same.

Effective Dates

Sec. 14. Except as provided by Subsection (b) of Section 5 of this Act, this Act takes effect on January 1, 1981.

[Acts 1979, 66th Leg., p. 1120, ch. 534, eff. Jan. 1, 1981.]

Art. 1970–31.18. County Criminal Court No. 10 of Dallas County

Creation

Sec. 1. There is created a court to be held in Dallas County to be known and designated as "County Criminal Court No. 10 of Dallas County, Texas."

Jurisdiction

Sec. 2. The County Criminal Court No. 10 shall have and is vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is now vested in the county courts having jurisdiction in civil and criminal cases under the constitution and laws of Texas.

Writ Power

Sec. 3. The County Criminal Court No. 10, or the judge thereof, shall have the power to issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws in cases where the offense charged is within the jurisdiction of the court or any court or tribunal inferior to the court and shall also have power to punish for contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state.

Terms

Sec. 4. The terms of the County Criminal Court No. 10 and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms shall be held not less that four times each year and the Commissioners Court of Dallas County shall fix the times at which the court shall hold its terms until the same may be changed according to law.

Judge

Sec. 5. (a) No person is eligible for judge of the County Criminal Court No. 10 unless the person is a citizen of the United States and of this state who shall have been a practicing lawyer of this state or a judge of a court in this state for four years next preceding the appointment or election and who shall have resided in the county of Dallas for two years next preceding the appointment or election.

(b) At the primaries and general election in 1980, there shall be elected by the qualified voters of Dallas County a judge of the County Criminal Court No. 10 for a two-year term beginning on January 1, 1981. At the general election in 1982, the judge shall be elected by the qualified voters of the county for a four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy in the office shall be filled by appointment by the Commissioners Court of Dallas County, and the appointee shall hold office until the next general election and until his or her successor is duly elected and qualified.

Bond and Oath

Sec. 6. The judge of the County Criminal Court No. 10 shall execute a bond and take the oath of office as required by the law relating to county judges.

Special Judge

Sec. 7. A special judge of the County Criminal Court No. 10 may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Court Officials and Seal

Sec. 8. The county clerk of Dallas County shall be the clerk of the County Criminal Court No. 10. The seal of the court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court, Number Ten, Dallas County, Texas." The sheriff of Dallas County shall in person or by deputy attend the court when required by the judge. The judge of the County Criminal Court No. 10 shall have an adminis-

trative assistant to aid the judge in the performance of his or her duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Fees and Compensation

Sec. 9. The judge of the County Criminal Court No. 10 shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by the judge monthly into the county treasury. The judge of the court shall receive a salary as fixed by the commissioners court at an amount that is at least equal to the sum that is $1,000 less per annum that the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments out of the county treasury by the commissioners court. The judge shall devote his or her entire time to the duties of the office and shall not engage in the practice of the law while in office.

Removal

Sec. 10. The judge of the County Criminal Court No. 10 may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Court Reporter

Sec. 11. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of the County Criminal Court No. 10 shall appoint an official court reporter, who shall have the qualifications provided by law, shall be a sworn officer of the court, and shall hold the office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of official court reporters for the district courts shall apply in all provisions, insofar as they are applicable, to the official court reporter herein authorized to be appointed. The reporter shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are provided for the official court reporters of district courts of this state and shall be governed by any other laws covering the official court reporters of the district courts of this state. The official court reporter of this court shall not be required to take testimony in cases where neither party litigant nor the judge demands it. Where the testimony is taken by the reporter, a fee of $3 shall be taxed by the clerk as costs in the case, the $3, when collected, to be paid into the county treasury of Dallas County.

Transfer of Cases

Sec. 12. As soon as practicable after this Act takes effect, the clerk of the County Criminal Courts of Dallas County may transfer to the docket of the County Criminal Court No. 10 any of the criminal cases then pending in those courts, and thereafter the judge of any of those courts may in the judge's discretion transfer any cause or causes that may at any time be pending in his or her court to the other courts by an order or orders entered in the minutes of that judge's court, and the judge of the court to which such transfer or transfers are made shall dispose of the cause or causes in the same manner as if the cause or causes were originally instituted in his or her court.

Exchange of Benches

Sec. 13. The judges of the County Criminal Courts of Dallas County may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same.

Effective Dates

Sec. 14. Except as provided by Subsection (b) of Section 5 of this Act, this Act takes effect on January 1, 1981.

[Acts 1979, 66th Leg., p. 1117, ch. 533, eff. Jan. 1, 1981.]

Art. 1970–31.20. County Criminal Court of Appeals of Dallas County

[See Compact Edition, Volume 3 for text of 1 to 9]

Sec. 10. The county clerk of Dallas County, Texas, shall be the clerk of the County Criminal Court of Appeals, of Dallas County, Texas, the seal of said court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court of Appeals, Dallas County, Texas." The Sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the Judge thereof. The Judge of the County Criminal Court of Appeals of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

[See Compact Edition, Volume 3 for text of 11 to 15]

[Amended by Acts 1975, 64th Leg., p. 1349, ch. 507, § 6, eff. Sept. 1, 1975.]

Art. 1970–31.21. County Criminal Court of Appeals No. 2 of Dallas County

Creation

Sec. 1. There is created a court to be held in Dallas County to be called County Criminal Court of Appeals No. 2 of Dallas County, Texas.

Jurisdiction

Sec. 2. The County Criminal Court of Appeals No. 2 shall have and is vested with concurrent jurisdiction within the county of all appeals from criminal convictions had under the laws of the State of Texas and the municipal ordinances of the municipalities located in Dallas County in the justice courts and municipal courts in the county, which jurisdiction is concurrent with the jurisdiction of the County Criminal Court of Appeals of Dallas County. The

County Criminal Court of Appeals No. 2 shall have and is vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is now vested in the county courts having jurisdiction in civil and criminal cases under the constitution and laws of Texas.

Writ Power

Sec. 3. The County Criminal Court of Appeals No. 2, or the judge thereof, shall have the power to issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws in cases where the offense charged is within the jurisdiction of the court or any court or tribunal inferior to the court and shall also have power to punish for contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state.

Terms

Sec. 4. The terms of the County Criminal Court of Appeals No. 2 and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms shall be held not less than four times each year and the Commissioners Court of Dallas County shall fix the times at which the court shall hold its terms until the same may be changed according to law.

Judge

Sec. 5. (a) No person is eligible for judge of the County Criminal Court of Appeals No. 2 unless the person is a citizen of the United States and of this state who shall have been a practicing lawyer of this state or a judge of a court in this state for four years next preceding the appointment or election and who shall have resided in the County of Dallas for two years next preceding the appointment or election.

(b) At the primaries and general election in 1980, there shall be elected by the qualified voters of Dallas County a judge of the County Criminal Court of Appeals No. 2 for a two-year term beginning on January 1, 1981. At the general election in 1982, the judge shall be elected by the qualified voters of the county for a four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy in the office shall be filled by appointment by the Commissioners Court of Dallas County, and the appointee shall hold office until the next general election and until his or her successor is duly elected and qualified.

Bond and Oath

Sec. 6. The judge of the County Criminal Court of Appeals No. 2 shall execute a bond and take the oath of office as required by the law relating to county judges.

Special Judge

Sec. 7. A special judge of the County Criminal Court of Appeals No. 2 may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Court Officials and Seal

Sec. 8. The county clerk of Dallas County shall be the clerk of the County Criminal Court of Appeals No. 2. The seal of the court shall be the same as provided for county courts, except that the seal shall contain the words "The County Criminal Court of Appeals No. 2 of Dallas County, Texas." The sheriff of Dallas County shall in person or by deputy attend the court when required by the judge. The judge of the County Criminal Court of Appeals No. 2 shall have an administrative assistant to aid the judge in the performance of his or her duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Fees and Compensation

Sec. 9. The judge of the County Criminal Court of Appeals No. 2 shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by the judge monthly into the county treasury. The judge of the court shall receive a salary as fixed by the commissioners court at an amount that is at least equal to the sum that is $1,000 less per annum than the total annual salary, including supplements, received by judges of the district courts in Dallas County, which shall be paid in 12 equal monthly installments out of the county treasury by the commissioners court. The judge shall devote his or her entire time to the duties of the office and shall not engage in the practice of the law while in office.

Removal

Sec. 10. The judge of the County Criminal Court of Appeals No. 2 may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Court Reporter

Sec. 11. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of the County Criminal Court of Appeals No. 2 shall appoint an official court reporter, who shall have the qualifications provided by law, shall be a sworn officer of the court, and shall hold the office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of official court reporters for the district courts shall apply in all provisions, insofar as they are applicable, to the official court reporter herein authorized to be appointed. The reporter shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are provided for the official court reporters of district courts of this state and shall be governed by any other laws covering the official

court reporters of the district courts of this state. The official court reporter of this court shall not be required to take testimony in cases where neither party litigant nor the judge demands it. Where the testimony is taken by the reporter, a fee of $3 shall be taxed by the clerk as costs in the case, the $3, when collected, to be paid into the county treasury of Dallas County.

Transfer of Cases

Sec. 12. (a) As soon as practicable after this Act takes effect, the clerk of the county criminal courts in Dallas County may transfer to the docket of the County Criminal Court of Appeals No. 2 any of the criminal cases then pending in the County Criminal Court of Appeals of Dallas County, and thereafter the judge of either of those courts may in the judge's discretion transfer any cause or causes that may at any time be pending in his or her court to the other court by an order or orders entered in the minutes of that judge's court, and the judge of the court to which such transfer or transfers are made shall dispose of the cause or causes in the same manner as if the cause or causes were originally instituted in his or her court. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) In cases transferred to either of the county criminal courts of appeals, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) All new appeals from convictions had under the laws of the State of Texas and ordinances of the municipalities located in Dallas County in justice courts and municipal courts in the county, filed with the county clerk of Dallas County, irrespective of the court or judge to which the appeal is addressed, shall be filed by the clerk alternately in the County Criminal Court of Appeals of Dallas County, Texas, and the County Criminal Court of Appeals No. 2 of Dallas County, Texas.

Exchange of Benches

Sec. 13. The judges of the county criminal courts and county criminal courts of appeals of Dallas County may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending and try or otherwise dispose of same.

Effective Dates

Sec. 14. Except as provided by Subsection (b) of Section 5 of this Act, this Act takes effect on January 1, 1981.

[Acts 1979, 66th Leg., p. 1018, ch. 452, eff. Jan. 1, 1981.]

Art. 1970–31.30. Retired Judges as Substitutes in Dallas County

Sec. 1. (a) When the regular judge of a county court at law, county criminal court, county criminal court of appeals, or probate court for Dallas County is absent or is from any cause disabled or disqualified from presiding, the presiding judge of the First Administrative Judicial District may appoint a retired judge to sit for the regular judge, provided the retired judge:

(1) voluntarily retired from office;

(2) resides within the First Administrative Judicial District;

(3) certifies his willingness to serve;

(4) has previous judicial experience; and

(5) otherwise meets the qualifications required of the regular judge.

(b) When the docket of a county court at law, county criminal court, county criminal court of appeals, or probate court for Dallas County becomes so excessive that the presiding judge deems it an emergency, he may appoint a retired judge who meets the qualifications set out in Subsection (a) of this section to sit for the regular judge for as long as the emergency exists.

Sec. 2. A retired judge appointed to sit for a regular judge under the provisions of this Act shall execute the bond and take the oath of office which is required by law for the regular judge for whom he is sitting.

Sec. 3. A retired judge appointed under the provisions of this Act has all the power and jurisdiction of the court and the regular judge for whom he is sitting and may sign orders, judgments, decrees, or other process of any kind as "Judge Presiding" when acting for the regular judge.

Sec. 4. A retired judge appointed to sit for the regular judge under the provisions of this Act shall receive for the services actually performed the same amount of compensation which the regular judge is entitled to receive for such services. The amount to be paid for such services shall be paid out of the county funds on certification by the presiding judge of the First Administrative Judicial District that the retired judge has rendered the services and is entitled to receive the compensation. No part of the amount paid to a retired judge sitting for the regular judge shall be deducted or paid out of the salary of the regular judge.

Sec. 5. The provisions of the Act are cumulative of all laws pertaining to the election or appointment

of a special judge, and if, in addition to a retired judge appointed to sit temporarily for a regular judge, a special judge is needed, he shall be appointed or elected as now authorized by law.

[Acts 1975, 64th Leg., p. 582, ch. 237, eff. May 20, 1975.]

Art. 1970–31c. Probate Court No. 3 of Dallas County

Sec. 1. There is created a county court to be held in and for Dallas County to be called the Probate Court Number 3 of Dallas County.

Sec. 2. Probate Court Number 3 of Dallas County shall have the general jurisdiction of the probate court within the limits of Dallas County concurrent with the jurisdiction of the Probate Court of Dallas County, the Probate Court Number 2 of Dallas County, and of the County Court of Dallas County in such matters and proceedings. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and administrative, settle accounts of executors, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons, lunacy proceedings, and the apprenticing of minors as provided by law. It is the intention of this Act that the Probate Court Number 3 of Dallas County shall have the primary responsibility, at all times, for all mental illness proceedings.

Sec. 3. On the first day of the initial term of Probate Court Number 3 of Dallas County there shall be transferred to the docket of the court under the jurisdiction of the county judge and of the judges of the Probate Court of Dallas County and the Probate Court Number 2 of Dallas County, and by order entered on the minutes of the County Court of Dallas County and of the Probate Court of Dallas County and of the Probate Court Number 2 of Dallas County, such number of such proceedings and matters then pending in the Probate Court of Dallas County, in the Probate Court Number 2 of Dallas County, and in the County Court of Dallas County as will equalize the number of such cases pending on the dockets of each of said four courts, with the Probate Court Number 3 of Dallas County having responsibility, at all times, for all mental illness proceedings. However, should an emergency or an overcrowded docket preclude the Probate Court Number 3 of Dallas County from effectively diminishing the number of mental illness proceedings before it, such cases may be transferred, with the concurrence of the judge of one or more of the other probate courts in Dallas County, to the dockets of one or more of the other probate courts of Dallas County. All writs and processes theretofore issued by or out of the Probate Court of Dallas County, Probate Court Number 2 of Dallas County, and County Court of Dallas County in such matters or proceedings shall be returnable to the Probate Court Number 3 of Dallas County as though originally issued therefrom. All new mental illness proceedings filed on said day or thereafter filed with the County Clerk of Dallas County irrespective of the court or judge to which the matter or proceeding is addressed, shall be filed by the clerk in the Probate Court Number 3 of Dallas County in the order in which the same are deposited with him for filing.

Sec. 4. The County Court of Dallas County shall retain as heretofore the powers and jurisdiction of the court existing at the time of the passage of this Act and shall exercise its own powers and jurisdiction as a probate court with respect to all matters and proceedings of such nature other than those provided hereinabove to be transferred to and filed in the Probate Court Number 3 of Dallas County. The County Judge of Dallas County shall be the Judge of the County Court of Dallas County and all ex officio duties of the County Judge of Dallas County as they now exist shall be exercised by the County Judge of Dallas County except insofar as the same shall have been committed heretofore to the Judge of the Probate Court of Dallas County, or to the Judge of the Probate Court Number 2 of Dallas County, or as the same shall by this Act expressly be committed to the Judge of the Probate Court Number 3 of Dallas County. Nothing in this Act shall be construed as in anywise impairing or affecting the jurisdiction of the County Court of Dallas County, the Probate Court of Dallas County, the Probate Court Number 2 of Dallas County, the County Courts of Dallas County at Law Numbers 1, 2, 3, and 4, or any other County Court at Law of Dallas County heretofore or hereafter created.

Sec. 5. There shall be two terms of Probate Court Number 3 of Dallas County in each year and the first term shall be known as the January-June term, which shall begin on the first Monday in January and shall continue until and including Sunday next before the first Monday in July, and the second of such terms shall be known as the July-December term and shall begin on the first Monday in July and continue until and including Sunday next before the first Monday in the following January. The initial term of the court shall begin on the first Monday after the effective date of this Act.

Sec. 6. The Judge of the Probate Court Number 3 of Dallas County shall be well informed on the laws of the state and shall have been a duly licensed and practicing member of the bar of this state for not less than five consecutive years prior to his election. A judge of the court shall be appointed by the Commissioners Court of Dallas County as soon as may be possible after the passage of this Act, who shall hold office from the date of his appointment until the next general election and until his successor is duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of

Dallas County a judge of the Probate Court Number 3 of Dallas County for a regular term of four years as provided in Article V, Section 30 and Article XVI, Section 65 of the Texas Constitution.

Sec. 7. The Judge of the Probate Court Number 3 of Dallas County shall execute a bond and take the oath of office as required by the laws relating to county judges.

Sec. 8. Any vacancy in the office of the Judge of Probate Court Number 3 of Dallas County may be filled by the Commissioners Court of Dallas County by appointment of a judge of the court who shall serve until the next general election and until his successor shall be duly elected and qualified.

Sec. 9. In case of the absence, disqualification, or incapacity of the Judge of the Probate Court Number 3 of Dallas County, the County Judge of Dallas County shall sit and act as judge of the court and may hear and determine either in his own courtroom or in the courtroom of the court any matter or proceeding there pending and may enter such orders in such matters or proceedings as the Judge of said Probate Court Number 3 of Dallas County might enter if personally presiding therein.

Sec. 10. The Judge of the Probate Court of Dallas County and the Judge of the Probate Court Number 2 of Dallas County may sit for the Judge of the Probate Court Number 3 of Dallas County, and the Judge of the Probate Court Number 3 of Dallas County may sit for the Judge of the Probate Court of Dallas County and the Judge of the Probate Court Number 2 of Dallas County on any matters or proceedings pending in any of the courts. In the case of the absence, disqualification, or incapacity of the County Judge of Dallas County, the Judge of the Probate Court of Dallas County, the Judge of the Probate Court Number 2 of Dallas County, and the Judge of the Probate Court Number 3 of Dallas County, a special judge of the Probate Court Number 3 of Dallas County may be appointed or elected as provided by the general laws relating to county courts and to the judges thereof.

Sec. 11. The County Clerk of Dallas County shall be the Clerk of the Probate Court Number 3 of Dallas County. The seal of the court shall be the same as that provided by law for county courts except that the seal shall contain the words "Probate Court Number 3 of Dallas County, Texas." The Sheriff of Dallas County shall in person or by deputy attend the court when required by the judge thereof. The Judge of the Probate Court Number 3 of Dallas County shall have an administrative assistant to aid him in the performance of his duties. The salary of the administrative assistant shall be set by the Commissioners Court of Dallas County.

Sec. 12. The Judge of the Probate Court Number 3 of Dallas County shall collect the same fees as are now or hereafter established by law relating to county judges as to matters within the jurisdiction of the court, all of which shall be paid by him into the county treasury as collected and from after the date of his qualification as Judge of said Probate Court Number 3 of Dallas County he shall receive an annual salary to be fixed by order of the Commissioners Court of Dallas County which shall be the same salary as that paid to the Judge of the Probate Court of Dallas County and the Judge of the Probate Court Number 2 of Dallas County.

Sec. 13. All laws and parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict only. All other laws applicable to the Probate Court of Dallas County and the Probate Court Number 2 of Dallas County shall be applicable to Probate Court Number 3 of Dallas County. As to all other laws and parts of laws this Act shall be cumulative.

[Acts 1975, 64th Leg., p. 359, ch. 153, eff. May 8, 1975.]

TARRANT COUNTY AT LAW

Art. 1970–33. Jurisdiction of Said Court

(a) The County Court at Law No. 1 of Tarrant County shall have jurisdiction of all civil matters and causes, original and appellate, over which by the general laws of the state of Texas, the county court of said county would have jurisdiction, and its jurisdiction is concurrent with that of the County Court at Law No. 2 of Tarrant County in civil matters and causes, original and appellate. This provision shall not affect the jurisdiction of the commissioners' court or of the county judge of Tarrant county as the presiding officer of said court as to roads, bridges and public highways, and matters which are now within the jurisdiction of the commissioners' court or of the judge of the county court of Tarrant county. The county judge of Tarrant County shall be the judge of the county court of Tarrant County, and all ex officio duties of the county judge shall be exercised by the judge of the county court of Tarrant County.

(b) The County Court at Law No. 1 of Tarrant County has jurisdiction concurrent with the district court in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of mandatory damages and penalties, attorney's fees, interest, and costs.

(c) In addition to the other jurisdiction conferred by law on the County Court at Law No. 1 of Tarrant County, the County Court at Law No. 1 has concurrent jurisdiction with the district court in Tarrant County in nonjury suits and causes involving family law matters, including adoptions; birth records; removal of disability of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, custody and support of minor children involved, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving

child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; and independent actions involving controversies between parent and child and between husband and wife. The provisions of this subsection do not diminish the jurisdiction of the district court in Tarrant County, and the district court shall retain and continue to exercise the jurisdiction that is conferred by law on district courts.

(d) The county clerk of Tarrant County is the clerk of the County Court at Law No. 1 of Tarrant County, except that the district clerk of Tarrant County shall serve as clerk of the County Court at Law No. 1 in the cases enumerated in Subsection (c) of this section. The district clerk may establish a separate docket for the County Court at Law No. 1 for family law matters filed originally in the district courts of Tarrant County. All cases of concurrent jurisdiction enumerated in Subsection (c) of this section shall be instituted in the district courts of Tarrant County but may be transferred between the district courts of Tarrant County and the County Court at Law No. 1 of Tarrant County. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. Practice and procedure, rules of evidence, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving the matters of concurrent jurisdiction enumerated in Subsection (c) of this section shall be governed by the laws and rules pertaining to district courts as well as county courts.
[Amended by Acts 1981, 67th Leg., p. 2099, ch. 485, § 10, eff. Sept. 1, 1981.]

Art. 1970–45a. Compensation of Certain Tarrant County Judges

Effective January 1, 1978, the judges of the county criminal courts of Tarrant County, the probate court of Tarrant County, and the county courts at law of Tarrant County may be paid annually a sum that is at least equal to that sum which is $8,000 less than the total annual salary as of January 1, 1978, including supplements, of any district judge in Tarrant County. Effective January 1, 1979, they may be paid annually a sum that is at least equal to that sum which is $5,500 less than the total annual salary as of January 1, 1979, including supplements, of any district judge in Tarrant County. Effective January 1, 1980, they may be paid annually a sum that is at least equal to that sum which is $3,000 less than the total annual salary as of January 1, 1980, including supplements, of any district judge in Tarrant County. Effective January 1, 1981, they may be paid annually a sum that is at least equal to that sum which is $1,000 less than the total annual salary, including supplements, of any district judge in Tarrant County. If the annual salary of any district judge in Tarrant County is increased within any calendar year, the salary of the judge of each county court of Tarrant County included in this Act may be increased in an equal amount so that the variance between the salaries of the judges of the county courts and the judges of the district courts does not exceed the amounts specified in this Act.
[Acts 1977, 65th Leg., p. 1821, ch. 730, § 1, eff. Aug. 29, 1977.]

Art. 1970–62.2. County Court at Law No. 2 of Tarrant County

Sec. 1. (a) There is created a court to be held in Tarrant County to be known and designated as the "County Court at Law No. 2 of Tarrant County."

(b) The County Court at Law of Tarrant County shall be hereafter known and designated as the "County Court at Law No. 1 of Tarrant County."

Sec. 2. (a) The County Court at Law No. 2 of Tarrant County has jurisdiction of all civil matters and causes, original and appellate, over which by the general laws of the state the county court of the county would have jurisdiction, and its jurisdiction is concurrent with that of the County Court at Law of Tarrant County in civil matters and causes, original and appellate. This provision does not affect the jurisdiction of the commissioners court or of the county judge of Tarrant County as the presiding officer of that court as to roads, bridges, and public highways, and matters which are now within the jurisdiction of the commissioners court or of the judge of the county court of Tarrant County. The county judge of Tarrant County shall be the judge of the county court of Tarrant County, and all ex officio duties of the county judge shall be exercised by the judge of the county court of Tarrant County.

(b) In addition to the other jurisdiction conferred by law on the County Court at Law No. 2 of Tarrant County, the County Court at Law No. 2 has concurrent jurisdiction with the district court in Tarrant County in nonjury suits and causes involving family law matters, including adoptions; birth records; removal of disability of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, custody and support of minor children involved, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; and independent actions involving controversies between parent and child and between husband and wife. The provisions of this subsection do not diminish the jurisdiction of the district court in Tarrant County, and the district court shall retain and continue to exercise the jurisdiction that is conferred by law on district courts.

(c) The County Court at Law No. 2 of Tarrant County has jurisdiction concurrent with the district court in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive

of mandatory damages and penalties, attorney's fees, interest and costs.

Sec. 3. The County Court at Law No. 2 of Tarrant County, or its judge, has the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of the court, to punish for contempts under such provisions as are, or may be, provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court, or of any court or tribunal inferior to that court.

Sec. 4. (a) The judges of the County Court at Law No. 1 of Tarrant County and the County Court at Law No. 2 of Tarrant County may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) The judges of the county courts at law with civil jurisdiction may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in a county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of any court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(c) In cases transferred to any of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 5. The terms of the County Court at Law No. 2 of Tarrant County are the same as the terms for the County Court at Law No. 1 of Tarrant County. The practice in the court, and appeals and writs of error therefrom, shall be as prescribed by the laws relating to county courts, except that practice and procedure, rules of evidence, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving the matters of concurrent jurisdiction with the district court enumerated in Section 2(b) of this Act shall be governed by the laws and rules pertaining to district courts as well as county courts.

Sec. 6. (a) The judge of the County Court at Law No. 2 of Tarrant County must be a citizen of the United States and of this state, who shall have been a practicing lawyer of this state, or a judge of a court in this state, for four years next preceding his election or appointment, and who shall have resided in the county of Tarrant for two years next preceding his election or appointment.

(b) At the primaries and general election in 1978, there shall be elected by the qualified voters of Tarrant County a judge of the County Court at Law No. 2 for a four-year term beginning on January 1, 1979. Every four years thereafter, this judge shall be elected by the qualified voters of Tarrant County for a four-year term as provided in the Texas Constitution. A vacancy in the office shall be filled by appointment by the Commissioners Court of Tarrant County until the next general election.

Sec. 7. The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office as required by the law relating to county judges.

Sec. 8. A special judge of the County Court at Law No. 2 may be appointed or elected as provided by law relating to county courts and to the judges thereof.

Sec. 9. The county clerk of Tarrant County shall be the clerk for the County Court at Law No. 2, except that the district clerk of Tarrant County shall serve as clerk of the County Court at Law No. 2 in the cases enumerated in Section 2(b) of this Act. The district clerk may establish a separate docket for the County Court at Law No. 2 for family law matters filed originally in the district courts of Tarrant County. All cases of concurrent jurisdiction enumerated in Section 2(b) of this Act shall be instituted in the district courts of Tarrant County but may be transferred between the district courts of Tarrant County and the County Court at Law No. 2 of Tarrant County. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. The seal of the court shall be the same as that provided for county courts, except that the seal shall contain the words, "County Court at Law No. 2 of Tarrant County." The sheriff of Tarrant County shall, in person or by deputy, attend the court when required by the judge thereof.

Sec. 10. The jurisdiction and authority now vested by law in the County Court at Law of Tarrant County for the selection and service of jurors shall be exercised by the County Court at Law No. 2.

Sec. 11. The judge of the County Court at Law No. 2 of Tarrant County shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury. The commissioners court may fix the amount of compensation to be paid to the judge of the County Court at Law No. 2 of Tarrant County, such compensation to be paid monthly out of the county treasury, provided however, that any such compensation shall be equal to the compensation as provided by law and fixed by the commissioners court for the judge of the County Court at Law No. 1 of Tarrant County. The judge shall not engage in the practice of law while in office.

Sec. 12. The judge of the County Court at Law No. 2 of Tarrant County may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Sec. 13. The judge of the County Court at Law No. 2 of Tarrant County shall appoint an official shorthand reporter, who shall be well skilled in his profession, shall be a sworn officer of the court, and who shall hold his office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of reporters for the district courts shall apply in all their provisions, insofar as they are applicable, to the official shorthand reporter herein authorized to be appointed, and the reporter is entitled to the same fees and salary and shall perform the same duties and shall take the same oath as provided for the reporters of district courts of this state, and shall be governed by any other laws covering the reporters of the district courts of this state.

Sec. 14. With the exception of Subsection (b), Section 6, the provisions of this Act take effect on January 1, 1979.

[Acts 1977, 65th Leg., p. 1532, ch. 625, eff. Jan. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2100, ch. 485, §§ 11 to 13, eff. Sept. 1, 1981.]

TARRANT COUNTY CRIMINAL COURTS

Art. 1970–62c. County Criminal Court No. 3 of Tarrant County

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

Sec. 2. The County Criminal Court No. 3 of Tarrant County shall have, and same is hereby vested with, concurrent jurisdiction within said County of all criminal matters and causes, original and appellate, that are now vested in the county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas. Each of the County Criminal Courts Nos. 3 and 4 of Tarrant County have concurrent jurisdiction within the County of all appeals from criminal convictions under the laws of the State of Texas and the municipal ordinances of the municipalities located in Tarrant County that are appealed from the justice courts and municipal courts in the County. The county clerk of Tarrant County shall alternatively file the appeals from the justice and municipal courts from convictions under the laws of the State and the ordinances of the municipalities in the County Criminal Court No. 3 and the County Criminal Court No. 4, regardless of the court or the judge to which the cases are addressed.

Sec. 3. Repealed by Acts 1979, 66th Leg., p. 802, ch. 360, § 4, eff. Aug. 27, 1979.

[See Compact Edition, Volume 3 for text of 4 to 18]

[Amended by Acts 1979, 66th Leg., p. 800, ch. 360, §§ 1, 4, eff. Aug. 27, 1979.]

Section 3 of the 1979 amendatory act provided:

"When this Act becomes effective, the judges of the County Criminal Court No. 3 of Tarrant County and the County Criminal Court No. 4 of Tarrant County, together with the clerk of the courts, shall make a just and fair division of all the cases pending on the dockets of those courts, including those cases appealed from criminal convictions under the laws of the State of Texas and the municipal ordinances of the municipalities located in Tarrant County that were appealed from the justice courts and the municipal courts in the county. After the division is made, the clerk of the courts shall transfer to the docket of each court all cases allotted to the court in the division made by the judges. In cases transferred as provided by this Act, all processes, writs, bonds, recognizances or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made."

Art. 1970–62d. County Criminal Court No. 4 of Tarrant County

Sec. 1. There is created a county court to be held in and for Tarrant County to be called the County Criminal Court No. 4 of Tarrant County.

Sec. 2. The County Criminal Court No. 4 of Tarrant County shall have and same is vested with concurrent jurisdiction within the county of all criminal matters and causes, original and appellate, that is vested in the county courts having jurisdiction in criminal cases under the constitution and laws of Texas. Each of the County Criminal Courts Nos. 3 and 4 of Tarrant County have concurrent jurisdiction within the county of all appeals from criminal convictions under the laws of the State of Texas and the municipal ordinances of the municipalities located in Tarrant County that are appealed from the justice courts and municipal courts in the county. The county clerk of Tarrant County shall alternately file the appeals from the justice and municipal courts from convictions under the laws of the state and the ordinances of the municipalities in the County Criminal Court No. 3 and the County Criminal Court No. 4 regardless of the court or the judge to which the cases are addressed.

Sec. 3. The County Criminal Court No. 4 of Tarrant County, or its judge, has the power to issue writs of injunction and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in

the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the County Criminal Court No. 4 has all other powers, duties, immunities, and privileges provided by law for county court judges.

Sec. 4. The terms of the County Criminal Court No. 4 of Tarrant County and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms of the County Criminal Court No. 4 shall be held not less than four times each year, and the Commissioners Court of Tarrant County shall fix the time at which the court shall hold its terms until the same may be changed according to law.

Sec. 5. As soon as possible after the passage of this Act, there shall be appointed by the Commissioners Court of Tarrant County a judge of the County Criminal Court No. 4, who shall be well informed in the laws of the state and who shall hold his office until the next succeeding general election and until his successor has qualified. At the next general election, there shall be elected a judge of the County Criminal Court No. 4 who shall hold office for the unexpired term. The judge of the court elected at the general election in 1978 and thereafter shall hold office for four years and until his successor has qualified. No person is eligible to be judge of the court unless he is a citizen of the United States and of this state who has been a practicing lawyer of this state or a judge of a court in this state for four years next preceding his appointment or election, and who shall have resided in the County of Tarrant for two years next preceding his appointment or election.

Sec. 6. The judge of the County Criminal Court No. 4 of Tarrant County shall execute a bond and take the oath of office as required by the law relating to county judges.

Sec. 7. A special judge of the County Criminal Court No. 4 of Tarrant County may be appointed or elected as provided by the laws relating to County Courts and the judges thereof.

Sec. 8. The County Clerk of Tarrant County, Texas, shall be the clerk of the County Criminal Court No. 4 of Tarrant County. The seal of the court shall be the same as provided for county courts except that the seal shall contain the words "The County Criminal Court No. 4, Tarrant County, Texas." The sheriff of Tarrant County shall in person or by deputy attend the court when required by the judge thereof.

Sec. 9. The judge of the County Criminal Court No. 4 of Tarrant County shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury. The judge of the County Criminal Court No. 4 shall receive the same compensation as provided by law and fixed by the commissioners court for the judges of the County Criminal Courts Nos. 1, 2, and 3 of Tarrant County, to be paid monthly out of the county treasury by the commissioners court. The judge shall not engage in the practice of law while in office.

Sec. 10. The judge of the County Criminal Court No. 4 of Tarrant County may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state.

Sec. 11. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of the County Criminal Court No. 4 of Tarrant County shall appoint an official shorthand reporter, who shall be well skilled in his profession, shall be a sworn officer of the court, and who shall hold his office at the pleasure of the court. The provisions of the general laws of Texas relating to the appointment of stenographers for the district courts shall apply in all their provisions, insofar as they are applicable, to the official shorthand reporter herein authorized to be appointed, and the reporter is entitled to the same fees and salary and shall perform the same duties and shall take the same oath as provided for the stenographers of district courts of this state, and shall be governed by any other laws covering the stenographers of the district courts of this state.

Sec. 12. After this Act becomes effective, the judges of the County Criminal Courts Nos. 1, 2, 3, and 4 of Tarrant County shall make a just and fair division of the cases pending on the dockets of the County Criminal Courts Nos. 1, 2, and 3, and after such division is made the clerk shall transfer to the docket of the County Criminal Court No. 4 of Tarrant County all cases allotted to the County Criminal Court No. 4 of Tarrant County in the division so made by the judges. Thereafter, the judge of a county criminal court in Tarrant County may, in his discretion, transfer any cause that may at any time be pending in his court to the other courts by an order or orders entered in the minutes of his court. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. The judge of the court to which such transfer or transfers are made shall dispose of the cause or causes in the same manner as if such cause or causes were originally instituted in that court. In cases transferred to any one of the county criminal courts in Tarrant County, as provided in this Act, all process extant at the time of the transfer shall be returned to and filed in the court to which the transfer is made, and shall be as valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 13. The judges of the County Criminal Courts Nos. 1, 2, 3, and 4 of Tarrant County may, in

their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same. [Acts 1975, 64th Leg., p. 1844, ch. 574, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 801, ch. 360, § 2, eff. Aug. 27, 1979.]

Section 3 of the 1979 amendatory act provided for the division of cases pending on the dockets of County Criminal Courts Nos. 3 and 4 upon the effective date of the amendment; see note under art. 1970–62c.

HARRIS COUNTY

1970–110a. Probate Court No. 1 of Harris County

[See Compact Edition, Volume 3 for text of 1 to 12]

Sec. 13. Repealed by Acts 1979, 66th Leg., p. 1639, ch. 686, § 3, eff. Aug. 27, 1979.

[See Compact Edition, Volume 3 for text of 14 to 16]

[Amended by Acts 1979, 66th Leg., p. 1639, ch. 686, § 3, eff. Aug. 27, 1979.]

Art. 1970–110a.2. Probate Court No. 2 of Harris County

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

Sec. 4. On the first day of the initial term of said Probate Court No. 2 of Harris County, Texas, there shall be transferred to the docket of said Court, under the direction of the County Judge and by order entered on the Minutes of the County Court of Harris County, Texas, such number of such proceedings and matters then pending in the County Court of Harris County, Texas, as shall be, as near as may be, four-fifths in number of the total of all of same then pending, and all writs and processes theretofore issued by or out of said County Court of Harris County in such matters or proceedings shall be returnable to the Probate Court No. 2 of Harris County, Texas, as though originally issued therefrom. All such new matters and proceedings filed on said day, or thereafter filed, with the County Clerk of Harris County, irrespective of the Courts or Judge to which the matter or proceeding is addressed, shall be filed by said Clerk alternately in said Probate Court No. 1 of Harris County and said Probate Court No. 2 of Harris County in the order in which the same are deposited with said Clerk for filing, beginning first with the Probate Court No. 1 of Harris County, filing the next with the Probate Court No. 2 of Harris County, and continuing alternately thereafter, and further, said Clerk shall keep separate dockets for each of said Courts. The County Judge of Harris County, in his discretion, may, by an order entered upon the Minutes of the County Court of Harris County, on or after the first day of the initial term of said Probate Court No. 2 of Harris County, transfer to said Probate Court No. 2 any such matter or proceeding then or thereafter pending in the County Court of Harris County and all processes extant at the time of such transfer shall be returned to and filed in the Court to which such transfer is made and shall be as valid and binding as though originally issued out of the Court to which such transfer may be made. Each of the Judges of the County Court and said Probate Courts Nos. 1 and 2 may, at any time, with the consent of the Judge of the County Court or the Judge of the Probate Court to which transfer is to be made by an order entered upon the Minutes of the County Court or of such Probate Court of Harris County, transfer to said County Court or other Probate Court any such matter or proceeding then or thereafter pending in such County or Probate Court of Harris County, and all processes extant at the time of such transfer shall be returnable to and filed in the County Court or the Probate Court to which such transfer is made and shall be as valid and binding as though originally issued out of the County Court or the Probate Court to which such transfer may be made.

[See Compact Edition, Volume 3 for text of 5 to 8]

Sec. 9. The term of office of the Judge of the Probate Court No. 2 of Harris County shall be for a period of four (4) years; said Judge shall be elected as provided by the Constitution and laws of the State for the election of Judges of County Probate Courts. A Judge of said Court shall be appointed by the Commissioners Court of Harris County as soon as practicable after the passage of this Act, who shall hold office from the date of his appointment until the General Election next before the first full term of office of said Judge, as herein provided and until his successor shall be duly elected and qualified. The Judge of said Court shall be well informed in the laws of the State, and shall have been a duly licensed and practicing member of the Bar of this State for not less than five (5) consecutive years.

[See Compact Edition, Volume 3 for text of 10 to 13]

Sec. 14. Repealed by Acts 1975, 64th Leg., p. 1118, ch. 421, § 2, eff. June 19, 1975.

[See Compact Edition, Volume 3 for text of 15 and 16]

[Amended by Acts 1975, 64th Leg., p. 1118, ch. 421, §§ 1, 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1202, ch. 464, § 1, eff. Aug. 29, 1977.]

Art. 1970–110a.3. Probate Court No. 3 of Harris County

Sec. 1. There is created a county court to be held in and for Harris County, to be called the "Probate Court No. 3 of Harris County, Texas."

Sec. 2. The Probate Court No. 3 of Harris County shall have the general jurisdiction of a probate court within the limits of Harris County, concurrent with the jurisdiction of the County Court of Harris County, Texas, in probate, administrations, guardianship, and mental illness proceedings, and also con-

current with and in all things equal to that heretofore conferred on the Probate Court No. 1 of Harris County, Texas, and Probate Court No. 2 of Harris County, Texas. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons, lunacy proceedings, and the apprenticing of minors as provided by law. It is the intention of this Act that the Probate Court No. 3 of Harris County shall have the primary responsibility at all times for all mental illness proceedings.

Sec. 3. On the first day of the initial term of the Probate Court No. 3 of Harris County, Texas, there shall be transferred to the docket of said court, under the jurisdiction of the county judge and the judges of the Probate Court No. 1 of Harris County, and the Probate Court No. 2 of Harris County, and by order entered on the minutes of the County Court of Harris County, and of the Probate Court No. 1 of Harris County, and of the Probate Court No. 2 of Harris County, such number of such proceedings and matters then pending in the County Court of Harris County, in the Probate Court No. 1 of Harris County, and in the Probate Court No. 2 of Harris County, as will equalize the number of such cases pending on the dockets of each of said four courts with the Probate Court No. 3 of Harris County having responsibility at all times for all mental illness proceedings. All writs and processes theretofore issued by or out of the County Court of Harris County, the Probate Court No. 1 of Harris County, and the Probate Court No. 2 of Harris County, in such matters and proceedings shall be returnable to the Probate Court No. 3 of Harris County as though originally issued therefrom. All new mental illness proceedings filed on said day or thereafter with the County Clerk of Harris County irrespective of the court or judge to which the matter or proceedings is addressed, shall be filed by the clerk in the Probate Court No. 3 of Harris County in the order in which the same are deposited with him for filing. All other new matters and proceedings filed on said day, or thereafter filed, with the County Clerk of Harris County, irrespective of the courts or judge to which matter or proceeding is addressed, shall be filed by said clerk so that the cases ending in 0 and 5 shall be filed in the Probate Court No. 3 of Harris County and all other cases or matters ending in an odd number shall be filed in the Probate Court No. 1 of Harris County, and all other cases or matters ending in an even number shall be filed in the Probate Court No. 2 of Harris County, and in the order in which the same are deposited with said clerk for filing, and further said clerk shall keep separate dockets for each of said courts. Each of the judges of the County Court and said Probate Courts Nos. 1, 2, and 3 of Harris County may, at any time, with the consent of the judge of the county court or probate court to which transfer is to be made, by an order entered on the minutes of the county court or of such probate court of Harris County, transfer to said county court or other probate court any such matter or proceeding then or thereafter pending in such county or probate court of Harris County, and all processes extant at the time of such transfer shall be returnable to and filed in the county court or the probate court to which such transfer is made and shall be as valid and binding as though originally issued out of the county court or the probate court to which such transfer may be made.

Sec. 4. The County Court of Harris County shall retain, as heretofore, the powers and jurisdiction of said court existing at the time of the passage of this Act, and shall exercise its powers and jurisdiction as a probate court with respect to all matters and proceedings of such nature, except those matters and proceedings transferred to or filed in said Probate Court No. 1 of Harris County or Probate Court No. 2 of Harris County or Probate Court No. 3 of Harris County. The County Judge of Harris County shall be the Judge of the County Court of Harris County, and all ex officio duties of the County Judge of Harris County as they now exist shall be exercised by the County Judge of Harris County. Nothing contained in this Act shall be construed as in anywise impairing or affecting the jurisdiction of the County Civil Courts at Law Nos. 1, 2, or 3 of Harris County, or the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, or 9 of Harris County, Texas, or any other county court at law of Harris County heretofore or hereafter created.

Sec. 5. The practice and procedure in the Probate Court No. 3 of Harris County shall be the same as that provided by law generally for the county courts of this state, and all statutes and laws of the state, as well as all rules of court relating to proceedings therefrom, shall, as to all matters within the jurisdiction of said court, apply equally thereto.

Sec. 6. The Probate Court No. 3 of Harris County shall have power to issue writs of injunction, mandamus, execution, attachment, and all writs and process necessary to the exercise and enforcement of the jurisdiction of said court, and also the power to punish for contempt under such provisions as are or may be provided by the general laws governing county courts throughout the state.

Sec. 7. The initial term of the Probate Court No. 3 of Harris County shall begin on the first Monday next after the first day of the first calendar month following the effective date of this Act and shall continue until and including Sunday next before the first Monday in January of the following year. Thereafter there shall be two terms of said Probate Court No. 3 of Harris County in each year, and the first of such terms shall be known as the January-

June Term, and shall begin on the first Monday in January and shall continue until and including Sunday next before the first Monday in July, and the second of such terms, which shall be known as the July-December Term, shall begin on the first Monday in July and shall continue until and including Sunday next before the first Monday in the following January.

Sec. 8. When this Act becomes effective, the Commissioners Court of Harris County shall appoint a judge to the Probate Court No. 3 of Harris County. The judge appointed serves until the next general election and until his successor has been duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Harris County a judge of the Probate Court No. 3 of Harris County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65 of the Texas Constitution. The judge of said court shall be well informed in the laws of the state and shall have been a duly licensed and practicing member of the bar of this state for not less than five consecutive years prior to his appointment or election.

Sec. 9. The Judge of the Probate Court No. 3 of Harris County shall execute a bond in the amount of $100,000 and take the oath of office as required by the laws relating to county judges.

Sec. 10. Any vacancy in the office of the Judge of the Probate Court No. 3 of Harris County may be filled by the Commissioners Court of Harris County by the appointment of a judge of said court, who shall serve until the next general election and until his successor shall be duly elected and qualified.

Sec. 11. In the case of the absence, disqualification, or incapacity of the Judge of the Probate Court No. 3 of Harris County, the County Judge of Harris County or the Judge of the Probate Court No. 1 of Harris County or the Judge of the Probate Court No. 2 of Harris County, may sit and act as judge of said court, and may hear and determine, either in his own courtroom or in the courtroom of said court, any matter or proceeding there pending, and enter any order in such matters or proceedings as the judge of said court may enter if personally presiding therein.

Sec. 12. In case of the absence, disqualification, or incapacity of the Judge of the Probate Court No. 1 of Harris County, the Judge of the Probate Court No. 2 of Harris County, the Judge of the Probate Court No. 3 of Harris County, or the County Judge of Harris County, a special judge of the Probate Court No. 1 of Harris County or of the Probate Court No. 2 of Harris County or of the Probate Court No. 3 of Harris County, as the need may demand, may be appointed or elected, as provided by the general laws relating to county courts and to the judges thereof.

Sec. 12a. Within 10 days after the effective date of this section, the judges of the Probate Courts Nos. 1, 2, and 3 of Harris County shall draw lots for terms as presiding judge of the courts of probate of Harris County. The judge of the court drawing lot number one shall act in that capacity until the first Tuesday after the first Monday of January, 1980. The judge of the court drawing lot number two shall serve for the six-month period ending on the first Tuesday after the first Monday of July, 1980. The judge of the court drawing lot number three shall serve for the six-month period ending on the first Tuesday after the first Monday of January, 1981. Thereafter, the judges shall continue to serve in rotation as presiding judge for periods of six months. No judge may serve two consecutive terms as presiding judge. It is the duty of the presiding judge of the courts of probate of Harris County to equalize as nearly as possible the dockets of the Probate Courts Nos. 1, 2, and 3, so that each of the courts will have an equal number of the probate cases pending in Harris County. It is the duty of the presiding judge of the courts of probate of Harris County to call a conference twice during each six-month term for the purpose of consultation and counsel as to the state of business in probate matters in Harris County and to arrange for the disposition of the business pending on the probate docket of each of the courts with probate jurisdiction in Harris County. In order to carry out the duties of presiding judge, the presiding judge of the courts of probate of Harris County has the power to transfer to or from any of the Probate Courts Nos. 1, 2, or 3 any case the presiding judge deems proper.

Sec. 12b. (1) Should there be created additional probate courts in Harris County, the judge of each new probate court shall serve as presiding judge for a period of six months with the first such six-month period to commence on the day following the expiration date of the term of the presiding judge of the most recently created probate court of Harris County.

(2) If two or more new probate courts are created in Harris County, at the same time, then the judge of each of the new probate courts shall draw lots for the purpose of determining the order of rotation to be used in the selection of the presiding judge.

Sec. 13. The County Clerk of Harris County shall be the Clerk of the Probate Court No. 3 of Harris County. The seal of the court shall be the same as that provided by law for county courts except that the seal shall contain the words "Probate Court No. 3 of Harris County, Texas," and said seal shall be judicially noticed. The Sheriff of Harris County shall, in person or by deputy, attend the court when required by the judge thereof.

Sec. 14. The Judge of the Probate Court No. 3 of Harris County shall collect the same fees as are now or hereafter established by law relating to county

judges or to matters within the jurisdiction of said court, all of which shall be paid by him into the county treasury as collected. He may receive an annual salary equal to the salary of the judges of the Probate Courts Nos. 1 and 2 of Harris County, Texas, and payable in like manner.

Sec. 15. The provisions of this Act shall take effect September 1, 1977.

[Acts 1977, 65th Leg., p. 1145, ch. 434, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1638, ch. 686, § 2, eff. Aug. 27, 1979.]

Art. 1970–110c.3. County Criminal Court at Law Nos. 8 and 9 of Harris County

(a) There are hereby created two courts to be held in Harris County, Texas, to be called the "County Criminal Court at Law No. 8 of Harris County, Texas," and the "County Criminal Court at Law No. 9 of Harris County, Texas."

(b) The County Criminal Courts at Law Nos. 8 and 9 of Harris County, Texas, shall have, and they are hereby granted the same jurisdiction over criminal matters that is now or may be vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas, and shall have appellate jurisdiction in all appeals in criminal cases from justice courts and corporation courts within Harris County, and the judges of said courts shall have the same powers, rights, and privileges as to criminal matters as are or may be vested in the judges of county courts having criminal jurisdiction; provided that said courts shall have no jurisdiction over any of those matters which are now vested exclusively in the County Court of Harris County, or in the judge thereof.

(c) When this Act becomes effective, the Commissioners Court of Harris County shall appoint a judge of the County Criminal Court at Law No. 8 of Harris County, Texas, and a judge of the County Criminal Court at Law No. 9 of Harris County, Texas, who shall have the qualifications herein prescribed and shall serve until the next general election and until their successors shall be duly elected and qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Harris County a judge of each of the County Criminal Courts at Law Nos. 8 and 9 of Harris County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65 of the Texas Constitution. The judge shall have been a duly licensed and practicing member of the bar of this state for not less than five years; and he shall be compensated as provided by law, and shall be paid out of the county treasury by the commissioners court in equal monthly installments; but such judge shall not collect any fee from the county for disposing of any criminal case, as provided in the Code of Criminal Procedure of Texas. Any vacancy occurring in the office of the judge of said County Criminal Court at Law No. 8 of Harris County, Texas, or in the office of the judge of said County Criminal Court at Law No. 9 of Harris County, Texas, shall be filled by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election and until his successor shall be duly elected and qualified. Said courts or the judges thereof shall have the power to issue writs of habeas corpus in criminal misdemeanor cases, and all writs necessary to the enforcement of its jurisdiction.

(d) The judges of the County Criminal Courts at Law Nos. 8 and 9 of Harris County, Texas, shall each appoint an official shorthand reporter for his court, who shall be well skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court and all of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and as the same may hereafter be amended and all other provisions of the law relating to official court reporters shall and are hereby made to apply in all its provisions, insofar as they are applicable to the official shorthand reporters herein authorized to be appointed, and insofar as they are not inconsistent with the provisions of this Act, and such official shorthand reporters shall be entitled to the same compensation as applicable to official shorthand reporters in the district courts of Harris County, Texas, paid in the same manner that compensation of official shorthand reporters of the district courts of Harris County is paid.

(e) The district clerk of Harris County, Texas, shall act as and be the clerk of said County Criminal Court at Law No. 8 of Harris County, Texas, and of said County Criminal Court at Law No. 9 of Harris County, Texas. The district clerk shall receive and collect such fees as he now receives and collects in criminal matters as clerk of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, and 7 of Harris County, Texas.

(f) The sheriff of Harris County, either in person or by deputy, shall attend said courts when required by the judges thereof; and the various sheriffs and constables of this state executing process issued out of said courts shall receive the fees now or hereafter fixed by law for executing process issued out of county courts.

(g) The seals of the County Criminal Courts at Law Nos. 8 and 9 of Harris County, Texas, shall be the same as that provided by law for county courts, except that such seals shall contain the words "County Criminal Court at Law No. 8 of Harris County, Texas," and the words "County Criminal Court at Law No. 9 of Harris County, Texas," respectively, and said seals shall be judicially noticed.

(h) A special judge of each of said courts may be appointed or elected in the manner and instances now or hereafter provided by law relating to county courts and judges thereof.

(i) The terms of the courts hereby created shall begin on the first Monday of the months of June,

August, October, December, February, and April of each year. The sessions of said courts shall be held in such places as may be provided therefor by the Commissioners Court of Harris County.

(j) When this Act becomes effective, the district clerk of Harris County, Texas, shall alternately file the first 200 cases to be filed in the said County Criminal Court at Law No. 8, and the said County Criminal Court at Law No. 9, with 100 cases being filed in each of the two said courts. Thereafter, cases shall be filed in rotation so thereafter of every 9 cases filed, each of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 shall each receive one case.

(k) The judges of the County Criminal Courts at Law Nos. 8 and 9 of Harris County, Texas, may exchange benches with each other and with the judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, and 7 of Harris County, Texas, in the same manner that the judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, and 7 of Harris County, Texas, are authorized to exchange benches. The judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Harris County, Texas, may transfer criminal causes between said courts by entry of an order on the docket of the court from which the cause is transferred, provided that no cause shall be transferred without the consent of the judge of the court to which transferred.

(*l*) The practice in said County Criminal Courts at Law Nos. 8 and 9 and in cases of appeal and writs of error therefrom and thereto, shall be the same as is now or may hereafter be prescribed for county courts.

(m) In cases transferred to any one of the County Criminal Courts at Law of Harris County, Texas, as provided in this Act, all process extant at the time of such transfer shall be returned to and filed in the court to which such transfer is made, and shall be as valid and binding as though originally issued out of the court to which such transfer shall be made.
[Acts 1975, 64th Leg., p. 928, ch. 346, § 1, eff. Jan. 1, 1976.]

Art. 1970–110c.4. County Criminal Court at Law No. 10 of Harris County

(a) There is hereby created a court to be held in Harris County, Texas, to be called the "County Criminal Court at Law No. 10 of Harris County, Texas."

(b) The County Criminal Court at Law No. 10 of Harris County, Texas, shall have and it is hereby granted the same jurisdiction over criminal matters that is now or may be vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas and shall have appellate jurisdiction in all appeals in criminal cases from justice courts and corporation courts within Harris County, and the judge of said court shall have the same powers, rights, and privileges as to criminal matters as are or may be vested in the judges of county courts having criminal jurisdiction; provided that said court shall have no jurisdiction over any of those matters which are now vested exclusively in the County Court of Harris County or in the judge thereof.

(c) When this Act becomes effective, the Commissioners Court of Harris County shall appoint a judge of the County Criminal Court at Law No. 10 of Harris County, Texas, who shall have the qualifications herein prescribed and shall serve until the next general election and until his successor shall be duly elected and qualified. At the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Harris County a judge of the County Criminal Court at Law No. 10 of Harris County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. The judge shall have been a duly licensed and practicing member of the bar of this state for not less than five years, and he shall be compensated as provided by law and shall be paid out of the county treasury by the commissioners court in equal monthly installments, but such judge shall not collect any fee from the county for disposing of any criminal case, as provided in the Code of Criminal Procedure of Texas. Any vacancy occurring in the office of the judge of said County Criminal Court at Law No. 10 of Harris County, Texas, shall be filled by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election and until his successor shall be duly elected and qualified. Said court or the judge thereof shall have the power to issue writs of habeas corpus in criminal misdemeanor cases and all writs necessary to the enforcement of its jurisdiction.

(d) The judge of the County Criminal Court at Law No. 10 of Harris County, Texas, shall appoint an official shorthand reporter for his court, who shall be well skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court; and all of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and as the same hereafter be amended and all other provisions of the law relating to official court reporters shall and are hereby made to apply in all its provisions insofar as they are applicable to the official shorthand reporters herein authorized to be appointed and insofar as they are not inconsistent with the provisions of this Act; and such official shorthand reporters shall be entitled to the same compensation as applicable to official shorthand reporters in the district courts of Harris County, Texas, paid in the same manner that compensation of official shorthand reporters of the district courts of Harris County is paid.

(e) The district clerk of Harris County, Texas, shall act as and be the clerk of said County Criminal Court at Law No. 10 of Harris County, Texas. The district clerk shall receive and collect such fees as he now receives and collects in criminal matters as clerk

of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Harris County, Texas.

(f) The sheriff of Harris County, either in person or by deputy, shall attend said court when required by the judge thereof, and the various sheriffs and constables of this state executing process issued out of said court shall receive the fees now or hereafter fixed by law for executing process issued out of county courts.

(g) The seal of the County Criminal Court at Law No. 10 of Harris County, Texas, shall be the same as that provided by law for county courts, except that such seal shall contain the words "County Criminal Court at Law No. 10 of Harris County, Texas," and said seal shall be judicially noticed.

(h) A special judge of said court may be appointed or elected in the manner and instances now or hereafter provided by law relating to county courts and judges thereof.

(i) The terms of the court hereby created shall begin on the first Monday of the months of June, August, October, December, February, and April of each year. The sessions of said court shall be held in such place as may be provided therefor by the Commissioners Court of Harris County.

(j) The judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Harris County, Texas, may make such rules governing the random filing, numbering, and docketing of cases by the clerk, the assignment thereof for trial and the distribution of the work of such courts as in their discretion is deemed necessary or desirable for the orderly equalization of the dockets and dispatch of the business of the courts. The clerk, with the approval of the judges of the courts, may utilize mechanical or electronic means in the random filing, numbering, and docketing of the cases.

(k) The judge of the County Criminal Court at Law No. 10 of Harris County, Texas, may exchange benches with the judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Harris County, Texas, in the same manner that the judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 of Harris County, Texas, are authorized to exchange benches. The judges of the County Criminal Courts at Law Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Harris County, Texas, may transfer criminal causes between said courts by entry of an order on the docket of the court from which the cause is transferred; provided that no cause shall be transferred without the consent of the judge of the court to which transferred.

(*l*) The practice in said County Criminal Court at Law No. 10 and in cases of appeal and writs of error therefrom and thereto shall be the same as is now or may hereafter be prescribed for county courts.

(m) In cases transferred to any one of the County Criminal Courts at Law of Harris County, Texas, as provided in this Act, all process extant at the time of such transfer shall be returned to and filed in the court to which such transfer is made and shall be as valid and binding as though originally issued out of the court to which such transfer shall be made. [Acts 1979, 66th Leg., p. 474, ch. 217, § 1, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., p. 172, ch. 79, § 1, eff. Aug. 31, 1981.]

Art. 1970–110f. County Civil Court at Law No. 4 of Harris County

(a) There is hereby created one court to be held in Harris County, Texas, to be called the "County Civil Court at Law No. 4 of Harris County, Texas." The seal of the court shall be the same as provided by law for county courts, except the seal shall contain the words "County Civil Court at Law No. 4."

(b) The county civil court at law of Harris County created in this Act shall have the same jurisdiction over civil matters, proceedings, and cases that is now or may be vested in the County Civil Courts at Law Nos. 1, 2, and 3 and shall have jurisdiction in civil actions, and the judge thereof exercises equal administrative and ministerial jurisdiction in matters of the filing and disposition of proceedings in eminent domain, concurrently and coextensively with the judge presiding in County Civil Court at Law No. 1 and the judge presiding in County Civil Court at Law No. 2 and the judge presiding in County Civil Court at Law No. 3, under the constitution and laws of Texas. The court created in this Act shall have appellate jurisdiction likewise in appeals of civil cases from the justice courts within Harris County. The judge of this court shall have the same powers, rights, and privileges as to civil matters as are or may be vested in the judges of county courts having civil jurisdiction, except that the court created in this Act shall have no jurisdiction over any of those matters which are now vested exclusively in the County Court of Harris County or in the judge thereof.

(c) The county civil court at law of Harris County created in this Act shall have jurisdiction in all civil matters and causes, original and appellate, except probate matters, over which, by the constitution and general laws of the State of Texas, the county court of the county would have formerly had jurisdiction, and shall have equal and like jurisdiction over civil cases and civil proceedings in the same manner as jurisdiction has been heretofore exercised in civil cases and civil proceedings and in eminent domain by the County Civil Courts at Law Nos. 1, 2, and 3. The County Civil Courts at Law Nos. 1, 2, 3, and 4 shall have special jurisdiction in matters of eminent domain, and the judges thereof shall have sole administrative and ministerial jurisdiction to file and dispose of proceedings in eminent domain concurrently and coextensively when filed in either of these civil courts or with the respective judges thereof.

(d) The terms of the county civil court at law of Harris County created in this Act and the practice therein and appeals and writs of error therefrom

shall be as prescribed by laws relating to county courts. The terms of the Harris County civil court at law created in this Act for civil cases shall be held as now established for the terms of the County Civil Courts at Law Nos. 1, 2, and 3 of Harris County until the same be changed in accordance with the law.

The court created in this Act shall hold six terms a year, beginning respectively on the first Monday in January, in March, in May, in July, in September, and in November of each year, and each term shall continue until the business is disposed of.

(e) As soon as practicable after this Act becomes effective, the Commissioners Court of Harris County shall appoint a judge to the county civil court at law of Harris County created in this Act, who shall have the qualifications herein prescribed and shall serve until the next general election and until his successor shall be duly elected and qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Harris County a judge of each of the county civil courts at law of Harris County created in this Act for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. The judge shall have been a duly licensed and practicing member of the bar of this state for not less than five years. The judge shall be compensated as provided by law and shall be paid out of the county treasury by the commissioners court in equal monthly installments. A vacancy occurring in the office of a judge of the Harris County civil court at law created in this Act shall be filled by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election and until his successor shall be duly elected and qualified.

(f) The judge of the Harris County civil court at law created in this Act shall execute a bond and take the oath of office as required by the law relating to county judges.

(g) A special judge of the Harris County civil court at law created in this Act may be appointed or elected as provided by law relating to county courts and to the judges thereof.

(h) The County Clerk of Harris County shall be the clerk of the Harris County civil court at law created in this Act. The Sheriff of Harris County shall, in person or by deputy, attend the court when required by the judge thereof.

The county clerk shall keep separate dockets for each of the County Civil Courts Nos. 1, 2, 3, and 4 and shall tax the official court reporter's fee as costs in civil actions filed in each of these courts in like manner as the fee is taxed in civil cases in the district courts.

Beginning as soon as practicable after the effective date of this Act, the county clerk shall file all civil cases and civil proceedings exclusively in the County Civil Courts at Law Nos. 1, 2, 3, and 4 and shall file the civil cases alternately in each of these courts as presented for filing.

(i) In case of disqualification, an overcrowded docket, sickness, or absence from the county of any of the judges of the County Civil Courts at Law Nos. 1, 2, 3, and 4 or county criminal courts at law, any other judge of these courts may exchange benches with any other county court at law judge of Harris County, and when so exchanging benches with any other of the county court at law judges of Harris County, the judge of the county civil court at law of Harris County created in this Act shall have all power and jurisdiction of the county civil or county criminal courts at law, and of the judge thereof, while so exchanging benches. In like manner, the judges of the county civil or criminal courts at law of Harris County shall have all the power and jurisdiction of any other of these civil or criminal county courts at law, and of the judges thereof, while so exchanging benches, and may sign orders, judgments and decrees, or other process as "Judge Presiding" when acting for the disqualified or absent judge upon request or in an emergency or for good cause shown.

(j) The judge of the county civil court at law of Harris County created in this Act may appoint and discharge an official court reporter in the same manner as such a reporter is appointed or discharged by the district courts. An official court reporter shall receive the same salary as the reporters of the district courts of Harris County, to be paid by the county treasurer out of the general fund of the county, and in addition to the salary shall receive the compensation for transcript fees as provided by law.
[Acts 1977, 65th Leg., p. 1152, ch. 437, § 1, eff. Jan. 1, 1978.]

EL PASO COUNTY

Art. 1970–141.2. County Court at Law No. 3 of El Paso County

[See Compact Edition, Volume 3 for text of 1 to 4]

Sec. 5.

[See Compact Edition, Volume 3 for text of 5(a)]

(b) The judges of the county courts at law now in existence or which shall hereafter be created in El Paso County and the judge of the county court shall receive an annual salary in an amount not to exceed nine-tenths of the total annual salary, including supplements, paid any district judge sitting in El Paso County. The salary shall be paid out of the general fund of El Paso County in equal monthly installments by warrants drawn on the county treasury on orders of the Commissioners Court of El Paso County. The judge of the county court and the judges of each county court at law in El Paso County shall not collect any fee from the county for disposing of any criminal case.

[See Compact Edition, Volume 3 for text of 6 to 14]

[Amended by Acts 1975, 64th Leg., p. 1383, ch. 531, § 1, eff. Sept. 1, 1975.]

Art. 1970–141.3. County Court at Law No. 4 of El Paso County

Sec. 1. There is created a County Court at Law in El Paso County, to be known and designated as the "County Court at Law No. 4 of El Paso County, Texas."

Sec. 2. The County Court at Law No. 4 of El Paso County shall have the same jurisdiction over criminal matters that is now or may be vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas, and shall have appellate jurisdiction in appeals in criminal cases from justice courts and municipal courts within El Paso County. The judge of the court shall have the same powers, rights, and privileges as to criminal matters as are or may be vested in the judges of county courts having criminal jurisdiction. The County Court at Law No. 4 of El Paso County shall have the same jurisdiction and powers in criminal matters and civil actions or proceedings that are now or may be vested in the County Courts at Law Nos. 1, 2, and 3 of El Paso County. The judge of each of the county courts at law may with the consent of the judge of the court to which transfer is to be made, transfer civil or criminal actions or proceedings from his respective court to the other court by the entry of an order to that effect on the docket. The judges of the County Courts at Law Nos. 1, 2, and 3 of El Paso County shall transfer to the County Court at Law No. 4 of El Paso County any civil or criminal action or proceeding pending on the docket of the court on the effective date of this Act as may be necessary in order that the now overcrowded dockets of the courts may be relieved, and the County Court at Law No. 4 of El Paso County, and the judge thereof, shall have jurisdiction to hear and determine civil or criminal matters, and render and enter the necessary and proper orders, decrees, and judgments therein. No cause may be transferred without the consent of the judge of the court to which it is transferred.

Sec. 3. (a) The county courts at law of El Paso County shall have the general jurisdiction of probate courts within the limits of El Paso County concurrent with jurisdiction of the County Court of El Paso County in such matters and proceedings. The county courts at law shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and drunkards, grant letters testamentary and of administration, settle accounts with administrators, executors, and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and drunkards, including the settlement, partition, and distribution of estates of deceased persons, and the apprenticing of minors as provided by law, and conduct lunacy proceedings. The county courts at law shall have no jurisdiction over any other of those matters which are now vested exclusively in the County Court of El Paso County, or in the judge therein.

(b) The judges of the County Court of El Paso County and the county courts at law of El Paso County may, with the consent of the judge of the court to which transfer is to be made, transfer probate matters or proceedings from his respective court to the other court by the entry of an order to that effect on the docket.

(c) The judges of the county court and the county courts at law may collectively make and publish rules from time to time governing the docketing and disposition of probate matters and proceedings in their courts not inconsistent with the laws of the State of Texas or the Texas Rules of Civil Procedure and for the purpose of efficient and justiciable disposition of probate matters and proceedings. A copy of the rules and changes shall be filed with the County Clerk of El Paso County, and one copy of the rules and changes shall be available in each court for the examination of participants in any probate matters filed.

(d) The County Court of El Paso County and the county courts at law of El Paso County, or each of the judges thereof, have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the courts, and also have the power to punish for contempt under such provisions as are or may be provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the courts or of any court or tribunal inferior to the courts.

Sec. 4. (a) The terms of the county courts at law of El Paso County shall commence on the first Monday in January and July and the courts may continue in session until the Sunday next preceding the Monday for the convening of the next regular term of court.

(b) The judges of the county courts at law of El Paso County may divide each term of court into as many sessions as they deem necessary for the disposition of business, and may extend a particular term of court whenever practicable for the efficient and justiciable disposition of individual proceedings and matters.

Sec. 5. (a) The judge of each county court at law of El Paso County shall be a citizen of the United States and of this state, who shall have been a practicing attorney of this state for at least five years next preceding his election or appointment and who shall have resided in the County of El Paso for at least two years next preceding his election or appointment.

(b) The judge of the County Court at Law No. 4 of El Paso County may receive an annual salary to be fixed by the commissioners court. The salary may be paid out of the general fund of El Paso County in equal monthly installments by warrants drawn on the county treasury on orders of the Commissioners Court of El Paso County. The judge of the county court and the judges of each county court at law in El Paso County shall not collect any fee from the county for disposing of any criminal case.

Sec. 6. When this Act becomes effective, the Commissioners Court of El Paso County shall appoint a judge of the County Court at Law No. 4 of El Paso County who shall serve until the next general election and until his successor is elected and has qualified. Beginning at the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of the county a judge of the County Court at Law No. 4 for a regular term of four years as provided by the Texas Constitution. In case of vacancy, the office shall be filled by appointment by the commissioners court, and the appointee shall hold office until the next succeeding general election and until his successor is elected and has qualified.

Sec. 7. The judge of the County Court at Law No. 4 of El Paso County shall execute bond and take the oath of office as required by law relating to county judges.

Sec. 8. The judge of the County Court at Law No. 4 of El Paso County shall appoint an official court reporter for the court, who shall be well-skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended,[1] and as hereafter amended, and all other provisions of the law relating to official court reporters, shall apply in all their provisions, insofar as they are applicable, to the official court reporter herein authorized to be appointed, and insofar as they are not inconsistent with the provisions of this Act. The official court reporter shall be entitled to the same compensation as the official court reporters in the district courts of El Paso County, to be paid in the same manner that compensation of official court reporters of the district courts of El Paso County is paid.

Sec. 9. The county clerk of El Paso County shall be the clerk of the County Court at Law No. 4 of El Paso County in civil and criminal matters. The county clerk shall receive and collect the same fees which he now receives and collects as clerk of the County Courts at Law Nos. 1, 2, and 3 of El Paso County. The clerk shall keep separate dockets for each court and shall tax the official court reporter's fee as costs in civil actions in each court in like manner as the fee is taxed in civil cases in the district courts.

Sec. 10. The sheriff of El Paso County, either in person or by deputy, shall attend the court when required by the judge. The various sheriffs and constables of this state executing process issued out of this court shall receive the fees now or hereafter fixed by law for executing process issued out of county courts.

Sec. 11. The seal of the County Court at Law No. 4 of El Paso County shall be the same as that provided by law for county courts, except that the seal shall contain the words "County Court at Law No. 4 of El Paso County, Texas," and the seal shall be judicially noticed.

Sec. 12. A special judge of the court may be appointed or elected in the manner and instances now or hereafter provided by law relating to county courts and judges thereof.

Sec. 13. (a) The judges of the county courts at law of El Paso County shall have the power to make and publish rules as to the docketing and disposition of criminal and civil cases in their courts not inconsistent with the laws of the State of Texas or the Texas Rules of Civil Procedure.

(b) The judges of the county courts at law of El Paso County with mutual consent may exchange benches with one another or act as presiding judge of the other courts in individual proceedings or actions in the absence or disqualification of the other judge.

Sec. 14. In cases transferred to any one of the county courts at law by order of the judge of one of the other county courts at law, all process extant at the time of the transfer shall be returned to and filed in the court to which such transfer is made, and shall be as valid and binding as though originally issued out of the court to which the transfer is made. [Acts 1977, 65th Leg., p. 1493, ch. 607, eff. Aug. 29, 1977.]

[1] Article 2286a et seq.

Art. 1970–141.4. County Court at Law No. 5 of El Paso County

Sec. 1. There is created a County Court at Law in El Paso County, to be known and designated as the "County Court at Law No. 5 of El Paso County, Texas."

Sec. 2. The County Court at Law No. 5 of El Paso County shall have the same jurisdiction over criminal matters that is now or may be vested in county courts having jurisdiction in criminal actions and proceedings under the constitution and laws of Texas and shall have appellate jurisdiction in appeals in criminal cases from justice courts and municipal courts within El Paso County. The judge of the court shall have the same powers, rights, and privileges as to criminal matters as are or may be vested in the judges of county courts having criminal jurisdiction. The County Court at Law No. 5 of El Paso

County shall have the same jurisdiction and powers in criminal matters and civil actions or proceedings that are now or may be vested in the County Courts at Law Nos. 1, 2, 3, and 4 of El Paso County. The judge of each of the county courts at law may, with the consent of the judge of the court to which transfer is to be made, transfer civil or criminal actions or proceedings from his respective court to the other court by the entry of an order to that effect on the docket. The judges of the County Courts at Law Nos. 1, 2, 3, and 4 of El Paso County shall transfer to the County Court at Law No. 5 of El Paso County any civil or criminal action or proceeding pending on the docket of the court on the effective date of this Act as may be necessary in order that the now overcrowded dockets of the courts may be relieved, and the County Court at Law No. 5 of El Paso County and the judge thereof shall have jurisdiction to hear and determine civil or criminal matters and render and enter the necessary and proper orders, decrees, and judgments therein. No cause may be transferred without the consent of the judge of the court to which it is transferred.

Sec. 3. (a) The county courts at law of El Paso County shall have the general jurisdiction of probate courts within the limits of El Paso County concurrent with jurisdiction of the County Court of El Paso County in such matters and proceedings. The county courts at law shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and drunkards, grant letters testamentary, and of administration, settle accounts with administrators, executors, and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and drunkards, including the settlement, partition, and distribution of estates of deceased persons, and the apprenticing of minors as provided by law, and conduct lunacy proceedings. The county courts at law shall have no jurisdiction over any other of those matters which are now vested exclusively in the County Court of El Paso County or in the judge therein.

(b) The judges of the County Court of El Paso County and the county courts at law of El Paso County may, with the consent of the judge of the court to which transfer is to be made, transfer probate matters or proceedings from their respective courts to the other court by the entry of an order to that effect on the docket.

(c) The judges of the county court and the county courts at law may collectively make and publish rules from time to time governing the docketing and disposition of probate matters and proceedings in their courts not inconsistent with the laws of the State of Texas or the Texas Rules of Civil Procedure and for the purpose of efficient and justiciable disposition of probate matters and proceedings. A copy of the rules and changes shall be filed with the county clerk of El Paso County, and one copy of the rules and changes shall be available in each court for the examination of participants in any probate matters filed.

(d) The County Court of El Paso County and the county courts at law of El Paso County, or each of the judges thereof, have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the courts, and also have the power to punish for contempt under such provisions as are or may be provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the courts or of any court of tribunal inferior to the courts.

Sec. 4. (a) The terms of the county courts at law of El Paso County shall commence on the first Monday in January and July, and the courts may continue in session until the Sunday next preceding the Monday for the convening of the next regular term of court.

(b) The judges of the county courts at law of El Paso County may divide each term of court into as many sessions as they deem necessary for the disposition of business and may extend a particular term of court whenever practicable for the efficient and justiciable disposition of individual proceedings and matters.

Sec. 5. (a) The judge of each county court at law of El Paso County shall be a citizen of the United States and of this state, who shall have been a practicing attorney of this state for at least five years next preceding his election or appointment and who shall have resided in the County of El Paso for at least two years next preceding his election or appointment.

(b) The judge of the County Court at Law No. 5 of El Paso County may receive an annual salary to be fixed by the commissioners court. The salary may be paid out of the general fund of El Paso County in equal monthly installments by warrants drawn on the county treasury on orders of the Commissioners Court of El Paso County. The judge of the county court and judges of each county court at law in El Paso County shall not collect any fee from the county for disposing of any criminal case.

Sec. 6. When this Act becomes effective, the Commissioners Court of El Paso County shall appoint a judge of the County Court at Law No. 5 of El Paso County who shall serve until the next general election and until his successor is elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of the county a judge of the County Court at Law No. 5 for a regular term of four years as provided by the Texas Constitution. In case of vacancy, the office shall be filled by

appointment by the commissioners court, and the appointee shall hold office until the next succeeding general election and until his successor is elected and has qualified.

Sec. 7. The judge of the County Court at Law No. 5 of El Paso County shall execute bond and take the oath of office as required by law relating to county judges.

Sec. 8. The judge of the County Court at Law No. 5 of El Paso County shall appoint an official court reporter for the court, who shall be well skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended,[1] and as hereafter amended, and all other provisions of the law relating to official court reporters shall apply in all their provisions, insofar as they are applicable, to the official court reporter herein authorized to be appointed, and insofar as they are not inconsistent with the provisions of this Act. The official court reporter shall be entitled to the same compensation as the official court reporters in the district courts of El Paso County, to be paid in the same manner that compensation of official court reporters of the district courts of El Paso County is paid.

Sec. 9. The county clerk of El Paso County shall be the clerk of the County Court at Law No. 5 of El Paso County in civil and criminal matters. The county clerk shall receive and collect the same fees which he now receives and collects as clerk of the County Courts at Law Nos. 1, 2, 3, and 4 of El Paso County. The clerk shall keep separate dockets for each court and shall tax the official court reporter's fee as costs in civil actions in each court in like manner as the fee is taxed in civil cases in the district courts.

Sec. 10. The sheriff of El Paso County, either in person or by deputy, shall attend the court when required by the judge. The various sheriffs and constables of this state executing process issued out of this court shall receive the fees now or hereafter fixed by law for executing process issued out of county courts.

Sec. 11. The seal of the County Court at Law No. 5 of El Paso County shall be the same as the provided by law for county courts except that the seal shall contain the words "County Court at Law No. 5 of El Paso County, Texas," and the seal shall be judicially noticed.

Sec. 12. A special judge of the court may be appointed or elected in the manner and instances now or hereafter provided by law relating to county courts and judges thereof.

Sec. 13. (a) The judges of the county courts at law of El Paso County shall have the power to make and publish rules as to the docketing and disposition of criminal and civil cases in their courts not inconsistent with the laws of the State of Texas or the Texas Rules of Civil Procedure.

(b) The judges of the county courts at law of El Paso County with mutual consent may exchange benches with one another or act as presiding judge of the other courts in individual proceedings or actions in the absence or disqualification of the other judge.

Sec. 14. In cases transferred to any one of the county courts at law by order of the judge of one of the other county courts at law, all process extant at the time of the transfer shall be returned to and filed in the court to which such transfer is made and shall be as valid and binding as though originally issued out of the court to which the transfer is made. [Acts 1981, 67th Leg., p. 2588, ch. 692, eff. Aug. 31, 1981.]

[1] Article 2286a et seq.

WICHITA COUNTY

Art. 1970–166d. County Court at Law of Wichita County

Creation

Sec. 1. The County Court at Law of Wichita County is created on the date determined by Section 10 of this Act.

Jurisdiction

Sec. 2. (a) The County Court at Law of Wichita County has jurisdiction concurrent with the County Court of Wichita County over all criminal and juvenile proceedings, original and appellate, prescribed by the constitution and general laws of this state for county courts, and prescribed by Chapter 762, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 1200aa, Vernon's Texas Civil Statutes), and by Chapter 519, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1970–166c, Vernon's Texas Civil Statutes).

(b) The County Court at Law of Wichita County has civil jurisdiction concurrent with the district courts of Wichita County over civil suits, causes, and proceedings when the amount in controversy exceeds $500 and does not exceed $10,000, exclusive of interest, and, without regard to the value of the estate or matter in question, over suits, causes, and proceedings involving dissolution of marriage by divorce or annulment, including the adjustment of property rights, suits affecting the parent-child relationship, suits concerning adoptions, suits for protection of children in an emergency, suits for removal of disabilities of minority or for change of name, suits involving delinquent children or children in need of supervision, suits brought under the authority of the Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Compact on Juveniles and all other jurisdiction, powers, and authorities now or

hereafter placed in the district or county courts under the juvenile or child welfare laws of this state.

(c) The County Court at Law of Wichita County has no jurisdiction other than that specifically set forth in this section. The concurrent civil jurisdiction granted to the County Court at Law of Wichita County does not include causes or proceedings, original or appellate, concerning eminent domain, roads, bridges and public highways, or the general administration of county business which is now within the jurisdiction of the commissioners court of Wichita County. The County Court at Law of Wichita County has jurisdiction concurrent with the County Court of Wichita County over probate and mental health proceedings during the absence of the county judge or the inability of the county judge to perform any of his duties relating to such proceedings. The absence or inability of the county judge shall be certified by the county judge or the commissioners court to the judge of the county court at law. When certification is for the purpose of conferring power to perform a judicial act, the certificate shall be spread on the minutes of the appropriate court. Notwithstanding the additional powers and duties conferred on the judge of the county court at law during the absence or inability of the county judge, no additional compensation or salary shall be paid to him, but the compensation or salary of the judge of the county court at law shall remain as fixed by law. The provisions of this subsection relating to the powers and duties of the judge of the county court at law during the absence or inability of the county judge do not repeal the law providing for the election or appointment of a special county judge but are cumulative of and in addition to all law providing for a special county judge.

(d) The County Court at Law of Wichita County and the duly qualified judge of the court have the power to issue writs and orders as may be necessary in aid of its jurisdiction or the enforcement of its lawful orders.

(e) The provisions of this section do not diminish the jurisdiction of the several district courts of Wichita County, and the district courts shall retain and continue to exercise the jurisdiction that they now have or that may be hereafter conferred upon them by law.

Terms

Sec. 3. The County Court at Law of Wichita County shall hold two continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Judge

Sec. 4. (a) The judge of the County Court at Law of Wichita County shall be at least 25 years of age and shall be a citizen of the United States and of this state who is licensed to practice law in this state, has been a practicing lawyer or a judge of a court in this state or both combined for four years, and has been a resident of Wichita County for two years. The judge shall reside in Wichita County during his or her term of office.

(b) During his or her term of office, the judge of the County Court at Law of Wichita County shall not engage in the private practice of law.

(c) When this court is created, the commissioners court of Wichita County shall appoint a judge of the County Court at Law of Wichita County, who shall serve until the next general election after he or she takes office and until his or her successor is duly elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Wichita County a judge of the county court at law for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(d) A vacancy occurring in the office of the judge of the County Court at Law of Wichita County shall be filled by the commissioners court of Wichita County, and the appointee shall hold office until the next general election and until his or her successor is elected and has qualified.

(e) The judge of the County Court at Law of Wichita County shall execute a bond and take the oath of office prescribed by law for county judges. The judge may be removed from office in the same manner and for the same causes as a county judge.

(f) The judge of the County Court at Law of Wichita County may receive a salary not to exceed 90 percent of the total annual salary paid to the judges of the district courts having jurisdiction in Wichita County to be set by the commissioners court and to be paid out of the county treasury by the commissioners court. The salary may be paid in equal monthly installments. The judge of the County Court at Law of Wichita County may be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge of Wichita County. The judge of the county court at law is a member of the Juvenile Board of Wichita County. The judge of the County Court at Law of Wichita County shall assess the same fees as are now prescribed or may be established by law relating to county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge.

(g) A special judge of the County Court at Law of Wichita County with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the County Court at Law of Wichita County is disqualified to try a case pending in his or her court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is

entitled to the same rate of compensation as the regular judge.

Personnel

Sec. 5. (a) The county attorney and sheriff of Wichita County shall serve as county attorney and sheriff, respectively, of the County Court at Law of Wichita County. The district clerk of Wichita County shall serve as clerk of the County Court at Law of Wichita County in cases enumerated in Subsection (b) of Section 2 of this Act, and the county clerk of Wichita County shall serve as clerk of the County Court at Law of Wichita County in cases enumerated in Subsection (a) of Section 2 of this Act. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the County Court of Law of Wichita County shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to the compensation fixed by the commissioners court of Wichita County.

Transfer of Cases and Judges

Sec. 6. (a) As soon as practicable after this court is created, the county clerk may establish a separate docket for the court created by this Act from among pending matters filed originally in the county court of Wichita County and shall transfer those matters to the docket of the court created by this Act. Equalization of case load shall be the primary object in establishing the initial case docket for the County Court at Law of Wichita County. As soon as practicable after this court is created, the district clerk shall establish a separate docket for the County Court at Law of Wichita County. The transfer of any pending matters originally filed in the district courts prior to the date the County Court at Law of Wichita County is created shall be in accordance with the provisions of Subsection (b) of this section.

(b) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated in Subsection (b) of Section 2 of this Act may be instituted in or transferred between the district courts of Wichita County and the County Court at Law of Wichita County. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) In cases transferred to the county court at law as provided by Subsection (a) of this section and in cases transferred to any of the courts in Wichita County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(d) The county judge and the judge of the County Court at Law of Wichita County may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him or her without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. The district judges and the judge of the County Court at Law of Wichita County may freely exchange benches and courtrooms with each other in matters within their concurrent jurisdiction so that if one is ill, disqualified, or otherwise absent, another may hold court for him or her without the necessity of transferring the case involved. Any of those judges may hear all or any part of a case pending in the district court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his or her court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the County Court at Law of Wichita County.

Practice and Procedure

Sec. 7. (a) Practice in the County Court at Law of Wichita County shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the County Court at Law of Wichita County involving those matters of concurrent jurisdiction enumerated in

Subsection (b) of Section 2 of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general and special, as well as county courts. If a case enumerated in Subsection (b) of Section 2 of this Act is tried before a jury, the jury shall be composed of six members and shall be privileged to render verdicts by a five to one margin in civil cases and a unanimous verdict in criminal cases.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the County Court at Law of Wichita County.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Courtroom

Sec. 8. The commissioners court of Wichita County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Seal

Sec. 9. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Wichita County."

Date of Creation

Sec. 10. The County Court at Law of Wichita County is created on January 1, 1982, or on a date determined by the commissioners court by an order entered on its minutes, after the provisions of Section 8 of this Act shall be fully complied with, whichever date is earlier.

[Acts 1979, 66th Leg., p. 424, ch. 195, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 553, ch. 233, § 1, eff. May 28, 1981.]

McLENNAN COUNTY

Art. 1970–298d. County Court at Law No. 2 of McLennan County

Sec. 1. The County Court at Law No. 2 of McLennan County is created on the date determined by the provisions of Section 11 of this Act.

Sec. 2. (a) The County Court at Law No. 2 of McLennan County has jurisdiction in all matters and causes, civil, criminal, and probate, original and appellate, over which by the general laws and constitution of the state the county court of the county would have jurisdiction, and its jurisdiction is concurrent with that of the County Court of McLennan County and the County Court at Law of McLennan County. This provision does not affect the jurisdiction of the commissioners court, or of the county judge of McLennan County as the presiding officer of the commissioners court, as to roads, bridges, and public highways, and matters that are now within the jurisdiction of the commissioners court or the county judge as presiding officer. The county judge of McLennan County shall be the judge of the County Court of McLennan County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of McLennan County, except insofar as the same shall by this Act be committed to the judge of the County Court at Law No. 2 of McLennan County.

(b) The County Court at Law No. 2 of McLennan County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $5,000, exclusive of interest, as provided by general law.

Sec. 3. The County Court at Law No. 2 of McLennan County or its judge has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, and supersedeas, and all writs necessary to the enforcement of the jurisdiction of the court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court or tribunal inferior to that court. The court and judge have the power to punish for contempt as prescribed by law for county courts.

Sec. 4. (a) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) The county judge and the judges of the county courts at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or in a county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(c) In cases transferred to either of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the

cases, as well as all bonds and recognizances before taken in the cases, shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 5. The terms of the County Court at Law No. 2 of McLennan County shall be held on the first Mondays in January, March, May, July, September, and November in each year, and each term of the court shall continue in session until and including the Saturday next preceding the beginning of the next succeeding term. The practice in the court, and appeals and writs of error therefrom, shall be as prescribed by the laws relating to county courts.

Sec. 6. Regardless of whether the court is created prior to January 1, 1979, beginning at the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters in McLennan County, for a term beginning on January 1 following each election, a judge of the County Court at Law No. 2 of McLennan County, who shall be a qualified voter in the county, who shall be a regularly licensed attorney at law in this state, who shall be well informed in the laws of this state, who shall have resided in and been actively engaged in the practice of law in this state or as the judge of a court for a period of not less than five years next preceding such general election, and who shall hold his office until his successor shall have been duly elected and qualified.

Sec. 7. The judge of the County Court at Law No. 2 of McLennan County shall execute a bond and take the oath of office as required by law relating to county judges.

Sec. 8. A special judge of the County Court at Law No. 2 of McLennan County may be appointed or elected when and under such circumstances as are provided by law relating to county courts and to the judges thereof, who shall receive for each day he actually serves the same compensation as provided for a special judge of the County Court at Law of McLennan County, to be paid out of the general fund of the county by the commissioners court.

Sec. 9. The clerk of the County Court of McLennan County shall be the clerk of the County Court at Law No. 2 of McLennan County. The seal of the court shall be the same as that provided by law for county courts except that the seal shall contain the words "Clerk of the County Court at Law No. 2 of McLennan County." The sheriff of McLennan County shall in person or by deputy attend the court when required by the judge thereof.

Sec. 10. (a) The judge of the County Court at Law No. 2 of McLennan County is authorized to appoint an official shorthand reporter for the court. A person is eligible for appointment who is well skilled in his profession. On appointment the reporter is to serve as a sworn officer of the court, holding his office at the pleasure of the court.

(b) The reporter is not required to take testimony in a case unless a party to the case or the judge demands that testimony be taken. In cases in which the reporter is required to take testimony, the court clerk shall tax a $3 fee as costs in the case. The clerk shall deposit fees collected under this section in the treasury of McLennan County. The reporter shall be available for matters being considered in the county court if a reporter is requested by the litigants before that court and the request is approved by the judge of the County Court at Law No. 2 of McLennan County.

(c) The reporter may receive the same compensation as the official shorthand reporters of the district courts in McLennan County, which compensation is to be paid in the same manner as is the compensation of the official shorthand reporters of the district courts in McLennan County. The county judge, the county auditor, the commissioners court, and any other officials of McLennan County charged with preparing and approving the county budget are authorized to amend the budget of McLennan County to provide for paying compensation to the reporter.

(d) Except where inconsistent with this Act, all general laws relating to court reporters apply to the official court reporter of the County Court at Law No. 2 of McLennan County.

Sec. 11. Any vacancy in the office of the judge of the court created by this Act shall be filled by the Commissioners Court of McLennan County until the next general election. The County Court at Law No. 2 of McLennan County is created on January 1, 1979, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier. If the court is created prior to January 1, 1979, the commissioners court shall appoint a judge of the County Court at Law No. 2 of McLennan County, who shall serve for a term ending on December 31, 1978, and until his successor is duly elected and has qualified.

Sec. 12. The judge of the County Court at Law No. 2 of McLennan County shall assess the same fees as are or may be established by law relating to county judges, all of which shall be collected by the clerk of the court and be paid monthly by him into the county treasury, and the judge of the County Court at Law No. 2 of McLennan County may receive an annual salary equal to the annual salary of the judge of the County Court at Law of McLennan County, payable monthly out of the county treasury by the commissioners court.

[Acts 1977, 65th Leg., p. 1007, ch. 373, eff. Aug. 29, 1977.]

BEXAR COUNTY

Art. 1970–301. County Courts at Law Nos. 1 and 2 of Bexar County

[See Compact Edition, Volume 3 for text of 1 to 4]

Sec. 4–A. The Judge of the County Court at Law No. 2 of Bexar County, Texas, upon proper

certification of the County Judge of Bexar County, Texas, because of conflicting duties, or absence or inability to act; or upon the failure or refusal of such County Judge to act for any reason or cause, shall also be authorized and empowered to act for and in the place and stead of said such County Judge in any probate proceeding or matter, and also may perform for the County Judge of Bexar County any and all other ministerial acts required by the laws of this State of said County Judge of Bexar County, Texas, including the granting or denying of applications for beer and wine licenses and other authority given the County Judge as set forth in the Alcoholic Beverage Code, and upon any such certification, the Judge of said County Court at Law No. 2, of Bexar County, Texas, shall give preference and priority to all such actions, matters, and proceedings so certified, and any and all such acts thus performed by the Judge of said County Court at Law No. 2, of Bexar County, Texas, shall be valid and binding upon all parties to such actions, matters, and proceedings the same as if performed by the County Judge of Bexar County, Texas. Provided, that the powers thus conferred on the Judge of the County Court at Law No. 2, of Bexar County, Texas, shall extend to and include all powers of the County Judge of Bexar County, Texas, except his powers and duties in connection with the transaction of the business of the County as presiding officer of the Commissioners Court, and in connection with the budget of Bexar County. And provided further that the provisions of this paragraph shall be in addition to and cumulative of the provisions of Chapter 355, Acts of the 52nd Legislature, Regular Session, 1951 (Article 1969a–2, Vernon's Texas Civil Statutes).

Notwithstanding the additional powers and duties conferred upon the Judge of the County Court at Law No. 2, of Bexar County, Texas, by the provisions of this paragraph, no additional compensation or salary shall be paid to said Judge, but the compensation or salary of such Judge shall remain the same as now, or as may be hereafter, fixed by law.

[See Compact Edition, Volume 3 for text of 5 to 21–B]

[Amended by Acts 1979, 66th Leg., p. 824, ch. 371, § 1, eff. Aug. 27, 1979.]

Art. 1370–301e.1. County Courts at Law Nos. 4 and 5 of Bexar County

[See Compact Edition, Volume 3 for text of 1 to 15]

Sec. 16. The judge of the County Court at Law Number 4 of Bexar County, Texas, may appoint an administrative assistant or assistants to aid him in the performance of his duties in matters probate. The salary of said administrative assistant or assistants shall be set by the Commissioners Court of Bexar County to be paid out of the General Fund of Bexar County, Texas, by warrants drawn on the county treasurer of said county upon orders of the Commissioners Court of Bexar County.

[Amended by Acts 1979, 66th Leg., p. 1003, ch. 439, § 1, eff. June 6, 1979.]

1970–301h. Repealed by Acts 1977, 65th Leg., p. 187, ch. 93, § 2, eff. May 2, 1977

See, now, § 8(c) of Art. 3883i.

CAMERON COUNTY

Art. 1970–305c. County Court at Law No. 2 of Cameron County

Creation

Sec. 1. The County Court at Law No. 2 of Cameron County is created. It shall sit in Brownsville, Texas.

Jurisdiction

Sec. 2. (a) The County Court at Law No. 2 of Cameron County shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the general laws of the state, the county courts have jurisdiction, and shall have jurisdiction concurrent with the County Court at Law of Cameron County in matters and causes, civil and criminal, original and appellate.

(b) The County Court at Law No. 2 of Cameron County shall have and exercise original concurrent jurisdiction with the justice courts and with the County Court at Law of Cameron County in all civil and criminal matters which by the general laws of this state is conferred on justice courts. No appeal or writ of error shall be taken to the court of civil appeals from any final judgment of the County Court at Law No. 2 of Cameron County in civil cases of which the court has appellate or original concurrent jurisdiction with the justice court, where the judgment or amount in controversy does not exceed $100, exclusive of interest and costs. This Act does not deprive the justice courts of the jurisdiction conferred on them by law, but gives concurrent original jurisdiction to the county courts at law of Cameron County over the matters specified in this subsection. This Act does not deny the right of appeal to the county courts at law of Cameron County from the justice court where the right of appeal to the county court exists by law. All cases appealed from the justice court and other inferior courts in Cameron County shall be made direct to the county courts at law under the provisions governing such appeals.

(c) The County Court at Law No. 2 of Cameron County shall also have the general jurisdiction of a probate court within the limits of Cameron County, concurrent with jurisdiction of the County Court of Cameron County and the County Court at Law of Cameron County in such matters and proceedings.

(d) The County Court at Law No. 2 of Cameron County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest, as provided by general law.

(e) The County Court of Cameron County shall have and retain concurrently with the County Court at Law of Cameron County and the County Court at Law No. 2 of Cameron County the general jurisdiction of a probate court but shall have no other jurisdiction, civil or criminal. The county judge of Cameron County shall be the judge of the County Court of Cameron County, and all ex officio duties of the county judge shall continue to be exercised by the judge of the County Court of Cameron County unless by this Act committed to the judges of the county courts at law. The county courts at law do not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways or the general administration of county business which is within the jurisdiction of the commissioners court or the presiding judge of the commissioners court.

Writ Power

Sec. 3. The County Court at Law No. 2 of Cameron County, or the judge thereof, shall have the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of the court or of any other court in the county of inferior jurisdiction to the County Court at Law No. 2.

Terms

Sec. 4. The County Court at Law No. 2 of Cameron County shall hold six terms of court each year, commencing on the first Monday in January, March, May, July, September, and November of each year, and each term shall continue until the next succeeding term begins.

Judge

Sec. 5. (a) There shall be elected in Cameron County, by the qualified voters of the county, a judge of the County Court at Law No. 2. No person may be elected judge of the court who has not been a resident citizen and practicing attorney of Cameron County for at least one year prior to the election and who does not possess all of the qualifications for the office that are required by the general laws of the state for county judges. As soon as this court is created, the Commissioners Court of Cameron County shall appoint a judge to the County Court at Law No. 2 of Cameron County, who shall hold the office as judge until the next general election and until his or her successor is elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected a judge of the County Court at Law No. 2 for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office of the judge of the County Court at Law No. 2 of Cameron County shall be filled by appointment of the Commissioners Court of Cameron County, and when so filled, the judge shall hold the office until the next general election and until his or her successor is elected and has qualified.

(b) The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office as required by law relating to county judges.

(c) The judge of the County Court at Law No. 2 may be removed from office in the same manner and for the same causes as provided by law for county judges.

(d) A special judge of the County Court at Law No. 2 may be appointed or elected as provided by law relating to county courts and to the judges thereof, who shall be compensated in the same manner as provided for special judges of the county courts.

Compensation

Sec. 6. The judge of the County Court at Law No. 2 of Cameron County may receive an annual salary, the amount of which shall be fixed by the Commissioners Court of Cameron County. The salary shall be paid out of the county treasury of Cameron County on the order of the commissioners court and shall be paid monthly in equal installments. The amount shall not exceed 90 percent of the amount paid a district court judge having jurisdiction in Cameron County.

Personnel

Sec. 7. (a) The county clerk, county attorney, and sheriff of Cameron County shall serve as clerk, county attorney, and sheriff, respectively, for the County Court at Law No. 2. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the County Court at Law No. 2 shall appoint an official shorthand reporter for the court who shall have the qualifications provided by law for official court reporters, shall be a sworn officer of the court, and shall hold office at the pleasure of the judge. The duties of the reporter shall be the same as provided by general law for official court reporters, and the salary of the reporter shall be set by the commissioners court and paid monthly by the commissioners court out of any funds available for the purpose. All other provisions of the law relating to official court reporters shall apply insofar as they are applicable to the court reporter authorized by this Act and insofar as they are not inconsistent with this Act.

Jurors

Sec. 8. (a) The jurisdiction and authority vested by law in the county court and the judge thereof for the drawing, selection, and service of jurors shall also be exercised by the county courts at law and the judges thereof. Jurors summoned for a county court at law or the county court may, by order of the judge of the court in which they are summoned, be transferred to any of the other courts for service and

may be used as if summoned for the court to which they may be transferred. On concurrence of the judges of the county courts at law and the county judge, jurors may be summoned for service in all of those courts and shall be used interchangeably in all of those courts.

(b) Jurors, regularly impaneled for the week by the district court or courts may, on request of either the county judge or the judge of a county court at law, be made available by the district judge or judges in such numbers as may be requested for service for the week in either or both of the county courts at law or the county court, and such jurors shall serve in the county court and county court at law the same as if they had been drawn and selected as is otherwise provided by law.

Transfer of Cases; Exchange of Benches

Sec. 9. (a) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. In cases transferred to any of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(b) The county judge and the judges of the county courts at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him or her without the necessity of transferring the case involved. Any judge may hear all or any part of a case pending in the county court or a county court at law, but only in matters within his or her jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. However, the judge of any court may not sit or act in a case unless it is within the jurisdiction of his or her court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision providing for the exchange of benches by and between the judge of the county court and the judges of the county courts at law is cumulative of and in addition to the provisions in this Act for the selection and appointment of a special judge of the county court at law.

Seal

Sec. 10. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 2 of Cameron County, Texas."

[Acts 1979, 66th Leg., p. 999, ch. 438, eff. Jan. 1, 1980.]

PARTICULAR COUNTY COURTS

Art. 1970–310. Other Acts Creating or Affecting Jurisdiction of Particular County Courts

Baylor—Jurisdiction diminished: Acts 1981, 67th Leg., p. 3039, ch. 794, eff. Sept. 1, 1981.

Brazos—Jurisdiction: Acts 1959, 56th Leg., p. 4, ch. 2; amended by Acts 1975, 64th Leg., p. 112, ch. 50, § 8, eff. Jan. 1, 1977.

Cottle—Jurisdiction diminished: Acts 1981, 67th Leg., p. 3039, ch. 794, eff. Sept. 1, 1981.

Falls—Jurisdiction: Acts 1917, March 20, ch. 89, p. 243; amended by Acts 1975, 64th Leg., p. 84, ch. 39, § 1, eff. April 8, 1975.

King—Jurisdiction diminished: Acts 1981, 67th Leg., p. 3039, ch. 794, eff. Sept. 1, 1981.

Knox—Jurisdiction diminished. Acts 1981, 67th Leg., p. 3039, ch. 794, eff. Sept. 1, 1981.

Real—Acts 1917, March 1, ch. 53, p. 92, repealed and jurisdiction restored: Acts 1979, 66th Leg., p. 452, ch. 208, eff. Aug. 27, 1979.

POTTER COUNTY

Art. 1970–311b. County Court at Law No. 2 of Potter County

Sec. 1. There is created a court to be held in Amarillo, Potter County, Texas, which shall be known as the County Court at Law No. 2 of Potter County.

Sec. 2. The County Court at Law No. 2 of Potter County shall have original and concurrent jurisdiction with the County Court of Potter County and the County Court at Law of Potter County in all matters and causes, civil, criminal, and probate, original and appellate, over which by the general laws of this state, county courts have jurisdiction. This provision shall not affect the jurisdiction of the commissioners court or the county judge of Potter County as the presiding officer of the commissioners court as to roads, bridges and public highways, and matters which are now within the jurisdiction of the commissioners court or the judge of Potter County.

Sec. 3. The County Court at Law No. 2 of Potter County shall have and exercise original concurrent

jurisdiction with the justice courts in all civil matters which by the general laws of this state is conferred on justice courts. Neither the County Court at Law No. 2 of Potter County nor the judge thereof shall have jurisdiction to act as a coroner or to preside at inquests, or have jurisdiction of claims which come within the jurisdiction of the Small Claims Court as prescribed by Chapter 309, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 2460a, Vernon's Texas Civil Statutes).

Sec. 4. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of the County Court at Law No. 2 of Potter County in civil cases of which the court had appellate or original concurrent jurisdiction with the justice court where the judgment or amount in controversy would not exceed $100, exclusive of interest and costs.

Sec. 5. This Act shall not be construed to deprive the justice courts of jurisdiction now conferred on them by law, but only to give concurrent original jurisdiction to the County Court at Law No. 2 of Potter County over such matters as are specified in this Act; nor shall this Act be construed to deny the right of an appeal to the County Court at Law No. 2 of Potter County from the justice court, where the right of appeals to the county court now exists by law.

Sec. 6. The County Court of Potter County shall retain the general jurisdiction of a probate court. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators, and guardians, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons, and to apprentice minors as provided by law; and the court, or the judge thereof, shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of the court, and also to punish contempts under such provisions as are or may be provided by general law governing county courts throughout the state. The County Judge of Potter County shall be the judge of the County Court of Potter County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Potter County except in so far as the same shall, by this Act, be committed to the judges of the County Courts at Law of Potter County.

Sec. 7. The terms of the County Court at Law No. 2 of Potter County shall be as prescribed by the laws relating to the county courts. The terms of the County Court at Law No. 2 of Potter County shall be held as now established for the terms of the County Court of Potter County and the same may be changed in accordance with the laws governing the change in the terms of the County Court of Potter County.

Sec. 8. No person may be elected or appointed judge of the court who is not a resident citizen of Potter County. He also shall have been a licensed attorney of the State of Texas for at least four years immediately prior to his appointment or election. The person elected judge shall hold his office for four years and until his successor shall have been duly elected and qualified.

Sec. 9. The County Attorney of Potter County shall represent the state in all prosecutions in the County Court at Law No. 2 of Potter County, as provided by law for such prosecutions in county courts, and shall be entitled to the same fees as now prescribed by law for such prosecutions in the county courts.

Sec. 10. As soon as this Act becomes effective, the Commissioners Court of Potter County shall appoint a judge of the County Court at Law No. 2 of Potter County, who shall hold his office until the next general election and until his successor is duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Potter County a judge of the County Court at Law No. 2 for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. The commissioners court shall provide suitable quarters for the holding of the court.

Sec. 11. The judge of the County Court at Law No. 2 of Potter County may be removed from office in the same manner and for the same causes as any county judge may be removed under the laws of this state.

Sec. 12. The judge of the County Court at Law No. 2 of Potter County shall execute a bond and take the oath of office as required by law relating to county judges.

Sec. 13. A special judge of the County Court at Law No. 2 of Potter County may be appointed or elected as provided by law relating to county courts and to the judge thereof. He shall receive a sum of money for each day he actually serves equal to the compensation for each day paid to the regular judge of County Court at Law No. 2 of Potter County, to be paid out of the general fund of the county by the commissioners court.

Sec. 14. In the case of the disqualification of the judge of the County Court at Law No. 2 of Potter County to try any case pending in his court, the parties or their attorneys may agree on the selection of a special judge to try the case or cases in which the judge of the County Court at Law No. 2 of Potter County is disqualified. In case of the selec-

tion of a special judge by agreement of the parties or their attorneys, the special judge shall draw the same compensation as that provided in Section 13 of this Act.

Sec. 15. The County Court at Law No. 2 of Potter County, or the judge thereof, shall have the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of the court or of any other court in the county of inferior jurisdiction to the County Court at Law No. 2.

Sec. 16. The county clerk of Potter County shall be the clerk of the County Court at Law No. 2 of Potter County, and the seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 2 of Potter County."

Sec. 17. The sheriff of Potter County shall in person or by deputy attend the County Court at Law No. 2 of Potter County when required by the judge thereof.

Sec. 18. The jurisdiction and authority now vested by law in the County Court of Potter County and the judge thereof, for the drawing, selection, and service of jurors and talesmen shall also be exercised by the County Court at Law No. 2 of Potter County and the judge thereof; but jurors and talesmen summoned for either of the county courts at law or county court may by order of the judge of the court in which they are summoned be transferred to one of the other courts for service therein and may be used therein as if summoned for the court to which they may be thus transferred. On concurrence of the judges of the county courts at law of Potter County and the judge of the county court of Potter County, jurors may be summoned for service in all county courts and shall be used interchangeably in all such courts. All summons for petit jurors for all civil and criminal cases under existing laws at the time this Act takes effect shall be as valid as if no change had been made, and the persons constituting such jury panels shall be required to appear and serve at the ensuing term of the courts as fixed by this Act, and their acts as jurors shall be as valid as if they had been selected as jurors in the court for which they were originally drawn.

Sec. 19. Any vacancy in the office of the judge of the County Court at Law No. 2 of Potter County shall be filled by the commissioners court, and when so filled the judge shall hold office until the next general election and until his successor is elected and has qualified.

Sec. 20. The judges of the County Court at Law of Potter County and the County Court at Law No. 2 of Potter County may each be paid an annual salary of not more than the total salary paid any District Judge in and for Potter County to be paid out of the general fund of Potter County by the County Treasurer of Potter County, on the order of the commissioners court of the county.

Sec. 21. The judge of the County Court at Law No. 2 of Potter County shall assess the same fees as are prescribed by law relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, no part of which shall be paid to the judge, but he shall draw the salary as specified in Section 20 of this Act.

Sec. 22. The judge of the County Court at Law No. 2 of Potter County may appoint an official shorthand reporter for such court who shall be well skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. The reporter shall take the oath required of official court reporters and shall receive a salary as set by the Commissioners Court of Potter County to be paid out of the county treasury of Potter County, as other county officials are paid, in equal monthly installments. All other provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended and as the same may hereafter be amended, and all other provisions of the law relating to official court reporters are hereby made to apply in all provisions, insofar as they are applicable, to the official shorthand reporter herein authorized to be appointed and insofar as they are not inconsistent with this Act.

Sec. 23. The laws of the State of Texas, the rules of procedure and the rules of evidence shall be applicable to and control trials and proceedings in the County Court at Law No. 2 of Potter County, and shall be applicable to and govern the proceedings in and appeals to and appeals from the County Court at Law No. 2 of Potter County.

Sec. 24. The County Clerk of Potter County shall distribute the cases filed, both civil and criminal. All cases with even numbers shall be filed and docketed in the County Court at Law of Potter County and all cases with odd numbers shall be filed and docketed in the County Court at law No. 2 of Potter County. With the consent of the judge of the court to which a case is transferred, the judge of either county court at law or the county court shall have the power to transfer to the other courts any case pending upon the docket of his court over which the courts have concurrent jurisdiction, except in cases where the writ of certiorari has been granted. The judges of the county courts at law may, in their discretion, exchange benches and sit and hear cases in the court in which the case or proceeding is then pending, and try or otherwise dispose of same.

Sec. 25. The effective date of this Act is January 1, 1977.

[Acts 1975, 64th Leg., p. 1955, ch. 645, eff. Jan. 1, 1977.]

MARION COUNTY

Art. 1970–322a. County Court of Marion County; Concurrent Jurisdiction of Certain Criminal Matters

Sec. 1. (a) In addition to the jurisdiction heretofore conferred by law upon the County Court of Marion County, Texas, and the County Judge of Marion County, Texas, the said County Court shall have jurisdiction within Marion County of all criminal matters and causes of misdemeanor over which the District Courts of Marion County, Texas, now has jurisdiction, and the jurisdiction of said Courts over such matters shall be concurrent, provided that the jurisdiction of the District Courts of Marion County, Texas, shall be and remain as now fixed by law and be in nowise affected by this Act; and provided further, that the jurisdiction hereby conferred upon the County Judge of Marion County, Texas, shall extend to and only to those cases in which pleas of guilty are entered by the defendant in any cases of misdemeanor filed in said Court.

(b) The County Attorney of Marion County shall continue to represent the state in all criminal matters pending before the District Courts in Marion County.

[See Compact Edition, Volume 3 for text of 2 and 3]

Sec. 4. The County Attorney of Marion County shall represent the state in all misdemeanor and felony cases before the District Court of Marion County, Texas.

[Amended by Acts 1975, 64th Leg., p. 1857, ch. 581, § 3, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 56, ch. 25, § 11, eff. April 8, 1981.]

TRAVIS COUNTY

Art. 1970–324. County Court at Law No. 1 of Travis County

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. The County Court at Law No. 1 of Travis County, Texas, shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the General Laws of the State the County Court of said County would have jurisdiction. The jurisdiction of the County Court at Law No. 1 of Travis County, Texas, and of the Judge thereof shall extend to all matters of which jurisdiction has heretofore vested in the County Court or in the County Judge or in the County Court at Law of Travis County, Texas; and such County Court at Law No. 1 of Travis County, Texas, shall exercise and have concurrent jurisdiction with the County Court or County Judge or any other numbered County Court at Law of Travis County, now or hereafter created, as to all probate matters. The County Court at Law No. 1 has jurisdiction concurrent with the district court in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest.

[See Compact Edition, Volume 3 for text of 3 to 17]

[Amended by Acts 1981, 67th Leg., p. 501, ch. 208, § 1, eff. May 28, 1981.]

Art. 1970–324a. County Court at Law No. 2 of Travis County

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. The County Court at Law No. 2 of Travis County, Texas, shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the General Laws of the State, the County Court of said County would have jurisdiction. The jurisdiction of the County Court at Law No. 2 of Travis County, Texas, and of the Judge thereof, shall extend to all matters of which jurisdiction has heretofore vested in the County Court or in the County Judge or in the County Court at Law of Travis County, Texas; and such County Court at Law No. 2 of Travis County, Texas, shall exercise and have concurrent jurisdiction with the County Court or County Judge or any other numbered County Court at Law of Travis County, now or hereafter created, as to all probate matters. The County Court at Law No. 2 has jurisdiction concurrent with the district court in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest.

[See Compact Edition, Volume 3 for text of 3 to 17]

[Amended by Acts 1981, 67th Leg., p. 501, ch. 208, § 2, eff. May 28, 1981.]

Art. 1970–324a.1. County Court at Law No. 3 of Travis County

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. The County Court at Law Number 3 of Travis County, Texas, shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the general laws of the state the county court of said county would have jurisdiction. The jurisdiction of the County Court at Law Number 3 of Travis County, Texas, and of the judge thereof, shall extend to all matters of which jurisdiction has heretofore vested in the County Court or in the County Judge or in the County Court at Law of Travis County, Texas; and such County Court at Law Number 3 of Travis County, Texas, shall exercise and have concurrent jurisdiction with the County Court or County Judge or any other numbered County Court at Law of Travis County, now or hereafter created, as to all probate matters. The County Court at Law No. 3 has jurisdiction concurrent with the district court in civil cases when the matter in controversy exceeds

$500 and does not exceed $20,000, exclusive of interest.

[See Compact Edition, Volume 3 for text of 3 to 18]

[Amended by Acts 1981, 67th Leg., p. 502, ch. 208, § 3, eff. May 28, 1981.]

Art. 1970–324a.2. County Court at Law No. 4 of Travis County

Creation

Sec. 1. The County Court at Law Number 4 of Travis County is created. The court shall sit in Austin, Texas.

Jurisdiction of County Court at Law

Sec. 2. The County Court at Law Number 4 of Travis County shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the general laws of the state the county court of the county would have jurisdiction, and its jurisdiction is concurrent with the other county courts at law of Travis County. The County Court at Law Number 4 of Travis County shall have and exercise jurisdiction concurrent with the County Court of Travis County and the other county courts at law of Travis County over all probate matters and proceedings. The County Court at Law Number 4 has jurisdiction concurrent with the district court in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000 exclusive of interest.

Jurisdiction of County Court

Sec. 3. The County Court of Travis County shall have and retain jurisdiction conferred by law over probate matters, and such jurisdiction shall be concurrent with the county courts at law. The County Court of Travis County shall have no jurisdiction over other matters, civil or criminal. The county judge of Travis County shall be the judge of the county court of the county, and all ex officio duties of the county judge shall be exercised by the judge of the County Court of Travis County, unless by this Act, or otherwise, committed exclusively to the county courts at law of Travis County.

Filing and Transfer of Cases; Exchange of Benches

Sec. 4. On the first day of the initial term of the County Court at Law Number 4, there shall be transferred to the docket of that court, under the direction of the county judge and by order entered upon the minutes of the County Court of Travis County, all mental health and probate actions, matters, and proceedings then pending in the County Court of Travis County, and all writs and processes theretofore issued by or out of either the County Court of Travis County or any of the county courts at law of Travis County in such actions, matters, and proceedings shall be returnable to the County Court at Law Number 4 of Travis County as though originally issued therefrom. All new mental health and probate actions, matters, and proceedings filed on or after the first day of the initial term of the County Court at Law Number 4 with the county clerk of Travis County, irrespective of the court or judge to which the matter or proceeding is addressed, shall be filed by the clerk in the County Court at Law Number 4. The county judge of Travis County may sit at any time for the judge of the County Court at Law Number 4 with regard to mental health and probate actions, matters, and proceedings. No mental health or probate proceeding had in either of the courts, or any order entered therein, shall be invalid because of a failure of the clerk to file new matters and proceedings as provided by this section. The judge of either of those courts, in his discretion, may, on or after the first day of the initial term of the County Court at Law Number 4, transfer to any other county court at law of Travis County, any mental health or probate matter or proceeding then or thereafter pending in those courts, and all processes extant at the time of the transfer shall be returned to and filed in the court to which the transfer is made and shall be as valid and binding as though originally issued out of the court to which the transfer is made. No application, pleading, motion, order, judgment, oath, bond, citation, return of citation, or any other mental health or probate matter or proceeding shall be invalid because of any reference therein to either of the courts by the name of the other, and any reference therein to either of the courts by the name of the other shall be legally sufficient for every purpose.

Terms; Practice and Procedure

Sec. 5. The terms of the County Court at Law Number 4 shall begin on the first Mondays in January, March, May, July, September, and November in each year, and each term of the court shall continue until the convening of the next succeeding term. The practice in the court, and appeals and writs of error from the court, shall be as prescribed by the laws relating to county courts, except as expressly provided by this Act.

Judge

Sec. 6. The Commissioners Court of Travis County shall appoint a judge of the County Court at Law Number 4, who shall serve until the next general election, and until his or her successor is elected and has qualified. Beginning at the general election in 1982 and every four years thereafter, a judge of the County Court at Law Number 4 shall be elected by the qualified voters of the county for a regular term of four years. The judge must be a qualified voter in the county, must be a regularly licensed attorney at law in this state, and must be a resident of Travis County, who shall have been actively engaged in the practice of law for a period of not less than two years next preceding the judge's election or appointment.

Bond and Oath

Sec. 7. The judge of the County Court at Law Number 4 shall execute a bond and take the oath of office as required by law relating to county judges.

Vacancy; Quarters

Sec. 8. Any vacancy in the office of the judge of the County Court at Law Number 4 shall be filled by the commissioners court, and when so filled, the judge shall hold office until the next general election and until his successor is elected and has qualified. The commissioners court shall provide suitable quarters for the holding of the County Court at Law Number 4.

Disqualification

Sec. 9. In the case of the disqualification of the judge of the County Court at Law Number 4 to try any case pending in the court, the parties or their attorneys may agree on the selection of a special judge to try the case, or the judges of the county courts at law may exchange benches or transfer a case to another county court at law, as provided by law. A special judge may be appointed or elected as provided by law for county judges or for judges of county courts at law, who shall receive such compensation as may be provided by law for special judges of county courts or county courts at law, whichever is the greater, to be paid out of the general funds of the county by the commissioners court.

Removal

Sec. 10. The judge of the County Court at Law Number 4 may be removed from office in the same manner and for the same causes as any county judge or judge of a county court at law may be removed under the laws of the state.

Court Reporter

Sec. 11. The judge of the County Court at Law Number 4 shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be as provided by law for official court reporters. The official court reporter is entitled to the compensation fixed by the commissioners court.

Writ Power

Sec. 12. The County Court at Law Number 4 and the judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court in the county with concurrent or inferior jurisdiction to the County Court at Law Number 4.

Appealed Cases

Sec. 13. All cases appealed from the justice courts and other inferior courts in Travis County shall be made direct to the County Court at Law Number 4 or to any other county court at law of Travis County.

Personnel; Seal

Sec. 14. The county clerk of Travis County shall be the clerk of the County Court at Law Number 4. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law Number 4 of Travis County." The sheriff of Travis County shall in person or by deputy attend the court when required by the judge of the court. The county attorney of Travis County shall represent the state in all prosecutions pending in the County Court at Law Number 4, and shall be entitled to the same fee as now prescribed by law for such prosecution in the county courts.

Jurors

Sec. 15. The jurisdiction and authority now vested by law in the County Court of Travis County for the drawing, selection, and service of jurors shall be exercised by the County Court at Law Number 4 or by any other county court at law of Travis County, but juries summoned for either or any of the courts may, by order of the judge of the court in which they are summoned, be transferred to any of the other courts for service therein and may be used in any of those courts as if summoned for the court to which they are transferred.

Compensation

Sec. 16. The judge of the County Court at Law Number 4 may be paid by the commissioners court a yearly salary in an amount determined by the commissioners court, but not more than 90 percent of the amount paid district judges from the General Revenue Fund of the state. The salary shall be paid out of the general fund of the county in equal monthly installments by warrants drawn upon the county treasurer upon orders of the commissioners court. The judge of the County Court at Law Number 4 shall assess the same fees and costs as are now prescribed by law for county judges, to be deposited in the county treasury as prescribed by law.

Private Practice Prohibited

Sec. 17. The judge of the County Court at Law Number 4 shall not engage in the private practice of law while holding the office of judge of the court. [Acts 1979, 66th Leg., p. 826, ch. 373, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., p. 502, ch. 208, § 4, eff. May 28, 1981.]

TITUS COUNTY

Art. 1970-330. Repealed by Acts 1975, 64th Leg., p. 1366, ch. 521, § 5, eff. June 19, 1975

See, now, art. 1970-330a.

Art. 1970-330a. Jurisdiction of Titus County Court and District Courts

Sec. 1. The County Court of Titus County has the full jurisdiction granted by the constitution and general law to county courts.

Sec. 2. The district courts having jurisdiction in Titus County have the jurisdiction granted by the constitution and general law to district courts.

Sec. 3. (a) All cases pending on the effective date of this Act in the district courts having jurisdiction in Titus County which are within the jurisdiction of the county court under Section 1 of this Act are transferred to the County Court of Titus County.

(b) All writs and process relating to cases transferred under Subsection (a) of this section are returnable to the next term of the County Court of Titus County.

Sec. 4. The provisions of this Act may not be construed to affect judgments rendered by the district courts having jurisdiction in Titus County prior to the effective date of this Act. The clerks of the district courts having jurisdiction in Titus County shall issue all executions and orders of sale and proceeding thereunder, which shall be valid and binding.

[Acts 1975, 64th Leg., p. 1366, ch. 521, §§ 1 to 4, eff. June 19, 1975.]

GRAYSON COUNTY

Art. 1970–332. Grayson County; County Court at Law; Jurisdiction; Terms; Judge; Prosecutor; Writs; Clerk and Court Reporter

[See Compact Edition, Volume 3 for text of 1 to 15]

Sec. 16. (a) The Judge of the County Court at Law of Grayson County may receive an annual salary up to an amount equal to the total annual salary of the County Attorney of Grayson County to be paid out of the County Treasury of Grayson County, Texas, on the order of the Commissioners Court of said County, and said salary shall be paid monthly in equal installments. The Judge of the County Court at Law of Grayson County shall assess the same fees as are now prescribed by law relating to the County Judge's fee, all of which shall be collected by the Clerk of the Court and shall be paid into the County Treasury on collection, no part of which shall be paid to the said Judge, but he shall draw the salary as above specified in this Section.

(b) The Judge of the County Court at Law of Grayson County may not actively engage in the private practice of law while serving as judge of the county court at law.

[See Compact Edition, Volume 3 for text of 17 to 20]

[Amended by Acts 1975, 64th Leg., p. 628, ch. 259, § 1, eff. Sept. 1, 1975.]

Art. 1970–332a. County Court at Law No. 2 of Grayson County

Sec. 1. On the date determined by the provisions of Section 19 of this Act, there is created a court to be held in Sherman, Grayson County, Texas, which shall be known as the County Court at Law No. 2 of Grayson County.

Sec. 2. The County Court at Law No. 2 of Grayson County shall have and exercise the jurisdiction in all matters and cases, civil, criminal, juvenile, and probate, original and appellate, over which by the general laws of this state county courts have jurisdiction, and has jurisdiction concurrent with the County Court at Law of Grayson County in matters and cases, civil and criminal, original and appellate. The County Court of Grayson County shall have and retain, as heretofore, the general jurisdiction of a probate court and has jurisdiction concurrent with the County Court at Law No. 2 of Grayson County in probate matters and cases. The provisions of this Act do not affect the jurisdiction of the Commissioners Court nor of the County Judge of Grayson County as presiding officer of the commissioners court as to roads, bridges, and public highways, or matters which are now in the jurisdiction of the Commissioners Court or the Judge of the County Court of Grayson County. The County Judge of Grayson County shall be the judge of the county court of the county, and all ex officio duties of the county judge shall be exercised by the judge of the County Court of Grayson County, except insofar as the same shall by this Act be committed to the County Court at Law No. 2 of Grayson County.

Sec. 3. The County Court at Law No. 2 of Grayson County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $5,000, exclusive of interest, as provided by general law.

Sec. 4. (a) The County Court at Law No. 2 of Grayson County shall have and exercise original concurrent jurisdiction with the justice courts in all civil and criminal matters which by the general laws of this state are conferred upon justice courts.

(b) No appeal or writ of error shall be taken to the court of civil appeals from any final judgment of the County Court at Law No. 2 of Grayson County in civil cases of which the court has appellate or original concurrent jurisdiction with the justice court, where the judgment or amount in controversy does not exceed $100, exclusive of interest and costs.

(c) This Act shall not be construed to deprive the justice courts of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the County Court at Law No. 2 of Grayson County over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal to the County Court at Law No. 2 of Grayson County from the justice court where the right of appeal to the county court now exists by law.

Sec. 5. The terms of the County Court at Law No. 2 of Grayson County, and the practice therein, and the appeals and writs of error therefrom shall be as prescribed by the laws relating to county

courts. The terms of the County Court at Law No. 2 of Grayson County shall be held in the Courthouse of Grayson County, and shall begin on the first Monday in February, April, June, August, October, and December of each year, and shall continue in session until the Saturday before the first Monday in April, June, August, October, December, and February of each year.

Sec. 6. The judge of the County Court at Law No. 2 of Grayson County shall be a qualified voter in Grayson County, shall be a regularly licensed attorney at law in this state, shall be a resident of Grayson County, and shall have been actively engaged in the practice of law for a period of not less than one year next preceding his appointment or election.

Sec. 7. At the general election in 1978 and every four years thereafter, a judge shall be elected for a regular four-year term by the qualified electors of Grayson County.

Sec. 8. Any vacancy in the office of the judge of the County Court at Law No. 2 of Grayson County may be filled by the commissioners court, and when so filled the judge shall hold office until the next general election and until his successor is elected and qualified.

Sec. 9. In the case of the disqualification of the judge of the County Court at Law No. 2 in any case pending in this court, the county judge or the judge of the County Court at Law of Grayson County may sit in such case, or, the parties or their attorneys may agree on the selection of a special judge to try such case or cases; and in default of such agreement a majority of the practicing lawyers of Grayson County shall elect a judge to try such cases where the judge of the County Court at Law No. 2 is disqualified.

Sec. 10. (a) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) In cases transferred to either of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 11. The County Court at Law No. 2 of Grayson County, or the judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of the court, or of any other court in the county of inferior jurisdiction to the County Court at Law No. 2.

Sec. 12. The County Attorney of Grayson County shall represent the state in all prosecutions pending in the County Court at Law No. 2 of Grayson County, and shall be entitled to the same fee as now prescribed by law for such prosecutions in the county courts.

Sec. 13. The County Clerk of Grayson County shall be the clerk of the County Court at Law No. 2 of Grayson County, and the seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 2 of Grayson County."

Sec. 14. The jurisdiction or authority now vested by law in the county court for the selection and service of jurors shall be exercised by the County Court at Law No. 2 of Grayson County.

Sec. 15. (a) The judge of the County Court at Law No. 2 of Grayson County may receive an annual salary up to an amount equal to the total annual salary of the County Attorney of Grayson County to be paid out of the county treasury of Grayson County on the order of the commissioners court of the county, and the salary shall be paid monthly in equal installments. The judge of the County Court at Law No. 2 of Grayson County shall assess the same fees as are now prescribed by law relating to the county judge's fee, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, no part of which shall be paid to the judge, but he shall draw the salary as specified in this section.

(b) The judge of the County Court at Law No. 2 of Grayson County may not actively engage in the private practice of law while serving as judge of the county court at law.

Sec. 16. All cases appealed from the justice court and other inferior courts in Grayson County, Texas, shall be made direct to the County Court at Law of Grayson County or the County Court at Law No. 2 of Grayson County, under the provisions heretofore governing such appeals.

Sec. 17. The judge of the County Court at Law No. 2 of Grayson County may be removed from office in the same manner and for the same causes

as any county judge may be removed under the laws of this state.

Sec. 18. The judge of the County Court at Law No. 2 of Grayson County may appoint an official shorthand reporter for his court in the manner now provided for district courts in this state who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official shorthand reporter shall receive a salary of not more than the compensation paid the official shorthand reporters of the district courts of Grayson County. The salary shall be fixed, determined, set, and allowed by the commissioners court of Grayson County, and shall be in addition to transcript fees, fees for statement of facts, and all other fees. The salary when so fixed and determined by the commissioners court shall be paid monthly out of the general fund, or the jury fund, or out of any fund available for the purpose as may be determined by the commissioners court, in the same manner as salaries of other county officers are paid. From and after passage of this Act, all provisions relating to official shorthand reporters and their duties in district courts shall in all respects govern, except that the salary of the official shorthand reporter as provided for in this Act shall be fixed and determined by the commissioners court of Grayson County.

Sec. 19. The County Court at Law No. 2 of Grayson County is created on January 1, 1979, or on a date determined by the Commissioners Court of Grayson County by an order entered on its minutes, whichever date is earlier. If the County Court at Law No. 2 is created on January 1, 1979, the office of the judge is initially filled by the judge elected at the general election in 1978. If the County Court at Law No. 2 is created on an earlier date by order of the commissioners court, the governor shall appoint a judge of the County Court at Law No. 2 of Grayson County, who shall serve until the next general election and until his successor shall be duly elected and has qualified.

[Acts 1975, 64th Leg., p. 2027, ch. 669, eff. Sept. 1, 1975.]

HILL COUNTY

Art. 1970–333. Hill County; Jurisdiction; Clerk's Duties; Shorthand Reporter; County Attorney's Duties

Sec. 1. The County Court of Hill County shall have and exercise the general jurisdiction of a probate Court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle the accounts of executors, administrators and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement and distribution of estates of deceased persons pending in such Court; to conduct lunacy hearings; to apprentice minors as provided by law, and to issue all writs necessary for the enforcement of its own jurisdiction; to punish contempt under such provisions as now or may be provided for by General Law governing County Courts throughout the State; and in addition thereto, the County Court of Hill County and the Judge thereof, subject to the conditions stated in this Act, shall have jurisdiction over matters of original civil jurisdiction, original criminal jurisdiction, appellate civil jurisdiction, and appellate criminal jurisdiction as are normally exercised by County Courts under the Constitution and General Laws of this State; provided, however, that all future Statutes pertaining to probate matters enacted by the Legislature of the State of Texas, shall be operative in said Hill County as fully as though this Statute had not been enacted.

Sec. 2. The Judge of the 66th District Court in Hill County will be the presiding Judge, insofar as the District Court and the county court are concerned, over original and appellate jurisdiction in all civil and criminal matters in causes over which by the laws of this State the County Court of Hill County would have original or appellate jurisdiction; and all such causes will be filed with the District Clerk of Hill County in the District Court. The Judge of the District Court may, in his discretion, assign to the County Court of Hill County, for trial and disposition, cases, or portions of cases, of original and appellate jurisdiction in civil and criminal matters and causes over which, by the General Laws of this State, the County Court of Hill County would have original or appellate jurisdiction. The assignments shall be made by docket notation. The purpose and intent of this Statute is to vest the 66th District Court and the County Court of Hill County with concurrent jurisdiction over matters of original and appellate jurisdiction in all civil and criminal matters over which, by the General Laws of this State, the County Court of Hill County would have original or appellate jurisdiction, subject to the control over assignments of the cases, or parts of the cases, by the District Court, as provided in this section.

Sec. 3. The District Clerk of Hill County shall continue to perform all the clerical functions of the County Court of Hill County as to all matters and causes over which the District Court and County Court have concurrent jurisdiction, as provided in this Act. Insofar as all cases over which the District Court and County Court have concurrent jurisdiction, the Clerk shall charge fees at the rate set by law for County Court cases.

Sec. 4. The Judge of the County Court of Hill County may appoint an official shorthand reporter for his Court in the manner provided for District Courts in this State, who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. In addition to transcript fees, fees for statement of facts and all

other fees, the official shorthand reporter shall receive a salary to be fixed by the Commissioners Court of Hill County in an amount not more than the compensation paid the official shorthand reporter of the District Court in Hill County and to be paid out of the General Fund, or the Jury Fund, or out of any fund available for the purpose, as may be determined by the Commissioners Court, in the same manner as salaries of other County officers are paid. All provisions relating to official shorthand reporters and their duties in District Courts shall in all respects govern, except that the salary of the official shorthand reporter shall be fixed and determined by the Commissioners Court of Hill County.

Sec. 5. The duties of the County Attorney of Hill County shall not be changed or affected by this Act, and the County Attorney shall perform the same duties as were performed prior to the passage of this Act.

[Amended by Acts 1975, 64th Leg., p. 657, ch. 274, § 1, eff. May 20, 1975.]

NUECES COUNTY

Art. 1970–339. County Court at Law No. 1 of Nueces County

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 3a. The County Court at Law No. 1 of Nueces County has jurisdiction concurrent with the district courts in eminent domain cases, as provided by general law, and in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest. The County Court at Law No. 1 may be designated a juvenile court, as provided by Chapter 178, Acts of the 66th Legislature, Regular Session, 1979 (Article 2338—1.1, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 3 for text of 4 to 16]

Sec. 17. (a) The Judge of the County Court at Law No. 1 of Nueces County may receive an annual salary in an amount equal to $1,000 less than the salary paid by the State of Texas to a District Judge exercising jurisdiction in Nueces County.

(b) The salary shall be paid in the same manner and from the same fund as prescribed by law for payment of the salary of the County Judge of Nueces County.

(c) The Judge of the County Court at Law No. 1 of Nueces County shall assess the fees prescribed by law for County Judges, which shall be collected by the Clerk of the Court and paid into the County Treasury and which may not be paid to the Judge.

[Amended by Acts 1975, 64th Leg., p. 1940, ch. 636, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1611, ch. 629, § 1, eff. June 15, 1977; Acts 1981, 67th Leg., p. 620, ch. 244, § 1, eff. May 28, 1981; Acts 1981, 67th Leg., p. 625, ch. 247, § 1, eff. May 28, 1981.]

Sections 5 and 6 of the 1977 Act provide as follows;

"Sec. 5. The provisions of this Act shall be severable. Should any section, paragraph, sentence, clause, or other part hereof, be declared for any reason unconstitutional or void, such declaration shall not affect or impair the remaining provisions hereof, and the legislature specifically declares that it would have passed this Act notwithstanding the absence of such portion as may be declared unconstitutional or void."

"Sec. 6. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

Art. 1970–339A. County Court at Law No. 2 of Nueces County

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 3a. The County Court at Law No. 2 of Nueces County has jurisdiction concurrent with the district courts in eminent domain cases, as provided by general law, and in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest. The County Court at Law No. 2 may be designated a juvenile court, as provided by Chapter 178, Acts of the 66th Legislature, Regular Session, 1979 (Article 2338—1.1, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 3 for text of 4 to 17]

Sec. 18. (a) The Judge of the County Court at Law No. 2 of Nueces County may receive an annual salary in an amount equal to $1,000 less than the salary paid by the State of Texas to a District Judge exercising jurisdiction in Nueces County.

(b) The salary shall be paid in the same manner and from the same fund as prescribed by law for payment of the salary of the County Judge of Nueces County.

(c) The Judge of the County Court at Law No. 2 of Nueces County shall assess the fees prescribed by law for County Judges, which shall be collected by the Clerk of the Court and paid into the County Treasurer and which may not be paid to the Judge.

[See Compact Edition, Volume 3 for text of 19 to 27]

[Amended by Acts 1975, 64th Leg., p. 1940, ch. 636, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1611, ch. 629, § 2, eff. June 15, 1977; Acts 1981, 67th Leg., p. 620, ch. 244, § 2, eff. May 28, 1981; Acts 1981, 67th Leg., p. 625, ch. 247, § 2, eff. May 28, 1981.]

Art. 1970–339C. County Court at Law No. 3 of Nueces County

Creation and Jurisdiction

Sec. 1.

[See Compact Edition, Volume 3 for text of 1(a) to 1(c)]

(d) The County Court at Law No. 3 of Nueces County has jurisdiction concurrent with the district courts in eminent domain cases, as provided by general law, and in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest. The County Court at Law

No. 3 may be designated a juvenile court, as provided by Chapter 178, Acts of the 66th Legislature, Regular Session, 1979 (Article 2338—1.1, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 3 for text of 2 and 3]

Judge

Sec. 4.

[See Compact Edition, Volume 3 for text of 4(a) to 4(d)]

(e) The judge of the County Court at Law No. 3 may receive an annual salary in an amount equal to $1,000 less than the salary paid by the state to a district judge exercising jurisdiction in Nueces County. The salary shall be paid in the same manner and from the same fund as prescribed by law for payment of the salary of the county judge of Nueces County. The judge of the County Court at Law No. 3 shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury and which may not be paid to the judge.

[See Compact Edition, Volume 3 for text of 4(f) to 9]

[Amended by Acts 1975, 64th Leg., p. 1941, ch. 636, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1611, ch. 629, § 3, eff. June 15, 1977; Acts 1981, 67th Leg., p. 621, ch. 244, § 3, eff. May 28, 1981; Acts 1981, 67th Leg., p. 625, ch. 247, § 3, eff. May 28, 1981.]

LUBBOCK COUNTY

Art. 1970-340. County Court at Law No. 1 Lubbock County

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. The County Court at Law No. 1 of Lubbock County, Texas, shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the General Laws of the State, the County Court of said County would have jurisdiction, and the County Court at Law No. 1 shall have and exercise jurisdiction as to all probate matters concurrently with the County Court and any other numbered County Court at Law of Lubbock County. The County Court at Law No. 1 has jurisdiction concurrently with the district court in eminent domain cases, as provided by general law; but this provision shall not affect the jurisdiction of the Commissioners Court or of the County Judge of Lubbock County as the presiding officers of such Commissioners Court, as to roads, bridges, and public highways, and matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge thereof.

[See Compact Edition, Volume 3 for text of 2a to 5]

Sec. 6. The County Court of Lubbock County shall have and retain the general jurisdiction of the Probate Court concurrently with the County Courts at Law of Lubbock County; but the County Court now existing shall have no jurisdiction over other matters, civil or criminal. The County Judge of Lubbock County shall be the Judge of the County Court of said County, and all ex-officio duties of the County Judge shall be exercised by said Judge of the County Court of Lubbock County, except in so far as the same shall by this Act be committed to the County Court at Law No. 1 of Lubbock County.

[See Compact Edition, Volume 3 for text of 7 to 27]

[Amended by Acts 1977, 65th Leg., p. 1276, ch. 498, § 1, eff. Aug. 29, 1977.]

Art. 1970-340.1. County Court at Law No. 2 of Lubbock County

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. The County Court at Law No. 2 of Lubbock County, Texas, shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the General Laws of the State, the County Court of said County would have jurisdiction, and the County Court at Law No. 2 shall have and exercise jurisdiction as to all probate matters concurrently with the County Court and any other numbered County Court at Law of Lubbock County. The County Court at Law No. 2 has jurisdiction concurrently with the district court in eminent domain cases, as provided by general law; but this provision shall not affect the jurisdiction of the Commissioners Court or of the County Judge of Lubbock County as the presiding officers of such Commissioners Court, as to roads, bridges, and public highways, and matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge thereof.

[See Compact Edition, Volume 3 for text of 2a to 6]

Sec. 7. The County Court of Lubbock County shall have and retain the general jurisdiction of the Probate Court concurrently with the County Courts at Law of Lubbock County; but the County Court now existing shall have no jurisdiction over other matters, civil or criminal. The County Judge of Lubbock County shall be the Judge of the County Court of said County, and all ex officio duties of the County Judge shall be exercised by said Judge of the County Court of Lubbock County, except in so far as the same shall by this Act be committed to the County Court at Law No. 2 of Lubbock County.

[See Compact Edition, Volume 3 for text of 8 to 21]

Sec. 22. After the effective date of this amendment, the Judge of the County Court of Lubbock County and the Judge of the County Court at Law No. 2 of Lubbock County shall receive an annual salary in an amount not less than three-fourths (¾) of the total annual salary paid to the Judge of the 99th Judicial District of Texas by the State of Texas.

This sum shall be paid in equal monthly installments out of the General Fund of Lubbock County on orders from Commissioners Court.

[See Compact Edition, Volume 3 for text of 23 to 27]

[Amended by Acts 1977, 65th Leg., p. 1276, ch. 498, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1317, ch. 522, § 1, eff. Aug. 29, 1977.]

HIDALGO COUNTY

Art. 1970–341. County Court at Law of Hidalgo County

[See Compact Edition, Volume 3 for text of 1 to 4]

Sec. 5. The County Court at Law of Hidalgo County shall sit in the County seat of Hidalgo County and shall hold continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins. The practice in said Court, and appeals and writs of error thereto and therefrom, shall be as prescribed by the laws and rules relating to County Courts.

[See Compact Edition, Volume 3 for text of 6 to 9]

Sec. 10. The Judge of the County Court at Law shall appoint an official shorthand reporter for such Court who shall be well skilled in his profession, shall be a sworn officer of the Court and shall hold office at the pleasure of said Judge. The duties of such reporter shall be the same as provided by general law for reporters of the District Courts and the salary of the reporter shall be set by the Judge as provided by general law for reporters of District Courts and paid monthly by the Commissioners Court out of any funds available for the purpose. The clerk of the Court shall tax as costs in each case, civil, criminal and probate where a record or any part thereof is made of the evidence in said case by the reporter, a stenographer's fee of Three Dollars ($3). Said fee shall be paid as other costs in the case and paid by the clerk, when collected, into the general fund of the County.

[See Compact Edition, Volume 3 for text of 11 to 18]

[Amended by Acts 1975, 64th Leg., p. 1018, ch. 387, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 227, ch. 110, § 1, eff. May 4, 1977.]

Art. 1970–341a. County Court at Law No. 2 of Hidalgo County

Sec. 1. There is created a court to be held in and for Hidalgo County, which shall be known as the County Court at Law No. 2 of Hidalgo County, and which shall be a court of record.

Sec. 2. (a) The County Court at Law No. 2 of Hidalgo County shall have and exercise jurisdiction in all matters and causes civil and criminal, original and appellate, over which by the general laws of the state, the county courts have jurisdiction, and shall have jurisdiction concurrent with the County Court at Law of Hidalgo County in matters and cases, civil and criminal, original and appellate. The county court at law does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways or the general administration of county business which is within the jurisdiction of the commissioners court or the presiding judge of the commissioners court.

(b) The County Court at Law No. 2 of Hidalgo County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $5,000, exclusive of interest, as provided by general law.

Sec. 3. The County Court at Law No. 2 of Hidalgo County shall also have the general jurisdiction of a probate court within the limits of Hidalgo County, concurrent with jurisdiction of the County Court of Hidalgo County and the County Court at Law of Hidalgo County in such matters and proceedings. The County Court at Law No. 2 of Hidalgo County shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons, the apprenticing of minors as provided by law, and conduct lunacy proceedings.

Sec. 4. The County Court of Hidalgo County shall have and retain concurrently with the County Court at Law of Hidalgo County and the County Court at Law No. 2 of Hidalgo County the general jurisdiction of a probate court and of jurisdiction now conferred or which may be conferred by law over probate matters but shall have no other jurisdiction criminal or civil, original or appellate. The County Judge of Hidalgo County shall be the judge of the County Court of Hidalgo County and all ex officio, executive, ministerial, and administrative duties of the County Judge of Hidalgo County shall continue to be exercised by the County Judge of Hidalgo County, but he shall not act in any proceeding of a judicial nature save in probate matters.

Sec. 5. The County Court at Law No. 2 of Hidalgo County shall sit in the county seat of Hidalgo County and shall hold continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins. The practice in the court and appeals and writs of error to and from the court shall be as prescribed by the laws and rules relating to county courts.

Sec. 6. There shall be elected in Hidalgo County, by the qualified voters of the county, a judge of the County Court at Law No. 2, who shall be a regularly licensed attorney at law in this state, and who shall be a resident citizen of Hidalgo County, and who shall have been actively engaged in the practice of law in this state for a period of not less than four years next preceding his election, and who shall hold his office for four years and until his successor shall have been duly elected and qualified. As soon as this Act becomes effective, the Commissioners Court of Hidalgo County shall appoint a judge to the County Court at Law No. 2 of Hidalgo County, who shall hold this office as judge until the next general election and until his successor is elected and qualified. Beginning at the general election in 1978 and every fourth year thereafter, there shall be elected a judge of the County Court at Law No. 2 for a regular term of four years as provided in Article V, Section 30 and Article XVI, Section 65 of the Texas Constitution. A vacancy in the office of the judge of the County Court at Law No. 2 of Hidalgo County, shall be filled by appointment of the Commissioners Court of Hidalgo County, and when so filled, the judge shall hold his office until the next general election and until his successor is elected and qualified.

Sec. 7. The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office as required by law relating to county judges.

Sec. 8. (a) A special judge of the County Court at Law No. 2 of Hidalgo County may be appointed or elected as provided by law relating to county courts and to the judges thereof, who shall be compensated in the same manner as provided for special judges of the county courts.

(b) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. In cases transferred to either of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) The county judge and the judges of the county courts at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Any judge may hear all or any part of a case pending in the county court or a county court at law, but only in matters within his jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of any court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision providing for the exchange of benches by and between the judge of the county court and the judges of the county courts at law is cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Sec. 9. The judge of the County Court at Law No. 2 of Hidalgo County may be removed from office in the same manner and for the same causes as provided by law for county judges.

Sec. 10. The judge of the County Court at Law No. 2 shall appoint an official shorthand reporter for the court who shall be well skilled in his profession, shall be a sworn officer of the court, and shall hold office at the pleasure of the judge. The duties of the reporter shall be the same as provided by general law for reporters of the district courts, and the salary of the reporter shall be set by the judge as provided by general law for reporters of district courts and paid monthly by the commissioners court out of any funds available for the purpose. The clerk of the court shall tax as costs in each case, civil, criminal, and probate where a record or any part thereof is made of the evidence in said case by the reporter, a stenographer's fee of $3. The fee shall be paid as other costs in the case and paid by the clerk, when collected, into the general fund of the county.

Sec. 11. (a) The judge of the County Court at Law No. 2 of Hidalgo County may receive an annual salary, the amount of which shall be fixed by the Commissioners Court of Hidalgo County. The salary shall be paid in the same manner and from the same fund as prescribed by law for payment of the salary of the County Judge of Hidalgo County.

(b) The judge of the County Court at Law No. 2 shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury and which may not be paid to the judge.

Sec. 12. The official interpreter of the district courts of Hidalgo County shall serve as official inter-

preter of the County Court at Law No. 2 of Hidalgo County, but if the official interpreter is not available when needed for service in the County Court at Law No. 2, the judge of that court is authorized to appoint an interpreter who shall serve only temporarily and who shall be paid not to exceed $5 per day out of the general fund of the county on certificate of the judge. On concurrence of the county commissioners court, the judge of the County Court at Law No. 2 may appoint an official interpreter for the court as provided by general law.

Sec. 13. The County Court at Law No. 2 of Hidalgo County, or the judge thereof, shall have the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of the court or of any other court in the county of inferior jurisdiction to the County Court at Law No. 2, and to punish for contempt under such provisions as are or may be provided by general laws governing county courts. The judge shall have all other powers, duties, immunities, and privileges as are or may be provided by general law for judges of courts of record and for judges of county courts at law, and he shall be a magistrate and a conservator of the peace.

Sec. 14. The county clerk of Hidalgo County shall be the clerk of the County Court at Law No. 2 of Hidalgo County, and as clerk of the court, he shall have the same powers, duties, privileges, and immunities as provided by law for county clerks. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 2 of Hidalgo County, Texas."

Sec. 15. The sheriff of Hidalgo County shall in person or by deputy attend the County Court at Law No. 2 when required by the judge.

Sec. 16. The jurisdiction and authority now vested by law in the County Court at Hidalgo County and the judge thereof for the drawing, selection, and service of jurors and talesmen shall also be exercised by the County Court at Law No. 2 and the judge thereof; but jurors and talesmen summoned for either of the county courts at law or the county court may by order of the judge of the court in which they are summoned be transferred to either of the other courts for service therein and may be used therein as if summoned for the court to which they may thus be transferred. Upon concurrence of the judges of the county courts at law and the county judge, jurors may be summoned for service in all of those courts and shall be used interchangeably in all of those courts.

Jurors regularly impaneled for the week by the district court or courts may on request of either the county judge or the judge of either of the county courts at law be made available by the district judge or judges in such numbers as may be requested for service for the week in either or all of the county courts at law or the county court, and such jurors shall serve in the county court and county court at law the same as if they had been drawn and selected as is otherwise provided by law.

[Acts 1977, 65th Leg., p. 259, ch. 123, eff. May 10, 1977.]

Art. 1970-341b. County Court at Law No. 3 of Hidalgo County

Creation

Sec. 1. The County Court at Law No. 3 of Hidalgo County is created. It is a court of record.

Jurisdiction

Sec. 2. (a) The County Court at Law No. 3 of Hidalgo County shall have and exercise jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the general laws of the state the county courts have jurisdiction and shall have jurisdiction concurrent with the County Court at Law of Hidalgo County and the County Court at Law No. 2 of Hidalgo County in matters and cases, civil and criminal, original and appellate. The county court at law does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways or the general administration of county business which is within the jurisdiction of the commissioners court or the presiding judge of the commissioners court.

(b) The County Court at Law No. 3 of Hidalgo County shall also have the general jurisdiction of a probate court within the limits of Hidalgo County, concurrent with jurisdiction of the County Court of Hidalgo County, the County Court at Law of Hidalgo County, and the County Court at Law No. 2 of Hidalgo County in such matters and proceedings. The County Court at Law No. 3 of Hidalgo County shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons, the apprenticing of minors as provided by law, and conduct mental health proceedings.

(c) The County Court at Law No. 3 of Hidalgo County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest, as provided by general law.

(d) The County Court of Hidalgo County shall have and retain concurrently with the County Court at Law of Hidalgo County and the County Courts at Law Nos. 2 and 3 of Hidalgo County the general

jurisdiction of a probate court and of jurisdiction conferred by law over probate matters but shall have no other jurisdiction, criminal or civil, original or appellate. The county judge of Hidalgo County shall be the judge of the County Court of Hidalgo County and all ex officio, executive, ministerial, and administrative duties of the county judge of Hidalgo County shall continue to be exercised by the county judge of Hidalgo County, but he or she shall not act in any proceeding of a judicial nature, except in probate matters.

Writ Power

Sec. 3. The County Court at Law No. 3 of Hidalgo County or the judge thereof shall have the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of the court or of any other court in the county of inferior jurisdiction to the County Court at Law No. 3 and to punish for contempt under such provisions as are provided by general laws governing county courts. The judge shall have all other powers, duties, immunities, and privileges as are provided by general law for judges of courts of record and for judges of county courts at law, and he or she shall be a magistrate and a conservator of the peace.

Terms

Sec. 4. The County Court at Law No. 3 of Hidalgo County shall sit in the county seat of Hidalgo County and shall hold continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins. The practice in the court and appeals and writs of error to and from the court shall be as prescribed by the laws and rules relating to county courts.

Judge

Sec. 5. (a) There shall be elected in Hidalgo County by the qualified voters of the county a judge of the County Court at Law No. 3, who shall be a regularly licensed attorney at law in this state and who shall be a resident citizen of Hidalgo County and who shall have been actively engaged in the practice of law in this state for a period of not less than four years next preceding his or her election and who shall hold the office for four years and until his or her successor is elected and has qualified. As soon as this court is created, the Commissioners Court of Hidalgo County shall appoint a judge to the County Court at Law No. 3 of Hidalgo County, who shall hold the office as judge until the next general election and until his or her successor is elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected a judge of the County Court at Law No. 3 for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office of the judge of the County Court at Law No. 3 of Hidalgo County shall be filled by appointment of the Commissioners Court of Hidalgo County, and when so filled, the judge shall hold the office until the next general election and until his or her successor is elected and has qualified.

(b) The judge of the County Court at Law No. 3 shall execute a bond and take the oath of office as required by law relating to county judges.

(c) The judge of the County Court at Law No. 3 of Hidalgo County may be removed from office in the same manner and for the same causes as provided by law for county judges.

(d) A special judge of the County Court at Law No. 3 of Hidalgo County may be appointed or elected as provided by law relating to county courts and to the judges thereof, who shall be compensated in the same manner as provided for special judges of the county courts.

Compensation

Sec. 6. (a) The judge of the County Court at Law No. 3 of Hidalgo County may receive an annual salary, the amount of which shall be fixed by the Commissioners Court of Hidalgo County. The salary shall be paid in the same manner and from the same fund as prescribed by law for payment of the salary of the county judge of Hidalgo County. The amount paid shall not exceed 90 percent of the amount paid a district court judge having jurisdiction in Hidalgo County.

(b) The judge of the County Court at Law No. 3 shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury and which may not be paid to the judge.

Personnel

Sec. 7. (a) The county clerk of Hidalgo County shall be the clerk of the County Court at Law No. 3 of Hidalgo County and as clerk of the court shall have the same powers, duties, privileges, and immunities as provided by law for county clerks.

(b) The criminal district attorney and sheriff of Hidalgo County shall serve as district attorney and sheriff, respectively, for the county court at law. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(c) The judge of the County Court at Law No. 3 shall appoint an official shorthand reporter for the court who shall have the qualifications provided by law for official court reporters, shall be a sworn officer of the court, and shall hold office at the pleasure of the judge. The duties of the reporter

shall be the same as provided by general law for reporters of the district courts, and the salary of the reporter shall be set by the judge as provided by general law for reporters of district courts and paid monthly by the commissioners court out of any funds available for the purpose. The clerk of the court shall tax as costs in each case, civil, criminal, and probate where a record or any part of a record is made of the evidence in the case by the reporter a stenographer's fee of $3. The fee shall be paid as other costs in the case and paid by the clerk, when collected, into the general fund of the county.

(d) The official interpreter of the district courts of Hidalgo County shall serve as official interpreter of the County Court at Law No. 3 of Hidalgo County, but if the official interpreter is not available when needed for service in the County Court at Law No. 3, the judge of that court is authorized to appoint an interpreter who shall serve only temporarily and who shall be paid not to exceed $5 per day out of the general fund of the county on certificate of the judge. On concurrence of the county commissioners court, the judge of the County Court at Law No. 3 may appoint an official interpreter for the court as provided by general law.

Jurors

Sec. 8. (a) The jurisdiction and authority now vested by law in the County Court at Hidalgo County and the judge thereof for the drawing, selection, and service of jurors shall also be exercised by the County Court at Law No. 3 and the judge thereof. Jurors summoned for any of the county courts at law or the county court may by order of the judge of the court in which they are summoned be transferred to any of the other courts for service and may be used as if summoned for the court to which they may be transferred. Upon concurrence of the judges of the county courts at law and the county judge, jurors may be summoned for service in all of those courts and shall be used interchangeably in all of those courts.

(b) Jurors regularly impaneled for the week by the district court or courts may, on request of either the county judge or the judge of any of the county courts at law, be made available by the district judge or judges in such numbers as may be requested for service for the week in either or all of the county courts at law or the county court, and such jurors shall serve in the county court and county court at law the same as if they had been drawn and selected as is otherwise provided by law.

Transfer of Cases; Exchange of Benches

Sec. 9. (a) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. In cases transferred to any of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(b) The county judge and the judges of the county courts at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him or her without the necessity of transferring the case involved. Any judge may hear all or any part of a case pending in the county court or a county court at law, but only in matters within his or her jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. However, the judge of any court may not sit or act in a case unless it is within the jurisdiction of his or her court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision providing for the exchange of benches by and between the judge of the county court and the judges of the county courts at law is cumulative of and in addition to the provisions in this Act for the selection and appointment of a special judge of the county court at law.

Seal

Sec. 10. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 3 of Hidalgo County, Texas."

Date Created

Sec. 11. The County Court at Law No. 3 of Hidalgo County is created on January 1, 1980, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier.

[Acts 1979, 66th Leg., p. 736, ch. 328, eff. Aug. 27, 1979.]

GALVESTON COUNTY

Art. 1970-342. Probate and County Court of Galveston County

[See Compact Edition, Volume 3 for text of 1 and 1a]

Sec. 1b. (a) The name of the Probate Court of Galveston County is changed to the "Probate and County Court of Galveston County," and the seal of

the court shall contain the words "Probate and County Court of Galveston County."

(b) In addition to all other jurisdiction granted by law to the Probate and County Court of Galveston County, the court has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $10,000, exclusive of interest.

(c) The judge of the Probate and County Court of Galveston County shall appoint an official shorthand reporter for the Probate and County Court, who shall be well-skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and all other applicable provisions of the law relating to "official court reporters" shall apply to the official shorthand reporter herein authorized to be appointed. The official shorthand reporter shall be entitled to the same compensation, to be paid in the same manner, as provided for the official shorthand reporters of the district courts of Galveston County. The court reporter shall be required primarily to report cases in the Probate and County Court of Galveston County but may be made available, when not engaged in a jury trial in that court, to report jury trials in the County Court of Galveston County and to the district attorney for examining trials in justice courts.

Text of subsection as added by Acts 1979, 66th Leg., p. 783, ch. 345, § 5

(d) In addition to all other jurisdiction granted by law to the probate and county court, the court has concurrent jurisdiction with the district courts and the County Courts Nos. 1 and 2 of Galveston County in juvenile matters and proceedings, and notwithstanding any other provision of the law relating to the designation of juvenile courts, each of these courts may serve as a juvenile court. All juvenile matters and proceedings shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall act as clerk in all juvenile proceedings, shall maintain all records, and upon order of the judge of the 306th District Court shall transfer juvenile matters and proceedings to the docket of the court designated therein.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

Text of subsection as added by Acts 1979, 66th Leg., p. 1641, ch. 686, § 10

(d) In addition to all other jurisdiction granted by law to the probate and county court, the court has concurrent jurisdiction with the district courts and the County Courts Nos. 1 and 2 of Galveston County in juvenile matters and proceedings, and notwithstanding any other provision of the law relating to the designation of juvenile courts, each of these courts may serve as a juvenile court. All juvenile matters and proceedings shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall act as clerk in all juvenile proceedings, shall maintain all records, and shall transfer juvenile matters and proceedings to the other courts so that the County Courts Nos. 1 and 2, the Probate and County Court, and the 306th District Court will rotate trying all juvenile cases and holding detention hearings and other associated matters during a three-month period of each year, beginning with the County Court No. 1 during the first quarter of each year, the County Court No. 2 during the second quarter, the Probate and County Court during the third quarter, and the 306th District Court during the fourth quarter, except that the judge of the 306th District Court upon his own order may retain jurisdiction of or transfer to one of the other courts, that is, County Courts Nos. 1 and 2 and the Probate and County Court, any such case as the judge of the 306th District Court may determine serves the needs of justice.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

[See Compact Edition, Volume 3 for text of 2 to 8]

Sec. 9. The Commissioners Court of Galveston County shall fix the yearly salary of the Judge of the Probate Court of Galveston County at a sum not less than 90 percent of the total salary, including supplements, paid any District Judge sitting in Galveston County. The salary shall be paid out of the general fund of the County in equal monthly installments by warrants drawn upon the County Treasury upon orders of the Commissioners Court of Galveston County, Texas.

[See Compact Edition, Volume 3 for text of 10]

[Amended by Acts 1975, 64th Leg., p. 1332, ch. 496, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 277, ch. 133, § 16, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 783, ch. 345, § 5, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1641, ch. 686, § 10, eff. Aug. 27, 1979.]

Art. 1970–342a. County Court No. 1 of Galveston County

[See Compact Edition, Volume 3 for text of 1]

Sec. 2.

[See Compact Edition, Volume 3 for text of 2(a) and 2(b)]

(c) In addition to the other jurisdiction granted in this section, the County Court No. 1 of Galveston County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $10,000, exclusive of interest.

Text of subsection as added by Acts 1979, 66th Leg., p. 783, ch. 345, § 6

(d) In addition to all other jurisdiction granted by law to the County Court No. 1, the court has concur-

rent jurisdiction with the district courts, the probate and county court, and the County Court No. 2 of Galveston County in juvenile matters and proceedings, and notwithstanding any other provision of the law relating to the designation of juvenile courts, each of these courts may serve as a juvenile court. All juvenile matters and proceedings shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall act as clerk in all juvenile proceedings, shall maintain all records, and upon order of the judge of the 306th District Court shall transfer juvenile matters and proceedings to the docket of the court designated therein.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

Text of subsection as added by Acts 1979, 66th Leg., p. 1641, ch. 686, § 12

(d) In addition to all other jurisdiction granted by law to the County Court No. 1, the court has concurrent jurisdiction with the district courts, the probate and county court, and the County Court No. 2 of Galveston County in juvenile matters and proceedings, and notwithstanding any other provision of the law relating to the designation of juvenile courts, each of these courts may serve as a juvenile court. All juvenile matters and proceedings shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall act as clerk in all juvenile proceedings, shall maintain all records, and shall transfer juvenile matters and proceedings to the other courts so that the County Courts Nos. 1 and 2, the Probate and County Court, and the 306th District Court will rotate trying all juvenile cases and holding detention hearings and other associated matters during a three-month period of each year, beginning with the County Court No. 1 during the first quarter of each year, the County Court No. 2 during the second quarter, the Probate and County Court during the third quarter and the 306th District Court during the fourth quarter, except that the judge of the 306th District Court upon his own order may retain jurisdiction of or transfer to one of the other courts, that is, County Courts Nos. 1 and 2 and the Probate and County Court, any such case as the judge of the 306th District Court may determine serves the needs of justice.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

Sec. 3.

[See Compact Edition Volume 3, for text of 3(a)]

(b) Probate matters, mental illness cases, and alcoholic hearings shall continue to be filed and docketed in the County Court of Galveston County and the County Court No. 2 of Galveston County in the same manner as they have been heretofore filed and docketed. Condemnation cases may be filed and docketed in the County Court of Galveston County, the Probate and County Court of Galveston County, County Court No. 1 of Galveston County, or County Court No. 2 of Galveston County.

[See Compact Edition, Volume 3 for text of 4 to 6]

Sec. 7. The judge of the County Court No. 1 of Galveston County shall appoint an official shorthand reporter for the County Court No. 1, who shall be well-skilled in his profession and shall be a sworn officer of the court, and shall hold his office at the pleasure of the court. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and all other applicable provisions of the law relating to "official court reporters" shall apply to the official shorthand reporter herein authorized to be appointed. Such official shorthand reporter shall be entitled to the same compensation, to be paid in the same manner, as provided for the official shorthand reporters of the district courts of Galveston County, Texas. Said court reporter shall be required primarily to report cases in the County Court No. 1 of Galveston County, but may be made available, when not engaged in a jury trial in said court, to report jury trials in the Probate and County Court of Galveston County.

[See Compact Edition, Volume 3 for text of 8 to 10]

Sec. 11.

[See Compact Edition, Volume 3 for text of 11(a)]

(b) The Commissioners Court of Galveston County shall fix the yearly salary of the Judge of the County Court No. 1 of Galveston County at a sum not less than 90 percent of the total salary, including supplements, paid any District Judge in and for Galveston County. The salary shall be paid to each Judge in equal monthly installments out of the General Fund of Galveston County, Texas, by warrants drawn upon the County Treasury upon orders of the Commissioners Court of Galveston County, Texas.

Sec. 12. A special judge may be appointed or elected for the County Court No. 1 of Galveston County in the same manner as may now or hereafter be provided by the General Laws of this state relating to the appointment and election of special judges. Every such special judge thus appointed or elected for said court shall receive for the services he may actually perform the same amount of pay which the regular judge of said court would be entitled to receive for such services.

[See Compact Edition, Volume 3 for text of 13 and 14]

[Amended by Acts 1975, 64th Leg., p. 1332, ch. 496, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 278, ch. 133, §§ 17, 18, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 783, ch. 345, § 6, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1641, ch. 686, §§ 11, 12, eff. Aug. 27, 1979.]

Art. 1970–342b. County Court No. 2 of Galveston County

Sec. 1. There is created on the effective date of this Act a court to be held in Galveston County to be known as the "County Court No. 2 of Galveston County."

Sec. 2. (a) The County Court No. 2 of Galveston County shall have the same jurisdiction over criminal matters that is now or may be vested in county courts having jurisdiction in criminal actions, matters, and proceedings under the constitution and laws of Texas and shall have appellate jurisdiction in all appeals in criminal cases from justice courts and municipal courts within Galveston County. The judge of the court shall have the same powers, rights, and privileges as to criminal matters as are now or may be vested in the judges of county courts having criminal jurisdiction.

(b) The County Court No. 2 of Galveston County shall have the same jurisdiction and powers in civil actions, matters, and proceedings that are now or may be conferred by law upon and vested in the County Court of Galveston County, the County Court No. 1, the Probate and County Court of Galveston County, and the judges thereof. The jurisdiction of the County Court of Galveston County, the Probate and County Court, and the County Courts Nos. 1 and 2 of Galveston County over all such actions, matters, and proceedings, civil and criminal, within Galveston County shall be concurrent.

(c) In addition to the other jurisdiction granted in this section, the County Court No. 2 of Galveston County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $10,000, exclusive of interest.

Text of subsection as added by Acts 1979, 66th Leg., p. 783, ch. 345, § 7

(d) In addition to all other jurisdiction granted by law to the County Court No. 2, the court has concurrent jurisdiction with the district courts, the probate and county court, and the County Court No. 1 of Galveston County in juvenile matters and proceedings, and notwithstanding any other provision of the law relating to the designation of juvenile courts, each of these courts may serve as a juvenile court. All juvenile matters and proceedings shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall act as clerk in all juvenile proceedings, shall maintain all records, and upon order of the judge of the 306th District Court shall transfer juvenile matters and proceedings to the docket of the court designated therein.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

Text of subsection as added by Acts 1979, 66th Leg., p. 1643, ch. 686, § 14

(d) In addition to all other jurisdiction granted by law to the County Court No. 2, the court has concurrent jurisdiction with the district courts, the probate and county court, and the County Court No. 1 of Galveston County in juvenile matters and proceedings, notwithstanding any other provision of the law relating to the designation of juvenile courts, each of these courts may serve as a juvenile court. All juvenile matters and proceedings shall be filed originally with the district clerk on the docket of the 306th District Court. The district clerk shall act as clerk in all juvenile proceedings, shall maintain all records, and shall transfer juvenile matters and proceedings to the other courts so that the County Courts Nos. 1 and 2, the Probate and County Court, and the 306th District Court will rotate trying all juvenile cases and holding detention hearings and other associated matters during a three-month period of each year, beginning with the County Court No. 1 during the first quarter of each year, the County Court No. 2 during the second quarter, the Probate and County Court during the third quarter, and the 306th District Court during the fourth quarter, except that the judge of the 306th District Court upon his own order may retain jurisdiction of or transfer to one of the other courts, that is, County Courts Nos. 1 and 2 and the Probate and County Court, any such case as the judge of the 306th District Court may determine serves the needs of justice.

Whenever possible, the court which presides over the initial hearing shall maintain exclusive jurisdiction over the case until final disposition.

Sec. 3. (a) Criminal cases shall be filed and docketed sequentially in the County Court No. 1 of Galveston County and the County Court No. 2 of Galveston County. Civil cases shall be filed and docketed sequentially in the County Court No. 1, the County Court No. 2, and the Probate and County Court of Galveston County. Upon the effective date of this Act, the civil cases now filed and docketed in County Court No. 1 shall be refiled in an equal and proportionate manner among the County Court No. 1, the County Court No. 2, and the Probate and County Court of Galveston County. The criminal cases now filed and docketed in County Court No. 1 shall be refiled in an equal and proportionate manner between County Court No. 1 and County Court No. 2.

(b) Probate matters, mental illness cases, and alcoholism hearings, shall continue to be filed and docketed in the County Court of Galveston County and the Probate and County Court of Galveston County in the same manner as they have been heretofore filed and docketed, except as may otherwise be agreed upon by consent of all judges of the county courts of Galveston County and the county probate court. Condemnation cases may be filed and docketed in the County Court of Galveston

County, the Probate and County Court of Galveston County, County Court No. 1 of Galveston County, or County Court No. 2 of Galveston County.

Sec. 4. The clerk of the County Court No. 2 of Galveston County shall keep a separate docket for the court in the same manner as now or may be provided by law for the keeping of dockets for the County Court of Galveston County and the County Court No. 1 and the Probate and County Court of Galveston County. He shall tax the official court reporter's fee as costs in civil actions in the County Court No. 2 of Galveston County in like manner as the fee is taxed in civil cases in the district courts of this state. The judge of the County Court of Galveston County and the judges of the Probate and County Court and the County Courts Nos. 1 and 2 of Galveston County may, with the consent of the judge of the court to which transfer is to be made, transfer civil or criminal actions, matters, and proceedings from his respective court to any one of the other courts by entry of an order to that effect upon the docket of his court. The judge of the court to which any such action, matter, or proceeding, civil or criminal, shall have been transferred shall have jurisdiction to hear and determine the matter or matters and render and enter the necessary and proper orders, decrees, and judgments therein, and in the same manner and with the same force and effect as if the case, action, matter, or proceeding had been originally filed in the court to which transferred. However, no cause, action, matter, case, or proceeding shall be transferred without the consent of the judge of the court to which it is transferred.

Sec. 5. The judge of the County Court No. 2 of Galveston County, together with the judges of the County Court of Galveston County, the County Court No. 1, and the Probate and County Court of Galveston County, may at any time exchange benches and may at any time sit and act for and with each other in any civil or criminal case, matter, or proceeding now or hereafter pending in their courts, and all such acts thus performed by any of the judges shall be valid and binding on all parties to such cases, matters, and proceedings.

Sec. 6. The practice in the County Court No. 2 of Galveston County shall be the same as prescribed by law relating to county courts and county courts at law. Appeals and writs of error may be taken from judgments and orders of the County Court No. 2 of Galveston County, and from judgments and orders of the judge thereof, in civil and criminal cases and in the same manner as now is or may hereafter be prescribed by law relating to such appeals and writs of error. Appeals may also be taken from interlocutory orders of the County Court No. 2 of Galveston County appointing a receiver or from orders overruling a motion to vacate or appointing a receiver. The procedure and manner in which the appeals from interlocutory orders are taken shall be governed by the laws relating to appeals from similar orders of the district courts throughout this state.

Sec. 7. The judge of the County Court No. 2 of Galveston County shall appoint an official shorthand reporter for the County Court No. 2, who shall be well skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All of the provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and all other applicable provisions of the law relating to "official court reporters" shall apply to the official shorthand reporter herein authorized to be appointed. The official shorthand reporter shall be entitled to the same compensation, to be paid in the same manner, as provided for the official shorthand reporters of the district courts of Galveston County. The official shorthand reporter shall be required primarily to report cases in the County Court No. 2 of Galveston County but may be made available, when not engaged in a jury trial in that court, to report jury trials in the Probate and County Court of Galveston County.

Sec. 8. The county clerk of Galveston County shall be the clerk of the County Court No. 2 of Galveston County. The court shall have a seal consisting of a star of five points with the words "County Court No. 2 of Galveston County" engraved thereon. The sheriff of Galveston County shall appoint a deputy to attend the court when required by the judge.

Sec. 9. The criminal district attorney of Galveston County shall represent the state in all prosecutions in the County Court No. 2 of Galveston County as provided by law for prosecutions in county courts and shall be entitled to the same fees as in other cases.

Sec. 10. There shall be elected a judge of the County Court No. 2 of Galveston County, who shall have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, who shall be well versed in the laws of the state and who shall have resided in and been actively engaged in the practice of law in Galveston County for a period of not less than four years prior to his election. When this Act becomes effective, the commissioners court shall appoint a judge of the County Court No. 2 of Galveston County, who shall have the qualifications prescribed in this section and who shall serve until the next general election and until his successor shall have been duly elected and have qualified. Beginning at the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of the county a judge of the County Court No. 2 for a regular term of four years as provided by the Texas Constitution. A vacancy thereafter occurring in the office of the judge of the County Court at Law No. 2 of Galveston County shall be filled by the Commissioners Court of Galveston County, and the appointee shall hold office until the next succeeding general election and until his successor shall be duly elected and have qualified.

Sec. 11. (a) The judge of the County Court No. 2 of Galveston County shall take the oath of office prescribed by the constitution, but no bond shall be required of him.

(b) The Commissioners Court of Galveston County may fix the yearly salary of the judge of the County Court No. 2 of Galveston County at the same salary paid all judges of other county courts and the Probate and County Court of Galveston County. The salary shall be paid to each judge in equal monthly installments out of the General Fund of Galveston County by warrants drawn on the county treasury on orders of the Commissioners Court of Galveston County.

Sec. 12. A special judge may be appointed or elected for the County Court No. 2 of Galveston County in the same manner as may now or hereafter be provided by the general laws of this state relating to the appointment and election of special judges. Every special judge appointed or elected for the court shall receive for the services he may actually perform the same amount of pay which the regular judge of the court would be entitled to receive for such services.

Sec. 13. The County Court No. 2 of Galveston County, or the judge thereof, shall have power to grant all writs necessary to the enforcement of the jurisdiction of the court and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court in Galveston County of inferior jurisdiction to the County Court No. 2 of Galveston County.

Sec. 14. The County Court No. 2 of Galveston County shall hold six terms of court commencing on the first Monday in January, March, May, July, September, and November of each year, and each term shall continue until the business of the court is disposed of. No term of the court shall extend beyond the date fixed for the commencement of the succeeding term, except pursuant to an order entered on the minutes during the term to be extended.

Sec. 15. The judge of the County Court No. 2 shall be a member of the Juvenile Board of Galveston County and shall have the same jurisdiction over juvenile proceedings as the judges of the County Court No. 1, the Probate and County Court, and the Court of Domestic Relations for Galveston County, with juvenile proceedings filed sequentially in the County Court No. 1, the Probate and County Court, the County Court No. 2, and the Court of Domestic Relations.

[Acts 1977, 65th Leg., p. 274, ch. 133, §§ 1 to 15, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 783, ch. 345, § 7, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1642, ch. 686, §§ 13, 14, eff. Aug. 27, 1979.]

Sections 16 to 18 of the 1977 Act amended arts. 1970-342 and 1970-342a; § 19 thereof provided:

"The provisions of this Act take effect on September 1, 1977."

TAYLOR COUNTY

Art. 1970-343. County Court at Law of Taylor County

[See Compact Edition, Volume 3, for text of 1 and 2]

Sec. 3. The County Court of Taylor County shall retain, as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors as provided by law; and the said Court and the Judge thereof shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said Court, and also to punish contempts under such provisions as are or may be provided by law governing County Courts throughout the State; but said County Court of Taylor County shall have no other jurisdiction, civil or criminal. The County Judge of Taylor County shall be the Judge of the County Court of Taylor County. All ex-officio duties of the County Judge shall be exercised by the said Judge of the County Court of Taylor County, except in so far as the same shall by this Act be committed to the Judge of the County Court at Law of Taylor County.

[See Compact Edition Volume 3, for text of 4 and 5]

Sec. 5a. When the Judge of the County Court at Law is ill, disqualified, or otherwise absent, a County Judge of Taylor County with the qualifications required of the Judge of the County Court at Law of Taylor County may, at the request of the Judge of the County Court at Law, sit and hold court in the County Court at Law. When the Judge of the County Court is ill, disqualified, or otherwise absent, the Judge of the County Court at Law may, at the request of the County Judge, sit in the County Court to hear and determine any probate matter pending in the County Court. If either of the Judges is incapable of requesting the services of the other Judge, either the Judge of the County Court or of the County Court at Law may hold court for the other Judge without the Judge's request. The provisions of this section are cumulative of and in addition to the provisions provided in this Act for the election and appointment of a Special Judge of the County Court at Law.

[See Compact Edition Volume 3, for text of 6]

Sec. 7. A Special Judge of the County Court at Law of Taylor County may be appointed or elected when and under such circumstances as are provided

by law relating to County Courts and to the Judges thereof, who shall receive a reasonable fee as determined by the Commissioners Court for each day he so actually serves, to be paid out of the General Fund of the county by the Commissioners Court.

[See Compact Edition, Volume 3 for text of 8 to 12]

[Amended by Acts 1979, 66th Leg., p. 196, ch. 106, § 1, eff. Aug. 27, 1979.]

TARRANT COUNTY

Art. 1970–345. Probate Court No. 1 of Tarrant County

[See Compact Edition, Volume 3 for text of 1]

Sec. 1a. The name of the Probate Court of Tarrant County is changed to the "Probate Court No. 1 of Tarrant County," and the seal of the court shall contain the words "Probate Court No. 1 of Tarrant County." Wherever the name "Probate Court of Tarrant County" appears in the statutes, it shall mean "Probate Court No. 1 of Tarrant County."

[See Compact Edition, Volume 3 for text of 2 to 16]

[Amended by Acts 1981, 67th Leg., p. 2101, ch. 485, § 14, eff. Sept. 1, 1981.]

Art. 1970–345a. Probate Court No. 2 of Tarrant County

Creation

Sec. 1. The Probate Court No. 2 of Tarrant County is created.

Jurisdiction

Sec. 2. (a) The Probate Court No. 2 of Tarrant County has the general jurisdiction of a probate court within the limits of Tarrant County, and its jurisdiction is concurrent with the jurisdiction of the County Court of Tarrant County and the Probate Court of Tarrant County in such matters and proceedings.

(b) The County Court of Tarrant County shall retain the powers and jurisdiction of that court existing on the effective date of this Act. The county judge of Tarrant County shall be the judge of the County Court of Tarrant County, and all ex officio duties of the county judge of Tarrant County shall be exercised by the county judge of Tarrant County.

Writ Power

Sec. 3. The Probate Court No. 2 of Tarrant County shall have power to issue writs of injunction, mandamus, execution, attachment, and all writs and process necessary to the exercise and enforcement of the jurisdiction of the court, and also the power to punish for contempt under the provisions provided by the general laws governing county courts throughout the state.

Terms

Sec. 4. There shall be two terms of the Probate Court No. 2 of Tarrant County in each year. The first term shall be known as the January-June term and shall begin on the first Monday in January and shall continue until and including Sunday next before the first Monday in July. The second term shall be known as the July-December term and shall begin on the first Monday in July and shall continue until and including Sunday next before the first Monday in the following January. The initial term of the court shall begin on the first Monday after the effective date of this Act.

Judge

Sec. 5. (a) The judge of the Probate Court No. 2 of Tarrant County shall be well informed in the laws of the state and shall have been a duly licensed and practicing member of the bar of this state for not less than five consecutive years prior to his election or appointment.

(b) When the court is created, a judge of the court shall be appointed by the Commissioners Court of Tarrant County, who shall hold office from the date of his appointment until the next general election and until his successor is elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of the county, for a term of four years and until his successor is elected and has qualified, a judge of the Probate Court No. 2 of Tarrant County, as provided by Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) After the initial appointment, a vacancy in the office of the judge of the Probate Court No. 2 of Tarrant County may be filled by the Commissioners Court of Tarrant County by the appointment of a judge who shall serve until the next general election and until his successor is elected and has qualified.

(d) The judge of the Probate Court No. 2 of Tarrant County shall execute a bond and take the oath of office as required by the laws relating to the county judges.

(e) In case of the absence, disqualification, or incapacity of the judge of the Probate Court No. 2 of Tarrant County, a special judge of the Probate Court No. 2 of Tarrant County may be appointed or elected, as provided by the general laws relating to the county courts and to the judges thereof.

(f) The judge of the Probate Court No. 2 of Tarrant County shall collect the fees that are established by law relating to county judges as to matters within the jurisdiction of the court, all of which shall be paid by him into the county treasury as collected. The judge shall receive an annual salary to be fixed by order of the Commissioners Court of Tarrant County in an amount equal to the annual salary of the judge of the Probate Court of Tarrant County and payable out of the county treasury by the commissioners court.

Personnel

Sec. 6. (a) The county clerk of Tarrant County shall be the clerk of the Probate Court No. 2 of Tarrant County. The sheriff of Tarrant County shall, in person or by deputy, attend the court when required by the judge.

(b) The Commissioners Court of Tarrant County shall provide a secretary and a chief clerk for the judge of the Probate Court No. 2 of Tarrant County, at salaries to be fixed by the commissioners court, which salaries shall be paid monthly out of the county treasury by the commissioners court from any funds available for this purpose. The judge of the Probate Court No. 2 of Tarrant County is authorized to employ, supervise, and terminate each of the employees. The Commissioners Court of Tarrant County may also provide such other and additional clerical assistance as may be required to properly carry on the business of the court at salaries to be fixed by the commissioners court.

Transfer of Cases and Judges

Sec. 7. (a) The judge of the county court and each of the judges of the Probate Court of Tarrant County and the Probate Court No. 2 of Tarrant County may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. In cases transferred to any of those courts by order of the judge of another court, all processes, writs, bonds, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All processes issued or returned before transfer of the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(b) The county judge and the judges of the Probate Court of Tarrant County and the Probate Court No. 2 of Tarrant County may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, another may hold court for him without the necessity of transferring the case involved. Any of the judges may hear all or any part of a case pending in the county court, the Probate Court of Tarrant County, or the Probate Court No. 2 of Tarrant County, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions provided for the selection and appointment of a special judge of the probate courts.

Practice and Procedure

Sec. 8. (a) The practice and procedure in the Probate Court No. 2 of Tarrant County shall be the same as that provided by law generally for the county courts of this state. All statutes and laws of the state, as well as all rules of court relating to proceedings in the county courts of this state, or to the review thereof or appeals therefrom, shall, as to all matters within the jurisdiction of the court, apply equally thereto.

(b) The laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the Probate Court No. 2 of Tarrant County.

(c) All new probate matters and proceedings filed on or after the effective date of this Act with the county clerk of Tarrant County, irrespective of the court or judge to which the matter or proceeding is addressed, shall be filed by the clerk alternately in the county court, the Probate Court of Tarrant County, and the Probate Court No. 2 of Tarrant County in the order in which the same are deposited with him for filing. No proceeding had in any of those courts, nor any order entered therein, shall be invalid because of any failure of the clerk to file new matters and proceedings alternately.

Seal

Sec. 9. The seal of the court shall be the same as that provided by law for county courts, except that the seal shall contain the words "Probate Court No. 2 of Tarrant County."

[Acts 1981, 67th Leg., p. 2096, ch. 485, §§ 1 to 9, eff. Sept. 1, 1981.]

ECTOR COUNTY

Art. 1970–346. County Court at Law of Ector County

[See Compact Edition, Volume 3 for text of 1 and 2]

Sec. 2a. The County Court at Law of Ector County shall have jurisdiction concurrent with that of the district court in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest.

[See Compact Edition, Volume 3 for text of 3 to 24]

[Amended by Acts 1981, 67th Leg., p. 2428, ch. 620, § 1, eff. June 15, 1981.]

SMITH COUNTY

Art. 1970–348a. County Court at Law No. 2 of Smith County

Sec. 1. There is created a court to be held in Tyler, Smith County, Texas, which shall be known as the County Court at Law No. 2 of Smith County.

Sec. 2. The County Court at Law No. 2 of Smith County shall have jurisdiction in all matters, causes, and proceedings, civil, criminal, and probate, original and appellate, over which by the general laws of this state county courts have jurisdiction, and jurisdiction of the County Court at Law No. 2 is concurrent with that of the County Court of Smith County and the County Court at Law of Smith County. This provision does not affect the jurisdiction of the Commissioners Court or the County Judge of Smith County as the presiding officer of the commissioners court. The County Judge of Smith County shall be the judge of the County Court of Smith County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Smith County, except insofar as the same shall, by this Act, be committed to the judge of the county court at law.

Sec. 3. The County Court at Law No. 2 of Smith County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $5,000, exclusive of interest, as provided by general law.

Sec. 4. The terms of the County Court at Law No. 2 of Smith County shall be the same as the terms of the County Court of Smith County and may be changed in accordance with the laws governing the change in the terms of the County Court of Smith County.

Sec. 5. (a) The judge of the County Court at Law No. 2 of Smith County shall have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, shall be well-informed in the laws of the state, and shall have resided in and been actively engaged in the practice of law in Smith County, Texas, for a period of not less than two years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Smith County shall appoint a judge to the County Court at Law No. 2 of Smith County, and shall provide suitable quarters for the holding of the court. The judge appointed serves until the general election in 1976, and until his successor is duly elected and has qualified. At the general election in 1976, there shall be elected a judge of the County Court at Law No. 2 for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, the judge of the County Court at Law No. 2 shall be elected for a regular four year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy occurring in the office of the judge of the County Court at Law No. 2 shall be filled by the Commissioners Court of Smith County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

Sec. 6. The judge of the County Court at Law No. 2 of Smith County may be removed from office in the same manner and for the same causes as any county judge may be removed under the laws of this state.

Sec. 7. The judge of the County Court at Law No. 2 of Smith County shall execute a bond and take the oath of office as required by law relating to county judges.

Sec. 8. A special judge of the County Court at Law No. 2 of Smith County may be appointed or elected as provided by law relating to county courts and to the judge thereof. He shall receive for each day he actually serves the same compensation as provided for a special judge of the County Court at Law of Smith County, to be paid out of the general fund of the county by the commissioners court.

Sec. 9. In the case of the disqualification of the judge of the County Court at Law No. 2 of Smith County to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge to try the case or cases where the judge of the County Court at Law No. 2 of Smith County is disqualified. In case of the selection of a special judge by agreement of the parties or their attorneys, the special judge shall draw the same compensation as that provided for a special judge in the County Court at Law of Smith County.

Sec. 10. The County Court at Law No. 2 of Smith County, or the judge thereof, shall have the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said court or of any other court in the county of inferior jurisdiction to the county court at law. The County Court at Law No. 2, or the judge thereof, shall also have the power to punish for contempt as prescribed by law for county courts.

Sec. 11. (a) The judge of the County Court at Law No. 2 may sit in the absence from the courtroom of the County Judge of Smith County in all matters, causes, and proceedings without the necessity of transferring those matters, causes, and proceedings, except matters coming under the jurisdiction of the commissioners court where the county judge would be the presiding officer of that court.

(b) The county judge, if a duly licensed attorney, may sit in the absence from the courtroom of the judge of the County Court at Law No. 2 in all matters and causes without the necessity of transferring those matters and causes. The judges of the county courts at law may freely exchange benches and courtrooms with each other without the necessity of transferring the case involved.

(c) Except in cases where the writ of certiorari has been granted, the judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(d) In cases transferred to either of the courts by order of the judge of one of the other courts, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before the transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 12. The Criminal District Attorney of Smith County shall represent the state in all prosecutions in the County Court at Law No. 2 of Smith County, as provided by law for such prosecutions in county courts, and shall be entitled to the same fees as now prescribed by law for such prosecutions in the county courts.

Sec. 13. The County Clerk of Smith County shall be the clerk of the County Court at Law No. 2 of Smith County, and the seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 2 of Smith County."

Sec. 14. The Sheriff of Smith County shall in person or by deputy attend the County Court at Law No. 2 of Smith County when required by the judge thereof.

Sec. 15. The jurisdiction and authority now vested by law in the County Court of Smith County, and the judge thereof, for the drawing, selection and service of jurors and talesmen shall also be exercised by the County Court at Law No. 2 of Smith County and the judge thereof. Jurors and talesmen summoned for either of the county courts at law or the county court may by order of the judge of the court in which they are summoned be transferred to the other courts for service and may be used as if summoned for the court to which they may be thus transferred. On concurrence of the judges of the county courts at law and the judge of the County Court of Smith County, jurors may be summoned for service in all of those courts and shall be used interchangeably in all such courts. All summons for petit jurors for all civil and criminal cases under existing laws at the time this Act takes effect, shall be as valid as if no change had been made and the persons constituting such jury panels shall be required to appear and serve at the ensuing term of the courts as fixed by this Act, and their acts as jurors shall be as valid as if they had been selected as jurors in the court for which they were originally drawn.

Sec. 16. The laws of the State of Texas, the rules of procedure, and the rules of evidence shall be applicable to and control trials and proceedings in the County Court at Law No. 2 of Smith County, and shall be applicable to and govern the proceedings in and appeals to and appeals from the County Court at Law No. 2 of Smith County.

Sec. 17. The judge of the County Court at Law No. 2 of Smith County shall receive an annual salary equal to the annual salary of the judge of the County Court at Law of Smith County as set by the commissioners court, to be paid out of the county treasury on the order of the commissioners court. The salary shall be paid monthly in equal installments. The judge of the County Court at Law No. 2 of Smith County shall assess the same fees as are now prescribed or may be established by law, relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, no part of which shall be paid to the judge, but he shall draw the salary as above specified in this section.

Sec. 18. The judge of the County Court at Law No. 2 of Smith County may appoint an official shorthand reporter for the court who shall be well-skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. The reporter shall take the oath required of official court reporters and shall receive a salary as set by the Commissioners Court of Smith County to be paid out of the county treasury of Smith County, as other county officials are paid, in equal monthly installments. All other provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended and as the same may hereafter be amended, and all other provisions of the law relating to official court reporters shall be and are hereby made to apply in all provisions in so far as they are applicable to the official shorthand reporter authorized to be appointed and in so far as they are not inconsistent with this Act.

Sec. 19. The judge of the County Court at Law No. 2 of Smith County, with the consent of the commissioners court, may employ a secretary. The secretary is entitled to a salary as determined by the commissioners court.

[Acts 1975, 64th Leg., p. 2031, ch. 672, eff. Sept. 1, 1975.]

BELL COUNTY

Art. 1970–350. County Court at Law No. 1 of Bell County

[See Compact Edition, Volume 3 for text of 1]

Change of Name

Sec. 1A. The name of the County Court at Law of Bell County is changed to County Court at Law

No. 1 of Bell County, and all laws heretofore or hereafter enacted by the Legislature applicable or relating to the County Court at Law of Bell County shall hereafter be applicable and shall relate to the County Court at Law No. 1 of Bell County.

[See Compact Edition, Volume 3 for text of 2 to 6]

[Amended by Acts 1975, 64th Leg., p. 79, ch. 37, § 7, eff. April 3, 1975.]

Art. 1970–350a. County Court at Law No. 2 of Bell County

Sec. 1. (a) On the effective date of this Act, the County Court at Law No. 2 of Bell County is created.

(b) The County Court at Law No. 2 has the same jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts, and its jurisdiction is concurrent with that of the County Court of Bell County and the County Court at Law of Bell County.

(c) The County Court at Law No. 2 of Bell County, or its judge, may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court; and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court, or of any other court of inferior jurisdiction in the county. The court and judge also have the power to punish for contempt as prescribed by law for county courts.

(d) The County Judge of Bell County is the Judge of the County Court of Bell County. All ex officio duties of the county judge shall be exercised by the Judge of the County Court of Bell County unless by this Act committed to the Judge of the County Court at Law No. 2.

Sec. 2. The Commissioners Court of Bell County, by order duly entered of record, shall prescribe not less than four terms each year for the County Court at Law No. 2 of Bell County.

Sec. 3. (a) As soon as practicable after this Act becomes effective, the Commissioners Court of Bell County shall appoint a judge to the County Court at Law No. 2 of Bell County. The judge appointed serves until January 1, 1977, and until his successor has qualified. At the general election in 1976, a successor shall be elected to serve until January 1, 1979. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Bell County a judge of the County Court at Law No. 2 of Bell County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(b) The Judge of the County Court at Law No. 2 of Bell County must have been a duly licensed and practicing member of the State Bar of Texas for not less than three years, be well informed in the laws of this state, and must have resided and been actively engaged in the practice of law in Bell County for a period of not less than two years prior to his election or appointment. During his term of office the Judge may not appear and plead as an attorney at law in any court of record in this state.

(c) If any vacancy occurs in the office of the Judge of the County Court at Law No. 2, the commissioners court shall appoint the Judge of the County Court at Law No. 2, who must have the same qualifications prescribed in Subsection (b) of this section, and the appointee holds office until January 1st of the year following the next general election and until his successor has been duly elected and qualified.

(d) The Judge of the County Court at Law No. 2 shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(e) The Judge of the County Court at Law No. 2 shall receive a salary in an amount determined by the commissioners court not to exceed the salary prescribed by the commissioners court for the County Judge of Bell County. Such salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The Judge of the County Court at Law No. 2 shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury, and which may not be paid to the judge.

(f) A special judge of the County Court at Law No. 2 may be appointed in the manner provided by law for the appointment of a special county judge. A special judge must have the same qualifications, and is entitled to the same rate of compensation, as the regular judge.

(g) The Judge of the County Court at Law No. 2 shall be a member of the Juvenile Board of Bell County, and for this additional work as a member of the juvenile board he shall be allowed compensation in like manner as other members of said juvenile board, such compensation to be determined and fixed by order of the commissioners court and to be paid in addition to any other compensation to which he is entitled under the provisions of law.

Sec. 4. (a) The County Attorney, County Clerk, and Sheriff of Bell County, Texas, shall serve as County Attorney, Clerk, and Sheriff, respectively, of the County Court at Law No. 2 of Bell County. Those serving shall perform the duties, and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices in Bell County.

(b) The Judge of the County Court at Law No. 2 may appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Bell County.

Sec. 5. (a) Practice in the County Court at Law No. 2 of Bell County shall conform to that prescribed by law for the County Court of Bell County.

(b) The Judge of each of the County Courts at Law or the County Court of Bell County may, in his discretion, either in term-time or in vacation, on motion of any party or on agreement of the parties, or on his own motion, transfer any cause, civil or criminal, on his docket to the docket of either of those courts, and the judges of those courts may, in their discretion, exchange benches from time to time. Whenever a judge of one of those courts is disqualified, he shall transfer the case from his court to one of the other courts, and either judge may, in his own courtroom, try and determine any case or proceeding pending in either of the county courts at law or the county court, without having the case transferred, or may sit in the other court and there hear and determine any case there pending, and each judgment and order shall be entered in the minutes of the court in which the case is pending. The judges may try different cases in the same court at the same time and each may occupy his own courtroom or the room of any county court at law or the county court. In case of absence, sickness, or disqualification of the judge of either of the county courts at law or the county court, either of the other judges may hold court for him. Either of the judges may hear any part of any case or proceeding pending in either of the county courts at law or the county court and determine the same or may hear and determine any question in any case, and either judge may complete the hearing and render judgment in the case. In cases transferred to one of the county courts at law or the county court by order of the judge of one of the other courts, all process, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in the cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law and by this Act. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken in the cases, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) Jurors regularly impaneled for the week by the District Courts of Bell County, Texas, may at the request of either the Judge of the County Court, the County Court at Law, or the County Court at Law No. 2 be made available by the district judges in the numbers requested and shall serve for the week in either the County Court, the County Court at Law, or the County Court at Law No. 2.

[Acts 1975, 64th Leg., p. 79, ch. 37, §§ 1 to 5, eff. April 3, 1975. Amended by Acts 1975, 64th Leg., p. 670, ch. 283, § 1, eff. May 20, 1975.]

DENTON COUNTY

Art. 1970–352a. County Court at Law No. 2 of Denton County

Creation and Jurisdiction

Sec. 1. (a) The County Court at Law No. 2 of Denton County is created on the date determined under Section 10 of this Act.

(b) The County Court at Law No. 2 has the same jurisdiction over all causes and proceedings, civil and criminal, original and appellate, as prescribed by law for county courts and has jurisdiction concurrent with the County Court of Denton County and the County Court at Law of Denton County in matters and cases, civil and criminal, original and appellate. However, it does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways which are within the jurisdiction of the commissioners court of Denton County.

(c) The County Court at Law No. 2 of Denton County has jurisdiction in civil cases where the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest.

(d) The County Court at Law No. 2 of Denton County has the general jurisdiction of a probate court within the limits of Denton County, concurrent with the jurisdiction of the County Court of Denton County and the County Court at Law of Denton County in such matters and proceedings.

(e) The County Court of Denton County shall have and retain, concurrently with the County Court at Law of Denton County and the County Court at Law No. 2 of Denton County, the general jurisdiction of a probate court and jurisdiction over all causes and proceedings, civil and criminal, original and appellate, that are prescribed by the constitution and general law for county courts. The county judge of Denton County shall be the judge of the County Court of Denton County. All ex officio, executive, ministerial, and administrative duties of the county judge of Denton County shall continue to be exercised by the county judge of Denton County.

Terms and Practice

Sec. 2. The County Court at Law No. 2 of Denton County shall sit in the county seat of Denton County and shall hold continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins. The practice in the court and appeals and writs of error to and from the court shall be as prescribed by the laws and rules relating to the county courts.

Judge

Sec. 3. (a) There shall be elected, by the qualified voters of Denton County, a judge of the County Court at Law No. 2, who shall be a regularly licensed attorney at law in this state, shall be a resident citizen of Denton County, and shall have been actively engaged in the practice of law in this state for a period of not less than two years next preceding his or her election and shall hold office for four years and until a successor is elected and has qualified. As soon as this court is created, the commissioners court of Denton County shall appoint a judge to the County Court at Law No. 2 of Denton County, who shall hold the office as judge until the next general election and until a successor is elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected a judge of the County Court at Law No. 2 for the regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office of judge of County Court at Law No. 2 of Denton County shall be filled by the appointment of the commissioners court of Denton County and when so filled, the judge shall hold office until the next general election and until a successor is elected and has qualified.

(b) The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office as required by law relating to county judges.

(c) A special judge of any county court at law in Denton County may be appointed or elected as provided by law relating to the county courts and to the judges thereof, who shall be compensated in the same manner as provided for special judges of the county courts.

(d) The judge of the County Court at Law No. 2 of Denton County may be removed from office in the same manner and for the same causes as provided by law for the county judges.

Compensation and Fees

Sec. 4. (a) The judge of the County Court at Law No. 2 of Denton County may receive an annual salary not to exceed 90 percent of the total annual salary paid to judges of the district courts having jurisdiction in Denton County, the amount of which shall be fixed by the commissioners court of Denton County. The salary shall be paid in the same manner and from the same funds as prescribed by law for payment of the salary of the county judge and judge of the County Court at Law of Denton County.

(b) The judge of the County Court at Law No. 2 shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury and which may not be paid to the judge.

Writ Power

Sec. 5. The County Court at Law No. 2 of Denton County, or the judge thereof, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary to the enforcement of jurisdiction of the court, to issue writs of habeas corpus in cases where the offense charged is in the jurisdiction of the court or any other court in the county of inferior jurisdiction to the County Court at Law No. 2, and to punish for contempt under the provisions that are provided by the general laws governing county courts. The judge has all powers, duties, immunities, and privileges that are provided by general law for judges of courts of record and for judges of county courts at law. The judge shall be a magistrate and conservator of the peace.

Court Officials

Sec. 6. (a) The county clerk of Denton County shall be the clerk of the County Court at Law No. 2 of Denton County, and as clerk of the court, he or she shall have the same powers, duties, privileges, and immunities as are provided by law for county clerks.

(b) The county attorney or the criminal district attorney, if there is no county attorney, and the sheriff of Denton County shall serve as county attorney, or criminal district attorney, and sheriff, respectively, of the County Court at Law No. 2 of Denton County. They shall perform the duties and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices.

(c) The judge of the County Court at Law No. 2 shall appoint an official shorthand reporter for the court, who shall have the qualifications provided by law for official court reporters, shall be a sworn officer of the court, and shall hold office at the pleasure of the judge. The duties of the reporter shall be the same as provided by general law for reporters of the district courts, and the salary of the reporter shall be set by the commissioners court and paid monthly by the commissioners court out of any funds available for the purpose.

Jurors

Sec. 7. (a) The jurisdiction and authority vested by law in the county courts, and the judges thereof, for the drawing, selection, and service of jurors shall also be exercised by the County Court at Law No. 2 and the judge thereof. Jurors summoned for either of the county courts at law or the county court may, by order of the judge of the court in which they are summoned, be transferred to either of the other courts for service and may be used as if summoned for the court to which they are thus transferred. Upon the concurrence of the judges of the county courts at law and the county judge, jurors may be summoned for service in all of those courts and shall be used interchangeably in all of those courts.

(b) Jurors regularly impaneled for the week by the district court or courts may on request of either the county judge or the judge of either of the county courts at law be made available by the district judge or judges in such numbers as may be requested for service for the week in either or all of the county courts at law or the county court, and such jurors shall serve in the county court and the county courts at law the same as if they had been drawn and selected as is otherwise provided by law.

Courtroom and Seal

Sec. 8. (a) The commissioners court shall provide suitable quarters for the County Court at Law No. 2.

(b) The seal of the court shall be the same as provided by law for county courts, except that the seal shall contain the words "County Court at Law No. 2 of Denton County, Texas."

Transfer of Cases and Exchange of Benches

Sec. 9. (a) When the County Court at Law No. 2 is created, a sufficient number of matters pending before the County Court of Denton County and the County Court at Law of Denton County shall be transferred to the County Court at Law No. 2 to equalize the dockets.

(b) The judges of the county court and the county courts at law may transfer cases to and from the dockets of the respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) On the transfer pending matters to the County Court at Law No. 2, as provided by Subsection (a) of this section, and in cases transferred to any of the courts by order of the judge of another court, all processes, writs, bonds, recognizances, or any other obligation issued or made in the case shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the term of the court to which the case is transferred as fixed by law. All processes issued or returned before the transfer of the cases, as well as all bonds and recognizances taken before the transfer shall be valid and binding as though originally issued out of the court to which the transfer is made.

(d) The county judge and judges of the county courts at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or is otherwise absent, either of the other judges may hold court for such judge without the necessity of transferring the case involved. Any judge may hear all or any part of a case pending in the county court or in a county court at law, but only in matters within the judge's jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to the judge's own docket. However, the judge of any court may not sit or act in a case unless it is within the jurisdiction of that judge's court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision for the exchange of benches by and between the judge of the county court and the judges of the county courts at law is cumulative of and in addition to the provisions in this Act for the selection and appointment of a special judge of the county court at law.

Date Created

Sec. 10. This Act takes effect and the County Court at Law No. 2 of Denton County is created on January 1, 1982, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier.

[Acts 1979, 66th Leg., p. 927, ch. 425, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 905, ch. 323, §§ 1, 2, eff. Aug. 31, 1981.]

PARKER COUNTY

Art. 1970–353. Parker County; Jurisdiction of County Court

Sec. 1. The County Court of Parker County shall have and exercise the general jurisdiction of a probate court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle the accounts of executors, administrators, and guardians; transact all business pertaining to the estates of deceased persons, minors, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement, and distribution of estates of deceased persons pending in such court; conduct lunacy hearings; apprentice minors as provided by law, and issue all writs necessary for the enforcement of its own jurisdiction; punish for contempt under such provisions as now or may be provided for by general law governing county courts throughout the state; and in addition thereto, the County Court of Parker County and the judge thereof, shall have all original and appellate civil and criminal jurisdiction as normally exercised by county courts under the constitution and general laws of this state. All present and future statutes pertaining to probate matters and eminent domain enacted by the Legislature of the State of Texas shall be operative in Parker County as fully as though this statute had not been enacted.

Sec. 2. All concurrent jurisdiction between the County Court of Parker County and the 43rd District Court previously existing by authority of this article is hereby abolished.

Sec. 3. Jurisdiction over juvenile matters in Parker County shall be as established by the constitution and general laws of this state.

Sec. 4. The District Clerk of Parker County shall file, within 30 days after the effective date of this amendment, with the County Clerk of Parker County, all original papers in cases herein transferred to the County Court of Parker County and all judge's dockets and certified copies of any interlocutory judgment or other order entered in the minutes of the 43rd District Court in a case transferred. The county clerk shall immediately docket all such cases on the docket of the County Court of Parker County in the same manner and place as each stands on the docket of the district court. It shall not be necessary that the county clerk refile any papers heretofore filed by the district clerk, but papers in the case bearing the file mark of the district clerk prior to the time of the transfer shall be held to have been filed in the case as of the date filed without being refiled by the county clerk. The district clerk in cases so transferred shall accompany the papers with a certified bill of costs, and against all costs deposit, the district clerk shall charge accrued fees due the district clerk and the remainder of the deposit, if any, the district clerk shall pay to the county court as a deposit in the particular case for which the deposit was made. Credit shall be given all litigants for all jury fees paid in the district court.

Sec. 5. Repealed by Acts 1977, 65th Leg., p. 677, ch. 257, § 3, eff. May 25 1977.

[Amended by Acts 1977, 65th Leg., p. 676, ch. 257, § 1, eff. May 25, 1977.]

HUNT COUNTY

Art. 1970–354. County Court at Law of Hunt County

[See Compact Edition, Volume 3 for text of 1]

Sec. 2.

[See Compact Edition, Volume 3 for Text of 2(a) and 2(b)]

(c) The County Court at Law of Hunt County has jurisdiction concurrent with the district court in eminent domain cases as provided by general law and in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest.

[See Compact Edition, Volume 3 for text of 2(d) to 3]

Sec. 4. (a) The Judge of the County Court at Law of Hunt County must be a duly licensed and practicing member of the State Bar of Texas who is well informed in the laws of this state and who is a bona fide resident of Hunt County, Texas. The judge holds office for fours years and until his successor has been duly elected and has qualified.

[See Compact Edition, Volume 3 for text of 4(b) and 4(c)]

(d) The Judge of the County Court at Law of Hunt County is entitled to receive a salary to be set by the Commissioners Court in an amount not less than $40,000 per year beginning January 1, 1982, and not less than $42,500 per year beginning January 1, 1983, and to be paid from the same fund and in the same manner as the County Judge of Hunt County. The judge shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury, and which may not be paid to the judge. During his term of office, the Judge of the County Court at Law of Hunt County shall diligently discharge the duties of his office on a full-time basis and shall not engage in the private practice of law.

[See Compact Edition, Volume 3 for text of 4(e) to 8]

[Amended by Acts 1981, 67th Leg., p. 2514, ch. 663, §§ 1, 2, eff. June 15, 1981.]

ANGELINA COUNTY

Art. 1970–355. County Court at Law of Angelina County

Sec. 1.

[See Compact Edition, Volume 3 for text of 1(a)]

(b) The county court at law has the same jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts, and its jurisdiction is concurrent with that of the County Court of Angelina County. The county court at law also has jurisdiction concurrent with the district court in eminent domain cases as provided by general law and in civil cases when the matter in controversy exceeds $500 and does not exceed $10,000, exclusive of interest.

[See Compact Edition, Volume 3 for text of 1(c) to 3]

Sec. 4.

[See Compact Edition, Volume 3 for text of 4(a) to (c)]

(d) The judge of the county court at law shall receive a salary of not less than $14,000 per year. Such salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The judge of the county court at law shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury, and which may not be paid to the judge.

[See Compact Edition, Volume 3 for text of 4(e) to 7]

[Amended by Acts 1977, 65th Leg., p. 1480, ch. 602, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1727, ch. 688, § 14, eff. Aug. 29, 1977.]

VICTORIA COUNTY

Art. 1970–356. County Court at Law of Victoria County

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4.

[See Compact Edition, Volume 3 for text of 4(a) to (c)]

(d) The judge of the County Court at Law of Victoria County shall receive the same salary, to be

paid from the same fund and in the same manner, as the County Judge of Victoria County. The Commissioners Court of Victoria County may provide traveling expenses, office expenses, and administrative and clerical help which it deems necessary.

[See Compact Edition, Volume 3 for text of 4(e)]

Sec. 5.

[See Compact Edition, Volume 1 for text of 5(a)]

(b) The judge of the county court at law may appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to compensation fixed by the Commissioners Court of Victoria County.

[See Compact Edition, Volume 3 for text of 5(c) to 7]

[Amended by Acts 1977, 65th Leg., p. 1757, ch. 705, §§ 1, 2, eff. June 15, 1977.]

Art. 1970–356a. County Court at Law No. 2 of Victoria County.

Creation

Sec. 1. The County Court at Law No. 2 of Victoria County is created.

Jurisdiction

Sec. 2. (a) The County Court at Law No. 2 has the same jurisdiction over all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, prescribed by law for county courts, and its jurisdiction is concurrent with that of the County Court of Victoria County and the County Court at Law of Victoria County. This provision does not affect the jurisdiction of the commissioners court or of the county judge of Victoria County as the presiding officer of the commissioners court as to roads, bridges, and public highways within the jurisdiction of the commissioners court or the county judge as presiding officer.

(b) The County Court at Law No. 2 has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest.

(c) The County Court at Law No. 2, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The county judge of Victoria County is the judge of the County Court of Victoria County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Victoria County unless by this Act committed to the judges of the county courts at law.

Terms

Sec. 3. The terms of the County Court at Law No. 2 are the same as those for the County Court of Victoria County.

Judge

Sec. 4. (a) The judge of the County Court at Law No. 2 must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Victoria County, and actively engaged in the practice of law in Victoria County for a period of not less than two years prior to his appointment or election.

(b) When this court is created, the Commissioners Court of Victoria County shall appoint a judge to the County Court at Law No. 2, who shall serve until the next general election and until his or her successor is elected and has qualified. At the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Victoria County a judge of the County Court at Law No. 2 for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office shall be filled by the Commissioners Court of Victoria County until the next general election. The judge of the County Court at Law No. 2 may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law No. 2 shall receive a salary not to exceed 90 percent of the amount paid a district court judge having jurisdiction in Victoria County. The Commissioners Court of Victoria County may provide traveling expenses, office expenses, and administrative and clerical help which it deems necessary.

(e) A special judge of the County Court at Law No. 2 with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the County Court at Law No. 2 is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

(f) The judge of the County Court at Law No. 2 shall be a member of the juvenile board in Victoria County and shall be entitled to additional compensation for the additional duties hereby imposed, to be fixed by the commissioners court and paid in 12 equal installments out of the general fund or other available fund of the county. Such compensation shall be in addition to all other compensation provided in this Act.

Personnel

Sec. 5. (a) The criminal district attorney, county clerk, and sheriff of Victoria County shall serve as criminal district attorney, clerk, and sheriff, respectively, of the County Court at Law No. 2. They shall perform the duties, and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices.

(b) The judge of the County Court at Law No. 2 may appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be as provided by law. The official court reporter is entitled to compensation fixed by the Commissioners Court of Victoria County.

Practice

Sec. 6. Practice in the County Court at Law No. 2 shall conform to that prescribed by law for the County Court of Victoria County.

Jurors

Sec. 7. (a) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the County Court at Law No. 2.

(b) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or a judge of the county courts at law, be made available and shall serve for the week in either the county court or county courts at law.

Seal

Sec. 8. The seal of the court shall contain the words "County Court at Law No. 2 of Victoria County," but in other respects is identical with the seal of the County Court of Victoria County.

Transfer of Cases

Sec. 9. (a) The judges of the county court and the county courts at law may transfer cases to and from the dockets of their respective courts in order that the business may be equally distributed between them. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) In cases transferred to any of the courts by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred to as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Exchange of Benches

Sec. 10. The county judge and the judges of the county courts at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him or her without the necessity of transferring the case involved. Any of these judges may hear all or any part of a case pending in the county court or a county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his or her court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

Effective Date

Sec. 11. The County Court at Law No. 2 of Victoria County is created on January 1, 1984, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier.

[Acts 1979, 66th Leg., p. 1007, ch. 443, §§ 1 to 11, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 2304, ch. 564, § 1, eff. June 12, 1981.]

BRAZORIA COUNTY

Art. 1970–357. County Courts at Law Nos. 1 and 2 of Brazoria County

Sec. 1.

[See Compact Edition, Volume 3 for text of 1(a)]

(b) The County Court at Law No. 1 of Brazoria County and the County Court at Law No. 2 of Brazoria County have the same jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts, and their jurisdiction is concurrent with that of the County Court of Brazoria County. Each county court at law has jurisdiction concurrent with the district court in eminent domain cases, in civil cases when the matter in controversy exceeds $500 and does not exceed $50,000, exclusive of interest, and in proceedings under Title 3 of The Family Code.[1] Each county court at law has concurrent jurisdiction with the district courts in Brazoria County in suits and causes involving family law matters, including adoptions; birth records; removal of disability of minority or coverture; change of name of persons; divorce and marriage annulment

cases, including the adjustment of property rights, custody and support of minor children involved, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; and independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; and independent actions involving controversies between parent and child and between husband and wife. The provisions in this subsection do not diminish the jurisdiction of the district courts in Brazoria County, and the district courts shall retain and continue to exercise the jurisdiction that is conferred by law on district courts.

[See Compact Edition, Volume 3 for text of 1(c) and 1(d)]

(e) The County Court at Law No. 1 and the County Court at Law No. 2 of Brazoria County shall be primarily responsible for and give preference to cases in which their jurisdiction is concurrent with the county court, eminent domain proceedings and cases, proceedings under Title 3 of The Family Code, and civil cases where the amount in controversy does not exceed $20,000 exclusive of interest.

[1] Family Code, § 51.01 et seq.

[See Compact Edition, Volume 3 for text of 2]

Sec. 3. (a) The Judge of the County Court at Law No. 1 of Brazoria County and the Judge of the County Court at Law No. 2 of Brazoria County shall have the same qualifications as those prescribed by the constitution and laws of this state for district judges.

[See Compact Edition, Volume 3 for text of 3(b) and 3(c)]

(d) The Judge of the County Court at Law No. 1 of Brazoria County and the Judge of the County Court at Law No. 2 of Brazoria County shall execute a bond and take the oath of office prescribed by law for county judges. Either judge may be removed from office in the same manner and for the same causes as a district judge.

(e) The Judge of the County Court at Law No. 1 of Brazoria County and the Judge of the County Court at Law No. 2 of Brazoria County shall each receive compensation prescribed by the Commissioners Court of Brazoria County in an amount not less than an amount that is $1,000 less than the combined annual salary paid to the district judges of Brazoria County from all sources. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The Judge of the County Court at Law No. 1 of Brazoria County and the Judge of the County Court at Law No. 2 of Brazoria County shall assess the fees prescribed by law for county judges and district judges according to the nature of the matter brought before them, which shall be collected by the clerk of the court and paid into the county treasury, and which may not be paid to the judges.

[See Compact Edition, Volume 3 for text of 3(f)]

Sec. 4. (a) The Criminal District Attorney, County Clerk, and Sheriff of Brazoria County, shall serve as Criminal District Attorney, Clerk, and Sheriff, respectively, of the County Court at Law No. 1 of Brazoria County and the County Court at Law No. 2 of Brazoria County, except that the District Clerk of Brazoria County shall serve as clerk of the county courts at law in cases of which the district courts and county courts at law have concurrent jurisdiction and which have been instituted in the district courts. The Commissioners Court of Brazoria County may employ as many additional assistant criminal district attorneys, deputy sheriffs, and deputy clerks as are necessary to serve the courts created by this Act. Those serving shall perform the duties, and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices in Brazoria County.

(b) The Judge of the County Court at Law No. 1 of Brazoria County and the Judge of the County Court at Law No. 2 of Brazoria County may each appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the same compensation as the reporters of the district courts of Brazoria County, to be paid by the County Treasurer out of the general fund of the county.

Sec. 5. (a) Practice in the County Court at Law No. 1 of Brazoria County and the County Court at Law No. 2 of Brazoria County shall conform to that prescribed by law for the County Court of Brazoria County, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county courts at law involving those matters of concurrent jurisdiction with the district courts shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. When a jury trial is requested in a case of concurrent jurisdiction between the district courts and county courts at law, and the case was instituted in district court, the jury shall be composed of 12 members. In all other cases where jury trial is requested in the county courts at law the jury shall be composed of six jurors.

(b) The judges of the County Court of Brazoria County and the County Courts at Law No. 1 and 2 of Brazoria County may transfer cases to and from the dockets of their respective courts so that the business may be equally distributed between them. All cases of concurrent jurisdiction between the district courts and county courts at law except those enumerated in Section 1(e) of this Act shall be instituted in the district courts and may be transferred between the district courts and the county courts at law. Cases of concurrent jurisdiction between the district courts and county courts at law enumerated

in Section 1(e) of this Act may be instituted in either the district courts or the county courts at law. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred; and no case may be transferred to a county court at law unless it is within the jurisdiction of that court.

[See Compact Edition, Volume 3 for text of 5(c) and 6]

Sec. 7. The Judge of the County Court at Law No. 1 of Brazoria County and the Judge of the County Court at Law No. 2 of Brazoria County shall be members of the Juvenile Board of Brazoria County.

[Amended by Acts 1975, 64th Leg., p. 812, ch. 316, §§ 1 and 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1638, ch. 686, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2260, ch. 543, §§ 1 to 4, eff. June 12, 1981.]

HAYS COUNTY

Art. 1970-358. County Court at Law of Hays County

[See Compact Edition Volume 3, for text of 1]

Sec. 2. (a) The county court at law has the same jurisdiction over all causes and proceedings, civil, criminal, original, and appellate, prescribed by the law for county courts, and its jurisdiction is concurrent with that of the County Court of Hays County. The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the amount in controversy exceeds $500 and does not exceed $20,000, exclusive of interest. The county court at law, the County Court of Hays County, and the district court in Hays County have jurisdiction over juvenile matters, and any of those courts may be designated a juvenile court. The county court at law does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways which are within the jurisdiction of the commissioners court or County Court of Hays County.

[See Compact Edition, Volume 3, for text of 2(b) to (d)]

(e) In addition to the jurisdiction conferred on the County Court at Law of Hays County by the other provisions of this Act, the county court at law has concurrent jurisdiction with the district court in Hays County in suits and causes involving family law matters, including adoptions; birth records; removal of disability of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, custody and support of minor children involved, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; and independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; and independent actions involving controversies between parent and child and between husband and wife. The provisions in this subsection do not diminish the jurisdiction of the district court in Hays County, and the district court shall retain and continue to exercise the jurisdiction that is conferred by law on district courts.

[See Compact Edition Volume 3, for text of 3]

Sec. 4. (a) There shall be elected a judge of the County Court at Law of Hays County who must have been a duly licensed and practicing member of the State Bar of Texas for not less than four years, who must be well informed in the laws of this state, and who must have resided and been actively engaged in the practice of law in Hays County for a period of not less than one year prior to the general election. Beginning at the general election in 1974 and every four years thereafter, the qualified voters of the county shall elect a judge who holds office for four years and until his successor has been duly elected and has qualified.

[See Compact Edition Volume 3, for text of 4(b) to (f)]

Sec. 5. (a) The criminal district attorney, county clerk, and sheriff of Hays County shall serve as criminal district attorney, clerk, and sheriff, respectively, of the County Court at Law of Hays County, except that the district clerk shall serve as clerk of the county court at law in cases enumerated in Section 2(e) of this Act and shall establish a separate docket for the county court at law. The Commissioners Court of Hays County may employ as many assistant district attorneys, deputy sheriffs, and bailiffs as are necessary to serve the court created by this Act. Those serving shall perform the duties, and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices in Hays County.

[See Compact Edition Volume 3, for text of 5(b) and (c)]

Sec. 6. (a) Practice in the County Court at Law of Hays County shall conform to that prescribed by law for the County Court of Hays County, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Section 2(e) of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Section 2(e) of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts in order that the business may be equally distributed between them. All cases within the concurrent jurisdiction of the

county court at law and the district court may be instituted in or transferred between the county court at law and the district court in Hays County. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred; and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

[See Compact Edition Volume 3, for text of 6(c)]

(d) In cases transferred to any of the courts by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

[See Compact Edition Volume 3, for text of 7]

[Amended by Acts 1979, 66th Leg., p. 953, ch. 429, §§ 1 to 4, eff. Aug. 27, 1979.]

BRAZOS COUNTY

Art. 1970–359. County Court at Law of Brazos County

Sec. 1. On January 1, 1977, the County Court at Law of Brazos County is created.

Sec. 2. (a) The county court at law has jurisdiction over all causes and proceedings, original and appellate, civil, criminal, juvenile, and probate, prescribed by law for county courts.

(b) The county court at law has the general jurisdiction of a probate court within the limits of Brazos County, and its jurisdiction is concurrent with that of the County Court of Brazos County in probate, administrations, guardianship, and mental illness proceedings. The County Court of Brazos County shall have no other jurisdiction, civil or criminal, original or appellate. This provision does not affect the jurisdiction of the Commissioners Court or the County Judge of Brazos County as the presiding officer of the commissioners court.

(c) The county court at law has jurisdiction concurrent with the district court in eminent domain cases, in juvenile proceedings if designated to serve as juvenile court, and in civil cases when the matter in controversy exceeds $500 and does not exceed $10,000, exclusive of interest.

(d) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(e) The County Judge of Brazos County is the judge of the County Court of Brazos County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Brazos County unless by this Act committed to the judge of the county court at law.

Sec. 3. The terms of the County Court at Law of Brazos County are the same as those for the County Court of Brazos County.

Sec. 4. (a) The judge of the County Court at Law of Brazos County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Brazos County, and actively engaged in the practice of law in Brazos County for a period of not less than two years prior to his appointment or election.

(b) At the general election in 1976, there shall be elected by the qualified voters of Brazos County a judge of the court created by this Act for a two-year term beginning on January 1, 1977. Every four years thereafter, this officer shall be elected by the qualified voters of Brazos County for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Brazos County, and the appointee holds office until January 1st of the year following the next general election and until his successor has been duly elected and has qualified. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law of Brazos County shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law of Brazos County shall receive a salary to be determined by the Commissioners Court of Brazos County in an amount not less than the salary of the county judge of Brazos County and to be paid from the same fund and in the same manner as other county officials. He shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The commissioners court shall provide adequate courtroom and office space for the judge of the County Court at Law of Brazos County.

(e) A special judge of the county court at law with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The county attorney, county clerk, and sheriff in Brazos County shall serve as county attorney, clerk, and sheriff, respectively, of the County Court at Law of Brazos County. They shall perform the duties, and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the county court at law may appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Brazos County.

(c) The seal of the court shall contain the words "County Court at Law of Brazos County," but in other respects is identical with the seal of the County Court of Brazos County.

Sec. 6. (a) Practice in the County Court at Law of Brazos County shall conform to that prescribed by law for county courts.

(b) After the effective date of this Act, all cases of concurrent jurisdiction provided for in this Act may be instituted in or transferred between the courts having concurrent jurisdiction.

(c) The Judge of the County Court at Law of Brazos County or the Judge of the County Court of Brazos County may, in his discretion, either in term-time or in vacation, on motion of any party or on agreement of the parties, or on his own motion, transfer any probate matter on his docket to the docket of the other court. The judges of the courts may, in their discretion, in any probate matter exchange benches from time to time. Whenever a judge in one of the courts is disqualified in a probate matter, he shall transfer the matter from his court to the other court. Either judge may, in his own courtroom, try and determine any probate matter pending in either court, without having the case transferred, or may sit in the other court and there hear and determine any probate matter there pending. Each judgment and order shall be entered in the minutes of the court in which the matter is pending. The judges may try different probate matters in the same court at the same time and each may occupy his own courtroom or the courtroom of the other. In case of absence, sickness, or disqualification of either judge, the other judge may hold court for him in any probate matter. Either of the judges may hear any part of or question in any probate matter pending in either of the courts and determine the matter or question. Either judge may complete the hearing and render judgment in the case. In any matter transferred by order of the judge of one of the courts, all process, writs, bonds, recognizances, or other obligations issued or made in the matter shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in the matter shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the matter is transferred to as are fixed by law and by this Act. All processes issued or returned before transfer of the matter as well as all bonds and recognizances before taken shall be valid and binding as though originally issued out of the court to which the transfer may be made.

Sec. 7. (a) The laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(b) Jurors regularly impaneled for a week by the district court may, on request of the judge of the county court at law, be made available and shall serve for the week in the county court at law. [Acts 1975, 64th Leg., p. 110, ch. 50, §§ 1 to 7, eff. Jan. 1, 1977.]

Section 8 of the 1975 Act amended Acts 1959, 56th Leg., p. 4, ch. 2 (art. 1970–310 note) and § 9 thereof provided: "With the exception of Section 4, Subsections (a) and (b), this Act becomes effective on January 1, 1977."

WEBB COUNTY

Art. 1970–360. County Court at Law of Webb County

Sec. 1. The County Court at Law of Webb County is created. It shall sit in Laredo.

Sec. 2. The County Court at Law of Webb County has the same jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by law for county courts. However, it does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the Commissioners Court of Webb County. The county court at law also has concurrent jurisdiction with the County Court of Webb County in all matters of probate, and shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and habitual drunkards, and shall grant letters testamentary and of administration, settle accounts of administrators, executors, and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of the estates of deceased persons, and apprentice minors as provided by law.

Sec. 3. (a) The County Court at Law of Webb County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases

when the matter in controversy exceeds $500 and does not exceed $10,000, exclusive of interest.

(b) In addition to the jurisdiction conferred on the County Court at Law of Webb County by the other provisions of this Act, the county court at law has concurrent civil jurisdiction with the district courts of Webb County in suits, causes, and matters involving adoptions, removal of disability of minority and coverture, wife and child desertion, delinquent, neglected, or dependent child proceedings, Uniform Reciprocal Enforcement of Support Act, and all jurisdiction, powers, and authority now or hereafter placed in the district or county courts under the juvenile and child welfare laws of this state; and of all divorce, marriage, and annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, alimony pending final hearing, and any and every other matter incident to divorce or annulment proceedings as well as independent actions involving child custody or support of minors, change of name of persons, and all other cases involving justiciable controversies and differences between spouses, or between parents, or between them, or one of them, and their minor children, or between any of these and third persons; corporations, trustees, or other legal entities, which are now or may hereafter be within the jurisdiction of the district or county courts; all cases in which children are alleged or charged to be dependent and neglected children or delinquent children as provided by law, and the county court at law and its judge have power to issue writs of habeas corpus, mandamus, injunction, and all writs necessary to enforce its jurisdiction. The provisions in this subsection do not diminish the jurisdiction of the several district courts in Webb County, and the district courts shall retain and continue to exercise such jurisdiction as is now or may be hereafter conferred by law, and the jurisdiction given in this subsection is concurrent with the jurisdiction of the district courts.

Sec. 4. The County Court of Webb County shall have and retain concurrently with the court created by this Act the general jurisdiction of a probate court. The county court shall have no other jurisdiction, civil or criminal, original or appellate. All ex officio duties of the county judge shall be exercised and retained by the judge of the County Court of Webb County, except as provided by this Act or otherwise provided by law.

Sec. 5. The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, except that such judge of the county court at law shall in no way have any authority over the administrative business of Webb County which is now performed by the County Judge of Webb County.

Sec. 6. The County Court at Law of Webb County shall hold six terms of court each year, commencing on the first Monday in January, March, May, July, September, and November of each year and each term shall continue until the business of the court has been disposed of. However, no term of the court shall continue beyond the date fixed for the commencement of its new term, except on an order entered on its minutes during the term extending the term for any particular cause therein specified.

Sec. 7. (a) The judge of the county court at law shall have been a bona fide resident of Webb County for two years prior to his appointment or election and shall be a qualified voter in Webb County. He shall be a licensed attorney in this state who has been actively engaged in the practice of law for a period of five years prior to this appointment or election.

(b) The judge of the county court at law shall not engage in the private practice of law after his appointment or election.

(c) When this Act becomes effective, the Commissioners Court of Webb County shall appoint a judge to the County Court at Law of Webb County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until the general election in 1976 and until his successor has been duly elected and has qualified. At the general election in 1976, there shall be elected a judge of the county court at law for a term ending on December 31, 1978. At the general election in 1978 and every fourth year thereafter there shall be elected by the qualified voters of Webb County a judge of the County Court at Law of Webb County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(d) A vacancy occurring in the office of the judge of county court at law shall be filled by the Commissioners Court of Webb County, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(e) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(f) The judge of the county court at law shall receive a salary to be set by the commissioners court in an amount not less than $20,000 per annum and

not more than the salary of the county judge of Webb County, which shall be paid out of the county treasury by order of the commissioners court and shall be paid monthly in equal installments. The judge of the county court at law shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the County Court at Law of Webb County shall assess the same fees as are now prescribed or may be established by law, relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge, but he shall draw the salary as specified in this section.

(g) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 8. (a) The District Attorney of the 49th Judicial District and the Sheriff of Webb County shall serve as district attorney and sheriff, respectively, of the County Court at Law of Webb County, except that the County Attorney of Webb County shall handle and prosecute all juvenile, child welfare, and mental health cases and the other civil cases where the State of Texas is a party. The District Clerk of Webb County shall serve as clerk of the county court at law in the cases enumerated in Section 3 of this Act, and the County Clerk of Webb County shall serve as clerk of the county court at law in cases enumerated in Section 2 of this Act. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Webb County.

Sec. 9. (a) As soon as practicable following the effective date of this Act, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the County Court of Webb County and shall transfer those matters to the docket of the court created by this Act, and the district clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the district courts of Webb County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize the dockets. Equalization of case load shall be the primary objective in establishing the initial case docket for the county court at law.

(b) On the transfer of all cases specified in Subsection (a) of this section to the county court at law, and in cases transferred to any of the courts in Webb County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated or included in Section 3 of this Act may be instituted in or transferred between the district courts of Webb County and the County Court at Law of Webb County. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(d) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within his jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision providing for the exchange of benches by and between the judge of the county court and the judge of the county court at law is cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Sec. 10. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (b), Section 3 of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Subsection (b), Section 3 of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Sec. 11. The Commissioners Court of Webb County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Sec. 12. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Webb County."

[Acts 1975, 64th Leg., p. 152, ch. 65, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 389, ch. 180, § 2, eff. May 15, 1979; Acts 1981, 67th Leg., p. 549, ch. 230, § 1, eff. May 28, 1981.]

NACOGDOCHES COUNTY

Art. 1970–361. County Court at Law of Nacogdoches County

Sec. 1. On the effective date of this Act, the County Court at Law of Nacogdoches County is created.

Sec. 2. (a) The county court at law has jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts. The County Court of Nacogdoches County shall have no jurisdiction over the matters of which jurisdiction is given to the county court at law by this Act. This provision does not affect the jurisdiction of the Commissioners Court or the County Judge of Nacogdoches County as the presiding officer of the Commissioners Court.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $5,000, exclusive of interest.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The County Judge of Nacogdoches County is the judge of the County Court of Nacogdoches County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Nacogdoches County unless by this Act committed to the judge of the county court at law.

Sec. 3. The terms of the County Court at Law of Nacogdoches County shall begin on the first Mondays in January, April, July, and October in each year, and each term of the court shall continue in session until the convening of the next succeeding term.

Sec. 4. (a) The judge of the County Court at Law of Nacogdoches County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Nacogdoches County for two years prior to his appointment or election and actively engaged in the practice of law in the State of Texas for a period of not less than five years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Nacogdoches County shall appoint a judge to the County Court at Law of Nacogdoches County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Nacogdoches County a judge of the County Court at Law of Nacogdoches County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Nacogdoches County, and the appointee holds office until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law of Nacogdoches County shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law of Nacogdoches County shall receive an annual salary to be fixed by the Commissioners Court of Nacogdoches County at an amount not less than $15,000 or more than 80 percent of the total annual salary paid to the judge of the 145th Judicial District of Texas. This sum shall be paid in equal monthly installments out of the county treasury of Nacogdoches County on orders from the commissioners court. Additionally, he shall be entitled to reasonable traveling expenses and necessary office expenses, including administrative and clerical help. The judge of the County Court at Law of Nacogdoches County shall charge the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury. During his term of office, the judge of the County Court at Law of Nacogdoches County shall diligently discharge the duties of his office on a full-time basis and shall not engage in the private practice of law.

(e) A special judge of the county court at law with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the county court at law is disqualified to try or recuses himself from trying a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The County Attorney, County Clerk, and Sheriff of Nacogdoches County shall serve as county attorney, clerk, and sheriff, respectively, of the County Court at Law of Nacogdoches County. They shall perform the duties and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the County Court at Law of Nacogdoches County may appoint an official shorthand reporter for the court who shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All provisions of the general laws of Texas relating to the appointment of a reporter for the district court shall apply, so far as applicable, to the official shorthand reporter authorized to be appointed by the judge of the County Court at Law of Nacogdoches County. The reporter shall be entitled to the same fees and shall perform the same duties as provided in the general laws and in addition shall receive a salary, not to exceed the compensation paid to the official shorthand reporter of the district court of Nacogdoches County, to be determined by the judge of the county court at law and paid out of the county treasury on order of the commissioners court.

(c) The seal of the court shall contain the words "County Court at Law of Nacogdoches County," but in other respects is identical with the seal of the County Court of Nacogdoches County.

Sec. 6. (a) Practice in the County Court at Law of Nacogdoches County shall conform to that prescribed by general law for county courts.

(b) All cases and matters, civil, criminal, and probate, original and appellate, pending before the County Court of Nacogdoches County on the effective date of this Act are transferred to the County Court at Law of Nacogdoches County. All processes, writs, bonds, recognizances, and other obligations issued or made in the cases transferred shall be returned to and filed in the county court at law. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the county court at law as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the county court at law.

Sec. 7. The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

[Acts 1975, 64th Leg., p. 248, ch. 99, eff. April 30, 1975.]

COLLIN COUNTY

Art. 1970-362. County Court at Law of Collin County

Sec. 1. The County Court at Law of Collin County is created.

Sec. 2. (a) The county court at law has jurisdiction over all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, prescribed by law for county courts.

(b) The county court at law has the general jurisdiction of a probate court within the limits of Collin County, and its jurisdiction is concurrent with that of the County Court of Collin County in probate, administrations, guardianship, and mental-illness proceedings. The County Court of Collin County has the general jurisdiction of a probate court but does not have jurisdiction over matters of eminent domain or other original civil or criminal jurisdiction or appellate civil or criminal jurisdiction. All future statutes pertaining to probate matters enacted by the legislature shall be operative in Collin County as fully as though this statute had not been enacted. The County Judge of Collin County is the judge of the County Court of Collin County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Collin County unless by this Act committed to the judge of the county court at law.

(c) The county court at law has jurisdiction concurrent with the district court in eminent-domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest.

(d) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

Sec. 3. The terms of the county court at law shall commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Sec. 4. (a) The judge of the County Court at Law of Collin County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Collin County and actively engaged in the practice of law in Collin County for a period of not less than two years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Collin County shall appoint a judge to the County Court at Law of Collin County. The judge appointed serves until the general election in 1976 and until his successor is duly elected and has qualified. At the general election in 1976, there shall be elected a judge of the county court at law for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, the judge of the county court at law shall be elected for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy occurring in the office of the judge of the county court at law shall be filled by the Commissioners Court of Collin County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

(c) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(d) The judge of the County Court at Law of Collin County shall receive an annual salary to be fixed by the Commissioners Court of Collin County at an amount not less than $18,000 nor more than 80 percent of the total annual salary paid to the judge of a district court having jurisdiction in Collin County. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The judge of the county court at law shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury and which may not be paid to the judge.

(e) The judge of the County Court at Law of Collin County is a member of the Juvenile Board of Collin County.

(f) A special judge of the county court at law may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. A special judge must have the same qualifications, and is entitled to the same rate of compensation, as the regular judge.

(g) During his term of office, the judge of the county court at law shall diligently discharge the duties of his office on a full-time basis and shall not engage in the private practice of law.

Sec. 5. (a) The Criminal District Attorney, County Clerk, and Sheriff of Collin County shall serve as criminal district attorney, clerk, and sheriff, respectively, of the County Court at Law of Collin County. They shall perform the duties and are entitled to the compensation, fees, and allowance prescribed by law for their respective offices.

(b) The judge of the county court at law may appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Collin County.

(c) The seal of the court shall contain the words "County Court at Law of Collin County," but in other respects is identical with the seal of the County Court of Collin County.

Sec. 6. (a) Practice in the County Court at Law of Collin County shall conform to that prescribed by general law for county courts.

(b) The laws which govern the drawing, selection, service, and pay of jurors for the county courts apply to the county court at law.

Sec. 7. All cases and matters within the jurisdiction of the County Court at Law of Collin County pending before the 199th District Court on the effective date of this Act are transferred to the County Court at Law of Collin County. All processes, writs, bonds, recognizances, and other obligations issued or made in the cases transferred shall be returned to and filed in the county court at law. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the county court at law as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the county court at law. If, in a civil or criminal case within the jurisdiction of the County Court at Law of Collin County on appeal from the 199th District

Court, the court of civil appeals, the supreme court, or the court of criminal appeals enters judgment remanding the case for a new trial or for further proceedings, the case shall be remanded to the County Court at Law of Collin County, and all jurisdiction in respect to that particular case shall thereafter vest in the county court at law. The county clerk and district clerk shall promptly take all necessary steps to effect the transfer of a certified bill of cost and any unused cost deposit or jury fee, all original papers, and certified copies of interlocutory judgments or orders in the cases transferred and shall docket the cases on the docket of the county court at law in the same manner and place as each stands on the docket of the 199th District Court. This Act does not affect final judgments heretofore rendered by the 199th District Court pertaining to matters and causes transferred to the county court at law by this Act, and the district court retains jurisdiction to enforce those final judgments.

[Acts 1975, 64th Leg., p. 375, ch. 166, §§ 1 to 7, eff. Jan. 1, 1976. Amended by Acts 1981, 67th Leg., p. 1004, ch. 382, § 1, eff. Aug. 31, 1981.]

Section 8 of the 1975 Act amended §§ 1 to 3 of art. 5139HHH; § 9 repealed subsecs. (b) to (e) of art. 199a, § 3.028; and § 10 provided: "The effective date of this Act is January 1, 1976."

Art. 1970–362a. County Court at Law No. 2 of Collin County

Creation

Sec. 1. The County Court at Law No. 2 of Collin County is created.

Jurisdiction: Writ Power

Sec. 2. (a) The county court at law created by this Act has jurisdiction over all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, prescribed by law for county courts, and its jurisdiction is concurrent with the jurisdiction of the County Court at Law of Collin County.

(b) The county court at law created by this Act has the general jurisdiction of a probate court within the limits of Collin County, and its jurisdiction is concurrent with that of the County Court of Collin County and the County Court at Law of Collin County in probate, administrations, guardianship, and mental-illness proceedings. The County Court of Collin County has the general jurisdiction of a probate court but does not have jurisdiction over matters of eminent domain or other original civil or criminal jurisdiction or appellate civil or criminal jurisdiction. All future statutes pertaining to probate matters enacted by the legislature shall be operative in Collin County as fully as though this statute had not been enacted. The County Judge of Collin County is the judge of the County Court of Collin County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Collin County unless by this Act committed to the judges of the county courts at law.

(c) The county court at law created by this Act has jurisdiction concurrent with the district court in eminent-domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest.

(d) The county court at law created by this Act, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law created by this Act has all other powers, duties, immunities, and privileges provided by law for county court judges.

Terms

Sec. 3. The terms of the court created by this Act shall commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Judge

Sec. 4. (a) The judge of the County Court at Law No. 2 of Collin County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Collin County and actively engaged in the practice of law in Collin County for a period of not less than two years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Collin County shall appoint a judge to the County Court at Law No. 2 of Collin County. The judge appointed serves until the general election in 1980 and until his successor is duly elected and has qualified. At the general election in 1980, there shall be elected a judge of the court created by this Act for a term ending on December 31, 1982. At the general election in 1982 and every four years thereafter, the judge of the county court at law shall be elected for a regular four-year term as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy occurring in the office of the judge of the court created by this Act shall be filled by the Commissioners Court of Collin County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

(c) The judge of the court created by this Act shall execute a bond and take the oath of office prescribed by law for county judges. The judge may be removed from office in the same manner and for the same causes as a county judge.

(d) The judge of the County Court at Law No. 2 of Collin County shall receive an annual salary to be fixed by the Commissioners Court of Collin County

at an amount not more than 90 percent of the total annual salary paid to the judges of the district courts having jurisdiction in Collin County. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The judge of the court created by this Act shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury and which may not be paid to the judge.

(e) The judge of the County Court at Law No. 2 of Collin County is a member of the Juvenile Board of Collin County.

(f) A special judge of the court created by this Act may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. A special judge must have the same qualifications, and is entitled to the same rate of compensation, as the regular judge.

(g) During his or her term of office, the judge of the court created by this Act shall diligently discharge the duties of the office on a full-time basis and not engage in the private practice of law.

Personnel; Seal

Sec. 5. (a) The criminal district attorney, county clerk, and sheriff of Collin County shall serve as criminal district attorney, clerk, and sheriff, respectively, of the County Court at Law No. 2 of Collin County. They shall perform the duties and are entitled to the compensation, fees, and allowance prescribed by law for their respective offices.

(b) The judge of the court created by this Act shall appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Collin County.

(c) The seal of the court shall contain the words "County Court at Law No. 2 of Collin County," but in other respects is identical with the seal of the County Court of Collin County.

Practice; Jurors

Sec. 6. (a) Practice in the County Court at Law No. 2 of Collin County shall conform to that prescribed by general law for county courts.

(b) The laws which govern the drawing, selection, service, and pay of jurors for the county courts apply to the court created by this Act.

Transfer of Cases

Sec. 7. (a) The judges of the County Court at Law of Collin County and the County Court at Law No. 2 of Collin County may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) In cases transferred to either of the county courts at law by order of the judge of the other court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

Exchange of Benches

Sec. 8. The judges of the County Court at Law of Collin County and the County Court at Law No. 2 of Collin County may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him or her without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the County Court at Law of Collin County or the County Court at Law No. 2 of Collin County, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his or her court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions provided in this Act for the selection and appointment of a special judge of the court created by this Act. [Acts 1979, 66th Leg., p. 836, ch. 375, §§ 1 to 8, eff. Jan. 1, 1981.]

MONTGOMERY COUNTY

Art. 1970–363. County Court at Law No. 1 of Montgomery County

Sec. 1. On the effective date of this Act, the County Court at Law No. 1 of Montgomery County is created.

Sec. 2. (a) The county court at law has the same jurisdiction over all causes and proceedings, criminal, juvenile, and probate, original and appellate, prescribed by law for the County Court of Montgomery County, and its jurisdiction is concurrent with that of the County Court of Montgomery County.

(b) The county court at law shall have and exercise original concurrent jurisdiction with the justice

courts in all criminal matters which by the general laws of this state are conferred on justice courts. This Act does not deprive the justice courts of the jurisdiction now conferred on him by law, but grants concurrent original jurisdiction to the County Court at Law No. 1 of Montgomery County over the matters specified in this Act. This Act does not deny the right of appeal to the County Court at Law No. 1 of Montgomery County from the justice court where the right of appeal to the county court now exists by law.

(c) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $5,000 and does not exceed $20,000, including interest.

Sec. 3. (a) The county court at law or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(b) The County Judge of Montgomery County is the judge of the County Court of Montgomery County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Montgomery County unless by this Act committed to the judge of the county court at law.

(c) The judge of the County Court at Law No. 1 of Montgomery County is a member of the Montgomery County Juvenile Board.

Sec. 4. The terms of the County Court at Law No. 1 of Montgomery County are the same as those for the County Court of Montgomery County.

Sec. 5. (a) The judge of the County Court at Law No. 1 of Montgomery County must be a duly licensed and practicing member of the State Bar of Texas for not less than five years who has resided in and been actively engaged in the practice of law in Montgomery County for a period of not less than two years prior to his appointment or election, and shall be well informed in the laws of the state.

(b) When this Act becomes effective, the Commissioners Court of Montgomery County shall appoint a judge to the County Court at Law No. 1 of Montgomery County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. At the next general election after the effective date of this Act, a judge shall be elected to serve until January 1, 1979. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Montgomery County a judge of the County Court at Law No. 1 of Montgomery County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Montgomery County, and the appointee holds office until January 1 of the year following the next general election and until his successor has been duly elected and has qualified.

(c) During his term of office, the judge shall not engage in the private practice of law while serving as the county court at law judge.

(d) The judge of the County Court at Law No. 1 of Montgomery County shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(e) The judge of the County Court at Law No. 1 of Montgomery County shall receive a salary in an amount that is not less than 95 percent of the annual salary of the district judges in Montgomery County, to be paid by the county treasurer by order of the commissioners court, and the salary shall be paid monthly in equal installments. The judge of the County Court at Law No. 1 shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the County Court at Law No. 1 shall assess the same fees that are prescribed by law relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge, but he shall draw the salary as specified in this section.

(f) A special judge of the county court at law may be appointed in the manner provided by law for the appointment of a special county judge when the judge of the county court at law is disqualified. A special judge must have the same qualifications as the judge of the county court at law and is entitled to the same rate of compensation as the regular judge.

Sec. 6. (a) The County Attorney of Montgomery County shall represent the state in all prosecutions in the County Court at Law No. 1 of Montgomery County, as provided by law for prosecutions in the county court.

(b) The County Clerk and Sheriff of Montgomery County shall serve as clerk and sheriff, respectively, of the County Court at Law No. 1 of Montgomery County. The Commissioners Court of Montgomery County may employ as many additional deputy sheriffs and clerks as are necessary to serve the court

created by this Act. Those serving shall perform the duties, and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices in Montgomery County.

(c) The judge of the county court at law shall appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Montgomery County, and shall serve at the pleasure of the judge of the county court at law.

Sec. 7. (a) Practice in the County Court at Law No. 1 of Montgomery County shall conform to that prescribed by law for the County Court of Montgomery County.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts in order that the business may be equally distributed between them. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(d) In cases transferred to either of the courts by order of the judge of the other court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 8. The jurisdiction and authority now vested by law in the County Court of Montgomery County and the judge thereof for the drawing, selection, and service of jurors shall also be exercised by the County Court at Law No. 1 of Montgomery County and the judge of the county court at law. Jurors summoned for either of the courts may by order of the judge of the court in which they are summoned be transferred to the other court for service and may be used as if summoned for the court to which they may be transferred. On concurrence of the Judge of the County Court at Law No. 1 of Montgomery County and the Judge of the County Court of Montgomery County, jurors may be summoned for service in both courts and shall be used interchangeably in both courts. All summons for petit jurors for all civil and criminal cases under existing laws at the time this Act takes effect shall be as valid as if no change had been made, and and the persons constituting such jury panels shall be required to appear and serve at the ensuing term of the courts as fixed by this Act, and their acts as jurors shall be as valid as if they had been selected as jurors in the court for which they were originally drawn.

Sec. 9. (a) The Commissioners Court of Montgomery County shall furnish and equip a suitable courtroom and office space for the county court at law.

(b) The county court at law shall have a seal identical with the seal of the County Court of Montgomery County, except that it shall contain the words "County Court at Law No. 1 of Montgomery County."

Sec. 10. This Act becomes effective on July 1, 1975.

[Acts 1975, 64th Leg., p. 439, ch. 186, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 534, ch. 217, §§ 11, 12, eff. Aug. 31, 1981.]

Art. 1970–363a. County Court at Law No. 2 of Montgomery County

Creation

Sec. 1. On the date provided by Section 10 of this Act, the County Court at Law No. 2 of Montgomery County is created.

Jurisdiction

Sec. 2. (a) The County Court at Law No. 2 has the same criminal and probate jurisdiction, original and appellate, over all causes and proceedings that is prescribed by law for county courts, which jurisdiction is concurrent with that of the County Court of Montgomery County and the County Court at Law No. 1 of Montgomery County.

(b) The County Court at Law No. 2 has jurisdiction concurrent with the district court and the County Court at Law No. 1 in eminent domain proceedings and in civil cases when the amount in controversy exceeds $5,000 and does not exceed $20,000, including interest. The County Court at Law No. 2 has concurrent civil jurisdiction with the district court in Montgomery County in suits, causes, and

matters involving adoptions; removal of disability of minority and coverture; wife and child desertion; Uniform Reciprocal Enforcement of Support Act (Section 21.01, Family Code) and all jurisdiction, powers, and authority placed in the district or county courts under the juvenile and child welfare laws of this state; all divorce and marriage annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, temporary support pending final hearing, and any and every other matter incident to divorce or annulment proceedings, as well as independent actions involving child custody or support of minors; change of name of persons; all other cases involving justiciable controversies and differences between spouses, or between parents, or between them, or one of them, and their minor children, or between any of these and third persons, corporations, trustees, or other legal entities which are within the jurisdiction of the district or county courts; and all cases in which children are alleged or charged to be dependent and neglected children or delinquent children as provided by law.

(c) This Act does not diminish the jurisdiction of the several district courts of Montgomery County or the County Court of Montgomery County or the County Court at Law No. 1 of Montgomery County, and those courts shall retain and continue to exercise the jurisdiction now conferred by law. The jurisdiction conferred by this Act is concurrent with the jurisdiction of those courts.

(d) The county judge of Montgomery County is the judge of the County Court of Montgomery County. All ex officio duties of the county judge, the executive functions of the county judge as a member of the commissioners court, board of equalization, budget officer, and other executive and administrative functions shall be exercised by the judge of the County Court of Montgomery County.

Writ Power

Sec. 3. The County Court at Law No. 2 or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge also have the power to punish for contempt as prescribed by law for county courts.

Terms

Sec. 4. The Commissioners Court of Montgomery County by order duly entered of record shall prescribe not less than four terms each year for the County Court at Law No. 2 of Montgomery County.

Judge

Sec. 5. (a) Beginning at the general election in 1982 or 1986, whichever is first after creation of this court, there shall be elected a judge of the County Court at Law No. 2 of Montgomery County for a regular term of four years as provided by Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. The judge must have been a duly licensed and practicing member of the State Bar of Texas for not less than four years, be well informed in the laws of this state, and must have resided and been actively engaged in the practice of law in Montgomery County for a period of not less than two years prior to the general election. The judge holds office until has successor has been elected and qualified. During his term of office, the judge may not appear and plead as an attorney at law in any court of record in this state or in any court over which he has appellate jurisdiction.

(b) When this court is created, the Commissioners Court of Montgomery County shall appoint a judge to the County Court at Law No. 2 of Montgomery County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until January 1 of the year following the next general election and until his successor has been elected and qualified. Any vacancy occurring in the office of the judge of the County Court at Law No. 2 may be filled in like manner by the commissioners court, and the appointee holds office until January 1 of the year following the next general election and until his successor has been elected and qualified.

(c) The judge of the County Court at Law No. 2 shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(d) The judge of the County Court at Law No. 2 shall receive a salary in an amount that is not less than 95 percent of the annual salary of the district judges in Montgomery County, to be paid by the county treasurer by order of the commissioners court, and the salary shall be paid monthly in equal installments. The judge of the County Court at Law No. 2 shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the County Court at Law No. 2 shall assess the same fees that are prescribed by law relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge, but he shall draw the salary as specified in this section.

(e) A special judge of the County Court at Law No. 2 may be appointed in the manner provided by law for the appointment of a special county judge. A special judge must have the same qualifications and is entitled to the same rate of compensation as the regular judge.

Court Officials

Sec. 6. (a) The county attorney and sheriff of Montgomery County shall serve as county attorney and sheriff, respectively, of the County Court at Law No. 2. The county clerk of Montgomery County shall be the clerk of the County Court at Law No. 2, except that the district clerk of Montgomery County shall be the clerk of the county courts at law in cases of concurrent jurisdiction between the district courts and the county courts at law and shall establish dockets for the county courts at law separate from the dockets of the district courts. The Commissioners Court of Montgomery County may employ as many additional assistant county attorneys, deputy sheriffs, and clerks as are necessary to serve the court created by this Act. Those serving shall perform the duties and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices in Montgomery County.

(b) The judge of the County Court at Law No. 2 shall appoint an official court reporter, who shall have the qualifications and duties provided by law. The official court reporter shall receive a salary, to be fixed by the Commissioners Court of Montgomery County, of not more than $_____ per year.

Practice and Procedure

Sec. 7. (a) Practice in the County Court at Law No. 2 shall conform to that prescribed by law for the County Court of Montgomery County and the County Court at Law No. 1, except that the practice and procedure, rules of evidence, issuance of process, and all other matters pertaining to the conduct of trials and hearings in the County Court at Law No. 2 involving matters of concurrent jurisdiction with the district court shall be governed by provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. Juries in all civil or criminal matters shall be composed of 12 members, except that in misdemeanor criminal cases and any other cases where the court has concurrent jurisdiction with the county court, the juries shall be composed of six members.

(b) The judges of the county court, the County Court at Law No. 1 and the County Court at Law No. 2 may transfer cases to and from the dockets of their respective courts so that the business may be equally distributed between them. All cases of concurrent jurisdiction between the district courts and county courts at law may be instituted in or transferred between the district courts of Montgomery County and the county courts at law of Montgomery County. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred to another court unless it is within the jurisdiction of the court to which it is transferred. In cases transferred to any of the courts in Montgomery County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) The county judge and the judges of the county courts at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Any of those judges may hear all or any part of a case pending in the county court or county courts at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring the case to his own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions provided for the selection and appointment of a special judge.

(d) Appeals in all cases from judgments and orders of the County Court at Law No. 2 shall be to the court of appeals as provided for appeals from district and county courts.

(e) The laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the County Court at Law No. 2. Jurors regularly impaneled for the week by the district courts of Montgomery County may, at the request of either the judge of the county court, the judge of the County Court at Law No. 1, or the judge of the County Court at Law No. 2, be made available by the district judges in the numbers requested and shall serve for the week in the county court, the County Court at Law No. 1, and the County Court at Law No. 2.

Facilities

Sec. 8. (a) The commissioners court shall furnish and equip a suitable courtroom and office space for the court created by this Act.

(b) The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law No. 2 of Montgomery County."

Juvenile Board

Sec. 9. The judge of the County Court at Law No. 2 of Montgomery County is a member of the Juvenile Board of Montgomery County and may be paid additional compensation therefor by the Commissioners Court of Montgomery County not to exceed the amount paid by Montgomery County to the district judges, the county judge of Montgomery County, and the judge of the County Court at Law No. 1 of Montgomery County for acting as members of the juvenile board.

Date of Creation

Sec. 10. The County Court at Law No. 2 of Montgomery County is created on January 1, 1984, or on a date determined by the commissioners court by an order entered on its minutes, whichever date is earlier.

[Acts 1981, 67th Leg., p. 530, ch. 217, §§ 1 to 10, eff. Aug. 31, 1981.]

FORT BEND COUNTY

Art. 1970–364. County Court at Law of Fort Bend County

Sec. 1. (a) The County Court at Law of Fort Bend County is created.

(b) The county court at law has the same jurisdiction over all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, prescribed by law for county courts and its jurisdiction is concurrent with that of the County Court of Fort Bend County.

(c) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $5,000, exclusive of interest, as provided by general law.

(d) The county court at law, or its judge, may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court; and may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court, or of any other court of inferior jurisdiction in the county. The court and judge also have the power to punish for contempt as prescribed by law for county courts.

(e) The County Judge of Fort Bend County is the judge of the County Court of Fort Bend County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Fort Bend County unless by this Act committed to the judge of the county court at law.

Sec. 2. The terms of the County Court at Law of Fort Bend County are the same as those for the County Court of Fort Bend County.

Sec. 3. (a) The judge of the County Court at Law of Fort Bend County shall be a qualified voter of Fort Bend County. He shall be a regularly licensed attorney at law in this state, and shall have resided in this state and have been actively engaged in the practice of law or as the judge of a court for a period of not less than three years next preceding his appointment of election.

(b) On the effective date of this Act the Commissioners Court of Fort Bend County shall make the initial appointment of the judge, who shall serve until the general election in 1976 and until his successor shall be duly elected and has qualified. At the general election in 1976, there shall be elected a judge of the county court at law for a term ending on December 31, 1978. At the general election in 1978 and every four years thereafter, the judge of the county court at law shall be elected for a regular four year term as provided in Article V, Section 30 and Article XVI, Section 65 of the Texas Constitution. Any vacancy occurring in the office of the judge of the County Court at Law of Fort Bend County shall be filled by the Commissioners Court of Fort Bend County, and the appointee shall hold office until the next general election and until his successor is duly elected and has qualified.

(c) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(d) The judge of the county court at law shall receive a salary in an amount not less than $18,000, and other compensation for office expense, travel expense, service on the juvenile board, and other allowances paid by the county. The salary shall be paid in equal monthly installments out of the county treasury on order of the commissioners court. The judge of the county court at law shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury, and which may be paid to the judge.

(e) A special judge of the county court at law may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. A special judge must have the same qualifications and is entitled to the same rate of compensation, as the regular judge.

Sec. 4. (a) The Criminal District Attorney, County Clerk, and Sheriff of Fort Bend County shall serve as criminal district attorney, clerk, and sheriff, respectively, of the County Court at Law of Fort Bend County. The Commissioners Court of Fort Bend County may employ as many additional assistant criminal district attorneys, deputy sheriffs, and clerks as are necessary to serve the court created by this Act. Those serving shall perform the duties and are entitled to the compensation, fees, and allowances, prescribed by law for their respective offices in Fort Bend County.

(b) The judge of the county court at law may appoint an official court reporter, who must meet the qualifications prescribed by law for that office and who is entitled to the compensation fixed by the Commissioners Court of Fort Bend County.

Sec. 5. (a) Practice in the County Court at Law of Fort Bend County shall conform to that prescribed by law for the County Court of Fort Bend County.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts so that the business may be equally distributed between them. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred to the county court at law unless it is within the jurisdiction of that court.

(c) Jurors regularly impaneled for the week by the district courts of Fort Bend County, may, at the request of either the judge of the county court or of the county court at law, be made available by the district judges in the numbers requested and shall serve for the week in either or both the county court or the county court at law.

Sec. 6. The judge of the County Court at Law of Fort Bend County shall be a member of the Juvenile Board of Fort Bend County and receive the same additional compensation for service on the juvenile board as paid by Fort Bend County to the County Judge of Fort Bend County for acting as a member of the juvenile board.

Sec. 7. The effective date of this Act is November 1, 1975.

[Acts 1975, 64th Leg., p. 797, ch. 308, eff. Nov. 1, 1975. Amended by Acts 1979, 66th Leg., p. 205, ch. 115, § 1, eff. Aug. 27, 1979.]

HOUSTON COUNTY

Art. 1970-365. County Court at Law of Houston County

Sec. 1. On the effective date of this Act, the County Court at Law of Houston County is created.

Sec. 2. (a) The county court at law has jurisdiction over all causes and proceedings, civil, criminal, and probate, original and appellate, prescribed by law for county courts, which jurisdiction is concurrent with that of the County Court of Houston County. This Act does not diminish the jurisdiction of the county court and does not affect the jurisdiction of the Commissioners Court or the County Judge of Houston County as the presiding officer of the commissioners court.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $5,000, exclusive of interest.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The County Judge of Houston County is the judge of the County Court of Houston County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Houston County unless by this Act committed to the judge of the county court at law.

Sec. 3. The terms of the County Court at Law of Houston County shall begin on the first Mondays in January, April, July, and October in each year, and each term of the court shall continue in session until the convening of the next succeeding term.

Sec. 4. (a) The judge of the County Court at Law of Houston County must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Houston County for two years prior to his appointment or election and actively engaged in the practice of law in the State of Texas for a period of not less than five years prior to his appointment or election.

(b) When this Act becomes effective, the Commissioners Court of Houston County shall appoint a judge to the County Court at Law of Houston County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until January 1st of the year following the next general election and until his successor has been duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Houston County a judge of the County Court at Law of Houston County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Houston County, and the appointee holds office until January 1st of the year following the next general election and until his successor has been duly elected and has qualified. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law of Houston County shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law of Houston County shall receive an annual salary to be fixed by the Commissioners Court of Houston County. This sum shall be paid in equal monthly installments out of the county treasury of Houston County on orders from the commissioners court. Additionally, he shall be entitled to reasonable traveling expenses and necessary office expenses, including administrative and clerical help. The judge of the County Court at Law of Houston County shall charge the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury. During his term of office, the judge of the County Court at Law of Houston County shall diligently discharge the duties of his office on a full-time basis and shall not engage in the private practice of law.

(e) A special judge of the county court at law with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the county court at law is disqualified to try or excuses himself from trying a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The county attorney, county clerk, and sheriff of Houston County shall serve as county attorney, clerk, and sheriff, respectively, of the County Court at Law of Houston County. They shall perform the duties and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the County Court at Law of Houston County may appoint an official shorthand reporter for the court, who shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All provisions of the general laws of Texas relating to the appointment of a reporter for the district court shall apply, so far as applicable, to the official shorthand reporter authorized to be appointed by the judge of the County Court at Law of Houston County. The reporter shall be entitled to the same fees and shall perform the same duties as provided in the general laws and in addition shall receive a salary not to exceed the compensation paid to the official shorthand reporter of the district court of Houston County, to be determined by the judge of the county court at law and paid out of the county treasury on order of the commissioners court.

(c) The seal of the court shall contain the words "County Court at Law of Houston County," but in other respects is identical with the seal of the County Court of Houston County.

Sec. 6. (a) Practice in the County Court at Law of Houston County shall conform to that prescribed by general law for county courts.

(b) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts [1] in matters within their jurisdiction. If the office of either judge is vacant, the clerk of the court may transfer cases within their concurrent jurisdiction to the other court. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred. In cases transferred to another court, all processes, writs, bonds, recognizances, and other obligations issued or made in the cases transferred shall be returned to and filed in the court to which transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) In the case of the illness, disqualifications, or absence of the county judge, the judge of the county court at law may sit for the county judge in all matters, causes, and proceedings within the concurrent jurisdiction of their courts without the necessity of transferring the matters, causes, and proceedings. In the case of the illness, disqualification, or absence of the judge of the county court at law, a county judge of Houston County who is a licensed attorney may sit for the judge of the county court at law in all matters, causes, and proceedings without the necessity of transferring the matters, causes, and proceedings. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Sec. 7. The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

[Acts 1975, 64th Leg., p. 1953, ch. 644, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 911, ch. 327, §§ 1, 2, eff. June 8, 1981; Acts 1981, 67th Leg., p. 1875, ch. 451, §§ 1, 2, eff. Aug. 31, 1981.]

[1] Acts 1981, 67th Leg., p. 1875, ch. 451, § 2, here inserted a comma.

HENDERSON COUNTY

Art. 1970–366. County Court at Law of Henderson County

Sec. 1. On the date determined by the provisions of Section 8 of this Act, the County Court at Law of Henderson County is created.

Sec. 2. (a) The county court at law has the same jurisdiction over all causes and proceedings, civil and criminal, original and appellate, as prescribed by law for county courts, and its jurisdiction in those matters is concurrent with that of the County Court of Henderson County. This provision does not affect the jurisdiction of the Commissioners Court or of the County Judge of Henderson County as the presiding officer of the commissioners court as to roads, bridges, public highways, and all other matters which are now within the jurisdiction of the commissioners court or the county judge as presiding officer. The County Court of Henderson County shall retain the general jurisdiction of a probate court and the county court at law does not have probate jurisdiction.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $5,000, exclusive of interest.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The County Judge of Henderson County is the judge of the County Court of Henderson County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Henderson County.

Sec. 3. The terms of the County Court at Law of Henderson County are the same as those for the County Court of Henderson County.

Sec. 4. (a) The judge of the County Court at Law of Henderson County must be a duly licensed and practicing member of the State Bar of Texas. He may not actively engage in the private practice of law while serving as judge of the county court at law.

(b) The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the County Court at Law of Henderson County shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the County Court at Law of Henderson County shall receive a salary to be determined by the Commissioners Court of Henderson County in an amount not less than $20,000 per year nor more than $25,000 per year and to be paid from the same fund and in the same manner as other county officials. In addition to a salary, the commissioners court may provide office and traveling expenses which it deems necessary. The judge of the county court at law shall charge the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury.

(e) A special judge of the county court at law with the same qualifications as the regular judge may be appointed in the manner provided by law for the appointment of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The county attorney, county clerk, and sheriff of Henderson County shall serve as county attorney, clerk, and sheriff, respectively, of the County Court at Law of Henderson County. They shall perform the duties and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the county court at law may appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Henderson County.

(c) The seal of the court shall contain the words "County Court at Law of Henderson County," but in other respects is identical with the seal of the County Court of Henderson County.

Sec. 6. (a) Practice in the County Court at Law of Henderson County shall conform to that prescribed by law for the County Court of Henderson County.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts in order that the business may be equally distributed between them. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county

court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(d) In cases transferred to either of the courts by order of the judge of the other court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred to as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 7. (a) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(b) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Sec. 8. (a) It is expressly provided that the provisions of this Act shall not become effective until the Commissioners Court of Henderson County enters an order adopting the same.

(b) When this Act becomes effective, the Commissioners Court of Henderson County shall have the option of either appointing a judge to the County Court at Law of Henderson County or allowing said judge to be elected at the next general election. If a judge is appointed, said judge serves until the next general election and until his successor has been duly elected and has qualified. If a judge is appointed or elected as provided herein and completes an unexpired term, then said judge shall stand for election at the next general election and every fourth year thereafter for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. If this Act is made effective and a judge of the County Court at Law is elected for the first time to a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution, said judge shall stand for election every fourth year thereafter as provided in said sections of the Constitution. Any vacancy in the office shall be filled by the Commissioners Court of Henderson County until the next general election. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for the removal of county judges.

Sec. 9. The Henderson County Commissioners Court is hereby empowered to submit the question of creating a county court at law for Henderson County to a vote of the people of Henderson County at any countywide general or special election.

[Acts 1975, 64th Leg., p. 1971, ch. 654, eff. June 19, 1975.]

WALKER COUNTY

Art. 1970–367. County Court at Law of Walker County

Sec. 1. There is hereby created a county court at law in Walker County, Texas. It shall sit in Huntsville and shall be known as the County Court at Law of Walker County.

Sec. 2. The County Court at Law of Walker County has the same jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by law for county courts. However, it does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the Commissioners Court of Walker County. The county court at law has concurrent jurisdiction with the County Court of Walker County in all matters of probate, and shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and habitual drunkards, and shall grant letters testamentary and of administration, settle accounts of administrators, executors, and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of the estates of deceased persons, and apprentice minors as provided by law.

Sec. 3. (a) The County Court at Law of Walker County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $10,000, exclusive of interest.

(b) In addition to the jurisdiction conferred on the County Court at Law of Walker County by the other provisions of this Act, the county court at law has concurrent civil jurisdiction with the district court of Walker County in suits, causes, and matters involving adoptions, removal of disability of minority and coverture, wife and child desertion, delinquent, neglected, or dependent child proceedings, Uniform Reciprocal Enforcement of Support Act, and all jurisdiction, powers, and authority now or hereafter placed in the district or county courts under the juvenile and child welfare laws of this state; and of

all divorce and marriage annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, temporary support pending final hearing, and any and every other matter incident to divorce or annulment proceedings as well as independent actions involving child custody or support of minors, change of name of persons, and all other cases involving justiciable controversies and differences between spouses, or between parents, or between them, or one of them, and their minor children, or between any of these and third persons, corporations, trustees, or other legal entities, which are now or may hereafter be within the jurisdiction of the district or county courts; all cases in which children are alleged or charged to be dependent and neglected children or delinquent children as provided by law, and the county court at law and its judge have power to issue writs of habeas corpus, mandamus, injunction, and all writs necessary to enforce its jurisdiction. The provisions in this subsection do not diminish the jurisdiction of the district court in Walker County, and the district court shall retain and continue to exercise such jurisdiction as is now or may be hereafter conferred by law, and the jurisdiction given in this section is concurrent with the jurisdiction of the district court.

Sec. 4. The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, execution, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, except that such judge of the county court at law shall in no way have any authority over the administrative business of Walker County which is now performed by the County Judge of Walker County.

Sec. 5. The County Court of Walker County shall have and retain concurrently with the court created by this Act the general jurisdiction of a probate court. The county court shall have no other jurisdiction, civil or criminal, original or appellate. All ex officio duties of the county judge shall be exercised and retained by the judge of the County Court of Walker County, except as provided by this Act or otherwise provided by law.

Sec. 6. The County Court at Law of Walker County shall hold four terms of court each year which terms shall begin on the first Mondays in January, April, July, and October in each year, and each term of the court shall continue in session until the convening of the next succeeding term.

Sec. 7. (a) The judge of the county court at law shall have been a bona fide resident of Walker County for two years prior to his appointment or election and shall be a qualified voter in Walker County. He shall be a licensed attorney in this state who has been actively engaged in the practice of law for a period of five years prior to his appointment or election.

(b) The judge of the county court at law shall not engage in the private practice of law after his appointment or election.

(c) When this Act becomes effective, the Commissioners Court of Walker County shall appoint a judge to the County Court at Law of Walker County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and shall serve until the general election in 1978 and until his successor has been duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Walker County a judge of the County Court at Law of Walker County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(d) A vacancy occurring in the office of the judge of county court at law shall be filled by the Commissioners Court of Walker County and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(e) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(f) The judge of the county court at law shall receive a salary of not less than 83 percent of the annual salary of the district judge in Walker County, to be paid by the county treasurer by order of the commissioners court, and the salary shall be paid monthly in equal installments. The judge of the county court at law shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the County Court at Law of Walker County shall assess the same fees as are now prescribed or may be established by law, relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge, but he shall draw the salary as specified in this section.

(g) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection

of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 8. (a) The County Attorney, County Clerk, and Sheriff of Walker County shall serve as county attorney, clerk and sheriff respectively of the County Court at Law of Walker County, except that the District Clerk of Walker County shall serve as clerk of the county court at law in the cases enumerated in Subsection (b), Section 3 of this Act. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law may appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law, which reporter shall serve at the pleasure of the judge of the county court at law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Walker County. The judge of the county court at law may, in lieu of appointing an official court reporter, contract for the services of a court reporter under guidelines to be established by the commissioners court.

Sec. 9. (a) As soon as practicable following the effective date of this Act, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the County Court of Walker County and shall transfer those matters to the docket of the court created by this Act, and the district clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the district court in Walker County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize the dockets. Equalization of case load shall be the primary objective in establishing the initial case docket for the county court at law.

(b) On the transfer of all cases specified in Subsection (a) of this section to the county court at law, and in cases transferred to any of the courts in Walker County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts in matters within their jurisdiction. All cases of concurrent jurisdiction enumerated or included in Section 3 of this Act may be instituted in or transferred between the district court in Walker County and the county court at law in Walker County. However, no case may be transferred from one court to the other without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(d) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within his jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. This provision providing for the exchange of benches by and between the judge of the county court and the judge of the county court at law is cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Sec. 10. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearing in the county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (b), Section 3 of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Subsection (b), Section 3 of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of the judge of the county court at law, be made available and shall serve for the week in the county court at law.

Sec. 11. The Commissioners Court of Walker County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Sec. 12. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Walker County." The County Court at Law of Walker County shall be a court of record.

Sec. 13. Appeals in all civil cases from judgments and orders of the county court at law shall be to the Court of Civil Appeals as is now or may be hereafter provided for appeals from district and county courts and in all criminal cases shall be to the Court of Criminal Appeals.

Sec. 14. All cases appealed from the justice courts and other inferior courts in Walker County shall be made direct to the County Court at Law of Walker County, unless otherwise provided by law.

Sec. 15. The effective date of this Act is September 1, 1977.

[Acts 1977, 65th Leg., p. 139, ch. 68, eff. Sept. 1, 1977.]

COMAL COUNTY

Art. 1970–368. County Court at Law of Comal County

Sec. 1. There is created a court in Comal County to be known as the County Court at Law of Comal County.

Sec. 2. (a) The county court at law has the same jurisdiction over all causes and proceedings, civil and criminal, original and appellate, as is prescribed by the constitution and general laws of the state for county courts. The county court at law has jurisdiction concurrent with the district court in Comal County in juvenile matters and proceedings and in all civil and criminal matters and proceedings, original and appellate, for which jurisdiction was transferred from the county court to the district court by Chapter 35, Acts of the 18th Legislature, Regular Session, 1883. The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the amount in controversy exceeds $500 and does not exceed $20,000, exclusive of interest, as provided by general law. The county court at law does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the commissioners court of Comal County.

(b) The county court at law has the general jurisdiction of a probate court within the limits of Comal County, and its jurisdiction is concurrent with that of the County Court of Comal County in probate matters and in proceedings.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court, or of any other court in the county of inferior jurisdiction. The court and judge also have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, and he is a magistrate and conservator of the peace.

(d) The County Judge of Comal County is the judge of the County Court of Comal County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Comal County except insofar as the same are, by this Act, committed to the judge of the County Court at Law of Comal County.

(e) In addition to the jurisdiction conferred on the county court at law by the other provisions of this Act, the county court at law has concurrent jurisdiction with the district courts in Comal County in suits and causes involving family law matters, including adoptions; birth records; removal of disability of minority and coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, custody and support of minor children involved, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; and independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; and independent actions involving controversies between parent and child and between husband and wife. The provisions in this subsection do not diminish the jurisdiction of the district courts in Comal County, and the district courts shall retain and continue to exercise the jurisdiction that is conferred by law on district courts.

Sec. 3. The terms of the County Court at Law of Comal County are the same as those for the County Court of Comal County, Texas.

Sec. 4. (a) There shall be elected, by the qualified voters of the county, a judge of the County Court at Law of Comal County, who must have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, who must be well informed in the laws of this state, and who must have resided and been actively engaged in the practice of law in Comal County for a period of not less than one year prior to the general election. The judge elected holds office for four years and until his successor has been duly elected and has qualified. During his term of office, the judge shall not engage in the private practice of law.

(b) When this Act becomes effective, the Commissioners Court of Comal County shall appoint a judge to the County Court at Law of Comal County. The judge appointed must have the qualifications prescribed in Subsection (a) of this section and serves until the next general election and until his successor has been duly elected and has qualified. Beginning at the general election in 1978 and every fourth year thereafter, there shall be elected a judge of the county court at law for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy occurring in the office of the judge of the County Court at Law of Comal County may be filled by appointment by the commissioners court, and the appointee holds office until the next general election and until his successor has been duly elected and has qualified.

(c) The judge of the County Court at Law of Comal County shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(d) The Commissioners Court of Comal County shall fix the salary of the judge of the County Court at Law of Comal County. The judge shall assess the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury, and which may not be paid to the judge.

(e) A special judge of the county court at law may be appointed or elected as provided by law for county courts. A special judge is entitled to the same rate of compensation as the regular judge.

(f) If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. The special judge selected is entitled to the compensation provided in Subsection (e) of this section.

Sec. 5. (a) The county attorney, county clerk, and sheriff of Comal County shall serve as county attorney, county clerk, and sheriff, respectively, of the County Court at Law of Comal County, except that the district clerk of Comal County shall serve as clerk of the county court at law in the cases enumerated in Subsection (e) of Section 2 of this Act and shall establish a separate docket for the county court at law. The Commissioners Court of Comal County may employ as many assistant county attorneys, deputy sheriffs, and bailiffs as are necessary to serve the court created by this Act. Those serving shall perform the duties, and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices in Comal County.

(b) The judge of the county court at law may appoint an official court reporter who serves at the pleasure of the judge and who is entitled to the compensation fixed by the commissioners court. The official court reporter must have the qualifications prescribed by law for district court reporters.

(c) The seal of the court shall contain the words "County Court at Law of Comal County," but in other respects is identical with the seal of the County Court of Comal County.

Sec. 6. (a) Practice in the County Court at Law of Comal County shall conform to that prescribed by law for the County Court of Comal County, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (e), Section 2, of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Subsection (e), Section 2, of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The judges of the county court and the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their concurrent probate jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated or included in Subsection (a) or (e) of Section 2 of this Act may be instituted in or transferred between the district court in Comal County and the County Court at Law of Comal County. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the cause or proceeding. Either judge may hear all or any part of a cause or proceeding pending in the county court or county court at law, and he may rule or enter orders on and continue, determine, or render judgment on all or any part of the cause or proceeding without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in any cause or proceeding unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the matter is pending.

(d) In cases transferred to any of the courts by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or

recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 7. (a) The jurisdiction and authority now vested by law in the county clerk and the county judge of Comal County for the drawing, selection, and service of jurors and talesmen shall also be exercised by the county court at law and its judge.

(b) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Sec. 8. This Act shall take effect July 15, 1977. [Acts 1977, 65th Leg., p. 284, ch. 137, eff. July 15, 1977. Amended by Acts 1979, 66th Leg., p. 34, ch. 23, §§ 1 to 3, eff. March 22, 1979; Acts 1981, 67th Leg., p. 2276, ch. 554, § 5, eff. Sept. 1, 1981.]

TOM GREEN COUNTY

Art. 1970–369. County Court at Law of Tom Green County

Sec. 1. The County Court at Law of Tom Green County is created.

Sec. 2. (a) The county court at law has jurisdiction in all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, over which by the constitution and general laws of the state the county courts have jurisdiction, and its jurisdiction is concurrent with that of the county court of Tom Green County. This provision does not affect the jurisdiction of the commissioners court or of the county judge of Tom Green County as the presiding officer of the commissioners court. The county judge of Tom Green County shall be the judge of the county court of Tom Green County. All ex officio duties of the county judge shall be exercised by the judge of the county court of Tom Green County unless by this Act committed to the judge of the county court at law.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases as provided by general law and in civil cases when the matter in controversy exceeds $500 and does not exceed $10,000, exclusive of interest.

Sec. 3. The county court at law or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

Sec. 4. The terms of the county court at law are the same as those for the county court of Tom Green County.

Sec. 5. (a) The judge of the county court at law shall have been a bona fide resident of Tom Green County for two years prior to his appointment or election. He shall be a licensed attorney in this state who has been actively engaged in the practice of law for a period of five years prior to this appointment or election. He shall devote his entire time to the duties of his office and shall not engage in the private practice of law while in office.

(b) When this court is created, the commissioners court shall appoint a judge to the county court at law who shall serve until the next general election and until his successor is duly elected and has qualified. At the general election in 1978 or 1982, and every fourth year thereafter, there shall be elected by the qualified voters of Tom Green County a judge of the county court at law for a regular term of four years, as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office of the judge of the county court at law shall be filled by appointment by the commissioners court, and the appointee holds office until January 1 of the year following the next general election and until his successor is duly elected and has qualified.

(c) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(d) The judge of the county court at law may receive a salary to be set by the commissioners court to be paid in equal monthly installments out of the county treasury by the commissioners court. He may be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the county court at law shall assess the same fees as are now prescribed or may be established by law relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection.

(e) A special judge of the county court at law may be appointed in the manner provided by law for the appointment of a special county judge when the judge of the county court at law is disqualified. A special judge must have the same qualifications as the judge of the county court at law and is entitled to the same rate of compensation as the regular judge.

Sec. 6. (a) The county attorney, county clerk, and sheriff of Tom Green County shall serve as county attorney, clerk, and sheriff, respectively, of the county court at law. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law may appoint an official court reporter, who must meet the qualifications prescribed by law for that office, who is entitled to the compensation fixed by the Commissioners Court of Tom Green County, and who shall serve at the pleasure of the judge of the county court at law. Except where inconsistent with this Act, all general laws relating to court reporters apply to the official court reporter of the county court at law. The reporter shall be available for matters being considered in the county court and in the district courts in Tom Green County, with the approval of the judge of the county court at law.

Sec. 7. (a) Practice in the county court at law shall conform to that prescribed by law for the county court.

(b) In order that the business may be equally distributed between the courts, the judges of the county court at law and the county court may transfer cases to and from the dockets of their respective courts and the judges of the county court at law and the district courts may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) The county judge and the judge of the county court at law may, in their discretion, exchange benches from time to time, and either of the judges may, in his own courtroom, try and determine any case or proceeding pending in either of the courts without having the case transferred, or may sit in either of the courts and there hear and determine any case there pending, and each judgment and order shall be entered in the minutes of the court in which the case is pending. The judges may try different cases in the same court at the same time and each may occupy his own courtroom or the room of any other court. In case of absence, sickness, or disqualification of either of the judges, the other judge may hold court for him. Either of the judges may hear any part of any case or proceeding pending in either of the courts and determine the same or may hear and determine any question in any case, and either of the judges may complete the hearing and render judgment in the case. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court.

(d) In cases transferred to any of the courts by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 8. The laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law. A general panel of jurors, or jurors impaneled for a week by a district court, may be made available and shall serve for the week in the county court at law.

Sec. 9. (a) The Commissioners Court of Tom Green County shall furnish and equip a suitable courtroom and office space for the county court at law.

(b) The county court at law shall have a seal identical with the seal of the county court of Tom Green County, except that it shall contain the words "County Court at Law of Tom Green County."

Sec. 10. The County Court at Law of Tom Green County is created on January 1, 1980, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier. [Acts 1977, 65th Leg., p. 688, ch. 260, eff. Aug. 29, 1977.]

MIDLAND COUNTY

Art. 1970–370. County Court at Law of Midland County

Sec. 1. The County Court at Law of Midland County is created on the date determined by the provisions of Section 10a of this Act.

Sec. 2. (a) The county court at law has jurisdiction in all causes and proceedings, civil, criminal, juvenile, and probate, original and appellate, over which by the constitution and general laws of the state the county courts have jurisdiction, and its jurisdiction is concurrent with that of the County Court of Midland County. This provision does not affect the jurisdiction of the commissioners court or of the county judge of Midland County as the presiding officer of the commissioners court. The county judge of Midland County shall be the judge of the county court of Midland County. All ex officio duties of the county judge shall be exercised by the judge of the county court of Midland County unless

by this Act committed to the judge of the county court at law.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $5,000, exclusive of interest, as provided by general law.

Sec. 3. The county court at law or its judge may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

Sec. 4. The terms of the county court at law are the same as those for the County Court of Midland County.

Sec. 5. (a) The judge of the county court at law must be a duly licensed and practicing member of the State Bar of Texas who has resided in and been actively engaged in the practice of law in Midland County for a period of not less than two years prior to his appointment or election.

(b) When this Act becomes effective, the commissioners court shall appoint a judge to the county court at law who shall serve until the next general election and until his successor is duly elected and has qualified. At the general election in 1978 and every fourth year thereafter, there shall be elected by the qualified voters of Midland County a judge of the county court at law for a regular term of four years beginning on January 1, 1979, as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office of the judge of the county court at law shall be filled by appointment by the commissioners court, and the appointee holds office until January 1 of the year following the next general election and until his successor is duly elected and has qualified.

(c) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(d) The judge of the county court at law shall receive a salary to be set by the commissioners court and to be paid in equal monthly installments out of the county treasury by the commissioners court. He shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the county court at law shall assess the same fees as are now prescribed or may be established by law relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection.

(e) A special judge of the county court at law may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. A special judge must have the same qualifications as the judge of the county court at law and is entitled to the same rate of compensation as the regular judge.

Sec. 6. (a) The county attorney, county clerk, and sheriff of Midland County shall serve as county attorney, clerk, and sheriff, respectively, of the county court at law. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law may appoint an official court reporter, who must meet the qualifications prescribed by law for that office, who is entitled to the compensation fixed by the Commissioners Court of Midland County, and who shall serve at the pleasure of the judge of the county court at law. Except where inconsistent with this Act, all general laws relating to court reporters apply to the official court reporter of the county court at law. The reporter shall be available for matters being considered in the county court and in the district courts in Midland County, with the approval of the judge of the county court at law.

Sec. 7. (a) Practice in the county court at law shall conform to that prescribed by law for the county court.

(b) In order that the business may be equally distributed between the courts, the judges of the county court at law and the county court may transfer cases to and from the dockets of their respective courts and the judges of the county court at law and the district courts may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any

part of a case pending in the county court or county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(d) In cases transferred to any of the courts by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred to as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 8. The laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law. A general panel of jurors, or jurors impaneled for a week by a district court, may be made available and shall serve for the week in the county court at law. A general panel of jurors or jurors impaneled for a week by a district court or summoned for the county court or county court at law may, on request of a justice of the peace, be made available in such numbers as may be requested for service in the justice court and shall serve in the justice court as if summoned for the justice court to which they are transferred.

Sec. 9. (a) The Commissioners Court of Midland County shall furnish and equip a suitable courtroom and office space for the county court at law.

(b) The county court at law shall have a seal identical with the seal of the county court of Midland County, except that it shall contain the words "County Court at Law of Midland County."

Sec. 10. The judge of the county court at law is a member of the Midland County Juvenile Board.

Sec. 10a. The County Court at Law of Midland County is created on January 1, 1980, or on an earlier date determined by the Commissioners Court of Midland County by an order entered in its minutes, finding and determining that the conditions of the dockets of the district courts serving Midland County require the creation of the county court at law to properly dispose of cases arising in Midland County. In determining the need of a county court at law, the commissioners court may submit the question in a nonbinding referendum to the voters of Midland County at any countywide general election or special election called for that purpose.

[Acts 1977, 65th Leg., p. 1626, ch. 640, §§ 1 to 10a, eff. Jan. 1, 1978. Amended by Acts 1979, 66th Leg., p. 48, ch. 27, § 1, eff. April 3, 1979.]

RANDALL COUNTY

Art. 1970–371. County Court at Law of Randall County

Sec. 1. The County Court at Law of Randall County is created on the date determined by the provisions of Section 13 of this Act.

Sec. 2. The County Court at Law of Randall County, concurrently with the County Court of Randall County, has jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by the constitution and general laws of this state for county courts. However, it does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the Commissioners Court of Randall County.

Sec. 3. The County Court at Law of Randall County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $10,000, exclusive of interest.

Sec. 4. In addition to the jurisdiction conferred on the County Court at Law of Randall County by the other provisions of this Act, the county court at law has concurrent civil jurisdiction with the district courts of Randall County in suits, causes, and matters involving adoptions, removal of disability of minority and coverture, wife and child desertion, delinquent, neglected, or dependent child proceedings, Uniform Reciprocal Enforcement of Support Act, and all jurisdiction, powers, and authority now or hereafter placed in the district or county courts under the juvenile and child welfare laws of this state; and of all divorce, marriage, and annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, temporary support pending final hearing, and any and every other matter incident to divorce or annulment proceedings as well as independent actions involving child custody or support of minors, change of name of persons, and all other cases involving justiciable controversies and differences between spouses, or between parents, or between them, or one of them, and their minor children, or between any of these and third persons; corporations, trustees, or other legal entities, which are now or may hereafter be within the jurisdiction of the district or county courts; all cases in which children are alleged or charged to be dependent and neglected children or delinquent children as provided by law, and the county court at law and its judge have power to issue writs of habeas corpus, mandamus, injunction, and all writs necessary to enforce its

jurisdiction. The provisions in this subsection do not diminish the jurisdiction of the several district courts in Randall County, and the district courts shall retain and continue to exercise such jurisdiction as is now or may be hereafter conferred by law, and the jurisdiction given in this subsection is concurrent with the jurisdiction of the district courts.

Sec. 5. The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, except that such judge of the county court at law shall in no way have any authority over the administrative business of Randall County which is now performed by the County Judge of Randall County.

Sec. 6. The county court at law shall hold two continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Sec. 7. (a) The judge of the county court at law shall be a qualified voter in Randall County. He shall be a licensed attorney in this state who has been actively engaged in the practice of law for a period of five years prior to his appointment or election.

(b) The judge of the county court at law shall not engage in the private practice of law after his appointment or election.

(c) When this court is created, the Commissioners Court of Randall County shall appoint a judge to the County Court at Law of Randall County. The judge appointed serves until the next general election and until his successor is duly elected and has qualified. Beginning at the general election in 1978 or 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Randall County a judge of the county court at law for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(d) A vacancy occurring in the office of the judge of county court at law shall be filled by the Commissioners Court of Randall County, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(e) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(f) The judge of the county court at law may receive a salary to be set by the commissioners court and to be paid out of the county treasury by the commissioners court. The salary may be paid in equal monthly installments. The judge of the county court at law may be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the county court at law shall assess the same fees as are now prescribed or may be established by law, relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge.

(g) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 8. (a) The criminal district attorney and sheriff of Randall County shall serve as district attorney and sheriff, respectively, of the County Court at Law of Randall County. The district clerk of Randall County shall serve as clerk of the county court at law in cases enumerated in Sections 3 and 4 of this Act, and the county clerk of Randall County shall serve as clerk of the county court at law in cases enumerated in Section 2 of this Act. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Randall County.

Sec. 9. (a) As soon as practicable after this court is created, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the County Court of Randall County and shall transfer those matters to the docket of the court created by this Act, and the district clerk shall establish a separate docket for the court created by this Act from among pending

matters filed originally in the district courts of Randall County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize the dockets. Equalization of case load shall be the primary objective in establishing the initial case docket for the county court at law.

(b) On the transfer of all cases specified in Subsection (a) of this section to the county court at law, and in cases transferred to any of the courts in Randall County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(c) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated in Sections 3 and 4 of this Act may be instituted in or transferred between the districts courts of Randall County and the County Court at Law of Randall County. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(d) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. The district judges and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their concurrent jurisdiction so that if one is ill, disqualified, or otherwise absent, another may hold court for him without the necessity of transferring the case involved. Either of the judges may hear all or any part of a case pending in the district court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Sec. 10. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Section 4 of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Section 4 of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Sec. 11. The Commissioners Court of Randall County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Sec. 12. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Randall County."

Sec. 13. The County Court at Law of Randall County is created on January 1, 1980, or on a date determined by the commissioners court by an order entered on its minutes, which ever date is earlier. [Acts 1977, 65th Leg., p. 1723, ch. 688, eff. Aug. 29, 1977.]

REEVES COUNTY

Art. 1970–372. County Court at Law of Reeves County

Sec. 1. The County Court at Law of Reeves County is created on the date determined by the provisions of Section 20 of this Act. It shall sit in Pecos, Texas.

Sec. 2. (a) The County Court at Law of Reeves County has jurisdiction in all matters and causes, civil, criminal, juvenile, and probate, original and appellate, over which, by the general laws of the

state, the county court of the county would have jurisdiction. This provision does not affect the jurisdiction of the commissioners court, or of the County Judge of Reeves County as the presiding officer of the commissioners court, as to roads, bridges, and public highways, and matters which are now in the jurisdiction of the commissioners court or the judge thereof.

(b) The County Court at Law of Reeves County has jurisdiction concurrent with the district court in eminent domain cases, as provided by general law, and in civil cases when the matter in controversy exceeds $500 and does not exceed $10,000, exclusive of interest.

(c) The County Court at Law of Reeves County has concurrent civil jurisdiction with the district court in Reeves County in suits, causes, and matters involving adoptions, removal of disability of minority and coverture, and all divorce and marriage annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, temporary support pending final hearing, and any and every other matter incident to divorce or annulment proceedings as well as independent actions involving child support and custody of minors, and change of name of persons. This court and the judge thereof shall have the power to issue writs of habeas corpus, mandamus, injunction, and all writs necessary to enforce its jurisdiction.

(d) Nothing in this Act shall diminish the jurisdiction of the district courts in Reeves County, and the district courts shall retain and continue to exercise such jurisdiction as is now or may be hereafter conferred by law, and the jurisdiction given in this Act is concurrent with the jurisdiction of the district courts.

Sec. 3. The County Court of Reeves County shall have no jurisdiction, civil, criminal, juvenile, or probate, original or appellate. All ex officio duties of the county judge shall be exercised and retained by the judge of the County Court of Reeves County, except insofar as same shall by this Act be committed to the County Court at Law of Reeves County.

Sec. 4. The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the County Court at Law of Reeves County. Jurors regularly impaneled for a week by the district court may, on request of the judge of the county court at law, be made available and shall serve for the week in the county court at law.

Sec. 5. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Subsection (c) of Section 2 of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general and special, as well as county courts. If a case enumerated in Subsection (c) of Section 2 is tried before a jury, the jury shall be composed of 12 members.

(b) The county court at law shall have the same terms of court as the district court sitting in Reeves County as presently established or as they may hereinafter be changed.

(c) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts.

Sec. 6. At the general election in 1978 and every four years thereafter, there shall be elected a judge of the County Court at Law of Reeves County who shall have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, who shall be well informed in the laws of the state, who shall have resided in and been actively engaged in the practice of law in Reeves County for a period of not less than two years prior to the general election, and who shall hold his office for four years and until his successor shall have been duly elected and qualified. When this court is created, the commissioners court shall appoint a judge of the County Court at Law of Reeves County who shall have the qualifications prescribed in this section and who shall serve until December 31, 1978, and until his successor shall be duly elected and qualified. A vacancy thereafter occurring in the office of the judge of the County Court at Law of Reeves County shall in like manner be filled by the commissioners court, with the appointee to hold office until the next succeeding general election and until his successor shall be duly elected and qualified.

Sec. 7. The judge of the County Court at Law of Reeves County may receive a salary in an amount determined by the commissioners court, not to exceed 90 percent of the total salary paid the district judge, to be paid out by the county treasurer by order of the commissioners court. The salary shall be paid monthly in equal installments. The judge of the county court at law is entitled to traveling expenses and necessary office expenses, including administrative and clerical help. The judge of the County Court at Law of Reeves County shall assess the same fees as are now prescribed by law relating to the county judge's fees, all of which shall be collected by the clerk of the court, shall be paid into the county treasury on collection, and no part of which shall be paid to the judge.

Sec. 8. The judge of the County Court at Law of Reeves County shall execute a bond and take the oath of office as required by law relating to county and district judges.

Sec. 9. The judge of the county court at law shall not engage in the practice of law in this or any other court in the State of Texas.

Sec. 10. The judge of the County Court at Law of Reeves County may be removed from office in the same manner and for the same causes as any county judge may be removed under the laws of this state.

Sec. 11. A special judge of the County Court at Law of Reeves County may be appointed or elected as provided by law relating to county courts. In the case of a disqualification of the judge of the county court at law to try a case pending in this court, the parties or their attorneys may agree on the selection of a special judge to try the case. A special judge, whether appointed, elected, or selected by the parties, shall receive, as compensation for each day he actively serves, an amount equal to 1/365th of the annual salary of the judge of the County Court at Law of Reeves County, to be paid out of the general fund of the county by the commissioners court.

Sec. 12. The county attorney of Reeves County shall represent the state in the County Court at Law of Reeves County as provided by law for prosecutions in county court, and shall be entitled to the fees prescribed by law for prosecutors in the county court.

Sec. 13. The sheriff of Reeves County shall in person or by deputy attend the court when required by the judge thereof.

Sec. 14. The county clerk of Reeves County shall be the clerk of the County Court at Law of Reeves County, except that the district clerk of Reeves County shall be the clerk of the county court at law in all those cases enumerated in Subsection (c), Section 2, of this Act.

Sec. 15. The judge of the County Court at Law of Reeves County shall appoint an official shorthand reporter for the court who shall be well-skilled in his profession and shall be a sworn officer of the court and shall hold his office at the pleasure of the court. The reporter shall take the oath required of official court reporters, and shall receive a salary to be set by the commissioners court of Reeves County and to be paid out of the county treasury of Reeves County, as other county officials are paid, in equal monthly installments. All other provisions of Chapter 13, Title 42, Revised Civil Statutes of Texas, 1925, as amended, and as the same may hereafter be amended, and all other provisions of the law relating to official court reporters shall apply insofar as they are applicable to the official shorthand reporter authorized in this Act to be appointed and insofar as they are not inconsistent with this Act.

Sec. 16. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Reeves County." The commissioners court of Reeves County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Sec. 17. All cases of concurrent jurisdiction may be instituted in or transferred between the district court of Reeves County and the County Court at Law of Reeves County.

Sec. 18. All cases appealed from the justice courts and other inferior courts in Reeves County shall be appealed to the County Court at Law of Reeves County under the provisions governing such appeals to the county courts. The laws of the State of Texas, the rules of procedure, and the rules of evidence shall be applicable to and control trials and proceedings in the County Court at Law of Reeves County, and shall be applicable to and govern the proceedings in and appeals to and appeals from the County Court at Law of Reeves County.

Sec. 19. When the county court at law is created, all cases and matters pending before the County Court of Reeves County are transferred to the County Court at Law of Reeves County. All processes, writs, bonds, recognizances, and other obligations issued or made in the cases transferred shall be returned to and filed in the county court at law. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the county court at law as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the county court at law.

Sec. 20. The County Court at Law of Reeves County is created on January 1, 1978, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier. [Acts 1977, 65th Leg., p. 1736, ch. 692, eff. June 15, 1977.]

VAL VERDE COUNTY

Art. 1970–373. County Court at Law of Val Verde County

Creation

Sec. 1. The County Court at Law of Val Verde County is created on the date determined by the provisions of Section 17 of this Act. It shall sit in Del Rio, Texas.

Jurisdiction

Sec. 2. (a) The County Court at Law of Val Verde County has jurisdiction concurrently with the County Court of Val Verde County in all matters and causes, civil, criminal, juvenile and probate, original and appellate, over which, by the constitution

and general laws of the state, the county court has jurisdiction. This provision does not affect the jurisdiction of the commissioners court, or of the county judge of Val Verde County as the presiding officer of the commissioners court, as to roads, bridges, and public highways, and matters which are now in the jurisdiction of the commissioners court or the judge thereof, or the administrative business of Val Verde County that is now performed by the county judge of Val Verde County.

(b) The County Court at Law of Val Verde County has concurrent jurisdiction with the district court in civil cases when the matter in controversy exceeds $500 and does not exceed $10,000, exclusive of interest.

(c) The County Court at Law of Val Verde County has concurrent civil jurisdiction with the district court of Val Verde County in suits, causes and matters involving adoptions, termination of parental rights, removal of disability of minority and coverture, all divorce and marriage annulment cases, including the adjustment of property rights and custody and support of minor children involved therein, temporary support pending final hearing, and any and every other matter incident to divorce or annulment proceedings as well as independent actions involving child support and custody of minors, and change of name of persons.

(d) The county court at law has the concurrent jurisdiction with the district court that is specified in this section, which concurrent jurisdiction does not diminish the jurisdiction of the district court in Val Verde County, and the district court shall retain and continue to exercise the jurisdiction that is conferred by law on district courts.

Jurors

Sec. 3. The laws that govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law. Jurors regularly impaneled for a week by the district court may, on request of the judge of the county court at law, be made available and shall serve for the week in the county court at law.

Practice and Procedure

Sec. 4. Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Section 2(c) of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general and special, as well as county courts. If a case enumerated in Section 2(c) is tried before a jury, the jury shall be composed of 12 members.

Terms

Sec. 5. The county court at law shall have the same terms of court as the district court sitting in Val Verde County as presently established or as they may be changed.

Writ Power

Sec. 6. The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts.

Election; Vacancy; Qualifications

Sec. 7. At the general election in 1982 and every four years thereafter, there shall be elected by the qualified voters of Val Verde County a judge of the county court at law, who shall have been a duly licensed and practicing member of the State Bar of Texas for not less than five years, who shall be well informed in the laws of the state, who shall have resided in and been actively engaged in the practice of law in Val Verde County for a period of not less than two years prior to the general election, and who shall hold office for four years and until his successor is elected and has qualified. When this court is created, the commissioners court shall appoint a judge of the county court at law, who shall have the qualifications prescribed in this section and who shall serve until the next general election and until his successor is elected and has qualified. A vacancy thereafter occurring in the office of the judge of the county court at law shall in like manner be filled by the commissioners court, with the appointee holding office until the next succeeding general election and until his successor is elected and has qualified.

Compensation

Sec. 8. The judge of the county court at law may receive an annual salary to be determined by the commissioners court in an amount not less than $20,000 and not more than 90 percent of the total compensation paid the district judge. The salary shall be paid monthly in equal installments by the county treasurer by order of the commissioners court. The judge of the county court at law is entitled to traveling expenses and necessary office expenses, including administrative and clerical help. The judge of the county court at law shall assess the same fees as are now prescribed by law relating to the county judge's fees, all of which shall be collected by the clerk of the court, shall be paid into the county treasury on collection, and no part of which shall be paid to the judge.

Bond and Oath

Sec. 9. The judge of the county court at law shall execute a bond and take the oath of office as required by law relating to county and district judges.

Private Practice Prohibited

Sec. 10. The judge of the county court at law shall not engage in the private practice of law after his appointment or election.

Removal

Sec. 11. The judge of the county court at law may be removed from office in the same manner and for the same causes as any county judge may be removed under the laws of this state.

Special Judge

Sec. 12. A special judge of the county court at law may be appointed or elected as provided by law relating to county courts. In the case of a disqualification of the judge of the county court at law to try a case pending in this court, the parties or their attorneys may agree on the selection of a special judge to try the case. A special judge, whether appointed, elected, or selected by the parties, shall receive, as compensation for each day he actively serves, an amount equal to 1/365 of the annual salary of the judge of the county court at law, to be paid out of the general fund of the county by the commissioners court.

Personnel

Sec. 13. (a) The county attorney of Val Verde County shall represent the state in the county court at law as provided by law for prosecutions in county court, and shall be entitled to the fees prescribed by law for prosecutors in the county court.

(b) The sheriff of Val Verde County shall in person or by deputy attend the court when required by the judge thereof.

(c) The county clerk of Val Verde County shall be the clerk of the county court at law, except that the district clerk of Val Verde County shall be the clerk of the county court at law in all those cases enumerated in Section 2(c) of this Act.

(d) The judge of the county court at law shall appoint an official shorthand reporter for the court, who shall have the qualifications required by law, shall be a sworn officer of the court, and shall hold the office at the pleasure of the court. The reporter shall take the oath required of official court reporters, and shall receive a salary to be set by the commissioners court of Val Verde County and to be paid out of the county treasury, as other county officials are paid, in equal monthly installments. All other provisions of the law relating to official court reporters shall apply insofar as they are applicable to the official shorthand reporter authorized in this Act to be appointed and insofar as they are not inconsistent with this Act.

Seal and Courtroom

Sec. 14. The seal of the court shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Val Verde County." The commissioners court of Val Verde County may furnish and equip a suitable courtroom and office space for the court created by this Act.

Transfer of Cases

Sec. 15. (a) On the first day of the court's existence, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the County Court of Val Verde County, by transferring the odd-numbered suits to the docket of the court created by this Act and leaving the even-numbered suits in the county court.

(b) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated in Section 2(b) and 2(c) of this Act may be instituted in or transferred between the district courts of Val Verde County and the County Court at Law of Val Verde County. However, no case may be transferred unless it is within the jurisdiction of the court to which it is transferred, and no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred.

Exchange of Benches

Sec. 16. The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Effective Date

Sec. 17. The County Court at Law of Val Verde County is created on January 1, 1982, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier. [Acts 1979, 66th Leg., p. 341, ch. 156, eff. Aug. 27, 1979.]

WISE COUNTY

Art. 1970–374. County Court at Law of Wise County

Sec. 1. The County Court at Law of Wise County is created. The court shall sit in Decatur, Texas.

Sec. 2. (a) The County Court at Law of Wise County has the same jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by law for county courts, and its jurisdiction in those matters is concurrent with that of the County Court of Wise County. This provision does not affect the jurisdiction of the commissioners court or the county judge of Wise County as the presiding officer of the commissioners court.

(b) The county court at law has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $5,000, exclusive of interest.

(c) The county court at law or its judge has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges.

(d) The county judge of Wise County is the judge of the County Court of Wise County. All ex officio duties of the county judge shall be exercised by the judge of the County Court of Wise County unless this Act provides otherwise.

Sec. 3. The term of the county court at law is continuous on an annual basis, beginning on January 1 of each year and concluding on December 31 of the same year.

Sec. 4. (a) The judge of the county court at law must be a duly licensed and practicing member of the State Bar of Texas who has been a bona fide resident of Wise County for six months prior to his appointment or election.

(b) When this Act becomes effective, the commissioners court shall appoint a judge to the county court at law to serve until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. At the next general election after the effective date of this Act, a judge shall be elected to serve until January 1, 1981. At the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Wise County a judge of the County Court at Law of Wise County for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. A vacancy in the office shall be filled by the commissioners court and the appointee holds office until January 1 of the year following the next general election and until his successor has been duly elected and has qualified. The judge of the county court at law may be removed from office in the same manner and for the same causes as provided by the laws of this state for removal of county judges.

(c) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges.

(d) The judge of the county court at law shall receive an annual salary in an amount to be fixed by the commissioners court, which shall not exceed 90 percent of the amount paid district judges from the General Revenue Fund of the state and which shall be paid in equal monthly installments out of the county treasury of Wise County on orders from the commissioners court. Additionally, he shall be entitled to reasonable traveling expenses and necessary office expenses, including administrative and clerical help. The judge of the county court at law shall charge the fees prescribed by law for county judges, which shall be collected by the clerk of the court and paid into the county treasury.

(e) A special judge of the county court at law with the same qualifications as the judge of the county court at law may be appointed in the manner provided by law for the appointment of a special county judge. A special judge is entitled to the same rate of compensation as the regular judge.

Sec. 5. (a) The county attorney, county clerk, and sheriff of Wise County shall serve in their respective capacities in the county court at law. They shall perform the duties and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices.

(b) The judge of the county court at law may appoint an official shorthand reporter for the court who shall be a sworn officer of the court and shall hold his office at the pleasure of the court. All provisions of the general laws of Texas relating to the appointment of a reporter for the district court shall apply, so far as applicable, to the official shorthand reporter authorized to be appointed by the judge of the county court at law. The reporter shall be entitled to the same fees and shall perform the same duties as provided in the general laws and in addition shall receive a salary, not to exceed the compensation paid to the official shorthand reporter of the district court of Wise County, to be determined by the judge of the county court at law and paid out of the county treasury on order of the commissioners court.

(c) The seal of the court shall contain the words "County Court at Law of Wise County," but in other

respects is identical with the seal of the county court of Wise County.

Sec. 6. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of the judge of the county court at law, be made available and shall serve for the week in the county court at law.

Sec. 7. (a) In order that the business may be equally distributed between the courts, the judges of the county court at law and the county court may transfer cases to and from the dockets of their respective courts and the judges of the county court at law and the district courts may transfer cases to and from the dockets of their respective courts. However, no case may be transferred from one court to another court without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(b) The county judge and the judge of the county court at law may, in their discretion, exchange benches from time to time, and either of the judges may, in his own courtroom, try and determine any case or proceeding pending in either of the courts without having the case transferred, or may sit in either of the courts and there hear and determine any case there pending, and each judgment and order shall be entered in the minutes of the court in which the case is pending. The judges may try different cases in the same court at the same time and each may occupy his own courtroom or the room of any other court. In case of absence, sickness, or disqualification of either of the judges, the other judge may hold court for him. Either of the judges may hear any part of any case or proceeding pending in either of the courts and determine the same or may hear and determine any question in any case, and either of the judges may complete the hearing and render judgment in the case. However, the judge of either court may not sit or act in a case unless it is within the jurisdiction of his court.

(c) In cases transferred to any of the courts by order of the judge of another court or by Section 10 of this Act, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases transferred shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of such bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

Sec. 8. The judge of the county court at law is a member of the juvenile board of Wise County.

Sec. 9. The commissioners court shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Sec. 10. All cases and matters, civil, criminal, and probate, original and appellate, pending before the County Court of Wise County on the effective date of this Act are transferred to the County Court at Law of Wise County.

[Acts 1979, 66th Leg., p. 418, ch. 192, eff. Sept. 1, 1979.]

GREGG COUNTY

Art. 1970–375. County Court at Law of Gregg County

Creation

Sec. 1. The County Court at Law of Gregg County is created on the date determined under Section 11 of this Act.

Jurisdiction

Sec. 2. (a) The County Court at Law of Gregg County, concurrently with the County Court of Gregg County, has jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by the constitution and general laws of this state for county courts. However, it does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the Commissioners Court of Gregg County.

(b) The County Court at Law of Gregg County has concurrent jurisdiction with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest.

Writ Power

Sec. 3. The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, except that such judge of the county court at law shall in no way have any authority over the administrative business of Gregg County which is now performed by the County Judge of Gregg County.

Terms

Sec. 4. The county court at law shall hold two continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Judge

Sec. 5. (a) The judge of the county court at law shall be a qualified voter in Gregg County. He shall be a licensed attorney in this state who has been actively engaged in the practice of law for a period of five years prior to his appointment or election.

(b) The judge of the county court at law shall not engage in the private practice of law after his appointment or election.

(c) When this court is created, the Commissioners Court of Gregg County shall appoint a judge to the County Court at Law of Gregg County. The judge appointed serves until the next general election and until his successor is duly elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Gregg County a judge of the county court at law for a regular term of four years as provided in Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(d) A vacancy occurring in the office of the judge of county court at law shall be filled by the Commissioners Court of Gregg County, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(e) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(f) The judge of the County Court at Law of Gregg County and the county judge of Gregg County shall receive an annual salary to be set by the commissioners court in an amount not to exceed 90 percent of the total annual salary paid to the judges of the district courts having jurisdiction in Gregg County. The salary may be paid in equal monthly installments. The judge of the county court at law may be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the county court at law shall assess the same fees as are prescribed by law relating to county judges' fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge.

(g) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Court Officials and Personnel

Sec. 6. (a) The criminal district attorney and sheriff of Gregg County shall serve as district attorney and sheriff, respectively, of the County Court at Law of Gregg County. The district clerk of Gregg County shall serve as clerk of the county court at law in cases enumerated in Section 2(b), and the county clerk of Gregg County shall serve as clerk of the county court at law in cases enumerated in Section 2(a) of this Act. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be the same as now provided by law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Gregg County.

(c) The judge of the County Court at Law of Gregg County, Texas, with the consent of the commissioners court, may employ a secretary, the secretary being entitled to a salary as determined by the commissioners court.

Transfer of Cases and Exchange of Benches

Sec. 7. (a) As soon as practicable after this court is created, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the County Court of Gregg County and shall transfer those matters to the docket of the court created by this Act, and the district clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the district courts of Gregg County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize the dockets. Equalization of case load shall be the primary objective in establishing the initial case docket for the county court at law.

(b) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated in Section 2(b) of this Act may be instituted in or transferred between the district courts of Gregg County and the County Court at Law of Gregg County. However, no case may be transferred from one court to

another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) On the transfer of all cases specified in Subsection (a) of this section to the county court at law, and in cases transferred to any of the courts in Gregg County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as are fixed by law. All processes issued or returned before transfer of the cases as well as all bonds and recognizances before taken in the cases shall be valid and binding as though originally issued out of the court to which the transfer is made.

(d) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions for the exchange of benches by and between the judges are cumulative of and in addition to the provisions in this Act for the selection and appointment of a special judge of the county court at law.

Practice and Jurors

Sec. 8. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Courtroom

Sec. 9. The Commissioners Court of Gregg County shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Seal

Sec. 10. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Gregg County."

Effective Date

Sec. 11. The County Court at Law of Gregg County is created on January 1, 1981, or on a date determined by the commissioners court by an order entered on its minutes, whichever date is earlier. [Acts 1979, 66th Leg., p. 889, ch. 409, eff. Aug. 27, 1979.]

MEDINA COUNTY

Art. 1970-376. County Court at Law of Medina County

Creation

Sec. 1. The County Court at Law of Medina County is created on the date determined by Section 10 of this Act.

Jurisdiction

Sec. 2. (a) The County Court at Law of Medina County has jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by the constitution and general laws of the state for county courts, and its jurisdiction is concurrent with the jurisdiction of the County Court of Medina County. It does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the Commissioners Court of Medina County.

(b) The County Court at Law of Medina County has jurisdiction concurrent with the district court in eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest, as provided by general law.

(c) In addition to the jurisdiction conferred on the County Court at Law of Medina County by the other provisions of this Act, the county court at law has concurrent jurisdiction with the district courts in Medina County in suits and causes involving family law matters, including adoptions; birth records; removal of disability of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, custody and support of minor children involved, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; and independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; and independent actions involving controversies between parent and child and between husband and wife. The provisions in this subsection do not diminish the jurisdiction of the district courts in Medina County, and the district courts shall retain and continue to

exercise the jurisdiction that is conferred by law on district courts.

(d) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, except that such judge of the county court at law shall in no way have any authority over the administrative business of Medina County which is now performed by the county judge of Medina County.

Terms

Sec. 3. The county court at law shall hold two continuous terms which commence on the first Monday in January and on the first Monday in July of each year. Each term of court continues until the next succeeding term begins.

Judge

Sec. 4. (a) The judge of the county court at law shall be a qualified voter in Medina County, shall have been a resident of Medina County for two years, and shall be a licensed attorney in this state who has been actively engaged in the practice of law or has been a judge of a court in this state, or both combined, for four years prior to the judge's appointment or election.

(b) When this court is created, the governor shall appoint a judge to the county court at law, who shall serve until the next general election after he or she takes office, and until his or her successor is elected and has qualified. Beginning at the general election in 1982 and every fourth year thereafter, there shall be elected by the qualified voters of Medina County a judge of the county court at law for a regular term of four years as provided by Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) After the initial appointment, a vacancy occurring in the office of the judge of the county court at law shall be filled by the Commissioners Court of Medina County, and the appointee shall hold office until the next general election and until his or her successor is elected and has qualified.

(d) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. The judge may be removed from office in the same manner and for the same causes as a county judge.

(e) The judge of the county court at law shall receive a salary to be set by the commissioners court and to be paid out of the county treasury by the commissioners court in an amount not to exceed 90 percent of the amount paid a district judge having jurisdiction in Medina County. The salary shall be paid in equal monthly installments. The judge of the county court at law shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the county court at law shall assess the same fees as are now prescribed or may be established by law, relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge.

(f) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his or her court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

Personnel

Sec. 5. (a) The county attorney, county clerk, and sheriff of Medina County shall serve as county attorney, clerk, and sheriff, respectively, for the county court at law, except that the district clerk of Medina County shall serve as clerk of the county court at law in cases enumerated in Section 2(c) of this Act and shall establish a separate docket for the county court at law. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances prescribed by law for their respective offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law shall appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be as provided by law for official court reporters. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Medina County.

Transfer of Cases and Judges

Sec. 6. (a) As soon as practicable after this court is created, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the county court, and shall transfer those matters to the docket of the court created by this Act, and the district clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the district courts of Medina County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize

the dockets. Equalization of case load shall be the primary objective in establishing the initial case docket for the county court at law.

(b) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction, in order that the business may be equally distributed between them. All cases of concurrent jurisdiction enumerated in Section 2(c) of this Act may be instituted in or transferred between the district courts of Medina County and the County Court at Law of Medina County. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) On the transfer of all cases specified in Subsection (a) of this section to the county court at law, and in cases transferred to any of the courts in Medina County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(d) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him or her without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his or her own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his or her court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions herein provided for the selection and appointment of a special judge of the county court at law.

Practice and Procedure

Sec. 7. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Section 2(c) of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Section 2(c) of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of either the county judge or the judge of the county court at law, be made available and shall serve for the week in either the county court or county court at law.

Courtroom

Sec. 8. The commissioners court shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Seal

Sec. 9. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Medina County."

Date of Creation

Sec. 10. The County Court at Law of Medina County is created on January 1, 1980, or on a date determined by the commissioners court by an order entered on its minutes, whichever date is earlier. [Acts 1979, 66th Leg., p. 931, ch. 426, eff. Aug. 27, 1979.]

ANDERSON COUNTY

Art. 1970-377. County Court at Law of Anderson County

Creation

Sec. 1. The County Court at Law of Anderson County is created on the date determined by Section 11 of this Act. The court shall sit in Palestine, Texas.

Jurisdiction

Sec. 2. (a) The County Court at Law of Anderson County has jurisdiction over all causes and proceedings, civil and criminal, juvenile and probate, original and appellate, prescribed by the constitution and general laws of the state for county courts. The county court at law has concurrent jurisdiction with the County Court of Anderson County in all probate matters. It does not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business which is now within the jurisdiction of the Commissioners Court of Anderson County.

(b) The County Court at Law of Anderson County has jurisdiction concurrent with the district court in

eminent domain cases and in civil cases when the matter in controversy exceeds $500 and does not exceed $20,000, exclusive of interest.

(c) In addition to the jurisdiction conferred on the County Court at Law of Anderson County by the other provisions of this Act, the county court at law has concurrent civil jurisdiction with the district courts in Anderson County in suits and causes involving family law matters, including adoptions; birth records; removal of disability of minority or coverture; change of name of persons; divorce and marriage annulment cases, including the adjustment of property rights, custody and support of minor children involved, temporary support pending final hearing, and every other matter incident to divorce or annulment proceedings; and independent actions involving child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency; and independent actions involving controversies between parents, between parent and child, and between husband and wife. The provisions in this subsection do not diminish the jurisdiction of the district courts in Anderson County, and the district courts shall retain and continue to exercise the jurisdiction that is conferred by law on district courts.

(d) The county court at law, or its judge, has the power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. It may issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county. The court and the judge have the power to punish for contempt as prescribed by law for county courts. The judge of the county court at law has all other powers, duties, immunities, and privileges provided by law for county court judges, except that such judge of the county court at law shall in no way have any authority over the administrative business of Anderson County which is now performed by the county judge of Anderson County.

Terms

Sec. 3. The county court at law shall hold four terms of court each year which commence on the first Mondays in January, April, July, and October, and each term of court shall continue in session until the convening of the next succeeding term.

Judge

Sec. 4. (a) The judge of the county court at law shall be a qualified voter in Anderson County, shall have been a resident of Anderson County for two years, and shall be a licensed attorney in this state who has been actively engaged in the practice of law or has been a judge of a court in this state, or both combined, for four years prior to the judge's appointment or election.

(b) When the court is created, the commissioners court shall appoint a judge to the county court at law, who shall serve until the next general election after he takes office, and until his successor is elected and has qualified. Beginning at the general election in 1982 or 1986 and every fourth year thereafter, there shall be elected by the qualified voters of Anderson County a judge of the county court at law for a regular term of four years as provided by Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(c) A vacancy occurring in the office of the judge of the county court at law shall be filled by the commissioners court, and the appointee shall hold office until the next general election and until his successor is elected and has qualified.

(d) The judge of the county court at law shall execute a bond and take the oath of office prescribed by law for county judges. He may be removed from office in the same manner and for the same causes as a county judge.

(e) The judge of the county court at law shall receive a salary to be set by the commissioners court and to be paid out of the county treasury by the commissioners court. The salary shall be paid in equal monthly installments. The judge of the county court at law shall be entitled to traveling expenses and necessary office expenses, including administrative and clerical help, in the same manner as is allowed the county judge. The judge of the county court at law shall assess the same fees that are prescribed or established by law relating to the county judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, and no part of which shall be paid to the judge.

(f) A special judge of the county court at law with the same qualifications as the regular judge may be appointed or elected in the manner provided by law for the appointment or election of a special county judge. If a judge of the county court at law is disqualified to try a case pending in his court, the parties or their attorneys may agree on the selection of a special judge for the case. A special judge is entitled to the same rate of compensation as the regular judge.

(g) The judge of the county court at law shall not engage in the private practice of law after his appointment or election.

Personnel

Sec. 5. (a) The county attorney, county clerk, and sheriff of Anderson County shall serve as county attorney, clerk, and sheriff, respectively, for the county court at law, except that the district clerk of Anderson County shall serve as clerk of the county court at law in cases enumerated in Section 2(c) of this Act and shall establish a separate docket for the county court at law. These officials, either personally or by the appointment of a deputy or assistant, shall perform the duties and responsibilities of their office and are entitled to the compensation, fees, and allowances prescribed by law for their respective

offices. The commissioners court may employ as many deputy sheriffs and bailiffs as are necessary to serve the court.

(b) The judge of the county court at law may appoint an official court reporter who shall have the same qualifications and whose duties shall in every respect be as provided by law for official court reporters. The court reporter shall serve at the pleasure of the judge of the county court at law. The official court reporter is entitled to the compensation fixed by the Commissioners Court of Anderson County. The judge of the county court at law may, in lieu of appointing an official court reporter, contract for the services of a court reporter under guidelines to be established by the commissioners court.

Transfer of Cases and Judges

Sec. 6. (a) As soon as practicable after this court is created, the county clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the county court, and shall transfer those matters to the docket of the court created by this Act, and the district clerk shall establish a separate docket for the court created by this Act from among pending matters filed originally in the district courts of Anderson County and may transfer a sufficient number of those matters to the docket of the court created by this Act to equalize the dockets. Equalization of case load shall be the primary objective in establishing the initial case docket for the county court at law.

(b) The judge of the county court and the judge of the county court at law may transfer cases to and from the dockets of their respective courts, in matters within their jurisdiction. All cases of concurrent jurisdiction between the district courts and the county court at law may be instituted in or transferred between the district courts of Anderson County and the County Court at Law of Anderson County. However, no case may be transferred from one court to another without the consent of the judge of the court to which it is transferred, and no case may be transferred unless it is within the jurisdiction of the court to which it is transferred.

(c) On the transfer of all cases specified in Subsection (a) of this section to the county court at law, and in cases transferred to any of the courts in Anderson County by order of the judge of another court, all processes, writs, bonds, recognizances, or other obligations issued or made in the cases shall be returned to and filed in the court to which the transfer is made. All bonds executed and recognizances entered into in those cases shall bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances at the terms of the court to which the cases are transferred as fixed by law. All processes issued or returned before transfer of the cases, as well as all bonds and recognizances taken before transfer, shall be valid and binding as though originally issued out of the court to which the transfer is made.

(d) The county judge and the judge of the county court at law may freely exchange benches and courtrooms with each other in matters within their jurisdiction so that if one is ill, disqualified, or otherwise absent, the other may hold court for him without the necessity of transferring the case involved. Either judge may hear all or any part of a case pending in the county court or county court at law, but only in matters within their jurisdiction, and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. However, a judge may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending. The provisions providing for the exchange of benches by and between the judges are cumulative of and in addition to the provisions provided by this Act for the selection and appointment of a special judge of the county court at law.

Practice and Procedure

Sec. 7. (a) Practice in the county court at law shall conform to that prescribed by general law for county courts, except that practice and procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials and hearings in the county court at law involving those matters of concurrent jurisdiction enumerated in Section 2(c) of this Act shall be governed by the provisions of this Act and the laws and rules pertaining to district courts, general or special, as well as county courts. If a case enumerated in Section 2(c) of this Act is tried before a jury, the jury shall be composed of 12 members.

(b) The laws which govern the drawing, selection, service, and pay of jurors for county courts apply to the county court at law.

(c) Jurors regularly impaneled for a week by the district court or courts may, on request of the judge of the county court at law, be made available and shall serve for the week in the county court at law.

Courtroom

Sec. 8. The commissioners court shall furnish and equip a suitable courtroom and office space for the court created by this Act.

Seal

Sec. 9. The seal of the court created by this Act shall be the same as that provided by law for county courts, except the seal shall contain the words "County Court at Law of Anderson County." The County Court at Law of Anderson County is a court of record.

Appeals

Sec. 10. (a) Appeals in all civil cases from judgments and orders of the county court at law shall be to the court of appeals as provided for appeals from district and county courts and in all criminal cases to the court of appeals as provided for appeals from county courts.

(b) All cases appealed from the justice courts and other inferior courts in Anderson County shall be made directly to the County Court at Law of Anderson County, unless otherwise provided by law.

Date of Creation

Sec. 11. The County Court at Law of Anderson County is created on January 1, 1984, or on a date determined by the commissioners court by an order entered in its minutes, whichever date is earlier. [Acts 1981, 67th Leg., p. 2516, ch. 665, eff. Aug. 31, 1981.]

TITLE 42

COURTS—PRACTICE IN DISTRICT AND COUNTY

CHAPTER ONE. INSTITUTION, PARTIES AND VENUE

3. PARTIES TO SUITS

Art. 1994. Suit and Representation by Next Friend

Minors, lunatics, idiots or non compos mentis persons who have no legal guardian may sue and be represented by "next friend" under the following rules:

1. In such cases when a judgment is recovered for money or other personal property, the court may by order entered of record, authorize such next friend or other person to take charge of such money or other property for the use and benefit of the plaintiff when he has executed a proper bond (in the sum at least double the value of the property), payable to the county judge, conditioned that he will pay said money with lawful interest thereon or deliver said property and its increase to the person entitled to receive the same when ordered by the court to do so, and that he will use such money or property for the benefit of the owner under the direction of the court. The bond shall be in a sum at least double the value of the property and money recovered, with the exception that a bond which is executed by the next friend or other person taking charge of the money or property, as principal, and by a solvent surety company authorized under the laws of Texas to execute such bonds, as surety, shall be in a sum equal to the value of the property and money recovered.

2. The judge of the court in which the judgment is rendered upon an application and hearing, in termtime or vacation, may provide by decree for an investment of the funds accruing under such judgment. Such decree, if made in vacation, shall be recorded in the minutes of the succeeding term of the court.

3. The person who takes such money or property shall receive such compensation as the court may allow and shall make such disposition thereof as the court may order; and he shall return such money or property into court upon the order of the court.

4. If any person has an interest in such recovery, the court may hear evidence as to such interest, and order such claim, or such part as is deemed just, to be paid to whoever is entitled to receive the same.

5. If not otherwise invested in the manner provided in this article, any moneys recovered by the plaintiff, regardless of the amount, may be invested as follows by either the next friend or the Clerk of the Court:

(a) in savings accounts or certificates of any savings and loan association domiciled in this State provided such accounts are insured by the Federal Savings & Loan Insurance Corporation; or

(b) in interest-bearing time deposits in any bank doing business in this State provided the payment of such time deposits is insured by the Federal Deposit Insurance Corporation; and if such moneys are so invested in such manner as to prevent the withdrawal of such moneys from the financial institution in which they are invested without an order of the court no bond shall be required of the "next friend" in respect to such moneys until the same are withdrawn from such financial institution, at which time the court shall order such bond to be made as may be appropriate under the other provisions of this article, or the court may order such funds turned over directly to the person entitled thereto upon the court finding that the previous disability had ceased to exist.

6. If not otherwise invested in the manner provided in this article, the judge of the court in which the judgment is rendered upon application of the next friend or a duly appointed guardian ad litem for the minor, or either or both of them, after hearing and upon a finding that the best interests of the minor would be served thereby, may by decree entered of record direct the clerk to deliver any funds accruing under such judgment to any trust company or state or national bank in Texas having trust powers, as trustee, to be held and invested as a trust estate for the benefit of such minor, under such terms and provisions of trust as may be provided by the court; provided, however, that any decree establishing such a trust estate shall contain the following trust provisions, in addition to such other terms, provisions, conditions, or limitations not inconsistent therewith as may be established by the court:

(a) the minor shall be the sole beneficiary of such trust;

(b) the trustee shall be authorized to disburse such amounts of the corpus, income, or both, of the trust as may be reasonably necessary in the

sole discretion of the trustee to provide for the health, education, support, or maintenance of the beneficiary. Any income not so distributed by the trustee shall be added to the corpus of the trust;

(c) the trust shall provide for termination of the trust upon the death of the beneficiary or upon the beneficiary attaining a stated age, which shall not exceed 25 years of age. Upon termination, the then existing trust principal and any undistributed income shall be paid to the beneficiary or to the personal representative of the estate of a deceased beneficiary;

(d) the trust shall provide that the trustee serve without bond and that the trustee receive reasonable compensation, to be paid out of the income or corpus of the trust, or both, upon application and approval of the court. Any trust established by the court pursuant to this article may provide for distributions of a stated percentage of the then existing trust corpus prior to termination of the trust, as the beneficiary from time to time attains a particular stated age, and may also provide that all distributions and all uses and applications of trust funds, either income or corpus, may be made directly to or expended for the benefit of the beneficiary without the intervention of any legal guardian or other legal representative, and that the trustee may pay any income or principal distribution to or for the benefit of a beneficiary directly to such beneficiary; to the legal or natural guardian or person having custody of such beneficiary; or directly for the maintenance or support of such beneficiary. Any trust established by the court pursuant to this article shall not be subject to revocation by the beneficiary or any guardian of the beneficiary's estate, but shall remain subject to amendment, modification, or revocation by the court at any time prior to termination of the trust. If any trust established hereunder is revoked by the court prior to the beneficiary attaining the age of 18, the court may enter such further or additional orders concerning the trust corpus and any undistributed income as may be authorized by this article. If any trust established hereunder is revoked by the court after the beneficiary has attained the age of 18, after payment of all proper and necessary expenses, the trust corpus and any undistributed income shall be delivered to the beneficiary. Any trust established pursuant to this article shall take precedence over any existing law or statute concerning minors or their property, and such trust shall continue in full force and effect until terminated or revoked notwithstanding the appointment of a guardian of the estate for such minor or such minor attaining his majority.

[Amended by Acts 1979, 66th Leg., p. 1761, ch. 713, § 33, eff. Aug. 27, 1979.]

4. VENUE

Art. 1995. Venue, General Rule

No person who is inhabitant of this State shall be sued out of the county in which he has domicile except in the following cases:

[See Compact Edition, Volume 3 for text of 1 to 5]

6. Executors, administrators, etc.—If the suit is against an executor, administrator or guardian, as such, to establish a money demand against the estate which he represents, the suit may be brought in the county in which such estate is administered, or if the suit is against an executor, administrator or guardian growing out of a negligent act or omission of the person whose estate the executor, administrator or guardian represents, the suit may be brought in the county where the negligent act or omission of the person whose estate the executor, administrator or guardian represents occurred.

[See Compact Edition, Volume 3 for text of 7 to 9]

9a. Negligence.—A suit based upon negligence per se, negligence at common law or any form of negligence, active or passive, may be brought in the county where the act or omission of negligence occurred or in the county where the defendant has his domicile. The venue facts necessary for plaintiff to establish by the preponderance of the evidence to sustain venue in a county other than the county of defendant's residence are:

1. That an act or omission of negligence occurred in the county where suit was filed.

2. That such act or omission was that of the tort-feasor, in person, or that of his servant, agent or representative acting within the scope of his employment, or that of the person whose estate the defendant represents as executor, administrator, or guardian.

3. That such negligence was a proximate cause of plaintiff's injuries.

[See Compact Edition, Volume 3 for text of 10 to 31]

[Amended by Acts 1977, 65th Leg., p. 856, ch. 322, § 1, eff. Aug. 29, 1977.]

CHAPTER THREE. CITATION

Article
2039b. Citation of Nonresidents for Tax Purposes.
2041b. Assessment of Cost of Postage for Service of Process by Mail.

Art. 2028. Against Cities, Towns, Villages and School Districts

Sec. 1. In suits against an incorporated city, town or village, the citation may be served on the mayor, clerk, secretary or treasurer thereof.

Sec. 2. In suits against a school district the citation may be served on the president of the school board or the superintendent.

[Amended by Acts 1977, 65th Leg., p. 1277, ch. 499, § 1, eff. June 15, 1977.]

Art. 2031b. Service of Process Upon Foreign Corporations and Nonresidents

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4. For the purpose of this Act, and without including other acts that may constitute doing business, any foreign corporation, joint stock company, association, partnership, or non-resident natural person shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State. The act of recruiting Texas residents, directly or through an intermediary located in Texas, for employment inside or outside of Texas shall be deemed doing business in this State.

[See Compact Edition, Volume 3 for text of 5 to 7]

[Amended by Acts 1979, 66th Leg., p. 522, ch. 245, § 1, eff. Aug. 27, 1979.]

Art. 2039a. Citation of Nonresident Motor Vehicle Operators by Serving Chairman of State Highway Commission; Forwarding Notice to Defendant

[See Compact Edition, Volume 3 for text of 1 to 3]

Certificate of Chairman of Highway Commission

Sec. 4. The Chairman of the State Highway and Public Transportation Commission shall, upon request of a party and upon the payment of a fee of Ten Dollars ($10), certify to the court out of which said process is issued or in which any suit or action may be pending against such nonresident, his agent, servant, employee, heir, legal representative, executor, administrator or guardian, the occurrence or performance of any of the duties, acts, omissions, transactions or happenings contemplated or required by this Act, including the wording of any registered letter received, and his certificate, as well as the wording of said registered letter receipt, shall be accepted as prima facie evidence and proof of the statements contained therein.

[See Compact Edition, Volume 3 for text of 5 and 6]

[Amended by Acts 1981, 67th Leg., p. 1839, ch. 427, § 1, eff. Aug. 31, 1981.]

Art. 2039b. Citation of Nonresidents for Tax Purposes

Acceptance of Benefits Relating to Taxation Deemed Equivalent to Appointment of Agent

Sec. 1. In addition to any procedures for citation provided under Rule 117a, Texas Rules of Civil Procedure, the acceptance by a nonresident of this state, or by a person who was a resident of this state at the time of the accrual of a cause of action but who subsequently removes therefrom, of the rights, privileges, and benefits extended by law to such person(s) of owning, having, or claiming an interest in property, real or personal, subject to taxation by the State of Texas and its legal subdivisions, or any of them, shall be deemed equivalent to appointment by such nonresident of the executive director of the State Property Tax Board or his successor in office, to be his true and lawful attorney and agent upon whom may be served all lawful process in any civil action or proceeding now pending or hereafter instituted against such nonresident(s) growing out of taxation by the state and its legal subdivisions, or any of them, of property in which such nonresident(s) owned, had, or claimed a taxable interest on the first day of any tax year(s) for which taxes on such property have not been paid. Such service of process, as herein provided, shall have the same effect as if made personally on the defendant within the State of Texas.

Manner and Method of Service

Sec. 2. Service of process under this Act shall be in the same manner and method as that prescribed in Chapter 125, Acts of the 41st Legislature, Regular Session, 1929, as last amended by Chapter 502, Acts of the 56th Legislature, Regular Session, 1959 (compiled as Article 2039a of Vernon's Texas Civil Statutes), which relates to citation of nonresident motor vehicle operators by serving the chairman of the state highway commission; provided, however, in the service of such process certified mail shall be used rather than registered mail.

"Nonresidents" Defined

Sec. 3. "Nonresidents" as used in this Act includes corporations, partnerships and all other legal entities or representatives owning, having, or claiming a taxable interest in such property at the time(s) specified in Section 1 hereof.

Severability Clause

Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1975, 64th Leg., p. 1900, ch. 607, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 629, ch. 250, § 1, eff. May 28, 1981.]

Art. 2041b. Assessment of Cost of Postage for Service of Process by Mail

If a public official is required or permitted by law to serve any legal process by mail, including process in suits for delinquent taxes, the official may collect advance payment for the actual cost of the postage required to serve or deliver the process, or the official may assess the expense of postage as costs. The charges authorized by this Act are in addition to the fees allowed by law for other services performed by the official.

[Acts 1981, 67th Leg., p. 756, ch. 288, § 1, eff. Sept. 1, 1981.]

CHAPTER SIX. CERTAIN DISTRICT COURTS

Art. 2093e. Assignment Clerk of Districts Courts of Bexar County

A majority of the Judges of the 37th, 45th, 57th, 73rd, 150th, 131st, 166th, 144th, 175th, 186th, 187th, 224th, 225th, 226th, and 227th District Courts may appoint an Assignment Clerk to serve said Courts in Bexar County under the presiding Judge of said District Courts in the coordination, setting and disposing of cases on the general docket. Such Assignment Clerk shall perform such duties as are assigned to him by said Judges in connection with the coordination, setting and disposing of cases. The Assignment Clerk shall receive reasonable compensation to be determined by the Judges of those Courts, not to exceed 70 percent of the salary paid by the state to the Judges of those Courts. The Commissioners Court of such County shall provide for the payment of the salary of the Assignment Clerk out of the general fund or the jury fund of said County. The appointment shall be for a term of two (2) years, but he shall be subject to dismissal by a majority of said Judges for inefficiency or misconduct.

[Amended by Acts 1975, 64th Leg., p. 1936, ch. 633, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1762, ch. 710, § 1, eff. Aug. 29, 1977.]

CHAPTER SEVEN. THE JURY

4. THE JURY IN THE COURT

Article

2137a. Permanent Exemption for Elderly.

1. JURIES IN CERTAIN COUNTIES

Art. 2094. Selecting Names for Jury Wheel

Between the first and fifteenth days of August of each year, in each county in this State, the tax collector, sheriff, county clerk, and district clerk of the county, each in person or represented by one of his deputies, shall meet at the county courthouse and reconstitute the jury wheel, using as the sole and mandatory source, all names on the voter registration lists from all precincts in the county and the register of permanently exempt persons maintained by the tax collector under Article 2137a.

[Amended by Acts 1979, 66th Leg., p. 253, ch. 131, § 2, eff. Aug. 27, 1979.]

Art. 2100a. Selection in Counties with Aid of Mechanical or Electronic Means; Adoption of Plan

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. Any such plan so adopted shall conform to the following requirements:

[See Compact Edition, Volume 3 for text of 2(a)]

(b) It shall specify that the sources from which names are to be taken for jury purposes are all voter registration lists from all precincts in the county and the register of permanently exempt persons maintained by the county tax collector under Article 2137a.

[See Compact Edition, Volume 3 for text of 2(c) to 2(e)]

Sec. 2a. A jury plan prepared under this Act must provide either for the use of the same list for the selection of persons for jury service until the list is exhausted or for the use of the same list for a specific period of time.

[See Compact Edition, Volume 3 for text of 3]

[Amended by Acts 1979, 66th Leg., p. 253, ch. 131, § 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 505, ch. 212, § 1, eff. May 28, 1981.]

Sections 2 and 3 of the 1981 amendatory act provided:

"Sec. 2. If on the effective date of this Act a plan for selection of persons for jury service is in effect in a county, the plan may not be continued in use after December 31, 1981, unless, before that date, it is amended to include a provision complying with the requirements of Section 2a, Chapter 529, Acts of the 61st Legislature, Regular Session, 1969 (Article 2100a, Vernon's Texas Civil Statutes), as added by this Act.

"Sec. 3. Section 1, Chapter 529, Acts of the 61st Legislature, Regular Session, 1969, as amended by Section 5, Chapter 905, Acts of the 62nd Legislature, Regular Session, 1971 (Article 2100a, Vernon's Texas Civil Statutes), is continued in effect. Chapter 386, Acts of the 62nd Legislature, Regular Session, 1971, is repealed."

Art. 2101. Interchangeable Juries

The provisions of this article shall be applicable only to such counties of this State as may now maintain three or more district courts, or in which three or more district courts may be hereafter established. A criminal court in any county with jurisdiction in felony cases shall be considered a district court within the meaning of this article. The "Interchangeable Jury Law" shall not apply to a selection of jurors in lunacy cases or in capital cases.

[See Compact Edition, Volume 3 for text of 1 to 5]

6. A. Notwithstanding any other provision of this article, in a county in which two district courts have jurisdiction, both district judges may meet together at such times as they may agree upon and determine approximately the number of jurors that are reasonably necessary for jury service in the district courts of the county for each week for as many weeks in advance as they deem proper, and may order the drawing of such number of jurors for each of said weeks, which jury is known as the general panel of jurors for service in both district courts for the respective weeks for which they are designated to serve. Both judges shall act together

in carrying out the provisions of this section. They may increase or diminish the number of jurors to be selected for any week and may order the jurors drawn for as many weeks in advance of service as they deem proper. From time to time they shall designate the judge to whom the general panel shall report for duty, and the designated judge, for the time he is chosen to act, shall organize the juries and have immediate supervision and control of them. The jurors, after being regularly drawn from the wheel, shall be served by the sheriff to appear and report for jury service before the judge so designated, who shall hear the excuses of the jury and swear them in for service for the week that they are to serve to try all cases that may be submitted to them in either of the district courts. The jurors, when impaneled, constitute a general jury panel for service as jurors in both district courts in the county and shall be used interchangeably. In the event of a deficiency of jurors at any given time to meet the requirement of either court, the judge having control of the general panel shall order such additional jurors to be drawn from the wheel as may be sufficient to meet the emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are no longer needed. Resort to the wheel shall be had in all cases to fill out the general panel.

B. With the approval of both district judges, jurors impaneled under the provisions of Subdivision A of this subsection may constitute a general jury panel for service as jurors in all county courts and statutory county courts in the county, in addition to service as jurors in both district courts, and in such event, shall be used interchangeably in all district and county courts.

C. The provisions of this subsection are cumulative of and in addition to the methods now authorized by law for the selection of a jury panel in the counties herein named, and the adoption of the method provided in this subsection is entirely optional with and in the discretion of the district judges of any such county coming under the terms of this law.
[Amended by Acts 1975, 64th Leg., p. 330, ch. 137, § 1, eff. May 8, 1975.]

3. JURY FOR THE WEEK

Art. 2122. Pay of Jurors

(a) Each grand juror and each petit juror in a civil or criminal case in a district or criminal district court, county court, county court at law, or justice court is entitled to receive not less than $6 nor more than $30 for each day or fraction of a day that he serves as a juror. The commissioners court of each county shall determine annually, within the minimum and maximum prescribed in this subsection, the amount of per diem for jurors, which shall be paid out of the jury fund of the county. A person who responds to the process of a court, but who is excused from petit jury service by the court for any cause after being tested on voir dire, is entitled to receive not less than $6 nor more than $30 for each day or fraction of a day that he attends court in response to such process.

[See Compact Edition, Volume 3 for text of (b)]
[Amended by Acts 1975, 64th Leg., p. 1353, ch. 510, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 881, ch. 401, § 1, eff. Aug. 27, 1979.]

4. THE JURY IN COURT

Art. 2133. Qualifications

All persons both male and female eighteen years of age or older are competent jurors, unless disqualified under some provision of this chapter. No person shall be qualified to serve as a juror who does not possess the following qualifications:

1. He must be a citizen of the State and of the county in which he is to serve and qualified under the Constitution and laws to vote in said county.

2. He must be of sound mind and good moral character.

3. He must be able to read and write, except as otherwise provided herein.

4. He must not have served as a juror for six (6) days during the preceding six (6) months in the District Court, or during the preceding three (3) months in the County Court.

5. He must not have been convicted of a felony.

6. He must not be under indictment or other legal accusation of theft or of any felony.

A person who is legally blind is not disqualified to serve as a juror in a civil case solely by reason of his legal blindness, but is subject to a challenge for cause in a civil case unless, in the opinion of the court and all parties to the suit and the prospective juror, his legal blindness does not render him unfit to act as a juror in that particular case. If a party to the suit challenges a prospective juror by reason of his legal blindness, it shall not count as one of that party's peremptory challenges.

Whenever it shall be made to appear to the court that the requisite number of jurors able to read and write cannot be found within the county, the court may dispense with the exception provided for in the third subdivision; and the court may in like manner dispense with the exception provided for in the fourth subdivision, when the county is so sparsely populated as to make its enforcement seriously inconvenient.

Where the word "he" is used in this Section it shall be used in the generic term so as to include both male and female persons.

In this Article, "legally blind" shall mean having not more than 20/200 of visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of

vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. [Amended by Acts 1975, 64th Leg., p. 474, ch. 202, § 1, eff. Sept. 1, 1975.]

Art. 2135. Jury Service

All competent jurors are liable to jury service, except the following persons:

1. All persons over sixty-five (65) years of age.

2. All persons who have legal custody of a child or children under the age of ten (10) years if jury service by that person would necessitate leaving the child or children without adequate supervision.

3. All students of public or private secondary schools.

4. Every person who is enrolled and in actual attendance at an institution of higher education. [Amended by Acts 1979, 66th Leg., p. 804, ch. 363, § 1, eff. Aug. 27, 1979.]

Art. 2137a. Permanent Exemption for Elderly

Eligibility for Permanent Exemption

Sec. 1. A person who is exempt from jury service on the ground of being over 65 years of age may establish a permanent exemption from jury service on that ground by claiming the exemption as provided by this article.

Claim Filed with Tax Assessor-Collector

Sec. 2. (a) A person may claim the permanent exemption by filing with the county tax assessor-collector at any time a signed statement affirming that he or she is over 65 years of age and desires a permanent exemption on that ground.

(b) The statement may be filed by mail or by personal delivery.

Claim Filed with Court Clerk

Sec. 3. (a) A person summoned for jury service who files a statement with the court clerk under Section 1, Article 2137, claiming an exemption from jury service on the ground of being over 65 years of age, may claim the permanent exemption by including in the statement a declaration that he or she desires a permanent exemption on that ground.

(b) Promptly after a statement claiming the permanent exemption is filed, the court clerk with whom it is filed shall have a copy delivered to the county tax assessor-collector.

Register of Permanently Exempt Persons

Sec. 4. The county tax assessor-collector shall maintain a current register indicating the name of each claimant who is entitled to the permanent exemption from jury service.

Permanently Exempt Persons Excluded from Jury List

Sec. 5. The names of persons listed on the register of persons permanently exempt from jury service may not be placed in the jury wheel or otherwise used in preparing the record of names from which a jury list is selected.

Rescission of Permanent Exemption

Sec. 6. (a) The claimant of a permanent exemption from jury service under this article may rescind the exemption at any time by filing a signed request for rescission with the county tax assessor-collector.

(b) Rescission does not affect a person's right to claim the permanent exemption at a later time. [Added by Acts 1979, 66th Leg., p. 252, ch. 131, § 1, eff. Aug. 27, 1979.]

CHAPTER EIGHT. TRIAL OF CAUSES

1. APPEARANCE AND PROCEDURE

Article

2166a. Priorities in Setting Matters for Hearing and Trial.

1. APPEARANCE AND PROCEDURE

Art. 2166a. Priorities in Setting Matters for Hearing and Trial

Hearing and Trial Priorities

Sec. 1. (a) The trial courts of this state shall regularly and frequently make settings for the hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, with criminal actions against defendants who are detained in jail pending trial given preference over other criminal actions;

(3) contents of election and suits under the Texas Election Code; and

(4) appeals of final rulings and decisions of the Industrial Accident Board.

(b) Insofar as practicable, the trial courts shall observe the preference provided by Subsection (a) of this section in ruling on, hearing, and trying the matters pending before the courts.

Secondary Priorities

Sec. 2. A matter not included in Section 1 of this Act shall be set at the discretion of the trial court in which the matter is pending, observing the following priorities:

(1) precedence should be given to matters where delay will cause physical or economic injury or harm to either the parties or the public;

(2) matters involving substantial substantive or constitutional rights should take precedence over matters involving permits, licenses, or privileges; and

(3) precedence should be given matters involving important issues that greatly concern the public or materially affect the public welfare.

General Repealer

Sec. 3. All laws or parts of laws that provide for preference or priority in conflict with this Act for the hearing or trial of pending matters in the trial courts of this state are repealed to the extent of the conflict. This Act does not repeal any provision of the law by which the legislature directs a specific court to give preference to cases involving that court's criminal jurisdiction, family law jurisdiction, or other specified jurisdiction.

[Acts 1981, 67th Leg., p. 2626, ch. 707, §§ 1 to 3, eff. Aug. 31, 1981.]

5. CASE TO JURY

Art. 2194a. Bringing Meals into Jury Room

(a) Whenever the judge deems it advisable, in order to expedite the final disposition of any district court civil case for which a jury is empaneled, to keep the jury together for deliberation rather than to dismiss it for meals, he shall have the power to draw a warrant on the jury fund or other appropriate fund of the county in which the case is being tried, to cover the cost of buying meals and bringing same into the jury room. However, not more than Three Dollars ($3) may be spent per meal for any juror.

[See Compact Edition, Volume 3 for text of (b)]

[Amended by Acts 1977, 65th Leg., p. 670, ch. 253, § 1, eff. Aug. 29, 1977.]

CHAPTER NINE. JUDGMENTS AND REMITTITUR

1. JUDGMENTS

Article

2226b. Costs and Attorney's Fees in Defense of Frivolous Action by State Agency.

1. JUDGMENT

Art. 2212b. Indemnity Provisions in Mineral Agreements Where Negligence Attributable to Indemnitee

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4. (a) The provisions of this Act do not apply to loss or liability for damages, or any other expenses, arising from:

(1) death or bodily injury to persons or injury to property resulting from radioactivity;

(2) injury to property resulting from pollution;

(3) injury to property resulting from reservoir or underground damage; or

(4) death or bodily injury or injury to property resulting from the performance of services to control a wild well so as to protect the safety of the general public and/or to prevent depletion of vital natural resources. The term "wild well" as used in this section means any well from which the escape of oil and/or gas is unintended and cannot be controlled by the equipment used in normal drilling practice.

[See Compact Edition, Volume 3 for text of 4(b) to 5]

[Amended by Acts 1979, 66th Leg., p. 511, ch. 237, § 1, eff. May 17, 1979.]

Art. 2226. Attorney's Fees

Any person, corporation, partnership, or other legal entity having a valid claim against a person or corporation for services rendered, labor done, material furnished, overcharges on freight or express, lost or damaged freight or express, or stock killed or injured, or suits founded upon a sworn account or accounts, or suits founded on oral or written contracts, may present the same to such persons or corporation or to any duly authorized agent thereof; and if, at the expiration of 30 days thereafter, payment for the just amount owing has not been tendered, the claimant may, if represented by an attorney, also recover, in addition to his claim and costs, a reasonable amount as attorney's fees. The usual and customary fees in such cases shall be presumed to be reasonable, but such presumption may be rebutted by competent evidence. In a proceeding before the court, or in a jury case where the issue of amount of attorney's fees is submitted to the court for determination by agreement, the court may in its discretion take judicial knowledge of the usual and customary fees in such matters and of the contents of the case file without receiving further evidence. The provisions hereof shall not apply to contracts of insurers issued by insurers subject to the provisions of the Unfair Claim Settlement Practices Act (Article 21.21–2, Insurance Code), nor shall it apply to contracts of any insurer subject to the provisions of Article 3.62, Insurance Code, or to Chapter 387, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 3.62–1, Vernon's Texas Insurance Code), or to Article 21.21, Insurance Code, as amended, or to Chapter 9, Insurance Code, as amended, and each such article or chapter shall be and remain in full force and effect. This Act shall be liberally construed to promote its underlying purposes.

[Amended by Acts 1977, 65th Leg., p. 153, ch. 76, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 718, ch. 314, § 1, eff. June 6, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act is remedial in character and is intended to apply to all pending and future actions, regardless of the time of institution thereof or of the accrual of any cause of action asserted."

Art. 2226b. Costs and Attorney's Fees in Defense of Frivolous Action by State Agency

Definitions

Sec. 1. In this Act:

(1) "State agency" means a department, commission, board, office, or other agency that:

(A) is in the executive branch of state government;

(B) has authority that is not limited to a geographical portion of the state; and

(C) was created by the constitution or a statute of this state.

(2) "Defendant" means an individual being sued by a state agency in a civil action regardless of whether he is an original defendant in the suit.

(3) "Witness fees" means expenses reasonably incurred by a witness in preparing to testify or in attending or testifying, reasonable compensation to a witness for his loss of time in preparing to testify or in attending or testifying, and a reasonable fee for the professional services of an expert witness.

Motion of Frivolous Claim

Sec. 2. In a suit in a court of this state that originates with an action by a state agency against a defendant who is an individual, the defendant, at any time after the filing of pleadings, may file a motion with the court stating that the agency's suit is frivolous, unreasonable, or without foundation.

Contents of Motion

Sec. 3. The written motion filed with the court shall set forth the facts justifying the defendant's claim that the suit is frivolous, unreasonable, or without foundation, and shall state that if the suit is dismissed or judgment is awarded to the defendant, the defendant intends to submit a motion to the court to require the agency to pay all reasonable witness fees and attorney's fees incurred by the defendant in defending against the suit.

Award of Costs

Sec. 4. In a civil action in which an individual is sued by a state agency, on the dismissal of the suit or the award of judgment to the defendant, the court, on motion of the defendant and on a finding by the court that the agency's suit was frivolous, unreasonable, or without foundation, shall order the agency that brought the suit to pay, in addition to all other costs allowed by law or by rule, the defendant's expenses reasonably necessary and actually incurred in obtaining the services of witnesses and reasonable attorney's fees, in an amount determined by the court.

Cumulative Law

Sec. 5. This Act is supplementary to existing statutes and procedures provided by law or by rule.
[Acts 1981, 67th Leg., p. 2675, ch. 727, eff. Aug. 31, 1981.]

CHAPTER TWELVE. APPEAL AND WRIT OF ERROR

Art. 2249. To Court of Appeals

An appeal or Writ of Error may be taken to the Court of Appeals from every final judgment of the district court in civil cases, and from every final judgment in the county court in civil cases of which the county court has original jurisdiction, and from every final judgment of the county court in civil cases in which the court has appellate jurisdiction, where the judgment or amount in controversy exceeds one hundred dollars exclusive of interest and costs.
[Amended by Acts 1981, 67th Leg., p. 785, ch. 291, § 55, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

Art. 2249a. Party Participating in Actual Trial; Writ of Error Review by Court of Appeals

Sec. 1. No party who participates either in person or by his attorney in the actual trial of the case in the trial court shall be entitled to review by the Court of Appeals through means of writ of error.

Sec. 2. All laws and parts of laws, insofar as they conflict with this Act, are repealed. Writ of error shall continue to be available under the rules and regulations of the law to a party who does not participate in the trial of the case in the trial court.
[Amended by Acts 1981, 67th Leg., p. 785, ch. 291, § 56, eff. Sept. 1, 1981.]

Art. 2250. Appeal from Interlocutory Order

An appeal shall lie from an interlocutory order of the District, County Court at Law, or County Court:

1. Appointing a receiver or trustee in any cause;

2. Overruling a motion to vacate an order appointing a receiver or trustee in any case; or

3. Certifying or refusing to certify a class in a suit brought pursuant to Rule 42 of the Texas Rules of Civil Procedure.

[Amended by Acts 1979, 66th Leg., p. 348, ch. 159, § 1, eff. Aug. 27, 1979.]

CHAPTER THIRTEEN. GENERAL PROVISIONS

1. MISCELLANEOUS

Article
2292m. Bailiff in the 30th, 78th, and 89th District Courts.
2292n. Bailiff of County Court of Harrison County.
2292o. Bailiff in the 65th, 120th, 142nd, 205th, 210th, 238th, 243rd, and 327th District Courts.

3. OFFICIAL COURT REPORTER

2324b. Regulation and Certification of Court Reporters.
2326a–1. Travel Expenses and Per Diem Payments to Visiting Court Reporters.
2326j–29a. Compensation and Expenses of Reporter for 31st Judicial District.

6. JUDICIAL COUNCIL

2328b. Office of Court Administration of the Texas Judicial System.

7. FOREIGN JUDGMENTS

Article
2328b–5. Uniform Enforcement of Foreign Judgments Act.
2328b–6. Uniform Foreign Country Money-Judgment Recognition Act.

1. MISCELLANEOUS

Art. 2292a. Appointment of Bailiff for 24th, 135th, and 267th Judicial Districts

The District Judges of the 24th Judicial District, the 135th Judicial District, and the 267th Judicial District may appoint, with the approval of the Commissioners Court, an officer of the Court to act as bailiff, whose primary duty shall be to act as interpreter. Such bailiff shall be paid a reasonable salary not to exceed the highest salary paid to any deputy, clerk or assistant employed by the County.
[Amended by Acts 1981, 67th Leg., p. 57, ch. 25, § 14, eff. April 8, 1981.]

Art. 2292e. Bailiffs and Assistants or Deputy Bailiffs in Counties with Nine District Courts; Duties; Terms; Compensation

Sec. 1. (a) In all counties having nine (9) or more District Courts, a majority of the District Judges of each such county may appoint a bailiff, and the assistants or deputy bailiffs that are deemed necessary by the District Judges, with approval of the Commissioners Court, to be in charge of the central jury room and the general panel. In such counties, if the District Judges of such county do not appoint a bailiff to be in charge of the central jury room and the general panel, the sheriff of that county shall perform all the duties in connection with the central jury room and the general panel, as provided by law. In any or all of such counties in which the District Judges thereof appoint a bailiff, and the necessary assistants or deputy bailiffs, in charge of the central jury room and the general panel, the sheriff of any such county shall not assign a deputy to the central jury room as is now provided by law. The bailiff and the assistants or deputy bailiffs appointed by the said District Judges are authorized to summon jurors whose names have been drawn from the jury wheel or selected by other means provided by law, and to serve notices upon absent jurors as directed by the District Judge having supervision and control of the general panel.

(b) Said bailiff and assistants and deputy bailiffs appointed by the District Judges shall look after the said panel and perform such duties in connection with the general supervision of the central jury room and the general panel as is required by the District Judges of such county. The bailiff and assistants and deputy bailiffs shall serve for a term of two (2) years from January 1st of the odd year, and the salary of each shall be set by the Commissioners Court upon the recommendation of the District Judges.

Sec. 2. In counties having nine (9) or more District Courts, the jurors in each of such counties may be summoned by the bailiff or the assistants or deputy bailiffs in charge of the central jury room and the general panel of such county or by the sheriff of such county, as the District Judges thereof may direct. Such service on the jurors may be made verbally in person, by registered mail, by ordinary mail or in any other manner or by any other method as may be determined upon the District Judges of such county. Jurors so selected and summoned for service on the central jury panel shall serve in criminal as well as civil cases, and no additional service shall be required in criminal cases.
[Amended by Acts 1981, 67th Leg., p. 619, ch. 243, § 1, eff. May 28, 1981.]

Art. 2292m. Bailiff in the 30th, 78th, and 89th District Courts

Bailiffs Appointed by Judges

Sec. 1. The judges of the 30th, 78th, and 89th District Courts shall appoint a person to serve their respective courts as bailiff.

Evidence of Appointment

Sec. 2. An order signed by the appointing judge entered in the minutes of the court shall be evidence of appointment of the bailiff.

Qualifications

Sec. 3. To be eligible for appointment to the office of bailiff, a person must be a resident of Wichita County and at least 21 years old.

Term of Office

Sec. 4. The bailiff holds office at the will of the judge.

Duties

Sec. 5. A person appointed bailiff is an officer of the court. Such person shall perform in the 30th, 78th, or 89th District Court, as the case may be, all duties imposed on bailiffs under the general laws of Texas and shall perform other duties required by the judge of the court.

Compensation

Sec. 6. The bailiff shall be paid out of the general fund of Wichita County a salary set by the judge and approved by the commissioners court.
[Acts 1977, 65th Leg., p. 744, ch. 278, eff. Aug. 29, 1977.]

Art. 2292n. Bailiff of County Court of Harrison County

Bailiff Appointed by Judge

Sec. 1. The judge of the County Court of Harrison County shall appoint a person to serve his court as bailiff.

Evidence of Appointment

Sec. 2. An order signed by the judge entered in the minutes of the court shall be evidence of the appointment of the bailiff.

Qualifications

Sec. 3. To be eligible for appointment to the office of bailiff, a person must be a resident of Harrison County and at least 21 years old.

Term of Office

Sec. 4. The bailiff holds office at the will of the judge.

Duties; May be Deputized

Sec. 5. (a) A person appointed bailiff is an officer of the court. He shall perform in the County Court of Harrison County all duties imposed on bailiffs under the general laws of Texas and shall perform other duties required by the judge of the court.

(b) The sheriff of Harrison County, on the request of the judge, shall deputize the person who is bailiff of the county court, in addition to other deputies authorized by law.

Compensation

Sec. 6. The bailiff shall be paid a salary in an amount to be set by the judge, not to exceed the salary of a deputy sheriff of the county, and to be paid out of the general fund of Harrison County.
[Acts 1977, 65th Leg., p. 1527, ch. 620, eff. Aug. 29, 1977.]

Art. 2292o. Bailiff in the 65th, 120th, 142nd, 205th, 210th, 238th, 243rd, 318th, and 327th District Courts

Bailiff Appointed by Judge

Sec. 1. The judges of the 65th, 120th, 142nd, 205th, 210th, 238th, 243rd, 318th, and 327th district courts may each appoint a person to serve his court as bailiff.

Evidence of Appointment

Sec. 2. An order signed by the appointing judge and entered on the minutes of the court shall be evidence of the appointment of a bailiff. The judge shall give each commissioners court in the district written notification of the appointment, the date of employment, and the compensation to be paid by each county.

Oath

Sec. 3. The following oath shall be administered by the appointing judge to each bailiff appointed under this Act: "You solemnly swear that you will faithfully and impartially perform all duties as may be required of you by law, so help you God."

Qualifications

Sec. 4. To be eligible for appointment to the office of bailiff, a person must be a resident of a county in which he serves the court and must be at least 21 years of age.

Term of Office

Sec. 5. A bailiff holds office at the will of the judge of the court served by the bailiff.

Duties

Sec. 6. A bailiff is an officer of the court and shall perform in each county in which the court sits all duties imposed on bailiffs under the general laws of Texas. The bailiff shall perform other duties required by the judge of the court that he serves but shall have no duties assigned by any other person.

Bailiff Deputized

Sec. 7. The sheriff of each county where the court sits shall, on written notice of the judge, deputize the bailiff in addition to other deputies authorized by law.

Compensation

Sec. 8. Each county in which the court sits shall compensate the bailiff out of the general fund in an amount set in writing by the judge, but not in an amount greater than the amount that the county pays the chief deputy sheriff.
[Acts 1981, 67th Leg., p. 2236, ch. 532, eff. Aug. 31, 1981.]

Art. 2320b. Receivers of Mineral Interests Owned by Nonresidents or Absentees

[See Compact Edition, Volume 3 for text of 1 and 2]

Execution of Mineral Leases; Assignment of Outstanding Undivided Mineral Leasehold Interest; Unitization Agreements; Payment and Application of Consideration

Sec. 3. Such receiver, under the orders of the court, shall have power, authority and duty, subsequent to his appointment and from time to time thereafter, to (1) execute and deliver to a lessee, or successive lessees, mineral leases on such outstanding mineral interests, (2) to execute and deliver to a lessee, or successive lessees, an assignment of any such outstanding undivided mineral leasehold interest, and (3) to enter into any unitization agreement which has been duly authorized by the Railroad Commission of Texas. Such receiver shall execute such leases or assignments, or enter into such unitization agreements forthwith upon the entry of any such decree by the District Court. The money consideration, if any, to be paid for the execution of the aforementioned leases, assignments and/or unitization agreements by such receiver, shall be paid over to the clerk of the District Court in which the cause is pending, prior to the execution of the instrument by the receiver, and thereafter, after applying such money consideration, if any, to costs that may have accrued in such cause, the district clerk shall retain the balance of such funds for the use and benefit of such nonresident or unknown owners of such mineral interests or leasehold interests, as the case may be, and any future payments paid under such mineral lease, assignment of leasehold interest or unitization agreement, shall be paid directly into the registry of the court and impounded for the use and benefit of such nonresident and unknown owners.

[See Compact Edition, Volume 3 for text of 4 and 5]

[Amended by Acts 1979, 66th Leg., p. 374, ch. 169, § 1, eff. Aug. 27, 1979.]

3. OFFICIAL COURT REPORTER

Art. 2321. Appointment and Examination

Each judge of a court of record shall appoint an official court reporter who shall be a sworn officer of the court and shall hold office at the pleasure of the court.

[Amended by Acts 1977, 65th Leg., p. 1158, ch. 438, § 17, eff. Aug. 29, 1977.]

Art. 2324. Duty of Reporter

Each Official Court Reporter shall upon request:

Attend all sessions of the court; take full shorthand notes of all oral testimony offered in cases tried in said court, together with all objections to the admissibility of the evidence, the rulings and remarks of the court thereon, and all exceptions thereto; take full shorthand notes of closing arguments when requested to do so by the attorney for any party to such case, together with all objections to such arguments, the rulings and remarks of the court thereon, and all exceptions thereto;

Preserve all shorthand notes taken in said court for future use or reference for three full years, and furnish to any person a transcript of all such evidence or other proceedings, or any portion thereof as such person may order, upon the payment to the official shorthand reporter of the fees provided by the judge.

When any party to any suit reported by any such reporter shall desire a transcript of the evidence in said suit, said party may apply for same by written demand, and the reporter shall make up such transcript and shall receive as compensation therefor a reasonable amount, subject to the approval of the judge of the court if objection is made thereto, taking into consideration the difficulty and technicality of the material to be transcribed and the time within which the transcript is requested to be prepared. The original transcript fee charged shall pay for the original plus one copy of the transcript, and additional copies may be purchased for a fee per page not in excess of one-third (⅓) of the original cost per page. In addition such reporter may make a reasonable charge, subject to the approval of the trial court if objection shall be made thereto, for postage and/or express charges paid; photostating, blue-printing or other reproduction of exhibits; indexing; and preparation for filing and special binding of original exhibits. Provided further, that in case any such reporter shall charge in excess of the fees herein allowed by the judge, whether by accident or design, he shall, on demand filed with the court, make refund of the excess to the party to which it is due. Provided, however, that the Supreme Court of Texas under its rulemaking authority shall provide for the duties and fees of court reporters in all civil judicial proceedings, except as provided by law.

[Amended by Acts 1975, 64th Leg., p. 826, ch. 319, § 1, eff. May 27, 1975.]

Art. 2324b. Regulation and Certification of Court Reporters

Certificate Required

Sec. 1. No person may be appointed an official court reporter or deputy court reporter or may engage in the practice of shorthand reporting for use in litigation in the courts of this state unless that person is the holder of a certificate in full force and effect issued by the Supreme Court of Texas.

Penalties

Sec. 2. A person engaging in the practice of shorthand reporting who violates the provisions of Section 1 of this Act is guilty of a Class A misdemeanor, and each day of violation shall constitute a separate offense.

Definition

Sec. 3. In this Act, "the practice of shorthand reporting for use in litigation in the courts of this state" means the making of a verbatim record of an oral court proceeding, deposition, or proceeding before a grand jury, referee, or court commissioner by means of written symbols or abbreviations in shorthand or machine shorthand writing or oral stenography.

Texas Court Reporters Committee; Creation; Membership

Sec. 4. There is hereby created the Texas Court Reporters Committee to consist of the following nine members appointed by the supreme court:

(1) one active district judge who shall serve as the committee's chairman;

(2) two active members of the State Bar who have been practicing members of the bar during more than five consecutive years next preceding their appointment; and

(3) three active official court reporters and three active free-lance court reporters who have been engaged in the practice of shorthand reporting for use in litigation in the courts of this state during more than five consecutive years next preceding their appointment.

Terms of Office

Sec. 5. The regular term of office of committee members shall be six years, but initially the terms of two court reporters and one attorney shall expire on December 31, 1978, and the terms of two court reporters and one attorney shall expire on December 31, 1980, and the terms of two court reporters and the district judge shall expire on December 31, 1982.

Successors; Vacancies

Sec. 6. Committee members shall hold office until the appointment and qualification of their successors. An interim vacancy shall be filled for the unexpired portion of the term in the same manner as the appointment at the expiration of a full term. Committee members may succeed themselves in office only if they have served less than three consecutive years.

Compensation; Expenses

Sec. 7. Committee members shall receive no compensation for their services but are entitled to receive actual and necessary expenses for traveling and other necessary expenses incurred in the discharge of their duties as members of the committee.

Meetings, Hearings, Examinations; Quorum; Records

Sec. 8. The committee may hold its meetings, hearings, examinations, and other proceedings at such times and places as it shall determine but shall meet in Austin, Texas, at least once each year. Five members constitute a quorum for the transaction of business. The committee shall keep a complete record of all of its proceedings and all certificates issued, renewed, or revoked, together with a detailed statement of receipts and disbursements.

Executive Functions; Subcommittees; Employees

Sec. 9. The committee is charged with the executive functions necessary to effectuate the purposes of this Act under such rules as may be promulgated by the supreme court. The committee may appoint subcommittees as it deems necessary or proper. The committee may employ the employees it deems necessary for the performance of the duties and exercise of the powers conferred on the committee and may pay from funds available to it all expenses reasonably necessary to effectuate the purposes of this Act.

Application for Examination; Fee

Sec. 10. Each applicant for a certificate under this Act shall file an application with the committee at least 30 days before the date fixed for examination, accompanied by the required fee. The fee for an examination given by the committee shall be fixed by the committee, subject to the approval of the supreme court.

Initial Certificate Fee; Renewals

Sec. 11. (a) Each person to whom a certificate is issued shall, as a condition precedent to its issuance and in addition to any other fee which may be payable, pay the initial certificate fee which shall be fixed by the committee, subject to approval by the supreme court.

(b) Each certificate issued under this Act that has not been renewed shall expire at the date of the second anniversary of the date of the issuance of the certificate. To renew a certificate, the certificate holder shall, on or before the expiration date of the certificate, pay the renewal fee which shall be fixed by the committee, subject to approval by the supreme court.

Powers and Duties of Committee

Sec. 12. (a) The committee shall have the powers and duties enumerated in Subsections (b) through (e) of this section.

(b) The committee shall administer tests to determine the qualifications of persons applying for certificates under this Act. Each test shall be given in two parts to be designated Part A and Part B. Part A shall be composed of five minutes of two-voice dictation of questions and answers given at 225 words per minute, five minutes of dictation of jury charge given at 200 words per minute, and five minutes of dictation of selected literary material given at 180 words per minute. Each applicant shall personally take down the test, either in his own writing or his own voice, and shall reduce to writing the takedown on either a manual or electric typewriter. The minimum passing grade on each section of Part A of the test shall be 95 percent accuracy. An error shall be charged for each wrong word, for each omitted word, for each added word not dictated, for each contraction where read as two words, for two words where read as a contraction, for each misplaced word, for each misplaced period that would materially alter the sense of a group of words or a sentence, for each misspelled word, for each plural or singular where the opposite was dictated, and for each wrong number. The use of a dictionary will be permitted during Part A of the test. Applicants will be allowed three hours to complete the transcription of Part A of the test. If time permits, the applicant may review his transcript but shall use only his original takedown from which his transcript was prepared to review the transcript. Part B of the test shall consist of objective questions touching on elementary aspects of court reporting, spelling, and grammar. The use of a dictionary will not be permitted during Part B of the test. The minimum passing grade on Part B will be 75 percent. Anyone discovered cheating on the tests is disqualified and will not be eligible for retesting for a period of two years.

(c) The committee shall charge and collect from all applicants for certificates and renewal of certificates the fees provided in this Act.

(d) The committee shall determine the qualifications and pass on the eligibility of all persons applying for certificates under this Act.

(e) The committee shall certify to the supreme court the applicants that are determined on examination by the committee to be qualified in professional shorthand reporting.

(f) Rules not inconsistent with this section may be promulgated by the supreme court.

Revocation of Certificate; Grievance Procedures

Sec. 13. (a) On a verified complaint, the committee may revoke any certificate issued under this Act for unprofessional conduct or other sufficient cause after notice and opportunity of a hearing. The notice shall state the cause for the contemplated revocation and the time and place of the hearing and shall be mailed to the registered address of the holder of the certificate at least 30 days before the hearing. Each committee member is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, and take evidence and require the production of any records concerning any matter within the jurisdiction of the committee, at the direction of a majority of the committee. The committee shall reduce to writing a summary of the evidence given before it and shall make a written finding of the facts thereon. A certificate may be revoked for fraud, dishonesty, corruption, willful violation of duty, having become incompetent to continue to perform the duties as a court reporter, or fraud or misrepresentation in obtaining a certificate under this Act. A disciplinary action of the committee may be appealed by the aggrieved person on trial de novo, with or without a jury, to the district court in the county of the aggrieved person's residence. If the aggrieved party is the official court reporter or deputy court reporter of the court in which the proceeding would be heard, the presiding judge of the administrative judicial district shall appoint the judge of another court or a retired judge to hear and determine the complaint. The committee shall not have the power to suspend a certificate issued under this Act.

(b) A person desiring to file a complaint against a court reporter holding a certificate under this Act shall obtain from the committee a complaint form, which shall be completed and signed under oath, attaching thereto any pertinent documentary evidence. On receipt of the form properly executed, it is the duty of the committee to duplicate and furnish copies of the complaint and attachments to the committee.

(c) Within 30 days from the date the verified complaint is received by the committee, it shall set a date for the hearing, if a hearing is deemed advisable by the committee, and shall immediately notify the certificate holder of the date of the hearing.

(d) The committee shall govern the treatment of the request for continuances with regard to hearings before the committee.

(e) Rules not inconsistent with this section may be promulgated by the supreme court. At the hearing, the committee will adhere to the general rules of evidence applicable before the district courts of the state.

(f) Five members of the committee shall constitute a quorum. The chairman or his designee shall preside at the hearings.

(g) A copy of the findings and rulings of the committee shall be forwarded to the complainant and the aggrieved person.

Employment of Noncertified Reporters

Sec. 14. Nothing in this Act shall be construed to prohibit the employment of a shorthand reporter not holding a certificate until a certified shorthand reporter is available. Oral depositions, however, may be reported by a person not certified under this Act only if the noncertified reporter delivers to the parties or their counsel present at the deposition an affidavit that no certified shorthand reporter is then available or, on stipulation on the record at the commencement of the deposition, by the parties or their counsel present at the deposition. The provisions of this section do not apply to depositions taken outside this state for use in this state.

Persons Excluded from Act

Sec. 15. The provisions of this Act shall not apply to a party to the litigation involved, his attorney, or to a full-time employee of either.

Certification of Present Reporters

Sec. 16. (a) No examination shall be required of an applicant who is an official court reporter of any court of record in this state as of the effective date of this Act, and said applicant shall be issued a certificate by the supreme court.

(b) Upon application to the committee, no examination shall be required of any court reporter who can verify that prior to the effective date of this Act said applicant had been actively engaged in the practice of shorthand reporting for use in litigation in the courts of this state. Upon approval by the committee, the supreme court shall issue its certificate.

(c) On certification, a court reporter is entitled to use the title "Certified Shorthand Reporter" or the abbreviation "CSR." A certified shorthand reporter may administer oaths to witnesses anywhere in this state.

[Acts 1977, 65th Leg., p. 1155, ch. 438, §§ 1 to 16, eff. Aug. 29, 1977.]

Art. 2326a. Expenses and Manner of Payment

All official shorthand reporters and deputy official shorthand reporters of the District Courts of the State of Texas composed of more than one county, when engaged in the discharge of their official duties in any county in this state other than the county of their residence shall, in addition to the compensation now provided by law for their services, be allowed their actual and necessary expenses while actually engaged in the discharge of such duties, not to exceed the sum of Fifteen Dollars ($15.00) per day for hotel bills, and not to exceed Six Cents (6¢) a mile when traveling by railroad or bus lines, and not to exceed Sixteen Cents (16¢) a mile when traveling by private conveyance in going to and returning

from the place where such duties are discharged, traveling the nearest practical route. Such expenses shall be paid after the completion of each term of court by the respective counties of the Judicial District for which they are incurred, each county paying the expenses incidental to its own regular or special term of court, and said expenses shall be paid to the official or deputy official shorthand reporter by the Commissioners Court of the county, out of the general fund of the county, upon the sworn statement of the reporter, approved by the Judge.

Provided there shall not be paid to any such official shorthand reporter, or his deputy, more than Two Thousand Dollars ($2,000.00) in any one year under the provisions of this Act; provided further, that in districts containing two counties only, the expenses herein allowed shall never exceed Four Hundred Dollars ($400.00) per annum; in districts containing three counties only, the expenses herein allowed shall never exceed Eight Hundred Dollars ($800.00) per annum; in districts containing four counties only, the expenses herein allowed shall never exceed One Thousand, Four Hundred Dollars ($1,400.00) per annum; in districts containing five or more counties the expenses herein allowed shall never exceed Two Thousand Dollars ($2,000.00) per annum.

The account for such services herein provided for shall be sworn to in duplicate by the reporter, and approved by the District Judge, and one copy of said account shall be filed by the reporter with the clerk of the District Court of the county where the Judge of the district resides.

Whenever a special term of any District Court in this state is convened and the services of an additional official or deputy official shorthand reporter is required, then this Act shall also apply to said shorthand reporter so employed by the Judge of said special term, and all expenses as herein provided shall be allowed and paid said shorthand reporter so employed for said special term by the county wherein said special term is convened and held, and shall be in addition to the expenses herein provided for the official or deputy official shorthand reporter of the district.

Provided, however, that whenever any official or deputy official shorthand reporter is called upon to report the proceedings of any special term of court, or on account of the sickness of any official shorthand reporter of any Judicial District, necessitating the employment of a shorthand reporter from some other county within the state, then the shorthand reporter so employed shall receive and be paid all actual and necessary expenses in going to and returning from the place where he or she may be called on to report the proceedings of any regular or special terms of court.

[Amended by Acts 1977, 65th Leg., p. 310, ch. 144, § 1, eff. May 13, 1977.]

Art. 2326a-1. Travel Expenses and Per Diem Payments to Visiting Court Reporters

Sec. 1. A visiting official shorthand reporter or deputy official shorthand reporter from another judicial district who is required to leave the county of his residence to report the proceedings as a substitute for the official reporter of the county visited is entitled to receive his actual and necessary expenses in going to and returning from the place where he is called on to report the proceedings and, in addition to his regular salary from the county or counties in which the reporter is regularly employed, is entitled to receive a per diem payment of $30 for each day, or part of a day, which the reporter spends outside the county of his residence in the performance of the duties as a substitute court reporter.

Sec. 2. The traveling expense and per diem payment provided in this Act shall be paid to the substitute court reporter or deputy court reporter by the commissioners court of the county visited, out of the general fund of the county, on the sworn statement of the reporter, approved by the district judge presiding in the court where the proceedings were reported.

[Acts 1977, 65th Leg., p. 1756, ch. 704, eff. June 15, 1977.]

Art. 2326j-13. Repealed by Acts 1973, 62nd Leg., p. 291, ch. 137, § 3, eff. May 18, 1973

See, now, arts. 2326j-13a and 3912k note.

Art. 2326j-13a. Compensation of Reporter for 23rd Judicial District

Sec. 1. The official court reporter of the 23rd Judicial District may receive a salary not to exceed $16,500 per annum, in addition to all travel expenses, transcript fees, and all other compensation provided by law to be paid to the official court reporter. The specific amount of the salary of the official court reporter may be fixed by the district judge of such judicial district and approved by the commissioners courts of the counties in the district.

Sec. 2. The salary of the official court reporter as herein fixed shall be paid monthly by the respective counties composing any of said judicial district in accordance with the proportion fixed, made, and determined by the district judge of said judicial district as to the amount to be paid monthly by each county in the judicial district. Such salary shall be paid out of the general fund or out of the jury fund, or out of any fund available for the purpose.

[Amended by Acts 1979, 66th Leg., p. 970, ch. 434, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1979 amendatory act provided:

"Section 3, Chapter 622, Acts of the 62nd Legislature, Regular Session, 1971 (Article 3912k, Vernon's Texas Civil Statutes), applies to the 130th Judicial District."

Art. 2326j-29. Repealed by Acts 1978, 65th Leg., 2nd C.S., p. 21, ch. 9, § 3, eff. Nov. 7, 1978

Art. 2326j-29a. Compensation and Expenses of Reporter for 31st Judicial District

Sec. 1. Notwithstanding the provisions of any local or general law to the contrary, the judge of the 31st Judicial District shall determine and order, on the basis of annual case loads in each county, the proportionate amount of the salary set by the judge for the official shorthand reporter of the 31st Judicial District to be paid by each county in the judicial district. The amount of the salary allocated to each county in the 31st Judicial District shall be paid monthly out of the general fund, jury fund, or other fund available for the purpose, as determined by the commissioners court.

Sec. 2. The official shorthand reporter shall, in addition, receive allowances for actual and necessary meals and traveling and hotel expenses while actually engaged in the discharge of the reporter's duties. These allowances may be in the same amounts as are allowed for employees of the State of Texas. The expenses shall be paid by the respective counties of the judicial district for which they are incurred, each county paying the expense incidental to its own regular or special term of court, and the expenses shall be paid to the official shorthand reporter by the commissioners court of the county out of the general fund of the county on the sworn statement of the reporter approved by the judge.

[Acts 1978, 65th Leg., 2nd C.S., p. 21, ch. 9, §§ 1, 2, eff. Nov. 7, 1978.]

Art. 2326j-62a. Expenses of Reporter for 46th Judicial District

In addition to a salary, the official court reporter for the 46th Judicial District may receive, in lieu of the expenses provided for court reporters in Chapter 56, Acts of the 41st Legislature, 1929, as amended (Article 2326a, Vernon's Texas Civil Statutes), an allowance of $3,000 per year as per diem for actual and necessary expenses, including travel and hotel expenses, while engaged in the discharge of his duties, which amount shall be paid in 12 equal monthly installments by the counties comprising the district in proportion to the population which each county bears to the population of the whole district, according to the last preceding federal census.

[Amended by Acts 1981, 67th Leg., p. 1009, ch. 385, § 1, eff. June 10 1981.]

Art. 2326o. Shorthand Reporters in Counties of 2,000,000 or more; Appointment and Compensation

Sec. 1. In all counties in the State of Texas having a population of 2,000,000 or more, according to the last preceding federal census, the judge of each district court, and the judge of each county court at law, civil or criminal, shall appoint an official shorthand reporter for such court. The appointment of each such court reporter and his annual salary as fixed by the judge of the court in which such court reporter serves, shall be evidenced by an order entered in the minutes of each such court, which appointment and the salary so fixed shall continue in effect from year to year unless and until changed by order of the judge of the court in which such court reporter serves.

[See Compact Edition, Volume 3 for text of 2 and 3]

[Amended by Acts 1981, 67th Leg., p. 567, ch. 237, § 25, eff. Sept. 1, 1981.]

Art. 2327. In County Court

When either party to a civil case pending in the county court or county court at law applies therefor, the judge thereof shall appoint a certified shorthand reporter, to report the oral testimony given in such case. A certified shorthand reporter shall be appointed to report the oral testimony given in any contested probate matter heard in a county court. In a county in which no certified shorthand reporter is a resident, a noncertified shorthand reporter or stenographer shall be appointed to report the oral testimony. The reporter or stenographer shall take the oath required of official court reporters, and shall receive not less than five dollars per day, to be taxed and collected as costs. In such cases the provisions of this title with respect to the preparation of the statement of facts, the time to be allowed therefor, and for the presentation to the opposite party, and the approving and filing thereof by the court, shall apply to all statements of facts in civil and probate cases tried in said courts, and all provisions of law governing statement of facts and bills of exception to be filed in district courts and the use of same on appeal, shall apply to civil and probate cases tried in said courts.

[Amended by Acts 1979, 66th Leg., p. 1761, ch. 713, § 32, eff. Aug. 27, 1979.]

Art. 2327d. Shorthand Reporters for County Judges and for Certain Judges of Probate Court

Sec. 1. For the purpose of preserving a record of all hearings had before the County Judge of the counties of Texas, for the information of the Court and parties that may be interested therein, the Judge of the County Courts of Texas may appoint an official shorthand reporter for such Court who shall be well skilled in his profession, shall be a sworn officer of the Court, and shall hold office at the pleasure of the County Judge, and all provisions of the Civil Statutes of the State of Texas relating to the appointment of stenographers for District Courts shall apply, in so far as applicable to the official shorthand reporter herein authorized to be appointed by the County Judge of the County Courts of Texas. Provided, that in counties having a population of not less than five hundred thousand (500,000) inhabitants, according to the last preceding Federal Census, or any future Federal Census, there may be paid to the official shorthand reporter for the County Court of such county a salary in addition

to compensation for transcript fees as provided by law, such salary to be paid out of the Officer's Salary Fund of such county.

Sec. 1A. For the purpose of preserving a record of all hearings had before the County Judge or any Judge of a Probate Court in counties having a population of not less than two million (2,000,000) according to the last preceding federal census, or any future federal census, the County Judge or any Judge of a Probate Court in such counties may elect to appoint an official shorthand reporter in any case pending before any of such courts. The official shorthand reporter so appointed shall be well skilled in his profession, shall be a sworn officer of the Court and shall hold office for the duration of the case in which he was appointed to serve.

[Amended by Acts 1981, 67th Leg., p. 567, ch. 237, § 26, eff. Sept. 1, 1981.]

5. JUDICIAL COUNCIL

Art. 2328a. Judicial Council

Creation; Purposes

Sec. 1. There is hereby created the Texas Judicial Council for the continuous study of and report upon the organization, rules, procedure and practice of the judicial system of the State of Texas, the work accomplished and the results produced by that system and its various parts, and methods for its improvement.

Application of Sunset Act

Sec. 1a. The Texas Civil Judicial Council is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1987.

[1] Article 5429k.

[See Compact Edition, Volume 3 for text of 2]

Ex Officio Members

Sec. 3. The ex officio members of the Council shall consist of the following: (1) the Chief Justice of the Supreme Court of Texas, who shall remain a member as long as he holds the position of Chief Justice; (2) the Presiding Judge of the Court of Criminal Appeals, who shall remain a member as long as he holds the position of Presiding Judge; (3) two Justices of the Courts of Appeals, to be designated by the Governor for overlapping four-year terms, one to be designated in January, 1971, for a four-year term and one to be designated in January, 1973, for a four-year term with the replacement in each case to be designated by the Governor in January of odd-numbered years; (4) two presiding judges of the administrative judicial districts, to be designated by the Governor for four-year terms, one to be designated in January, 1971, for a four-year term and one to be designated in January, 1973, for a four-year term, with the replacement in each case to be designated by the Governor in January of odd-numbered years; (5) the Chairman and the immediate past Chairman of the Senate Jurisprudence Committee; and (6) the Chairman and the immediate past Chairman of the House Judiciary Committee. The Chief Justice of the Supreme Court may from time to time designate some other Justice of that Court to act in his stead, and at his pleasure, as member of the Council. The Presiding Judge of the Court of Criminal Appeals may from time to time designate some other Judge of that Court to act in his stead, and at his pleasure, as member of the Council. The foregoing references to justices and judges, other than the Chief Justice of the Supreme Court and the Presiding Judge of the Court of Criminal Appeals, include respectively such retired justices and judges of the same grade as are legally eligible for assignment to part-time judicial duties. In the event the Chairman of the Senate Jurisprudence Committee or the Chairman of the House Judiciary Committee is reappointed to such position, his immediate predecessor shall continue to serve on the Council as immediate past Chairman, it being the intent of the Legislature that two members of the Senate and two members of the House be at all times members of the Council; provided, however, that in the case of legislative members, cessation of membership in the Legislature shall not terminate their membership on the Council, but they shall continue to serve for their full term notwithstanding their cessation of membership in the Legislature. In the event of a vacancy in a legislative membership, such vacancy shall be filled for the unexpired term only by the presiding officer of the appropriate house of the Legislature, and vacancies in other official memberships shall be filled in the same manner as the original appointment and for the unexpired term only. Ex officio members of the Council shall be entitled to all the privileges of full membership thereon and shall be regarded and treated in every respect as full members thereon.

[See Compact Edition, Volume 3 for text of 4]

Duties of Council

Sec. 5. It shall be the duty of the Council:

1. To make a continuous study of the organization of the courts; the rules and methods of procedure and the practice of the judicial system of the State; of the work accomplished, the results attained and the uniformity of the discretionary powers of the courts, to the end that procedure may be simplified, business expedited, and justice better administered.

2. To receive and consider suggestions from judges, public officers, members of the bar, and citizens, touching remedies for faults in the administration of justice.

3. To formulate methods for simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults in the administration of justice.

4. To gather judicial statistics and other pertinent data from the several judges and other court officials of the State.

5. To make a complete detailed report, on or before December 1st of each year, to the Governor and to the Supreme Court, of all its proceedings, suggestions and recommendations, and such supplemental reports from time to time as the Council may deem advisable. All such reports shall be considered public reports and may be given to the press as soon as filed.

6. To make investigations and reports upon such matters, touching the administration of justice as may be referred to the Council by the Supreme Court or the Legislature.

7. To hold one meeting in each calendar year, and such other meetings as may be ordered by the Council or under its authority, and at such time and place as may be designated by it or under its authority.

[See Compact Edition, Volume 3 for text of 6 to 8]

[Amended by Acts 1975, 64th Leg., p. 150, ch. 64, §§ 1, 2, eff. April 24, 1975; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.140, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 78, ch. 49, § 1, eff. April 11, 1979; Acts 1981, 67th Leg., p. 786, ch. 291, § 57, eff. Sept. 1, 1981.]

6. CIVIL JUDICIAL COUNCIL

Art. 2328b. Office of Court Administration of the Texas Judicial System

Definitions

Sec. 1. In this Act, unless the context requires a different definition:

(1) "Court" means any tribunal forming a part of the judicial branch of government.

(2) "Trial court" means any tribunal forming a part of the judicial branch of government with the exception of the supreme court, the court of criminal appeals, and the courts of civil appeals.

(3) "Office of Court Administration" means the Office of Court Administration of the Texas Judicial System.

Promulgation of Rules

Sec. 2. The supreme court shall promulgate rules of administration for the efficient administration of justice in this state and other rules necessary for the enforcement of this Act. When promulgating rules of administration for the efficient administration of criminal justice in this state, the supreme court will seek the advice of the court of criminal appeals.

Creation of Office; Direction and Supervision; Duties

Sec. 3. (a) The Office of Court Administration of the Texas Judicial System is hereby created.

(b) The office of court administration shall operate under the direction and supervision of the supreme court. It shall perform the duties provided in this Act and such other duties as may be directed by the supreme court and shall provide the necessary staff functions for the efficient operation of the Texas Judicial Council.

Administrative Director

Sec. 4. (a) The supreme court shall appoint the administrative director of the courts, who shall serve at the will of the court and shall be subordinate to, and act by authority of and under the direction of, the chief justice of the supreme court. The administrative director shall direct the operations of the office of court administration and, as an additional duty of his office, shall serve as executive director of the Texas Judicial Council. He shall serve in such other capacities as may be directed by the supreme court or the chief justice.

(b) The administrative director shall devote full time to his official duties.

Employment of Personnel

Sec. 5. The administrative director, with the approval of the chief justice, shall employ such personnel as are necessary for the efficient operation of the office of court administration and of the Texas Judicial Council.

Duties of Administrative Director

Sec. 6. Under the direction and supervision of the chief justice, the administrative director shall implement the provisions of this Act and the rules of administration and other rules promulgated by the supreme court for the efficient administration of justice in this state. He shall:

(1) assist the justices and judges of the various courts in discharging their administrative duties;

(2) consult with and assist the administrative judges in discharging their duties under provisions of law and rules promulgated by the supreme court;

(3) make such recommendations to the supreme court as may be appropriate for the implementation of this Act;

(4) examine the administrative and business methods and systems employed in the offices of the clerks of court and other offices related to and serving the courts and make recommendations for necessary improvement and recommend forms and other documents used to record the business of the courts;

(5) examine the state of the dockets and practices and procedures of the courts and make recommendations for the promotion of the orderly and efficient administration of justice;

(6) prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system, and study and make recommendations on the expenditure of state funds appropriated for the maintenance and operation of the judicial system;

(7) consult with and assist the clerks of court and other officers and employees of the courts and of offices related to and serving the courts to provide for the efficient administration of justice;

(8) consult with and make recommendations to the court administrators and court coordinators of the courts of the state to provide for uniform administration and promote the efficient administration of justice in all courts of the state;

(9) perform such additional duties as may be assigned by the supreme court and by the chief justice; and

(10) prepare an annual report of the activities of his office to be published in the annual report of the Texas Judicial Council.

Clerical Personnel

Sec. 7. The authority of the courts to appoint clerical personnel is not limited by any provision of this Act.

Judge Acting Without Potential Jurisdiction

Sec. 8. Neither this Act nor any rule adopted under this Act may be construed to authorize a judge to act in a case of which his own court would not have potential jurisdiction under the constitution and laws of this state.

Judicial Discretion

Sec. 9. Neither this Act nor any rules adopted under its authority shall be construed to authorize any infringement upon the judicial discretion of any judge of the state in the trying of a case properly before his court.

[Acts 1977, 65th Leg., p. 98, ch. 45, eff. April 5, 1977.]

7. FOREIGN JUDGMENTS

Art. 2328b–5. Uniform Enforcement of Foreign Judgments Act

Definition

Sec. 1. In this Act, "foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state.

Filing and Status of Foreign Judgments

Sec. 2. A copy of any foreign judgment authenticated in accordance with an act of congress or statutes of this state may be filed in the office of the clerk of any court of competent jurisdiction of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed. A filed foreign judgment has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, staying, enforcing, or satisfying as a judgment of the court in which it is filed.

Notice of Filing

Sec. 3. (a) At the time a foreign judgment is filed, the judgment creditor or the judgment creditor's attorney shall file with the clerk of the court an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor.

(b) The clerk shall promptly mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall note the mailing in the docket. The notice must include the name and post office address of the judgment creditor and if the judgment creditor has an attorney in this state, the attorney's name and address. The judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk does not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

Stay

Sec. 4. (a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted and proves that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

(b) If the judgment debtor shows the court any ground on which enforcement of a judgment of the court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, and require the same security for satisfaction of the judgment that is required in this state.

Fee

Sec. 5. A person filing a foreign judgment shall pay $10 to the clerk of the court. Fees for other enforcement proceedings shall be as otherwise provided by law for judgments of the courts of this state.

Optional Procedure

Sec. 6. The judgment creditor retains the right to bring an action to enforce a judgment instead of proceeding under this Act.

Uniformity of Interpretation

Sec. 7. This Act shall be interpreted and construed to achieve its general purpose to make the law of those states which enact it uniform.

Short Title

Sec. 8. This Act may be cited as the Uniform Enforcement of Foreign Judgments Act.

[Acts 1981, 67th Leg., p. 464, ch. 195, eff. May 25, 1981.]

Art. 2328b-6. Uniform Foreign Country Money-Judgment Recognition Act

Short Title

Sec. 1. This Act may be cited as the Uniform Foreign Country Money-Judgment Recognition Act.

Definitions

Sec. 2. In this Act:

(1) "Foreign country" means a governmental unit other than the United States, or a state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands.

(2) "Foreign country judgment" means a judgment of a foreign country granting or denying a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

Applicability

Sec. 3. This Act applies to any foreign country judgment:

(1) that is final and conclusive and enforceable where rendered even though an appeal is pending or the judgment is subject to appeal; or

(2) that is in favor of the defendant on the merits of the cause of action and is final and conclusive where rendered, even though an appeal is pending or the judgment is subject to appeal.

Recognition and Enforcement

Sec. 4. Except as provided in Section 5 of this Act, a foreign country judgment meeting the requirements of Section 3 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign country judgment is enforceable in the same manner as the judgment of a sister state that is entitled to full faith and credit.

Grounds for Nonrecognition

Sec. 5. (a) A foreign country judgment is not conclusive if:

(1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign country court did not have personal jurisdiction over the defendant; or

(3) the foreign country court did not have jurisdiction over the subject matter.

(b) A foreign country judgment need not be recognized if:

(1) the defendant in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to enable him to defend;

(2) the judgment was obtained by fraud;

(3) the cause of action on which the judgment is based is repugnant to the public policy of this state;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign country court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;

(6) in the case of jurisdiction based only on personal service, the foreign country court was a seriously inconvenient forum for the trial of the action; or

(7) it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in Texas, conform to the definition of "foreign country judgment" in Section 2(2) of this Act.

Personal Jurisdiction

Sec. 6. (a) The foreign country judgment shall not be refused recognition for lack of personal jurisdiction if:

(1) the defendant was served personally in the foreign country;

(2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;

(3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign country court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign country;

(5) the defendant had a business office in the foreign country and the proceedings in the foreign country court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceedings involved a cause of action arising out of such operation.

(b) The courts of this state may recognize other bases of jurisdiction.

Stay in Case of Appeal

Sec. 7. If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign country judgment, the court may stay the proceedings until the

appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

Saving Clause

Sec. 8. This Act does not prevent the recognition of a foreign country judgment in situations not covered by this Act.

Uniformity of Interpretation

Sec. 9. This Act shall be construed to carry out its general purpose to make uniform the law of those states that enact it.

Nonapplicability

Sec. 10. This Act does not apply to a judgment rendered before the effective date of this Act. [Acts 1981, 67th Leg., p. 3069, ch. 808, eff. June 17, 1981.]

TITLE 43

COURTS—JUVENILE

Article

2338–1.1. Jurisdiction of District and County Courts; Actions of Juvenile Judge Not Licensed as Attorney.

2338–1c. Appointment of Retired Special Juvenile Court or Domestic Relations Court Judge to Sit for Regular Family District Court Judge.

2338–1d. Master in Domestic Relations Court in Counties Over 1,500,000.

2338–9b.2. Masters in Dallas County Domestic Relations Courts.

Art. 2338–1.1. Jurisdiction of District and County Courts; Actions of Juvenile Judge Not Licensed as Attorney

Each district court, county court, and statutory county court exercising any of the constitutional jurisdiction of either a county court or a district court has jurisdiction over juvenile matters and may be designated a juvenile court. Any action taken by a juvenile judge not licensed as an attorney by the State of Texas shall be subject to the trial de novo and appeal provisions as authorized by Sections 51.-04, 51.18, and 56.01 of the Family Code.

[Acts 1979, 66th Leg., p. 387, ch. 178, § 1, eff. Aug. 27, 1979.]

Art. 2338–1c. Appointment of Retired Special Juvenile Court or Domestic Relations Court, Judge to Sit for Regular Family District Court Judge

Absent, Disabled or Disqualified Regular Judge; Crowded Docket

Sec. 1. (a) When the regular judge of a Family District Court as created by the Family District Court Act in this state is absent or is from any cause disabled or disqualified from presiding, a retired judge of a special juvenile court or a domestic relations court may be appointed by the presiding judge of the administrative judicial district in which the appointed judge resides to sit for the regular judge of a Family District Court within the geographic limits of the respective administrative judicial district, provided the retired judge voluntarily retired from office and certifies his willingness to serve.

(b) When the docket of a Family District Court in this state becomes so excessive that the presiding judge of the administrative judicial district in which that court is located deems it an emergency, a retired judge of a special juvenile court or a domestic relations court residing within the geographic limits of the respective administrative judicial district, who meets the qualifications set out in Subsection (a) of this section, may be appointed by the presiding judge to sit for the regular judge for as long as the emergency exists.

(c) A presiding judge may, with the consent of a retired judge of a special juvenile court or a domestic relations court, within his district make an assignment outside of his judicial district with the specific authorization of the presiding judge of the district in which that assignment is made.

Bond and Oath of Retired Judge

Sec. 2. A retired judge appointed to sit for a regular judge under the provisions of this Act shall execute the bond and take the oath of office which is required by law for the regular judge for whom he is sitting.

Power and Jurisdiction

Sec. 3. A retired judge appointed under the provisions of this Act has all the power and jurisdiction of the court and the regular judge for whom he is sitting and may sign orders, judgments, decrees, or other process of any kind as "Judge Presiding" when acting for the regular judge.

Compensation

Sec. 4. A retired judge appointed to sit for the regular judge under the provisions of this Act shall receive for the services actually performed the same amount of salary which the regular judge is entitled to receive for such services. The amount to be paid for such services shall be paid in the same manner as the regular judge is paid on certification by the presiding judge of the administrative judicial district that the retired judge has rendered the services and is entitled to receive the salary. Such payment shall be made from the item in the judiciary section, comptrollers department, of the appropriations act providing for payment of salaries of district judges and criminal district judges. This Act does not entitle the retired judge of a special juvenile court or a domestic relations court to participate in the state Judicial Retirement System. No part of the amount paid to a retired judge sitting for the regular judge shall be deducted or paid out of the salary of the regular judge.

Cumulative Effect

Sec. 5. The provisions of the Act are cumulative of all laws pertaining to the election or appointment of a special judge, and if, in addition to a retired judge appointed to sit temporarily for a regular judge, a special judge is needed, he shall be appointed or elected as now authorized by law.

[Acts 1975, 64th Leg., p. 1816, ch. 552, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1989, ch. 794, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 670, ch. 297, § 1, eff. Aug. 27, 1979.]

Art. 2338–1d. Master in Domestic Relations Court in Counties Over 2,000,000

Authorization to Appoint Master; Termination; Qualifications; Compensation

Sec. 1. (a) Each judge of a court of domestic relations in a county of more than 2,000,000 population or any successor court thereto may appoint a master as provided in this Act. The services of the master may be terminated if the performance of his duties is unsatisfactory to the judge of the court, by which the master was appointed.

(b) A master shall be an attorney licensed to practice law in the State of Texas and shall be a citizen of this state. The compensation for a master shall be fixed by the judge of the court making such appointment. If the judge of the court determines that the parties litigant are unable to defray the costs of the master's compensation, such costs shall be paid out of the jury fund of the county.

Matters Referred to a Master

Sec. 2. If the judge of a court of domestic relations in such county or any successor court thereto deems it advisable, he may appoint a master and refer to the master any civil case involving motions of contempt for failure or refusal to pay child support, temporary support, or separate maintenance; motions for failure or refusal to comply with court orders concerning visitation with children growing out of separate maintenance and divorce actions; motions for changes of conservatorships; motions for revision of child-support payments; and motions for revision of visitation privileges.

Powers

Sec. 3. (a) In all cases designated in Section 2 of this Act, the judge of a court of domestic relations in a county of more than 2,000,000 population or any successor court thereto may authorize the master to hear evidence, to make findings of fact thereon, to formulate conclusions of law, and to recommend judgment to be entered in such cases. In all cases referred to the master, the order of reference may specify or limit the powers of the master and may direct him to report only on particular issues, or to do or perform particular acts, or to receive and report on evidence only, and may fix the time and place for beginning and closing hearings and for filing reports.

(b) Subject to the limitations and specifications stated in the order, the master shall have the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary and proper for the efficient performance of his duties under the order. He may require the production of evidence before him on all matters embraced in the reference, and he may rule on the admissibility of evidence, unless otherwise directed by the order of reference. He has the authority to issue summons for the appearance of witnesses and to swear the witnesses for the hearing and may examine them himself. A witness appearing before him that is duly sworn is subject to the penalties of perjury. If a witness after being duly summoned fails to appear or having appeared refuses to answer questions, on certification of such refusal to the referring court, the court may issue attachment against the witness and may fine or imprison the witness.

Report to Referring Judge; Notice to Parties

Sec. 4. On the conclusion of the hearing in each case, the master shall transmit to the referring judge all papers relating to the case, together with his findings and a statement that notice of his findings and of the right to a hearing before the judge has been given to all adult principals, minors, or parents, guardians, or custodians of any minor whose case has been heard by the master. This notice may be given at the hearing or otherwise as the referring court directs.

Disposition by Referring Judge

Sec. 5. After it is filed, the referring court may adopt, modify, correct, reject, or reverse the master's report or recommit it for further information as the court may deem proper and necessary in the particular circumstances of the case. Where judgment has been recommended, the court in its discretion may approve the recommendation and hear further evidence before rendition of judgment.

Hearing by Judge upon Request

Sec. 6. Adult principals or a minor child or his parents, guardians, or custodians are entitled to a hearing by the judge of the referring court if within three days after receiving notice of the findings of the master they file a request with the court for a hearing. The referring court may allow the hearing at any time.

Failure to Request Hearing

Sec. 7. If no hearing before the judge of the referring court is requested or the right to such hearing is waived, the findings and recommendations of the master become the decree of the court when adopted by an order of the judge.

Notice of Hearing by Master

Sec. 8. Prior to the hearing by the master, the parties litigant shall be given due notice as provided by law of the time and place of the hearing.

Jury Trial

Sec. 9. In any proceeding where a jury trial has been demanded, the master shall refer the case back to the referring court for a full hearing before the court and jury, subject to the usual rules of the court in such cases.

Appointment of Master not Mandatory

Sec. 10. Nothing in this Act shall be interpreted to require any judge of a court of domestic relations to appoint a permanent or standing master to serve in such court.

[Acts 1977, 65th Leg., p. 1222, ch. 471, eff. June 15, 1977. Amended by Acts 1981, 67th Leg., p. 568, ch. 237, §§ 27, 28, eff. Sept. 1, 1981.]

Art. 2338–3. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(1), eff. Sept. 1, 1977

Prior to repeal, §§ 5 and 6(a) were amended by Acts 1977, 65th Leg., p. 1787, ch. 715, §§ 1, 2.

See, now, the Family District Court Act, art. 1926a.

Art. 2338–3a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(2), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–4. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(c), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–5. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(3), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–6. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(c), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–7. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(4), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–7a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(5), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–8. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(6), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–9. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(7), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–9a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(8), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–9b. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(22), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–9b.1. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(31), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–9c. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(26), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–10. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(9), eff. Sept. 1, 1977

Prior to repeal, § 2 of this article was amended by Acts 1975, 64th Leg., p. 1941, ch. 636, § 4; Acts 1977, 65th Leg., p. 1612, ch. 629, § 4.

See, now, the Family District Court Act, art. 1926a.

Art. 2338–11. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(10), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–11a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(11), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–11b. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(24), eff. Sept. 1 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–13. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(12), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–14. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(13), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–15. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(15), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–15a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(16), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–15b. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(23), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–15c. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(25), eff. Sept. 1, 1977

Prior to repeal of this article, § 11 was reenacted and amended by Acts 1977, 65th Leg., p. 1292, ch. 510, § 1.

See, now, the Family District Court Act, art. 1926a.

Art. 2338–16. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(17), eff. Sept. 1, 1977

Prior to repeal, § 2 of this article was amended by Acts 1975, 64th Leg., p. 1332, ch. 496, § 3 and § 10 was amended by Acts 1975, 64th Leg., p. 1188, ch. 446, § 1.

See, now, the Family District Court Act, art. 1926a.

Art. 2338–17. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(18), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–18. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(19), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–18a. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(27), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–19. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(20), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–20. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(21), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–21. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(28), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–22. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(29), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

Art. 2338–23. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(30), eff. Sept. 1, 1977

See, now, the Family District Court Act, art. 1926a.

TITLE 44

COURTS—COMMISSIONERS

2. POWERS AND DUTIES

Article
2351a–7. Fire-Fighter Training Facilities; Certificates of Indebtedness.
2351f–2. Counties of 6500 or Less; Ownership, Operation, and Maintenance of Cemeteries.
2352g. Water Supply or Sewage System in Matagorda County.
2352h. Contracts or Agreements for Water Supply or Sewer System in Counties Over 900,000.
2352i. Hotel Occupancy Tax.
2352j. County Equipment and Employees Used to Assist Other Governmental Entities.
2353b. Additional County Tax Levy for Flood Control and Roads; Discontinuance of State Levy.
2353c. Contracts for Accomplishment of Plans and Programs.
2353d. Local Option Elections in Certain Countries Respecting Annual Tax for Domestic Livestock Protection Fund.
2368a.2. Public Property Finance Act.
2368a.3. Competitive Bidding on Public Works Contracts.
2368a–13. Validation of Time Warrants in Counties of Less than 1,000,000.
2370b–2. Auxiliary Courts in Counties of 1,200,000 or More.
2370c–2. Criminal Justice Facilities in Certain Counties and Cities.
2370c–3. Justice Centers Located on State Line.
2372d–6. Lease and Sale of Land for Hotel in Conjunction With County Convention Center in Counties Over 700,000.
2372d–7. Admission Fees For County Museums in Counties of 1,200,000 or More.
2372d–8. Public Improvements in Certain Counties to Attract Visitors and Tourists; Bonds; Occupancy Tax.
2372h–7. Liability Insurance for County Officers and Employees.
2372h–8. Sheriff's Department Civil Service in Counties of More Than 1,500,000.
2372h–9. Motor Vehicle Liability Insurance For Certain Law Enforcement Personnel; Counties over 1,400,000.
2372q–1. Regulation of Private Water Companies in Counties Over 1,500,000.
2372s–3. Parking on County Property.
2372s–4. Parking Regulations and Purchase of Equipment by Counties of 235,000 or More.
2372u. Regulation of Outdoor Lighting and Subdivisions Near Major Astronomical Observations.
2372v. Regulation of Massagers and Massage Establishments.
2372w. Regulation of Location of Sexually Oriented Commercial Activities by Cities and Counties.
2372x. Closing Gulf Beaches for Special Events.
2372y. Regulation of Keeping Wild Animals Near Public Schools.
2372z. Sale or disposition of County Surplus or Salvage Property.

1. COMMISSIONER COURTS

Art. 2340. Oath and Bond

Before entering upon the duties of their office, the county judge and each commissioner shall take the official oath, and shall also take a written oath that he will not be directly or indirectly interested in any contract with, or claim against, the county in which he resides, except such contracts or claims as are expressly authorized by law and except such warrants as may issue to him as fees of office. Each commissioner shall execute a bond to be approved by the county judge in the sum of three thousand dollars, payable to the county treasurer, conditioned for the faithful performance of the duties of his office, that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and that he will not vote or give his consent to pay out county funds except for lawful purposes.

[Amended by Acts 1981, 67th Leg., p. 2230, ch. 527, § 3, eff. June 12, 1981.]

Art. 2344. Seal

Each commissioners court shall have a seal, whereon shall be engraved either a star with five points or a design selected by the court and approved by the secretary of state, and the words, "Commissioners Court, _____ County, Texas," (the blank to be filled with the name of the County) which seal shall be kept by the clerk of said court and used in authentication of all official acts of the court, or of the presiding officer or clerk of said court, in all cases where a seal may be necessary for the authentication of any of said acts.

[Amended by Acts 1975, 64th Leg., p. 42, ch. 21, § 1, eff. March 20, 1975.]

Art. 2350o. Allowance for Traveling Expenses and Automobile Depreciation

[See Compact Edition, Volume 3 for text of 1 and 2]

Sec. 3. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

[See Compact Edition, Volume 3 for text of 4 to 6]

[Amended by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.]

Art. 2350p. Allowance for Traveling Expenses and Automobile Depreciation in Counties of 73,000 to 75,750 and 11,870 to 12,000

Sec. 1. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

[See Compact Edition, Volume 3 for text of 2 and 3]

Sec. 4. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

[See Compact Edition, Volume 3 for text of 5]

[Amended by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.]

2. POWERS AND DUTIES

Art. 2351½. Change in Boundaries of Commissioners or Justice Precincts

[See Compact Edition, Volume 3 for text of (a)]

(b) When boundaries of commissioners or justice precincts are changed, the terms of office of the commissioners, justices of the peace, and constables then in office shall not be affected by such change, and each of them shall be entitled to serve for the remainder of the term to which he was elected even though the change in boundaries may have placed his residence outside of the precinct for which he was elected.

(c) Repealed by Acts 1981, 67th Leg., p. 748, ch. 280, § 2, eff. Aug. 31, 1981.

[Amended by Acts 1981, 67th Leg., p. 748, ch. 280, §§ 1, 2, eff. Aug. 31, 1981.]

Art. 2351a–6. Rural Fire Preventing Districts

[See Compact Edition, Volume 3 for text of 1 to 11]

Limitation on Indebtedness

Sec. 12. No indebtedness shall be contracted in any one year in excess of funds then on hand or which may be satisfied out of current revenues for the year. The Board of Fire Commissioners shall annually levy and cause to be assessed and collected a tax upon all properties, real and personal, situated within the district and subject to district taxation, in an amount not to exceed three cents (3¢) on the One Hundred Dollars ($100) valuation for the support of the district, and for the purposes authorized in this Act. Such tax levy shall be certified to the County Tax Assessor-Collector, who shall be the Assessor-Collector for the district.

[See Compact Edition, Volume 3 for text of 13 to 18]

Dissolution of District; Petition; Notice of Hearing

Sec. 19. (a) When it is proposed to dissolve a Rural Fire Prevention District created under this Act, a petition shall be presented to the Board of Fire Commissioners for the district signed by not less than one hundred (100) of the qualified voters who own taxable real property within the district. If there are less than one hundred (100) such voters, a majority of those qualified voters who own taxable real property in the district must sign the petition.

(b) If the petition is in proper form the Board of Fire Commissioners shall set the day, place, and hour when it will hear and consider the petition.

(c) The Board of Fire Commissioners shall issue notices of the hearing which shall include:

(1) the name of the district;

(2) a description of the district's boundaries;

(3) the proposal that the district be dissolved; and

(4) the place, date, and time of the hearing on the petition.

(d) The notice shall be published in a newspaper of general circulation in the district once a week for two (2) consecutive weeks. The first published notice must appear at least twenty (20) days before the date of the hearing.

Hearing of Petition; Appeal

Sec. 20. (a) The Board of Fire Commissioners shall hear the petition and all issues concerning the dissolution of the district. Any person interested may appear before the board and oppose or support the proposed dissolution. The board shall grant or deny the petition.

(b) Any person or owner of real or personal property situated within the district may appeal the decision of the Board of Fire Commissioners to a district court in one (1) of the counties in which the district is located.

Election to Confirm Dissolution

Sec. 21. (a) On granting the petition, the board shall call an election to confirm the dissolution of the district.

(b) The election shall be held not less than thirty (30) days nor more than sixty (60) days after the date of the board's decision on the petition.

(c) Notice of the election shall be given in the same manner as required by Section 19 of this Act. The notice shall include:

(1) the proposition to be submitted to the voters;

(2) the classification of voters who are authorized to vote; and

(3) the time and place for holding the election.

(d) The ballot shall be printed to provide for voting for or against the following: "Dissolving the ..... Rural Fire Prevention District."

(e) The presiding judge of each voting place shall supervise the counting of all votes cast and shall certify the results to the Board of Fire Commissioners within ten (10) days after the date of the election. A copy of the results shall be filed with the County Clerk in any county in which the district is located and shall become a public record.

(f) If the majority of the voters voting in the election vote to dissolve the district, the Board of Fire Commissioners shall declare the result and proceed with dissolution.

(g) If the proposition to dissolve the district fails to carry at the election, the Board of Fire Commissioners may not order another election for the same purpose within one (1) year after the result is announced.

(h) After the dissolution of a Rural Fire Prevention District, no election may be held to create a new Rural Fire Prevention District within the boundaries of the old district for a period of one (1) year.

Administration of Property, Debts and Assets

Sec. 22. (a) The Board of Fire Commissioners shall continue to control and administer the property, debts, and assets of the district until all funds have been disposed of and all debts of the district have been paid or settled.

(b) The Board of Fire Commissioners may not dispose of the district's assets except for due compensation unless debts are transferred to another governmental entity or agency embracing the district or within the district, and the transfer will benefit the citizens of the district.

(c) After issuing the dissolution order the Board of Fire Commissioners shall:

(1) determine the debt, if any, owed by the district; and

(2) levy and collect a tax on the property included in the tax roll of the district in proportion of the debt to the value of the property.

(d) Each taxpayer may pay the tax at once, and the Board of Fire Commissioners shall have suit instituted, if necessary, to enforce payment of taxes and to foreclose liens to secure the payment of taxes due the district.

(e) When all outstanding debts and obligations of the district are paid, the Board of Fire Commissioners shall order the secretary of the district to return all unused tax money to the taxpayers of the district on a pro rata basis. A taxpayer may request that his share of surplus tax money be credited to his county taxes. The board shall direct the secretary to transmit any funds so requested to the County Tax Assessor-Collector.

(f) After all debts have been paid and all assets and funds have been disposed of as provided in this Act, the Board of Fire Commissioners shall file a written report with the Commissioners Court of each county in which all or part of the district is located setting forth a summary of the actions taken by the Board of Fire Commissioners in the dissolution of the district. Within ten (10) days after receiving the report and after determining that the requirements of this Act have been fulfilled, each of the Commissioners Courts shall enter an order finding the Rural Fire Prevention District dissolved, and on entry of the order, the fire commissioners shall be discharged from liability under their bonds, and the district shall be officially dissolved.

[Amended by Acts 1977, 65th Leg., p. 1417, ch. 575, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2316, ch. 841, § 4(f), (w), eff. Jan. 1, 1982.]

Art. 2351a-7. Fire-Fighter Training Facilities; Certificates of Indebtedness

Sec. 1. The commissioners court in all counties of this state shall be authorized, for and on behalf of each county, to issue negotiable certificates of indebtedness for the purpose of acquiring, purchasing, constructing, repairing, renovating, improving, and/or equipping fire-fighter training facilities and acquiring any real or personal property in connection therewith and to levy and pledge annual county ad valorem taxes under Article VIII, Section 9, of the Texas Constitution sufficient to pay the principal of and interest on said certificates of indebtedness as the same come due. When any such certificates of indebtedness are issued, it shall be the duty of the commissioners court annually to levy the aforesaid taxes and to cause the same to be assessed and collected in an amount sufficient to pay such principal and interest. Such certificates of indebtedness may be issued in one or more series or issues, shall mature serially or otherwise not more than 40 years from their date, and shall bear interest at such rate or rates as shall be determined within the discretion of the commissioners court. Said certificates of indebtedness and any interest coupons appertaining thereto shall be negotiable instruments, and they may be made redeemable prior to maturity, may be issued in such form, denominations, and manner, and under such terms, conditions, and details, and shall be signed and executed, as provided by the commissioners court in the order authorizing the issuance thereof. Such certificates of indebtedness shall be sold for not less than their par value and accrued interest to date of delivery. The certificates of indebtedness may be issued by order of the commissioners court if the issuance is approved by a majority of the qualified voters of the county voting on the question at an election called by the commissioners court. The election shall be held on the next uniform election date authorized by Section 9b, Texas Election Code, as amended (Article 2.01b, Vernon's Texas Election Code), that occurs at least 20 days after the day on which the election is called. The commissioners court shall order the ballot to be printed to provide for voting for or against the proposition: "Issuing certificates of indebtedness by the county to acquire, purchase, construct, repair, renovate, improve, or equip fire-fighter training facilities or to purchase real or personal property in connection with these facilities." Each qualified voter in the county may vote in the election. The aggregate principal amount of certificates of indebtedness issued under this Act may not exceed $5,000,000.

Sec. 2. All certificates of indebtedness issued pursuant to this Act, and the appropriate proceedings authorizing their issuance, shall be submitted to the Attorney General of the State of Texas for examination. If he finds that such certificates of indebtedness have been authorized in accordance with law he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas; and after such approval and registration such certificates of indebtedness shall be incontestable in any court or other forum for any reason and shall be valid and binding obligations in accordance with their terms for all purposes.

Sec. 3. All certificates of indebtedness issued pursuant to this Act shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. Said certificates of indebtedness also shall be eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities thereof, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of said certificates of indebtedness, when accompanied by any unmatured interest coupons appurtenant thereto.

Sec. 4. The commissioners court shall be authorized to operate and maintain the county's fire-fighter training facilities and to fix and collect fees and charges for services performed and information furnished to others by the use of said facilities. The commissioners court shall pay the expenses of operation and maintenance of said facilities from such fees and charges and/or from any other available county funds.

[Added by Acts 1981, 67th Leg., p. 94, ch. 49, § 1, eff. Aug. 31, 1981.]

Art. 2351e. Repealed by Acts 1977, 65th Leg., p. 1658, ch. 654, § 6, eff. June 15, 1977

See, now, arts. 2351f–1, 2351f–2.

Art. 2351f. Repealed by Acts 1977, 65th Leg., p. 1658, ch. 654, § 5, eff. June 15, 1977

See, now, arts. 2351f–1, 2351f–2.

Art. 2351f–1. Perpetual Trust Fund to Maintain Cemeteries

[See Compact Edition, Volume 3 for text of 1 to 7]

Sec. 8. Except as provided for counties with a population of 6,500 or less, the trustee, the commissioners court, and other elected public officials of the county are hereby prohibited from paying or using any public funds, or using county employees or county equipment and property for the purpose of maintenance and upkeep of neglected and unkept public and private cemeteries.

Sec. 9. If on September 1, 1976, a county owned a cemetery and continued to own it on January 1, 1979, or if during 1976 a county used county funds, employees, equipment, or property for the maintenance and upkeep of a county-owned cemetery, the county may continue to own the cemetery or to provide for its maintenance and upkeep, or both, and the prohibition stated in Section 8 of this Act does not apply. A county exercising the power granted herein shall file with the secretary of state a certified copy of its commissioners court certifying that such county qualifies under this section. Such order shall be kept in a register entitled "County-Owned and-Operated Cemeteries."

[Amended by Acts 1977, 65th Leg., p. 1658, ch. 654, § 4, eff. June 15, 1977; Acts 1979, 66th Leg., p. 497, ch. 228, § 1, eff. May 17, 1979.]

Art. 2351f–2. Counties of 6,500 or Less; Ownership, Operation, and Maintenance of Cemeteries

Sec. 1. A county with a population of 6,500 or less according to the last preceding federal census may own, operate, and maintain cemeteries and may sell the right of burial within the cemetery. The sale of the right of burial is exempt from the requirements of Article 1577, Revised Civil Statutes of Texas, 1925, as amended. Revenue received from the sale of the right of burial may be used for the purchase of additional land to be used for cemetery purposes and for general upkeep of county cemetery property.

Sec. 2. The commissioners court of a county subject to this Act may spend money in the general fund for the purpose of maintenance and upkeep of public cemeteries in the county, and may dedicate up to one-eighth of the maximum allowable tax levy to that purpose.

Sec. 3. The commissioners court of a county subject to this Act shall serve as the Cemetery Board of the county and be responsible for the management of the cemetery property.

[Acts 1977, 65th Leg., p. 1657, ch. 654, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 2352g. Water Supply or Sewage System in Matagorda County

Sec. 1. Matagorda County, acting through its commissioners court, may acquire or construct and may operate a water supply or sewage system serving parts of the county outside the limits of an incorporated city or town.

Sec. 2. Matagorda County may enter management or lease agreements with another public or private entity for operation of a county water or sewage system acquired or constructed under this Act.

Sec. 3. Matagorda County may apply for and receive grants or other assistance from any state or federal governmental entity for the purposes of this Act.

[Acts 1977, 65th Leg., p. 1625, ch. 639, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 2352h. Contracts or Agreements for Water Supply or Sewer System in Counties Over 900,000

Contract or Agreement with District

Sec. 1. The commissioners court of a county having a population of more than 900,000, according to the last preceding federal census, may enter into contracts or other agreements with any district created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution under which the district will provide and operate a water supply or sewage system or both in parts of the county outside the limits of an incorporated city or town in the county.

Distribution of Federal and State Funds

Sec. 2. The commissioners court, by order, may distribute to a district that is a party to a contract or agreement under Section 1 of this Act, federal funds and state water conservation and development funds received by the county. Funds distributed by the commissioners court under this section shall be used only for the construction, renovation, and maintenance of a water supply or sewage system or both that is covered by a contract or other agreement made by the county under this Act.

Acts and Services to be Within District Powers

Sec. 3. The acts performed by and the services provided by a district under a contract or agreement under this Act must be within the scope of the powers, duties, and purposes of the district as provided by the laws under which the district was created.

Jeopardization of Quality of Service Prohibited

Sec. 4. No contract or agreement may be entered into under this Act if it will jeopardize the quality of service provided by the district to those persons residing in the district as determined by the Texas Department of Water Resources.

Contract or Agreement Covering City or Town Extraterritorial Jurisdiction; Approval

Sec. 5. Before a district and a county may enter into a contract or agreement under this Act covering any of the extraterritorial jurisdiction of a city or town as defined in the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes), the parties must submit the contract or agreement to the city or town and must receive the approval of the city or town for the contract.

Area Outside District; Use of Funds Prohibited

Sec. 6. If a contract or agreement under this Act covers an area that is not located within the boundaries of the contracting district, no funds of the district may be used to carry out the provisions of the contract or agreement.

Approval of Contract or Agreement

Sec. 7. Before the parties to a contract or agreement under this Act enter into a binding contract or agreement, the parties shall submit the contract or agreement to and shall have it approved by the Texas Department of Water Resources. The Texas Department of Water Resources shall examine the contract or agreement to assure that the interests of the residents of the district will be served and protected and may submit suggested changes to the parties for inclusion in the contract or agreement before the department gives its final approval. [Acts 1979, 66th Leg., p. 496, ch. 227, eff. May 17, 1979. Amended by Acts 1981, 67th Leg., p. 568, ch. 237, § 29, eff. Sept. 1, 1981.]

Art. 2352i. Hotel Occupancy Tax

Definitions

Sec. 1. In this Act:

(1) "Hotel" means a building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term includes hotels; motels; tourist homes, houses, or courts; lodging houses; inns; rooming houses; or other buildings where rooms are furnished for a consideration, but "hotel" does not include a hospital, sanitarium, or nursing home.

(2) "Consideration" means the cost of the room in a hotel only if the room is one ordinarily used for sleeping, and does not include the cost of food served or personal services rendered to the occupant of the room not related to the cleaning and readying of the room for occupancy.

(3) "Occupancy" means the use or possession, or the right to the use or possession, of a room in a hotel if the room is one ordinarily used for sleeping and if the occupant's use, possession, or right to use or possession extends for a period of less than 30 days.

(4) "Occupant" means anyone who for a consideration uses, possesses, or has a right to use or possess a room in a hotel if the room is one ordinarily used for sleeping.

Hotel Occupancy Tax Authorized

Sec. 2. A county in which there is no incorporated city or town may levy, by adoption of a resolution by the commissioners court, a tax upon the cost of occupancy of any sleeping room furnished by any hotel, where the cost of occupancy is at the rate of $2 or more per day. The tax may not exceed four percent of the consideration paid by the occupant of the sleeping room to the hotel.

Disposition of Revenue

Sec. 3. The revenue derived from an occupancy tax authorized by this Act may only be used for:

(1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities including, but not limited to, civic center convention buildings, auditoriums, coliseums, civic theaters, museums, and parking areas

or facilities for the parking or storage of motor vehicles or other conveyances located at or in the immediate vicinity of the convention center facilities;

(2) the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants;

(3) advertising for general promotional and tourist advertising of the county and conducting a solicitation and operating program to attract conventions and visitors either by the county or through contracts with persons or organizations selected by the commissioner's court;

(4) the encouragement, promotion, improvement, and application of the arts, including music (instrumental and vocal), dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, and exhibition of these major art forms; and

(5) historical preservation and restoration.

[Acts 1981, 67th Leg., p. 404, ch. 168, eff. May 20, 1981.]

Art. 2352j. County Equipment and Employees Used to Assist Other Governmental Entities

A commissioners court of a county may use its road equipment, other construction equipment, including trucks, and employees necessary to operate the equipment to assist another governmental entity on any project so long as the cost does not exceed $3,000 if:

(1) the use of the equipment or employees does not interfere with the county's work schedule; and

(2) the county does not pay any costs related to the use of the equipment or employees that the county would not pay if the assistance were not given to the other governmental entity.

[Acts 1981, 67th Leg., p. 668, ch. 260, § 1, eff. May 29, 1981.]

Art. 2353b. Additional County Tax Levy for Flood Control and Roads; Discontinuance of State Levy

State Ad Valorem Tax Discontinued From Jan. 1, 1951

Sec. 1. From and after January 1, 1951, no State ad valorem tax shall be levied upon any property within this State for general revenue purposes, except as hereinafter provided.

State Levy for 1949 and 1950

Sec. 1a. The Automatic State Tax Board as created by Article 7041 Revised Civil Statutes of Texas, 1925, shall levy and order collected for each of the years 1949 and 1950, on all property in the State subject thereto an ad valorem tax of thirty cents (30¢) on the One Hundred Dollar ($100) valuation for State purposes. The tax so levied shall be and is hereby allocated as now or as may hereafter be provided by law.

County Levy for Flood Control and Farm-to-Market and Lateral Roads; Inapplicable when State Taxes Donated

Sec. 2. From and after January 1, 1951, the several counties of the State be and they are hereby authorized to levy, assess and collect ad valorem taxes upon all property within their respective boundaries for county purposes, except the first Three Thousand Dollars ($3,000) value of residential homesteads, not to exceed thirty cents (30¢) on each One Hundred Dollars ($100) valuation, in addition to all other ad valorem taxes authorized by the Constitution of the State, provided the revenue therefrom shall be used as provided in this Act for the construction and maintenance of Farm-to-Market and Lateral Roads or for Flood Control and for these two (2) purposes only.

Provided, that the provisions of this Act shall not apply to those counties or political subdivisions or areas of the State from which tax donations have heretofore been granted for such period of time as the State Automatic Tax Board shall continue to levy the full amount of the State ad valorem tax for the duration of such donation, but shall apply to said counties at the end of the period of said donation or when all legal obligations heretofore authorized by the law granting such donation or donations shall have been fully discharged, whichever shall first occur. In the event that the donation to any such county or political subdivision is for less than the full amount of State ad valorem taxes so levied, the portion of such taxes remaining over and above such donation shall be retained by said county or subdivision and used in accordance with the provisions of this Act.

Funds to Which Taxes Credited

Sec. 3. Taxes levied and collected under the provisions of this Act shall be credited by the Commissioners Court to separate funds known as the Farm-to-Market and Lateral Road Fund, to be used solely for Farm-to-Market and Lateral Roads within such county, and to the Flood Control Fund, to be used solely for Flood Control purposes within such county, said credits to be made proportionately in accordance with the allocation adopted at the election called under the provisions of Sections 7 and 8 of this Act.

Jurisdiction and Use of Farm-To-Market and Lateral Road Funds

Sec. 4. The funds placed in the Farm-to Market and Lateral Road Fund shall be under the jurisdiction and control of the Commissioners Court of said county and all or part of said fund may be used in cooperation with the State Highway Department in acquiring right-of-ways and in constructing and maintaining Farm-to-Market and Lateral Roads.

Jurisdiction and Use of Flood Control Funds

Sec. 5. The funds transferred to the Flood Control Funds shall be under the jurisdiction and control

of the Commissioners Court of such county and shall be used solely for Flood Control purposes. All or part of said funds may be used in connection with the plans and programs of the Federal Soil Conservation Service and the State Soil Conservation Districts and the State Extension Service, Conservation and Reclamation Districts, Drainage Districts, Water Control and Improvement Districts, Navigation Districts, Flood Control Districts, Levee Improvement Districts and Municipal Corporations, and such funds may be expended by the Commissioners Court in accordance with this Act for flood control purposes, including all soil conservation practices such as contouring, terracing, tank building, and all other practices actually controlling and conserving moisture and water, within any said county and political subdivision thereof for Flood Control and Soil Conservation programs, provided that such plans for improvement are approved by such county and political subdivision.

Soil, Water, Erosion and Drainage Program

Sec. 5a. To this end, the Commissioners Court may, in its discretion, engage the services of a Federal or State Soil Conservation Engineer or of Extension Service personnel, in devising and planning a soil, water, erosion and drainage program coming within the purview of this Act and consistent with the expenditure of said funds for Flood Control purposes only, and may acquire whatever machinery, equipment and material is useful and necessary in carrying out said Flood Control program, provided such machinery and equipment shall be made available to farm and ranch owners for purposes consistent with the provisions of this Act on an out-of-pocket expense basis, not including depreciation.

Equitable Distribution of Benefits

Sec. 6. Both the Farm-to-Market and Lateral Road Fund and the Flood Control Fund shall be expended so as to equitably distribute as nearly as possible the benefits derived from such expenditures to the various Commissioners' precincts in accordance with the taxable values therein.

Submission to Voters

Sec. 7. Before any county shall levy, assess and collect the tax provided for herein the question shall by the Commissioners Court of the county be submitted to a vote of the qualified property taxpaying voters of such county at an election called for that purpose, either on said Commissioners Court's own motion, or upon petition of ten per cent (10%) of the qualified property taxpaying voters of said county as shown by the returns of the last general election. Said election shall be ordered at a regular session of said Commissioners Court and such order shall specify the rate of tax to be voted on, not to exceed thirty cents (30¢) on each One Hundred Dollars ($100) valuation of taxable property within such county, shall state the date when said election shall be held, and shall appoint officers to hold said election in accordance with the election laws of this State. Provided, however, that the proposition submitted to the qualified property taxpaying voters at said election may provide that the tax at a rate not to exceed thirty cents (30¢) on each One Hundred Dollars ($100) valuation may be used for the construction and maintenance of Farm-to-Market and Lateral Roads or for Flood Control purposes, either or both, as the Commissioners Court may determine (in which event the ballots shall have written or printed thereon, "For the tax of not exceeding _____ cents on each One Hundred Dollars ($100) valuation," and the contrary thereof, specifying the tax to be voted upon), or the proposition may provide for a specific maximum tax for Farm-to-Market and Lateral Roads purposes and a specific maximum tax for Flood Control purposes, the total of the two (2) specific maximum taxes not to exceed thirty cents (30¢) on the One Hundred Dollars ($100) valuation (in which event the ballots shall have written or printed thereon, "For a Farm-to-Market and Lateral Roads tax of not exceeding _____ cents and a Flood Control tax of not exceeding _____ cents, on the One Hundred Dollars ($100) valuation," and the contrary thereof, specifying the specific taxes to be voted upon). Provided, further, that elections may subsequently be called and held in the same manner for the purpose of changing the amount of the maximum tax within the limit of thirty cents (30¢) on the One Hundred Dollars ($100) valuation, or for changing the amounts of the maximum specific tax voted for each purpose; provided, however, that such tax or taxes may not be reduced to an extent which would result in the impairment of any bonds or warrants theretofore issued under the provisions of Section 10 of this Act.

Notice of Election; Qualification of Voters

Sec. 8. The County Judge shall cause notice of said election to be posted at a public place in each voting precinct in said county not less than fourteen (14) days next before said election and to be published on the same day in each of two (2) successive weeks in a newspaper of general circulation published within said county, the date of the first publication to be not less than fourteen (14) days prior to the date set for the election, which notice shall be a substantial copy of the election order, and only those shall be entitled to vote at said election who are qualified, property taxpaying voters in said county, and who have duly rendered the same for taxation.

Tax Levied if Majority Vote in Favor

Sec. 9. If a majority of the qualified property taxpaying voters, voting at said election, shall vote in favor of said tax, then the same shall be annually levied, assessed and collected as other county ad valorem taxes are levied, assessed and collected.

Bonds or Time Warrants

Sec. 10. After an election has been held under the provisions of Sections 7 and 8 of this Act, at which election a majority of the qualified, property taxpaying voters, voting at said election, voted in

favor of the tax, the Commissioners Court may issue either negotiable county bonds or county time warrants for the purpose of the construction and/or improvement of Farm-to-Market and Lateral Roads, or for the purpose of constructing permanent improvements for Flood Control purposes; provided, however, that any such bonds or warrants must have been authorized by a majority of the qualified property taxpaying voters who have duly rendered the same for taxation voting at an election duly called by the Commissioners Court, such bonds and warrants to be issued and the taxes to be levied and collected in payment thereof in accordance with the provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, and provided further that each proposition shall be separately submitted to the voters at such election.

State Tax in Counties, Etc., Where Tax Donated

Sec. 10(a). (1) Beginning in the year 1951 and each year thereafter the State Automatic Tax Board created by Article 7041 of the Revised Civil Statutes of Texas, 1925,[1] shall cause to be levied annually in each county, political subdivision or other defined area, the full thirty cents (30¢) State ad valorem tax for general revenue purposes, the proceeds of which heretofore were donated and granted by the Legislature to certain counties, political subdivisions or other defined areas for the purpose of carrying out and performing actions of preventing calamities, improving, protecting and reclaiming certain areas for and on behalf of the State as more fully declared in each applicable law or laws making such donation or grant and said Board shall continue to levy such tax at said rate in each such designated area until the bonds or other obligations of said areas authorized or incurred in connection with the performance of such action on behalf of the State shall have been fully paid or discharged or until the expiration date of such donation or grant as may be determined from the law or laws making such grant or donation, whichever shall first occur.

(2) The provisions of Article 7043, Revised Civil Statutes of Texas, 1925,[1] as amended setting up a formula to govern said Board in ascertaining the rate of tax to be levied for state general revenue purposes shall not apply from and after January 1, 1951. The rate of tax to be levied after said date shall be thirty cents (30¢) on each One Hundred Dollars ($100) valuation as fixed by the amendment to Section 1–A, Article 8 of the Constitution, as adopted November 2, 1948.

(3) The tax assessors and collectors in each of such Counties shall continue to assess and collect such tax and make the proceeds thereof available to the donees or grantees in the manner provided by the law or laws making each such grant or donation. The moneys thus collected by said tax assessors and collectors and received by such grantees or donees shall be used and accounted for annually as prescribed by the law or laws making such grant or donation.

(4) In those instances where less than the full State general ad valorem tax was granted or donated, the portion of the money collected in excess of the amount donated or granted shall be retained by or paid over to the governing body of the county or political subdivision from which such tax is collected; and in the event that the amount of State general ad valorem tax granted, donated and collected is in excess of the amount needed to pay off and fully discharge all legal obligations authorized by law and which were incurred prior to the adoption of Section 1–a of Article VIII of the Constitution of Texas, then such excess shall be retained by or paid over to the governing body of the county or political subdivision from which such tax is collected; provided, however, that nothing herein shall be construed to limit or impair the right of the Upper Colorado River Authority to receive and fully utilize the full amount of moneys heretofore donated and granted said Authority; and provided further, that nothing in this Act shall apply to, nor in anywise affect, the State general ad valorem tax heretofore granted or donated to the Central Colorado River Authority, the boundary of which is co-extensive with that of Coleman County; and provided further, that nothing contained herein shall be construed to diminish or affect any right or authority of the Brazos River Conservation and Reclamation District to receive, obligate or expend the full amount of Three Hundred Nine Thousand ($309,000.00) Dollars each year heretofore donated for the full period of the donation. In the discretion of said governing body such excess shall be used either for the construction and maintenance of farm-to-market roads, or for flood control, only within the county, political subdivision, or defined area from which such tax is collected. The moneys thus retained or paid over shall be fully reported each year to the Comptroller of Public Accounts at the same time such Assessor-Collector makes his annual report as required by law, and the governing body of the county, political subdivision, or defined area thus retaining or being paid such excess money shall likewise report annually to the Comptroller of Public Accounts the sum thus retained or held and the purpose for which it was used. The moneys thus retained or held or declared to be trust funds to be used only for the purpose herein named, and the use thereof for any other purpose shall constitute a misapplication of public money and the person or persons so offending shall be punished as provided for in Article 86 of the Penal Code of the State of Texas.[2]

[1] Repealed; see, now, Tax Code.
[2] Repealed; see, now, Penal Code, § 39.01.

Partial Invalidity

Sec. 11. Should any Section of this Act, or any part of any Section hereof, be held invalid, unconstitutional or inoperative, no other part or parts thereof shall be held affected thereby and the remaining provisions shall nevertheless stand effective and val-

id as if this Act had been enacted without such part or parts held to be invalid, unconstitutional or inoperative.

[Acts 1949, 51st Leg., p. 849, ch. 464, §§ 1 to 11. Amended by Acts 1951, 52nd Leg., p. 672, ch. 389, § 1. Renumbered from art. 7048a by Acts 1981, 67th Leg., p. 1784, ch. 389, § 38, eff. Jan. 1, 1982.]

Art. 2353c. Contracts for Accomplishment of Plans and Programs

The Commissioners Court of any county in the State may enter into contracts for the accomplishment of plans and programs for flood control and soil conservation with the Federal Soil Conservation Service, State Soil Conservation Districts, State Extension Service, Conservation and Reclamation Districts, Drainage Districts, Water Control and Improvement Districts, Navigation Districts, Flood Control Districts, Levee Improvement Districts and Municipal Corporations, as provided in Section 5 of Chapter 464 of the Acts of the Fifty-first Legislature, 1949,[1] and the responsibility for carrying out such plans and the expenditure of funds of the county and such agencies, districts and municipal corporations may by such agreement be divided between the parties or delegated to either the county or to one or more of said agencies, districts and municipal corporations, and such contracts may be for a specified term of years or until certain plans or programs have been accomplished, provided further that in the event any such agency, district or municipal corporation shall issue its bonds payable from and secured by revenues to be derived from any such contract it may be provided therein that such contract will continue in effect until such bonds, or any refunding bonds issued in lieu thereof, have been fully paid. Any contracts of the kind authorized hereby, which have heretofore been entered into, shall be valid and binding contracts.

[Acts 1951, 52nd Leg., p. 140, ch. 84, § 1. Amended by Acts 1955, 54th Leg., p. 1071, ch. 402, § 1. Renumbered from art. 7048b by Acts 1981, 67th Leg., p. 1784, ch. 389, § 38, eff. Jan. 1, 1982.]

[1] Article 2353b, § 5.

Art. 2353d. Local Option Elections in Certain Counties Respecting Annual Tax for Domestic Livestock Protection Fund

Additional Assistance to Law Enforcement Officers

Sec. 1. In all counties in this State having ten thousand (10,000) or more cattle, sheep, and goats rendered for taxation, the qualified voters of such county may, as hereinafter provided, employ additional assistance to the law enforcement officers of such county as hereinafter provided.

Upon the petition of ten (10) per cent of the qualified voters of such county, presented to the Commissioners Court in open Regular Session, requesting such Court to order an election to be held in such county to determine whether or not said Court, when acting as a Board of Equalization in such county, shall levy, and cause to be assessed and collected an annual tax not to exceed one (1) cent per head on all sheep and goats and not to exceed five (5) cents per head on all cattle, within such county; said Court shall order such election to be held within such county, in accordance with the petition therefor; and said Court shall forthwith order such election to be held in the voting places within such county, upon a day not less than ten (10), nor more than twenty (20) days, from the date of said order and the order thus made, shall express the object of such election and shall be held to be prima facie evidence that all the provisions necessary to give it validity have been duly complied with; and provided further that such Court shall appoint such officers to hold such election as is now required to hold general elections. The expenses of such election shall be borne by the county wherein such election is ordered and held. In such election so held, the ballot shall read as follows:

"For the levy, assessment, and collection of an annual tax on cattle, sheep, and goats."

"Against the levy, assessment, and collection of an annual tax on cattle, sheep, and goats."

Returns of such election shall be made by the presiding officer of the precincts of such county where such election is held, to the County Judge of said county, who shall forthwith call the Commissioners Court together for the purpose of canvassing the returns; and if it shall be found by the Commissioners Court, upon a canvass of such returns, that a majority of the qualified voters of the county wherein such election is held, is in favor of the levy, assessment, and collection of the annual tax on sheep and goats of not more than one (1) cent per head and on cattle not more than five (5) cents per head, then said Court shall forthwith declare the results of said election and give public notice thereof by proclamation of said Court to be issued and posted at three (3) public places of the county in which such election is held; and shall thereafter, at the next succeeding meeting of said Court acting as the Board of Equalization for such county, levy and cause to be assessed and collected by the Assessor and Collector of Taxes for such county, not more than one (1) cent per head on all sheep and goats and not more than five (5) cents per head on all cattle within such county, on the 1st day of January preceding the date of such meeting.

Tax Moneys to be Deposited in Domestic Livestock Protective Fund

Sec. 2. All moneys assessed and collected by the Assessor and Collector of Taxes for each county of this State as provided for in Section 1 hereof, shall be paid by said Collector unto the County Treasurer of such County, and said Treasurer shall deposit said moneys to a fund to be known as "The Domestic Livestock Protective Fund," and such moneys shall never be expended for any other purpose than is herein provided.

Employment of Enforcement Officers by Commissioners Court; Compensation; Duties; Reports

Sec. 3. To aid in the enforcement of all the Penal Laws of this State and in ferreting out and detecting any violation thereof, it shall be the duty of the Commissioners Court of such county adopting the provisions hereof, and they are hereby authorized and required to employ for such service, in addition to the officers now provided for by law, as many other competent and discreet persons as, in the judgment of said Court, is deemed necessary for said purposes, and shall fix their compensation; provided however, no such person, or persons, shall be paid in excess of Five Dollars ($5) per day, while in actual service; and provided further that at no time, shall the moneys expended in the payment of such person, or persons, for such services, exceed the amount of money collected therefor. Such Court shall designate the duties to be performed by all such persons and shall require them to make monthly reports in writing to said Court as to the manner in which they have performed such duties.

[Acts 1937, 45th Leg., p. 831, ch. 408. Renumbered from art. 7155a by Acts 1981, 67th Leg., p. 1784, ch. 389, § 38, eff. Jan. 1, 1982.]

Art. 2362. Stationery Classified

The stationery shall be divided into four classes: Class "A" shall embrace all blank books and all work requiring permanent and substantial binding. Class "B" shall embrace all legal blanks, letter heads and other printing, stationery and blank papers. Class "C" shall embrace typewriter ribbons, pens, ink, mucilage, pencils, penholders, ink stands and ware of like kind. Class "D" shall embrace all election supplies of whatever nature and description, not furnished by the State. Each and every bid shall be upon a particular class, separate and apart from any other class. To the lowest bidder on each class shall be awarded the contract for all work of that class.

[Amended by Acts 1981, 67th Leg., p. 3141, ch. 827, § 1, eff. Aug. 31, 1981.]

Art. 2368a. Requirements Governing Advertising for Bids by Counties and Cities

[See Compact Edition, Volume 3 for text of 1]

Competitive Bidding for Contracts for Public Works; Notice to Bidders; Advertisement; Exceptions; Conflicting Provisions; Noncompliance With Law

Sec. 2. (a) No county, acting through its Commissioners Court, and no city in this state shall hereafter make any contract calling for or requiring an expenditure or payment in an amount exceeding five thousand dollars ($5,000.00) out of any fund or funds of any city or county or subdivision of any county creating or imposing an obligation or liability of any nature or character upon such county or any subdivision of such county, or upon such city, without first submitting such proposed contract to competitive bids.

(b) Notice of the time and place when and where such contracts shall be let shall be published in such county (if concerning a county contract or contracts for such subdivision of such county) and in such city, (if concerning a city contract), once a week for two (2) consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least fourteen (14) days prior to the date set for letting said contract; and said contract shall be let to the lowest responsible bidder. The court and/or governing body shall have the right to reject any and all bids, and if the contract is for the construction of public works, then the successful bidder shall be required to give a good and sufficient bond in the full amount of the contract price, for the faithful performance of such contract, executed by some surety company authorized to do business in this state in accordance with the provisions of Article 5160, Revised Statutes of 1925, and the amendments thereto. However, the city or county in making any contract calling for or requiring the expenditure or payment of less than Fifty Thousand Dollars ($50,000.00) may, in lieu of the bond requirement, provide in the contract that no money will be paid to the contractor until completion and acceptance of the work by the city or county. If there is no newspaper published in such county, the notice of the letting of such contract by such county shall be given by causing notice thereof to be posted at the County Court House door for fourteen (14) days prior to the time of letting such contract. If there is no newspaper published in such city, then the notice of letting such contract shall be given by causing notice thereof to be posted at the City Hall for fourteen (14) days prior to the time of letting such contract. Provided, that in case of public calamity, where it becomes necessary to act at once to appropriate money to relieve the necessity of the citizens, or to preserve the property of such county, subdivision, or city, or when it is necessary to preserve or protect the public health of the citizens of such county or city, or in case of unforeseen damage to public property, machinery or equipment, this provision shall not apply; and provided further, as to contracts for personal or professional services; work done by such county or city and paid for by the day, as such work progresses; and the purchase of land and right-of-way for authorized needs and purposes, the provisions hereof requiring competitive bids shall not apply and in such cases the notice herein provided shall be given but only with respect to an intention to issue time warrants with right of referendum as contemplated in Sections 3 and 4 hereof respectively.

(c) Provisions in reference to notice to bidders, advertisement thereof, requirements as to the taking of sealed bids based upon specifications for public improvements or purchases, and the manner of letting of contracts, as contained in the charter of a city, if in conflict with the provisions of this Act, shall be followed in such city notwithstanding any

other provisions of this Act. The provisions of this Act and of Article 5160, Revised Statutes of 1925, as amended, relating to the furnishing of surety bonds by contractors may be adopted by ordinance of the governing body of a city, not withstanding conflicting city charter provisions.

(d) Any and all such contracts or agreements hereafter made by any county or city in this state, without complying with the terms of this section, shall be void and shall not be enforceable in any court of this state and the performance of same and the payment of any money thereunder may be enjoined by any property taxpaying citizen of such county or city.

Lump Sum Basis; Unit Price Basis; Changes in Plans and Specifications

Text of section effective until December 31, 1983

Sec. 2a. Contracts for the construction of public works or the purchase of materials, equipment and supplies may be let under the provisions of Section 2 on a lump sum basis or on a unit price basis, as the governing body or Commissioners Court shall determine. In the event a contract is to be let on a unit price basis, the information furnished bidders shall specify the approximate quantities estimated upon the best available information, but the compensation paid the contractor shall be based upon the actual quantities constructed or supplied.

In the event it becomes necessary to make changes in the plans or specifications after performance of a contract has been commenced, or it becomes necessary to decrease or increase the quantity of work to be performed or materials, equipment or supplies to be furnished, the Commissioners Court or governing body shall be authorized to approve change orders effecting such changes but the total contract price shall not be increased thereby unless due provision has been made to provide for the payment of such added cost either by appropriating available funds for that purpose or by authorizing the issuance of time warrants as provided in the Act amended hereby.

Where any change order involves a decrease or increase in cost of fifteen thousand dollars ($15,000) or less, the Commissioner's Court or governing body may grant general authority to one of its administrative officials to approve such change orders.

Provided, however, that the original contract price may not be increased under the provisions of this Section 2a by more than twenty-five (25%) per cent or decreased more than twenty-five (25%) per cent without the consent of the contractor to such decrease. However, the limitation on the amount by which the original contract price may be increased does not apply to a contract to construct or improve a county jail to respond to or comply with a court order pertaining to the county's jail facilities or conditions.

Lump Sum Basis; Unit Price Basis; Changes in Plans and Specifications

Text of section effective January 1, 1984

Sec. 2a. Contracts for the construction of public works or the purchase of materials, equipment and supplies may be let under the provisions of Section 2 on a lump sum basis or on a unit price basis, as the governing body or Commissioners Court shall determine. In the event a contract is to be let on a unit price basis, the information furnished bidders shall specify the approximate quantities estimated upon the best available information, but the compensation paid the contractor shall be based upon the actual quantities constructed or supplied.

In the event it becomes necessary to make changes in the plans or specifications after performance of a contract has been commenced, or it becomes necessary to decrease or increase the quantity of work to be performed or materials, equipment or supplies to be furnished, the Commissioners Court or governing body shall be authorized to approve change orders effecting such changes but the total contract price shall not be increased thereby unless due provision has been made to provide for the payment of such added cost either by appropriating available funds for that purpose or by authorizing the issuance of time warrants as provided in the Act amended hereby.

Where any change order involves a decrease or increase in cost of fifteen thousand dollars ($15,000) or less, the Commissioner's Court or governing body may grant general authority to one of its administrative officials to approve such change orders.

Provided, however, that the original contract price may not be increased under the provisions of this Section 2a by more than twenty-five (25%) per cent or decreased more than twenty-five (25%) per cent without the consent of the contractor to such decrease.

[See Compact Edition, Volume 3 for text of 2b to 11a]

[Amended by Acts 1979, 66th Leg., p. 540, ch. 256, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1902, ch. 770, § 8, eff. June 13, 1979; Acts 1979, 66th Leg., p. 2147, ch. 824, § 1, eff. June 14, 1979; Acts 1981, 67th Leg., p. 2433, ch. 622, § 1, eff. June 15, 1981; Acts 1981, 67th Leg., p. 2532, ch. 672, § 1, eff. June 15, 1981; Acts 1981, 67th Leg., p. 3242, ch. 853, § 1, eff. June 17, 1981.]

Sections 3 and 4 of Acts 1981, 67th Leg., p. 2533, ch. 672, provide:

"Sec. 3. (a) Any actions of a county occurring before the effective date of this Act that relate to the construction or improvement of a county jail may not be held invalid on the ground that they violated Section 6(c), The Certificate of Obligation Act of 1971 (Article 2368a.1, Vernon's Texas Civil Statutes), or Section 2a, Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes), if those actions would not have violated those provisions as amended by this Act. Those actions are validated in all respects as of the date on which they occurred.

"(b) The validation does not apply to any matter involved in litigation on the date this Act takes effect if the litigation ultimately results against the legality of the matter. The validation does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

"Sec. 4. The provisions of this Act terminate December 31, 1983."

Art. 2368a.1. Certificate of Obligation Act

[See Compact Edition, Volume 3 for text of 1]

Definitions

Sec. 2.

[See Compact Edition, Volume 3 for text of 2(a) to 2(d)]

(e) "County means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Constitution of Texas.

[See Compact Edition, Volume 3 for text of 2(f) to 2(h)]

Certificates Authorized; Amount, Public Works Construction

Sec. 3. (a) The governing body of an issuer may authorize certificates for the purpose of paying any contractual obligation to be incurred for the construction of any public work or for the purchase of materials, supplies, equipment, machinery, buildings, land and rights-of-way for authorized needs and purposes, or for the payment of contractual obligations for professional services (including tax appraisal engineers, engineering, architectural, attorneys, mapping, auditing, financial advisors, fiscal agent) or for any one or more of such purposes.

[See Compact Edition, Volume 3 for text of 3(b) to 5]

Competitive Bids; Notice; Publication; Change Orders, Payment of Added Cost; Rejection of Bids; Performance Bond

Sec. 6. (a) Except as provided herein, the governing body of an issuer shall hereafter make no contract calling for or requiring the expenditure or payment or creating or imposing an obligation or liability of any nature upon such city, county, or subdivision of the county in an amount exceeding $5,000 without first submitting such proposed contract to competitive bids.

(A–1) Repealed by Acts 1981, 67th Leg., p. 3243, ch. 853, § 3, eff. June 17, 1981.

[See Compact Edition, Volume 3 for text of 6(b)]

Text of subsection (c) effective until December 31, 1983

(c) After performance of a construction contract has been commenced, if it becomes necessary to (i) make changes in the plans or specifications or (ii) decrease or increase the quantity of work to be performed or materials, equipment or supplies to be furnished, the governing body shall be authorized to approve change orders effecting such changes but the total contract price shall not be increased thereby unless due provision has been made to provide for the payment of such added cost either by appropriating current or bond funds for that purpose, by authorizing the issuance of certificates, or by any one or more such procedures, but the original contract price may not be increased by more than twenty-five per cent (25%) or decreased more than twenty-five per cent (25%) without the consent of the contractor to such decrease. However, the limitation on the amount by which the original contract price may be increased does not apply to a contract to construct or improve a county jail to respond to or comply with a court order pertaining to the county's jail facilities or conditions. This exception does not affect the limitation imposed by Section 3(b) of this Act on the amount for which certificates may be authorized to provide for change orders.

Text of subsection (c) effective January 1, 1984

(c) After performance of a construction contract has been commenced, if it becomes necessary to (i) make changes in the plans or specifications or (ii) decrease or increase the quantity of work to be performed or materials, equipment or supplies to be furnished, the governing body shall be authorized to approve change orders effecting such changes but the total contract price shall not be increased thereby unless due provision has been made to provide for the payment of such added cost either by appropriating current or bond funds for that purpose, by authorizing the issuance of certificates, or by any one or more such procedures, but the original contract price may not be increased by more than twenty-five per cent (25%) or decreased more than twenty-five per cent (25%) without the consent of the contractor to such decrease.

(d) The governing body shall have the right to reject any and all bids, and if the contract is for the construction of public works and is for or requires the expenditure of the amount of money requiring competitive bidding under Subsection (a–1) of this section, then the successful bidder shall be required to give a good and sufficient payment and performance bond each in the full amount of the contract price, executed by some surety company authorized to do business in this State in accordance with the provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended.

[See Compact Edition, Volume 3 for text of 7]

Constructing or Equipping Jail

Sec. 7A. (a) Certificates issued for payment of any contractual obligation to be incurred for constructing or equipping a jail may be sold for cash subject to the same restrictions and conditions applicable to the sale of certificates for cash under Section 7 of this Act.

(b) Section 6 of this Act, relating to advertisement for competitive bids, is applicable to the incurring of contractual obligations for constructing or equipping a jail under this section.

[See Compact Edition, Volume 3 for text of 8 to 11]

[Amended by Acts 1979, 66th Leg., p. 542, ch. 256, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 664, ch. 292, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1902, ch. 770, § 8, eff. June 13, 1979; Acts 1981, 67th Leg., p. 535, ch. 218, § 1, eff. May 28, 1981; Acts 1981, 67th Leg., p. 2532, ch. 672, § 2, eff. June 15, 1981; Acts 1981, 67th Leg., p. 3243, ch. 853, §§ 2, 3, eff. June 17, 1981.]

Section 2 of Acts 1981, 67th Leg., p. 535, ch. 18, the emergency provision, provided, in part:

"The fact that the Certificate of Obligation Act of 1971 is currently unclear as to the power to issue certificates for the purpose of acquiring urgently needed buildings for public purposes and the crowded condition of the calendars in both houses create an emergency * * *."

Sections 3 and 4 of Acts 1981, 67th Leg., p. 2533, ch. 672, provide:

"Sec. 3. (a) Any actions of a county occurring before the effective date of this Act that relate to the construction or improvement of a county jail may not be held invalid on the ground that they violated Section 6(c), The Certificate of Obligation Act of 1971 (Article 2368a.1, Vernon's Texas Civil Statutes), or Section 2a, Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes), if those actions would not have violated those provisions as amended by this Act. Those actions are validated in all respects as of the date on which they occurred.

"(b) The validation does not apply to any matter involved in litigation on the date this Act takes effect if the litigation ultimately results against the legality of the matter. The validation does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

"Sec. 4. The provisions of this Act terminate December 31, 1983."

Art. 2368a.2. Public Property Finance Act

Short Title

Sec. 1. This Act shall be known and may be cited as the Public Property Finance Act.

Purpose

Sec. 2. The legislature finds and determines that the acquisition, use, and purchase of property by governmental agencies and the financing of such activities are necessary to the efficient and economic operation of government. This Act facilitates a public purpose by furnishing governmental agencies with a feasible means to acquire, use, purchase, and finance public property.

Definitions

Sec. 3. In this Act:

(1) "City" means any city, town, or village incorporated in this state, whether governed by the general laws of the state or the laws pertaining to home-rule cities.

(2) "Conservation and reclamation district" means any district or authority organized or operating pursuant to Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution.

(3) "Contract" means an agreement entered into pursuant to this Act.

(4) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Texas Constitution.

(5) "Governing body" means the board, council, commission, agency, court, or other body or group that is authorized by law to acquire property for each respective governmental agency.

(6) "Governmental agency" means any city, county, school district, conservation and reclamation district, hospital organization, or other political subdivision of the State of Texas.

(7) "Hospital organization" means any district, authority, board, or joint board organized pursuant to the laws of this state for hospital purposes.

(8) "Net effective interest rate" means, with reference to a contract, the interest amount deemed by the governing body of a governmental agency to accrue on a contract and shall be calculated as simple interest.

(9) "Net interest cost" means the total of all interest to accrue and come due on a contract through the last date a payment is due on the contract, plus any discount or minus any premium included in the contract price or principal sum.

(10) "Person" means any individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(11) "Property" means personal property, appliances, equipment, facilities or furnishings, or an interest therein, whether movable or fixed, deemed by the governing body of the governmental agency to be necessary, useful, or appropriate to one or more purposes of the governmental agency, but shall not include real property.

(12) "School district" means any independent school district, common school district, community college district, junior college district, or regional college district organized pursuant to the laws of this state.

Authority to Contract for Property

Sec. 4. (a) The governing body of a governmental agency is authorized to execute, perform, and make payments under contracts with any person for use, acquisition, or purchase of any property. The contracts may be on the terms and conditions that are deemed appropriate by the governing body. Contracts may be in the form of a lease, a lease with option or options to purchase, installment purchase, or any other form deemed appropriate by the governing body. All contracts shall be obligations of the governmental agency. The contracts may be for a term approved by the governing body, and in each case, the contract may contain an option or options to renew or extend the term and may be made payable from a pledge of all or any part of any revenues, funds, or taxes or revenues, or funds and taxes available to the governmental agency for its public purposes.

(b) Each contract which retains to the governing body of the governmental agency the continuing right to terminate at the expiration of each budget period of the governmental agency during the term of the contract shall be considered to be a commitment of the governmental agency's current revenues only. All applicable constitutional requirements of approval by the voters shall be met. The contracts may provide for the payment of interest on the unpaid amounts of the contract at a rate or rates and may contain prepayment provisions, termination penalties, and such other provisions as shall be determined within the discretion of the governing body of the governmental agency. Subject only to applicable constitutional restrictions, the governing body has authority to obligate taxes or revenues for the full term of the contract for the payment of the contract. The net effective interest rate on any such contract shall not exceed the net effective

interest rate at which public securities may be issued in accordance with Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k–2, Vernon's Texas Civil Statutes).

Compliance with Other Acts

Sec. 5. Each governmental agency currently subject thereto shall comply with the terms of Chapter 163, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes), in entering into contracts, including the requirement that certain contracts be awarded pursuant to public bids, except that it is not necessary for a governmental agency to submit the question of entering into a contract to a referendum.

Approved and Registered Contracts

Sec. 6. After a contract providing for payment aggregating $100,000 or more by a governmental agency is authorized by the governing body, the contract and the record relating to the contract may, at the discretion of the governmental agency, be submitted to the attorney general for his examination as to the validity of the contract. If the contract has been made in accordance with the constitution and laws of the state, the attorney general shall approve the contract, and the contract then shall be registered by the comptroller of public accounts. After the contract has been approved by the attorney general and registered by the comptroller of public accounts, the validity of the contract is incontestable for any cause. The legal obligations of the lessor, vendor, or supplier of the property to the governmental agency shall not be diminished in any respect by the approval and registration of a contract.

Contract as Authorized Investment

Sec. 7. A contract entered into pursuant to this Act is a legal and authorized investment for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas.

Term of Contracts

Sec. 8. A contract may have any term not to exceed 25 years.

Construction and Effect of Act

Sec. 9. This Act is wholly sufficient authority within itself for entering into contracts and the performance of the other acts and procedures authorized by this Act, without reference to any other laws, or any restrictions or limitations contained therein, except as specifically provided in this Act. When contracts are entered into under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law, the provisions of this Act shall prevail and control, except that any governmental agency may use the provisions of any other law, not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act. This Act shall be liberally construed to effectuate its purpose. Notwithstanding any contrary provision, this Act does not apply to a contract solely for the construction of improvements to real property.

[Acts 1979, 66th Leg., p. 1839, ch. 749, eff. Aug. 27, 1979.]

Art. 2368a.3. Competitive Bidding on Public Works Contracts

Applicability

Sec. 1. This Act applies to:

(1) a county;

(2) an incorporated city, town, or village;

(3) a common or independent school district;

(4) a special district or authority created under Article III, Section 52, or Article XVI, Section 59, Texas Constitution;

(5) a hospital district or authority;

(6) a housing authority; or

(7) an agency or instrumentality of a unit of government described in one of the preceding subdivisions.

Procedure for Bidding

Sec. 2. If a governmental entity covered by this Act is required by statute to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, such bidding shall be accomplished as provided herein.

Advertisement for Bids

Sec. 3. (a) The governmental entity shall advertise for bids. The advertisement for bids must include a notice that:

(1) describes the work;

(2) states where the bidding documents, plans, specifications, or other data may be examined by all bidders; and

(3) states the time and place for submitting bids and the time and place that bids will be opened.

(b) The advertisement must be published as required by law. If no legal requirement for publication exists, the advertisement must be published at least twice in one or more newspapers of general circulation in the county or counties where the work is to be performed. The second publication must be no later than the 10th day before the first day on which bids may be submitted.

(c) The governmental entity must mail a notice containing the information required under Subsection (a) of this section to any organization that:

(1) requests in advance that notices for bids be sent to it;

(2) agrees in writing to pay the actual cost of mailing the notice; and

(3) certifies that it circulates notices for bids to the construction trade in general.

(d) The governmental entity shall mail a notice required under Subsection (c) of this section not later than the date on which the first newspaper advertisement under this section is published.

Opening of Bids

Sec. 4. Bids may be opened only by the governing body at a public meeting or by an officer or employee of the governmental entity at or in an office of the governmental entity.

Award of Bid

Sec. 5. A governmental entity shall have the right to reject any and all bids. Contracts covered by this Act shall be awarded to the lowest, responsible bidder, but a contract may not be awarded to a bidder who is not the lowest bidder unless prior to the award each lower bidder is given notice of the proposed award and is given an opportunity to appear before the governing body of the governmental entity or the designated representative of the governing body and present evidence concerning the bidder's responsibility.

Effect of Noncompliance

Sec. 6. A contract awarded in violation of this Act is void.

General Provisions

Sec. 7. (a) To the extent a municipal home-rule charter conflicts with this Act, the charter prevails.

(b) The provisions of the Professional Services Procurement Act (Article 664–4, Vernon's Texas Civil Statutes) are not affected by this Act.

(c) This Act does not apply to a contract which does not call for or require the expenditure of more than $10,000 out of the funds of the governmental entity.

Repealer

Sec. 8. The last sentence of Section 2 of the Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes) and all of Section 2(e) of The Certificate of Obligation Act of 1971 (Article 2368a.1, Vernon's Texas Civil Statutes) following the word "Texas" are repealed.

[Acts 1979, 66th Leg., p. 1901, ch. 770, §§ 1 to 8, eff. June 13, 1979.]

Art. 2368a–13. Validation of Time Warrants in Counties of Less than 1,000,000

Sec. 1. The governmental acts and proceedings performed by the commissioners court of any county with a population of less than 1,000,000, according to the most recent federal census, in authorizing the issuance of time warrants are validated in all respects as of the date of the act or proceeding if the time warrants were issued after August 1, 1976. Time warrants issued in connection with the proceedings are validated according to their terms and as of the date they were issued. The acts, proceedings, or time warrants issued in connection with them may not be held invalid because they were not performed in accordance with law.

Sec. 2. This Act does not apply to any matter involved in litigation on the date this Act takes effect if the litigation ultimately results against the legality of the matter. This Act does not apply to any matter that has been nullified by a final judgment of a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 2010, ch. 803, eff. Aug. 29, 1977.]

Art. 2370b. County Office, Courts and Jail Buildings; Construction, Improvement, etc.

Power to Acquire, Construct, Reconstruct, Remodel, Etc., Buildings

Sec. 1. Whenever the Commissioners Court of any county determines that the county courthouse is not adequate in size or facilities to properly house all county and district offices and all county and district courts and all justice of the peace courts for the precincts in which the courthouse is situated, and to adequately store all county records and equipment (including voting machines) and/or that the county jail is not adequate in size or facilities to properly confine prisoners and other persons who may be legally confined or detained in a county jail, the Commissioners Court may purchase, construct, reconstruct, remodel, improve and equip, or otherwise acquire an office building or buildings, or courts building or buildings, or jail building or buildings (in addition to the existing courthouse and/or jail), or an additional building or buildings in which any one or more of the county or district offices or county, district or justice of the peace courts, or the county jail or any other county facilities or functions may be housed, conducted and maintained; and may purchase and improve the necessary site or sites therefor, and may use such building or buildings for any or all of such purposes, provided that any such building or buildings so acquired shall be located in the county seat, but provided that any regional jail facility built according to the provisions of Section 4(h), The Interlocal Cooperation Act, as amended (Article 4413(32c), Vernon's Texas Civil Statutes), may be located outside the county seat, and further provided that no justice of the peace court shall be housed, conducted or maintained in any such building if said building is located out of the boundaries of the precinct of such justice of the peace court.

[See Compact Edition, Volume 3 for text of 2 to 6]

[Amended by Acts 1977, 65th Leg., p. 1619, ch. 634, § 1, eff. Aug. 29, 1977.]

Art. 2370b-1. Branch Courthouses; Counties of 54,000 to 56,000 or 30,000 to 31,000

Sec. 1. In counties which have a population of not less than 54,000 nor more than 56,000, or less than 30,000 nor more than 31,000, according to the last preceding federal census, the Commissioners Court may provide for, operate, and maintain one or more branch courthouses outside the county seat for any length of time the Commissioners Court considers necessary.

[See Compact Edition, Volume 3 for text of 2 to 4]

[Amended by Acts 1981, 67th Leg., p. 568, ch. 237, § 30, eff. Sept. 1, 1981.]

Art. 2370b-2. Auxiliary Courts in Counties of 1,200,000 or More

The commissioners court in any county with a population of 1,200,000 or more according to the last preceding federal census may authorize specific geographic locations within the county other than the county courthouse as auxiliary courts for purposes of conducting nonjury proceedings and may designate those locations as auxiliary county seats for such purposes.

[Acts 1977, 65th Leg., p. 1203, ch. 465, § 1, eff. Aug. 29, 1977.]

Art. 2370b-3. Office Buildings or Jails Outside County Seat

Sec. 1. The commissioners court of any county may provide one or more office buildings or jail facilities at any place in the county outside the county seat in the same manner as the commissioners court may provide for these facilities at the county seat. The commissioners court may provide office space in a building provided under this Act for any county or precinct office, except courts required by law to sit at the county seat. Each county officer shall maintain an office at the county seat in which the officer shall keep all original records of the office.

Sec. 2. The office building or jail may be provided for by the issuance of bonds, as is provided by Chapters 1 and 2, Title 22, Revised Civil Statutes of Texas, 1925, as amended,[1] or by the issuance of other evidences of indebtedness, in the same manner as bonds or evidences of indebtedness for courthouses and jails at county seats.

Sec. 3. The authority granted by this Act is in addition to that provided by other laws.

[Acts 1979, 66th Leg., p. 28, ch. 18, eff. Sept. 1, 1979.]

[1] Articles 701 et seq. and 718 et seq.

Art. 2370c-2. Criminal Justice Facilities in Certain Counties and Cities

Eligible Counties and Cities

Sec. 1. This Act shall apply to any county in this state and to any city in such county which city is not the county seat of such county but has a population of more than 17,500 according to the last preceding federal census.

Authorization

Sec. 2. Counties and cities to which this Act is applicable are hereby authorized jointly or severally to own, construct, equip, enlarge, and maintain a building or buildings in such city to constitute a criminal justice center providing facilities of a public nature with relation to or incidental in the administration of criminal justice, including, without limitation, accommodations for the handling, processing, and detention of prisoners, and offices for state, county, and city administrative and judicial officials, courtrooms, garages, and parking areas.

Contracts

Sec. 3. Such county and city shall have authority to specify by contract the purpose, terms, rights, objectives, duties, and responsibilities of each of the contracting parties, including the amount, or proportionate amount, of money to be contributed by each for land acquisition, building acquisition, construction, and equipment; the method or methods by which such moneys are to be provided; the account or accounts in which such money is to be deposited; the party which shall award construction or other contracts or that such contracts shall be awarded by action of both parties; and the manner in which disbursements shall be authorized. Such contract may further provide for the creation of an administrative agency or may designate one of the parties to supervise the accomplishment of the purposes of the contract and to operate and maintain the joint facilities, and any administrative agency so created or party so designated shall have authority to employ personnel and engage in other administrative activities as necessary in accomplishing the purposes of the contract and in operating and maintaining the joint facilities.

Methods of Meeting Costs

Sec. 4. The county and city contract may specify that moneys required of them in meeting the cost of providing the criminal justice center shall be derived from current income and funds on hand budgeted by them for such purpose, or through the authorization and issuance of bonds by either or both the county and city under the procedures prescribed for the issuance of general obligation bonds for other public buildings and purposes, or by the issuance by either or both the county and the city of certificates of obligation under the provisions of Article 2368a-1,[1] Vernon's Texas Civil Statutes, or by a combination of those methods. In lieu of or in combination with the employment of taxing power in the payment of such bonds or certificates of obligation, same may be payable from and secured by income derived from the criminal justice center facilities, including that from leases and from the proceeds of parking or other fees. In the financing of the facilities herein authorized eligible counties and cities jointly or sev-

erally may accept grants, gratuities, advances, and loans from the United States, the State of Texas, or any of their agencies, any private or public corporation, or any other person.

Office Facilities

Sec. 5. As applicable to counties eligible to employ the provisions of this Act, any county officer, in addition to the office he maintains at the county seat, may maintain office facilities in the herein authorized criminal justice center notwithstanding provisions of Article 1605, Revised Civil Statutes of Texas, 1925, as amended, or any other law limiting the location of county offices to the county seat of their respective counties.

[Acts 1975, 64th Leg., p. 1966, ch. 650, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 756, ch. 285, § 1, eff. Aug. 29, 1977.]

[1] So in enrolled bill; probably should read "2368a.1".

Art. 2370c–3. Justice Centers Located on State Line

Definitions

Sec. 1. In this Act:

(1) "Law" means a statute of a state, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted pursuant to a statute.

(2) "Municipality" means an incorporated city or town.

Authorization for Contract

Sec. 2. (a) A county in this state and a municipality in that county, both located on the state line, may contract with an adjoining county and any municipality in that county located on the other side of the state line for the joint construction, financing, operation, and management of a justice center to be located on the state line. The contracting municipality in this state need not be the county seat of the contracting county in this state. The county and municipality in this state may contract for the center to contain:

(1) courtrooms and office space needed by municipal, justice, county, district, and appellate courts;

(2) jail, lockup, and other detention facilities;

(3) federal, county, precinct, and municipal offices for prosecuting attorneys and other personnel as needed;

(4) adult or juvenile probation offices;

(5) any other offices that either county or municipality is separately authorized or required to operate or provide; or

(6) parking space, dining areas, and other facilities incidental to operation of the center.

(b) A court of civil appeals or a district, county, justice, or municipal court having jurisdiction in the county or municipality in which a part of the center is located may maintain offices and courtrooms and hold proceedings at the center, except that no justice court other than the justice court for the precinct in which the part of the center in this state is located may maintain an office and courtroom in the center.

(c) A court of this state may not hold proceedings in the part of the center located in the other state. Courts of the other state may hold proceedings in the part of the center in this state.

Financing

Sec. 3. The governing body of a Texas municipality or Texas county contracting as provided by Section 1 of this Act may finance its share of the construction, financing, operation, or management of the center by any means that it could finance the type of facilities in the center to be used or provided by it. The contract may take advantage of the availability of federal funds to finance any part of the center.

Management of Center

Sec. 4. The contracting parties may specify in the contract the manner of determining the persons responsible for:

(1) the operation, alteration, maintenance, cleaning, and repair of the facilities;

(2) the employment of center personnel;

(3) the purchase of materials, supplies, tools, and other equipment to be jointly used by offices provided or used by the contracting parties;

(4) preparing reports to the governing bodies of the contracting parties;

(5) joint record-keeping, communications, or dispatch systems; and

(6) the performance of any other powers or duties relating to operation of the center.

Personnel

Sec. 5. The contracting parties may provide in the contract the manner of determining the personnel policies and employment benefit programs for center personnel.

Jail Management

Sec. 6. The contract must provide that the sheriffs of the two counties are jointly responsible for operation of any jail, lockup, or other detention facility in the center and the custody, care, and treatment of persons in custody in the facility or must provide for the hiring of a jailer with those responsibilities.

Law Applicable to the Center

Sec. 7. (a) Except as otherwise provided by this Act, the law of both states regarding rights, duties, liabilities, privileges, and immunities arising from conduct applies to conduct in any part of the center. If, however, it is impossible for a person to conform his or her conduct in the center to the law of both

states, that person may choose which state's law governs that conduct. If a person chooses to conform his or her conduct in the center to the law of the other state, the conflicting law of this state does not apply to that conduct.

(b) The physical plant of the center and equipment and facilities used by personnel of both states employed at the center are constructively present in both states.

(c) Except as provided by Subsection (d) of this section, property in any part of the center that is owned by or in the possession of a person in custody or summoned to appear in the center is constructively present in the state under the law of which the person was taken into custody or summoned to appear.

(d) Possession of property that constitutes an offense committed in the center is conduct to which Subsection (a) of this section applies. A person's exercise of a duty in regard to property in the center is conduct to which Subsection (a) of this section applies.

(e) Property that is ordered by a court to be produced in the center or that is in the possession of a peace officer or a party to a proceeding for use as evidence before a court holding a proceeding in the center is constructively present in the state of the court.

(f) Property in the center that is not covered by Subsection (c), (d), or (e) of this section is constructively present in both states.

(g) The law of a state in which property is constructively present applies to that property to the same extent that that law would apply if the property were actually present in that state. If property is constructively present in only one state, the law of the state in which the property is not constructively present may be applied to that property only to the extent that that law would apply if the property were actually outside that state.

(h) Except as otherwise provided by this Act, the courts of both states have concurrent jurisdiction over the geographic area of both states in the center, but the state in which a prosecution is first instituted for an offense committed in the center retains jurisdiction to apply that state's law to the exclusion of the other state's jurisdiction, unless the prosecution is terminated without jeopardy attaching under the law of the state of the first prosecution. For the purposes of this Act, a prosecution is commenced in this state on the filing of an indictment, information, or complaint, and the attachment of jeopardy in this state is determined by Article 27.05, Code of Criminal Procedure, 1965, as amended.

Arrest, Extradition, and Service of Process

Sec. 8. (a) A person who is in the center in the custody of a peace officer or center personnel under Texas law:

(1) is constructively present in Texas while that person is in custody in the part of the center in the other state;

(2) may be prosecuted for an offense against Texas law without extradition of that person; and

(3) may be personally served in any part of the center for a proceeding in Texas.

(b) A person who is in the center in the custody of a peace officer or center personnel under the law of the other state:

(1) is constructively present in the other state while that person is in custody in the part of the center in Texas;

(2) may not be prosecuted for an offense against Texas law without extradition of that person; and

(3) may not be personally served with process in any part of the center for a proceeding in Texas.

(c) Texas agrees that a person who is in the center in the custody of a peace officer or center personnel under the law of the other state may be prosecuted for an offense against the law of the other state without extradition of that person. Texas agrees that a person who is in the center in the custody of a peace officer or center personnel under the law of the other state may be personally served with process in any part of the center for a proceeding in the other state.

(d) Center personnel or a peace officer of either state may transfer across the state line in the center a person in custody in the center under the law of either state and may exercise control over that person on both sides of the state line in the center.

(e) A person in the center who has not been confined in the center, taken to the center under arrest, or summoned to appear in the center may be arrested in any part of the center for an offense against the law of either state without extradition of that person. Extradition of a person who was arrested in the center under those circumstances is not required in order to prosecute the person for an offense against the law of either state if the person is physically present in any part of the center or the state of the prosecution at the time of the prosecution.

(f) A person who is summoned to appear in the center under Texas law:

(1) is constructively present in Texas while that person is appearing under the summons in the part of the center in the other state;

(2) without extradition, may be arrested in any part of the center for an offense against Texas law and prosecuted for that offense if that person is physically present in any part of the center or Texas at the time of the prosecution; and

(3) may be personally served with process in any part of the center for a proceeding in Texas.

(g) A person who is summoned to appear in the center under the law of the other state:

(1) is constructively present in the other state while that person is appearing under the summons in the part of the center in Texas;

(2) without extradition, may not be arrested under Texas law in any part of the center for an offense against Texas law; and

(3) may not be personally served with process in any part of the center for a proceeding in Texas.

(h) Texas agrees that a person who is summoned to appear in the center under the law of the other state may be arrested in any part of the center for an offense against the law of the other state and prosecuted for that offense without extradition if that person is physically present in any part of the center or the other state at the time of the prosecution. Texas agrees that a person who is summoned to appear in the center under the law of the other state may be personally served with process in any part of the center for a proceeding in the other state.

(i) If a person in the center is constructively present in one state under this section, the law of the state in which the person is not constructively present may be applied to that person only to the extent that that law would apply if the person were actually outside that state. However, the law applicable to that person's conduct in the center is governed by Section 7 of this Act, and whether extradition is required to arrest or prosecute that person for an offense committed in the center is governed by Section 8 of this Act.

(j) If the other state enacts legislation as provided in Section 9 of this Act, a peace officer of Texas may:

(1) arrest a person under Texas law in the part of the center in the other state for an offense against Texas law if that peace officer would be authorized to make that arrest in the part of the center in Texas; and

(2) arrest a person under the law of the other state in any part of the center for an offense against the law of the other state if a peace officer of the other state would be authorized to make that arrest in the part of the center in the other state.

(k) Texas agrees that a peace officer of the other state may arrest a person under Texas law in any part of the center for an offense against Texas law if a peace officer of Texas would be authorized to make that arrest in the part of the center in Texas.

(*l*) Texas agrees that a peace officer of the other state may arrest a person under the law of the other state in the part of the center in Texas for an offense against the law of the other state if that peace officer would be authorized to make that arrest in the part of the center in the other state.

(m) Notwithstanding Sections 3 and 6, Article 51.-13, Code of Criminal Procedure, 1965, the governor of this state may recognize a demand for the extradition of a person charged with crime in the other state if the demand alleges that any element of the offense occurred in any part of the center.

Other State's Legislation

Sec. 9. A county and a municipality in this state may contract with a county and a municipality in an adjoining state as provided by Sections 2 and 3 of this Act only if the other state enacts legislation relating to the establishment of a justice center pursuant to a contract as provided in those sections that:

(1) provides for joint responsibility of the sheriffs of the two counties over the operation of a jail, lockup, or other detention facility in the center and persons in custody in the facility, or the hiring of a jailer with those responsibilities;

(2) provides for the application and enforcement of the law of both states in the manner provided by Section 7 of this Act;

(3) provides that a person in custody in the center under Texas law may be prosecuted for an offense against Texas law without extradition of that person, as provided by Section 8 of this Act;

(4) provides that a person in custody in the center under Texas law may not be prosecuted for an offense against the law of the other state without extradition of that person or personally served with process in the center for a proceeding in the other state;

(5) provides that a person summoned to appear in the center under Texas law may not be personally served with process in any part of the center for a proceeding in the other state and may be arrested in any part of the center for an offense against Texas law and prosecuted for that offense without extradition of the person if the person is physically present in any part of the center or Texas at the time of the prosecution, as provided by Section 8 of this Act;

(6) provides that a person summoned to appear in the center under Texas law may not be arrested in any part of the center for an offense against the law of the other state;

(7) provides that center personnel or a peace officer of either state may transfer across the state line in the center a person in custody in the center under the law of either state and may exercise control over that person on both sides of the state line in the center, as provided by Section 8 of this Act;

(8) provides that a person in the center who is not confined in the center, taken to the center under arrest, or summoned to appear in the center may be arrested in any part of the center for an offense against the laws of either state without extradition of that person, and that extradition of a person who was arrested in the center under those circumstances is not required in order for the person to be prosecuted for an offense against the law of either state if the person is physically present in any part of the center or the state of the prosecution at the time of the prosecution, as provided by Section 8 of this Act;

(9) authorizes a peace officer of either state, under Texas law, to arrest a person in any part of the center for an offense against Texas law if a peace officer of Texas would be authorized to make that arrest in the part of the center in Texas, as provided by Section 8 of this Act; and

(10) authorizes a peace officer of either state, under the law of the other state, to arrest a person in any part of the center for an offense against the law of the other state if a peace officer of the other state would be authorized to make that arrest in the part of the center in the other state, as provided by Section 8 of this Act.

[Acts 1979, 66th Leg., p. 1878, ch. 760, eff. Aug. 27, 1979.]

Art. 2372c. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Agriculture Code.

Art. 2372d–6. Lease and Sale of Land for Hotel in Conjunction With County Convention Center in Counties Over 700,000

Lease of County Property

Sec. 1. The commissioners court of any county with a population of more than 700,000 according to the most recent federal census is authorized to lease real property owned by such county and the air rights above such real property owned by such county to private persons, corporations, or associations as provided in this Act.

Use of Leased Property

Sec. 2. The commissioners court is authorized to lease real property owned by the county, as well as the air rights above such property, to private persons, corporations, or associations for the construction, maintenance, and operation of a privately owned hotel and related facilities which are operated in conjunction with an existing convention center owned by the county.

Effect of Existing Bond Indentures

Sec. 3. The commissioners court may lease the real property and air rights thereto, as provided herein, notwithstanding that the real property leased is presently encumbered by existing revenue bond indentures. In leasing the county-owned land or the air rights thereto, the commissioners court shall abide by all applicable terms and conditions of the existing revenue bond indentures, except such terms as are waived by the holders of the revenue bonds.

Creation of Encumbrance Prohibited

Sec. 4. No lease of county-owned land or air rights thereto hereunder shall in any way subject the county-owned land to a mortgage or encumbrance not heretofore existing and any lease executed hereunder shall specifically provide that such county-owned land shall not be deemed to be encumbered or mortgaged by any lease executed hereunder, or any agreement executed in connection with such lease.

Land May not be Mortgaged

Sec. 5. The county-owned land which may be leased hereunder shall not be in any way pledged or mortgaged (other than by existing revenue bond indentures or refunding or other release of existing revenue bond indentures), by any lease or agreement executed hereunder, and the county executing a lease hereunder shall not in any way lend its credit to any private corporation, association, or person in connection with a lease executed hereunder.

Duration of Lease

Sec. 6. Any lease entered into hereunder by the commissioners court is authorized to be initially for the term of any mortgage covering the construction of the hotel and related facilities and is authorized to provide an option to renew thereafter in the parties constructing, owning, or operating the hotel or related facilities for such term as the parties may mutually agree.

Lease Terms and Conditions

Sec. 7. Any lease hereunder of county-owned property or air rights thereto shall be leased upon a competitive bid and for a consideration of not less than the fair market lease value and may otherwise be upon such terms and conditions as the parties may mutually agree upon consistent with the constitution and laws of this state.

Sale of Property

Sec. 8. (a) Notwithstanding any other provisions of the law to the contrary, the commissioners court is specifically authorized to enter an agreement hereunder to provide for the sale of specified county-owned land to a private association, corporation, or individual once the following conditions have been fulfilled:

(1) all existing revenue bond obligations have been fully discharged to bond holders;

(2) a hotel has been built on the land in conjunction with an existing convention center and the operation of the hotel has been continuous for at least five years from its inception;

(3) the parties mutually agree to a sale of the realty and air rights thereto;

(4) the county receives an adequate sale price which is fair under the then existing market conditions for the sale of the land and any air rights thereto.

(b) The commissioners court may impose such deed restrictions or reverters as may be advisable to preserve the use of the land for a purpose consistent with the construction, expansion, ownership, and operation of a hotel and related facilities in conjunction with a convention center.

(c) The sale of the land may include land appurtenant to the land upon which said hotel or related facilities have been built.

Contracts: Parties, Purposes

Sec. 9. The power of the commissioners court to enter into agreements and contracts hereunder shall extend to one or more private associations, corporations, or individuals for all or any of the following purposes: construction of a hotel and related facilities, ownership of a hotel and related facilities, and operation, maintenance, and expansion of a hotel and related facilities.

Expenditure of Tax Revenue

Sec. 10. In agreements and contracts authorized by this Act, the commissioners court may expend tax funds consistent with the provisions of this Act and other provisions of state law, but the commitment and expenditure of tax funds must be from current revenues of the county.

[Acts 1979, 66th Leg., p. 2007, ch. 786, eff. Aug. 27, 1979.]

Art. 2372d-7. Admission Fees For County Museums in Counties of 1,200,000 or More

Sec. 1. The commissioners court of a county having a population of 1,200,000 or more, according to the most recent federal census, may charge and collect a fee from members of the general public for admission to a county-operated museum, historical site, historical building, or other similar building or site.

Sec. 2. The commissioners court by order may set the admission fee authorized by this Act. Admission fees charged and collected under this Act shall be placed in a county special fund to be used by the commissioners court for the payment of costs associated with the administration, maintenance, security, or staffing necessary to operate the building or site. The special fund may not be expended for purposes other than those associated with the building or site.

[Acts 1981, 67th Leg., p. 456, ch. 191, eff. Aug. 31, 1981.]

Art. 2372d-8. Public Improvements in Certain Counties to Attract Visitors and Tourists; Bonds; Occupancy Tax

Applicability

Sec. 1. This article applies only to counties with a population of more than 2,000,000, according to the most recent federal census and to counties that border the Republic of Mexico with a population of more than 90,000, according to the most recent federal census, excluding counties which contain three or more cities with populations of more than 17,500, according to the most recent federal census.

Improvements to Attract Visitors and Tourists

Sec. 2. A county covered by this article is authorized to establish, acquire, lease as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate, or maintain (any or all) public improvements such as civic centers, civic center buildings, auditoriums, exhibition halls, coliseums, and stadiums, including sports and other facilities (either or all) that serve the purpose of attracting visitors and tourists to the county, and to establish, acquire, lease as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate, or maintain (any or all) structures, parking areas, or facilities located at or in the immediate vicinity of these public improvements to be used in connection with the public improvements for off-street parking or storage of motor vehicles or other conveyances. Any lease shall be on such terms and conditions as the county deems appropriate.

Revenue Bonds

Sec. 3. (a) The county is authorized to issue negotiable revenue bonds to provide all or part of the funds for the establishment, acquisition, purchase, construction, improvement, enlargement, equipment, or repair (any or all) of public improvements such as civic centers, civic center buildings, auditoriums, exhibition halls, coliseums, and stadiums, including sports and other facilities (either or all) that serve the purpose of attracting visitors and tourists to the county, and the establishment, acquisition, purchase, construction, improvement, enlargement, equipment, or repair (any or all) of structures, parking areas or facilities located at or in the immediate vicinity of these public improvements to be used in connection with the public improvements for off-street parking or storage of motor vehicles or other conveyances.

(b) The revenue bonds may be issued when duly authorized by an order passed by the commissioners court of the county and shall be secured by a pledge of and be payable from all or any designated part of the revenues of the public improvements or the parking or storage facilities, as may be provided in the order or orders authorizing the issuance of the bonds. To the extent that these revenues may have been pledged to the payment of revenue or revenue refunding bonds that are still outstanding, the pledge securing the proposed bonds shall be inferior to the previous pledge or pledges. Within the discretion of the commissioners court of the county, and subject to limitations contained in previous pledges, if any, in addition to the pledge of revenues a lien may be given in all or any part of the physical properties acquired out of the proceeds from the sale of the bonds.

(c) When any of the revenues of the public improvements and facilities are pledged to the payment of bonds issued under this article, it is the duty of the commissioners court of the county to cause to be fixed, maintained, and enforced charges for services rendered by properties and facilities, the revenues of which have been pledged, at rates and amounts at least sufficient to comply with and carry out the covenants and provisions contained in the order or orders authorizing the issuance of the bonds.

(d) If the county leases as lessee any one or more of these public improvements, structures, parking areas, or facilities, the county shall have authority to pledge to the lease payments required to be made by the county all or any part of the revenues of the public improvements, structures, parking areas, or facilities.

Hotel Occupancy Tax

Sec. 4. (a) The commissioners court of the county by order may levy a tax on the cost of occupancy of any sleeping room in a hotel in the county for which the cost of occupancy is at the rate of $2 or more per day. The tax may not exceed the applicable percentage specified in this section of the consideration paid to the hotel by the occupant of the sleeping room.

(b) As to a hotel located in an incorporated city with a population of 1,200,000 or more, according to the most recent federal census, the applicable percentage is three percent until January 1, 1984, and one percent on or after that date. As to any other hotel, the applicable percentage is seven percent.

Validation

Sec. 5. All orders heretofore passed and adopted by the governing body of a county levying a tax on the cost of occupancy of any sleeping room furnished by any hotel, where the cost of occupancy is at the rate of $2 or more per day and the tax is equal to or less than two percent of the consideration paid by the occupant of the room in the hotel, and any bonds heretofore issued that are secured in whole or in part by a pledge of the tax are hereby in all respects validated and held to be enforceable as of the respective date of passage and adoption of the orders levying the tax or issuing the bonds. All occupancy taxes to be levied or attempted to be levied pursuant to the orders are hereby validated and declared fully enforceable to the same extent as if levied or attempted to be levied pursuant to valid laws duly enacted by the legislature of this state specifically providing authority for the passage and adoption of the orders and the levy of the taxes.

Use of Revenue

Sec. 6. (a) The revenue derived from any occupancy tax authorized or validated by this article may only be used for:

(1) the acquisition of sites for and the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of public improvements such as civic centers, civic center buildings, auditoriums, exhibition halls, coliseums, and stadiums, including sports and other facilities (either or all) that serve the purpose of attracting visitors and tourists to the county, and parking areas or facilities for the parking or storage of motor vehicles or other conveyances located at or in the immediate vicinity of the convention center facilities;

(2) the furnishing of facilities, personnel, and materials for the registration of convention delegates or registrants; and

(3) those counties bordering the Republic of Mexico, as provided in Section 1 of Article 1 of this Act, advertising for general promotion and tourist advertising of the country and its vicinity and conducting a solicitation and operating program to attract conventions and visitors either by the county or through contracts with persons or organizations selected by the county.

(b) Any county that levies and collects an occupancy tax that is authorized or validated by this article may pledge a portion of the revenue derived therefrom to the payment of the bonds that the county may issue pursuant to the provisions of Section 3 of this article, if the bonds are issued solely for one or more of the purposes set forth in this article.

Definitions

Sec. 7. In this article:

(1) "Hotel" means any building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels; motels; tourist homes, houses, or courts; lodging houses; rooming houses; or other buildings where rooms are furnished for a consideration, but "hotel" shall not be defined as to include hospitals, sanitariums, or nursing homes.

(2) "Consideration" means the cost of the room in the hotel only if the room is one ordinarily used for sleeping and shall not include the cost of any food served or personal services rendered to the occupants of the room not related to the cleaning and readying of the room for occupancy.

(3) "Occupancy" means the use or possession or the right to the use or possession of any room in a hotel if the room is one ordinarily used for sleeping and if the occupant's use, possession, or right to use or possession extends for a period of less than 30 days.

(4) "Occupant" means anyone who for a consideration uses, possesses, or has a right to use or possess any room in a hotel if the room is one ordinarily used for sleeping.

Rights of Bondholders

Sec. 8. The owners or holders of these revenue or revenue refunding bonds shall never have the right to demand payment of either the principal of or interest on the bonds out of any funds raised or to be raised by taxation, except as to room taxes, if pledged.

Orders Relating to Bonds

Sec. 9. In the order or orders authorizing the issuance of any revenue or revenue refunding bonds authorized by this article, the county may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund or funds,

reserve fund or funds, and other funds and make additional covenants with respect to the bonds and the pledged revenues and the operation and maintenance of those improvements, and facilities, the revenues of which are pledged, including provision for the operation or for the leasing of all or any part of said improvements or facilities and the use or pledge of money derived from such operation, contracts and leases, as it may deem appropriate. The order or orders may also prohibit the further issuance of bonds or other obligations payable from the pledged revenues or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenues on a parity with or subordinate to the lien and pledge in support of the bonds being issued, subject to the conditions as are set forth in the order or orders. The order or orders may contain other provisions and covenants, as the county may determine, not prohibited by the Constitution of Texas or by this article, and the county may adopt and cause to be executed any other proceedings or instruments necessary or convenient in the issuance of any of the bonds.

Reserve Funds; Investments

Sec. 10. From the proceeds of sale of any bonds issued under this article, the county may appropriate or set aside, out of the bond proceeds an amount for the payment of interest expected to accrue during the period of construction, an amount or amounts to be deposited into the reserve fund or funds as may be provided in the bond order or orders, and an amount necessary to pay all expenses incurred and to be incurred in the issuance, sale, and delivery of the bonds. Until such time or times as the bond proceeds are needed to carry out the bond purpose, the bond proceeds may be invested in direct obligations of the United States of America or may be placed on time deposit, or both. Money in the interest and sinking fund or funds, in the reserve fund or funds, and in any other fund or funds established or provided for in the bond order or orders may be invested in such a manner and in such securities as may be provided in the bond order or orders.

Formal Requirements; Maturity; Approval and Registration

Sec. 11. All bonds shall be signed by the county judge and countersigned by the county clerk and shall have the seal of the county impressed on them; provided that the bond order or orders may provide for the bonds and any attached interest coupons to be signed by facsimile signatures and for the seal of the county on the bonds to be a facsimile as provided by Chapter 204, Acts of the 57th Legislature, Regular Session, 1961 (Article 717j—1, Vernon's Texas Civil Statutes). The bonds shall mature serially or otherwise in not to exceed 40 years from their date or dates and may be sold at a price and under such terms determined by the commissioners court of the county to be most advantageous and reasonably obtainable, and within the discretion of the commissioners court, the bonds may be callable prior to maturity at such time or times and at such price or prices as may be prescribed in the order or orders authorizing the bonds. Any of the bonds may be made registrable as to principal or as to both principal and interest. All bonds issued under this article and the record relating to their issuance shall be submitted to the Attorney General of the State of Texas for his examination as to the validity hereof, and after the attorney general has approved them, the bonds shall be registered by the Comptroller of Public Accounts of the State of Texas. When the bonds have been approved by the attorney general, registered by the comptroller, and delivered to the purchasers, they shall thereafter be incontestable except for forgery or fraud.

Refunding Bonds

Sec. 12. The county shall have the power and authority to issue revenue refunding bonds similarly secured to refund either original bonds or revenue refunding bonds previously issued by the county under this article, and the refunding bonds shall bear interest at the same or lower rate or rates than that of the bonds refunded unless it is shown mathematically that a saving will result in the total amount of interest to be paid. Refunding bonds shall be authorized by order or orders and shall be executed and shall mature as is provided in this article for original bonds. They shall be approved by the attorney general as in the case of original bonds and shall be registered by the comptroller on the surrender and cancellation of the bonds to be refunded, but in lieu thereof the order or orders authorizing their issuance may provide that they shall be sold and the proceeds thereof deposited in the place or places where the underlying bonds are payable, in which case the refunding bonds may be issued in an amount sufficient to pay the interest on and principal of the underlying bonds to their option or maturity date, and the comptroller shall register them without the surrender and cancellation of the underlying bonds. All such refunding bonds, after they have been approved by the attorney general and registered by the comptroller, shall be incontestable except for forgery or fraud.

Negotiability; Authorized Investments; Use as Security

Sec. 13. All bonds issued under this article, whether original bonds or refunding bonds, shall be and are hereby declared to be and to have all the qualifications of negotiable instruments under Chapter 8, Business & Commerce Code, and all the bonds shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies of every kind or type, fiduciaries, trustees, guardians, and the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. The bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns,

villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

Cumulative Effect

Sec. 14. This article is cumulative of all existing laws of this state, but to the extent that existing laws may be in conflict or inconsistent with the provisions of this article, the provisions of this article shall govern and prevail; and this article shall take precedence over any and all conflicting or inconsistent county charter provisions.

Reimbursement for Collecting Tax

Sec. 15. A county imposing the tax authorized by this article may permit the person required to collect the tax to deduct and withhold from the person's payment to the county, as reimbursement for the cost of collecting the tax, an amount not to exceed one percent of the tax collected.

[Acts 1981, 67th Leg., p. 3041, ch. 796, art. 1, eff. Aug. 31, 1981.]

Art. 2372f–1. Automobiles, Purchasing For Each Commissioner; Counties of 105,000 to 114,000

In any county in this State having a population of not less than 105,000 and not more than 114,000 according to the last preceding federal census the Commissioners Court is hereby authorized to allow each commissioner to purchase an automobile to be used in each respective precinct on official business, to be paid for out of county funds and each commissioner shall make under oath an account of his expenditures for such purpose.

[Amended by Acts 1981, 67th Leg., p. 569, ch. 237, § 31, eff. Sept. 1, 1981.]

Art. 2372f–2. Motor Vehicles; Allowance For Each Member; Counties of 190,000 to 205,000

Sec. 1. In any county having a population in excess of one hundred ninety thousand (190,000) but not in excess of two hundred five thousand (205,000) according to the last preceding or any future federal census, the Commissioners Court is hereby authorized to furnish each member of the Commissioners Court an adequate motor vehicle, including all expenses incidental to the upkeep and operation of such motor vehicle, for use on official business.

[See Compact Edition, Volume 3 for text of 2 and 3]

[Amended by Acts 1981, 67th Leg., p. 569, ch. 237, § 32, eff. Sept. 1, 1981.]

Art. 2372f–3. Automobile or Pickup; Furnishing Each Commissioner; Counties of 76,000 to 80,000

Sec. 1. This Act applies to every county in this State which has a population of not less than 76,000 nor more than 80,000, according to the last preceding federal census.

[See Compact Edition, Volume 3 for text of 2 and 3]

[Amended by Acts 1981, 67th Leg., p. 569, ch. 237, § 33, eff. Sept. 1, 1981.]

Art. 2372f–4. Automobile; Furnishing Each Commissioner; Counties of 23,200 to 23,500

Sec. 1. This Act applies to every county within a judicial district of this State comprised of four counties, one of which counties has a population of not less than twenty-three thousand, two hundred (23,200) and not more than twenty-three thousand, five hundred (23,500).

[See Compact Edition, Volume 3 for text of 2 and 3]

[Amended by Acts 1981, 67th Leg., p. 569, ch. 237, § 34, eff. Sept. 1, 1981.]

Art. 2372f–5. Two-Way Radios for County Vehicles; Counties of 76,000 to 80,000

Sec. 1. The Commissioners Court of all counties having a population of not less than 76,000 nor more than 80,000 according to the last preceding federal census may purchase two-way radios for county vehicles.

[See Compact Edition, Volume 3 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 569, ch. 237, § 35, eff. Sept. 1, 1981.]

Art. 2372f–6. Automobile; Furnishing Each Commissioner; Counties of 99,400 to 100,000 or 84,000 to 86,000

Sec. 1. This Act applies to any county having a population of not less than 99,400 nor more than 100,000, or not less than 84,000 nor more than 86,000, according to the last preceding federal census.

[See Compact Edition, Volume 3 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 569, ch. 237, § 36, eff. Sept. 1, 1981.]

Art. 2372f–7. Automobile for Each Commissioner In Counties of 83,000 to 84,000

Sec. 1. This Act applies to any county having a population of not less than 83,000 nor more than 84,000, according to the last preceding Federal Census.

[See Compact Edition, Volume 3 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 570, ch. 237, § 37, eff. Sept. 1, 1981.]

Art. 2372f-8. Traveling Expenses and Automobile Depreciation, Counties of 56,000 to 57,000

In any county having a population of not less than 56,000 nor more than 57,000, according to the last preceding federal census, the Commissioners Court may allow each county commissioner traveling expenses and automobile depreciation for the use of the commissioner's automobile while he is engaged in official business within the county. Each county commissioner shall pay any expenses in the operation of his automobile and shall keep the automobile repaired without charge to the county.

[Amended by Acts 1981, 67th Leg., p. 570, ch. 237, § 38, eff. Sept. 1, 1981.]

Art. 2372h-3. Vacations, Holidays and Sick Pay for Employees of Counties of 41,000 to 41,500

The Commissioners Court of any county having a population of more than 41,000 and less than 41,500, according to the last preceding federal census, may provide for vacations, holidays fixed by State law, sick leaves without deduction or loss of pay, and deductions for absences from work of all county employees whether paid a fixed salary or an hourly or daily wage.

[Amended by Acts 1981, 67th Leg., p. 570, ch. 237, § 39, eff. Sept. 1, 1981.]

Art. 2372h-4. Payroll Deductions; Authorized Purposes

Sec. 1. (a) The commissioners court of any county of 20,000 or more population may authorize payroll deductions to be made from the wages and salaries of county employees, on each employee's written request, to a credit union, to pay membership dues in a labor union or a bona fide employees association, and to pay fees for parking in county owned facilities.

(b) Each employee requesting a deduction under this Act shall submit to the county auditor a written request indicating the amount to be deducted from the employee's wages or salary and to transfer the withheld funds to the credit union, proper labor union or employees association, or county funds. The request shall remain in effect until the county auditor receives written notice of revocation signed by the employee.

(c) The amount deducted from an employee's wages or salary for the purpose stated in this Act shall not be more than the amount stipulated in the written request.

(d) Participation in the program authorized by this Act is voluntary on the part of any county employee and the county.

Sec. 2. The provisions of this Act shall not alter, amend, modify, or repeal any of the provisions of Chapter 135, Acts of the 50th Legislature, 1947 (Article 5154c, Vernon's Texas Civil Statutes).

Sec. 3. Public funds shall not be used to defray the administrative cost of making the deductions authorized under this Act, except those deductions relating to payment for parking. The credit union, labor union or employees association shall pay the full and complete administrative cost, if any, as determined and approved by the commissioners court of the deductions made for their benefit under this Act.

[Amended by Acts 1975, 64th Leg., p. 2355, ch. 724, § 1, eff. Sept. 1, 1975.]

Art. 2372h-6. Civil Service System in Counties of 200,000 or More

[See Compact Edition, Volume 3 for text of 1]

Establishment of Civil Service

Sec. 2. Any county having a population of 200,000 or more inhabitants according to the last preceding federal census may establish a county civil service system under the provisions of this Act to cover all employees of the county.

[See Compact Edition, Volume 3 for text of 3 to 7]

Powers of Commission

Sec. 8.

[See compact Edition, Volume 3 for text of 8(a) and (b)]

(c) The commission may not make a rule or enforce any existing rule requiring retirement at any age below 70. If a commission rule sets a mandatory retirement age, an employee who reaches that age may have his employment extended on application to and approval by the commissioners court on a year to year basis.

[See Compact Edition, Volume 3 for text of 9 to 13]

[Amended by Acts 1977, 65th Leg., p. 654, ch. 244, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 864, ch. 326, § 1, eff. Aug. 29, 1977.]

Art. 2372h-7. Liability Insurance for County Officers and Employees

Sec. 1. A county may insure such of its officers and employees, including county and precinct peace officers as may be designated by the county commissioners court, against liability to a third person arising from the performance of official duties or duties of employment by purchasing policies of liability insurance from an insurer authorized to do business in this state.

Sec. 2. Insurance purchased by a county under the provisions of this Act shall be on forms approved by the State Board of Insurance.

[Acts 1977, 65th Leg., p. 1657, ch. 653, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1831, ch. 744, § 4, eff. June 13, 1979.]

Art. 2372h–8. Sheriff's Department Civil Service Systems in Counties of More Than 1,500,000

Definitions

Sec. 1. In this Act:

(1) "Commission" means a sheriff's department civil service commission.

(2) "Department" means a sheriff's department.

(3) "Employee" includes a deputy sheriff and any other employee of the department.

Establishment of Civil Service

Sec. 2. In any county having a population of more than 1,500,000, according to the most recent federal census, a sheriff's department civil service system may be created in accordance with this Act.

Petition and Election

Sec. 3. (a) If a petition requesting an election under this section signed by at least 20 percent of the employees of a department is submitted to the county judge, the judge shall order a departmental election on the question of establishing a sheriff's department civil service system.

(b) The county judge shall hold the election not less than 15 nor more than 45 days after the day the petition is submitted. The election shall be by secret ballot, and each employee is entitled to vote. The ballot shall be printed to permit voting for or against the proposition: "Creation of a sheriff's department civil service system."

(c) The county judge shall canvass the votes and declare the result of the election.

Creation of Commission

Sec. 4. (a) If the result of the election indicates that a majority of the employees voting at the election favor creation of a civil service system, the sheriff, commissioners court, and district attorney shall each appoint one member to a civil service commission of three members to administer the system. The sheriff shall designate one member as chairman of the commission.

(b) When the three initial appointees have been appointed, they shall determine by lot which two of them serve for a term of two years and which one of them serves for a term of one year. Successors to the initial appointees serve terms of two years. A vacancy on the commission shall be filled by the entity which originally appointed the member for the unexpired term of the member whose position has been vacated.

(c) To be qualified for appointment to the commission a person must:

(1) be 25 years of age or older; and

(2) have been a resident of the county for three years immediately preceding the beginning of the term of office.

Compensation; Expenses; Staff

Sec. 5. A member of the commission serves without compensation. The commissioners court shall reimburse a member for actual and necessary expenses incurred in performing duties as a member of the commission. The commissioners court shall provide the commission with adequate office space and with funds sufficient to employ an adequate staff and to purchase necessary supplies and equipment.

Powers of Commission

Sec. 6. (a) The commission shall make, publish, and enforce rules relating to:

(1) selection and classification of employees;

(2) competitive examinations;

(3) promotions, seniority, and tenure;

(4) layoffs and dismissals;

(5) disciplinary actions;

(6) grievance procedures and other procedural and substantive rights of employees; and

(7) other matters relating to the selection of employees and their advancement, rights, benefits, and working conditions.

(b) The commission may adopt or use as a guide a civil service law or rule of the United States or of this state or a political subdivision or municipal corporation in this state to the extent that the law or rule promotes the purposes of this Act and is consistent with the necessities and circumstances of the department.

Appeals

Sec. 7. (a) An employee who under a final decision of the commission is demoted, suspended, or removed from a position may appeal the decision by filing a petition in a district court of the county not later than the 30th day after the day the decision is issued.

(b) An appeal under this section shall be tried de novo.

(c) If the district court renders judgment for the petitioner, it may order reinstatement, back pay, or any other appropriate relief.

(d) A suit instituted under this section has precedence over other civil cases, and the judgment of the district court is appealable as in other civil cases.

Exemptions

Sec. 8. (a) A person who is an employee covered by this Act when this Act is adopted in a department may not be required to take any competitive examination or perform another act to maintain employment.

(b) The sheriff may designate as exempt from the civil service system the following positions:

(1) the position of chief deputy;

(2) four positions of major deputy;

(3) one or more positions in the office of departmental legal counsel; and

(4) additional positions.

(c) The total number of exempt positions under this section may not exceed 10.

(d) At the time a new sheriff takes office, an employee holding the position of chief deputy or major deputy has the right to transfer to the next lower nonexempt position in rank.

Dissolution of System

Sec. 9. (a) In any department in which this Act has been in effect for at least one year, the county judge, on being petitioned by at least 20 percent of the employees of the department, shall order a departmental election on the question of dissolving the sheriff's department civil service system.

(b) The county judge shall hold the election not less than 15 nor more than 45 days after the day the petition is submitted. The election shall be by secret ballot and each employee is entitled to vote. The ballot shall be printed to permit voting for or against the proposition: "Dissolving the sheriff's department civil service system."

(c) The county judge shall canvass the votes and declare the result of the election. If the result indicates that a majority of the employees voting at the election favor dissolution of the civil service system, the county judge shall declare the system dissolved.

System is Exclusive

Sec. 10. If a civil service system created under this Act is in effect, that system applies to the department to the exclusion of a civil service system created under Chapter 262, Acts of the 62nd Legislature, Regular Session, 1971, as amended (Article 2372h–6, Vernon's Texas Civil Statutes), or any other law.

[Acts 1981, 67th Leg., p. 295, ch. 119, eff. Aug. 31, 1981.]

Art. 2372h–9. Motor Vehicle Liability Insurance For Certain Law Enforcement Personnel; Counties over 1,400,000

Definition

Sec. 1. "Motor vehicle" means any motor vehicle for which motor vehicle insurance is written under Subchapter A, Chapter 5, Insurance Code, as amended.

Provision of Insurance

Sec. 2. (a) Each county with a population of more than 1,400,000 according to the most recent federal census shall provide for insuring its sheriff, full-time deputy sheriffs, constables, and full-time deputy constables against liability to third persons arising out of the operation, maintenance, or use of a motor vehicle owned or leased by the county.

(b) The county may elect to reimburse the actual cost of extended automobile liability insurance endorsements obtained by its sheriff, full-time deputy sheriffs, constables, and full-time deputy constables on individually owned automobile liability insurance policies of the sheriff, full-time deputy sheriffs, constables, and full-time deputy constables. The extended endorsements shall be in amounts not less than those required under this Act and shall extend the coverage to include the operation and use of county vehicles by the sheriff, full-time deputy sheriffs, constables, and full-time deputy constables in the scope of their employment. Any county that elects to use the reimbursement method authorized under this subsection may require that the sheriff, full-time deputy sheriffs, constables, and full-time deputy constables who operate and use motor vehicles owned or leased by the county present proof that an extended coverage endorsement has been purchased and that the extended coverage is current.

(c) The county may elect to become a self-insurer for purposes of this Act and, if so, shall qualify as a self-insurer by complying with Section 34, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes).

Amount of Coverage

Sec. 3. Liability coverage provided under this Act must be in amounts not less than the amounts required by the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes), to provide proof of financial responsibility.

[Acts 1981, 67th Leg., p. 2146, ch. 499, §§ 1 to 3, eff. Jan. 1, 1982.]

Art. 2372*l*. Zoning of Padre Island

[See Compact Edition, Volume 3 for text of 1 to 7]

Board of Adjustment

Sec. 8. The said Commissioners Court may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this Act may provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained.

The board of adjustment shall consist of five members, each to be appointed for a term of two (2) years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

The board shall adopt rules in accordance with the provisions of any order adopted pursuant to this Act. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the

board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county or of any municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken, and with the Board of Adjustment, a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Act or of any order adopted pursuant thereto;

2. To hear and decide special exceptions to the terms of the order upon which such board is required to pass under such order;

3. To authorize upon appeal in specific cases such variance from the terms of the order as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the order will result in unnecessary hardship, and so that the spirit of the order shall be observed and substantial justice done.

In exercising the above mentioned powers such board may, in conformity with the provisions of this Act, reverse or reaffirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four (4) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such order, or to effect any variation in such order.

Any person, or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, board, or bureau of the county or of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten (10) days after the filing of the decision in the office of the board.

Upon the presentation of such petition the court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the Board of Adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The Board of Adjustment shall not be required to return the original papers acted upon by it, but is shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

[See Compact Edition, Volume 3 for text of 9 to 10a]

[Amended by Acts 1981, 67th Leg., p. 2632, ch. 707, § 4(9), eff. Aug. 31, 1981.]

Art. 2372m. Repealed by Acts 1981, 67th Leg., p. 485, ch. 204, § 3, eff. Jan. 1, 1982

See, now, art. 4477–6a.

Art. 2372p-1. Furnishing Counsel and Investigative Services for Indigents Accused of Crime; Counties Over 2,000,000

Authority to Contract

Sec. 1. For the purpose of providing timely and effective assistance of counsel to those persons accused of crime and who are financially unable to employ counsel on their own, the Commissioners Court of any county in this State having a population of more than 2,000,000, according to the last preceding federal census, may contract with some already established bar association, nonprofit corporation, nonprofit trust association or any other nonprofit entity (which has for its purpose the providing of timely effective assistance of counsel for the indigent accused of crime) to assist the courts in providing the timely and effective assistance of counsel.

[See Compact Edition, Volume 3 for text of 2 to 5]

[Amended by Acts 1981, 67th Leg., p. 570, ch. 237, § 40, eff. Sept. 1, 1981.]

Art. 2372p-2. Personal Bond Offices

[See Compact Edition, Volume 3 for text of 1 to 3]

Sec. 4. (a) If a court releases an accused on personal bond on a personal bond office's recommendation, the court shall assess a personal bond fee of $20 or of three percent of the amount of the bail fixed for the accused, whichever is greater. The court may waive the fee or assess a lesser fee if good cause is shown.

[See Compact Edition, Volume 3 for text of 4(b) and (c)]

[Amended by Acts 1977, 65th Leg., p. 1914, ch. 765, § 1, eff. Aug. 29, 1977.]

Art. 2372p-3. Licensing and Regulation of Bail Bondsmen

Declaration of Policy

Sec. 1. The business of executing bail bonds is declared to be a business affecting the public interest. It is declared to be the policy of this state to provide reasonable regulation to the end that the right of bail be preserved and implemented by just and practical procedures governing the giving or making of bail bond and other security to guarantee appearance of the accused.

Definitions

Sec. 2. In this Act:

(1) "Person" means an individual or corporation.

(2) "Bondsman" means any person who for hire or for any compensation deposits any cash or bonds or other securities, or executes as surety or cosurety any bond for other persons.

(3) "Bonding Business" means the occupation in which a bondsman is engaged.

(4) "Company" includes corporations and other business entities.

(5) "Bond" includes cash deposit and any similar deposit or written undertaking to assure appearance.

(6) "Board" means the County Bail Bond Board.

Licensing Requirement and Eligibility

Sec. 3. The provisions of this Act apply only to the execution of bail bonds in counties having a population of more than 110,000 according to the last federal census or in counties of less than 110,000 where a board has been created. The creation of the board is within the discretion of a majority of the officers of the county who would be members of, or who would designate members of, the board as provided under Subsection (b) of this section.

(a) In a county that has a board, no person may act as a bondsman except:

(1) persons licensed under this Act, and

(2) persons licensed to practice law in this state who meet the requirements set forth in Subsection (e) of Section 3 of this Act.

(b) No individual is eligible for a license under this Act unless the individual:

(1) is a resident of this state and a citizen of the United States;

(2) is at least 18 years of age;

(3) possesses sufficient financial resources to provide indemnity against loss on such obligations as he may undertake as required by Section 6 of this Article.

(c) No person shall be eligible for a license under this Act, who after the effective date of this Act, commits an offense for which he is finally convicted, such offense being a felony or misdemeanor involving moral turpitude.

(d) No corporation is eligible to be licensed unless:

(1) it is chartered or admitted to do business in this state; and

(2) it is qualified to write fidelity, guaranty and surety bonds under the Texas Insurance Code, as amended.

(e) Persons licensed to practice law in this state may execute bail bonds or act as sureties for persons they actually represent in criminal cases without being licensed under this Act, but they are prohibited from engaging in the practices made the basis for revocation of license under this Act and if found by the sheriff to have violated any term of this Act, may not qualify thereafter under the exception provided in this subsection unless and until they come into compliance with those practices made the basis of revocation under this Act. Notwithstanding any other provision of this subsection, no person licensed to practice law shall be relieved of liability on a bail

bond he has executed for the sole reason that he has not been employed to represent the principal on the merits of the case if he has been paid a fee for the execution of the bail bond.

Records Required of Licensees

Sec. 4. (a) A bondsman licensed under this Act shall maintain a record of each bond on which the bondsman appears as surety and shall maintain a separate set of records for each county in which the bondsman is licensed. The records shall include the following information for each bond executed and enforced:

(1) the style and number of the cause in which the bond is given and the court in which it is executed;

(2) the name of the defendant released on bond;

(3) the amount of the bail set in the case; and

(4) the amount and type of security held by the bondsman, together with a statement as to whether the security was taken for payment of a bail bond fee or for assurance of the principal's appearance in court and the conditions under which the security will be returned. No security shall be held for both the payment of a bail bond fee and assurance of the principal's appearance in court that is in excess of the particular risk involved.

(b) The records shall be submitted to the board or a person designated by the board for inspection prior to each renewal of the bondsman's license and shall be available for inspection on demand by the board or its authorized representative.

County Bail Bond Board

Sec. 5. (a) There is hereby created in all counties having a population of 110,000 or more, according to the last preceding federal census, a County Bail Bond Board. In counties of less than 110,000, the creation of the board is within the discretion of a majority of the officers of the county who would be members of, or who would designate members of, the board as provided under Subsection (b) of this section.

(b) The County Bail Bond Board shall be composed of the following persons:

(1) the county sheriff or his designee;

(2) a district judge of the county having jurisdiction over criminal matters designated by the presiding judge of the administrative judicial district;

(3) the county judge or a member of the commissioners court designated by the county judge;

(4) a judge of a county court or a county court at law in the county having jurisdiction over criminal matters designated by the commissioners court;

(5) the district attorney or his designee;

(6) a licensed bondsman, licensed in the county, elected by other county licensees; and

(7) a justice of the peace.

(c) The board shall meet within 60 days after its creation. The board shall initially elect one of its members as chairman who shall preside at all meetings to be held thereafter at the call of the chairman.

(d) Four members of the board shall constitute a quorum for the conduct of business. All action by the board shall require the vote of a majority of the members present. The board shall meet at least every 30 days.

(e) Unless clearly not required by this Act, all rules, regulations, and actions of the board passed pursuant to this Act shall be posted at an appropriate place in the courthouse for a period of 10 days prior to their effective date.

(f) In addition to the powers and duties given to the County Bail Bond Board by this Act, the board has the following powers and duties:

(1) To exercise any powers incidental or necessary to the administration of this Act, to supervise and regulate all phases of the bonding business and enforce this Act within the county, and to prescribe and post any rules necessary to implement this Act;

(2) To conduct hearings and investigations and make determinations respecting the issuance, refusal, suspension, or revocation of licenses to bondsmen within the provisions of this Act and to issue licenses to those applicants who qualify under the terms of this Act, to refuse licenses to those applicants who do not qualify, and to suspend or revoke the licenses of licensees who commit violations under this Act or the rules prescribed by the board under this Act;

(3) To require applicants and licensees to appear before the board, and to administer oaths, examine witnesses, and compel the production of pertinent books, accounts, records, documents, and testimony by the licensee or applicant in its hearings;

(4) To cause records and transcripts to be made of all its proceedings;

(5) To maintain records and minutes and otherwise operate its office affairs;

(6) To employ such employees to assist the board in its functions as necessary;

(7) To furnish and post in each court in the county having jurisdiction of criminal cases and each local official responsible for the detention of prisoners in the county with current lists of the bondsmen and their agents licensed and approved in the county and to notify immediately each court and local official when a bondsman's license is suspended or revoked or an agent's authority is rescinded; and

(8) To file reports and furnish information on the operation of the bonding business in the county at the request of the Texas Judicial Council which shall report annually to the governor and

the legislature on or before December 1 of each year on the operation of the bonding business in the state.

Application and Issuance of License

Sec. 6. (a) Any person desiring to act as a bondsman in any court of the county shall file with the County Bail Bond Board a sworn application for a license. The application shall be in such form and shall contain such information as the board may prescribe including the following:

(1) The name, age, and address of the applicant, and if the applicant is a surety corporation, and whether chartered or admitted to do business in this state and qualified to write fidelity, guaranty, and surety bonds under the Texas Insurance Code, as amended;

(2) The name under which the business shall be conducted;

(3) The name of the place or places, including street address and city, wherein the business is to be conducted;

(4) A statement listing any nonexempt real estate owned by the applicant that the applicant intends to convey in trust to the board to secure payment of any obligations incurred by the applicant in the bonding business if the license is granted. The following shall be included for each parcel listed:

(A) a legal description equivalent to the description required to convey the property by general warranty deed;

(B) current statements from each taxing unit with power to assess or collect taxes against the property indicating that there are no outstanding tax liens against the property and indicating the net value of the property according to the current appraisal made by a member of the Society of Real Estate Advisors or a Member of Appraisal Institute, accompanied by a statement from the applicant agreeing to keep all taxes paid on the property while it remains in trust;

(C) a statement of the applicant that he will not further encumber the property after conveying it in trust to the County Bail Bond Board, without notifying and obtaining the permission of the board;

(D) an agreement to insure and keep current the insurance on any improvements on the property against any damage or destruction while the property remains in trust, in the full amount of the value claimed for the improvements;

(E) a statement indicating whether the applicant is married and, if so, a sworn statement from the spouse agreeing to transfer to the board, as a part of the trust, any right, title, or interest that the spouse may have in the property; and the spouse must execute the deeds of trust to any community property placed in the security deposit required under this section;

(5) A statement indicating the amount of cash or cash value of any certificate of deposit or cashier's checks which the applicant intends to place on deposit with the county treasurer to secure payment of any obligations incurred by the applicant in the bonding business if the license is granted;

(6) A complete, sworn financial statement;

(7) A declaration by the applicant that he will comply with this Act and the rules prescribed by the board.

(b) The application of an individual for a license under this Act shall be accompanied by letters of recommendation from three reputable persons who have known the applicant for a period of at least three years. If the applicant is a corporation, the letters shall be required for the person to be in charge of its business in the county. Each letter shall recommend the applicant or person who will be in charge of its business as having a reputation of honesty, truthfulness, fair dealing, and competency and shall recommend that the license be granted. If the applicant or the person to be in charge of its business has been licensed under this Act in another county, the application shall be accompanied by a letter from each appropriate board stating whether or not the applicant is in good standing in the county where he is licensed.

(c) The application shall be accompanied by a fee of $500 for the filing of any original application, a photograph of the applicant, and a set of fingerprints of the applicant taken by a law enforcement officer designated by the board.

(d) Prior to a hearing on the application, the board or its authorized representative shall conduct necessary inquiries to determine whether the applicant possesses the financial responsibility and meets other requirements of this Act.

(e) A hearing shall be held on the application after the board conducts the inquiries required by Subsection (d) of this section. The board may submit any questions to the applicant and the applicant's agents relevant to its ruling on the application, and the applicant is entitled to present oral and documentary evidence to the board. If, after the hearing, the board is satisfied that no grounds exist on which to refuse the application, the board shall enter an order tentatively approving the application subject to the application being perfected by the filing of the security deposits required of licensees under this Act. If the board is not so satisfied, it shall enter an order refusing the license.

(f) Upon notice from the board that the application has been tentatively approved, the applicant shall then:

(1) deposit with the county treasurer of the county in which the license is to be issued a cashier's check, certificate of deposit, cash, or cash equivalent in the amount indicated by the applicant under Subdivision (5) of Subsection (a) of

Section 6 of this Act but in no event less than $5,000 to be held in a special fund to be called the bail security fund; or

(2) execute in trust to the board deeds to the property listed by the applicant under Subdivision (4) of Subsection (a) of Section 6 of this Act, which property shall be valued in the amount indicated on an appraisal by a member of the Society of Real Estate Advisors or a Member of Appraisal Institute of the county in which it is located, but in no event less than $10,000 valuation, the condition of the trust being that the property may be sold to satisfy any final judgment forfeitures that may be made in bonds on which the licensee is surety after such notice and upon such conditions as are required by the Code of Criminal Procedure, 1965, as amended, in bond forfeiture cases; the board shall file the deeds of trust in the records of each county in which the property is located, and the applicant shall pay the filing fees.

(3) If the licensee is a corporation, it shall furnish to the sheriff an irrevocable letter of credit as a cash equivalent to satisfy any final judgment of forfeiture that may be made on any bonds on which the corporate licensee is surety.

(g) No bondsman may execute, in any county, bail bonds that in the aggregate exceed 10 times the value of the property held as security on deposit or in trust under Subsection (f) of this section. A county officer or employee designated by the board shall maintain a current total of the bondsman's potential liability on bonds in force, and no further bonds may be written by or accepted from the bondsman when the limit is reached. When a bondsman's total liability on judgments nisi reaches two times the same amount as he has on deposit as security, no further bonds may be written until the bondsman posts additional security as required in this subsection. A bondsman whose license is effective may, at any time, by posting additional security, increase the bondsman's limit.

(h) The cash deposit or the funds realized from the trust shall be used to pay the final judgments of any bail forfeitures that result from the licensee's execution of a bail bond, if the licensee fails to satisfy the judgment within 30 days after a final judgment of forfeiture. When any sums are depleted from the deposit or trust to pay a judgment resulting from a forfeited bond, the licensee shall, as a condition to continuing as a licensee, replenish the amount so depleted up to the amount of the required minimum deposit to secure other bonds in force. When the licensee ceases to engage in the business of executing bail bonds and ceases to maintain his license, he may withdraw his security deposit or trust upon presentment of a release by the board, if there are no judgments or bond liabilities, either actual or potential, outstanding against the license. Any portion of the deposit or trust not used to pay judgments or to secure unexpired obligations on existing bonds in force shall be returned to the licensee or his heirs or assigns upon presentment of a release by the board.

Corporation as Surety

Sec. 7. (a) Wherever in this Act any person is required or authorized to give or execute any bail bond, such bail bond may be given or executed by such principal and any corporation authorized by law to act as surety. When any such corporation authorized by law to act as a surety undertakes to be a surety on a bail bond, such corporation, before being acceptable as a surety on a bail bond, shall be required to meet the applicable requirements prescribed by Section 6 of this Act before being acceptable as a personal surety on a bail bond; Subsection (g) of Section 6 does not apply to a corporate surety.

(b) The certificate of authority to do business in this state issued to a corporation by the State Board of Insurance pursuant to Article 8.20, Insurance Code, as amended, shall be conclusive evidence as to the sufficiency of the security, the corporation's solvency, or its credits.

(c) Any corporation which acts as a surety shall, before executing any bail bond, first file in the office of the county clerk of the county where such bail bond is given a power of attorney designating and authorizing the named agent of such corporation to execute such bail bonds by such agent. This power of attorney shall be a valid and binding obligation of the corporation. A separate license is required for each agent operating under a corporate power of attorney.

(d) Notwithstanding any statutory requirements to the contrary, any agent so designated and licensed or approved hereunder for the purpose of writing bail bonds shall not be required to be licensed as a local recording agent as defined in Article 21.14, Texas Insurance Code, as amended, for the purpose of this Act.

(e) It shall be the duty of the board to notify promptly the State Board of Insurance of default by a corporation on any financial obligation which it undertakes in the county.

Expiration and Renewal of License

Sec. 8. (a) A license issued under this Act expires 24 months after the date of its issuance and may not be renewed unless an application for renewal is filed with the board at least 30 days before expiration. The application for renewal shall have the same form and content as an application for an original license under this Act. The application for renewal shall be accompanied by a renewal fee of $500. If the applicant's current license has not been suspended or revoked, if the renewal application complies with the requirements of this Act, and if the board knows no legal reason why the application should not be renewed, the license may then be renewed for a period of 24 months from the date of expiration and may be renewed subsequently each 24 months in like manner.

(b) All fees collected by the board shall be deposited in the general fund of the county for use in the administration and enforcement of this Act. The board is authorized to receive disbursements from the general fund for reasonable expenses incurred in the enforcement of this Act, but service on the board is considered an additional duty of office, and the members of the board are not entitled to compensation for the service but only for reimbursement of any expenses actually incurred as a result of the service.

(c) Each license, when issued, shall show on its face the date of expiration and license number, and it shall be the responsibility of the licensee to file for renewal under the terms of this Act, and each subsequent renewal license shall have the same number as assigned the original license.

Refusal, Suspension, and Revocation of Licenses

Sec. 9. (a) No license may be issued to any person who has not complied with the requirements of this Act for applying for an original or renewal license.

(b) The board may, on its own motion, and shall, on receipt of a sworn complaint providing reasonable cause to believe that a violation of this Act has occurred or on the request of a court, investigate the actions and records relating to such complaint against any bondsman it has licensed. The board may, after notice and hearing, suspend or revoke a license for:

(1) violation of a provision of this Act or a rule prescribed by the board during the term of the license sought to be suspended or revoked or during any prior licensing period;

(2) fraudulently obtaining a license under the provisions of this Act, making a false statement or misrepresentation in an application for an original or renewal license or in any hearing before the board, or refusing to answer any question submitted by the board in a hearing relevant to the license or the conduct or qualifications of the licensee or applicant;

(3) final conviction under the laws of this or any other state or of the United States of a misdemeanor involving moral turpitude or of a felony committed after the effective date of this Act;

(4) being adjudged bankrupt or becoming insolvent;

(5) being adjudged mentally incompetent;

(6) failing to pay within 30 days any final judgment rendered on any forfeited bond in any court of competent jurisdiction within the county of the licensee;

(7) paying of commissions or fees or dividing commissions or fees or offering to pay or divide commissions or fees with any person, company, firm, or corporation not licensed under this Act to execute bonds;

(8) soliciting bail bond business in any building where prisoners are processed or confined;

(9) recommending to any client the employment of a particular attorney or firm of attorneys in a criminal case;

(10) falsifying any records required to be maintained under this Act, failing to keep the records, or failing promptly to permit the inspection of the records at any time requested by the board or its representatives or agents;

(11) operating as a bondsman while the license is suspended or after it has expired and before it is renewed; and

(12) on more than one occasion failing to maintain the minimum amount of security required by this Act or misrepresenting to any official or employee of the official the limit supported by the amount of security to obtain the release of any person on bond.

Procedure for Suspension or Revocation of License

Sec. 10. (a) The board may revoke or suspend a license in accordance with the procedure provided in this section for the violation of any provision of this Act.

(b) Notice of a hearing to suspend or revoke shall be given by certified mail addressed to the last known address of the licensee at least 10 days prior to a date set for the hearing.

(c) The notice shall specify the charges of violation of this Act made against the licensee, and no other charges shall be made at the hearing pursuant to the notice.

(d) The hearing shall afford to the licensee opportunity to be heard, to present witnesses in his behalf, and to question witnesses against him.

(e) A record of the hearing shall be made. It shall be made available to the licensee on his request subject to his paying reasonable costs of transcription.

(f) If the licensee fails to maintain the security deposit at the proper ratio required by this Act, under Subsection (g) of Section 6 of this Act, the board shall immediately suspend the license while the violation continues. No prior notice or a hearing is necessary. Once the proper ratio is regained, the suspension shall be immediately lifted. The board shall revoke the license with prior notice or hearing if the licensee fails to pay any final judgment connected with the licensee's bonding business within 30 days and there is not sufficient property held as security to satisfy the final judgment.

Court Review

Sec. 11. An appeal may be taken from any board's order revoking, suspending, or refusing to issue a license. The appeal must be made within 30 days after written notice of the suspension, revocation, or refusal by filing a petition in a district court in the county in which the license is issued or refus-

ed. If no appeal is taken within 30 days after written notice of suspension, revocation, or refusal, such action shall become final. An appeal shall be by trial de novo, as in proceedings appealed from justice to county courts. The decision of the board shall have full force and effect pending the determination of the appeal. All appeals taken from actions of the board shall be against the board and not against the members individually.

Surrender of Principal

Sec. 12. (a) No person who executes a bail bond as a surety for a principal may surrender the principal without the written permission of the judge having jurisdiction of the case after the person who executed the bail bond has executed an affidavit to be filed with the clerk of the court stating:

(1) the date the bond was made;

(2) the fee paid for the bond; and

(3) the reason for the surrender.

(b) If the reason for surrender is deemed without reasonable cause by the principal, any agent of the board, or any attorney representing the state or any accused in the proceeding, that person may bring the matter to the attention of the court.

(c) If the court determines that the person who surrendered the principal did so without reasonable cause, the court in its discretion may require that all or a part of the fees paid as a condition for making the bail bond shall be returned to the principal. In making the determination the court shall determine what fees, whether denominated fees for the making of the bond or not, were in fact paid for the purpose of inducing the surety to make the bond.

(d) Notwithstanding any statute required to the contrary or any provision in the bond, the court may not require or commit the surety to remain during any appeal of a case without previous approval of the surety. When a case is appealed without approval of the surety, the bail shall be discharged. Nothing shall deny the principal any right to an appeal bond as provided in the Code of Criminal Procedure, 1965, as amended.

Remittitur of Forfeited Bonds

Sec. 13. (a) Prior to final judgment on any forfeiture of an appearance bond in a criminal case the attorney for the state may recommend to the court settlement for an amount less than that stated in the bond, or the court may upon its own motion approve such settlement.

(b) After a forfeiture, if the defendant is incarcerated within two years of a judgment nisi, the bondsman shall be entitled to a remittitur of at least 95 percent if he presents a sworn affidavit stating that the defendant was returned to custody, in part, as a result of money spent or information furnished by the bondsman.

The remittitur shall be credited against an unpaid judgment of forfeiture or if the judgment has been paid, the treasurer shall refund at least 95 percent.

(c) The surety on appearance bonds in criminal cases shall be absolved of liability upon disposition of the case, and disposition as used herein shall mean a dismissal, acquittal, or finding of guilty on the charges made the basis of the bond.

Approval of Bond

Sec. 14. (a) In any county or district case in which the posting of bond is required as a condition of release, the sheriff shall accept or approve a bond posted by a licensed bondsman only in accordance with this Act and the rules prescribed by the board, but a sheriff may not refuse to accept a bail bond from a licensed bondsman who meets the requirements of Subdivision (4) or (5) of Subsection (a) of Section 6 of this Act.

Effect of Default by Corporation

Sec. 14A. (a) Notwithstanding any law to the contrary, a corporation that is in default on five or more bail bonds in a county may not act as a bail bondsman in that county.

(b) The clerk of the court in which the corporation is in default on a bail bond shall deliver a written notice of the default to the sheriff, chief of police, or other appropriate peace officer in the county in which the bond is forfeited.

(c) A corporation is considered in default on a bail bond from the time the trial court enters its final judgment on the scire facias until the judgment is satisfied or set aside.

(d) For purposes of this section, a corporation is not considered in default on a bond if it deposits with the appropriate court cash in the full amount of the judgment, pending appeal. The deposit shall be applied to the payment of any final judgment in the case.

Acts Subject to Penalty

Sec. 15. (a) No person required to be licensed under this Act may execute a bail bond without a license.

(b) No bondsman or agent of a bondsman may, by any means, recommend or suggest to any person whose bail bond has been posted the name of any particular attorney or firm of attorneys for employment in connection with a criminal offense.

(c) No person in the bonding business shall, either directly or indirectly, give, donate, lend, contribute, or promise to give, donate, lend, or contribute any money or property to any attorney, police officer, sheriff, or deputy, constable, jailer, or employee of a law enforcement agency for the referral of bail bond business.

(d) No attorney, police officer, constable, or deputy, jailer, or employee of a law enforcement agency, judge or employee of a court, or public official, or

employee of a related agency, or any person not shown in the records of the board to be an agent or employee of the bondsman may accept or receive from a bondsman any money, property, or other thing of value as payment for the referral of bail bond business.

(e) No police officer, sheriff, or deputy, constable, jailer, or employee of a law enforcement agency, judge or employee of a court, or public official, or employee of a related agency may recommend to any person or persons, family of such person or persons, friends, relatives, or employer the name of any particular bondsman. In all places where prisoners are examined, processed, or confined, a list of licensed bondsmen of that county may be displayed.

(f) No bondsman or agent of a bondsman may solicit business in a police station, jail, prison, detention facility, or other place where persons in the custody of law enforcement officials are detained.

(g) No person may advertise as a bondsman who does not hold a valid license under this Act.

(h) No bondsman or agent of a bondsman may receive money or other consideration or thing of value for issuance of a bond or undertaking of a surety obligation without issuing a receipt indicating the name of the person paying the money or transferring the property, the amount received or the estimated value of the property received and briefly identifying it, the suit, action, or matter for which it is received or is to be applied, and the name of the person receiving it. The bondsman or agent shall retain a duplicate copy of the receipt which shall be available for inspection by representatives of the board of any county in which the bondsman is licensed or by the appointed representatives of a court in which the bondsman agrees to make bail or undertake other surety obligations.

(i) No person shall falsify any records required to be kept under this Act.

(j) A person who violates Subsection (a) or (g) of this section shall be guilty of a Class C misdemeanor.

(k) A person who violates Subsection (b), (e), (f), (h), or (i) of this section shall be guilty of a Class B misdemeanor.

(*l*) A person who violates Subsection (c) or (d) of this section shall be guilty of a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1194, ch. 451, §§ 1 to 3, eff. June 19, 1975; Acts 1979, 66th Leg., p. 202, ch. 111, §§ 1 to 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 875, ch. 312, § 1, eff. Aug. 31, 1981.]

Sections 7 and 8 of the 1981 amendatory act provide:

"Sec. 7. A person who, on the effective date of Section 1 of this Act, is a licensed bondsman under the law amended by Section 1 of this Act may continue to operate under the prior law for the term of the current license, and the prior law is continued in effect for that purpose. To renew the license, the person must meet the requirements of the law as amended by Section 1 of this Act.

"Sec. 8. The sheriff shall make any necessary transfers of property and functions to the board in accordance with the law as amended by Section 1 of this Act."

Art. 2372q-1. Regulation of Private Water Companies in Counties Over 1,500,000

Definitions

Sec. 1. In this Act:

(1) "Commissioners court" means the commissioners court of any county with a population of more than 1,500,000, according to the last preceding federal census.

(2) "Private water company" means a privately owned entity organized under the laws of this state for the purpose of furnishing a water supply or sewer services or both to the public, to cities and towns including home-rule cities, or to special districts, counties, or other political subdivisions of the state.

Assumption of Regulatory Authority Over Rates and Services; Rates Schedule

Sec. 2. (a) The rates and services of a private water company in a county with a population of more than 1,500,000, according to the last preceding federal census, shall be regulated by the commissioners court as provided in this Act, if:

(1) the private water company is charging or proposes to charge residential rates in any service area which exceed by 30 percent or more the highest residential rates charged by the water department of the largest city in the county; or

(2) a petition is submitted to the commissioners court signed by at least 30 percent of the persons residing, according to the last preceding federal census, in one or more of the service areas served by a private water company requesting that the commissioners court exercise regulatory authority over the company serving them.

(b) To determine whether or not the commissioners court should assume regulatory authority over a private water company under Subdivision (1), Subsection (a) of this section, each private water company operating inside the boundaries of a county with a population of more than 1,500,000, according to the last preceding federal census, on the effective date of this Act shall submit to the commissioners court copies of all rate schedules in effect on the effective date of this Act. After examining these rate schedules, the commissioners court shall determine and issue an order designating which private water companies within the county will be under its regulatory authority as a result of the provisions of Subdivision (1), Subsection (a) of this section.

(c) After the initial determination under Subsection (b) of this section, each private water company that is not operating under the regulatory authority of the commissioners court shall submit copies of each new or changed rate schedule that it plans to adopt at least 30 days before the rates are to take effect so that the commissioners court may make a determination whether or not the private water company will come under the regulatory authority of the commissioners court under Subdivision (1),

Subsection (a) of this section. The commissioners court shall issue an order within 10 days after the schedules are filed stating whether or not the company will be brought under regulatory authority of the commissioners court.

(d) If the commissioners court finds that a private water company qualifies for regulation by it under Subsection (a) of this section, it shall issue its order assuming regulatory authority over the company, and the regulatory authority of the commissioners court shall take effect 15 days after the order is issued.

Filing of Rate Schedules; Proposed Changes

Sec. 3. (a) Each private water company over which the commissioners court assumes regulatory authority shall file with the commissioners court copies of all of its schedules of rates and charges and proposed schedules of rates and charges within 15 days after the commissioners court assumes regulatory authority unless this information has already been filed under some other section of this Act.

(b) A private water company regulated under this Act which proposes to change any of its rates, charges, or both shall file with the commission copies of the proposed schedules of rates, charges, or both at least 40 days before they are to take effect.

Hearing

Sec. 4. On receiving schedules of existing or proposed rates, charges, or both from a private water company under the regulatory authority of the commissioners court, the commissioners court shall set a time, place, and date for a public hearing to consider approval of the rates, charges, or both and shall issue notice as provided in this Act. The hearing shall be held not earlier than 25 nor later than 30 days after the date the schedules are filed.

Notice of Hearing

Sec. 5. (a) Notice of a hearing shall be posted in at least one public place in each service area affected by or to be affected by the proposed rates, charges, or both and at the courthouse in the place for posting notice of meetings of the commissioners court.

(b) Notice of the hearing shall be published at least one time in a newspaper of general circulation in each service area affected by or to be affected by the rates, charges, or both.

(c) The private water company whose rates, charges, or both are being considered at the hearing shall be given notice by certified mail return receipt requested.

(d) Notice required by this section shall be given at least 10 days before the day of the hearing.

Access to Books, Records and Information of Water Company

Sec. 6. The commissioners court and its employees and agents are entitled to access to all books, records, and other information of a private water company which may be necessary for the commissioners court to determine if it may exercise regulatory authority under Section 2(a)(1) of this Act and to carry out its regulatory authority under this Act.

Inspection of Files and Information Gathered

Sec. 7. At least 10 days before the date set for the hearing, the commissioners court shall make all files and information gathered by it and its employees and agents relating to the matter to be heard available for inspection during regular office hours.

Personal Appearance at Hearing; Recess

Sec. 8. (a) Any person who desires to appear at the hearing and present testimony, evidence, exhibits, or other information may do so in person, by counsel, or both.

(b) The commissioners court may recess the hearing from day to day.

Compelling Testimony; Oaths; Subpoenas

Sec. 9. The commissioners court may compel the testimony of any person necessary to carry out the provisions of this Act, and may administer oaths to persons who appear to testify before the commissioners court. Also, the commissioners court may issue subpoenas to compel the testimony of any persons and the production of any documents or information necessary to carry out the provisions of this Act.

Determination; Written Order

Sec. 10. (a) Within 30 days after the conclusion of the hearing, the commissioners court shall determine whether or not to approve the schedules of rates, charges, or both that were considered at the hearing and if the schedules are to be adopted, shall decide on any modifications in the schedules that the commissioners court considers necessary based on its own investigation and evidence and information gathered at the hearing.

(b) On making a determination, the commissioners court shall issue a written order stating its determination and the reasons for its determination.

Fair Return on Value of Property; Public Relations Expenses

Sec. 11. (a) No rate or charge determined by the commissioners court may yield more than a fair return on the fair value of property used and useful in rendering service to the public and no return on a rate or charge may exceed eight percent a year.

(b) In making a determination on a rate, charge, or both, the commissioners court shall not include in the basis for establishment of the rate, charge, or both any amounts spent by the private water company for advertising or other public relations expenses.

Appeal

Sec. 12. Orders of the commissioners court issued under this Act may be appealed to a district court in the county in which the commissioners court has jurisdiction.

Rules and Regulations

Sec. 13. (a) The commissioners court, after notice and hearing, may adopt by order any rules and regulations that it considers necessary to carry out the provisions of this Act.

(b) The commissioners court by rules and regulations may adopt reasonable standards to be followed by private water companies operating under its regulatory authority in delivering their services to the public.

Annual Report of Water Company

Sec. 14. (a) Each private water company under the regulatory authority of the commissioners court shall file with the commissioners court before January 1 of each year a report which shall include:

(1) the amount of a lien or mortgage on any property of the company;

(2) other indebtedness of the company and the consideration for it;

(3) the actual cost of the visible physical property of the company and the date it was installed and the present value of it with land, machinery, buildings, pipes, mains, and other items of property being listed separately; and

(4) the annual cost of operating the facilities of the company including amounts paid for actual salaries; labor; fixed charges including interest, taxes, and insurance; fuel; extension and repairs; maintenance; damages, claims, or suits for damages; and miscellaneous expenses.

(b) If machinery or equipment of the company is abandoned, worn out, or its use discontinued within the preceding year, this shall be stated in the report together with the original cost and the present value.

(c) The report shall state the gross earnings of the company including revenues from every source and shall state each item separately and the amount received by the company.

Civil Penalty

Sec. 15. A private water company that violates any provision of this Act or any rule, regulation, or order of the commissioners court is subject to a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation to be recovered as provided in this Act.

Injunctive Relief or Civil Penalty

Sec. 16. (a) Whenever it appears that a private water company has violated or is violating, or is threatening to violate, any provision of this Act, or any rule, regulation, or order of the commissioners court, the commissioners court may have a civil suit instituted in a district court in the county in which the commissioners court has jurisdiction for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) On application for injunctive relief and a finding that a person is violating or threatening to violate any provisions of this Act or any rule, regulation, or order of the commissioners court, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the commissioners court, the county attorney shall institute and conduct a suit in the name of the county for injunctive relief or to recover the civil penalty, or both, as authorized in Subsection (a) of this section.

[Acts 1975, 64th Leg., p. 1946, ch. 640, eff. Sept. 1, 1975.]

Art. 2372r. Repealed by Acts 1975, 64th Leg., p. 114, ch. 52, § 1, eff. April 18, 1975

See, now, art. 6145.1.

Art. 2372r-1. Counties of 160,000 to 170,000; Construction, Restoration, Preservation and Maintenance of Historical Landmarks and Buildings

Sec. 1. This Act applies to any county of this State having a population of not less than 160,000 nor more than 170,000, according to the last preceding federal census.

[See Compact Edition, Volume 3 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 570, ch. 237, § 41, eff. Sept. 1, 1981.]

Art. 2372s. Parking Stations Near Courthouses in Counties Over 900,000

Power to Construct and Operate Parking Stations; Leases

Sec. 1. The commissioners court of any county with a population in excess of 900,000 according to the most recent federal census upon finding that it is to the best interest of the county and its inhabitants shall have the power to construct, enlarge, furnish, equip and operate a parking station in the vicinity of the courthouse of the county. It is further authorized from time to time to lease said parking station to a person or corporation on such terms as the commissioners court shall deem appropriate.

[See Compact Edition, Volume 3 for text of 2 to 9]

[Amended by Acts 1977, 65th Leg., p. 379, ch. 188, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 570, ch. 237, § 42, eff. Sept. 1, 1981.]

Art. 2372s-1. Regulation of Parking in Certain Courthouse Parking Lots

Sec. 1. This Act shall apply in every county having a population of not less than 13,350 nor more than 13,400, and in every county having a population of not less than 16,500 nor more than 16,700, and in every county having a population of not less than

17,400 nor more than 17,450, and in every county having a population of not less than 31,000 nor more than 31,400, and in every county having a population of not less than 37,700 nor more than 38,000, and in every county having a population of not less than 170,000 nor more than 225,000, according to the last preceding federal census.

Sec. 2. The commissioners court is authorized to purchase such equipment as is necessary and make and enforce regulations for parking in county-owned or county-leased parking lots in, under, adjacent to, or near the county courthouse. The commissioners court may in its discretion contract with the city for enforcement of the regulations and likewise the city in its discretion may contract with the county. The Sheriff's Department of such counties is hereby authorized to enforce any and all regulations passed by the Commissioners Court.

Sec. 3. A person who violates a regulation authorized by this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $1 nor more than $20.

[Acts 1965, 59th Leg., p. 802, ch. 387, eff. June 9, 1965. Amended by Acts 1969, 61st Leg., p. 2453, ch. 820, §§ 1, 2, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1844, ch. 542, § 108, eff. Sept. 1, 1971; Acts 1981, 67th Leg., p. 571, ch. 237, § 43, eff. Sept. 1, 1981.]

Art. 2372s–3. Parking on County Property

Adoption of Regulations

Sec. 1. The commissioners court of a county by order may adopt regulations as to the parking of vehicles on property owned or leased by the county.

Regulations

Sec. 2. Regulations adopted under this Act may:

(1) limit the use of parking spaces to certain vehicles or types of vehicles;

(2) limit the time a vehicle may remain parked in a specific space or area; and

(3) prohibit the parking of vehicles in certain areas.

Signs

Sec. 3. If parking is restricted or prohibited in a place, the county shall erect at the place one or more appropriately worded signs reasonably calculated to inform the drivers of vehicles of the restriction or prohibition. No sign is required to indicate that parking is prohibited on a lawn or other area that does not appear to be a place intended for use as a parking area.

Violations; Defenses

Sec. 4. An individual who parks a vehicle in violation of a regulation adopted under this Act commits a Class C misdemeanor. It is a defense to prosecution under this section that:

(1) the place where the actor parked is one where a sign or signs are required by Section 3 of this Act; and

(2) a sign or signs meeting the requirements of Section 3 of this Act were not in place at the time the actor parked.

Towing and Storing of Vehicles

Sec. 5. A county may provide for the towing away and storing at the owner's expense of any vehicle parked in violation of regulations adopted under this Act. This section does not authorize the towing away of a vehicle that is parked under circumstances where the person parking it would have a defense to prosecution under Section 4 of this Act.

[Acts 1975, 64th Leg., p. 569, ch. 228, eff. May 20, 1975.]

Art. 2372s–4. Parking Regulations and Purchase of Equipment by Counties of 235,000 or More

Sec. 1. The commissioners court of a county having a population of 235,000 or more inhabitants, according to the last preceding federal census, may purchase necessary equipment and make and enforce parking regulations for parking in a county-owned or county-leased parking lot in, under, adjacent to, or near the county courthouse.

Sec. 2. (a) The commissioners court may contract with the governing body of the city in which the county seat is located for enforcement of the parking regulations promulgated under the provisions of Section 1 of this Act.

(b) The sheriff's department of the county may enforce parking regulations promulgated under the provisions of Section 1 of this Act.

Sec. 3. A person who violates a parking regulation promulgated under the provisions of Section 1 of this Act commits a misdemeanor and on conviction is punishable by a fine of not less than $1 nor more than $20.

[Acts 1975, 64th Leg., p. 2198, ch. 702, eff. Sept. 1, 1975.]

Art. 2372t. Emergency Ambulance Service in Counties of 9,800 to 20,000

Sec. 1. The commissioners court of any county with a population in excess of 9,800 inhabitants but less than 20,000, according to the last preceding federal census, may provide within the county for emergency ambulance service, including all necessary equipment, personnel, and maintenance for the service.

[See Compact Edition, Volume 3 for text of 2 to 5]

[Amended by Acts 1979, 66th Leg., p. 576, ch. 266, § 1, eff. May 24, 1979.]

Art. 2372u. Regulation of Outdoor Lighting and Subdivisions Near Major Astronomical Observatories

Definitions

Sec. 1. In this Act:

(1) "Major astronomical observatory" means a facility established for making scientific observation of astronomical phenomena and equipped with a telescope having an aperture at least 75 inches in diameter.

(2) "Outdoor lighting" means any type of lighting equipment, fixed or movable, designed or used for illumination outside of buildings or homes, including lighting for billboards, street lights, searchlights used for advertising purposes, externally or internally illuminated on- or off-site advertising signs, and area-type lighting. It does not include lighting equipment required by law to be installed on motor vehicles, or lighting required for the safe take-off and landing of aircraft.

County Regulatory Authority

Sec. 2. (a) To protect against the use of outdoor lighting in a way that interferes with scientific astronomical research, the commissioners court of a county may adopt orders regulating the installation and use of outdoor lighting within the unincorporated territory located within the same county and within 75 miles of a major astronomical observatory, regardless of whether the observatory is in the county.

(b) Orders adopted under this section may:

(1) require that a permit be obtained from the county for the installation or use of certain types of outdoor lighting, and establish fees for the issuance of permits;

(2) prohibit the use of those types of outdoor lighting found to be incompatible with the effective use of the observatory;

(3) establish requirements for the shielding of outdoor lighting; and

(4) regulate the times during which various types of outdoor lighting may be used.

Regulation of Subdivisions

Sec. 3. (a) This section applies only to real estate subdivisions subject to the plat-approval authority of a commissioners court and located within 75 miles of a major astronomical observatory.

(b) A commissioners court may adopt orders establishing standards applicable to proposed subdivisions designed to minimize the interference with observatory activities from outdoor lighting. The commissioners court may not approve a plat of a proposed subdivision that does not meet those requirements.

Standards May Vary

Sec. 4. Orders adopted under this Act may apply more stringent standards in areas where the impact of outdoor lighting on activities of the observatory is greater.

Adoption of Orders

Sec. 5. No orders may be adopted by a commissioners court under this Act, unless:

(a) a request for such orders be made by the Director of McDonald Observatory; then

(b) such requested orders may be adopted by a commissioners court after a public hearing has been held on the proposed order; of which

(c) at least two weeks public notice has been given of such hearing.

Exemption

Sec. 6. No outdoor lighting in existence or under construction on the effective date of this Act shall be subject to the provisions of this Act.

Enforcement; Penalty

Sec. 7. (a) An individual, corporation, or association that violates an order adopted under this Act commits a Class C misdemeanor.[1]

(b) A county or district attorney may sue in the district court to enjoin violation of this Act.

(c) Both civil and criminal enforcement may be used against the same conduct.

[Acts 1975, 64th Leg., p. 102, ch. 44, eff. Sept. 1, 1975.]

[1] Penal Code, § 12.23.

Art. 2372v. Regulation of Massagers and Massage Establishments

Definitions

Sec. 1. In this Act:

(1) "Massage" means the rubbing, kneading, tapping, compression, vibration, application of friction, or percussion of the human body or parts of it by hand or with an instrument or apparatus.

(2) "Massager" means an individual who administers massages for compensation.

(3) "Massage establishment" means a business establishment where massagers practice massage.

(4) "Unincorporated territory" means the territory outside the corporate limits of an incorporated city or town.

Adoption of Regulations; Penalty for Violations

Sec. 2. (a) The commissioners court of any county by order may adopt regulations applicable to the practice of massage and operation of massage establishments in unincorporated territory in the county.

(b) Regulations adopted under this Act may:

(1) require the licensure by the county of massagers and massage establishments and establish reasonable requirements and fees for obtaining a license;

(2) establish standards applicable to the practice of massage and the operation of massage establishments designed to protect public health;

(3) provide procedures for suspending or cancelling the licenses of massagers and massage establishments for violation of a regulation adopted under this Act, for the conviction of an offense defined in Chapter 43, Penal Code, or for the conviction of any other offense reasonably indicating the licensee's unfitness to practice massage or operate a massage establishment;

(4) provide for the inspection of massage establishments;

(5) provide reasonable standards for clothing worn by persons employed by a massage establishment; and

(6) establish any other reasonable procedures or prohibitions consistent with the police power to protect the public health and safety and to prevent violations of state law.

(c) A person who violates a regulation adopted under this Act commits a Class B misdemeanor.

Exemptions from Act

Sec. 3. (a) Ordinances adopted under this Act do not apply to a licensed physical therapist, a licensed athletic trainer, a licensed cosmetologist, or a licensed barber performing functions authorized under the license held, nor do ordinances adopted under this Act apply to a licensed physician or chiropractor, or any individual working under the direct supervision of a licensed physician or chiropractor, while engaged in practicing the healing arts.

(b) Ordinances adopted under this Act do not apply to the administration of massage for therapeutic purposes in a hospital, nursing home, or other health care facility.

Inspection and Licensing Officer; Enforcement

Sec. 4. The county commissioners court shall designate the sheriff of the county as the inspection and licensing officer under this Act. Any peace officer certified by the State of Texas may enforce the regulations.

Severability

Sec. 5. In case any one or more of the sections, provisions, clauses, or words of the Act or the application of such sections, provisions, clauses, or words to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of the Act or the application of such sections, provisions, clauses, or words to any other situation or circumstance, and it is intended that the Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

[Acts 1977, 65th Leg., p. 651, ch. 242, eff. May 25, 1977.]

Art. 2372w. Regulation of Location of Sexually Oriented Commercial Activities by Cities and Counties

Findings and Purpose

Sec. 1. (a) The legislature finds that the unrestricted location of certain sexually oriented commercial enterprises may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity. The purpose of this Act is to provide local governments a means of remedying this problem.

(b) This Act neither enhances nor diminishes the authority of local governments to regulate commercial enterprises covered by this Act with regard to matters other than their location.

Definitions

Sec. 2. In this Act "city" means an incorporated city, town, or village and includes a home-rule city.

Authority to Regulate

Sec. 3. (a) A city by ordinance or a county by order of the commissioners court may adopt regulations restricting the location of massage parlors, nude studios, modeling studios, love parlors, and other similar commercial enterprises whose major business is the offering of a service which is intended to provide sexual stimulation or sexual gratification to the customer.

(b) Nothing in this Act is intended to authorize the regulation of any bookstore, movie theatre, or business licensed to sell alcoholic beverages, nor does it authorize regulation of any business:

(1) operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers engaged in performing functions authorized under the license held; or

(2) operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts.

(c) City regulations apply only inside the city's corporate limits. County regulations apply only to the parts of the county outside the corporate limits of a city.

Scope of Regulations; Permits; Fees; Application of Comprehensive Zoning Procedures

Sec. 4. (a) Regulations adopted under this Act may restrict the location of regulated enterprises to particular areas, restrict the density of regulated enterprises, or prohibit the operation of a restricted enterprise within a certain distance of a school, regular place of religious worship, residential neighborhood, or other specified land use the governing body of the city or county finds to be inconsistent with the operation of a restricted establishment.

(b) The city or county may require the obtaining of a permit for the operation of a restricted establishment. The city or county may charge a fee for the permit, but the fee may not exceed the actual cost of processing the permit application.

(c) A city that has in effect a comprehensive zoning ordinance adopted under Chapter 283, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 1011a, et seq., Vernon's Texas Civil Statutes), must comply with all applicable procedural requirements of that statute in adopting regulations under this Act within the scope of that statute.

Violations; Injunctions; Penalties

Sec. 5. (a) A city or county may sue in the district court to enjoin the violation of a regulation adopted under this Act.

(b) Violation of a county regulation adopted under this Act is a Class B misdemeanor.

(c) In a city that has a comprehensive zoning ordinance as described in Subsection (c), Section 4, of this Act, a violation of an ordinance adopted under this Act is punishable by the same penalty prescribed for a violation of the zoning ordinance. In all other cities, violation of an ordinance adopted under this Act is a Class B misdemeanor.

Effect on Other Laws

Sec. 6. This Act does not legalize anything prohibited under the Penal Code or other state law.

Severability

Sec. 7. If any provision of this Act or its application to any person or circumstances is held invalid for any reason, the invalidity does not affect any other provision or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1979, 66th Leg., p. 498, ch. 229, eff. May 17, 1979.]

Art. 2372x. Closing Gulf Beaches for Special Events

In a county in which there is a public beach or a beach to which a substantial portion of the public has free access, located on a bay or inlet of the Gulf of Mexico, the commissioners court by order may close a portion of the beach for a maximum of three days a year to allow one or more nonprofit organizations to hold events on the beach to which the public is invited and for which a nominal admission fee may be charged.

[Acts 1979, 66th Leg., p. 585, ch. 274, § 1, eff. May 24, 1979.]

Art. 2372y. Regulation of Keeping Wild Animals Near Public Schools

Wild Animals

Sec. 1. In this Act, "wild animal" means an animal that ordinarily lives in a state of nature without the aid or care of man.

Regulation of Wild Animals

Sec. 2. The commissioners court of a county may by order prohibit or regulate the keeping of wild animals within 1,000 feet of a public school. The regulations do not apply inside the limits of an incorporated city, town, or village.

Application

Sec. 3. This Act does not apply to rabbits, squirrels or other small rodents commonly kept as pets, fish, birds, or nonpoisonous, nonconstricting snakes.

Offense

Sec. 4. If an order adopted under this Act defines an offense, the offense is a Class C misdemeanor. The offense is prosecuted in the same manner as an offense defined by state law.

Injunction

Sec. 5. The county attorney or other prosecuting attorney representing the county in the district court may file an action to enjoin the violation or threatened violation of an order adopted under this Act. The court may grant appropriate relief.

[Acts 1981, 67th Leg., p. 631, ch. 252, eff. Aug. 31, 1981.]

Art. 2372z. Sale or Disposition of County Surplus or Salvage Property

Definitions

Sec. 1. In this Act:

(1) "Surplus property" means personal property that is in excess of the needs of its owner, that is not required for the owner's foreseeable needs, and that possesses some usefulness for the purpose for which it was intended or for some other purpose.

(2) "Salvage property" means personal property, other than wastepaper, that because of use, time, or accident is so damaged, used, or consumed that it has no value for the purpose for which it was originally intended.

Disposition of Surplus or Salvage Property

Sec. 2. (a) The commissioners court of a county periodically may sell the county's surplus or salvage property by competitive bid or auction.

(b) The commissioners court shall cause to be published a notice of the sale in at least one newspaper of general circulation in the county. Such notice must be published no fewer than 10 days nor more than 30 days prior to the day of the sale.

(c) The commissioners court shall keep a record of each item of surplus or salvage property sold and its sale price.

(d) Unless otherwise provided by law, the proceeds from the sale of surplus or salvage property shall be deposited in the county treasury and credited to the general fund or to the fund from which the property was purchased. The proceeds from the sale of surplus or salvage property used for maintenance

and construction of county roads and bridges shall be deposited in the county treasury to the credit of the county road and bridge fund.

(e) The commissioners court or its designated representative conducting the sale may reject any offer to purchase surplus or salvage property if it finds the rejection to be in the best interests of the county.

Destruction of Surplus or Salvage Property

Sec. 3. (a) If the commissioners court cannot sell any surplus or salvage property, it may order the property to be destroyed as worthless salvage.

(b) The commissioners court shall keep a record of each item of surplus or salvage property destroyed.

Obtaining Good Title to Surplus or Salvage Property

Sec. 4. A purchaser of a county's surplus or salvage property at a sale obtains good title to the property if the purchaser has complied in good faith with the conditions of the sale and the applicable rules of the commissioners court.

Rules

Sec. 5. The commissioners court may adopt rules necessary to administer this Act.

Property Used as Trade-in

Sec. 6. The commissioners court may offer surplus or salvage property as a trade-in on new property of the same general type if the commissioners court considers that action to be in the best interests of the county.

[Acts 1981, 67th Leg., p. 2484, ch. 647, eff. Sept. 1, 1981.]

TITLE 45

COURTS—JUSTICE

CHAPTER ONE. JUSTICES AND JUSTICE COURTS

Article

Art. 2385a. Jurisdiction in Counties With a Population of 2,000,000 or More.

Art. 2373. Election, Bond and Term of Office

Sec. 1. The qualified voters of each justice precinct in this State, at each election, shall elect one justice of the peace, styled in this title 'justice,' who shall hold his office for four years. Each justice shall give bond payable to the county judge in a sum not to exceed five thousand dollars, conditioned that he will faithfully and impartially discharge the duties required of him by law, and will promptly pay over to the party entitled to receive it, all moneys that may come into his hands during his term of office.

Sec. 2. A person who has served as justice of the peace of a precinct for 10 or more consecutive years preceding a change in boundaries of the precinct is not ineligible for reelection in the precinct because of residence outside the precinct as long as the justice's residence is within the boundaries of the precinct as they existed before they were changed.
[Amended by Acts 1981, 67th Leg., p. 1830, ch. 418, § 1, eff. Aug. 31, 1981.]

Art. 2385. Jurisdiction

Justice courts shall, in addition to their other powers and duties, have and exercise original jurisdiction in civil matters of all cases where the amount in controversy is five hundred dollars, or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county courts, and of cases of forcible entry and detainer, and to foreclose mortgages and enforce liens on personal property, where the amount in controversy is within their jurisdiction.
[Amended by Acts 1979, 66th Leg., p. 846, ch. 377, § 1, eff. June 6, 1979.]

Art. 2385a. Jurisdiction in Counties With a Population of 2,000,000 or More

Justice courts in counties with a population of 2,000,000 or more shall, in addition to their other powers and duties, have and exercise original jurisdiction in civil matters of all cases where the amount in controversy is $1,000 or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county courts, and of cases of forcible entry and detainer, and to foreclose mortgages and enforce liens on personal property, where the amount in controversy is within their jurisdiction.
[Added by Acts 1981, 67th Leg., p. 753, ch. 285, § 1, eff. Sept. 1, 1981.]

CHAPTER TWO. INSTITUTION OF SUIT

Art. 2390. Suits, Where Brought

Every suit in the justice court shall be commenced in the county and precinct in which the defendant or one or more of the several defendants resides, except in the following cases and such other cases as are or may be provided by law:

1. Cases of forcible entry and detainer must be brought in the precinct where the premises, or a part thereof, are situated.

2. Suits against executors, administrators and guardians as such must be brought in the county in which such administration or guardianship is pending, and in the precinct in which the county seat is situated.

3. Suits against counties must be brought in such county and in the precinct in which the county seat is situated.

In the following cases the suit may, at the plaintiff's option, be brought either in the county and precinct of the defendant's residence or in that provided in each exception:

4. (a) Suits upon a contract in writing promising performance at any particular place, may be brought in the county and precinct in which such contract was to be performed, provided that in all suits to recover for labor actually performed, suit may be brought and maintained where such labor is performed, whether the contract for same be oral or in writing.

(b) Suits by creditors upon contracts for goods, services, or loans, intended primarily for personal, family, household, or agricultural use may only be brought in the county and precinct in which the contract was signed or in the county and precinct of the defendant's residence, notwithstanding any provision in the contract to the contrary.

5. Suits for the recovery of rents may be brought in the county and precinct in which the rented premises, or a part thereof are situated.

6. Suits for damages for torts may be brought in the county and precinct in which the injury was inflicted.

7. Suits against transient persons may be brought in any county and precinct where such defendant is to be found.

8. Suits against non-residents of the State or persons whose residence is unknown, may be brought in the county and precinct where the plaintiff resides.

9. Suits for the recovery of personal property may be brought in any county and precinct in which the property may be.

10. Suits against private corporations, associations and joint stock companies may be brought in any county and precinct in which the cause of action or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated.

11. Suits against railroad and canal companies, or the owners of any line of transportation vehicles of any character, for any injury to person or property upon the road, canal, or line of vehicles of the defendant, or upon any liability as a carrier, may be brought in any precinct through which the road, canal or line of vehicles may pass, or in any precinct where the route of such railroad, canal, or vehicle may begin or terminate.

12. Suits against fire, marine or inland insurance companies may be brought in any county and precinct in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may be brought in the county and precinct in which the persons insured, or any of them resided at the time of such injury or death.

13. Suits against the owners of a steamboat or other vessel may be brought in any county or precinct where such steamboat or vessel may be found, or where the cause of action arose or the liability was contracted or accrued. In every suit commenced in a county or precinct in which the defendants or one of them may reside, it shall be affirmatively shown in the citation or pleading, if any, that such suit comes within one of the exceptions named in this article.

[Amended by Acts 1977, 65th Leg., p. 1963, ch. 783, § 1, eff. June 16, 1977.]

CHAPTER THREE. APPEARANCE AND TRIAL

Art. 2428. Repealed by Acts 1975, 64th Leg., p. 1353, ch. 510, § 2 eff. Sept. 1, 1975

See, now, art. 2122.

CHAPTER SEVEN. SMALL CLAIMS COURT

Art. 2460a. Creation; Jurisdiction; Procedure

[See Compact Edition, Volume 3 for text of 1 to 10]

Judgments Not Claimed by Plaintiff

Sec. 10a. (a) If a judgment against a defendant has not been paid and the whereabouts of the plaintiff who was awarded the judgment are unknown, the defendant shall use due diligence to locate the plaintiff, which includes sending a letter by registered or certified mail, return receipt requested, to the plaintiff at his last known address and the address appearing in the plaintiff's statement of his claim and any other records of the court.

(b) If, after the use of due diligence, the plaintiff is not located, the defendant may deposit payment of the judgment into the court in trust for the plaintiff and obtain a release of the judgment, which release shall be executed without delay by the judge of said court on behalf of the plaintiff.

(c) All trust funds paid into the court, as provided in this section, shall be paid over by the judge at least once a month to the county clerk to be deposited in and withdrawn from the clerk's trust fund account in the county depository for trust funds in the possession of the county clerk, in the same manner as trust funds deposited in county and district courts to abide the result of a legal proceeding are deposited and withdrawn.

(d) If the plaintiff does not claim the payment of his judgment within two (2) years from the date of its deposit in the county clerk's trust fund account, the money shall escheat to the state.

[See Compact Edition, Volume 3 for text of 11 to 14]

[Amended by Acts 1975, 64th Leg., p. 1826, ch. 563, § 1, eff. Sept. 1, 1975.]

TITLE 46

CREDIT ORGANIZATIONS

1. CREDIT UNIONS

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1. CREDIT UNIONS

The Credit Union Act, formerly set out in this Title as Articles 2461–1 to 2461–49, was enacted by Acts 1969, 61st Leg., p. 540, ch. 186, §§ 1 to 49. Former Articles 2461 to 2484d, regulating Rural Credit Unions, were repealed by § 50 of the 1969 Act.

Acts 1975, 64th Leg., p. 2240, ch. 707, § 1, revised and amended the 1969 Act, as herein set out, to consist of Articles 2461–1.01 to 2461–11.17.

For disposition of subject matter of repealed Articles 2461–1 to 2461–49, see Table, post.

DISPOSITION TABLE

Showing where subject matter of former Articles 2461–1 to 2461–49 is now covered by Articles 2461–1.01 to 2461–11.17, as revised and amended by Acts 1975, 64th Leg., p. 2240, ch. 707, § 1.

1969 Articles	1975 Articles
2461–1	2461–1.02
2461–2(a)	2461–2.01
2461–2(a)(1)	2461–2.02
2461–2(a)(2), (3)	2461–2.03
2461–2(b)	2461–2.05
2461–3	2461–2.06
2461–4	2461–2.07
2461–5	2461–4.01
	2461–4.02
2461–6	2461–3.01
2461–7	—
2461–8	2461–2.02(4)
2461–9	2461–3.02
2461–10(a)	2461–5.01
2461–10(b)	2461–5.03(c)
2461–11(a)	2461–5.03
	2461–5.04
2461–11(b)	—
2461–11(c)	2461–5.02
2461–11(d)	2461–5.02
2461–11(e)	2461–5.04(d)
2461–12	2461–5.03
	2461–5.06
2461–13	2461–5.08
2461–14	2461–5.05
2461–15(a)	2461–7.01
2461–15(b)	—
2461–15(c)	2461–7.01
2461–15(d)	2461–7.02
2461–15(e)	2461–7.01
2461–15(f)	—
2461–15(g)	2461–7.01
2461–15(h)	2461–7.05
2461–15(i)	—
2461–15(j)	2461–7.06
2461–16	2461–5.07
2461–17	2461–5.06(a)
2461–18	2461–6.02
2461–19	2461–6.04
2461–20	2461–6.03
2461–21	2461–6.05
2461–22	2461–6.06
2461–23	2461–6.07
2461–24	2461–8.01
2461–25	2461–9.01
2461–26	2461–9.02
2461–27	2461–9.03
2461–28	2461–10.03
2461–29	2461–2.09
2461–30	—
2461–31	—
2461–32	2461–11.12
2461–33	—
2461–34	2461–10.04
2461–35	2461–5.09
2461–35A	2461–10.01
2461–36	2461–10.02
2461–37	2461–2.08
2461–38	2461–11.01
2461–39	2461–11.02
2461–40	2461–11.02
2461–41	2461–11.03
2461–42	2461–11.04
2461–43	—
2461–44	2461–11.05
2461–45	—
2461–46	2461–11.06
2461–47(a)	2461–11.08
	2461–11.15
2461–47(b)	2461–11.09
	2461–11.11
	2461–11.15
2461–47(c)	2461–11.13
2461–47(d)	2461–11.07
	2461–11.10
2461–47(e)	2461–11.07
2461–47(f)	2461–11.10
2461–48	2461–11.16
2461–49	—

CHAPTER 1. SHORT TITLE, DEFINITION AND PURPOSES

Art. 2461–1.01. Short Title

This Act may be cited as the Texas Credit Union Act.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–1.02. Definition and Purposes

In this Act:

(1) "Credit union" means a voluntary, cooperative, nonprofit savings institution, incorporated under this Act for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition.

(2) "Commission" means the Credit Union Commission.

(3) "Commissioner" means the Credit Union Commissioner.

(4) "Department" means the Credit Union Department.

(5) "Deputy commissioner" means the Deputy Credit Union Commissioner.

[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–1.03. Effect of Headings

The division of this Act into chapters and sections and the use of section and chapter headings are

solely for convenience and have no legal effect in construing this Act.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-1.04. Application of Act

All credit unions organized and existing under the laws of this state are governed by and are subject to this Act and are authorized to do business under it.
[Added by Acts 1981, 67th Leg., p. 406, ch. 169, § 1, eff. Sept. 1, 1981.]

Section 5 of the 1981 Act provides:

"If any provision of this Act or its application to any person or circumstance is held to be invalid for any reason, that holding does not affect the validity of the other provisions or application of this Act that can be given effect without the invalid provision or application.

CHAPTER 2. ORGANIZATION PROCEDURE

Art. 2461-2.01. Incorporators

Any seven or more adult persons, a majority of whom are residents of this state, and all of whom share a definable community of interest, may act as incorporators of a credit union by signing, verifying, and delivering in duplicate to the commissioner articles of incorporation for the credit union.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.02. Articles of Incorporation

The articles of incorporation shall set forth:

(1) the name which contains the words "credit union" and is different from that of any other existing credit union;

(2) the name of the town or city and county where the proposed credit union will have its principal place of business;

(3) the term of existence of the credit union, which shall be perpetual;

(4) the fiscal year of the credit union, which ends on December 31 of each calendar year;

(5) the par value of the shares of the credit union, which shall be $5, or multiples thereof;

(6) the name and address of each incorporator and the number of shares subscribed by each; and

(7) the number of directors constituting the initial board of directors and the names and addresses of the persons who will serve as directors until the first annual meeting or until their duly elected successors are elected and qualify.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.03. Filing of Articles of Incorporation

(a) The incorporators shall file with the commissioner:

(1) a duplicate of the original articles of incorporation;

(2) a duplicate of the original bylaws for the general operation of the credit union; and

(3) biographical information concerning each member of the original board of directors, entered on forms prescribed by the commissioner and signed by each member.

(b) With the approval of the commission, the commissioner shall set a uniform charter fee and uniform investigation and report charges for all credit unions. The department shall publish the fees and rates for charges set by the commissioner.

(c) The commissioner may investigate the charter application, bylaws, and the biographical information concerning each director named in the application to determine whether the proposed credit union and its initial board of directors meet the requirements of this Act and of the regulations promulgated under this Act.

(d) If the proposed credit union or its initial board of directors does not meet the requirements of this Act and of the regulations promulgated under this Act, the commissioner shall deny the application in writing. If the incorporators file a written notice of appeal with the commission within 30 days after denial of the application, the commission shall set a date for a hearing on the application. On that date, the commission shall hold a hearing in accordance with the regulations promulgated under this Act.

(e) If the commissioner determines that all statutory requirements and regulations have been satisfied, or if on a hearing the commission determines that they have been satisfied, the commissioner shall issue a certificate of incorporation and shall return copies of the articles of incorporation and bylaws to the incorporators.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.04. Effect of Issuance of Certificate of Incorporation

The corporate existence of a credit union begins at the time the commissioner issues a certificate of incorporation. The certificate of incorporation is conclusive evidence of the incorporators' compliance with the requirements of this Act and of the credit union's incorporation under this Act.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-2.05. Requirement Before Commencing Business

A credit union may not transact any business or incur any indebtedness, except such as is incidental to its organization or to obtaining subscriptions to or payment for its shares, until:

(1) it has received minimum paid-in capital of at least $1,000;

(2) it has a membership of at least 100 persons; and

(3) it has so notified the department.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–2.06. Right to Amend Articles of Incorporation and Bylaws

A credit union may amend its articles of incorporation or its bylaws in the manner provided in its bylaws. A credit union shall submit amendments to its articles of incorporation or bylaws to the commissioner in duplicate. Amendments to articles of incorporation or bylaws become effective at the time the commissioner issues a certificate of approval.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–2.07. Restrictions on Use of Name

No person, corporation, partnership, or association, other than a credit union or association of credit unions organized under this Act or the Federal Credit Union Act, may use a name or title containing the words "credit union" or any derivation thereof, represent itself as a credit union, or conduct business as a credit union. Violation of this section constitutes a misdemeanor punishable by a fine of not more than $5,000, by confinement in jail for not more than two years, or both. The commissioner may petition a court of competent jurisdiction to enjoin a violation of this section.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–2.08. Place of Business

A credit union shall maintain a principal place of business and shall file with the commissioner a statement specifying the post office address of its principal place of business. If a credit union gives the commissioner prior written notification, a credit union may establish at locations other than its principal place of business additional offices that are reasonably necessary to furnish services to its members.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–2.09. Reports

On or before February 1 of each year, each credit union organized under this Act shall report to the department on a form supplied by the department for this purpose. On filing the report, a credit union shall pay to the commissioner a filing fee of $10, except no credit union chartered within the preceding six-month period is required to pay a filing fee. The department may, in its discretion, require a credit union to file additional reports. If a credit union does not file a report within 15 days after February 1 of any year, the commissioner shall charge the credit union a late fee of $5 for each day that the report is in arrears, except the commissioner may waive payment of the late fee for good cause shown.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–2.10. Exemption from Certain Taxes

Each credit union organized under this Act is exempt from all franchise and other license taxes. However, a credit union is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the credit union is exempted by that chapter. The intangible property of a credit union organized under this Act is not taxable by the state or any of its political subdivisions.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 1778, ch. 389, § 29, eff. Jan. 1, 1982.]

Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

CHAPTER 3. MEMBERSHIP

Art. 2461–3.01. Membership Defined

(a) Membership in a credit union is limited to the incorporators and other persons who:

(1) share a definable community of interest, in accordance with the bylaws of the credit union, including a community of interest based on occupation, association, or residence;

(2) have paid an entrance fee if one is required by the bylaws;

(3) have subscribed to and paid for one or more shares; and

(4) have complied with any other requirements contained in the articles of incorporation and bylaws.

(b) For the purposes of Subsection (a) of this section, the State of Texas acting through the state comptroller as administrator of the State of Texas deferred compensation program or a political subdivision acting through the appropriate officer of the political subdivision as administrator of the political subdivision's deferred compensation program shall be considered a person for membership qualifications in order to fund a deferred compensation program. Notwithstanding the provisions of Subsection (a) of this section, the payment of an entrance fee may not be a membership requirement for the State of Texas or a political subdivision funding a deferred compensation program.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1543, ch. 665, § 2, eff. Aug. 27, 1979.]

Art. 2461–3.02. Meetings of Members

Members of a credit union shall hold annual and special meetings at the time, place, and in the manner provided in the bylaws. At all meetings, each member has only one vote, regardless of his shareholdings. No member may vote by proxy, except a member that is an organization may be represented and vote by one of its members or shareholders who is authorized, in writing, by the organization's governing body to represent the organization.
[Acts 1975, 64th Leg., p. 2219, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 4. POWERS OF CREDIT UNION

Art. 2461–4.01. General Powers

Subject to the provisions of this Act, the articles of incorporation, and the bylaws of the credit union, each credit union organized under this Act may:

(1) make contracts;

(2) sue and be sued in the name of the credit union;

(3) adopt and use a common seal and alter its seal at pleasure;

(4) purchase, hold, lease, or dispose of property necessary or incidental to its operations, subject to regulations issued by the commissioner;

(5) require the payment of an entrance or membership fee not to exceed $1;

(6) receive from its members payments on shares or deposits and to conduct Christmas clubs, vacation clubs, and other thrift programs for the membership;

(7) act as fiscal agent of the United States, under such regulations as the secretary may promulgate, as agent for any instrumentality of the United States, and as agent of this state or any governmental division or instrumentality of this state;

(8) lend its funds to its members in accordance with applicable law;

(9) purchase or otherwise provide insurance for the benefit or convenience of its members;

(10) borrow money from any source, but if, after incurring a debt, the total debt of the credit union will exceed an amount equal to 25 percent of its shares, deposits, and surplus, the debt may not be incurred without the prior approval of the commissioner, and the commissioner shall grant or deny a request for approval under this subsection within 10 days after it is made;

(11) act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, custodian, or as depository for any money paid into court for members; act as depository for any money constituting the estates of deceased members; accept funds or money for deposit by fiduciaries, trustees, or receivers, if managing or holding funds in behalf of a credit union or one or more members of the credit union; accept funds or money for deposit by building and loan associations, savings departments of banks, commercial banks, savings banks and trust companies, or insurance companies if the membership or the primary ownership of the institutions, associations, or companies is confined or restricted to or for the benefit of credit unions and their members or organizations of credit unions, or if the institutions, associations, or companies are designed to serve or otherwise assist credit union operations; and act as custodian of individual retirement accounts, custodian of pension funds of self-employed individuals or of the sponsor of a credit union, or as trustee under pension and profit-sharing plans; and all powers granted under the provisions of this subsection are subject to standards prescribed by regulations promulgated under this Act;

(12) invest funds in the manner provided in this Act;

(13) make deposits in legally chartered banks, trust companies, and central-type credit union organizations, and purchase shares and invest in savings and loan associations;

(14) hold membership in other credit unions organized under this Act or other laws, subject to rules and regulations promulgated by the commissioner, and hold membership in other organizations as may be approved by the board of directors;

(15) declare dividends, pay interest on deposits, and pay interest refunds to borrowers in the manner provided in this Act;

(16) impress a lien on the shares and accumulation of dividends and interest of any member to the extent of any loans made to the member directly or indirectly, or on which the member is surety, and for any other obligations due by the member;

(17) change its principal place of business to another place in the state, or change the location in the state of any subsidiary places of business, on giving written notice to the commissioner;

(18) collect, receive, and disburse money in connection with the sale of travelers checks, money orders, and similar instruments, and for other purposes that may provide benefit or convenience for its members, and for those purposes, levy incident charges;

(19) levy a charge not to exceed reasonable administrative costs for each check negotiated to the credit union by a member or other person if the check is returned by the drawee bank because it is drawn against insufficient funds, there is a stop payment order, the account on which it is drawn is closed, or it is drawn against uncollected funds, or if it is returned for a similar reason; this charge is in addition to interest authorized by law and is not a part of the interest collected or agreed to be paid on a subject loan under any state law that limits the rate of interest that may be charged in any transaction, but the charge is an expense of administration;

(20) make donations or contributions to any nonprofit, civic, charitable, or community organization as authorized by the board of directors subject to rules and regulations promulgated by the commissioner and subject to federal or state laws regulating these contributions;

(21) operate as a central credit union, with the approval of the commissioner; and

(22) cause any or all records kept by the credit union to be copied or reproduced by any photostatic, photographic, electronic, or microfilming process that correctly and permanently copies, reproduces, or forms a medium for copying or reproducing the original record on a file or other durable material, subject to any regulations promulgated by the commissioner, and dispose of the original record. Any copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification, or certified copy shall, for all purposes, be deemed a facsimile, exemplification, or certified copy of the original record.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 271, ch. 111, § 2, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 2461-4.02. Incidental Powers

A credit union may exercise all powers necessary or appropriate to accomplish the purposes for which the credit union is organized. A credit union may exercise the powers granted corporations organized under the laws of this state, including those powers necessary or requisite to enable the credit union to promote and carry on most effectively its purposes.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-4.03. Conformity to Federally Chartered Credit Unions

The commissioner by rule or regulation may authorize credit unions organized under this Act to engage in any activity in which the credit unions could engage if they were operating as federally chartered credit unions at the time authority is granted, if on investigation or hearing, the commissioner finds it necessary to preserve and protect the welfare of the credit unions and to promote the general economy of this state.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 5. DIRECTION OF AFFAIRS

Art. 2461-5.01. Management

The business and affairs of a credit union are managed by a board of directors of not less than five members, by a credit committee of not less than three members, and by those officers prescribed in the bylaws of the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.02. Certificate of Election

The chairman of the board and the secretary shall execute a certificate of election that sets forth the names and addresses of the officers, directors, and committee members elected or appointed, and shall file a copy of the certificate of election with the department within 30 days after the election or appointment.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.03. Board of Directors

(a) Directors of the credit union are elected at an annual membership meeting, by and from the membership, and in the manner provided in the bylaws.

(b) The duties of the board of directors are prescribed by the bylaws.

(c) The terms of the members of the board of directors are prescribed in the bylaws.

(d) The board of directors shall elect from its own number a chairman, who shall preside at all meetings of the board. The board shall elect from its own members a treasurer and secretary of the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.04. Officers

(a) The officers of a credit union consist of:

(1) a chairman of the board;

(2) a chief executive officer in charge of operations whose title is president, who may or may not be a member of the board of directors;

(3) a treasurer;

(4) a secretary; and

(5) such other officers as may be prescribed in the bylaws.

(b) The board of directors may employ or shall designate the president, who may or may not be, in the discretion of the board, the same person as the treasurer or credit manager. The treasurer and the secretary may be the same person, but the president and secretary may not be the same person.

(c) The board of directors shall elect the officers of the credit union at the time and in the manner prescribed by the bylaws.

(d) Each officer shall serve for one year or until his successor is elected and qualifies.

(e) The duties of the officers are prescribed in the bylaws.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.05. Credit Committee; Credit Manager; Loan Officers

(a) The board of directors shall appoint a credit committee in the manner prescribed by the bylaws.

(b) The terms of the members of the credit committee are prescribed in the bylaws.

(c) The credit committee shall supervise the making of loans to members.

(d) The credit committee shall meet at least once a month or more frequently if the business of the credit union requires.

(e) A credit union may not make a loan unless it has been considered by the credit committee and approved by a majority of the credit committee present at the meeting at which the loan is considered.

(f) The credit committee may appoint one or more loan officers and delegate to each loan officer the power to approve loans. At least once a month, each loan officer shall furnish to the credit committee a record of each loan approved or not approved by the loan officer during the month preceding the date of the meeting of the credit committee. The loan officer may make loans without the necessity for any meetings other than those prescribed in this subsection and without the necessity of the prior approval by any members of the credit committee, if the bylaws permit. The credit committee shall consider and act on all applications for loans not approved by the loan officer within 30 days after the date the application or request for loan is forwarded to the credit committee.

(g) With the approval of the board of directors, the president may appoint a credit manager to serve in lieu of the credit committee. The credit manager, if so appointed, shall supervise the making of loans to members and shall have the same powers, duties, rights, and prerogatives extended the credit committee under the provisions of this section. A credit union may have only one credit manager, who may be the same person as the president.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.06. Compensation and Bond

(a) No director may receive compensation, directly or indirectly, for serving as a director or committee member. Directors may receive reimbursement for actual expenses incurred in carrying out their duties.

(b) The board of directors shall purchase from a surety company authorized to do business in this state a blanket security bond covering all officers, employees, members of official committees, attorneys at law, and other agents of the credit union to protect the credit union against loss caused by the failure of a person to faithfully perform his duties.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.07. Audits

(a) The board of directors shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union, in accordance with established principles and regulations promulgated by the commissioner, and shall submit a summary of the audit to the members of the credit union at the next annual membership meeting. The board shall report the results of the audit to the department. The board of directors shall make or cause to be made any supplementary audits or examinations that it deems necessary. The board of directors shall make or cause to be made verifications of the accounts of the members with the records of the credit union if required by regulations promulgated by the commissioner.

(b) If the representative examiners from the department find that the board of directors is not acting in accordance with this Act and the regulations issued under it, the commissioner may appoint an independent committee from outside the credit union and its membership to perform an audit, the costs and expenses of which are borne by the credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.08. Misconduct and Penalties for Misconduct

(a) No person may demand or receive, directly or indirectly, any bonus, commission, or other consideration on account of the making of a loan or investment or the purchase of any asset by a credit union.

(b) Any officer, director, committee member, loan officer, or employee of a credit union who knowingly permits a loan to be made to a nonmember or participates in a loan to a nonmember commits a Class B misdemeanor. Additionally, the offender is primarily liable to the credit union for the amount illegally loaned. The illegality of the loan is no defense in any action of the credit union to recover on the loan. Extension of credit to a nonmember for the sale of real or personal property owned by the credit union or for the sale of assets acquired in liquidation or repossession shall not be construed as a loan to a nonmember.

(c) Any officer, director, committee member, loan officer, or employee of a credit union, or any person who knowingly permits or participates in a loan in violation of this Act, the bylaws of the credit union, or rules and regulations of the commissioner, other than a loan in violation of Subsection (b) of this section, commits a felony of the third degree.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-5.09. Officers, Directors, and Employees; Cease and Desist; Removal; Appeal

(a) The commissioner may find that an officer, director, or employee of a credit union, or the credit

union itself, acting through any authorized person, has:

(1) violated the provisions of this Act or any other law or regulation applicable to credit unions;

(2) refused to comply with the provisions of this Act or any other law or regulation applicable to credit unions;

(3) willfully neglected to perform duties, or committed a breach of trust or fiduciary duty;

(4) committed any fraudulent or questionable practice in the conduct of the credit union's business which endangers the credit union's reputation or threatens its solvency;

(5) refused to submit to examination under oath;

(6) conducted business in an unsafe or unauthorized manner; or

(7) violated any conditions of its charter or of any agreement entered with the commissioner or the department.

(b) If the commissioner makes any of these findings, he shall give notice in writing to the credit union and the offending officer, director, or employee, stating the particular violations or practices found. The commissioner shall call a meeting of the directors of the credit union and lay before them the findings and demand a discontinuance of the violations and practices found.

(c) If the commissioner finds that an order to cease and desist is necessary and in the best interest of the credit union involved and its depositors, creditors, and members, then at the directors' meeting above provided or within 30 days thereafter the commissioner may serve on the credit union, its board of directors, and any offending officers, directors, or employees, a written order to cease and desist from the violations and practices enumerated in the order and to take such affirmative action as may be necessary to correct the conditions resulting from the violations or practices. The cease and desist order is effective immediately if the commissioner finds that immediate and irreparable harm is threatened to the credit union, its depositors, or members; otherwise, the order shall state the effective date, not less than 10 days after delivery or mailing of the notice. Unless the credit union or directors file a notice of appeal with the commissioner within 10 days after the delivery or mailing of notice, whichever is the case, the order is final. A copy of the order shall be entered in the minutes of the directors, who shall certify to the commissioner in writing that each has read and understood the order.

(d) If the commissioner subsequently finds by examination or other credible evidence that the offending officer, director, or employee has continued violations or practices previously charged and found by the commissioner, after notice and demand made under Subsection (b) of this section, and further finds that removal from office or employment is necessary and in the best interest of the credit union and its depositors, creditors, and members, then the commissioner may serve the officer, director, or employee with an order of removal. The order shall state the grounds for removal with reasonable certainty and shall effect immediate suspension from office or employment. Unless the credit union, the director, or the person removed files a notice of appeal with the commissioner within 10 days after the delivery or mailing of notice, whichever is the case, the order of removal is effective and final as of the date of suspension, and the person removed may not hold office, be employed by, or participate in the affairs of the credit union. A copy of the order shall be entered in the minutes of the directors, and an officer shall acknowledge receipt of the order and certify to the commissioner that the person has been removed from office.

(e) If the person removed files a timely appeal, the commissioner shall set a time and place for hearing the appeal, giving reasonable notice to the person removed. The commission may adopt any rules or procedures necessary to govern the fair hearing and adjudication of the questions appealed.

(f) If, after a cease and desist order or an order of removal becomes effective and final, a credit union or its board of directors or any duly authorized officer of the credit union fails or refuses to comply with an order, then the commissioner may, after giving notice, assess a civil penalty against the credit union in an amount not to exceed $100 for each day the credit union is in violation of the order. If a credit union fails to pay the penalty assessed, the commissioner may institute a suit for collection of the civil penalty in a district court of Travis County.
[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 6. CAPITAL ACCOUNTS

Art. 2461–6.01. Capital

The capital of a credit union consists of the aggregate amount of the share and deposit accounts of its members plus all reserves and undivided earnings of the credit union.
[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–6.02. Share Accounts

(a) Share accounts consist of payments made by members on shares, all of which are common shares of one class, subscribed, paid for, and transferred in the manner prescribed by the bylaws.

(b) Without qualifying any other statutory right to a setoff or lien, and subject to any contractual provisions accepted by the credit union, a credit union has a lien on the shares or deposits of a member for any sum due to the credit union from the member or for any loan endorsed by the member.

(c) The credit union may require 60 days' notice for withdrawal of shares.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.03. Deposit Accounts

Deposit accounts, if any, are operated in accordance with the policies and conditions prescribed by the board of directors.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.04. Thrift Club Accounts

Christmas clubs, vacation clubs, and other thrift programs, if provided for the use of members, are operated in accordance with the policies and conditions prescribed by the board of directors.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.05. Multiple-party Accounts

(a) A member may designate any person, organization, association, corporation, or partnership to hold shares, deposits, and thrift club accounts with the member in joint tenancy. One or more or all of the joint tenants may make deposits and withdrawals subject to the terms of a multiple-party account agreement accepted by the credit union. A credit union shall maintain all multiple-party account agreements as a permanent part of the records pertaining to multiple-party accounts. At least one party to a multiple-party account must be a member of the credit union in which the account is established. No joint tenant, unless also a member, may vote, obtain loans, or hold office in the credit union. Payment of part or all of a multiple-party account to any one or more of the joint tenants discharges, to the extent of the payment, the liability of the credit union to all.

(b) The net contribution of a party to a multiple-party account as of any given time is the sum of all deposits or shares made by or for the party, less all withdrawals made by or for the party which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The net contribution includes, in addition, any share or deposit of life insurance proceeds added to the account by reason of the death of the party whose net contribution is in question. During the lifetime of all parties to a multiple-party account, unless the multiple-party account agreement with the credit union provides otherwise, sums on deposit or in share accounts may be paid on the demand of one or more parties even though it is presumed that sums on deposit or in share accounts belong to the parties in proportion to the net contributions by each to the sums on deposit or in share accounts. Unless the multiple-party account agreement with the credit union provides otherwise, and in the absence of satisfactory proof of the net contributions, those who are parties from time to time shall be presumed to own the joint account in equal undivided interests.

(c) The death of any party to a multiple-party account has no effect on the beneficial ownership of the account, other than to transfer the decedent's right in the account to the estate of the decedent, unless the account is a survivorship account or trust account established in accordance with the laws and with the constitution of this state and the bylaws of the credit union. Nothing in this Act otherwise prevents a credit union from operating the account in accordance with the terms of the multiple-party account agreement.

(d) A multiple-party account payable to two or more persons, jointly or severally, that does not expressly provide that there is a right of survivorship, is presumed to be a nonsurvivorship account.

(e) Without qualifying any other statutory right to a setoff or lien, and subject to any contractual provisions accepted by the credit union, when a party to a multiple-party account is indebted to a credit union, the credit union has a right to set off against the entire amount of the account.

(f) Nothing in this Act shall be construed as in conflict with the laws of the United States or of the State of Texas as those laws govern the taxation of multiple-party accounts.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.06. Minor Accounts

A credit union may issue shares or deposits in the name of a minor, and a minor may withdraw the shares or deposits. Payments made on withdrawals by a minor are valid. A minor may vote in the meetings of the members if permitted by the bylaws, except no minor may vote through his parent or guardian. No minor is eligible for any office or committee membership within the credit union unless the bylaws specify otherwise.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-6.07. Trust Accounts

A credit union may issue shares or deposits in the name of a member in trust for a beneficiary, including a minor, but no beneficiary, unless the beneficiary is also a member, may vote, obtain loans, hold office, or be required to pay an entrance fee. Payment of part or all of the shares or deposits to a member shall, to the extent of the payment, discharge the liability of the credit union to the member and the beneficiary, and the credit union shall be under no obligation to see the application of the payment. If a member to whom shares or deposits are issued or held in trust dies, and the credit union has no other written evidence of the existence or terms of any trust, the credit union shall pay the shares or deposits and any dividends or interest to the beneficiary or to the legal representative of the

beneficiary; otherwise, the credit union shall administer and distribute the shares or deposits so issued or held under the provisions of the trust agreement, a copy of which must remain on file with the credit union until termination of the trust.
[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–6.08. Third Party Claims

No credit union organized under the laws of this state, nor any federal credit union domiciled in this state is required to recognize the claim of any third party to any share account or deposit, or to withhold payment of any share account or deposit to the depositor or to the order of the depositor, unless and until the credit union is served with citation or other appropriate process issuing out of a court of competent jurisdiction in connection with a suit instituted by the third party for the purpose of recovering or establishing an interest in the deposit or share account.
[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 7. LOANS

Art. 2461–7.01. Purpose, Terms, and Interest Rate

If made in accordance with rules and regulations promulgated by the commission, a credit union may make loans to members for such purposes and on such security and terms as the credit committee, credit manager, or loan officer approves, at rates of interest not exceeding one percent per month on the unpaid monthly balance, or higher rates otherwise authorized by law, including the rates authorized by Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes). Every loan must be evidenced by a written instrument.
[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 273, ch. 111, § 3, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas), 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 2461–7.02. Loan Limit

No credit union may make a loan or aggregate of loans to any one member in an amount greater than 10 percent of the unimpaired capital and surplus of the credit union.
[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–7.03. Line of Credit

The credit committee, an authorized loan officer, or the credit manager may approve in advance a line of credit, and may grant advances to a member within the limit of the extension of credit. If a line of credit has been approved, no additional loan applications are required if the aggregate obligation does not exceed the limit of the extension of credit.
[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–7.04. Participation Loans and Other Loan Programs

(a) A credit union may participate in loans to members jointly with other credit unions, corporations, or financial organizations.

(b) A credit union may participate in guaranteed loan programs of the federal and state governments.
[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–7.05. Loans to Officials

(a) A credit union may make loans and extend lines of credit to its directors, employees, loan officers, credit manager, and to members of its credit committee, if:

(1) the loan complies with the requirements of this Act with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and

(2) the board of directors approves the loan, if the loan or aggregate of outstanding loans to any one person is greater than $2,500, plus pledged shares and deposits.

(b) A credit union may permit a director, employee, loan officer, credit manager, and member of its credit committee to act as comaker, guarantor, or endorser of a loan to another member, unless the loan standing alone or added to any outstanding loan or loans to the comaker, guarantor, or endorser exceeds $2,500, plus pledged shares and deposits, in which case approval of the board of directors is required.
[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–7.06. Prepayment Privilege

Any loan may be paid or prepaid in whole or in part, without penalty, during regular working hours on any day on which the credit union is open for business.
[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 8. INVESTMENTS

Art. 2461–8.01. Investment of Funds

A credit union may invest funds not used in loans to members:

(1) in capital shares, obligations, participation certificates, or preferred stock issues of any agen-

cy, association, or company organized either as a stock company, mutual association, membership corporation, or trust company, if the membership or ownership of the agency, association, or company is confined or restricted to credit unions and their members or organizations of credit unions, and if the agency, association, or company is designed to serve or otherwise assist credit union operations; in loans to any credit union association or corporation, national or state, of which the credit union is a member; and investments in any one agency, association, or company of the type described in this subsection may not exceed an aggregate amount of five percent of the credit union's total assets or the amount of its reserve fund, whichever is less;

(2) in obligations of the State of Texas or any of its political subdivisions;

(3) in certificates of deposit or passbook accounts issued by a state or national bank, or issued by a building and loan association or a savings and loan association, subject to regulations promulgated by the commissioner;

(4) in securities, obligations, participations, or other instruments of, issued by, or fully guaranteed as to principal and interest by, the federal government or any of its agencies, or in any trust or trusts established for investing directly or collectively in the same;

(5) in loans to other credit unions in an amount not to exceed 25 percent of the total dollar amount of the capital of the lending credit union, or to any trust or trusts established for lending directly or collectively to credit unions;

(6) in purchases from any liquidating credit union, in accordance with rules and regulations promulgated by the commissioner, of notes made by individual members of the liquidating credit union at such prices as may be agreed to by the commissioner, or by the liquidating agent or board of directors of the liquidating credit union and the board of directors of the purchasing credit union.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 9. RESERVE ALLOCATIONS; DIVIDENDS; SHARE REDUCTION

Art. 2461-9.01. Reserve Allocations

(a) The commissioner shall, with the approval of the commission, promulgate rules and regulations prescribing reserve allocations and requiring credit unions to maintain any reserves necessary to protect the interests of their members.

(b) The reserve fund belongs to the credit union. The credit union shall use its reserve fund to meet all losses except those resulting from an excess of expenses over income. The credit union may not distribute its reserve fund except on liquidation of the credit union or in accordance with a plan approved by the department. The board of directors may increase, or if the fund equals or exceeds the percentage established by regulations promulgated under this Act, may decrease the proportion of the gross income to be placed in the reserve fund, and may transfer part or all of the undivided earnings to the reserve fund.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-9.02. Dividends

The board of directors of a credit union may declare a dividend from undivided earnings in accordance with rules and regulations promulgated by the commissioner.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-9.03. Share Reduction

When the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund and the estimated value of its assets is less than the total amount due the shareholders, the credit union may, by a majority vote of the entire membership, order a reduction in shares of each of its shareholders to divide the loss proportionately among the members. If the credit union later realizes from its assets a greater amount than was fixed by the order of reduction, the credit union shall divide the excess among the shareholders whose assets were reduced, but only to the extent of the reduction.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 10. CHANGE IN CORPORATE STATUS

Art. 2461-10.01. Suspension

(a) If the commissioner finds that the capital of a credit union is seriously impaired, or that it is conducting its affairs in an unsafe, unauthorized, or unlawful manner, or that it refuses to submit to examination, the commissioner may take possession of the property and business of the credit union and retain possession until the commissioner permits it to resume business or orders its liquidation. Simultaneously, the commissioner shall cause notice of suspension to be given to the board of directors and shall call for a hearing within 10 days, at which hearing the board of directors may show cause why the suspension should not be continued or the credit union should not be liquidated. The board of directors may waive this hearing.

(b) If the commissioner, after issuing notice of suspension and providing opportunity for a hearing, rejects the credit union's plan to continue operations, the commissioner may issue a notice of involuntary liquidation and appoint a liquidating agent who shall proceed as provided in Section 10.02 of this Act.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-10.02. Liquidation

(a) When the commissioner finds that the interests of depositors and creditors of a credit union are seriously jeopardized through insolvency or imminent insolvency and that it is to the best interest of the depositors and creditors that the credit union be closed and its assets liquidated, the commissioner may close and liquidate the credit union.

(b) Unless involuntary liquidation has already been initiated by the commissioner, a majority of the credit union members present at a meeting specially called to consider the matter, but not less than a quorum, may vote to dissolve and liquidate the credit union if a notice of the special meeting was mailed to the members of the credit union at least 10 days prior to the meeting. Immediately after the mailing of a notice of a special meeting called to consider the matter of liquidation, the credit union shall cease to operate except for the purposes of accepting payments on loans or other obligations due the credit union. If the vote to dissolve and liquidate the credit union passes, the credit union may do no further business except that incidental to liquidation. The chairman of the board or the president and the secretary shall, within five days following the meeting and the affirmative vote to dissolve and liquidate, notify the department of intention to liquidate and shall include a list of the names of the directors and officers of the credit union together with their addresses. Notwithstanding the provisions of this subsection, the commissioner may appoint a liquidating agent to act for the board of directors of the credit union in liquidation if it is found that it is to the best interests of the depositors and creditors to do so.

(c) At any time within five days after the commissioner has closed any credit union under the provisions of Subsection (a) of this section or has appointed a liquidating agent to act for the board of directors under the provisions of Subsection (b) of this section, the credit union acting through its directors may sue in the district court of the county in which the credit union is located to enjoin the commissioner from liquidating the credit union. The court may, without notice or hearing, restrain the commissioner from liquidating the assets of such credit union pending hearing of the suit on the merits, and shall, in that event, instruct the commissioner to hold the assets of the credit union in the commissioner's possession pending final disposition of the suit. The commissioner may, with approval of the court, take such actions as may be necessary or proper to prevent loss or depreciation in the value of the assets. The court shall, as soon as possible, hear the suit on the merits and shall enter a judgment either enjoining the commissioner from liquidating the assets of the credit union or refusing to issue an injunction. Appeal shall lie from the judgment as in other civil cases, but the commissioner, irrespective of the character of judgment entered by the trial court or of any supersedeas bond filed, shall retain possession of the assets of such credit union pending final disposition on appeal.

(d) The credit union in liquidation shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business, and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted. The board of directors or the liquidating agent shall use the assets of the credit union to pay, in the following order:

(1) expenses incidental to liquidation including any surety bond that may be required;

(2) any liability due nonmembers;

(3) depositors;

(4) thrift club accounts as provided in this Act; and

(5) distributions to members proportionate to the shares held by each member as of the date liquidation was voted.

(e) A liquidating agent may, subject to the control and supervision of the commissioner and under the rules and regulations promulgated by the commissioner:

(1) receive and take possession of the books, records, assets, and property of the credit union in liquidation; sell, enforce collection of, and liquidate all assets and property; compound all bad or doubtful debts; sue in the name of the liquidating agent or in the name of the credit union in liquidation; and defend actions brought against the liquidating agent or against the credit union;

(2) receive, examine, and pass on all claims against the credit union in liquidation, including claims of members on shares;

(3) make distribution and payment to creditors and members as their interests may appear; and

(4) execute such documents and papers and do such other acts and things that the liquidating agent may deem necessary or desirable to discharge his duties.

(f) Subject to the control and supervision of the commissioner and under the rules and regulations promulgated by the commissioner, the board of directors or liquidating agent of a credit union in liquidation shall:

(1) cause notice to be given to creditors and members to present and make legal proof of their claims, which notice must be published once a week in each of three successive weeks in a newspaper of general circulation in each county where the credit union in liquidation maintained an office or branch for the transaction of business on the date it ceased unrestricted operations; except that when the aggregate book value of the assets and property of the credit union in liquidation is less than $10,000, the commissioner shall declare the credit union in liquidation to be a "no publica-

tion" liquidation, and publication notice to creditors and members is not required in such case;

(2) from time to time make a ratable liquidation dividend on all claims that have been proved to the satisfaction of the board of directors or the liquidating agent or adjusted in a court of competent jurisdiction and, after the assets of the credit union have been liquidated, make further liquidation dividends on all claims previously proved or adjusted (the statement of any amount due to the creditor as shown on the books and records of the credit union may be accepted in lieu of a formal proof of claim on behalf of any creditor or member); but all claims not filed before payment of the final dividend are barred; claims rejected or disallowed by the board of directors or by the liquidating agent are also barred unless suit is instituted within three months after notice of rejection or disallowance; and

(3) in a "no publication" liquidation, determine from all sources available, and within the limits of available funds of the credit union, the amounts due to creditors and members, and after 60 days have elapsed from the date of notification to the department of a voluntary liquidation or from the date of appointment of the liquidating agent distribute the funds of the credit union to creditors and members ratably and as their interests may appear.

(g) The commissioner shall prescribe the certificate to be completed by the liquidating agent or by the board of directors attesting to liquidation, that distribution has been made and that liquidation has been completed. The commissioner, on receipt and approval of the certificate, shall cancel the charter of the credit union. The corporate existence of the credit union shall continue for a period of three years from the date of cancellation of its charter, during which period the liquidating agent, or any duly appointed successor, or such persons as the commissioner may designate, may act on behalf of the credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

(h) No liquidating agent, officer, director, or employee of a credit union in liquidation may acquire any of the assets of the credit union or purchase any loans of the credit union. None of these persons may obtain from the liquidation any compensation or profit for personal benefit, whether directly, indirectly, for the benefit of any member of the person's family or any person associated with the person, or for the benefit of any business enterprise with which the person is associated, except for the credit union in liquidation. The liquidating agent may receive such reasonable compensation as may be set forth in the contract of employment, and nothing in this Act shall prevent compensation of the liquidating agent or those salaried employees and salaried officers of the credit union during the pendency of the liquidation, which payments shall be considered expenses incidental to liquidation. Any person who participates in a violation of this subsection commits a misdemeanor punishable by a fine of not more than $1,000 and not less than $100, or by confinement in jail for not more than six months, or both.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461-10.03. Merger

(a) A credit union may, with the approval of the department, merge with any other credit union under the existing charter of the other credit union, pursuant to a plan agreed to by the majority of the board of directors of each credit union joining in the merger and approved by the affirmative vote of a majority of the members of each credit union present at the meetings of members called for that purpose. The commissioner may waive the requirement that the plan be approved by a majority of the members of the credit unions.

(b) After agreement by the directors and approval by the members of each credit union, the president and secretary of each credit union shall execute a certificate of merger containing the following information:

(1) the time and place of the meeting of the board of directors at which the plan of merger was agreed to;

(2) the vote of the board of directors in favor of and against the adoption of the plan;

(3) a copy of the resolution or other action by which the plan of merger was agreed to;

(4) the time and place of the meeting of the members at which the plan was approved;

(5) the vote of the membership in favor of and against approval of the plan; and

(6) the name of the surviving credit union.

(c) The merging credit union shall submit the certificates and a copy of the plan of merger to the department. On approving the merger, the department shall return the certificates and plan to the merging credit unions.

(d) After a merger is effected, all property, property rights, and interests of the merged credit union vest in the surviving credit union without deed, endorsement, or other instrument of transfer, and all debts, obligations, and liabilities of the merged credit union are assumed by the surviving credit union under whose charter the merger is effected.

(e) This section shall be construed, whenever possible, to permit a credit union organized under any other act to merge with one organized under this Act.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

Art. 2461–10.04. Conversion

The commissioner shall promulgate regulations to permit the conversion of a credit union organized under this Act to a federal credit union, and the conversion of a federal credit union to a credit union organized under this Act.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975.]

CHAPTER 11. REGULATORY BODY

Art. 2461–11.01. Credit Union Commission

(a) The Credit Union Commission consists of nine members. The commission shall supervise, consult with, advise, and make recommendations to the commissioner. The jurisdiction, authority, powers, and duties previously conferred and imposed by law on the Banking Commissioner in relation to the management, control, regulation, and general supervision of credit unions are conferred and imposed on the commission and the commissioner.

(b) The Credit Union Department is composed of the Credit Union Commission and a Credit Union Commissioner, together with other officers and employees within the department. The department shall supervise and shall regulate, as provided in this Act, all credit unions organized under the laws of the State of Texas. The department shall periodically make comprehensive studies of the statutes of this state as they pertain to credit union operations. The commissioner shall report the recommendations of the department when and as necessary to the legislature for consideration. The department shall report annually to the governor the receipts and disbursements of the department for each fiscal year, and shall report to the appropriate committees of the house of representatives and of the senate within the first 60 days of each regular session of the legislature.

(c) The Credit Union Commission is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.068, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Section 4 of the 1981 Act provides:

"Promptly after the effective date of this Act, the governor shall appoint the three additional members of the Credit Union Commission authorized by this Act. In making the appointments, the governor shall designate one for a term that expires February 15, 1983, one for a term that expires February 15, 1985, and one for a term that expires February 15, 1987."

Art. 2461–11.02. Eligibility of Members

(a) Six members of the commission must be individuals who are currently engaged in the exercise of the duties, responsibilities, rights, and powers of a duly authorized director, officer, or committee member of a credit union doing business under this Act and who have five years or more of active experience as such a director, officer, or committee member. Experience as a commissioner, deputy commissioner, or examiner is equivalent to the type of experience required by this subsection. If a person holding a position in accordance with this subsection ceases to be engaged in the exercise of the duties, responsibilities, rights, and powers prescribed by this subsection for a period exceeding 90 days, the person is ineligible to serve as a member and the person's position on the commission is vacant.

(b) Three members of the commission are representatives of the general public. An individual appointed to serve in that capacity may not, at the time of the individual's appointment to or while serving on the commission, be engaged in the management or direction of a financial institution, such as a credit union, bank, or savings and loan association.

(c) No two members of the commission may be residents of the same state senatorial district.

(d) A member of the commission may not be:

(1) a salaried officer, salaried employee, or salaried consultant of a trade association in the credit union industry; or

(2) related within the second degree by affinity or consanguinity to a person who is a salaried officer, salaried employee, or salaried consultant of a trade association in the credit union industry.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461–11.03. Appointment and Terms of Members

(a) The members of the commission are appointed, without regard to race, creed, sex, religion, or national origin, by the governor, with the advice and consent of the senate, for terms of six years, with the terms of three members expiring February 15 of each odd-numbered year. The governor shall appoint the members who are representatives of the general public on the basis of recognized business ability.

(b) Each member serves until the member's successor is appointed and qualified.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461–11.04. Vacancies

(a) The office of a member of the commission becomes vacant on January 1 if the member failed to attend more than one-half of the meetings of the commission held during the preceding calendar year, excluding any meetings held before the member assumed office.

(b) The governor may remove a member from the member's position on the commission for neglect of duty, incompetence, or fraudulent or criminal conduct.

(c) The office of a member of the commission is vacant in the event of the death, resignation, or removal of the member, or if the member ceases to have the qualifications necessary to serve as a member. In the event of a vacancy on the commission for any cause, the governor, with the advice and consent of the senate, shall promptly appoint a qualified person to fill the unexpired term.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461–11.05. Compensation; Expenses of Members

(a) Notwithstanding any other law, a member of the commission may not receive any compensation or benefit, except as provided by Subsection (b) of this section, as a result or by virtue of the member's service as a member.

(b) Each member of the commission is entitled to reimbursement of the reasonable expenses incurred in the performance of his official duties.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461–11.06. Meetings

(a) The commission shall hold regular meetings at least twice each year. The chairman of the commission, the commissioner, or any five members of the commission may call special meetings. The commission shall adopt reasonable rules governing the time and place of meetings and the conduct of all meetings, including the form in which minutes of the meetings are maintained. All meetings of the commission are subject to the Open Meetings Law, Chapter 271, Acts of the 60th Legislature, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes).

(b) A majority of the membership of the commission constitutes a quorum for the purpose of transacting any business.

(c) The commission shall annually elect one of its members to serve as chairman. The chairman shall preside at all meetings of the commission.

(d) The commissioner shall attend meetings of the commission and shall preside in the absence of the chairman. The commissioner may not vote at any meeting.

(e) No commission member may act on matters under consideration which directly and specifically relate to any credit union of which the member of the commission is an officer, director, or member.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461–11.07. Rulemaking Power

(a) The commission may adopt reasonable rules necessary for the administration of this Act, and in doing so, may exercise its discretion to regulate and classify credit unions according to criteria that the commission determines are appropriate and necessary to accomplish the purposes of this Act, including, but not limited to, the character of field of membership, amount of assets, number of members, or financial condition.

(b) All rules adopted under this Act must be adopted in accordance with the rulemaking provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(c) The commission shall promulgate reasonable rules to prescribe all supervision fees, charges, and revenues required to be paid by credit unions authorized to do business under this Act.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461–11.08. Credit Union Commissioner

(a) The commission shall appoint, by the affirmative vote of two-thirds of the membership, a Credit Union Commissioner who shall serve as an employee and at the pleasure of the commission.

(b) The commissioner must have at least 5 years' practical experience in the operation of credit unions within the 10 years immediately preceding his appointment. The experience may consist of experience in the exercise of the duties, responsibilities, rights, and powers of a duly authorized director, officer, or committee member of a credit union or in the employment of a credit union regulatory agency.

(c) The commissioner may not be:

(1) a salaried officer, salaried employee, or salaried consultant of a trade association in the credit union industry; or

(2) related within the second degree by affinity or consanguinity to a person who is a salaried officer, salaried employee, or salaried consultant of a trade association in the credit union industry.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461–11.09. Deputy Credit Union Commissioner

Subject to the approval of the commission, the commissioner may appoint a Deputy Credit Union Commissioner. The deputy commissioner must meet the same qualifications as does the commissioner. The deputy commissioner, if any, shall serve at the pleasure of the commissioner. He may exercise, at the direction of the commissioner, all the powers and prerogatives of the commissioner and shall perform all the duties of the commissioner during the commissioner's absence or inability to act.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461-11.10. Powers of Credit Union Commissioner

(a) On the appointment and qualification of a commissioner, the commissioner shall supervise and regulate all credit unions doing business in this state, except federal credit unions organized and existing under federal law, in accordance with this Act and the rules and regulations promulgated under this Act.

(b) The commissioner shall enforce the provisions of this Act and the rules and regulations promulgated from time to time.

(c) The commissioner shall levy and collect all supervision fees, charges, and revenues required to be paid by credit unions as provided by Subsection (c), Section 11.07, of this Act.

(d) The commissioner shall submit to the commission at least once a year a full and complete report of the receipts and expenditures of the department. The commission may require more frequent reports. The commission shall adopt, and from time to time amend, budgets that direct the purposes and prescribe the amounts for which the fees, penalties, charges, and revenues may be expended or levied.

(e) The commission shall promulgate, and the commissioner shall enforce, reasonable rules requiring credit unions to provide or cause to be provided share and deposit insurance protection for their members and depositors, including the authorization and establishment of a share and deposit guaranty corporation or credit union under the exclusive regulation of the department to enable the department to carry out the purposes of this Act. Share and deposit insurance protection may also be provided through other sources approved by the department, including such a program of the National Credit Union Administration.

(f) The commissioner shall supervise the establishment and maintenance of files regarding complaints about credit unions received by the department. The files must include all relevant information regarding the nature, status, and disposition of the complaints. The commissioner shall take the steps that the commissioner determines to be necessary to notify each complainant of the procedures and remedies available for the resolution of complaints and to periodically inform each complainant of the status of his complaint.

(g) The commissioner shall supervise the preparation of information regarding the regulatory functions of the department, procedures for resolution of complaints, and other matters of general interest regarding the credit union movement and shall supervise the dissemination of that information to the general public.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461-11.10A. Restrictions on Members and Commissioner

A member of the commission or the commissioner may not communicate directly or indirectly with a party or the representative of a party to any proceeding before the commission or the commissioner if such a communication violates the provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), relating to ex parte communications.

[Added by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461-11.11. Credit Union Examiners

Subject to recruitment and qualifications approved by the commission, the commissioner shall appoint credit union examiners in sufficient number to perform fully the duties and responsibilities under this Act and the laws of this state.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461-11.12. Annual Examination

(a) The department, by and through its duly appointed examiners and in accordance with the rules adopted by the commission, shall perform periodic examinations of the books and records of each credit union authorized to do business under this Act. The officers, directors, agents, and employees of each credit union shall furnish the examiner full and free access to all books, papers, securities, records, and other sources of information that relate to the business of the credit union. The commissioner or any examiner may summon witnesses or administer oaths or affirmations in the examination of the credit union, its officers, directors, agents, or employees, or any other person concerning the credit union's business, transactions, and condition and may compel the production of books, papers, securities, records, or other documents by court order if they are not voluntarily produced.

(b) All information, except statements intended for publication, obtained by the department relative to the financial conditions of credit unions, whether obtained through examination or otherwise, and all files and records of the department relative to that information are confidential and not for public record or inspection. The commissioner may disclose to the commission any information, files, or records pertinent to any hearing or matter pending before the commission or the commissioner. If the commissioner determines it is necessary or proper for the enforcement of the laws of this state applicable to credit unions or rules adopted under those laws, the commissioner may disclose any files, records, or other information of the department to the Texas Share Guaranty Credit Union or any department, agency, or instrumentality of this state or the United States.

(c) Examiners shall report results of each examination on a form prescribed by the commissioner and

approved by the commission. The examiner shall include in the report a general statement of the affairs of the credit union. The department shall send a copy of the report to the board of directors of the credit union examined within 30 days after the examination. Each credit union shall pay an examination fee established by the commission and based on the costs of performing the examination.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461–11.13. Oaths of Office; Bond

The commissioner, the deputy commissioner, if any, each credit union examiner, and every other officer and employee of the commission, shall, before assuming the duties of office, take an oath and make fidelity bond in the sum of $10,000 payable to the governor and all successors in the office of governor, in individual, schedule, or blanket form, executed by a surety appearing on the list of approved sureties acceptable to the United States government. Each oath and bond required under this Act must be in a form approved by the commission. The premiums for the bond are paid out of the funds of the department.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461–11.14. Defense by Attorney General

The attorney general shall defend any action brought against any member of the commission or against any of its officers or employees by reason of the official act or omission of the person, whether or not the person is a member, officer, or employee of the commission at the time of the initiation of the action. Suits against the commission, its officers, or employees shall be brought in Travis County, Texas, and not elsewhere.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461–11.15. Compensation of Employees

The commissioner, the deputy commissioner, if any, each examiner, and every other officer of the commission, except commission members, are employees of the commission, subject to its orders and directions, and are entitled to receive compensation fixed by the commission, but in no event may any employee receive compensation exceeding that paid to the governor. The compensation is paid from funds of the department.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461–11.16. Transfers to General Revenue Fund

The department shall transfer $1,000 each year to the general revenue fund to cover the costs of governmental service rendered by other departments.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

Art. 2461–11.17. Exemption from Securities Laws

Credit unions, whether authorized to do business under this Act or the Federal Credit Union Act,[1] their officers, employees, and agents in the sale, issuance, or offering of any security issued by any state or federal credit union are exempt from the provisions of the laws of this state, other than as required by this Act, which provide for the supervision, registration, or regulation in connection with the sale, issuance, or offering of securities as the term is defined in Section 4, Securities Act, as amended (Article 581–4, Vernon's Texas Civil Statutes). The sale, issuance, or offering of any such security is legal without any action or approval on the part of any official, other than the credit union commissioner, authorized to license, regulate, or supervise the sale, issuance, or offering of securities.

[Acts 1975, 64th Leg., p. 2919, ch. 707, § 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 406, ch. 169, § 2, eff. Sept. 1, 1981.]

[1] 12 U.S.C.A. § 1751 et seq.

CHAPTER 12. MISCELLANEOUS

Art. 2461–12.01. Hearings

The conduct of all hearings held under this Act and the judicial review of the final decisions following those hearings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes). The commission may adopt rules of procedure consistent with the Administrative Procedure and Texas Register Act, as amended, for the fair hearing and adjudication of all issues in a hearing held under this Act.

[Added by Acts 1981, 67th Leg., p. 411, ch. 169, § 3, eff. Sept. 1, 1981.]

Arts. 2485 to 2524. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal arts. 2512 and 2518 were amended by Acts 1981, 67th Leg., p. 1778, ch. 389, §§ 22, 28; Acts 1981, 67th Leg., p. 2786, ch. 752, § 17.

TITLE 46A

DECLARATORY JUDGMENTS

Art. 2524–1. Uniform Declaratory Judgments Act

[See Compact Edition, Volume 4 for text of 1 to 9]

Costs

Sec. 10. In any proceeding under this Act the Court may make such award of costs and reasonable and necessary attorney's fees as may seem equitable and just.

[See Compact Edition, Volume 4 for text of 11 to 16]

[Amended by Acts 1981, 67th Leg., p. 455, ch. 190, § 1, eff. May 25, 1981.]

Section 2 of the 1981 amendatory act provides:

"This Act applies only to actions filed on or after the effective date of this Act."

TITLE 47

DEPOSITORIES

CHAPTER ONE. STATE DEPOSITORIES

Article
2525a. Application of Sunset Act.
2529b–1. Investment Securities as Security for Deposits of State and Public Agencies.

Art. 2525a. Application of Sunset Act

The State Depository Board is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.072, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 2529b–1. Investment Securities as Security for Deposits of State and Public Agencies

Sec. 1. The following terms, used in this Act, have the meanings set forth below:

(a) "Government securities" means direct obligations of the United States of America, obligations which in the opinion of the attorney general of the United States are general obligations of the United States and backed by its full faith and credit, obligations guaranteed by the United States of America, evidence of indebtedness of or participation certificates guaranteed by Federal Intermediate Credit Banks, Federal Land Banks, Banks for Cooperatives, Federal Farm Credit System, Federal Home Loan Banks, Federal National Mortgage Association, Federal Financing Bank Participation Certificates in the Federal Asset Financing Trust, New Housing Authority Bonds and Project Notes fully secured by contracts with the United States of America provided such term shall not include any obligation with a declining principal balance.

(b) "Investment securities" means (i) government securities or (ii) any general or special obligation issued by a public agency (approved by the attorney general of Texas) payable from taxes, revenues, either or both.

(c) "Public agency" means any board, authority, agency, department, commission, political subdivision, municipal corporation, district, public corporation, body politic, or instrumentality of the State of Texas, including without limitation any county, home-rule charter city, general-law city, town, or village, any state-supported educational institution of higher learning, any school, junior college, hospital, water, sewage, waste disposal, pollution, road, navigation, levee, drainage, conservation, reclamation, or other district or authority, and any other type of political or governmental entity of the State of Texas.

Sec. 2. Investment securities or any ownership or beneficial interest herein shall be eligible and lawful security for all deposits of public funds of the State of Texas and any public agency to the extent of the market value thereof.

Sec. 3. The provisions of this Act shall be cumulative of all other existing laws, but shall be full and complete authority for investment securities to be eligible to secure public funds without reference to any other law.

[Acts 1981, 67th Leg., p. 2674, ch. 726, eff. June 16, 1981.]

Art. 2530. Deposit of Securities

In the event the State Depository, as designated in the preceding Article, shall elect to deposit said pledged securities, above mentioned, with the State Treasurer, the said securities shall be delivered to the Treasurer and receipted for by him, and retained by him in the vaults of the State Treasury. Provided, however, that such bank so designated as depository shall have the option, instead of depositing said pledged securities with the State Treasurer, of depositing same with another State or National Bank situated in the State, subject to the approval of the Board; said securities to be held in trust by said custodian bank to secure funds deposited by the State Treasurer in the State Depository bank. Upon the receipt of said securities, said custodian bank shall immediately issue and deliver to the State Treasurer controlled trust receipts for said securities pledged to the State Treasurer. The security evidenced by such trust receipts shall be subject to inspection by the Board or its agents at any time deemed advisable by said Board. Said custodian bank shall have a capital stock and permanent surplus of not less than Five Hundred Thousand ($500,000.00) Dollars, and said bank designated as depository shall itself defray the charges, if any, of such custodian bank for accepting and holding said securities.

A State Depository bank shall also have the option of depositing said pledged securities with the Federal Reserve Bank of Dallas; such securities to be held by said Bank to secure funds deposited by the State Treasurer in the State Depository bank. When such pledged securities are so deposited and subject to the

approval of the Board, the Federal Reserve Bank of Dallas may apply book entry procedures to the pledged securities so held. The records of the Federal Reserve Bank of Dallas shall at all times reflect the name of the State Depository bank for whose account the pledged securities are so deposited, and an Advice of Transaction shall be issued by the Federal Reserve Bank of Dallas to the State Treasurer and the State Depository bank.

A custodian bank, holding in trust securities of a State Depository bank pledged to secure funds deposited by the State Treasurer in the State Depository bank as provided above, shall also have the option of depositing said pledged securities with the Federal Reserve Bank of Dallas provided that the Federal Reserve Bank of Dallas is the third party to the transaction; such securities to be held by said Federal Reserve Bank to secure funds deposited by the State Treasurer in the State Depository bank. When such pledged securities held by a custodian bank are so deposited, and, subject to the approval of the Board, the Federal Reserve Bank of Dallas may apply book entry procedures to the pledged securities so held. The records of the Federal Reserve Bank of Dallas shall at all times reflect the name of the custodian bank for whose account the pledged securities are so deposited, and an Advice of Transaction or other document evidencing each deposit of securities shall be issued by the Federal Reserve Bank of Dallas to the custodian bank. The custodian bank shall immediately issue and deliver to the State Treasurer controlled trust receipts for said pledged securities. The trust receipt shall reflect that the custodian bank has deposited with the Federal Reserve Bank of Dallas the pledged securities held in trust for the State Depository bank.

Subject to the approval of the Board, a State Depository may have the right to substitute one group of securities for another group of securities pledged with the State Treasurer, when and as such State Depository may desire to make such substitution, so long as the securities desired to be substituted by such bank shall come within the classification of securities acceptable under the terms of this Act.

If, in any case, or at any time, such bonds or other securities are not satisfactory security, in the opinion of the Board, for the deposits made under this Act, they may require such additional security to be given as will be satisfactory to them. Said Board shall, from time to time inspect such bonds and see that the same are actually kept in the vaults of the State Treasury and in said custodian banks. If the pledged securities are deposited with the Federal Reserve Bank of Dallas, the Board shall conduct such audits and inspections of the records of the Federal Reserve Bank of Dallas as may be reasonably necessary to verify the existence of and proper accounting for said pledged securities. In the event that any State Depository shall fail to pay deposits or any part thereof on the check of the Treasurer, he shall have the power to forthwith realize upon such bonds or other securities deposited by said bank, and disburse the money arising therefrom, according to law, upon the warrants drawn by the Comptroller upon the funds for which said bonds or other securities were secured. Any bank making deposits of bonds or other securities with the Treasurer under the provisions of this Act may cause such bonds or other securities to be endorsed or stamped, as they may deem proper, so as to show that they are deposited as collateral and not transferable, except as herein provided.

Upon request of the owner or owners, the Treasurer or custodian bank may surrender interest coupons or other evidence of interest when due on securities deposited by depository banks, provided, said securities are ample to meet the requirements of the State.

Whenever any private bank now organized as provided for by the private banking laws of Texas should seek to become a depository for State funds or any other governmental agency, it shall agree in writing to submit itself to examination as to its solvency.

[Amended by Acts 1975, 64th Leg., p. 1021, ch. 390, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 560, ch. 196, § 1, eff. May 20, 1977.]

CHAPTER TWO. COUNTY DEPOSITORIES

Art. 2546. Selecting County Depository

It shall be the duty of the Commissioners Court at ten o'clock a.m. on the first day of each term at which banks are to be selected as county depositories, to consider all applications filed with the County Judge, cause such applications to be entered upon the minutes of the Court and to select those applicants that are acceptable and who offer the most favorable terms and conditions for the handling of such funds and having the power to reject those whose management or condition, in the opinion of the Court, does not warrant placing of county funds in their possession. The County Commissioners Court shall have the power to determine and designate the character and amount of county funds which will be deposited by it in said depositories that shall be "demand deposits" and what character and amount of funds shall be "time deposits," and may contract with said depositories in regard to the payment of interest on "time deposits" at such rate or rates as may be lawful under any Act of the Congress of the United States and any rule or regulations that may be promulgated by the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation. When the selection of a depository or depositories has been made, the checks of those applicants which have been rejected shall be immediately returned. The check or checks of the applicant or applicants whose applications are accepted shall be returned when said depository or depositories

enter into and file the bond required by law and said bond has been approved by the Commissioners Court, and not until such bond is filed and approved. The term "demand deposits," as used herein, shall mean any deposit which is payable on demand, and the term "time deposits," as used herein, shall mean any deposit with reference to which there is in force a contract, that neither the whole nor any part of such deposit may be withdrawn by check or otherwise prior to the expiration of the period of notice which must be given in writing in advance of withdrawals.

[Amended by Acts 1981, 67th Leg., p. 88, ch. 48, § 1, eff. April 15, 1981.]

Art. 2547. Bonds

Within fifteen (15) days after the selection of such depository, it shall be the duty of the banking corporation, association or individual banker so selected, to qualify as county depository in one or more of the following ways, at the option of the Commissioners' Court:

(a) By executing and filing with the Commissioners' Court, a bond or bonds, payable to the County Judge and his successors in office, to be approved by the Commissioners' Court, and immediately thereafter filed in the office of the County Clerk of said county, said bond to be signed by not less than five (5) solvent sureties who shall own unencumbered real estate in this State not exempt from execution under the Constitution and laws of this State, of a value equal to, or in excess of, the amount of said bonds where there is more than one bond; said bond or bonds to be in an amount equal to the estimated highest daily balance of such county, as determined by the Commissioners' Court, such estimated daily balance to be in no event less than seventy-five (75%) per cent of the highest daily balance of said county for the next preceding year, less the amount of bond funds received and expended; provided, however, in the event that county funds derived from the sale of county securities during the term of such bond are deposited, such Commissioners' Court shall require additional bond and/or bonds, and/or pledge of securities equal to the amount of such additional county funds. The sureties shall file with the Commissioners' Court at the time of filing said bond or bonds, a statement containing a description of the unencumbered and non-exempt lands owned by them, sufficient to identify such lands on the ground, and such statement shall remain on file with the County Clerk and attached to such bond or bonds; and such statement shall contain a value of each tract of land so listed, together with the value of the improvements thereon.

(b) By having issued and executed by some solvent surety company or companies authorized to do business in the State of Texas, such bond or bonds, as provided by law, to be in the amount and payable as provided in subdivision (a) hereinabove, which said surety bond shall be approved by the Commissioners' Court, and filed in the office of the County Clerk of said county. Provided, however, such surety company or companies may be relieved of its or their obligation on thirty (30) days notice in writing to the Commissioners' Court, such bonding surety company or companies not to be relieved of any liability for loss sustained by the county prior to the expiration date of such bonds or bond; and provided further, in the event any surety company or companies shall ask to be relieved of such bond or bonds, such depository shall, previous to the termination date of such obligation of such surety company or companies, present further security acceptable to the County Commissioners' Court, and filed in the office of the County Clerk of said county, for the securing of county funds in accordance with the provisions of this Act.

(c) In lieu of such personal bonds or surety bonds as above specified, said banking corporation, association or individual banker so selected as county depository, may pledge, and said depository bank is authorized to pledge with the Commissioners' Court for the purpose of securing such county funds, securities of the following kind, in an amount equal to the amount of such county funds on deposit in said depository bank, to-wit: bonds and notes of the United States, securities of indebtedness of the United States, and other evidences of indebtedness of the United States, when said evidences of indebtedness are supported by the full faith and credit of the United States of America, and other bonds or other evidences of indebtedness which are guaranteed as to both principal and interest by the United States Government, bonds of the State of Texas, or of any county, city, town, independent school district, common school district, or bonds issued under the Federal Farm Loan Act, or road district bonds, bonds, pledges or other securities issued by the Board of Regents of the University of Texas, bank acceptances of banks having a capital stock of not less than Five Hundred Thousand ($500,000.00) Dollars, notes or bonds secured by mortgages insured and debentures issued by the Federal Housing Administrator of the United States Government, shares or share accounts of any building and loan association organized under the laws of this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation, and in the shares or share accounts of any Federal Savings & Loan Association domiciled in this state, provided the payment of such shares or share accounts is insured by the Federal Savings & Loan Insurance Corporation; and bonds issued by municipal corporations in Texas, all said securities having a total market value equal to the amount of the depository bond; an amount of the following described securities not to exceed twenty-five (25%) per cent

of the assessed value of the property in the county as shown by the certified tax roll for the preceding year, viz.: closed first mortgages on improved and unencumbered real estate situated in the State of Texas, provided such security so offered must be first approved by the Commissioners' Court; and before approving such a mortgage tendered as security for deposits, the Commissioners' Court shall require a written opinion by an attorney selected by the Court, showing that the lien so offered is superior to any and all other claims or rights in the property, and the Court shall also require that the improvements on each tract of real estate described in such mortgage be fully insured in some Stock Fire Insurance Company, or a Mutual Fire Insurance Company having One Hundred Thousand ($100,000.00) Dollars surplus in excess of all legal reserves and other liabilities, to be approved by the County Judge, with loss payable clause in favor of the County Judge, such mortgage as may be approved as acceptable security under the provisions of this Article shall be assigned to the County Judge by written instrument, duly acknowledged, and the same shall be placed of record forthwith in each county where any part of said real estate is situated; and as security for such deposits, unencumbered, improved real estate, subject to approval of Commissioners' Court, may be pledged directly by Deed of Trust executed to a trustee selected by the Commissioners' Court, with the County Judge as beneficiary; provided that the Court shall first require the written opinion of an attorney selected by the Court, showing that the lien offered as security for deposits is superior to any and all other claims or rights in the property; and provided further that the Court shall require that all improvements on any real estate, so pledged, be fully insured in a Stock Fire Insurance Company or a Mutual Fire Insurance Company having One Hundred Thousand ($100,000.00) Dollars surplus in excess of all legal reserves and other liabilities, approved by the County Judge, with loss payable clause in favor of the County Judge; and the Commissioners' Court shall investigate all real estate security and determine the value at which such real estate security as is herein described shall be accepted; provided that in no event shall such security be accepted as collateral at a value in excess of fifty (50%) per cent of the reasonable market value of the real property covered by such mortgages, except where such mortgages are insured or guaranteed by the Federal Housing Administrator of the United States; and such real estate security as herein described may be withdrawn and replaced by other real estate securities meeting the requirements of this Act, or any class of securities above enumerated, provided all such withdrawals, substitutions and replacements must be approved by the Commissioners' Court; and the County Judge shall execute such instruments as may be necessary to transfer to the depository or its order, all liens, so withdrawn, and said Commissioners' Court may accept said securities in lieu of such personal or surety bonds; and such securities so pledged by such depository bank shall be deposited as the Commissioners' Court may direct.

When the securities pledged by a depository bank to secure county funds shall be in excess of the amount required under the provisions of this Article, the Commissioners' Court shall permit the release of such excess; and when the county funds deposited with said depository bank shall for any reason, increase beyond the amount of securities pledged, said depository bank shall immediately pledge additional securities with the Commissioners' Court so that the securities pledged shall at no time be less than the total amount of county funds on deposit in said depository bank. The right of substitution of securities shall be granted to depositories, provided the securities substituted meet with the requirements of the law, and are approved by the Commissioners' Court. Upon the request of such depository bank, the Commissioners' Court shall surrender interest coupons or other evidence of interest, when due, on securities deposited with the Commissioners' Court by such depository bank, provided said securities remaining pledged are ample to meet the requirements of said Commissioners' Court. Such depository may secure said funds by one or more of the ways herein provided, at the option of the Commissioners' Court.

The condition of the personal bond or bonds, or contract for securities pledged, as hereinabove provided, shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon any "demand deposit" account in any depository by the county treasurer of the county, and all checks drawn upon any "time deposit" account, upon presentation, after the expiration of the period of notice required in the case of "time deposits"; and that said county funds shall be faithfully kept by said depository and accounted for according to law. Any suits arising thereon shall be tried in the county for which such depository is selected; and provided further, that upon reasonable notice to the Commissioners' Court, such county depository may change from time to time its method of securing such funds, so long as the same are at all times secured in the amount and manner specified herein.

Where separate bonds are given to secure county funds, each surety thereunder shall be liable only for such part of any loss sustained by failure of the depository, as the amount of each bond shall bear to the aggregate amount of all bonds and/or securities held by the county for protection of the funds covered by said bonds.

In the event of payment of a loss to the county by personal sureties or surety companies, said sureties shall be subrogated by the county in the amounts

such payment bears to the deposit secured by them or it, at the time of default of the depository.

It shall be the duty of the Commissioners' Court to investigate and inquire into the solvency of each and every surety, on any personal bond or bonds so filed by such county depository, and accepted by the Commissioners' Court and approved as required by law, at least twice during each and every year such bonds are effective and in force; and for that purpose shall have authority to require each surety to render an itemized and verified financial statement, under oath, showing his true financial condition. If any such statement or statements indicate that any of said sureties have become insolvent, or their net worth depreciated below the amount required by law as such sureties, or if any of the assets listed are shown to be, or are known to be depreciated, or their value in any way impaired, then and in any such events, the Commissioners' Court shall require a new bond meeting fully the requirements of this law; and in case of a bond or bonds the sureties on which are required to own unencumbered and non-exempt real estate as herein provided, such statement shall show each tract of land owned by each surety and the value thereof; and if the statements provided for herein shall indicate that any of such lands have been disposed of or encumbered, and the value of the remaining unencumbered or non-exempt lands shall not be sufficient to meet the requirements of this law, then the said Commissioners' Court shall require a new bond, meeting fully the requirements of this law. The Commissioners' Court shall at any time it may deem necessary for the protection of the county, investigate and inquire into the solvency of any surety company or companies issuing a bond or bonds for any depository, and to investigate the value of any of the securities that may be pledged by such depository in lieu of the personal bond; and such Commissioners' Court may request any such depository if it deem advisable, to execute a new bond. If said new bond required by the Commissioners' Court for any reason as herein specified be not filed within five (5) days from the time of the service of a copy of said order upon said depository, the Commissioners' Court may proceed to the selection of another depository, in the same manner as provided for the selection of a depository at the regular time for such selection. Nothing in this law shall in any manner limit, restrict or prevent the Commissioners' Court from requiring any depository to execute a new bond at any time such Commissioners' Court may deem it necessary for the protection of the county.

[Amended by Acts 1981, 67th Leg., p. 88, ch. 48, § 1, eff. April 15, 1981.]

Art. 2549. Designating Depository

(a) As soon as said bond be given and approved by the Commissioners Court, an order shall be made and entered upon the minutes of said Court designating such banking corporation, association or individual banker, as a depository for the funds of said county until sixty (60) days after the time fixed for the next selection of a depository; and thereupon, it shall be the duty of the county treasurer of said county immediately upon the making of such order, to transfer to said depository all the funds belonging to said county, as well as all funds belonging to any district or other municipal subdivision thereof not selecting its own depository, and immediately upon receipt of any money thereafter, to deposit the same with said depository to the credit of said county, district and municipalities. It shall also be the duty of the tax collector of such county to deposit all taxes collected by him, or under his authority, for the State and such county and its various districts and other municipal subdivisions, in such depository or depositories, as soon as collected, pending the preparation of his report of such collection and settlement thereon. The bond of such county depository or depositories shall stand as security for all such funds. Upon such funds being deposited as herein required, the tax collector and sureties on his bond, shall thereafter be relieved of responsibility of its safekeeping. All county depositories shall collect all checks, drafts and demands for money so deposited with them by the county and when using due diligence shall not be liable on such collections until the proceeds thereof have been duly received by the depository bank, provided that any expense incurred in collection thereof by the depository, which the depository is not allowed or permitted to pay or absorb by reason of any act of Congress of the United States or any regulation by either the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation, shall be charged to and paid by the county. All money collected or held by any district, county or precinct officer in such county, or the officers of any defined district or subdivision in such county, including the funds of any municipal or quasi-municipal subdivision or corporation which has the power to select its own depository, but has not done so, shall be governed by this law, and shall be deposited in accordance with its requirements, and shall be considered in fixing the bond of such depository, and shall be protected by such bond; and all warrants, checks, and vouchers evidencing such funds shall be subject to audit and countersignature as now or hereafter provided by law.

(b) If during a school year, a Commissioners Court having control of school district funds elects to transfer the funds from one bank serving as county depository to another bank, the school district affected may require that the Commissioners Court delay the transfer of the district's funds until the end of the school district's fiscal year or until September 1, whichever date follows nearest the date the Commissioners Court took action on the transfer.

(c) Unless expressly prohibited by law or unless it is in contravention of any depository contract between a county and any depository bank, the Commissioners Court may direct the county treasurer to:

(1) withdraw any amount of funds of the county that are deposited in a county depository and that are not required immediately to pay obligations of the county or required to be kept on deposit under the terms of the depository contract: and

(2) invest those funds in direct debt securities of the United States.

[Amended by Acts 1981, 67th Leg., p. 88, ch. 48, § 1, eff. April 15, 1981; Acts 1981, 67th Leg., p. 2259, ch. 542, § 1, eff. Aug. 31, 1981.]

Acts 1981, 67th Leg., p. 2260, ch. 542, § 3, provides:

"This Act does not apply to funds that, on the effective date of this Act, are on deposit in a depository in accordance with Article 2549 or Article 2561, Revised Civil Statutes of Texas, 1925, as they exist immediately before this Act takes effect."

CHAPTER THREE. CITY DEPOSITORIES

Art. 2561. Designating Depository, etc.

(a) As soon as said bond shall be given and approved, an order shall be made by the council designating said banking corporation, association, or individual banker, as the depository of the funds of the city until the time fixed by this Act for another selection, and such order shall be entered upon the minutes. It shall be the duty of the city treasurer, immediately upon the making of said order, to transfer to said depository all the funds in his hands belonging to the city, and immediately upon the receipt of the money thereafter, he shall deposit the same with said depository to the credit of the city. If any banking corporation, association, or individual banker, after having been selected as such depository, shall fail to give bond within the time provided by this Act, then the selection of such banking corporation, association, or individual banker, as the depository of the city funds shall be set aside and be null and void, and the governing body shall, after the notice published in the manner hereinbefore provided, proceed to receive new applications and select another depository.

(b) Unless expressly prohibited by law or unless it is in contravention of any depository contract between a city, town, or village and any depository bank, the governing body of a city, town, or village may direct the treasurer of the entity to:

(1) withdraw any amount of funds of the entity that are deposited in a depository and that are not required immediately to pay obligations of the entity or required to be kept on deposit under the terms of the depository contract; and

(2) invest those funds in direct debt securities of the United States.

[Amended by Acts 1981, 67th Leg., p. 2259, ch. 542, § 2, eff. Aug. 31, 1981.]

Section 3 of the 1981 amendatory act provides:

"This Act does not apply to funds that, on the effective date of this Act, are on deposit in a depository in accordance with Article 2549 or Article 2561, Revised Civil Statutes of Texas, 1925, as they exist immediately before this Act takes effect."

TITLE 51

ELEEMOSYNARY INSTITUTIONS

CHAPTER ONE. GENERAL PROVISIONS

Art. 3174b–2. Medical Treatment and Services, Power to Provide Without Consent of Relatives, etc.

Sec. 1. The Texas Department of Mental Health and Mental Retardation, directly or through its authorized agent or agents, shall provide or perform recognized medical treatment or services to persons admitted or committed to its care. Where the consent of any person or guardian is considered necessary, and is requested, and such person or guardian shall fail to immediately reply thereto, the performance or provision for the treatment or services shall be ordered by the superintendent upon the advice and consent of three (3) physicians licensed by the Texas State Board of Medical Examiners, at least one of whom must principally be engaged in the private practice of medicine. Where there is no guardian or responsible relative to whom request can be made, treatment and operation shall be performed on the advice and consent of three (3) physicians licensed by the Texas State Board of Medical Examiners. This authority shall not allow the performance of any operation involving sexual sterilization or frontal lobotomies.

Sec. 2. The Texas Department of Mental Health and Mental Retardation, directly or through its authorized agent or agents, also shall provide or perform recognized dental treatment or services to persons admitted or committed to its care. Where the consent of any person or guardian is considered necessary, and is requested, and such person or guardian shall fail to immediately reply thereto, the performance or provision for the treatment or services shall be ordered by the superintendent upon the advice and consent of one dentist licensed by the State Board of Dental Examiners and two physicians licensed by the Texas State Board of Medical Examiners, at least one of whom must principally be engaged in the private practice of medicine. Where there is no guardian or responsible relative to whom request can be made, treatment and services shall be performed on the advice and consent of one dentist licensed by the State Board of Dental Examiners and two physicians licensed by the Texas State Board of Medical Examiners.

[Amended by Acts 1981, 67th Leg., p. 665, ch. 257, § 1, eff. May 29, 1981.]

Art. 3183a. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

CHAPTER TWO. STATE HOSPITALS

Article

3196a–1. Admission of Patients Eligible for Service Under Department of Health Program.
3201c. Security at San Antonio State Hospital.
3201–4. Transfer of Control of East Texas Chest Hospital.

Art. 3184. Superintendent, Qualifications

Sec. 1. The Superintendent of the Austin State Hospital, San Antonio State Hospital, Wichita Falls State Hospital, Big Springs State Hospital, Rusk State Hospital, Terrell State Hospital, Kerrville State Hospital, Vernon Center and the Texas Research Institute of Mental Sciences shall meet such requirements for eligibility for appointment as Superintendent as the Board, by substantive rule adopted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), may adopt.

Sec. 2. In adopting requirements for eligibility for appointment as Superintendent, the Board shall give appropriate consideration to the desirability of the need if possible of a physician authorized to practice medicine in Texas who has experience in the treatment of mental disease and who has proven administrative experience and ability. In appointing superintendents, the Commissioner shall give preferential consideration to a qualified candidate who is authorized to practice medicine in Texas who shall have experience in the treatment of mental diseases and who has proven administrative experience and ability.

Sec. 3. If no such physician as described in Section 2 is available, the Board may appoint as Superintendent of the institutions described in Section 1 of this Act a person of proven administrative experience and ability, however, prior to said appointment, the Board shall have authority and shall promulgate appropriate rules and regulations to insure that all duties of admitting patients, providing appropriate medical care and treatment and determinations whether a patient has recovered to the extent that cure is effected or the patient no longer needs to be restrained and should be discharged, or that it would be in the best interest of patients that he or she should be sooner released prior to the period of

detention, as well as all medical decisions are only made by physicians licensed to practice medicine in Texas.

Sec. 4. This Act shall not be construed to:

(a) authorize the Department or any person, other than a duly licensed physician, acting within the scope of his or her license, to engage, directly or indirectly, in the practice of medicine; or

(b) authorize the Department, or any person to regulate, interfere, or intervene in any manner in the practice of medicine.

[Amended by Acts 1979, 66th Leg., p. 1797, ch. 730, § 2, eff. Aug. 27, 1979.]

Art. 3185. Repealed by Acts 1979, 66th Leg., p. 607, ch. 283, § 2, eff. Aug. 27, 1979

Art. 3196a. Classes of Patients Admitted

[See Compact Edition, Volume 4 for text of 1]

Persons Chargeable with Expenses of Patients

Sec. 2. Where the patient has no sufficient estate of his own, he shall be maintained at the expense:

Of the husband or wife of such person, if able to do so;

Of the father or mother of such person, if able to do so, provided such person is less than 18 years old.

[See Compact Edition, Volume 4 for text of 3 to 7]

[Amended by Acts 1977, 65th Leg., p. 264, ch. 125, § 1, eff. Aug. 29, 1977.]

Art. 3196a–1. Admission of Patients Eligible for Services Under Department of Health Program

(a) The Texas Board of Health may admit to any hospital under its supervision a patient who is eligible to receive patient services under a program of the Texas Department of Health and who will benefit from the hospitalization.

(b) Admission to a hospital as authorized by this Act is subject to the availability of appropriate space after the needs of eligible tuberculosis and chronic respiratory disease patients have been met and to the availability of trained medical personnel for the necessary medical care and treatment.

(c) The board may enter into contracts and make rules necessary to implement this Act.

(d) This Act does not require the board or department to admit a patient to a particular hospital, guarantee the availability of space at any hospital, or provide treatment for a particular medical need at any hospital.

[Acts 1979, 66th Leg., p. 1523, ch. 657, § 1, eff. Aug. 27, 1979.]

Art. 3201a–3. Pilot Program for Treatment of Respiratory Diseases; Harlingen State Chest Hospital and San Antonio State Chest Hospital

[See Compact Edition, Volume 4 for text of 1]

Number of Patients; Persons Treated; Payment of Charges

Sec. 2.

[See Compact Edition, Volume 4 for text of 2(a) and (b)]

(c) Repealed by Acts 1975, 64th Leg., p. 2194, ch. 700, § 3, eff. June 21, 1975.

[See Compact Edition, Volume 4 for text of 3 to 6]

Disposition of Fees and Charges

Sec. 6A. Fees and charges collected by each hospital for physicians' services shall be retained locally and shall be used only for the purpose of recruiting, retaining, and supplementing the salaries of the hospital's medical staff. Distribution of fees and charges for physicians' services shall be subject to rules and regulations adopted by the medical staff, not inconsistent with the laws of this state regulating the practice of medicine.

[See Compact Edition, Volume 4 for text of 7]

[Amended by Acts 1975, 64th Leg., p. 2194, ch. 700, §§ 2 and 3, eff. June 21, 1975.]

Art. 3201a–4. Transfer of Control of East Texas Chest Hospital

Intent of Act

Sec. 1. By this Act the legislature does intend:

(1) that the East Texas Chest Hospital shall continue to serve as a "state tuberculosis hospital" under the terms and provisions of the Texas Tuberculosis Code; [1]

(2) that the Texas Department of Health Resources [2] shall continue to have the authority and power to assign and send tuberculosis patients to the East Texas Chest Hospital for treatment and/or hospitalization under the terms and provisions of the Texas Tuberculosis Code;

(3) that The University of Texas System shall provide and pay for the care and treatment of tuberculosis patients in the East Texas Chest Hospital out of such funds as the legislature may appropriate for the hospital to use for that purpose;

(4) that The University of Texas System shall honor and perform all existing contracts heretofore entered into by, for, or on behalf of the East Texas Chest Hospital, including but not limited to the existing contracts covering the training and education of osteopathic resident physicians at the East Texas Chest Hospital;

(5) that if future contracts are required to provide for the care and treatment of the outpatients of the

East Texas Chest Hospital, The University of Texas System shall pay for that care and treatment out of such funds as the legislature may appropriate for such hospital to use for that purpose, or The University of Texas System shall transfer to the Texas Department of Health Resources, out of such funds as the legislature may appropriate for the East Texas Chest Hospital to use for that purpose, money to pay for the care and treatment of the outpatients of that hospital, whichever may be appropriate; and

(6) that except for the transfer of the governance and management of the East Texas Chest Hospital from the Texas Board of Health Resources to The University of Texas System, the power and authority of the Texas Department of Health Resources to examine, diagnose, isolate, quarantine, hospitalize, treat, and/or otherwise care for tuberculosis patients under the terms and provisions of the Texas Tuberculosis Code shall remain undiminished, unchanged, and in full force and effect.

[1] Article 4477–11.
[2] Name changed to Department of Health; see art. 4418g.

Transfer of Control to University of Texas System

Sec. 2. From and after the effective date of this Act, the governance, operation, management, control, and ownership of the East Texas Chest Hospital and all land, buildings, facilities, improvements, equipment, supplies, and property comprising said hospital shall be, and are hereby, transferred from the Texas Board of Health Resources to the Board of Regents of The University of Texas System. Said hospital, land, buildings, facilities, improvements, equipment, supplies, and property shall be governed, operated, managed, and controlled pursuant to such powers, duties, and responsibilities as are now, or as may be hereafter, conferred by law upon the Board of Regents of The University of Texas System for the governance, management, and control of the component institutions comprising said system.

Transfer of Appropriations and Funds

Sec. 3. All appropriations heretofore or hereafter made by the legislature for the use and benefit of the East Texas Chest Hospital under the governance of the Texas Board of Health Resources shall be transferred to the Board of Regents of The University of Texas System for the use and benefit of such hospital, and all other funds held for the use and benefit of the East Texas Chest Hospital shall be similarly transferred.

Validation of Contracts

Sec. 4. All contracts heretofore entered into in behalf of the East Texas Chest Hospital, or in names previously used by such hospital, are hereby ratified, confirmed, and validated for and on its behalf.

Use and Name of Hospital

Sec. 5. The Board of Regents of The University of Texas System is authorized to use the East Texas Chest Hospital as a teaching hospital and is authorized to change the name of the hospital, if and when deemed appropriate, so as to conform to the policies, rules, and regulations of said board.

Chest Diseases

Sec. 6. It shall continue to be the policy of the State of Texas to provide a program of treatment of the citizens of this state who are affected with chest diseases, and in pursuance of that policy the East Texas Chest Hospital shall among other functions continue to serve as the primary facility in this state to conduct research, develop diagnostic and treatment techniques and procedures, provide training and teaching programs, and provide diagnosis and treatment for both inpatients and outpatients with respect to all chest diseases.

Application of Tuberculosis Code

Sec. 7. The East Texas Chest Hospital shall among other functions continue to serve as a "state tuberculosis hospital" under the terms and provisions of the Texas Tuberculosis Code (Article 4477–11, Vernon's Texas Civil Statutes), but insofar as applicable to the East Texas Chest Hospital, Subsections (b) through (e) of Section 12 and all of Section 15, Texas Tuberculosis Code (Article 4477–11, Vernon's Texas Civil Statutes), are repealed.

Repealer

Sec. 8. Chapter 528, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 4477–13, Vernon's Texas Civil Statutes), is repealed, and all other laws or parts of laws in conflict with this Act are repealed to the extent of such conflict.

Effective Date

Sec. 9. The effective date of this Act shall be September 1, 1977.

Severability

Sec. 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1977, 65th Leg., p. 752, ch. 282, eff. Sept. 1, 1977.]

Art. 3201c. Security at San Antonio State Hospital

The Texas Department of Mental Health and Mental Retardation shall establish and enforce security measures at the San Antonio State Hospital to ensure that the patients in that institution do not leave without authorization and that patients absent without authorization are returned as quickly as practicable. Among other measures, the department shall provide for a daily check to determine if any patients are absent and for immediate reporting to local law enforcement officials of a patient who is absent without authorization.

[Acts 1979, 66th Leg., p. 575, ch. 265, § 1, eff. May 24, 1979.]

CHAPTER THREE. OTHER INSTITUTIONS

TEXAS SCHOOL FOR THE BLIND

Article
3207d. Repealed.

WACO CENTER FOR YOUTH

3255c. Transfer of Land Facilities and Functions; Change of Name.

SAN ANTONIO STATE SCHOOL

3263g. San Antonio State School.

TEXAS SCHOOL FOR THE BLIND

Arts. 3207a to 3207c. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing these articles, enacts the Human Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Human Resources Code.

Prior to repeal, art. 3207a was amended by:

Acts 1975, 64th Leg., p. 2383, ch. 734, §§ 12, 26, 27.

Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.102.

Acts 1979, 66th Leg., p. 675, ch. 301, §§ 1, 2, 8(a).

Section 9(a) of Acts 1979, 66th Leg., p. 679, ch. 301, provided:

"The governor shall appoint three new members to the State Commission for the Blind immediately after the effective date of this Act. In making those appointments, the governor shall designate one appointee to serve for a term expiring January 1, 1981, one to serve for a term expiring January 1, 1983, and one to serve for a term expiring January 1, 1985."

Art. 3207d. Repealed by Acts 1979, 66th Leg., p. 679, ch. 301, § 8(a), eff. May 31, 1979; Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

The repealed article, relating to early identification and registry of blind and visually handicapped, was added by Acts 1975, 64th Leg., p. 2382, ch. 734, § 11.

WACO CENTER FOR YOUTH

Art. 3255c. Transfer of Land, Facilities and Functions; Change of Name

Transfer of Waco State Home

Sec. 1. The custody, control, and management of the land, buildings, and facilities of the Waco State Home are transferred to the Texas Department of Mental Health and Mental Retardation effective September 1, 1979.

Change of Name

Sec. 2. Effective September 1, 1979, the name of the Waco State Home is changed to the Waco Center for Youth.

Purpose of Center

Sec. 3. The Waco Center for Youth shall be used as a residential treatment facility for emotionally disturbed juveniles who:

(1) have been committed to a facility of the Texas Department of Mental Health and Mental Retardation under the provisions of the Texas Mental Health Code, as amended; [1] or

(2) are under the managing conservatorship of the Texas Department of Human Resources and have been committed to the Waco Center for Youth under the provisions of the Texas Mental Health Code, as amended.

(3) No emotionally disturbed juvenile who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3 of the Texas Family Code [2] will be admitted to the Waco Center for Youth.

[1] Article 5547–1 et seq.
[2] Family Code, § 51.01 et seq.

Educational Services

Sec. 4. The Texas Department of Mental Health and Mental Retardation will provide free, appropriate educational services for all clients who reside at the Waco Center for Youth. The cost of such services will be paid by the Texas Department of Mental Health and Mental Retardation from funds appropriated for that purpose to said facility. No client of said facility, other than those who are legal residents of the Waco Independent School District, will receive educational services from the Waco Independent School District without the prior approval of the superintendent of said school district.

Disposition of Property

Sec. 5. The Texas Youth Council and the Texas Board of Mental Health and Mental Retardation by agreement shall provide for the transfer or retention by the Texas Youth Council of all items of state property now located at the Waco State Home, including furniture, equipment, vehicles, tools, supplies, linens, machinery, and utensils. The Texas Youth Council and the Texas Board of Mental Health and Mental Retardation shall inform the State Board of Control of the disposition made of all such property on or before September 1, 1979.

Transfer of Funds

Sec. 6. (a) From funds appropriated to the Texas Youth Council for the Waco State Home for the biennium ending August 31, 1979, the Texas Youth Council may transfer to the Texas Department of Mental Health and Mental Retardation an amount determined by agreement between the Texas Youth Council and the Texas Department of Mental Health and Mental Retardation. Any of these funds may be used by the Texas Department of Mental Health and Mental Retardation for renovation, remodeling, and alteration of buildings and facilities and purchase of equipment for the Waco Center for Youth as required to house emotionally disturbed clients or for the payment of salaries for personnel involved in the planning, development, or provision of services to emotionally disturbed clients at the facility.

(b) The Texas Department of Human Resources may transfer funds from its Fund 117, Federal Public Welfare Administrative Fund, to the Texas Department of Mental Health and Mental Retardation in an amount determined by agreement between the Texas Department of Human Resources and the Texas Department of Mental Health and Mental Retardation to be used for renovation, remodeling, and alteration of buildings and facilities and purchase of equipment for the Waco Center for Youth as required to house emotionally disturbed clients.

Department May Take Possession

Sec. 7. For the purposes of renovation, remodeling, and alteration of the buildings and facilities of the Waco State Home, the Texas Department of Mental Health and Mental Retardation may take possession of any such building or facility prior to September 1, 1979, with the prior written approval of the Texas Youth Council.

[Acts 1979, 66th Leg., p. 1360, ch. 611, eff. Aug. 27, 1979.]

SAN ANTONIO STATE SCHOOL

Art. 3263g. San Antonio State School

Sec. 1. There is hereby established the San Antonio State School for the education, care, and treatment of mentally retarded persons. The Texas Department of Mental Health and Mental Retardation may enter into agreements with the State Department of Health for use of the excess facilities of the San Antonio Chest Hospital in the operation of the school.

Sec. 2. The Texas Department of Mental Health and Mental Retardation shall appoint personnel necessary to operate and maintain the school and to adequately treat the persons admitted within the limits of legislative appropriations. The Texas Department of Mental Health and Mental Retardation shall admit persons and shall provide for their care and maintenance under the state laws, rules, and regulations governing the admission and care of mentally retarded persons.

[Acts 1975, 64th Leg., p. 2163, ch. 695, eff. June 21, 1975.]

TITLE 52

EMINENT DOMAIN

Art. 3265. Rule of Damages

[See Compact Edition, Volume 4 for text of 1 to 5]

6. Where a plaintiff after filing a petition in condemnation, desires to dismiss or abandon the proceedings, said plaintiff shall by a motion filed to the judge of the court be heard thereon, and the court hearing the same shall make an allowance to the landowner for all necessary and reasonable attorneys', appraisers', and photographers' fees and all other expenses incurred to the date of such hearing on said motion; provided, however, after a special commissioners hearing has been held and the special commissioners have made an award, the plaintiff will not be permitted to dismiss the condemnation proceedings merely to file a new petition in condemnation involving substantially the same taking against the landowner in an effort to secure a lower commissioners award from a second special commissioners hearing. If the plaintiff does dismiss and files a second petition in condemnation to condemn from the same landowner the same substantial interest in the land as in the first petition in condemnation, the landowner is entitled to three (3) times the amount of all expenses allowed the landowner prior to the dismissal of the first petition in condemnation. The court will not appoint new commissioners under the second petition in condemnation, but the court will merely enter the special commissioners award as previously found under the first petition in condemnation as the award of the special commissioners in the second petition filed by the plaintiff.

7. The owner of the land who is actually and physically displaced and permanently moved from his dwelling or place of business shall be entitled to, as a separate item of damages, the reasonable moving expenses for personal property when personal property is moved from a place of residence or from a place of business, but the maximum distance of movement to be considered shall be fifty (50) miles. In no event shall such expenses exceed the market value of such personal property; provided, however, that the provisions of this section shall not apply in any condemnation proceeding whether before special commissioners or the court where the owner is entitled to reimbursement for moving expenses under other existing law.

[Amended by Acts 1979, 66th Leg., p. 449, ch. 206, § 1, eff. May 17, 1979.]

Art. 3266a. Jurisdiction

District Courts, County Courts at Law, and County Courts

Sec. 1. The district courts of all counties in the State shall have jurisdiction concurrent with the county courts at law in eminent domain cases. The county courts shall have no jurisdiction in eminent domain cases.

Counties Without County Court at Law Having One District Court

Sec. 2. In all counties in which there is no county court at law with jurisdiction of eminent domain cases and there is one district court, the party desiring to initiate condemnation proceedings shall file its petition with the district judge; and objections to the award of the special commissioners shall be filed in that district court.

Counties With County Court at Law

Sec. 3. In all counties in which there is one county court at law with jurisdiction in eminent domain cases, the party desiring to initiate condemnation proceedings shall, except where otherwise specifically provided by law, file its petition with the judge of the county court at law; and objections to the award of the special commissioners shall be filed in that county court at law.

Transfers to District Court

Sec. 4. In any eminent domain case pending in a county court at law, whenever the judge of the court determines that the controversy involves a genuine issue of title or any other matter which cannot be fully adjudicated in the county court at law, he shall transfer the case to the district court.

Counties With Multiple County Courts at Law or No County Courts at Law and Multiple District Courts

Sec. 5. (a) In all counties in which there is no county court at law with jurisdiction of eminent domain cases and there are two or more district courts, the party desiring to initiate condemnation proceedings shall file its petition with the district clerk. The district clerk shall assign eminent domanin cases so filed to the district courts in rotation with each court receiving an equal number of eminent domain cases; and objections to the award of the special commissioners shall be filed in the district court to which the case has been assigned.

(b) In all counties in which there are two or more county courts at law with jurisdiction of eminent domain cases, the party desiring to initiate condemnation proceedings shall file its petition with the

county clerk. The county clerk shall assign eminent domain cases so filed to the county courts at law in rotation with each court receiving an equal number of eminent domain cases; and objections to the award of the special commissioners shall be filed in the county court at law to which the case has been assigned.

Construction of Act

Sec. 6. This Act shall not be construed to alter the provisions of Article 3266, Revised Civil Statutes of Texas, 1925, as amended, except that the court in which a petition is filed or assigned to initiate condemnation proceedings, under the provisions of this Act, shall appoint the special commissioners.

Proceedings Pending on Effective Date

Sec. 7. The provisions of this Act shall not apply to any proceeding pending on the effective date of this Act.

[Amended by Acts 1981, 67th Leg., p. 546, ch. 227, § 1, eff. Aug. 31, 1981.]

By the title and by § 1 of the 1981 amendatory act, said act purports to amend only § 1 of this article, while in fact the amendatory act amends the entire article, making no changes in § 1.

TITLE 52A

ENGINEERS

Art. 3271a. Texas Engineering Practice Act

[See Compact Edition, Volume 4 for text of 1 and 2]

State Board of Registration for Professional Engineers—Appointment of Members—Terms

Sec. 3. A State Board of Registration for Professional Engineers is hereby created whose duty it shall be to administer the provisions of this Act. The Board shall consist of six (6) professional engineers and three (3) representatives of the general public, who shall be appointed by the Governor of the State, without regard to the race, creed, sex, religion, or national origin of the appointees and with the advice and consent of the Senate. At the expiration of the term of each member first appointed, his successor shall be appointed by the Governor of the State and he shall serve for a term of six (6) years or until his successor shall be appointed and qualified. Before entering upon the duties of his office each member of the Board shall take the Constitutional Oath of office and the same shall be filed with the Secretary of State.

Application of Sunset Act

Sec. 3a. The State board of Registration for Professional Engineers is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

Qualifications of Members of Board

Sec. 4. (a) Each professional engineer member of the Board shall be a citizen of the United States and a resident of this State for a period of 10 years prior to appointment, and shall have been engaged in the practice of the profession of engineering for at least 10 years, two years of which may be credited for graduation from an approved engineering school. Responsible charge of engineering teaching and the teaching of engineering shall be considered as the practice of professional engineering as defined by this Act for purposes of this section and for all other purposes in regard to the administration and enforcement of this Act. A person is eligible for appointment as a public member if the person and the person's spouse:

(1) are not licensed by an occupational regulatory agency in the field of engineering;

(2) are not employed by and do not participate in the management of an agency or business entity related to the field of engineering; and

(3) do not have, other than as consumers, a financial interest in a business entity related to the field of engineering.

(b) A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the engineering industry. A member or employee of the Board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

(c) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(d) The Board by majority vote may limit the participation of general public members in the evaluations of applications for licensure except in those instances in which the evaluations take place at an official meeting of the Board.

Compensation and Expenses of Board Members

Sec. 5. Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. All per diem and expenses incurred hereunder shall be paid from the "Professional Engineers' Fund" as provided in this law. No money shall ever be paid for the administration of this Act from the General Funds of the State.

Removal of Members of Board—Vacancies

Sec. 6. (a) Vacancies in the membership of the Board shall be filled for the unexpired term by appointment by the Governor as provided in this Act.

(b) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of Section 4 of this Act for appointment to the Board;

(2) does not maintain during the service on the Board the qualifications required by Subsection (a)

of Section 4 of this Act for appointment to the Board;

(3) violates a prohibition established by Subsections (b) or (c) of Section 4 of this Act; or

(4) does not attend at least one-half of the regularly scheduled meetings held in a calendar year, excluding meetings held while the person was not a member.

(c) If a ground for removal of a member from the Board exists, the Board's actions taken during the existence of the ground for removal are not invalid for that reason.

Organization and Meetings of the Board

Sec. 7. (a) The Board shall hold at least two (2) regular meetings each year. Special meetings shall be held at such time as the by-laws of the Board may provide. The Board shall elect or appoint annually from its own membership the following officers: a Chairman, a Vice-Chairman, and a Secretary. A quorum of the Board shall consist of not less than five (5) members.

(b) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(c) The director of the Board or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of each job opening with the Board in a nonentry level position. The intraagency posting shall be made at least ten (10) days before any public posting is made.

(d) The executive head of the Board or his designee shall develop a system of annual performance evaluations of the Board's employees based on measurable job tasks. Any merit pay authorized by the executive head shall be based on the system established under this subsection.

Powers of Board; Violations of Rules and Regulations; Actions and Proceedings

Sec. 8. (a) The Board shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for engineers in keeping with the purposes and intent of this Act or to insure strict compliance with an enforcement of this Act. The violation by any engineer of any provision of this Act or any rule or regulation of the Board shall be a sufficient reason or ground to suspend or revoke the certificate of registration of or to issue a formal or informal reprimand to such engineer. In addition to any other action, proceeding or remedy authorized by law, the Board shall have the right to institute an action in its own name against any individual person to enjoin any violation of any provision of this Act or any rule or regulation of the Board and in order for the Board to sustain such action it shall not be necessary to allege or prove, either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The Board shall not be required to give any appeal bond in any cause arising under this Act. The Attorney General shall represent the Board in all actions and proceedings to enforce the provisions of this Act.

(b) The Board may promulgate rules restricting competitive bidding. The Board may not promulgate rules restricting advertising by licensees except to prohibit false, misleading, or deceptive practices by licensees. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his personal voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

(c) The Board may recognize, prepare, or administer continuing education programs for persons regulated by the Board under this Act. Participation in the programs is voluntary.

(d) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committee's statements.

[See Compact Edition, Volume 4 for text of 9]

Records and Reports

Sec. 10. (a) The Board shall keep a record of its proceedings and register of all applications for registration, which register shall show (a) the name, age and residence of each applicant; (b) the date of the application; (c) the place of business of such applicant; (d) his educational and other qualifications; (e) whether or not an examination was required; (f) whether the applicant was rejected; (g) whether a certificate of registration was granted; (h) the date of the action of the Board; and (i) such other information as may be deemed necessary by the Board.

The records of the Board shall be available to the public at all times and shall be prima facie evidence of the proceedings of the Board set forth therein, and a transcript thereof, duly certified by the Secretary of the Board under seal, shall be admissible in evidence with the same force and effect as if the original was produced.

(b) On or before January 1 of each year, the Board shall file with the Governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the Board in the preceding year.

(c) The State Auditor shall audit the financial transactions of the Board in each fiscal biennium.

Roster of Registered Engineers

Sec. 11. A roster showing the names and places of business of all registered professional engineers shall be prepared and published by the Board each biennium at a time determined by the Board. Copies of this roster shall be furnished without charge to any engineer licensed by the Board on the written request of the engineer, placed on file with the Secretary of State, and furnished to any person upon written request who tenders a reproduction fee set by the Board.

[See Compact Edition, Volume 4 for text of 12]

Certification of Engineer-in-Training

Sec. 12a. (a) The term "Engineer-in-Training," as used in this Section shall mean a person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in Sections 12 and 14 of this Act.

(b) The following shall be considered as minimum evidence that the applicant is qualified for certification as an Engineer-in-Training:

(1) A graduate of an approved engineering curriculum of four (4) years or more who has passed the Board's eight (8) hour written examination in the fundamentals of engineering shall be certified or enrolled as an Engineer-in-Training, if he is otherwise qualified; or

(2) An applicant having a high school education and a specific record of eight (8) or more years of experience or having completed an approved four (4) year curriculum in engineering technology with six (6) years of experience in engineering work of a grade and character satisfactory to the Board, who passes the Board's eight (8) hour written examination in the fundamentals of engineering shall be certified or enrolled as an Engineer-in-Training, if he is otherwise qualified.

(c) The fee for Engineer-in-Training certification or enrollment shall be established by the Board and shall accompany the application. This fee may be credited toward the fee necessary for registration.

(d) The certification or enrollment of an Engineer-in-Training shall be valid for a period of twelve (12) years.

Applications and Registration Fees

Sec. 13. Applications for registration shall be on forms prescribed and furnished by the Board, shall contain statements made under oath, showing the applicant's education and a detailed summary of his actual engineering work, and shall contain not less than five (5) references, of whom three (3) or more shall be engineers having personal knowledge of his engineering experience.

The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

1.	Registration fee	$ 50
2.	Annual renewal fee	45
3.	Reciprocal registration fee	50
4.	Duplicate certificate of registration	5
5.	Engineer-in-training certificate	15
6.	Roster of engineers	10
7.	Examination fee	75

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

Examinations

Sec. 14. (a) When oral or written examinations are required, they shall be held at such time and place as the Board shall determine. The scope of the examinations and the methods of procedure shall be prescribed by the Board with special reference to the applicant's ability to design and supervise engineering works, which shall insure the safety of life, health, and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration in professional engineering. A candidate failing on examination may apply for re-examination at the expiration of six (6) months and will be re-examined without payment of additional fees. Re-examination may be granted at any time upon payment of a fee to be determined by the Board.

(b) Within 30 days after the day on which a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination within two weeks after the day that the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

(d) The Board may administer written examinations for record purposes as a convenience to the public and may charge an appropriate fee.

[See Compact Edition, Volume 4 for text of 15]

Expirations and Renewals

Sec. 16. (a) It shall be the duty of the Board to notify every person registered under this Act of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate.

(b) A person may renew an unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not longer than 90 days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the application fee for the license.

(d) If a person's license has been expired for longer than 90 days but less than two years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the application fee for the license.

(e) If a person's license has been expired for two years or longer, the person may not renew the license. The person may obtain a new license by submitting to an examination to be determined by the Board and complying with the requirements and procedures for obtaining an original license.

[See Compact Edition, Volume 4 for text of 16.1 to 20]

Reciprocity

Sec. 21. The Board may, upon application therefor, and the payment of a fee, issue a certificate of registration as a professional engineer to any person who holds a certificate of qualification or registration issued to him by proper authority of the National Council of State Boards of Engineering Examiners, or of the National Bureau of Engineering Registration, or of any state or territory or possession of the United States, or any country provided that the requirements for the registration of professional engineers under which said certificate of qualification or registration was issued do not conflict with the provisions of this Act and are of a standard not lower than that specified in Section 12 of this Act. The Board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this State.

Revocation, Suspension, Probation, Reprimand, Re-Issuance and Refusal of Certificate

Sec. 22. The Board shall revoke, suspend, or refuse to renew a registration, shall reprimand a registrant, or may probate any suspension of any registrant who is found guilty of:

(a) The practice of any fraud or deceit in obtaining a certificate of registration;

(b) Any gross negligence, incompetency, or misconduct in the practice of professional engineering as a registered professional engineer; or

(c) A violation of this Act or a Board rule.

Any person who may feel himself aggrieved by reason of the revocation of his certificate of registration by the Board, as hereinabove authorized, shall have the right to file suit in the district court of the county of his residence, or of the county in which the alleged offense relied upon as grounds for revocation took place, to annul or vacate the order of the Board revoking the certificate of registration.

If the Board proposes to suspend or revoke a person's certificate of registration, the person is entitled to a hearing before the Board. Proceedings for the suspension or revocation of a certificate of registration are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

The Board, for reasons it may deem sufficient, may re-issue a certificate of registration to any person whose certificate has been revoked, provided six (6) or more members of the Board vote in favor of such re-issuance. A new certificate of registration, to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the Board.

Information About Complaints

Sec. 22A. (a) The Board shall keep an information file about each complaint filed with the Board relating to a licensee.

(b) If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation.

Consumer Information

Sec. 22B. The Board shall prepare information of consumer interest describing the regulatory functions of the Board and describing the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make information available to the general public and appropriate state agencies.

[See Compact Edition, Volume 4 for text of 23 to 25]

[Amended by Acts 1975, 64th Leg., p. 299, ch. 129, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 964, ch. 362, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.033, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 3254, ch. 857, § 1, eff. Sept. 1, 1981.]

Sections 2 and 3 of Acts 1977, 65th Leg., p. 965, ch. 362, provided:

"Sec. 2. If any section, subsection, paragraph, sentence, clause, phrase, or word is this Act, or application thereof to any person or circumstance for any reason is held invalid, such holdings shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares it would have passed such remaining portions of this Act despite such invalidity of any part thereof.

"Sec. 3. All laws or parts of laws in conflict or inconsistent herewith are hereby repealed to the extent of such conflict or inconsistency only."

Sections 2 to 4 of the 1981 amendatory act provide:

"Sec. 2. (a) A person holding office as a member of the State Board of Registration for Professional Engineers on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall appoint three public members to the board. The governor shall designate one public member for a term expiring in 1983, one for a term expiring in 1985, and one for a term expiring in 1987. The terms of office of these appointees begin on the day in 1981 on which the terms of other members of the board begin.

"Sec. 3. A rule adopted by the State Board of Registration for Professional Engineers before September 1, 1981, that conflicts with The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule.

"Sec. 4. (a) This Act takes effect September 1, 1981.

"(b) The requirements of Subsections (c) and (d), Section 7, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), as added by this Act, that the executive head of the board develop a career ladder program and a system of annual performance evaluations, shall be implemented before September 1, 1982. The requirement of Subsection (d) of Section 7 that merit pay is to be based on this system shall be implemented before September 1, 1983."

TITLE 53

ESCHEAT

Art. 3272. When Estates Shall Escheat

Escheat After Seven Years

Sec. 1. Except as provided by Section 2 of this article, if any person die seized of any real estate or possessed of any personal estate, without any devise thereof, and having no heirs, or where the owner of any real or personal estate shall be absent for the term of seven years, and is not known to exist, leaving no heirs, or devisee of his estate, such estate shall escheat to and vest in the State. Where no will is recorded or probated in the county where such property is situated within seven years after the death of the owner it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in, such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be prima facie evidence of the death of the owner without heirs. Any one paying taxes to the State on such property, either personally or through an agent, shall be held to be exercising lawful acts of ownership in such property within the meaning of this title, and shall not be concluded by any judgment, unless he be made a party by personal service of citation, to such escheat proceedings, if a resident of this State, and his address can be secured by reasonable diligence, but, if he be a non-resident of the State or can not be found, the personal service of citation shall be made upon any agent of such claimant, if such agent, by the use of reasonable diligence, can be found; such diligence to include an investigation of the records of the office and inquiry of the tax collector and tax assessor of the county in which the property sought to be escheated is situated.

Escheat After Fifteen Years

Sec. 2. The portion of a personal estate that consists of travelers checks does not escheat to the State under Section 1 of this article because of the absence of the owner of the travelers checks, nor is the owner presumed to be dead or to have abandoned the checks, until the passage of fifteen years as provided by Section 1(d) of Article 3272a, Revised Civil Statutes of Texas, 1925, instead of seven years as provided by Section 1 of this article.

[Amended by Acts 1981, 67th Leg., p. 2407, ch. 610, § 1, eff. Sept. 1, 1981.]

Art. 3272a. Personal Property Subject to Escheat

Report by Holder of Personal Property

Sec. 1.

[See Compact Edition, volume 4 for text of 1(a) and 1(b)]

(c) Except as provided by Subsection (d) of this Section, the term "subject to escheat" shall include personal property presumed to be subject to escheat by the prima facie conclusions contained in Article 3272, including all personal property (1) of which the existence and whereabouts of the owner are unknown and have been unknown to the holder for more than seven (7) years and (2) on which, from the knowledge and records of the holder it appears that no claim or act of ownership has been asserted or exercised during the past seven (7) years and (3) on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years.

(d) A travelers check is not presumed abandoned or subject to escheat by the provisions of Article 3272 until the 15th anniversary of the date the check was issued, of the date the issuer last received a written communication from the owner concerning the check, or the date of the last indication of the owner's interest in the check that is evidenced by a writing on file with the issuer, and unless:

(1) the records of the issuer indicate that the check was purchased in this State;

(2) the issuer has its principal place of business in this State and the records of the issuer do not indicate the state in which the check was purchased; or

(3) the issuer has its principal place of business in this State, the records of the issuer indicate the check was purchased in another state, and the laws of the state of purchase do not provide for the escheat or custodial taking of the check or its escheat or unclaimed property law is not applicable to the check.

Form of Report

Sec. 2. The report shall be prepared and returned in triplicate, verified under oath, and shall include the following:

(a) The name, if known, and last known address, if any, of each person appearing from the

records of the holder to be the owner of the property reported; or the name and address, if known, of any person who may be entitled to such property; together with a brief description of the property, which in the case of deposits, shall disclose the total balance. If any deductions have been made therefrom by the holder for service, maintenance, or other charges, they shall be disclosed unless such deductions have been fully restored in the total amount reported as provided in subsection (d) below.

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured beneficiary or annuitant and his last known address according to the life insurance corporation's records.

(c) In the case of mineral proceeds, a list of all credits grouped as to the counties from which the credited proceeds were derived, including credits which have theretofore been charged off or disposed of in any manner except by payment to the owner thereof; giving the name and last known address of the owner; the fractional mineral interest of the owner; description and location of the land or lease from which the oil, gas, or mineral was produced; the name of the person, firm or corporation who operated the oil or gas well or mine; the period of time during which such proceeds accumulated and the price for which such oil, gas, or other mineral was sold, each such several ownerships to be given an identifying number. The nature and identifying number, if any, or description of the property, and the amount appearing from the records to be due, except that items of value under Ten Dollars ($10) each may be reported in aggregate;

(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property. Since the State upon escheat is entitled to all rights of the former owner, in the case of dormant deposits or accounts on which deductions for service, maintenance, or other charges would be restored under the policy or procedures of the holder upon request by the owner, such deposits or accounts shall be reported and shall be subject to escheat hereunder in the same amount to which the former owner would be entitled upon such request; and

(e) Other information which may be prescribed by rule of the State Treasurer as necessary for the administration of this Article.

(f) The verification under oath at the conclusion of the report shall include the following language:

"The foregoing report contains a full and complete list of all personal property held by the undersigned that, from the knowledge and records of the undersigned, is subject to escheat to the State of Texas."

(g) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

[See Compact Edition, Volume 4 for text of 3 to 16]

[Amended by Acts 1981, 67th Leg., p. 2407, ch. 610, §§ 2 and 3, eff. Sept. 1, 1981.]

Art. 3272b. Duties of Depositories of Dormant or Inactive Accounts

[See Compact Edition, Volume 4 for text of 1 to 3]

Report to State Treasurer

Sec. 4. On or before May 1st of the year following the first publication required by this Article, the depository shall submit in duplicate copies a report to the State Treasurer listing the names of all such depositors or creditors whose names were published, whose whereabouts and the whereabouts of any owner of such deposit or credit still remain unknown, and each of whose deposits or accounts still remain in a dormant or inactive status. Such report shall set forth in alphabetical order the name and last known address of the depositor or creditor, the date and amount appearing to be due each depositor or creditor when the account first became dormant or inactive, or on January 1, 1959, whichever date is later, the amount credited to such account at the time of the report, the date of the last transaction with the depositor or creditor, and its identification number, if any. If the amount then credited to an account is less than the amount of the initial dormant deposit or inactive account, except for its share of publication costs, the reason for such reduction shall be stated.

The subscribing officer shall certify under oath that the report is a complete and correct statement of all dormant deposits and inactive accounts held by the depository subject to the reporting provisions of Section 4 of Article 3272b; that the existence and whereabouts of the listed depositors or creditors are unknown to the depository; and that the listed depositors or creditors have not asserted any claim or exercised any act of ownership with respect to the reported accounts during the past seven (7) years.

Together with the foregoing report, the depository shall deliver to the State Treasurer a sum equal to the total amount of the accounts listed in the report, and the State Treasurer shall sign a receipt therefor and shall assume custody thereof. The State shall be responsible for the safekeeping thereof, and any depository delivering such deposits or accounts to the State Treasurer under this Act is relieved of all liability for any claim which then exists or which may thereafter arise or be made in respect to the property.

State Conservator Fund

Sec. 5. All funds received by the State Treasurer under the provisions of this Article or from the escheat of any deposit, credit, account or other property held by any bank or other institution covered by Section 1(a) hereof shall be deposited into a separate fund to be known as the "State Conservator Fund," from which there shall be set aside and maintained a revolving expense fund of Twenty-five Thousand Dollars ($25,000) for the purpose of paying expenses incurred by the State Treasurer in the enforcement of the provisions of this Article, including the expense of publications, forms, notices, examinations, travel, and employment of necessary personnel; and thereafter any amounts remaining unpaid to owners shall be transferred to the Available School Fund; provided that the State Conservator Fund shall never be reduced below Two Hundred and Fifty Thousand Dollars ($250,000). This sum shall remain available for payments to those who may at any time in the future establish their ownership or right as herein provided to any deposit or account delivered to the State Treasurer under this Act. The moneys in such fund over Fifty Thousand Dollars ($50,000) shall be invested from time to time by the State Treasurer in investments which are approved by law for the investment of any State funds, and the income thereof shall be and become a part of the said State Conservator Fund. The expense fund of Twenty-five Thousand Dollars ($25,000) is hereby appropriated to the State Treasurer for the purposes above stated for the biennium ending August 31, 1963.

The State Banking Commissioner shall transfer to the State Treasurer for deposit in the State Conservator Fund all dormant deposits and other funds formerly owned by or deposited in liquidated depositories which have been held by the Commissioner for more than twenty (20) years and of which the whereabouts of the depositors, creditors or owners have been unknown to him for more than twenty (20) years. Upon delivery, together with a certificate of such facts under oath of the State Banking Commissioner, the funds shall be subject to conservation and disposition under the terms of this Article. The State Banking Commissioner shall deliver to the State Treasurer a record of the names of the liquidated depositories, and the names and last known addresses of the depositors and creditors and the amounts of the deposits, credits, or other funds.

The State Treasurer shall compile an alphabetical list containing the name and last known address of each depositor or creditor listed on the depository reports and the amount of each depositor account. The State Treasurer shall revise the list not later than June 1 of each year. The list shall be available for public inspection at all reasonable business hours.

[See Compact Edition, Volume 4 for text of 6 to 10]

[Amended by Acts 1975, 64th Leg., p. 638, ch. 263, §§ 1, 2, eff. Sept. 1, 1975.]

TITLE 55

EVIDENCE

1. WITNESSES AND EVIDENCE

Article
3737g. Advance Payment to Tort Claimants; Introduction of Evidence.
3737h. Necessity of Services and Reasonableness of Charges.

1. WITNESSES AND EVIDENCE

Art. 3712a. Interpreters for Deaf Persons

(a) In all civil cases or in the taking of depositions, where a party or a witness is a deaf person, he shall have the proceedings of the trial interpreted to him in any language that he can understand, including but not limited to sign language, by an interpreter appointed by the court, whose qualifications have been approved by the State Commission for the Deaf. In this Act, "deaf person" means a person who has a hearing impairment, regardless of whether the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(b) In any case where an interpreter is required to be appointed by the court under this Act, the court shall not commence proceedings until the appointed interpreter is in court in a position not exceeding 10 feet from and in full view of the deaf person.

(c) The interpreter appointed under the terms of this Act shall be required to take an oath that he will make a true interpretation to the deaf person of all the proceedings of the case in a language that he understands; and that he will repeat the deaf person's answer to questions to counsel, court, or jury, in the English language, in his best skill and judgment. When a deaf person communicates through an interpreter to a person under such circumstances that the communication would be privileged and the deaf person could not be compelled to testify as to the communications, the privilege applies to the interpreter as well.

(d) Interpreters appointed under this Act shall be paid a reasonable fee determined by the court after considering the recommended fees of the State Commission for the Deaf. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees. The fee and expenses shall be paid from the general fund of the county in which the case was instituted.

(e) On the court's motion or the motion of a party, the court may order testimony of a deaf witness and the interpretation of that testimony by the interpreter visually, electronically recorded for use in verification of the transcription of the reporter's notes. The clerk of the court shall include the recording in the appellate record if requested by a party.

[Amended by Acts 1979, 66th Leg., p. 397, ch. 186, § 2, eff. May 15, 1979.]

Art. 3731a. Official Written Instruments, Certificates, Records, Returns and Reports; Proceedings of the State Legislature; Foreign Laws

[See Compact Edition, Volume 4 for text of 1]

Proceedings of the State Legislature

Sec. 1a. All available written or electronic records of the proceedings of the state legislature which are required by the rules of the respective houses to be preserved may be attested by the presiding officer of each house or by a deputy designated by him for such purpose. The attested records or copies or duplications thereof shall be, so far as relevant, admitted in the courts of this state as evidence of the matters stated therein, subject to the provisions of Section 3 of this Act, without the necessity of the presence in the court of the presiding officer or deputy designated to attest, preserve, or display the records, copies, or duplications.

[See Compact Edition, Volume 4 for text of 2 and 3]

Authentication of Copy

Sec. 4. Such writings or electronic records may be evidenced by an official publication thereof or by a copy or electronic duplication attested by the officer having the legal custody of the record, or by his deputy. Except in the case of a copy of an official writing or official electronic recording from a public office of this State or a subdivision thereof, the attestation shall be accompanied with a certificate that the attesting officer has the legal custody of such writing. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign

service of the United States, or by any officer of a United States military government, stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office. In the case of the matters in Section 2a, the substance, contents, and/or wording of any of such matters may also be evidenced by certification, as to existence on a particular date or dates by the governmental head of such country or his secretary, or such country's attorney (such as attorney general) or assistant attorney or chief legal head, or the president, leader or head of its or one of its law-making bodies or the secretary thereof; or judge or any justice of any appellate court of such country and if none, judge or any justice of one or any one of its highest judicial tribunals. All such attested and certified instruments and the contents of the certificate and the title of the person making same, shall be evidence of the matters, statements, representations and title contained therein.

[See Compact Edition, Volume 4 for text of 5 and 6]

[Amended by Acts 1975, 64th Leg., p. 666, ch. 280, § 1, eff. Sept. 1, 1975.]

Art. 3737g. Advance Payment to Tort Claimants; Introduction of Evidence

Purpose of Act

Sec. 1. The purpose of this Act is to promote the making of advance payments for economic loss to claimants without permitting the introduction of evidence of advance payments on the issue of liability or damages during subsequent litigation, but permitting the allowance of advance payments as a credit against any sum judicially established as a claimant's total damages. The making of periodic payments to claimants for medical expenses, wages lost, and property damaged, often without taking any form of release, will avoid delays in and promote payments for economic loss to persons in need.

"Advance Payment" Defined

Sec. 2. In this Act, "advance payment" includes but is not limited to, any partial payment or payments made by any person, corporation, or insurer to another which is predicated on possible tort liability for medical, surgical, hospital, or rehabilitation services, facilities, or equipment; loss of earnings; out-of-pocket expenses; bodily injury; death; or property damage, loss, or destruction.

Inadmissibility of Evidence of Advance Payment at Trial

Sec. 3. In any civil action in which a party or someone on his behalf, such as his insurer, has made an advance payment prior to trial, any evidence of or concerning the advance payment shall be inadmissible at the trial on liability or damages in any action brought by the claimant, his survivor, or his personal representative to recover damages for personal injuries or related damages, for wrongful death of another, or for property damage or destruction.

Admissibility of Evidence of Advance Payment after Verdict or Decision; Right to Jury Trial Undenied

Sec. 4. If an action results in a jury verdict or decision of the court for damages in favor of a party, the party against whom the verdict or decision is entered may introduce evidence of advance payments after the verdict or decision and before final judgment, and the court shall then reduce the amount awarded to the claimant by the amount of the advance payment proved to have been made prior to trial. Such advance payments shall not be permitted as a reduction of the amount awarded unless there is evidence at the trial on liability that the party to whom the advance payments were made suffered loss as described in Section 2 herein, equal to or exceeding the amount of such advance payments. Nothing in this Act shall be construed to deny to any party his constitutional right to trial by jury on the amount of the credit at a time subsequent to the trial on liability and damages.

Application of Act

Sec. 5. This Act applies to any action filed after the effective date of this Act, regardless of the site of the accident, location of property, or residence of the parties.

Statute of Limitations Tolled

Sec. 6. The making of an advance payment tolls the running of the statute of limitations until the last payment is made unless the person making the advance payment notifies the recipient in writing at the time of each payment that the applicable statute of limitations is not tolled.

[Acts 1975, 64th Leg., p. 962, ch. 364, eff. June 19, 1975.]

Art. 3737h. Necessity of Services and Reasonableness of Charges

Sec. 1. (a) In a civil action other than an action on sworn account, the amount charged for services by a person or institution, when supported by affidavit that the charges reflected in the affidavit were reasonable at the time and place that the services were rendered and that the services were necessary, is sufficient evidence to support a finding of fact by judge or jury that the services were necessary or that the amount charged was reasonable, or both. The affidavit shall be taken before an officer authorized to administer oaths, shall be made by a person who rendered the services or who is in charge of records that show the services rendered and the charges made, and shall include an itemized statement of the services and the charges.

(b) As a condition precedent to applicability of Subsection (a) of this Section 1, the party asserting such applicability, or such party's attorney of record, shall file the affidavit provided for in said Subsection (a) with the clerk of the court and shall serve a copy thereof on each other party to the cause, or such other party's attorney of record, at least 14 days prior to the day on which presentation of evidence at trial of the cause commences. As a

condition precedent to controverting a claim covered by an affidavit so filed and served, any party intending to controvert all or part of any such claim shall, within 10 days after receipt of such party's copy of such affidavit, or with leave of court first had and obtained at any time prior to commencement of evidence at trial of the cause, file a counter-affidavit with the clerk of the court and serve a copy thereof on each other party to the cause, or such other party's attorney of record. The counter-affidavit shall give reasonable notice of the basis upon which the party filing it intends at trial to controvert all or part of the claim covered by the initial affidavit. The counter-affidavit shall be taken before a person authorized to administer oaths and may be made upon information and belief by the party filing it, or such party's attorney of record. When a counter-affidavit is so filed and served, then Subsection (a) of this Section 1 shall thereafter have no force or effect at the trial of the cause.

Sec. 2. This Act does not apply to civil actions in which judgment was rendered prior to the effective date of this Act, nor to attorney fees charged in the trial of the cause or preparation thereof.

[Acts 1979, 66th Leg., p. 1778, ch. 721, eff. Aug. 27, 1979.]

TITLE 56

EXECUTION

Article
3799a. Liability of Officer Executing Writ; Recovery of Seized Property.
3827a. Collection of Judgments by Court Proceedings.

Art. 3799a. Liability of Officer Executing Writ; Recovery of Seized Property

Immunity of Officers Executing Writs

Sec. 1. Except as provided by Article 3799, Revised Civil Statutes of Texas, 1925, an officer is not liable for damages resulting from the execution of a writ issued by a Texas court if the officer in good faith executes the writ as provided by law and by the Texas Rules of Civil Procedure and uses reasonable diligence in performing his official duties.

No Indemnification

Sec. 2. An officer shall execute a writ issued by a Texas court without requiring that bond be posted for indemnification of the officer.

Recovery of Seized Property

Sec. 3. (a) Unless property has been sold at an execution sale as provided by law and by the Texas Rules of Civil Procedure, a person is entitled to recover his property that has been seized through execution of a writ issued by a court if the judgment upon which the execution is issued is later reversed or set aside.

(b) If the property has been sold, a person who would otherwise be entitled to recover the property is entitled to recover from the judgment creditor the market value of the property sold at the time of the sale.

[Acts 1981, 67th Leg., p. 2659, ch. 714, eff. Aug. 31, 1981.]

Art. 3810. Sales Under Deed of Trust

All sales of real estate made under powers conferred by any deed of trust or other contract lien shall be made in the county in which such real estate is situated. Where such real estate is situated in more than one county then notices as herein provided shall be given in both or all of such counties, and the real estate may be sold in either county, and such notice shall designate the county where the real estate will be sold. Notice of such proposed sale shall be given by posting written notice thereof at least 21 days preceding the date of the sale at the courthouse door of the county in which the sale is to be made, and if the real estate is in more than one county, one notice shall be posted at the courthouse door of each county in which the real estate is situated.

In addition, the holder of the debt to which the power is related shall at least 21 days preceding the date of sale serve written notice of the proposed sale by certified mail on each debtor obligated to pay such debt according to the records of such holder. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such debtor at the most recent address as shown by the records of the holder of the debt, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service. Such sale shall be made at public vendue between the hours of 10:00 a. m. and 4:00 p. m. of the first Tuesday in any month.

[Amended by Acts 1975, 64th Leg., p. 2354, ch. 723, § 1, eff. Jan. 1, 1976.]

Section 2 of the 1975 amendatory act provided:

"This Act shall become effective on January 1, 1976, and it shall apply only to sales made after that date."

Art. 3827a. Collection of Judgments by Court Proceedings

(a) A judgment creditor whose judgment debtor is the owner of property, including present or future rights to property, which cannot readily be attached or levied on by ordinary legal process and is not exempt from attachment, execution, and every type of seizure for the satisfaction of liabilities, is entitled to aid from a court of appropriate jurisdiction by injunction or otherwise in reaching the property to satisfy the judgment.

(b) The court may order the property of the judgment debtor referred to in Subsection (a) of this section, together with all documents or records related to the property, that is in or subject to the possession or control of the judgment debtor to be turned over to any designated sheriff or constable for execution or otherwise applied toward the satisfaction of the judgment. The court may enforce the order by proceedings for contempt or otherwise in case of refusal or disobedience.

(c) The court may appoint a receiver of the property of the judgment debtor referred to in Subsection (a) of this section, with the power and authority to take possession of and sell the nonexempt proper-

ty and to pay the proceeds to the judgment creditor to the extent required to satisfy the judgment.

(d) These proceedings may be brought by the judgment creditor in the same suit in which the judgment is rendered or in a new and independent suit.

(e) In a proceeding under this section, a judgment creditor is entitled to recover reasonable costs, including attorney's fees.

[Acts 1979, 66th Leg., p. 1555, ch. 671, § 1, eff. June 13, 1979.]

TITLE 57

EXEMPTIONS

1. PROPERTY EXEMPT FROM FORCED SALE

Art. 3836. Personal Property Exempt from Satisfaction of Liabilities

(a) Personal property (not to exceed an aggregate fair market value of $15,000 for each single, adult person, not a constituent of a family, or $30,000 for a family) is exempt from attachment, execution and every type of seizure for the satisfaction of liabilities, except for encumbrances properly fixed thereon, if included among the following:

(1) furnishings of a home, including family heirlooms, and provisions for consumption;

(2) all of the following which are reasonably necessary for the family or single, adult person, not a constituent of a family: implements of farming or ranching; tools, equipment, apparatus (including a boat), and books used in any trade or profession; wearing apparel; two firearms and athletic and sporting equipment;

(3) all passenger cars and light trucks, as those terms are defined by Section 2, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), that are not held or used for production of income or, whether held or used for production of income or not, any two of the following categories of means of travel: two animals from the following kinds with a saddle and bridle for each: horses, colts, mules, and donkeys; a bicycle or motorcycle; a wagon, cart, or dray, with harness reasonably necessary for its use; an automobile or station wagon; a truck cab; a truck trailer; a camper-truck; a truck; a pickup truck;

(4) livestock and fowl not to exceed the following in number and forage on hand reasonably necessary for their consumption: 5 cows and their calves, one breeding-age bull, 20 hogs, 20 sheep, 20 goats, 50 chickens, 30 turkeys, 30 ducks, 30 geese, 30 guineas;

(5) a dog, cat, and other household pets;

(6) the cash surrender value of any life insurance policy in force for more than two years to the extent that a member or members of the family of the insured person or a dependent or dependents of a single, adult person, not a constituent of a family, is beneficiary thereof;

(7) current wages for personal services.

[See Compact Edition, Volume 4 for text of (b) to (d)]

[Amended by Acts 1979, 66th Leg., p. 688, ch. 302, § 2, eff. May 31, 1979.]

TITLE 59

FEEBLE MINDED PERSONS—PROCEEDINGS IN CASE OF

Art. 3871b. Repealed by Acts 1977, 65th Leg., p. 797, ch. 294, § 69, eff. Jan. 1, 1978

See, now, the Mentally Retarded Persons Act, classified as art. 5547–300.

TITLE 60

FEEDING STUFF

Art. 3881e. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Agriculture Code.

Prior to repeal, § 7(a) to (d) of this article was amended by Acts 1977, 65th Leg., p. 1629, ch. 641, § 1.

TITLE 61

FEES OF OFFICE

CHAPTER ONE. GENERAL PROVISIONS

Article

3883i–3. Compensation of Judges of Probate Court; Counties of Not Less Than 700,000
3912*l*. Secretarial Personnel of District, County or Precinct Officers.

Arts. 3883c–2, 3883c–3. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 3883i. Maximum and Minimum Salaries; Certain Precinct, County and District Officials in Certain Counties

[See Compact Edition, Volume 4 for text of 1]

(a) Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

Counties of 19,500 to 19,700

Sec. 1½. Provided, however, that in addition to the maximum compensation provided in Section 1, that in all counties having a population of not less than nineteen thousand, five hundred (19,500) and not more than nineteen thousand, seven hundred (19,700) according to the last preceding federal census, and where all such county officials are compensated on a salary basis, the Commissioners Courts are authorized to increase the compensation allowed in Section 1 above in an additional amount not to exceed Two Thousand, Six Hundred Dollars ($2,600) per annum, provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

Secs. 1A, 1B. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

Counties of 11,200 to 11,400 or 14,100 to 14,500

Sec. 1C. In any county having a population of not less than 11,200 nor more than 11,400, or not less than 14,100 nor more than 14,500, according to the last preceding Federal Census, the Commissioners Court may fix the salaries of county and district officials named in this Act in an amount not to exceed $12,500 a year. The provisions of Section 18 of this Act do not apply to salaries set under this section.

Counties of 17,450 to 17,600

Sec. 1D. In any county having a population of not less than 17,450 nor more than 17,600 according to the last preceding Federal Census, the commissioners court may fix the salaries of officials named in Sections 6 and 7a of this Act at not more than $12,000 a year. The provisions of Section 18 of this Act do not apply to salaries set under this section.

Counties of 18,300 to 18,600

Sec. 1E. In each county of the State of Texas having a population of not less than 18,300 nor more than 18,600, according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of the officials named in this Act at a sum of not more than Fifteen Thousand Dollars ($15,000) per annum, all salaries to be paid in twelve (12) equal monthly installments; providing that no salary covered by this Act shall be set at a lower figure than that actually paid on the effective date of this section. Section 18 of this Act does not apply to salaries set under this section.

Counties of 4,500 to 4,600

Sec. 1F. In any county having a population of not less than 4,500 nor more than 4,600 according to the last preceding federal census, and paying county officials on a salary basis, the Commissioners Court may set the compensation of persons listed in this Act in an amount not to exceed $9,600 a year; however, no salary may be set at a figure lower than that actually paid on the effective date of this amendment. The provisions of Section 18 of this Act do not apply to salaries set under this section.

[See Compact Edition, Volume 4 for text of 2]

Counties of 6,550 to 6,650

Sec. 2A. In any county having a population of not less than 6,550 nor more than 6,650 inhabitants according to the last preceding federal census, the commissioners court may fix the salaries of county and district officials named in this Act in an amount not to exceed $12,000 a year; provided, that no salary shall be set at a figure lower than that actually paid on the effective date of this amendment.

Counties of 61,000 to 65,000

Sec. 2B. In any county which has a population of not less that sixty-one thousand (61,000) nor more than sixty-five thousand (65,000), according to the last preceding federal census, the Commissioners Courts shall fix the salaries of the county and district officials named in this Act at not more than Twelve Thousand Dollars ($12,000) per annum.

Counties of 25,050 to 25,200

Sec. 2E. In any county having a population of not less than 25,050 nor more than 25,200 according to the last preceding federal census, the commissioners court may fix the salaries of officials named in Sections 6 and 7a of this Act at not more than $12,000 a year. The provisions of Section 18 of this Act do not apply to salaries set under this section.

Counties of 40,000 to 40,500

Sec. 2F. In any county having a population of not less than 40,000 nor more than 40,500, according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of the county and district officials named in this Act at not more than Fifteen Thousand Dollars ($15,000) per annum. Section 18 of this Act does not apply to salaries set under this section.

Counties of 37,700 to 38,000

Sec. 2G. In any county having a population of not less than 37,700 nor more than 38,000, according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of the county and district officials named in this Act at not more than Fifteen Thousand Dollars ($15,000) per annum. Section 18 of this Act does not apply to salaries set under this section.

Counties of 4,605 to 4,615

Sec. 2H. In any county having a population of not less than 4,605 nor more than 4,615, according to the last preceding Federal Census, the Commissioners Court may fix the salaries of county and district officials named in this Act in an amount not to exceed $12,000 per year.

[See Compact Edition, Volume 4 for text of 3]

Counties of 99,400 to 110,000

Sec. 3A. In each county in the state having a population of at least ninety-nine thousand, four hundred (99,400) and not more than one hundred ten thousand (110,000) inhabitants according to the last preceding federal census, the Commissioners Court shall fix the salaries of the officials named in this Act at not more than Sixteen Thousand Dollars ($16,000) per annum. Notwithstanding the provisions of Sections 15 and 18 of this Act, the Commissioners Court of such a county may not exercise the authority vested in it by virtue of this Act except at a regular meeting of the Court and after thirty (30) days notice published in a newspaper of general circulation in the county at least four times, one time a week.

Counties of 140,000 to 144,000

Sec. 3B. In each county in the state having a population of at least one hundred forty thousand (140,000) and not more than one hundred forty-four thousand (144,000) inhabitants according to the last preceding federal census, the Commissioners Court shall fix the salaries of the officials named in this Act at not more than Sixteen Thousand Dollars ($16,000) per annum. Notwithstanding the provisions of Sections 15 and 18 of this Act, the Commissioners Court of such a county may not exercise the authority vested in it by virtue of this Act except at a regular meeting of the Court and after thirty (30) days notice published in a newspaper of general circulation in the county at least four times, one time a week.

Counties of 98,001 to 195,000

Sec. 4. In each county in the State of Texas having a population of at least ninety-eight thousand and one (98,001) and not more than one hundred and ninety-five thousand (195,000) inhabitants according to the last preceding federal census, the Commissioners Court shall fix the salaries of the county and district officials named in this Act at not more than Eleven Thousand Dollars ($11,000) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

Counties of 170,000 to 205,000, or 210,000 to 240,000, or 280,000 to 400,000

(a) In each county of the State of Texas governed by Section 4 hereof and having a population of at least one hundred seventy thousand (170,000) and less than two hundred five thousand (205,000), or having a population of at least two hundred ten thousand (210,000) and less than two hundred forty thousand (240,000), or having a population of at least two hundred eighty thousand (280,000) and less than four hundred thousand (400,000), according to the last preceding federal census where all county and district officials are compensated on a salary basis, the Commissioners Court shall fix the salaries of the officials named in this Act at a sum of not more than Seventeen Thousand, Five Hundred Dollars ($17,500) per annum; providing that no salary covered by this Act shall be set at a lower figure than that actually paid on the effective date of this Act and further providing this Subsection shall be cumulative of all other laws pertaining to the compensation of county officials.

Counties of 190,000 to 205,000

(b) In each county of the State of Texas governed by Section 4 and Subsection 4(a) hereof and having a population of at least one hundred ninety thousand (190,000) but less than two hundred five thousand (205,000) according to the last preceding federal census where the County Judge is compensated on a salary basis, the Commissioners Court shall fix the yearly salary of the County Judge at a sum not less than 90 percent of the total salary, including supplements, paid any District Judge sitting in Galveston County; providing that no salary covered by this Act shall be set at a lower figure than that actually paid on the effective date of this Act and further providing that this subsection shall be cumulative of all other laws pertaining to the compensation of County Judges.

Counties of 240,000 to 280,000 or 400,000 to 800,000

Sec. 5. In each county in the State of Texas having a population of at least two hundred forty thousand (240,000) inhabitants and less than two hundred eighty thousand (280,000) inhabitants or at least four hundred thousand (400,000) inhabitants and less than eight hundred thousand (800,000) inhabitants, according to the last preceding Federal Census, the Commissioners Courts shall fix the salaries of the county and district officials named in this Act at not more than Eighteen Thousand, Five Hundred Dollars ($18,500) per annum; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

Officials to Which Statute Applies

Sec. 6. The provisions of Sections 1, 2, 3, 4 and 5 of this Act shall be applicable to judges of the county courts at law, judges of the county criminal courts, judges of the county probate courts, judges of the county domestic relations court, and criminal district attorneys.

[See Compact Edition, Volume 4 for text of 7 and 7a]

Counties of 1,200,000 to 2,000,000

Sec. 8(a). In all counties of this State having a population of not less than one million, two hundred thousand (1,200,000) inhabitants and not more than two million (2,000,000) inhabitants, according to the last preceding Federal Census, the Commissioners Court shall fix the salaries of county officials as follows:

The Commissioners Court of each county to which this Subsection (a) applies may fix the salary of each of the Judges of the Probate Courts, Judges of the County Courts at Law, and Judges of the County Criminal Courts at Law at an amount not to exceed One Thousand Dollars ($1,000) less per annum than the total annual salary received by Judges of the District Courts in such counties, which shall be paid in twelve (12) equal monthly installments.

[See Compact Edition, Volume 4 for text of 8(b)]

Counties of 900,000 to 1,000,000

(c) In all counties of this state having a population of not less than 900,000 nor more than 1,000,000 according to the last preceding Federal Census, the Commissioners Court shall fix the annual salaries of county courts at law judges in an amount not less than $25,000 annually and not to exceed nine-tenths of the total annual salary, including supplements, paid any district judge sitting in the county. Salaries fixed by this Section shall be payable in equal monthly installments. Nothing in Chapter 622, Acts of the 62nd Legislature, Regular Session, 1971, as amended (Article 3912k, Vernon's Texas Civil Statutes), applies to judges of the county courts at law.

[See Compact Edition, Volume 4 for text of 8(d)]

Sec. 8a. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

[See Compact Edition, Volume 4 for text of 9 to 18]

[Amended by Acts 1975, 64th Leg., p. 1333, ch. 496, § 4, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2353, ch. 722, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 187, ch. 93, § 1, eff. May 2, 1977; Acts 1981, 67th Leg., p. 581, ch. 237, §§ 84 to 101, eff. Sept. 1, 1981.]

Art. 3883i-2. Compensation of Judges; Counties of Not Less Than 1,200,000

Sec. 1. In all counties of this State having a population of not less than one million, two hundred thousand (1,200,000) inhabitants, according to the last preceding Federal census, the Commissioners Court shall fix the salary of each of the Judges of the County Courts at Law, Judges of the County Criminal Courts at Law, and the Judge of the County Criminal Court of Appeals at not less than One Thousand Dollars ($1,000) less per annum than the total annual salary, including supplements, received by Judges of the District Courts in such counties, which shall be paid in twelve (12) equal monthly installments. The salary of each of the Judges of the Probate Courts shall be fixed by the Commissioners Courts at not less than the total annual salary, including supplements, received by the Judges of the District Courts in such counties, which shall be paid in twelve (12) equal monthly installments.

Sec. 2. In all counties of this State having a population of not less than two million (2,000,000) inhabitants, according to the last preceding Federal census, the Commissioners Court shall fix the salary of the County Judge at not less than One Thousand Dollars ($1,000) more per annum than the total annual salary received by Judges of the County Courts at Law and Judges of the County Criminal Courts at Law in such counties, which shall be paid in twelve (12) equal monthly installments. The salary of each of the Judges of the Probate Courts shall be fixed by the Commissioners Court at not less than the total annual salary, including supplements, received by the Judges of the District Courts in such counties, which shall be paid in twelve (12) equal monthly installments.

[Amended by Acts 1977, 65th Leg., p. 1111, ch. 410, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 535, ch. 250, § 1, eff. May 24, 1979; Acts 1979, 66th Leg., p. 1639, ch. 686, § 4, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 585, ch. 237, § 102, eff. Sept. 1, 1981.]

Art. 3883i-3. Compensation of Judges of Probate Court; Counties of Not Less Than 700,000

In all counties of this state having a population of not less than 700,000 inhabitants, according to the last preceding federal census, the salary of each of

the judges of the probate courts shall be fixed by the commissioners court at not less than the total annual salary, including supplements, received by the judges of the district courts in such counties, which shall be paid in 12 equal monthly installments.
[Acts 1979, 66th Leg., p. 1640, ch. 686, § 5, eff. Aug. 27, 1979.]

Art. 3886b-1. Salaries and Expenses of County Attorneys and Judges of County Courts at Law in Counties of 97,000 to 99,000

Sec. 1. In any county having a population of not less than 97,000 nor more than 99,000, according to the last preceding federal census, the county attorney, with the approval of the commissioners court, may appoint a first assistant county attorney and other assistants and investigators as necessary for the proper performance of the duties of his office. All assistant county attorneys must be attorneys licensed to practice law in this state, and are authorized to perform all the duties imposed by law on the county attorney. The commissioners court may pay to the county attorney and his assistants and investigators actual and necessary travel expenses incurred in the discharge of their duties. Salaries and expenses authorized by this Act may be paid from the officers salary fund or the general fund, or both, as determined by the commissioners court.

Sec. 2. In any county having a population of not less than 97,000 nor more than 99,000, according to the last preceding federal census, the commissioners court may fix the salary of the judges of the county courts at law, at not more than the amount of annual salary paid by the State to any district judge in that county. The commissioners court may pay the judge of the county court at law, actual and necessary travel expenses incurred in the discharge of their duties. Salaries and expenses authorized by this Act may be paid from the officers salary fund or the general fund, or both, as determined by the commissioners court.
[Amended by Acts 1981, 67th Leg., p. 586, ch. 237, §§ 103, 104, eff. Sept. 1, 1981.]

Art. 3886b-2. Assistant County Attorneys in Counties of 400,000 to 450,000

Sec. 1. The county attorney in any county of this State having a population of not less than 400,000 and not more than 450,000 according to the last preceding federal census may appoint not more than five assistant county attorneys, one of whom may be designated first assistant county attorney. Assistant county attorneys must be licensed to practice law in the State of Texas, and they serve at the pleasure of the county attorney.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1981, 67th Leg., p. 586, ch. 237, § 105, eff. Sept. 1, 1981.]

Art. 3886b-3. Salaries of Assistant County Attorneys in Counties of 74,000 to 75,800

Sec. 1. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.]

Art. 3886h. Compensation of District Attorneys, Assistants, Investigators, Secretaries and Office Personnel in 34th District

Sec. 1. The District Attorney of the Thirty-fourth Judicial District may be paid a salary in an amount not to exceed the total salary and supplemental compensation paid from the state and county funds to the Judge of the Thirty-fourth Judicial District of Texas. The amount of county contributions to the salary paid by the State of Texas to the District Attorney of the Thirty-fourth Judicial District shall be fixed by the Commissioners Court of El Paso County. The salaries of Assistant District Attorneys, Investigators, secretaries, and other office personnel shall be fixed by the District Attorney, subject to approval of the Commissioners Court of El Paso County.

Sec. 2. The Commissioners Court of El Paso County, Texas, in said Thirty-fourth Judicial District, is hereby authorized to pay the salaries of the Assistant District Attorneys, Investigators, secretaries, and other office personnel as provided in Section 1 of this Act, and to supplement the salary of the District Attorney paid by the State of Texas in such an amount that the total salary paid shall not exceed the maximum provided for in Section 1 hereof. Nothing shall affect the present existing law relating to the manner of selecting and determining the number of Assistant District Attorneys and Investigators except as herein provided.
[Amended by Acts 1975, 64th Leg., p. 276, ch. 118, § 1, eff. Sept. 1, 1975.]

Art. 3887a-1. County Attorneys in Counties of 83,000 to 84,000; Private Practice

Sec. 1. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

Sec. 2. In all counties having a population of more than 83,000 inhabitants and less than 84,000 inhabitants, according to the last preceding Federal Census, no county attorney or assistant county attorney may engage in the private practice of law except in regard to civil matters involving the aforesaid counties.

[See Compact Edition, Volume 4 for text of 3]

[Amended by Acts 1981, 67th Leg., p. 586, ch. 237, §§ 106, 145, eff. Sept. 1, 1981.]

Art. 3887a-3. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 3899b. Offices, Office Supplies, Furniture and Automobiles; Aid for District Attorneys

[See Compact Edition, Volume 4 for text of 1]

Sec. 1a. In addition to the expenditures authorized in Section 1, in all counties having a population in excess of two million (2,000,000) inhabitants according to the last preceding federal census, the Commissioners Court may, in its discretion, at the expense of the county, furnish constables such offices and office furniture as may be necessary for the performance of their duties.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1981, 67th Leg., p. 586, ch. 237, § 107, eff. Sept. 1, 1981.]

Art. 3899b–1. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 3902f–2. Counties of 11,400 to 11,500; Compensation of Deputies, Clerks and Assistants

Sec. 1. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.]

Art. 3902f–3. Counties of 29,300 to 31,000; Compensation of Deputies, Assistants, Clerks or Stenographers

Sec. 1. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

[See Compact Edition, Volume 4 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.]

Art. 3902f–4. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Arts. 3902f–6, 3902f–7. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 3903f. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 3912c–1. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 3912e. Method of Compensation of District and Certain Designated County and Precinct Officers

[See Compact Edition, Volume 4 for text of 1 to 12]

Commissioners' Court to Fix Salaries of Certain Officers; Increase

Sec. 13.

[See Compact Edition, Volume 4 for text of 13(a)]

(b) In those counties wherein the county officials are on a salary basis and in which counties there is a criminal district attorney or a county attorney performing the duties of a district attorney, there shall be deposited in the officers salary fund on the first day of September, January and May of each year, such sums as may be apportioned to such county under the provisions of this Act out of the available appropriations, made by the Legislature for such purposes; provided, however, that in counties wherein the Commissioners Court is authorized to determine whether county officers shall be compensated on a salary basis, no apportionment shall be made to such county until the Comptroller of Public Accounts shall have been notified of the order of the Commissioners Court that the county officers of such county shall be compensated on a salary basis for the fiscal year. It shall be the duty of the Comptroller of Public Accounts to annually apportion to such counties any monies appropriated for said year for such apportionment; each such county entitled to participate in such apportionment shall receive for the benefit of its officers salary fund or funds its proportionate part of the appropriation which shall be distributed among the several counties entitled to participate therein, on the basis of the per capita population of each such county according to the last preceding Federal Census; provided the annual apportionment for such purposes shall be determined as follows: the apportionment shall not exceed Ten Cents (10¢) per capita of said population in those counties under eighty five hundred (8500) inhabitants; the apportionment shall not exceed Seven and One-half Cents (7½¢) per capita of said population in those counties having a population of not less than eighty five hundred (8500) and not more than nineteen thousand (19,000) inhabitants; the apportionment shall not exceed Five Cents (5¢) per capita of said population in those counties having a population of not less than nineteen thousand and one (19,001) and not more than seventy five thousand (75,000) inhabitants and the apportionment shall not exceed Four Cents (4¢) per capita in those counties having a population of over seventy five thousand (75,000) inhabitants. Provided the provisions of this Act shall also apply to Harris County for the constitutional office of the District Attorney for the Criminal District Court of Harris County at not to exceed Four Cents (4¢) per capita. The Comptroller shall, at the option of the criminal district attorney, pay directly to the criminal district attorney in all counties with a population in excess of six hundred thousand (600,000) inhabitants according to the last preceding Federal Census a sum equal to the sum authorized in the general appropriations bill for district attorneys. Such sum shall be paid in twelve (12) equal installments on the first day of each month. Any such sums so paid shall be deducted from any sum due to said county under the provisions of this Act. In no event shall the total salary and allowances of the criminal district attorney of any such county from all sources be less than

the salary of such criminal district attorney paid by said county on the effective date of this Act.

[See Compact Edition, Volume 4 for text of 13(c) to 23]

[Amended by Acts 1977, 65th Leg., p. 1489, ch. 604, § 1, eff. Aug. 29, 1977.]

Section 7 of the Public Prosecutors Act (Art. 332b–4) provides that § 13(b) of this article continues in force only as to those counties and district attorneys not subject to said Act.

The 1977 Act, amending § 13(b) of this article, provides in §§ 2 and 3:

"Sec. 2. All laws or portions thereof in conflict with the provisions of this Act are hereby repealed to the extent of such conflict.

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision."

Art. 3912e–17. Counties of 4,615 to 4,640; Compensation of District Officials

Sec. 1. In each county in the State of Texas having a population of more than four thousand, six hundred fifteen (4,615) and less than four thousand, six hundred forty (4,640) according to the last preceding Federal Census the Commissioners Courts of such counties are authorized to fix the salaries of district officials at a sum of not more than Eleven Thousand Dollars ($11,000) per year.

[See Compact Edition, Volume 4 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 586, ch. 237, § 108, eff. Sept. 1, 1981.]

Art. 3912e–18. Counties of 12,500 to 12,600 or 13,300 to 13,350 or 9,940 to 10,100; Compensation of District Officials

In each county of the State of Texas having a population of not less than 12,500 and not more than 12,600, not less than 13,300 and not more than 13,350, or not less than 9,940 and not more than 10,100, according to the last preceding federal census, the district officials are to be compensated as determined by the Commissioners Courts in an amount not to exceed Ten Thousand Dollars ($10,000), provided no salary shall be set at a figure lower than that actually paid on June 16, 1961.

[Amended by Acts 1981, 67th Leg., p. 587, ch. 237, § 109, eff. Sept. 1, 1981.]

Art. 3912e–19. Counties of 14,600 to 14,625; Compensation of District Officials

In each county of the State of Texas having a population of not less than 14,600 and not more than 14,625, according to the last preceding federal census, the district officials are to be compensated as determined by the Commissioners Courts in an amount not to exceed Eight Thousand, Five Hundred Dollars ($8,500), provided no salary shall be set at a figure lower than that actually paid on August 28, 1961.

[Amended by Acts 1981, 67th Leg., p. 587, ch. 237, § 110, eff. Sept. 1, 1981.]

Art. 3912e–20. Counties of 4,500 to 4,600; Compensation of District Officials

Sec. 1. In each county in the State of Texas having a population of more than four thousand, five hundred (4,500) persons according to the last preceding federal census and not more than four thousand, six hundred (4,600) persons according to such federal census; the Commissioners Courts of such counties are authorized to fix the salaries of district officials at a sum of not less than the salary paid for the calendar year of 1962, nor more than Eight Thousand, Five Hundred Dollars ($8,500) per year.

[See Compact Edition, Volume 4 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 587, ch. 237, § 111, eff. Sept. 1, 1981.]

Art. 3912e–21. Counties of 24,600 to 24,700; Compensation of Officials and Employees

Sec. 1. In every county in the State of Texas, having a population of not less than twenty-four thousand, six hundred (24,600) and not more than twenty-four thousand, seven hundred (24,700), according to the last preceding federal census, the Commissioners Courts are authorized to fix the salaries of district officials at a sum of not less than the salary paid on March 29, 1963, nor more than Ten Thousand Dollars ($10,000) per year. Chief deputies, deputies, clerks, assistants, secretaries, custodians and general employees may be paid salaries not to exceed Six Thousand, Five Hundred Dollars ($6,500) annually.

[See Compact Edition, Volume 4 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 587, ch. 237, § 112, eff. Sept. 1, 1981.]

Art. 3912e–22. Counties of 128,400 to 130,000; Compensation of Officials

Sec. 1. In each county in the State of Texas having a population of at least 128,400 and not more than 130,000 according to the last preceding federal census, the Commissioners Court shall fix the salaries of the county and district officials named in Section 2 of this Act at not more than $12,000 per year; provided, however, that no salary shall be set at a figure lower than that actually paid on the effective date of this Act.

Sec. 2. This Act applies to the salaries of judges of the county courts at law.

[Amended by Acts 1981, 67th Leg., p. 588, ch. 237, § 113, eff. Sept. 1, 1981.]

Art. 3912e–23. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 3912e–24. Counties of 190,000 to 205,000; Deputies; Administrative Assistants, and Clerks of Officers

Secs. 1, 2. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

Sec. 3. In any county having a population of not less than 190,000 and not more than 205,000, according to the last preceding Federal Census, the Commissioners Court may employ and fix the number, as well as the salaries, of the deputies, administrative assistants, and clerks of any district, county, or precinct officer, including any member of the Commissioners Court, in an amount not to exceed $14,000 per year except that to the extent that Chapter 622, Acts of the 62nd Legislature, Regular Session, 1971, as amended (Article 3912k, Vernon's Texas Civil Statutes), conflicts with this section, that law prevails.

[Amended by Acts 1981, 67th Leg., p. 588, ch. 237, §§ 114, 145, eff. Sept. 1, 1981.]

Art. 3912e–26 to 3912e–28. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Arts. 3912f–5, 3912f–6. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 3912f–7. Longevity Pay for Deputy Sheriffs in Counties of Not Less Than 150,000

(a) The commissioners court of each county in this state with a population of not less than 150,000, according to the last preceding federal census, shall provide longevity pay for each commissioned deputy of the sheriff's department in accordance with this Act.

(b) Each commissioned deputy shall receive, in addition to his regular compensation, longevity pay of not less than $5 per month for each year of service in the department. Years of service in excess of 25 do not count for the purposes of this subsection.

[See Compact Edition, Volume 4 for text of (c)]

[Amended by Acts 1977, 65th Leg., p. 1091, ch. 400, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided:

"In counties required for the first time to provide longevity pay for deputy sheriffs because of this amendatory Act, the requirement is not mandatory until the first day of the first county fiscal year beginning after this Act takes effect."

Art. 3912i. Maximum Salaries of Justices of the Peace and Constables; Precinct Officers; Certain Counties

[See Compact Edition, Volume 4 for text of 1 to 4]

Sec. 5. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

[See Compact Edition, Volume 4 for text of 6 to 15]

[Amended by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.]

Art. 3912j. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 3912k. County and Precinct Officials and Employees Who Are Paid Wholly From County Fund; Compensation, Expenses and Allowances

[See Compact Edition, Volume 3 for text of 1]

Justices of the Peace; Courtrooms and Offices; Supplies and Equipment

Sec. 1a. In addition to the compensation and expenses provided for in Section 1 of this Act, the commissioners court of each county may furnish, and equip with necessary telephone, equipment, and supplies, a suitable courtroom and office space for each justice of the peace in the county.

[See Compact Edition, Volume 3 for text of 2 to 10]

[Amended by Acts 1979, 66th Leg., p. 1039, ch. 468, § 1, eff. Aug. 27, 1979.]

Section 1 of Acts 1979, 66th Leg., p. 970, ch. 434, amended art. 2326j–13a, relating to compensation of court reporters of the 23rd and 130th judicial districts; section 2 of that act provided:

"Section 3, Chapter 622, Acts of the 62nd Legislature, Regular Session, 1971 (Article 3912k, Vernon's Texas Civil Statutes), applies to the 130th Judicial District."

Art. 3912*l*. Secretarial Personnel of District, County or Precinct Offices

The commissioners court of any county is hereby authorized, when in their judgment the financial condition of the county and the staff needs of a district, county, or precinct officer justify doing so, to enter an order to hire and provide compensation for adequate secretarial personnel of any district, county, or precinct officer.

[Acts 1975, 64th Leg., p. 381, ch. 170, § 1, eff. May 8, 1975.]

CHAPTER TWO. ENUMERATION

Article

3916A. Fee for Expedited Handling.
3916B. Nonpayment of Fees.
3916B. Refund.
3926a. Fees Set by Commissioners Court.

Art. 3914. Secretary of State

The Secretary of State is authorized and required to charge for the use of the State the following other fees:

For each commission to every officer elected or appointed in this State, Two Dollars ($2), except a notary public commission, Four Dollars ($4).

For each official certificate, Two Dollars ($2).

For each warrant of requisition, Two Dollars ($2).

For each remission of fine or forfeiture, One Dollar ($1).

For copies of any paper, document, or record in this office, fifty cents (50$) per legal size page.

For recording each contract for the conditional sale, lease or hire of railroad equipment and rolling stock, and for recording each description of performance of such contract, Five Dollars ($5);

and for entering such declaration on the margin of the record of such contract, One Dollar ($1).

For recording each certificate of consolidation of cities, and for recording each certificate of adoption of a city charter or amendment under the "Home Rule Act," fifty cents (50¢) per legal size page; provided such fee shall not be less than Two Dollars ($2).

[Amended by Acts 1977, 65th Leg., p. 1291, ch. 509, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act provided:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications to the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 3916A. Fee for Expedited Handling

(a) The secretary of state is authorized to set and collect a fee for:

(1) the expedited handling of a certified record search pursuant to Chapter 9 or 35, Business & Commerce Code or Article 1.07C, Title 122A, Taxation–General, Revised Civil Statutes of Texas, 1925, as amended, not to exceed $5; and

(2) the expedited filing or reviewing of a document relating to a profit or nonprofit corporation, professional corporation or association, cooperative association, or limited partnership, not to exceed $10.

(b) Fees under Subdivision (2) of Subsection (a) of this article shall be collected in advance. All fees shall be deposited in the State Treasury to the credit of the General Revenue Fund.

[Added by Acts 1979, 66th Leg., p. 441, ch. 201, § 1, eff. Aug. 27, 1979.]

Sections 2 and 3 of the 1979 Act provided:

"Sec. 2. Notwithstanding the requirements of Article 3916A, Revised Civil Statutes of Texas, 1925, as added by this Act, the secretary of state may deposit fees collected for expedited handling of certified record searches and for expedited filing or reviewing of documents for the remainder of the biennium ending August 31, 1979, in the Secretary of State Operating Expense Account and may use the funds as provided by legislative appropriation for use of that account.

"Sec. 3. Any imposition, collection, and expenditure of a fee for expedited handling of a certified record search or for expedited filing or reviewing of a document by the secretary of state prior to the effective date of this Act is hereby validated."

Art. 3916B. Nonpayment of Fees

Text as added by Acts 1981, 67th Leg., p. 848, ch. 297, § 33

The secretary of state may revoke the filing of any document filed by or on behalf of a corporation with the office of the secretary of state if the secretary of state determines that the filing fee for the document has not been paid or was paid by an instrument that was dishonored when presented by the state for payment. The secretary of state shall return the document and give notice of revocation to the filing party by regular mail. Failure to give or receive notice does not invalidate the revocation.

[Added by Acts 1981, 67th Leg., p. 848, ch. 297, § 33, eff. Aug. 31, 1981.]

For text as added by Acts 1981, 67th Leg., p. 1815, ch. 404, § 1, see art. 3916B, post

Art. 3916B. Refund

Text as added by Acts 1981, 67th Leg., p. 1815, ch. 404, § 1

If the secretary of state deposits into the State Treasury a fee that is not due the state or a fee in an amount that exceeds the amount due the state, the fee or the excess is subject to refund.

[Added by Acts 1981, 67th Leg., p. 1815, ch. 404, § 1, eff. June 11, 1981.]

For text as added by Acts 1981, 67th Leg., p. 848, ch. 297, § 33, see art. 3916B, ante

Art. 3918. Land Commissioner

The Land Commissioner is authorized and required to charge, for the use of the state, the following fees:

FILING FEES.

Deed transferring one (1) tract of land or a decree of court relating to one (1) tract of land—for each file affected	$ 5.00
Affidavit of Ownership	5.00
Original Field Notes	10.00
Relinquishment Act Oil and Gas Lease	10.00
Transfer or Release of each Mineral Award, Mineral Prospect Permit, Grazing Lease, or Mineral Lease or part thereof—for each file affected	10.00
Servicing and Filing Easement—State-owned Land	10.00
Servicing and Filing Grazing Lease—State-owned Land	10.00
Prospect Permits	10.00
Geophysical exploration permits	10.00

PREPARATION OF CERTIFICATES OF FACT.

Certificates of Facts involving examination of one (1) file	$25.00
Each additional file	7.50
Each other certificate not otherwise provided for	7.50

CERTIFIED COPIES.

Toby Scrip Certificate	$ 4.00
Patent	4.00
Deed of Acquittance	4.00
Muster Roll	4.00
Copy of any record, document or papers in the English language not otherwise provided for herein, per page	2.00
Pages of a record, document, or paper, regardless of language, if the pages are larger than 8¼" x 14", per page	4.00
Copy of any other paper, document or record in any other language than the English—per page	2.00
Records of the General Land Office and the Veterans Land Board, except those specified, two pages or less	4.00

Records of the General Land Office and the Veterans Land Board, except those specified, that are more than two pages, per page	2.00

MAPS.

Blue Print, White Print, or other Cloth Map of any county	$15.00
Blue or White Print Paper Map of any county	8.00
Blue Print, White Print, or other Cloth Map of an inland bay	20.00
Blue or White Print Paper Map of an inland bay	7.50
Blue Print, White Print, or other Cloth Map of Gulf of Mexico	20.00
Blue or White Print Paper Map of Gulf of Mexico	10.00
Certificate on either Cloth or Paper Map	1.00
For a working sketch, the fee shall be determined by the amount of material used and the time consumed, at the rate of, per hour	8.00
When an examination of the records of the General Land Office, other than maps or filed papers, is desired by one (1) person or where search is necessary to compile information, minimum fee to be charged of One Dollar ($1); and if the information is extended beyond thirty (30) minutes, an additional sum shall be charged at the rate of, per hour (except where examination is made for the purpose of purchasing copies)	8.00

REPRODUCTION OF MAPS AND SKETCHES.

12″ x 10″	$2.00
12″ x 15″	3.00
12″ x 20″	4.00

SPANISH TRANSLATIONS.

Translation of any Spanish document such as Titles and field notes, Five Cents (5¢) per word, provided that no charge shall be less than	$5.00
Certificate of Fact concerning Spanish Titles	5.00

OTHER SERVICES.

Additional charge for maps or other instruments shipped in a mailing tube	$0.75
Typed transcriptions of tapes or other sound recordings, per hour	8.00
Typed copies of tapes or other sound recordings, for first cassette	7.50
Typed copies of tapes or other sound recordings, for each cassette after the first	3.00

PATENT AND DEED OF ACQUITTANCE FEES.

Patent Fee	$15.00
Deed of Acquittance Fee	15.00

[Amended by Acts 1975, 64th Leg., p. 580, ch. 236, § 1, eff. May 20, 1975; Acts 1981, 67th Leg., p. 995, ch. 376, § 1, eff. Sept. 1, 1981.]

Art. 3923. Clerk of Supreme Court; Deposits to Cover Costs

(A) The Clerk of the Supreme Court shall receive the following fees and costs:

1. For the filing of records, applications, motions, briefs, and other necessary and proper papers; for the docketing and docket and minute book entries; for issuing notices, citations, processes, mandates; and for the performance of other proper and necessary clerical duties in cases before the court, he shall receive the fee set out opposite each class of the following cases:

(a) Application for writ of error	$ 50
(b) If application for writ of error is granted, an additional fee of	$ 75
(c) Motion for leave to file petition for writ of mandamus, prohibition, injunction, and other like proceedings originating in the Supreme Court	$ 50
(d) If motion for leave to file petition for writ of mandamus, prohibition, injunction, certiorari, or other like proceeding be granted, an additional fee of	$ 75
(e) Certified questions from the Court of Appeals to the Supreme Court	$ 75
(f) In cases appealed to the Supreme Court from the District Court by direct appeal	$100
(g) Each and every other proceeding filed in the Supreme Court	$ 75

2. Administering an oath or affirmation and giving certificate thereof, with seal $ 5

3. Making copies of any papers of record in offices, including certificate and seal, a minimum charge of $5, or 50 cents per page if in excess of 10 pages.

Provided the Supreme Court may by order or rule fix a reasonable fee for any official service performed by its Clerk not otherwise provided herein.

The Supreme Court shall provide by order or rule for the making of deposits to cover the costs in cases before the court as classified above, but nothing

herein shall be construed as requiring a deposit in any case in which the petitioner, relator, or appellant in the Supreme Court is exempt from the giving of a bond.

(B) The Clerk of the Supreme Court shall receive a fee of $10 for the issuance of an attorney's license or certificate, affixed with seal. The fee so collected shall be held by the clerk and expended by the court or under its direction for the purpose of preparation and issuance, including mailing, of said license or certificate.

[Amended by Acts 1981, 67th Leg., p. 787, ch. 291, § 58, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 1817, ch. 407, § 1, eff. Aug. 31, 1981.]

Art. 3924. Clerks of Courts of Appeals

The Clerks of the Courts of Appeals shall receive the following fees in civil cases:

1. For the filing of records, applications, motions, briefs and other necessary and proper papers; for the docketing and docket and minute book entries; for issuing notices, citations, processes and mandates; for preparing transcript on application for writ of error to Supreme Court of Texas; and for the performance of other proper and necessary clerical duties in cases before the Court, they shall receive the fee set out opposite each class of the following cases:

(a) In cases appealed to and filed in the Court of Appeals from the district and county courts within its Supreme Judicial District	$25.00
(b) Motion for leave to file petition for writ of mandamus, prohibition, injunction and other like proceedings originating in the Court of Appeals	10.00
(c) If motion for leave to file petition for writ of mandamus, prohibition, injunction and other like proceedings be granted, an additional fee of	15.00
(d) Motion to file or to extend time to file record on appeal from district or county court—if motion granted and record subsequently filed, this deposit to apply on fee provided in 1(a)	5.00
2. Administering an oath or affirmation	.50
3. Administering an oath or affirmation and giving certificate thereof with seal	1.00
4. Making certified copy of any papers, judgments or orders on file or of record in their offices, including certificate and seal, for each 100 words	.15
5. Comparing any document with the original of any papers, judgments or orders on file or of record in their offices, for purpose of certifying thereto, for each page	.10
6. For certificate and seal, where same is necessary	.50

Provided the Supreme Court may by order or rule fix a reasonable fee for any official service performed by the Clerks of the Courts of Appeals not otherwise provided herein.

The Supreme Court shall provide by order or rule for the making of deposits to cover the costs in cases before the Courts of Appeals as classified above, but nothing herein shall be construed as requiring a deposit in any case in which the petitioner, relator, appellant, or movant in the Courts of Appeals is exempt from the giving of a bond.

[Amended by Acts 1981, 67th Leg., p. 787, ch. 291, § 59, eff. Sept. 1, 1981.]

Art. 3926a. Fees Set by Commissioners Court

(a) The commissioners court of each county may set reasonable fees to be charged for services by the offices of sheriffs and constables.

(b) A commissioners court may not set fees higher than is necessary to pay the expenses of providing the services.

[Added by Acts 1981, 67th Leg., p. 1001, ch. 379, § 1, eff. Sept. 1, 1981.]

Section 2(a) of the 1981 Act provides:

"Fees provided for sheriffs and constables in other laws in conflict with the provisions of this Act are repealed to the extent they conflict with this Act.

Section 3(b) of the 1981 Act provides:

"Until a commissioners court prescribes different fees pursuant to Article 3926a, Revised Civil Statutes of Texas, 1925, the fees charged by a sheriff or constable are those provided by the law in effect on August 31, 1981. Fees charged by a sheriff or constable for services performed before the effective date of this Act are governed by the law in effect at the time the services were performed."

Art. 3927. District Clerk

The clerks of the district courts shall receive the following fees for their services:

(1) The fees in this Subsection shall be due and payable, and shall be paid at the time suit or action is filed.	
For each suit filed, including appeals from inferior courts	$25.00
For each cross action, intervention, contempt action or motion for new trial filed	$15.00
For issuing each subpoena, including one (1) copy thereof, when requested at the time a suit or action is filed	$ 4.00
For issuing each citation or other writ or process not otherwise provided for, including one (1) copy thereof, when requested at the time a suit or action is filed	$ 8.00
For issuing each additional copy of any process, not otherwise provided for, when requested at the time a suit or action is filed	$ 4.00

(2) The fees in this Subsection shall be due and payable at the time or times of performance or request for performance of services; shall be an obligation of the party to the suit or action initiating the request, and shall be additional to the fees provided for in Subsection (1) of this Act; provided, however, that the District Court may accept bond or bonds as security therefor.

For issuing each subpoena not provided for in Subsection (1), including one (1) copy thereof ..... $ 4.00

For issuing each citation, commission for deposition, writ of execution, order of sale, writ of execution and order of sale, writ of injunction, writ of garnishment, writ of attachment, writ of sequestration not provided for in Section 1, or any other writ or process not otherwise provided for, including one (1) copy thereof when required by law ..... $ 8.00

For issuing each additional copy of any writ or process not otherwise provided for ..... $ 4.00

For searching the files or records, fees may be charged:

a. To locate any one cause when the person requesting same does not furnish the docket number of said cause, or

b. To ascertain the existence or nonexistence of any instrument or record in his office ... $ 5.00

For issuing certificate to any fact or facts contained in the records of his office ..... $ 2.00

For issuing deposition each one hundred (100) words ..... $ .20

For issuing interrogatories with certificate and seal, per page or portion thereof ..... $ 1.00

For abstracting judgment ..... $ 4.00

For approving each bond ..... $ 4.00

For making a copy, other than a photocopy, of all records, judgments, orders, pleading, or papers on file or of record in his office, whether certified or not, for any person applying for same, including the certificate and seal, per page or portion thereof ..... $ 1.00

For making a copy of the type described in the preceding item, if the copy is made by a photocopying machine, per page or portion thereof, not to exceed ..... $ 1.00

[Amended by Acts 1977, 65th Leg., p. 608, ch. 219, § 1, eff. May 24, 1977; Acts 1979, 66th Leg., p. 667, ch. 295, § 1, eff. Aug. 27, 1979.]

Art. 3927b. Repealed by Acts 1979, 66th Leg., p. 15, ch. 7, § 1, eff. March 5, 1979

Art. 3928. Other Fees of District Clerk

The District Clerk shall also receive the following fees:

1. Whenever in any suit a certified or uncertified copy of any petition or any other instrument, judgment or order is necessary in the District Court, it shall be lawful for the plaintiff or defendant to prepare such copy and submit the same to the District Clerk, who shall be entitled to a fee of Ten (10¢) Cents per page, for his services in comparing same with the original. If a certified copy is necessary, he shall attach his certificate of true copy, and for such service he shall receive One ($1.00) Dollar for each certificate and seal.

2. In matters relating to estates of deceased persons and minors, when the same are transacted in the District Court he shall receive the same fees that are allowed therefor to County Clerks.

3. For the care and preservation of the records of his office, keeping the necessary indexes, and other labor of the like kind, to be paid out of the County Treasury on the order of the Commissioners' Court, such sum as said Court shall determine.

4. If a clerk serves process by certified or registered mail, the clerk shall charge the same fee that sheriffs and constables are authorized by Section 1, Chapter 696, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 3933a, Vernon's Texas Civil Statutes),[1] to charge for service of process.

5. For such other duties prescribed, authorized, and/or permitted by the Legislature for which no fee is set by the Legislature, reasonable fees shall be charged.

[Amended by Acts 1979, 66th Leg., p. 667, ch. 295, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 756, ch. 288, § 2, eff. Sept. 1, 1981.]

[1] Repealed; see now, art. 3926a.

Art. 3930. County Clerk and County Recorders

County clerks and county recorders are hereby authorized and required to collect the following fees for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies and/or governmental representatives:

Fees for County Clerk and County Recorder Records and Miscellaneous Services

(1) For filing, or filing and registering, including indexing, each instrument, document, legal paper, or record (excepting notaries public records, marriage records, vital statistics records, and those instruments, documents, legal papers and records filed in the county civil courts records, or in the county criminal courts records, or in the probate

courts records, and those instruments, documents, legal papers and records filed and recorded in the real property records in the office of the county clerk, and those instruments the filing fee for which is fixed in the Business & Commerce Code), authorized, permitted, or required, to be filed, or filed and registered, in the personal property, chattels and personal records in the office of the county clerk and county recorder, a fee or fees, as follows:

(a) For each such instrument, document, legal paper, or record, a fee, which shall be in addition to any and all specific fee or fees provided for in any and all other statute or statutes, of ---------- $ 2.00

(2) For filing and recording, including indexing not more than five (5) names, each instrument, document, legal paper, or record (excepting map records, condominium records, notaries public records, marriage records, vital statistics records, and those instruments, documents, legal papers and records filed in the county civil courts records, or in the county criminal courts records, or in the probate courts records, or in the personal property, chattels and personal records in the office of the County Clerk) authorized, permitted, or required, to be filed and recorded in the real property records in the office of the county clerk and county recorder, a fee, or fees, as follows, which fee, or fees, shall be in addition to any specific fee, or fees, provided for in any other statute, or statutes:

(a) For the first page, a fee of ---------- $ 3.00

(b) Plus, for each additional page, or part of a page, on which there are visible marks of any kind, a fee of ---------- $ 2.00

(c) Plus a fee for each 8½" x 14", or part thereof, of attachment or rider, to be charged for each such attachment or rider, of ---------- $ 2.00

(d) Plus, for each additional name that has to be indexed in excess of a total of five (5) names indexed for all records in which an instrument, document, paper or record must be indexed, a fee of -------- $ 0.25

(e) Provided, however, that a county clerk and county recorder who files, registers, or records by copying the instrument manually, and not by a photocopy, photostatic or microphotographic process, in his discretion may substitute, in lieu of the per page fee prescribed by this Act, for each page of such a legal instrument, document or paper having more than 500 words on it, a fee per one hundred words of ---------- $ 0.20

(3) For issuing each certified copy (except certified copy of map records and condominium records), notice, statement, license where the fee for issuing the license is not specifically provided by statute, or any other instrument, document, or paper authorized, permitted, or required, to be issued by said county clerk or county recorder, except as otherwise provided in Section 1, of this Act:

For each page, or part of a page, a fee, to be paid in cash at the time each order is placed, of ---------- $ 1.00 plus $1.00 for the county clerk's certificate.

However, nothing in this Act shall be construed to limit or deny to any person, firm, or corporation, full and free access to any papers, documents, proceedings and records referred to in this Act, the right of such parties to read and examine the same, and to copy information from any microfilm or other photographic image, or other copy thereof under reasonable rules and regulations of the county clerk at all reasonable times during the hours the county clerk's office is open to the public, and without making payment of any charge, being hereby established and confirmed.

(4) For issuing each certified copy of birth certificate or death certificate a fee of ---------- $ 3.00

(5) For approving bond, except notarial bonds and bonds required to be approved in County Civil Courts, County Criminal Courts and Probate Courts, a fee, to be paid at the time of said approval, of ---------- $ 3.00

(6) For all clerical work in having appointment of notary public made, administering oaths and qualifying the notary public, and approving, filing and recording notarial bond, a fee (does not include the fee for the Secretary of State), to be paid at the time the executed oath and bond is filed, of ---- $ 4.00

(7) For issuing each marriage license, including all and every service relating thereto and including, but not limited to, preparing the application, filing health certificates, administering oaths, filing waivers and orders of county judge, issuing license and recording all papers including the return of the license, a total fee, to be paid at the time the license is issued, of ---------- $ 7.50

(8) For registering a brand, including indexing, search, and issuing the certificate, a fee of ---------- $ 5.00

(9) For administering each oath, with or without a seal of clerk, except oaths

required to be administered in duties as Clerk of County Civil Courts, County Criminal Courts and Probate Courts, a fee of ---------- $ 1.00

(10) For such other duties prescribed, authorized, and/or permitted by the Legislature for which no fee is set by this Act, reasonable fees shall be charged.

[Amended by Acts 1977, 65th Leg., p. 763, ch. 291, § 1 eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1133, ch. 543, § 1, eff. Aug. 27, 1979.]

Art. 3930a–1. County Clerks and County Recorders—Other Services

(1) In addition to the fees authorized and required by Article 3930 of this title, as amended, county clerks and county recorders are authorized and required to collect the fees specified by this article for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies, and governmental representatives. Unless otherwise specified, each fee shall be collected at the time the service is rendered.

(2) A total fee of $7.50 shall be collected for services rendered in connection with the execution of each declaration of informal marriage under Section 1.92 of the Family Code.

[Amended by Acts 1977, 65th Leg., p. 765, ch. 291, § 2, eff. Aug. 29, 1977.]

Art. 3930(b). County Clerks and Clerks of County Courts

Sec. 1. County clerks and clerks of county courts are hereby authorized and required to collect the following fees for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies and/or governmental representatives:

A. Fees for County Civil Court Dockets

(1) For each cause or action, or docket in County Civil Courts: for filing, or filing and registering, or filing and recording, and for docketing and including taxing costs for each and all applications, complaints, petitions, returns, documents, papers, legal instruments, records and/or proceedings; for issuing, including the recording of the return thereon, each and all citations, notices, subpoenas, commissions to take depositions, executions while the docket is still open, garnishments before judgments, orders, writs, processes, or any and all other instruments, documents or papers authorized, permitted or required to be issued by said county clerk or said clerk of county courts on which a return must be recorded; for all attendances in court as clerk of court; for impaneling a jury; for swearing witnesses; for approving bonds involved in court actions; for administering oaths; and for all other clerical duties in connection with such county civil court docket:

(a) For each original cause or suit in a County Civil Court, including, but not limited to, appeals from Justice of the Peace Courts or Corporation Courts and transfers of causes or suits from other jurisdictions, a fee to be due and payable, and to be paid by the plaintiff or plaintiffs, or appellant or appellants, at the time said cause or suit is filed, started or initiated, which fee is to be paid but one time in each cause or docket, or suit, and which fee excludes the items listed in Paragraphs B, C, D, and E of this Section 1:

(i) For causes or dockets involving damages, debts, specific performance of contracts and agreements, pleas of privilege, appeals from Justice of the Peace Courts and Corporation courts, for appeals from driver's license suspension, and other causes of action not otherwise listed in this Paragraph A(1)(a): a fee of ---------- $30.00

(ii) For eminent domain, or condemnation proceedings, with or without objections: a fee of ---------- $30.00

(iii) For garnishments after judgment: a fee of ---------- $15.00

(b) For each interpleading, or cross-action, or any other action other than the original action, in a cause or suit in a County Civil Court, a fee to be due and payable, and to be paid by the party or parties starting or initiating each such interpleading, or other action, or cross-action, at the time of starting or initiating each such cross-action or interpleading, or other action, which fee is to be paid but one time for each such cross-action, or interpleading, or other action, but excluding items listed in Paragraphs B, C, D and E of this Section 1: a fee of ---------- $30.00

B. Fees for Probate Court Dockets

(1) For each cause or action, or docket in Probate Courts: for filing, or filing and registering, or filing and recording, and for docketing and including taxing costs for each and all applications, wills, complaints, petitions, returns, documents, papers, legal instruments, records and/or proceedings; for issuing, including the recording of the return thereon, each and all citations, notices, subpoenas, commissions to take depositions, orders, writs, processes, or any and all other instruments, documents, or papers

authorized, permitted or required to be issued by said county clerk or said clerk of probate courts on which a return must be recorded; for all attendances in court as clerk of court; for swearing witnesses; for approving bonds involved in court actions; for administering oaths; and for all other clerical duties in connection with such probate court docket:

(a) For each original cause or action in a Probate Court, a fee to be due and payable and to be paid by the party or parties starting or initiating said cause or estate action, or with the permission of the court, payable at the time of qualifying of the legal or personal representative of such cause or estate action, or when a Veterans' Administration Chief Attorney is attorney of record in a cause, payable when the legal or personal representative of such cause or estate action receives funds with which to make such payment, for such services for the period of time as shown, and which fee excludes the items listed in Paragraphs A, B(1)(b), B(1)(d), C, D and E of this Section 1:

(i) For probating will with independent executor; for administration with will attached, for administration of an estate, for guardianship or receivership of an estate, for muniment of title, a fee for one year from the starting or initiating such cause of action: a fee of $25.00

(ii) For community survivors: a total fee of $20.00

(iii) For small estates: a total fee of ..... $ 5.00

(iv) For affidavits of heirship, including filing of affidavit, after approval by Judge, in Small Estates Records in the Recorder's Office: a total fee of ..... $ 7.50

(v) For mentally ill: Total costs for all services listed in Article 5547—13, Article 5547—14 and Article 5547—15, Vernon's Civil Statutes of Texas, shall be in the amount of $40.00

(b) For each probate docket remaining open after its first anniversary date, the following fees shall be paid in cash at the time earned, which fee shall be separate and apart from other fees listed in Paragraphs A, B, C, D and E of this Section 1 hereof:

(i) For filing, or filing and recording, of each instrument of writing, legal document, paper or record in an open Probate Docket after its first anniversary date: a fee of ..... $ 4.00

(ii) For approving and recording each bond relating only to an open Probate Docket after said Docket's first anniversary date, a fee of .... $ 3.00

(iii) For administering each oath relating to an open Probate Docket after said Docket's first anniversary date, a fee of ..... $ 2.00

(c) For each adverse action or contest, other than the filing of a claim against an estate, in a clause or docket in a probate court, a fee to be due and payable and to be paid by the party or parties starting or initiating such adverse action or contest, but excluding other items listed in Paragraphs A, B, C and D of this Section 1, of $25.00

(d) For filing and entering each claim against an estate in the claim docket, a fee, to be paid by claimant at the time of filing such claim, of ..... $ 2.00

C. Where no cause is pending, as is contemplated in Section 1, Paragraphs A and B hereof, the clerk shall charge as follows for the hereinafter listed services, for issuing (including recording of the returns thereon), each citation, notice, commission to take depositions, execution, order, writ, process, or any other instrument, document, or paper authorized, permitted or required to be issued by said county clerk or said clerk of county courts on which a return must be recorded:

(i) For issuing each such instrument, document, or paper, including the original and one copy and the recording of the return, a fee, to be paid at the time each order is placed, of ..... $ 4.00

(ii) For issuing for the same docket at the same time more than one set of one original and one copy of the same instrument, document, or paper, including recording the return thereon, a fee, per set, to be paid at the time the order is placed, of ..... $ 4.00

D. For issuing each certificate, certified copy, notice, statement, transcript, or any other instrument, document, or paper authorized, permitted, or required, to be issued by said county clerk or clerk of county courts on which there is no return to be recorded:

For each page, or part of a page, a fee, to be paid at the time each order is placed, of ..... $ 1.00 plus $1.00 for the clerk's certificate.

However, nothing in this Act shall be construed to limit or deny to any person, firm, or corporation, full and free access to any papers,

documents, proceedings, and records referred to in this Act, the right of such parties to read and examine the same, and to copy information from any microfilm or other photographic image, or other copy thereof under reasonable rules and regulations of the county clerk at all reasonable times during the hours the county clerk's office is open to the public, and without making payment of any charge, being hereby established and confirmed.

E. For issuing each Letter Testamentary, Letter of Guardianship, Letter of Administration and each Abstract of Judgment a fee of ---------- $ 2.00

F. For filing and keeping "Wills Held for Safekeeping", a fee, to be paid at the time said wills are filed, of -------- $ 5.00

Sec. 2. If the final judgment has not been entered for a docket, or cause, in a county civil court on the date this Act becomes effective, the amount of costs for such docket, or cause, accruing to such effective date shall be paid in full before final judgment is filed or recorded, and no further costs shall accrue in each such docket, or cause, after said effective date, except that the fees specified in Paragraphs A(1)(a)(iii), A(1)(b), C, D, and E of Section 1, for items and services therein specified shall apply after said effective date to each of such dockets, or such causes, and shall be paid in accordance with the provisions of said paragraphs. If the final judgment has not been entered for a docket, or cause, or estate action, in a probate court on the date this Act becomes effective, the amount of costs for such docket, or cause, or estate action, accruing to such effective date shall be paid in full, and no further costs shall accrue, prior to the next anniversary date of such docket, or cause, or estate action, except that the fees specified in Section 1, Paragraphs B(1)(b), B(1)(c), B(1)(d), and C, D, and E of Section 1, for items and services therein specified shall apply after said effective date to such dockets, or such causes, or such estate actions, and shall be paid in accordance with the provisions of said paragraphs. Any deposit balance or balances left after applying all costs accrued through the date this Act becomes effective, including the adjustments stipulated hereinabove, for a docket, or cause, shall be refunded without delay and all further fees and charges shall be paid for at the time of filing, or issuing, or otherwise becoming due and payable. Said clerk shall continue to collect, at the time said fees or costs accrue, or are earned, or are payable, all fees, or costs, authorized, or required, to be collected by said clerk, including, but not limited to: law library fees, county judge's fees, county judge's commissions, jury fees, and fees for state officials.

Sec. 3. If a county clerk or the clerk of a county court serves process by certified or registered mail, the county clerk or clerk of the county court shall charge the same fee that sheriffs and constables are authorized by Section 1, Chapter 696, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 3933a, Vernon's Texas Civil Statutes), to charge for service of process.

[Amended by Acts 1977, 65th Leg., p. 765, ch. 291, § 3, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 757, ch. 288, § 3, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2341, ch. 574, § 1, eff. Aug. 31, 1981.]

Art. 3930(c). Specifications for Legal Papers for Filing and for Recording

Sec. 1. (a) Each legal paper offered or presented to a county clerk and county recorder for filing or for recording other than fees authorized in Article 3930(b), Revised Civil Statutes of Texas, 1925, should meet the requirements specified in Subsections (b) through (g) of this section.

(b) A page is defined as one side of a sheet of paper, no more than 8½ inches wide and 14 inches long, of sufficient weight and substance that printing or typing or handwriting thereon will not smear or "bleed-through," and the paper shall be suitable otherwise for reproducing from it a readable record by photocopy or photostatic or microphotographic process or processes used in the offices of county clerks.

(c) A clearly identifying heading, similar to the headings on most commercially supplied printed forms, shall be placed at the top of the first page to identify the type or kind of legal paper.

(d) Printing and typing and handwriting shall be clearly legible.

(e) Names shall be legibly typed or printed immediately under each signature.

(f) All photostats, photocopies, and other types of reproduction shall have black printing, typing, or handwriting on a white background, commonly known as positive prints.

(g) Riders and attachments shall not be larger than the size of the page as defined in this article. Not more than one rider or attachment shall be included in or attached to a page.

Sec. 2. (a) The filing fee or recording fee for each page of a legal paper which is offered or presented for filing or for recording to a county clerk or county recorder and which fails to meet the requirements for, or which is deficient in, one or more of the items specified in Section 1 of this article, shall be equal to twice the regular filing fee or recording fee provided by statute for that page.

(b) When a page of a legal paper has more riders or attachments than one, the filing fee or recording fee for each attachment in excess of one is twice the regular filing fee or recording fee provided by statute.

(c) When a page of a legal paper has one or more riders or attachments larger than the size of a page as defined in Section 1(b) of this article, the filing

fee or recording fee for each oversized attachment is twice the regular filing fee or recording fee provided by statute for the attachment.

[Added by Acts 1977, 65th Leg., p. 768, ch. 291, § 4, eff. Jan. 1, 1978.]

Art. 3933a. Repealed by Acts 1981, 67th Leg., p. 1001, ch. 379, § 2(b), eff. Sept. 1, 1981

Prior to repeal, this article was amended by Acts 1975, 64th Leg., p. 1297, ch. 488, § 1; Acts 1979, 66th Leg., p. 1103, ch. 519, § 1.

See, now, art. 3926a.

Art. 3935. Justice of the Peace

Justices of the peace are required to collect the following fees for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies, or governmental representatives:

A. Fee before entry of judgment:

For each original cause or action, cross-action, third-party action or intervention in the justice civil courts: for filing, or filing and registering, or filing and recording, and for docketing and including taxing costs for each and all applications, complaints, petitions, returns, documents, papers, legal instruments, records or proceedings; for issuing, including the recording of the return thereon, each and all citations, notices, subpoenas, commissions to take depositions, orders, writs, processes, or any and all other instruments, documents or papers authorized, permitted or required to be issued by the justices of the peace on which a return must be recorded; for causing juries to be summoned and swearing them, and receiving and recording jury verdicts; for swearing witnesses; for approving bonds involved in court actions; for administering oaths; for rendering and recording judgment; and for all other clerical duties in connection with such justice of the peace court docket: a fee of ---------- $ 7.00

The fee is due and payable, and is to be paid by the plaintiff or plaintiffs, or the party or parties initiating the action, cross-action, third-party action, intervention, or other action, at the time of starting each action, cross-action, third-party action, intervention, or other action, and is to be paid but one time for each action, cross-action, third-party action, intervention, or other action.

B. Fees after entry of judgment:

For making and certifying a transcript of the entries on their dockets, and filing the transcript, together with the original papers in the case, in the proper court, in each case of appeal or certiorari, a fee of ---------- $ 2.00

For issuing abstract of judgment, a fee of ---------- 1.00

For issuing and recording a return thereon, for each execution, order of sale, writ of restitution, or other writ or process not otherwise herein provided for, a fee of ---------- 2.00

For issuing each certificate, certified copy, notice, statement, or any other instrument, document, or paper authorized, permitted, or required to be issued by the justices of the peace on which there is no return to be recorded:

For each page or part of a page, a fee, to be paid at the time each order is placed, which shall not exceed the costs for copies as designated by the State Board of Control in accordance with Section 9(a), Article 6252–17a, Vernon's Texas Civil Statutes.

[Amended by Acts 1977, 65th Leg., p. 655, ch. 245, § 1, eff. Aug. 29, 1977.]

Art. 3936c–1. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Arts. 3936e–1, 3936e–2. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 3936f–1. Justices of the Peace; Maximum Fees Kept and Disposition of Excess

Sec. 1. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.

[See Compact Edition, Volume 4 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981.]

Arts. 3937 to 3940. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing these articles, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 3946a. River Authority Directors

Each Director of Boards of Directors of river authorities of the state created by the Legislature by special law pursuant to the provisions of Section 59 of Article 16 or Section 52 of Article 3 of the Texas Constitution shall receive as fees of office the sum of not more than $100 for each day of service necessary to discharge his duties, plus actual expenses, provided that such compensation and expenses are approved by vote of the Board of Directors. Each Director shall file with the Secretary or Treasurer a statement showing the amount due him each month or as soon thereafter as practicable before check shall be issued therefor.

[Amended by Acts 1975, 64th Leg., p. 164, ch. 68, § 1, eff. April 24, 1975; Acts 1981, 67th Leg., p. 990, ch. 372, § 1, eff. Aug. 31, 1981.]

TITLE 62

FENCES

Arts. 3947 to 3954. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Arts. 3954–1 to 3954–4. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

TITLE 63

FIRE ESCAPES

Article
3972b. Applicability.
3972c. Compliance.

Art. 3972b. Applicability

The provisions of Title 63, as amended, shall not be applicable and shall have no force or effect on construction in any city or town which has adopted and has in effect a nationally recognized model building code governing such construction if such building code in effect in any city or town requires at least one or more one-hour fire-resistive means of escape having a total width equivalent to or greater than the total exit width required by the present "Fire Escapes," Title 63, Articles 3955–3972, Revised Civil Statutes of Texas, 1925, as amended, in all structures of three or more stories.

[Added by Acts 1975, 64th Leg., p. 1162, ch. 435, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act added art. 3972c; §§ 3 to 5 thereof provided:

"Sec. 3. Notwithstanding Sections 1 and 2, any city may enact additional standards that are not in conflict with the provisions of this Act.

"Sec. 4. The provisions of this Act shall be severable, and if any section or part hereof shall be declared unconstitutional, void, or inoperative in any way, said declaration shall not affect the remaining sections or parts of this Act.

"Sec. 5. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

Art. 3972c. Compliance

Any construction heretofore completed in accordance with the provisions and requirements of a nationally recognized model building code shall be deemed for all purposes to have complied with all of the provisions and requirements contained in Title 63, as amended, if such building code in effect in any city or town requires at least one or more one-hour fire-resistive means of escape having a total width equivalent to or greater than the total exit width required by the present "Fire Escapes," Title 63, Articles 3955–3972, Revised Civil Statutes of Texas, 1925, as amended, in all structures of three or more stories.

[Added by Acts 1975, 64th Leg., p. 1163, ch. 435, § 2, eff. Sept. 1, 1975.]

Section 1 of the 1975 Act added art. 3972b; see notes under art. 3972b for text of §§ 3 to 5.

TITLE 67

FISH, OYSTER, SHELL, ETC.

Arts. 4016 to 4075c. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(2), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Prior to repeal, art. 4075b was amended by Acts 1975, 64th Leg., p. 1336, ch. 499, §§ 1 to 7 and Acts 1975, 64th Leg., p. 1855, ch. 580, §§ 1 to 3. Said Acts were incorporated into the Parks and Wildlife Code by Acts 1975, 64th Leg., p. 1212, ch. 456, §§ 13 and 20.

TITLE 68A

GOOD NEIGHBOR COMMISSION OF TEXAS

Art. 4101–2. Good Neighbor Commission

Creation of Commission; Members; Terms; Absence From Meetings

Sec. 1. There is hereby created the Good Neighbor Commission of Texas which shall be composed of nine (9) members, each of whom shall be a citizen of the United States and a resident of the State of Texas, and shall be appointed by the Governor with advice and consent of the Senate. Each member must have expertise in one or more of the following areas: international trade and tourism, industrial development, education and research, diplomacy, or Hispanic culture, law, sociology, economics, or language. Each two (2) years the Governor shall appoint three (3) members of this Commission for a term of six (6) years. No person shall be eligible to appointment to the Commission who has contributed more than $1,000 on behalf of the political candidacy of the Governor who makes the appointments under this Act, or to any political action committee supporting such candidacy. The appointments made under this Act shall be made without regard to race, creed, sex, religion, or national origin. Failure by any member to attend at least one-half of the regularly scheduled meetings of the Commission will cause his position on the Commission to be automatically vacated.

Open Meetings; Administrative Procedure

Sec. 1a. The Commission shall comply with all provisions of the state open meetings act, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Application of Sunset Act

Sec. 1b. The Good Neighbor Commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1991.

[See Compact Edition, Volume 4 for text of 2]

Executive Director; Staff; General Counsel

Sec. 3. (a) The Commission shall appoint an executive director who serves at the will of the Commission. The executive director is the executive head of the Commission and performs its administrative functions.

(b) The executive director may employ staff members necessary for administering the functions of the Commission.

(c) If the Commission employs a general counsel, the counsel shall be prohibited from lobbying for the agency employing such counsel.

Powers

Sec. 4. (a) The Commission shall have the power to:

(1) elect from its members a chairman and other such officers as it may be deemed desirable. All officers of the Commission shall serve as such only during the pleasure of the Commission;

(2) hold such meetings at such times as the Commission may designate;

(3) appoint committees from its membership and prescribe their duties;

(4) appoint consultants and committees to the Commission;

(5) make rules and regulations for its government and that of its officers and committees; and prescribe the duties of its officers, consultants and employees. If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, transmit to the Commission statements opposing adoption of a rule under this section, the rule may not take effect;

(6) provide information to individuals and governmental entities about the nations of the Western Hemisphere and their citizens and about Texans of Hispanic heritage for the purpose of advancing inter-American understanding and goodwill;

(7) provide language translation services to State agencies and other governmental entities and assist State agencies in disseminating information to the public about bilingual publications;

(8) sponsor and provide administrative guidance to the Pan American Student Forum for the purpose of encouraging the study and appreciation of the peoples and nations of the Western Hemisphere and the multilingual and multicultural traditions of this State;

(9) assist private, nonprofit organizations whose objectives are the establishment of friendly relations in inter-American affairs; and

(10) gather information, conduct investigations, and perform research relating to inter-American affairs and accept grants for this purpose.

(b) If requested to do so by the Governor, the Commission shall:

(1) gather information about matters of mutual interest to this State and the nations of the Western Hemisphere;

(2) maintain connections with the governors of nations of the Western Hemisphere and act as a source of information about State affairs for the consular corps stationed in this State;

(3) research, develop, or implement interstate compacts relating to relations between states sharing international borders or experiencing problems related to international borders;

(4) represent the Governor at public events, make arrangements for State officers to appear at public events, and receive dignitaries from Western Hemisphere countries;

(5) serve as protocol advisor or interpreter at meetings between State officers and officers of Western Hemisphere countries;

(6) gather information in cooperation with governmental entities and interagency task forces about the relationship between this State and Western Hemisphere countries or their citizens; and

(7) establish and maintain offices in Mexico to provide information to the people of Mexico about this State and to promote a mutually beneficial relationship between Mexico and this State.

(c) A member, executive director, or staff person of the Commission may not negotiate any agreement or contract with any individual or business entity from a foreign country or a foreign government unless the member, executive director, or staff person has the Commission's prior approval to do so. An agreement or contract negotiated in accordance with this subsection is valid only after approval by the Commission.

Offices; Reports

Sec. 5. The Commission shall maintain its office in the City of Austin and shall hold at least one meeting each year in the city of Austin. On or before the first day of December of each year the Commission shall make in writing a complete and detailed report to the Governor and to the presiding officer of each House of the Legislature of its activities and shall include in the report an accounting of all funds received by the Commission, including funds received from the Pan American Student Forum or received for hospitality or special events.

Expenses

Sec. 6. Members of the Commission are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the Commission. Reimbursement to members shall be paid upon verified and itemized accounts approved by the chairman of the Commission. The necessary clerical and other expenses of the Commission shall be paid in like manner.

[See Compact Edition, Volume 3 for text of 7]

Deposit of Funds; Audit

Sec. 7a. (a) Except as provided by Subsection (b) of this section, funds received by the Commission shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(b) Funds received by the Commission from the Pan American Student Forum, including funds received as part of a Pan American Student Forum scholarship program, shall be deposited in financial institutions selected by the Commission. The Commission shall administer the funds to finance activities, including scholarship programs, of the Pan American Student Forum.

(c) The Commission's accounting books and records relating to funds deposited in financial institutions are subject to audit by the State auditor. The Commission shall furnish to the State auditor any information requested by the auditor for an audit.

[Amended by Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.007, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1825, ch. 741, §§ 1, 2, eff. Sept. 1, 1979.]

Section 3 of the 1979 amendatory act provided:

"A person holding office as a member of the Good Neighbor Commission of Texas on the effective date of this Act continues to hold the office for the term for which the person was originally appointed."

TITLE 70

HEADS OF DEPARTMENTS

Chapter Article
12. Conservatorship Board ----------4413(203)

CHAPTER ONE. SECRETARY OF STATE

Article
4330a. Application of Sunset Act.

Art. 4330a. Application of Sunset Act

The office of secretary of state is subject to the Texas Sunset Act,[1] but it is not abolished under that Act. The office shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

[Added by Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.173, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 4331. General Duties

Among other duties the Secretary of State shall:

1. Keep his office in the City of Austin or other place where the sessions of the Legislature may be held.

2. Affix the seal of the State to all certificates of official character that may emanate from his office.

3. Keep a fair register of all the official acts of the Governor, and when required shall lay the same and all minutes and other papers in relation thereto before the Legislature or either branch thereof.

4. Keep in a separate suitable book a complete register of all the officers appointed and elected in this State, and commission them when not otherwise provided by law.

5. Arrange and preserve all the books, maps, parchments, records, documents, and all papers that have been or may be properly deposited there, and sealed with the seal of the State, and also similar copies of any act, law or resolution of the United States, or either of them, from the originals in his office, which copies shall be as legal and conclusive in evidence, and to all intents and purposes, in the courts of this State, as the originals would have been; and furnish on request such copies to the Governor, the Legislature or either branch thereof.

6. Attend at every session of the Legislature to receiving bills which have become laws, and immediately after the close thereof cause all enrolled joint resolutions thereof and all such bills to be bound together in a volume to be kept in his office, the date of the session to be placed thereon, and deliver a certified copy thereof and index thereof to the Board of Control, and carefully examine and compare the printed copy with the certified copy and correct each error contained in the former.

7. Turn over to the person in charge of the State Library, immediately upon their receipt, all books, maps, charts or other publications of a political or miscellaneous character received at his office, and all printed volumes of the statutes or laws of any Nation, State or Territory, and in like manner turn over to the Supreme Court Librarian all volumes of reports of any courts of any other Nation, State or Territory received by him.

8. Forward to the Librarian of Congress, the Secretary of State of the United States, the Secretary of the Treasury of the United States, and the executive departments of each State of the Union, to each foreign librarian or government with whom a system of library exchange may be established, as he may deem advisable, copies of all laws and judicial reports printed and published by order of the Legislature at the expense of the State.

9. Forward to each county clerk for the use of the county one copy of each Act of Congress which may be received in his office.

[Amended by Acts 1981, 67th Leg., p. 322, ch. 128, § 1, eff. Aug. 31, 1981.]

Art. 4340. Chief Clerk; Assistant Secretary of State

The Secretary of State shall appoint an Assistant Secretary of State. The Assistant Secretary of State shall serve at the pleasure of the Secretary of State and shall perform all the duties required by law to be performed by the Secretary of State when the said Secretary of State is absent or unable to act for any reason. Such assistant shall perform such other duties as shall be required of him by the Secretary of State.

[Amended by Acts 1981, 67th Leg., p. 323, ch. 128, § 2, eff. Aug. 31, 1981.]

CHAPTER TWO. COMPTROLLER OF PUBLIC ACCOUNTS

Article
4344c. Temporary Transfer of Surplus Cash.
4344d. Suspense Accounts.

Article
4344e. Available School Fund Credits.
4344f. Payment of Tax Refund Claims.
4348b. Taxpayer Assistance to Victims of Natural Disasters.
4359a. Signature on Pay Warrants After Change in Office.
4351b. Miscellaneous Claims.
4364a. Allocations From General Revenue Fund.
4366c. School Taxing Ability Protection Fund.

Art. 4344. Certain Duties

Among other duties the Comptroller shall:

1. Procure a seal with words "Comptroller's Office, State of Texas" engraved around the margin and a five-pointed star in the center, which shall be used as the seal of his office to authenticate all his official acts, except warrants drawn on the State Treasury.

2. Adopt such regulations not inconsistent with the constitution and laws as he may deem essential to the speedy and proper assessment and collection of the revenues of the State.

3. Superintend the fiscal concerns of the State, as the sole accounting officer thereof, and manage the same in the manner required by law.

4. Require all accounts presented to him for settlement not otherwise provided for by law to be made on forms prescribed by him, all such accounts to be verified by affidavit as to their correctness, and he may administer the oath himself in any case in which he may deem it necessary.

5. Prescribe and furnish the form to be used by all persons in the collection of the public revenue and the mode and manner of keeping and stating their accounts.

6. Prescribe forms of the same class, kind and purpose so as to be uniform in size, arrangement, matter and form.

7. From time to time require all persons receiving money or having the disposition or management of any property of the State, of which an account is kept in his office, to render statements thereof to him.

8. Require all persons who have received and not accounted for any money belonging to the State to settle their accounts.

9. Keep and settle all accounts in which the State is interested, including all moneys received by the State as interest and other payments on land and office fees of his and other departments of the State government, and all other moneys received by the State from whatever source and for whatever purpose.

10. Examine and settle the accounts of all persons indebted to the State and certify the amount or balance to the Treasurer, and direct and superintend the collection of all moneys due the State.

11. Audit the claims of all persons against the State in cases where provision for the payment thereof has been made by law, unless the audit of any such claim is otherwise specially provided for.

12. Keep a book to register and index all audited claims against the State, and on the meeting of the regular session of the Legislature make a minute report of the same to both houses thereof, giving the names and amounts of all audited claims.

13. Keep and state all accounts between this State and the United States.

14. Keep journals through which all entries are made in the ledger.

15. Remit or make an allowance to each tax collector in the auditing of his accounts for all sums of money which, in his judgment, have been illegally assessed.

16. Draw warrants on the Treasurer for the payment of all moneys directed by law to be paid out of the Treasury.

17. Suggest plans for the improvement and management of the general revenue.

18. Preserve the books, records, papers and other things belonging in his office and deliver the same in good condition to his successor.

19. Have the authority to accept federal moneys for any state agency not otherwise restricted by statute or by rider or special provision in the General Appropriations Act. These moneys may only be accepted if the agency has certified to the Comptroller the agency will be responsible for compliance with all applicable federal and state laws.

[Amended by Acts 1979, 66th Leg., p. 150, ch. 82, § 1, eff. April 26, 1979.]

Section 7 of the 1979 amendatory act provided:

"On January 1, 1980, all books and records, property, and personnel in the office of the comptroller of public accounts that are involved or used in administration of ad valorem taxation are transferred to the State Property Tax Board. The state auditor shall resolve any dispute over what property, books, or records are subject to this section, and the auditor's decision is final."

Art. 4344b. Purpose; Construction of laws; Reorganization and Consolidation of Divisions; Electronic Data Processing Center; Electronic Funds Transfer System

[See Compact Edition, Volume 4 for text of (1) and (2)]

(3) Notwithstanding the provisions of any other statute, the Comptroller of Public Accounts may establish and operate an electronic funds transfer system to transfer directly into their accounts in financial institutions only: (i) employees' gross state salaries less deductions specifically authorized by state or federal law or reimbursement for travel and subsistence of employees and (ii) payments to annuitants by the Employees Retirement System of Texas or the Teacher Retirement System of Texas under either system's administrative jurisdiction. An authorized payee must request in writing to participate in any electronic funds transfer system established and operated by the Comptroller of Public Accounts. A single transfer may contain payments to multiple payees without the necessity of issuing individual

warrants for each payee. The Comptroller shall establish procedures for administering the system and may use the services of financial institutions, automated clearinghouses, and the federal government. The use of electronic funds transfer or any other payment means does not create any rights that would not have been created had an individual state warrant been used as the payment medium. The State Treasurer may not make payment of a state employee's salary before the last working day of the payroll period.

[Amended by Acts 1981, 67th Leg., p. 632, ch. 253, § 1, eff. Aug. 31, 1981.]

Art. 4344c. Temporary Transfer of Surplus Cash

Sec. 1. The comptroller of public accounts, with the consent of the State Treasurer, may transfer surplus cash, excluding constitutionally dedicated revenues, between funds in the State Treasury. Those transfers are authorized to allow effective management of the cash flow of the General Revenue Fund and to avoid temporary cash deficiency in the General Revenue Fund. The comptroller shall return the surplus cash to the fund from which it was transferred as soon as practicable. The comptroller shall preserve the fund equity and the State Treasurer shall allocate the depository interest as if the transfers had not been made.

Sec. 2. If the comptroller submits a statement to the governor and to the legislature under Article III, Section 49a, of the Texas Constitution when surplus cash transferred under this article is in the General Revenue Fund, in that statement the comptroller shall indicate that the transferred surplus cash:

(1) is in the General Revenue Fund;

(2) is a liability of the General Revenue Fund; and

(3) is not available for appropriation by the legislature.

[Added by Acts 1979, 66th Leg., p. 101, ch. 61, § 1, eff. April 19, 1979.]

Art. 4344d. Suspense Accounts

The comptroller of public accounts may create and use suspense accounts and funds for the collection, allocation, and distribution of revenue, including the allocation of revenue which is required to be deposited to the credit of the available school fund.

[Added by Acts 1981, 67th Leg., p. 2249, ch. 540, § 2, eff. Sept. 1, 1981.]

Art. 4344e. Available School Fund Credits

(1) Except as provided in Section (2) of this article, when state revenue is allocated in proportional amounts to the available school fund and to the general revenue fund, the comptroller of public accounts shall deposit all revenue to the credit of the general revenue fund and then, as a ministerial duty on the 10th day of each month and on the last day of the fiscal year, shall transfer from the general revenue fund to the available school fund the equivalent to the proper proportional amount as required by law to be allocated to the available school fund from the revenue received from the tax during the preceding month or, in the case of the last month of the fiscal year, during the last month of the fiscal year.

(2) All net revenue derived from the collection of the taxes imposed by Chapter 7, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended,[1] shall be deposited in the general revenue fund, and the comptroller of public accounts shall, as a ministerial duty on the 10th day of each month and on the last day of each fiscal year, transfer from the general revenue fund to the proper funds and accounts the amounts calculated by the comptroller equal to the amounts required by Chapter 7 and Article 24.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended.[2]

[Added by Acts 1981, 67th Leg., p. 2249, ch. 540, § 2, eff. Sept. 1, 1981.]

[1] Repealed; see, now, Tax Code, § 154.001 et seq.
[2] Repealed; see, now, Tax Code.

Art. 4344f. Payment of Tax Refund Claims

(1) The comptroller of public accounts shall pay from available funds tax refund claims for refunds of taxes collected under:

(a) the Alcoholic Beverage Code, as amended; and

(b) Articles 7064,[1] 7064a,[2] and 4769, Revised Civil Statutes of Texas, 1925, as amended; and Sections 11 and 12 of Article 1.14–1, and Section 12 of Article 1.14–2, Insurance Code.

(2) The comptroller shall maintain records of each transaction made under this article. A record must show:

(a) the amount of each claim paid, the identity of each claimant, and the purpose for which each claim was made; and

(b) the identity of the fund or the account against which the claim is to be charged.

[Added by Acts 1981, 67th Leg., p. 2249, ch. 540, § 2, eff. Sept. 1, 1981]

[1] Transferred; see, now, Insurance Code, art. 4.10.
[2] Transferred; see, now, Insurance Code, art. 4.11

Art. 4348a. Preparation of Financial Statements and Itemized Estimates; Probable Receipts and Disbursements; Committee on State Revenue Estimates

[See Compact Edition, Volume 4 for text of a and b]

c. The Committee on State Revenue Estimates is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1989.

[Amended by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.169, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 4348b. Taxpayer Assistance to Victims of Natural Disasters

The comptroller may assist any taxpayer in reconstructing and recompiling business records that are damaged or destroyed by natural disaster.
[Added by Acts 1979, 66th Leg., p. 336, ch. 153, § 2, eff. May 11, 1979.]

Art. 4350. Warrants on Treasurer

No warrant shall be issued to any person indebted or owing delinquent taxes to the State, or to his agent or assignee, until such debt or taxes are paid.
[Amended by Acts 1977, 65th Leg., p. 1715, ch. 682, § 1, eff. June 15, 1977.]

Art. 4351b. Miscellaneous Claims

Comptroller of Public Accounts to Pay Miscellaneous Claims

Sec. 1. The comptroller shall pay, from available funds appropriated for that purpose, miscellaneous claims, including but not limited to state ad valorem tax refund claims, qualified under Section 3 of this Act.

Comptroller of Public Accounts to Maintain Records

Sec. 2. The comptroller shall maintain records of all transactions made under authority of this Act. The records must show

(1) the amount of each miscellaneous claim paid, the identity of each claimant, and the purpose for which each claim was made; and

(2) the identity of the fund or account against which the claim is to be charged.

Qualification of Claims

Sec. 3. (a) Under the authority of this Act the comptroller shall pay only those claims for which no appropriation otherwise exists.

(b) No warrant may be prepared for the payment of a miscellaneous claim until the claim has been

(1) verified and substantiated by the administrator of the special fund or account against which the claim is to be charged;

(2) audited by the state auditor; and

(3) verified by the attorney general as a legally enforceable obligation of the State of Texas.

Limitation

Sec. 4. (a) No single claim, nor any aggregate of claims by any single claimant, in an amount in excess of $10,000 may be paid during any biennium under the authority of this Act.

(b) For purposes of this section, all claims which were originally held by one person shall be considered as held by a single claimant, without regard to whether those claims were subsequently assigned or otherwise transferred.
[Acts 1975, 64th Leg., p. 443, ch. 187, eff. May 13, 1975.]

Art. 4359. Pay Warrants Register

The Comptroller shall provide a pay warrant register for each class of pay warrants, each volume of which shall be appropriately designated by class, number or otherwise. When a pay warrant is prepared, it shall be registered in the pay warrant register for the class to which it belongs; and such registry shall consist of an entry of the amount of the warrant, name of the payee, appropriation to which charged, and such other information as may be deemed advisable by the Comptroller. After a warrant has been prepared and registered as herein provided it shall be checked against the claim, and the warrant number shall be entered on the claim papers. The initials of the person checking the warrant with the claim shall be written on both the warrant and the claim, and the warrant together with the claim upon which it is based shall be passed to the Comptroller for his signature, except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, or for the signature of such person as may be authorized by law to sign the same in his stead; and such warrant together with a copy of the warrant register shall then be passed to the State Treasury and registered in the Treasury, and signed, except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, by the State Treasurer or some person authorized by law to sign for him, and returned to the Comptroller's Department. Such warrant shall then be delivered by the Comptroller to the person entitled to receive it, and the Comptroller shall at his option take a receipt therefor and file the receipt in his office. The Comptroller shall also keep a "warrants cancelled register" in which shall be entered the details of all warrants cancelled.

It is hereby provided that a department, court, school, or other state agency may prepare and present payroll claims to the Comptroller prior to the end of the payroll period, which said payroll claims shall be verified by affidavit as to services theretofore actually performed within such payroll period prior to the date of such payroll claims; and such payroll claims need not be verified by affidavit as to any services to be performed during such payroll period subsequent to the date of such payroll claims. Such claims when so presented shall be prepared and approved as otherwise provided below. The Comptroller shall accept such payroll claim when presented and prepare warrants in payment thereof prior to date such claims become due and payable, and hold such warrants for delivery until the claims become due and payable. Such warrants shall be dated as of the due date of the claim and shall not be delivered to the claimant until the end of the pay period. The Treasurer is hereby authorized to countersign such warrants and to make such entry as to properly take them into account. In order that such warrants may be ready for delivery at the end of the pay period the Comptroller is authorized to make such rules and regulations as may be necessary for filing payroll

claims in advance of the pay period, and for the preparation and writing of warrants in payment thereof to adequately and properly achieve such purpose.

One person shall be designated by the Comptroller as Chief of the Claims Division, and such person shall prepare or be responsible for the preparation of all pay warrants, and shall be accountable to the Comptroller for warrants coming into his possession. [Amended by Acts 1979, 66th Leg., p. 207, ch. 117, § 2, eff. May 9, 1979.]

Art. 4359a. Signature on Pay Warrants after Change in Office

If by resignation, death, or other reason a person ceases to hold or perform the duties of the office of comptroller or treasurer, existing stocks of pay warrants bearing that person's printed name, signature, or facsimile signature may be used in accordance with this section until they are exhausted. If they are used, the person holding or performing the duties of the office of comptroller shall cause them to be issued with a strike through the obsolete printed name, signature, or facsimile signature; with the printed name of the person currently holding or performing the duties of the office of comptroller or treasurer substituted for the obsolete name, signature, or facsimile signature; and with the following inscription: "Printed name authorized by law." The inscription shall appear on the warrants near the printed name of the person currently holding or performing the duties of the office of comptroller or treasurer.

[Added by Acts 1979, 66th Leg., p. 207, ch. 117, § 1, eff. May 9, 1979.]

Section 4 of the 1979 Act provided:

"Stocks of pay warrants that exist on the effective date of this Act and that contain the printed name, signature, or facsimile signature of a person who held or performed the duties of the office of comptroller or treasurer before the effective date of this Act may be used in accordance with this Act."

Art. 4364a. Allocations From General Revenue Fund

Priority Allocations

Sec. 1. (a) During the months of September, October, November, December, January, February, and March of each fiscal year, the following withdrawals from the general revenue fund in the amounts provided by this article shall be made:

(1) funds allocated to the state contribution account of the teacher retirement system trust fund;

(2) funds allocated to the state highway fund;

(3) funds allocated to the foundation school fund; and

(4) other authorized withdrawals and transfers.

(b) During the months of April and May of each fiscal year, the following withdrawals from the general revenue fund in the amounts provided by this article shall be made:

(1) funds allocated to the farm-to-market road fund;

(2) funds allocated to the state contribution account of the teacher retirement system trust fund;

(3) funds allocated to the state highway fund;

(4) funds allocated to the foundation school fund; and

(5) other authorized withdrawals and transfers.

(c) During the months of June, July, and August of each fiscal year, the following withdrawals from the general revenue fund in the amounts provided by this article shall be made:

(1) funds allocated to the farm-market road fund;

(2) funds allocated to the state contribution account of the teacher retirement system trust fund;

(3) funds allocated to the state highway fund; and

(4) other authorized withdrawals and transfers.

Amount of Allocations

Sec. 2. (a) During April, May, June, July, and August, the comptroller shall transfer each month from the general revenue fund to the farm-to-market road fund $3 million.

(b) Each month the comptroller shall transfer from the general revenue fund to the state contribution account of the teacher retirement system trust fund the equal monthly payment provided by Section 3.58, Texas Education Code, as amended. If the appropriation provided by the legislature is different from the actual amount of state contributions required, the comptroller shall, after the close of the fiscal year, make adjustments in the teacher retirement fund and the general revenue fund to make the total transfers during the year equal the total amount of the state contribution required by Section 3.58, Texas Education Code, as amended.[1]

(c) Each month the comptroller shall transfer from the general revenue fund to the state highway fund one-twelfth of the annual estimate made under Article 6674f, Revised Civil Statutes of Texas, 1925, as amended, as adjusted as required by that article.

(d) During September, October, November, December, January, February, March, April, and May, the comptroller shall transfer from the general revenue fund to the foundation school fund in nine equal or nearly equal installments an amount of money equal to the annual estimate by the foundation school budget committee of the amount necessary to fund the foundation school program as described in Chapter 16, Texas Education Code, as amended. If the foundation school budget committee alters the estimate of funds needed for financing the foundation school program, the comptroller shall increase, diminish, or suspend transfers under this subsection so that by the end of the fiscal year there has been transferred to the foundation school fund sufficient money to fund the foundation school program.

(e) If, on the 10th day of a month, the amount available for transfer as provided in this article from the general revenue fund to the programs and funds listed in this article or the amount available for transfer from the general revenue fund to the available school fund, as required by law, is insufficient, subsequent credits to the general revenue fund shall be accumulated in an amount sufficient to make the required transfers to the programs and funds listed in this article or to the available school fund as required by law.

[Added by Acts 1981, 67th Leg., p. 2247, ch. 540, § 1, eff. Sept. 1, 1981.]

[1] Repealed; see, now, Title 110B, § 35.404

Acts 1981, 67th Leg., p. 2776, ch. 752, § 9(a) to (i), conformed the Tax Code to various provisions of Acts 1981, 67th Leg., p. 2247, ch. 540, while simultaneously repealing said provisions of the former Act. Section 9(j) of Acts 1981, 67th Leg., p. 2779, ch. 752, provides:

"(j) Sections 1, 2, 10, 11, 12, 13, 14, 15, 16, and 17 of H.B. 872, Acts of the 67th Legislature, Regular Session, 1981 [Chapter 540], are not repealed by this Act."

Art. 4365. Duplicate Warrants

The Comptroller, when satisfied that any original warrant drawn upon the State Treasurer has been lost, destroyed, or stolen, or that the payee's endorsement on the original warrant has been forged, or when any certificate or other evidence of indebtedness approved by the auditing board of the State has been lost, is authorized to issue a duplicate warrant in lieu of the original warrant or a duplicate or a copy of such certificate, or other evidence of indebtedness in lieu of such original; but no such duplicate warrant, or other evidence of indebtedness, shall issue until the applicant has filed with the Comptroller his affidavit, stating that he is the true owner of such instrument, and that the same is in fact lost, destroyed, or stolen, or that the payee's endorsement on the instrument has been forged, and shall also file with the Comptroller his bond in double the amount of the claim with two or more good and sufficient sureties, payable to the Governor, to be approved by the Comptroller, and conditioned that the applicant will hold the State harmless and return to the Comptroller, upon demand being made therefor, such duplicates or copies, or the amount of money named therein, together with all costs that may accrue against the State on collecting the same. Provided, however, that any state department, court, school, school district, or other state agency, or federal agency, shall not be required to make bond for the issuance of duplicate warrants. The head of such state agency or federal agency and one other person connected with the handling of warrants for such agency shall be required to make the affidavit for duplicate to issue in case of lost or destroyed warrant belonging to such agency. In the case of a stolen warrant or a warrant on which the payee's endorsement has been forged, if the Comptroller is satisfied that the warrant is in the possession of the appropriate law enforcement officials, and if the applicant is the same person as the payee, the Comptroller may issue the duplicate warrant without requiring a bond. Any entity, other than a law enforcement official, that has possession of a stolen warrant or a warrant on which the payee's endorsement has been forged shall immediately deliver the warrant to the issuing agency or the Comptroller upon request. The agency or Comptroller shall then issue a receipt for the warrant. After the issuance of said duplicate or copy if the Comptroller should ascertain that the same was improperly issued, or that the applicant or party to whom the same was issued was not the owner thereof, he shall at once demand the return of said duplicate or copy if unpaid, or the amount paid out by the State, if so paid; and, upon failure of the party to return same or the amount of money called for, suit shall be instituted upon said bond in Travis County. The Comptroller shall adopt rules, regulations, and forms regarding the issuance of duplicate warrants.

[Amended by Acts 1977, 65th Leg., p. 265, ch. 126, § 1, eff. Aug. 29, 1977.]

Art. 4366b. Federal Revenue Sharing Trust Fund

[See Compact Edition, Volume 4 for text of 1 and 2]

Sec. 3. In order to insure that the State of Texas obtains the full benefit of the Federal Revenue Sharing Trust Fund, the Comptroller of Public Accounts of the State of Texas is hereby authorized to invest any cash held in such fund, which is determined to be in excess of cash requirements for current expenditures, in United States Government securities, in direct obligations of or obligations the principal and interest of which are guaranteed by the United States of America, in direct obligations of or participation certificates guaranteed by the Federal Intermediate Credit Bank, Federal Land Banks, Federal National Mortgage Association, Federal Home Loan Banks, and Banks for Cooperatives, in savings and loans insured by the Federal Savings and Loan Insurance Corporation, in certificates of deposit of any bank or trust company the deposits of which are fully secured by a pledge of securities of any of the kind hereinabove specified, in any other securities made eligible for such investment by other laws and constitutional provisions, or in any combination of the foregoing.

[Amended by Acts 1977, 65th Leg., p. 1717, ch. 684, § 1, eff. Aug. 29, 1977.]

Art. 4366c. School Taxing Ability Protection Fund

Sec. 1. The School Taxing Ability Protection Fund is established as a special fund in the state treasury. The fund may be appropriated to finance formulas designed to protect school districts against estimated revenue losses resulting from implementation of Article VIII, Sections 1–b(c), 1–b(d) and 1–d–1 of the Texas Constitution.

Sec. 2. Money appropriated from the School Taxing Ability Protection Fund shall be allocated to school districts on the basis of formulas, conditions, and limitations prescribed by law.

Sec. 3. As soon as possible, consistent with sound management of state funds, the comptroller shall transfer from the general revenue fund to the School Taxing Ability Protection Fund the sum of $450 million for use in the 1979–80 and 1980–81 school years.

Sec. 4. The Act takes effect only if and when the constitutional amendment proposed by H.J.R. No. 1, 65th Legislature, 2nd Called Session, 1978, is adopted.

[Added by Acts 1978, 65th Leg., 2nd C.S., p. 22, ch. 10, §§ 1 to 4.]

H.J.R. No. 1 was adopted by vote of the people at an election held on Nov. 7, 1978.

CHAPTER THREE. STATE TREASURER

Article
4381a. Time and Demand Deposit Records and Annual Reports.
4386c–1. Repealed.
4393c. State Funds Reform Act of 1981.

Art. 4371. Money Paid Out, How

The Treasurer shall countersign, except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, and pay all warrants drawn by the Comptroller on the Treasury which are authorized by law. No money shall be paid out of the Treasury except on the warrants of the Comptroller, and no warrant shall be paid by the Treasurer unless presented for payment within two years from the close of the fiscal year in which such warrant was issued, but claims for the payment of such warrants may be presented to the Legislature for appropriations to be made from which such claims may be paid.

[Amended by Acts 1979, 66th Leg., p. 207, ch. 117, § 2, eff. May 9, 1979.]

Art. 4375. Employes

The Treasurer shall appoint a First Assistant who shall be required to give bond with a good and solvent surety company authorized to do business in this State, in the sum of twenty-thousand dollars, payable to and to be approved by the Governor, and conditioned as is the bond of the State Treasurer, and shall appoint such other employes and clerks as may be authorized by law. All such employes, whether clerks or otherwise, who, as a part of their duties, handle any money, drafts, checks, bills of exchange, warrants, or securities or other evidences of debt which are, or may be, convertible into money, shall give bond with a good and solvent surety company authorized to do business in this State, payable to the Treasurer in such sum as he may require, conditioned that he or she will faithfully execute and perform the duties of his or her position. The Treasurer shall employ security officers to provide needed security services at the Treasury Department and may commission the officers as peace officers. The security officers shall give bond in the same manner required by this Article of employes who handle money as part of their duties. The cost and expense incident to the execution of the bond of the First Assistant and of the bonds of the respective employes shall be paid by the State by appropriation.

[Amended by Acts 1977, 65th Leg., p. 618, ch. 227, § 1, eff. May 24, 1977; Acts 1979, 66th Leg., p. 505, ch. 235, § 1, eff. May 17, 1979.]

Art. 4376. First Assistant to Act

Whenever the Treasurer from sickness, unavoidable absence or other cause is not able to act, the first assistant shall sign except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, his own name as "Acting Treasurer" and do such other acts and things as the State Treasurer himself might legally do. The legal acts and signatures of such first assistant as Acting Treasurer, shall be as valid as the acts and signatures of the Treasurer himself.

[Amended by Acts 1979, 66th Leg., p. 207, ch. 117, § 2, eff. May 9, 1979; Acts 1979, 66th Leg., p. 505, ch. 235, § 2, eff. May 17, 1979.]

Art. 4381a. Time and Demand Deposit Records and Annual Reports

Sec. 1. The state treasurer shall maintain accurate records of the daily balances of, and the interest income from, funds deposited by the state treasurer or the state depository board in time and demand deposit accounts in each bank acting as a state depository. The treasurer shall maintain and preserve these records according to the provisions of the Preservation of Essential Records Act (Article 5441d, Vernon's Texas Civil Statutes), and of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252–17a, Vernon's Texas Civil Statutes).

Sec. 2. The treasurer annually shall make a complete report to the legislature and to the governor of the amounts of interest income earned on funds deposited by the state treasurer or the state depository board in each bank acting as a state depository. The report shall contain the following: (a) the name of each bank serving as a state depository during the fiscal year; (b) for each bank, the balance at the beginning of the fiscal year, the balance at the end of the fiscal year, and the average daily balance in demand deposit accounts placed by the state treasurer or the state depository board; (c) for each bank, the balance at the beginning of the fiscal year, the balance at the end of the fiscal year, and the average daily balance in time deposit accounts placed by the state treasurer or the state depository board, and the amount of interest income earned on these accounts; and (d) the totals of these amounts aggregated for all state depositories.

[Acts 1979, 66th Leg., p. 2011, ch. 788, eff. June 13, 1979.]

Art. 4386b to 4386b–3. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(3), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 4386c, 4386c–1. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Former art. 4386c–1, relating to the disposition of money collected or received by the Agriculture Department, was derived from Acts 1977, 65th Leg., p. 687, ch. 259.

Art. 4388. Daily Statement from Departments

The State Treasurer shall receive daily from the head of each Department, each of whom is specifically charged with the duty of making same daily, a detailed list of all persons remitting money the status of which is undetermined or which is awaiting the time when it can finally be taken into the Treasury, together with the actual remittances which the Treasurer shall cash and place in his vaults or in legally authorized depository banks, if the necessity arises. The report from the General Land Office shall include all money for interest, principal and leases of school, university, asylum and other lands. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances from each Department; and the cashier of the Treasurer's Department shall keep a cash book, to be called "suspense cash book," in which to enter these deposit receipts, and any others issued for cash received for which no deposit warrants can be issued, or when their issuance is delayed. As soon as the status of money so placed with the Treasurer on a deposit receipt is determined, it shall be transferred from the suspense account by placing the portion of it belonging to the State in the Treasury by the issuance of a deposit warrant, and the part found not to belong to the State shall be refunded. When deposit warrants are issued, they shall be entered in this cash book, as well as any refunds, and the balance shall represent the aggregate of the items still in suspense. Refunds shall be made in a manner similar to that in present use, except that separate series of warrants shall be used for making such refunds, to be called "refund warrants," and such warrants shall be written and signed, except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, by the Comptroller and countersigned, except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, by the Treasurer and charged against the suspense funds to which they apply. Such warrants shall then be returned to the Comptroller and delivered by him to the person entitled to receive them.

[Amended by Acts 1979, 66th Leg., p. 207, ch. 117, § 2, eff. May 9, 1979.]

Art. 4393a. Trust Funds

Sec. 1. All moneys and other securities placed in the hands of the State Treasurer in trust for any legal purpose shall be received by the State Treasurer on a deposit receipt issued by the State Comptroller as provided in Article 4354, Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 495, Chapter 243, Acts of the Regular Session, 42nd Legislature. Such moneys or other securities shall be held in trust by the State Treasurer in like manner as the Departmental Suspense Account is held under Article 4388, Revised Civil Statutes of Texas, 1925, as amended by House Bill No. 493, Chapter 242, Acts of the Regular Session, 42nd Legislature. Such moneys or other securities shall be withdrawn by trust and suspense draft in the case of money, and withdrawal authorization in the case of other securities, which instruments shall be issued serially and signed, except as provided by Article 4359a, Revised Civil Statutes of Texas, 1925, as added, by the State Comptroller. Any and all moneys received in trust, or for any legal purpose for which a state deposit warrant has not or cannot immediately be issued, shall be handled by the Treasurer in the same manner as items deposited in departmental suspense accounts. All moneys and securities now held in trust in the State Treasury shall immediately be transferred to the trust and suspense section of the state's accounting, and thenceforth transferred, refunded or disposed of according to the provisions of this Act. Adequate registers, ledgers and files shall be maintained by the State Treasurer, and by the State Comptroller, to account for the receiving and disposing of all trust and suspense moneys and other securities, which registers and ledgers shall be known as "Trust and Suspense Record."

Nothing herein shall be construed as amending Section 2 of House Bill No. 684, Chapter 3, Acts of the Regular Session, 46th Legislature; [1] nor as amending Senate Bill No. 89, Chapter 324, Acts of the Regular Session of the 48th Legislature.[2]

[Amended by Acts 1979, 66th Leg., p. 207, ch. 117, § 3, eff. May 9, 1979.]

[1] Article 4379b.

[2] Article 6674q–1 et seq.

Art. 4393c. State Funds Reform Act of 1981

Short Title

Sec. 1. This Act may be cited as the State Funds Reform Act of 1981.

Definition

Sec. 2. In this Act, "state agency" means any department, commission, board, office, institution, or other agency that is in the executive branch of state government, has authority that is not limited to a geographical portion of the state, and was created by the constitution or a statute of this state, but does not include an institution of higher education as defined in Section 61.003, Texas Education Code, as

amended, and does not include the Banking Department of Texas, the Savings and Loan Department of Texas, and the Office of the Consumer Credit Commissioner, whose funds are subject to the budgetary control of the Finance Commission of Texas by virtue of existing laws, and does not include the Credit Union Department of Texas whose funds are subject to the budgetary control of the Credit Union Commission of Texas.

Applicability of Act; Exemptions

Sec. 3. (a) This Act applies to each state agency only to the extent that it is not otherwise required to deposit funds in the state treasury.

(b) This Act does not apply to:

(1) funds pledged to the payment of bonds, notes, or other debts if the funds are not otherwise required to be deposited in the state treasury;

(2) funds held in trust or escrow for the benefit of any person or entity other than a state agency;

(3) funds set apart out of earnings derived from investment of funds held in trust for others, as administrative expenses of the trustee agency;

(4) funds, grants, donations, and proceeds from funds, grants, and donations, given in trust to the Texas State Library and Archives Commission for the establishment and maintenance of regional historical resource depositories and libraries in accordance with Section 2A, Chapter 503, Acts of the 62nd Legislature, Regular Session, 1971, as amended (Article 5442b, Vernon's Texas Civil Statutes); or

(5) the deposit funds for state agencies subject to review under the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes) for 1981, which shall be determined by each agency's enabling statute.

Funds to be Deposited in Treasury

Sec. 4. All fees, fines, penalties, taxes, charges, gifts, grants, donations, and other funds collected or received by a state agency as authorized or required by law shall be deposited in the state treasury, credited to a special fund or funds, and subject to appropriation only for the purposes for which they are otherwise authorized to be expended or disbursed. Deposit shall be made within seven days after the date of receipt.

Reports by Finance Commission

Sec. 5. Not later than December 31 of each year, the Finance Commission of Texas shall file with the governor and the Legislative Budget Board a certified copy of each of the budgets that has been adopted for the Banking Department of Texas, the Savings and Loan Department of Texas, and the Office of the Consumer Credit Commissioner for the coming calendar year. If the budget for the banking department, the savings and loan department, or the Office of the Consumer Credit Commissioner is later amended by the finance commission, each amendment shall be filed in the same manner within 30 days after its adoption. In addition, the finance commission shall file a certified copy of the report of receipts and disbursements and the schedule of all investments for the preceding calendar year for the banking department, the savings and loan department, and the Office of the Consumer Credit Commissioner in the same manner not later than March 1 of each year. In every calendar year when the legislature is in regular session, the Legislative Budget Board shall make available copies of the budgets for that calendar year and the reports of receipts and expenditures for the preceding calendar year, including schedules of all investments, to the respective committees considering appropriations of the senate and the house of representatives. The committees may call for discussion or explanation of items in the budgets that have been adopted by the finance commission. In years in which the legislature is not in regular session, the Legislative Budget Board may call for discussion or explanation of items in the budgets that have been adopted by the finance commission.

[Acts 1981, 67th Leg., p. 3189, ch. 835, eff. Sept. 1, 1981.]

CHAPTER FOUR. ATTORNEY GENERAL

Article
4412b. Defense of District Judges.

Art. 4399. Whom to Advise

The Attorney General at the request of the Governor, or the head of any department of the State government, including the heads and boards of penal and eleemosynary institutions, and all other State boards, regents, trustees of the State educational institutions, committees of either branch of the Legislature, county auditors authorized by law, and the chairman of the governing board of any river authority, shall give them written advice upon any question touching the public interest, or concerning their official duties. He shall advise the several district and county attorneys of the State, in the prosecution and defense of all actions in the district or inferior courts, wherein the State is interested, whenever requested by them, after said attorney shall have investigated the question, and shall with such question, also submit his brief. He shall advise the proper legal authorities in regard to the issuance of all bonds that the law requires shall be approved by him. He is hereby prohibited from giving legal advice or written opinions to any other than the officers or persons named herein.

[Amended by Acts 1977, 65th Leg., p. 1302, ch. 512, § 1, eff. Aug. 29, 1977.]

Art. 4405. Repealed by Acts 1975, 64th Leg., p. 568, ch. 226, § 1, eff. May 20, 1975

Art. 4412a. Charitable Trusts

Definition

Sec. 1. As used in this Article, "charitable trust" is defined as:

(1) a corporation, trust, community chest, fund, foundation, or other entity which is organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or any other civic or public purpose as described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. 501(c)(3));

(2) any trust whose stated purpose is to benefit in whole or in part an entity of the type previously described in Subdivision (1) of this section;

(3) any gift, by inter vivos or testamentary disposition, to an entity of the type previously described in Subdivision (1) of this section.

Attorney general as Necessary Party to Suits or Proceedings

Sec. 2. (a) For and on behalf of the interest of the general public of this state in such matters, the Attorney General shall be a proper party to and shall be given notice, as provided by Section 3 of this Article, in any suit or judicial proceeding, the object of which is:

(1) To terminate a charitable trust or to distribute its assets to other than charitable donees, or

(2) To depart from the objects of a charitable trust as the same are set forth in the instrument creating the trust, including any proceedings for the application of the doctrine of cy pres, or

(3) To construe, nullify or impair the provisions or any instrument, testamentary or otherwise, creating or affecting a charitable trust, or

(4) To contest or set aside the probate of an alleged will by the terms of which any money, property or other thing of value is given, devised or bequeathed for charitable purposes, or

(5) To allow a charitable trust to contest or set aside the probate of an alleged will, or

(6) To determine matters incident to the probate and administration of an estate involving a charitable trust, or

(7) To obtain a declaratory judgment involving a charitable trust.

(b) The Attorney General may intervene in any suit or judicial proceeding in which the Attorney General is a proper party under this section.

Service of Process

Sec. 3. An interested party, or his attorney, shall give the notice required by Section 2 of this Article by sending through the United States mail, duly certified or registered, a certified copy of the petition or other instrument by which the party's involvement in the suit or proceeding is initiated, to the Attorney General and making and filing in said cause an affidavit reciting the facts of notice and attaching thereto the customary postal receipts signed by the Attorney General or any Assistant Attorney General.

Judgment Rendered Without Service or Process Upon Attorney General

Sec. 4. A judgment rendered in any suit or judicial proceeding referred to in this Article without notice to the Attorney General shall be voidable. Any such judgment shall be set aside upon motion of the Attorney General filed at any time thereafter.

Settlement or Compromise of Dispute Without Intervention of Court

Sec. 5. (a) The Attorney General may join and enter into a compromise, settlement agreement, contract, or judgment relating to a suit or judicial proceeding in which the Attorney General is a proper party under Section 2 of this Article.

(b) A compromise, settlement agreement, contract, or judgment relating to a suit or judicial proceeding in which the Attorney General is a proper party is voidable on the motion of the Attorney General if the Attorney General has not received notice of the proceeding required by Section 2 of this Article unless the Attorney General:

(1) has declined in writing to be a party to the proceeding; or

(2) has approved and joined in the compromise, settlement agreement, contract, or judgment.

Purpose of Article

[See Compact Edition, Volume 4 for text of 6]

[Amended by Acts 1981, 67th Leg., p. 2151, ch. 501, § 1, eff. Aug. 31, 1981.]

Art. 4412b. Defense of District Judge, Grand Juror or Commissioner

(a) The Attorney General of Texas is responsible for defending a state district judge in any action or suit in the federal courts in which the judge is a defendant because of his office as district judge if the district judge requests the attorney general's assistance in the defense of the suit.

(b) The attorney general is responsible for defending a state grand jury commissioner or a state grand juror in an action or suit in the federal courts in which the commissioner or the juror is a defendant if:

(1) the suit involves an act of the defendant while in the performance of his duties as a grand jury commissioner or a grand juror; and

(2) the commissioner or the juror requests the attorney general's assistance in the defense of the suit.

[Acts 1975, 64th Leg., p. 659, ch. 275, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 186, ch. 92, § 1, eff. Aug. 29, 1977.]

CHAPTER FOUR-A. STATE AUDITOR

4413a–8a. Application of Sunset Act.
4413a–14A. Subpoenas Issued by Committee.
4413a–14B. Service of Subpoena; Enforcement.
4413a–14C. Compensation of Witnesses.

Art. 4413a–7b. Repealed by Acts 1975, 64th Leg., p. 591, ch. 242, § 7, eff. May 20, 1975

See, now, art. 41b.

Art. 4413a–8a. Application of Sunset Act

The Legislative Audit Committee is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.161, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 4413a–14. Examination of State Departments; Reports; Recommendations

In addition to the other duties provided for the State Auditor, he shall thoroughly examine all departments of the State Government with special regard to their activities and the duplication of efforts between departments and the quality of service being rendered by subordinate employees in each of the several departments.

Upon completing the examination of any department, he shall furnish the chief executive officer and governing body thereof with a report of, among other things, (a) the efficiency of the subordinate employees; (b) the status and condition of all public funds in charge of such department; (c) the amount of duplication between work done by the departments so examined and other departments of the State Government; (d) the expense of operating the department; (e) breaches of trust and duty, if any, by an officer, department, institution, board, bureau, or other custodian or disbursement officer of public funds; (f) any suggested changes looking toward economy and reduction of number of clerical and other employees, and the elimination of duplication and inefficiency. Copies of each report shall be filed with the Governor, the Lieutenant-Governor, the Speaker of the House of Representatives, the Secretary of State, and each member of the Legislature.

The State Auditor shall file an annual report with the Governor; copies of such report shall be filed with the Speaker of the House, the Lieutenant-Governor, and in the office of the Secretary of State. Such annual report shall contain, among other things, copies of, or the substance of reports made to the various departments, bureaus, institutions, and boards, as well as a summary of changes made in the system of accounts and records thereof.

Reports shall also contain specific recommendations to the Legislature for the amendment of existing laws or the passage of new laws designed to improve the functioning of various departments, boards, bureaus, institutions or agencies of State Government to the end that more efficient service may be rendered and the cost of government reduced.

All recommendations submitted by the State Auditor shall be confined to those matters properly coming within his jurisdiction, which is to see that the laws passed by the Legislature dealing with the expenditure of public moneys are in all respects carefully observed, and that the attention of the Legislature is directed to all cases of violation of the law and to those instances where there is need for change of existing laws or the passage of new laws to secure the efficient spending of public funds. The State Auditor shall not include in his recommendations to the Legislature any recommendations as to the sources from which taxes shall be raised to meet the governmental expense.

All reports by the State Auditor shall call attention to any funds, which, in his opinion, have not been expended in accordance with law or appropriations by the Legislature; and shall make recommendations to the Legislature as to the manner or form of appropriations, which will avoid any such improper expenditure of money in the future.

Each of the auditings herein provided for shall be made and concluded as directed by the Legislative Audit Committee, and in accordance with the terms of this Act; but shall be concluded and reports thereof made not later than thirty (30) days before the convening of each Regular Session of the Legislature. The Committee shall direct the Auditor to make any special audit or investigation that in its judgment is proper or necessary to carry out the purpose of this Act, or to assist the Legislature in the proper discharge of its duties.

The Committee shall direct the printing or mimeographing of such number of any reports as it thinks necessary and proper.

All reports filed by the Secretary of State shall be open to public inspection.

[Amended by Acts 1979, 66th Leg., p. 2071, ch. 810, § 8, eff. June 13, 1979.]

Art. 4413a–14A. Subpoenas Issued by Committee

(a) At the request of the state auditor or on its own motion the Legislative Audit Committee may subpoena witnesses or any books, records, or other documents reasonably necessary to carrying out an examination under this Act.[1]

(b) Each subpoena must be signed by the chairman or secretary of the committee.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 8A, added by Acts 1979, 66th Leg., p. 236, ch. 123, § 1, eff. May 9, 1979.]

[1] Articles 4366, 4413a–8 to 4413a–24.

Art. 4413a–14B. Service of Subpoena; Enforcement

(a) On the request of the chairman or secretary, the sergeant-at-arms or an assistant sergeant-at-arms of either house of the legislature or any peace

officer shall serve a subpoena issued under this Act.[1] The officer shall serve the subpoena in the same manner as a subpoena issued by a district court is served.

(b) If the person to whom a subpoena is directed fails to comply, the committee may bring suit in the district court to enforce the subpoena. If the court determines that good cause exists for the issuance of the subpoena, the court shall order compliance. The court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to comply with the order of the district court is punishable as contempt.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 8B, added by Acts 1979, 66th Leg., p. 236, ch. 123, § 1, eff. May 9, 1979.]

[1] Articles 4366, 4413a-8 to 4413a-24.

Art. 4413a-14C. Compensation of Witnesses

The Legislative Audit Committee may provide for the compensation of subpoenaed witnesses. The amount of compensation may not exceed the amount paid to a witness subpoenaed by a district court in a civil proceeding.

[Acts 1943, 48th Leg., p. 429, ch. 293, § 8C, added by Acts 1979, 66th Leg., p. 236, ch. 123, § 1, eff. May 9, 1979.]

CHAPTER FOUR-B. INTERSTATE COOPERATION

Article

4413b. Regulation of Style and Format of Agency Periodic Reports to Governor or Legislature.

Art. 4413b. Regulation of Style and Format of Agency Periodic Reports to Governor or Legislature

Sec. 1. In this Act, "agency" means a department, board, commission, office, or other entity in the executive, legislative, or judicial branch of state government, and includes a public university, senior college, or junior college.

Sec. 2. The state auditor shall promulgate and distribute rules prescribing the style and format of all periodic reports that agencies are required by law to make to the governor, the legislature, or any officer, committee, or agency of the legislature. The rules shall include restrictions on the quality or price of paper used, style or method of printing or typesetting, binding, illustrations, photographs, and other matters relevant to the cost of producing the reports, with the objective of minimizing the cost of the reports without impairing the ability of agencies to make effective reports.

Sec. 3. In making periodic reports referred to in Section 2 of this Act, each agency shall comply with the rules promulgated by the state auditor, and the comptroller shall refuse to issue a warrant to pay any expense incurred by an agency in violation of the rules.

[Acts 1977, 65th Leg., p. 138, ch. 67, eff. April 18, 1977.]

Art. 4413b-1. Commission Established; Composition; Functions; Governor's Committee

[See Compact Edition, Volume 4 for text of 1 and 2]

Application of Sunset Act

Sec. 2a. The Texas Commission on Interstate Cooperation is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 10]

[Amended by Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.077, eff. Aug. 29, 1977.]

CHAPTER FOUR-C. SOUTHERN INTERSTATE NUCLEAR COMPACT

Art. 4413c-1. Southern Interstate Nuclear Compact

[See Compact Edition, Volume 4 for text of 1 and 2]

Application of Sunset Act

Sec. 2a. The office of Southern Interstate Nuclear Compact Board Member for Texas is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 6]

[Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.064, eff. Aug. 29, 1977.]

CHAPTER FOUR-D. STATE-FEDERAL RELATIONS

Art. 4413d-1. Division of State-Federal Relations

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The office of State-Federal Relations is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 4]

Compensation

Sec. 5. The director and staff are entitled to the compensation and transportation allowances provided for in the General Appropriations Acts. The Director and Deputy Director of the Office of State-

Federal Relations may also receive a per diem allowance in addition to the regular compensation and transportation allowances as may be provided for by the Legislature in the General Appropriations Acts.

[See Compact Edition, Volume 3 for text of 6 and 7]

[Amended by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.076, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 799, ch. 358, § 1, eff. Sept. 1, 1979.]

CHAPTER FOUR-E. ENERGY AND WATER RESOURCE CONSERVATION

Article

4413e-1. Repealed.

Art. 4413e-1. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979

The repealed article, derived from Acts 1977, 65th Leg., p. 322, ch. 155, related to an interstate compact for the conservation and utilization of natural energy and water resources.

See, now, Natural Resources Code, § 142.001 et seq.

CHAPTER FIVE. DEPARTMENT OF PUBLIC SAFETY

Article

4413(1a). Application of Sunset Act.
4413(17a). Supplemental Pay for Certain Commissioned Officers.
4413(29aa-1). Persons Convicted of Unlawful Interception, Use, or Disclosure of Oral or Wire Communications; Denial or Revocation of Certification.
4413(29aa-2). Periodic Demonstration of Weapons Proficiency.

Art. 4413(1a). Application of Sunset Act

The Department of Public Safety is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the department is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.129, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 4413(17a). Supplemental Pay for Certain Commissioned Officers

If a commissioned officer of the Department of Public Safety who holds a classified position is required to be on duty more than 40 hours during any one or more calendar weeks which end during a calendar month, or is required to appear in court at any time during a calendar month, he shall receive for that month, in addition to his regular monthly salary as provided by legislative appropriation, a supplement not to exceed 10 percent of his regular salary.

[Added by Acts 1977, 65th Leg., p. 1377, ch. 548, § 1, eff. Aug. 29, 1977.]

Art. 4413(29c). Licensing Commercial Driver-Training Schools and Instructors

[See Compact Edition, Volume 4 for text of 1 to 13]

Driver-Training Instruction for Hire in Licensed School

Sec. 14. No motor vehicle driver-training instruction shall be conducted for hire or tuition unless in a licensed commercial driver-training school or one of its branch offices except as set out in Section 2 and in counties with a population of less than 50,000 where driver-training instruction may be given by a supervisory instructor or instructor not connected with or in a commercial driver-training school.

[See Compact Edition, Volume 4 for text of 15]

[Amended by Acts 1975, 64th Leg., p. 1839, ch. 569, § 1, eff. June 19, 1975.]

Art. 4413(29aa). Commission on Law Enforcement Officer Standards and Education

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The Commission on Law Enforcement Officer Standards and Education is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

[1] Article 5429k.

Powers of Commission

Sec. 2. The Commission shall have the authority and power to:

(a) Promulgate rules and regulations for the administration of this Act including the authority to require the submission of reports and information by any state, county, or municipal agency within this state which employs peace officers, jailers or guards of county jails, or reserve law enforcement officers.

(b) Establish minimum standards that relate to competence and reliability, including educational, training, physical, mental and moral standards for licensing as a peace officer, jailer or guard of a county jail, or reserve law enforcement officer: (1) in permanent positions, and (2) in temporary or probationary status.

(c) Issue temporary or permanent licenses to persons qualified under the provisions of this Act to be peace officers, jailers or guards of county jails, or reserve law enforcement officers.

(d) Certify persons as having qualified as instructors under such conditions as the Commission may prescribe.

(e) Establish minimum curriculum requirements for preparatory, in-service and advanced courses

and programs for schools or academies operated by or for the state or any political subdivisions thereof for the specific purpose of training peace officers, jailers and guards of county jails, or reserve law enforcement officers, or recruits for those positions.

(f) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of training schools and programs of courses of instruction for peace officers, jailers or guards of county jails, or reserve law enforcement officers.

(g) Approve, or revoke the approval of, institutions and facilities for schools operated by or for the state or any political subdivision thereof for the specific purpose of training peace officers, jailers and guards of county jails, reserve law enforcement officers, or recruits for those positions, and issue certificates of approval to such institutions and revoke such certificates of approval.

(h) Operate schools and facilities thereof and conduct courses therein, both preparatory, in-service, basic and advanced courses, for peace officers, jailers or guards of county jails, or reserve law enforcement officers, and recruits for those positions as the Commission may determine.

(i) Contract with other agencies, public or private, or persons, as the Commission deems necessary for the rendition and affording of such services, facilities, studies and reports as it may require to cooperate with municipal, county, state and federal law enforcement agencies in training programs, and to otherwise perform its functions.

(j) Make or encourage studies of any aspect of law enforcement, including police administration.

(k) Conduct and stimulate research by public and private agencies which shall be designed to improve law enforcement and police administration.

(*l*) Employ an Executive Director and such other personnel as may be necessary in the performance of its functions.

(m) Visit and inspect all institutions and facilities conducting courses for the training of peace officers, jailers or guards of county jails, or reserve law enforcement officers, and recruits for those positions, and make evaluations as may be necessary to determine if they are complying with the provisions of this Act and the Commission's rules and regulations.

(n) Adopt and amend rules and regulations, consistent with law, for its internal management and control.

(*o*) Accept any donations, contributions, grants or gifts from private individuals or foundations or the federal government.

(p) Report annually to the Governor and to the Legislature at each regular session on its activities, with its recommendations relating to any matter within its purview, and make such other reports as it deems desirable.

(q) Meet at such times and places in the State of Texas as it deems proper; meetings shall be called by the Chairman upon his own motion, or upon the written request of five members.

(r) Establish procedures for the revocation of licenses issued to a peace officer, a jailer or a guard of a county jail, or a reserve law enforcement officer under the provisions of this Act.

(s) Establish procedures for the issuance of professional achievement or proficiency certificates based upon law enforcement training, education, and experience.

Sec. 2A. Repealed by Acts 1981, 67th Leg., p. 2797, ch. 757, § 10, eff. Sept. 1, 1981.

Reporting Standards and Procedures

Sec. 2B. (a) The Commission shall establish such reporting standards and procedures for matters of appointment and termination of peace officers, jailers or guards of county jails, and reserve law enforcement officers by law enforcement agencies, for matters concerning the activities of certified training academies, and for other matters it deems necessary for the administration of this Act.

(b) The Commission shall furnish each agency and certified training academy with the required reporting forms.

(c) The chief administrative officer of a law enforcement agency or certified training academy shall be responsible for compliance with the reporting standards and procedures prescribed by the Commission.

(d) The Commission shall maintain the records submitted evidencing the qualifications of persons as required by Sections 6, 7A, and 7B of this Act. When the person has this evidence on file with the Commission and a temporary or permanent license has been issued, no additional documentation is required for a subsequent appointment as a peace office, jailer or guard of a county jail, or reserve law enforcement officer. However, if a six-month period elapses between appointments, the Commission shall require the submission of a current criminal history check and fingerprints.

[See Compact Edition, Volume 4 for text of 3 to 5]

Peace Officers and Reserve Officers; Tenure; Probationary Appointments; Training

Sec. 6. (a) Peace officers already serving under permanent appointment prior to September 1, 1970, shall not be required to meet any requirement of Subsection (b) of this section as a condition of tenure or continued employment, nor shall failure of any such officer to fulfill such requirements make him

ineligible for any promotional examination for which he is otherwise eligible. The Legislature finds, and it is hereby declared to be the policy of this Act, that such peace officers have satisfied such requirements by their experience.

Text of subsec. (b) as amended by Acts 1981, 67th Leg., p. 988, ch. 370, § 1

(b) A person who has not satisfactorily completed preparatory training in law enforcement at a school that is operated by or approved by the Commission is eligible to be appointed as a peace officer only on a probationary basis. A probationary peace officer who fails to complete the required training within the probationary period must be removed from office and may not be reappointed on a probationary basis unless 12 months have passed since the date of removal from office and the Commission approves reappointment. The probationary period expires one year after the date of the original appointment except that:

(1) if a probationary peace officer is enrolled in and attending approved law enforcement training at the end of the one-year period, the probationary period is extended until the peace officer completes or ceases to attend the training course; and

(2) if a probationary peace officer is employed in a regional planning commission area in which no approved course is offered during the one-year period, the probationary period is extended until the date the first course in that area is offered and, if the peace officer enrolls in and attends the course, until the date on which the peace officer completes or ceases to attend the course.

Text of subsec. (b) as amended by Acts 1981, 67th Leg., p. 2794, ch. 757, § 3

(b) A person who has not satisfactorily completed preparatory training in law enforcement at a school that is operated by or approved by the Commission is eligible to be appointed as a peace officer or reserve law enforcement officer only on a probationary basis. A probationary peace officer or a probationary reserve law enforcement officer who fails to complete the required training within the probationary period must be removed from office and may not be reappointed on a probationary basis unless 12 months have passed since the date of removal from office and the Commission approves reappointment. The probationary period expires 12 months after the date of the original appointment except that:

(1) if a probationary peace officer or a probationary reserve law enforcement officer is enrolled in and attending approved law enforcement training at the end of the 12-month period, the probationary period is extended until the peace officer or reserve law enforcement officer completes or ceases to attend the training course; and

(2) if a probationary peace officer or a probationary law enforcement officer is employed in a regional planning commission area in which no approved course is offered during the 12-month period, the probationary period is extended until the date the first course in that area is offered and, if the peace officer or reserve law enforcement officer enrolls in and attends the course, until the date on which the peace officer or reserve law enforcement officer completes or ceases to attend the course.

(c) No person who does not have a license issued by the Commission shall be appointed as a peace officer, jailer or guard of a county jail, or reserve law enforcement officer. A law enforcement agency hiring a person desiring a Commission license must file an application with the Commission in accordance with Commission rule.

(d) A person who appoints an individual possessing a license issued by the Commission as a peace officer, jailer or guard of a county jail, or reserve law enforcement officer shall notify the Commission of the appointment within 30 days of the date of appointment.

(e) A person who appoints or retains an individual as a peace officer, jailer or guard of a county jail, or reserve law enforcement officer in violation of Subsection (b), (c), or (d) of this section or in violation of Section 7A of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00).

(f) Nothing herein shall be construed to preclude an employing agency from establishing qualifications and standards for hiring or training peace officers, jailers or guards of county jails, or reserve law enforcement officers which exceed the minimum standards set by the Commission nor shall anything herein be construed to affect any sheriff, constable or other law enforcement officer elected under the provisions of the Constitution of the State of Texas.

(g) Any peace officer already serving under permanent appointment prior to September 1, 1970, and any sheriff, constable, or other law enforcement officer elected to office under the provisions of the Constitution of the State of Texas, shall be eligible to attend peace officer training courses subject to the rules and regulations established by the Commission.

(h) "Peace officer," for the purposes of this Act, means only a person so designated by Article 2.12, Code of Criminal Procedure, 1965, or by Section 51.212 or 51.214, Texas Education Code.

Text of subsecs. (i) to (k) as added by Acts 1981, 67th Leg., p. 2614, ch. 699, § 2

(i) The Commission shall not adopt or enforce rules or regulations that set the date of employment or appointment of a peace officer at a later date than appears on employment records of the hiring law enforcement agency. The provisions of this subsection shall be retroactive.

(j) The Commission shall maintain records submitted in accordance with Sections 6(c) and 7A(c) of

this Act as evidence of qualifications for employment of peace officers or of jailers or guards of a county jail, including records that relate to age, education, physical standards, citizenship, good moral character, experience, and other matters relating to competence and reliability, and the Commission shall maintain records of a psychologist's or physician's declaration of psychological and emotional health of a peace officer or of a jailer or guard of a county jail. If the Commission has on record evidence of fulfillment of employment or appointment qualifications of a peace officer or of a jailer or guard of a county jail, the peace officer, jailer, or guard may not be required to submit duplicate records of qualifications if the peace officer, jailer, or guard is employed or appointed by another law enforcement agency as a peace officer or a jailer or guard of a county jail.

(k) After submitting the proper application, a peace officer or a jailer or guard of a county jail who has completed the required training and acquired the necessary experience for certification shall be certified by the Commission. A certified peace officer or a certified jailer or guard of a county jail may be employed or appointed by a law enforcement agency and the law enforcement agency shall report the employment or appointment to the Commission within 30 days after the date of employment or appointment. If there is a break in employment of a peace officer or of a jailer or guard of a county jail for a period of 180 days or more, the appointing law enforcement agency shall also include with its report a new criminal history record check, a new declaration of psychological and emotional health, and two completed fingerprint cards.

Text of subsecs. (i) to (k) as added by Acts 1981, 67th Leg., p. 2794, ch. 757, § 3

(i) "Reserve law enforcement officer," for the purposes of this Act, means only a person so designated by Chapter 829, Acts of the 62nd Legislature, Regular Session, 1971 (Article 998a, Vernon's Texas Civil Statutes), and by Chapter 506, Acts of the 62nd Legislature, Regular Session, 1971 (Article 6869.1, Vernon's Texas Civil Statutes).

(j) "Jailer or guard of a county jail," for the purposes of this Act, means only a person so designated by Article 6871, Revised Civil Statutes of Texas, 1925.

(k) The Commission shall issue professional achievement or proficiency certificates based upon law enforcement training, education, and experience. For purposes of this subsection, the Commission shall use the employment records of the employing agency.

Revocation of License

Sec. 6A. The Commission may revoke a license issued to a peace officer, a jailer or guard of a county jail, or a reserve law enforcement officer under the provisions of this Act if the Commission determines that the holder of the license has violated a rule, regulation, requirement, specification, or other standard established by the Commission. The Commission shall revoke a license issued to a peace officer, a jailer or guard of a county jail, or a reserve law enforcement officer under the provisions of this Act if the holder of the license is convicted in any state or federal court of a felony.

Training Programs for Peace Officers, Reserve Officers; and Jailers

Sec. 7. (a) The Commission shall establish and maintain peace officer and reserve law enforcement officer training programs and training programs in the operation of county jails to be conducted by its own staff or through such agencies and institutions as the Commission may deem appropriate.

[See Compact Edition, Volume 3 for text of 7(b)]

(c) The commission shall include in the peace officer training program instruction in weapons proficiency and shall require a person seeking certification as a peace officer to demonstrate weapons proficiency.

Psychological and Emotional Health

Sec. 7A. (a) A person may not be licensed by the Commission to be a peace officer, jailer or guard of a county jail, or reserve law enforcement officer unless, before licensing, the person is examined by a licensed psychologist or a licensed physician and is declared in writing by the psychologist or physician to be in satisfactory psychological and emotional health to be a peace officer, jailer or guard of a county jail, or reserve law enforcement officer. The psychologist's or physician's declaration is not public information.

(b) The examining psychologist or physician shall be selected by the agency hiring a person desiring to be licensed as a peace officer, jailer or guard of a county jail, or reserve law enforcement officer.

(c) The agency hiring a person desiring to be licensed as a peace officer, jailer or guard of a county jail, or reserve law enforcement officer shall forward a copy of the psychologist's or physician's declaration to the Commission with the person's application for Commission licensing. The Commission shall keep the copy on file.

Jailers and Guards; Training Requirements; Exceptions; Temporary Appointees

Sec. 7B. (a) A jailer or a guard of a county jail serving under permanent appointment before September 1, 1979, is not required to meet the requirements of Subsections (b) and (c) of this section as a condition of continued employment, nor does the failure of a jailer or guard to fulfill the requirements of this section make the person ineligible for a promotional examination for which the person is otherwise eligible. Those jailers and guards have satisfied the requirements of this section by their experience. Those jailers or guards are eligible to attend training courses in the operation of a county

jail subject to the rules of the Commission. This subsection applies to a jailer or guard who was employed in a county jail before September 1, 1979, and whose employment was terminated before that date because of failure to satisfy educational standards adopted under Section 14, Chapter 480, Acts of the 64th Legislature, 1975 (Article 5115.1, Vernon's Texas Civil Statutes), except that:

(1) this subsection does not apply to an individual who attempted to satisfy those standards by taking an examination and because he or she committed a dishonest act regarding the examination, failed to pass or was not permitted to complete the examination; and

(2) this subsection does not apply to an individual if he or she attempted to prove compliance with those standards with a forged document.

(b) After September 1, 1979, a person may not be appointed as a jailer or guard of a county jail, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of training in the operation of a county jail at a school approved or operated by the Commission. A jailer or guard of a county jail who has received a temporary or probationary appointment on or after September 1, 1979, and who fails to satisfactorily complete a basic course in the operation of a county jail, as prescribed by the Commission, within a one-year period from the date of his original appointment, forfeits his position and shall be removed from the position. The temporary or probationary employment may not be extended beyond one year by renewal of appointment or otherwise, except that after the lapse of one year from the date of the person's forfeiture and removal, the sheriff may petition the Commission for reinstatement of the person to temporary or probationary employment.

[See Compact Edition, Volume 4 for text of 8]

Convicted Felons

Sec. 8A. (a) No person who has been convicted of a felony under the laws of this state, another state, or the United States may be licensed by the Commission as qualified to be a peace officer, jailer or guard at a county jail, or reserve law enforcement officer.

(b) Final conviction of a felony under the laws of this state, another state, or the United States disqualifies a person previously licensed by the Commission to be a peace officer, jailer or guard at a county jail, or reserve law enforcement officer, and the Commission shall immediately revoke the license of a person so convicted.

(c) Subsection (a) of this section does not apply to a person if the person has been placed on probation pursuant to the deferred adjudication provision of Subsection (a), Section 3d, Code of Criminal Procedure, 1965.[1]

[1] So in enrolled bill; probably should read "Subsection (a), Section 3d, Article 42.12, Code of Criminal Procedure, 1965."

[See Compact Edition, Volume 4 for text of 9 and 9A]

Law Enforcement Officer Standards and Education Fund

Sec. 9B. (a) There is hereby created and established in the State Treasury a special fund to be known as the Law Enforcement Officer Standards and Education Fund to be used by the Commission in administering this Act and performing other duties imposed on the Commission by law.

(b) The sum of One Dollar ($1.00) shall be paid as costs of court, in addition to other taxable court costs, by any person convicted of any criminal offense. Convictions arising under the traffic laws of this state are specifically included as follows:

(1) any offense defined in Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes); and

(2) any offense defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), except Sections 34, 76, 77, 78, 79, 80, 81, 93, 94, 95, 96, and 97 of that Act.

(c) Court costs due under this section shall be collected in the same manner as other fines or costs are collected in the case.

(d) The officer collecting the costs in a municipal court case shall keep separate records of the funds collected as costs under this section, and shall deposit the funds in the municipal treasury. The officer collecting the costs in a justice, county, and district court case shall keep separate records of the funds collected as costs under this section, and shall deposit the funds in the county treasury.

(e)(1) All officers collecting court costs under this section shall file the reports required by Articles 1001 and 1002, Code of Criminal Procedure, 1925.

(2) If no funds due as costs under this section have been collected in any quarter, the report required for each quarter shall be filed in the regular manner, and the report shall state that no funds due under this section were collected.

(f) The custodians of the municipal and county treasuries shall keep records of the amount of funds on deposit collected under this section, and shall on or before the last day of the month following each calendar quarter period of three months remit to the Comptroller of Public Accounts the funds collected under this section during the preceding quarter. Each city and county collecting funds under this section is hereby authorized to retain ten percent (10%) of the funds collected by them as a service fee for said collection. All funds collected shall be subject to audit by the Comptroller of Public Accounts. All funds expended shall be subject to audit by the State Auditor. Additionally, all funds collected or expended shall be subject to audit by the Governor's Division of Planning Coordination.

(g) The Comptroller of Public Accounts shall deposit the funds received by him under this section in the Law Enforcement Officer Standards and Education Fund.

(h) The Comptroller of Public Accounts shall, on requisition of the Commission, draw warrants from time to time on the State Treasury for the amount specified in the requisition, not exceeding, however, the amount in the fund at the time of making a requisition. All money expended by the Commission in the administration of this Act and in performing the duties otherwise imposed upon it by law, shall be specified and determined by itemized appropriation in the general appropriations bill for the Commission on Law Enforcement Officer Standards and Education, and not otherwise. At the end of each state fiscal year, any unused portion of the money in this special fund, except those funds theretofore appropriated to the Commission to administer this Act and to perform the duties otherwise imposed on it by law for the next fiscal year, shall be paid into the state General Revenue Fund.

(i) This Act takes effect September 1, 1977.

[Amended by Acts 1975, 64th Leg., p. 637, ch. 262, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1807, ch. 547, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1808, ch. 547, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1809, ch. 549, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 246, ch. 114, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 876, ch. 328, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.136, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 499, ch. 230, § 1, eff. May 17, 1979; Acts 1979, 66th Leg., p. 1140, ch. 546, §§ 1, 2, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1150, ch. 555, § 1, eff. June 11, 1979; Acts 1979, 66th Leg., p. 1293, ch. 599, §§ 1 to 5, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 857, ch. 303, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 988, ch. 370, § 1, eff. June 10, 1981; Acts 1981, 67th Leg., p. 1810, ch. 399, § 3, eff. June 11, 1981; Acts 1981, 67th Leg., p. 2124, ch. 495, § 9, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2613, ch. 699, §§ 1, 2, 5, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2792, ch. 757, §§ 1 to 8, 10, eff. Sept. 1, 1981.]

Acts 1981, 67th Leg., p. 988, ch. 370, § 2, provides:

"The probationary period of a peace officer appointed on a probationary basis before the effective date of this Act is covered by the law in effect on the date the appointment was made."

Acts 1981, 67th Leg., p. 2614, ch. 699, § 3, provides:

"Conduct constituting an offense under the law amended by this Act that does not constitute an offense under that law as amended by this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct constituting an offense under the law amended by this Act is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final."

Acts 1981, 67th Leg., p. 2797, ch. 757, § 9, provides:

"All certificates issued by the Commission on Law Enforcement Officer Standards and Education before the effective date of this Act that are valid on the effective date of this Act shall be treated as if they were licenses issued under Chapter 546, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 4413(29aa), Vernon's Texas Civil Statutes), as amended by this Act."

Art. 4413(29aa-1). Persons Convicted of Unlawful Interception, Use, or Disclosure of Oral or Wire Communications; Denial or Revocation of Certification

Text of article added effective until September 1, 1985

(a) A person who has been convicted of an offense under Section 16.02, Penal Code, may not be certified by the Commission on Law Enforcement Officer Standards and Education to be a peace officer.

(b) Final conviction of an offense under Section 16.02, Penal Code, disqualifies a person previously certified by the Commission on Law Enforcement Officer Standards and Education as qualified to be a peace officer, and the commission shall immediately revoke the certification of a person so convicted.

[Acts 1981, 67th Leg., p. 740, ch. 275, § 4, eff. Aug. 31, 1981.]

Section 5 of the 1981 Act provides:

"This Act shall not be in force after September 1, 1985."

Art. 4413(29aa-2). Periodic Demonstration of Weapons Proficiency

An agency or institution that employs more than two peace officers shall designate a firearms proficiency control officer and require each peace officer it employs to demonstrate to a firearms proficiency control officer weapons proficiency based on the minimum basic training standards as prescribed by the commission at least once every 12 months. The records of this proficiency shall be maintained by the agency or institution that employs peace officers. "Peace officer" means those persons so designated by Article 2.12, Code of Criminal Procedure, 1965, as amended, and Section 51.212, Texas Education Code.

[Acts 1981, 67th Leg., p. 858, ch. 303, § 2, eff. Sept. 1, 1981.]

Art. 4413(29bb). Private Investigators and Private Security Agencies Act

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1. This Act may be cited as the Private Investigators and Private Security Agencies Act.

Definitions

Sec. 2. In this Act, unless the context requires a different definition:

(1) "Board" means the Texas Board of Private Investigators and Private Security Agencies.

(2) "Person" includes individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity.

(3) "Investigations company" means any person who engages in the business or accepts employment to obtain or furnish information with reference to:

(a) crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, damages or injuries to persons or to property; or

(e) the securing of evidence to be used before any court, board, officer, or investigating committee.

(4) "Guard company" means any person engaging in the business of or undertaking to provide a private watchman, guard, or street patrol service on a contractual basis for another person and performing any one or more of the following or similar functions:

(a) prevention of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property;

(b) prevention, observation, or detection of any unauthorized activity on private property;

(c) control, regulation, or direction of the flow or movements of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to assure the protection of property; or

(d) protection of individuals from bodily harm.

(5) "Alarm systems company" means any person that sells, installs, services, or responds to burglar alarm signal devices, burglar alarms, television cameras, still cameras or any other electrical, mechanical, or electronic device used to prevent or detect burglary, theft, shoplifting, pilferage, and other losses of that type.

(6) "Armored car company" means any person that provides secured transportation and protection from one place or point to another place or point of money, currency, coins, bullion, securities, bonds, jewelry, or other valuables.

(7) "Courier company" means any person that transports or offers to transport under armed guard from one place or point to another place or point documents, papers, maps, stocks, bonds, checks, or any other item that requires expeditious delivery.

(8) "Guard dog company" means any person that places, leases, rents, or sells an animal for the purpose of protecting property and/or any person or company that is contracted to train an animal for the purpose of protecting property.

(9) "Security services contractor" means any guard company, alarm systems company, armored car company, courier company or guard dog company as defined herein.

(10) "Security department of a private business" means the security department of any person, if the security department has as its general purpose the protection and security of its own property and grounds, and if it does not offer or provide security services to any other person.

(11) "Private investigator" means any person who performs one or more services as described in Section 2(3) of this Act.

(12) "Undercover agent" means an individual hired by another individual, partnership, corporation, or other business entity to perform a job in and/or for that individual, partnership, corporation, or other business entity, and while performing such job, to act as an undercover agent, an employee, or an independent contractor of a licensee, but supervised by a licensee.

(13) Except as provided by Subsection (e) of Section 3 of this Act, "private security officer" means any individual employed by a security services contractor or the security department of a private business to perform the duties of a security guard, security watchman, security patrolman, armored car guard, courier guard, or alarm systems response runner.

(14) "Manager" means in the case of a corporation, an officer or supervisor, or in the case of a partnership, a general or unlimited partner meeting the experience qualifications set forth in Section 14 of this Act for managing a security services contractor or an investigations company.

(15) "License" means a permit granted by the board entitling a person to operate as a security services contractor or investigations company.

(16) "Branch office license" means a permit granted by the board entitling a person to operate as a security services contractor or investigations company at a location other than the principal place of business as shown in the board records.

(17) "Licensee" means any person to whom a license is granted under this Act.

(18) "Security officer commission" means an authorization granted by the board to an individual employed as a private security officer to carry a handgun.

(19) "Commissioned security officer" means any private security officer to whom a security officer commission has been issued by the board.

(20) "Branch office" means an office established or maintained at some place other than the principal place of business as shown in board records and identified to the public as a place from which business is conducted, solicited, or advertised.

(21) "Registration" means a permit granted by the board to an individual to perform the duties of a private investigator, manager, or branch office manager.

(22) "Registrant" means an individual who has filed an application with the board to perform the duties of a private investigator, manager, or branch office manager.

(23) "Handgun" has the meaning given in Section 46.01(5), Penal Code.

(24) "Director" means the director of the Texas Board of Private Investigators and Private Security Agencies.

(25) "Alarm systems response runner" means a person who responds to the first signal of entry.

Exceptions

Sec. 3. (a) This Act does not apply to:

(1) a person employed exclusively and regularly by one employer in connection with the affairs of an employer only and where there exists an employer-employee relationship; provided, however, any person who shall carry a handgun in the course of his employment shall be required to obtain a private security officer commission under the provisions of this Act;

(2) except as provided by Subsection (e) of this Section, an officer or employee of the United States of America, or of this State or a political subdivision of either, while the employee or officer is engaged in the performance of official duties;

(3) a person who has full-time employment as a peace officer as defined by Article 2.12, Code of Criminal Procedure, 1965, who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, or watchman if such person is:

(a) employed in an employee-employer relationship; or

(b) employed on an individual contractual basis;

(c) not in the employ of another peace officer; and

(d) not a reserve peace officer;

(4) a person engaged exclusively in the business of obtaining and furnishing information for purposes of credit worthiness or collecting debts or ascertaining the financial responsibility of applicants for property insurance and for indemnity or surety bonds, with respect to persons, firms, and corporations;

(5) an attorney-at-law in performing his duties;

(6) admitted insurers, insurance adjusters, agents, and insurance brokers licensed by the State, performing duties in connection with insurance transacted by them;

(7) a person who engages exclusively in the business of repossessing property that is secured by a mortgage or other security interest;

(8) a locksmith who does not install or service detection devices, does not conduct investigations, and is not a security service contractor;

(9) a person who owns and installs burglar detection or alarm devices on his own property or, if he does not charge for the device or its installation, installs it for the protection of his personal property located on another's property, and does not install the devices as a normal business practice on the property of another;

(10) an employee of a cattle association who is engaged in inspection of brands of livestock under the authority granted to that cattle association by the Packers and Stockyards Division of the United States Department of Agriculture;

(11) the provisions of this Act shall not apply to common carriers by rail engaged in interstate commerce and regulated by state and federal authorities and transporting commodities essential to the national defense and to the general welfare and safety of the community;

(12) registered professional engineers practicing in accordance with the provisions of the Texas Engineering Practice Act; [1]

(13) a person whose sale of burglar alarm signal devices, burglary alarms, television cameras, still cameras, or other electrical, mechanical, or electronic devices used for preventing or detecting burglary, theft, shoplifting, pilferage, or other losses is exclusively over-the-counter or by mail order;

(14) a person who holds a license or other form of permission issued by an incorporated city or town to practice as an electrician and who installs fire or smoke detectors in no building other than a single family or multifamily residence;

(15) a person or organization in the business of building construction that installs electrical wiring and devices that may include in part the installation of a burglar alarm or detection device if:

(A) the person or organization is a party to a contract that provides that the installation will be performed under the direct supervision of and inspected and certified by a person or organization licensed to install and certify such an alarm or detection device and that the licensee assumes full responsibility for the installation of the alarm or detection device; and

(B) the person or organization does not service or maintain burglar alarms or detection devices;

(16) a reserve peace officer while the reserve officer is performing guard, patrolman, or watchman duties for a county and is being compensated solely by that county; or

(17) response to a burglar alarm or detection device by a law enforcement agency or by a law enforcement officer acting in an official capacity.

(b) Licensees and employees of licensees under the provisions of this Act shall not be required to obtain any authorization, permit, franchise, or license from or pay any other fee or franchise tax to or post a bond in any city, county, or other political subdivision of this State to engage in business or perform any service authorized under this Act.

(c) Except as otherwise specifically provided in this subsection, no city, county, or other political subdivision of this State shall impose any charge, service charge, fee, or any other type of payment for the use of city, county, or other public facilities in connection with businesses or services rendered by the licensees under this Act, except that any city or town may levy and collect reasonable charges for the use of central alarm installations located in a police office, that is owned, operated, or monitored by such

city or town. Provided further, that any city or town may require discontinuation of service of any alarm signal device which, because of mechanical malfunction or faulty equipment, causes at least five false alarms in any 12-month period. Such city or town may cause the disconnection of any such device until the same is repaired to the satisfaction of the appropriate municipal official, and the city or town may levy and collect reasonable inspection and reinspection fees in connection therewith. "Mechanical malfunction" and "faulty equipment" shall not relate, for the purposes of this section, to false alarms caused by human error or an act of God.

(d) Although under the provisions of this Act the security department of a private business that hires or employs an individual in the capacity of a private security officer to possess a handgun in the course and scope of his duties is required to make application for a security officer commission for the individual according to the provisions of this Act, the security department of a private business shall not be required to make application to the board for any license under this Act.

(e) The provisions of this Act relating to security officer commissions apply to a person employed by a political subdivision whose duties include serving as a security guard, security watchman, or security patrolman on property owned or operated by the political subdivision if the governing body of the political subdivision files a written request with the board for the board to commission the political subdivision's employees with those duties. The board may not charge a fee for commissioning those officers. The board shall issue the officer a pocket card designating the political subdivision employing him. The commission expires when the officer's employment as a security officer by the political subdivision is terminated. The board may approve a security officer training program conducted by the political subdivision under the provisions of Section 20 of this Act applicable to approval of a private business' training program.

[1] Article 3271a.

SUBCHAPTER B. ADMINISTRATION

Creation of Board

Sec. 4. (a) A Texas Board of Private Investigators and Private Security Agencies is created to carry out the functions and duties conferred on it by this Act.

(b) The position of director of the Texas Board of Private Investigators and Private Security Agencies is created. He shall serve as chief administrator of the board. He shall not be a member of the board, but shall be a full-time employee of the board, fully compensable in an amount to be determined by the Legislature. The director shall perform such duties as may be prescribed by the board, and shall have no financial or business interests, contingent or otherwise, in any security services contractor or investigations company.

(c) All legal process and all documents required by law to be served upon or filed with the board shall be served or filed with the director at the designated office of the board. All official records of the board or affidavits by the director as to the content of such records shall be prima facie evidence of all matters required to be kept by the board.

(d) The Texas Board of Private Investigators and Private Security Agencies is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

Text of subsecs. (e) and (f) as added by Acts 1981, 67th Leg., p. 862, ch. 306, § 2

(e) Except as provided by Subsection (f) of this section, all sums of money paid to the board under this Act shall be deposited in the State Treasury and placed in a special fund to be known as the Texas Board of Private Investigators and Private Security Agencies Fund and may be used only for the administration of this Act.

(f) The fines collected under this Act shall be deposited to the credit of the General Revenue Fund and may not be used for the administration of this Act.

Text of subsecs. (e) and (f) as added by Acts 1981, 67th Leg., p. 2895, ch. 773, § 1

(e) Funds paid to the board under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(f) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Board Membership

Sec. 5. (a) The board is composed of the following members:

(1) the director of the Texas Department of Public Safety or his designated representative shall serve as an ex officio member of such board, and such service shall not jeopardize the individual's official capacity with the State of Texas;

(2) the Attorney General or his designated representative shall serve as an ex officio member of such board, and such service shall not jeopardize the individual's official capacity with the State of Texas;

(3) one city or county law enforcement officer shall be appointed by the Governor, without regard to the race, creed, sex, religion, or national origin of the appointee and with the advice and consent of the Senate;

(4) two members shall be appointed by the Governor, without regard to the race, creed, sex, religion, or national origin of the appointees and with

the advice and consent of the Senate, who are citizens of the United States and residents of the State of Texas; and

(5) three members shall be appointed by the Governor, without regard to the race, creed, sex, religion, or national origin of the appointees and with the advice and consent of the Senate, who are licensed under this Act, who have been engaged for a period of five consecutive years as a private investigator or security services contractor, and who are not employed by the same person as any other member of the board.

(b) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of private security;

(2) is employed by or participates in the management of a business entity or other organization related to the field of private security; or

(3) has, other than as a consumer, a financial interest in a business entity or other organization related to the field of private security.

(c) A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the private security industry.

(d) A member or employee of the board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee or paid consultant of a trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board.

(e) It is a ground for removal from the board of a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) or (b) of this section for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Subsection (a) or (b) of this section for appointment to the board;

(3) violates a prohibition established by Subsection (c) or (d) of this section; or

(4) does not attend at least one-half of the regularly scheduled meetings held by the board in a calendar year, excluding meetings held when the person was not a member of the board.

(f) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

Oath of Office

Sec. 6. (a) The members of the board appointed by the Governor and confirmed by the Senate shall take the constitutional oath of office before an officer authorized to administer an oath within this state.

(b) Upon presentation of the oath, together with the certificate of appointment, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members.

Terms of Office

Sec. 7. (a) The appointed members of the board serve staggered six-year terms, and the terms of two appointed members expire on January 31 of each odd-numbered year. Each appointed members shall hold office until his successor is appointed and has qualified.

(b) The director of the Department of Public Safety and the attorney general, or their representatives, serve on the board during their terms of office and shall perform the duties required of members of the board by this Act in addition to those duties required of them in other official capacities.

Vacancies

Sec. 8. The governor, with the advice and consent of the Senate, shall fill vacancies occurring among appointed members of the board with appointments for the duration of the unexpired term.

Designated Representatives

Sec. 9. (a) The Attorney General and the director of the Department of Public Safety may delegate to a personal representative from their respective offices the authority and duty to represent them on the board.

(b) The designated representative may exercise all of the powers, duties, and responsibilities of the member while engaged in the performance of official board business, but a member is responsible for the acts and decisions of his delegated representative.

Compensation of Board Members; Personnel Matters

Sec. 10. (a) A member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. The number of employees and the salaries of each shall be fixed in the General Appropriations Act.

(b) The director of the board or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of each job opening with the board in a nonentry level position. The intraagency posting shall be made at least 10 days before any public posting is made.

(c) The director of the board or his designee shall develop a system of annual performance evaluations of the board's employees based on measurable job tasks. Any merit pay authorized by the director shall be based on the system established under this subsection.

Rules of Procedure and Seal

Sec. 11. (a) The board shall have the following powers and duties:

(1) to determine the qualifications of licensees, registrants, and commissioned security officers as provided in this Act;

(2) to investigate alleged violations of the provisions of this Act and of any rules and regulations adopted by the board;

(3) to promulgate all rules and regulations necessary in carrying out the provisions of this Act; and

(4) to establish and enforce standards governing the safety and conduct of persons licensed, registered, and commissioned under the provisions of this Act.

(b) The board shall have a seal, the form of which it shall prescribe.

(c) On or before January 1 of each year, the board shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board in the preceding year.

(d) The board may recognize, prepare, or administer continuing education programs for persons regulated by the board under this Act. Participation in the programs is voluntary.

Subpoenas and Injunctions

Sec. 11A. (a) In the conduct of any investigation conducted under the provisions of this Act, the board may issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The officer conducting a hearing may administer oaths and may require testimony or evidence to be given under oath.

(b) No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he is properly examined by the officer conducting the hearing. Any person called upon to testify or to produce papers upon any matter properly under inquiry by the board, who refuses to so testify or produce papers upon the ground that his testimony or the production of papers would incriminate him or tend to incriminate him, shall nevertheless be required to testify or to produce papers, but when so required under these objections he is not subject to indictment or prosecution for any transaction, matter, or thing concerning which he truthfully testifies or produces evidence.

(c) If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the board, then the board may petition a district court of the county in which the hearing is held to compel the witness to obey the subpoena or to give the evidence. The court shall immediately issue process to the witness and shall hold a hearing on the petition as soon as possible. If the witness then refuses, without reasonable cause or legal grounds, to be examined or to give any evidence relevant to proper inquiry by the board, the court shall punish the witness for contempt.

(d) Investigators employed by the board are authorized to take statements under oath in any investigation of a matter covered by this Act.

(e) The board may institute an action in its name against a person to enjoin a violation of this Act or a rule or regulation of the board. For the board to sustain the action, the board does not have to allege or prove that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation. The board may not be required to give an appeal bond in any cause arising under this Act.

Revocation, Suspension, etc.

Sec. 11B. (a) The board shall revoke or suspend any registration, license, or security officer commission, reprimand any registrant, licensee, or commissioned security officer, or deny an application for a registration, license, or security officer commission, or renewal thereof, or may place on probation a person whose registration, license, or security officer commission has been suspended, on proof:

(1) that the applicant, licensee, commissioned security officer, or registrant has violated any provisions of this Act or of the rules and regulations promulgated under this Act;

(2) that the applicant, licensee, commissioned security officer, or registrant has committed any act resulting in conviction of a felony;

(3) that the applicant, licensee, commissioned security officer, or registrant has committed an act after the date of application for a registration, license, or security officer commission that results in a conviction of a misdemeanor involving moral turpitude;

(4) that the applicant, licensee, commissioned security officer, or registrant has practiced fraud, deceit, or misrepresentation; or

(5) that the applicant, licensee, commissioned security officer, or registrant has made a material misstatement in the application for or renewal of a license, registration, or security officer commission;

(b) If the board proposes to refuse a person's application for a registration, license, or security officer commission, to suspend or revoke a person's registration, license, or security officer commission, or to place on probation a person whose registration,

license, or security officer commission has been suspended, the person is entitled to a hearing before the board.

(c) Proceedings for the refusal, suspension, or revocation of a registration, license, or security officer commission or for the probation of a person are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(d) Deleted by Acts 1981, 67th Leg., p. 2898, ch. 773, § 9, eff. Aug. 31, 1981.

(e) If the board is authorized to suspend a license under this Act, the board may give the licensee the opportunity to pay a civil penalty rather than have the license suspended. The amount of the civil penalty may not be more than $200 for each day the license was to have been suspended. If the licensee does not pay the penalty before the sixth day after the board notifies him of the amount, he loses the opportunity to pay it and the board shall impose the suspension.

Organization and Meetings of the Board

Sec. 12. (a) The board shall meet within 30 days after the effective date of this Act, and thereafter at regular intervals to be decided by a majority vote of the board.

(b) The board, including the representative of the director of the Department of Public Safety if he so designates one, shall elect from among its members a chairman, vice-chairman, and secretary to serve two-year terms commencing on September 1, of each odd-numbered year. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the board and perform the other duties prescribed in this Act.

(c) A majority of the board constitutes a quorum to transact business.

(d) At the first meeting, the board shall specify the date and place of the first examinations for licenses to be held.

Consumer Information

Sec. 12A. (a) The board shall prepare information of consumer interest describing the regulatory functions of the board and describing the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

(b) Each written contract for services in this state of a company licensed under this Act shall contain the name, mailing address, and telephone number of the board.

(c) There shall be displayed prominently in the place of business of each licensee regulated under this Act, a sign containing the name, mailing address, and telephone number of the board and a statement informing consumers that complaints against licensees can be directed to the board.

SUBCHAPTER C. LICENSES

License Required and False Representation Prohibited

Sec. 13. (a) It shall be unlawful and punishable as provided in Section 44 of this Act for any person to engage in the business of, or perform any service as an investigations company, guard company, alarm systems company, armored car company, courier company, or guard dog company or to offer his services in such capacities or engage in any business or business activity required to be licensed by this Act unless he has obtained a license under the provisions of this Act.

(b) It is unlawful and punishable as provided in Section 44 of this Act for any person to represent falsely that he is employed by a licensee or represent falsely that he is licensed, registered, or commissioned.

(c) It shall be unlawful and punishable as provided in Section 44 of this Act for any individual to make application to the board as manager or to serve as manager of an investigations company, guard company, alarm systems company, armored car company, courier company, or guard dog company unless the individual intends to maintain and maintains that supervisory position on a daily basis for the company.

Qualifications

Sec. 14. (a) An applicant for a license or his manager must:

(1) be at least 18 years of age;

(2) not have been convicted in any jurisdiction of any felony unless a full pardon has been granted;

(3) not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude during the seven-year period preceding the date of application unless a full pardon has been granted for the conviction;

(4) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and has not been restored;

(5) not be suffering from habitual drunkenness or from narcotics addiction or dependence; and

(6) not have been discharged from the armed services of the United States under other than honorable conditions.

(b) An applicant who applies for a license to engage in the business of an investigations company or his manager shall have three (3) years consecutive experience prior to the date of said application in the investigative field, as an employee, manager, or owner of an investigations company or other requirements as shall be set by the board. The experience of the applicant must be reviewed by the board or by the director, and determined to be adequate to qualify the applicant to engage in the business of an investigations company.

(c) An applicant who applies for a license to engage in the business of a security services contractor or his manager shall have two (2) consecutive years experience prior to the date of said application in each security services field for which he applies, as an employee, manager, or owner of a security services contractor or other requirements as shall be set by the board. The experience of the applicant must have been obtained legally and must be reviewed by the board or by the director and determined to be adequate to qualify the applicant to engage in the business of a security services contractor.

Application and Examination

Sec. 15. (a) An application for a license under this Act shall be in the form prescribed by the board. The application shall include:

(1) the full name and business address of the applicant;

(2) the name under which the applicant intends to do business;

(3) a statement as to the general nature of the business in which the applicant intends to engage;

(4) a statement as to the classification under which the applicant desires to be qualified;

(5) the full name and residence address of each of its partners, officers, and directors, and its manager, if the applicant is an entity other than an individual;

(6) two recent photographs of a type prescribed by the board of the applicant, if the applicant is an individual, or of each officer and of each partner or shareholder who owns a 25 percent or greater interest in the applicant, if the applicant is an entity;

(7) one classifiable set of fingerprints of the applicant, if the applicant is an individual, or of each officer and of each partner or shareholder who owns a 25 percent or greater interest in the applicant, if the applicant is an entity;

(8) a verified statement of his experience qualifications in the particular field of classification in which he is applying;

(9) a letter from the police department and a letter from the sheriff's department of the city and county wherein the applicant resides concerning the character of the applicant and containing any objection or recommendation as to his application; and a letter from the Texas Department of Public Safety setting forth the record of any convictions of any applicant for a felony or a crime involving moral turpitude; and

(10) any other information, evidence, statements, or documents as may be required by the board.

(b) An application for a license under this Act shall include the Social Security number of the one making application.

(c) The board may require an applicant or his manager to demonstrate qualifications in his field of classification by an examination to be determined by the board.

(d) Payment of the application fee prescribed by this Act entitles the applicant or his manager to one examination without further charge. If the person fails to pass the examination, he shall not be eligible for any subsequent examination except upon payment of the reexamination fee which shall be set by the board in an amount not in excess of the renewal fee for the license classification for which license application was originally made.

(e) Within 30 days after the day on which a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the day that the board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(f) If requested in writing by a person who fails the licensing examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.

Classification of License

Sec. 16. (a) No person may engage in any operation outside the scope of his license.

(b) For the purpose of defining the scope of licenses, the following license classifications are established:

(1) Class A: investigations company license, covering operations as defined in Subdivision (3), Section 2, of this Act;

(2) Class B: security services contractor license, covering operations as defined in Subdivision (9), Section 2, of this Act;

(3) Class C: covering the operations included within Class A and Class B.

(c) A person licensed only as a security services contractor may not make any investigation except as incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property which he has been hired or engaged to protect.

(d) A Class A, B, or C license does not authorize the licensee to perform any services for which he has not qualified. The board shall indicate on the license which services the licensee is authorized to perform, and the licensee may not perform any service not indicated on the license.

Fees

Sec. 17. (a) The board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

1.	Class A license (original and renewal)	$225
2.	Class B license (original and renewal)	225
3.	Class C license (original and renewal)	340
4.	Reinstate suspended license	150
5.	Assignment of license	150
	Change name of license	75
	Delinquency fee	—
	Branch office certificate and renewal	150
	Registration fee for private investigators, managers, and branch office managers (original and renewal)	25
	License termination fee	10
	Security officer commission fee	
	original	25
	renewal	15

(b) The State Auditor shall audit the financial transactions of the board in each fiscal biennium.

Manager to Control Business

Sec. 18. (a) The business of each licensee shall be operated under the direction and control of one manager, and no licensee shall make application to qualify more than one individual to serve as manager.

(b) No person shall act as a manager of a licensee until he has complied with each of the following:

(1) demonstrated his qualifications by a written examination;

(2) made a satisfactory showing to the board that he has the qualifications prescribed by Section 14 of this Act, and that none of the facts stated in Subsection (a), Section 11B, of this Act exist as to him.

(c) If the manager, who has qualified as provided in this section, ceases to be manager for any reason whatsoever, the licensee shall notify the board in writing within 14 days from such cessation. If notice is given, the license shall remain in force for a reasonable length of time to be determined by the rules of the board pending the qualifications as provided in this Act, of another manager. If the licensee fails to notify the board within the 14-day period, his license shall be subject to suspension or revocation.

(d) When the individual on the basis of whose qualifications a license under this Act has been obtained ceases to be connected with the licensee for any reason whatsoever, the business may be carried on for such temporary period and under such terms and conditions as the board shall provide by regulation.

(e) If a manager lacks the experience to qualify to manage all categories of service included in a license or application, a supervisor qualified as required in Subsection (b) of this section must be responsible for each service for which the manager is unqualified.

Handgun; Security Officer Commission

Sec. 19. (a) It is unlawful and punishable as provided in Section 44 of this Act:

(1) for an individual employed as a private security officer to knowingly carry a handgun during the course of performing his duties as a private security officer if the board has not issued him a security officer commission under this section;

(2) for any person to hire or employ an individual or for any individual to accept employment in the capacity of a private security officer to carry a handgun in the course and scope of his duties unless the private security officer is issued a security officer commission by the board; or

(3) for a commissioned security officer to carry a handgun unless:

(A) he is engaged in the performance of his duties as a security officer or is engaged in traveling directly to or from his place of assignment;

(B) he wears a distinctive uniform indicating that he is a security officer; and

(C) the handgun is in plain view.

(b) The board, with the concurrence of the Texas Department of Public Safety, may issue a security officer commission to an individual employed as a uniformed private security officer provided the geographical scope of the security officer commission is restricted to one named county in the State of Texas and all counties contiguous to the named county, except as allowed in Subsection (c) of this section.

(c) The board, with the concurrence of the Texas Department of Public Safety, may issue a security officer commission that is broader in geographical scope within the State of Texas than that specified in Subsection (b) of this section if the broader scope is shown to be in the public interest and necessary to the performance of the duties of the private security officer.

(d) The board, with the concurrence of the Texas Department of Public Safety, shall issue a security officer commission to a qualified employee of an armored car company that is a carrier that has a permit from the proper federal or state regulatory authority to conduct the armored car business in accordance with the permit or certificate. A security officer commission issued to an employee of an armored car company shall be broad enough in its geographical scope to cover the county or counties in this state in which the armored car company has a permit or certificate to conduct its business.

(e) The employer of a private security officer who makes application for a security officer commission shall submit an application to the board on a form provided by the board.

(f) No security officer commission may be issued to any individual who is under 18 years of age, who is a convicted felon, or who has committed any act

which if committed by a licensee would be grounds for suspension or revocation of a license under this Act.

(g) The board shall send a copy of each application for a security officer commission to the Texas Department of Public Safety and to the sheriff of the county and the chief of police of the principal city of the county in which the applicant resides. A sheriff or chief of police who wishes to object to the issuance of a security officer commission to a particular applicant may do so by mailing or otherwise delivering a written statement of his objection and his reasons to the board.

(h) If the board decides to issue a security officer commission over the objections of a sheriff or chief of police, it shall mail a notice of its decision to the objecting officer and give him an opportunity to request a hearing before the board to contest the board's decision. If the objecting officer files a request for a hearing within 30 days after the date the notice was mailed to him, the board shall set the matter for a hearing. The board may not issue a security officer commission over the objection of a sheriff or chief of police unless it finds at the hearing that there is good cause to issue the commission over the objection or, if no hearing is requested, until the time for requesting a hearing has passed.

(i) Each security officer commission issued under this section shall be in the form of a pocket card designed by the board, and shall identify the licensee or the security department of a private business by whom the holder of the security officer commission is employed. A security officer commission expires on the date the license of the licensee who employs the officer expires or, if the officer is employed by the security department of a private business, one year after the date it is issued. No charge may be imposed for the pocket card.

(j) If the holder of the security officer commission terminates his employment with the licensee or the security department of a private business or transfers his residence to another county, he must return the pocket card to his employer and his employer must return the pocket card to the board within 14 days of the date of termination of the employment or transfer of business.

(k) The board shall provide by rule the procedure by which a licensee or the security department of a private business may issue a temporary security officer commission to a private security officer who has made application to the board for a security officer commission.

(*l*) Subsection (a) of this section does not apply to the holder of a valid temporary security officer commission issued under this section if the holder is in uniform and in possession of only one handgun and engaged in the performance of his duties.

Training Programs

Sec. 20. (a) The board shall establish training programs to be conducted by agencies and institutions approved by the board. The board may approve training programs conducted by licensees if the licensees offer the courses listed in Subsection (b) of this section, and if the instructors of the training program are qualified instructors approved by the board. The board shall approve a training program conducted by the security department of a private business to train its own personnel, without regard to its curriculum, if it is adequate for the business' security purposes.

(b) The basic training course approved by the board shall consist of a minimum of 30 hours and shall include:

(1) legal limitations on the use of handguns and on the powers and authority of a private security officer;

(2) familiarity with this Act;

(3) field note taking and report writing;

(4) range firing and procedure, and handgun safety and maintenance; and

(5) any other topics of security officer training curriculum which the board deems necessary.

(c) The board shall develop a commissioned security officer training manual to be used in the instructing and training of commissioned security officers.

(d) The board shall promulgate all rules necessary to administer the provisions of this section concerning the training requirements of this Act.

(e) The board may not issue a security officer commission to an applicant employed by a licensee unless the applicant submits evidence satisfactory to the board that:

(1) he has completed the basic training course at a school or under an instructor approved by the board;

(2) he meets all qualifications established by this Act and by the rules of the board;

(3) he has satisfied his handgun training instructor that he has attained a minimum average marksmanship competency of 160 out of 300 on an "Army L" target or a minimum of 80 out of 150 on an F.B.I. Silhouette target (N.R.A. B–27), at 50 feet with 10 shots slow fire, 10 shots time fire, and 10 shots double-action or complies with the standards of marksmanship set by the board.

(f) The board may not issue a security officer commission to an applicant employed by the security department of a private business unless the applicant submits evidence satisfactory to the board that:

(1) he has completed an approved training course conducted by the security department of the business; and

(2) he meets all qualifications established by this Act and by the rules of the board.

(g) In addition to the requirements of Subsections (e) and (f) of this section, the board by rules and regulations shall establish other qualifications for

persons who are employed by licensees or the security department of a private business in positions requiring the carrying of handguns. These qualifications may include physical and mental standards, standards of good moral character, and other requirements that relate to the competency and reliability of individuals to carry handguns. The board shall prescribe appropriate forms and rules and regulations by which evidence that the requirements are fulfilled is presented. The board shall require commissioned security officers at least once every 24 months to demonstrate proficiency in the use of handguns to the satisfaction of a handgun training instructor who is employed by a board approved training school. The records of this proficiency shall be maintained by the school and available for inspection by the board.

(h) The board shall prescribe appropriate rules and regulations for the maintenance of records relating to persons issued security officer commissions by the board.

Psychological Testing

Sec. 20A. The board shall contract with one or more licensed psychologists practicing to study the feasibility of developing psychological and emotional standards of applicants for a private security officers commission and the possibility of developing an examination that will test those standards. If the examination can be validated, the board shall implement the examination by January 1, 1981. In the event no examination is being utilized by the board by January 1, 1981, it shall be incumbent upon the legislature to review this section.

Failure to Pass Psychological Test; Licensee or Private Business Security Department Held Harmless and Defense Provided

Sec. 20B. Should an applicant for a private security commission file legal action against a licensee or a security department of a private business as a result of failing to pass a psychological and emotional standards examination approved by the board, the State of Texas agrees to hold harmless and provide legal defense for the licensee or the security department of a private business.

Form of Licenses

Sec. 21. A license or a branch office license, when issued, shall be in the form prescribed by the board, and shall include:

(1) the name of the licensee;

(2) the name under which the licensee is to operate; and

(3) the number and date of the license.

Posting

Sec. 22. (a) The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

(b) Each branch office license shall at all times be posted in a conspicuous place in each branch office of the licensee.

Change of Address and New Officers

Sec. 23. Notification to the board shall be made within 14 days after the change of address of the principal place of business of a licensee, the change of address of a branch office, or the change of a business name under which a licensee does business. A licensee shall within 14 days after such change, notify the board of any and all changes of his address, of the name under which he does business and of any changes in its officers or partners.

License Not Assignable

Sec. 24. A license issued under this Act is not assignable unless the assignment is approved in advance by the board.

Termination of License

Sec. 25. The board shall prescribe by rule the procedure under which a license issued under this Act may be terminated.

Notice to Local Officials

Sec. 26. Notice of the issuance, revocation, reinstatement, or expiration of every license, commission, or registration card issued by the board shall be furnished to the sheriff of the county and the chief of police of the principal city of the county in which every person regulated under this Act resides.

Licensee Responsible for Conduct of Employees

Sec. 27. A licensee may be legally responsible for the conduct in the business of each employee while the employee is performing his assigned duties for the licensee.

Divulgence of Information

Sec. 28. (a) Any licensee or officer, director, partner, or manager of a licensee shall divulge to any law enforcement officer or district attorney, or his representative, any information he may acquire as to any criminal offense, but he shall not divulge to any other person except as he may be required by law so to do, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(b) No licensee or officer, director, partner, manager, or employee of a licensee shall knowingly make any false report to his employer or client for whom information was being obtained.

(c) No written report shall be submitted to a client except by the licensee, qualifying manager, or a person authorized by one or either of them, and such person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in such a report are true and correct.

Text of subsection as amended by Acts 1981, 67th Leg., p. 862, ch. 306, § 4

(d) No licensee or officer, director, partner, manager, or employee of a licensee shall use a title, or wear a uniform, or use an insignia, or use an identification card, or make any statement with the intent

to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government. No licensee or officer, director, partner, manager, or employee of a licensee shall use a title, an insignia, or an identification card or wear a uniform containing the designation "police."

Text of subsection as amended by Acts 1981, 67th Leg., p. 2571, ch. 685, § 3

(d) No licensee or officer, director, partner, manager, or employee of a licensee shall use a title, or wear a uniform, or use an insignia, or use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government. This subsection does not prohibit an officer employed by a political subdivision commissioned as provided by Subsection (e) of Section 3 of this Act from using a title, insignia, or identification card, wearing a uniform, or making a statement indicating his employment by the political subdivision.

Employee Records

Sec. 29. Each licensee shall maintain a record containing such information relative to his employees as may be prescribed by the board.

Advertisements

Sec. 30. (a) Every advertisement by a licensee soliciting or advertising business shall contain his company name and address and license number as they appear in the records of the board.

(b) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his personal voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Branch Offices

Sec. 31. (a) Each licensee shall file in writing with the board the address of each branch office, and within 14 days after the establishment, closing, or changing of location of a branch office shall notify the board in writing of such fact.

(b) Upon application of a licensee the board shall issue a branch office license.

Registration of Employees or Private Investigators

Sec. 32. (a) Every employee of a licensee who is employed as a private investigator, manager, or branch office manager must be registered with the board within 14 days after the commencement of such employment.

(b) The minimum age of a person registered under this section shall be 18 years of age.

(c) The board may promulgate by rule any additional qualifications of an individual registered under this section as a private investigator, manager, or branch office manager.

Application for Registration

Sec. 33. The application for registration shall be verified and shall include:

(1) the full name, residence address, residence telephone number, date and place of birth, and the Social Security number of the employee;

(2) a statement listing any and all names used by the employee, other than the name by which he is currently known, together with an explanation setting forth the place or places where each name was used, the date or dates of each use, and a full explanation of the reasons why each such name was used. If the employee has never used a name other than that by which he is currently known, this fact shall be set forth in the statement;

(3) the name and address of the employer and the date the employment commenced and a letter from the licensee requesting that the employee be registered under his license;

(4) the title of the position occupied by the employee and a description of his duties;

(5) two recent photographs of the employee, of a type prescribed by the board, and two classifiable sets of his fingerprints;

(6) a letter from the police department and a letter from the sheriff's department of the city and county wherein the applicant resides concerning the character of the applicant and containing any objection or recommendation as to his application;

(7) such other information, evidence, statements, or documents, as may be required by the board.

Pocket Card

Sec. 34. A pocket card of such size, design, and content as may be determined by the board shall be issued to each registrant under this Act. The date of issuance shall be noted on such pocket card, and the date of expiration shall also be noted. Such pocket card shall contain a color photograph and signature of the registrant.

Undercover Agents: Exemption

Sec. 35. Notwithstanding any other provision of this Act, employees of a licensee who are employed exclusively as undercover agents shall not be required to register under this Act with the board.

Pocket Card: Annual Renewal

Sec. 36. The pocket card of each registrant expires on the date the license of the licensee who employs the registrant expires. On notification from the board the month before expiration of the registrant's pocket card, each registrant shall file for renewal of registration on a form designed by the board.

Pocket Card: Return

Sec. 37. When an individual to whom a pocket card has been issued under Section 32 of this Act terminates his position, he shall return the pocket card to the licensee within five days after his date of termination.

Cancellation

Sec. 38. Within seven days after the licensee has received the pocket card of a terminated registered employee, the licensee shall mail or deliver the pocket card to the board for cancellation, along with a letter from the licensee stating the date the registered employee terminated, the date the licensee received the pocket card of the terminated registered employee, and the cause for which or the conditions under which the registered employee terminated.

Sec. 39. Repealed by Acts 1981, 67th Leg., p. 2902, ch. 773, § 11, eff. Aug. 31, 1981

Bonds and Insurance Filed for Licensee

Sec. 40. (a) No license shall be issued under this Act unless the applicant files with the board a surety bond executed by a surety company authorized to do business in this State in the sum of Ten Thousand Dollars ($10,000) conditioned to recover against the principal, its servants, officers, agents and employees by reason of its wrongful or illegal acts in conducting such business licensed under this Act.

(b) No license shall be issued under this Act unless the applicant files with the board proof of a policy of public liability insurance in the form of a certificate of insurance executed by a local recording agent licensed in this state or a surplus lines agent licensed in this state. The policy of public liability insurance shall be conditioned to pay on behalf of the licensee all sums which the licensee becomes legally obligated to pay as damages because of bodily injury, limit of liability Fifty Thousand Dollars ($50,000), property damage, limit of liability Twenty-five Thousand Dollars ($25,000), and personal injury, limit of liability Fifty Thousand Dollars ($50,000), caused by an occurrence involving the principal, its servants, officers, agents, or employees in the conduct of any business licensed under this Act.

Action on Bonds to Recover Damages

Sec. 41. The bond required by this Act shall be made payable to the State of Texas, and anyone so injured by the principal, its servants, officers, agents and employees, shall have the right and be permitted to sue directly upon this obligation in their own names, and this obligation shall be subject to successive suits for recovery until complete exhaustion of the face amount hereof.

Suspension for Failure to File Surety Bond or Insurance

Sec. 42. (a) Every licensee shall at all times maintain on file with the board the surety bond and certificate of insurance required by this Act in full force and effect and upon failure to do so, the license of such licensee shall be forthwith suspended and shall not be reinstated until an application therefor, in the form prescribed by the board, is filed together with a proper bond, insurance certificate, or both.

(b) The board may deny the application notwithstanding the applicant's compliance with this section:

(1) for any reason which would justify refusal to issue or a suspension or revocation of a license; or

(2) for the performance by applicant of any practice while under suspension for failure to keep his bond or insurance certificate in force, for which a license under this Act is required.

(c) Bonds executed and filed with the board pursuant to this Act shall remain in force and effect until the surety has terminated future liability by a 30-day notice to the board.

(d) Insurance certificates executed and filed with the board pursuant to this Act shall remain in force and effect until the insurer has terminated future liability by a 10-day notice to the board.

Cash Deposited in Lieu of Surety Bond

Sec. 43. The sum of $10,000 in cash may be deposited with the State of Texas, in lieu of the surety bond required by this Act.

SUBCHAPTER D. ENFORCEMENT PROVISIONS

Penal Provisions

Sec. 44. Any person who knowingly falsifies the fingerprints or photographs submitted under Subdivisions (6) and (7) of Subsection (a), Section 15, is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not more than five years. Any person who violates any of the other provisions of this Act is guilty of a misdemeanor punishable by fine not to exceed $500 or by imprisonment in the county jail not to exceed one year, or both.

Expiration and Renewal of License

Sec. 45. (a) A license issued under this Act expires at 12 midnight on the last day of the 11th month after the month in which it is issued.

(b) Removal of a license shall not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

(c) The renewal period for a license is the month preceding the month in which it expires.

(d) A person may renew an unexpired license by paying to the board before the expiration date of the license the required renewal fee.

(e) If a person's license has been expired for not longer than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(f) If a person's license has been expired for longer than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(g) If a person's license has been expired for two years or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Expiration Dates of Licenses; Proration of Fees

Sec. 46. The board by rule may adopt a system under which the expiration date of a license may be changed at renewal time so that a licensee may pay only that portion of the license renewal fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Activity During Suspension of License

Sec. 47. A suspended license is subject to expiration and shall be renewed as provided in this Act, but such renewal does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

Reinstatement of a Revoked License

Sec. 48. A revoked license may not be reinstated.

Notification of Conviction for Felony or Crime Involving Moral Turpitude

Sec. 49. The Texas Department of Public Safety shall notify the board, and the police department and the sheriff's department of the city and county wherein any person licensed, commissioned, or registered under this Act resides of the conviction of such person for a felony or a crime involving moral turpitude.

Sec. 50. Repealed by Acts 1981, 67th Leg., p. 2902, ch. 773, § 11, eff. Aug. 31, 1981

Sec. 50A. (a) The board shall keep an information file about each complaint filed with the board relating to a person regulated by the board.

(b) If a written complaint is filed with the board relating to a person regulated by the board, the board, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation. [Amended by Acts 1975, 64th Leg., p. 788, ch. 303, § 1, eff. May 27, 1975; Acts 1975, 64th Leg., p. 1312, ch. 494, §§ 1 to 49, eff. July 19, 1975; Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.032, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1871, ch. 746, §§ 1 to 25, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 518, ch. 242, § 1, eff. May 17, 1979; Acts 1979, 66th Leg., p. 1041, ch. 471, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1811, ch. 738, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2179, ch. 830, §§ 2 to 4, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 858, ch. 304, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 861, ch. 306, §§ 1 to 5, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2569, ch. 685, §§ 1 to 4, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2609, ch. 697, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2895, ch. 773, §§ 1 to 9, 11, eff. Sept. 1, 1981.]

Section 27 of Acts 1977, 65th Leg., ch. 746 provided:

"A person licensed on the effective date of this Act may continue to offer the services he is currently offering without reapplication or additional qualifications."

Section 2 of Acts 1979, 66th Leg., p. 519, ch. 242, provided:

"Section 3(a), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), as amended by this Act, does not affect any right or duty that matured, any penalty that was incurred, any civil or criminal liability that arose, or any proceeding that began before the effective date of this Act."

Section 2 of Acts 1979, 66th Leg., p. 1042, ch. 471, provided:

"Section 20(b), Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), as amended by this Act, applies only to an individual who completes a basic training course after the effective date of this Act."

Acts 1981, 67th Leg., p. 2902, ch. 773, §§ 10, 12, 13, provide:

"Sec. 10. A rule adopted by the Texas Board of Private Investigators and Private Security Agencies before September 1, 1981, that conflicts with the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule."

"Sec. 12. A person holding office as a member of the Texas Board of Private Investigators and Private Security Agencies on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"Sec. 13. (a) This Act takes effect September 1, 1981.

"(b) The requirements of Subsections (b) and (c), Section 10, Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes), as added by this Act, that the director of the board develop an intraagency career ladder and a system of annual performance evaluations, shall be implemented before September 1, 1982. The requirement of Subsection (c) of Section 10 that merit pay is to be based on this system shall be implemented before September 1, 1983."

Art. 4413(29cc). Polygraph Examiners Act

[See Compact Edition, Volume 4 for text of 1 to 4]

Creation of the Board

Sec. 5. (a) There is hereby established a Polygraph Examiners Board consisting of six members who shall be citizens of the United States and residents of the state for at least two years prior to appointment. Four members shall each have been engaged for a period of five consecutive years as a polygraph examiner prior to appointment to the board, and at the time of appointment as an active polygraph examiner. Two members must be representatives of the general public. A person is eligible for appointment as a public member if the person and the person's spouse are not licensed by an occupational regulatory agency in the field of polygraph examining, are not employed by and do not participate in the management of an agency or business entity related to the field of polygraph examining, and do not have, other than as consumers, a finan-

cial interest in a business entity related to the field of polygraph examining. No two board members may be employed by the same person or agency. Two of the members who are polygraph examiners must be qualified examiners of a governmental law enforcement agency, one of which shall be the supervisor of the polygraph section of the Department of Public Safety, and two of the members who are polygraph examiners must be qualified polygraph examiners in the commercial field. The members shall be appointed by the Governor of the State of Texas with the advice and consent of the Senate for a term of six years. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term. Appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(b) The board shall contract with the Department of Public Safety for the administrative functions of the board including the collection of all fees and money due and the payment of all expenses, including travel expenses of board members. Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act.

[See Compact Edition, Volume 4 for text of 5(c) and 5(d)]

(e) The Polygraph Examiners Board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

(f) A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the polygraph examining field. A member or employee of the board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

(g) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board.

(h) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the board;

(2) does not maintain during his service on the board the qualifications required by Subsection (a) of this section for appointment to the board;

(3) violates a prohibition prescribed by Subsection (f) or (g) of this section; or

(4) fails to attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a board member.

(i) If a ground for removal of a member from the board exists, the board's actions taken during the existence of the ground for removal are not invalid for that reason.

(j) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(k) The board may recognize, prepare, or implement continuing education programs for polygraph examiners and trainees. Participation in the programs is voluntary.

Administration and Expenses

Sec. 6. (a) The board shall issue regulations consistent with the provisions of this Act for the administration and enforcement of this Act and shall prescribe forms which shall be issued in connection therewith. The board may not adopt rules restricting competitive bidding or advertising by a licensee of the board except to prohibit false, misleading, or deceptive practices by the licensee. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a licensee a rule that:

(1) restricts the licensee's use of any medium for advertising;

(2) restricts the licensee's personal appearance or use of his voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee; or

(4) restricts the licensee's advertisement under a trade name.

[See Compact Edition, Volume 4 for text of 6(b) and 6(c)]

(d) During each fiscal biennium, the state auditor shall audit the financial transactions of the Department of Public Safety that relate to the administration of this Act.

(e) On or before January 1 of each year, the Department of Public Safety shall make in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the department under this Act during the preceding year.

(f) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Reg-

ister Act, as added (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committees' statements.

[See Compact Edition, Volume 4 for text of 7]

Examiner's License Qualifications

Sec. 8. (a) A person is qualified to receive a license as an examiner

(1) who has not been convicted of a felony or a misdemeanor involving moral turpitude; and

(2) who holds a baccalaureate degree from a college or university accredited by an organization that the board designates and that the board determines has accreditation standards to ensure a high level of scholarship for students, or in lieu thereof, has five consecutive years of active investigative experience immediately preceding his application; and

(3) who is a graduate of a polygraph examiners course approved by the board and has satisfactorily completed not less than six months of internship training, provided that if the applicant is not a graduate of an approved polygraph examiners course, satisfactory completion of not less than 12 months of internship training may satisfy this subdivision; and

(4) who has passed an examination conducted by the board, or under its supervision, to determine his competency to obtain a license to practice as an examiner.

(b) Prior to the issuance of a license, the applicant must furnish to the board evidence of a surety bond or insurance policy. Said surety bond or insurance policy shall be in the sum of $5,000.00 and shall be conditioned that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy all judgments which may be recovered against the licensee by reason of any wrongful or illegal acts committed by him in the course of his examinations.

(c) The board by rule shall establish the criteria by which it determines whether an applicant complies with the active investigative experience requirement established by Subdivision (2) of Subsection (a) of this section.

Acquisition of License by Present Examiners

Sec. 9. On the effective date of this Act, any person who held a license issued by the board established or attempted to be established by Chapter 441, Acts of the 59th Legislature, Regular Session, 1965, and whose license was in effect on the date on which said Act was held invalid, shall be automatically licensed hereunder until such date as his license under the Act aforesaid has expired and thereafter may renew his license on payment of the fee herein provided. The applicant must also satisfy the provisions of Subsection (b) of Section 8 of this Act.

[See Compact Edition, Volume 4 for text of 10 and 11]

Applicant With Out-of-State License

Sec. 12. The board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

[See Compact Edition, Volume 4 of text of 13]

Notice and Analysis of Examination Results

Sec. 13A. (a) Within 30 days after the date a license examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the date the board receives the results from the testing service. If it is foreseeable that the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails a license examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.

Fees

Sec. 14. (a) The board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

1.	Polygraph examiner's license	$225
2.	Internship license	115
3.	Duplicate license	40
4.	Renewal fee for examiner's license	210
5.	Extension or renewal of an internship license	40
6.	Examination fee	75

(b) The fees required by this Act may be paid by the governmental agency employing the examiner.

[See Compact Edition, Volume 4 for text of 15 and 16]

Termination and Renewal of Examiner's License

Sec. 17. (a) Each polygraph examiner's license shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually.

(b) A person may renew his unexpired license by paying to the board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) A polygraph examiner whose license expired while he was in the federal service on active duty with the armed forces of the United States, or the national guard called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without examination if within two years after termination of such service, training, or education except under condition other than honorable, he pays to the board the required renewal fee and furnishes the board with an affidavit to the effect that he has been so engaged and that his service, training, or education has been so terminated.

[See Compact Edition, Volume 4 for text of 18]

Refusal, Probation, Reprimand, Suspension, Revocation—Grounds

Sec. 19. The board shall refuse to issue a license, shall revoke or suspend a license, shall reprimand a licensee, or may probate a license suspension on any one or more of the following grounds:

(1) for failing to inform a subject to be examined as to the nature of the examination;

(2) for failing to inform a subject to be examined that his participation in the examination is voluntary;

(3) material misstatement in the application for original license or in the application for any renewal license under this Act;

(4) wilful disregard or violation of this Act or of any regulation or rule issued pursuant thereto, including, but not limited to, wilfully making a false report concerning an examination for polygraph examination purposes;

(5) if the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;

(6) making any wilful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees;

(7) having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this Act;

(8) allowing one's license under this Act to be used by any unlicensed person in violation of the provisions of this Act;

(9) wilfully aiding or abetting another in the violation of this Act or any regulation or rule issued pursuant thereto:

(10) where the license holder has been adjudged as a habitual drunkard or mentally incompetent as provided in the Probate Code;

(11) failing, within a reasonable time, to provide information requested by the secretary as the result of a formal complaint to the board which would indicate a violation of this Act;

(12) failing to inform the subject of the results of the examination if so requested; or

(13) violating Subsection (a) of Section 19A of this Act relating to the confidentially of information acquired from an examination.

Confidentiality of Examination Results

Sec. 19A. (a) Except as provided by Subsection (c) of this section, a licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may not disclose to another person information acquired from a polygraph examination.

(b) Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the person, firm, corporation, partnership, business entity, or governmental agency that requested the examination;

(3) members or their agents of governmental agencies such as federal, state, county, or municipal agencies that license, supervise, or control the activities of polygraph examiners;

(4) other polygraph examiners in private consultation, all of whom will adhere to this section; or

(5) others as may be required by due process of law.

(d) A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

(e) The board or any other governmental agency that acquires information from a polygraph examination under Subdivision (3) of Subsection (c) of this section shall keep the information confidential.

Information About Complaints

Sec. 19B. (a) The board shall keep an information file about each complaint filed with the board relating to a licensee.

(b) If a written complaint if filed with the board relating to a licensee, the board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until its final disposition unless the notification would jeopardize an undercover investigation.

[See Compact Edition, Volume 4 for text of 20 and 21]

Board Hearing

Sec. 22. (a) If the board proposes to refuse a person's application for a license or to suspend or revoke a person's license, the person is entitled to a hearing before the board.

(b) Proceedings for the refusal, suspension, or revocation of a license are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Judicial Review

Sec. 23. Any person dissatisfied with the action of the board in refusing his application or suspending or revoking his license, or any other action of the board, may appeal the action of the board by filing a petition within the appropriate time in the district court in the county where the person resides or in the district court of Travis County, Texas. An appeal of an action of the board is governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes). Judicial review of an action of the board shall be conducted under the substantial evidence rule.

[See Compact Edition, Volume 4 for text of 24]

Consumer Information

Sec. 24A. (a) The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

(b) Each written contract for the services in this state of a licensed polygraph examiner and each waiver of liability that is signed by the subject of a polygraph examination shall contain the name, mailing address, and telephone number of the board.

[See Compact Edition, Volume 4 for text of 25]

Penalties

Sec. 26. (a) Any person who violates any provision of this Act or any person who falsely states or represents that he has been or is a polygraph examiner or trainee or that he is qualified to apply instrumentation of the detection of deception or verification of truth of statements shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 nor more than $1,000 or by imprisonment in the county jail for a term of not to exceed six months, or both.

(b) A person commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence violates Section 19A of this Act relating to the confidentiality of information acquired from a polygraph examination. An offense under this subsection is a Class B misdemeanor.

[See Compact Edition, Volume 4 for text of 27 to 30]

[Amended by Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.031, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2867, ch. 768, §§ 1 to 4, eff. Sept. 1, 1981.]

Sections 5 and 6 of the 1981 amendatory act provides:

"Sec. 5. A rule adopted by the Polygraph Examiners Board before September 1, 1981, that conflicts with the Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule.

"Sec. 6. (a) A person holding office as a member of the Polygraph Examiners Board on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall appoint two public members to fill the offices of the incumbent members who are not polygraph examiners in the commercial field and whose terms expire June 18, 1983, and June 18, 1985."

CHAPTER SEVEN. INTERGOVERNMENTAL COOPERATION

Article

4413(32e). Joint Advisory Committee on Government Operations.
4413(32f). Closeup Act.
4413(32g). Uniform Grant and Contract Management Act of 1981.
4413(32h). Automated Information Systems Advisory Council.

Art. 4413(32). Interagency Cooperation Act

[See Compact Edition, Volume 4 for text of 1 to 3]

Written Agreement or Contract

Sec. 4. Before any services may be rendered or received, a written agreement or contract shall be entered into, specifying the kinds and amounts of services to be rendered, the bases for calculating reimbursable costs, and the maximum amount of the costs during the time period covered by the agreement. In emergency situations for the defense or safety of the civil population, or in planning and preparation therefor, or in cooperative efforts, proposed by the Governor, for the economic development of the State, or where the amount involved is less than Three Hundred and Fifty Dollars ($350), no written contract or advance approval by the Board of Control is required. To be valid, the written agreement or contract must have the advance approval of the administrator of the State agencies which are parties thereto, and of the Board of Control.

[See Compact Edition, Volume 4 for text of 5 to 7]

[Amended by Acts 1979, 66th Leg., p. 1803, ch. 735, § 1, eff. Aug. 27, 1979.]

Art. 4413(32a). Interagency Planning Councils

[See Compact Edition, Volume 4 for text of 1 to 3]

Sec. 4. (a) The Governor shall establish a Division of Planning Coordination within his office.

(b) Responsibilities of the Division of Planning Coordination.

(1) The Division shall coordinate the activities of the Interagency Planning Councils. The several councils may participate jointly in studies providing information common to all planning efforts.

(2) The Division shall serve as the State Clearinghouse on all state agency applications for federal grant or loan assistance, and shall be notified of all applications for federal grant or loan assistance prior to actual submittal of such applications.

(3) The Division may provide for the review and comment of all state plans of state agencies required as a condition for federal assistance and may provide for the review and comment on all state agency applications for grant or loan assistance.

(4) The Division shall establish policies and guidelines for the effective review and comment on such state plans and applications for federal grant or loan assistance.

(5) The Division shall cooperate with the Legislative Budget Board in developing information requirements pertaining to the review and comment process.

Sec. 5. [Severability].

Sec. 6. (a) The governor shall establish a Criminal Justice Division within his office to perform the following duties:

(1) to advise and assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system;

(2) to administer the Criminal Justice Planning Fund;

(3) to prepare a state comprehensive criminal justice plan, to update the plan annually, based on an analysis of the state's criminal justice problems and needs, and to encourage identical or substantially similar local and regional comprehensive criminal justice planning efforts;

(4) to establish goals, priorities, and standards for programs and projects to improve the administration of justice and the efficiency of law enforcement, the judicial system, prosecution, criminal defense, and adult and juvenile corrections and rehabilitation;

(5) to award grants to state agencies, units of local government, school districts, and private, nonprofit corporations from the Criminal Justice Planning Fund for programs and projects which address the goals, priorities, and standards established in the state comprehensive criminal justice plan and local and regional comprehensive criminal justice plans;

(6) to apply for, obtain, and allocate for the purposes of this section any federal or other funds which may from time to time be made available for programs and projects which address the goals, priorities, and standards established in or which assist the local and regional comprehensive criminal justice planning efforts;

(7) to administer the funds provided by this Act in such a manner as to ensure that grants received under this section do not supplant state or local funds;

(8) to establish procedures and policies that require that the costs of programs and projects funded to local general purpose units of government be assumed over a period of five years out of local revenues;

(9) to monitor and evaluate programs and projects funded under this section, to cooperate with and render technical assistance to state agencies and local governments seeking to reduce crime or enhance the performance and operation of the criminal justice system, and to collect from any state or local government entity information, data, statistics, or other material necessary to carry out the purposes of this section;

(10) to submit a biennial report to the legislature reporting the division's activities during the preceding biennium including the comprehensive state criminal justice plans and such other studies, evaluations, crime data analyses, reports, or proposed legislation as the governor may deem appropriate or as the legislature may from time to time request; and

(11) to perform such other duties as may be necessary to carry out the duties enumerated above and adopt such rules, regulations, and procedures as may be necessary.

(b) The governor shall appoint a director for the division to serve at the pleasure of the governor. The appointment is subject to senate confirmation.

(c) When any local grant application is submitted to the Criminal Justice Division, it shall also be submitted to the local governing body for comment as determined by rules of the board.

Sec. 7. (a) The Criminal Justice Division Advisory Board shall consist of 21 members. The governor, lieutenant governor, and speaker of the house of representatives shall each appoint one-third of the members of the board. The board shall review and make recommendations to the governor on the projects and programs recommended for funding by staff of the division, the goals, priorities, and standards recommended by staff, the comprehensive criminal justice plan, and on such other matters related to criminal justice as the governor may request. The governor shall designate a chairman and vice-chairman of the board from among the members.

(b) The members of the advisory board, including the chairman, shall be subject to confirmation by the senate, except elected officers. In this Act, "elected officer" has the meaning given in Section 2, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9b, Vernon's Texas Civil Statutes). The chairman and members shall be selected from professional law enforcement, judicial, prosecution, adult and juvenile corrections, postsecondary law enforcement education, and rehabilitation agency personnel, other criminal justice personnel, state and local officials, and private citizens. The members shall serve for two-year terms. Service on the board by state and local officials and employees shall be considered as an additional duty of their office or employment and shall not be construed as dual office holding.

(c) Board members shall serve without compensation but shall be reimbursed for reasonable and necessary expenses incurred in performing their duties. In the event of a vacancy on the board the appointing authority shall appoint, subject to senate confirmation, a new member to fill the remaining portion of the unexpired term.

(d) The Director of the Criminal Justice Division shall sit as an ex officio, nonvoting member of the board.

(e) The governor, the lieutenant governor, and the comptroller of public accounts shall sit as the executive funding committee of the Criminal Justice Division. No grant of funds shall be made to any applicant nor shall funds be released for any project of the Criminal Justice Division without the approval of the majority of the executive funding committee. The executive funding committee shall not approve the release of grant funds for the acquisition of electronic surveillance equipment unless and until use of such equipment is authorized by the legislature. No grant funds shall be used in any manner to influence the outcome of any election or the passage or defeat of any legislative measure.

Sec. 8. The Criminal Justice Division and any project funded by the Criminal Justice Division shall be subject to examination, inspection, and audit by the State Auditor's Office, the Legislative Budget Board, and the Governor's Division of Planning Coordination to determine compliance with this Act and the approved annual comprehensive criminal justice plans.

[Amended by Acts 1975, 64th Leg., p. 1403, ch. 544, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2121, ch. 495, § 1, eff. Sept. 1, 1981.]

Section 2 of the 1975 Act provided:
"This Act takes effect September 1, 1975."

Art. 4413(32b). Intergovernmental Cooperation Act

[See Compact Edition, Volume 4 for text of 1 to 4]

Application of Sunset Act

Sec. 4a. The Texas Advisory Commission on Intergovernmental Relations is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

[1] Article 5429k.

Membership; Duties

Sec. 5. The commission shall be composed of twenty-four appointed members and two ex officio members as follows: four county officials, four city officials, two public school officials, two representatives of other political subdivisions, two federal officials residing in Texas and responsible for federal programs operating in the State, and four private citizens all appointed by the Governor; three State Senators appointed by the Lieutenant Governor; three State Representatives appointed by the Speaker of the House; and the Lieutenant Governor (ex officio) and Speaker of the House of Representatives (ex officio). The duties to be performed by each public official or employee appointed to the commission or serving ex officio shall be considered duties in addition to those otherwise required by that person's office.

[See Compact Edition, Volume 4 for text of 6]

Terms of Office; Vacancies; Records

Sec. 7. (a) Appointed members of the commission shall hold office for staggered terms of six years, with the terms of eight appointed members, including one Senator and one Representative, expiring on the first day of September in each odd-numbered year.

[See Compact Edition, Volume 4 for text of 7(b) to 13]

[Amended by Acts 1975, 64th Leg., p. 165, ch. 69, §§ 1, 2, eff. April 24, 1975; Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.075, eff. Aug. 29, 1977.]

Art. 4413(32c). Interlocal Cooperation Act

[See Compact Edition, Volume 4 for text of 1 and 2]

Definitions

Sec. 3. As used in this Act:

(1) "local government" means a county; a home rule city or a city, village, or town organized under the general laws of this state; a special district; a school district; a junior college district; any other legally constituted political subdivision of the State of Texas or any adjoining state; or a combination of political subdivisions.

[See Compact Edition, Volume 4 for text of 3(2) to 3A]

Authority to Make Interlocal Contracts and Agreements

Sec. 4.

[See Compact Edition, Volume 4 for text of 4(a) to 4(c)]

(d) The contracting parties to any interlocal contract or agreement shall have full authority to cre-

ate an administrative agency or designate an existing political subdivision for the supervision of performance of an interlocal contract or agreement and any administrative agency so created or political subdivision so designated shall have the authority to employ personnel and engage in other administrative activities and provide other administrative services necessary to execute the terms of any interlocal contract or agreement. For purposes of this Act any body politic and corporate organized under the laws of this state shall be considered a political subdivision.

(e) The contracting parties to any interlocal contract or agreement shall have full authority to contract with state departments and agencies as defined in Article 4413(32), Vernon's Texas Civil Statutes, or any similar department or agency of an adjoining state. The contracting parties to interlocal contract or agreement shall have specific authority to contract with the Department of Corrections for the construction, operation and maintenance of a regional correctional facility provided that title to the land on which said facility is to be constructed is deeded to the Department of Corrections and provided further that a contract is executed by and between all the parties as to payment for the housing, maintenance and rehabilitative treatment of persons held in jails who cannot otherwise be transferred under authority of existing statutes to the direct responsibility of the Department of Corrections.

[See Compact Edition, Volume 4 for text of 4(f) and (g)]

(h)(1) By resolution of the governing body, a political subdivision of the state may contract with other political subdivisions of the state to participate in the ownership, construction, and operation of a regional jail facility. The regional jail shall be located within the geographic boundaries of one of the participating political subdivisions, but the regional jail need not be located in a county seat.

(2) Prior to acquisition and construction of the regional jail facility, bonds to finance the acquisition and construction of the facility shall be issued by the participating subdivisions in the manner prescribed by law for issuance of permanent improvement bonds.

(3) The participating political subdivisions may establish by agreement that the police chief or sheriff of the political subdivision in which the regional jail is located shall be appointed as jailer of the facility and shall have authority to supervise the operation and maintenance of the jail, that a committee composed of the sheriff or police chief of each participating political subdivision may be established to appoint a jailer to supervise the maintenance and operation of the jail, or that each police chief or sheriff may continue the supervision and responsibility over the prisoners he has incarcerated in the regional jail facility. The participating political subdivisions may also employ or authorize the jailer to employ additional personnel necessary to operate and maintain the facility.

(4) When an agreement is established pursuant to Subdivision (3) of this subsection, prisoners incarcerated in the regional jail shall be under the supervision of the person designated to have responsibility for the supervision of the regional jail. If a prisoner is transferred back to the originating political subdivision from a regional jail, the appropriate law enforcement official in the originating political subdivision shall assume supervision and responsibility for the prisoner.

(5) While a prisoner is incarcerated in a regional jail facility, a sheriff or police chief not assigned to supervise the regional jail is not liable for the escape of the prisoner or for any injury or damage caused by or to the prisoner unless the escape, injury, or damage is directly caused by the sheriff or police chief.

(6) A jailer in charge of a regional jail and any assistant jailers he may employ must be commissioned peace officers.

(i) To conserve and coordinate the use of public funds, local governments may enter into agreements for cooperative purchase of goods and services between and among themselves and with the state, including cooperative agreements with the State Purchasing and General Services Commission.

[See Compact Edition, Volume 4 for text of 5]

Emergency Assistance

Sec. 5A. (a) A local government may provide emergency assistance to another local government, regardless of whether the local governments have previously agreed or contracted to provide that kind of assistance, if:

(1) in the opinion of the presiding officer of the governing body of the local government desiring emergency assistance, a state of civil emergency exists in the local government that requires assistance from another local government and the presiding officer requests the assistance; and

(2) before the emergency assistance is rendered, the governing body of the local government that is to provide the assistance, by resolution or other official action, has authorized the local government to provide the assistance.

(b) This section does not apply to emergency assistance rendered by law enforcement officers under Section 2, Chapter 81, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 999b, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 4 for text of 6 to 8]

[Amended by Acts 1975, 64th Leg., p. 1235, ch. 460, §§ 1 to 3, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1619, ch. 634, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1362, ch. 612, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 626, ch. 248, § 1, eff. May 28, 1981.]

Section 4 of the 1975 amendatory act provided:

"Any law in conflict with this Act is hereby repealed to the extent of the conflict."

Art. 4413(32e). Joint Advisory Committee on Government Operations

Purpose

Sec. 1. The purpose of this Act is to promote the economical delivery of the services provided by state government by means of a comprehensive review of governmental structure and administration.

Definitions

Sec. 2. In this Act:

(1) "Committee" means the Joint Advisory Committee on Government Operations.

(2) "Departments and Agencies" means all departments, bureaus, agencies, boards, commissions, and other instrumentalities of the executive branch of the state government.

Creation of Committee

Sec. 3. There is created the Joint Advisory Committee on Government Operations.

Membership

Sec. 4. (a) The committee consists of the lieutenant governor, the speaker of the house of representatives, the secretary of state, and other members appointed as provided by this section.

(b) The governor shall appoint nine persons, none of whom may be members of the house or of the senate.

(c) The lieutenant governor shall appoint three members of the senate.

(d) The speaker of the house of representatives shall appoint three members of the house of representatives.

Terms and Vacancies

Sec. 5. (a) The initial members of the committee shall take office within 30 days after the effective date of this Act and shall serve until the expiration of the committee.

(b) Vacancies among the appointed members shall be filled for the unexpired terms in the same manner as the original appointments were made.

Compensation

Sec. 6. (a) Legislative members of the committee shall serve without additional compensation. Each member shall be reimbursed from the appropriate fund of the member's respective house for travel, subsistence, and other necessary expenses incurred in performing the duties of the committee.

(b) Persons appointed pursuant to Section 4(b) of this Act shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses from appropriations made by the legislature to the committee.

(c) The duties to be performed by each public official or employee appointed to the committee shall be considered duties in addition to those otherwise required by that person's office.

Officers

Sec. 7. The lieutenant governor shall serve as chairman of the committee. The speaker of the house of representatives shall serve as vice-chairman of the committee.

Quorum

Sec. 8. Ten members of the committee shall constitute a quorum for the conduct of business.

Duties

Sec. 9. The committee shall:

(1) examine and evaluate the organization and methods of operation of the departments and agencies of state government;

(2) develop proposals for improving the structure and administration of state government in order to assure the delivery of governmental services at the lowest possible cost;

(3) recommend policies and programs to minimize creation of new departments and agencies of state government and to control the growth of existing departments and agencies; and

(4) recommend suspension of government programs and services that duplicate and exceed in cost those same services offered by private business.

Powers

Sec. 10. The committee or any subcommittee of its membership designated by the chairman may:

(1) appoint and fix the compensation of necessary staff, including the retention of independent auditors;

(2) hold open hearings, take testimony, and administer oaths or affirmations to witnesses;

(3) secure directly from any department or agency of state government any information deemed necessary for the implementation of this Act;

(4) make findings and issue reports in the execution of the duties imposed by Section 9 of this Act.

Appropriations; Private Funds

Sec. 11. The legislature shall appropriate money necessary to carry out the provisions of this Act in the General Appropriations Act for the biennium ending August 31, 1977, or in special appropriation acts for the purpose. Private funds including public or private foundation funds may be used to defray the cost of conducting any of the affairs of the committee upon authorization by the committee.

Cooperation of Other Departments and Agencies

Sec. 12. (a) The Texas Legislative Council, the Legislative Budget Board, the Legislative Audit Committee, the Advisory Commission on Intergovernmental Relations, and the Division of Planning Coordination shall, through their respective administrative officers, furnish staff assistance to the committee upon request.

(b) Each department and agency of state government is directed to furnish assistance and information to the committee upon request.

Reports; Recommendations; Dissolution

Sec. 13. The committee may make an interim report on its progress, together with any specific recommendations it may deem desirable, to any session of the 64th Legislature, and shall make its final report to the 65th Legislature not later than 30 days after that legislature is organized. Unless extended by the 65th Legislature, the committee is dissolved on May 31, 1977.

[Acts 1975, 64th Leg., p. 949, ch. 357, eff. June 19, 1975.]

Art. 4413(32f). Closeup Act

Short Title

Sec. 1. This Act may be cited as the Texas Closeup Act.

Definitions

Sec. 2. In this Act:

(1) "Board" means the Texas Closeup Board;

(2) "Program" means the Texas Closeup Program.

Creation of Program

Sec. 3. The Texas Closeup Program is created. Under this program, 11th and 12th grade students and supervising teachers from participating school districts and private institutions may be brought to Austin in order to observe and evaluate state government.

Texas Closeup Board

Sec. 4. (a) Control of the program is vested in the Texas Closeup Board, which is composed of nine members appointed by the governor with the advice and consent of the senate. The term of office of members is six years, and the terms shall be staggered at two-year intervals. In making the initial appointments, the governor shall designate three members for terms expiring on January 31 of each of the succeeding three consecutive odd-numbered years.

(b) Vacancies in the offices of members must be filled by appointment by the governor for the unexpired term.

(c) The board shall elect from among its members a chairman to serve for a term of one year.

(d) The board shall have its office in Austin.

(e) Members of the board serve without compensation but shall be reimbursed for actual and necessary expenses incurred in carrying out official duties.

(f) Five members constitute a quorum for the transaction of business.

(g) The Texas Closeup Board shall expire on September 1, 1985, unless its existence is extended prior to that date by legislative action.

Duties of Board

Sec. 5. The board shall in conjunction with the board and executive officers of the Closeup Foundation:

(1) develop the tours, seminars, and other activities of the program;

(2) promulgate rules necessary for the administration of the program, including rules governing the eligibility requirements for participating students and the compensation to be provided supervising teachers;

(3) coordinate the program with the National Closeup Foundation;

(4) prepare and submit annually to the governor and legislature an operating budget; and

(5) solicit gifts, grants, and endowments from public and private sources.

Executive Director

Sec. 6. (a) The board shall employ an executive director and may delegate to him authority to manage and operate the affairs of the program subject to orders of the board.

(b) The director shall:

(1) serve as liaison with the board and executive officers of the Closeup Foundation;

(2) hire adequate staff to carry out the program;

(3) coordinate the program with administrators of participating school districts and private institutions;

(4) develop for board approval a plan to divide the state into regions and select regional coordinators for implementation of the program; and

(5) carry out the orders of the board in the administration and development of the program.

Texas Closeup Advisory Council

Sec. 7. (a) There is created the Texas Closeup Advisory Council, to be composed of the following members:

(1) the governor;

(2) the lieutenant governor;

(3) the secretary of state;

(4) the comptroller of public accounts;

(5) the treasurer;

(6) the commissioner of the General Land Office;

(7) the attorney general;

(8) the chairman of the Railroad Commission of Texas;

(9) the chief justice of the Supreme Court;

(10) the presiding judge of the Court of Criminal Appeals;

(11) the speaker of the house;

(12) two members of the senate, appointed biennially for two-year terms by the lieutenant governor;

(13) five members of the house of representatives, appointed biennially for two-year terms by the speaker of the house;

(14) the commissioner of education; and

(15) one representative from each teacher, school administrator, school board, or other professional organization involved in high school education, as determined by the board, appointed by the board for a term of two years.

(b) The governor or his designee from among the other members shall serve as chairman of the advisory council.

(c) The advisory council shall meet at least once a year and at other times it considers necessary.

(d) The advisory council shall advise and assist the board in the development and implementation of the program and shall recommend changes in the program considered necessary in order to improve its services and functions.

Grants and Gifts; No State Funds

Sec. 8. The board may accept and administer, without appropriation, grants and gifts from the federal government and from any foundation, trust fund, corporation, individual, or organization for the use and benefit of the program. No state funds may be specifically appropriated to support the program.

Contract for Services

Sec. 9. The board may contract with individuals, federal, state, and local government agencies, and corporations or associations to provide services necessary to the administration of the program.

[Acts 1977, 65th Leg., p. 2035, ch. 814, eff. June 16, 1977. Amended by Acts 1979, 66th Leg., p. 1037, ch. 466, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2495, ch. 654, § 1, eff. Aug. 31, 1981.]

Art. 4413(32g). Uniform Grant and Contract Management Act of 1981

Short Title

Sec. 1. This Act may be cited as the Uniform Grant and Contract Management Act of 1981.

Policy

Sec. 2. It is the policy of the state to promote the efficient use of public funds in local government and in programs requiring cooperation among local, state, and federal agencies.

Definitions

Sec. 3. In this Act:

(1) "Local government" means a city, county, or other political subdivision of the state, but does not include a school district or other special purpose district.

(2) "State agency" means a state board, commission, department, or officer having statewide jurisdiction, but does not include a state college or university.

(3) "Assurance" means a statement of compliance with federal or state law that is required of a local government as a condition for the receipt of grant or contract funds.

(4) "Financial management conditions" means generally applicable policies and procedures for the accounting, reporting, and management of funds that state agencies require local governments to follow in the administration of grants and contracts.

Uniform Administration of Grants and Contracts With Local Governments

Sec. 4. (a) The governor's office is designated the state agency for uniform grant and contract management.

(b) The governor's office shall develop uniform and concise language for any assurances local governments are required to make to state agencies as a condition for receipt of grant or contract funds.

(c) The governor's office may categorize the assurances according to the type of grant or contract, designate programs to which the assurances are applicable, and periodically revise or update the assurances.

(d) The standards developed under this Act shall not be construed to affect methods of distribution or amounts of federal funds received by state agencies or local agencies.

Standard Financial Management Conditions

Sec. 5. (a) The governor's office shall compile and distribute to state agencies an official compilation of standard financial management conditions that are generally applicable to the administration of grants and contracts by local governments. This compilation shall be developed from Federal Management Circular A–102 or future revisions of that circular and from other applicable statutes and regulations. The compilation shall include official commentary as to administrative or judicial interpretation that affect the application of financial management standards.

(b) The governor's office may categorize the financial management conditions according to the type of grant or contract, designate programs to which the conditions are applicable, and periodically revise or update the conditions.

Adoption of Financial Management Conditions and Assurances

Text of section effective September 1, 1982

Sec. 6. (a) A state agency must use the standard financial management conditions and uniform assurances applicable to local governments receiving financial assistance from that agency unless variation in the conditions or assurances are required or spe-

cifically authorized by federal statute or regulation or by state statute.

(b) Variations from the standard conditions and uniform assurances must be established by agency rule in accordance with the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes). Reasons for the variations must be stated along with proposed rules, and the reasons must be based on the applicable federal statutes or regulations or state statutes.

(c) A notice of each proposed rule that establishes a variation from the standard conditions or uniform assurances must be filed with the governor's office.

(d) This section is effective September 1, 1982.

State Audits of Grants and Contracts to Local Governments

Sec. 7. (a) To avoid duplicate audits and unnecessary audit costs, a local government receiving state-administered financial assistance may request by action of its governing body a single audit or coordinated audits by all state agencies from which it receives funds.

(b) On receipt of a request for a single audit or audit coordination, the governor's office in consultation with the state auditor shall within 30 days designate a single state agency to coordinate state audits of the local government.

(c) The designated agency shall, to the extent practicable, assure single or coordinated state audits of the local government for as long as the designation remains in effect or until the local government by action of its governing body withdraws its request for audit coordination.

(d) This section does not apply to audits performed by the comptroller of public accounts or state auditor.

[Acts 1981, 67th Leg., p. 2611, ch. 698, §§ 1 to 5, 7, eff. Aug. 31, 1981; § 6, eff. Sept. 1, 1982.]

Art. 4413(32h). Automated Information Systems Advisory Council

Definition

Sec. 1. In this Act, "state governmental body" means a board, commission, department, institution, office, or other agency (including an institution of higher education as defined by Section 61.003, Texas Education Code, as amended), that is in the executive branch of state government; or the supreme court, the court of criminal appeals, a court of appeals, or the State Bar of Texas or another judicial agency.

Council

Sec. 2. The Automated Information Systems Advisory Council is established.

Members

Sec. 3. (a) The council is composed of the following seven members:

(1) one person, appointed by the speaker of the house of representatives, who must be a member or employee of the house or an employee of a legislative agency;

(2) one person, appointed by the speaker, who must be employed by a private corporation as a manager of the corporation's automated information system;

(3) one person, appointed by the lieutenant governor, who must be a member or employee of the senate or an employee of a legislative agency;

(4) one person, appointed by the lieutenant governor, who must be employed by private industry as a manager of a large mainframe computer facility;

(5) one person, appointed by the governor, who must be knowledgeable in the management of automated information systems and the computers on which they are automated;

(6) one person, appointed by the governor, who must be employed by a state-supported institution of higher education in this state and who must be knowledgeable in the management of automated information systems and the computers on which they are automated; and

(7) one person, appointed by the governor, who must be an employee of a state governmental body other than an institution of higher education and who must be knowledgeable in the management of automated information systems and the computers on which they are automated.

(b) A member of the council or employee of the council may not be interested in, or in any manner connected with, any contract or bid for furnishing any state governmental body with automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated. A member or employee of the council may not be employed by any state governmental body as a consultant on automated information systems, the computers on which they are automated, or a related service. A member or employee of the council, under penalty of dismissal, may not accept or receive from any person, firm, or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift, or otherwise, any money or other thing of value, and may not receive any promise, obligation, or contract for future reward or compensation from any such party.

Terms

Sec. 4. Members of the council hold office for staggered terms of two years with three members' terms expiring February 1 of each even-numbered year and four members' terms expiring February 1 of each odd-numbered year.

Officers; Meetings

Sec. 5. (a) The chairman of the council is the member appointed by the governor under Section 3(a)(5) of this Act.

(b) The council shall meet at least once quarterly during each fiscal year of the state. The council may meet at other times at the call of the chairman or as provided by rule of the council.

Expenses

Sec. 6. (a) A member of the council may not receive compensation for serving as a member of the council. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the council.

(b) A member of the council who is a public officer or employee is entitled to reimbursement for expenses from the funds of the governmental body from which the member is appointed. Other members are entitled to reimbursement from the funds of the council.

Additional Function of Public Office

Sec. 7. The functions performed by a member of the council who holds public office are additional functions of the public office.

Staff

Sec. 8. The council may employ persons necessary for it to perform its functions.

Automated Information Systems Guidelines

Sec. 9. (a) The council shall adopt guidelines to aid state governmental bodies in making economical and efficient use of automated information systems, the computers on which they are automated, or related services. The guidelines shall include, but not be limited to, the areas of long-range planning, common data bases, networking, applications, shared software, security, and disaster recovery.

(b) The council shall adopt guidelines consistent with Section 3.10, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

Review of Actions of Governmental Bodies

Sec. 10. (a) If a state governmental body proposes to take any of the following actions, the governmental body shall at the same time it files an acquisition request with the State Purchasing and General Services Commission also file with the council any information that the council considers necessary for it to prepare its report under Subsection (b) of this section:

(1) a purchase at a cost of more than $20,000, or a greater amount as may be prescribed by rule of the council, of automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated;

(2) a lease at a cost of more than $1,000 per month, or a greater amount as may be prescribed by rule of the council, of automated information systems or the computers on which they are automated;

(3) a major conversion of automated information systems or the computers on which they are automated.

(b) The council shall review each action proposed by a state governmental body under Subsection (a) of this section and shall within 60 days after receipt of the proposal and any supporting information file with the governor, lieutenant governor, speaker of the house of representatives, State Purchasing and General Services Commission, and state auditor a report about whether the guidelines adopted under Section 9 of this Act would be fulfilled if the governmental body's action were taken. The council may designate at the discretion of the chairman or as provided by rule of the council those reports on proposed actions which may not be filed under this subsection until they have been reviewed and approved in writing by a majority vote of the council membership. Reports on proposed actions not so designated shall be prepared and filed in the council's name by the council staff. The council may meet as provided in Section 5(b) of this Act for the purpose of meeting the requirements of this subsection.

(c) A state governmental body may not take an action under Subsection (a) of this section until 60 days after receipt of the proposal and any supporting information by the council or until the council has filed the report under Subsection (b) of this section, whichever is earlier. The failure of the council to timely file a report under Subsection (b) of this section may not be grounds for prohibiting a state governmental body from taking the action after the expiration of the 60 day period. The council together with the governmental body involved may agree to an extension of the time limit for filing a report.

Advice

Sec. 11. The council shall advise state governmental bodies about ways in which the governmental bodies may comply with the guidelines adopted under Section 9 of this Act.

Rules

Sec. 12. The council shall adopt rules to administer this Act.

Biennial Report

Sec. 13. The council shall report to the legislature at each regular session about the activities of the council, the guidelines adopted under Section 9 of this Act, and changes to state law or state governmental body procedures that the council considers necessary to promote the economical and efficient use by state governmental bodies of automated information systems and the computers on which they are automated.

Application of Sunset Act

Sec. 14. The council is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas

Civil Statutes). Unless continued in existence as provided by that Act, the council is abolished and this Act expires September 1, 1993.

[Acts 1981, 67th Leg., p. 2701, ch. 737, §§ 1 to 14, eff. Sept. 1, 1981.]

Section 15 of the 1981 Act provides:

At the time the initial appointments to the council are made, the governor shall designate three members for terms expiring February 1, 1982, and four members for terms expiring February 1, 1983.

CHAPTER NINE. COMMISSIONS AND AGENCIES

Article

4413(34a). Coordination of Regulatory Agency Functions.
4413(34b). Aircraft Pooling Act.
4413(34c). Investment of Local Funds.
4413(42a). Joint Advisory Committee on Educational Services to the Deaf.
4413(42b). Repealed.
4413(43a). Interagency Council on Early Childhood Intervention Services.
4413(47). Expired.
4413(47a). Repealed.
4413(47b). Energy Development Act of 1977.
4413(47c). Energy and National Resources Advisory Council.
4413(48). Repealed.
4413(49). Criminal Justice Coordinating Council.
4413(50). Crime Stoppers Advisory Council.

Art. 4413(33a). Distribution of State Agency Publications

Secs. 1 to 3. [Amend § 17(e) of art. 5446a and art. 5442a; repeal art. 5442]

Definitions

Sec. 4. In this Act:

(1) "Person" means an individual, association, or corporation.

(2) "Publication" means printed matter containing news or other information. It includes magazines, newsletters, newspapers, pamphlets, and reports.

(3) "State agency" means any department, commission, board, office, or other agency that:

(A) is in the executive branch of state government;

(B) has authority that is not limited to a geographical portion of the state; and

(C) was created by the constitution or a statute of the state.

Publication Request Forms

Sec. 5. (a) Each state agency that distributes publications to any person or other state agency shall distribute a publication request form on request or with each copy of the last publication that it distributes before January 1 of each year.

(b) The publication request form provides a means of requesting a state agency's publications.

(c) The comptroller of public accounts shall have the publication request forms printed and shall furnish the forms to each state agency that distributes publications. The comptroller shall furnish the forms in sufficient quantities to enable each state agency annually to distribute a form to each person or state agency that receives a publication.

Publication Distribution List

Sec. 6. (a) If a state agency receives a completed publication request form or a written request for its publications, the agency may place the name of the requestor on its publication distribution list.

(b) A state agency shall compile a distribution list after January 1 of each year from the forms and written requests received for publications for that calendar year.

(c) A state agency may not place the name of a person, state agency, or other entity on the publication distribution list unless the distributing agency has received a completed publication request form or a written request for publications from that person, state agency, or other entity.

Distribution of Publications

Sec. 7. Except as provided by Section 5 of this Act, a state agency may not distribute a publication to a person, state agency, or other entity unless the name of the person, agency, or entity appears on the distributing agency's publication distribution list.

Distribution to Those Not on the List

Sec. 8. (a) A state agency may distribute a copy of a publication to a person, state agency, or other entity that is not listed on the publication distribution list if the person, agency, or entity:

(1) has orally or in writing requested a specific copy of a publication prior to or after this Act; or

(2) is a newly elected or appointed state officer, newly appointed executive head of a state agency, or newly established state agency.

(b) A state agency shall send to the Legislative Reference Library five copies of each publication that it distributes. The library shall make available to its users the publications of each state agency.

Filing the Publication Request List

Sec. 9. Before March 1 of each year, each state agency that distributes publications shall file a copy of its publication distribution list with the comptroller of public accounts. When filed, the lists are public information.

Application

Sec. 10. Sections 4 through 9 of this Act do not apply to the distribution of information that is required by law.

Effective Date

Sec. 11. (a) Except as provided by Subsection (b) of this section, Sections 4 through 9 of this Act take effect September 1, 1979.

(b) Sections 7 and 8 of this Act take effect January 1, 1980.

[Acts 1979, 66th Leg., p. 1776, ch. 720, §§ 4 to 6, 9, eff. Sept. 1, 1979; §§ 7, 8, eff. Jan. 1, 1980; §§ 10, 11, eff. Aug. 27, 1979.]

Art. 4413(34). Repealed by Acts 1975, 64th Leg., p. 2063, ch. 678, § 5, eff. June 20, 1975

The repealed article, creating the Mass Transportation Commission, was derived from Acts 1969, 61st Leg., p. 1825, ch. 615.

See, now, arts. 6663b, 6663c.

Art. 4413(34a). Coordination of Regulatory Agency Functions

Sec. 1. In this Act, "regulatory agency" means a constitutionally or statutorily created department, commission, board, office, or other agency that:

(1) is in the executive branch of state government;

(2) has authority not limited to a geographical part of the state; and

(3) has authority to grant, deny, renew, suspend, or revoke a license, permit, certificate, registration, or other form of permission to engage in an occupation or to operate a business.

Sec. 2. (a) Before a regulatory agency inspects, surveys, investigates, or requires a report to be filed by a regulated individual or business, the executive head of the agency shall determine if that agency's or another regulatory agency's previous inspection, survey, investigation, or reporting requirement has gathered information about the individual or business that substantially satisfies the present information need of the agency. If so, the regulatory agency may not inspect, survey, investigate, or require a report to be filed by the individual or business.

(b) The executive head of a regulatory agency, on request, shall release to the executive head of another regulatory agency any information not made confidential by statute and within the requesting regulatory agency's statutory jurisdiction about a regulated individual or business that it gathers in an inspection, survey, or investigation of the individual or business or in a report filed by the individual or business.

(c) The executive head of a regulatory agency shall coordinate its inspections, surveys, investigations, and reporting requirements within the agency and with those of other regulatory agencies to avoid the duplication of those functions.

[Acts 1979, 66th Leg., p. 1800, ch. 732, eff. Aug. 27, 1979.]

Art. 4413(34b). Aircraft Pooling Act

Short Title

Sec. 1. This Act may be cited as the State Aircraft Pooling Act.

Definitions

Sec. 2. In this Act:

(1) "Agency" means an office, department, board, commission, institution, or other agency to which legislative appropriations are made. The term does not include any institution, component, or agency which owns and operates an airport approved by the Federal Aeronautics Administration.

(2) "Board" means the State Aircraft Pooling Board.

Board

Sec. 3. The State Aircraft Pooling Board is created.

Composition

Sec. 4. (a) The board is composed of:

(1) an appointee of the governor;

(2) an appointee of the lieutenant governor;

(3) an appointee of the speaker of the house of representatives;

(4) a representative of the State Board of Control designated from time to time by the chairman of the State Board of Control; and

(5) a representative of the State Auditor's Office designated from time to time by the state auditor.

(b) The three appointed members of the board hold office for staggered terms of six years, with the term of one member expiring on January 31 of each odd-numbered year. A vacancy shall be filled by the original appointing authority for the unexpired portion of the term.

(c) The representatives of the State Board of Control and the State Auditor's Office are ex officio, nonvoting members of the board and serve only in an advisory capacity.

Chairman, Meetings, etc.

Sec. 5. (a) The voting members of the board shall biennially elect one of them as chairman.

(b) The board shall adopt rules to govern the calling and holding of meetings and the conduct of business.

(c) Two voting members of the board constitute a quorum.

Staff

Sec. 6. The board may employ and compensate staff as provided by legislative appropriation or may utilize staff provided by the State Board of Control or the State Auditor's Office.

Aircraft Subject to Act

Sec. 7. All aircraft owned or leased by the state are subject to the provisions of this Act.

Aircraft Transferred to Board

Sec. 8. The custody, control, operation, and maintenance of all aircraft owned or leased by the state are transferred to the board.

Powers of Board

Sec. 9. (a) The board shall establish and operate a pool for the custody, control, operation, and maintenance of all aircraft owned or leased by the state.

The board may purchase aircraft with funds appropriated for the purpose.

(b) The board by interagency contract may lease state-owned aircraft to an agency. The agency which was the prior owner or lessee of an aircraft shall have first option to lease that aircraft from the board. The lease may provide for operation or maintenance, or both, by the board or by the agency.

(c) Whenever funds appropriated to an agency may be expended for the lease of an aircraft, the lease must be executed by the board or approved by order of the board.

(d) To the extent that aircraft are available, the board shall provide transportation on request to state officers and employees who are traveling on official business; provided the agency leasing an aircraft shall be given first option on use of the aircraft except in cases of state emergency.

Facilities

Sec. 10. The board may acquire appropriate facilities for the accommodation of all aircraft owned or leased by the state. The facilities may be purchased or leased as determined by the board to be most economical for the state and as provided by legislative appropriations. The facilities may include adequate hangar space, an indoor passenger waiting area, a flight-planning area, communications facilities, and other related and necessary facilities. No state agency shall acquire such facilities without permission from the board.

[Acts 1979, 66th Leg., p. 1833, ch. 746, eff. Sept. 1, 1979.]

Art. 4413(34c). Investment of Local Funds

Definitions

Sec. 1. In this Act:

(1) "Local funds" means public funds in the custody of a state agency or political subdivision that are not required by law to be deposited in the state treasury and that the agency or subdivision has legal authority to invest.

(2) "State agency" means an office, department, commission, board, or other agency, including an institution of higher education or a river authority, that is a part of any branch of state government.

(3) "Political subdivision" means a county, incorporated city or town, or special purpose district.

Rules Governing Investment of Local Funds

Sec. 2. Each state agency or political subdivision shall adopt rules governing the investment of local funds of the agency or subdivision. The rules shall clearly specify the scope of authority of officers and employees of the agency or subdivision that are designated to invest the local funds.

Designation of Investment Officers

Sec. 3. (a) If an officer is not assigned the function by law, a state agency or political subdivision by rule, order, ordinance, or resolution shall designate one or more officers or employees of the agency or subdivision to be responsible for the investment of local funds.

(b) No person may deposit, withdraw, invest, transfer, or otherwise manage local funds of a state agency or political subdivision that are eligible for investment without express written authority of the governing body or chief executive officer of the agency or subdivision.

Internal Management Reports

Sec. 4. At least once each year, the investment officer of a state agency or political subdivision shall prepare a written report concerning the agency's or subdivision's local funds investment transactions for the preceding year and describing in detail the investment position of the agency or subdivision as of the date of the report. If the agency or political subdivision has two or more investment officers, those officers shall prepare the report jointly. The report shall be signed by each investment officer and shall be delivered to the governing body and the chief executive officer of the agency or subdivision.

Private Auditors

Sec. 5. Notwithstanding any other provision of law, a state agency shall employ private auditors if authorized to do so by the Legislative Audit Committee on its own initiative or upon request of the governing body of the agency.

Investment Rate of Return

Sec. 6. A state agency or political subdivision shall invest local funds in investments that yield the highest possible rate of return while providing necessary protection of the principal consistent with the operating requirements as determined by the governing body.

Investments Authorized or Prohibited by Other Law

Sec. 7. This section does not prohibit an investment specifically authorized by other law nor authorize an investment specifically prohibited by other law.

[Acts 1979, 66th Leg., p. 2071, ch. 810, §§ 1 to 7, eff. June 13, 1979.]

Art. 4413(35). Commission on Fire Protection Personnel Standards and Education

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The Commission on Fire Protection Personnel Standards and Education is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1987.

[1] Article 5429k.

Powers

Sec. 2. The commission shall have the authority and power to:

(1) promulgate rules and regulations for the administration of this Act including the authority to require the submission of reports and information by any state, county, or municipal agency within this State which employs fire protection personnel;

(2) establish minimum educational, training, physical, mental, and moral standards for admission to employment as fire protection personnel in permanent positions or in temporary or probationary status;

(3) certify persons as being qualified under the provisions of this Act to be fire protection personnel;

(4) certify persons as having qualified as fire protection instructors under such conditions as the commission may prescribe;

(5) establish minimum curriculum requirements for preparatory, in-service and advanced courses and programs for schools or academies operated by or for the State or any political subdivisions thereof for the specific purpose of training fire protection personnel or recruits for the position of fire protection personnel;

(6) consult and cooperate with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of fire protection personnel training schools and programs of courses of instruction;

(7) approve, or revoke the approval of, institutions and facilities for schools operated by or for the State or any political subdivision thereof for the specific purpose of training fire protection personnel or recruits for the position of fire protection personnel, and issue certificates of approval to such institutions and revoke such certificates of approval;

(8) operate schools and facilities thereof and conduct courses therein, both preparatory, in-service, basic, and advanced courses, for fire protection personnel and recruits for the position of fire protection personnel as the commission may determine;

(9) contract with other agencies, public or private, or persons, as the commission deems necessary for the rendition and affording of such services, facilities, studies, and reports as it may require to cooperate with municipal, county, state, and federal agencies in training programs, and to otherwise perform its functions;

(10) make or encourage studies of any aspect of fire protection, including fire administration;

(11) conduct and stimulate research by public and private agencies which shall be designed to improve fire protection and fire administration;

(12) employ an executive director and such other personnel as may be necessary in the performance of its functions;

(13) visit and inspect all institutions and facilities conducting courses for the training of fire protection personnel and recruits for the position of fire protection personnel and make evaluations as may be necessary to determine if they are complying with the provisions of this Act and the commission's rules and regulations;

(14) adopt and amend rules and regulations, consistent with state law, for its internal management and control;

(15) accept any donations, contributions, grants, or gifts from private individuals or foundations or the federal government;

(16) report annually to the Governor and to the Legislature at each regular session on its activities, with its recommendations relating to any matter within its purview, and make such other reports as it deems desirable;

(17) meet at such times and places in the State of Texas as it deems proper, meetings to be called by the chairman upon his own motion, or upon the written request of five members; and

(18) consistent with the provisions of Section 8A of this Act, publish minimum standards for protective clothing and self-contained breathing apparatus for full-time, paid fire protection personnel.

[See Compact Edition, Volume 4 for text of 3 to 5]

Personnel Qualifications and Standards; Rules; Certificate; Penalty

Sec. 6.

[See Compact Edition, Volume 4 for text of 6(a) to (g)]

(h) The commission shall formulate and publish the requirements for certification as a marine fireman by September 1, 1978. After September 1, 1978, no person may be appointed as a marine fireman except on a probationary basis unless the person has completed training prescribed by the commission. A marine fireman who is appointed on a probationary basis after September 1, 1978, must complete the prescribed training within a two-year period from the date of appointment. Marine firemen serving under permanent appointment and with five or more years of service on September 1, 1978, have satisfied the training requirements by their experience. A marine fireman serving under permanent appointment and with less than five years of experience on September 1, 1978, must complete the prescribed training by September 1, 1980. For the purposes of this Act, a marine fireman is one who works for a fire department and aboard fireboats and fights fires which occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(i) A person who accepts appointment as a marine fireman or a person who appoints a marine fireman

in violation of Subsection (h) of this section shall be guilty of a misdemeanor and on conviction shall be fined not less than $100 nor more than $1,000.

[See Compact Edition, Volume 4 for text of 7 and 8]

Protective Clothing Meeting Minimum Standards; Self-contained Breathing Apparatus

Sec. 8A. (a) Effective January 1, 1983, every state, county, and municipal agency shall furnish all full-time, paid fire protection personnel who engage in fire fighting with protective clothing which complies with minimum standards promulgated by the National Fire Protection Association or its successor. "Protective clothing" means garments worn by fire fighters in the course of performing fire-fighting operations. An agency complies with the requirements of this section by:

(1) providing and maintaining the prescribed protective clothing; or

(2) providing an allowance to fire protection personnel to cover the purchase and maintenance of the prescribed protective clothing and by requiring each employee to maintain the clothing to meet the prescribed standards.

(b) Effective January 1, 1982, every self-contained breathing apparatus purchased by a state, county, or municipal agency must comply with the minimum approval and certification requirements of the National Institute For Occupational Safety and Health (or its successor) with respect to self-contained breathing apparatus for use by fire fighters.

(c) Effective January 1, 1982, every state, county, or municipal agency shall provide for complete tests of all self-contained breathing apparatus utilized in such agency in conformance with testing procedures recommended by the National Institute For Occupational Safety and Health or American National Standards Institute, Inc. The tests required under this section shall be performed on each self-contained breathing apparatus at least once each 30 days.

[See Compact Edition, Volume 4 for text of 9 and 10]

[Amended by Acts 1977, 65th Leg., p. 755, ch. 283, § 1, eff. May 27, 1977; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.138, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 847, ch. 378, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 859, ch. 305, §§ 1, 2, eff. Aug. 31, 1981.]

Art. 4413(36). Motor Vehicle Commission Code

SUBCHAPTER A. GENERAL PROVISIONS

[See Compact Edition, Volume 4 for text of 1.01 and 1.02]

Definitions

Sec. 1.03. In this Act, unless the context requires a different definition:

(1) "Motor vehicle" means every fully self-propelled vehicle which has as its primary purpose the transport of a person or persons, or property, on a public highway, and having two or more wheels.

[See Compact Edition, Volume 4 for text of 1.03(2) to (7)]

(8) "Franchise" means one or more contracts under which (A) the franchisee is granted the right to sell new motor vehicles manufactured or distributed by the franchisor; (B) the franchisee as an independent business is a component of franchisor's distribution system; (C) the franchisee is substantially associated with franchisor's trademark, tradename and commercial symbol; (D) the franchisee's business is substantially reliant on franchisor for a continued supply of motor vehicles, parts, and accessories for the conduct of its business; or (E) any right, duty, or obligation granted or imposed by this Act is affected.

[See Compact Edition, Volume 4 for text of 1.03(9)]

(10) "Broker" means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new motor vehicle, and who is not:

(A) a dealer or a bona fide agent or employee of a dealer;

(B) a representative or a bona fide agent or employee of a representative;

(C) a distributor or bona fide agent or employee of a distributor; or

(D) at any point in the transaction the bona fide owner of the vehicle involved in the transaction.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

[See Compact Edition, Volume 4 for text of 2.01]

Application of Sunset Act

Sec. 2.01a. The Texas Motor Vehicle Commission is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1991.

[1] Article 5429k.

Members of Commission

Sec. 2.02. The Commission shall consist of nine persons appointed by the Governor with the advice and consent of the Senate.

Qualifications of Members

Sec. 2.03. (a) Each member of the Commission shall be a citizen of the United States and a resident of this State. Five members shall be dealers, no two of which are franchised to sell the motor vehicles manufactured or distributed by the same person or a subsidiary or affiliate of the same person. Four

members shall be persons from the public who are not licensed hereunder and who do not have, except as consumers, interests in any business that manufactures, distributes, or sells new motor vehicles.

(b) The persons initially appointed to the Commission as dealer-members shall be persons whose principal occupation has been as franchised new motor vehicle dealers in this State for at least ten years. The dealer-members appointed to the Commission after the initial appointments are made shall be licensed dealers under this Act.

(c) The office of a member is automatically vacated and shall be filled as any other vacancy, if:

(1) the person is a dealer-member of the Commission and ceases to be a licensed dealer under this Act;

(2) the person is a public member of the Commission and acquires an interest in a business that manufactures, sells, or distributes new motor vehicles;

(3) the member becomes an officer, employee, or paid consultant of a trade association in the new motor vehicle industry; or

(4) a person related to the member within the second degree by consanguinity or affinity becomes an officer, employee, or paid consultant of a trade association in the new motor vehicle industry.

Terms of Members

Sec. 2.04. (a) Except as provided by Subsections (b) and (c) of this section, the members of the Commission shall hold office for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. The Governor shall make the appointments in such a way that there are always four members on the Commission from the public at large. No person shall serve two consecutive full six-year terms as a member of the Commission.

(b) The Governor shall appoint the three additional members to the Commission before the 91st day after September 1, 1979, and shall designate one to serve a term expiring January 31, 1981, one for a term expiring January 31, 1983, and one for a term expiring January 31, 1985.

(c) A person holding office as a member of the Commission on September 1, 1979, continues to hold the office for which the member was originally appointed. The term of office succeeding a Commission member's term that expires on September 1, 1979, expires on January 31, 1985. The term of office succeeding a Commission member's term that expires on September 1, 1981, expires on January 31, 1987. The term of office succeeding a Commission member's term that expires on September 1, 1983, expires on January 31, 1989.

(d) A term of office shortened under Subsection (c) of this section or the term expiring January 31, 1985, under Subsection (b) of this section is considered a full six-year term for the purpose of the prohibition against serving two consecutive full six-year terms as a member of the Commission.

[See Compact Edition, Volume 4 for text of 2.05 to 2.07]

Commission Meetings

Sec. 2.08. (a) The Commission shall hold a regular annual meeting in September of each year and elect a chairman and vice-chairman to serve for the ensuing year. The Commission shall have regular meetings as the majority of the members specifies and special meetings at the request of any two members. Reasonable notice of all meetings shall be given as Commission rules prescribe. A majority of the Commission, including at least two of the public members, shall constitute a quorum to transact business.

(b) The Commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes).

Executive Director; Staff

Sec. 2.09. (a) The Commission shall employ an executive director who shall be the chief administrative officer of the Commission, who shall maintain all minutes of Commission proceedings, and who shall be custodian of the files and records of the Commission. The executive director shall employ the staff authorized by the Commission. The Commission may by interagency contract utilize assistance of any State agency.

(b) An employee of the Commission is subject to dismissal who has an interest, except as a consumer, or is related within the second degree by consanguinity or affinity to a person who has an interest, except as a consumer, in a business that manufactures, distributes, or sells new motor vehicles.

(c) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not act as the general counsel to or serve as a member of the Commission.

Revenues

Sec. 2.10. (a) The Commission shall send all moneys received by it from license fees paid under this Act to the State Treasurer, who shall deposit them in the General Revenue Fund in the State Treasury.

(b) Before September 1 of each year, the Commission shall file a written report with the legislature and the Governor in which the Commission accounts for all funds received and disbursed by the Commission during the preceding year.

(c) The State Auditor shall audit the financial transactions of the Commission during each fiscal year.

[See Compact Edition, Volume 4 for text of 2.11]

SUBCHAPTER C. POWERS AND DUTIES

[See Compact Edition, Volume 4 for text of 3.01]

Rules

Sec. 3.02. The Commission, after hearing, shall make, amend, and enforce rules reasonably required to effectuate the provisions of this Act and govern procedure and practice before the Commission. The Commission shall comply with the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes). If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as added (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Commission a statement opposing adoption of a rule under that section, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the Commission receives the committees' statement.

[See Compact Edition, Volume 4 for text of 3.03]

Hearings

Sec. 3.04. (a) The Commission shall hear all contested cases, as defined in the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), arising under this Act. The Commission may hold hearings, administer oaths, receive evidence, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions in administering the Act and the rules, orders, and other actions of the Commission.

[See Compact Edition, Volume 4 for text of 3.04(b) to 3.04(f)]

(g) All persons whose rights may be affected at any hearing shall have the right to appear personally and by counsel, to cross-examine adverse witnesses and to produce evidence and witnesses in their own behalf. If a hearing is not held before the whole Commission, such person shall have the right to appear before the Commission and present oral argument when the matter comes before them for decision.

(h) A retail buyer of a new motor vehicle may make a complaint concerning defects in a new motor vehicle which are covered by the warranty agreement applicable to the vehicle. Such complaint must be made by letter to the dealer, a copy of which shall be sent to the applicable manufacturer or distributor, and must specify the defects in the vehicle which are covered by the warranty. The owner may make further complaint by sending to the Commission a copy of the letter. The Commission may hold a hearing on all unsatisfied complaints to determine whether there has been a violation of the Act.

(i) After the Commission schedules a hearing on a complaint made by a retail buyer under this section or by a licensed dealer under Section 4.06(c) of this Act, the Commission may cancel or adjourn the hearing if it determines, by an order entered on the records of the Commission, that the complaint was made for purposes of harassment of the dealer, the applicant, or the Commission.

(j) No dealer member of the Commission may participate in, deliberate on, hear, or consider, or decide any matter involving denial under Section 4.06(c) of this Act of an application to establish a dealership to sell the same motor vehicles manufactured or distributed by the same person or a subsidiary or affiliate of the same person for which the dealer member is franchised.

Enforcement; Contracts; Instruments

Sec. 3.05. The Commission shall conduct investigations and, if appropriate, shall cause legal proceedings to be instituted to enforce this Act and its rules, orders, and decisions, whenever the Commission has reason to believe, through receipt of a complaint or otherwise, that a violation of this Act or a Commission rule, order, or decision has occurred or is likely to occur. Should it appear from any investigation of a possible violation of any other law or regulation that a violation of this Act may have occurred, the matter shall be referred to the Commission to determine whether proceedings under this Act are also appropriate. The Commission may make contracts and execute instruments necessary or convenient to the exercise of its power or performance of its duties.

Complaint Status

Sec. 3.06. The Commission shall keep an information file about each complaint filed with the Commission. If a written complaint is filed with the Commission relating to a licensee under this Act, the executive director of the Commission, at least as frequently as quarterly, shall notify the persons involved of the status of the complaint until it has been resolved.

SUBCHAPTER D. LICENSES

License Required

Sec. 4.01. No person shall engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, or representative in this State without obtaining a license therefor as provided in this Act. All licenses shall expire one year from date of issue.

Expiration Dates of Licenses; Proration of Fees

Sec. 4.01A. The commission by rule shall adopt a system under which licenses expire, beginning in 1981, on various dates during the year. For 1981 only, license fees payable on the date of issuance

shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

Notice of License Expiration

Sec. 4.01B. The Commission shall notify each person licensed under this Act of the date of license expiration and the amount of the fee required for license renewal. The notice shall be mailed at least thirty days before the date of license expiration.

Dealer Application

Sec. 4.02.

[See Compact Edition, Volume 4 for text of 4.02(a) to (c)]

(d) A dealer licensed hereunder shall promptly notify the Commission of a change in ownership, location or franchise of a dealer, or any other matters the Commission may require by rule. Prior to a change in location of a dealership, a new license must be applied for as in any original application.

Manufacturer, Distributor and Representative Application

Sec. 4.03.

[See Compact Edition, Volume 4 for text of 4.03(a) and (b)]

(c) Each application for a manufacturer's license shall include an instrument setting forth the terms and conditions of all warranty agreements in force and effect on the products it sells in this State to ascertain the degree of protection afforded the retail purchasers of those products and the obligations of dealers in connection therewith as well as the basis for compensating dealers for labor, parts and other expenses incurred in connection with such manufacturer's warranty agreements including a statement of the manufacturer's compliance with Subdivision (9), Section 5.02 of this Act. In addition, all manufacturers shall specify on or with the application the delivery and preparation obligations of their dealers prior to delivery of a new motor vehicle to a retail purchaser and the schedule of compensation to be paid to dealers for the work and service performed by them in connection with such delivery.

[See Compact Edition, Volume 4 for text of 4.03(d) to 4.04]

Fees

Sec. 4.05. (a) The annual license fees for licenses issued hereunder shall be as follows:

(1) For each manufacturer and distributor, $300.00.

(2) For each dealer who sold more than 200 new motor vehicles during the preceding calendar year, $100.00.

(3) For each dealer who sold 200 or less new motor vehicles during the preceding calendar year, $50.00.

(4) For each representative, $25.00.

[See Compact Edition, Volume 4 for text of 4.05(b)]

Denial, Revocation or Suspension of License

Sec. 4.06. (a) The Commission may deny an application for a license or revoke or suspend an outstanding license, for any of the following reasons:

(1) Proof of unfitness of applicant or licensee under standards set out in this Act or in Commission rules.

(2) Material misrepresentation in any application or other information filed under this Act or Commission rules.

(3) Willful failure to comply with this Act or any rule promulgated by the Commission hereunder.

(4) Failure to maintain the qualifications for a license.

(5) Willfully defrauding any retail buyer to the buyer's damage.

(6) Willful violation of any law relating to the sale, distribution, financing, or insuring of new motor vehicles.

(7) Any act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity for a licensee which act or omission would be cause for denying, revoking, or suspending a license to an individual licensee.

(8) Repeated failure to fulfill written agreements between the licensee and retail buyers of new motor vehicles.

[See Compact Edition, Volume 4 for text of 4.06(b)]

(c) The Commission may deny a dealer application to establish a dealership if the same line-make of new motor vehicle is then represented in the county in which the proposed dealership site is located, or in an area within 25 miles of the proposed dealership site, by a dealer who is in compliance with his franchise agreement with the manufacturer or distributor, is adequately representing the manufacturer or distributor in the sale and service of its new motor vehicles, and good cause is shown why an additional dealer license is not in the public interest, provided that the Commission shall consider the desirability of a competitive marketplace in all determinations made pursuant to this subsection.

[See Compact Edition, Volume 4 for text of 4.06(d) and (e)]

Required Notice to Buyers

Sec. 4.07. (a) A dealer licensed under this Act shall provide notice of the complaint procedures provided by Section 3.04(h) of this Act to each person to whom the dealer sells a new motor vehicle.

(b) The Commission may require its approval of the contents of notices required by Subsection (a) of this section or may prescribe the contents of required notices.

(c) Failure to give the notice required by Subsection (a) of this section is a ground for suspension or revocation of a dealer's license.

SUBCHAPTER E. PROHIBITIONS

Dealers

Sec. 5.01. It shall be unlawful for any dealer to:

(1) Require a retail purchaser of a new motor vehicle as a condition of sale and delivery thereof to purchase special features, equipment, parts, or accessories not ordered or desired by the purchaser, provided such features, equipment, parts, or accessories are not already installed on the new motor vehicle when received by the dealer.

(2) Use false, deceptive, or misleading advertising, in connection with any of the business of a dealer, as defined in Section 17.12 of the Business and Commerce Code, as amended.

(3) Fail to perform the obligations placed on the selling dealer in connection with the delivery and preparation of a new motor vehicle for retail sale as provided in the manufacturer's preparation and delivery agreements on file with the Commission and applicable to such vehicle.

(4) Fail to perform the obligations placed on the dealer in connection with the manufacturer's warranty agreements on file with the Commission.

(5) Operate as a dealer without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

Manufacturers; Distributors; Representatives

Sec. 5.02. It shall be unlawful for any manufacturer, distributor or representative to:

(1) Require or attempt to require any dealer to order, accept delivery of or pay anything of value, directly or indirectly, for any motor vehicle, appliance, part, accessory or any other commodity unless voluntarily ordered or contracted for by such dealer.

(2) Refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order to a dealer having a franchise agreement for the retail sale of any motor vehicles sold or distributed by such manufacturer, distributor, or representative, any new motor vehicle or parts or accessories to new motor vehicles as are covered by such franchise if such vehicle, parts or accessories are publicly advertised as being available for delivery or are actually being delivered; provided, however, this provision is not violated if such failure is caused by acts of God, work stoppage or delays due to strikes or labor disputes, freight embargoes or other causes beyond the control of the manufacturer, distributor, or representative.

(3) Notwithstanding the terms of any franchise agreement, terminate or refuse to continue any franchise with a dealer unless (A) the dealer and the Commission have received written notice sixty days before the effective date thereof setting forth the specific grounds for termination or noncontinuance and (B) if the dealer files a protest with the Commission, it is established by a preponderance of evidence at a hearing called by the Commission that there is good cause for the termination or noncontinuance. The Commission shall consider all the existing circumstances in determining good cause, including without limitation the dealer's sales in relation to the market, the dealer's investment and obligations, injury to public welfare, adequacy of service facilities, equipment, parts and personnel of the dealer and other dealers of new motor vehicles of the same line-make, whether warranties are being honored, and compliance with the franchise agreement. Good cause shall not be shown solely by a desire for further market penetration. If a franchise is terminated or not continued, another franchise in the same line-make will be established within a reasonable time unless it is shown to the Commission that the community or trade area cannot reasonably support such a dealership. If this showing is made, no dealer license shall be thereafter issued in the same area unless a change in circumstances is shown.

(4) Use any false, deceptive or misleading advertising, as defined in Section 17.12 of the Business and Commerce Code, as amended.

(5) Notwithstanding the terms of any franchise agreement, prevent any dealer from changing the capital structure of his dealership or the means by or through which he finances the operation thereof, provided that the dealer meets any reasonable capital requirements agreed to by contract of the parties.

(6) Notwithstanding the terms of any franchise agreement, fail to give effect to or attempt to prevent any sale or transfer of a dealer, dealership or franchise or interest therein or management thereof unless it is shown to the Commission after hearing that the result of such sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor.

(7) Require or attempt to require that a dealer assign to or act as an agent for any manufacturer, distributor or representative in the securing of promissory notes and security agreements given in connection with the sale or purchase of new motor vehicles or the securing of policies of insurance on or having to do with the operation of vehicles sold.

(8) Fail, after complaint and hearing, to perform the obligations placed on the manufacturer in connection with the delivery, preparation and warranty of a new motor vehicle as provided in the manufacturer's warranty, preparation, and delivery agreements on file with the Commission.

(9) Fail to compensate its dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations according to the agreements on file with the Commission which must be found by the Commission to be reasonable, or fail to adequately and fairly compensate its dealers for labor, parts and other expenses incurred by such dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer or distributor pay its dealers an amount of money for warranty work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty work of like kind. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer's delivery, preparation, and warranty obligations as filed with the Commission shall constitute the dealer's sole responsibility for product liability as between the dealer and manufacturer, and, except for a loss caused by the dealer's failure to adhere to these obligations, a loss caused by the dealer's negligence or intentional misconduct, or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action.

(10) Operate as a manufacturer, distributor, or representative without a currently valid license from the Commission or otherwise violate this Act or rules promulgated by the Commission hereunder.

(11) Notwithstanding the terms of any franchise agreement, to prevent or refuse to honor the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution of this State unless it is shown to the Commission, after notice and hearing, that the result of such succession will be detrimental to the public interest or to the representation of the manufacturer or distributor; provided, however, nothing herein shall prevent a dealer, during his lifetime, from designating any person as his successor dealer, by written instrument filed with the manufacturer or distributor.

(12) Require that a dealer pay or assume, directly or indirectly, any part of any refund, rebate, discount, or other financial adjustment made by the manufacturer, distributor, or representative to, or in favor of, any customer of a dealer, unless voluntarily agreed to by such dealer.

Brokers

Sec. 5.03. A person may not act as, offer to act as, or hold himself or herself out to be, a broker.

Sale of New Motor Vehicles

Sec. 5.04. No person may represent to the public, by advertising or other means, that he is engaged in the business of buying, selling, or exchanging new motor vehicles unless he holds a valid license issued by the Commission for the make or makes of new motor vehicles being bought, sold, or exchanged; or unless such person is acting as a bona fide employee or agent of the licensee; or unless such person is a second stage or allied equipment manufacturer modifying or converting new motor vehicles and offering them for sale with the original manufacturer's warranty unimpaired.

SUBCHAPTER F. ENFORCEMENT

[See Compact Edition, Volume 4 for text of 6.01 to 6.05]

Application of Other Law

Sec. 6.06. (a) In addition to the other remedies provided by this subchapter, a person who has sustained actual damages as a result of a violation of Section 5.01 or Subdivision (1), (2), (4), (7), (8), or (10), Section 5.02 of Subchapter E of this Code may maintain an action pursuant to the terms of Subchapter E, Chapter 17, Business and Commerce Code.[1]

(b) In any action brought against a licensee under Subsection (a) of this section, or for any other type of conduct which is actionable pursuant to the provisions of Subchapter E, Chapter 17, Business and Commerce Code, the $1,000 limitation set forth in Section 17.50(b)(1) of Subchapter E, Chapter 17, Business and Commerce Code shall be adjusted to reflect any change in the consumer price index after the effective date of this section. The $1,000 limitation shall be increased or decreased, as applicable, by a sum equal to the amount of the $1,000 limitation multiplied by the percentage of increase or decrease in the consumer price index between the effective date of this section and the time at which the damages are awarded by final judgment or settlement. The term "consumer price index" means the National Consumer Price Index For All Urban Consumers, or a substantially similar successor, and the court may take judicial notice of said index.

[1] Business and Commerce Code, § 17.41 et seq.

[See Compact Edition, Volume 4 for text of 7.01]

[Amended by Acts 1975, 64th Leg., p. 297, ch. 128, §§ 1, 2, May 6, 1975; Acts 1977, 65th Leg., p. 947, ch. 357, §§ 1 to 5, eff. June 10, 1977; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.010, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1725, ch. 709, §§ 1 to 25, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 555, ch. 235, §§ 1, 2, eff. May 28, 1981.]

Art. 4413(38). Coastal and Marine Council

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The Texas Coastal and Marine Council is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1985.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 5]

[Amended by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.085, eff. Aug. 29, 1977.]

Art. 4413(40). Civil Air Patrol Commission

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The Commission for the Texas Civil Air Patrol is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1981.

[1] Article 5429k.

Powers

Sec. 2. The commission may:

(1) advise the Governor's Division of Disaster Emergency Services as to (i) the deployment of voluntarily offered aviation resources in search and rescue operations and (ii) disaster-related planning, training, and operations under the Texas Disaster Act of 1975 (Article 6889–7, Vernon's Texas Civil Statutes); and

(2) provide assistance to private aviators, including partial reimbursement for funds expended, in meeting the actual costs of aircraft operation requested by the governor or his designee.

Clerical and Administrative Services

Sec. 2a. The Governor's Division of Disaster Emergency Services shall provide clerical and other administrative services to the commission.

[See Compact Edition, Volume 4 for text of 3 to 5]

Duties

Sec. 6. In carrying out the duties and responsibilities of the commission it shall have the following duties:

(a) to meet at such times and places in the State of Texas as it deems proper; meeting shall be called by the chairman upon his own motion, or upon the written request of five members;

(b) to contract with other agencies, public or private, or persons, as it deems necessary for the rendition and affording of such services, facilities, studies, and reports as it may require to exercise the powers granted in Section 2 of this Act as amended.

[See Compact Edition, Volume 4 for text of 7 and 8]

[Amended by Acts 1977, 65th Leg., p. 814, ch. 304, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.053, eff. Aug. 29, 1977.]

Art. 4413(41). Amusement Machine Commission

Creation; Members; Employees; Meetings; Procedure

Sec. 1. (a) There is hereby created an agency of the State of Texas which shall be designated as the Texas Amusement Machine Commission; said Commission shall consist of three (3) members to be appointed by the Governor with the advice and consent of the Senate and three (3) ex officio members, who shall have the right to vote, to be the Director of the Department of Public Safety, or his nominee; the Commissioner of Consumer Credit, or his nominee; and the Attorney General, or his nominee. The appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. None of the three appointed members, shall be or have ever been an "owner" or "operator" of any "coin-operated" machine as those terms are defined in Chapter 13, Title 122A, Taxation—General, Revised Civil Statutes of Texas, as amended.[1] Members of the Commission shall serve for six (6) years. Appointees shall hold office until their successors are appointed and qualified.

(b) A member or employee of the Commission may not be an officer, employee, or paid consultant of a trade association in the coin-operated machine industry. A member or employee of the Commission may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

(c) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the Commission or act as the general counsel to the Commission.

(d) It is a ground for removal from the Commission if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the Commission;

(2) does not maintain during the service on the Commission the qualifications required by Subsection (a) of this section for appointment to the Commission;

(3) violates a prohibition established by Subsection (b) or (c) of this section; or

(4) fails to attend at least half of the regularly scheduled Commission meetings held in a calendar year, excluding meetings held while the person was not a member of the Commission.

(e) The validity of an action of the Commission is not affected by the fact that it was taken when a

ground for removal of a member of the Commission existed.

(f) The Commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 4 for text of 1A]

Application of Sunset Act

Sec. 1B. The Texas Amusement Machine Commission is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1993.

Sec. 2. Repealed by Acts 1981, 67th Leg., p. 2884, ch. 770, § 8, eff. Sept. 1, 1981.

Executive Director; Personnel; Compensation

Sec. 3. (a) The Texas Amusement Machine Commission shall be empowered to hire and employ an Executive Director and such other personnel as may be required and necessary to carry out the duties, functions, responsibilities and authority of said Commission including professional consultants. The Executive Director of the Commission and other personnel shall receive such compensation as may be set by the Commission, exclusive of any necessary expenses incurred in the performance of official duties, as shall be appropriated by the Legislature.

(b) The Executive Director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the Executive Director must be based on the system established under this subsection.

Compensation of Members

Sec. 4. All members of the Commission shall be entitled to a per diem as set by legislative appropriation for each day they are actually engaged in performing their duties whether or not in attendance at a meeting; provided, however, they shall not draw compensation for more than sixty (60) days in any one fiscal year. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act.

Deposit of Funds; Appropriations; Audits; Annual Reports

Sec. 7. (a) All funds received by the Commission for license fees pursuant to Article 13.17, Title 122A, Taxation—General, Revised Civil Statutes of Texas, as amended, shall be deposited to the General Revenue Fund of the State Treasury. All money to be expended by the Commission shall be appropriated out of the General Revenue Fund.

(b) The state auditor shall audit the financial transactions of the Commission during each fiscal year.

(c) On or before January 1 of each year, the Commission shall make in writing to the Governor and the presiding officer of each house of the Legislature a complete and detailed annual report accounting for all funds received and disbursed by the Commission during the preceding year.

Advisory Committee

Sec. 8. (a) The Commission may create an advisory committee to assist it in the execution of its duties under this Act.

(b) If the Commission creates an advisory committee, it may appoint no more than six persons to the committee. A person is qualified to be appointed to the advisory committee if he engages in any aspect of the coin-operated machine industry.

(c) A member of the advisory committee receives no salary. Each member is entitled to be reimbursed for his actual and necessary traveling and per diem expenses incurred in serving on the committee. [Amended by Acts 1975, 64th Leg., p. 1045, ch. 407, §§ 1 and 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.036, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2877, ch. 770, §§ 1, 8, eff. Sept. 1, 1981.]

[1] Transferred; see, now, art. 8801 et seq.

Section 3 of the 1975 amendatory act amended Taxation—General, Arts. 13.01 to 13.17; §§ 4 to 6 thereof provided:

"Sec. 4. (a) On the effective date of this Act the terms of all members of the Texas Amusement Machine Commission whose membership is prohibited by Section 1 of this Act shall expire and their positions on the board become vacant. The terms of the remaining members will continue until January 31, 1979; on that date, the governor shall appoint three members for the following terms:

"(1) one member for a term that expires January 31, 1985;

"(2) one member for a term that expires January 31, 1983;

"(3) one member for a term that expires January 31, 1981.

"(b) The governor by appointment shall fill any vacancy for the unexpired term only.

"Sec. 5. This Act takes effect September 1, 1975.

"Sec. 6. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 9(b) of Acts 1981, 67th Leg., p. 2884, ch. 770, provides:

"The requirement under Subsection (b), Section 3, Chapter 587, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4413(41), Vernon's Texas Civil Statutes), as added by this Act, that the executive director of the commission develop a system of annual performance evaluations, shall be implemented before September 1, 1982. The requirement of Subsection (b) of Section 3 that merit pay is to be based on that system shall be implemented before September 1, 1983."

Art. 4413(42). Repealed by Acts 1979, 66th Leg., p. 1652, ch. 690, § 12, eff. Sept. 1, 1979

Acts 1979, 66th Leg., p. 1652, ch. 690, § 12, repealed this article without reference to amendment of this article by Acts 1979, 66th Leg., p. 399, ch. 186, § 7, which added subsecs. (e) and (f) to § 8, reading:

"(e) The commission shall compile a list of qualified interpreters who are available for assignment by a state agency, a court, or a political subdivision to interpret proceedings for deaf persons. The commission shall disseminate this list to the agencies, courts, political subdivisions, and the general public. The commission shall prescribe the qualifications for interpreters who are to appear on the list and in prescribing those qualifications shall consider interpreters who are certified by the Texas Society of Interpreters for the Deaf or the National Registry of Interpreters for the Deaf, or both.

"(f) The commission by rule shall adopt a schedule of reasonable fees recommended for the payment of interpreters required by law to be provided in proceedings of state agencies, courts, and political subdivisions. In adopting the schedule, the commission shall consider the recommendations of the Texas Society of Interpreters for the Deaf and the National Registry of Interpreters for the Deaf."

Section 12 of Acts 1979, 66th Leg., ch. 690, repealing this article, provided in part:

"The State Commission for the Deaf created by that Act is abolished and its records and property are transferred to the commission created by this Act."

Acts 1979, 66th Leg., p. 1652, § 12, repealed this article without reference to amendment of this article by Acts 1979, 66th Leg., p. 399, ch. 186, § 7, which added subsecs. (e) and (f) to § 8.

Acts 1981, 67th Leg., p. 351, ch. 140, § 2, incorporated the amendment by Acts 1979, 66th Leg., p. 399, ch. 186, § 7, into the Human Resources Code as § 81.0061 thereof.

Art. 4413(42a). Joint Advisory Committee on Educational Services to the Deaf

Purpose

Sec. 1. The purpose of this Act is to promote the economical delivery of the educational services to the deaf provided by state governmental educational institutions by means of a comprehensive review of governmental structure and administration.

Definitions

Sec. 2. In this Act:

(1) "Committee" means the Joint Advisory Committee on Educational Services to the Deaf.

(2) "Departments and agencies" means all departments, bureaus, agencies, boards, commissions, and other instrumentalities of the executive branch of state government which provide any type of educational services to the deaf or that train professionals to work with the deaf.

(3) "Professionals" means persons trained as teachers, interpreters, and directors of teacher training programs, and ancillary personnel employed by educational institutions for the deaf.

Creation of Committee

Sec. 3. There is created the Joint Advisory Committee on Educational Services to the Deaf.

Membership

Sec. 4. (a) The committee consists of the lieutenant governor, the speaker of the house of representatives, the secretary of state, and other members appointed as provided by this section.

(b) The governor shall appoint six persons, none of whom may be members of the house or of the senate, two of these members being deaf consumers, two members being parents of deaf consumers, and two members being professionals serving the deaf as defined by this Act.

(c) The lieutenant governor shall appoint one member of the senate.

(d) The speaker of the house of representatives shall appoint one member of the house of representatives.

Terms and Vacancies

Sec. 5. (a) The initial members of the committee shall take office within 30 days after the effective date of this Act and shall serve until the expiration of the committee.

(b) Vacancies among the appointed members shall be filled for the unexpired terms in the same manner as the original appointments were made.

Compensation

Sec. 6. (a) Legislative members of the committee shall serve without additional compensation. Each member shall be reimbursed from the appropriate fund of the member's respective house for travel, subsistence, and other necessary expenses incurred in performing the duties of the committee.

(b) Persons appointed pursuant to Section 4(b) of this Act shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses from appropriations made by the legislature to the committee.

(c) The duties to be performed by each public official or employee appointed to the committee shall be considered duties in addition to those otherwise required by that person's office.

Officers

Sec. 7. The lieutenant governor shall serve as chairman of the committee. The speaker of the house of representatives shall serve as vice-chairman of the committee.

Quorum

Sec. 8. Six members of the committee shall constitute a quorum for the conduct of business.

Duties

Sec. 9. The committee shall:

(1) examine and evaluate the organization and methods of operation of the departments and agencies of state government related to educational programs for the deaf;

(2) develop proposals for improving the structure and administration of state educational services to the deaf in order to assure the delivery of quality governmental services at the lowest possible cost;

(3) recommend suspension of government programs and services that duplicate and exceed in cost those same services offered by private business; and

(4) make findings and issue reports in the execution of the duties imposed by this section.

Powers

Sec. 10. The committee or any subcommittees of its membership designated by the chairman may:

(1) appoint and fix the compensation of necessary staff;

(2) hold open hearings, take testimony, and administer oaths or affirmations to witnesses;

(3) secure directly from any department or agency of state government any information deemed necessary for the implementation of this Act; and

(4) make findings and issue reports in the execution of the duties imposed by Section 9 of this Act.

Cooperation of Other Departments and Agencies

Sec. 11. (a) The Texas Legislative Council, the Legislative Budget Board, the Legislative Audit Committee, the Texas Advisory Commission on Intergovernmental Relations, and the Division of Planning Coordination shall, through their respective administrative officers, furnish staff assistance to the committee upon request.

(b) Each department and agency of state government is directed to furnish assistance and information to the committee upon request.

Reports; Recommendations; Dissolution

Sec. 12. The committee may make an interim report on its progress, together with any specific recommendations it may deem desirable, to any session of the 65th Legislature, and shall make its final report to the 66th Legislature not later than 30 days after that legislature is organized. Unless extended by the 66th Legislature, the committee is dissolved on May 31, 1979.

[Acts 1977, 65th Leg., p. 1694, ch. 672, §§ 1 to 12, eff. Aug. 29, 1977.]

Art. 4413(42b). Repealed by Acts 1979, 66th Leg., p. 2443, ch. 842, art. 2, § 24, eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

The repealed article, relating to the Texas Commission for the Deaf, was derived from Acts 1979, 66th Leg., p. 1649, ch. 690, §§ 1 to 12.

Art. 4413(43). Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 2, § 2(1), eff. Sept. 1, 1979.

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Prior to repeal, this article was amended by Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.110.

Art. 4413(43a). Interagency Council on Early Childhood Intervention Services

Definitions

Sec. 1. In this article:

(1) "Council" means the Interagency Council on Early Childhood Intervention Services.

(2) "Department" means the Texas Department of Health.

(3) "Developmentally delayed child" means a child who exhibits:

(A) a significant delay, beyond acceptable variations in normal development, in one or more of the following areas:

(i) cognitive;

(ii) gross or fine motor;

(iii) language or speech;

(iv) social or emotional;

(v) self-help skills; or

(B) an organic defect or condition that is very likely to result in such a delay.

Interagency Council

Sec. 2. (a) The Interagency Council on Early Childhood Intervention Services is composed of one lay member and one representative each from the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and the Central Education Agency. The governor with the advice and consent of the senate shall appoint the lay member, and the commissioner of each agency shall appoint that agency's representative.

(b) A member appointed by an agency serves for a term of two years or until the person terminates employment with the agency, whichever occurs first. The member appointed by the governor serves for a term of two years expiring February 1 of every odd-numbered year.

(c) The members of the council shall annually elect one member to serve as chairman.

(d) The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(e) Any action taken by the council must be approved by a majority vote of the members present.

State Plan

Sec. 3. (a) The council shall develop and implement a state plan for early childhood intervention services to ensure that:

(1) the provisions of this article are properly implemented by the agencies affected;

(2) child and family needs are assessed statewide and all available resources are coordinated to meet those needs;

(3) manpower needs are assessed statewide and strategies are developed to meet those needs;

(4) incentives are offered for private sources to maintain present commitments and to assist in developing new programs; and

(5) a procedure for review of individual complaints about services provided under this article is implemented.

(b) The council shall make written recommendations for the carrying out of its duties under this article. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. The council's recommendations shall be implemented by the agencies affected by the recommendations.

Advisory Committee

Sec. 4. (a) The council shall establish an advisory committee composed of parents, professionals, and advocacy groups. The council shall appoint as many members as it considers necessary to assist the council in the performance of its duties.

(b) The committee shall meet and serve under the rules of the council, but the committee shall elect its own chairman. The committee may be divided into regional committees to assist the council in community-level program planning and implementation.

Duties

Sec. 5. (a) The council with the advice of the committee shall address contemporary issues affecting intervention services in the state including:

(1) successful intervention strategies;

(2) personnel preparation and continuing education;

(3) screening services;

(4) day or respite care services;

(5) public awareness; and

(6) contemporary research.

(b) The council with the advice of the committee shall advise the legislature on legislation that is needed to further develop and maintain a statewide system of quality intervention services for all developmentally delayed children under three years of age. The council may develop and submit legislation to the legislature or comment on pending legislation that affects this population.

Reimbursement and Staff Support

Sec. 6. (a) Council and committee members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. The agencies represented on the council shall equally bear the cost of reimbursement.

(b) The agencies represented on the council shall provide staff support to the council. The agencies may provide staff support to the committee.

Public Awareness and Training

Sec. 7. (a) The Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and the Central Education Agency shall jointly develop and implement:

(1) a general public awareness strategy focusing on the importance of prenatal care and early detection of developmental delay and the availability of state resources to meet the needs of developmentally delayed children under six years of age; and

(2) a statewide plan for conducting regional training sessions for public and private service providers who have routine contact with children under six years of age that focuses on methods for early detection of developmental delay.

(b) The department shall allocate funds appropriated to it under this article to other agencies that assume implementation responsibilities.

Early Identification Strategy

Sec. 8. (a) The department shall develop and implement a statewide strategy for the early identification of developmentally delayed children under six years of age, utilizing information from other agencies serving handicapped children.

(b) The strategy must include plans to:

(1) incorporate, strengthen, and expand similar existing local efforts;

(2) incorporate and coordinate screening services currently provided through a public agency; and

(3) establish a liaison with primary referral sources, including hospitals, physicians, public health facilities, and day-care facilities, to encourage referrals of developmentally delayed children.

Follow-up

Sec. 9. (a) A child under six years of age may be referred to the department for services described by this section if the child is:

(1) identified as developmentally delayed;

(2) suspected of being developmentally delayed; or

(3) considered at risk of developmental delay because of certain biological or environmental factors.

(b) For each child referred, the department shall:

(1) seek appropriate medical or developmental screening or evaluation and if such screening services or evaluation services are not available, the department shall provide those services, either directly or by contract; and

(2) refer the child to a public or private program that can meet the child's needs.

(c) Services under this section shall be provided in a manner that minimizes intrusion into family privacy.

Eligibility for Services

Sec. 10. A developmentally delayed child is eligible for services under Sections 11 through 13 and 16 of this article if the child is under three years of age, or until reaching the age of eligibility for entry into the comprehensive special education program for handicapped children under Section 16.104 of the Texas Education Code.

Parent Counseling and Case Management

Sec. 11. (a) For an eligible developmentally delayed child, the department shall provide parent counseling and case management services.

(b) Those services shall be designed to:

(1) assist in the development of positive attitudes and coping skills;

(2) provide objective information about alternatives for securing direct services for the child;

(3) actively involve the case manager in procuring needed services on the parent's behalf;

(4) actively involve the case manager in responding to complaints about services procured through this process; and

(5) facilitate communication among providers serving the child, including the primary physician.

(c) The services shall be provided before a child is placed in an appropriate program. If the child is placed in a program that meets the standards established by Section 19 of this article, that program shall assume responsibility for providing parent counseling and case management services following placement. If the child is not placed in such a program, the department shall continue to provide those services.

Monitoring

Sec. 12. (a) The department shall monitor the overall progress of an eligible developmentally delayed child who receives services under this Act until the child enters the public school system, including the monitoring of the parental counseling and case management services provided under Section 11 of this article.

(b) Periodic reevaluations shall be obtained as the department considers necessary. If an original placement no longer meets the child's needs, the department shall provide additional referrals.

Intervention Services

Sec. 13. (a) The department shall provide intervention services to an eligible developmentally delayed child if the department is not able to place the child in a program that meets the standards established by Section 19 of this article.

(b) Intervention services must include:

(1) training, counseling, and case management services for the child's parents;

(2) individualized instruction or treatment in the following areas of development: cognitive, gross or fine motor, language or speech, social or emotional, and self-help skills; and

(3) related services, including occupational therapy, physical therapy, speech and language therapy, adaptive equipment, and transportation.

(c) The department may either directly provide the services needed to comply with the requirements of this section or contract for the provision of the services.

Report

Sec. 14. The department shall report to the council any needs identified in areas where a program that meets the standards established by Section 19 of this article is not available.

New Program Strategy

Sec. 15. The council shall develop a strategy for establishing new programs to meet needs identified by the department in accordance with Section 14 of this article.

Grant Request for New Program

Sec. 16. A public or private service provider may apply for funds to provide a program of intervention services for eligible developmentally delayed children in an area of identified need by submitting a grant request to the Central Education Agency or the Texas Department of Mental Health and Mental Retardation. The council shall adopt guidelines for determining which agency shall receive a request, but each agency shall process any request received.

Approval Criteria

Sec. 17. (a) The agency receiving a request for funding for a new program shall transmit the request to the council for approval.

(b) The council shall review the requests on a competitive basis giving consideration to the following:

(1) the extent to which the program would meet identified needs;

(2) the cost of initiating a program, if applicable;

(3) whether other funding sources are available;

(4) the proposed cost to the parents for the services; and

(5) the assurance of quality services.

Program Approval

Sec. 18. (a) For each grant approved by the council, the council shall direct the department to allocate appropriated funds for the program to the service provider in the amount specified by the council.

(b) The department shall require the service provider to execute a contract with the department specifying the program standards and agency guidelines that the provider has agreed to meet.

(c) The contract must specify the minimum and maximum number of eligible developmentally delayed children to be served. The program must serve at least the minimum number and may not be required to serve more than the maximum number specified. If the number of eligible children applying for admission to an approved program exceeds the maximum number specified, the service provider may apply for supplemental funding.

(d) The service provider may charge a fee for intervention services, based on the parent's ability to pay, to be used to offset the cost of providing or securing the services. If a fee is charged, a separate charge shall be made for each type of service. A determination of the parent's ability to pay for services must include a consideration of the availability of financial assistance or other benefits for which the child may be eligible.

Program Standards

Sec. 19. Before a grant request for a new program may be approved, the provider must agree to meet the following program standards:

(1) the program must be maintained within the guidelines established by the agency;

(2) the provider must ensure that for each child served an individualized developmental plan is developed and is based on a comprehensive developmental evaluation performed by an interdisciplinary team with parent participation and periodic review and reevaluation;

(3) the provider must provide services to meet the unique needs of each child as indicated by the child's individualized developmental plan;

(4) the provider must demonstrate a capability to obtain or provide an array of services that must include:

(A) training, counseling, case management services, and home visits for the parents of each child served;

(B) individualized instruction or treatment in the following areas of development: cognitive, gross or fine motor, language or speech, social or emotional, and self-help skills; and

(C) related services, including occupational therapy, physical therapy, speech and language therapy, adaptive equipment, transportation, and other therapies as needed or prescribed;

(5) the provider must maintain a plan for in-service personnel training;

(6) the provider must cooperate with the department's monitoring and case management efforts; and

(7) the provider must cooperate with the periodic evaluation efforts of the agency.

Agency Guidelines

Sec. 20. (a) The agency that receives a grant request for a new program shall develop specific program guidelines in the following areas:

(1) instructional or treatment options;

(2) frequency and duration of service;

(3) staff-child ratios;

(4) staff composition and qualifications; and

(5) other program aspects designed to ensure the provision of quality services.

(b) The agency may modify the standards established by Section 19 of this article if the agency considers the modifications necessary for a particular program.

Program Evaluation

Sec. 21. (a) Each agency shall periodically evaluate each program operating under the agency's guidelines to determine whether the provider is meeting the conditions of the contract.

(b) If an agency determines that a program is not meeting a requirement that was agreed on as a condition for funding, the agency shall notify the department to withhold further funding for the program.

[Acts 1981, 67th Leg., p. 2326, ch. 572, art. I, eff. Sept. 1, 1981.]

Acts 1981, 67th Leg., p. 2338, ch. 572, art. V, § 2, provides:

"The term of the first member appointed by the governor to the Interagency Council on Early Childhood Intervention Services created by Section 2, Article I, of this Act expires February 1, 1983."

Art. 4413(44). Governor's Commission on Physical Fitness

[See Compact Edition, Volume 4 for text of 1 and 2]

Creation; Appointment of Members; Term of Office; Vacancies; Application of Sunset Act

Sec. 3.

[See Compact Edition, Volume 4 for text of 3(a) and 3(b)]

(c) The Governor's Commission on Physical Fitness is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1989.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 4 to 9]

[Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.159, eff. Aug. 29, 1977.]

Art. 4413(45). Film Commission

[See Compact Edition, Volume 4 for text of 1 and 2]

Application of Sunset Act

Sec. 2a. The Texas Film Commission is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1989.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 5]

[Amended by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.166, eff. Aug. 29, 1977.]

Art. 4413(47). Expired

This article constituted the Energy Policy Planning Act of 1975, enacted by Acts 1975, 64th Leg., p. 971, ch. 370, which by § 8 thereof expired on September 1, 1977.

See, now, art. 4413(47c).

Art. 4413(47a). Repealed by Acts 1979, 66th Leg., p. 1550, ch. 666, § 15(1), eff. Sept. 1, 1979

The repealed article, the Energy Policy Planning Act of 1977, was derived from Acts 1977, 65th Leg., p. 1990, ch. 795. See, now, art. 4413(47c).

Art. 4413(47b). Energy Development Act of 1977

Short Title

Sec. 1. This Act shall be known as "The Texas Energy Development Act of 1977."

Declaration of Policy

Sec. 2. The legislature finds and declares that:

(1) Texas, the largest producer and consumer of energy among the 50 states, currently relies on oil and gas to supply at least 98 percent of its energy needs. Texas and the United States have less than 10 years' supply of oil and gas reserves based on current rates of production.

(2) Although an end to federal price controls on oil and gas would stimulate greater development of oil and gas supplies, the rapid depletion of these fossil fuels is inevitable.

(3) The nation and the state must develop known resources of more plentiful fuels and begin the shift to total reliance on alternate abundant energy resources.

(4) Development of alternative energy technologies is both an expensive and risky activity which often discourages adequate funding by private sources alone. Precedent exists for government involvement in research, development, and demonstration of new technologies.

(5) While the major responsibility for energy research, development, and demonstration lies with the federal government, federal programs will often overlook projects of regional or state significance in order to concentrate on national priorities. Federal programs often bypass competent local research facilities in preference to federal laboratories or contractors.

(6) Other states have been able to attract federally funded energy development projects with the use of matching funds or seed money. Texas is interested in competing with these other states to secure such projects.

(7) The most effective development of alternate technologies depends on the close cooperation and coordination among federal, state, and local governments and private participants. Such coordination can be enhanced through the planning, programming, and implementation of a state energy development fund.

(8) Funding of energy research and development under this Act should concentrate on technologies which offer the realistic promise of significant energy contributions within 25 years and which are of particular importance to Texas.

Definitions

Sec. 3. In this Act:

(1) "Fund" means the Energy Development Fund created by this Act.

(2) "Council" means the Texas Energy and Natural Resources Advisory Council.

(3) "Person" means an individual, corporation, association, organization, business trust, or any other legal entity.

Creation of the Energy Development Fund

Sec. 4. The Energy Development Fund is created in the state treasury and is composed of funds provided by legislative appropriation plus such additional funds as are received from other sources in accordance with Section 7 of this Act. The fund is created to support research, development, and demonstration of alternate energy supplies and energy conservation technologies of particular importance to Texas. Although it is the purpose of this Act to focus and coordinate through the council the primary energy-related problems and needs of this state, nothing in this Act shall be construed to restrict, limit, or specify the research, development, or demonstration in energy-related fields that a university, non-profit institution, or any other person might pursue where funds to support such research, development, or demonstration are from sources other than legislative appropriation.

Texas Energy and Natural Resources Advisory Council

Sec. 5. The Texas Energy and Natural Resources Advisory Council shall be responsible for the proper administration of the Energy Development Fund and shall have the director for energy analysis and development submit to the governor and legislature before March 1 of each odd-numbered year a comprehensive report on the operation of the fund.

Administration of the Fund

Sec. 6. (a) The council shall provide for the administration of the fund.

(b) The council shall promulgate a plan for the development of alternative energy technologies. Such a plan shall prescribe detailed regulations for: submission and solicitation of proposals, evaluation and selection of proposals by an impartial group of technical experts, the disbursement of contracted funds, project cost accounting, and project reporting requirements. Such a plan shall be published within 60 days of the effective date of this Act. Within 90 days thereafter, the council shall adopt the plan following public hearing and appropriate review.

(c) The council may contract with universities, nonprofit institutions, and other persons that meet the criteria for funding adopted by the council.

Secs. 6A to 6C. [Blank]

Program to Demonstrate Solar Generation of Heat for Industrial Purposes

Sec. 6D. (a) In this section:

(1) "Solar generation of heat for industrial purposes" means the use of solar energy captured through a concentrating solar collector system to generate, as steam, hot water, hot oil, hot gas, molten salt, molten sodium, or a similar fluid, all or part of the heat needed in an industrial process.

(2) "Concentrating solar collector system" means a system, such as a central receiver system, a line focus system, or a point focus system, in which multiple solar images are directed into a focal region.

(3) "Central receiver system" means an energy conversion system that uses a field of heliostats, which are large flat mirrors, to reflect sunlight onto a central receiver and heat exchanger that transforms the solar energy into a fluid such as molten salt, molten sodium, water, steam, or air for energy transmission to an electric power plant or other energy utilization system.

(4) "Line focus system" means a trough of parabolic or approximately parabolic cross-section, a linear Fresnel lens, or a similar device that directs solar energy from a large area to a pipe passing through the central focal region.

(5) "Point focus system" means a dish of parabolic or approximately parabolic cross-section, a circular Fresnel lens, or a similar device that directs a small circular focal region.

(b) The council may establish and administer a program to expire four years from the effective date of this Act to demonstrate solar generation of heat for industrial purposes.

(c) The state may provide no more than 20 percent of the funds for the program. The remainder of the funds for the program shall be obtained from the federal government and private sources subject to the final approval of the council.

Program to Demonstrate Solar Electric Repowering

Sec. 6E. (a) In this section:

(1) "Solar electric repowering" means the use of solar energy captured through a central receiver system to generate all or part of the steam required by a steam electric power plant. In projects demonstrating solar electric repowering, the conventional fossil fuel system may or may not be retained to supply energy if solar energy is not available, but other components of the power plant are retained to function in their usual capacities.

(2) "Central receiver system" means an energy conversion system that uses a field of heliostats, which are large flat mirrors, to reflect sunlight onto a central receiver and heat exchanger that transforms the solar energy into a fluid such as molten salt, molten sodium, water, steam, or air for energy transmission to an electric power plant or other energy utilization system.

(b) The council may establish and administer a program to expire four years from the effective date of this section to demonstrate solar electric repowering in Texas.

(c) The state may provide no more than 20 percent of the funds for the program. The remainder of the funds for the program shall be obtained from the federal government and private sources subject to the final approval of the council.

Additional Sources of Funding

Sec. 7. The council may receive funds from private or public sources for the purposes of this Act.

Sec. 8. Repealed by Acts 1979, 66th Leg., p. 1550, ch. 666, § 15(3), eff. Sept. 1, 1979.

Effective Date

Sec. 9. This Act shall take effect on September 1, 1977.

[Acts 1977, 65th Leg., p. 2091, ch. 838, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1549, ch. 666, §§ 12, 13, 15(3), eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 451, ch. 186, §§ 1, 2, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 3130, ch. 822, §§ 1, 2, eff. Sept. 1, 1981.]

Art. 4413(47c). Energy and National Resources Advisory Council

Creation of the Texas Energy and Natural Resources Advisory Council

Sec. 1. (a) The Texas Energy and Natural Resources Advisory Council is established.

(b) The council is composed of 22 members. The members are the following officials: the governor, the lieutenant governor, the speaker of the house of representatives, the attorney general, a member of the Railroad Commission of Texas designated by the Railroad Commission of Texas, a member of the Public Utility Commission of Texas designated by the Public Utility Commission of Texas, the chairman of the Texas Air Control Board, the chairman of the Texas Water Development Board, the chairman of the Parks and Wildlife Commission, the commissioner of health, the Commissioner of the General Land Office, the commissioner of agriculture, the comptroller of public accounts, the Director of the Bureau of Economic Geology of The University of Texas at Austin, two senators appointed by the lieutenant governor, two members of the house of representatives appointed by the speaker of the house, and four citizens appointed by the governor. Appointees serve at the pleasure of the appointing officer.

(c) The governor and lieutenant governor are cochairmen of the council. The speaker of the house of representatives is vice-chairman.

(d) Twelve members of the council constitute a quorum.

(e) The council shall meet at least once every three months or at the call of either cochairman. At any time a majority of the council may petition the cochairmen for a meeting of the council at a time certain.

(f) A member of the council is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the council. The lieutenant governor, speaker of the house, senate members on the council, and members of the house of representatives on the council shall be reimbursed from the appropriate fund of the member's respective house of the legislature. Other

members shall be reimbursed from the funds of the office or agency in which the member serves. The citizen members are to be reimbursed from the council's funds appropriated for that purpose.

Directors and Staff

Sec. 2. (a) There shall be appointed by the cochairmen an executive director. The executive director with the approval of the cochairmen may hire directors to assist him in carrying out the duties and functions of the council. The executive director and directors shall serve at the pleasure of the cochairmen.

(b) The executive director shall employ staff necessary to administer the functions of the council and may contract with individuals, consultants, partnerships, corporations, universities, state agencies, and other governmental bodies to provide services necessary to perform the duties of the council.

(c) The executive director shall perform functions relating to the conservation of energy resources or the allocation of fuel products that the governor is responsible for performing as designated by law and that the governor may delegate to the executive director.

(d) The executive director may with the approval of the cochairmen and with the advice of the council issue such orders as may be necessary to implement programs and priorities concerning the allocation and conservation of fuels.

(e) The executive director and the directors may represent the council at state, regional, national, or international energy or natural resource meetings at the cochairmen's request.

(f) All staff responsible for technical assessments or for the development of computer or econometric systems, excluding administrative personnel, must be qualified by academic training and actual work experience in the area of their respective responsibilities.

(g) The executive director and the directors are entitled to compensation as provided by the general appropriations bill.

(h) Compensation for staff members shall be determined according to the classification act for other state employees.

Divisions

Sec. 3. The executive director with the approval of the cochairmen may establish divisions to carry out the functions of the council. The executive director with the approval of the cochairmen may add, remove, or transfer duties among divisions.

Energy Analysis and Development Division

Sec. 4. (a) The energy analysis and development division is established as a division of the council.

(b) The director may contract with the approval of the executive director with individuals, consultants, partnerships, corporations, universities, state agencies, and other governmental bodies to provide services necessary to perform the duties of the division.

(c) The energy analysis and development division shall:

(1) develop and maintain an energy data base system and econometric modeling of the state and nation;

(2) prepare an annual Texas energy outlook report and an assessment of the United States Department of Energy, Energy Information Administration's Annual Report to Congress;

(3) provide energy information and policy analysis for the council and others as the cochairmen may direct;

(4) recommend energy policy positions to the council;

(5) recommend legislation to the council to foster the development of increased energy supplies and more efficient energy systems not inconsistent with other laws of the state;

(6) administer the Texas Energy Development Fund as directed by the council;

(7) maintain an awareness of all energy-related research of importance to this state conducted inside and outside this state in order to promote information exchange and coordination and in order to coordinate and support necessary energy technology research, development, and demonstration;

(8) coordinate and support energy-related technology research, development, and demonstration; and

(9) perform other duties as assigned by the executive director.

Energy Conservation Division

Sec. 5. (a) The energy conservation division is established as a division of the council.

(b) The director may contract with the approval of the executive director with individuals, consultants, partnerships, corporations, universities, state agencies, and other governmental bodies to provide services necessary to perform the duties of the division.

(c) The energy conservation division shall:

(1) provide and develop energy conservation information and policy analysis for the council and others as the cochairman may direct;

(2) recommend energy conservation policy positions to the council;

(3) recommend legislation to the council to foster energy conservation;

(4) coordinate and support energy conservation related technology, research, development, and demonstration; and

(5) perform other duties as assigned by the executive director.

Functions of the Council

Sec. 6. The council shall:

(1) adopt and continually reassess an energy policy for the state;

(2) adopt and continually reassess a natural resources policy for the state;

(3) recommend legislation to the United States Congress and the Texas Legislature implementing energy policy and natural resources policy of the state;

(4) review existing and proposed actions and policies of federal agencies to determine the energy and natural resources impact on this state and to recommend to the legislature and the governor alternative actions and policies consistent with state energy and natural resources policy;

(5) adopt a plan and award contracts for the development of alternative energy technologies under the Energy Development Fund;

(6) represent the governor at state, regional, national, or international energy or natural resources meetings at the governor's request;

(7) provide staff and technical assistance to the advisory committees;

(8) adopt a budget and an annual operating plan;

(9) develop projects and programs to insure proper protection and development of the state's natural resources including the participation of all necessary entities;

(10) study problems and issues connected with state agency permitting processes; and

(11) perform such other tasks as may be assigned by the governor and/or accepted by the council.

Advisory Committees

Sec. 7. (a) The cochairmen may appoint advisory committees composed of public officials or private citizens to advise the Texas Energy and Natural Resources Advisory Council.

(b) A member of an advisory committee is not entitled to compensation for services performed as a member of the committee. A member is entitled to reimbursement for actual and necessary expenses incurred in attending meetings of the advisory committee.

(c) The council shall prescribe the operating procedures for advisory committees.

Gifts and Grants

Sec. 8. (a) The executive director may accept on behalf of the state a gift, grant, or donation from any source to be used to administer the council's functions.

(b) A gift, grant, or donation received by the executive director shall be deposited in the State Treasury to the credit of a special fund to be known as the Texas Energy and Natural Resources Advisory Council Fund and may be used only to administer the council's functions.

Report

Sec. 9. Before December 1 of each year, the executive director shall file a report with the governor and the legislature about the activities of the council during the preceding year.

Rules

Sec. 10. The council may adopt rules necessary to accomplish the purposes of this Act.

Application of Sunset Act

Sec. 11. The council is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the council is abolished and this Act expires effective September 1, 1983.

Secs. 12, 13. [Amends subsec. (2) of § 3, and §§ 4 to 7 of art. 4413(47b)]

Abolition and Succession of Agencies

Sec. 14. The Texas Energy Advisory Council, created by Chapter 795, Acts of the 65th Legislature, Regular Session, 1977 (Article 4413(47a), Vernon's Texas Civil Statutes), and the Natural Resources Council are abolished and are succeeded by the Texas Energy and Natural Resources Advisory Council. The records and other property in the custody of the agencies are transferred to the Texas Energy and Natural Resources Advisory Council.

[Acts 1979, 66th Leg., p. 1545, ch. 666, §§ 1 to 11, 14, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2268, ch. 550, § 1, eff. June 12, 1981.]

Art. 4413(48). Repealed by Acts 1979, 66th Leg., p. 1550, ch. 666, § 15(2), eff. Sept. 1, 1979

The repealed article, the Natural Resources Council Act of 1977, was derived from Acts 1977, 65th Leg., p. 1895, ch. 756. See, now, art. 4413(47c).

Art. 4413(49). Criminal Justice Coordinating Council

Creation and Composition of Council

Sec. 1. (a) The Criminal Justice Coordinating Council is established.

(b) The membership of the Criminal Justice Coordinating Council shall be composed of the following persons:

(1) a representative designated by the governor;

(2) a representative designated by the lieutenant governor;

(3) a representative designated by the speaker of the house;

(4) a representative designated by the presiding judge of the Court of Criminal Appeals;

(5) a representative of the Chief Justice of the Supreme Court of Texas;

(6) the director of the department of corrections;

(7) the executive director of the adult probation commission;

(8) the executive director of the Board of Pardons and Paroles;

(9) the executive director of the prosecutors coordinating council;

(10) the executive director of the judicial council;

(11) the executive director of the Commission on Jail Standards;

(12) the director of the Department of Public Safety;

(13) the chairman of the criminal justice division advisory board;

(14) the executive director of the State Bar of Texas;

(15) the executive director of the Texas Youth Council; and

(16) any other officer, executive director of a state agency, or citizen designated by the governor, not to exceed three.

(c) The council shall act in an advisory capacity only.

Duties of Council

Sec. 2. The council is charged with ensuring to the maximum extent coordination and cooperation among criminal justice agencies to promote a comprehensive and cohesive state criminal justice system. The council shall:

(1) examine the specific role of each state agency involved in the criminal justice system to determine methods of coordination of services;

(2) identify any instances of duplication of services that can be eliminated;

(3) identify areas within the criminal justice system in which state and local funds can be used with greater cost-efficiency and cost-effectiveness;

(4) identify systems for the compilation, storage, and dissemination of criminal justice data used by all the state's criminal justice agencies;

(5) develop a coordinated plan for the state's criminal justice agencies to share records and other information obtained through Subdivision (4) above;

(6) identify improvements in interagency referral mechanisms;

(7) conduct an in-depth analysis of the duties and responsibilities of the courts, adult probation departments, Board of Pardons and Paroles, and department of corrections and recommend systems and methods by which maximum coordination among these agencies can be achieved; emphasis should be given to (A) identifying and coordinating use of community resources to assist in the rehabilitation of persons handled by these agencies; and (B) coordinating the dissemination of records of persons handled by these agencies;

(8) perform other duties as may be requested by the governor.

Transaction of Business

Sec. 3. A majority of the representatives on the council constitutes a quorum. The representative of the governor shall serve as chairman of the council. The council shall meet at least quarterly and at the call of the chairman. The council shall be staffed by the staff of the Criminal Justice Division to assist the council in the performance of its functions.

Service of Representatives

Sec. 4. The designated members of the council serve at the pleasure of the officer that designated the member. The duties of a member are in addition to those of any other employment or office of that member. A member of the council may not receive compensation for the performance of duties as a member of the council but is entitled to reimbursement for actual and necessary expenses incurred in performing those duties.

Initial Report

Sec. 5. (a) The council shall submit its initial report to the governor, lieutenant governor, speaker of the house, and the 68th regular session of the legislature.

(b) The council shall prepare other reports as requested by the governor.

Application of Sunset Act

Sec. 6. The council is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes), and expires 12 years from its creation. [Acts 1981, 67th Leg., p. 906, ch. 324, §§ 1 to 6, eff. Sept. 1, 1981.]

Art. 4413(50). Crime Stoppers Advisory Council

Definition

Sec. 1. In this Act, "local crime stoppers program" means a private, nonprofit organization that is operated on less than a statewide level, that accepts and expends donations for rewards to persons who report to the organization information concerning criminal activity, and that forwards the information to the appropriate law enforcement agency.

Creation of Council

Sec. 2. The Crime Stoppers Advisory Council is created within the criminal justice division of the office of the governor to assist in the creation of local crime stoppers programs, to promote local crime stoppers programs in the media, and to help law enforcement agencies detect and combat crime by increasing the flow of information to and between law enforcement agencies.

Membership of Council

Sec. 3. The council consists of five members appointed by the governor with the advice and consent of the senate for two-year terms. At least three members of the council must be persons who have participated in a local crime stoppers program.

Director

Sec. 4. (a) The council shall have a director and may employ a person or designate a current employee of the state as director who is approved by the governor.

(b) The council shall define his authority and responsibilities.

Duties of the Council

Sec. 5. The council shall:

(1) advise and assist in the creation of local crime stoppers programs;

(2) foster the detection of crime and encourage persons through the program and otherwise to come forward with information about criminal activity;

(3) encourage the news media to promote local crime stoppers programs and to inform the public of the functions of the council; and

(4) assist local crime stoppers programs in channeling information reported to those programs concerning criminal activity to the appropriate law enforcement agencies.

Confidentiality of Council Records

Sec. 6. The council's records relating to reports of criminal activity are confidential.

Rules

Sec. 7. The council may promulgate rules to carry out its functions pursuant to this Act.

Organization

Sec. 8. At the council's first meeting after the beginning of each fiscal year, the council shall elect from among its members a chairman and any other officers it deems necessary.

Per Diem and Expenses

Sec. 9. Members of the council are entitled to a per diem as determined by legislative appropriation and are entitled to reimbursement for actual and necessary expenses incurred in performing their duties as members of the council.

Penalty for Misuse of Report Information

Sec. 10. (a) A member or employee of the council or a person who accepts reports of criminal activity on behalf of a local crime stoppers program commits an offense if he intentionally or knowingly divulges to a person not employed by a law enforcement agency the content of a report of criminal activity, or the identity of the person who made the report, without the consent of the person who made the report.

(b) An offense under this section is a Class A misdemeanor.

(c) A person convicted of an offense under this section is not eligible for state employment for a period of five years following the date the conviction becomes final.

Privileged Information

Sec. 11. (a) Evidence of a communication between a person submitting a report of criminal activity to the council or a local crime stoppers program and the person who accepted the report on behalf of the council or the local crime stoppers program is not admissible in a court or an administrative proceeding.

(b) Records of the council or a local crime stoppers program concerning reports of criminal activity may not be compelled to be produced before a court or other tribunal except on the order of the supreme court.

Application of Sunset Act

Sec. 12. The council is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the council is abolished and this Act expires September 1, 1993.

[Acts 1981, 67th Leg., p. 1007, ch. 384, §§ 1 to 12, eff. Sept. 1, 1981.]

CHAPTER TEN. DEPARTMENT OF COMMUNITY AFFAIRS

Art. 4413(201). Department of Community Affairs

[See Compact Edition, Volume 4 for text of 1 to 3]

Application of Sunset Act

Sec. 3a. The Texas Department of Community Affairs is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the department is abolished, and this Act expires effective September 1, 1983.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 4 to 14]

[Amended by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.073, eff. Aug. 29, 1977.]

CHAPTER ELEVEN. GOVERNOR'S COORDINATING OFFICE FOR THE VISUALLY HANDICAPPED

Article
4413(202). Repealed.

Art. 4413(202). Repealed by Acts 1979, 66th Leg., p. 679, ch. 301, § 8(a), eff. May 31, 1979; Acts 1979, 66th Leg., p. 2429, ch. 842, art. 2, § 2(2), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

The repealed article, relating to the Governor's Coordinating Office for the Visually Handicapped, was added by Acts 1975, 64th Leg., p. 2386, ch. 734, § 14.

Acts 1979, 66th Leg., p. 679, ch. 301, repealing this article, provided in § 8(b) thereof:

"The Governor's Coordinating Office for the Visually Handicapped is abolished. The records and other property of the abolished office shall be transferred to the appropriate agency under this Act."

CHAPTER TWELVE. CONSERVATORSHIP BOARD

Article

4413(203). Conservatorship Board.

Art. 4413(203). Conservatorship Board

Definitions

Sec. 1. In this Act:

(1) "State agency" means a department, commission, board, office, or other agency, including a university system or an institution of higher education except a public junior college, that:

(A) is in the executive branch of state government;

(B) is or was created by statute; and

(C) does not have statutory geographical boundaries limited to a part of the state.

(2) "Gross fiscal mismanagement" includes:

(A) failure to keep adequate fiscal records;

(B) failure to maintain proper control over assets;

(C) failure to discharge fiscal obligations in a timely manner; and

(D) misuse of state funds.

(3) "State fiscal management policies" means laws or rules relating to:

(A) fiscal recordkeeping and reporting;

(B) use or control of state property;

(C) timely discharge of fiscal obligations; or

(D) use of state funds.

Agencies Exempted

Sec. 2. This Act does not apply to an agency that is under the direction of an elected officer, board, or commission.

Board; Members; Terms

Sec. 3. (a) The State Conservatorship Board is established.

(b) The board consists of three members appointed by the governor with the advice and consent of the senate.

(c) The governor shall appoint to the board only persons who are residents of this state and who are qualified by experience or education in administration or fiscal management. A public officer is ineligible to serve on the board.

(d) Members hold office for terms of six years, with the term of one member expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate one member for a term expiring on January 31, 1981, one member for a term expiring on January 31, 1983, and one member for a term expiring on January 31, 1985.

Chairman; Meetings

Sec. 4. (a) A majority of the board constitutes a quorum.

(b) The governor shall designate one of the members of the board to serve as chairman for a term, in that capacity, of two years expiring on January 31 of each odd-numbered year.

(c) The board shall meet at the call of the chairman or as provided by board rule. The board shall hold the organizational meeting at the call of the governor.

Compensation; Expenses

Sec. 5. A member of the board may not receive compensation for his service on the board but is entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties.

Administration

Sec. 6. The governor shall provide the board with administrative services. If necessary, the governor may use appropriations made pursuant to Article 4351, Revised Civil Statutes of Texas, 1925, to provide the services.

Finding of Mismanagement; Order of Conservatorship

Sec. 7. If the Legislative Audit Committee finds that a condition of gross fiscal mismanagement exists in a state agency, it shall notify the governor of its finding. On receipt of the notice, the governor by proclamation may order the board to act as conservator of the agency.

Assumption of Agency Functions

Sec. 8. If the governor directs the board to act as conservator of an agency, the board shall assume all the powers and duties of the officer or officers responsible for policy direction of the agency, and that officer or officers may not act unless authorized to do so by the board.

Board Responsibility; Powers

Sec. 9. (a) As conservator of an agency, the board is responsible for bringing the agency into compliance with state fiscal management policies.

(b) While acting as conservator of an agency, the board may:

(1) terminate any employee if it determines that his or her conduct contributed to the condition that brought about the conservatorship;

(2) employ personnel for the agency;

(3) make organizational or structural changes in the agency that are necessary to alleviate the conditions that brought about the conservatorship; and

(4) contract with entities or persons, whether public or private, for management or administrative services necessary to effect the conservatorship.

(c) The board may delegate all or any part of its powers or duties as conservator, except the adoption of rules, to an entity or person with whom it contracts pursuant to Subdivision (4) of Subsection (b) of this section.

Periodic Reports

Sec. 10. Within 60 days after the date the governor directs the board to act as conservator of an agency and at the end of every subsequent 60-day period until the conservatorship is dissolved, the board shall report on the conservatorship to the governor and the Legislative Audit Committee. The report shall include a description of the measures taken to bring the agency into compliance with state fiscal management policies and an estimate of the progress the board has made in attaining that goal.

Rules

Sec. 11. The board may adopt and enforce rules necessary to administer this Act.

Duration of Conservatorship

Sec. 12. The board's conservatorship of an agency continues until:

(1) the governor issues a proclamation declaring that the condition of gross fiscal mismanagement in the agency no longer exists and that the conservatorship is dissolved; or

(2) the Legislative Audit Committee finds and certifies to the governor that the condition of gross fiscal mismanagement in the agency no longer exists, in which case the conservatorship is dissolved.

[Acts 1979, 66th Leg., p. 796, ch. 357, §§ 1 to 12, eff. June 6, 1979.]

TITLE 71

HEALTH—PUBLIC

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CHAPTER ONE. HEALTH BOARDS AND LAWS

Article

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4447v. Circuses, Carnivals, and Zoos.
4447w. Reports and Assistance to Veterans Exposed to Agent Orange Chemical Defoliants or Herbicides or Other Causative Agents.

Art. 4414a. Department of Health Created

To better protect and promote the health of the people of Texas, the Texas Department of Health is created. The Texas Department of Health consists of the Texas Board of Health, the Commissioner of Health, and an administrative staff.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4414aa. Application of Sunset Act

The Texas Department of Health Resources [1] is subject to the Texas Sunset Act; [2] and unless continued in existence as provided by that Act the department is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.113, eff. Aug. 29, 1977.]

[1] Name changed to Department of Health; see art. 4418g.
[2] Article 5429k.

Art. 4415a. Appointment, Composition and Terms of the Board

(a) The Board consists of 18 members appointed by the Governor with the advice and consent of the Senate. The Governor shall make appointments so that:

(1) six members are physicians licensed under the laws of this state, each of whom has been engaged in the practice of medicine in this state for at least five years prior to appointment;

(2) two members are hospital administrators with at least five years' experience in hospital administration in this state prior to appointment;

(3) one member is a dentist who is licensed under the laws of this state and who has been engaged in the practice of dentistry for at least five years in this state prior to appointment;

(4) one member is a registered nurse who is licensed to practice professional nursing under the laws of this state and who has been engaged in the practice of nursing in this state for at least five years prior to appointment;

(5) one member is a veterinarian who is licensed under the laws of this state and who has been engaged in the practice of veterinary medicine in this state for at least five years prior to appointment;

(6) one member is a pharmacist who is licensed under the laws of this state and who has been engaged in the practice of pharmacy in this state for at least five years prior to appointment;

(7) one member is a nursing home administrator who is licensed under the laws of this state and who has been engaged as a nursing home administrator in this state for at least five years prior to appointment;

(8) one member is an optometrist who is licensed under the laws of this state and who has been engaged in the practice of optometry in this state for at least five years prior to appointment;

(9) one member holds a civil engineering degree from an accredited university or college, is licensed by the State of Texas as a professional engineer, and has specialized in the practice of sanitary engineering in this state for at least five years prior to appointment;

(10) one member is a doctor of chiropractic who is licensed under the laws of this state and who has been engaged in the practice of chiropractic for at least five years in this state prior to appointment; and

(11) two members are citizens who have none of the qualifications required of the other 16 members.

(b) Except for the initial appointees, members of the Board hold office for staggered terms of six years, with the terms of six members expiring on February 1 of each odd-numbered year. In making the initial appointments, the Governor shall designate six members for terms expiring in 1981, six members for terms expiring in 1979, and six members for terms expiring in 1977.

(c) The Governor shall biennially designate one member as Chairman and one member as Vice-chairman.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4416a. Quorum and Meetings of the Board

A majority of the members of the Board constitute a quorum for the transaction of business. The Board shall meet at Austin or at other places fixed by the Board at least once each month, on dates to be fixed by the Board, and shall hold such special meetings as may be called by the Chairman. Timely notice of such special meetings shall be given to each member.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4417a. Compensation and Oath of Office of the Board

The members of the Board receive no fixed salary, but each member shall be allowed, for each and every day in attending the meetings of the Board, the sum of $50, and said members shall be allowed traveling and other necessary expenses while in the performance of official duty. The members of the Board shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this state, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue Commissions to them, which shall be evidence of their authority to act as such.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4418a. Powers and Duties of the Board

(a) The Texas Board of Health shall:

(1) employ the Commissioner of Health, who shall be a person licensed to practice medicine in the State of Texas, who shall serve at the will of the Board;

(2) investigate the conduct of the work of the Department, and for this purpose to have access, at any time, to all books and records thereof, and to require written or oral information from any officer or employee thereof;

(3) adopt rules, not inconsistent with law, for its own procedure, and for the conduct and performance of every duty imposed on the Board, the Department, or the Commissioner of Health by law, a copy of which rules shall be filed in the Department.

(b) The Board may appoint advisory committees to assist the Board in performing its duties. If not otherwise specified by law, a member of an advisory committee appointed by the Board is entitled to receive $50 for each advisory committee meeting the member attends and the per diem and travel allowance authorized by the General Appropriations Act for state employees. Two members of each advisory committee must be representatives of the general public. A person is eligible to be appointed and to serve as a public member of an advisory committee if the person and the person's spouse are not licensed by an occupational regulatory agency in the health care field, are not employed by any health care facility, agency, or corporation or by a corporation authorized to underwrite health care insurance, do not govern or administer a health care facility, agency, or corporation, and do not have, other than as consumers, a financial interest in a health care facility, agency, or corporation.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1533, ch. 659, § 1, eff. Aug. 27, 1979.]

Arts. 4418b to 4418c. Repealed by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.08(1), (2), eff. May 28, 1975

Art. 4418d. Duties of the Commissioner of Health

The Commissioner of Health shall be the executive head of the Department, and he shall, subject to the provisions of this Act, perform the duties assigned to him by the Board.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4418e. Repealed by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.08(1), eff. May 28, 1975

Art. 4418f. Appropriations, Grants, Donations and Contributions to the Department

For the purpose of carrying out its duties and functions, the Department may apply for, contract for, receive, and expend any appropriations or grants from the state, the federal government, or any other public source, subject to any limitations and conditions prescribed by legislative appropriation. It shall be lawful for the Department to

accept donations and contributions, to be expended in the interest of the public health and the enforcement of public health laws. The Commissioners Court of any County shall have the authority to appropriate and expend money from the general revenues of its County for and in behalf of public health and sanitation within its County.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4418g. Powers, Duties and Functions Transferred to the Department of Health

(a) The Texas Board of Health has all of the powers, duties, and functions granted by law to the State Board of Health, the State Commissioner of Health, the State Department of Health, the Texas Board of Health Resources, and the Texas Department of Health Resources.

(b) Any reference in the law to the Texas Board of Health Resources means the Texas Board of Health.

(c) Any reference in the law to the Texas Department of Health Resources means the Texas Department of Health.

(d) Whenever any law grants a power or imposes a duty on the State Commissioner of Health, the power shall be exercised or the duty performed by the Texas Board of Health or a designee of the Board, subject to the direction and control of the Board.

[Added by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.07, eff. May 28, 1975. Amended by Acts 1977, 65th Leg., p. 1226, ch. 474, § 1, eff. Aug. 29, 1977.]

Art. 4418g-1. The Texas Board of Health Dental Advisory Committee

Appointment, Composition, Terms, Vacancies, and Officers

Sec. 1. (a) The Texas Board of Health Dental Advisory Committee is composed of nine members. The members shall be appointed as follows:

(1) the governor shall appoint four dentists and one dental hygienist licensed under the laws of this state, each of whom has engaged in the practice of dentistry or dental hygiene in this state for at least five years prior to appointment, three of whom are members of the Texas Dental Association, and one of whom is a member of the Gulf States Dental Association, and one of whom is a member of the Texas Dental Hygienists Association;

(2) the State Board of Dental Examiners shall appoint one of its members;

(3) the governor shall appoint two members who are representatives of the general public, who are not licensed dentists, and who do not have, other than as consumers, financial interests in the dental health industry;

(4) on a rotating basis, each of the three dental schools in the state shall appoint one member who is a member of the faculty of the dental school.

(b) Except for the initial appointees, the nine voting members of the advisory committee hold office for staggered terms of six years, with the terms of three members expiring on February 1 of each even-numbered year. The Texas Board of Health shall designate three initial members for terms expiring on February 1, 1984, three initial members for terms expiring on February 1, 1982, and three initial members for terms expiring on February 1, 1980.

(c) A vacancy on the advisory committee for any cause shall be filled by a successor who is appointed in the same manner as his or her predecessor. The successor shall serve for the unexpired term of his or her predecessor.

(d) At a regular meeting in April of each year, the advisory committee shall elect from its membership a chairman, vice-chairman, and secretary.

(e) A member of this advisory committee serves without compensation. A member is entitled to reimbursement for actual and necessary expenses incurred in performing the duties of the advisory committee.

Application of Sunset Act

Sec. 2. The advisory committee is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless the advisory committee is continued in existence as provided by that Act, the advisory committee is abolished and this Act expires effective September 1, 1985.

Quorum and Meetings

Sec. 3. A majority of the members of the advisory committee constitute a quorum for the transaction of business. The committee shall meet at Austin or at other places fixed by the committee at least four times per calendar year on dates to be fixed by the committee and shall hold special meetings at the call of the chairman. Timely notice of the special meetings shall be given to each member of the committee.

Funds; Study of Supply and Demand for Dental Services; Advice

Sec. 3A. The Texas Department of Health may provide funds for the advisory committee to hire necessary staff and may provide funds for office space, equipment, postage, travel, and printing. In addition to the duties imposed upon the advisory committee, the committee may conduct a comprehensive study of the supply and demand for dental services within Texas and advise the appropriate governmental entities regarding anticipated dental educational programs necessary to satisfy the dental care needs of the people of Texas.

Oath of Office

Sec. 4. The members of the committee shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths

within this state, and on presentation of the oath of office, the secretary of state shall issue commissions to them, which shall be evidence of their authority to act as members of the committee.

Powers and Duties

Sec. 5. The advisory committee shall:

(1) investigate the various public dental service programs in the state, identify the various funding sources for the programs, and make recommendations to the Texas Board of Health about the best manner in which to administer those funds to provide the maximum use of the funds for the purpose of providing the best dental care possible to the citizens of the state within the available funding levels;

(2) review current rules adopted by the Texas Board of Health and rules proposed by the board relating to dental health care and draft proposed recommended rules relating to dental health care or relating to the conduct and performance of the duties relating to dental health care imposed on the board by law and submit those recommendations to the board for final approval and implementation; and

(3) make investigations and studies of the dental health care delivery system in the state necessary to develop procedures by which the provision of dental services can be coordinated to provide the most economical and effective dental care delivery system to serve the maximum number of patients from current funding levels and submit the procedures to the Texas Board of Health for approval and implementation.

[Added by Acts 1979, 66th Leg., p. 787, ch. 349, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 537, ch. 220, §§ 1, 2, eff. Sept. 1, 1981.]

Art. 4418h. Health Planning and Development Act

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1.01. This Act may be cited as the Texas Health Planning and Development Act.

Policy, Purpose

Sec. 1.02. The policy of this state and the purpose of this Act are to insure that health-care services and facilities are made available to all citizens in an orderly and economical manner and to meet the requirements of, and to implement, the National Health Planning and Resources Development Act of 1974 (P.L. 93–641), as amended by the Health Planning and Resources Development Amendments of 1979 (P.L. 96–79),[1] the federal rules and regulations promulgated under that Act, and other pertinent federal authority. To achieve this public policy and purpose, it is essential that appropriate health planning activities be undertaken and implemented and that health-care services and facilities be provided in a manner that is cost effective and that is compatible with the health-care needs of the various areas and populations of the state.

[1] 42 U.S.C.A. § 300k et seq.

Definitions

Sec. 1.03. In this Act:

(1) "Applicant" means any person who makes application to the commission pursuant to this Act.

(2) "Application" means a written request for consideration by the commission pursuant to this Act.

(3) "Certificate holder" is the person named in the certificate of need and any person owning title or interest in the person named in the certificate of need.

(4) "Certificate of need" means a written order of the commission setting forth the commission's affirmative finding that a proposed project sufficiently satisfies the criteria prescribed for such projects by this Act and by rule of the commission.

(5) "Commission" means the Texas Health Facilities Commission.

(6) "Department" means the Texas Department of Health.

(7) "Development" means those activities, other than planning or predevelopment activities, as determined by rule of the commission, which on their completion result in the consummation of a project or a significant financial commitment toward the consummation of a project, and includes the adoption of ordinances, orders, or resolutions authorizing the issuance of bonds.

(8) "Federal law" includes the National Health Planning and Resources Development Act of 1974 (P.L. 93–641), as amended by the Health Planning and Resources Development Amendments of 1979 (P.L. 96–79),[1] and Public Laws 79–725,[2] 88–164,[3] 89–749,[4] 91–515,[5] and 92–603,[6] the federal rules and regulations promulgated under those Acts, and other pertinent federal authority.

(9) "Health-care facility," referred to as "facility," means, regardless of ownership, a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic which performs ambulatory surgical procedures, rural health initiative clinic, urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, and other facilities as defined by federal law, but does not include the office of physicians or practitioners of the healing arts singly or in groups in the conduct of their profession.

(10) "Health maintenance organization," referred to as "HMO," has the meaning given the term in the Texas Health Maintenance Organization Act.[7]

(11) "Health systems agency" means a nonprofit private corporation or public regional planning body acting as an instrumentality of the federal

government and designated in accordance with federal law and subject to approval of the governor and his periodic review and redesignation.

(12) "Institutional health-care services," referred to as "services," means the health-care services provided in health-care facilities and includes, but is not limited to, inpatient or outpatient services for observation, diagnosis, treatment, or rehabilitation, and all care for patients with obstetrical, medical, surgical, tubercular, mental, alcoholic, drug abuse, chronic, rehabilitative, or other conditions.

(13) "Party" means any person who by formal intervention or action as determined by rule of the commission participates in the consideration of a specific application by the commission.

(14) "Person" means an individual, sole proprietorship, charity, trust, estate, institution, group, association, firm, joint venture, partnership, joint stock company, cooperative, corporation, the state or a political subdivision or instrumentality of the state, any receiver, trustee, assignee, or other similar representative or any other legal entity.

(15) "Project" means services, facility, or HMO requiring a certificate of need or other action under this Act.

(16) "Statewide Health Coordinating Council" means the council appointed by the governor in accordance with federal law to advise the department generally on the performance of its functions.

(17) "Capital expenditure" means an expenditure made by or on behalf of a health-care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance.

(18) "Expenditure minimum" means a capital expenditure that exceeds $150,000 or any other unadjusted minimum as may be defined by federal law.

[1] 42 U.S.C.A. § 300k et seq.
[2] See 42 U.S.C.A. § 201 et seq.
[3] 42 U.S.C.A. § 2661 et seq.
[4] See 42 U.S.C.A. § 246.
[5] 42 U.S.C.A. § 299 et seq.
[6] 42 U.S.C.A. § 401 et seq.
[7] Insurance Code, art. 20A.01 et seq.

Administrative Procedure

Sec. 1.04. The Administrative Procedure and Texas Register Act [1] applies to all proceedings under this Act except to the extent inconsistent with this Act.

[1] Article 6252–13a.

Authority of the Governor

Sec. 1.05. As the chief executive and planning officer of this state, the governor is authorized to perform those duties and functions assigned to him by federal law. The governor is authorized to transfer personnel, equipment, records, obligations, appropriations, functions, and duties of his office to the commission or the department.

Interagency Contracts

Sec. 1.06. Agencies, departments, instrumentalities, grantees, political subdivisions, and institutions of higher education of the state shall cooperate with the commission and the department in the performance of their assigned duties and functions.

Limitations on Powers

Sec. 1.07. Nothing in this Act shall be construed to authorize the commission or the department or any employee or official of the commission or the department to:

(1) exercise any supervision or control over the practice of medicine or the manner in which physician's services in private practice are provided, or over the selection, tenure, compensation, or fees of any physician in the delivery of physician's services;

(2) perform any duty or function under the provisions of Title XI of the Social Security Act (Section 249(f) of P.L. 92–603) [1] or rules or regulations promulgated thereunder; or

(3) apply for grants under the provisions of Section 1526, P.L. 93–641, as amended by P.L. 96–79.[2]

[1] 42 U.S.C.A. § 1301 et seq.
[2] 42 U.S.C.A. § 300m–5.

Health-Related State Agencies: Regional Administration

Sec. 1.08. The Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and as directed by the governor, other health-related state agencies shall divide the state into regions for administrative or regulatory purposes that coincide with the health service areas established pursuant to P.L. 93–641, as amended by P.L. 96–79.[1]

[1] 42 U.S.C.A. § 300k et seq.

SUBCHAPTER B. TEXAS HEALTH FACILITIES COMMISSION

Establishment

Sec. 2.01. The Texas Health Facilities Commission is established and is administratively attached to the Texas Department of Health. The department, at the request of the commission, shall provide administrative assistance to the commission; and the department and the commission shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The department, at the request of the commission, shall submit the commission's budget requests to the legislature.

Application of Sunset Act

Sec. 2.01a. The Texas Health Facilities Commission is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished, and Subchapters B and C of this Act expire effective September 1, 1985.

[1] Article 5429k.

Composition

Sec. 2.02. The commission is under the direction of three commissioners appointed by the governor with the advice and consent of the senate. At least one commissioner, at the time of appointment, must be a resident of a county having a population of less than 50,000, according to the last preceding federal decennial census. However, a commissioner by moving to another county does not vacate the office. The governor shall not appoint to the commission any person who is actively engaged as a health care provider or who has any substantial pecuniary interest in a facility.

Terms of Office

Sec. 2.03. Commissioners hold office for staggered terms of six years, with the term of one commissioner expiring on February 1 of each odd-numbered year.

Chairman, Vice-chairman

Sec. 2.04. The governor shall biennially designate one commissioner to serve as chairman and one commissioner to serve as vice-chairman.

Compensation; Expenses

Sec. 2.05. Each commissioner is entitled to a salary within the limits of legislative appropriations and to reimbursement for actual and necessary traveling expenses incurred in performing their official duties.

General Duties of Commission

Sec. 2.06. In addition to the other powers and duties prescribed by this Act, the commission shall:

(1) administer a state certificate of need program as prescribed by this Act and to comply with federal law;

(2) promulgate and adopt rules determined to be necessary for the administration and enforcement of Subchapters B and C of this Act;

(3) issue written orders regarding certificates of need, declaratory rulings, and other matters which may properly come before it;

(4) make an annual report to the governor and the legislature of the commission's operations and provide other reports that the governor or the legislature may require;

(5) administer all funds entrusted to the commission; and

(6) prescribe the personnel policies for the commission and perform other duties and functions that may be prescribed by law.

Executive Officer

Sec. 2.07. (a) The chairman is the chief executive and administrative officer of the commission.

(b) In addition to the other powers and duties prescribed by this Act, the chairman as chief executive officer of the commission shall:

(1) administer the duties and functions of the commission;

(2) employ and remove personnel and prescribe their duties, responsibilities, and compensation; and

(3) submit through and with the approval of the commission requests for appropriations and other funds to operate the commission.

(c) In the absence of the chairman for any cause, the vice-chairman has the powers and duties assigned to the chairman.

Offices and Divisions

Sec. 2.08. The commission shall establish offices and divisions of the commission that it deems necessary to carry out the functions and duties of the commission. The commission may assign functions and duties to the various offices and divisions, provide for additional offices and divisions, and reorganize the commission if necessary to improve its efficiency or effectiveness.

Funds

Sec. 2.09. For the purpose of carrying out its duties and functions, the commission may apply for, contract for, receive, and expend any appropriations or grants from the state, the federal government, or any other public source, subject to any limitations and conditions prescribed by legislative appropriation.

Review of Institutional Health Services

Sec. 2.10. The commission, after consultation with the department, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and other appropriate health-related state agencies, shall review and determine, if required by and pursuant to federal law, the appropriateness of all institutional health services being offered in the state and shall make public its determinations by filing a report with the secretary of state.

Capital Expenditure Review Program

Sec. 2.11. The commission, when authorized by the governor, may negotiate an agreement with the Secretary of Health and Human Services on behalf of the State of Texas to administer a state capital expenditure review program pursuant to Section 1122 of the Social Security Act,[1] the federal rules and regulations promulgated under that Act, and other pertinent federal authority, if after thorough review and study, the commission determines that such a review program would be in the best interest of the people of Texas.

[1] 42 U.S.C.A. § 1320a-1.

SUBCHAPTER C. STATE CERTIFICATE OF NEED PROGRAM

Services and Facilities Requiring Certificates

Sec. 3.01. (a) Each person must obtain from the commission a certificate of need in accordance with this Act for a proposed project to:

(1) obligate a capital expenditure by or on behalf of a health-care facility that exceeds the expenditure minimum in this Act;

(2) offer a new institutional health-care service;

(3) terminate an existing institutional health-care service where the termination is associated with the obligation of any capital expenditure;

(4) acquire major medical equipment costing more than the expenditure minimum in this Act, unless the acquisition is exempt by commission rule pursuant to federal law; the commission shall, by rule, exempt such acquisitions to the maximum extent permitted by federal law;

(5) substantially change the bed capacity of a health-care facility where the change is associated with the obligation of any capital expenditure; or

(6) acquire an existing health-care facility where the acquisition is associated with the obligation of any capital expenditure, unless the acquisition is exempt by commission rule pursuant to federal law; the commission shall, by rule, exempt such acquisitions to the maximum extent permitted by federal law.

(b) The commission shall review according to selected criteria a proposed project which is solely designed to eliminate or prevent imminent safety hazards or to comply with licensing, accreditation, or certification standards.

(c) This section applies to a proposed project by an HMO's ambulatory care facility or by or on behalf of an inpatient health-care facility controlled directly or indirectly by an HMO or combination of HMOs only in those circumstances described in P.L. 96–79.[1]

(d) The commission by rule shall define and determine the terms and conditions under which a project comes within the meaning of this section. In this regard, the commission by rule shall exempt, to the extent permitted by federal law, the acquisition of major medical equipment to be used solely for research, the offering of an institutional health service solely for research, or the obligation of capital expenditures solely for research. In addition, the commission shall promulgate rules for determining the costs of acquiring facilities or equipment if facilities or equipment are leased or donated.

[1] 42 U.S.C.A. § 300k et seq.

Sec. 3.02. Repealed by Acts 1981, 67th Leg., p. 1798, ch. 393, § 12, eff. Sept. 1, 1981.

Declaratory Ruling

Sec. 3.03. On the application of a person sufficiently describing a proposed project, the commission may issue a declaratory ruling on whether this Act requires a certificate of need for the project. If the commission rules that a certificate of need is required, the applicant may apply for a certificate of need and may seek judicial review of the declaratory ruling only in proceedings to review the denial of a certificate of need as provided by this Act.

Application for Certificate of Need

Sec. 3.04. (a) A person may apply for a certificate of need by submitting a written application to the commission. The application must be prepared in the form and contain the information required in rules promulgated by the commission.

(b) Each application for a certificate of need must be accompanied by the required application fee except as prohibited by federal law. All application fees shall be deposited in the state treasury and shall be expended by the commission for the administration and enforcement of this Act.

Application Fee

Sec. 3.05. The maximum application fee is $7,500 or 2 percent of the total cost of the proposed project, whichever is less, and the minimum application fee is $25, and within these limits the commission by rule shall establish a schedule of application fees for the various types and sizes of projects, with fees for the more substantial projects set at nearer the maximum and fees for the smaller projects set at nearer the minimum.

Application Review

Sec. 3.06. (a) Each application for a certificate of need shall be reviewed and a determination made within 10 working days after the date of its receipt whether the application complies with the rules governing the preparation and submission of applications.

(b) If the application complies with the rules governing the preparation and submission of applications, the chairman shall, pursuant to commission rules:

(1) declare the application to be sufficient and shall accept and date the application;

(2) schedule a hearing on the application which on a showing of good cause by the applicant or the parties, may be postponed for a reasonable period of time not to exceed 45 days; and

(3) provide written notification to affected persons and to the health systems agency within whose boundary the project is located of the time, place, and matter to be considered at the hearing.

(c) If the application does not comply with the rules governing the preparation and submission of applications, the chairman shall notify the applicant in writing and provide a list of deficiencies.

(d) All applications for certificates of need shall be filed in the commission, indexed, and made available for public inspection.

Publication of Notice by Applicant

Sec. 3.07. (a) The applicant shall publish public notice of the hearing to be held by the commission on an application for a certificate of need in at least one newspaper of general circulation in the locality within which the proposed service or facility would be developed.

(b) The commission shall prescribe the form of publication and the date or dates of publication which shall not be later than 30 days after the application is accepted and dated.

Review by Health Systems Agencies

Sec. 3.08. (a) A health systems agency may review an application transmitted to it and may provide written comments to the commission and to the applicant not later than the 60th day after the day the application is dated.

(b) The review, if any, of an application by a health systems agency must be conducted according to rules promulgated by the commission.

(c) A health systems agency may hold a hearing on an application referred to it. The hearing must be conducted in accordance with rules promulgated by the commission.

(d) If at the time of the application a health systems agency is not currently designated for the area in which the project is to be located, the commission may perform the functions of the health systems agency.

Commission Hearings

Sec. 3.09. (a) The chairman shall designate a hearing officer to conduct a hearing for each dated application. The hearing officer must be an employee of the commission who is an attorney licensed to practice law in this state.

(b)(1) If a health systems agency has submitted written comments concerning an application to the commission and the applicant as provided in Section 3.08 of this Act, a representative or representatives of that agency may present testimony and evidence for or against that application at the hearing. Any other interested party may present evidence or testimony for or against an application pursuant to rules promulgated by the commission. Testimony may be presented orally or in writing.

(b)(2) The commissioner of insurance may review an HMO application and provide written comments to the commission. The review and comment on an HMO application by the commissioner of insurance must be conducted according to rules promulgated by the commission. When written comments are provided on an HMO application, the commissioner of insurance or a representative may participate in the hearing on the application as a party.

(c) The hearing officer shall keep a complete record of each hearing and transmit the record to the commission when completed. Each record must include in addition to any other items required by rules promulgated by the commission:

(1) evidence received or considered;

(2) a statement of matters officially noticed;

(3) objections and rulings thereon;

(4) staff memoranda or data submitted to or considered by the hearing officer or the commission in connection with the hearing; and

(5) the recommendations of the hearing officer concerning the approval or disapproval of the application.

(d) The hearing officer shall forward to the commission the complete record of the hearing on an application for a certificate of need as provided by commission rules.

(e) At the request of the applicant and with the concurrence of the commission, an uncontested application may be reviewed by and acted on by the commission without a hearing under rules promulgated by the commission.

Criteria for Review

Sec. 3.10. (a) The commission shall promulgate rules establishing criteria to determine whether an applicant is to be issued a certificate of need for the proposed project.

(b) Criteria established by the commission must include at least the following:

(1) whether a proposed project is necessary to meet the health-care needs of the community or population to be served;

(2) whether a proposed project can be adequately staffed and operated when completed;

(3) whether the cost of a proposed project is economically feasible;

(4) if applicable, whether a proposed project meets the special needs and circumstances for rural or sparsely populated areas; and

(5) if applicable, whether the proposed project meets special needs for special services or special facilities.

(c) In developing criteria the commission shall consider at least the following:

(1) the recommendations, if any, of the Texas Department of Health, the Texas Board of Mental Health and Mental Retardation, the Texas Department of Human Resources, and the governing boards of other state agencies;

(2) the relationship of a proposed project to the state health plan and the health systems plan and annual implementation plan of the appropriate health systems agency;

(3) the special needs and circumstances of facilities that provide substantial services to indigents;

(4) the special needs and circumstances of facilities that provide a substantial portion of their services to persons residing outside the areas in which the facilities are located;

(5) the possible effects of a project on existing facilities; and

(6) the special needs and circumstances of health maintenance organizations.

Orders of Commission

Sec. 3.11. (a) The commission shall either grant or deny a certificate of need by written order not

later than the 90th day following the date of publication of public notice, unless the date of the hearing was delayed pursuant to Section 3.06(b)(2) of this Act, in which case the deadline for the order is extended accordingly, or unless a later date is agreed on in writing by the applicant and the commission.

(b) Copies of the order must be forwarded to the applicant, the appropriate health systems agency, and the parties of record.

(c) Copies of the order and the record of the hearing shall be filed together in the office of the commission, indexed, and made available for public inspection.

(d) The commission may prescribe as conditions to a certificate of need limits on project cost, time periods for development and completion of a project, limits on the scope of the project, project status reports, and other conditions as may be placed in the order necessary for administering this Act.

Development May Commence

Sec. 3.12. Development of a project may commence only after appropriate authorization by the commission.

Forfeiture of Certificate

Sec. 3.13. (a) The order granting a certificate of need constitutes the determination of a need for the project and authorizes the certificate holder to commence development and proceed toward completion of the project as expeditiously as possible.

(b) A certificate of need is subject to forfeiture on the following conditions:

(1) automatically, for failure to commence development of an approved project within 180 days after the date of the order. The former certificate holder may petition the commission for the reissuance of the certificate forfeited under this subsection not later than 30 days after the date of forfeiture, and the commission may consider the petition without a hearing. The commission must approve or disapprove the petition by written order within 60 days after the date of receipt of the petition. A written order approving the petition constitutes reissuance of the certificate of need;

(2) after notice and hearing, for failure to proceed with reasonable diligence toward completion of the project;

(3) after notice and hearing, for failure of the certificate holder to comply with conditions in the written certificate of need order.

(c) The commission shall promulgate rules prescribing procedures and criteria for forfeiture proceedings.

Violations; Enforcement

Sec. 3.14. (a) A person who commences the development of a project without authorization from the commission is in violation of this Act.

(b) If requested by the commission, the attorney general may institute a legal action to enjoin an alleged violation of this Act or to recover civil penalties as provided by this subchapter.

(c) No agency of the state or any of its political subdivisions may appropriate or grant funds or assist in any way a person, applicant, facility, or certificate holder who is or whose project is in violation of this Act.

(d) No permit to build or license to operate a facility or license to provide a service may be issued for a project or to a person in violation of this Act, by the state or a political subdivision or instrumentality of the state.

(e) A person who violates this Act is subject to a civil penalty of no greater than $100 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this subchapter. Such civil penalties assessed for violations of this Act shall be deposited in the State Treasury and shall be expended by the commission for the administration and enforcement of this Act.

(f) A person who has been judicially determined to be in violation of this Act, and who has paid all imposed civil penalties and has made a proper application to the commission, shall not be deemed to be in violation of this Act.

Judicial Review

Sec. 3.15. An applicant or party who is aggrieved by an order of the commission granting or denying a certificate of need is entitled to judicial review under the substantial evidence rule.

SUBCHAPTER D. FUNCTIONS OF DEPARTMENT

Health Planning and Development Agency

Sec. 4.01. The Texas Department of Health is designated as the state health planning and development agency for the State of Texas.

General Powers and Functions

Sec. 4.02. The department shall perform the duties and functions prescribed by state law and, after consultation with the commission, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and other appropriate health-related state agencies, those of the state health planning and development agency.

Assistance to Statewide Health Coordinating Council

Sec. 4.03. The department shall assist the Statewide Health Coordinating Council in the performance of its functions.

Preliminary State Health Plan

Sec. 4.04. The department shall prepare, review, and revise a preliminary state health plan.

Assistance Under Title XVI

Sec. 4.05. No application for assistance under Title XVI of the Public Health Service Act [1] may be considered by the department until the requirements of Subchapters B and C of this Act have been complied with.

[1] 42 U.S.C.A. § 300o et seq.

Authority to Collect Data

Sec. 4.06. (a) The department, after consultation with the commission, shall adopt rules establishing reasonable procedures for the collection and dissemination of data determined to be necessary to facilitate and expedite proper and effective health planning and resource development.

(b) The department shall file, index, and periodically publish in a coherent manner summaries or analyses of the data collected.

(c) Persons who fail to comply with the rules promulgated pursuant to this section are in violation of this Act.

Contracts

Sec. 4.07. With the approval of the governor and after a public hearing, the department may contract with an appropriate state agency to perform specific state health planning and development agency functions of the department.

SUBCHAPTER E. AMENDMENTS AND REPEALS

Sec. 5.01. [Adds § 2.24 to art. 5547–202]

Sec. 5.02. [Amends subsecs. (a), (b) of art. 5547–91]

Sec. 5.03. [Amends subsec. (a) of art. 5547–93]

Sec. 5.04. [Adds § 9A to art. 4437f]

Sec. 5.05. [Adds § 6A to art. 4442c]

Sec. 5.06. [Amends §§ 1 to 5, 8 and adds § 6A to art. 4447c]

Sec. 5.07. [Amends arts. 4414a, 4415a, 4416a, 4417a, 4418a, 4418d, 4418f and adds art. 4418g]

Sec. 5.08. [Repeals arts. 4418b, 4418b–1, 4418c, 4418e, 4442c–1, and § 6 of art. 4447c]

SUBCHAPTER F. TRANSITION PROVISIONS AND MISCELLANEOUS

Secs. 6.01 to 6.03. Repealed by Acts 1981, 67th Leg., p. 1801, ch. 393, § 23, eff. Sept. 1, 1981.

Initial Terms of Reconstituted Board; Transition

Sec. 6.04. (a) In making the initial appointments of members of the Texas Board of Health Resources, as renamed and reconstituted by this Act, the governor shall designate members to serve initial terms as follows:

(1) for terms expiring February 1, 1977, two physicians, one citizen, one hospital administrator, the dentist, and the veterinarian;

(2) for terms expiring February 1, 1979, two physicians, one citizen, the civil engineer, the registered nurse, and the optometrist; and

(3) for terms expiring February 1, 1981, two physicians, the chiropractor, the nursing home administrator, the pharmacist, and one hospital administrator.

(b) The State Board of Health shall continue to function until all of the initial appointees of the board as reconstituted have been appointed and have qualified, or until September 1, 1975, whichever is sooner.

[Acts 1975, 64th Leg., p. 832, ch. 323, §§ 1.01 to 4.07, 6.01 to 6.04, eff. May 28, 1975. Amended by Acts 1977, 65th Leg., p. 1848, ch. 735, §§ 2, 114, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 506, ch. 236, §§ 1 to 10, eff. May 17, 1979; Acts 1981, 67th Leg., p. 1794, ch. 393, §§ 1 to 23, eff. Sept. 1, 1981.]

Section 24 of Acts 1981, 67th Leg., p. 1801, ch. 393, provides:

"The amendments made herein to Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes), shall become effective September 1, 1981, except as follows: until January 1, 1982, a certificate of need shall be required prior to (a) the development and establishment of a new Class B home health agency and (b) a service expansion or geographical expansion of an existing Class B home health agency. For purposes of this section, a Class B home health agency shall have the meaning given that term in Chapter 642, Acts of the 66th Legislature, Regular Session, 1979 (Article 4447u, Vernon's Texas Civil Statutes)."

Art. 4419c. Physical Restoration Service for Crippled Children, Children with Neurofibromatosis or Cancer, and for Victims of Cystic Fibrosis

Creation of Service; Aid to Needy Children Distinguished

Sec. 1. There is hereby created in the Texas Department of Health a physical restoration service for crippled children under twenty-one (21) years of age, including those who have neurofibromatosis and for persons, regardless of age, who have cystic fibrosis. This service shall make provisions for locating, examining and physically restoring crippled children of the state as hereinafter provided. The physical restoration service herein provided for crippled children is separate and distinct from the assistance or aid to needy children.

Eligibility of Children with Cancer; Cancer Defined

Sec. 1A. (a) The department shall provide the medical, dental, and rehabilitative services provided for crippled children under this Act for children under 21 years of age who have cancer and who meet the financial eligibility requirements for receiving crippled children's services.

(b) As used in this Act, cancer is defined as a malignant disease characterized by unrestricted growth of abnormal cells, the natural course of which is fatal; cancer includes but is not limited to leukemia, lymphoma, and histiocytosis. To be eligible for medical, dental, and rehabilitative services for cancer as provided in Subsection (a) of this section, the child's condition must be such that it is

reasonable to assume that the services provided may cure or arrest the condition (cancer) or prolong the child's period of independent function.

Approval of Qualified Dentist as Primary Provider Not Precluded

Sec. 1B. Nothing in this Act may be interpreted in a manner which would preclude the approval of a qualified dentist who is licensed to practice in Texas to deliver services as the primary provider within the area of his expertise to eligible recipients who have conditions which are covered by the program.

"Crippled Child" Defined; Eligibility

Sec. 2. A crippled child is defined as any person under twenty-one (21) years of age, whose physical functions, movements, or sense of hearing are impaired by reason of a joint, bone, ossicular chain, muscle, or neurological defect or deformity, to the extent that the child is or may be expected to be totally or partially incapacitated for education or remunerative occupation. To be eligible for rehabilitation service under this Act, the child's disability must be such that it is reasonable to expect that such child can be improved through hospitalization, medical, dental, or surgical care, optometric care, artificial appliances, or through a combination of these services. For the purposes of this Act, a "crippled child" includes a child whose sole or primary handicap is blindness or other substantial visual handicap, but the responsibility for rendering services to a child crippled with blindness or other substantial visual handicap is that of the Commission for the Blind.

Powers of Crippled Children's Division; Administration of Properties; Rules and Regulations

Sec. 3. The Crippled Children's Division of the Texas Department of Health is empowered to take census, make surveys, and establish permanent records of crippled children and children who have cancer; to procure medical, dental, and surgical service for eligible children, provided that only physicians and dentists legally qualified to practice medicine, dentistry, or surgery in Texas be employed for purposes of diagnosis and treatment, that not more than the customary minimum fees be paid for such services, and that physicians, dentists, or surgeons so employed shall be approved by the State Board of Health as qualified to render such service; to select and designate hospitals for the care of children contemplated by this Act, and to take such other steps as may be necessary in order to accomplish the purposes of this Act.

At the discretion of the Texas Department of Health, transportation, appliances, braces, and material necessary in the proper handling of crippled children or children who have cancer may be in part or entirely provided. Such appliances, braces, and material, being a part of the care and treatment program and necessary to the physical restoration of the individual crippled child as defined in this Act or a child who has cancer, shall not be considered to be state-owned personal property and shall be excluded from the personal property inventory required of state-owned property; and all such property including appliances, braces, and materials, being a part of the care and treatment program, and which are now being accounted for under the provisions of the present system of accounting shall be deleted from and not required after the passage and effective date of this Act. The Texas Department of Health, however, shall maintain at all times a complete record of such appliances, braces, and materials provided and such records shall be verified by the State Auditor.

The Texas Department of Health is directed to provide in Rules and Regulations, the necessary details for the conduct of this work, in accordance with the purposes of this Act, which shall permit as far as possible, the free choice of patients in their selections of hospitals and licensed physicians and dentists, and shall arrange with hospitals, brace departments and other services providing for crippled children's work and children who have cancer, compensation for such services, provided that such fees or charges shall not exceed the average charges for the same services rendered to patients in the hospitals approved for purposes of this Act.

Right to Care and Treatment; Entering Homes; Death of Hospitalized Patient; Expenses

Sec. 4. No child shall be entitled to care and treatment provided for in this Act unless the Texas Department of Health determines that every person who has a legal obligation to provide care and treatment for the child is financially unable to provide for said care and treatment.

A person who has a legal obligation to provide care and treatment for a child and who is financially able to bear a portion of the expenses shall be required to pay for or reimburse the department for a portion of the cost of the services provided by the department to the child for whom the application is made or by whom the services are received. A schedule to govern this required proportional payment or reimbursement of the cost of services shall be included in the department's rules.

Provided further that at least one physician or dentist, regularly practicing under the laws of the State of Texas and within the scope of their licensing practice act, must certify that the physician or dentist has examined said child and recommends said child as coming under the provisions and intent of this Act. Provided further that no employee, agent, or representative of the Department, or other official agent, shall, by virtue of this Act, have any right to enter any home over the objection of the person who has legal responsibility to provide care and treatment for the child, and nothing in this Act shall be construed as limiting the power of those persons over such child.

Provided further that funds of the Division of Crippled Children's Services may be expended for the care of any patients either under the regular Crippled Children's Program, the Children's Cancer Services Program, or the Cardiac Program who expire while being hospitalized under the State Program for the following:

Transportation of the deceased and a parent or anyone who may accompany the body of the deceased from the hospital to the place of burial designated by the parents.

Expenses incidental to embalming of the deceased as required for transportation.

A casket purchased at the minimum price as required for transportation.

Any other necessary expenses directly related to the care of the body of the deceased and the return of the body to the place of burial.

Eligibility for Other Benefits; Reimbursement of Department

Sec. 4A. (a) In this section, "other benefit" means a benefit to which a person is entitled other than a benefit under this Act for payment of the costs of medical or dental care and treatment or burial, including but not limited to the following:

(1) benefits available under:

(A) an insurance policy, group health plan, or prepaid medical or dental care plan;

(B) Title XVIII or Title XIX of the Social Security Act, as amended; [1]

(C) the Veterans Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services;

(E) workers' compensation or any other compulsory employers' insurance program; or

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, except those benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, or a hospital district; or

(2) benefits available from a cause of action for medical or dental expenses to a child applying for or receiving services from the department or a settlement or judgment based on such a cause of action, if the expenses are related to the need for services provided by the program.

(b) A child is not eligible to receive services provided by this Act to the extent that the child or a person who has a legal obligation to support the child is eligible for some other benefit that would pay for the service or part of the service provided by this Act.

(c) An applicant or recipient of services provided by this Act shall inform the department at the time of application or at any time during eligibility and receipt of services of any other benefit to which the child for whom the application is made, the child's parent, the child's managing conservator, or other person who has a legal obligation to support the child may be entitled.

(d) The parent of a child, the managing conservator of a child, or other person who has a legal obligation to support a child who has received services that are covered by some other benefit shall reimburse the department to the extent of the services provided when the other benefit is received.

(e) The department may recover the expenditure for services provided under this Act from a person who does not reimburse the department as required by Subsection (d) of this section or from any third party upon whom there is a possible legal obligation to pay other benefits and to whom notice of the department's interest in the other benefits has been given. At the request of the commissioner of health, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date the department provides the service to the date the department is reimbursed in a judgment in favor of the department.

[1] 42 U.S.C.A. §§ 1395 et seq., 1396 et seq.

Modification, Suspension, or Termination of Services

Sec. 4B. (a) The department is authorized after notice to the persons affected, for good cause to modify, suspend, or terminate services to any child who has been found to be eligible for services or who is receiving services from the department.

(b) The criteria for departmental action authorized under this section shall be contained in the department's program rules.

[See Compact Edition, Volume 4 for text of 5 to 8]

[Amended by Acts 1979, 66th Leg., p. 168, ch. 92, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1497, ch. 647, §§ 1 to 3, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1512, ch. 653, §§ 1 to 3, eff. June 13, 1979; Acts 1981, 67th Leg., p. 112, ch. 54, § 1, eff. April 15, 1981; Acts 1981, 67th Leg., p. 244, ch. 103, §§ 1 to 4, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2164, ch. 505, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2337, ch. 572, art. IV, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2352, ch. 579, § 1, eff. Aug. 31, 1981.]

Art. 4419e. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Prior to repeal, this article was amended by Acts 1975, 64th Leg., p. 939, ch. 352, §§ 1, 2; Acts 1977, 65th Leg., p. 1203, ch. 466, §§ 1 to 3.

Art. 4419f. Children's Vision Screening Act of 1979

Short Title

Sec. 1. This Act shall be known as and may be cited as "The Texas Children's Vision Screening Act of 1979."

Purpose

Sec. 2. The purpose of children's vision screening is to identify those children who need a thorough eye examination by a professional eye examiner. Such screening is particularly necessary in early childhood since many visual defects will become incurable if detected too late. Screening is not a diagnostic procedure and decisions about the need for treatment can only be made after a professional eye examination. Besides discovering vision defects which may interfere with the child's education, vision screening helps the teacher prepare assessments of the child's educational potential and helps to detect those children who are needing special educational services because of insufficient vision. It shall not be the intent of the legislature to impose any added fiscal implications or additional costs on units of local government.

Definitions

Sec. 3. (a) "Board" means the Texas Board of Health.

(b) "Department" means the Texas Department of Health.

(c) "Vision screening" means a test or battery of tests for rapid determination of the need for a more complete visual examination by an eye specialist.

Children's Vision Screening Required; Exception

Sec. 4. (a) It is required for all children enrolling in any public, private, parochial, or denominational school in Texas for the first time, that the parent, managing conservator, or other person having a legal responsibility for the child's support shall submit to the admitting officer of the school within 90 days after admission a certificate which states that the child has either (1) been examined by a physician licensed to practice in the United States or an optometrist licensed to practice in the United States or (2) undergone a vision screening test which has been approved by the board and which discloses the results of the examination or test.

(b) Subject to the exception in Subsection (c) of this section, the board may by rule modify the requirement of Subsection (a) to require the additional periodic examination or screening of children it determines is necessary.

(c) A child may be provisionally admitted to a kindergarten, elementary, or secondary school upon the submission of an affidavit signed by the parent, managing conservator, or person having a legal responsibility for the child's support, that the child will undergo the required vision screening test or examination as rapidly as is feasible.

(d) The requirements of this section are mandatory except in the event that the affected child's parent, managing conservator, or person having a legal responsibility for the child's support presents to the school authorities an affidavit signed by the parent, managing conservator, or person having a legal responsibility for the child's support stating that the visual screening test conflicts with the tenets or practices of a recognized church or religious denomination of which the affiant is an adherent or a member.

(e) The governing body of each school shall ensure that all parents, managing conservators, or persons having a legal responsibility for the support of school children within the jurisdiction of the governing body present the required certificate of examination or screening, or an affidavit of exemption based on religious tenet or practice.

Required Certificate

Sec. 5. (a) The certificate required shall be in a form prescribed by the board and shall contain that information which may be required by the board to carry out the intent of this Act.

(b) The certificate may be signed by:

(1) a physician licensed to practice in the State of Texas or an optometrist licensed to practice in the United States who performed the eye examination;

(2) a physician licensed to practice in the State of Texas or an optometrist licensed to practice in the United States who personally supervised a vision screening test; or

(3) health personnel, volunteers, school nurses or aides, or other school personnel who have undergone a special training program in the administration of children's vision screening testing which meets the standards approved by the board.

(c) The requirement of Section 4 may be met by an entry made in the official school record of the child which states that the child has undergone a vision screening test which meets the standards set by the board, that the test was administered by a person authorized in this section to sign the required certificate, and which discloses the results of the test.

Examination or Test Records; Reporting

Sec. 6. (a) Each school covered by this Act shall keep an individual eye examination or vision screening record for each student during the period of attendance for each child admitted, and the records shall be open for inspection at all reasonable times by representatives of the local health departments or the Texas Department of Health.

(b) Each school covered by this Act shall cooperate in transferring student's eye examination or vision screening records between other schools. Specific approval from the parent, managing conserva-

tor, or other person having a legal responsibility for the child's support is not required prior to making such transfers.

(c) The department shall develop the form for a required annual report of the results of the examinations or tests and the report will be submitted according to the instructions of the board.

Powers of the Texas Board of Health

Sec. 7. (a) The board is authorized to establish a vision screening program in the department.

(b) The board, in consultation with the advisory committee, shall adopt rules to carry out the intent of this Act. These rules shall include, but not be limited to, rules prescribing the following:

(1) form and content of the required certificate;

(2) the closing dates for presenting such certificates;

(3) transfer of individual certificates between schools;

(4) criteria for rescreening and referral;

(5) reporting of results and referrals to the department;

(6) standards required for vision screening tests and screener training courses to ensure excellence and uniformity in the vision screening program.

(c) The board acting through the department and in consultation with the advisory committee shall:

(1) train or approve the training of persons who will administer vision screening tests;

(2) monitor the quality of screening activities in an appropriate manner;

(3) directly or through local health departments or regional public health offices, assist school districts and other organizations in developing programs to provide vision screening for children;

(4) compile and publish statistical analyses of reports relating to examination and screening results and referrals to ascertain the impact of the requirements on public health.

Advisory Committee on Vision Screening

Sec. 8. The board shall appoint an advisory committee on children's vision to consult with and advise the board in determining acceptable technical and professional standards which must be met by any individual or public or private health care entity undertaking to perform the vision screening tests allowed in Section 4 of this Act. The advisory committee will also advise the board on referral and appropriate follow-up.

(a) The advisory committee shall be composed of:

(1) two physicians who are licensed to practice in Texas and whose medical specialty is ophthalmology;

(2) two optometrists who are licensed to practice in Texas, one of whom must be a member of the Texas Optometric Association and one of whom must be a member of the Texas Association of Optometrists; and

(3) two persons to represent the public who have experience in and an interest in children's visual problems.

(b) Except for those first appointed, members are appointed for terms of six years expiring on August 31 of the odd-numbered years. If a vacancy occurs on the committee, the board shall appoint a member to serve the unexpired portion of the term.

(c) The advisory committee shall serve without compensation; however, the committee members may be reimbursed for their actual and necessary expenses incurred while fulfilling their duties as committee members.

(d) The advisory committee, after approval from the department, may from time to time invite the participation of representatives of professional and volunteer organizations in their activities.

Interagency Committee on Children's Vision

Sec. 9. (a) The functioning of the vision screening program shall be assisted by an interagency committee on children's vision. The commissioner of education, the commissioner of human resources, the executive director of the State Commission for the Blind, and the commissioner of health shall appoint one member from their agency to the committee. The committee members shall coordinate preschool and school vision screening programs and the vision health programs in their respective agencies in the State of Texas. The committee may invite the advisory committee on children's vision, authorized under this Act, to meet with it and to offer professional consultation when requested.

(b) The interagency committee shall select one of its members as chairman and may elect other officers that it considers necessary. The committee may meet as often and at any place that it may decide, but shall meet at least once in each calendar year.

Limitation on Authority

Sec. 10. Nothing in this Act shall be construed as giving anyone authority to require the maintenance of any forms or filing of reports that were not required prior to the passage of this Act.

Initial Appointments

Sec. 11. In making the initial appointments to the advisory committee, the board shall appoint one ophthalmologist and one optometrist for terms expiring on August 31, 1981; one optometrist and a person representing the public for terms expiring August 31, 1983; and one ophthalmologist and a person representing the public for terms expiring August 31, 1985.

Effective Date

Sec. 12. The effective date of this Act is September 1, 1979; provided, however, that the require-

ments of Section 4 and Section 5 shall not be effective until September 1, 1980.

[Acts 1979, 66th Leg., p. 2053, ch. 804, §§ 1 to 3, 6 to 12, eff. Sept. 1, 1979; §§ 4, 5, eff. Sept. 1, 1980.]

Art. 4437c-2. Sale, Lease, or Closure of Public Hospitals

Definition

Sec. 1. In this Act, "official action" means an ordinance adopted by the governing body of an incorporated city or town, an order issued by the commissioners court of a county, or a resolution adopted by the governing body of a hospital district.

Sale, Lease, or Closure of Hospital

Sec. 2. (a) The governing body of an incorporated city or town, or a hospital district by official action may order the sale, lease, or closure of all or any part of, including real property, a hospital owned and operated by the political subdivision. The official action must include a finding by the governing body that the sale, lease, or closure is in the best interest of the residents of the political subdivision.

(b) The governing bodies of an incorporated city or town and of a county may take any action described by Subsection (a) of this section with respect to a joint city-county hospital by official action of both governing bodies that includes the same finding of fact.

(c) The sale or closure of a hospital is contingent on the right of the voters by petition to require a referendum on the issue. The sale or closure may not take effect sooner than the expiration of the time for a petition to be filed under Section 3 of this Act and, if a valid petition is filed, the sale or closure is contingent on voter approval.

Petition and Referendum

Sec. 3. (a) If before the 31st day after the date on which the governing body orders that a hospital be sold or closed the governing body receives a petition signed by at least 10 percent of the qualified voters of the political subdivision requesting an election on the question, the governing body shall order and conduct an election.

(b) The number of qualified voters of the political subdivision is determined according to the most recent official list of qualified voters. If a majority of the qualified voters voting on the question approve the sale or closure, the hospital may be sold or closed.

[Acts 1981, 67th Leg., p. 2361, ch. 583, §§ 1 to 3, eff. Aug. 31, 1981.]

Art. 4437e. Hospital Authority Act

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. As used in this law, "City" means any incorporated city or town in this State;

"Governing Body" means the council, commission or other governing body of a City;

"Authority" means a Hospital Authority created under this Act;

"Board" or "Board of Directors" means the board of directors of the Authority;

"Bond" or "Bonds" means bonds or notes;

"Bond Resolution" means the resolution authorizing the issuance of revenue bonds;

"Trust Indenture" means the mortgage, deed of trust or other instrument pledging revenues of, or creating a mortgage lien on properties, or both, to secure the revenue bonds issued by the Authority;

"Trustee" means the trustee under the Trust Indenture;

"Hospital" or "Hospitals" means any "Hospital Project" as defined in Section 3(g) of Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975, as now or hereafter amended.[1]

[1] Article 4437e-2.

[See Compact Edition, Volume 4 for text of 3]

Board of Directors

Sec. 4. (a) The Authority shall be governed by a Board of Directors consisting of not less than seven (7) nor more than eleven (11) members to be determined at the time of creating the Authority. Unless otherwise provided in the resolution authorizing the issuance of bonds or the Trust Indenture securing them, the number of Directors may be increased or decreased from time to time by amendment to the ordinance creating the Authority adopted by the Governing Body of the City or ordinances creating the Authority adopted by the Governing Bodies of the Cities, but no decrease in number shall have the effect of shortening the term of any incumbent Director. Except as hereinafter in this Section provided, the first Directors shall be appointed by the Governing Body of the City or by the Governing Bodies of the Cities, and they shall serve until their successors are appointed as hereinafter provided. If Authority includes more than one City, each Governing Body shall appoint an equal number of Directors unless otherwise agreed by the Cities. When the Authority issues its revenue bonds the resolution authorizing the issuance of the bonds or the Trust Indenture securing them may prescribe the method of selecting and the term of office of a majority of the members of the Board. The remaining members of the Board shall be appointed by the Governing Body of the City or the Governing Bodies of the Cities for two (2) year terms. The Trust Indenture may also provide that, in event of default as defined in the Trust Indenture, the Trustee may appoint all of the Directors, in which event the terms of the Directors then in office shall automatically terminate. Unless and until provision is made in the Bond Resolution or Indenture in connection with the issuance of bonds for the appointment by other means of part of the Directors, all of the Directors

shall be appointed by the Governing Body of the City or each of the Cities, as the case may be, for terms not to exceed two (2) years, but the terms of Directors appointed prior to the issuance of the first issue of revenue bonds shall be subject to the exercise of the provision herein made for appointment of a majority of the members of the Board in connection with the issuance of the bonds. No officer or employee of any such City shall be eligible for appointment as a Director. Directors shall not receive compensation for services but shall be entitled to reimbursement of their expenses incurred in performing such service.

(b) In the event the Authority purchases from a nonprofit corporation a hospital then in existence or in process of construction, the first members of the Board of Directors and their successors shall be determined as provided in the contract of purchase.

Officers; Quorum; Committees; Manager or Executive Director; Sale, Lease, or Closure; Legal Counsel

Sec. 5. The Board of Directors shall elect from among their members a president and vice-president, and shall elect a secretary and a treasurer who may or may not be Directors, and may elect such other officers as may be authorized by Authority's bylaws. The offices of secretary and treasurer may be combined. The president shall have the same right to vote on all matters as other members of the Board. A majority of the members of the Board shall constitute a quorum and when a quorum is present action may be taken by a majority vote of Directors present. If the bylaws so provide, the Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, which, to the extent and in the manner provided in such resolution or in the bylaws, shall have and exercise the authority of the Board of Directors in the management of the Authority. Each such committee shall consist of two or more persons who are directors and may have additional nonvoting members who, if such resolution or the bylaws so provide, need not be directors. The Board of Directors may not, however, provide for the delegation to such committees of the Authority of the power to issue bonds, enter into or amend a lease of a Hospital or a management agreement with respect to a Hospital or to employ or discharge a manager or an executive director. The Board may employ a manager or executive director of the Hospital and such other employees, experts and agents as it may see fit, or enter into a management agreement with any person and it may delegate to the manager the power to manage the Hospital and to employ and discharge employees. The Board may sell, lease, or close the Hospital as otherwise provided by law and may employ legal counsel.

Construction, Operation and Equipment of Hospitals; Location; Sale of Property

Sec. 6. (a) The Authority shall have the power to construct, enlarge, furnish and equip Hospitals, purchase existing Hospitals, furnishings and equipment for its Hospitals, and to operate and maintain Hospitals. A Hospital need not be located within the City or Cities.

(b) The Authority may sell any of its property without an election to a political subdivision of the State for the fair market value of the property if:

(1) the Board of Directors has notice of its intention to sell the property, a description of the property, and the scheduled date of the sale published in a newspaper or newspapers providing general circulation in the Authority once each week for two consecutive weeks, the first publication at least 14 days before the scheduled date of the sale; and

(2) a petition requesting an election on a proposition for or against the sale, signed by 10 percent or more of the qualified voters residing in the Authority is not presented to the secretary or president of the Board of Directors before the scheduled date of the sale.

(c) If a petition described in Subdivision (2), Subsection (b) of this section is presented to the secretary or president of the Board of Directors before the scheduled date of the sale, the property may be sold to a political subdivision only if an election on the proposition is held and a majority of the qualified voters voting in the election favor the sale. The Board shall call the election on receiving the petition or may call the election on its own motion if no petition is filed. The Board shall determine and the order calling the election shall specify the date, place, or places of holding the election, the form of ballot, and the presiding judge, alternate judge, and clerks for each voting place. Section 9b, Texas Election Code (Article 2.01b, Vernon's Texas Election Code), does not apply to the election. A substantial copy of the election order shall be published in a newspaper or newspapers of general circulation in the Authority once a week for two consecutive weeks, the first publication to appear at least 30 days before the election date. The form of the ballots at the election shall be in conformity with Section 61, Texas Election Code, as amended (Article 6.05, Vernon's Texas Election Code), so that ballots may be cast for or against the following proposition: "The sale of ..... by the ..... Hospital Authority." The Board shall canvass the returns and announce the results. Except as specifically provided in this section, the election shall be governed by the Texas Election Code.

(d) The Board may sell real property acquired by donation, gift, or purchase that the Board determines is not needed for Hospital purposes if the sale does not contravene (1) a trust indenture or bond resolution relating to outstanding bonds of the Authority, or any prior restrictions or limitations placed on the use of the property, or (2) any agreement entered into either prior to or after the effective

date of this Section 6(d) between the Authority and a non-profit corporation under the provisions of Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975. The Board shall sell the property through sealed bids or at a public auction. If the Board conducts the sale by sealed bids, the Board shall provide notice of the sale in the manner provided by Chapter 455, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 5421c–12, Vernon's Texas Civil Statutes). If the Board conducts the sale by public auction, the Board shall publish notice of the sale, including a description of the property and the date, time, and place of the auction, in a newspaper with general circulation in each City of the Authority once a week for three consecutive weeks, the first notice to appear at least 20 days before the auction. Nothing in this Section 6(d) is intended to affect or amend the powers granted to the Authority by Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975.

Revenue Bonds

Sec. 7. The Authority may issue revenue bonds to provide funds for any of its purposes. Such bonds shall be payable from and secured by a pledge of all or any designated part of the revenues to be derived from the operation of the Hospital or Hospitals and any other revenues resulting from the ownership of the Hospital properties. The bonds may be additionally secured by a mortgage or deed of trust on real property of Authority or by a chattel mortgage on its personal property, or by both.

Procedure for Bond Issue; Requisites; Maturity; Sales; Registration

Sec. 8. The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the Board of Directors, and shall be signed by the president or vice-president and countersigned by the secretary, or either or both of their facsimile signatures may be printed thereon. The seal of the Authority shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold at a price and under terms determined by the Board of Directors to be the most advantageous reasonably obtainable, provided that the net effective interest rate as defined by law in Article 717k–2 does not exceed ten per cent (10%) per annum, and within the discretion of the Board, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds, and may be made registrable as to principal or has to both principal and interest.

[See Compact Edition, Volume 4 for text of 8a and 9]

Junior Lien Bonds; Parity Bonds

Sec. 10. Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the Bond Resolution or Trust Indenture. Parity bonds may be issued under conditions specified in the Bond Resolution or Trust Indenture.

Money Set Aside Out of Bond Sale Proceeds

Sec. 11. Money for the payment of not more than two (2) years interest on the bonds and an amount estimated by the Board to be required for operating expenses during the first year of operation and an amount to fund any bond reserve fund or other reserve funds provided for in the Bond Resolution or Trust Indenture may be set aside for those purposes out of the proceeds from the sale of the bonds.

Refunding Bonds

Sec. 12. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this Act for other bonds, and may be exchanged by the Comptroller of Public Accounts of the State of Texas or sold and the proceeds applied in accordance with the procedure prescribed in Chapter 503, Acts of the Fifty-fourth Legislature [1] or other applicable law.

[1] Article 717k.

[See Compact Edition, Volume 4 for text of 13]

Operation of Hospital; Rates Charged; Creation of Funds; Lease Conditions

Sec. 14. Unless the Hospital is being leased, it shall be operated by the Authority without the intervention of private profit for the use and benefit of the public. If the Hospital is not being used, operated, or acquired by a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e–2, Vernon's Texas Civil Statutes) or not leased it shall be the duty of the Board of Directors to charge sufficient rates for services rendered by the Hospital and to utilize other sources of its revenues that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation and upkeep of the Hospital, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. In the event the Hospital is being used, operated, or acquired by a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e–2, Vernon's Texas Civil Statutes) or leased, it shall be the duty of the Board of Directors to provide that such nonprofit corporation or the lessee shall charge sufficient rates for services rendered by the Hospital which together with other sources of such nonprofit corporation's or the lessee's revenues will produce revenues sufficient to enable such nonprofit corporation or the lessee to pay all expenses in connection with the operation and upkeep of the Hospital and to make payments or to pay lease rentals to the Authority which will be sufficient, when taken with other pledged sources of the Authority's estimated revenues, to pay the interest on the bonds as it

becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. The Bond Resolution or Trust Indenture may prescribe systems, methods, routines, procedures, and policies under or in accordance with which the hospital shall be operated, and in the event the Hospital is being used, operated, or acquired by a nonprofit corporation or leased, the Authority may delegate to such nonprofit corporation or the lessee the duty to establish the systems, methods, routines, procedures, and policies under or in accordance with which the Hospital shall be operated.

[See Compact Edition, Volume 4 for text of 15 to 17]

Investment of Funds and Proceeds of Bonds

Sec. 18. The law as to the security for and the investment of funds, applicable to Cities, shall control, insofar as applicable the investment of funds belonging to Authority. The Bond Resolution or the Indenture or both may further restrict the making of such investments. In addition to other powers Authority shall have the right to invest the proceeds of its bonds, until such money is needed, in the manner authorized in the Bond Resolution or Indenture, and the proceeds of its bonds may be deposited in such banks and may be paid out pursuant to such terms as may be provided in the Bond Resolution or Trust Indenture.

[See Compact Edition, Volume 4 for text of 19]

[Amended by Acts 1975, 64th Leg., p. 1904, ch. 612, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1309, ch. 517, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1358, ch. 539, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 502, ch. 233, § 1, eff. May 17, 1979; Acts 1979, 66th Leg., p. 1603, ch. 678, § 1, eff. June 13, 1979; Acts 1981, 67th Leg., p. 2362, ch. 583, § 4, eff. Aug. 31, 1981.]

Section 2 of the 1975 amendatory act, § 2 of Acts 1977, 65th Leg., p. 1309, ch. 517, and § 2 of Acts 1979, 66th Leg., p. 1604, ch. 678, provided: "If any word, phrase, clause, sentence or part of this Act shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other word, phrase, clause, sentence or part of this Act, and such remaining portions shall remain in full force and effect."

Art. 4437e–1. Leases and Agreements by Hospital Authorities

Sec. 1. In addition to any other powers which it may now or hereafter have, the governing body of any hospital authority created as provided in the Hospital Authority Act (Vernon's Annotated Civil Statutes, Article 4437e) or the County Hospital Authority Act (Vernon's Annotated Civil Statutes, Article 4494r) is hereby authorized: (a) to lease to any person any hospital, or part thereof, owned by said hospital authority to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the governing body and the lessee; (b) to enter into an agreement with any person for the management and/or operation of any hospital, or part thereof, owned by said hospital authority under such terms and conditions as may be satisfactory to the governing body and the other contracting party or parties; (c) to sell a hospital or part of a hospital owned by the hospital authority; and (d) to close a hospital or part of a hospital owned or operated by the hospital authority.

[See Compact Edition, Volume 4 for text of 2]

Sec. 3. (a) Any such sale, lease, closure, or agreement shall be authorized by resolution adopted by such governing body and shall be executed, on behalf of the authority, by the presiding officer and the secretary of the governing body, and the seal of the authority shall be impressed thereon.

(b) The sale or closure of a hospital is contingent on the right of the voters by petition to require a referendum on the issue. The sale or closure may not take effect sooner than the expiration of the time for a petition to be filed under Section 4 of this Act and, if a valid petition is filed, the sale or closure is contingent on voter approval.

Sec. 4. (a) If before the 31st day after the date on which the governing body authorizes the sale or closure of a hospital the governing body receives a petition signed by at least 10 percent of the qualified voters of the political subdivision requesting an election on the question, the governing body shall order and conduct an election. The number of qualified voters of the authority is determined according to the most recent official list of qualified voters.

(b) If a majority of the qualified voters voting on the question approve the sale or closure, the hospital may be sold or closed.

[Amended by Acts 1981, 67th Leg., p. 2363, ch. 581, § 5, eff. Aug. 31, 1981.]

Art. 4437e–2. Hospital Project Financing Act

Short Title

Sec. 1. This Act may be cited as the "Hospital Project Financing Act."

Purpose

Sec. 2. It is hereby found, determined, and declared that it is the policy of the State of Texas that the present and prospective health, safety, and general welfare of the people of this state require as a public purpose the promotion and development of new and expanded hospital projects, as defined in this Act. It is essential that the people of this state have access to adequate medical care and health facilities and that such facilities be provided with appropriate additional means to assist in the development and maintenance of the public health. It is the purpose of this Act to enable certain issuers, as defined in this Act, to provide the facilities and structures, at a reasonable cost, which are determined to be needed by the various issuers; therefore the issuance of revenue bonds and notes by such issuers as herein provided for the promotion of medi-

cal care, public health, and medical research, including training and teaching, is hereby declared to be in the public interest and a public purpose. The necessity in the public interest of the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

Definitions

Sec. 3. When used in this Act, unless the context requires a different definition:

(a) "Authority" means a hospital authority created and established in accordance with Chapter 472, Acts of the 55th Legislature, 1957, as amended (Article 4437e, Vernon's Texas Civil Statutes); or Chapter 122, Acts of the 58th Legislature, 1963 (Article 4494r, Vernon's Texas Civil Statutes); or any other public health authority presently existing or created hereafter by law in this state.

(b) "City" means any municipal corporation of this state presently existing or created hereafter, whether existing or created by general law or pursuant to a home-rule charter.

(c) "Cost" as applied to a hospital project, as herein defined, means and includes any and all costs of a hospital project, and, without limiting the generality of the foregoing, "cost" as applied to a hospital project and used in this Act shall include the following:

(1) the cost of the acquisition of all land, rights-of-way, options to purchase land, easements, and interests of all kinds in land related to a hospital project;

(2) the cost of the acquisition, construction, repair, renovation, remodeling, or improvement of all buildings and structures to be used as, or in conjunction with, a hospital project;

(3) the cost of site preparation, including the cost of demolishing or removing any buildings or structures the removal of which is necessary or incident to providing a hospital project;

(4) the cost of architectural, engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of a hospital project;

(5) the cost of all machinery, equipment, furniture, and facilities necessary or incident to the equipping of a hospital project so that it may be placed in operation;

(6) the cost of financing charges and interest prior to and during construction and for a maximum of two years after completion of construction and the start-up costs of a hospital project during construction and for a maximum of two years after completion of construction;

(7) any and all cost incurred in connection with the financing of a hospital project, including without limitation, the cost of financing, legal, accounting, and appraisal fees, expenses, and disbursements; the cost of printing, engraving, and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent;

(8) all direct and indirect costs of the issuer, as herein defined, incurred in connection with providing a hospital project, including, without limitation, reasonable sums to reimburse the issuer for time spent by its employees with respect to providing a hospital project and the financing thereof; and

(9) the cost of all fees, charges, and expenses incurred in connection with the authorization, preparation, sale, issuance, and delivery of any bonds or notes issued in accordance with the terms of this Act.

(d) "County" means a political subdivision of the State of Texas created and established under Article IX, Section 1, of the Constitution of Texas.

(e) "District" means a hospital district presently existing or created hereafter under authority of the constitution and laws of Texas.

(f) "Governing body" means, with reference to an issuer, as herein defined, the board of directors, council, commission, commissioners court, trustees, or similar body charged by law with the governance of an issuer.

(g) "Hospital project" means and includes any real, personal, or mixed property, or any interest therein, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the governing body of an issuer to be required or necessary for medical care, research, training, and teaching, any one or all, within this state, irrespective of whether such property is in existence or to be provided after the making of such finding. The use of the singular "hospital project" herein shall also include the plural "hospital projects" unless the context clearly requires a different connotation. Without limiting the generality of the foregoing, and when found by the governing body of an issuer to be so required, necessary, or convenient, "hospital project" shall include the following:

(1) any land, buildings, equipment, machinery, furniture, facilities, and improvements;

(2) any structure suitable for use as a hospital, clinic, health facility, extended care facility, out-patient facility, rehabilitation or recreation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, or laundry or administrative facility or building related to a health facility or system;

(3) any structure suitable for use as a multi-unit housing facility for medical staff, nurses, interns, other employees of a health facility or system, patients of a health facility, or relatives of patients admitted for treatment or care in a health facility;

(4) any structure suitable for use as a support facility related to a hospital project such as an office building, parking lot or building, or maintenance, safety, or utility facility, and related equipment;

(5) any structure suitable for use as a medical or dental research facility, medical or dental training facility, or any other facility used in the education or training of health care personnel;

(6) any property or material used in the landscaping, equipping, or furnishing of a hospital project and other similar items necessary or convenient for the operation of a hospital project; and

(7) any other structure, facility, or equipment related to, or essential to, the operation of any health facility or system except that a hospital project shall not include any nursing home licensed as such, or which would be required to be licensed as such, under the authority of the State of Texas. "Hospital project" may include any combination of one or more of the foregoing.

(h) "Issuer" means any authority, city, county, or district.

(i) "Non-profit corporation" means (1) a non-profit corporation established under the Texas Non-Profit Corporation Act, as amended (Article 1396–1.01, et seq., Vernon's Texas Civil Statutes), or any other similar statute, or (2) an association, foundation, trust, cooperative, or similar person or organization no part of the net earnings of which inures to the benefit of any private shareholder or individual and which incurs a contractual obligation with an issuer with respect to a hospital project in accordance with the provisions of this Act. The use of the singular "non-profit corporation" herein shall also include the plural "non-profit corporations" unless the context clearly requires a different connotation.

Payment of Bonds or Notes

Sec. 4. Bonds or notes issued in accordance with the provisions of this Act shall not be deemed to constitute general obligations of the State of Texas, the issuer, or any other political subdivision or agency of this state or a pledge of the faith and credit of any of them but such bonds or notes shall be payable solely from revenues of the hospital project for which they are issued and/or from such other revenues as may be provided by a non-profit corporation. No money of the State of Texas or any political subdivision or agency of this state, whether raised from taxation or any other source, except for revenue of the hospital project being financed with the bonds, shall ever be used to pay the principal of, redemption premium, if any, or interest on any revenue bonds or notes or refunding bonds or notes issued under this Act. All such revenue bonds or notes shall contain on the face thereof statements to the effect (a) that neither the State of Texas, the issuer, nor any political subdivision or agency of the State of Texas shall be obligated to pay the same or the interest thereon except from the revenues pledged thereto and (b) that neither the faith, credit, nor the taxing power of the State of Texas, the issuer, or any political subdivision or agency thereof is pledged to the payment of the principal of, redemption premium, if any, or interest on such bonds or notes. The issuer shall not be authorized to incur financial obligations under this Act which cannot be paid from the proceeds of the bonds or notes, revenues derived from operating a hospital project, or any other revenues as may be provided by a non-profit corporation, in accordance with the provisions of this Act. In no event shall any appropriation be made by the Legislature of Texas or any issuer to pay all or any part of any cost of a hospital project or any operating cost of such hospital project in accordance with the provisions of this Act. The issuer shall be paid, out of money from the proceeds of the sale and delivery of its revenue bonds or notes issued in accordance with the provisions of this Act, an amount of money equal to all of the issuer's out-of-pocket expenses and costs in connection with the issuance, sale, and delivery of such bonds or notes, including, without limitation, all financing, legal, printing, and other expenses and costs incurred in issuing such bonds or notes, plus an amount of money equal to the compensation paid any of such issuer's employees for the time such employees spent on activities related to the issuance, sale, and delivery of such bonds or notes. All such costs and expenses shall be deemed to be a "cost" of a hospital project as defined in Section 3(c) of this Act.

Powers of Issuer

Sec. 5. In addition to all other powers which it may now or hereafter have, each issuer is authorized and empowered as follows:

(a) to provide, or cause to be provided by a non-profit corporation, by acquisition (whether by purchase, devise, gift, lease, or any one or more of such methods), construction, or improvement one or more hospital projects located within this state, and within or partially within the issuer's boundaries; provided that with respect to the acquisition of one or more hospital projects, (a) the issuer shall only acquire such hospital project from a non-profit corporation which has been in existence and has operated such hospital project for a period of at least three years prior to the date of acquisition by the issuer and (b) the issuer affirmatively finds that the cost of such hospital project is not more than (1) the actual audited cost of the hospital project to the date of acquisition or (2) the fair market value of the hospital project at the date of acquisition as determined by an appraisal obtained by the issuer, the cost of which appraisal shall be a cost of the hospital project; provided that as to a

city, a hospital project may be situated outside its territorial limits if it is within its extraterritorial jurisdiction as provided by the Municipal Annexation Act, as amended (Article 970a, Vernon's Texas Civil Statutes); and further provided that as to a city, a hospital project may be situated within the territorial limits of any other city if the governing body of such other city shall consent to the former city providing such hospital project;

(b) to cause title to a hospital project provided in accordance with the provisions of this Act to be vested in a non-profit corporation; provided that if the governing body of the issuer deems it advisable to so vest title in a non-profit corporation, such issuer may retain a mortgage interest in such hospital project, which mortgage interest shall expire if and when all bonds or notes of the issuer sold to provide such hospital project have been paid or provision has been made for their final payment;

(c) to enter into leases or other contracts with a non-profit corporation with respect to any hospital project whereby such non-profit corporation shall use, operate, or acquire such hospital project, and such leases or contracts may be for such payment and upon such terms and conditions as the governing body may deem advisable; and to sell such hospital project to any non-profit corporation, including a non-profit corporation using such hospital project, such sale to be by installment payments or otherwise, and to be fully consummated if and when all bonds or notes of the issuer issued to provide such hospital project have been paid or provision has been made for their final payment; provided that during the time the bonds or notes or interest thereon remains unpaid there is no failure to make any payments owing under any lease or contract at the time and in the manner as the same become due; and

(d) to refund outstanding obligations, mortgages, or advances issued, made, or given by a non-profit corporation for the cost of a hospital project.

Eminent Domain

Sec. 6. No issuer shall have the power under this Act to acquire any hospital project, or any part thereof, to be sold or leased under this Act, by the exercise of the power of eminent domain. Land previously acquired by an issuer in the exercise of the power of eminent domain may be sold or leased, under the provisions of this Act; provided that the governing body of the issuer determines that (a) such use will not interfere with the purpose for which such land was originally acquired or that such land is no longer needed for such purpose, (b) at least seven years have elapsed since such land was so acquired, and (c) such land was not acquired for park purposes unless such sale or lease of park land has been approved at an election held under the authority of Article 1112, Revised Civil Statutes of Texas, 1925, as amended by Chapter 108, Acts of the 63rd Legislature, 1973.

Issuance of Bonds or Notes

Sec. 7. (a) Each issuer is hereby authorized to provide by resolution, from time to time, for the issuance of negotiable revenue bonds or notes or any other evidences of indebtedness for the purpose of paying all or any part of the cost of a hospital project. The bonds or notes of each issue shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times, not exceeding 40 years from their date, as may be determined by the issuer and may be made redeemable before maturity, at the option of the issuer, at such price or prices and under such terms and conditions as may be determined by the issuer.

(b) The principal of, redemption premium, if any, and the interest on such bonds or notes shall be payable from and secured by a pledge of all or any part of the revenues of the issuer to be derived from the ownership, operation, lease, use, mortgage, and/or sale of the hospital project for which such bonds or notes have been issued and/or from such other revenues, if any, as may be provided by a non-profit corporation, all as specified by the resolution of the governing body or in any trust indenture or other instrument securing the bonds or notes.

(c) One or more series of bonds or notes may be issued for each hospital project or any hospital projects may be combined in one or more series of bonds or notes if the governing body, in the exercise of its discretion, deems the same to be in the best interest of the issuer, but each hospital project may be considered separately with respect to the provisions of Sections 8 and 9 of this Act.

(d) The issuer shall determine the form of the bonds or notes, including any interest coupons to be attached thereto, and shall determine the denomination or denominations of the bonds or notes and the place or places of payment of principal, redemption premium, if any, and interest. Provision may be made for execution of the bonds or notes and coupons, if any, under the provisions of Chapter 204, Acts of the 57th Legislature, 1961, as amended (Article 717j–1, Vernon's Texas Civil Statutes). In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds, notes, or coupons shall cease to be such officer before the delivery of such bonds or notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery. The bonds or notes may be issued in coupon or in registered form, or both, or may be payable to a specific person, as the issuer may determine, and provisions may be made for the registration of any coupon bonds or notes as to the principal alone and also as to both principal and interest, and provision may be made for the conversion of coupon bonds or notes into registered bonds or notes without coupons and for

the reconversion into coupon bonds or notes of any registered bonds or notes without coupons. If the duty of such conversion or reconversion is imposed upon a trustee in a trust agreement, the substituted bonds or notes need not be reapproved by the Attorney General of Texas, and they shall remain incontestable. The issuer shall sell the bonds or notes at such price or prices as shall be determined by the governing body of the issuer.

(e) The proceeds of the bonds or notes shall be used solely for the payment of the cost of the hospital project for which the bonds or notes were issued, and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing their issuance or in the trust agreement securing the same. If the proceeds of the bonds or notes shall exceed the cost of the hospital project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or notes.

(f) From the proceeds from the sale of the bonds or notes, the governing body may set aside amounts for payments into reserve funds, and provisions for such funds may be made in the resolution authorizing the bonds or notes or any instruments securing the same. The proceeds from the sale of the bonds or notes may be invested: (1) in direct, indirect, or guaranteed obligations of the United States government or its agencies maturing in the manner that may be specified by the resolution authorizing the bonds or notes or any other instrument securing the bonds or notes; or (2) in certificates of deposit of any bank or trust company which deposits are secured by such obligations. Any bank or trust company with trust powers may be designated by the governing body to act as depository of the proceeds of the bonds or notes or of contract or lease revenues. Such bank or trust company shall furnish such indemnifying bonds or pledge such securities as may be required by the issuer to secure the deposits.

(g) Prior to the preparation or issuance of definitive bonds or notes, the issuer may issue interim receipts or temporary bonds or notes, with or without coupons, exchangeable for definitive bonds or notes when such bonds or notes shall have been executed and are available for delivery. Such interim receipts or temporary bonds or notes shall be for a maximum term of two years. The issuer shall submit such interim receipts or temporary bonds or notes to the Attorney General of Texas in accordance with Subsection (i) of this Section 7.

(h) Bonds or notes may be issued in accordance with the provisions of this Act without obtaining the consent of any department, division, commission, board, bureau, or agency of the State of Texas, and without any proceedings or the happening of any conditions or things other than those proceedings, conditions, or things which are specifically required by this Act.

(i) After issuance of the bonds or notes is authorized and before the bonds or notes may be delivered to the purchaser thereof, the bonds or notes and the proceedings authorizing their issuance and securing the bonds or notes shall be presented to the Attorney General of Texas for examination. Where such bonds or notes recite that they are secured by a pledge of all or any part of the revenues of the issuer to be derived from any lease or other contract, such contracts shall also be submitted to the Attorney General of Texas. If the attorney general finds that such bonds or notes have been duly authorized in accordance with the constitution and laws of the State of Texas and that such contracts, if any, submitted to him securing and relating to the bonds or notes have been made in accordance with the constitution and laws of the State of Texas, he shall approve the bonds or notes and such contracts. The bonds or notes when approved shall be registered by the Comptroller of Public Accounts of the State of Texas. After such approval and registration, the bonds or notes and any and all contracts submitted therewith shall be valid and binding obligations in accordance with their terms, and shall be incontestable in any court or other forum.

(j) Nothing in this Act shall supercede the provisions of the state certificate of need law.

(k) Before authorizing the issuance of any bonds or notes or calling an election on any matters authorized by this Act, the issuer shall deposit with the chief administrative officer of the issuer a full and complete description of any proposed hospital project, including a detailed listing and explanation of projected costs, the reasons for the hospital project, and the names of the owners of the nonprofit corporation for whom the hospital project is to be constructed. All of the information deposited or required to be deposited by this section is public information.

Resolution for Issuance of Bonds or Notes; Publication; Protest of Issuance; Election

Sec. 8. Before issuing any bonds or notes in accordance with the provisions of this Act, the governing body of an issuer shall adopt a resolution declaring its intention to do so and stating the maximum amount of bonds or notes proposed to be issued, the purpose for which the bonds or notes are to be issued, and the tentative date, time, and place at which the governing body proposes to authorize the issuance of such bonds or notes. A substantial copy of such resolution shall be published three times in a newspaper or newspapers of general circulation in the territorial limits of the issuer. The first publication shall be made not more than 45 days prior to the tentative date fixed in such resolution and the third publication shall be made not less than 10 days prior to the tentative date fixed in such resolution for the authorization of the bonds or notes. If at least 5 percent or 20,000 of the qualified electors of the issuer, whichever is less, shall file a written protest against the issuance of such proposed bonds or notes at no later than the close of business the business day before the tentative date specified for the au-

thorization of such bonds or notes, then an election on the question of the issuance of such bonds or notes shall be called and held as herein provided. If no such protest is filed, then such bonds or notes may be issued by the issuer without an election at any time within a period of two years after the tentative date specified in the resolution; provided, however, that the governing body of an issuer, in its discretion, may call an election on such question, in which event it shall not be necessary to publish the notice of its intention to issue bonds or notes as provided herein.

Election on Issuance of Bonds or Notes

Sec. 9. If an election is called, notice thereof shall be published three times in a newspaper or newspapers of general circulation in the territorial limits of the issuer. The first publication shall be made not more than 45 days prior to the date fixed for such election, and the third publication shall be made not less than 10 days prior to the date fixed for such election. The election shall be conducted in accordance with the general laws of Texas pertaining to bond elections in cities, except as modified by the provisions of this Act. The order calling the election shall specify the date of such election, the place or places of holding the election, and the presiding judge and alternate judge for each voting place, and shall provide for clerks as provided in the Election Code of the State of Texas. The form of ballot shall be in conformity with the applicable provisions of such election code and the ballots shall provide for voting for or against the following proposition: "The issuance of revenue bonds or notes or other evidences of indebtedness for the hospital project or hospital projects." As soon as practicable after such election is held, the governing body of the issuer shall convene and canvass the returns of the election, and in the event a majority of the voters voting in such election approves the proposition, such governing body shall so find and declare and shall be authorized to proceed with the authorization of bonds or notes. No election shall again be called on the proposition of issuing revenue bonds or notes for any hospital project which has been defeated by a majority of the voters voting in an election within six months of the proposed new election, and no bonds or notes shall be issued for any such hospital project until a majority of the voters voting in an election held for that purpose approve the issuance of such bonds or notes.

Leases and Other Contracts; Terms

Sec. 10. Any lease or other contract entered into pursuant to this Act may be for such term as the parties may agree, and may provide that it shall continue in effect until the bonds or notes specified therein, or refunding or substitution bonds or notes issued in lieu of such bonds or notes, are fully paid or provision has been made for their final payment.

Refunding Bonds or Notes

Sec. 11. An issuer is hereby authorized to provide by resolution for the issuance of its revenue refunding bonds or notes for the purpose of refunding any bonds, notes, or other evidences of indebtedness then outstanding, issued to provide a hospital project, which bonds, notes, or evidences of indebtedness may or may not have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, notes, or evidences of indebtedness. The bonds, notes, or evidences of indebtedness previously issued and to be refunded by the revenue refunding bonds or notes described in this Section 11 need not have been originally issued by the issuer of the revenue refunding bonds or notes. The issuance of such bonds or notes, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the issuer in respect of the same, shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the issuer, the refunding bonds or notes may be issued in exchange or substitution for outstanding bonds, notes, or other evidences of indebtedness or may be sold and the proceeds used for the purpose of paying or redeeming outstanding bonds, notes, or other evidences of indebtedness.

Securing Bonds or Notes by Trust Agreement

Sec. 12. (a) Any bonds or notes issued under the provisions of this Act may be secured by a trust agreement by and between the issuer and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the State of Texas. Any such trust agreement may pledge or assign lease income, contract payments, fees, or any other charges to be received from a non-profit corporation. Such bonds or notes, within the discretion of the governing body of the issuer, may be additionally secured by a mortgage, a deed of trust lien, or other security interest upon a designated hospital project vesting in the trustee power to sell such hospital project for the payment of the indebtedness, power to operate such hospital project, and all other powers and authority for the further security of the bonds or notes.

(b) The trust agreement may evidence a pledge of all or any part of the revenues of the issuer to be derived from the ownership, operation, lease, use, mortgage, and/or sale of any hospital project for the payment of principal of, redemption premium, if any, and interest on such bonds or notes as the same shall become due and payable and may provide for the creation and maintenance of reserves. Any such trust agreement or any resolution providing for the issuance of such bonds or notes may contain such provisions for protecting and enforcing the rights and remedies of the holders thereof as may be reasonable and proper and not in violation of law,

including covenants setting forth the duties of the issuer and the non-profit corporation in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the hospital project in connection with which such bonds or notes shall have been issued, and the custody, safeguarding, and application of all money. Any such trust agreement may set forth the rights and remedies of the bondholders or noteholders and of the trustee, and may restrict the individual right of action by bondholders or noteholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the issuer may deem reasonable and proper for the security of the bondholders or noteholders and may also contain provisions governing the issuance of bonds and notes to replace lost, stolen, or mutilated bonds or notes. All expenses incurred by any issuer in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the hospital project with respect to which the bonds or notes have been issued.

Default in Payment of Bonds or Notes; Enforcement by Mandamus or by Appointment of Receiver

Sec. 13. Any agreement or contract made in accordance with the provisions of this Act may contain a provision that, in the event of a default in the payment of the principal of, redemption premium, if any, or the interest on bonds or notes issued in accordance with, or relating to, such agreement, or in the performance of any agreement contained in the proceedings, mortgage, or instruments relating to such bonds or notes, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rates, rents, or contract payments and to apply the revenues from the hospital project in accordance with such resolution, mortgage, or instruments.

Foreclosure of Mortgage to Secure Bonds or Notes

Sec. 14. Any mortgage to secure bonds or notes issued in accordance with the provisions of this Act may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the property secured by the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds or notes secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

Members of Governing Body; Method of Selecting and Term of Office

Sec. 15. If an authority issues bonds or notes in accordance with the provisions of this Act, notwithstanding any provision of law, and under no circumstances, shall the method of selecting and the term of office of any of the members of the governing body of such authority be prescribed in the resolution authorizing the issuance of such bonds or notes, the trust agreement securing such bonds or notes, or any other agreement relating to such bonds or notes.

Authority of Governing Body

Sec. 16. Except as limited by the provisions of this Act, each governing body of an issuer shall have full and complete authority with respect to bonds or notes of such issuer, lease agreements in which such issuer is lessor, sales agreements, and all other contracts and the provisions thereof.

Tax Exemption for Bonds or Notes

Sec. 17. In carrying out the purposes of this Act, the issuer will be performing an essential public function and any bonds or notes issued by it and their transfer and the interest therefrom, including any profits made from the sale thereof, shall at all times be free from taxation by the State of Texas or any municipality or political subdivision thereof.

Bonds or Notes as Securities

Sec. 18. Bonds or notes issued under the provisions of this Act, and coupons, if any, representing interest thereon, shall when delivered be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code, as amended (Chapter 8, Title I, Business & Commerce Code),[1] and shall be exempt securities under the Texas Securities Act, as amended (Article 581–1, et seq., Vernon's Texas Civil Statutes). A lease agreement, sales agreement, or other contract under this Act shall not be a security within the meaning of the Texas Securities Act.

[1] Business and Commerce Code, § 8.101 et seq.

Bonds or Notes as Legal and Authorized Investments and Security

Sec. 19. Unless the bonds and notes issued under this Act are ineligible for investments in accordance with the criterion established in other statutes, rulings, or regulations of the State of Texas or the United States, then the bonds and notes under this Act shall be and are hereby declared to be legal and authorized investments for any banks; savings banks; trust companies; building and loan associations; insurance companies; fiduciaries; trustees and guardians; and sinking funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas. Such bonds or notes shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, and other political corporations or subdivisions of the State of Texas, and they shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmatured coupons, if any, appurtenant thereto.

Expenses of Relocation, Rerouting, Altering Construction, etc.

Sec. 20. In the event any issuer, in the exercise of the power of relocation or any other power, makes necessary the relocation, raising, lowering, rerouting, or changing the grade of, or altering the construction of any highway, railroad, electric transmission line, cable television transmission line, telegraph or telephone properties and facilities, or pipelines, all such necessary relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of the issuer or the non-profit corporation. Such expense shall be paid from the proceeds of the sale of the bonds or notes. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, changing the grade of, or alteration of construction to provide comparable replacement, without enhancement, of such facilities, after deducting therefrom the net salvage value derived from the old facility.

Severability

Sec. 21. The provisions of this Act are severable. If any word, phrase, clause, paragraph, sentence, section, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid; and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, section, part, or provision.

[Acts 1975, 64th Leg., p. 285, ch. 126, eff. Sept. 1, 1975.]

Art. 4437f. Texas Hospital Licensing Law

[See Compact Edition, Volume 4 for text of 1 to 6]

Application for License; Approval; Fees; Disposition

Sec. 7. Applications for license shall be made to the Licensing Agency upon forms provided by it, and shall contain such information as the Licensing Agency may reasonably require. It shall be necessary that the Licensing Agency issuing licenses require that each hospital show evidence that there are one or more physicians on the medical staff of the hospital, and that these physicians are currently licensed by the Texas State Board of Medical Examiners.

The Licensing Agency may require that the application be approved by the local health officer, or other local official, for the compliance with city ordinances on building construction, fire prevention, and sanitation. Hospitals outside city limits shall comply with corresponding state laws.

Each application shall be accompanied by a license fee. In the event the application for a license is denied, such fee shall be refunded to the applicant.

All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said agency for its use in the administration and enforcement of this Act.

Each hospital so licensed shall pay a license fee, both initially and annually thereafter, of Two Dollars ($2.00) per bed; but in no event shall the total fee exceed the sum of Five Hundred Dollars ($500.00).

[See Compact Edition, Volume 4 for text of 8 and 9]

Failure to Comply with Health Planning and Development Act

Sec. 9A. The Licensing Agency shall deny, cancel, revoke, or suspend a license if its finds that the applicant or licensee has failed substantially to comply with any applicable provisions of the Texas Health Planning and Development Act [1] requiring a certificate of need or an exemption certificate.

[1] Article 4418h.

[See Compact Edition, Volume 4 for text of 10 to 17]

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.04, eff. May 28, 1975; Acts 1977, 65th Leg., p. 1056, ch. 387, § 5, eff. Aug. 29, 1977.]

Art. 4437f-1. Hospital Laundry Cooperative Associations; Health Related State-Supported and Nonprofit Institutions Within Medical Centers in Counties Over 1,600,000 Population

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. The following terms used in this Act shall have the following meanings:

(1) "Eligible institutions" shall include only political subdivisions and municipalities of the State of Texas; health-related state-supported institutions, including, but not limited to, Texas A&M University System, The University of Texas System, and Texas Woman's University; nonprofit health-related institutions; and cooperative associations created to provide certain systems as defined in Subsection (2), Section 2, Chapter 195, Acts of the 64th Legislature, Regular Session, 1975 (Article 4447r, Vernon's Texas Civil Statutes), a unit of which is situated in any county of this State having a population in excess of 1,600,000 inhabitants according to the most recent federal census. In addition to other activities, such entities must be engaged in health-related pursuits to become eligible institutions, and, except for cooperative associations, must be exempt from federal income tax. It is not a requirement of this Act that any component institution of any state-supported institution be a member of any association created under this Act, but any one or more of such component institutions may be a member of any one or more associations.

[See Compact Edition, Volume 4 for text of 2(2)]

Powers, Rights and Functions

Sec. 3. Associations established under this Act shall have the following specific powers, rights, and functions:

(1) to acquire, own, and operate a laundry system on a cooperative basis solely for the benefit of eligible institutions whether or not members of the association and to engage in such activities for the benefit of such eligible institutions as are necessarily related to the acquisition, ownership, operation, and maintenance of a laundry system;

(2) to acquire by purchase, lease, or otherwise lands and estates in lands (whether leasehold or otherwise) appropriate or reasonably incidental to the laundry system, and to own, hold, improve, develop, and manage any real estate so acquired, and to construct or cause to be constructed, improve, enlarge, and equip buildings or other structures on any such real estate, and to encumber and dispose of any lands or estates in lands and any buildings or other structures at any time owned or held by the association;

(3) to acquire by purchase, lease, manufacture, or otherwise any personal property appropriate or reasonably incidental to the laundry system, including property for the cleaning, washing, steaming, bleaching, dry cleaning, and disinfecting of all types of clothing, cloths, and fabrics and the transportation and distribution of these articles, and to encumber and dispose of any such personal property;

(4) to acquire by purchase or otherwise any uniforms, clothing, or linen for its members;

(5) to borrow or raise money without limit as to amount; to sell, grant security interests in, pledge, and otherwise dispose of and realize upon accounts receivable, contract rights and other choses in action; to make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money so borrowed or in payment for property purchased, and to secure the payment thereof by mortgage upon, or creation of security interests in, or pledge of, or conveyance or assignment in trust of, the whole or any part of the property, real or personal, of the association.

[See Compact Edition, Volume 4 for text of 4 and 5]

Cooperative and Nonprofit Requirements; Franchise Tax Exemption; Annual Written Report; Disposition of Surplus Revenue

Sec. 6. Associations established under this Act shall be purely co-operative and not for profit, and shall not be required to pay any annual franchise tax. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter. Associations shall nevertheless file a written report to the Secretary of State showing their assets and the condition of their affairs annually. Such associations may by their directors, in accordance with their bylaws, pass any surplus revenue derived from the laundry system to the surplus fund or divide such funds among the patrons thereof in proportion to their respective contributions to the working capital of the association and patronage.

[See Compact Edition, Volume 4 for text of 7 to 14]

[Amended by Acts 1977, 65th Leg., p. 1231, ch. 476, §§ 4 to 6, eff. June 15, 1977; Acts 1981, 67th Leg., p. 1776, ch. 389, § 24, eff. Jan. 1, 1982.]

Section 7 of the 1977 amendatory act provided:

"If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

Art. 4437h. Surveys and Inspections of Health Care Facilities

Purpose

Sec. 1. The purpose of this Act is to require that state agencies, including the Texas Department of Health Resources,[1] the Department of Public Welfare,[2] and those agencies with which each contracts, who perform surveys, inspections, and investigations of health care facilities, do not duplicate their procedures or subject such health care facilities to duplicitous rules and regulations.

Definitions

Sec. 2. For the purposes of this Act:

(1) "Health care facility" shall have the same definition as that given in the Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes).

(2) "Inspection" means all surveys, inspections, investigations, and other procedures necessary for a state agency or a division or unit thereof to perform in order to carry out various obligations imposed on such agency by applicable state and federal law and regulations.

Only Necessary Inspections to be Made; Acceptance of Equivalent On-Site Inspections

Sec. 3. State agencies shall make or cause to be made only such inspections necessary to carry out the various obligations imposed on each agency by applicable state and federal law and regulations. Any on-site inspection by a state agency or a division or unit thereof that substantially complies with the inspection requirements of any other state agency or any other division or unit of the inspecting agency charged with making similar inspections shall be accepted as an equivalent inspection in lieu of an on-site inspection by said agency or by a division or unit of the inspecting agency. A state agency shall coordinate its health care facility inspections both internally and with those required by other state agencies so as to insure that the requirements of this section are met.

Licensing Inspections; Exemptions; Certification of Nursing Homes

Sec. 4. (a) All hospitals licensed by the Texas Department of Health Resources which have been certified under Title XVIII of the Social Security Act, as added July 30, 1965 (Public Law 89–97),[3] or which have obtained accreditation from the Joint Commission on Accreditation of Hospitals or which have obtained accreditation from the American Osteopathic Association shall not be subject to licensing inspections under the Texas Hospital Licensing Law [4] by the agency so long as such certification or accreditation is maintained. Such hospitals shall only be required to annually remit the statutory licensing fees in order to be issued a license by the licensing agency.

(b) The State Department of Public Welfare and the Texas Department of Health Resources shall establish procedures to eliminate or reduce duplication of functions in certifying nursing homes for payments under the requirements of the Medical Assistance Act of 1967, as amended (Article 695j–1, Vernon's Texas Civil Statutes), and federal laws and regulations relating to Title XIX of the Social Security Act.[5] The procedures established under this section shall provide for use by both agencies of information collected by either agency in making inspections for certification purposes and in investigating complaints regarding matters that would affect the certification of a nursing home.

Code of Professional Responsibility; Contents; Complaints; Sanctions for Violations

Sec. 5. State agencies shall promulgate a Code of Professional Responsibility which shall regulate the conduct of those employees of the agency who carry out inspections and surveys of health care facilities. The code shall set forth the appropriate procedure to be undertaken by the agency personnel on (1) entering the facility, (2) during the course of the inspection, and (3) during the exit conference. The code shall set forth specific standards of conduct describing appropriate behavior toward the staff and administration of the facility being surveyed, toward the residents of the facility being surveyed, toward the families of the residents, and toward the general public. Each agency shall establish a procedure for the receipt and investigation of complaints of code violations. All complaints of code violations shall be investigated by the agency and the results of the investigation forwarded to the complainant. Each agency may adopt rules and regulations establishing sanctions for violations of the Code of Professional Responsibility.

Unannounced Inspections or Surveys

Sec. 6. Nothing in the Code of Professional Responsibility shall prohibit or impede unannounced visits to inspect or survey the health care facility by the employees of the agency.

[Acts 1977, 65th Leg., p. 1055, ch. 387, §§ 1 to 4, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2492, ch. 652, § 1, eff. Aug. 31, 1981.]

[1] Name changed to Department of Health; see art. 4418g.
[2] Name changed to Department of Human Resources; see Acts 1977, 65th Leg., p. 1371, ch. 543, § 2.
[3] 42 U.S.C.A. § 1395 et seq.
[4] Article 4437f.
[5] 42 U.S.C.A. § 1396 et seq.

Art. 4438a. Denial of Emergency Treatment by Hospital Officer or Employee for Inability to Pay

Sec. 1. No officer or employee of a general hospital supported with public funds may deny a person diagnosed by a licensed physician on the staff of that hospital as seriously ill or injured emergency services customarily provided at the hospital because the person is unable to establish his ability to pay for the services.

Sec. 2. An officer or employee of a hospital who violates the provisions of Section 1 of this Act is guilty of a Class C misdemeanor and on conviction is subject to a fine not exceeding $200.

Sec. 3. Nothing in this Act shall be construed to relieve a person of his obligation to pay for services provided by a hospital.

[Acts 1975, 64th Leg., p. 1331, ch. 495, §§ 1 to 3, eff. Sept. 1, 1975.]

Art. 4439. Repealed by Acts 1977, 65th Leg., p. 316, ch. 149, § 1, eff. May 13, 1977

See, now, art. 4477, rules 3 and 13.

Art. 4442a–1. Adult Day Care Act

Purpose

Sec. 1. It is the purpose of this Act to establish programs of quality adult day care and day health care that will enable elderly and handicapped persons with medical or functional impairments to maintain maximum independence and to prevent premature or inappropriate institutionalization. It is the purpose of this Act to provide adequately regulated supervision for elderly and handicapped persons while enabling them to remain in a family environment and affording the family a measure of normalcy for their daily activities. It is therefore the intent of the legislature to provide for the development of policies and programs that will:

(1) provide alternatives to institutionalization;

(2) establish facilities for adult day care and day health care throughout the state that offer services and are accessible to economically disadvantaged persons; and

(3) prevent inappropriate institutionalization.

Short Title

Sec. 2. This Act may be cited as the Adult Day Care Act.

Definitions

Sec. 3. In this Act:

(1) "Adult day care facility" means a facility that provides counseling, recreation, or food or

any combination of these services on a daily or regular basis but not overnight to four or more elderly or handicapped persons who are not related by blood, marriage, or adoption to the owner of the facility.

(2) "Adult day health care facility" means a facility that provides health care or physical therapy or both and that may also provide adult day care services on a daily or regular basis but not overnight to four or more elderly or handicapped persons who are not related by blood, marriage, or adoption to the owner of the facility.

(3) "Elderly person" means a person 65 years of age or older.

(4) "Handicapped person" means a person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(5) "Department" means the Texas Department of Human Resources.

(6) "Licensing agency" means the Texas Department of Health.

(7) "Person" means an individual, corporation, or association.

Department Duties

Sec. 4. (a) The department shall adopt rules for implementing this Act.

(b) The department shall set standards for:

(1) the health and welfare of persons attending a facility;

(2) the eligibility of persons to attend a facility;

(3) the scope of services provided by a facility;

(4) adequate supervision for persons attending a facility;

(5) the professional staff and other personnel at a facility;

(6) adequate and healthful food service, where it may be offered;

(7) procedures for consultation with family members, case workers, or other persons responsible for the welfare of a person attending a facility; and

(8) prohibiting racial discrimination.

(c) The department may contract with political subdivisions or persons for transporting persons to a facility.

Licensing Agency Duties

Sec. 5. The licensing agency shall adopt rules for the licensing procedures and set standards for the safety and sanitation requirements for a licensed facility.

License

Sec. 6. (a) The licensing agency shall issue a license to operate an adult day care facility or an adult day health care facility to a person who has met the application requirements and received approval after an on-site inspection.

(b) A license issued under this Act expires one year from the date of issuance.

(c) The department may contract with the licensing agency for cooperative and efficient evaluation of an applicant for a license or license renewal.

(d) An applicant for a license that is already licensed by the licensing agency as a health care provider is entitled to have inspections and license renewal procedures coordinated so that one inspection may fulfill various licensing requirements.

License Application

Sec. 7. (a) An applicant for a license to operate an adult day care or an adult day health care facility must file an application on a form prescribed by the licensing agency together with a license fee of $25.

(b) The applicant shall provide evidence of:

(1) the ability to comply with the department's and licensing agency's requirements;

(2) responsible management; and

(3) qualified professional staff and personnel.

(c) A person who operates a facility that is licensed under this Act shall file an application for a renewal license before the expiration date of the current license on a form prescribed by the licensing agency together with a renewal fee of $25.

Inspections

Sec. 8. (a) The licensing agency may enter the premises at reasonable times and make an inspection necessary to issue a license or renew a license.

(b) Any person may request an inspection of a facility by notifying the licensing agency in writing of an alleged violation of a licensing requirement. The complaint shall be as detailed as possible and signed by the complainant. The licensing agency shall perform an on-site inspection as soon as feasible but no later than 30 days after receiving the complaint unless the agency determines after an investigation that the complaint is frivolous. The licensing agency shall respond to a complainant in writing. The licensing agency shall also receive and investigate anonymous complaints.

License Denial, Suspension, or Revocation

Sec. 9. (a) The licensing agency may deny, suspend, or revoke the license of an applicant or holder of a license who fails to comply with the rules or standards for licensing required by this Act.

(b) The licensing agency may revoke or suspend a license to be effective immediately when the health and safety of persons attending a facility are threatened. A person whose license is suspended or revoked under this subsection is entitled to a hearing within seven days after the effective date of the suspension or revocation.

Disposition of Funds

Sec. 10. (a) All fees collected under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(b) The legislature may appropriate the money received under this Act for the sole purpose of administering this Act.

Sec. 11. Repealed by Acts 1981, 67th Leg., p. 1792, ch. 391, § 6, eff. Aug. 31, 1981.

[Acts 1979, 66th Leg., p. 1509, ch. 562, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 1791, ch. 391, §§ 1 to 6, eff. Aug. 31, 1981.]

Art. 4442c. Convalescent and Nursing Homes and Related Institutions

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. (a) "Institution" means an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor, and, in addition, provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or services which meet some need beyond the basic provision of food, shelter, and laundry. Nothing in this Act shall apply to:

(1) a hotel or other similar place that furnishes only food and lodging, or either, to its guests;

(2) a hospital;

(3) an establishment conducted by or for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively upon prayer or spiritual means for healing, without the use of any drug or material remedy, provided safety, sanitary, and quarantine laws and regulations are complied with;

(4) an establishment that furnishes only baths and massages in addition to food, shelter and laundry;

(5) an institution operated by persons licensed by the Texas State Board of Chiropractic Examiners; or

(6) a facility operated within the jurisdiction of a state or federal governmental agency, including but not limited to the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, the State Commission for the Blind, the Texas Commission on Alcoholism, the Texas Department of Corrections, and the Veterans' Administration, where the facility is primarily engaged in training, habilitation, rehabilitation, or education of clients or residents, and such facility has been certified through inspection or evaluation as having met standards established by the state or a federal governmental agency.

"Institution" also means any place or establishment in or at which any person receives, treats or cares for, overnight or longer, within a period of twelve months, four or more pregnant women or women who have within two weeks prior to such treatment or care had a child born to them; provided, however, that this definition shall not include women who receive maternity care in the home of a relative within the third degree of consanguinity or affinity, nor shall it include general or special hospitals licensed in pursuance of or as those terms are defined in the Texas Hospital Licensing Law. Nothing in this Act shall be construed to prohibit an institution, as defined in this subdivision, from simultaneously caring for pregnant women and other women under 50 years of age.

"Institution" also means a foster care type residential facility providing room and board to fewer than four persons unrelated within the second degree of consanguinity or affinity to the proprietor and who, in addition to room and board, because of his physical or mental limitation or both, requires a level of care and services suitable to the needs of the individual which contribute to his health, comfort, and welfare; provided, however, that such institution shall be subject to licensure only upon written application for participation in the intermediate care program provided by Federal law as it now reads or may hereafter be amended.

[See Compact Edition, Volume 4 for text of 2(b) to 2(c)]

(d) "Licensing Agency" means the Texas Department of Health.

(e) "Respite care" means the provision by an institution of room, board, and care at the level ordinarily provided for permanent residents of the institution to a person for not more than two weeks for each stay in the institution.

(f) "Plan of care" means a written description of the medical care or the supervision and nonmedical care needed by a person during respite care.

(g) "Elderly person" means a person who is 65 years of age or older.

(h) "Handicapped person" means a person whose physical or mental functioning is sufficiently impaired to require medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(i) "Hospital" has the meaning given to the term by the Texas Hospital Licensing Law, as amended (Article 4437f, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 4 for text of 3]

Application for License

Sec. 4. An application for a license shall be made to the Licensing Agency upon forms provided by it and contain such information as the Licensing Agency requires which may include affirmative evidence of ability to comply with reasonable standards, rules and regulations as are lawfully prescribed hereun-

der. The application shall be accompanied by a license fee which shall be in the sum of Twenty-five Dollars ($25) plus One Dollar ($1) for each unit of capacity or bed space for which a license is sought. Such license fee shall be paid annually in said amount with each application for renewal of the institution's license. All license fees provided for herein shall be waived for the State of Texas and its departments, divisions, boards and agencies. All license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees are hereby appropriated to said Agency for its use in the administration and enforcement of this Act.

Upon receipt of an application for a license the Licensing Agency shall issue a license if upon inspection and investigation it finds that the applicant and facilities meet the requirements established under this law. A license, unless suspended or revoked, shall be renewed annually after an inspection and upon tender of the annual license fee together with the filing by the licensee and approval by the Licensing Agency of an annual report upon such date and containing such information in such form as the Licensing Agency prescribes by regulation. Such license shall be issued only for the premises and persons or governmental units and for the maximum number of beds named in the application and shall not be transferable or assignable. Any approved increase in the bed space shall be subject to an additional fee. Any violation of these provisions shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided for in Section 12 of this Act.

Fire Safety Requirements

Sec. 4A. (a) The Licensing Agency shall require all nursing homes and custodial care homes and major additions over One Hundred Thousand Dollars ($100,000) to existing nursing homes and custodial care homes which are approved for construction or conversion after September 1, 1979, to comply with the 1976 edition of the Code for Safety to Life from Fire in Buildings and Structures, known as the Life Safety Code (Pamphlet No. 101) of the National Fire Protection Association.

(b) After September 1, 1979, those building sections of a licensed nursing home or custodial care home, regardless of ownership, which have complied with or without waiver, with either the 1967 or 1973 edition of the Life Safety Code of the National Fire Protection Association will be recognized as meeting licensing requirements for fire safety as long as they continue to be in substantial compliance with either the 1967 or 1973 code edition.

(c) The requirements of this section do not preclude an institution from conforming to a higher or additional fire safety standard or provision where required by federal law or regulation. Where provisions of this section conflict with federal laws or regulations adopted after September 1, 1979, then the federal requirements prevail, if required for participation in federal programs.

(d) As provided in the 1976 edition of the Life Safety Code, the Licensing Agency shall have discretionary powers to grant exceptions to the code under certain conditions or in the interest of common and uniform applicability.

(e) Fire safety requirements for institutions other than nursing homes or custodial care homes shall be as determined by the Licensing Agency.

[See Compact Edition, Volume 4 for text of 5 and 6]

Failure to Comply with Health Planning and Development Act

Sec. 6A. The Licensing Agency shall deny, cancel, revoke, or suspend a license if it finds that the applicant or licensee has failed substantially to comply with any applicable provisions of the Texas Health Planning and Development Act [1] requiring a certificate of need or an exemption certificate.

[1] Article 4418h.

Emergency Suspension and Closing Order

Sec. 6B. (a) If the Licensing Agency finds an institution operating in violation of the standards prescribed by this Act and the violations create an immediate threat to the health and safety of a resident in the institution, the Licensing Agency shall suspend the license or order an immediate closing of the institution or part of an institution; and the Licensing Agency shall by rule provide for resident placement during the period of suspension to assure the health and safety of the residents in said institution.

(b) The order suspending a license under Subsection (a) of this section is immediately effective upon written notice to the license holder or on the date specified on the order.

(c) The order suspending the license and ordering an institution or part of an institution closed is valid for 10 days after the effective date.

Appointment of Trustee

Sec. 6C. (a) The legislature finds that the closing of nursing and convalescent homes for violations of laws and regulations may, in certain circumstances, have an adverse effect on both the residents of the facilities and the families of the residents. It is the purpose of this Act to provide for the appointment of a trustee to assume the operations of these facilities in a manner calculated to emphasize resident care and reduce resident trauma.

(b) Persons holding a controlling interest in a nursing or convalescent home at any time may request the licensing agency to assume the operation of the nursing home through the appointment of a trustee. Upon receiving a request for a trustee, the licensing agency may, if it considers the appointment desirable, enter into an agreement providing for the appointment of a trustee to take charge of

the facility under conditions considered appropriate by both parties. The agreement shall specify all terms and conditions of the trustee's appointment and authority and shall preserve all rights of the facility residents as granted by law. A trustee appointment made in accordance with this subsection terminates at the time specified by the parties or at the time when either party notifies the other in writing that the party wishes to terminate the appointment agreement.

(c) The licensing agency may request the attorney general to bring an action in the name and on behalf of the State of Texas for the appointment of a trustee to operate a nursing or convalescent home when any of the following conditions exist:

(1) the facility is operating without a license;

(2) the licensing agency has suspended or revoked the existing license of the facility;

(3) revocation or suspension procedures have been initiated and, in the opinion of the licensing agency, there is an imminent threat to the health and safety of the residents pending a final determination on license suspension or revocation;

(4) the facility is closing and arrangements for relocation of residents to other licensed facilities have not been made prior to closure; however, the duties of a trustee appointed under this subsection shall be limited to assuring an orderly and safe relocation of the facility's residents as quickly as possible;

(5) the licensing agency determines that an emergency exists that presents an immediate threat to the health and safety of residents of the facility.

(d) If, after hearing, the court finds that involuntary appointment of a trustee is necessary, the court shall appoint a trustee to take charge of the facility. When possible, the court shall appoint as trustee an individual whose background includes institutional medical administration.

(e) A trustee appointed pursuant to this section is entitled to a reasonable fee as determined by the court. The trustee may petition the court to order the release to the trustee of any payment due for care and services provided to the residents that has been withheld, such as payment withheld by the Texas Department of Human Resources at the recommendation of the Texas Department of Health. The funds may include Medicaid, Medicare, insurance or other third-party payments, or medical expenses borne by the resident that may be withheld by a governmental agency or other entity during the appointment of the trustee.

Rules, Regulations and Enforcements

Sec. 7. The Licensing Agency is authorized to adopt, amend, promulgate, publish and enforce minimum standards in relation to:

(a) Construction of the home or institution, including plumbing, heating, lighting, ventilation and other housing conditions, which shall insure the health, safety and comfort of residents and protection from fire hazard;

(b) Regulate the number and qualification of all personnel, including management and nursing personnel, having responsibility for any part of the care given to residents, and establish requirements for in-service education of all employees who have any contact with residents;

(c) All sanitary and related conditions within the institution and its surroundings, including water supply, sewage disposal, food handling and general hygiene, which shall insure the health, safety and comfort of the residents;

(d) Diet related to the needs of each resident and based upon good nutritional practice or on recommendations which may be made by the physician attending the resident;

(e) Equipment essential to the health and welfare of the residents;

(f) At least one unannounced inspection per year shall be mandatory; further inspections may be required by the Licensing Agency;

(g) For at least one unannounced inspection in each year as required by Subsection (f) of this section, the Licensing Agency shall arrange to invite in the inspection at least one person as a citizen advocate from one of the following groups: American Association of Retired Persons, the Texas Senior Citizen Association, or the Texas Retired Federal Employees, or any other statewide organization for the elderly, except that this subsection does not apply to an institution that provides maternity care;

(h) The use and administration of medications in conformity with applicable law and rules and regulations on the use and administration of medications; all personnel administering medications must have completed a state-approved training program in medication administration;

(i) Grading each home or institution so as to recognize those homes or institutions that go beyond the minimum level of services and personnel, as established by the agency and such attained grade shall be prominently displayed for public view and as incentive to attain the superior grade, allow each home or institution to advertise such grade, except that this subsection does not apply to an institution that provides maternity care.

(j) The Licensing Agency shall require one medical examination per resident per year. The details of this examination will be specified by the Licensing Agency.

(k) Unless another state or federal requirement prohibits, the Licensing Agency may allow a licensed facility to operate a portion of the facility under the standards of a lesser licensing category. The Licensing Agency shall determine the rank of licensing categories and may establish procedures and stan-

dards to accommodate a facility's operation under the lower category.

The Licensing Agency is further authorized to provide for advice to and coordination of its personnel and facilities with any local agency of a city or county where such city or county shall see fit to supplement the state program with further regulations required to meet local conditions.

Language Requirements Prohibited

Sec. 7A. No institution may prohibit a resident or employee from communicating in his or her native language with other residents or employees for the purpose of acquiring or providing medical treatment, nursing care, or institutional services.

[See Compact Edition, Volume 4 for text of 8]

Respite Care

Sec. 8A. (a) An institution that is licensed under this Act may provide respite care for an elderly or handicapped person according to a plan of care that is filed at the institution and agreed upon between the institution and the person arranging the respite care before the institution admits the person for the care.

(b) The plan of care must be signed by a licensed physician if the person for whom respite care is arranged needs medical care or treatment. If the person does not need medical care or treatment, the plan of care must be signed by the person arranging for the respite care.

(c) The institution may keep an agreed plan of care for not longer than six months from the date it is received and during that period admit a person for respite care as frequently as is needed and as accommodations are available.

(d) An institution that offers respite care shall notify the licensing agency in writing that it is offering respite care.

(e) The licensing agency, at the time of ordinary licensing inspections, or at other times if the agency determines necessary, shall inspect the institution's records of respite care services, the physical accommodations available for respite care, and the plan of care records to insure that the respite care services comply with the licensing standards of this Act and with any rules the licensing agency may adopt to regulate respite care services.

(f) The licensing agency may suspend the license of an institution that provides respite care that does not comply with the licensing standards of this Act. The licensing agency may require an institution to cease providing respite care if the agency determines that the respite care does not meet the standards required by this Act and that the institution cannot comply with those standards in the respite care it provides. The licensing agency may suspend the license of an institution that continues to provide respite care after receiving an order in writing from the licensing agency that it is to cease.

(g) The licensing agency may adopt rules for the regulation of respite care provided by a licensed institution.

Inspections and Consultations

Sec. 9. The Licensing Agency shall make or cause to be made such inspections and investigations as it deems necessary. The Licensing Agency shall hold at least one open hearing a year in each licensed institution to hear any complaints of substandard care or licensing violations; provided, however, an institution that provides maternity care is exempt from this specific requirement. The Licensing Agency shall notify the institution, the designated closest living relatives or legal guardians of the institution's residents, and other appropriate State or Federal agencies that work with the institution of the time, place, and date of the hearing. The Licensing Agency may exclude an institution's administrators and personnel from the hearing. The Licensing Agency shall notify an institution of any complaints received at the hearing. The Licensing Agency shall provide a summary of the complaints without identifying the source thereof to the licensed institution. The Licensing Agency shall determine and implement a mechanism to notify confidentially the complainant of the results of the investigation which followed the complaint. It is further provided that the Licensing Agency shall wherever possible utilize the services and consultation of other State and local agencies in carrying out its responsibility under the provisions of this Act and shall use wherever possible the facilities of the Texas Department of Human Resources especially in setting up and maintaining standards with reference to the humane treatment of the individuals in the institutions.

The Licensing Agency is hereby given the authority to cooperate with local public health officials of any county or incorporated city in carrying out the provisions of this Act and may in its discretion delegate to said local authorities the power to make the inspections and recommendations to the Licensing Agency in accordance with the terms and provisions of this Act.

[See Compact Edition, Volume 4 for text of 10]

Injunction; Temporary Restraining Order; Appointment of Trustee

Sec. 11. (a) When the Licensing Agency finds that a person's violations of the standards prescribed by this Act create an immediate threat to the health and safety of the residents of an institution, the Licensing Agency may petition the district court for a temporary restraining order to restrain the person from continuing the violations.

(b) When a person violates the licensing requirements or the standards prescribed by this Act, the Licensing Agency may petition the district court for an injunction to prohibit a person from continuing the violation or to restrain or prevent the establish-

ment, conduct, management, or operation of an institution without a license under this Act. A suit for a temporary restraining order or other injunctive relief must be brought in the judicial district that includes the county of the alleged violation.

(c) On application for injunctive relief and a finding that a person is violating the licensing requirements or standards prescribed by this Act, the district court shall grant the injunctive relief the facts may warrant.

(d) At the request of the Licensing Agency, the attorney general shall institute and conduct the suits authorized in Subsections (a) and (b) of this section and Section 6C of this Act, in the name of the State of Texas, including the appointment of a trustee to operate a nursing or convalescent home under appropriate orders of the court.

Penalties

Sec. 12. (a) Any person establishing, conducting, managing, or operating any institution without a license under this law shall be guilty of a misdemeanor and upon conviction shall be fined not more than Two Hundred Dollars ($200) for the first offense and not more than One Hundred Dollars ($100) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

(b) A person who violates this Act or who fails to comply with a rule or regulation authorized by this Act determined by the Licensing Agency to threaten the health and safety of the patient is subject to a civil penalty of not less than $100 nor more than $500 for each act of violation, and each day of a continuing violation constitutes a separate ground of recovery.

Sec. 13. Repealed by Acts 1977, 65th Leg., 1st C.S., p. 55, ch. 2, § 11, eff. July 22, 1977.

[See Compact Edition, Volume 4 for text of 14 and 15]

Reports of Abuse and Neglect

Sec. 16. (a) Persons Required to Report. (1) Any person or any owner or employee of an institution having cause to believe that an institution resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person or persons shall report in accordance with Section 16(b).

(2) Each institution employee shall be required to sign a statement that he or she realizes his or her criminal liability for failure to report such abuses as a condition of employment by the institution.

(b) Contents of Report. (1) Nonaccusatory reports reflecting the reporting person's belief that an institution resident has been or will be abused or neglected or has died of abuse or neglect shall be made to:

(A) the Licensing Agency; or

(B) any local or state law enforcement agency.

(2) All reports must contain the name and address of the institution resident, the name and address of the person responsible for the care of the resident, if available, and any other relevant information.

(3) All reports received by any local or state law enforcement agency shall be referred to the Licensing Agency or to the agency designated by the court to be responsible for the protection of the institution resident.

(4) An oral report shall be made immediately on learning of the abuse or neglect and a written report shall be made within five days to the same agency. Anonymous reports, while not encouraged, will be received and acted on in the same manner as acknowledged reports. Anonymous reports about a specific individual, accusing the individual of abuse or neglect, need not be investigated.

(c) Immunities. Any person reporting pursuant to this chapter is immune from liability, civil or criminal, that might otherwise be incurred or imposed because of the making of the report or reports. Immunity extends to participation in any judicial proceeding resulting from the report. Persons reporting in bad faith or with malice are not protected by this section. A person making a bad faith, malicious, or reckless report is subject to the criminal penalty of a Class A misdemeanor, in addition to any civil penalties.

(d) Privileged Communications. In any proceeding regarding the abuse or neglect of an institution resident or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of communications between attorney and client.

(e) Investigation and Report of Receiving Agency. (1) The Licensing Agency or the agency designated by the court to be responsible for the protection of institution residents shall make a thorough investigation promptly after receiving either the oral or written report. The primary purpose of the investigation shall be the protection of the institution resident.

(2) In the investigation the agency shall determine:

(a) the nature, extent, and cause of the abuse or neglect;

(b) the identity of the person responsible for the abuse or neglect;

(c) the names and conditions of the other institution residents in the institution;

(d) an evaluation of the persons responsible for the care of the institution residents;

(e) the adequacy of the institution environment; and

(f) any other data required by the Licensing Agency.

(3) The investigation shall include a visit to the resident's institution and an interview with the subject institution resident. If admission to the institution, or any place where the institution resident may be, cannot be obtained, the district court, upon cause shown, shall order the persons responsible for the care of the institution resident, or the person in charge of any place where the institution resident may be, to allow entrance for the interview and investigation.

(4) If, before the investigation is complete, the opinion of the Licensing Agency is that immediate removal is necessary to protect the institution resident from further abuse or neglect, the Licensing Agency shall file a petition for temporary care and protection of the institution resident.

(5) The agency designated by the court to be responsible for the protection of the institution resident or the Licensing Agency shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the district attorney and the appropriate law enforcement agency.

(f) Central Registry. The Licensing Agency shall establish and maintain in Austin, Texas, a central registry of reported cases of institution resident abuse or neglect. The Licensing Agency may adopt rules and regulations as are necessary in carrying out the provisions of this section. The rules shall provide for cooperation with hospitals and clinics in the exchange of these reports.

(g) Failure to Report; Penalty. (1) A person commits an offense if the person has cause to believe that an institution resident's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Subsection (a)(1).

(2) An offense under this section is a Class A misdemeanor.

(h) Confidentiality. The reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the regulations adopted by the investigating agency.

Prohibition of Remuneration

Sec. 17. (a) No institution may receive remuneration, either monetary or otherwise, from any individual, corporation, company, or agency which furnishes services or materials to the institution or its occupants for a fee.

(b) The Licensing Agency may seek the revocation of the license of an institution that violates the prohibition in Subsection (a) of this section.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.05, eff. May 28, 1975; Acts 1977, 65th Leg., 1st C.S., p. 49, ch. 2, §§ 1 to 7, 9, 11, eff. July 22, 1977; Acts 1979, 66th Leg., p. 1903, ch. 771, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1962, ch. 775, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 865, ch. 309, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2564, ch. 684, §§ 1 to 6, eff. Aug. 31, 1981.]

Section 8 of the 1977 Act provides as follows:

"(a) The Department of Public Welfare shall contract those medical functions and quality of care functions, including quality assurance and consultation, level of care determination, periodic medical review, utilization review, and related program support, pertaining to long-term care regulation and services performed by the Medical Assistance Unit under the authority of the State Department of Public Welfare to the Texas Department of Health. The contract shall include all provisions necessary to ensure compliance with federal law and regulations, including submission of reports and other information requested by the State Department of Public Welfare, for purposes of Title XIX of the Social Security Act. After January 1, 1978, if the Governor of Texas makes a finding that the public interest will be served, he shall direct the Department of Public Welfare to request a waiver from the Department of Health, Education, and Welfare to allow the Texas Department of Health to perform those medical and quality of care functions pertaining to long-term care regulation and services performed by the Medical Assistance Unit of the State Department of Public Welfare.

"(b) If a contract is executed or a waiver is obtained, the funds, personnel, equipment, and central office supporting personnel relating to the functions described in Subsection (a) are to be included in the contract between the State Department of Public Welfare and the Texas Department of Health or transferred by the waiver.

"(c) The functions of eligibility determination, health related social services, vendor drug program, and provider payments related to long-term care are not included in the programs to be contracted under this section."

Art. 4442c–1. Repealed by Acts 1975, 64th Leg., p. 847, ch. 323, § 5.08(3), eff. May 28, 1975

See, now, the Health Planning and Development Act, classified as art. 4418h.

Art. 4442d. Nursing Home Administrators Licensure Act

[See Compact Edition, Volume 4 for text of 1 and 2]

Creation and Composition of Board

Sec. 3. (1) There is hereby created the Texas Board of Licensure for Nursing Home Administrators which shall consist of nine (9) members. The Commissioner of Human Resources for the State of Texas, or his designee, and the Commissioner of Health of the Texas Department of Health, or his designee, shall be ex officio nonvoting members of the board. Such designees shall be chosen from those representatives of the respective departments who are actively assigned to and are engaged in work in the nursing home field. One member shall be a physician duly licensed by the State of Texas; one member shall be an educator connected with a university program in public health or medical or nursing home care administration within the State of Texas or a psychiatrist whose field includes geriatric or institutional psychiatry, or a psychologist whose field includes clinical psychology or educational psychology. Four (4) members shall be duly licensed nursing home administrators of the State of Texas; however, at least one of these four shall represent a nonproprietary nursing home. Three (3) members must be representatives of the general public who are not licensed under this Act.

(2) Appointments to the board shall be made by the Governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

[See Compact Edition, Volume 4 for text of 3(3)]

(4) Appointed members of the board serve staggered terms of six (6) years with the terms of three (3) members expiring on January 31 of each odd-

number year. Vacancies on the board shall be filled by appointment for the unexpired portion of the term.

(5) All appointive members of the board who are nursing home administrators shall hold degrees from an accredited four year college or university and shall have special interest, background, and experience in the field of care for the aged. They shall be residents of the State of Texas and citizens of the United States and shall be of good character.

In lieu of the degree requirement above specified an appointee who is a nursing home administrator representative may nevertheless qualify by submitting to the Governor satisfactory evidence of two (2) years of practical experience as a nursing home administrator for each year, whether one or more, of four (4) years of college and such appointee shall receive credit toward his qualifications for each full year of credits earned by him in an accredited college or university.

[See Compact Edition, Volume 4 for text of 3(6) to 3(8)]

(9) All money collected under this Act shall be deposited in the state treasury in a designated separate account in the name of the board and shall be subject to appropriation by the legislature only for use by the board.

(10) The Texas Board of Licensure for Nursing Home Administrators is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

(11) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

[1] Article 5429k.

Restrictions on Board Members, etc.

Sec. 3A. (1) A member of the board or an employee of the board or of the Texas Board of Health who carries out the functions of the board may not:

(a) be an officer, employee, or paid consultant of a trade association in the nursing home industry;

(b) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the nursing home industry; or

(c) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the board unless notice and an opportunity to participate is given to all parties to the proceeding, if the member or agent is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding.

(2) Members of the board, except those members who are duly licensed nursing home administrators, may not have personally, nor be related to persons within the second degree by affinity or third degree by consanguinity who have, except as consumers, financial interests in nursing homes as officers, directors, partners, owners, employees, attorneys, or paid consultants of the nursing homes or otherwise.

(3) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the board or serve as a member of the board.

Organization of the Board

Sec. 4. (1) As soon as practicable after appointment, appointive members of the board shall be certified by the Governor's office and shall take the constitutional oath of office for officers of the State of Texas. The board shall elect from its appointive members a chairman and vice chairman and these officers shall be elected to serve for one (1) year or so much thereof as shall remain, and elections for these offices shall be held annually thereafter for the term of a year. Elections to fill vacancies shall be held in the same manner for the balance of any unexpired term. The board shall appoint a person to be executive director to the board who shall serve at the pleasure of the board and who shall be the chief executive officer to the board but not a member thereof. The executive director shall have such powers and shall perform such duties as may be prescribed by law or delegated to him by the board under its rules and regulations. Suitable office space, equipment and supplies and additional agents or employees as may be required for discharging the functions of the board shall be provided within the limits of the funds available to the board as hereinafter provided for. The board shall adopt an official seal which shall be affixed to licenses, certificates and other official documents of the board.

(2) The executive director and such other person as the board may designate, as an alternate, shall act as fiscal agent for the board and shall be responsible for the receipt, deposit, safekeeping and disbursement of all funds of the agency, provided, however, that at all times the board shall cause to be maintained in force a fidelity bond covering the executive director and such other person in an amount which shall at all times exceed any reasonable expectations as to the total amount of funds to be held at any one time to the account of the board. At no time shall the fidelity bond or bonds be for an amount less than $25,000.00.

(3) The board shall hold not less than four meetings per year after due notice thereof and at any meeting a majority of the board shall constitute a quorum. Board members shall receive a per diem of $25.00 while engaged in board business together with actual and necessary expenses.

(4) Each member of the board shall be present for at least one-half of the regularly scheduled meetings held each year by the board. The failure of a member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.

(5) The Texas Board of Licensure for Nursing Home Administrators shall be administratively attached to the Texas Department of Health. The department shall provide administrative assistance to the board; and the department and the board shall coordinate administrative responsibilities in order to avoid unnecessary duplication and in furtherance of the objective of providing quality nursing home services. The department shall submit the board's budget requests to the legislature. The department and the board shall share investigative staff and other employees. However, the board may employ its own additional investigative staff.

[See Compact Edition, Volume 5 for text of 5]

Functions and Duties of the Board

Sec. 6. It shall be the function and duty of the board to:

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator and standards which must be met by licensees, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators and satisfactorily perform the duties of nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards;

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such;

(7) conduct or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this Act, and make provisions for the conduct of such courses and their accessibility to residents of this State, unless it finds that there are a sufficient number of courses conducted by others within this State to meet the needs of the State. In lieu thereof the board may approve courses conducted within and without the State as sufficient to meet the education and training requirements of this Act; and

(8) on request, provide to each individual who fails an examination administered by the board an analysis of the individual's performance on the examination.

[See Compact Edition, Volume 4 for text of 7]

Posting of Complaint Information Sign

Sec. 7A. There shall at all times be prominently displayed in every nursing home regulated by the state, a sign in letters no smaller than one inch in height, the contents of which shall contain the name, mailing address, and telephone number of the Texas Board of Licensure for Nursing Home Administrators and which shall contain a statement informing consumers that complaints against nursing home administrators can be directed to the board.

Rulemaking Authority

Sec. 8. (a) The Board shall have the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in Section 1908 of the Social Security Act,[1] the Federal rules and regulations promulgated thereunder, and other pertinent Federal authority; provided, however, that no rule shall be promulgated, altered or abolished without the approval of a two-thirds majority of the Board.

(b) If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements.

[1] 42 U.S.C.A. § 1396g.

Qualifications for Licensure

Sec. 9. The Board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for

such nursing home administrators. No license shall be issued to a person as a nursing home administrator unless:

(1) he is at least 18 years of age, of good moral character, and sound in mental and physical health;

(2) he has satisfactorily completed a course of instruction and training prescribed by the board, which course shall be conducted by or in cooperation with an accredited postsecondary educational institution and which course shall be so designed as to content and so administered as to present sufficient knowledge of the proper needs to be served by nursing homes; laws governing the operation of nursing homes and the protection of the interests of patients therein; and the elements of good nursing home administration; or has presented evidence satisfactory to the board of sufficient education, training or experience in the foregoing fields to enable him to administer, supervise and manage a nursing home;

(3) he has passed an examination administered by the board and designed to test for competence in the subject matters referred to in subsection (2) hereof;

(4) that applicant submit written evidence, on forms provided for such purpose by the board, that he has successfully completed a course of study and has been graduated from a high school or secondary school approved and recognized by the educational authorities of the State in which such school is located, or a political division thereof, or has submitted a certificate indicating that he has obtained high school or secondary school equivalency, such certificate being certified by a State educational authority or a political division thereof; and

(5) that applicant has complied with all other qualifications and requirements as may have been established by rule and regulation of the board.

Licenses and Fees

Sec. 10.

[See Compact Edition, Volume 4 for text of 10(1)]

(2) Every holder of a nursing home administrator's license shall renew it biennially, by making application to the board. The license remains valid and is subject to renewal for 30 days after the expiration date of the license. The board shall notify each person licensed under this Act of the expiration date of the person's license and the amount of the fee that is required for its renewal. The notice shall be mailed at least 30 days before the expiration date of the license. A person renews an unexpired license or a license that has been expired for 30 days or less by paying to the board the renewal fee. A person renews a license that has been expired for more than 30 days but less than one year by paying to the board the renewal fee plus $50. A person may not renew a license that has been expired for one year or more, but the person may obtain a new license by applying for the license in the manner that a person applies for an original license. Renewals of licenses shall be granted as a matter of course, unless the board finds, after due notice and hearing, that the applicant has acted or failed to act in such a manner or under circumstances, as would constitute grounds for suspension or revocation of a license.

(3) Each person licensed as a nursing home administrator shall pay an initial license fee to be fixed by the board which shall not exceed $150. Renewal licenses shall be issued biennially at a fee to be set by the board which shall not exceed $150 for the biennium. Reasonable fees shall be set by the board for the issuance of copies of public records in its office as well as for certificates or transcripts and duplicates of lost instruments. Each applicant for examination and license shall accompany the application with an examination fee not to exceed $150 which shall not be refundable, for investigation, processing, and testing purposes. Upon the certification by any department, division, board or agency of the State of Texas of the necessity therefor, all examination fees and license fees provided for herein shall be waived for any employee of such state entity so long as such person remains an employee of the State of Texas and does not serve as a nursing home administrator of a nursing home operated other than by such state entity. The board shall set the fees in amounts that produce sufficient money for administering this Act.

(4) The board may issue a nursing home administrator's license for the regular fee to any person who holds a current license as a nursing home administrator from another jurisdiction, provided that the board finds that the standards for licensure in such other jurisdiction are at least the substantial equivalent of those prevailing in this State; and that the applicant is otherwise qualified; and that the other state gives similar recognition and endorsement to nursing home administrators licenses of the State of Texas.

(5) The board shall have authority to receive and disburse funds received pursuant to Section 1908(e)(1) of the Social Security Act [1] or from any other Federal source of funds or grants for the furtherance of board duties and responsibilities hereunder.

(6) Deleted by Acts 1979, 66th Leg., p. 1231, ch. 591, § 4, eff. Sept. 1, 1979.

[1] 42 U.S.C.A. § 1396g(e)(1).

Disciplinary Action

Sec. 11. (1) The board shall be authorized to revoke, suspend, or refuse to renew, a nursing home administrator's license after due notice and hearing upon the following grounds or any of them:

(a) upon proof that such licensee has wilfully or repeatedly violated any of the provisions of this Act or the rules adopted in accordance therewith;

(b) upon proof that such licensee has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of the home of which he is administrator;

(c) upon proof that the licensee was guilty of fraud in securing his license;

(d) upon proof of the intemperate use of alcohol or drugs which in the opinion of the board creates a hazard to patients;

(e) upon proof of a judgment of a court of competent jurisdiction finding the licensee insane;

(f) upon proof that such licensee has been convicted in a court of competent jurisdiction of a misdemeanor or a felony involving moral turpitude; and

(g) upon proof that the licensee has been grossly negligent in his duties as a nursing home administrator.

(2) The board shall have jurisdiction to hear all disciplinary charges brought under the provisions of this Act against persons licensed as nursing home administrators and upon such hearings shall determine such charges upon their merits. Proceedings under this Act shall be begun by filing with the board written charges under oath. Such charges may be preferred by any person and after notice in writing of not less than fifteen (15) full days, stating the place and date of the hearing, accompanied by a copy of the complaint or charges, the board, or a majority thereof, shall hold a hearing on said charges, cause a written record to be made of the evidence given at the hearing, accord the person charged a right to present evidence, be represented by an attorney, and to cross-examine the witnesses. In this connection the board shall be authorized to issue subpoenas for witnesses at the hearing, either at the request of the person cited or on behalf of the board or its representative; to compel the attendance of witnesses, and administer oaths to witnesses. Disobedience of a subpoena duly issued by the board or by its executive director under its direction, shall constitute a contempt of the board which shall be enforceable by any district court sitting in the county in which the hearing is being held upon petition of the board and the presentation to the court of evidence of wilful disobedience and if the district judge is of the opinion and finds that the subpoena was wilfully disobeyed, such judge shall be authorized to punish a subpoenaed witness in like manner and to the extent provided in like cases in civil actions in the district courts of Texas.

(3) Strict rules of evidence shall not apply in a hearing before the board but all decisions of the board shall be supported by sufficient legal and competent evidence.

(4) The failure of the nursing home to comply with Texas State Department of Health requirements for licensure of nursing homes may be considered by the board in determining whether the licensee meets standards for licensure as a nursing home administrator.

(5) If a written complaint is filed with the board or the Texas Board of Health relating to a licensee under this Act, the board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.

(6) The board must within 31 days from the date of filing of the complaint determine whether a hearing shall be held on such complaint or whether such complaint shall be dismissed and shall notify both the person who filed the complaint and the person against whom the complaint has been filed of the board's decision.

(7) If the board determines that a hearing should be held on a complaint, the board shall designate a hearing officer to conduct the hearing on the complaint. The hearing shall be held within 61 days from the date that the written complaint was filed unless such time is extended in writing by the board.

(8) The hearing officer shall keep a complete record of the hearing and shall transmit the record to the board when completed.

(9) The hearing officer shall forward to the board the complete record of the hearing not later than 30 days from the date of the hearing along with the hearing officer's recommendations concerning what disciplinary action, if any, should be taken by the board with respect to the complaint.

(10) The board shall take action on such complaint by written order not later than the 120th day following the filing of the complaint, unless the date for hearing was delayed pursuant to Subsection (7) of this section, in which case the deadline for the order is extended accordingly. Copies of the order and the record of the hearing shall be filed together in the office of the board, indexed, and made available for public inspection.

(11) The board shall maintain an information file on each complaint it receives.

Injunction

Sec. 11A. A person who violates Section 7 of this Act or who engages in conduct that is grounds for revocation or suspension of the person's license under Section 11 of this Act, on petition of the board, may be enjoined or restrained by a district court from practicing nursing home administration.

[See Compact Edition, Volume 4 for text of 12 to 16]

[Amended by Acts 1975, 64th Leg., p. 1116, ch. 420, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.012, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1226, ch. 591, §§ 1 to 7, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 855, ch. 302, §§ 1 to 3, eff. June 8, 1981.]

Section 6 of the 1979 amendatory act provided:

"Membership. (a) In making the initial appointments of public members to the Texas Board of Licensure for Nursing Home Administrators, the governor shall designate one public member for a term expiring on January 31, 1981, one for a term expiring on January 31, 1983, and one for a term expiring on January 31, 1985.

"(b) A person holding office as a member of the Texas Board of Licensure for Nursing Home administrators on September 1, 1979, other than the ex officio members, who satisfies the provisions of this Act, continues to hold office for the term for which the member was originally appointed."

Art. 4445. Venereal Diseases

[See Compact Edition, Volume 4 for text of 1 to 7]

Confidentiality of Information and Records; Circumstances Permitting Release

Sec. 8. All information and records held by the Texas Department of Health and its agents relating to known or suspected cases of sexually transmissible diseases shall be strictly confidential. Such information shall not be released or made public upon subpoena or otherwise, except that release may be made under the following circumstances:

(1) release is made of medical or epidemiological information for statistical purposes in a manner such that no individual person can be identified, or

(2) release is made of medical or epidemiological information with the consent of all persons identified in the information released, or

(3) release is made of medical or epidemiological information to medical personnel or the appropriate state agencies to enforce the provisions of this chapter and related rules and regulations concerning the control and treatment of sexually transmissible diseases, or

(4) release is made of medical or epidemiological information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party, or

(5) in a case involving a minor not more that 12 years of age, only the name, age, address, and sexually transmissible disease treated shall be reported to appropriate agents as required by Chapter 34, Family Code. No further information shall be released. If the information to be disclosed is required in a court proceeding involving child abuse the information is disclosed in camera.

No state or local health authority, officer, or employee shall be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of a person examined or treated for any sexually transmissible disease in a local health authority facility, or of the existence or contents of such reports received from a private physician or private health facility, without the consent of the persons examined or treated for such diseases.

[See Compact Edition, Volume 4 for text of 9 and 10]

[Amended by Acts 1981, 67th Leg., p. 760, ch. 290, § 1, eff. Aug. 31, 1981.]

Art. 4445c. Laboratory Tests for Venereal Diseases; Reporting Results

Notification of Findings; Duty

Sec. 1. (a) Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of those venereal diseases significant from a public health standpoint listed in Section 3 of this Act shall notify the Communicable Disease Services Section, Texas State Department of Health, of such findings.

(b) Notification shall be submitted by the person in charge of the laboratory to the Communicable Disease Services Section, Texas State Department of Health, through the local health officer having jurisdiction of the area containing the office address of the physician for whom the examination or test was performed or, if the examination or test was not performed for a physician, the area in which the facility is located. In the absence of a local full-time health officer, said report(s) will be forwarded directly to the Communicable Disease Services Section, Texas State Department of Health.

Notification of Findings; Contents

Sec. 2. (a) Notification shall contain the date and result of the test performed, the name and age of the person from whom the specimen was obtained, and the name and address of the physician for whom such examination or test was performed or, if the examination or test was not performed for a physician, a notation to that effect and a statement of the reason it was performed. Also, notification shall be submitted in writing and in such form and manner as prescribed by the Communicable Disease Services Section, Texas Department of Public Health.

[See Compact Edition, Volume 4 for text of 2(b) to 4]

Communications with Patient and Physician

Sec. 5. (a) Except when acting on the basis of information other than the laboratory notification, neither the Communicable Disease Services Section, Texas State Department of Health, nor the local health director will under any circumstances communicate with the patient or the potential contacts until a diagnosis has been reported to the Department of Health by the attending physician, if any, but if there is no attending physician, communications with the person from whom the specimen was derived and other potential contacts may proceed as in cases in which the information is received from other than laboratory notification.

[See Compact Edition, Volume 4 for text of 5(b) to 7]

[Amended by Acts 1975, 64th Leg., p. 2211, ch. 704, §§ 1 to 3, eff. June 21, 1975.]

Art. 4447. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Agriculture Code.

Art. 4447c. Texas Coordinating Commission for State Health and Welfare Services

Creation; Membership; Terms

Sec. 1. There is hereby created a "Texas Coordinating Commission for State Health and Welfare Services," to be composed of the following persons:

(a) The Director of Health Resources, the chairman of the Texas Health Facilities Commission, the Commissioner of Education, the Commissioner of Mental Health and Mental Retardation, the Chairman of the Texas Employment Commission, the Commissioner of Public Welfare, the Executive Secretary-Director of the State Commission for the Blind, the Executive Director of the Texas Youth Council, and the executive heads of other health-related state agencies designated by executive order of the Governor, each of whom, or his designee, is an ex officio, non-voting member of the Commission;

(b) Three members of the Senate appointed by the Lieutenant Governor;

(c) Three members of the House of Representatives appointed by the Speaker of the House;

(d) Three citizen members appointed by the Governor and chosen for their recognized interest in health or welfare activities of the state, local governments, and private agencies.

The terms of members of the Commission first appointed shall be from the date of their appointment to December 31, 1976, and appointments thereafter shall be for two-year periods ending on December 31 of even-numbered years.

Application of Sunset Act

Sec. 1a. The Texas Coordinating Commission for State Health and Welfare Services is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1985.

[1] Article 5429k.

Organization; Chairman

Sec. 2. The Texas Coordinating Commission for State Health and Welfare Services shall meet within thirty (30) days after the appointment of all its members. The Governor shall biennially designate one member as chairman and another as vice-chairman.

Staff and Services Assistance

Sec. 3. The Governor shall provide the staff and services necessary to assist the Commission in performing its duties. To the extent practicable, all health-related state agencies with ex officio representatives on the Commission shall provide staff and services assistance.

Meetings

Sec. 4. Regular meetings of the Texas Coordinating Commission for State Health and Welfare Services shall be held in Austin or at other locations within the state as determined by the Commission, and after its initial organization the Commission shall meet at least once every three months. Called meetings of the Commission may be held at such times and at such places as it may determine. A majority of the appointed members shall constitute a quorum.

Compensation; Expenses

Sec. 5. Members of the Commission shall serve without compensation, but appointed members of the Commission shall be reimbursed for their actual and necessary expenses while in attendance upon meetings of the Commission from funds appropriated by the Legislature.

Sec. 6. Repealed by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.08(4), eff. May 28, 1975.

Application for Federal Grant; Study and Analysis of Services and Programs

Sec. 6A. (a) Whenever any state agency or institution applies for a federal grant for health purposes, prior to or at the time the application is submitted to the federal government, the agency or institution shall provide the Commission with a copy of the application. The Commission may review and comment on the application. If the agency or institution receives funds pursuant to the application, it shall so report to the Commission and shall advise the Commission of the disposition of the funds.

(b) The Commission shall make a continuing study and analysis of the services and programs of all health-related state agencies and shall include its findings and recommendations in its annual report.

[See Compact Edition, Volume 4 for text of 7]

Reports

Sec. 8. The Commission shall compile annual reports on its activities for submission to the Governor and the Legislature. The reports shall be submitted not later than December 1 of each year and shall include any recommendations which the Commission may have for legislative action.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.06, May 28, 1975; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.105, eff. Aug. 29, 1977.]

Art. 4447d-2. Immunization Reminder Notices

In a program administered by the State Department of Health in which immunization reminder notices for children are sent to persons, the notices must be sent without discrimination on the basis of the legitimacy of the child and must be addressed to an adult or parent without including an indication of the marital status of the addressee and without use of the terms "Mr.," "Mrs.," "Miss," or "Ms."

[Acts 1975, 64th Leg., p. 1020, ch. 389, § 1, eff. June 19, 1975.]

Art. 4447e. Phenylketonuria and Other Heritable Diseases

Sec. 1. The Texas Department of Health shall establish, maintain, and carry out a program designed to combat mental retardation in children suffering from phenylketonuria and other heritable diseases. The Texas Board of Health is authorized to adopt regulations necessary to carry out the program. The Board may adopt a rule specifying the heritable diseases covered by this Act. The Department shall establish and maintain a diagnostic laboratory for conducting experiments, projects, and other undertakings necessary to develop tests for the early detection of phenylketonuria and other heritable diseases; for developing ways and means or discovering methods to be used for the prevention and treatment of phenylketonuria and other heritable diseases in children; and for such other purposes considered necessary by the Department to carry out the program.

Sec. 2. The physician attending a newborn child, or the person attending a newborn child that was not attended by a physician, shall cause the child to be subjected to tests for phenylketonuria and other heritable diseases that have been approved by the Department. The tests required by this Act must be performed by the Department's diagnostic laboratory or by a laboratory approved by the Department under Section 2A of this Act. Providing, however, that such tests shall not be given to any child whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets or practices. Provisions of this Act are mandatory with the exception above-stated; however, no physician, technician, or person giving such tests shall be liable or responsible because of the failure or refusal of the parent or guardian to give permission or consent to tests herein provided. The city or county health officer shall follow up all positive tests with the attending physician who notified such officer or with the parent of the newborn child if such notification was made by a person other than a physician. The Department may follow up positive tests with the attending physician, the attending physician's designee, the city or county health officer, or the parents of the newborn child. When a positive test is confirmed, the services and facilities of the Department, and those of other boards, departments, agencies, and political subdivisions of the State cooperating with the Department in carrying out the program, shall be made available to the extent needed by the family and physician. The Department and the other departments, boards, agencies, and political subdivisions of the State cooperating with it shall, in cooperation with an attending physician, provide for the continued medical care, dietary, and other related needs of such children where necessary or desirable.

Sec. 2A. (a) The Department may develop a program to approve any laboratory that wishes to perform the tests required to be administered under this Act. To the extent that they are not otherwise provided in this Act, the Board may adopt rules prescribing procedures and standards for the conduct of the program.

(b) The Department may prescribe the form and reasonable requirements for the application and the procedures for processing the application.

(c) The Department may prescribe the test procedure to be employed and the standards of accuracy and precision required for each test.

(d) The Department may extend or renew any approval in accordance with reasonable procedures prescribed by the Board.

(e) The Department may for good cause, after notice to the affected laboratory and a hearing if requested, restrict, suspend, or revoke any approval granted under this program.

(f) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the Board and the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Sec. 3. The various boards, departments, agencies and political subdivisions of the State capable of assisting the Department in carrying out any program established under the authority of this Act may cooperate with the department and are encouraged to furnish their services and facilities in aid of any such program.

Sec. 4. The Department may invite the cooperation of all physicians and hospitals in the state which provide maternity and newborn infant care to participate in any program established by the Department under the authority of this Act.

[Amended by Acts 1979, 66th Leg., p. 578, ch. 269, §§ 1 to 5, eff. Aug. 27, 1979.]

Art. 4447e–1. Hypothyroidism

Detection Program; Diagnostic Laboratory

Sec. 1. The Texas Department of Health [1] shall establish a program to detect hypothyroidism in newborn infants. The department shall establish a diagnostic laboratory for conducting screening and other undertakings necessary to develop and carry out tests for the early detection of hypothyroidism.

[1] Name changed to Department of Health; see art. 4418g.

Rules

Sec. 2. The department may adopt rules necessary to carry out the program established pursuant to this Act.

Test Requirement

Sec. 3. The physician attending a newborn infant or the person attending a newborn infant who is not attended by a physician shall cause the child to be subjected to a test or tests for hypothyroidism

which have been approved by the department. The tests required by this Act must be performed at the department's diagnostic laboratory or at a laboratory that has been approved by the department under Section 4 of this Act.

Approval of Laboratories

Sec. 4. (a) The Texas Department of Health may develop a program to approve any laboratory that wishes to perform the tests required to be administered under this Act. To the extent that they are not otherwise provided in this Act, the board is authorized to adopt rules prescribing procedures and standards for the conduct of the laboratory approval program.

(b) The department may prescribe the form and reasonable requirements for the application and the procedures for processing such application.

(c) The department may prescribe the test procedure to be employed and the standards of accuracy and precision required for each test.

(d) The department may extend or renew any approval in accordance with reasonable procedures prescribed by the department.

(e) The department may for good cause after notice to the affected laboratory and an opportunity for hearing restrict, suspend, or revoke any approval granted under this program.

(f) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the board and the applicable provisions of the Administrative Procedure and Texas Register Act, as amended, (Article 6252–13a, Vernon's Texas Civil Statutes).

Provisions Mandatory; Exception for Religious Tenets; Liability for Failure to Give Permission for Tests

Sec. 5. The provisions of this Act are mandatory; provided, however, that such test or tests shall not be given to any child whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets or practices. Provided further, that no physician, technician, or person giving a test for hypothyroidism is liable or responsible because of the failure or refusal of a parent or guardian to give permission for tests provided in the screening program under this Act.

Follow Up of Positive Tests

Sec. 6. The city or county health officer shall follow up all positive tests with the attending physician who notified such officer or with the parent of the newborn child if such notification was made by a person other than a physician. The Texas Department of Health is authorized to follow up positive tests with the attending physician or the physician's designee, the city or county health officer, or the parent of the newborn infant.

Diagnosis and Treatment

Sec. 7. When a positive test is confirmed, the services and facilities of the department and other boards, agencies, and political subdivisions in the state cooperating in the program shall be made available to establish a definitive diagnosis and to supervise treatment as a service to the family and attending physician.

Services and Facilities to Aid Program

Sec. 8. The various boards, agencies, and political subdivisions of the state capable of assisting the department in carrying out a program established under this Act are encouraged to furnish their services and facilities to aid the program.

Cooperation of Physicians and Hospitals

Sec. 9. The department may invite the cooperation of physicians and hospitals in the state which provide maternity and newborn infant care to participate in any program established under this Act.

Gifts and Donations

Sec. 10. The department may receive gifts and donations on behalf of the program established under this Act.

[Acts 1977, 65th Leg., p. 905, ch. 339, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1601, ch. 677, § 1, eff. Aug. 27, 1979.]

Art. 4447e–2. Sudden Infant Death Syndrome

Sec. 1. When a child under the age of two years dies within this state under circumstances of sudden death, cause unknown, or found dead, cause unknown, that death shall be immediately reported to the justice of the peace, coroner, medical examiner, or other proper official under the law, wherein the body lies, whereupon the justice of the peace, coroner, or medical examiner shall inform the parents or legal guardian of the child that they may request an autopsy performed on the child, the reasonable cost of which shall be borne by the state. An autopsy requested by the parents or legal guardians shall be arranged for by the justice of the peace, coroner, or medical examiner and the parents or legal guardians shall be promptly notified of the results of that autopsy. The reasonable cost of the autopsy performed under this section shall be reported to the director of Health Resources who shall in turn instruct the comptroller to pay the account to the person entitled thereto out of funds appropriated for this purpose by the legislature. The reasonableness and propriety of all claims and accounts under this section shall be passed upon and determined by the director of Health Resources. Nothing in this section shall be construed as interfering with the duties and responsibilities of the justice of the peace, coroner, or medical examiner as defined in other sections of the law.

Sec. 2. Sudden Infant Death Syndrome (SIDS) is hereby recognized and may be used as a primary cause of death, when applicable, in such certification as is required by Rule 40a, Sanitary Code for Texas, as amended (Article 4477, Revised Civil Statutes of Texas, 1925).

Sec. 3. The Texas Department of Health Resources [1] shall develop and disseminate to proper agencies, governmental bodies, officials, physicians, nurses, health professionals, and citizens a model program that can be used in follow-up consultation and information about Sudden Infant Death Syndrome (SIDS) and its characteristic grief-guilt reaction. It is the intent of this section to initiate a model program that can be used to humanize and maximize the understanding and the handling of Sudden Infant Death Syndrome (SIDS) in this state. The Texas Department of Health Resources may appoint an advisory committee to assist it in the development of such program.

[Acts 1977, 65th Leg., p. 1196, ch. 462, eff. Aug. 29, 1977.]

[1] Department of Health Resources abolished and Department of Health created by Acts 1977, 65th Leg., ch. 474; see art. 4418g.

Art. 4447e-3. Expired

The expired article, a pilot program to identify infants with high risk of impaired hearing, was derived from Acts 1979, 66th Leg., p. 2069, ch. 809. It expired on September 1, 1981, by force of its own terms.

Art. 4447r. Cooperative Associations by Eligible Institutions

Establishment; Names; Purposes

Sec. 1. Associations may hereafter be established for the purpose of enabling "eligible institutions" (as defined in this Act) to cooperate with each other for the purposes named in this Act. Only eligible institutions can become members of associations established under this Act. Each association chartered under this Act shall contain as part of its name the words "Cooperative Association," and its purposes shall be limited to establishing, operating, and maintaining a "system" or "systems" (as defined in this Act) on a cooperative basis solely for the use and benefit of eligible institutions. Eligible institutions are authorized to create and establish each association only under such terms and conditions as may be prescribed by the governing bodies of the respective eligible institutions.

Definitions

Sec. 2. The following terms used in this Act shall have the following meanings:

(1) The term "eligible institutions" shall include only political subdivisions and municipalities of the State of Texas; health-related state-supported institutions, including, but not limited to, Texas A & M University System, The University of Texas System, and Texas Woman's University, and nonprofit health-related institutions; and cooperative associations created to provide a system as defined in Subsection (2) of this Section 2, a unit of which is situated in any county of this state having a population in excess of 1,600,000 inhabitants according to the most recent federal census. In addition to other activities, such entities must be engaged in health-related pursuits to become eligible institutions, and, except for cooperative associations, must be exempt from federal income tax. It is not a requirement of this Act that any component institution of any state-supported institution be a member of any association created under this Act, but any one or more of such component institutions may be a member of any one or more associations.

(2) The term "system" shall include all properties and facilities necessary, incidental, and appropriate for the purposes of providing laundering services, central heating and cooling services (including steam and chilled water supply), cable television and other communication services, including transmission of x-rays, records, and other copy, parking facilities and traffic control facilities and devices on private streets, and food processing and dietary food preparation and supply services, together with the buildings and land (whether leasehold or other interests) necessary to provide the foregoing services, properties and facilities, all by and for the benefit of the members of the cooperative associations created under this Act.

Powers, Rights and Functions

Sec. 3. Each association established under this Act shall have the following specific powers, rights, and functions:

(1) to acquire, own, and operate a system or systems on a cooperative basis solely for the benefit of the eligible institutions whether or not members of the association and to engage in such activities for the benefit of such eligible institutions as are necessarily related to the acquisition, ownership, operation, and maintenance of the system or systems as defined in this Act;

(2) to acquire by purchase, lease, or otherwise, lands and estates in lands (whether leasehold or otherwise) appropriate or reasonably incidental to the system or systems as defined in this Act; to own, hold, improve, develop, and manage any real estate so acquired; to construct, or cause to be constructed, improve, enlarge, and equip buildings or other structures on any such real estate; and to encumber and dispose of any lands or estates in lands and any such buildings or other structures at any time owned or held by the association;

(3) to acquire by purchase, lease, manufacture, or otherwise, any personal property appropriate or reasonably incidental to the system or systems as defined in this Act; and

(4) to borrow or raise money; to sell, grant security interests in, pledge, and otherwise dispose of and realize upon accounts receivable, contract rights, and other choses in action; and to make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money so borrowed or in payment for property purchase, and to secure the payment thereof by mortgage upon, or creation of security interests in, or pledge of, or conveyance or assignment in trust of, the whole or any part of the property, real or person-

al, of the association, all of the above being authorized to the extent necessary to accomplish the purposes set forth in this Act.

Public Funds

Sec. 4. No public funds appropriated to any department of the state government or to any state institution shall be used in establishing any association authorized by this Act.

Articles of Incorporation

Sec. 5. Eligible institutions desiring to establish associations hereunder may, in the exercise of the rights herein granted and subject to the limitations herein provided, prepare and file articles under the general corporation laws of the State of Texas, which corporation laws, including the Texas Business Corporations Act, shall upon such filing govern such associations except wherein such laws conflict with the provisions of this Act.

Franchise Tax Exemption; Reports; Surplus Revenue

Sec. 6. The associations established under this Act shall be purely cooperative and not for profit, and shall not be required to pay any annual franchise tax. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter. Associations shall nevertheless file a written report to the secretary of state showing their assets and the condition of their affairs annually. Such associations may by their directors, in accordance with their bylaws, pass any surplus revenue derived from each system to the surplus fund or divide such funds among the patrons thereof in proportion to their respective contributions to the working capital of the association and patronage.

Loaning Money to Members

Sec. 7. The associations established under this Act shall not have the power to loan money to their members.

Loans From Public or Private Sources; Services and Costs

Sec. 8. The associations established under this Act shall only have the powers enumerated in Section 3 of this Act. The creation, operation, or maintenance of each system may be accomplished in whole or in part with the proceeds of loans obtained from any public or private source. Such associations are authorized to furnish services from each system to any and all eligible institutions and to determine the amounts to be charged as the cost of furnishing such services.

Bonds, Notes or Other Obligations

Sec. 9. From time to time each association established under this Act shall have authority to borrow money and to deliver evidences of indebtedness to include bonds or notes in such amounts as may be necessary for the purpose of creating, enlarging, operating, or maintaining the system or systems. Such bonds, notes, or other evidences of indebtedness authorized by this Act shall be paid solely from the revenues received from the operation of the system or systems or from funds specifically provided for that purpose from other sources, and said revenues and funds may be pledged to secure the payment of such bonds, notes, or other evidences of indebtedness. Said bonds, notes, or other evidences of indebtedness authorized under this Act shall never constitute indebtedness of the State of Texas or of any of the eligible institutions that are members of any association, and the holders thereof shall never have the right to demand or to enforce payment of principal or interest of the bonds, notes, or other evidences of obligations out of funds, other than those specifically pledged to the payment thereof.

Bonds as Legal and Authorized Investments

Sec. 10. All bonds of the associations established by this Act shall be and are hereby declared to be legal, eligible, and authorized investments for banks, savings and loan associations, insurance companies, fiduciaries, and trustees.

Election to Membership; Voting Rights; Suspension or Expulsion; Transfer of Membership Certificates

Sec. 11. (a) Membership in the associations established under this Act shall be limited to eligible institutions and can be obtained only by election to membership at the time of organization by the organizers thereof, or by the board of directors of the association, when organized under such rules and limitations as may be contained in the bylaws. Members shall have voting rights in the management of the affairs of the association contained in the bylaws of the association.

(b) Members may be suspended or expelled for misconduct under such rules and regulations as may be prescribed in the bylaws. In case of expulsion, the association shall pay to the members such amount and at such time as may be fixed in its bylaws in cancellation of such membership; provided, however, that such member's contractual obligations pledged to the payment of the association's notes, bonds, or other evidences of indebtedness shall have been fully paid or provided for.

(c) Membership certificates shall be transferable only to eligible institutions under and subject to such rules and regulations as may be adopted by any association in its bylaws.

(d) All amounts paid or property conveyed or transferred to any association by expelled members not returned as hereinunder provided shall be retained by the association and any facilities or property theretofore acquired shall remain the property of the association, and the members shall have no lien or other rights with regard thereto.

Liability to Creditors; Financial Commitments

Sec. 12. Unless otherwise herein provided, the members of any association established hereunder shall not be responsible to such association or to its

creditors in excess of amounts contracted for by the member, and when the contracts are paid in the amounts and at the times therein specified, the liability of each such member shall cease. Nothing contained in this Act shall be interpreted to authorize any health-related state-supported institution to make a financial commitment extending beyond the then current budget period for such institution.

Cumulative Effect

Sec. 13. This Act shall be cumulative of all laws now in effect relating to eligible institutions.

Tax Exemption

Sec. 14. The accomplishment of the purposes stated in this Act being for the health and benefit of the people of this state, and for the improvement of their properties and industries, the associations in carrying out the purposes of this Act will be performing essential public functions under the constitution, and the associations shall not be required to pay any tax or assessment on its properties or any part thereof or on any purchases made by the associations.

Severability; Liberal Construction

Sec. 15. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the applications thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes, powers, rights, functions, and authorities herein set forth.

[Acts 1975, 64th Leg., p. 458, ch. 195, eff. May 13, 1975. Amended by Acts 1977, 65th Leg., p. 1230, ch. 476, §§ 1 to 3, eff. June 15, 1977; Amended by Acts 1981, 67th Leg., p. 1777, ch. 389, § 26, eff. Jan. 1, 1982.]

Section 7 of the 1977 amendatory act provided:

"If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 1 of the 1981 amendatory act enacted Title 2 of the Tax Code.

Art. 4447s. Disclosure of Agreements for Payment of Laboratory Tests

Sec. 1. No person licensed in this state to practice medicine, dentistry, podiatry, veterinary medicine, or chiropractic shall agree with any clinical, bioanalytical, or hospital laboratory, wherever located, to make payments to such laboratory for individual tests, combination of tests, or test series for patients unless such person discloses on the bill or statement to the patient or third party payors the name and address of such laboratory and the net amount or amounts paid to or to be paid to such laboratory for individual tests, combination of tests, or test series or makes available on request to the patient or third party payors the net amount or amounts paid to or to be paid to such laboratory for individual tests, combination of tests, or test series. Such information made available shall be in writing and shall show the charge for such laboratory test or test series and may include explanation in net dollar amounts or percentages the charge from such laboratory, the charge for handling, and an interpretation charge.

Sec. 2. The board or agency responsible for licensing and regulation of persons practicing medicine, dentistry, podiatry, veterinary medicine, and chiropractic, in addition to other authority granted, may deny an application for license or other authority to practice for violation of Section 1 of this Act.

[Acts 1977, 65th Leg., p. 1528, ch. 621, eff. June 15, 1977. Amended by Acts 1979, 66th Leg., p. 65, ch. 40, § 1, eff. April 11, 1979.]

Art. 4447t. Determination of Death

Sec. 1. (a) A person will be considered legally dead if, based on ordinary standards of medical practice, there is the irreversible cessation of spontaneous respiratory and circulatory functions.

(b) If artificial means of support preclude a determination that spontaneous respiratory and circulatory functions have ceased, a person will be considered legally dead if in the announced opinion of a physician, based on ordinary standards of medical practice, there is the irreversible cessation of all spontaneous brain function. Death will have occurred at the time when the relevant functions ceased.

(c) Death is to be pronounced before artificial means of supporting respiratory and circulatory functions are terminated.

Sec. 2. A physician who determines death in accordance with the provisions of Section 1(b) of this Act is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her acts or the actions of others based on that determination.

Sec. 3. A person who acts in good faith in reliance on a determination of death by a physician is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her act.

[Acts 1979, 66th Leg., p. 368, ch. 165, eff. May 15, 1979.]

Art. 4447u. Home Health Services

Definitions

Sec. 1. In this Act:

(1) "Home health agency" means a place of business that provides a home health service for pay or other consideration in a patient's residence, ordinarily according to a written and signed plan of treatment.

(2) "Home health service" means the provision of a health service for pay or other consideration in a patient's residence.

(3) "Health service" means:

(A) nursing;

(B) physical, occupational, speech, or respiratory therapy;

(C) a medical social service;

(D) the service of a home health aide;

(E) the furnishing of medical supplies (other than drugs and medicines) and medical equipment; or

(F) nutritional counseling.

(4) "Residence" means a place where a person resides, including a home, nursing home, or convalescent home for the disabled or aged.

(5) "Certified agency" means a person who provides a home health service and holds a current letter of approval signed by an official of the Department of Health, Education, and Welfare and indicating compliance with conditions of participation in Title XVIII of the federal Social Security Act.[1]

(6) "Department" means the Texas Department of Health.

(7) "Council" means the Home Health Services Advisory Council.

(8) "Person" means an individual, corporation, or association.

(9) "Place of business" means any office of a home health agency which is required to maintain the official patient records and directs patient services.

[1] 42 U.S.C.A. § 1395 et seq.

Home Health Services Advisory Council

Sec. 2. (a) The Home Health Services Advisory Council is created.

(b) The council is composed of nine members appointed by the governor as follows:

(1) one member to represent the department;

(2) two members to represent consumers of home health agency services;

(3) one member to represent the Texas Department of Human Resources;

(4) one member to represent the Texas Association of Home Health Agencies, Incorporated;

(5) one member to represent private nonprofit home health agencies;

(6) one member to represent voluntary nonprofit agencies;

(7) one member to represent proprietary agencies; and

(8) one member to represent an official department home health agency.

(c) Members of the council serve staggered terms of two years, the terms of five members expiring on January 31 of each even-numbered year and the terms of four members expiring on January 31 of each odd-numbered year.

(d) The council shall elect a presiding officer from among its members to preside at meetings and to notify members of meetings. The presiding officer shall serve for one year and may not serve in that capacity for more than two years.

(e) The council shall meet at least once a year and at other times at the call of the presiding officer, any three members of the council, or the commissioner of health.

(f) Members of the council serve without compensation.

Council Duties

Sec. 3. The council shall advise the department on standards for licensing.

Rules and Standards

Sec. 4. (a) The department shall prescribe forms necessary to perform its duties and shall adopt rules necessary to implement this Act.

(b) The department shall set minimum standards for home health services licensed under this Act that pertain to:

(1) qualifications for professional personnel;

(2) qualifications for nonprofessional personnel;

(3) treatment and services provided by a home health agency and the coordination of treatment and services;

(4) supervision of professional and nonprofessional personnel;

(5) organizational structure of the agency, lines of authority, and delegation of responsibility;

(6) clinical records kept by the agency;

(7) business records;

(8) financial ability to carry out the functions as proposed; and

(9) other aspects of home health services necessary to protect the public.

Licenses Required

Sec. 5. (a) No certified agency may engage in the business of providing home health services unless the person has acquired from the department a Class A home health service license for each place of business from which home health services are directed.

(b) No person, other than a certified agency, may engage in the business of providing home health services unless the person has acquired from the department a Class B home health service license for each place of business from which home health services are directed.

Persons Exempted from License Requirement

Sec. 6. The following persons are not required to be licensed under Section 5 of this Act:

(1) a licensed physician;

(2) an individual whose permanent residence is in the patient's residence;

(3) an employee of a person holding a license under this Act who provides home health services only as an employee of the licensed person and who receives no benefit for providing home health services other than wages from the employer;

(4) a home, nursing home, convalescent home, or other institution for the disabled or aged that provides health services only to residents of the home or institution;

(5) a person who provides one health service through a contract with a person licensed under Section 5 of this Act;

(6) a durable medical equipment supply company;

(7) a drug store or wholesale medical supply company that furnishes no services to persons in their houses except supplies;

(8) a hospital or other licensed health care facility serving in-patient residents; or

(9) a person providing home health services to an injured employee pursuant to Article 8306 et seq. of the Revised Civil Statutes of Texas, 1925, as amended.

License Application

Sec. 7. (a) An applicant for a license to provide a home health service must:

(1) file a written application on a form prescribed by the department;

(2) file with the application the name of the owner of the service or a list of names of persons who own an interest in the service and a list of any businesses with which the service business subcontracts and in which the owner or owners of the service business hold as much as five percent of the ownership;

(3) cooperate with any inspections the department may require for a license; and

(4) pay to the department a license fee as prescribed by Section 8 of this Act.

(b) In addition to the above requirements: (1) for a Class A license, if the applicant is at the time of filing an application a certified home health agency, it shall include a copy of its letter of approval from the Department of Health, Education, and Welfare showing its compliance with federal conditions of participation. If the applicant is not at the time of filing its application a certified home health agency, it must attach a copy of its certificate of need, exemption certificate, or declaratory ruling. It must also have been surveyed and be in the process of receiving its certificate from the Department of Health, Education, and Welfare.

(2) For a Class B license, the applicant must show proof of the services provided and geographical territory in which such services have been provided as of the effective date of this Act and it must have requested a survey for the purposes of confirming the services provided and territory covered. If the applicant is not providing services as of the effective date of this Act, it must attach a copy of its certificate of need, exemption certificate, or declaratory ruling.

(c) The license fee shall be returned to the applicant if the license application is denied.

License Fees

Sec. 8. (a) Except as provided by Subsections (b) and (c) of this section, the Class A home health service license fee and the Class B home health service license fee for each place of business is $100.

(b) The Class A home health service license fee for each place of business of a certified agency that has been operated during the year immediately preceding the date of the application is a figure in dollars that equals one percent of the total number of home visits made by the agency from the place of business during the year immediately preceding the date of the application, but not less than $100 nor more than $400.

(c) The Class B home health service license fee for each place of business of a person, other than a certified agency, providing home health services during the year immediately preceding the date of the application is the fee specified in the following schedule according to the number of home health service hours billed from the place of business during the year immediately preceding the date of the application:

Fee	No. Hrs. Billed
$100	0–10,000
$200	over 10,000 but not more than 100,000
$400	over 100,000

Issuance of License

Sec. 9. (a) The department shall issue a Class A or Class B home health service license for each place of business to each applicant who:

(1) qualifies for the type of license requested;

(2) submits an application as required by this Act; and

(3) complies with all licensing standards required or adopted by the department under this Act.

(b) A license issued under this Act may not be transferred or assigned.

(c) A license issued under this Act expires one year from the date of issuance.

Inspections

Sec. 10. The department or its authorized representatives may enter the premises of a license applicant or license holder at reasonable times to make an inspection incidental to the issuance of a license.

License Denial, Suspension, or Revocation

Sec. 11. (a) The department may deny, suspend, or revoke the license of an applicant or holder of a license who fails to comply with the rules or standards for licensing required by this Act.

(b) The department may revoke or suspend a license to be effective immediately when the health and safety of persons are threatened. A person whose license is suspended or revoked under this subsection is entitled to a hearing within seven days after the effective date of the suspension or revocation.

(c) The licensing agency shall deny, cancel, revoke, or suspend a license if it finds that the applicant or licensee has failed substantially to comply with any applicable provisions of the Texas Health Planning and Development Act [1] requiring a certificate of need or an exemption certificate.

[1] Article 4418h.

Injunctions

Sec. 12. (a) When a person violates the licensing requirements of this Act, the department may petition a district court to restrain the person from continuing the violation. A suit for injunctive relief must be brought in Travis County.

(b) On application for injunctive relief and a finding that a person is violating this Act, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the department, the attorney general shall institute and conduct the suit authorized in Subsection (a) of this section in the name of the State of Texas.

Disposition of Funds

Sec. 13. All fees received by the department under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund.

Application of Sunset Act

Sec. 14. This Act and the council created thereby are subject to the Texas Sunset Act; [1] and unless continued in existence by that Act, the council is abolished, and this Act expires effective September 1, 1991.

[1] Article 5429k.

Effective Date

Sec. 15. This Act takes effect September 1, 1979, except that Section 5 takes effect January 1, 1980. [Acts 1979, 66th Leg., p. 1466, ch. 642, §§ 1 to 4, 6 to 15, eff. Sept. 1, 1979; § 5, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., p. 1809, ch. 398, § 1, eff. Aug. 31, 1981.]

Art. 4447v. Circuses, Carnivals, and Zoos

Definitions

Sec. 1. In this Act:

(1) "Board" means the Texas Board of Health.

(2) "Commissioner" means the Commissioner of Health.

(3) "Department" means the Texas Department of Health.

(4) "Person" means an individual, partnership, corporation, trust, estate, joint-stock company, foundation, political subdivision, or association of individuals.

(5) "Circus" or "carnival" means a commercial variety show featuring animal acts for public entertainment.

(6) "Zoo" means any premises, whether mobile or stationary, where living animals that normally live in a wild state are kept primarily for display to the general public.

Prohibited Act

Sec. 2. A person may not operate a circus, carnival, or zoo unless the person is licensed for the particular circus, carnival, or zoo under this Act.

Exemptions

Sec. 3. This Act does not apply to:

(1) a circus, carnival, or zoo required to be licensed under the federal Animal Welfare Act, as amended (7 U.S.C. 2131 et seq.);

(2) a zoo operated by a political subdivision of the state, a childcare institution, or accredited by the American Association of Zoological Parks and Aquariums; or

(3) premises where nonindigenous ruminants are bred and raised; or

(4) organizations sponsoring and all persons participating in exhibitions of domestic livestock shows and rodeos.

License Application

Sec. 4. To be licensed under this Act, a person must submit to the board a written application on a form prescribed by the board, furnish information requested by the board, and pay an application fee.

Licensing Standards

Sec. 5. (a) The board shall adopt standards for the operation of circuses, carnivals, and zoos that promote humane conditions for animals and protect the public health and safety.

(b) The standards shall include coverage of the following subjects: housing and sanitation; control, care, and transportation of animals; animal health and disease control.

(c) In promulgating and enforcing standards established pursuant to this section, the board is authorized to consult experts and persons concerned with the welfare of animals in circuses, carnivals, and zoos.

Issuance of License

Sec. 6. (a) The board shall issue a license to operate a particular circus, carnival, or zoo to an applicant who complies with Section 4 of this Act, meets the board's standards adopted under Section 5 of this Act, and pays a license fee.

(b) A license issued under this Act is valid for two years from the date of issue or such lesser period as the board shall deem appropriate for circuses or animal variety shows not resident in Texas which are not exempt under Subdivision (1) of Section 3 of this Act.

License Renewal

Sec. 7. (a) A licensee may renew his license by submitting to the board before the expiration date of the license a renewal application on a form prescribed by the board and a renewal fee.

(b) The board shall issue a renewal license to a licensee who complies with Subsection (a) of this section and meets the standards adopted under Section 5 of this Act.

Inspection by the Board

Sec. 8. (a) The board shall inspect circuses, carnivals, and zoos to determine compliance with the standards adopted under Section 5 of this Act.

(b) The board or its agents may enter the circuses, carnivals, or zoos inspected under this section at reasonable times.

(c) The board shall prescribe the qualifications for its agents employed to inspect circuses, carnivals, or zoos under this section.

Denial, Suspension, or Revocation of License

Sec. 9. (a) If the commissioner determines after the inspection required under Section 8 of this Act that an applicant for a license has failed to comply with the standards adopted under Section 5 of this Act, the commissioner shall refuse to issue the license and shall give written notice of the decision and the reasons for it to the applicant. On the written request of the applicant submitted to the commissioner not later than the 31st day after the date the notice is received, the commissioner shall conduct a hearing on the denial of the license not later than the 31st day after the date the request is received. If after the hearing the commissioner determines that the applicant has failed to comply with the standards, the commissioner shall refuse to issue the license.

(b) If the commissioner determines after inspection that a licensee has failed to comply with the standards, the commissioner shall give written notice to the licensee of a revocation hearing to be held not later than the 31st day after the date notice is given. If after the hearing the commissioner determines that the licensee has failed to comply with the standards, the commissioner shall revoke the license.

(c) If the commissioner determines after inspection that a licensee has committed gross violations of the standards, the commissioner may, after giving written notice to the licensee, suspend the license for not more than 31 days pending a hearing. The commissioner shall give written notice to the licensee of a revocation hearing to be held not later than the 31st day after the date notice is given. If after the hearing the commissioner determines that the licensee has failed to comply with the standards, the commissioner shall revoke the license.

(d) If a license is suspended or revoked, the commissioner may seek a writ from a justice of the peace serving the justice precinct in which the circus, carnival, or zoo is located ordering the sheriff or other peace officer to seize any of the animals being kept on the premises of the circus, carnival, or zoo operated by the person whose license was suspended or revoked. The department may rent, lease, or acquire facilities for keeping impounded animals. The justice of the peace shall issue the writ if the justice finds probable cause to believe that any of the animals are in danger of being harmed by a gross violation of the licensing standards. The board's employees may accompany the peace officer executing the seizure. If the license is revoked and the commissioner's decision becomes final, the commissioner shall order a public sale by auction of the seized animals. Proceeds from the sale shall be applied first to the expenses incurred in conducting the sale. The commissioner shall return any excess proceeds to the person whose license is revoked. That person or the person's agent may not participate in the auction.

(e) This section does not preclude an informal disposition of the matter by an agreement between a licensee and the board.

Judicial Review

Sec. 10. A person whose application for a license is denied or whose license is revoked is entitled to judicial review in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Rules

Sec. 11. The board shall adopt rules necessary to administer this Act.

Contracts

Sec. 12. The board may enter into contracts or agreements necessary to administer this Act. Under a contract or agreement, the board may pay for materials, equipment, or services from any available funds.

Fees; Annual Report

Sec. 13. (a) The board shall prescribe the amount of each type of fee required by this Act.

(b) Fees received by the board under this Act shall be deposited in the State Treasury to the credit of a special fund to be known as the circus, carnival, and zoo licensing fund and may be used only for administering the board's or commissioner's functions under this Act.

(c) A fee received by the board under this Act is not refundable.

(d) During the period beginning on August 31 and ending on September 10 of each year, the board shall file with the comptroller of public accounts and the governor an annual financial report, in a form prescribed by the comptroller, relating to the administration of this Act.

(e) If the funds in the circus, carnival, and zoo licensing fund at the beginning of the fiscal year plus the fees anticipated for that year exceed the probable costs of administering this Act during that year, the board shall reduce the fees required by this Act by the amount necessary to eliminate the projected surplus.

(f) The legislature may not appropriate funds from the General Revenue Fund to implement this Act.

Penalty

Sec. 14. (a) A person commits an offense if the person knowingly or intentionally violates Section 2 of this Act.

(b) An offense under this section is a Class C misdemeanor.

Temporary License

Sec. 15. (a) A person, who on the effective date of this Act operates a circus, carnival, or zoo, may obtain from the board a temporary license to operate the circus, carnival, or zoo until a regular license can be issued or the temporary license is revoked for cause.

(b) The board shall issue a temporary license if the person applies for the license on an application form prescribed by the board and pays a license fee. The temporary license is valid for two years from the date of application or until approval or denial of a regular license. The board shall inspect a circus, carnival, or zoo operated by a temporary license and shall grant or deny the regular license on or before September 1, 1983.

[Acts 1981, 67th Leg., p. 1804, ch. 396, §§ 1 to 15, eff. Sept. 1, 1981.]

Art. 4447w. Reports and Assistance to Veterans Exposed to Agent Orange, Chemical Defoliants or Herbicides or Other Causative Agents

Definitions

Sec. 1. In this Act:

(1) "Veteran" means a person who was a resident of this state at the time of his induction into the armed forces of the United States of America, or was a resident of this state as of March 31, 1981, who served in Vietnam, Cambodia, or Laos during the Vietnam conflict.

(2) "Agent Orange" means the herbicide composed primarily of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid.

(3) "Department" means the Texas Department of Health.

Reports to the Department

Sec. 2. (a) A physician who has primary responsibility for treating a veteran who believes he may have been exposed to chemical defoliants or herbicides or other causative agents, including Agent Orange, while serving in the armed forces of the United States, shall, at the request of the veteran, submit a report to the department on a form provided by the department. If there is no physician having primary responsibility for treating the veteran, the hospital treating the veteran shall, at the request of the veteran, submit the report to the department.

(b) The form provided by the department to the physician shall request the following information:

(1) symptoms of the veteran which may be related to exposure to a chemical defoliant or herbicide or other causative agent, including Agent Orange;

(2) diagnosis of the veteran; and

(3) methods of treatment prescribed.

(c) The department may require the veteran to provide such other information as determined by the commissioner.

Reports by the Department

Sec. 3. (a) The department, in consultation and cooperation with a board-certified medical toxicologist, shall compile and evaluate information submitted under this Act into a report to be distributed annually to members of the legislature and to the Veterans Administration, the Veterans Affairs Commission, and other veterans' groups. The report shall contain current research findings on the effects of exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange, and statistical information compiled from reports submitted by physicians or hospitals.

(b) The department, in consultation and cooperation with a board-certified medical toxicologist, shall conduct epidemiological studies on veterans who have cancer or other medical problems associated with exposure to a chemical defoliant or herbicide or any other causative agent, including Agent Orange, or who have children born with birth defects after the veterans' suspected exposure to a chemical defoliant or herbicide or any other causative agent, including Agent Orange. The department must obtain consent from each veteran to be studied under this subsection. The department shall compile and evaluate information obtained from these studies into a report to be distributed as provided by Subsection (a) of this section.

Confidentiality

Sec. 4. The identity of a veteran about whom a report has been made under Section 2 or 3 of this Act may not be disclosed unless the veteran consents to the disclosure. Statistical information collected under this Act is public information.

Immunity From Liability

Sec. 5. A physician or a hospital subject to this Act who complies with this Act may not be held civilly or criminally liable for providing the information required by this Act.

Class Action Representation by Attorney General

Sec. 6. The attorney general may represent a class of individuals composed of veterans who may have been injured because of contact with chemical defoliants or herbicides or other causative agents, including Agent Orange, in a suit for release of information relating to exposure to such chemicals during military service and for release of individual medical records.

Assistance Programs

Sec. 7. (a) The department and the health science centers and other medical facilities of The University of Texas System shall institute a cooperative program to:

(1) refer veterans to appropriate state and federal agencies for the purpose of filing claims to remedy medical and financial problems caused by the veterans' exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange; and

(2) provide veterans with fat tissue biopsies, genetic counseling, and genetic screening to determine if the veteran has suffered physical damage as a result of substantial exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange.

(b) The commissioner of health shall adopt rules necessary to the administration of the programs authorized by this section.

Application

Sec. 8. Sections 2 and 3 of this Act apply to all cases of veterans treated on or after January 1, 1982, for symptoms typical of a person who has been exposed to a chemical defoliant or herbicide or any other causative agent, including Agent Orange. Sections 6 and 7 of this Act apply to all veterans.

Termination of Programs and Duties

Sec. 9. If the commissioner of health determines that an agency of the federal government is performing the referral and screening functions required by Section 7 of this Act, the commissioner may discontinue any program required by this Act or any duty required of a physician or hospital under this Act.

[Acts 1981, 67th Leg., p. 3330, ch. 874, §§ 1 to 9, eff. Sept. 1, 1981.]

CHAPTER THREE. FOOD AND DRUGS

Article

4476–2a. Frozen Dessert Manufacturer Licensing Act.
4476–5a. Laetrile; Manufacture, Distribution, Sale, Prescription, and Use.
4476–5b. Dimethyl Sulfoxide.
4476–5c. Good Faith Donor Act.
4476–6a. Purchase of Imported Beef by State Agencies and Subdivisions.
4476–6b. Purchase of Imported Dairy Products by State Agencies and Subdivisions.
4476–15a. R.B. McAllister Drug Treatment Program Act.

Art. 4476–2. Repealed by Acts 1979, 66th Leg., p. 887, ch. 407, § 1, eff. June 6, 1979

Art. 4476–2a. Frozen Dessert Manufacturer Licensing Act

Short Title

Sec. 1. This Act may be cited as the Frozen Dessert Manufacturer Licensing Act.

Purpose

Sec. 2. The legislature finds that a statewide licensing act is needed to regulate manufacturers of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products; to provide for uniformity of inspections of the premises of frozen dessert manufacturers; to protect the health and safety of consumers by preventing the manufacture or distribution of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products that do not meet state standards or related requirements of purity or labeling; and to assist manufacturers in meeting state standards or related requirements.

Cumulative in Effect

Sec. 3. (a) This Act and the rules adopted by the Texas Board of Health under this Act are cumulative of and supplemental to any other state and federal laws that regulate manufacturers of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products.

(b) There is no intent, express or implied, that any provision of this Act, unless specifically stated in this Act, shall repeal or in any manner impair the force of any statutory provision, or administrative rule, that has been enacted or promulgated by the legislature or by a regulatory board, commission, or agency of this state.

Definitions

Sec. 4. In this Act:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "Commissioner" means the commissioner of health.

(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, or any other public or private legal entity.

(5) "Manufacture" means the processing, freezing, or packaging of frozen desserts, imitation

frozen desserts, products sold in semblance of frozen desserts, or mixes for those products for sale at wholesale. However, a retailer purchasing those products from a manufacturer displaying the retailer's brand name is not considered a manufacturer.

(6) "Wholesale" means the exposing, offering, possessing, selling, dispensing, holding, or giving of any frozen dessert, imitation frozen dessert, product sold in semblance of frozen dessert, or a mix for one of those products to other than the ultimate consumer. The term does not include sale by a retail store.

(7) "Sale" means the manufacture, production, processing, packing, exposure, offer, or holding of any frozen dessert product for sale; the sale, dispensing, or giving of any frozen dessert product; or the supplying or applying of any frozen dessert product in the conduct of any frozen desserts retail establishment.

(8) "Frozen desserts plant" means premises where a frozen dessert or mix is manufactured, processed, or frozen for sale.

(9) "Frozen desserts retail establishment" means premises, including a retail store, approved type stand, hotel, restaurant, vehicle, or mobile unit, where frozen dessert mixes are frozen or partially frozen and dispensed for retail sale or distribution. A frozen desserts retail establishment may also be known as a "counter freezer establishment."

(10) "Adulterated or misbranded frozen desserts mix" means any frozen dessert or mix that contains any unwholesome substance, or, if defined in this standard, that does not conform with its definition, or that does not comply with the Texas Food, Drug and Cosmetic Act (Article 4476–5, Vernon's Texas Civil Statutes) or any other applicable regulations.

(11) "Mix" means the pasteurized or unpasteurized, liquid or dry, unfrozen combination of the ingredients permitted in a frozen dessert with or without fruits, fruit juices, candy, baked goods and confections, nutmeats, or other harmless flavor or color.

(12) "Official laboratory" means a biological, chemical, or physical laboratory that is under the supervision of a state or local health authority.

(13) "Health authority" means the city, county, or state health officer or his representative or any other agency having jurisdiction or control over the matters embraced within the specifications and requirements of this Act.

(14) "State health officer" means the commissioner of health.

(15) "Frozen desserts manufacturer" means a person who manufactures, processes, converts, partially freezes, or freezes any mix, be it dairy, nondairy, imitation, pasteurized or unpasteurized, frozen desserts, imitation frozen desserts, or nondairy frozen desserts for distribution or sale at wholesale; provided, however, that this definition shall not include a frozen dessert retail establishment.

(16) "Frozen dessert" means any of the following: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit water ice, frozen dietary dairy desserts, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert. The term includes the mix used in the freezing of one of those frozen desserts.

(17) "Imitation frozen dessert" means any frozen substance, mixture, or compound, regardless of the name under which it is represented, that is made in imitation or semblance of any of the following products, or is prepared or frozen in the manner in which any of the following products is customarily prepared or frozen, and that is not the product: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit ice, frozen low fat yogurt, nonfat yogurt, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert.

Powers and Duties of Board

Sec. 5. To achieve the intent of this Act, the board, pursuant to the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), may:

(1) adopt rules prescribing standards or related requirements for the operation of establishments for the manufacture of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products, including, but not limited to, the following subjects:

(A) the health, cleanliness, education, and training of personnel who are employed in the establishments;

(B) protection of raw materials, manufactured merchandise, and merchandise held for sale;

(C) design, construction, installation, and cleanliness of equipment and utensils;

(D) sanitary facilities and controls of the establishments;

(E) establishment construction and maintenance, including vehicles;

(F) production processes and controls; and

(G) institution and content of a system of records to be maintained by the establishment; and

(2) adopt rules prescribing procedures for the enforcement of the standards or related requirements prescribed under Subdivision (1) of this

section, including, but not limited to, the following:

(A) the requirement of a valid license to operate an establishment;

(B) issuance, suspension, revocation, and reinstatement of licenses;

(C) administrative hearings before the board or its designee;

(D) institution of certain court proceedings by the board or its designee;

(E) inspection of establishments; securing of samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;

(F) access to the establishments and vehicles used in operations;

(G) compliance by manufacturers outside the jurisdiction of the state; and

(H) plan review for future construction.

Prohibited Acts

Sec. 6. (a) A person may not operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products in this state unless he has a valid license issued under this Act.

(b) A political subdivision or agency of this state other than the Texas Department of Health may not impose a license fee on any manufacturer covered by this section.

Exemptions

Sec. 7. This Act does not apply to:

(1) a person operating a frozen desserts retail establishment; or

(2) a person operating a retail store, unless the person is also a manufacturer as defined by this Act.

Licenses

Sec. 8. (a) A person desiring to operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products must obtain a license from the department. A license shall be granted pursuant to procedural rules adopted by the board and shall be issued only for the purpose and use as stated on the application for a license.

(b) The department shall inspect the establishment under Section 10 of this Act before issuing a license. A license may not be issued to a person who does not comply with the standards prescribed by the board under this Act.

(c) A $100 fee for each establishment must accompany each application for a license. The fee may not be refunded by the department.

(d) A license issued under this Act shall be renewed on or before August 1 of each year in accordance with rules adopted by the board.

Hearings

Sec. 9. Hearings conducted by the board in the administration of this Act shall be governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes). Based on the record of a hearing, the department shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing.

Inspection by Department

Sec. 10. (a) Pursuant to rules adopted by the board, the department's authorized representatives shall have free access at all reasonable hours to any establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products, or to any vehicle being used to transport in commerce a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products, for the purpose of:

(1) inspecting the establishment or vehicle to determine compliance with the standards or related requirements prescribed by the board under this Act; or

(2) securing samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or a mix for one of those products, for the purpose of making or causing to be made an examination of the samples to determine compliance with the standards or related requirements prescribed by the board under this Act.

(b) A political subdivision or an agency other than the department that collects samples described by Subsection (a)(2) of this section shall bear the cost of the samples and any analyses of the samples.

Penalties

Sec. 11. (a) A person commits an offense if he knowingly or intentionally violates Section 6 of this Act or the rules adopted by the board under this Act.

(b) An offense under this section is a Class C misdemeanor.

(c) The penalty prescribed by this section is in addition to any civil or administrative penalty or sanction otherwise imposed by law.

Establishments Outside the State

Sec. 12. A frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products from a manufacturer located outside this state may be sold or distributed in this state if the manufacturer complies with this Act or complies with other regulatory requirements that are substantially equivalent to those of this state. To determine the extent of the manufacturer's compliance, the department may ac-

cept reports from responsible authorities in the jurisdiction in which the manufacturer is located.

Disposition of Fees

Sec. 13. Fees received by the department under this Act shall be deposited in the state treasury to the credit of the general revenue fund.

Temporary Permit

Sec. 14. The department may issue a temporary permit to continue the operation of an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or mix for one of those products until the department performs the inspection required by this Act.

[Acts 1981, 67th Leg., p. 459, ch. 194, §§ 1 to 14, eff. Sept. 1, 1981.]

Art. 4476–5. Food, Drug and Cosmetic Act

[See Compact Edition, Volume 4 for text of 1 to 15]

Sec. 16.

[See Compact Edition, Volume 4 for text of 16(a) to 16(e)]

(f) This section does not apply to dimethyl sulfoxide (DMSO).

(g) A hospital or health care facility may not forbid or restrict the use of a drug prescribed or administered by a licensed physician having staff privileges at that hospital or facility if:

(1) an application for the drug has been approved under this section;

(2) the Commissioner of Health has not issued an order refusing to permit an application relating to the drug to become effective under this section; or

(3) a court of competent jurisdiction has declared that an application relating to the drug has become effective and has authorized the manufacture, sale, delivery, offer for sale, holding for sale, or gift of the drug under this section.

[See Compact Edition, Volume 4 for text of 17 to 22A]

Registration Statement of Wholesale Distributors; Contents; Fees; Refusal, Revocation, or Suspension of Registration

Sec. 23.1. No person shall engage in the wholesale distribution of drugs in this State without first filing a registration statement with the Commissioner of Health.

The words "wholesale distribution" shall be defined as meaning distribution to other than the consumer or patient and shall include distribution by manufacturers, re-packers, own label distributors, jobbers, and wholesalers.

[See Compact Edition, Volume 4 for text of subsec. 2]

3. The registration statement shall be filed prior to commencing business as a wholesale drug distributor and annually thereafter on or before the first day of September in each calendar year.

4. The initial and annual fee for registration which shall accompany the registration statement shall be Twenty-five Dollars ($25) for a single place of business.

[See Compact Edition, Volume 4 for text of subsec. 5]

6. The Commissioner of Health may, after notice and hearing, refuse to register or cancel, revoke or suspend the registration of any wholesale drug distributor for any of the following reasons:

(a) If the registrant has been convicted of a felony or misdemeanor which involves moral turpitude, or if the registrant be an association, partnership or corporation, that the managing officer has been convicted of a felony or misdemeanor which involves moral turpitude;

(b) That the registrant has been convicted in either a State or Federal court for the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs, or if the registrant be an association, partnership, or corporation, that the managing officer has been convicted in either State or Federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(c) That based on evidence presented during a hearing it is determined that the applicant or registrant has sold counterfeit drugs and medicines, or has violated any of the provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), of the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or of the regulations of the director of the Department of Public Safety including any significant discrepancy in the records required to be maintained by State law;

(d) Failure of the applicant or registrant to comply with this Act.

[See Compact Edition, Volume 4 for text of subsec. 7]

8. Any person who engages in the wholesale distribution of drugs who does not comply with the requirements of this Section by being registered with the Commissioner of Health shall be fined an amount not exceeding Three Thousand Dollars ($3,000) or confined in jail for a period of not less than Thirty Days (30) nor more than two years (2) or

by both such fine and imprisonment. For any second or subsequent violation of this Section, any person so violating the same shall be confined in the penitentiary not less than two (2) years nor more than ten (10) years.

9. The fees provided for in Subsections 4 and 5 shall be deposited in the State Treasury to the Food and Drug Registration Fee General Revenue account and shall be available for carrying out the provisions of this Act.

[See Compact Edition, Volume 4 for text of subsec. 10]

[Amended by Acts 1981, 67th Leg., p. 2379, ch. 590, § 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2786, ch. 753, § 1, eff. Sept. 1, 1981.]

Sections 1 to 3 of Acts 1979, 66th Leg., p. 2159, ch. 826, amended art. 4476–15. Section 4 of that act provided:

"Any person, firm, or corporation which has filed a new drug application under the Texas Food, Drug and Cosmetic Act, as amended (Article 4476–5, Vernon's Texas Civil Statutes), on or after December 5, 1977, with respect to which the commissioner of health did not enter a formal order of denial within 180 days from the date of application as provided by the Texas Food, Drug and Cosmetic Act, as amended (Article 4476–5, Vernon's Texas Civil Statutes), shall be deemed approved and granted and the commissioner of health shall enter an order to such effect. This section shall take effect upon passage of this Act [August 27, 1979]."

Acts 1981, 67th Leg., p. 2787, ch. 753, § 2, provides:

"(a) The registration of a person registered on the effective date of this Act under the law amended by this Act continues in effect for the regular term of the registration.

"(b) A person who, on the effective date of this Act, is subject to the registration requirements of Section 23, Texas Food, Drug and Cosmetic Act (Article 4476–5, Vernon's Texas Civil Statutes), as amended by this Act, and who was not subject to the registration requirements of Section 23 as it existed immediately before the effective date of this Act is not required to be registered under that Act until November 1, 1981."

Art. 4476–5a. Laetrile; Manufacture, Distribution, Sale, Prescription, and Use

Sec. 1. (a) It is lawful to manufacture amygdalin (laetrile) in this state in accordance with the provisions of the Texas Food, Drug and Cosmetic Act (Article 4476–5, Vernon's Texas Civil Statutes) and to sell the substance in the state for distribution by licensed physicians.

(b) A licensed physician may prescribe or administer amygdalin (laetrile) in the treatment of cancer.

(c) No hospital or health care facility may forbid or restrict the use of amygdalin (laetrile) when prescribed or administered by a physician and requested by a patient, unless the substance, as prescribed or administered by the physician, is found to be harmful by the Texas Board of Health Resources after a hearing conducted as provided in the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).

(d) No physician may be subject to disciplinary action by the Texas State Board of Medical Examiners for prescribing or administering amygdalin (laetrile) to a patient under the physician's care and who has requested the substance, unless the Texas State Board of Medical Examiners has made a formal finding, in a hearing conducted as provided in the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), that the substance is harmful.

Sec. 2. Nothing in this Act shall deny the right of the Texas State Board of Medical Examiners to cancel, revoke, or suspend the license of any practitioner of medicine who:

(1) fails to keep complete and accurate records of purchases and disposal of amygdalin (laetrile). A physician shall keep records of his purchases and disposals of amygdalin (laetrile) to include, but not be limited to, date of purchase, sale or disposal of amygdalin (laetrile) by the doctor, the name and address of the person receiving amygdalin (laetrile), and the reason for disposing of or dispensing amygdalin (laetrile) to such person;

(2) writes prescriptions for or dispenses to a person known to be an habitual user of narcotic drugs or dangerous drugs, or to a person who the doctor should have known was an habitual user of narcotic or dangerous drugs. This provision shall not apply to those persons being treated by the physician for their narcotic use after the physician notifies the Texas State Board of Medical Examiners in writing of the name and address of such person being so treated;

(3) uses any advertising statement of a character tending to mislead or deceive the public; or

(4) is unable to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

[Acts 1977, 65th Leg., p. 571, ch. 204, eff. Aug. 29, 1977.]

Art. 4476–5b. Dimethyl Sulfoxide

Definition

Sec. 1. In this Act, "DMSO" means sterile and pyrogen-free dimethyl sulfoxide.

Lawful Manufacture and Sale

Sec. 2. It is lawful to manufacture DMSO in this state and to sell the substance in the state for human use when prescribed or administered by licensed physicians or dispensed by licensed pharmacists as prescribed by a licensed physician.

Prescription or Administration

Sec. 3. (a) Subject to the requirements of Subsection (b) of this section, a licensed physician may prescribe or administer DMSO.

(b) A physician may not prescribe or administer DMSO in a formulation not approved for human use by the Food and Drug Administration of the United States Department of Health and Human Services unless the physician:

(1) provides a written statement to the patient informing the patient that DMSO, in the formation to be prescribed or administered, has not been approved for human use by the United States Food and Drug Administration; and

(2) informs the patient of the alternative methods of treatment for the patient's disorder and their potential for cure.

Cancellation, Revocation, or Suspension of Physician's License

Sec. 4. (a) Nothing in this Act shall deny the right of the Texas State Board of Medical Examiners to cancel, revoke, or suspend the license of any practitioner of medicine who:

(1) fails to keep complete and accurate records of purchases and disposal of DMSO in a formulation not approved for human use. A physician shal keep records of his purchases and disposals of DMSO to include, but not be limited to, date of purchase, sale, or disposal of DMSO by the doctor, the name and address of the person receiving DMSO, and the reason for disposing of or dispensing DMSO to such person; or

(2) prescribes or administers DMSO in a manner that has been proven in a formal hearing held by the board to be harmful to the patient.

(b) The Texas State Board of Medical Examiners may temporarily suspend the license of a physician who prescribes or administers DMSO in a manner that, in the board's opinion, creates an immediate danger to the public if the board conducts a hearing on the temporary suspension as soon as practicable after the suspension.

Restrictions on Use by Hospital or Health Care Facility

Sec. 5. (a) No hospital or health care facility may forbid or restrict the use of DMSO prescribed or administered by a licensed physician having staff privileges at that hospital or health care facility, unless the hospital or facility:

(1) makes a formal finding that the DMSO as prescribed or administered by the physician is or will be harmful to the patient; or

(2) determines that the prescription or administration of DMSO creates an immediate danger to the public.

(b) If a hospital or health care facility forbids or restricts the use of DMSO under Subsection (a)(2) of this section, the hospital or facility shall conduct a hearing on the restriction or prohibition as soon as practicable after its determination.

Dispensing by Pharmacist

Sec. 6. A licensed pharmacist may dispense DMSO upon the written prescription of a licensed physician.

Offenses

Sec. 7. (a) A person commits an offense if, in connection with advertising or promoting the sale of DMSO, the person knowingly or intentionally represents the substance as a cure for any human disease, ailment, or disorder.

(b) A person commits an offense if the person manufactures, distributes, or sells a dimethyl sulfoxide formulation that is not sterile and pyrogen-free unless the substance is packaged in a container whose label includes:

(1) information about the concentration of the dimethyl sulfoxide; and

(2) the following statement:

Avoid contact with your skin. This dimethyl sulfoxide is not sterile and pyrogen-free DMSO approved for human use. It may contain harmful impurities that can be absorbed through the skin. Dimethyl sulfoxide is a potent solvent that may have adverse effects on fabrics, plastics and other materials.

(c) An offense under this section is a Class B misdemeanor.

[Added by Acts 1981, 67th Leg., p. 2377, ch. 590, § 1, eff. Aug. 31, 1981.]

Art. 4476–5c. Good Faith Donor Act

Sec. 1. This Act may be cited as the Good Faith Donor Act.

Sec. 2. In this Act:

(1) "Apparently wholesome food" means food that meets all quality standards of local, county, state, and federal agricultural and health laws and rules, even though the food is not readily marketable due to appearance, age, freshness, grade, size, surplus, or other condition, but does not include canned goods that are leaking, swollen, dented on a seam, or no longer airtight.

(2) "Nonprofit organization" means an incorporated or unincorporated organization that has been established and is operating for religious, charitable, or educational purposes and that does not distribute any of its income to its members, directors, or officers.

(3) "Intentional misconduct" means conduct that the person acting knows is harmful to the health or well-being of another person.

(4) "Donate" means to give without requiring anything of monetary value from the donee.

(5) "Person" means an individual, corporation, partnership, organization, or association.

Sec. 3. (a) A person who donates apparently wholesome food to a nonprofit organization for distribution to the needy is not subject to civil or criminal liability that arises from the condition of the food, unless an injury or death results from an act or omission of the person that constitutes gross negligence, recklessness, or intentional misconduct.

(b) A nonprofit organization that distributes apparently wholesome food to the needy at no charge and that substantially complies with applicable local, county, state, and federal laws and rules regarding the storage and handling of food for distribution to the public is not subject to civil or criminal liability that arises from the condition of the food, unless an

injury or death results from an act or omission of the organization that constitutes gross negligence, recklessness, or intentional misconduct.

(c) This Act does not create any liability.

Sec. 4. This Act applies to liability for food donated on or after the effective date of this Act. [Acts 1981, 67th Leg., p. 1003, ch. 381, eff. June 10, 1981.]

Art. 4476–6a. Purchase of Imported Beef by State Agencies and Subdivisions

Sec. 1. In this Act:

(1) "State agency" means any agency, department, board, or commission of the state or any state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(2) "Subdivision" means any county, incorporated city or town, or any school, junior-college, water, hospital, reclamation, or other special-purpose district.

Sec. 2. No state agency or subdivision may purchase beef, or any product consisting substantially of beef, which has been imported from outside the United States of America.

Sec. 3. The State Department of Health has responsibility for enforcing the provisions of this Act and is the agency for receipt of notifications of violations of this Act.

Sec. 4. The State Department of Health shall promulgate rules and regulations for the reporting of purchases covered by this Act by state agencies and subdivisions and for the reporting of violations of this Act.

[Acts 1975, 64th Leg., p. 368, ch. 159, eff. May 8, 1975.]

Art. 4476–6b. Purchase of Imported Dairy Products by State Agencies and Subdivisions

Sec. 1. In this Act:

(1) "State agency" means any agency, department, board or commission of the state or any state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(2) "Subdivision" means any county, incorporated city or town, or any school, junior college, water, hospital, reclamation, or other special purpose district.

(3) "Dairy product" means milk, cream, butter, cheese, or any product consisting largely of one or more of them.

Sec. 2. No state agency or subdivision may purchase a dairy product that has been imported from outside the United States of America. This Act does not apply to the purchase of milk powder when, in the normal course of business, domestic milk powder is not readily available.

[Acts 1975, 64th Leg., p. 1346, ch. 505, eff. Sept. 1, 1975.]

Art. 4476–13. Hazardous Substances; Labeling; Sales

Definitions

Sec. 1. When used in this Act, unless the context requires a different definition:

(1) "Department" means the Texas Department of Health.

(2) "Person" includes any individual, partnership, corporation or association, or legal representative or agent.

(3) "Commerce" means any and all commerce within the State of Texas and subject to the jurisdiction thereof; and includes the operation of any business or service establishment.

(4) "Hazardous substance" means any substance or mixture of substances which is toxic, corrosive, flammable, an irritant, a strong sensitizer, or generates pressure through decomposition, heat, or other means, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children, or any toy or other article other than clothing intended for use by children which presents an electrical, mechanical, or thermal hazard; and any radioactive substance if, with respect to the substance as used in a particular class of article or as packaged, the department finds by regulation that the substance is sufficiently hazardous to require labeling in accordance with the provisions of this Act in order to protect the public health. The term "hazardous substance" does not apply to economic pesticides subject to the State or Federal Insecticide, Fungicide, and Rodenticide [1] Act nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act [2] or to beverages complying with or subject to the Federal Alcohol Administration Act, [3] or to the Texas Food, Drug, and Cosmetic Act,[4] nor to substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a private residence, nor does it apply to or include any source material, special nuclear material, or by-product material as defined in the federal Atomic Energy Act of 1954, as amended,[5] and regulations issued pursuant thereto by the Atomic Energy Commission.

(5) "Toxic" means any substance other than a radioactive substance which has the capacity to produce personal injury or illness to any person through ingestion, inhalation, or absorption through any body surface.

(6) "Highly toxic" means any substance which produces death within 14 days in half or more than half of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally adminis-

tered, or when inhaled continuously for a period of one hour or less at an atmospheric concentration of 200 parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, if the inhaled concentration is likely to be encountered by any person when the substance is used in any reasonably foreseeable manner; or which produces death within 14 days in half or more than half of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less. However, if the department finds that available data based on human experience indicate results different from those obtained on animals, the human data shall take precedence.

(7) "Corrosive" means any substance which in contact with living tissue will cause destruction of that tissue by chemical action. It does not refer to chemical action on inanimate surfaces.

(8) "Irritant" means any noncorrosive substance which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(9) "Strong sensitizer" means any substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substances. Before designating any substance as a strong sensitizer, the department, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(10) "Flammable" applies to any substance which has a flash point of above 20 degrees to and including 80 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester. Any substance which has a flash point at or below 20 degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester shall be designated "extremely flammable." However, the flammability of solids, fabrics, children's clothing, household furnishings, and of the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to these materials or containers, and shall be established by regulations issued by the department.

(11) "Radioactive substance" means a substance which emits ionizing radiation.

(12) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance, or in the case of an article which is unpackaged or is not packaged, in an immediate container intended or suitable for delivery to the ultimate consumer, a display of this matter directly on the article involved or on a tag or other suitable material affixed thereto.

(13) "Immediate container" does not include package liners.

(14) "Misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in a manner which is susceptible of access by a child to whom the toy or other article is entrusted, intended or packaged in a form suitable for use in the household or by children) which fails to bear a proper label as required by this Act.

(15) "Electrical hazard" means an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture may cause personal injury or illness by electrical shock.

(16) "Mechanical hazard" means an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture presents an unreasonable risk of personal injury or illness;

(A) from fracture, fragmentation, or disassembly of the article;

(B) from propulsion of the article or any part or accessory thereof;

(C) from points or other protrusions, surfaces, edges, openings, or closures;

(D) from moving parts;

(E) from lack or insufficiency of controls to reduce or stop motion;

(F) as a result of self-adhering characteristics of the article;

(G) because the article or any part or accessory thereof may be aspirated or ingested;

(H) because of instability; or

(I) because of any other aspect of the article's design or manufacture.

(17) "Thermal hazard" means an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

[1] Article 135b–5; 7 U.S.C.A. § 135 et seq.
[2] 21 U.S.C.A. § 301 et seq.
[3] 27 U.S.C.A. § 201 et seq.
[4] Article 4476–5.
[5] 42 U.S.C.A. § 2011 et seq.

[See Compact Edition, Volume 4 for text of 2]

Banned Hazardous Substances

Sec. 3. (a) Any article of clothing (other than diapers) intended for the use of children which is not in compliance with flammability standards for such clothing established by the department shall be declared to be a banned hazardous substance by the department. The determination by the department that articles of clothing of a specified range of sizes are intended for the use of a child 14 years or younger shall be conclusive.

(b) Any toy or other article other than clothing intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in a manner susceptible of access by a child to whom the toy or other article is entrusted, shall be declared to be a banned hazardous substance by the department.

(c) Any hazardous substance intended, or packaged, in a form suitable for use in a household, which, notwithstanding cautionary labeling required by this Act, is potentially so dangerous or hazardous when present or used in a household, that the protection of the public health and safety can be adequately served only by keeping the substance out of the channels of commerce, shall be declared to be a banned hazardous substance by the department.

(d) Any article subject to the provisions of this Act which cannot be labeled adequately to protect the public health and safety, or which presents an imminent danger to the public health and safety, shall be declared a banned hazardous substance by the department.

(e) The provisions of this section do not apply to any toy or article such as chemical sets which by reason of functional purpose requires the inclusion of a hazardous substance, or necessarily presents an electrical, mechanical, or thermal hazard, and which bears labeling which in the judgment of the department gives adequate directions and warnings for safe use, and is intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed these directions and warnings; nor do the provisions of this section apply to the manufacture, sale, distribution, or use of fireworks of any class.

[See Compact Edition, Volume 4 for text of 4 to 6]

Penalty

Sec. 7. (a) A person commits an offense if he intentionally, knowingly, or recklessly violates any provision of this Act or any rule issued pursuant to the authorization of this Act.

(b) An offense under this section is a Class B misdemeanor unless the person's intent is to defraud another, in which event the offense is a Class A misdemeanor.

[See Compact Edition, Volume 4 for text of 8 to 12]

[Amended by Acts 1979, 66th Leg., p. 712, ch. 311, §§ 1 to 3, eff. Aug. 27, 1979.]

Art. 4476–14. Dangerous Drugs

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. For the purposes of this Act:

(a) The term "dangerous drug" means any drug or device that is not included in Penalty Groups I through IV of the Texas Controlled Substances Act[1] and that is unsafe for self-medication, and includes the following:

(1) Procaine, its salts, derivatives, or compounds or mixtures thereof except ointments and creams for topical application containing not more than two and one-half percent (2½%) strength.

(2) Any drug or device which bears or is required to bear the legend: Caution: federal law prohibits dispensing without prescription, or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

[1] Article 4476–15.

[See Compact Edition, Volume 4 for text of 2(b) to 4]

Duties of Exempt Persons

Sec. 5. Persons (other than carriers) exempt from the provisions of paragraphs (a) and (b) of Section 3 by virtue of Section 4 shall:

(a)(1) Make a complete record of all stocks of drugs set forth in Section 2(a)(1) hereof, on hand on the effective date of this Act, and retain such record for not less than two (2) calendar years immediately following such date, and

(2) Retain each commercial or other record relating to those drugs set forth in Section 2(a)(1) hereof, maintained by them in the usual course of their business or occupation, for not less than two (2) calendar years immediately following the date of such record, to create and maintain a perpetual record of the purchases of those drugs set forth in Section 2(a)(1) hereof.

(b) Pharmacies as set forth in Section 4(b)(1) shall, in addition to complying with the provisions of subsection (2) above, retain each prescription for those drugs set forth in Section 2(a)(1) hereof, received by them for not less than two (2) calendar years immediately following the date of the filling or the date of the last refilling of such prescription, whichever is the later date, to create and maintain a perpetual record of the sales of those drugs set forth in Section 2(a)(1) hereof.

Files or Records; Inspection; Inventory of Drugs

Sec. 6. Persons required to keep files and records relating to those drugs set forth in Section 2(a)(1) hereof, by Section 5 shall

(1) make such files or records available for inspection by any public official or employee engaged in the enforcement of this Act, at all reasonable hours, for inspection and copying; and

(2) accord to such officer or employee full opportunity to make inventory of all stocks of those drugs set forth in Section 2(a)(1) hereof, on hand; and it shall be unlawful for any such person to fail to make such files or records available or to accord such opportunity to check their correctness.

[See Compact Edition, Volume 4 for text of 7 to 15A]

[Amended by Acts 1979, 66th Leg., p. 163, ch. 90, §§ 8, 9, eff. May 2, 1979.]

Section 10 of the 1979 amendatory act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act takes effect is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

Art. 4476–15. Controlled Substances Act

SUBCHAPTER 1. GENERAL PROVISIONS

[See Compact Edition, Volume 4 for text of 1.01]

Definitions

Sec. 1.02.

[See Compact Edition, Volume 4 for text of 1.02(1) to 1.02(7)]

(8) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a controlled substance or drug paraphernalia, whether or not there is an agency relationship. For purposes of this Act, it also includes an offer to sell a controlled substance or drug paraphernalia. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

[See Compact Edition, Volume 4 for text of 1.02(9) to 1.02(26)]

(27) "Prescription" means an order by a practitioner to a pharmacist for a controlled substance for a particular patient which specifies the date of issue, the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner, the name and quantity of the controlled substance prescribed, and directions for use of the drug.

(28) "Raw material" means a compound, material, substance, or equipment that is used or intended for use, alone or in any combination, in manufacturing, compounding, or processing a controlled substance.

(29) "Drug paraphernalia" means equipment, a product, or a material of any kind that is used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing a controlled substance in violation of this Act or in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this Act. It includes, but is not limited to:

(A) a kit used or intended for use in planting, propagating, cultivating, growing, or harvesting any species of plant that is a controlled substance or from which a controlled substance can be derived;

(B) a kit used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(C) an isomerization device used or intended for use in increasing the potency of any species of plant that is a controlled substance;

(D) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;

(E) a scale or balance used or intended for use in weighing or measuring a controlled substance;

(F) a diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, used or intended for use in cutting a controlled substance;

(G) a separation gin or sifter used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;

(H) a blender, bowl, container, spoon, or mixing device used or intended for use in compounding a controlled substance;

(I) a capsule, balloon, envelope, or other container used or intended for use in packaging small quantities of a controlled substance;

(J) a container or other object used or intended for use in storing or concealing a controlled substance;

(K) a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body; and

(L) an object used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

(i) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(ii) a water pipe;

(iii) a carburetion tube or device;

(iv) a smoking or carburetion mask;

(v) a chamber pipe;

(vi) a carburetor pipe;

(vii) an electric pipe;

(viii) an air-driven pipe;

(ix) a chillum;

(x) a bong; or

(xi) an ice pipe or chiller.

SUBCHAPTER 2. STANDARD AND SCHEDULES

[See Compact Edition, Volume 4 for text of 2.01 and 2.02]

Schedule I

Sec. 2.03. (a) Schedule I shall consist of the controlled substances listed in this section.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Allylprodine;
(2) Benzethidine;
(3) Betaprodine;
(4) Clonitazene;
(5) Diampromide;
(6) Diethylthiambutene;
(7) Difenoxin;
(8) Dimenoxadol;
(9) Dimethylthiambutene;
(10) Dioxaphetyl butyrate;
(11) Dipipanone;
(12) Ethylmethylthiambutene;
(13) Etonitazene;
(14) Etoxeridine;
(15) Furethidine;
(16) Hydroxypethidine;
(17) Ketobemidone;
(18) Levophenacylmorphan;
(19) Meprodine;
(20) Methadol;
(21) Moramide;
(22) Morpheridine;
(23) Noracymethadol;
(24) Norlevorphanol;
(25) Normethadone;
(26) Norpipanone;
(27) Phenadoxone;
(28) Phenampromide;
(29) Phenomorphan;
(30) Phenoperidine;
(31) Piritramide;
(32) Proheptazine;
(33) Properidine;
(34) Propiram;
(35) Trimeperidine;
(36) Phencyclidine.

(c) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except hydrochloride salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Monoacetylmorphine;
(16) Morphine methylbromide;
(17) Morphine methylsulfonate;
(18) Morphine-N-Oxide;
(19) Myrophine;
(20) Nicocodeine;
(21) Nicomorphine;
(22) Normorphine;
(23) Pholcodine;
(24) Thebacon.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

(1) 4-bromo-2, 5-dimethoxyamphetamine (Some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

(2) 2, 5-dimethoxyamphetamine (Some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

(3) 4-methoxyamphetamine (Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(4) 5-methoxy-3, 4-methylenedioxy amphetamine;

(5) 4-methyl-2, 5-dimethoxyamphetamine (Some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP");

(6) 3, 4-methylenedioxy amphetamine;

(7) 3, 4, 5-trimethoxy amphetamine;

(8) Bufotenine (Some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-

dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

(9) Diethyltryptamine (Some trade and other names: N, N-Diethyltryptamine, DET);

(10) Dimethyltryptamine (Some trade and other names: DMT);

(11) Ibogaine (Some trade or other names: 7-Ethyl-6, 6, beta, 7, 8, 9, 10, 12, 13, -octahydro-2-methoxy-6, 9-methano-5H-pyrido [1′, 2′,:1, 2] azepino [5, 4-b] indole; tabernanthe iboga);

(12) Lysergic acid diethylamide;

(13) Marihuana;

(14) Mescaline;

(15) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant presently classified botanically as Lophophora, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or extracts;

(16) N-ethyl-3-piperidyl benzilate;

(17) N-methyl-3-piperidyl benzilate;

(18) Psilocybin;

(19) Psilocin;

(20) Tetrahydrocannabinols.

Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.);

(21) Thiophene Analog of Phencyclidine (Some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP);

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant or stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

(1) Fenethylline;

(2) Mecloqualone; and

(3) Nitrazepam.

Schedule II

Sec. 2.04. (a) Schedule II shall consist of the controlled substances listed in this section.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, however produced:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone and its salts, and excluding naltrexone and its salts, but including the following:

(A) Raw opium;

(B) Opium extracts;

(C) Opium fluid extracts;

(D) Powdered opium;

(E) Granulated opium;

(F) Tincture of opium;

(G) Codeine;

(H) Ethylmorphine;

(I) Etorphine hydrochloride;

(J) Hydrocodone;

(K) Hydromorphone;

(L) Metopon;

(M) Morphine;

(N) Oxycodone;

(O) Oxymorphone;

(P) Thebaine;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) of this subsection, but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including its salts, isomers (whether optical, position, or geometric) and salts of such isomers; coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy);

(6) 1-Phenylcyclohexylamine; and

(7) 1-Piperidinocyclohexane-Carbonitrile.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Dihydrocodeine;

(5) Diphenoxylate;

(6) Fentanyl;

(7) Isomethadone;

(8) Levomethorphan;

(9) Levorphanol;

(10) Metazocine;

(11) Methadone;

(12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

(14) Pethidine;

(15) Pethidine-Intermediate-A, 4-cyano-1-methy-l-4-phenylpiperidine;

(16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(18) Phenazocine;

(19) Piminodine;

(20) Racemethorphan;

(21) Racemorphan.

(d) Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine.

(e) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) methamphetamine, including its salts, isomers, and salts of isomers;

(3) methylphenidate and its salts; and

(4) phenmetrazine and its salts.

(f) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Methaqualone;

(2) Amobarbital;

(3) Secobarbital;

(4) Pentobarbital.

Schedule III

Sec. 2.05. (a) Schedule III shall consist of the controlled substances listed in this section.

(b) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more active medicinal ingredients which are not listed in any schedule;

(2) any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(3) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

(4) Chlorhexadol;

(5) Glutethimide;

(6) Lysergic acid;

(7) Lysergic acid amide;

(8) Methyprylon;

(9) Sulfondiethylmethane;

(10) Sulfonethylmethane;

(11) Sulfonmethane.

(c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one

or more ingredients in recognized therapeutic amounts;

(7) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture, or preparation containing any stimulant listed in Subsection (e) of Section 2.04 or depressant substance listed in Subsection (b) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(f) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible, within the specific chemical designation:

(1) Benzphetamine;
(2) Chlorphentermine;
(3) Clortermine;
(4) Mazindol;
(5) Phendimetrazine.

Schedule IV

Sec. 2.06. (a) Schedule IV shall consist of the controlled substances listed in this section.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Barbital;
(2) Chloral betaine;
(3) Chloral hydrate;
(4) Chlordiazepoxide;
(5) Clonazepam;
(6) Clorazepate;
(7) Diazepam;
(8) Ethchlorvynol;
(9) Ethinamate;
(10) Flurazepam;
(11) Lorazepam;
(12) Mebutamate;
(13) Meprobamate;
(14) Methohexital;
(15) Methylphenobarbital;
(16) Oxazepam;
(17) Paraldehyde;
(18) Pentazocine, its salts, derivatives, or compounds or mixtures thereof;
(19) Petrichloral;
(20) Phenobarbital;
(21) Prazepam.

(c) Any compound, mixture, or preparation containing any depressant substance listed in Subsection (b) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(d) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific designation:

(1) Diethylpropion;
(2) Phentermine;
(3) Fenfluramine;
(4) Pemoline (including organometallic complexes and chelates thereof).

(e) OTHER SUBSTANCES. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

Schedule V

Sec. 2.07. (a) Schedule V shall consist of the controlled substances listed in this section.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following

narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams.

(6) not more than 0.5 milligram of difenoxin and not less than 25 milligrams of atropine sulfate per dosage unit.

(c) Loperamide.

[See Compact Edition, Volume 4 for text of 2.08 to 2.16]

Dangerous Drugs

Sec. 2.17. The following substances are dangerous drugs regulated by the provisions of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes):

(1) procaine, its salts, derivatives, or compounds or mixtures thereof; or

(2) any substance that bears or is required to bear the legend: Caution: federal law prohibits dispensing without prescription; or the legend: Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

SUBCHAPTER 3. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

Registration Requirements

Sec. 3.01.

[See Compact Edition, Volume 4 for text of 3.01(a) to 3.01(d)]

(e) The following persons need not register and may lawfully possess controlled substances under this Act:

(1) an agent or employee of any registered manufacturer, distributor, analyzer, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user, as that term is defined herein, or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance; or

(4) an official of the Texas Department of Health, a medical school researcher, or a research program participant possessing tetrahydrocannabinols and their derivatives as authorized under Subchapter 7 of this Act.

[See Compact Edition, Volume 4 for text of 3.01(f) to 3.01(h)]

Rules

Sec. 3.02. (a) The director may promulgate reasonable rules.

(b) The director may charge an annual fee of up to $5 per registrant for the costs necessary to administer this Act. Except as provided by Subsection (c) of this section, the fees shall be paid to the director of the department of public safety.

(c) The director may authorize a contract between the department of public safety and an appropriate state agency for the collection and remittance of fees required under this section.

(d) The director by rule may provide for remittance of registration fees collected by state agencies for the department of public safety.

(e) Fees collected by the director of the department of public safety under the terms of this section shall be deposited in the state treasury in the operator's and chauffeur's license fund and said fees deposited may be used only by the department of public safety in the administration of this Act.

Registration

Sec. 3.03. (a) The director shall register an applicant to manufacture or distribute or analyze controlled substances included in Schedules II through V, if:

(1) the applicant furnishes the director evidence that the applicant is registered for such purpose pursuant to the Federal Controlled Substances Act;

(2) the applicant has made proper application and paid the applicable fee; and

(3) the applicant has not been found by the director to have violated any provision of Section 3.04 of this Act.

(b) The director shall register an applicant to dispense any controlled substances in Schedules II through V or to conduct research with controlled substances in Schedules II through V, if:

(1) the applicant is a practitioner licensed under the laws of this state;

(2) the applicant has made proper application and paid the applicable fee; and

(3) the applicant has not been found by the director to have violated any provision of Section 3.04 of this Act.

[See Compact Edition, Volume 4 for text of 3.03(c) to 3.03(e)]

(f) This section does not apply to the use of tetrahydrocannabinols in the research program established under Subchapter 7 of this Act.

Grounds for Revocation and Suspension

Sec. 3.04. (a) A registration under Section 3.03 to manufacture, distribute, analyze, or dispense a controlled substance may be suspended, denied, or revoked in accordance with this Act upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under this Act;

(2) has been convicted of a felony offense under any state or federal law relating to any controlled substance or convicted of any other felony;

(3) has had his registration under the Federal Controlled Substances Act suspended or revoked to manufacture, distribute, analyze, or dispense controlled substances;

(4) has had his practitioner's license under the laws of this state suspended or revoked;

(5) has failed to establish and maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels as provided by federal regulations or laws now in effect or hereafter promulgated; or

(6) has willfully failed to maintain records required to be kept or has willfully or unreasonably refused to allow an inspection authorized by this Act.

[See Compact Edition, Volume 4 for text of 3.04(b) to 3.07]

Prescriptions

Text of section as amended by Acts 1981, 67th Leg., p. 2313, ch. 570, § 1, and effective until January 1, 1986

Sec. 3.08. (a) No controlled substance in Schedule II may be dispensed or administered without the written prescription of a practitioner on a form that meets the requirements of and is filled in by the practitioner in accordance with Section 3.09 of this Act, except that:

(1) in emergency situations, as defined by rule of the director, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing by the pharmacy, which shall include in its written record of the oral prescription the name, address, and federal drug enforcement administration number of the prescribing practitioner, all information required to be provided by the practitioner under Subsection (c) of Section 3.09 of this Act, and all information required to be provided by the dispensing pharmacist under Subsection (e) of Section 3.09 of this Act and shall send a copy of the written record to the Department of Public Safety within 30 days from the date the prescription is filled; and

(2) a prescription written for a patient who is admitted to a hospital at the time the prescription is written and filled is not required to be on a form that meets the requirements of Section 3.09 of this Act, and the provisions of Section 3.09 of this Act are not applicable to such prescriptions. No prescription for a Schedule II substance may be refilled.

(b) Except when dispensed directly to an ultimate user by a practitioner, other than a pharmacy, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act,[1] shall not be dispensed without a written or oral prescription of a practitioner. A prescription for a Schedule III or IV drug shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(c) A controlled substance listed in Subdivision (1) or (2), Subsection (b), Section 2.07 of this Act, may not be dispensed without the prescription of a practitioner, except when dispensed directly to an ultimate user by a practitioner other than a pharmacy, and a prescription for the substances may not be filled or refilled more than six months after the date of the prescription or be refilled more than five times, unless renewed by the practitioner. A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(d) No prescription for Schedule II narcotic drugs shall be filled after the end of the second day following the day on which the prescription was issued.

(e) A practitioner, as defined by Section 1.02(24)(A) of this Act, may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under his direction and supervision except for a valid medical purpose and in the course of professional practice.

(f) No person may administer or dispense a controlled substance in Schedule I, except as otherwise authorized by this Act.

[1] 21 U.S.C.A. § 301 et seq.

Prescriptions

Text of section as amended by Acts 1981, 67th Leg., p. 2933, ch. 777, § 2

Sec. 3.08. (a) No controlled substance in Schedule II may be dispensed without the written prescription of a practitioner, except when dispensed directly to an ultimate user by a practitioner, other than a pharmacy.

(b) In emergency situations, as defined by rule of the director, Schedule II drugs may be dispensed upon oral or telephonically communicated prescription of a practitioner, reduced promptly to writing by the pharmacy and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of Section 3.06. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly to an ultimate user by a practitioner, other than a pharmacy, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act,[1] shall not be dispensed without a written, oral, or telephonically communicated prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(d) A telephonically communicated prescription of a practitioner under this subchapter may be communicated only by the practitioner or by an agent of the practitioner designated in writing as authorized to communicate prescriptions by telephone. Such telephonically communicated prescriptions shall be reduced promptly to writing by the pharmacy and filed and retained in conformity with this subchapter. The written designation of an agent authorized to communicate prescriptions shall be maintained in the usual place of business of the practitioner and shall be available for inspection by investigators for the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the Department of Public Safety.

(e) Upon request from a pharmacist, the practitioner shall furnish a copy of such written designation of an agent authorized to communicate prescriptions on behalf of such practitioner. Nothing herein shall be construed as to relieve such a practitioner or his designated agent from the requirements of Section 40 of the Texas Pharmacy Act, H.B. 1628, 67th Legislature, Regular Session, 1981;[2] and such practitioner shall be personally responsible for the actions for such designated agent in communicating prescriptions to a pharmacist.

(f) A controlled substance listed in Subdivision (1) or (2), Subsection (b), Section 2.07 of this Act, may not be dispensed without the prescription of a practitioner, except when dispensed directly to an ultimate user by a practitioner other than a pharmacy, and a prescription for the substances may not be filled or refilled more than six months after the date of the prescription or be refilled more than five times, unless renewed by the practitioner. A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(g) No prescription for Schedule II narcotic drugs shall be filled after the second day the prescription was issued.

(h) A practitioner, as defined by Section 1.02(24)(A) of this Act, may not prescribe, dispense, or administer a controlled substance or cause a controlled substance to be administered under his direction and supervision except for a valid medical purpose and in the course of professional practice.

[1] 21 U.S.C.A. § 301 et seq.
[2] Article 4542a–1.

Triplicate Prescription Program Requirements

Text of section added effective until January 1, 1986

Sec. 3.09. (a) Except as otherwise provided in Subsection (a) of Section 3.08 of this Act, each prescription for a controlled substance in Schedule II must be recorded on a prescription form that meets the requirements of Subsection (b) of this section and that is issued to practitioners at cost by the Department of Public Safety. No more than one such prescription shall be recorded on each form. Before delivering forms to a practitioner, the department shall print on the forms the name, address, and federal drug enforcement administration number of the practitioner.

(b) Each prescription form used to prescribe a controlled substance must be serially numbered and in triplicate, with the original copy labeled "Copy 1," the duplicate copy labeled "Copy 2," and the triplicate copy labeled "Copy 3." Each form must contain spaces for:

(1) the date the prescription is written;

(2) the date the prescription is filled;

(3) the drug prescribed, the dosage, and instructions for use;

(4) the name, address, and federal drug enforcement administration number of the dispensing pharmacy and the name of the pharmacist who fills the prescription; and

(5) the name, address, and age of the person for whom the controlled substance is prescribed.

(c) Except for oral prescriptions prescribed under Subsection (a) of Section 3.08 of this Act, the prescribing practitioner shall:

(1) fill in on all three copies of the form in the space provided:

(A) the date the prescription is written;

(B) the drug prescribed, the dosage, and instructions for use; and

(C) the name, address, and age of the patient (or, in the case of an animal, its owner) for whom the controlled substance is prescribed;

(2) sign copies 1 and 2 of the form and give them to the person authorized to receive the prescription; and

(3) retain Copy 3 of the form with his records for a period of not less than two years from the date the prescription is written.

(d) In the case of an oral prescription prescribed under Subsection (a) of Section 3.08 of this Act, the

prescribing practitioner shall give the dispensing pharmacy the information it needs to complete the form.

(e) Each dispensing pharmacist shall:

(1) fill in on copies 1 and 2 of the form in the space provided the information not required to be filled in by the prescribing practitioner or the Department of Public Safety;

(2) retain Copy 2 with the records of the pharmacy for a period of not less than two years; and

(3) sign Copy 1 and send it to the Department of Public Safety within 30 days from the date the prescription is filled.

(f) A practitioner in possession of prescription forms issued under Subsection (a) of Section 3.09 of this Act whose license to practice or federal drug enforcement administration number is suspended or revoked shall within seven days after the suspension or revocation becomes effective return to the department all of such forms which have not been used to issue prescriptions.

(g) The director shall not permit access to information submitted to the Department of Public Safety pursuant to this section to any person, except:

(1) investigators for the Texas State Board of Medical Examiners, the Texas State Board of Podiatry Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the State Board of Pharmacy; or

(2) authorized officers of the Department of Public Safety engaged in bona fide investigation of suspected criminal violations of this Act, who obtain such access with the approval of an investigator listed in Subdivision (1) of Subsection (g) of this section, who shall cooperate and assist such peace officers in obtaining information for bona fide investigations of suspected criminal violations of this Act.

(h) The system for retrieval of information submitted to the Department of Public Safety pursuant to this section shall be designed in all respects so as to preclude improper access to information through use of automated information security techniques and devices. The director shall submit the system design to the State Board of Pharmacy and the Texas State Board of Medical Examiners for review and approval or comment a reasonable time before implementation of the system and shall comply with the comments of those agencies unless it would be unreasonable to do so. The Texas State Board of Medical Examiners and the State Board of Pharmacy shall promptly approve or comment on the system design submitted by the director.

(i) Information submitted to the Department of Public Safety pursuant to this section shall be used only for bona fide drug-related criminal investigatory or evidentiary purposes or for investigatory or evidentiary purposes in connection with the functions of one or more of the regulatory boards listed in Subdivision (1) of Subsection (g) of this section.

(j) Each identity of an individual which is submitted to the Department of Public Safety pursuant to this section shall be removed from the system for retrieval of such information and shall be destroyed and rendered irretrievable not later than the end of the sixth calendar month following the month in which such identity was submitted to the department; provided that an individual identity which is necessary for use in a specific ongoing investigation conducted in accordance with this section may be retained in the system until the end of the month in which the necessity for retention of such identity ends. The department shall issue a report at least quarterly to the Legislative Budget Board certifying that the provisions of this subsection have been complied with and setting forth in detail the results of monthly audits showing that identities have been removed from the system and rendered irretrievable in compliance with this subsection. Failure to comply with any provision of this subsection shall be corrected as soon as practicable after discovery, and any person responsible for failure to comply with this subsection shall be subject to disciplinary action for such failure, including but not limited to dismissal.

(k) The director may promulgate rules to implement this section.

(*l*) On or before September 1, 1984, the Texas State Board of Medical Examiners, the Texas State Board of Podiatry Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the State Board of Pharmacy, and the Department of Public Safety shall jointly submit a public report to the attorney general on the effectiveness of the triplicate program. Such report shall include, for each of the years 1982 and 1983, and for the first six-month period of 1984:

(1) the number of triplicate blanks issued;

(2) the number of lost or stolen triplicate blanks;

(3) the number of indictments, convictions, and peer review proceedings attributable to the triplicate program;

(4) the cost of administering the program; and

(5) such other information as the reporting agencies shall deem appropriate.

SUBCHAPTER 4. OFFENSES AND PENALTIES

Classification of Offenses and Punishment

Sec. 4.01.

[See Compact Edition, Volume 4 for text of 4.01(a)]

(b) Those felonies for which a specific punishment is not provided are classified according to the relative seriousness of the offense into three categories:

(1) Felonies of the first degree. An individual adjudged guilty of a felony of the first degree

shall be punished by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years. In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed $20,000.

(2) Felonies of the second degree. An individual adjudged guilty of a felony of the second degree shall be punished by confinement in the Texas Department of Corrections for a term of not more than 20 years or less than 2 years. In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed $10,000.

(3) Felonies of the third degree. An individual adjudged guilty of a felony of the third degree shall be punished by confinement in the Texas Department of Corrections for a term of not more than 10 years or less than 2 years. In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed $5,000.

(c), (d) Repealed by Acts 1981, 67th Leg., p. 707, ch. 268, § 18, eff. Sept. 1, 1981.

Preparatory Offenses

Sec. 4.011. The provisions of Title 4, Penal Code,[1] apply to Section 4.052 and offenses designated as aggravated offenses under Subchapter 4 of this Act, except that the punishment for a preparatory offense is the same as the punishment prescribed for the offense that was the object of the preparatory offense.

[1] Penal Code, § 15.01 et seq.

Repeat Offenders

Sec. 4.012. (a) If it is shown on the trial of an offense listed under Subsection (b) of this section that the defendant has previously been convicted of a felony offense under this subchapter, on conviction the defendant shall be punished by the term of confinement and amount of fine imposed by this section.

(b) An offense under this section is punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than:

(1) 10 years, and a fine not to exceed $100,000, if the person is convicted of an offense for which the punishment is otherwise imposed under Section 4.03(d)(1), 4.031(d)(1), 4.032(d)(1), 4.04(d)(1), 4.041(d)(1), 4.042(d)(1), 4.043(d)(1), 4.05(d)(1), 4.051(d)(1), or 4.052(b);

(2) 15 years, and a fine not to exceed $250,000, if the person is convicted of an offense for which the punishment is otherwise imposed under Section 4.03(d)(2), 4.031(d)(2), 4.032(d)(2), 4.04(d)(2), 4.041(d)(2), 4.042(d)(2), 4.043(d)(2), 4.05(d)(2), or 4.051(d)(2); and

(3) 20 years, and a fine not to exceed $500,000, if the person is convicted of an offense for which the punishment is otherwise imposed under Section 4.03(d)(3), 4.05(d)(3), or 4.051(d)(3).

(c) A person who is subject to prosecution under both this section and Section 12.42, Penal Code, may be prosecuted under either section.

Criminal Classification

Sec. 4.02.

[See Compact Edition, Volume 4 for text of 4.02(a)]

(b) Penalty Group 1. Penalty Group 1 shall include the following controlled substances:

(1) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(A) Allylprodine;
(B) Benzethidine;
(C) Betaprodine;
(D) Clonitazene;
(E) Diampromide;
(F) Diethylthiambutene;
(G) Difenoxin;
(H) Dimenoxadol;
(I) Dimethylthiambutene;
(J) Dioxaphetyl butyrate;
(K) Dipipanone;
(L) Ethylmethylthiambutene;
(M) Etonitazene;
(N) Etoxeridine;
(O) Furethidine;
(P) Hydroxypethidine;
(Q) Ketobemidone;
(R) Levophenacylmorphan;
(S) Meprodine;
(T) Methadol;
(U) Moramide;
(V) Morpheridine;
(W) Noracymethadol;
(X) Norlevorphanol;
(Y) Normethadone;
(Z) Norpipanone;
(AA) Phenadoxone;
(BB) Phenampromide;
(CC) Phenomorphan;
(DD) Phenoperidine;
(EE) Piritramide;
(FF) Proheptazine;
(GG) Properidine;

(HH) Propiram;

(II) Trimeperidine.

(2) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Acetorphine;

(B) Acetyldihydrocodeine;

(C) Benzylmorphine;

(D) Codeine methylbromide;

(E) Codeine-N-Oxide;

(F) Cyprenorphine;

(G) Desomorphine;

(H) Dihydromorphine;

(I) Drotebanol;

(J) Etorphine;

(K) Heroin;

(L) Hydromorphinol;

(M) Methyldesorphine;

(N) Methyldihydromorphine;

(O) Monoacetylmorphine;

(P) Morphine methylbromide;

(Q) Morphine methylsulfonate;

(R) Morphine-N-Oxide;

(S) Myrophine;

(T) Nicocodeine;

(U) Nicomorphine;

(V) Normorphine;

(W) Pholcodine;

(X) Thebacon.

(3) Any of the following substances, except those narcotic drugs listed in another group, however produced:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone and its salts, and excluding naltrexone and its salts, but including the following:

(i) Raw opium;

(ii) Opium extracts;

(iii) Opium fluid extracts;

(iv) Powdered opium;

(v) Granulated opium;

(vi) Tincture of opium;

(vii) Codeine;

(viii) Ethylmorphine;

(ix) Hydrocodone;

(x) Hydromorphone;

(xi) Metopon;

(xii) Morphine;

(xiii) Oxycodone;

(xiv) Oxymorphone;

(xv) Thebaine;

(B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (A), but not including the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Cocaine, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(E) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(4) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(A) Alphaprodine;

(B) Anileridine;

(C) Bezitramide;

(D) Dihydrocodeine;

(E) Diphenoxylate;

(F) Fentanyl;

(G) Isomethadone;

(H) Levomethorphan;

(I) Levorphanol;

(J) Metazocine;

(K) Methadone;

(L) Methadone-Intermediate,
4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(M) Moramide-Intermediate,
2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

(N) Pethidine;

(O) Pethidine-Intermediate-A,
4-cyano-1-methyl-4-phenylpiperidine;

(P) Pethidine-Intermediate-B,
ethyl-4-phenylpiperidine-4 carboxylate;

(Q) Pethidine-Intermediate-C,
1-methyl-4-phenylpiperidine-4-carboxylic acid;

(R) Phenazocine;

(S) Piminodine;

(T) Racemethorphan;

(U) Racemorphan.

(5) Lysergic acid diethylamide, including its salts, isomers, and salts of isomers.

(6) Methamphetamine, including its salts, isomers, and salts of isomers.

(7) 1-Phenylcyclohexylamine;

(8) Phenylacetone and methylamine, if possessed together with intent to manufacture methamphetamine;

(9) 1-Piperidinocyclohexane-Carbonitrile;

(10) Phencyclidine.

(c) Penalty Group 2. Penalty Group 2 shall include the following controlled substances: (1) Any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

(A) 4-bromo-2, 5-dimethoxyamphetamine (Some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

(B) 2, 5-dimethoxyamphetamine (Some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

(C) 4-methoxyamphetamine (Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(D) 5-methoxy-3, 4-methylenedioxy amphetamine;

(E) 4-methyl-2, 5-dimethoxyamphetamine (Some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP");

(F) 3, 4-methylenedioxy amphetamine;

(G) 3, 4, 5-trimethoxy amphetamine;

(H) Bufotenine (Some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

(I) Diethyltryptamine (Some trade and other names: N, N-Diethyltryptamine, DET);

(J) Dimethyltryptamine (Some trade and other names: DMT);

(K) Ibogaine (Some trade or other names: 7-Ethyl-6, 6, beta 7, 8, 9, 10, 12, 13, -octahydro-2-methoxy-6, 9-methano-5H-pyrido [1′, 2′,:1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

(L) Mescaline;

(M) N-ethyl-3-piperidyl benzilate;

(N) N-methyl-3-piperidyl benzilate;

(O) Psilocin;

(P) Psilocybin;

(Q) Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

(R) Thiophene Analog of Phencyclidine (Some trade or other names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP);

(S) Etorphine Hydrochloride.

(d) Penalty Group 3. Penalty Group 3 shall include the following controlled substances:

(1) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(B) Fenethylline;

(C) Methylphenidate and its salts;

(D) Phenmetrazine and its salts;

(2) Methaqualone;

(3) Mecloqualone.

(4) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(A) Any substances which contain any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid not otherwise covered by this subsection;

(B) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of these, and one or more active medicinal ingredients which are not listed in any schedule;

(C) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs, and approved by the United States Food and Drug Administration for marketing only as a suppository;

(D) Amobarbital;

(E) Secobarbital;

(F) Pentobarbital;

(G) Chlordiazepoxide;

(H) Clonazepam;

(I) Clorazepate;

(J) Chlorhexadol;

(K) Diazepam;

(L) Flurazepam;

(M) Glutethimide;

(N) Lorazepam;

(O) Lysergic acid, including its salts, isomers, and salts of isomers;

(P) Lysergic acid amide, including its salts, isomers, and salts of isomers;

(Q) Mebutamate;

(R) Methyprylon;

(S) Nitrazepam;

(T) Oxazepam;

(U) Pentazocine, its salts, derivatives, or compounds or mixtures thereof;

(V) Prazepam;

(W) Sulfondiethylmethane;

(X) Sulfonethylmethane;

(Y) Sulfonmethane.

(5) Nalorphine.

(6) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(A) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(D) not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(F) not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(G) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(H) not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(I) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(7) Any compound, mixture, or preparation containing any stimulant listed in Subsection (d)(1) of this section or depressant substance listed in Subsection (d)(4) of this section is excepted if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(8) Any material, compound, mixture or preparation which contains any quantity of the following substances:

(A) Barbital;

(B) Chloral betaine;

(C) Chloral hydrate;

(D) Ethchlorvynol;

(E) Ethinamate;

(F) Methohexital;

(G) Meprobamate;

(H) Methylphenobarbital;

(I) Paraldehyde;

(J) Petrichloral;

(K) Phenobarbital.

(9) Any compound, mixture, or preparation containing any depressant substance listed in Subsection (d)(8) is excepted if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(10) Peyote, unless unharvested and growing in its natural state, (meaning all parts of the plant presently classified botanically as Lophophora, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or extracts);

(11) Unless listed in another penalty group, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of its isomers, if the existence of the salts, isomers,

and salts of isomers is possible, within the specific chemical designation:

(A) Benzphetamine;

(B) Chlorphentermine;

(C) Clortermine;

(D) Diethylpropion;

(E) Fenfluramine;

(F) Mazindol;

(G) Pemoline (including organometallic complexes and chelates thereof);

(H) Phendimetrazine;

(I) Phentermine.

(12) OTHER SUBSTANCES. Unless specifically excepted or unless listed in another penalty group, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

(A) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(e) Penalty Group 4. Penalty Group 4 shall include the following controlled substances: (1) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(A) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(B) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(C) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(D) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(E) not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams;

(F) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Loperamide.

Unlawful Manufacture or Delivery of Controlled Substance in Penalty Group 1

Sec. 4.03. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 1.

(b) An offense under Subsection (a) of this section is a felony of the first degree if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, less than 28 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 28 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 28 grams or more but less than 200 grams;

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 200 grams or more but less than 400 grams; and

(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed $250,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

Unlawful Manufacture or Delivery of Controlled Substance in Penalty Group 2

Sec. 4.031. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 2.

(b) An offense under Subsection (a) of this section is a felony of the second degree if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, less than 28 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 28 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of

not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 28 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

Unlawful Manufacture or Delivery of Controlled Substance in Penalty Group 3 or 4

Sec. 4.032. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 3 or 4.

(b) An offense under Subsection (a) of this section is a felony of the third degree if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, less than 200 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 200 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 200 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

Unlawful Possession of Controlled Substance in Penalty Group 1

Sec. 4.04. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance in Penalty Group 1 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

(b) An offense under Subsection (a) of this section is a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, less than 28 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 28 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 28 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

Unlawful Possession of Controlled Substance in Penalty Group 2

Sec. 4.041. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance in Penalty Group 2 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

(b) An offense under Subsection (a) of this section is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, less than 28 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 28 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 28 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

Unlawful Possession of Controlled Substance in Penalty Group 3

Sec. 4.042. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance in Penalty Group 3 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

(b) An offense under Subsection (a) of this section is a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, less than 200 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 200 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 200 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance possessed is, by aggregation weight, including any adulterants or dilutants, 400 grams or more.

Unlawful Possession of Controlled Substance in Penalty Group 4

Sec. 4.043. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a controlled substance in Penalty Group 4 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his practice.

(b) An offense under Subsection (a) of this section is a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, less than 200 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 200 grams or more.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 200 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance possessed is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

Unlawful Delivery of Marihuana

Sec. 4.05. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally delivers marihuana.

(b) An offense under Subsection (a) of this section is:

(1) a Class B misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;

(2) a Class A misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;

(3) a felony of the third degree if the amount of marihuana delivered is four ounces or less but more than one-fourth ounce;

(4) a felony of the second degree if the amount of marihuana delivered is five pounds or less but more than four ounces; and

(5) a felony of the first degree if the amount of marihuana delivered is 50 pounds or less but more than 5 pounds.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this section and the amount of marihuana delivered is more than 50 pounds.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of marihuana delivered is 200 pounds or less but more than 50 pounds;

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of

marihuana delivered is 2,000 pounds or less but more than 200 pounds; and

(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed $250,000, if the amount of the marihuana delivered is more than 2,000 pounds.

Unlawful Possession of Marihuana

Text of section as added by Acts 1981, 67th Leg., p. 702, ch. 268, § 8

Sec. 4.051. (a) Except as authorized by this Act, a person commits an offense if he knowingly or intentionally possesses a usable quantity of marihuana.

(b) An offense under Subsection (a) of this section is:

(1) a Class B misdemeanor if the amount of marihuana possessed is two ounces or less;

(2) a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces; and

(3) a felony of the third degree if the amount of marihuana possessed is five pounds or less but more than four ounces; and

(4) a felony of the second degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) of this Act and the amount of marihuana possessed is more than 50 pounds.

(d) An offense under Subsection (c) of this section is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of marihuana possessed is 200 pounds or less but more than 50 pounds;

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of marihuana possessed is 2,000 pounds or less but more than 200 pounds; and

(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed $250,000, if the amount of the marihuana possessed is more than 2,000 pounds.

(e) An offense for which the punishment is prescribed in Subsection (b) of this section may not be considered a crime of moral turpitude.

Delivery of Controlled Substance to Minor

Text of section as added by Acts 1981, 67th Leg., p. 741, ch. 276, § 1

Sec. 4.051. (a) Except as authorized by this Act, a person commits an aggravated offense if the person knowingly or intentionally delivers a controlled substance listed in Penalty Group 1, 2, or 3 or knowingly or intentionally delivers marihuana and the person delivers the marihuana or controlled substance to a person:

(1) who is 17 years of age or younger; or

(2) that the actor knows or believes intends to deliver the controlled substance or marihuana to a person 17 years of age or younger.

(b) It is an affirmative defense to prosecution under this section that the actor was less than 18 years of age when the offense was committed.

(c) It is an affirmative defense to prosecution under this section that the actor was less than 21 years of age at the time the offense was committed and delivered solely marihuana in an amount less than one-fourth ounce for which the actor received no renumeration.[1]

(d) An offense under this section is a felony of the first degree.

[1] So in enrolled bill.

Illegal Investment

Sec. 4.052. (a) A person commits an offense if the person knowingly or intentionally:

(1) receives or expends funds he knows or believes are derived from the commission of an offense under Section 4.03(c), 4.031(c), 4.032(c), 4.04(c), 4.041(c), 4.042(c), 4.043(c), 4.05(c), or 4.051(c) of this Act; or

(2) finances or invests funds he knows or believes are intended to further the commission of an offense listed in Subdivision (a) (1) of this subsection.

(b) An offense under Subsection (a) of this section is punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine of not more than $1,000,000 or less than $50,000.

[See Compact Edition, Volume 4 for text of 4.06]

Possession of Delivery of Drug Paraphernalia

Sec. 4.07. (a) A person commits an offense if he knowingly or intentionally uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this Act or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Act.

(b) A person commits an offense if he knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver drug

paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends that it be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this Act or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this Act.

(c) A person commits an offense if he commits an offense under Subsection (b) of this section, is 18 years of age or older, and the person who receives or who is intended to receive the drug paraphernalia is under 18 years of age and at least three years younger than the actor.

(d) An offense under Subsection (a) of this section is a Class C misdemeanor, unless the actor has been convicted previously under Subsection (a), in which event it is a Class B misdemeanor.

(e) An offense under Subsection (b) of this section is a Class A misdemeanor. If it be shown on a trial for violation of Subsection (b) of this section, that the defendant has been previously convicted of Subsection (b) or (c) of this section, then an offense under Subsection (b) of this section is a felony of the third degree.

(f) An offense under Subsection (c) of this section is a felony of the third degree.

Sec. 4.08.

Text of subsection effective until January 1, 1986

(a) It is unlawful for any person:

(1) who is a practitioner knowingly or intentionally to distribute or dispense a controlled substance in violation of Section 3.08;

(2) who is a registrant knowingly or intentionally to manufacture a controlled substance not authorized by his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other person;

(3) to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this Act;

(4) to refuse an entry into any premises for any inspection authorized by this Act; or

(5) to refuse or fail to return triplicate prescription forms as required by Subsection (f) of Section 3.09 of this Act.

For text of subsection (a) effective January 1, 1986, see Compact Edition, Volume 4

[See Compact Edition, Volume 4 for text of 4.08(b)]

Unauthorized Disclosure of Information

Text of section added effective until January 1, 1986

Sec. 4.081. (a) A person commits an offense if he intentionally or knowingly gives, permits, or obtains unauthorized access to information submitted to the Department of Public Safety under Section 3.09 of this Act.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

Fraud Offenses

Sec. 4.09. (a) It is unlawful for any person knowingly or intentionally:

(1) to distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by Section 3.07 of this Act;

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire, obtain, or attempt to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Act, or any record required to be kept by this Act; or

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any controlled substance or container or labeling thereof so as to render the controlled substance a counterfeit substance.

(b) An offense under Subsection (a) with respect to:

(1) a controlled substance classified in Schedule I or II is a felony of the second degree;

(2) a controlled substance classified in Schedule III is a felony of the third degree;

(3) a controlled substance classified in Schedule IV or V is a Class B misdemeanor.

[See Compact Edition, Volume 4 for text of 4.10]

Exemptions

Sec. 4.11. (a) The provisions of this Act relating to the possession and distribution of peyote shall not apply to the use of peyote by members of the Native American Church in bona fide religious ceremonies of the church. However, persons who supply the substance to the church are required to register and

maintain appropriate records of receipts and disbursements in accordance with rules promulgated by the director. The exemption granted to members of the Native American Church under this section does not apply to a member with less than 25 percent Indian blood.

(b) The provisions of this Act relating to the possession of denatured sodium pentobarbital do not apply to possession by personnel of a humane society or an animal control agency for the purpose of destroying injured, sick, homeless, or unwanted animals if the humane society or animal control agency is registered with the drug enforcement administration. The provisions of this Act relating to the distribution of denatured sodium pentobarbital do not apply to a person registered as required by Section 3.01 of this Act, as amended, distributing the substance for that purpose to a humane society or an animal control agency registered with the drug enforcement administration.

Sec. 4.12.

Text of subsection (a) as amended by Acts 1981, 67th Leg., p. 703, ch. 268, § 9

(a) If any person who has not previously been convicted of an offense under this Act, or, subsequent to the effective date of this Act, under any statute of the United States or of any state relating to a substance that is defined by this Act as a controlled substance, is charged with or found guilty of a violation of this subchapter, except an aggravated offense or an offense under Section 4.052 of this Act, after trial or on a plea of guilty, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place him on probation on such reasonable conditions as it may require and for such period as the court may prescribe, except that the probationary period may not exceed two years.

Text of subsection (a) as amended by Acts 1981, 67th Leg., p. 741, ch. 276, § 2

(a) If any person who has not previously been convicted of an offense under this Act, or, subsequent to the effective date of this Act, under any statute of the United States or of any state relating to a substance that is defined by this Act as a controlled substance, is charged with or found guilty of a violation of this subchapter, other than a violation of Section 4.051 of this subchapter, after trial or on a plea of guilty, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place him on probation on such reasonable conditions as it may require and for such period as the court may prescribe, except that the probationary period may not exceed two years.

[See Compact Edition, Volume 4 for text of 4.12(b) to 4.12(d)]

Additives Required for Abusable Glue and Aerosol Paint

Sec. 4.13. (a) A person commits an offense if he knowingly and intentionally manufactures, delivers, or possesses with intent to manufacture or deliver abusable glue or aerosol paint which does not contain additive material in accordance with rules promulgated by the commissioner.

(b) An offense under Subsection (a) of this section is a Class A misdemeanor.

(c) It is an affirmative defense to prosecution under this section that the abusable glue or aerosol paint is packaged in bulk quantity containers each holding two gallons or more and is intended for ultimate use only by industrial or commercial enterprises.

(d) The commissioner shall promulgate rules approving and designating additive materials to be included in abusable glue and aerosol paint and prescribing the proportions of such materials to be placed in such abusable glue or aerosol paint; provided that the rules promulgated under this subsection shall be designed to safely and effectively discourage intentional abuse by inhalation of abusable glue or aerosol paint at the lowest practicable cost to the manufacturers and distributors of such abusable glue or aerosol paint.

(e) In this section, "abusable glue or aerosol paint" means an adhesive substance or aerosol mixture of pigment and liquid that forms a thin coating containing any of the following volatile solvents:

(1) acetone;
(2) amyl acetate;
(3) benzol or benzene;
(4) butyl acetate;
(5) butyl alcohol;
(6) carbon tetrachloride;
(7) chloroform;
(8) cyclohexanone;
(9) ethanol or ethyl alcohol;
(10) ethyl acetate;
(11) hexane;
(12) isopropanol or isopropyl alcohol;
(13) isopropyl acetate;
(14) methyl "cellosolve" acetate;
(15) methyl ethyl ketone;
(16) methyl isobutyl ketone;
(17) toluol or toluene;
(18) trichloroethylene;
(19) tricresyl phosphate; or
(20) xylol or xylene.

SUBCHAPTER 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

[See Compact Edition, Volume 4 for text of 5.01]

Cooperative Arrangements and Confidentiality

Sec. 5.02.

[See Compact Edition, Volume 4 for text of 5.02(a) and 5.02(b)]

Text of subsection effective until January 1, 1986

(c) Except as provided in Subsection (a) of Section 3.08 or Subsection (c) of Section 3.09 of this Act, a practitioner engaged in authorized medical practice or research may not be required or compelled to furnish the name or identity of a patient or research subject to the department of public safety, the director of the State Program on Drug Abuse, or to any other agency, public official, or law enforcement officer, and a practitioner may not be compelled in any state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

Forfeitures

Sec. 5.03.

Text of subsection (a) as amended by Acts 1981, 67th Leg., p. 2317, ch. 570, § 5, effective until January 1, 1986

(a) The following are subject to forfeiture as authorized by this subchapter:

(1) all controlled substances that are or have been manufactured, distributed, dispensed, delivered, acquired, obtained, or possessed in violation of this Act;

(2) all raw materials, products, and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this Act;

(3) all property that is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) all books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use, in violation of this Act;

(5) any conveyance, including aircraft, vehicles, vessels, trailers, and railroad cars, that is used or intended for use to transport for delivery or in any manner facilitate the transportation for delivery of any property described in paragraph (1), (2), or (3) of this subsection, provided that no conveyance used by any person as a common carrier shall be forfeited under this subchapter unless the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act, and no conveyance shall be subject to forfeiture if the delivery involved is an offer to sell;

(6) all money derived from the sale, manufacture, distribution, dispensation, delivery, or other commercial undertaking violative of this Act; and

(7) triplicate prescription forms required by this Act to be returned to the Department of Public Safety.

Text of subsection (a) as amended by Acts 1981, 67th Leg., p. 704, ch. 268, § 10; Acts 1981, 67th Leg., p. 744, ch. 277, § 3

(a) The following are subject to forfeiture as authorized by this subchapter:

(1) all controlled substances that are or have been manufactured, distributed, dispensed, delivered, acquired, obtained, or possessed in violation of this Act;

(2) all raw materials, products, and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this Act;

(3) all property that is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) all books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use, in violation of this Act;

(5) any conveyance, including aircraft, vehicles, vessels, trailers, and railroad cars, that is used or intended for use to transport or in any manner facilitate the transportation, sale, receipt, possession, concealment, or delivery of any property described in paragraph (1), (2), or (3) of this subsection, provided that no conveyance used by any person shall be forfeited under this subchapter unless the owner or other person in charge of the conveyance is a consenting party or privy to an aggravated offense under this Act or an offense under Section 4.052 of this Act;

(6) all money, certificates of deposit, negotiable instruments, securities, stocks, bonds, businesses or business investments, contractual rights, real estate, personal property, or other things of value derived from the sale, manufacture, distribution, dispensation, delivery, or other commercial undertaking violative of this Act; and

(7) all drug paraphernalia.

[See Compact Edition, Volume 4 for text of 5.03(b) to 5.04]

Notification of Forfeiture Proceedings

Sec. 5.05. (a) When any property, other than a controlled substance or raw material, is seized, proceedings under this section shall be instituted within 30 days after the seizure and not thereafter.

(b) The seizing officer shall immediately cause to be filed in the name of the State of Texas with the clerk of the district court of the county in which the

seizure is made, or if the property is a conveyance, in any county in which the conveyance was used or intended for use to transport or in any manner facilitate the transportation, sale, receipt, possession, or concealment of any property described in Paragraph (1), (2) or (3) of Section 5.03(a), a notice of the seizure and intended forfeiture. Certified copies of the notice shall be served upon the following persons as provided for the serving of process by citation in civil cases:

(1) the owner of the property, if address is known;

(2) any secured party who has registered his lien or filed a financing statement as provided by law; and

(3) any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the Texas Department of Public Safety has knowledge.

[See Compact Edition, Volume 4 for text of 5.05(c) to (k)]

Replevy of Seized Property

Sec. 5.06. Any property, other than a controlled substance or raw material, or money, negotiable instrument, or security furnished or intended to be furnished by a person in exchange for a controlled substance in violation of this Act or used or intended to be used to facilitate a violation of this Act that is seized under this subchapter may be replevied by the owner, lienholder, secured party, or other party holding an interest in the nature of a security interest affecting the property, upon execution by him of a good and valid bond with sufficient surety in a sum double the appraised value of the property replevied, which bond shall be approved by the seizing officer and shall be conditioned upon return of the property to the custody of the officer on the day of hearing of the forfeiture proceeding and abide the judgment of the court.

Forfeiture Hearing

Sec. 5.07. (a) An owner of property, other than a controlled substance or raw material, that has been seized shall file a verified answer within 20 days of the mailing or publication of notice of seizure. If no answer is filed, the court shall hear evidence that the property is subject to forfeiture and may upon motion forfeit the property to the state or an agency of the state or to a political subdivision of the state authorized by law to employ peace officers. If an answer is filed, a time for hearing on forfeiture shall be set within 30 days of filing the answer and notice of the hearing shall be sent to all parties.

(b) If the owner of the property has filed a verified answer denying that the property is subject to forfeiture then the burden is on the state to prove by a preponderance of the evidence that the property is subject to forfeiture. However, if no answer has been filed by the owner of the property, the notice of seizure may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture.

(c) At the hearing any claimant of any right, title, or interest in the property may prove his lien, security interest, or other interest in the nature of a security interest, to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(d) If it is found that the property is subject to forfeiture, then the judge shall upon motion forfeit the property to the state or an agency of the state or to a political subdivision of the state authorized by law to employ peace officers. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party, or other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the state or an agency of the state or to a political subdivision of the state authorized by law to employ peace officers.

(e) Upon petition of the seizing officer, filed in the name of the State of Texas with the clerk of the district court of the county in which the seizure of any controlled substance or raw material is made, the district court having jurisdiction may order the controlled substance or raw material summarily forfeited except when lawful possession and title can be ascertained. If a person is found to have had lawful possession and title prior to seizure, the court shall order the controlled substance or raw material returned to the owner, if the owner so desires.

Disposition of Forfeited Property

Sec. 5.08. (a) Regarding all controlled substances and raw materials which have been forfeited, the district court shall by its order direct a law enforcement agency to:

(1) retain the property for its official purposes;

(2) deliver the property to a government agency or department for official purposes;

(3) deliver the property to a person authorized by the court to receive it; or

(4) destroy the property that is not otherwise disposed in the manner prescribed by Section 5.081 of this Act.

(b) All other property that has been forfeited, except the money derived from the sale, manufacture, distribution, dispensation, delivery, or other commercial undertaking violative of this Act, and except as provided below, shall be sold at a public auction under the direction of the county sheriff after notice of public auction as provided by law for

other sheriff's sales. The proceeds of the sale shall be delivered to the district clerk and shall be disposed of as follows:

(1) to any bona fide lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(2) the balance, if any, after deduction of all storage and court costs, shall be forwarded to the state comptroller and deposited with and used as general funds of the state.

(c) The state or an agency of the state or a political subdivision of the state authorized by law to employ peace officers may maintain, repair, use, and operate for official purposes all property that has been forfeited to it if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. The department or agency receiving the forfeited vehicle may purchase the interest of a bona fide lienholder, secured party, or other party who holds an interest so that the property can be released for use by the department or agency receiving the forfeited vehicle. The department or agency receiving the forfeited vehicle may maintain, repair, use, and operate the property with money appropriated to the department or agency for current operations. If the property is a motor vehicle susceptible of registration under the motor vehicle registration laws of this state, the department or agency receiving the forfeited vehicle is deemed to be the purchaser and the certificate of title shall be issued to it as required by Subsection (e) of this section.

(d) Storage charges on any property accrued while the property is stored at the request of a seizing officer of the department or agency receiving the forfeited vehicle pending the outcome of the forfeiture proceedings shall be paid by the department or agency out of its appropriations if such property after final hearing is not forfeited to the department or agency.

[See Compact Edition, Volume 4 for text of 5.08(e)]

(f) All money, securities, negotiable instruments, stocks, or bonds forfeited to an agency of the state or an agency or office of a political subdivision of the state authorized by law to employ peace officers shall be deposited in a special fund to be administered by the agency or office to which they are forfeited. Expenditures from this fund shall be used solely for the investigation of any alleged violations of the criminal laws of this state. Nothing in this subsection shall be construed to decrease the total salaries, expenses, and allowances which an agency or office is receiving from other sources at or from the time this subsection takes effect.

Forfeiture and Destruction of Excess Quantities

Sec. 5.081. (a) If notice is given in accordance with Subsection (b) of this section, a peace officer may file a petition before a magistrate who has jurisdiction over the subject matter asking that the controlled substance or the mixture containing the controlled substance that has been seized be forfeited to the state and destroyed.

(b) At least five days before a peace officer files a petition under Subsection (a) of this section, the sheriff of the county in which the seizure was made shall serve notice in accordance with the Texas Rules of Civil Procedure of the peace officer's intention to file the petition to each person arrested and charged with an offense under this Act related to the property which is the subject of the petition, and to each person who claims an interest in the seized property at the time notice is given. A copy of the petition must accompany each notice.

(c) Each petition filed under this section must identify the controlled substance or mixture containing the controlled substance, establish its location, and include an affidavit stating that:

(1) at least five random and representative samples have been taken from the total amount of controlled substance or mixture containing the controlled substance, and a sufficient quantity has been preserved to provide for discovery by parties entitled to discovery;

(2) photographs have been taken which reasonably demonstrate the total amount of the controlled substance or mixture containing the controlled substance;

(3) the gross weight of the controlled substance or mixture containing the controlled substance has been determined, either by actually weighing the substance or by estimating its weight after making dimensional measurements of the total amount seized; and

(4) after considering the difficulty and security risk of transporting and storing the substance and the nature of available storage facilities, the peace officer that has custody of the controlled substance or mixture containing the controlled substance has determined that it is not reasonably practical to preserve the substance in place, or to remove it to another location.

(d) The magistrate shall provide an interested person an opportunity to object to the proposed destruction.

(e) If the objection of an interested person is not sustained and the magistrate finds that the requirements of Subsections (b) and (c) of this section have been met, the magistrate shall issue an order forfeiting the controlled substance or mixture containing the controlled substance to the state and ordering the peace officer that has custody of the controlled substance or mixture containing the controlled substance to destroy it.

(f) On destruction of the controlled substance or mixture containing the controlled substance, the peace officer accomplishing the destruction shall sign a sworn statement before the magistrate attesting to the fact that the property was destroyed, the place of destruction, and the type and quantity of controlled substance or mixture containing the controlled substance destroyed.

(g) Representative samples, photographs, and records made pursuant to this section are admissible in civil or criminal proceedings in the same manner and to the same extent as if the total quantity of the suspected controlled substance was offered in evidence, regardless of whether or not the remainder of the substance has been destroyed. No inference or presumption of spoliation applies to substances destroyed pursuant to this section.

[See Compact Edition, Volume 4 for text of 5.09 to 5.11]

Education and Research

Sec. 5.12.

[See Compact Edition, Volume 4 for text of 5.12(a) and 5.12(b)]

(c) The executive director of the Texas Department of Community Affairs may establish accreditation standards for drug abuse treatment programs and treatment personnel consistent with those required by federal law and regulation and certify those drug abuse treatment programs and treatment personnel meeting accreditation standards. The Department of Community Affairs may charge reasonable fees for initial certifications and renewal certifications in such amounts as are necessary to cover the costs of the accreditation program. All certification fees collected by the Texas Department of Community Affairs under the provisions of this Act shall be placed in a special fund in the State Treasury to be known as the Drug Dependency Treatment Program Certification Fund. The fund may be appropriated only to the Texas Department of Community Affairs for the purpose of administering the drug dependency treatment certification program.

[See Compact Edition, Volume 4 for text of 5.13 and 5.14]

Evidentiary Rules

Sec. 5.15. In considering whether an item is drug paraphernalia under this Act, a court or other authority shall consider, in addition to all other logically relevant factors, but subject to current rules of evidence:

(1) statements by an owner or by anyone in control of the object concerning its use;

(2) the existence of any residue of controlled substances on the object;

(3) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he knows or should reasonably know intend to use the object to facilitate a violation of this Act (the innocence of an owner or of anyone in control of the object as to a direct violation of this Act does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia);

(4) instructions, oral or written, provided with the object concerning its use;

(5) descriptive materials accompanying the object which explain or depict its use;

(6) the manner in which the object is displayed for sale;

(7) whether the owner or anyone in control of the object is a supplier of similar or related items to the community, such as a licensed distributor or dealer of tobacco products;

(8) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(9) the existence and scope of uses for the object in the community;

(10) the physical design characteristics of the item; and

(11) expert testimony concerning its use.

[See Compact Edition, Volume 4 for text of 6.01 to 6.04]

SUBCHAPTER 7. MEDICAL AND RESEARCH PROGRAM

Research Program

Sec. 7.01. The Texas Board of Health shall establish a controlled substance therapeutic research program for the supervised use of tetrahydrocannabinols for medical and research purposes to be conducted in accordance with this Act.

Research Program Review Board

Sec. 7.02. (a) The Research Program Review Board is created. The review board members are appointed by the Texas Board of Health and serve at the board's pleasure.

(b) The review board shall be composed of:

(1) a licensed physician who is certified by the American Board of Ophthalmology;

(2) a licensed physician who is certified by the American Board of Internal Medicine and also certified in the subspecialty of medical oncology;

(3) a licensed physician who is certified by the American Board of Psychiatry;

(4) a licensed physician who is certified by the American Board of Surgery;

(5) a licensed physician who is certified by the American Board of Radiology; and

(6) a licensed attorney who has experience in law pertaining to the practice of medicine.

(c) Members serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing official duties.

Review Board Powers and Duties

Sec. 7.03. (a) The review board shall review research proposals submitted and medical case histories of persons recommended for participation in a research program and determine which research programs and persons are most suitable for the therapy and research purposes of the program. The review board shall approve the research programs, certify program participants, and conduct periodic reviews of the research and participants.

(b) The review board, after approval of the Board of Health, may seek authorization to expand the research program to include diseases not covered by this subchapter.

(c) The review board shall maintain a record of all persons in charge of approved research programs and of all persons who participate in the program as researchers or as patients.

Termination of Tetrahydrocannabinols Distribution to Program

Sec. 7.04. The Texas Board of Health may terminate the distribution of tetrahydrocannabinols and their derivatives to a research program as it determines necessary.

Patient Participation

Sec. 7.05. (a) A person may not be considered for participation as a recipient of tetrahydrocannabinols and their derivatives through a research program unless the person is recommended to a person in charge of an approved research program and the review board by a physician licensed by the Board of Medical Examiners attending the person.

(b) A physician may not recommend a person for the research program unless the person:

(1) has glaucoma or cancer;

(2) is not responding to conventional treatment for glaucoma or cancer or is experiencing severe side effects from treatment; and

(3) has symptoms or side effects from treatment that may be alleviated by medical use of tetrahydrocannabinols or their derivatives.

Acquisition of Controlled Substance for Program

Sec. 7.06. The Texas Board of Health shall acquire the tetrahydrocannabinols and their derivatives for use in the research program by contracting with the National Institute on Drug Abuse to receive tetrahydrocannabinols and their derivatives that are safe for human consumption according to the regulations promulgated by the institute, the Food and Drug Administration, and the Drug Enforcement Administration.

Distribution of Controlled Substance

Sec. 7.07. The Texas Board of Health shall supervise the distribution of the tetrahydrocannabinols and their derivatives to program participants. The tetrahydrocannabinols and derivatives thereof may be distributed only by the person in charge of the research program, under rules promulgated by the Texas Board of Health in such manner as to prevent unauthorized diversion of the substances and in compliance with any and all requirements of the Drug Enforcement Administration, to physicians caring for program participant patients. The physician is responsible for dispensing the substances to patients.

Rules

Sec. 7.08. The Texas Board of Health shall adopt rules necessary for implementing the research program.

Report

Sec. 7.09. The commissioner of health shall publish a report before January 2 of each year in which the Texas Legislature meets in regular session on the medical effectiveness of the use of tetrahydrocannabinols and their derivatives and any other medical findings of the research program.

Authorized Possession or Delivery not Violation

Sec. 7.10. The possession or delivery of tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinols or the possession of an instrument that has on it a quantity of any of those substances is not a violation of Section 4.03, 4.04, 4.05, or 4.07 of this Act if the possession or delivery is for use in the program established under this subchapter.

[Amended by Acts 1975, 64th Leg., p. 123, ch. 58, § 1, eff. April 18, 1975; Acts 1975, 64th Leg., p. 749, ch. 295, §§ 1 to 4, eff. May 27, 1975; Acts 1975, 64th Leg., p. 1842, ch. 572, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1269, ch. 492, §§ 1 and 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1860, ch. 737, § 1, eff. June 16, 1977; Acts 1979, 66th Leg., p. 59, ch. 37, §§ 1 to 5, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 163, ch. 90, §§ 1 to 7, eff. May 2, 1979; Acts 1979, 66th Leg., p. 1278, ch. 598, §§ 1 to 6, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2159, ch. 826, §§ 1 to 3, eff. Jan. 1, 1980; Acts 1981, 67th Leg., p. 181, ch. 82, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 696, ch. 268, §§ 1 to 15, 18, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 741, ch. 276, §§ 1, 2, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 742, ch. 277, §§ 1 to 4, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2313, ch. 570, §§ 1 to 5, 7, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 2346, ch. 577, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2933, ch. 777, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., 1st C.S., p. 82, ch. 9, § 1, eff. Aug. 31, 1981.]

Section 2 of Acts 1975, 64th Leg., ch. 58, provided:

"For the fiscal year ending August 31, 1975, all money in the fund, or as much of it as is necessary, is appropriated to the department of public safety to be used for the purpose of performing the department's functions under the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes)."

Section 10 of Acts 1979, 66th Leg., ch. 90, provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act takes effect is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

Section 7 of Acts 1979, 66th Leg., ch. 598, provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense governed by the Texas Controlled Substances Act that is committed before this Act's effective date is governed by the law existing before this Act's effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Section 2 of Acts 1981, 67th Leg., p. 182, ch. 82, provides:

"(a) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

"(b) For purposes of this section, an offense is committed before the effective date of this Act if all elements of the offense occur before the effective date."

Section 19 of Acts 1981, 67th Leg., p. 707, ch. 268, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act only if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Section 4 of Acts 1981, 67th Leg., p. 742, ch. 276, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Section 5 of Acts 1981, 67th Leg., p. 745, ch. 277, provides:

"(a) This Act applies only to offenses committed on or after its effective date.

"(b) A criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force.

"(c) For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Acts 1981, 67th Leg., p. 2319, ch. 570, § 9, provides:

"Unless reenacted on or before December 31, 1985, the amendments to the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), and to Subsection (a) of Section 3, Chapter 424, Acts of the 63rd Legislature, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes), made by this Act shall become null, void, and of no further force or effect as of 12:01 a.m. on January 1, 1986."

Art. 4476–15a. R.B. McAllister Drug Treatment Program Act

ARTICLE I. DEFINITIONS

Title

Sec. 100. This Act shall be cited as the R.B. McAllister Drug Treatment Program Act.

Definitions

Sec. 101. For purposes of this Act:

(1) "Executive director" means the executive director or his designee of the Texas Department of Community Affairs.

(2) "Commitment" means the relationship established by a court order that places a drug-dependent person or person incapacitated by controlled substances in the custody of the executive director for purposes of treatment under this Act.

(3) "Controlled substance" means any substance designated as such in the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes) or toxic inhalants as defined by the executive director.

(4) "Criminal justice system" means law enforcement officials, district attorney(s), county attorney(s), courts, and the Texas Department of Corrections.

(5) "Drug-dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence or both arising from administration of a controlled substance. Drug dependence is characterized by behavioral and other responses that include a strong compulsion to take a controlled substance in order to experience its psychic effects or to avoid the discomfort of its absence.

(6) "Day care services" means treatment services for drug dependence provided for a part-time resident client in a treatment facility.

(7) "Nearest relative" means, in the order of priority stated, a person's legal guardian, spouse, adult issue, whether natural or adopted, parent or adult sibling, or any other person with whom the person is residing, whether related or not.

(8) "Outpatient services" means treatment services for drug dependence provided to a client who is not a resident of a treatment facility.

(9) "Person incapacitated by controlled substances" means a person who, as a result of the effects of one or more controlled substances, needs treatment and either is unconscious of or has had his judgment so impaired that he is incapable of making a rational decision with respect to his need for treatment.

(10) "Private facility" means any facility providing treatment services which is not operated by the federal, state, or local government, whether or not it receives public funds and whether or not it operates for profit.

(11) "Public facility" means any facility providing treatment services which is operated by the federal, state, or local government.

(12) "Residential services" means treatment services for drug dependence provided for a full-time resident client in a treatment facility.

(13) "Treatment" means (A) emergency services for drug-dependent persons, persons incapacitated by controlled substances; or persons under the influence of controlled substances; and (B) the full range of residential, day care, and outpatient services for drug-dependent persons designed to aid them to gain control over or eliminate their dependence on controlled substances and to become productive, functioning members of the community. Treatment includes but is not limited to diagnostic evaluation; medical, psychiatric, psychological, and social services; drug maintenance services; vocational rehabilitation, job training, and career counseling; educational and informational guidance; family counseling; and recreational services.

(14) "Treatment facility" means a public or private facility to which the executive director has authorized public agencies to refer persons for treatment.

(15) "Prevention" means a constructive process designed to promote personal and social growth of the individual toward full human potential and thereby inhibit or reduce physical, mental, emotional, or social impairment which results in or from the abuse of licit or illicit chemical substances.

ARTICLE II. ORGANIZATION, OBJECTIVE, AND STANDARDS OF DRUG DEPENDENCE TREATMENT PROGRAM

Establishment of Program

Sec. 201. (a) The executive director shall establish and supervise a drug dependence treatment pro-

gram. Within funds appropriated to the Texas Department of Community Affairs, the executive director shall provide integrated health, education, information, and welfare services through appropriate public and private facilities to persons who seek the services voluntarily or who are referred from public or private agencies.

(b) The program shall include, so far as practicable, a comprehensive range of treatment services in each locality. The number, location, and types of services included in the treatment program and the amount of public resources allocated thereto shall be determined by the executive director based in whole or in part by the estimated size and location of the current and potential numbers of drug-dependent persons in designated council of government regions. The executive director shall give particular attention to the potential drug problem in rural areas in developing the program.

(c) In establishing and supervising the program, the executive director may contact any public or private person, agency, organization, or institution for services or for the use of any facility or personnel.

(d) The executive director shall utilize and coordinate public and private treatment facilities and resources, wherever practicable, utilizing community mental health centers and general hospitals.

Powers and Duties of Executive Director

Sec. 202. The director shall:

(1) prescribe by rule those controlled substances that pose a substantial risk of severe psychic or physical dependence and the types of drug dependence for which treatment is feasible and available under this Act;

(2) require programs receiving funds under this Act to meet established standards;

(3) prepare, publish, and distribute throughout the state as often as necessary a list of all public and private treatment facilities the director finds to conform to the established standards and periodically notify the courts of the treatment facilities within their respective jurisdictions and of the types of services offered at each facility;

(4) evaluate, on a continuing basis, the services provided by treatment facilities funded through this Act to assure that the services are effective, humanely operated, and properly staffed and meet the standards established under this Act, and make the evaluations a matter of public record;

(5) use funds appropriated through this Act to carry out the mandate of this Act, the Texas Controlled Substances Act, and Public Law 92–255, the Drug Abuse Office and Treatment Act of 1972; [1] and

(6) use funds to provide matching funds for local programs and to increase the overall state allotment of federal funds.

[1] 21 U.S.C.A. § 1101 et seq.

Prevention Services

Sec. 203. The executive director shall develop prevention services that include:

(1) information to promote awareness within the general public about controlled substances and inhalants and treatment services for drug dependence;

(2) education designed to promote a deeper understanding of drug abuse and its concomitant problems and to promote the support, participation, and cooperation of selected groups in drug abuse prevention education;

(3) intervention services to persons who do not require drug dependence treatment but who are risking drug dependence and are not being adequately served by the standard social service institutions; and

(4) alternatives to drug abuse through the development of public activities that promote positive growth and fulfillment.

Coordination with Other Treatment Agencies

Sec. 204. (a) The executive director shall establish coordinated efforts with the Texas Rehabilitation Commission, Texas Department of Human Resources, Texas Department of Health, Texas Adult Probation Commission, Texas Department of Mental Health and Mental Retardation, councils of government, and other appropriate agencies.

(b) The executive director and the director of the Texas Department of Corrections may establish appropriate drug dependence treatment in the correctional institutions of this state.

Other Duties of Executive Director

Sec. 205. In addition to the other duties specified in this Act, the executive director shall:

(1) develop, encourage, and evaluate public and private plans and services to discourage the improper use of controlled substances, with special attention to developing, in cooperation with the schools, public health agencies, courts, and other public and private agencies, programs to discourage the improper use of controlled substances by juveniles and young adults;

(2) provide, so far as practicable, technical assistance and advice to public and private agencies within and without the state on services designed to treat drug-dependent persons;

(3) conduct, in cooperation with the United States Departments of Justice and Health, Education and Welfare, the police, the courts, and other public and private agencies, a program for educating policemen, prosecuting attorneys, court personnel, the judiciary, probation and parole officers, correctional officials, and other criminal justice personnel on the causes, effects, and treatment of drug dependence; and

(4) conduct and develop, in cooperation with the Texas Department of Human Resources and the Texas Rehabilitation Commission, services for educating all personnel of those agencies on the causes, effects, and treatment of drug dependence.

Treatment Services in Program

Sec. 206. The treatment program shall include:

(1) residential services for short-term and long-term treatment of drug-dependent persons; residential services for persons not incarcerated under sentence shall be provided at a location other than a correctional institution unless no other facilities are available, in which case those persons shall be segregated from persons incarcerated under sentence; and

(2) day care and outpatient services; the executive director shall give priority to developing these services, which must be community-based and readily accessible to patients, and may include clinics, social centers, vocational rehabilitation and job referral facilities, welfare centers, and supportive residential facilities such as foster homes and halfway houses.

Treatment Objective

Sec. 207. For a drug-dependent person being treated under this Act, the primary purpose of treatment is to enable the person to live as a productive, functioning member of the community. Insofar as possible, treatment shall be designed to aid the person to overcome his dependence on controlled substances. Treatment also may be designed to maintain or control the person's drug dependence through approved drug maintenance services that conform to applicable state and federal laws and are limited to persons who consent to such treatment.

ARTICLE III. VOLUNTARY TREATMENT OF DRUG–DEPENDENT PERSONS AND OTHER PERSONS

Application

Sec. 301. (a) A person, whether adult or minor, who needs emergency services as a result of using controlled substances may apply directly to a treatment facility.

(b) A person, whether adult or minor, who considers himself drug-dependent may apply directly to a treatment facility. A private physician who diagnoses a person as drug-dependent and determines he is unable to provide adequate treatment may refer the person, with his consent, to a treatment facility.

(c) The executive director shall make necessary efforts to develop outreach services that identify drug-dependent persons and encourage application for treatment under this Act.

ARTICLE IV. TREATMENT AND CIVIL COMMITMENT OF PERSONS CHARGED WITH CRIMES

Applicability

Sec. 401. This article applies to policies of the State of Texas regarding referral procedures between the criminal justice system and the executive director which apply to a person from the time he is first taken into police custody for the purpose of being charged with a crime under the laws of this state until the charge is dismissed or, if the person is convicted, until his sentence has been finally discharged.

State Interagency Cooperation

Sec. 402. The executive director is authorized, within funds appropriated to the Texas Department of Community Affairs, to accept persons referred from the criminal justice system under the terms of bail, probation, conditional discharge, parole, or other conditional release which is not inconsistent with medical or clinical judgment or in conflict with this Act or applicable federal rules, regulations, or standards.

Emergency Treatment of Persons in Police Custody

Sec. 403. The executive director, within funds appropriated for this Act, may develop emergency treatment resources for persons who appear to be (1) incapacitated by controlled substances, (2) under the influence of controlled substances and in need of medical attention, or (3) drug-dependent and undergoing withdrawal or experiencing medical complications.

Treatment of Drug-Dependent Persons on Conditional Release

Sec. 404. (a) The director of the Texas Department of Corrections and the Board of Pardons and Paroles may refer persons who are or were drug-dependent to treatment facilities established under this Act if available when they are placed on work release, parole, or other conditional release.

(b) A person who is released from any correctional institution on the condition that he participate in the treatment program established under this Act may be required to submit to periodic urinalysis or other medically accepted means of detecting the presence of controlled substances in the body. If, in the judgment of the physician in charge of his treatment, a person fails to conform to the conditions of treatment, the court or the Board of Pardons and Paroles shall decide whether to retain, restrict, or revoke parole or other conditional release according to what is most consistent with both the treatment of the individual and the safety of the community.

(c) If required for effective treatment, the director of the Texas Department of Corrections and the Board of Pardons and Paroles may transfer an offender placed on conditional release from one day care or outpatient treatment facility to another.

(d) The executive director shall report periodically to the director of the Texas Department of Corrections and the Board of Pardons and Paroles on compliance with the conditions of treatment by persons participating in the program under this section.

ARTICLE V. EMERGENCY TREATMENT AND POLICE REFERRAL OF PERSONS NOT CHARGED WITH CRIMES

Applicability

Sec. 501. This article applies to a person against whom no criminal charge is pending under the laws of this state or for whom any sentence previously assessed has been finally discharged.

Emergency Treatment for Persons Under the Influence of Controlled Substances

Sec. 502. (a) When, in the judgment of a law enforcement officer, a person is under the influence of a controlled substance in a public place and needs emergency treatment, the person may be taken to his home or to a treatment facility. If the person is taken to a treatment facility and the physician in charge of emergency services confirms the need for treatment, the person shall, with his consent, be either admitted or referred to another treatment facility. If the person is admitted, reasonable efforts shall be made to notify his nearest relative. If the person is referred to another treatment facility, reasonable efforts shall be made to provide transportation to that facility. Medical assistance may be provided to a person who is neither admitted nor referred.

(b) A person admitted to a treatment facility under this section may be detained until emergency treatment is completed, but he may not be detained without his consent for longer than 24 hours after admission.

Emergency Treatment for Incapacitated Persons

Sec. 503. (a) If a law enforcement or public health officer is notified by an interested person that another person appears incapacitated by controlled substances, the law enforcement or public health officer may take the person to a treatment facility for emergency treatment. If a person appears incapacitated by controlled substances in a public place in the judgment of a law enforcement officer or in a treatment facility in the judgment of a public health officer, the person may be brought to or detained at a treatment facility for emergency treatment. A law enforcement or public health officer, in detaining a person in or taking him to a treatment facility, takes him into protective custody and shall make every effort to protect his health and safety. Entry into protective custody under this section is not to be considered an arrest, and no entry or other record may be made to indicate that the person has been arrested for or charged with a crime.

(b) A person brought to a treatment facility under Subsection (a) of this section shall be examined as soon as practicable by the physician in charge of emergency services. If the physician determines that the person is incapacitated by controlled substances, the person shall be either admitted as a client or referred to another treatment facility. If he is admitted, the patient's nearest relative shall be notified as soon as practicable. If the person is referred to another treatment facility, the referring facility shall arrange for his transportation. If the physician determines that the person is not incapacitated by controlled substances and does not admit or refer the person for treatment under Section 502 of this Act, the person may be taken to his home.

(c) A person admitted to a treatment facility under this section may be required to remain until he is no longer incapacitated by controlled substances, but no longer than 48 hours unless commitment is authorized by a court in accordance with other applicable law.

(d) Law enforcement officers, public health officers, and physicians are not criminally or civilly liable for acts undertaken in the good faith conduct of their official functions under this section.

Release and Conditional Referral to Treatment Services by Police

Sec. 504. (a) This section applies to a person who has been apprehended, either with or without a warrant, for a violation of Section 4.04, 4.05, or 4.07 of the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes).

(b) With the consent of a person covered by Subsection (a) of this section, a police or law enforcement officer may, in lieu of normal criminal processing, take the person before a magistrate, and with the approval of the magistrate refer the person for treatment. If the person agrees to participate in treatment, the police officer may either (1) release the person unconditionally, or (2) issue a conditional citation for the offense for which the person was apprehended to be returned to the police department in 90 days and to be dismissed if the person has participated satisfactorily in the treatment program. The person's agreement to participate in treatment shall not be used against him in any criminal proceeding nor does it waive any rights that he has in any criminal proceedings later brought on the original offense.

(c) If, in the judgment of the person or agency supervising the treatment program, a person who has been issued a citation under Subsection (b) of this section fails to participate satisfactorily in the program or if the person fails to appear on the return date of the citation, a warrant shall issue for his arrest on the original offense, unless he is already in police custody. Timeliness of the person's initial appearance before the court on the original offense shall be determined on the basis of the return date of the citation.

(d) The police department shall record all dispositions under Subsection (b) of this section as deten-

tions and not as arrests. Such records shall be treated as confidential, except for use in determining whether a person is given the benefit of this section upon apprehension at a later time.

ARTICLE VI. GENERAL PROVISIONS

Policy for Governmental and Private Employees

Sec. 601. (a) The executive director may develop and maintain, in cooperation with other state and local agencies, appropriate services for the prevention and treatment of drug dependence among state and local employees consistent with this Act. Drug-dependent employees of this state or any political subdivision shall be granted the same employment and other benefits as persons afflicted with serious illness while undergoing treatment under Article III or V of this Act and shall not be denied pension, retirement, medical, or other rights because of their drug dependence. However, acceptance of appropriate treatment may be made a condition of their continued employment.

(b) The executive director shall encourage private industry to develop treatment services within the state.

Applicability to the Mentally Ill

Sec. 602. The services provided under this Act shall be made available to a mentally ill, drug-dependent person.

Applicability to Juveniles

Sec. 603. Articles III, IV, and V of this Act are available to a juvenile. Nothing in this Act shall take precedence over any provision of the Family Code relating to juveniles unless expressly stated herein.

Rules and Delegation of Powers

Sec. 604. The executive director may promulgate rules for the implementation of this Act and may designate any state officer or employee to carry out any of its functions under this Act.

ARTICLE VII. MISCELLANEOUS

Continuation of Rules

Sec. 701. Any orders and rules promulgated under any law affected by this Act and in effect on the effective date of this Act and not in conflict with it continue in effect until modified, superseded, or repealed.

Appropriation

Sec. 702. The sum of $210,000 is appropriated from the General Revenue Fund to the Texas Department of Community Affairs for each year of the biennium beginning September 1, 1979, for the purpose of implementing the provisions of this Act.

Effective Date

Sec. 703. This Act takes effect September 1, 1979; provided that for the period beginning September 1, 1979, and ending August 31, 1981, the Act shall authorize but not require the executive director to make emergency drug treatment services available pursuant to this Act.

[Acts 1979, 66th Leg., p. 1843, ch. 750, eff. Sept. 1, 1979.]

CHAPTER FOUR. SANITARY CODE

Article
4477e. Spanish Surname Information on Vital Statistics Records.

Art. 4477. Sanitary Code

The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this State, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases, to wit:

[See Compact Edition, Volume 4 for text of Rules 1 and 2]

Rule 3. "Contagious Diseases."—The term "contagious disease" as used in these regulations shall be held to include the following diseases, whether contagious or infectious; and as such shall be reported to all local health authorities and by said authority reported in turn to the Chairman of the State Board of Health: Asiatic cholera, bubonic plague, typhus fever, yellow fever, Hansen's disease, smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), epidemic cerebrospinal meningitis, dengue, typhoid fever, epidemic dysentery, trachoma, and anthrax.

[See Compact Edition, Volume 4 for text of Rules 4 to 12]

Rule 13. Dangerous Contagious Diseases; Modified Quarantine.—In the management and control of smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), and dengue, it is required that the house be placarded, premises placed in modified quarantine, patient in modified isolation, and complete disinfection done upon death or recovery.

[See Compact Edition, Volume 4 for text of Rules 14 to 40]

Rule 40a. Death Certificates.—Not later than the 10th day after the date of each death that occurs in this state, a certificate of death shall be filed with the local registrar of the district in which the death occurred, and if the place of death is not known, the certificate shall be filed with the local registrar of the district in which the body was found. The standard certificate of death shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. All items prescribed on the certificate of death are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The person in charge of interment or of removal of the body from the district for disposition shall be responsible for obtaining and filing the

certificate and shall supply on such certificate over his signature the data relating to the disposition of the body. He shall obtain the required information from the following persons, over their respective signatures: (a) Personal data shall be supplied by a competent person having knowledge of the facts, (b) Except as otherwise provided, the medical certification shall be made by the physician, if any, last in attendance on the deceased. If the deceased shall have rendered service in any war, campaign or expedition of the United States of America, the Confederate States of America or the Republic of Texas, or who at the time of death was in the service of the United States of America, or a wife or widow of any person who has served in any war, campaign or expedition of the United States of America, the Confederate States, or the Republic of Texas, the funeral director or person having charge of the disposition of the body shall show the following facts on the reverse side of the death certificate: the organization in which service was rendered, the serial number taken from the discharge papers or the adjusted service certificate, the name and post office address of the next of kin or next friend of the deceased. And provided that when such a death certificate is filed, the local registrar shall immediately notify the nearest Congressionally Chartered Veteran Organizations. And provided further, that the State Registrar, when such certificate is filed with the State Bureau of Vital Statistics, shall notify the State Service Officer of the Adjutant General's Department and the State Adjutant of the American Legion and the State Comptroller.

[See Compact Edition, Volume 4 for text of Rules 41 to 47]

Rule 47a. Form and Contents of Birth Certificates; Supplementary Certificate; Certificates of Adoption, Annulment and Revocation.—The standard certificate of birth shall be in such form and shall provide for such items of information as may be prescribed by the State Department of Health. Any person may apply to the State Department of Health to have any indication of illegitimacy removed from his or her birth record, including separate medical records. The Department shall charge a fee of $10.00 for this service. All items prescribed on the certificate of birth are hereby declared necessary for the legal, social and sanitary purposes subserved by registration records. The name of the father or any information by which he might be identified may be written in the birth or death certificate of any child:

(a) whose mother was married at the time of conception or birth; or whose mother was subsequently married to the father; or

(b) where paternity of the father has been established in a judicial proceeding. The State Department of Health shall be specifically authorized to use and to provide upon request to other state agencies records pertaining to all births in connection with programs to notify the mothers of young children about health needs for the children.

Subject to the regulations of the State Department of Health, any person:

(a) who becomes the legitimate child of its father by the subsequent marriage of its parents;

(b) whose parentage has been determined by a court of competent jurisdiction; or

(c) adopted under the law existing at the time of adoption in this state or any other state or territory of the United States of America may request the state registrar to file a supplementary certificate of birth on the basis of the status subsequently acquired or established and of which proof is submitted. The application to file a supplementary certificate of birth may be filed by the person, if of age, or a legal representative of the person. The state registrar shall require such proof in these cases as the State Department of Health may by regulation prescribe. The preparation and filing of supplementary certificates of birth based on legitimation, paternity determination, and adoption shall be in accordance with the regulations of the State Department of Health. Provided, however, that when a child is adopted the new birth certificate shall be in the names of the parents by adoption, and the copies of birth certificates or birth records made therefrom shall not disclose the child to be adopted. After the supplementary certificate is filed, any information disclosed from the record shall be made from the supplementary certificate, and access to the original certificate of birth and to the documents filed upon which the supplementary certificate is based shall not be authorized except upon order of a court of competent jurisdiction.

A certificate of each adoption, annulment of adoption, and revocation of adoption ordered or decreed in this state shall be filed with the state registrar as hereinafter provided. The information necessary to prepare the certificates shall be supplied to the clerk of the court by the petitioner for adoption, annulment of adoption, or revocation of adoption at the time the petition is filed. The clerk of the court shall thereupon prepare the certificate on a form furnished by and containing such items of information as may be determined by the State Department of Health and shall, immediately after the decree becomes final, complete the certificate. On or before the 10th of each month, the clerk shall forward to the state registrar the certificates completed by him for decrees which have become final during the preceding calendar month.

Provided, that the above provisions shall not, in any way, be construed as affecting the property rights of natural or adoptive parents or of natural or adopted children, or as amending, modifying, or repealing any of the present laws of the State of Texas governing descent and distribution of property.

Subject to the regulations of the State Department of Health, any person whose name has been

changed by court order may request the state registrar to attach to the original birth record an amendment reflecting the change of name. The request to attach such amendment may be made by the person, if of age, or a legal representative of the person. The state registrar shall require such proof of change of name as the State Department of Health may by regulation prescribe.

Rule 47b. "For Medical and Health Use Only" Section of Birth Certificate.—The section entitled "For Medical and Health Use Only" shall not be considered a part of the legal certificate of birth.

[See Compact Edition, Volume 4 for text of Rules 48 to 51]

Rule 51a. Blanks and Registration Forms; Index of Births and Deaths; Records; Transcripts; Fees; Delayed Registrations; Judicial Procedure to Establish Facts of Birth.—A. The State Department of Health shall prepare, print, and supply to local registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this Act, and each city and incorporated town shall supply its local registrar, and each county shall supply the county clerk with permanent record books, in forms approved by the State Registrar, for the recording of all births, deaths, and stillbirths occurring within their respective jurisdictions. The State Registrar shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other forms shall be used than those approved by the State Department of Health. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, informants or funeral directors, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the State Department of Health, or upon the original certificate, such information as they may possess regarding any birth, death, or stillbirth upon demand of the State Registrar, in person, by mail, or through the local registrar. After its acceptance for registration by the local registrar, no record of any birth, death, or stillbirth shall be altered or changed; provided, however, that if any such record is incomplete, or satisfactory evidence can be submitted proving the record to be in error in any respect, an amending certificate may be filed for the purpose of completing or correcting such record, which amendment shall be in a form prescribed by the State Department of Health and shall, if accepted for filing, be attached to and become a part of the legal record of such birth, death, or stillbirth. The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the names of decedents, and in the case of births, by the names of fathers and mothers. When the State Registrar receives the death certificate of a person under 18 years of age whose birth has been registered in this state, the State Registrar shall make a conspicuous notation on the face of the decedent's birth certificate showing that the person is dead and shall provide copies of the death certificate to the county clerk of the county in which the decedent was born and to the local registrar of the district in which the decedent was born. If any organization or individual is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such organization or individual may file such record or a duly authenticated transcript thereof with the State Registrar. If any person desires a transcript of any such record, the State Registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of Ten Cents (10¢) per folio, Fifty Cents (50¢) per hour or fraction of an hour necessarily consumed in making such transcript, and to a fee of Twenty-five Cents (25¢) for the certificate, which fees shall be paid by the applicant; provided, that before the issuance of any such transcript, the State Registrar shall be satisfied that the applicant is properly entitled thereto, and that it is to be used only for legitimate purposes.

A–1. If an amending certificate of birth filed under Subsection A of this section completes or corrects information in a person's original or supplementary record of birth concerning the person's sex or color or race, then on request of that person or his legal representative, the State Registrar of Vital Statistics, local registrar, or other person who issues birth certificates shall issue a corrected or completed certificate of birth that incorporates the necessary changes in one document instead of issuing a copy of the original or supplementary certificate of birth with an amending certificate attached. The Texas Department of Health shall prescribe the form for certificates issued under this subsection.

A–2. A person whose certificate of birth was amended before the effective date of Subsection A–1 of this section to correct or complete information concerning sex or color or race, or such person's legal representative, may request a corrected or completed certificate of birth under Subsection A–1.

B. Delayed Registration of Births.

Subject to the regulations and requirements of the State Department of Health:

[See Compact Edition, Volume 4 for text of B 1 to 8]

9. For each application for a delayed certificate of birth, the State Registrar shall be entitled

to a fee not to exceed Ten Dollars ($10.00), said fee to be paid by the applicant. All such fees received by the State Registrar under the provisions of this Section shall be deposited and used as provided in Section 21 of this Act.

[See Compact Edition, Volume 4 for text of C and D and Rule 52]

Rule 52a. Duties of Local Registrars.—That each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return. All certificates, either of birth or death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission.

If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number 1 for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied in accordance with provisions of Section 18 of this Act,[1] to be preserved permanently in his office as the local record, in such manner as directed by the state registrar, or in the event that local ordinances require that all reports of births and deaths be made in duplicate, he may permanently bind the duplicate reports and index them in the manner prescribed in Section 18 for the state registrar. And he shall, on the tenth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month, he shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for such purposes.

When the state registrar notifies the county clerk of the county in which the decedent was born and the local registrar of the district in which the decedent was born, the county clerk and the local registrar shall make a conspicuous notation on the face of the decedent's birth certificate showing that the person is dead.

[1] Rule 51a of this article.

[See Compact Edition, Volume 4 for text of 53 to 54]

Rule 54a. Copies of Records.—Subject to the regulations of the Texas Department of Health controlling the accessibility of vital records, the State Registrar shall, upon request, supply to any properly qualified applicant a certified copy of a record, or any part thereof, registered under the provisions of this Act.[1] The State Registrar is entitled to a fee of Five Dollars ($5.00) for each copy of a birth record or part of a record and Five Dollars ($5.00) for the first copy of a death record and Two Dollars ($2.00) for each additional copy of the record requested by the applicant in a single request. The fee is to by paid by the applicant. A local registrar who issues certified copies of death certificates shall charge the same fee as is charged by the State Registrar. Certified copies shall be issued only in the form approved by the Texas Department of Health. And any such copy of a record, when properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files where a record is not found or a certified copy is not made, the State Registrar shall be entitled to a fee of Five Dollars ($5.00), said fee to be paid by the applicant. The State Registrar shall, upon request of any parent or guardian, supply, without fee, a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment. The State Registrar shall issue free of cost to any veteran, his widow, orphan or other dependents, a certified copy of any record not otherwise prohibited by law when such record is to be used in the settlement of a claim against the government. The State Registrar may issue, upon court order, without fee, a certified copy of a birth record in cases relating to child labor and the public schools. Provided, that the national agency in charge of the collection of vital statistics may obtain, without expense to the State, transcripts of vital records without payment of the fees herein prescribed; and provided further, that the State Registrar is hereby authorized to act as special agent for that agency in accepting the use of the franking privilege and blanks furnished by that agency; and provided further, that the Bureau of Vital Statistics of the Texas Department of Health is hereby authorized to enter into a contract with the national agency in charge of the collection of vital statistics in order to have transcribed for that agency copies of vital records filed with the State Bureau of Vital Statistics. The State Registrar shall keep a true and correct account of all money received by him under these provisions, and deposit the same with the State Treasurer at the close of each month and at such other intervals as the Registrar deems advisable, and all such money shall be kept by the State Treasurer in a special and separate fund, to be known as the vital statistics fund, and the amounts so deposited in this fund shall be used for defraying expenses incurred in the enforcement and operation of this Act.

The State Registrar shall refund to the applicant any fee received for services which the Bureau cannot render. If the money has been deposited in the vital statistics fund, the Comptroller shall issue a warrant against the fund, upon presentation of a claim signed by the State Registrar, for the purpose of refunding the payment.

The State Registrar shall be entitled to a fee of Five Dollars ($5.00) for filing a new birth certificate based on adoption, a fee of Eight Dollars ($8.00) for filing a new birth certificate based on legitimation or paternity determination, and a fee of Five Dollars ($5.00) for filing an amendment to a birth certificate based on a court order of change of name, said fees to be paid by the applicants.

[1] Rules 34a to 55a of this article and art. 4477c.

[See Compact Edition, Volume 4 for text of Rules 55 to 59]

Rule 60. Repealed by Acts 1979, 66th Leg., p. 1145, ch. 550, § 1, eff. Aug. 27, 1979.

[See Compact Edition, Volume 4 for text of Rules 61 to 76]

[Amended by Acts 1975, 64th Leg., p. 117, ch. 54, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 30, ch. 14, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 316, ch. 149, §§ 2 and 3, eff. May 13, 1977; Acts 1977, 65th Leg., p. 1689, ch. 669, §§ 1 and 2, eff. Jan. 1, 1978; Acts 1977, 65th Leg., p. 2089, ch. 837, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 89, ch. 54, §§ 1, 2, eff. April 19, 1979; Acts 1979, 66th Leg., p. 1135, ch. 543, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1145, ch. 550, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 504, ch. 211, § 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 824, ch. 295, § 1, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 1811, ch. 400, § 1, eff. Aug. 31, 1981.]

Acts 1977, 65th Leg., p. 1689, ch. 669, which by §§ 1 and 2 amended subsec. B, par. 9 of rule 51a and rule 54a of this article, provided in § 3: "This Act takes effect January 1, 1978."

Art. 4477a. Repealed by Acts 1981, 67th Leg., p. 504, ch. 211, § 1, eff. Aug. 31, 1981

See, now, art. 4477, rule 51a, subsecs. A–1, A–2.

Art. 4477b. Repealed by Acts 1979, 66th Leg., p. 317, ch. 146, § 2, eff. May 11, 1979

Art. 4477c. Penalty for Birth or Death Information Violations

Definitions

Sec. 1. As used in this Act, the following words or phrases have the meaning indicated:

(a) "Person" means an individual, corporation, association, or partnership;

(b) "Vital Statistics Act" means Rules 34a to 55a, Article 4477, Revised Civil Statutes of Texas, 1925, as amended;

(c) "State registrar" means the director of the Bureau of Vital Statistics;

(d) "Local registrar" means a person serving as registrar of vital statistics in a primary registration district as specified in Rule 36a, Article 4477, Revised Civil Statutes of Texas, 1925, as amended, or a combination of primary registration districts.

False Entries; Fraudulent Records

Sec. 2. (a) A person commits an offense if he:

(1) intentionally or knowingly makes any false statement in a certificate, record, or report required by the Vital Statistics Act, or in an application for an amendment thereof, or in an application for a delayed certificate of birth or death, or in an application for a certified copy of a vital record, or intentionally or knowingly supplies false information or intentionally or knowingly creates any false record to be used in the preparation of any such report, record, or certificate, or amendment thereof;

(2) without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required by the Vital Statistics Act or a certified copy of such certificate, record, or report;

(3) intentionally or knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, or report required by the Vital Statistics Act or certified copy thereof so made, counterfeited, altered, amended, or mutilated, or which is false in whole or in part or which relates to the birth of another person, whether living or deceased.

(b) An offense under this section is a felony of the third degree.

Failure to Furnish Required Information, File Required Certificates, or Perform Required Duties

Sec. 3. (a) A person commits an offense if he:

(1) refuses or fails to furnish correctly any information in his possession affecting any certificate or record required by the Vital Statistics Act;

(2) being required by the Vital Statistics Act to fill out a certificate of birth or death and file same with the local registrar or deliver it upon request to any person charged with the duty of filing the same, shall fail, neglect, or refuse to perform such duty in the manner required by this Act;

(3) being a local registrar, deputy registrar, or subregistrar, shall fail, neglect, or refuse to perform his duty as required by the Vital Statistics Act and by the instructions and directions of the state registrar thereunder.

(b) An offense under this section is a Class C misdemeanor.

Construction with Penal Code

Sec. 4. If the conduct of a person, which constitutes an offense under this Act, also constitutes an offense defined by the Penal Code of the State of Texas, as amended, the provisions of this Act shall not be applicable and the Penal Code shall govern.

[Amended by Acts 1979, 66th Leg., p. 316, ch. 146, § 1, eff. May 11, 1979.]

Art. 4477e. Spanish Surname Information on Vital Statistics Records

Purpose

Sec. 1. The purpose of this Act is to enable this state to participate in a study being conducted by a group of states in the Southwest to obtain information about the birth rates and mortality patterns of persons with Spanish surnames and to implement recommendations made by the National Center for Health Statistics for improved methods of maintaining vital statistics.

Revision of Vital Statistic Forms

Sec. 2. In the next official revision of the prescribed forms for birth certificates, fetal death certificates, and death certificates, the Texas Department of Health shall include the following inquiries and instructions:

(A) on a birth certificate or fetal death certificate:

"(1) Is father of Spanish origin?

"(2) If yes, specify Mexican, Cuban, Puerto Rican, etc.

"(3) Is mother of Spanish origin?

"(4) If yes, specify Mexican, Cuban, Puerto Rican, etc."

(B) on a death certificate:

"(1) Was the decedent of Spanish origin?

"(2) If yes, specify Mexican, Cuban, Puerto Rican, etc."

[Acts 1979, 66th Leg., p. 1112, ch. 529, eff. Aug. 27, 1979.]

CHAPTER FOUR A. SANITATION AND HEALTH PROTECTION

Article
4477–1a. Sewage Discharge into Open Ponds; Municipal Corporations of 600,000 to 900,000.
4477–6a. Rabies Control Act of 1981.
4477–6b. Animal Shelters.
4477–7a. Solid Waste Resource Recovery Financing Act.
4477–9a. Litter Abatement Act.
4477–10. Treating and Conveying Waste in Cities of 1,200,000 or More.

Art. 4477–1. Minimum Standards of Sanitation and Health Protection Measures

[See Compact Edition, Volume 4 for text of 1 to 4]

Disposal of Human Excreta

Sec. 5.

[See Compact Edition, Volume 4 for text of 5(a) and (b)]

(c) No privy shall hereafter be constructed within seventy-five (75) feet of any drinking water well or of a human habitation other than to which it is appurtenant without approval by the Local Health Officer or the Texas Board of Health Resources [1] and no privy shall be erected or maintained over any abandoned well or over any stream; provided further that no privy shall be constructed or maintained in any unincorporated village which shall hereafter come within the provisions of Article 4434–35 of the Revised Civil Statutes of Texas, 1925, which is located within thirteen hundred and twenty (1320) feet of any water well which is used for drinking water purposes, and the construction, maintenance, and use of such privy in violation of this section shall be a nuisance.

[1] Board of Health Resources abolished and Board of Health created by Acts 1977, 65th Leg., ch. 474; see art. 4418g.

[See Compact Edition, Volume 4 for text of 5(d) to 10]

Protection of Public Water Supplies

Sec. 11.

[See Compact Edition, Volume 4 for text of 11(a) and (b)]

(c) The owner or manager of every water supply system furnishing drinking water to 25,000 or more persons shall have the water tested at least once daily for the determination of its sanitary quality and shall furnish the Texas Department of Health Resources with monthly reports thereof. The owner or manager of any water plant supplying drinking water to less than 25,000 persons, according to the latest Federal Census and such revised Federal Census as may hereafter be taken and established, or by other population-determining methods in all such cases where Federal Census are not taken, shall submit to the Texas Department of Health Resources at least one (1) specimen of water taken from the supply for the purpose of bacteriological analysis during each monthly period of the operation of such service.

[See Compact Edition, Volume 4 for text of 11(d) to 22]

Authority of Home Rule Cities Not Affected

Sec. 23. (a) All provisions of this Act are hereby declared to constitute minimum requirements of sanitation and health protection within the State of Texas and shall in no way affect the authority of Home Rule Cities to enact more stringent ordinances pertaining to the matters herein referred to, and shall in no way affect the authority of Home Rule Cities to enact ordinances as granted to them under Article XI, Section V of the State Constitution, and Articles 1175–76 of the Revised Civil Statutes of Texas of 1925.

(b) The Texas Board of Health Resources may adopt rules consistent with the general intent and purposes of this Act, and establish standards and procedures for the management and control of sanitation and health protective measures.

Home-Rule Cities of 800,000 or More; Appointment of Environmental Health Officer

Sec. 23a. In a home-rule city in cities of a population of 800,000 or more according to the last federal census, an environmental health officer may be appointed to enforce the provisions of this article. An environmental health officer must be a registered professional engineer, subscribe to the official oath, and file a copy of his oath and appointment with the State Board of Health. He shall assist the State Board of Health in the enforcement of this article and is subject to the authority of the State Board of Health and to removal from office in the same manner as a city health officer.

Penalty

Sec. 24. Any person, firm or corporation who shall violate any of the provisions of any Section or sub-division of this Act, or any rule adopted under this Act, shall be fined not less than Ten Dollars ($10.00) and not more than Two Hundred Dollars ($200.00), and each day of such violation shall constitute a separate offense.

Enforcement

Sec. 25. The Texas Department of Health Resources may apply to any district court in this state to enforce, prevent, or restrain violations of this Act or violations of rules adopted pursuant to this Act. [Amended by Acts 1975, 64th Leg., p. 227, ch. 86, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1188, ch. 456, §§ 1 to 5, eff. Aug. 29, 1977.]

Art. 4477–1a. Sewage Discharge into Open Ponds; Municipal Corporations of 600,000 to 900,000

Definitions

[See Compact Edition, Volume 4 for text of 1]

Prohibition

Sec. 2. No municipal corporation with a population of not less than 600,000 nor more than 900,000 according to the last preceding Federal census, may discharge any municipal sewage into any open pond, the surface area of which pond covers more than 100 acres, if the discharge will cause or result in a nuisance. The Texas Water Quality Board, acting with the Texas Air Control Board and the Texas State Department of Health, shall make periodic inspections of such ponds as necessary, but at least once every year, and shall ascertain whether such pond is causing or will cause or result in a nuisance.

If the Texas Water Quality Board, acting in accord with the Texas Air Control Board and the Texas State Department of Health, shall ascertain that the maintenance of such pond creates or continues a nuisance, it shall advise the municipal corporation making such discharge and shall allow such municipal corporation adequate time to abate such nuisance.

Penalty

Sec. 3. (a) Any municipal corporation with a population of not less than 600,000 nor more than 900,000 which fails to abate a nuisance pursuant to a directive of the Texas Water Quality Board as provided in Section 2 above, within a reasonable time after notification of such failure by the Texas Water Quality Board, shall be liable to a civil penalty of not more than $1,000 a day for each day that it maintains such a nuisance.

[See Compact Edition, Volume 4 for text of 3(b)] [Amended by Acts 1981, 67th Leg., p. 588, ch. 237, §§ 115, 116, eff. Sept. 1, 1981.]

Art. 4477–5. Texas Clean Air Act

SUBCHAPTER A. GENERAL PROVISIONS

[See Compact Edition, Volume 4 for text of 1.01 and 1.02]

Definitions

Sec. 1.03. As used in this Act, unless the context requires a different definition:

(1) "air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor or odor, or any combination thereof produced by processes other than natural;

(2) "source" means a point of origin of air contaminants, whether privately or publicly owned or operated;

(3) "air pollution" means the presence in the atmosphere of one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property;

(4) "board" means the Texas Air Control Board;

(5) "executive director" means the executive director of the Texas Air Control Board;

(6) "person" means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity; and

(7) "local government" means a county, an incorporated city or town; or a health district established under authority of Chapter 63, Acts of the 51st Legislature, 1949, as amended by Chapter 239, Acts of the 56th Legislature, 1959 (Article 4447a, Vernon's Texas Civil Statutes);

(8) "new source" means any stationary source, the construction or modification of which is commenced after the effective date of this statute;

(9) "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source into the atmosphere or which results in the emission of any

air pollutant not previously emitted. Insignificant increases in the amount of any air pollutant emitted are not intended to be included, nor is maintenance or replacement of equipment components which do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted to the atmosphere.

[See Compact Edition, Volume 4 for text of 1.04 to 1.07]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

[See Compact Edition, Volume 4 for text of 2.01]

Application of Sunset Act

Sec. 2.01a. The Texas Air Control Board is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by the Act the board is abolished, and this Act expires effective September 1, 1985.

[1] Article 5429k.

Members of the Board

Sec. 2.02. The board is composed of nine members appointed by the governor with the advice and consent of the Senate. Of the nine members appointed by the governor, one shall be a professional engineer with at least ten years experience in the actual practice of his profession which experience shall include work in air control; one shall be a physician licensed to practice in this state, currently engaged in general practice in this state, with experience in the field of industrial medicine; one shall be a person who has been actively engaged in the management of a private manufacturing or industrial concern for at least ten years immediately prior to his appointment; one shall be an agricultural engineer with at least ten years experience in his profession; and five shall be chosen to represent the public interest.

[See Compact Edition, Volume 4 for text of 2.03]

Qualification by Members; Vacancies; Records

Sec. 2.04.

[See Compact Edition, Volume 4 for text of 2.04(a) to 2.04(c)]

(d) A board member who is appointed to represent the public interest may not derive a significant portion of his or her income from a person subject to the board's permits or enforcement orders.

[See Compact Edition, Volume 4 for text of 2.05 to 2.17]

SUBCHAPTER C. POWERS AND DUTIES OF THE BOARD

[See Compact Edition, Volume for text of 3.01 to 3.10]

Limitations on Board Actions

Sec. 3.11. The board may not make any rule, regulation, determination or order with respect to air conditions existing solely within buildings and structures used for commercial and industrial plants, works or shops when the source of the offending air contaminants is under the control of the person who owns or operates the plant, works or shops, or which affects the relations between employers and their employees with respect to or arising out of any air condition from such a source. This provision does not and is not intended to limit or restrict in any way the authority or powers granted to the board under the provisions of Subsections (c) and (f) of Section 3.10 of this Act.

[See Compact Edition, Volume 4 for text of 3.12 to 3.26]

Construction Permit

Sec. 3.27.

[See Compact Edition, Volume 4 for text of 3.27(a) and 3.27(b)]

(c) If, from the information submitted under subsection (b) of this section, the board finds the proposed facility will utilize at least the best available control technology, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility and no indication that the emissions from the proposed facility will contravene the intent of the Texas Clean Air Act, including protection of the health and physical property of the people, the board shall grant within a reasonable time a permit to construct or modify the facility. If the board finds that the emissions from the proposed facility will contravene these standards or will contravene the intent of the Texas Clean Air Act, it shall not grant the permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

[See Compact Edition, Volume 4 for text of 3.27(d) to 3.28]

Permit and Variance Fees

Sec. 3.29. The board may adopt rules relating to charging and collecting fees for permits and variances, including schedules of fees to be charged. The fees shall be sufficient to cover the reasonable costs of review and action by the board on a permit or variance application and of implementing and enforcing the terms and conditions of the permit or variance. Fees adopted under this section shall be not less than $50 nor more than $7,500.

A Pilot Program for Motor Vehicle Inspection and Maintenance, a Study of such Programs, Reports to the Legislature, and Development of and Preparation for a Motor Vehicle Inspection and Maintenance Program

Sec. 3.30. (a) On or before December 1, 1980, the Texas Air Control Board shall submit to the 67th Session of the Legislature a report based on the results of the pilot program and study required by Subsections (b) and (c) of this section. The report required by this subsection shall contain recommen-

dations as to the most feasible program, if any, for controlling motor vehicle emissions in the State of Texas and reflect consideration of the following factors as they relate to the alternative programs listed in Subsection (c):

(1) acceptance by and protection of consumers;

(2) overall effectiveness including costs versus benefits;

(3) resulting social and economic impacts;

(4) appropriate geographic areas of applicability;

(5) the operating of motor vehicle inspection and maintenance, registration, and safety inspection programs in other states; and

(6) any additional factors deemed by the Texas Air Control Board to be appropriate.

(b) The Texas Air Control Board with the assistance and cooperation of the Department of Public Safety and the State Department of Highways and Public Transportation shall develop and conduct either directly or through a private contractor a pilot program utilizing advanced computer technology for the purpose of inspecting, testing, and compiling a list of a representative sample of motor vehicles giving primary attention to vehicles operated in Harris and contiguous counties to determine:

(1) actual emissions of air contaminants from such vehicles and the cause of any excessive emissions and whether specific equipment and operating parameters identified by the Texas Air Control Board as significantly affecting vehicle emissions are installed, adjusted, and operating in accordance with manufacturers' specifications;

(2) whether required vehicle safety features as specified by Section 140 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), are properly installed and operating; and

(3) the feasibility of performing any necessary registration of such vehicles at the time of inspection and testing.

(c) In conjunction with the pilot program established pursuant to Subsection (b) and using any available information, including but not limited to that generated by the program, the Texas Air Control Board with the assistance of the Department of Public Safety and the State Department of Highways and Public Transportation shall conduct a comprehensive examination and evaluation of motor vehicle inspection, maintenance, and registration programs utilizing advanced computer technology. The study required by this subsection shall include an analysis of:

(1) the effectiveness of programs requiring actual testing of motor vehicle emissions and needed maintenance or the inspection and adjustment of appropriate vehicle operating parameters which relate to emissions of air contaminants;

(2) the effectiveness and efficiency of such a motor vehicle inspection and maintenance program operated in Texas in conjunction with a motor vehicle safety inspection program such as that required by Section 140 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), through:

(A) existing inspection stations;

(B) state-operated inspection centers with vehicle maintenance performed in private repair facilities; or

(C) contractor-operated inspection centers with maintenance performed in private repair facilities; and

(3) the effectiveness and efficiency of such a motor vehicle inspection and maintenance program operated in Texas independently of a motor vehicle safety program such as that required by Section 140 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), through:

(A) existing inspection stations;

(B) state-operated inspection centers with vehicle maintenance performed in private repair facilities; or

(C) contractor-operated inspection centers with maintenance performed in private repair facilities; and

(4) the effectiveness and efficiency of a motor vehicle registration program operated in conjunction with one or more of the alternative programs listed in Subsection (c)(1), (c)(2), or (c)(3) above.

(d) The Texas Air Control Board with the assistance and cooperation of the Department of Public Safety and the State Department of Highways and Public Transportation shall develop and make preparations for a motor vehicle inspection and maintenance program for Harris County by designing, planning, and scheduling the implementation of the necessary elements of such program. The design of such program shall be based on the results of the pilot program and study required by Subsections (a) and (b) of this section and shall be consistent with the recommendations to be contained in the report required by Subsection (c) of this section. The schedule for such program:

(1) shall be adequate to allow and achieve full implementation of the inspection and maintenance program as it affects passenger automobiles in Harris County not later than December 31, 1982;

(2) shall not, prior to 120 calendar days after the convening of the 67th Session of the Legislature, require or include:

(A) mandatory participation in the program by the public;

(B) execution of an agreement with a private contractor to operate inspection centers; or

(C) construction or acquisition of inspection centers or acquisition of inspection equipment except as may be necessary or useful to the conduct of the pilot program required by Subsection (a) of this section;

(3) shall, to the maximum extent feasible and consistent with other requirements of this subsection, preserve and facilitate the range of choices available to the 67th Session of the Legislature as to the direction and further development of a motor vehicle inspection and maintenance program for the State of Texas.

(e) The Texas Air Control Board shall cooperate with any legislative committee appointed to monitor the progress made in satisfying the requirements of this section.

(f) This section shall become effective upon approval by the administrator of the Environmental Protection Agency of those provisions of the plan submitted by the governor of the State of Texas in accordance with the Federal Clean Air Act Amendments of 1977,[1] which relate to inspection and maintenance of motor vehicles and the use of emission reductions credited to the pilot program established by this Act to allow for new source growth in affected areas.

[1] 42 U.S.C.A. § 7401 et seq.

[See Compact Edition, Volume 4 for text of 4.01 to 4.03]

Venue and Procedure

Sec. 4.04.

[See Compact Edition, Volume 4 for text of 4.04(a) and 4.04(b)]

(c) A suit brought under this Act shall be given precedence over all other cases of a different nature on the docket of the appellate court.

[See Compact Edition, Volume 4 for text of 4.04(d) to 6.01]

[Amended by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.084, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1787, ch. 726, §§ 2 to 8, eff. June 13, 1979; Acts 1981, 67th Leg., p. 2645, ch. 707, § 4(36), eff. Aug. 31, 1981.]

Sections 1 and 9 of the 1979 amendatory act provided:

"Sec. 1. Purpose and policy. The Texas Legislature recognizes both the importance and historical effectiveness of this state's efforts to control air pollution in order to protect the public health and improve air quality. It further recognizes the impact of the 1970 Federal Clean Air Act and subsequent amendments on the State of Texas. The Texas Legislature believes that in passing the Clean Air Act, the United States Congress intended that the national air quality standards promulgated thereunder by the Environmental Protection Agency be both reasonable and attainable.

"It is hereby declared the public policy of the State of Texas that the state in cooperation with the federal government should determine the appropriate environmental controls to be applied within its boundaries necessary to protect the public health and improve air quality. The State of Texas should continue to question and challenge federal air quality regulations and programs which establish unreasonable and unattainable standards; particularly when the programs are of doubtful scientific benefit and are established with no consideration of regional differences among the states. The Texas Legislature should undertake to conduct studies and pilot projects necessary to prove the need for air quality programs and control measures which will have major impact on the State of Texas."

"Sec. 9. The provisions of this Act which give the Texas Air Control Board authority to regulate radioactive air contaminants shall become effective only upon an affirmative determination relating to such contaminants by the administrator of the Environmental Protection Agency pursuant to Section 122 of the Federal Clean Air Act Amendments of 1977."

Art. 4477–6a. Rabies Control Act of 1981

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1.01. This Act is known and may be cited as the "Rabies Control Act of 1981."

Purpose of Act

Sec. 1.02. The purpose of this Act is to establish a minimum statewide program to control and eradicate rabies in the State of Texas. This program shall be administered by the Texas Board of Health with the cooperation of the governing bodies of the counties and incorporated municipalities within the state.

Definitions

Sec. 1.03. In this Act the following terms have the meanings indicated.

(1) "Animal" means a warm-blooded animal.

(2) "Board" means the Texas Board of Health.

(3) "Cat" means felis catus.

(4) "Commissioner" means the Commissioner of Health.

(5) "Department" means the Texas Department of Health.

(6) "Dog" means canis familiaris.

(7) "Epizootic" means the occurrence in a given geographic area or population of cases of a disease clearly in excess of the expected frequency.

(8) "Person" means an individual, corporation, government or governmental subdivision, or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(9) "Quarantine" means strict confinement under restraint by closed cage or paddock or in any other manner approved in a rule of the board of animals specified in an order of the board or its designee on the private premises of the owner or at a facility approved by the board or its designee.

(10) "Rabies" means an acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite.

(11) "Stray" means any animal running free with no physical restraint beyond the premises of owner and/or keeper.

(12) "Licensed veterinarian" means a veterinarian licensed to practice veterinary medicine in one or more of the 50 states.

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF THE BOARD; GENERAL POWERS AND DUTIES OF MUNICIPAL AND COUNTY GOVERNMENTS

General Powers and Duties of the Board

Sec. 2.01. (a) The board or its designee shall administer the control program established by this Act.

(b) The board or its designee may enter into contracts and/or agreements with other entities, governmental or private, to carry out the provisions of this Act. The contracts and/or agreements may provide for payment by the state for materials, equipment, and services.

(c) The board or its designee may seek, receive, and expend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purpose of the control program established by this Act subject to any limitations or conditions prescribed by the legislature.

(d) The board or its designee may impose an area quarantine to prevent or contain a rabies epizootic in accordance with procedures established in Section 3.09 of this Act.

(e) The board or its designee may compile, analyze, publish, and distribute information relating to the control of rabies for the education of physicians, veterinarians, public health personnel, and the general public.

(f) The board shall adopt the rules necessary for the effective administration of the provisions of this Act.

General Powers and Duties of Municipal and County Governments

Sec. 2.02. (a) The governing body of an incorporated municipality or the commissioners court of a county may adopt the provisions of this Act and the standards established by the board; or

(b) As provided in Section 3.01 of this Act the governing body of an incorporated municipality or the commissioners court of a county may adopt ordinances and/or rules which establish local control programs and set local standards which are compatible with and equal to or more stringent than the program established by this Act and the rules adopted by the board, including but not limited to ordinances and rules which require the registration and/or restraint of each dog or cat found within the respective jurisdictions.

(c) The governing body of each incorporated municipality and the commissioners court of each county shall designate an officer to act as a local health authority for the purposes of this Act as provided in Section 3.02 of this Act.

(d) The governing body of each incorporated municipality and the commissioners court of each county may enter into contracts and/or agreements with other entities, governmental and private, to carry out the activities required of them or permitted by them under the provisions of this Act.

SUBCHAPTER C. IMPLEMENTATIONS OF RABIES CONTROL

Development and Application of Control Provisions and Standards

Sec. 3.01. Except as specifically provided for in Section 3.09 of this Act:

(a) The provisions of this Act and/or the rules adopted by the board under the authority of this Act are the minimum standards for rabies control in this state.

(b) The provisions of this Act and/or the rules adopted by the board do not prohibit the adoption by the commissioners court of a county of ordinances and/or rules establishing requirements for rabies control in the county which are compatible with and equal to or more stringent than the provisions of this Act and the rules adopted by the board. Such county ordinances and/or rules shall supersede the provisions of this Act and the rules of the board within the county of their adoption so that dual enforcement will not occur.

(c) The provisions of this Act, the rules adopted by the board, and the ordinances and/or rules adopted by the commissioners court of a county do not prohibit the adoption by the governing body of an incorporated municipality located within the county of ordinances and/or rules which are compatible with and equal to or more stringent than the ordinances and rules adopted by the county and the provisions of this Act and the rules adopted by the board. Such municipal ordinances and/or rules shall supersede those of the county and the provisions of this Act and the rules of the board within the corporate limits of the municipality so that multiple enforcement will not occur.

Designation of Local Health Authorities

Sec. 3.02. The commissioners court of each county and the governing body of each city or town shall designate one officer to act as the local health authority for the purposes of this Act. The officer designated may be the county health officer, municipal health officer, animal control officer, peace officer, or any entity that the commissioners court or governing body considers appropriate, except as restricted by rule of the board. The duties of the local health authority shall include but are not limited to the enforcement of:

(1) the provisions of this Act and the rules of the board which comprise the minimum standards for rabies control;

(2) the ordinances and/or rules of the local jurisdiction (municipality or county) in which he serves; or

(3) the rules adopted by the board under the area quarantine provisions of Section 3.09 of this Act.

Reports of Exposure to Rabies

Sec. 3.03. (a) A person having knowledge of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies or of an animal that the person suspects is rabid shall report the incident or animal to a local health authority of the county or the city or town in which the person lives, in which the animal is located, or in which the exposure occurs. The

report shall include the name and address of any victim and of the owner of the animal, if known, and any other data which may aid in the locating of the victim or the animal.

(b) The owner of an animal that is reported to be rabid or to have exposed an individual or that the owner knows or suspects to be rabid or to have exposed an individual shall submit the animal for quarantine to the local health authority of the county or the city or town in which the exposure occurred.

(c) The local health authority shall investigate all reports filed under this section.

Quarantine of Animals

Sec. 3.04. (a) The local health authority shall quarantine for at least 10 days any animal that the authority has probable cause to believe is rabid or has exposed an individual.

(b) The board shall adopt rules governing the testing of quarantined animals, the procedure for and method of quarantine, and the types of facilities that may be used for quarantine.

(c) In accordance with the rules of the board, a local health authority may contract with one or more public or private entities for the purpose of providing and operating a quarantine facility.

(d) If it is determined by a veterinarian that a quarantined animal shows the clinical signs of the disease of rabies, the local health authority shall humanely destroy the animal. If an animal dies or is destroyed while in quarantine, the local health authority shall remove the head or brain of the animal and submit it to the nearest Texas Department of Health laboratory for testing.

(e) If a veterinarian determines that a quarantined animal does not show the clinical signs of a rabies, the local health authority shall release it to the owner following the quarantine period if:

(1) the owner has an unexpired rabies vaccination certificate for the animal; or

(2) the animal is vaccinated against rabies by a licensed veterinarian at the owner's expense.

(f) The owner of an animal that is quarantined under this Act shall pay to the local health authority the reasonable costs of the quarantine and disposition of the animal, and the local health authority may bring suit to collect those costs. The local health authority may sell and retain the proceeds or keep, grant, or destroy an animal that the owner or custodian does not take possession of on or before the third day following the final day of the quarantine.

Vaccination of Dogs and Cats Required

Sec. 3.05. (a) Except as otherwise provided by rule of the board, the owner of each dog or cat shall have the dog or cat vaccinated against rabies by the time the dog or cat is four months of age and at regular intervals thereafter as prescribed by rule of the board.

(b) A veterinarian who vaccinates a dog or cat against rabies shall issue to the owner of the animal a vaccination certificate in a form which meets the minimum standards approved by the board.

(c) No county, city, or town may register or license an animal that has not been vaccinated in accordance with this section.

Use of Modified Live Virus Rabies Vaccine for Animals Restricted

Sec. 3.06. To prevent improper vaccination of animals against and the accidental exposure of humans to rabies, modified live virus rabies vaccine for animals shall be administered only by or under the direct supervision of a veterinarian who is licensed to practice in this state.

Registration of Dogs and Cats by Municipal and County Governments

Sec. 3.07. Fees for Registration. (a) Subject to the limitation contained in Subsection (b) of this section, the governing body of an incorporated municipality and the commissioners court of a county may enact ordinances and/or adopt rules to require the registration of each dog and cat within the respective jurisdiction of the municipality or the county.

(b) No dog or cat shall be subject to dual registration and the priority of registration enforcement shall be governed by the provisions of Section 3.01 of this Act.

(c) The enforcement agency may collect a fee set by ordinance for the registration of each dog and/or cat and such fees shall be retained by the enforcement agency to be used only to help defray the expense of the administration of the provisions of this Act or the ordinances and/or rules of the enforcement agency within the area of its jurisdiction.

Restraint of Dogs and Cats of Municipal and County Governments: Impoundment Charges: Disposition of Stray Animals

Sec. 3.08. (a) Subject to the limitation contained in Subsection (b) of this section, the governing body of an incorporated municipality and the commissioners court of a county may enact ordinances and adopt rules including but not limited to ordinances and rules to require that within the respective jurisdiction of the municipality or the county

(1) each dog or cat be restrained by its owner;

(2) each stray dog or cat be declared a public nuisance;

(3) each unrestrained dog or cat be detained or impounded by the local health authority or that officer's designee;

(4) that each stray dog or cat be impounded for a period to be set by ordinance or rule;

(5) that a humane disposition be made of each unclaimed stray dog or cat upon the expiration of the required impoundment period.

(b) No jurisdiction shall be subject to dual restraint ordinances and rules, and in the extent of dual provisions the priority of enforcement shall be governed by the provision of Section 3.01 of this Act.

(c) The enforcing agency may adopt an ordinance setting charges for the impoundment and board provided to any dog or cat during the retention period to be paid by the owner before release of the animal. Such charges shall be deposited in the treasury of the enforcing agency and shall be used only to help defray the expense of the administration of this Act or the ordinances and rules of the enforcement agency within the area of jurisdiction.

(d) The board shall adopt rules establishing the minimum acceptable standards for impoundment facilities and for the care of impounded animals.

Declaration of Area Quarantine

Sec. 3.09. (a) If rabies is known to exist within an area, the board or its designee may declare an area rabies quarantine.

(b) Upon the declaration that a quarantine exists, the board shall:

(1) define the borders of the area quarantined;

(2) adopt permanent or emergency rules in accordance with the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes). These rules may include but are not limited to rules setting forth conditions for the restraint of carnivorous animals and the transporting of carnivorous animals into and out of the quarantine area.

(c) The area quarantine shall remain in effect for 180 days following the last case of rabies diagnosed in a dog or cat, or other animal species responsible for declaration of the area quarantine, unless removed prior to that date by declaration by the board or its designee.

(d) When the board employs the area quarantine procedures, the rules adopted by the board shall supersede all other applicable ordinances and/or rules applying to the quarantine area until the quarantine is removed by declaration of the board or its designee or until such time as the rules expire or are revoked by the board.

Provision of Vaccines and Sera by Department

Sec. 3.10. Depending upon resources available, the department is authorized to provide vaccines and hyper-immune sera for the use and benefit of persons exposed, or suspected of exposure, to rabies, in accordance with policies or procedures established by the board. The department shall have the right to be reimbursed for actual costs incurred in the providing of such vaccines and sera by or on behalf of the persons receiving same, in accordance with rules, regulations, and eligibility standards established by the board. Upon the written request of the department, such claim for reimbursement may be collected by suit or other proceedings in the name of the State of Texas by the county or district attorney, or the attorney general, in the county of the residence of the recipient, against the recipient or the parent, guardian, or other person or persons legally responsible for the support of the recipient, or against responsible third-parties.

SUBCHAPTER D. PROCEDURAL REQUIREMENTS

Inspections

Sec. 4.01. Employees of the department, upon the presentation of appropriate credentials to the local health authority or his designee, may make a reasonable inspection at a reasonable hour of any quarantine facility or impoundment facility to determine if such facilities comply with the minimum standards for such facilities adopted by the board.

Hearings

Sec. 4.02. A person aggrieved by an action of the department in amending, limiting, suspending, or revoking any approval required by this Act may request a hearing before the department. Any hearing held under this section shall be conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), and the department's formal hearing rules.

State Compliance Procedures

Sec. 4.03. At the request of the commissioner, the attorney general may bring an action in the name of the State of Texas to enjoin the operation of any quarantine or impoundment facility which fails to meet the minimum standards established by this Act and the rules of the board adopted under the authority of this Act. Upon the court's issuing of an order to the facility to cease operation, the local health authority shall remove all animals housed therein to a shelter approved by the department. The expense of relocation shall be borne by the county or incorporated municipality within whose jurisdiction the deficient facility lies. Any suit filed under this subsection shall be filed in a district court of the county in which the facility is located.

SUBCHAPTER E. PENALTIES

Violation of Animal Quarantine Requirement

Sec. 5.01. (a) A person commits an offense if he fails or refuses to quarantine or present for quarantine any animal which

(1) is required to be placed in quarantine under the provisions of Section 3.04 of this Act and the rules adopted by the department under the authority of this Act;

(2) is required to be placed in quarantine under the ordinances and/or rules of a county which is exercising the authority granted in Sections 2.02

and 3.01 of this Act and within whose jurisdiction the act occurs; or

(3) is required to be placed in quarantine under the ordinances and/or rules of an incorporated municipality which is exercising the authority granted in Sections 2.02 and 3.01 of this Act and within whose jurisdiction the act occurs.

(b) An offense under this subsection is a Class C misdemeanor.

Violation of Area Quarantine

Sec. 5.02. (a) A person commits an offense if he violates or attempts to violate a rule of the board which governs an area quarantine adopted under the authority of Section 3.09 of this Act.

(b) An offense under this subsection is a Class C misdemeanor.

Violation of Dog and Cat Registration Requirements

Sec. 5.03. (a) A person commits an offense if he fails or refuses to register or present for registration any dog or cat of which he is the owner and such animal

(1) is required to be registered under the ordinances and/or rules of a county which is exercising the authority granted in Sections 2.02, 3.01, and 3.07 of this Act and within whose jurisdiction the act occurs; or

(2) is required to be registered under the ordinances and/or rules of an incorporated municipality which is exercising the authority granted in Sections 2.02, 3.01, and 3.07 of this Act and within whose jurisdiction the act occurs.

(b) An offense under this subsection is a Class C misdemeanor.

Violation of Dog and Cat Restraint Requirements

Sec. 5.04. (a) A person commits an offense if he fails or refuses to restrain any dog or cat of which he is the owner and such animal

(1) is required to be registered under the ordinances and/or rules of a county which is exercising the authority granted in Sections 2.02, 3.01, and 3.08 of this Act and within whose jurisdiction the act occurs; or

(2) is required to be registered under the ordinances and/or rules of an incorporated municipality which is exercising the authority granted in Sections 2.02, 3.01 and 3.08 of this Act and within whose jurisdiction the act occurs.

(b) An offense under this subsection is a Class C misdemeanor.

Violation of Requirement to Vaccinate Dog or Cat

Sec. 5.05. (a) A person commits an offense if he fails or refuses to have each dog or cat of which he is the owner vaccinated against rabies and such animal

(1) is required to be vaccinated under the provisions of Section 3.05 of this Act and the rules adopted by the board under the authority of this Act;

(2) is required to be vaccinated under the ordinances and/or rules of a county which is exercising the authority granted in Sections 2.02 and 3.01 of this Act and within whose jurisdiction the act occurs; or

(3) is required to be vaccinated under the ordinances and/or rules of an incorporated municipality which is exercising the authority granted in Sections 2.02 and 3.01 of this Act and within whose jurisdiction the act occurs.

(b) An offense under this subsection is a Class C misdemeanor.

Violation of Jurisdictional Standards Governing the Operation of a Quarantine or Impoundment Facility

Sec. 5.06. (a) A person commits an offense if he operates a facility for quarantining or impounding animals and the facility

(1) fails to meet the standards for approval established by the rules adopted by the board;

(2) fails to meet the standards for approval established under the ordinances and/or rules of a county which is exercising the authority granted in Sections 2.02 and 3.01 of this Act; or

(3) fails to meet the standards for approval established under the ordinances and/or rules of an incorporated municipality exercising the authority granted in Sections 2.02 and 3.01 of this Act.

(b) An offense under this subsection is a Class C misdemeanor.

Violation of the Restrictions Upon the Use of Modified Live Virus Rabies Vaccine

Sec. 5.07. (a) A person commits an offense

(1) if he administers or attempts to administer modified live virus rabies vaccine in a manner not authorized by Section 3.06 of this Act; or

(2) if he dispenses or attempts to dispense modified live virus rabies vaccine in a manner not authorized by Section 3.01 of this Act.

(b) An offense under this section is a Class C misdemeanor.

[Acts 1979, 66th Leg., p. 1852, ch. 752, eff. Jan. 1, 1980. Amended by Acts 1981, 67th Leg., p. 476, ch. 204, § 1, eff. Jan. 1, 1982.]

Art. 4477–6b. Animal Shelters

Text of article effective September 1, 1982

Definitions

Sec. 1. In this Act:

(1) "Animal shelter" means a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals.

(2) "Board" means the Texas Board of Health.

(3) "Commissioner" means the commissioner of the Texas Department of Health.

(4) "Department" means the Texas Department of Health.

(5) "Person" means an individual, corporation, or association and includes a political subdivision of the state but does not include veterinary medicine clinics or livestock commission facilities.

Standards for Animal Shelters

Sec. 2. (a) Every animal shelter operated in this state must comply with the standards for housing and sanitation existing on the effective date of this Act which implement Chapter 752, Acts of the 66th Legislature, Regular Session, 1979 (Article 4477–6a, Vernon's Texas Civil Statutes.)

(b) An animal shelter shall separate animals in its custody at all times by species, by sex (if known), and if the animals are not related to one another, by size.

(c) The animal shelter may not confine healthy animals with sick, injured, or diseased animals.

(d) Every person who operates an animal shelter shall, at least once per year, employ a veterinarian to inspect such shelter to determine whether it complies with the requirements of this Act. The veterinarian shall file copies of his report with the person operating the shelter and with the department on forms prescribed by the department.

(e) The board may require every person operating an animal shelter to keep records of the date and disposition of animals in its custody, to maintain the records on the business premises of the animal shelter, and to make the records available for inspection at reasonable times.

(f) A substantial violation of the requirements of this section is a Class C misdemeanor.

Personnel Training

Sec. 3. The board shall prescribe standards and charge reasonable fees for the training of animal shelter personnel as to animal health and disease control, humane care and treatment, control of animals in an animal shelter, and the transportation of animals.

Advisory Committee

Sec. 4. The governing body of every county, city, town, or village in which an animal shelter is situated shall appoint an advisory committee to assist in complying with the requirements of this Act.

(b) The advisory committee shall be composed of at least one licensed veterinarian, one county or city official, one person whose duties include the daily operation of an animal shelter, and one representative from an animal welfare organization.

(c) The advisory committee shall meet at least three times a year.

Euthanasia

Sec. 5. (a) No person may put to death a dog, cat, or other small animal in the custody of an animal shelter by shooting, except in emergency field conditions, by clubbing, or by administering any of the following substances:

(1) unfiltered or uncooled carbon monoxide;

(2) curariform drugs, including curare, succinylcholine, pancuronium, glyceryl fenesin, used alone;

(3) magnesium salts, used alone;

(4) chloral hydrate;

(5) nicotine; or

(6) strychnine.

(b) A violation of this section is a Class C misdemeanor.

Remedy

Sec. 6. Any person may, upon proof of a substantial violation of the requirements of this Act, obtain a mandatory injunction in a court of competent jurisdiction to enjoin such violation.

Fees

Sec. 7. The fees collected under this Act shall be deposited with the State Treasurer to the credit of the General Revenue Fund.

Exception

Sec. 8. This Act does not apply in any county having a population of less than 75,000 or to any animal shelter within the city limits of a city having a population of less than 75,000, according to the last preceding federal census.

[Acts 1981, 67th Leg., p. 2544, ch. 677, §§ 1 to 8, eff. Sept. 1, 1982.]

Art. 4477–7. Solid Waste Disposal Act

Short Title; Policy

Sec. 1. This Act may be cited as the Solid Waste Disposal Act. It is the policy of the state and the purpose of this Act to safeguard the health, welfare, and physical property of the people, and to protect the environment, through controlling the management of solid wastes, including the accounting for hazardous wastes generated.

Definitions

Sec. 2. As used in this Act, unless the context requires a different definition:

(1) "Board" means the Texas Water Development Board.

(2) "Board of health" means the Texas Board of Health.

(3) "Class I industrial solid waste" means any industrial solid waste designated as Class I by the Executive Director of the Texas Department of Water Resources as any industrial solid waste or mixture of industrial solid wastes which because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means and

may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste.

(4)"Commission" means the Texas Water Commission.

(5)"Commissioner" means the Commissioner of Health.

(6) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(7) "Department" means the Texas Department of Health.

(8) "Department of water resources" means the Texas Department of Water Resources.

(9) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(10) "Executive director" means the Executive Director of the Texas Department of Water Resources.

(11) "Garbage" means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(12) "Hazardous waste" means any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(13) "Industrial solid waste" means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(14) "Local government" means a county; an incorporated city or town; or a political subdivision exercising the authority granted under Section 6 of this Act.

(15) "Management" means the systematic control of any or all of the following activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(16) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(17) "Person" means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(18) "Person affected" means any person who is a resident of a county or any county adjacent or contiguous to the county in which a solid waste facility is to be located including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government. Such person affected shall also demonstrate that he has suffered or will suffer actual injury or economic damage.

(19) "Processing" means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. Unless the state agency determines that regulation of such activity under this Act is necessary to protect human health or the environment, the definition of "processing" does not include activities relating to those materials exempted by the Administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(20) "Radioactive waste" means that waste which requires specific licensing under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), and the rules adopted by the Texas Board of Health under that law.

(21) "Rubbish" means nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1600°F to 1800°F).

(22) "Sanitary landfill" means a controlled area of land upon which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the board.

(23) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(24) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include: (i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code; (ii) soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or (iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Texas Railroad Commission.

(25) "Solid waste facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and consist of several processing, storage, or disposal operational units; e. g., one or more landfills, surface impoundments, or combinations of them.

(26) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the board or board of health.

(27) "Storage" means the holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere.

State Solid Waste Agency; Designations; Duties

Sec. 3. (a) The department is hereby designated the state solid waste agency with respect to the management of municipal solid waste, and shall be the coordinating agency for all municipal solid waste activities. The department shall be guided by the board of health in its activities relating to municipal solid waste. The department shall seek the accomplishment of the purposes of this Act through the control of all aspects of municipal solid waste management by all practical and economically feasible methods consistent with the powers and duties given the department under this Act and other existing legislation. The department has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department shall consult with the department of water resources with respect to the water pollution control and water quality aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department by this Act.

(b) The department of water resources is hereby designated the state solid waste agency with respect to the management of industrial solid waste, and shall be the coordinating agency for all industrial solid waste activities. The department of water resources shall seek the accomplishment of the purposes of this Act through the control of all aspects of industrial solid waste management by all practical and economically feasible methods consistent with the powers and duties given it under this Act and other existing legislation. The department of water resources has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department of water resources shall consult with the department with respect to the public health aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department of water resources by this Act.

(c) Where both municipal solid waste and industrial solid waste, except Class I industrial solid waste which is not routinely collected with municipal solid waste, are involved in any activity of management of solid waste, the department is the state agency responsible and has jurisdiction over the activity; and, with respect to that activity, the department may exercise all of the powers, duties and functions vested in the department by this Act. Class I industrial solid waste under the jurisdiction of the department of water resources may be accepted in a municipal solid waste facility if authorized in writing by the department with the written concurrence of the department of water resources. Solid waste, including hazardous waste, under the jurisdiction of the department may be accepted in an industrial solid waste facility, if authorized in writing by the department of water resources with the written concurrence of the department.

(d) The department is designated under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), as the state agency with respect to regulating radioactive waste activities that are not preemptively regulated by the federal government. The department has all powers under the Solid Waste Disposal Act, as amended (Article 4477–7, Vernon's Texas Civil Statutes), necessary or convenient to carry out responsibilities concerning the regulation of the management of solid waste components of any radioactive wastes under its jurisdiction.

State Agencies; Authority and Powers; Permits

Sec. 4. (a) As used in this section the term "state agency" refers to either the department or the department of water resources, and "state agencies" means both the department and the department of water resources.

(b) The department is authorized to develop a state municipal solid waste plan, and the department of water resources is authorized to develop a state industrial solid waste plan. The state agencies shall coordinate the solid waste plans developed. Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.

(c) Each state agency may adopt and promulgate rules consistent with the general intent and purposes of this Act, and establish minimum standards of operation for all aspects of the management and control of the solid waste over which it has jurisdiction under this Act. Each state agency shall require persons who generate, transport, process, store, or dispose of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that such wastes are transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose.

(d) Each state agency is authorized to inspect and approve solid waste facilities used or proposed to be used for the storage, processing, or disposal of the solid waste over which it has jurisdiction.

(e) Except as provided in Subsection (f) of this section with respect to certain industrial solid wastes, each state agency has the power to require and issue permits authorizing and governing the operation and maintenance of solid waste facilities used for the storage, processing, or disposal of solid waste. This power may be exercised by a state agency only with respect to the solid waste over which it has jurisdiction under this Act. If this power is exercised by a state agency, that state agency shall prescribe the form of and reasonable requirements for the permit application and the procedures to be followed in processing the application, to the extent not otherwise provided for in this subsection. The following additional provisions apply if a state agency exercises the power authorized in this subsection:

(1) The state agency to whom the permit application is submitted shall mail a copy of the application or a summary of its contents to the Texas Air Control Board, to the other state agency, to the mayor and health authorities of any city or town within whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and health authorities of the county in which the facility is located. The governmental entities to whom the information is mailed shall have a reasonable time, as prescribed by the state agency to whom the application was originally submitted, to present comments and recommendations on the permit application before that state agency acts on the application.

(2) A separate permit shall be issued for each solid waste facility. The permit shall include the names and addresses of the person or persons who own the land where the solid waste facility is located and the person who is or will be the operator or person in charge of the facility; a legal description of the land on which the facility is located; and the terms and conditions on which the permit is issued, including the duration of the permit. The state agency in its discretion shall have the power to process a permit application for purpose of determining land use compatibility alone, and at another time, if the site location is acceptable, consider technical matters related to the application. Where this power is exercised, a public hearing may be held for each determination in accordance with Paragraph (4) of this Subsection (e).

(3) The state agency may amend, extend, or renew any permit it issues in accordance with reasonable procedures prescribed by the state agency. The procedures prescribed in Paragraph (1) of this Subsection (e) for permit applications apply also to applications to amend, extend, or renew a permit.

(4) Before a permit is issued, amended, extended, or renewed, the state agency to which the application is submitted shall provide an opportunity for a hearing to the applicant and persons affected; the state agency may also hold such a hearing upon its own motion. The state agency by rule shall establish procedures for public notice and any public hearing authorized under this paragraph. A hearing on a permit involving a solid waste facility for hazardous industrial solid waste must include one session held in the county in which the solid waste facility is located. Hearings under this paragraph shall be conducted in accordance with the hearing rules adopted by the state agency and the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(5) Before a permit is issued, amended, extended, or renewed, the state agency to which the application is submitted may require the permittee to execute a bond or give other financial assurance conditioned on the permittee's satisfactorily operating and closing the solid waste facility. The state agency to which the application is submitted shall require an assurance of financial responsibility as may be necessary or desirable consistent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste. Financial requirements established by the state agency shall at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C., 6901 et seq., as amended.

(6) If a permit is issued, amended, renewed, or extended by a state agency in accordance with this Subsection (e), the owner or operator of the solid waste facility does not need to obtain a license for the same facility from a county, or from a political subdivision exercising the authority granted in Section 6 of this Act.

(7) A permit issued under this Act is issued only to the person in whose name the application is made and is issued only for the facility described in the permit. A permit may not be transferred without prior written notice to and prior written approval by the state agency which issued it.

(8) The state agency has the authority, for good cause, to revoke or amend any permit it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or rules controlling the management of solid waste. The state agency using this authority shall notify the governmental entities named in Paragraph (1) of this Subsection (e) and provide an opportunity for a hearing to the permittee and persons affected. The state agency may hold such a hearing upon its own motion. The state agency by rule shall establish procedures for public notice and any public hearing authorized under this paragraph. Hearings under this paragraph shall be conducted in accordance with the hearing rules adopted by the state agency and the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(9) Manufacturing and processing establishments, commonly known as rendering plants, which process for any purpose waste materials originating from animals, poultry, and fish (all hereinafter referred to as "animals") and materials of vegetable origin, including without limitation animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin are subject to regulation under the industrial solid waste provisions of this Act and may also be regulated under Chapter 26, Water Code. When a rendering establishment is owned by a person who operates the rendering establishment as an integral part of an establishment engaged in manufacturing or processing for animal or human consumption food derived wholly or in part from dead, slaughtered, or processed animals, poultry, or fish, the combined business may operate under authority of a single permit issued pursuant to Chapter 26, Water Code. The provisions of this subsection do not apply to those rendering plants in operation and production on or before August 27, 1973.

(10) Each state agency may issue an emergency order, either mandatory or prohibitory in nature, regarding any activity of solid waste management within its jurisdiction, whether such activity is covered by a permit or not, if the state agency determines that the activity is creating or will cause extensive or severe property damage or economic loss to others or is posing an immediate and serious threat to human life or health and that other procedures available to the state agency to remedy or prevent the occurrence of the situation will result in unreasonable delay. The order may be issued without notice and hearing, or with such notice and hearing as the state agency deems practicable under the circumstances.

(i) If an emergency order is issued under this authority without a hearing, the issuing agency shall fix a time and place for a hearing to be held in accordance with the departmental rules by the state agency, so as to affirm, modify, or set aside the emergency order.

(ii) The requirements of Paragraph (4) of this subsection relating to public notice do not apply to such a hearing, but such general notice of the hearing shall be given in accordance with the departmental rules of the state agency.

(f)(1) This subsection applies to the collection, handling, storage, processing, and disposal of industrial solid waste which is disposed of within the property boundaries of a tract of land owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and which tract of land is within 50 miles from the plant or operation which is the source of the industrial solid waste. This subsection does not apply if the waste is collected, handled, stored, processed, or disposed of with solid waste from any other source or sources or if the waste, which is collected, handled, stored, processed, or disposed of is hazardous waste. The department of water resources may not require a permit under this Act for the disposal of any solid waste to which this subsection applies, but this does not change or limit any authority the department of water resources may have with respect to the requirement of permits, the control of water quality, or otherwise, under Chapter 26, Water Code. However, the department of water resources may adopt rules as provided under Subsection (c) of this section to govern and control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this subsection applies so as to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection. The department of water resources may require a person who disposes or plans to dispose of industrial solid waste under the authority of this subsection to submit to the department of water resources such information as may be reasonably required to enable the department of water resources to determine whether in its judgment the waste disposal activity is one to which this subsection applies.

(2) No person shall process, store, or dispose of hazardous industrial solid wastes under this subsection without having first obtained a hazardous

waste permit issued by the commission; provided, however, that any person who has on or before November 19, 1980, commenced on-site processing, storing, or disposing of hazardous waste under this subsection and who has filed a hazardous waste permit application in accordance with the rules of the board may continue to process, store, or dispose of hazardous waste until such time as the commission approves or denies the application. Upon its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit. The board by rule shall establish procedures for public notice and any public hearing authorized by this subsection. The commission may include requirements in the permit for any remedial actions by the applicant that are determined by the commission to be necessary to protect the public health and safety and the environment.

(g) Each state agency is authorized to develop a program for the training of solid waste technicians to improve the competency of those technicians. Each state agency is authorized to issue letters of competency. The owner or operator of a solid waste facility is encouraged to employ as site manager a solid waste technician holding a letter of competency from the appropriate state agency. If a state agency develops a program for training solid waste technicians under this subsection, the state agency may:

(1) prescribe standards of training required for the program;

(2) determine the duration of the letter of competency;

(3) award one or more categories of letters of competency with each category reflecting a different degree of training or skill;

(4) require a reasonable, nonrefundable fee, in an amount determined from time to time by the state agency, to be paid by participants, deposited in the general revenue fund, and used for administering the program;

(5) extend or renew letters of competency issued by the state agency; and

(6) withdraw a letter of competency for good cause, which may include a violation of this Act or rules of the agency relating to the technician's duties and responsibilities.

(h) The state agencies may, either individually or jointly:

(1) provide educational, advisory, and technical services to other agencies of the state, regional planning agencies, local governments, special districts, institutions, and individuals with respect to solid waste management;

(2) assist other agencies of the state, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for the development of solid waste facilities and management programs, and for research to improve the state of the art; and

(3) accept funds from the federal government for purposes relating to solid waste management, and to expend money received from the federal government for those purposes in the manner prescribed by law and in accordance with such agreements as may be necessary and appropriate between the federal government and each state agency.

If a state agency engages in any of the programs and activities named in this subsection on an individual basis, it may do so only as the participation by that state agency is related to the management and control of the solid waste over which it has jurisdiction. When the state agencies do not participate jointly, they shall coordinate on any efforts undertaken by either one individually so that similar programs and activities of the state agencies will be compatible.

(i) The state agencies are authorized to administer and expend state funds provided to them by legislative appropriations, or otherwise, for the purpose of making grants to local governments for solid waste planning, the installation of solid waste facilities, and the administration of solid waste programs. The grants made under the terms of this Act shall be distributed in a manner determined by the state agency to whom the appropriation is made. Any financial assistance granted by the state through either of the state agencies to any local government under the terms of this Act must, at a minimum, be equally matched by local government funds.

County Powers

Sec. 5. (a) Every county has the solid waste management powers which are enumerated in this Section 5. However, the exercise of the licensing authority and other powers granted to counties by this Act does not preclude the department or the department of water resources from exercising any of the powers vested in the department or the department of water resources under other provisions of this Act, including specifically the provisions authorizing the department and the department of water resources to issue permits for the operation and maintenance of facilities for the processing, storage, or disposal of solid waste. The powers specified in Subsections (d) and (e) of this section and Section 18 of the County Solid Waste Control Act (Article 4477–8, Vernon's Texas Civil Statutes) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Subsection (f) of Section 4 of this Act applies. The department or the department of water resources, by specific action or directive, may supersede any authority or power granted to or exercised by a county under this Act, but only with respect to those matters which are, under this Act, within the jurisdiction of the state agency acting.

(b) A county is authorized to appropriate and expend money from its general revenues for the management of solid waste and for administering a solid

waste program; and to charge reasonable fees for the services.

(c) A county may develop county solid waste plans and coordinate those plans with the plans of local governments, regional planning agencies, other governmental entities, the department, and the department of water resources.

(d) Except as provided in Subsection (a) of this section, a county is empowered to require and issue licenses authorizing and governing the operation and maintenance of facilities used for the processing, storage, or disposal of solid waste, excluding hazardous waste, in areas not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns. If a county elects to exercise licensing authority, it must adopt, promulgate, and enforce rules for the management of solid waste. The rules shall be compatible with and not less stringent than those of the department or the department of water resources, as appropriate, and must be approved by, the department or the department of water resources as appropriate. The following additional provisions apply if a county exercises the power authorized in this Subsection (d):

(1) The county shall mail a copy of the license application with pertinent supporting data to the department, the department of water resources, and the Texas Air Control Board. The governmental entities to whom the information is mailed shall have no less than 60 days to submit comments and recommendations on the license application before the county acts on the application unless waived by the commenting agency.

(2) A separate license shall be issued for each solid waste facility. The license shall include the names and addresses of the person or persons who own the land where the solid waste facility is located and the person who is or will be the operator or person in charge of the facility; a legal description of the land on which the facility is located; and the terms and conditions on which the license is issued, including the duration of the license. The county is authorized to charge a fee for a license of not to exceed $100.00, as set by the commissioners court of the county. Receipts from the fees shall be placed in the general revenue fund of the county.

(3) The county may amend, extend, or renew any license it issues in accordance with rules prescribed by the county. The procedures prescribed in Paragraph (1) of this Subsection (d) apply also to applications to amend, extend, or renew a license.

(4) No license for the use of a facility for the processing, storage, or disposal of solid waste may be issued, amended, renewed, or extended without the prior approval, as appropriate, of the department or the department of water resources. If a license is issued, amended, renewed, or extended by a county in accordance with this Subsection (d), the owner or operator of the facility does not need to obtain a permit from the department or the department of water resources for the same facility.

(5) A license issued under this Act is issued only to the person in whose name the application is made and is issued only for the facility described in the permit. A license may not be transferred without prior notice to and prior approval by the county which issued it.

(6) The county has the authority, for good cause, after hearing with notice to the licensee and to the governmental entities named in Paragraph (1) of this Subsection (d), to revoke or amend any license it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or rules controlling the processing, storage, or disposal of solid waste. For like reasons, the department and the department of water resources each may, for good cause, after hearing with notice to the licensee, the county which issued the license, and the other governmental entities named in Paragraph (1) of this Subsection (d), revoke or amend any license issued by a county, but only as to those facilities which fall, under the terms of this Act, within the jurisdiction of the state agency acting.

(e) Subject to the limitation specified in Subsection (a) of this section, a county may designate land areas not within the territorial limits or extraterritorial jurisdiction of incorporated cities and towns as suitable for use as solid waste facilities. The county shall base these designations on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, and any other pertinent considerations.

(f) A county is authorized to enforce the requirements of this Act and the rules promulgated by the board of health and the board as related to the management of solid waste.

(g) Repealed by Acts 1971, 62nd Leg., p. 1763, ch. 516, § 20, eff. Aug. 30, 1971.

(h) A county may enter into cooperative agreements with local governments and other governmental entities for the purpose of the joint operation of solid waste management activities and to charge reasonable fees for the services.

Political Subdivisions With Jurisdiction in Two or More Counties

Sec. 6. This section applies to a political subdivision of the state which has jurisdiction over two or more counties or parts of two or more counties, and which has been granted the power by the Legislature to regulate solid waste handling or disposal practices or activities within its jurisdiction. The governing body of such a political subdivision may, by formal resolution, assume for the political subdivision the exclusive authority to exercise, within the area subject to its jurisdiction, the powers granted in this Act to a county, to the exclusion of the exercise

of the same powers by the counties otherwise having jurisdiction over the area. In the exercise of these powers the political subdivision is subject to the same duties, limitations and restrictions applicable to counties under this Act. When a political subdivision assumes this authority, it shall also serve as the coordinator of all solid waste management practices and activities for all cities, counties and other governmental entities within its jurisdiction which have solid waste management regulatory powers or engage in solid waste management practices or activities. Once a political subdivision assumes the authority granted in this section, it is empowered to and shall exercise the authority so long as the resolution of the political subdivision remains in effect.

Restrictions on Use of Facility

Sec. 6a. (a) No incorporated city or town may abolish or restrict the use or operation of a solid waste facility within its limits or extraterritorial jurisdiction if the solid waste facility:

(1) was in existence at the time the city or town was incorporated or was in existence at the time the city or town annexed the area where it is located; and

(2) is operated in substantial compliance with all applicable state and county regulations.

(b) An incorporated city or town or a political subdivision operating a solid waste facility shall not be prevented from operating the solid waste facility on the ground that it is located within the limits or extraterritorial jurisdiction of another city or town.

Right of Entry; Inspections; Access to Hazardous Waste Records

Sec. 7. (a) The authorized agents or employees of the department, the department of water resources, and local governments have the right to enter at all reasonable times in or upon any property, whether public or private, within the governmental entity's jurisdiction, including in the case of an incorporated city or town, its extraterritorial jurisdiction, for the purpose of inspecting and investigating conditions relating to solid waste management and control. Agents and employees shall not enter private property having management in residence without notifying the management, or the person in charge at the time, of their presence and exhibiting proper credentials. The agents and employees shall observe the rules and regulations of the establishment being inspected concerning safety, internal security, and fire protection.

(b) The authorized agents or employees of the department and the department of water resources may have access to, examine, and copy during regular business hours any records pertaining to hazardous waste management and control.

(c) Records copied pursuant to Subsection (b) of this section shall be public records, except that, if a showing satisfactory to the commissioner of the department or to the executive director is made by the owner of such records that the records would divulge trade secrets if made public, then the department or the department of water resources shall consider such copied records as confidential. Nothing in this subsection shall require the department of water resources or the department to consider the composition or characteristics of solid waste being processed, stored, disposed, or otherwise handled to be held confidential.

Prohibited Acts; Violations; Penalties; Injunction

Sec. 8. (a) Civil Penalties; Injunction. (1) No person may cause, suffer, allow, or permit the collection, storage, handling, transportation, processing, or disposal of solid waste, or the use or operation of a solid waste facility for the storage, processing, or disposal of solid waste, in violation of this Act or of the rules, permits, licenses or other orders of the department or the department of water resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs.

(2) Any person who violates any provision of this Act or of any rule, permit, license, or other order of the department or the department of water resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs, which is not a requirement applicable to hazardous waste, is subject to a civil penalty of not less than $100.00 nor more than $2,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8. Any person who violates any requirement applicable to hazardous waste shall be subject to a civil penalty of not less than $100.00 nor more than $25,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8(a).

(3) Whenever it appears that a person has violated, or is violating or threatening to violate, any provision of this Act, or of any rule, permit, or other order of the department or the department of water resources, then the department or the department of water resources may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty as provided by this subsection, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or any rule, permit, or other order of the department or the department of water resources, the district court shall grant appropriate injunctive relief. At the request of the commissioner or the executive director, the attorney general shall institute and

conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in this subsection.

(4) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, permit, license, or other order of the department, the department of water resources, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the jurisdiction of that county or political subdivision, the county or political subdivision, in the same manner as the department of water resources and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (3) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(5) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, permit, license, or other order of the department, the department of water resources, a county, or political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the area of the extraterritorial jurisdiction of an incorporated city or town, or is causing or will cause injury to or an adverse effect on the health, welfare or physical property of the city or town or its inhabitants, then the city or town, in the same manner as the department of water resources and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (3) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

(6) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs. In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, permit, license or other order of the department of water resources, the department, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the court may grant the governmental entity bringing the suit, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

(7) In a suit brought by a local government under Subsection (4) or (5) of this section, the department of water resources and the department are necessary and indispensable parties.

(8) Any party to a suit may appeal from a final judgment as in other civil cases.

(9) All civil penalties recovered in suits instituted under this Act by the State of Texas through the department of water resources or the department shall be paid to the General Revenue Fund of the State of Texas. All civil penalties recovered in suits first instituted by a local government or governments under this Act shall be equally divided between the State of Texas on the one hand and the local government or governments on the other, with 50 per cent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 per cent equally to the local government or governments first instituting the suit.

(b) Criminal Penalties. (1) Any person who knowingly:

(A) transports, or causes to be transported for storage, processing, or disposal, any hazardous waste to any location which does not have a permit as required by a state agency exercising jurisdiction under Section 4 of this Act;

(B) stores, processes, or disposes, or causes to be stored, processed, or disposed, any hazardous waste without having obtained a permit as required by a state agency exercising jurisdiction under Section 4 of this Act or in knowing violation of any material condition or requirement of a permit;

(C) makes, or causes to be made, any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with any requirement of this Act applicable to hazardous waste; or

(D) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, any hazardous waste (whether such activity took place before or after the date of enactment of this section) and who knowingly destroys, alters, or conceals, or causes to be destroyed, altered, or concealed, any record required to be maintained under the rules promulgated by the state agency under this Act,

shall be subject, upon conviction, to a fine or not less than $100.00 nor more than $25,000.00 for each act of violation and each day of violation, or to imprisonment not to exceed 180 days, or both. If the conviction is for a violation committed after a first conviction of such person under this Section 8(b), punishment shall be by a fine of not less than $200.00 nor more than $50,000.00 for each day of violation, or by imprisonment not to exceed one year, or both.

(c) Knowing Endangerment. (1) Any person who knowingly:

(A) transports, processes, stores, or disposes of, or causes to be transported, processed, stored, or disposed of, any hazardous waste in

violation of this Act and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, and

(B)(i) if his conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or

(ii) if his conduct in the circumstances manifests an extreme indifference for human life,

shall be subject upon conviction to a fine of not more than $250,000.00 or imprisonment for not more than two years, or both, except that a person that violates Subsections (c)(1)(A) and (c)(1)(B)(ii) of this section shall, upon conviction, be subject to a fine of not more than $250,000.00 or imprisonment for not more than five years, or both. A person, other than an individual, shall upon conviction of violating this Section 8(c) be subject to a fine of not more than $1,000,000.00.

(2) It is an affirmative defense to a prosecution under this subsection that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods,

if such endangered person had been made aware of the risks involved prior to giving consent.

(d) For purposes of Sections 8(b) and 8(c) of this Act, the term "person" means an individual, corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals.

(e) Venue for prosecution for any alleged violation of Subsections (b)(1) and (c)(1) of this Section 8 is in the county in which the violation is alleged to have occurred or in Travis County, Texas.

(f) All fines recovered under Sections 8(b) and 8(c) of this Act shall be equally divided between the State of Texas and the local government or governments first instituting the cause with 50 per cent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 per cent to be paid equally to the local government or governments instituting the cause, or as otherwise provided by this Act.

Appeals

Sec. 9. A person affected by any ruling, order, decision, or other act of the department or the department of water resources may appeal by filing a petition in a district court of Travis County. A person affected by any ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted in Section 6 of this Act, may appeal by filing a petition in a district court having jurisdiction in the county or political subdivision. The petition must be filed within 30 days after the date of the action, ruling, order, or decision of the governmental entity complained of. Service of citation must be accomplished within 30 days after the date the petition is filed. The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed, unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay. In an appeal from an action by the department, the department of water resources, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the issue is whether the action is invalid, arbitrary or unreasonable.

Cumulative Act

Sec. 10. This Act is cumulative of and supplemental to any other laws and parts of laws relating to the same subject and does not repeal those other laws or parts of laws. Nothing in this Act diminishes or limits, or is intended to diminish or limit, the authority of the department, the department of water resources, the Texas Air Control Board, or local governments in performing any of the powers, functions, and duties vested in those governmental entities by other laws.

[See Compact Edition, Volume 4 for text of 11]

[Amended by Acts 1977, 65th Leg., p. 825, ch. 308, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2337, ch. 870, §§ 2 to 7, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 536, ch. 251, §§ 1, 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 3170, ch. 831, §§ 1 to 9, eff. Sept. 1, 1981.]

Section 10 of the 1981 amendatory act provides:

"On or before January 1, 1982, the Texas Department of Water Resources, the Texas Department of Health, and the Railroad Commission of Texas shall execute a memorandum of understanding that specifies in detail these agencies' interpretation of the division of jurisdiction among the agencies over waste materials that result from or are related to activities associated with the exploration for and the development, production, and refining of oil or gas. The agencies shall amend the memorandum of understanding at any time that the agencies find it to be necessary."

Art. 4477–7a. Solid Waste Resource Recovery Financing Act

Short Title

Sec. 1. This Act may be cited as the Solid Waste Resource Recovery Financing Act.

Policy

Sec. 2. (a) It is the policy of this state to safeguard the health, general welfare, and physical property of the people from pollution resulting from solid waste by encouraging the processing of solid waste for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. The accomplishment of the purposes stated in this Act will further such policy and is for the health and welfare of the people of this state and for the improvement and protection of their properties. The issuer in carrying out the purposes of this Act

will be performing an essential public function under the constitution.

(b) It is hereby determined by the legislature and also declared to be the policy of this state that the processing of solid waste for reuse is essential to the well-being and survival of its inhabitants and the protection of the environment and will be for the specific purpose of the conservation and development of the natural resources of the state within the meaning of Article XVI, Section 59(a), of the Texas Constitution through the prevention of further damage to or destruction of the environment resulting in further conservation and development of such natural resources and through the conservation of valuable material and energy resources which otherwise might be disposed of as solid waste. Nothing in this Act shall authorize any public agency to compel the burning of materials which are presorted to be recycled.

Definitions

Sec. 3. As used in this Act, unless the context requires a different definition:

(1) "Cost" as applied to the acquisition, construction, or improvement of solid waste resource recovery systems, including real property acquired therefor, shall include financing charges, interest prior to and during construction and for a period found to be reasonable by the issuer after completion of construction, expenses incurred for architectural and engineering services, license fees and royalties, legal services, plans, specifications, surveys, estimates, placing the solid waste resource recovery systems in operation, administration, and such other expenses as may be necessary or incident to such acquisition, construction, and improvement.

(2) "Governing body" means, with reference to an issuer, the commission, board of directors, trustees, city council, or similar body charged by law with the governance of an issuer.

(3) "Issuer" means any district or authority created and existing under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution which is now or hereafter authorized under general law, special law, or any specific act to own a waste disposal system and which includes within its boundaries all of at least one county.

(4) "Person" means any individual, public agency as defined herein, public or private corporation, political subdivision or governmental agency of the United States of America or the state, copartnership, association, firm, trust, estate, or any other entity whatsoever.

(5) "Public agency" means any district or authority heretofore or hereafter created and existing under Article XVI, Section 59, as amended, or Article III, Section 52, as amended, of the Constitution of Texas which includes within its boundaries all of at least one county, any incorporated city or town in the state, whether operating under general law or under its home-rule charter, or any other political subdivision or agency of the state having the power to own and operate solid waste collection, transportation, or disposal facilities or systems.

(6) "Real property" means lands, structures, franchises and interests in land, and air rights and any thing and right pertaining thereto, including but not limited to easements, rights-of-way, uses, leases, licenses, and incorporeal hereditaments, and every estate, interest, or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages, or otherwise.

(7) "Resolution" means the resolution, order, ordinance, or such other action as the case may be of the governing body authorizing the bonds.

(8) The term "solid waste" shall have the meaning as set forth in the Solid Waste Disposal Act, as amended (Article 4477–7, Vernon's Texas Civil Statutes).

(9) "Solid waste resource recovery system" means any real property, buildings, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises which are used or useful in connection with the processing of solid waste to extract, recover, reclaim, salvage, reduce, concentrate, or convert to energy or useful matter or resources whatever their form, including electricity, steam, or other forms of energy, and metal, fertilizer, glass, or other forms of metal and resources, from such solid waste, including any real property, buildings, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in (i) the transportation, receiving, storage, transfer, and handling of solid waste, (ii) the preparation, separation, or processing of solid waste for reuse, (iii) the handling and transportation of recovered matter, resources, or energy, and (iv) the handling, transportation, and disposing of any nonrecoverable solid waste residue.

Authority of Issuer; Public Agency Contracts With Issuer

Sec. 4. (a) Each issuer is authorized to acquire, construct, and improve or cause to be acquired, constructed, and improved solid waste resource recovery systems for lease or sale as provided below. The issuer is also authorized to acquire real property as deemed appropriate by the issuer for the solid waste resource recovery systems. Such solid waste resource recovery systems may be located upon property owned by the issuer or upon property of another person or persons. The issuer is authorized to enter into leases with persons whereby such persons shall lease any solid waste resource recovery systems of the issuer. The issuer is authorized to sell such solid waste resource recovery systems to any person or persons, including a person or persons using such systems, such sale to be by installment payments or

otherwise and upon such conditions as the issuer deems desirable. Any lease or other sales contract entered into pursuant to this Act may be for such term as the parties may agree and shall provide that it shall continue in effect until the bonds specified therein or refunding bonds issued in lieu of such bonds are fully paid.

(b) Any public agency may contract with an issuer or with any person financing, acquiring, constructing, or improving a solid waste resource recovery system to sell, lease, or dedicate the use of any real property or any solid waste disposal facility or part thereof for use as a part of such solid waste resource recovery system on such terms as the public agency considers appropriate.

Bonds and Bond Anticipation Notes

Sec. 5. (a) Each issuer is empowered to issue its bonds, notes, or other evidences of indebtedness (hereinafter referred to as "bonds") payable from revenues of the issuer for the purpose of financing or refinancing the cost of acquiring, constructing, or improving or causing to be acquired, constructed, or improved solid waste resource recovery systems.

(b) The issuer may declare an emergency in the matter of funds not being available to pay principal of and interest on any bonds of the issuer or to meet any other needs of the issuer and may issue bond anticipation notes to borrow the money needed by the issuer. Bond anticipation notes may bear interest at any rate or rates, fixed, floating, or otherwise, and shall mature within one year of their date. The bond anticipation notes so issued will be taken up with the proceeds of bonds, or the bonds may be issued and delivered in exchange for and in substitution of such notes.

(c) Such bonds shall be authorized by resolution of the governing body and shall have characteristics and bear such designation as may be determined by the governing body, provided that the designation of the bonds shall include the name or names of the person or persons guaranteeing the contractual obligations of the person or persons leasing or purchasing such solid waste resource recovery systems, or if the solid waste resource recovery systems are to be leased or purchased by a group of persons, the designation may state that a group of persons will be leasing or purchasing such solid waste resource recovery systems as therein provided. The bonds shall be signed by the presiding officer or the assistant presiding officer of the governing body, shall be attested by its secretary, and shall bear the seal of the issuer of the governing body. It is provided, however, that such signatures may be printed or lithographed on the bonds if authorized by the governing body, and such may be impressed on the bonds or may be printed or lithographed thereon. The issuer may adopt or use for any purpose the signature of any person who shall have been an officer, notwithstanding the fact that he may have ceased to be such officer at the time when bonds shall be delivered to a purchaser or purchasers. The bonds shall mature serially or otherwise in not to exceed 40 years, may bear interest at a rate or rates, fixed, floating, or otherwise, may be sold at public or private sale at a price or under terms determined by the governing body to be the most advantageous reasonably obtainable within the discretion of the governing body, may be made callable prior to maturity at such times and prices as may be prescribed by the governing body and may be in coupon form with or without provisions for registration as to principal or may be registrable as to both principal and interest.

(d) Such bonds may be issued in more than one series and from time to time as required for carrying out the purposes of this Act.

(e) The bonds of any issuer shall be payable solely from and secured by a pledge of all or any part of the revenues of the issuer derived from the lease or sale of solid waste resource recovery systems and in certain events out of amounts attributable to the proceeds of such bonds or amounts obtained through the exercise of any remedy provided in any resolution of the governing body or in any trust indenture or other instrument securing the bonds or notes in the manner specified in such resolution, trust indenture, or instrument. Any such pledge under this paragraph may reserve the right under conditions therein specified to issue additional bonds which will be on a parity with or subordinate to the bonds then being issued. Bonds issued for the purposes set out in this Act may be combined in the same issue with bonds issued for other purposes authorized by law.

(f) It shall be the duty of the governing body to fix and from time to time revise payments under leases and contracts for sale of the solid waste resource recovery systems of the governing body in order that such payments together with any other pledged revenues will be sufficient to pay such bonds and the interest thereon as the same mature and become due and to maintain the reserve or other funds as provided in the resolutions authorizing such bonds or the trust indenture or other instruments securing such bonds. The governing body shall have the power to direct the investment of money in the funds created by such resolutions, trust indentures, or other instruments securing the bonds; provided, however, that the issuer in its discretion may delegate this power to its authorized agent.

(g) From the proceeds from the sale of the bonds, the governing body may set aside amounts for payments into the interest and sinking fund and reserve funds, and provisions for such may be made in the resolution authorizing the bonds or the trust indenture or other instrument securing the bonds. Proceeds from the sale of the bonds shall be used for the payment of all expenses of issuing and selling the bonds. The proceeds from the sale of the bonds shall be invested in the manner set forth in the resolution authorizing the bonds or notes or the trust

indenture or other instrument securing the bonds. Any bank or trust company with trust powers may be designated to act as depository of the proceeds of bonds or of sales contract or lease revenues. Such bank or trust company shall furnish such indemnifying bonds or pledge such securities as may be required by the issuer to secure the deposits.

(h) The resolution authorizing the issuance of the bonds or the trust indenture or other instrument securing them may provide that in the event of a default or under the conditions therein stated a threatened default in the payment of principal of or interest on bonds any court of competent jurisdiction may, upon petition of the holders of outstanding bonds, appoint a receiver with authority to collect and receive pledged income, and such instruments may limit or qualify the rights of less than all of the holders of the outstanding bonds payable from the same source to institute or prosecute any litigation affecting the issuer's property or income.

(i) All such bonds shall be special obligations of the issuer payable solely from the revenues pledged to their payment and shall not be considered general obligations of the governing body, an issuer, or the State of Texas. The holder of the bonds shall never have the right to demand payment from money derived by taxation or any other revenues of the issuer except those revenues pledged to the payment of the bonds.

Refunding Bonds

Sec. 6. The governing body is authorized to issue refunding bonds for the purpose of refunding the principal of and interest and redemption premium, if any, on outstanding bonds authorized by this Act. Such refunding bonds may be issued to refund more than one series of outstanding bonds and combine the revenues pledged to the outstanding bonds for the security of the refunding bonds and may be secured by other or additional revenues and deed of trust liens. The provisions of this law with reference to the issuance by the governing body of bonds, their security, and their approval by the attorney general and the remedies of the holders shall be applicable to refunding bonds. Refunding bonds shall be registered by the comptroller upon surrender and cancellation of the bonds to be refunded, but in lieu thereof the resolution authorizing their issuance may provide that they shall be sold and the proceeds thereof deposited in the bank where the original bonds are payable, in which case the refunding bonds may be issued in an amount sufficient to pay the principal of, any redemption premium, and the interest on the original bonds to their option date or maturity date, and the comptroller shall register them without concurrent surrender and cancellation of the original bonds.

Additional Security

Sec. 7. Any bonds, including refunding bonds, authorized by this law may be additionally secured by a trust indenture under which the trustee may be a bank having trust powers situated either within or outside the State of Texas. Such bonds within the discretion of the governing body may be additionally secured by a mortgage or a deed of trust lien or security interest upon designated solid waste resource recovery systems and all property, franchises, easements, leases, and contracts and all rights appurtenant to such properties, vesting in the trustee power to sell such solid waste resource recovery systems for the payment of the indebtedness, power to operate such solid waste resource recovery systems, and all other powers and authority for the further security of the bonds. Such trust indenture, regardless of the mortgage or the deed of trust lien or security interest in the properties, may contain any provisions prescribed by the governing body for the security of the bonds and the preservation of the trust estate and may make provision for amendment or modification thereof, may condition the right to expend the issuer's money or sell the issuer's solid waste resource recovery systems as provided therein, and may make such other provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law. Any purchaser at a sale made under the mortgage or the deed of trust lien where one is given shall be the absolute owner of the solid waste resource recovery systems and rights so purchased. The trust indenture may also contain provisions governing the issuance of bonds to replace lost, stolen, or mutilated bonds.

Approval and Registration of Bonds and Contracts

Sec. 8. After any bonds, including refunding bonds, are authorized by the governing body, such bonds and the record relating to their issuance shall be submitted to the attorney general for his examination as to the validity thereof. Where such bonds recite that they are secured by a pledge of the proceeds of a lease or leases or a contract or contracts of sale theretofore made between the issuer and any person, such contracts may also be submitted to the attorney general. If such bonds have been authorized and if such contracts have been made in accordance with the constitution and laws of the State of Texas, he shall approve the bonds and such contracts, and the bonds then shall be registered by the comptroller of public accounts. After the bonds and the leases or other contracts of sale, if any, have been approved by the attorney general and the bonds registered by the comptroller of public accounts, such bonds and any such leases or contracts of sale shall be incontestable for any cause.

Bonds as Investments and Security

Sec. 9. All bonds issued pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and the sinking funds of cities, towns, villages, counties, school districts, or other

political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

Contracts; Payments; Elections

Sec. 10. (a) All public agencies are authorized to enter into contracts with any person for the supply of solid waste, including contracts for the collection and transportation of solid waste, for disposal at any solid waste resource recovery system and may covenant and agree in such contracts to supply minimum quantities of solid waste and to pay minimum fees and charges for the right to have solid waste disposed of at such solid waste resource recovery system during the term of such contracts. Any such contract may continue in effect for such term of years as the governing body of the public agency shall determine is desirable.

(b) All public agencies are authorized to use and pledge any available revenues or resources whatsoever for and to the payment of amounts due under such contracts as a source or sources of payment thereof or as the sole source or sources of payment thereof and may covenant with respect thereto so as to assure the availability thereof when required. All public agencies may agree to make sufficient provision in their annual budgets to make all payments under such contracts. In addition, all public agencies are authorized to fix, charge, and collect fees, rates, charges, rentals, and other amounts for any services or facilities provided pursuant to or in connection with any such contract from their inhabitants or from any users or beneficiaries of such services or facilities, including specifically water charges, sewage charges, solid waste disposal fees and charges (including garbage collection or handling fees), and other fees and charges and to use and pledge same to make payments required under such contract and may covenant to do so in amounts sufficient to make all or any part of such payments when due. Further, any public agency having taxing power, which at the time of entering into any such contract is using its general funds (including its tax revenues) for the purpose of paying all or a part of the costs of providing solid waste collection, transportation, and disposal services, may determine, agree, and pledge that such contracts may be an obligation against the taxing power of the public agency; provided that no person shall be entitled to demand payment from taxes during any period unless during such period the contracting person is willing and able to receive and dispose of solid waste as provided in the contract.

(c) Notwithstanding the foregoing, if a public agency having taxing power holds an election substantially according to the applicable provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,[1] relating to the issuance of bonds of cities, and it is determined by a favorable vote at such election that the public agency is authorized to levy an ad valorem tax to make all or a part of the payments under a contract with a person and that such payments are to be made unconditionally even though the contracting person is not willing and able to receive and dispose of solid waste as provided in the contract, then the contract shall be an obligation against the taxing power of the public agency to the extent provided. The ballot proposition for any election held pursuant to this subsection shall plainly state that ad valorem tax funds may be used to make contract payments if, because of mechanical failure of the facility financed by such bonds or other reasons, the contractor is unable to receive or dispose of solid waste.

[1] Article 701 et seq.

Performance and Payment Bonds; Terms of Contracts; Procedures in Letting Contracts

Sec. 11. the provisions of Article 5160, Revised Civil Statutes of Texas, 1925, as amended, relating to performance and payment bonds, shall apply to construction contracts entered into by an issuer. An issuer may contract for the acquisition, construction, and improvement of any solid waste resource recovery system upon such terms and under such conditions as the governing body deems appropriate, including without limitation a contract pursuant to which a person agrees to perform and supply or cause to be performed and supplied all services and materials required in connection with the design, construction, and placing into operation of such solid waste resource recovery system; provided, however, that as to any such contract, notice of the time and place when and where such contract shall be let shall be published in a newspaper of general circulation within the boundaries of the issuer once a week for two consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least 14 days prior to the date set for letting said contract, and competitive proposals received in response to such notice will be analyzed and the contract shall be let to the responsible party making the proposal which will be most advantageous to the issuer and result in the best and most economical completion of the solid waste resource recovery system.

Taxation

Sec. 12. Bonds issued hereunder and their transfer and the income therefrom shall at all times be free from taxation within this state. Any solid waste resource recovery systems that are the subject of any contract for purchase or lease under this Act shall be construed to be subject to ad valorem taxation payable by the person contracting with the issuer in accordance with the laws of this state.

Items purchased or leased as part of a solid waste resource recovery system are subject to all applicable state taxation.

Certain Actions Accomplished at Sole Expense of Issuer

Sec. 13. In the event any issuer in the exercise of the power of relocation or any other power makes necessary the relocation, raising, lowering, rerouting, or changing the grade of or altering the construction of any highway, railroad, electric transmission line, telegraph or telephone properties and facilities, or pipelines, all such necessary relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of the issuer, and such expense shall be paid from the proceeds of any bonds issued to finance solid waste resource recovery systems, the installation of which results in such expense. The term "sole expense" shall mean the actual cost of such relocation, raising, lowering, rerouting, or changing the grade of or alteration of construction to provide comparable replacement without enhancement of such facilities, after deducting therefrom the net salvage value derived from the old facility.

Construction With Other Laws

Sec. 14. Nothing in this Act diminishes or limits or is intended to diminish or limit the authority of the Texas Department of Water Resources, the Texas Department of Health, or local governments in the performing of any of the powers, functions, and duties vested in such entities by other laws. The Solid Waste Disposal Act, as amended (Article 4477–7, Vernon's Texas Civil Statutes), shall be enforced without regard to ownership of any solid waste resource recovery systems financed under this Act.

Remedies Available; Rules and Regulations

Sec. 15. (a) Nothing in this Act affects the right of any private person to pursue against a person contracting with an issuer pursuant to this Act all common law remedies available to abate a condition of pollution or other nuisance or recover damages therefor or both. No person contracting with an issuer for the purchase or lease of solid waste resource recovery systems shall ever be entitled to urge the defense of sovereign immunity by reason of the ownership of such solid waste resource recovery systems by an issuer.

(b) Notwithstanding the provisions of this section, it is further provided that nothing in this Act shall in any way limit or diminish the power and authority of the Texas Department of Water Resources, the Texas Department of Health, or a local government to enact and enforce rules and regulations to carry out other duties authorized by the Solid Waste Disposal Act, as amended (Article 4477–7, Vernon's Texas Civil Statutes).

Industrial Development Corporations

Sec. 16. A public agency which has entered into a contract pursuant to Section 10 of this Act may sponsor the creation of an industrial development corporation pursuant to the provisions of The Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), and such an industrial development corporation may, pursuant to the provisions of such Act, issue its bonds, notes, or other evidences of indebtedness to finance the costs of any solid waste resource recovery system contemplated under such contract whether such system is located within or without the boundaries of such public agency.

Cumulative Act; Conflicts With Other Laws

Sec. 17. This Act shall be cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds, the execution of the contracts, the performance of the other acts and procedures, and the pledge of revenues authorized hereby, without reference to any other general or special laws or specific acts or any restrictions or limitations contained therein, except as herein specifically provided; and in any case, to the extent of any conflict or inconsistency between any provision of this Act and any other provision of law (including any home-rule city charter provisions), this Act shall prevail and control; provided, however, that all issuers and public agencies shall have the right to use any other provisions of law not in conflict with the provisions of this Act to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

Constitutional Construction and Acts

Sec. 18. Nothing in this Act shall be construed to violate any provision of the United States or state constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not.

Severability

Sec. 19. The provisions of this Act are severable. If any word, phrase, clause, paragraph, sentence, section, part, or provision of this Act or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid; and the legislature hereby declares that the Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, section, part, or provision.

[Acts 1981, 67th Leg., p. 2946, ch. 780, eff. Sept. 1, 1981.]

Art. 4477–9. Dumping Solid Waste on Property or Into Waters; Penalty

Any person who shall dump or otherwise dispose of trash, junk, garbage, refuse, unsightly matter, or other solid waste on public highways, rights-of-way, on other public or private property, or into any inland or coastal waters of Texas shall be guilty of a misdemeanor and upon conviction shall be fined not less than $15 nor more than $200. It is a defense to

prosecution under this Act that before the disposal, the person disposing of solid waste had written consent to dispose of solid waste on that property from the owner, the owner's agent, or the public official in charge of the property. Every law enforcement officer of this State and its subdivisions and health officers of municipalities authorized by law to regulate matters of sanitation and public health may issue citations for violations of this Act and may otherwise enforce this Act.

[Amended by Acts 1981, 67th Leg., p. 2728, ch. 744, § 1, eff. Sept. 1, 1981.]

Repeal

This article was repealed by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2(1), eff. Jan. 1, 1982, without reference to the amendment of this article by Acts 1981, 67th Leg., p. 2728, ch. 744, § 1, eff. Sept. 1, 1981.

Section 4 of Acts 1981, 67th Leg., p. 2725, ch. 741, provides:

"This Act takes effect January 1, 1982, and applies only to offenses committed on or after that date. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed and the prior law is continued in effect for that purpose. An offense is committed before the effective date of this Act if any element of the offense occurs before that date."

Section 2 of Acts 1981, 67th Leg., p. 2728, ch. 744, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act only if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Art. 4477–9a. Litter Abatement Act

ARTICLE I. GENERAL PROVISIONS

Short Title

Sec. 1.01. This Act may be cited as the Texas Litter Abatement Act.

Construction of Act

Sec. 1.02. The Code Construction Act (Article 5429b–2, Vernon's Texas Civil Statutes) applies to the construction of each provision of this Act except as otherwise expressly provided by this Act.

ARTICLE II. CERTAIN ACTIONS PROHIBITED OR RESTRICTED

Disposing of Solid Waste Restricted

Sec. 2.01. (a) A person commits an offense if that person disposes of trash, junk, garbage, refuse, unsightly matter, or other solid waste on a public highway, right-of-way, other public or private property, or into inland or coastal waters of Texas without written consent of the owner, the owner's agent, or the public official in charge of the property or water.

(b) A person who commits an offense under this section is, on conviction, subject to a fine of not less than $15 nor more than $200.

Discarding Refuse in County Park Restricted

Sec. 2.02. (a) In this section, "beach" means an area in which the public has acquired a right of use or an easement and that borders on the seaward shore of the Gulf of Mexico or extends from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

(b) A person commits an offense if that person discards in a county park situated in a county that has as one boundary the Gulf of Mexico garbage, paper, or other refuse in a place that is not an officially designated refuse container or disposal unit.

(c) This section does not apply to a beach that is included within the boundaries of a county park situated in a county that has as one boundary the Gulf of Mexico.

(d) A person who commits an offense under this section is, on conviction, subject to a fine of not less than $1 nor more than $200.

Disposing of Refuse in Caves Restricted

Sec. 2.03. (a) A person commits an offense if that person, without prior permission of the owner, stores, dumps, disposes of, or otherwise places in a cave a chemical, a dead animal, sewage, trash, garbage, or other refuse.

(b) A first offense under this section is a Class C misdemeanor. A second offense under this section is a Class A misdemeanor. A third or subsequent offense under this section is a felony of the third degree.

Dumping Refuse On or Near Highway Prohibited

Sec. 2.04. (a) In this section:

(1) "Refuse" means garbage, rubbish, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses. The term does not include sewage from a public or private establishment or residence.

(2) "Garbage" means all decayable wastes from public and private establishments and restaurants, including vegetable, animal, and fish offal and animal and fish carcasses. The term does not include sewage, body wastes, or industrial by-products.

(3) "Rubbish" means all nondecayable wastes, except ashes, from a public or private establishment or residence.

(4) "Junk" means all worn-out, worthless, and discarded material, including odds and ends, old iron or other metal, glass, paper, and cordage.

(5) "Public highway" means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(b) A municipal or private corporation, firm, or individual commits an offense if that corporation, firm, or individual dumps, deposits, or leaves refuse, garbage, rubbish, or junk on a public highway in this state.

(c) A municipal or private corporation, firm, or individual commits an offense if that corporation, firm, or individual dumps, deposits, or leaves refuse, garbage, rubbish, or junk within 300 yards of a public highway in this state, whether or not the refuse, garbage, rubbish, or junk being dumped, deposited, or left, or the land on which refuse, garbage, rubbish, or junk is dumped, deposited, or left belongs to the offender.

(d) Subsection (c) of this section does not apply if the refuse, garbage, rubbish, or junk is processed and treated in accordance with rules and standards adopted by the Texas Department of Health.

(e) This section does not apply to farmers in the handling of anything necessary in the growing, handling, and care of livestock, or in the erection, operation, and maintenance of improvements necessary in the handling, threshing, and preparation of agricultural products.

(f) The Texas Department of Health shall adopt rules and standards regulating the processing and treating of refuse, garbage, rubbish, or junk dumped, deposited, or left within 300 yards of a public highway.

(g) A person who commits an offense under this section is, on conviction, subject to a fine of not less than $50 nor more than $400, and each day of the offense is a separate offense. A county or district attorney may bring suit for injunction to prevent or restrain a violation of this section. A person affected or to be affected by a violation is entitled to enjoin the violation.

Throwing Injurious Substance on Highway Prohibited

Sec. 2.05 (a) A person commits an offense if that person throws or deposits on a highway a glass bottle, glass, a nail, a tack, wire, a can, or any other substance likely to injure a person, animal, or vehicle on the highway.

(b) A person who commits an offense under this section is, on conviction, subject to the penalties and procedures provided by Sections 143 through 153, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

Polluting Water in the State Prohibited

Sec. 2.06. The pollution of water in the state is controlled by Chapter 26, Water Code.

Throwing Certain Substances In or Near Lake Lavon Prohibited

Sec. 2.07 (a) A person commits an offense if that person throws, leaves, or causes to be thrown or left wastepaper, glass, metal, a tin can, refuse, garbage, waste, discarded or soiled personal property, or any other noxious or poisonous substance in the water of or near Lake Lavon in Collin County if the substance is detrimental to fish or to a person fishing in Lake Lavon.

(b) A person who commits an offense under this section is, on conviction, subject to a fine of not less than $25 nor more than $100.

ARTICLE III. REGULATING LITTER

Disposal of Refuse in Certain Areas Under Control of Parks and Wildlife Department

Sec. 3.01. The Parks and Wildlife Commission may adopt rules to govern the disposal of garbage, sewage, and refuse in state parks, public water in state parks, historic sites, scientific areas, and forts under the control of the Parks and Wildlife Department in the manner provided by Chapter 13, Parks and Wildlife Code.

Regulating Litter on Public Beaches

Sec. 3.02. The regulation of litter on public beaches is controlled by Subchapters C and D, Chapter 61, Natural Resources Code. [1]

[1] Natural Resources Code, §§ 61.061 et seq. and 61.121 et seq.

Regulating Litter, Garbage, Refuse, and Rubbish on Lake Sabine

Sec. 3.03. The governing body of the city of Port Arthur by ordinance may prohibit the depositing or placing of litter, garbage, refuse, or rubbish into or on the waters of Lake Sabine within the corporate limits of the city.

ARTICLE IV. HIGHWAY BEAUTIFICATION

Definitions

Sec. 4.01. In this article:

(1) "Commission" means the State Highway and Public Transportation Commission.

(2) "Interstate system" means that portion of the national system of interstate and defense highways that is located in this state and is designated officially by the commission and approved pursuant to Title 23, United States Code.

(3) "Primary system" means that portion of connected main highways located in this state that is designated officially by the commission and approved pursuant to Title 23, United States Code.

(4) "Outdoor advertising" or "sign" means an outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing designed, intended, or used to advertise or inform, if any part of the advertising or information content is visible from a place on the main-traveled way of the interstate or primary system.

(5) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, or waste, or junked, dismantled, or wrecked automobiles or automobile parts, or iron, steel, and other old or scrap ferrous or nonferrous material.

(6) "Automobile graveyard" means an establishment or place of business that is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(7) "Junkyard" means an establishment or place of business maintained, used, or operated for storing, keeping, buying, or selling junk, for processing scrap metal, or for maintaining or operating an automobile graveyard. The term includes garbage dumps and sanitary fills.

(8) "Urbanized area" means an area defined by the commission in cooperation with local officials, subject to the approval of the secretary of the United States Department of Transportation, which as a minimum includes an urbanized area as defined by the United States Bureau of the Census or that part of a multistate urbanized area located in this state.

(9) "Urban area" means an area defined by the commission in cooperation with local officials, subject to the approval of the secretary of the United States Department of Transportation, which as a minimum includes an urban place as designated by the United States Bureau of the Census having a population of 5,000 or more and not located within an urbanized area.

Purpose of Article

Sec. 4.02. Subject to the availability of state and federal funds, it is the intent of the legislature to comply with the Highway Beautification Act of 1965 (Public Law 89–285) [1] to the extent that it is implemented by Congress. This article is conditioned on the provisions of that law. The legislature declares that to promote the health, safety, welfare, morals, convenience, and enjoyment of the traveling public and to protect the public investment in the interstate and primary highway systems, it is necessary to regulate the erection and maintenance of outdoor advertising and the establishment, operation, and maintenance of junkyards and automobile graveyards in areas adjacent to the interstate and primary systems. The legislature considers that the landscaping and developing of recreational areas, acquisition of interests in and improvement of strips of land within, adjacent to, or within view of the interstate or primary system, which are necessary for the restoration, preservation, and enhancement of scenic beauty, and developing publicly owned and controlled rest and sanitary facilities within or adjacent to highway rights-of-way are means of protecting and providing for the general welfare of the traveling public and promoting the safety of citizens using the highways of this state.

[1] 23 U.S.C.A. §§ 131, 136, 319.

Control of Outdoor Advertising

Sec. 4.03. (a) Except as provided by this section, a person commits an offense if that person erects or maintains outdoor advertising within 660 feet of the nearest edge of a right-of-way if the advertising is visible from the main-traveled way of the interstate or primary system or erects or maintains outdoor advertising outside an urban area if the advertising is located more than 660 feet from the nearest edge of a right-of-way, is visible from the main-traveled way of the interstate or primary system, and was erected for the purpose of having its message seen from the main-traveled way of the interstate or primary system.

(b) A person does not commit an offense if that person erects and maintains in an area proscribed by Subsection (a) of this section:

(1) a directional or other official sign authorized by law, including a sign pertaining to a natural wonder or a scenic or historic attraction;

(2) a sign advertising the sale or lease of the property on which it is located;

(3) a sign advertising activities conducted on the property on which it is located;

(4) a sign located within 660 feet of the nearest edge of a right-of-way in an area in which the land use is designated industrial or commercial under authority of law;

(5) a sign located within 660 feet of the nearest edge of a right-of-way in an area in which the land use is not designated industrial or commercial under authority of law but in which the land use is consistent with an area designated industrial or commercial;

(6) a sign located on property within the limits proscribed by Subsection (a) of this section that has as its purpose the protection of life and property; or

(7) a sign erected on or before October 22, 1965, that the commission, with the approval of the secretary of the United States Department of Transportation, determines to be a landmark sign of such historic or artistic significance that preservation is consistent with the purposes of this section.

(c) The determination of whether an area is to be designated industrial or commercial shall be based on actual land use under criteria established by rules of the commission.

(d) The commission may adopt rules to regulate the orderly and effective display of outdoor advertising consistent with the customary use of outdoor advertising in this state in an area in which the land use is designated industrial or commercial under authority of law and in an area in which the land use is not designated industrial or commercial but in which the land use is consistent with areas designated industrial or commercial in the manner provided by Subsection (c) of this section.

(e) The commission may enter into agreements with the secretary of the United States Department of Transportation to regulate the orderly and effective display of outdoor advertising in the areas described in Subsection (d) of this section.

(f) The commission may purchase or acquire by eminent domain a sign that is lawfully in existence on any highway in the interstate or primary system.

(g) If the commission takes a sign, the commission shall pay just compensation:

(1) to the owner for the right, title, leasehold, and interest in the sign; and

(2) to the owner or, if appropriate, the lessee of the real property on which the sign is located for the right to erect and maintain the sign.

Licenses

Sec. 4.04 (a) A person who has not obtained a license under this article commits an offense if that person erects or maintains a sign:

(1) within 660 feet of the interstate or primary system, if the sign is visible from the main-traveled way; or

(2) outside an urban area if the sign is located more than 660 feet from the nearest edge of a right-of-way, is visible from the main-traveled way of the interstate or primary system, and was erected for the purpose of having its message seen from the main-traveled way of the interstate or primary system.

(b) The commission shall issue a license to a person who:

(1) completes the application form specified by the commission within the time specified by the commission;

(2) pays the license fee of $25; and

(3) files with the commission a surety bond:

(A) in the amount of $2,500 for each county in the state in which the person erects or maintains outdoor advertising; and

(B) payable to the commission to reimburse it for removal costs of a sign the licensee unlawfully erects or maintains.

(c) A person may not be required to provide more than $10,000 in surety bonds.

(d) The commission may revoke or suspend a license issued under this section if the licensee:

(1) violates a provision of this article; or

(2) violates a commission rule adopted under this article.

(e) A person whose license is revoked or suspended may appeal the revocation or suspension to a district court in Travis County. The appeal must be taken not later than the 15th day after the day of the commission's action.

Permits

Sec. 4.05. (a) A person who has a license commits an offense if that person erects or maintains a sign for which a license is required by Section 4.04(a) of this article unless that person also has a permit for that sign.

(b) The commission shall adopt rules specifying:

(1) a reasonable fee for each permit;

(2) the time for and manner of applying for a permit and the form of the permit application; and

(3) the information that must be in a permit application.

(c) The commission shall issue a permit to a person with a license whose license application complies with the commission's rules adopted under Section 4.04 of this article and whose sign, if erected, would comply with this article and the commission's rules adopted under Section 4.03(d) of this article.

(d) A permit issued to control the erection and maintenance of outdoor advertising by a political subdivision of this state within the jurisdiction of the political subdivision shall be accepted in lieu of the permit required by this section if the erection and maintenance of outdoor advertising is in compliance with Section 4.04 of this article and the commission's rules adopted under Section 4.03(d) of this article.

(e) Funds the commission receives under this article shall be deposited in the state treasury in a special fund to be known as the Texas highway beautification fund. The commission shall use the fund in the administration of this article.

Exceptions

Sec. 4.06. (a) A person is not required to obtain a license or permit to erect or maintain a sign advertising the sale or lease of the property on which it is located.

(b) A person is not required to obtain a license or permit to erect or maintain a sign that relates solely to an activity conducted on the property on which the sign is erected or maintained.

(c) This article does not apply to a sign or marker giving information about the location of underground electric transmission lines, telegraph or telephone properties and facilities, pipelines, public sewers, or waterlines.

Official Signs

Sec. 4.07 (a) The commission may designate and provide official signs that give specific information of interest to the traveling public, including specific brand names.

(b) The signs may be erected and maintained within rights-of-way at appropriate distances from interchanges and at appropriate locations on the interstate and primary systems.

Control of Junkyards and Automobile Graveyards

Sec. 4.08. (a) A person commits an offense if that person establishes, operates, or maintains a junkyard or automobile graveyard if any portion of it is within 1,000 feet of the nearest edge of a right-of-way of the interstate or primary system, except:

(1) a junkyard or automobile graveyard screened by natural objects, plantings, fences, or other appropriate means so that it is not visible from the main-traveled way of the interstate or primary system; or

(2) a junkyard or automobile graveyard located in an area that is a zoned or unzoned industrial area.

(b) The determination of whether an area is to be designated industrial shall be based on actual land use under criteria established by rules of the commission.

(c) The commission may screen with natural objects, plantings, fences, or other appropriate means, a lawfully existing junkyard or automobile graveyard if the junkyard or automobile graveyard is within 1,000 feet of the nearest edge of a right-of-way of the interstate or primary system. The commission may acquire an area outside of a highway right-of-way so that a junkyard or automobile graveyard may be screened from the main-traveled way of the interstate or primary system.

(d) The commission may adopt rules governing the location, planting, construction, and maintenance of the materials used in screening junkyards and automobile graveyards.

(e) If the commission determines that screening a junkyard or automobile graveyard is not feasible, the commission shall pay just compensation to:

(1) the owner of the junkyard or automobile graveyard for its relocation, removal, or disposal; and

(2) the owner or, if appropriate, the lessee of the real property on which the junkyard or automobile graveyard is located for the taking of the right to erect and maintain a junkyard or automobile graveyard.

(f) The commission shall compensate an owner of a junkyard or automobile graveyard and an owner or lessee of real property on which the junkyard or automobile graveyard is located if the junkyard or automobile graveyard is lawfully in existence on any highway in the interstate or primary system.

Landscaping and Scenic Enhancement

Sec. 4.09. (a) The commission may acquire, improve, and maintain a strip of land adjacent to a federal aid highway in this state if the land is necessary to restore, preserve, or enhance scenic beauty. The commission may also acquire and develop rest and recreation areas and sanitary and other facilities within or adjacent to a highway right-of-way if the area or facility is necessary to accommodate the traveling public.

(b) The interest in land authorized by this section to be acquired and maintained may be the fee simple or a lesser interest, as determined necessary by the commission. The acquisition may be by gift, purchase, exchange, or condemnation.

Powers of Acquisition

Sec. 4.10 (a) The commission may acquire by gift, purchase, exchange, or condemnation land or an interest in land and property or a property right of any kind or character that it considers necessary or convenient to carry out this article.

(b) On delivery to and acceptance by the commission of instruments conveying to the state an interest in land, property, or property rights considered necessary or convenient by the commission to effectuate the purposes of this article, the commission shall prepare and transmit to the comptroller of public accounts vouchers covering the commission's costs in acquiring the interests in land, property, or property rights, and the comptroller shall issue warrants on the appropriate account covering the state's obligation as evidenced by the vouchers.

(c) Land owned by the state or by a state agency or department is subject to the terms of this article.

(d) The exercise of the power of eminent domain authorized by this article is the same as that authorized by Section 4, Chapter 300, Acts of the 55th Legislature, Regular Session, 1957 (Article 6674w–3, Vernon's Texas Civil Statutes).

Recording and Disposal of Surplus Property

Sec. 4.11. (a) In the implementation of this article instruments conveying land or an interest in land to the state must be recorded in the deed records of the county or counties in which the land is situated. The state shall pay the fees for recording the instruments in the same manner as fees are paid for the recording of highway right-of-way instruments and in accordance with the laws of this state establishing fees to be charged by the county clerk for the recording of these instruments.

(b) Land or an interest in land acquired to carry out this article that becomes surplus and is, in the opinion of the State Highway and Public Transportation Commission, no longer needed by the state for the purposes for which it was acquired or for highway purposes shall be disposed of in accordance with the provisions of Chapter 99, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 6673a, Vernon's Texas Civil Statutes).

Penalty

Sec. 4.12. A person who wilfully commits an offense under this article or wilfully violates any rule adopted by the commission in accordance with this article is, on conviction, subject to a fine of not less than $25 nor more than $200. Each day of the wilful offense or violation constitutes a separate offense.

ARTICLE V. ABANDONED MOTOR VEHICLES

Definitions

Sec. 5.01. In this article:

(1) "Police department" means the Department of Public Safety, the police department of a city, town or municipality, acting under the general police power authority as vested in the department by its respective governing body, or the sheriff or a constable of a county.

(2) "Abandoned motor vehicle" means a motor vehicle that is inoperable and more than eight years old and left unattended on public property for more than 48 hours, or a motor vehicle that has remained illegally on public property for a period of more than 48 hours, or a motor vehicle that has remained on private property without the consent of the owner or person in control of the property for more than 48 hours, or a motor vehicle left unattended on the right-of-way of a designated county, state, or federal highway within this state for more than 48 hours or for more than 12 hours on a turnpike project constructed and maintained by the Texas Turnpike Authority.

(3) "Demolisher" means a person whose business is to convert a motor vehicle into processed scrap or scrap metal or to otherwise wreck or dismantle a motor vehicle.

(4) "Garagekeeper" means an owner or operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of a motor vehicle.

(5) "Junked vehicle" means a motor vehicle as defined in Section 1, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d–11, Vernon's Texas Civil Statutes), that:

(A) is inoperative, does not have lawfully affixed to it both an unexpired license plate and a valid motor vehicle safety inspection certificate, and that is wrecked, dismantled, partially dismantled, or discarded; or

(B) remains inoperable for a continuous period of more than 120 days.

(6) "Storage facility" means a garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.

(7) "Motor vehicle" means a motor vehicle subject to registration under the Certificate of Title Act (Article 6687–1, Vernon's Texas Civil Statutes).

(8) "Antique auto" means a passenger car or truck that was manufactured in 1925 or before or a passenger car or truck that is at least 35 years old.

(9) "Special interest vehicle" means a motor vehicle of any age that has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.

(10) "Collector" means the owner of one or more antique or special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for personal use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

Authority to Take Possession of Abandoned Motor Vehicles

Sec. 5.02. (a) A police department may take into custody an abandoned motor vehicle found on public or private property.

(b) A police department may employ its own personnel, equipment, and facilities or hire persons, equipment, and facilities to remove, preserve, and store an abandoned motor vehicle it takes into custody.

Notification of Owner and Lien Holders

Sec. 5.03. (a) A police department that takes into custody an abandoned motor vehicle shall notify not later than the 10th day after taking the motor vehicle into custody, by certified mail, the last known registered owner of the motor vehicle and all lien holders of record pursuant to the Certificate of Title Act (Article 6687–1, Vernon's Texas Civil Statutes), that the vehicle has been taken into custody. The notice shall describe the year, make, model, and vehicle identification number of the abandoned motor vehicle, set forth the location of the facility where the motor vehicle is being held, inform the owner and any lien holders of their right to reclaim the motor vehicle not later than the 20th day after the date of the notice, on payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody, or garagekeeper's charges if notice is under Section 5.05 of this article. The notice shall also state that the failure of the owner or lien holders to exercise their right to reclaim the vehicle within the time provided constitutes a waiver by the owner and lien holders of all right, title, and interest in the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction.

(b) If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned is sufficient notice under this article. The notice by publication may contain multiple listings of abandoned vehicles, shall be published within the time requirements prescribed for notice by certified mail, and shall have the same contents required for a notice by certified mail.

(c) The consequences and effect of failure to reclaim an abandoned motor vehicle are as set forth in a valid notice given under this section.

Auction of Abandoned Motor Vehicles

Sec. 5.04. If an abandoned motor vehicle has not been reclaimed as provided by Section 5.03 of this article, the police department shall sell the abandoned motor vehicle at a public auction. Proper notice of the public auction shall be given, and in the case of a garagekeeper's lien, the garagekeeper shall be notified of the time and place of the auction.

The purchaser of the motor vehicle takes title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department, and is entitled to register the purchased vehicle and receive a certificate of title. From the proceeds of the sale of an abandoned motor vehicle, the police department shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing the vehicle that resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred under Section 5.03 of this article. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lien holder for 90 days and then shall be deposited in a special fund that shall remain available for the payment of auction, towing, preserving, storage, and all notice and publication costs that result from placing another abandoned vehicle in custody, if the proceeds from a sale of another abandoned motor vehicle are insufficient to meet these expenses and costs.

Garagekeepers and Abandoned Motor Vehicles

Sec. 5.05 (a) A motor vehicle left for more than 10 days in a storage facility operated for commercial purposes after notice is given to the owner as provided by this section, or for more than 10 days after a period when under a contract the vehicle was to remain on the premises of the storage facility, or a motor vehicle left for more than 10 days in a storage facility by someone other than the registered owner or by a person authorized to have possession of the motor vehicle under a contract of use, service, storage, or repair, is considered an abandoned vehicle, and shall be reported by the garagekeeper to the police department.

(b) A garagekeeper who fails to report the possession of an abandoned vehicle within 10 days after it becomes abandoned may no longer claim reimbursement for storage of the vehicle.

(c) The police department, upon receipt of a report from a garagekeeper of the possession of a vehicle considered abandoned under the provisions of this section shall follow the notification procedures provided by Section 5.03 of this article, except that custody of the vehicle shall remain with the garagekeeper until after compliance with the notification requirements. A fee of $2 shall accompany the report of the garagekeeper to the police department. The $2 fee shall be retained by the police department receiving the report and used to defray the cost of notification or other cost incurred in the disposition of an abandoned motor vehicle. If the Department of Public Safety is the police department involved this fee shall be deposited in the state treasury and shall be used to defray the cost of administering this article.

(d) An abandoned vehicle left in a storage facility and not reclaimed after notice is sent in the manner provided by Section 5.03 of this article shall be taken into custody by the police department and sold in the manner provided by Section 5.04 of this article. The proceeds of a sale under this section shall first be applied to the garagekeeper's charges for servicing, storage, and repair, but as compensation for the expense incurred by the police department in placing the vehicle in custody and the expense of auction, the police department shall retain two percent of the gross proceeds of the sale of each vehicle auctioned, unless the gross proceeds are less than $10. If the gross proceeds are less than $10, the department shall retain the $10 to defray expenses of custody and auction. If the Department of Public Safety conducts the auction, the compensation shall be deposited in the state treasury and shall be used to defray the expense incurred. Surplus proceeds remaining from an auction shall be distributed in accordance with Section 5.04 of this article.

(e) Except for the termination of claim for storage for failure to report an abandoned motor vehicle, nothing in this section may be construed to impair any lien of a garagekeeper under the laws of this state.

(f) The police department shall send notice to the owner of a vehicle by certified mail. The notice shall direct the owner to pick up the vehicle. If the notice is returned by the post office unclaimed, notice by one publication in one newspaper of general circulation in the area where the vehicle was left in storage is sufficient.

Disposal to Demolishers

Sec. 5.06. (a) A person, firm, corporation, or unit of government on whose property or in whose possession is found any abandoned motor vehicle and a person who is the owner of a motor vehicle whose title certificate is faulty, lost, or destroyed, may apply to the State Department of Highways and Public Transportation for authority to sell, give away, or dispose of the vehicle to a demolisher. Nothing in this section may be construed as being in conflict with the provisions of Sections 5.09 and 5.10 of this article. The application, except one submitted by a unit of government, shall be accompanied by a fee of $2 that shall be deposited in the state highway fund.

(b) The application must set out the name and address of the applicant, the year, make, model, and vehicle identification number of the motor vehicle, if ascertainable, together with any other identifying features, and must contain a concise statement of the facts surrounding the abandonment, a statement that the title of the motor vehicle is lost or destroyed, or a statement of the reasons for the defect of title in the owner. The applicant shall execute an affidavit stating that the facts alleged in the application are true and that no material fact has been withheld.

(c) If the State Department of Highways and Public Transportation finds that the application is executed in proper form and shows that the motor vehicle has been abandoned on the property of the

applicant or that the motor vehicle is not abandoned but that the applicant appears to be the rightful owner, the department shall follow the notification procedures as provided in Section 5.03 of this article.

(d) If an abandoned motor vehicle is not reclaimed in accordance with Section 5.03 of this article, the State Department of Highways and Public Transportation, on notification of that fact by the applicant, shall issue the applicant a certificate of authority to sell the motor vehicle to a demolisher for demolition, wrecking, or dismantling. A demolisher shall accept the certificate in lieu of the certificate of title to the motor vehicle.

(e) The State Department of Highways and Public Transportation may issue the applicant a certificate of authority to dispose of the motor vehicle to a demolisher without following the notification procedures of Section 5.03 of this article if the motor vehicle is more than eight years old and has no engine or is otherwise totally inoperable.

(f) A person in possession of an abandoned vehicle that was authorized to be towed in by a police department and that is more than eight years old and has no engine or is otherwise totally inoperable may, on affidavit of that fact and approval of the police department, apply to the State Department of Highways and Public Transportation for a certificate of authority to dispose of the vehicle to a demolisher for demolition, wrecking, or dismantling only.

(g) The State Department of Highways and Public Transportation may adopt rules and prescribe forms that are necessary to carry out the provisions of this section.

Duties of Demolishers

Sec. 5.07. (a) A demolisher who purchases or otherwise acquires a motor vehicle to wreck, dismantle, or demolish it is not required to obtain a certificate of title for the motor vehicle in the demolisher's name. After the motor vehicle has been demolished, processed, or changed so that it physically is no longer a motor vehicle, the demolisher shall surrender for cancellation the certificate of title or authority. The State Department of Highways and Public Transportation shall issue such forms and rules governing the surrender of auction sales receipts and certificates of title as are appropriate. The Certificate of Title Act (Article 6687–1, Vernon's Texas Civil Statutes) governs the cancellation of title of the motor vehicle.

(b) A demolisher commits an offense if the demolisher fails to keep an accurate and complete record of a motor vehicle purchased or received in the course of business in the manner provided by this subsection. These records must contain the name and address of the person from whom each motor vehicle was purchased or received and the date of the purchase or receipt. The records shall be open for inspection by the State Department of Highways and Public Transportation or any police department at any time during normal business hours. A record required by this subsection must be kept by the demolisher for at least one year after the transaction to which it applies. A demolisher who commits an offense under this subsection is, on conviction, subject to a fine of not less than $100 nor more than $1,000, to confinement in the county jail for not less than 10 days nor more than six months, or to both.

Junked Vehicles as Public Nuisance

Sec. 5.08. (a) A junked vehicle that is located in a place where it is visible from a public place or public right-of-way is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors, and is detrimental to the economic welfare of the state by producing urban blight adverse to the maintenance and continuing development of the municipalities in the state, and is a public nuisance.

(b) A person commits an offense if that person maintains a public nuisance as determined under this section.

(c) A person who commits an offense under this section is, on conviction, subject to a fine not to exceed $200. On conviction, the court shall order removal and abatement of the nuisance.

City or County Procedures for Abating Nuisance

Sec. 5.09. (a) A city, town, or county within this state may adopt procedures for the abatement and removal of a junked vehicle or a part of a junked vehicle as a public nuisance, from private property, public property, or public rights-of-way. The procedures must conform to the requirements of this section.

(b) For a nuisance on private property, the procedures must require not less than 10 days' notice stating the nature of the public nuisance on private property, that it must be removed and abated within 10 days, and that a request for a hearing must be made before expiration of the 10-day period. The notice must be mailed, by certified mail with a 5-day return requested, to the owner or occupant of the private premises on which the public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate the nuisance shall be continued to a date not less than 10 days after the date of the return.

(c) For a nuisance on public property, the procedures must require not less than 10 days' notice, stating the nature of the public nuisance on public property or on a public right-of-way, that the nuisance must be removed and abated within 10 days, and that a request for a hearing must be made before expiration of the 10-day period. The notice must be mailed, by certified mail with a 5-day return requested, to the owner or occupant of the public

premises or to the owner or occupant of the premises adjacent to the public right-of-way on which the public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate the nuisance shall be continued to a date not less than 10 days after the date of the return.

(d) In addition, the procedures must prohibit a vehicle from being reconstructed or made operable after it has been removed.

(e) The procedures must require a public hearing before the removal of the vehicle or vehicle part as a public nuisance. The hearing shall be held before the governing body of the city, town, or county or any board, commission, or official of the city, town, or county as designated by the governing body, if a hearing is requested by the owner or occupant of the public or private premises or by the owner or occupant of the premises adjacent to the public right-of-way on which the vehicle is located, within 10 days after service of notice to abate the nuisance. A resolution or order requiring the removal of a vehicle or vehicle part must include a description of the vehicle and the correct identification number and license number of the vehicle if the information is available at the site.

(f) The procedures must require notice to be given to the State Department of Highways and Public Transportation not later than the fifth day after the date of removal. The notice must identify the vehicle or vehicle part. The department shall immediately cancel the certificate of title to the vehicle pursuant to the Certificate of Title Act (Article 6687–1, Vernon's Texas Civil Statutes).

(g) The procedures may not apply to a vehicle or vehicle part that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, a vehicle or vehicle part that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or an unlicensed, operable, or inoperable antique or special interest vehicle stored by a collector on the collector's property, if the vehicle and the outdoor storage area are maintained in a manner so that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

(h) The procedures must be administered by regularly salaried, full-time employees of the city, town, or county, except that the removal of a vehicle or vehicle part from property may be by any duly authorized person.

(i) The procedures must provide for the filing of a complaint concerning a public nuisance in an appropriate court, if the nuisance is not removed and abated and a hearing is not requested within the 10-day period provided by Subsections (b) and (c) of this section.

Disposal of Junked Vehicles

Sec. 5.10. A junked vehicle or vehicle part may be disposed of by removal to a scrapyard, demolisher, or any suitable site operated by the city, town, or county for processing as scrap or salvage. The process of disposal must comply with the provisions of Section 5.09(d) of this article. A city, town, or county may operate a disposal site if its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of the vehicles or vehicle parts, or the city, town, or county may transfer the vehicles or vehicle parts to another disposal site if the disposal is only as scrap or salvage.

Authority to Enforce

Sec. 5.11. A person authorized by the city, town, or county to administer the procedures authorized by this article may enter private property for the purposes specified in the procedures to examine a vehicle or vehicle part, obtain information as to the identity of the vehicle, and remove or cause the removal of a vehicle or vehicle part that constitutes a nuisance. An appropriate court in a city, town, or county that enacts procedures under this article may issue orders necessary to enforce the procedures.

Effect of Article on Other Statutes

Sec. 5.12. This article does not affect a law authorizing the immediate removal, as an obstruction to traffic, of a vehicle left on public property. [Acts 1981, 67th Leg., p. 2710, ch. 741, § 1, eff. Jan. 1, 1982.]

Section 4 of the 1981 Act provides:

"This Act takes effect January 1, 1982, and applies only to offenses committed on or after that date. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed and the prior law is continued in effect for that purpose. An offense is committed before the effective date of this Act if any element of the offense occurs before that date."

Art. 4477–10. Treating and Conveying Waste in Cities of 1,200,000 or More

Application

Sec. 1. This Act shall be applicable to all incorporated cities, including home-rule cities, having a population of 1,200,000 or more according to the last preceding federal census (hereinafter called "eligible city").

Acquisition of Property; Construction of Improvements; "Waste" Defined

Sec. 2. An eligible city is authorized to acquire, by purchase, lease or otherwise, any or all property (real, personal or mixed) and to construct or otherwise acquire, improve and equip any property for the purposes of treating and conveying waste, including, but not limited to waste treatment facilities including plants, disposal fields, lagoons and areas devoted to sanitary landfills for the purposes of treating, neutralizing, stabilizing or disposal of waste, and sewer systems including pipelines, conduits, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste (such waste treatment facilities and sewer systems are hereinafter called

"project" or "projects"). An eligible city is also authorized to enter into leases and other contracts, including installment sale agreements, with persons, firms or corporations to use or acquire a project or projects of such city and to enter into agreements under which the project or projects may be operated on behalf of such city; such leases, contracts and agreements to contain such terms and conditions as the eligible city deems appropriate. Each and all of the foregoing purposes are hereby found and declared to be public purposes and proper municipal functions. The term "waste" as used in this section has the meaning defined in the Texas Water Quality Act, codified as Chapter 21 of the Texas Water Code, as heretofore and hereafter amended.

Issuance of Bonds

Sec. 3. For any purpose or purposes authorized under Section 2 of this Act, the governing body of an eligible city may issue its revenue bonds from time to time in one or more series to be payable from and secured by liens on all or part of the revenues derived from any project or projects.

Ordinances Authorizing Bonds; Maturity; Registration as "Security"; Disposition of Proceeds from Sale; Property Tax

Sec. 4. (a) Said bonds may be issued when authorized by ordinance duly adopted by an eligible city's governing body and may mature serially or otherwise within not to exceed 40 years from their date or dates, and provision may be made for the subsequent issuance of additional parity bonds, or subordinate lien bonds, under any terms or conditions that may be set forth in the ordinance authorizing the issuance of such bonds.

(b) Said bonds, and any interest coupons appertaining thereto, shall be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, Uniform Commercial Code (Chapter 785, Acts of the 60th Legislature, Regular Session, 1967).[1] The bonds may be issued registrable as to principal alone or as to principal and interest, and shall be executed, and may be made redeemable prior to maturity, and may be issued in such form, denominations, and manner, and under such terms, conditions and details, and may be sold in such manner, at such price, and under such terms, and such bonds shall bear interest at such rates, all as shall be determined and provided in the ordinance authorizing the issuance of the bonds.

(c) If so provided in said ordinance, the proceeds from the sale of the bonds may be used for paying interest on the bonds during and after the period of the acquisition, construction or improvement of any project or projects, for paying expenses of operation and maintenance of said project or projects, for creating a reserve fund for the payment of the principal of and interest on the bonds, and for establishing any other funds. The proceeds of sale of the bonds may be placed on time deposit or invested, until needed, all to the extent, and in the manner provided, in the bond ordinance.

(d) An eligible city is authorized to levy and pledge to the payment of the operation and maintenance of any project or projects, either as a supplement to the pledge of revenues for such purpose or in lieu thereof, a continuing annual ad valorem tax at a rate or rates on each $100 valuation of taxable property within said city sufficient for such purposes, all as may be provided in said ordinance authorizing the issuance of such bonds; provided, that such taxes shall be within any constitutional or charter limit for eligible cities; and provided further, that no part of any moneys raised by such taxes shall ever be used for the payment of the interest on or principal of any bonds issued hereunder. The proceeds of any such taxes thus pledged shall be utilized annually to the extent required by, or provided in, the ordinance for operation and maintenance of such projects, and such city in its discretion may covenant in such ordinance that certain costs of operating and maintaining such projects, as may be enumerated therein, or all of such costs, will be paid by the eligible city from the proceeds of such tax.

(e) An eligible city shall not acquire or construct any such project or projects with the proceeds of bonds, notes, or other evidences of indebtedness the interest on which is exempt from federal income taxation by virtue of Section 103(c)(4) of the Internal Revenue Code of 1954, as heretofore or hereafter amended,[2] unless (1) such project is operated by an eligible city or a political subdivision of the State of Texas on behalf of such eligible city or, (2) such project provides pretreatment for waste which is then discharged into a project operated by an eligible city or a political subdivision on behalf of such city.

[1] Business and Commerce Code, § 8.101 et seq.
[2] 26 U.S.C.A. § 103(c)(4).

Fees, Purchase Prices, Rentals, Rates and Charges

Sec. 5. An eligible city is authorized to fix and collect fees, purchase prices, rentals, rates and charges for the sale, occupancy, use or availability of all or any of the projects in such amounts and in such manner as may be determined by the governing body of the eligible city.

Pledges for Payment of Bonds

Sec. 6. (a) An eligible city may pledge all or any part of the revenues, income or receipts from such fees, purchase prices, rentals, rates and charges to the payment of the bonds, including the payment of principal, interest and any other amounts required or permitted in connection with the bonds. The pledged fees, purchase prices, rentals, rates and charges shall be fixed and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for all payments of principal, interest and any other amounts required in connection with the bonds, and, to the extent required by the ordinance authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds, and for the payment of

operation, maintenance and other expenses in connection with the projects.

(b) The bonds may be additionally secured by mortgages or deeds of trust on any real property relating to the projects owned or to be acquired by the eligible city and by chattel mortgages, liens or security interests on any personal property appurtenant to that real property. The governing body of the eligible city may authorize the execution of trust indentures, mortgages, deeds of trust or other forms of encumbrances to evidence the indebtedness.

(c) An eligible city may also pledge to the payment of the bonds all or any part of any grant, donation, revenues or income received or to be received from the United States government or any other public or private source, whether pursuant to an agreement or otherwise.

Refunding Bonds

Sec. 7. (a) Any bonds issued pursuant to this Act may be refunded or otherwise refinanced by the issuance of refunding bonds for that purpose under any terms or conditions as are determined by ordinance of the governing body of the eligible city. All appropriate provisions of this Act are applicable to refunding bonds, and the refunding bonds shall be issued in the manner provided in this Act for other bonds. The refunding bonds may be sold and delivered in amounts necessary to pay the principal, interest and redemption premium, if any, of bonds to be refunded, at maturity or on any redemption date.

(b) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller of public accounts shall register the refunding bonds and deliver them to the holder or holders of the bonds being refunded in accordance with the provisions of the ordinance authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(c) Bonds issued at any time by a city under this Act also may be refunded in the manner provided by any other applicable law.

Examination of Bonds by Attorney General; Approval and Registration

Sec. 8. All bonds issued under this Act and the appropriate proceedings authorizing their issuance shall be submitted to the attorney general for examination. If the bonds recite that they are secured by a pledge of revenues or rentals from a contract or lease, a copy of the contract or lease and the proceedings relating to it shall also be submitted to the attorney general. If he finds that the bonds have been authorized and any contract or lease has been made in accordance with law, he shall approve the bonds and the contract or lease, and thereupon the bonds shall be registered by the comptroller of public accounts. After approval and registration the bonds and any contract or lease relating to them are incontestable for any reason, and are valid and binding obligations for all purposes in accordance with their terms.

Bonds as Legal and Authorized Investments and Security

Sec. 9. All bonds issued under this Act are legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, trustees, and guardians, and for all interest and sinking funds and other public funds of the state and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic. The bonds are also eligible and lawful security for all deposits of public funds of the state and all agencies, subdivisions, and instrumentalities of it, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant thereto.

Cumulative Effect; Conflicting Laws

Sec. 10. This Act is cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of the bonds and the performance of the other acts and procedures authorized by it without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided. When any bonds are issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any law or home-rule-charter provision, the provisions of this Act shall prevail and control. An eligible city shall have the right to use the provisions of any other laws, not in conflict with the provisions of this Act, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

Severability

Sec. 11. In case any one or more of the sections, provisions, clauses, or words of this Act, or the application thereof to any situation or circumstance, shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act, or the application thereof to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein.

[Acts 1975, 64th Leg., p. 257, ch. 106, eff. Sept. 1, 1975.]

CHAPTER FOUR B. TUBERCULOSIS

Art. 4477–11. Texas Tuberculosis Code

[See Compact Edition, Volume 4 for text of 1 and 2]

Definitions

Sec. 3. As used in this Code, unless the context otherwise requires:

(a) "Board" means the Texas Board of Health;

(b) "Person" includes firm, partnership, joint stock company, joint venture, association, and corporation;

(c) "Political subdivision" includes a county, city, town, village, or hospital district in this State but does not include the Board or any other department, board, or agency of the State having state-wide authority and responsibility;

(d) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine in the State of Texas;

(e) "Head of hospital" means the individual in charge of a hospital;

(f) "State Chest Hospital" means a chest hospital operated by the Board and includes San Antonio State Chest Hospital, San Antonio, Texas, and Harlingen State Chest Hospital, Harlingen, Texas;

(g) "Tuberculosis patient" means any person, adult or child, who has any form of tuberculosis disease in any part of the body;

(h) "Person legally responsible" means parents, guardians, spouses, or any person whom the laws of this State hold responsible for the debts incurred as a result of hospitalization and/or treatment;

(i) "Local health authority" means the city or county health officer, a director of a local health department or local board of health, or a regional director of the Texas Department of Health, provided that such health officer is a licensed and practicing physician, within their respective jurisdictions;

(j) "Resident of this State" means a person who is physically present and living voluntarily in the State of Texas with the intention of making a home within the State and whose stay is not for temporary purposes. Such intent may be demonstrated by (but not limited to) the following: the presence of personal effects at a specific abode within this State; employment within this State; possession of such documentation as a Texas driver's license, motor vehicle registration or voter registration forms;

(k) "Department" means the Texas Department of Health.

Control and Sanitary Management of Tuberculosis

Sec. 4. Tuberculosis in a contagious, infectious, or communicable state is hereby declared to be dangerous to public health.

(a) Any physician, or other person, who makes a diagnosis in, or treats a case of tuberculosis, and every head or manager of a hospital, dispensary, or charitable, or penal institution in which there is a case of tuberculosis, shall report such case as soon as possible, in writing, or by an acknowledged telephone communication to the local health authority, stating the name, address, age, sex, color, and occupation of the diseased person and the date of the onset of the disease, and the probable source of infection.

(b) All local health authorities shall keep a careful and accurate record of all cases of tuberculosis as reported to them with the date, name, age, sex, race, location, and such other necessary data as may be prescribed by the Department. Such health authorities shall make a report of all tuberculosis cases of which they may be cognizant to the Department within forty-eight (48) hours of receiving a report upon blank forms provided by the Department. These reports may be used by the Department for any and all purposes consistent with the care and treatment of individuals afflicted with tuberculosis, for research purposes, for statistical purposes, for investigative purposes, with the ultimate goal being the eradication of tuberculosis in Texas.

(c) It shall be the duty of every physician and of every other person who examines or treats a person having tuberculosis to instruct him in measures for preventing the spread of such disease and of the necessity for treatment until cured.

Notice of Evidence of Tuberculosis

Sec. 4A. (a) The Bureau of Tuberculosis Services must be notified when a laboratory examination of a specimen derived from a human indicates microscopical, cultural, or other evidence of the presence or likely presence of Mycobacterium tuberculosis.

(b) The person in charge of the laboratory in which the evidence of tuberculosis disease is discovered shall notify the local health authority, or if there is no local health authority, the Bureau of Tuberculosis Services in the Department.

(c) The notification must contain:

(1) the name and age of the person from whom the specimen was obtained;

(2) the name and address of the physician requesting the tests; and

(3) the tests performed, the date of the tests, and the results.

(d) Cumulative reports must be reported weekly.

(e) All laboratory notifications required by this section are confidential and are not open for inspection by anyone other than authorized public health personnel.

(f) No person from the Bureau of Tuberculosis Services or the local health authority may communicate with a suspected tuberculosis patient or a person who may be exposed to tuberculosis by a suspected patient until a diagnosis is reported to the Department by the attending physician.

Measures for Protection of Persons not Having Tuberculosis

Sec. 5. Upon receipt of a report of a case of tuberculosis, the local health authority shall institute measures for protection of other persons from infection by such diseased person.

(a) All duly authorized health authorities of this State are authorized to notify any person who is known to be infected with tuberculosis, to place himself under the medical care of a physician licensed by the Texas State Board of Medical Examiners, hospital, or clinic, for treatment or examination until such physician, hospital, or clinic shall furnish such health authority with a certificate that such person examined or treated is free from tuberculosis in an infectious or contagious state. The certificate shall state that the person examined has been given an actual and thorough examination. A certificate may not be issued until the physician, hospital, or clinic has submitted to the local health authority a report on the person for whom a certificate is to be issued summarizing the clinical and appropriate radiologic or laboratory evidence that the person no longer has tuberculosis in an infectious or contagious state.

(b) Physicians, local health authorities, and all other persons are prohibited from issuing certificates of freedom from tuberculosis unless the examination includes clinical and appropriate radiographic or laboratory evidence that the person so examined is free from tuberculosis in an infectious or contagious state. Before a certificate of freedom from tuberculosis can be issued in the case of a person who has previously had tuberculosis, it will be necessary that the physician or person on giving the certificate shall submit to the local health authority a report of the person summarizing the clinical and appropriate radiologic or laboratory evidence that the person no longer has tuberculosis in an infectious or contagious state.

(c) Any person who violates the provisions of Section 4, or who fails to follow the directions of the local health authority, or who fails to follow the directions of his attending physician pursuant to Section 4, or who in the opinion of the local health authority cannot be treated with reasonable safety to the public, at home, may be quarantined, as that term is hereinafter defined, and the local health authority may direct the removal of the person to a suitable place for examination, and if such person is found to have tuberculosis in an infectious and contagious state, then such person may be quarantined, as that term is hereinafter defined, until such person is no longer in an infectious and contagious state.

Quarantine, as used in this Section, means the limitation of movement and separation, during that period of time while infectious and contagious, from other persons not infected, in such places and under such conditions as will prevent the conveyance of such infectious or contagious condition to others not infected.

A person found to have tuberculosis in an infectious and contagious state and quarantined under the provisions of this Section may be placed in any place suitable for the detention and segregation required under the provisions of this Section. If suitable facilities are not available within the jurisdiction of the local health authority, then in such event, the person so quarantined may be transported to a State chest hospital designated by the Board. The Board is hereby empowered and directed to provide suitable facilities for detention of such individuals.

The Commissioners Courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered to provide suitable places for the detention of persons who may be subject to quarantine and who should be segregated for the execution of the provisions of this Section; and such commissioners courts and governing body of incorporated cities and towns are hereby authorized to incur on behalf of their said counties, cities, or towns, the expenses necessary to the enforcement of this Section.

The Commissioners Courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered and directed to provide transportation to the State chest hospital so designated by the Board for any person quarantined under the provisions of this Section when suitable facilities are not available within the jurisdiction of the local health authority.

The local health authority shall inform all persons who are to be released from quarantine for tuberculosis of the status of their disease and what further treatment is required.

(d) It shall be the duty of all persons with tuberculosis, or who, from exposure to tuberculosis, may be liable to endanger others who may come in contact with them, to strictly observe such instructions as may be given them by any local health authority of the State in order to prevent the spread of tuberculosis.

(e) If an attending physician or other person knows or has good reason to suspect that a person having tuberculosis is so conducting himself or herself so as to expose other persons to infection or is about so to conduct himself or herself, he shall notify the local health authority of the name and address of the diseased person and the essential facts in the case, and the local health authority shall investigate the facts of the case and shall adopt or employ the necessary measures as set out herein.

Violations; Penalties

Sec. 6. (a) A person commits an offense if he violates the provisions of Section 4, 4A, or 5 of this Act.

(b) An offense under this section is a Class B misdemeanor.

Local Regulations

Sec. 7. These regulations shall not be construed to prevent any city, county, or town from establish-

ing such types of disinfection, isolation, control, and management of tuberculosis cases which they deem necessary for the preservation of the health of the individuals and the public; provided that such rules and regulations are not inconsistent with the provisions of this Code and are subordinate to said Code, and the rules and regulations prescribed by the Department. The local health authority shall at once furnish the Department with a true copy of any such regulations adopted by said local authorities.

Provided, however, that no provision in this Act shall be construed in any manner such that it would deprive any person of his right to depend on prayer or spiritual means alone for healing, in the practice of the principles, tenets, or teachings of his religion; provided that in so doing the isolation and quarantine rules and regulations under this Act are complied with.

Admission

Sec. 8. Residents of Texas as defined in Section 1 herein, having tuberculosis, may be admitted to a State chest hospital. Non-resident indigents with tuberculosis who have been quarantined under the provisions of Section 5 herein may be admitted to a State chest hospital pending their return to the State or country of their residence.

Classification of Patients

Sec. 9. Patients admitted to State chest hospitals shall be two (2) classes:

(1) Indigent public patients and

(2) Non-indigent public patients.

(a) Indigent public patients are those who possess no property of any kind nor have anyone legally responsible for their support, and who are unable to reimburse the State. This class shall be supported at the expense of the State.

(b) Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have someone legally responsible for their support. This class shall be kept and maintained at the expense of the State as in (a) above, but in such case the State shall have the right to be reimbursed for the support of such patients, and the claim of the State shall constitute a valid lien against any property of any such patient, or in case he has a guardian, against any property of his which is in the possession of said guardian, or against the person or persons who may be legally responsible for his support and financially able to contribute as herein provided. Such claim may be collected by suit or other proceedings in the name of the State of Texas by the County or District Attorney of the county from which said patient is sent or the Attorney General against such patient or his guardian or the person or persons legally responsible for his support; and the suit shall be brought in the county from which such patient was sent. Such suit shall be instituted upon the written request of the head of the State chest hospital accompanied by a certificate as to the amount due the State. In all suits or proceedings, the certificate of the head of the hospital shall be sufficient evidence of the amount due the State for the support of such patient. It shall be the duty of said Attorney upon such request being made to institute and conduct such proceedings and for which he shall be entitled to a commission of ten per cent (10%) of the amount collected. All moneys so collected, less such commission, shall be paid by said County Attorney to the head of said hospital, who shall receive and receipt for the same.

Sec. 10. Repealed by Acts 1979, 66th Leg., p. 1529, ch. 658, § 9, eff. Aug. 27, 1979.

Certificate of Examination

Sec. 11. The application for admission to a State chest hospital shall be accompanied by a certificate of a physician licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners, or in the case of indigent patients by a certificate from the local health authority if such individual or individuals are licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners, stating that he has thoroughly examined the person for whose admission application has been made, and that such person is suffering from tuberculosis. The certificate shall be in the form and contain such information as prescribed by the Department.

In the event that the person applying for admission to a State chest hospital is afflicted with a contagious, infectious, or transmissible disease other than tuberculosis, then in such event the head of the State chest hospital to whom application has been made may use the presence of such contagious, infectious, or transmissible disease other than tuberculosis as a valid reason for delaying admission until such contagious disease is rendered non-contagious.

Duties of Board

Sec. 12. (a) The State chest hospital shall review applications for admission and admit or deny admission to applicants.

(b) The Board shall prepare and adopt by-laws, rules, and regulations for the government, control, and management of all State chest hospitals, prescribing the duties of all officers and employees, and for enforcing the necessary discipline and restraint of all patients.

(c) The Board shall appoint for each of said chest hospitals a physician licensed to practice medicine in the State of Texas by the Texas State Board of Medical Examiners. Each physician so appointed shall be the head of the hospital under his control and shall have power to remove with just cause any

person employed in said hospital over which he has such authority. Any such physician so appointed shall be removable at the discretion of the Board. The provisions applying to the powers and duties of the Board and of the head of the hospital as set forth in this Section are in addition to any others provided for by law. The Board shall supply each hospital with the necessary personnel for the operation and maintenance of such hospital.

(d) In addition to the specific authority granted by other provisions of law, the Board is authorized to prescribe the form of application, certificates, records, and reports provided for under this Code and the information required to be contained therein; to require reports from the head of any State chest hospital relating to the admission, examination, diagnosis, release, or discharge of any patient; to visit each hospital regularly to review the admitting procedures and care and treatment of all new patients admitted between visits; to investigate by personal visit complaints made by any patient or by any person on behalf of a patient; and to adopt such rules and regulations not inconsistent with the provisions of this Code as may be necessary for proper and efficient hospitalization of tuberculosis patients.

(e) Unless otherwise expressly provided in this Code, a power granted to, or a duty imposed upon the Board may be exercised or performed by an authorized employee, but the delegation of a duty does not relieve the Board from its responsibility.

Unless otherwise expressly provided in this Code, a power granted to, or a duty imposed upon the head of a hospital may be exercised or performed by an authorized employee, but the delegation of a duty does not relieve the head of a hospital from his responsibility.

(f) The Board may return a non-resident patient admitted to a State chest hospital in this State to the proper agency of the State of his residence.

The Board may permit the return of any resident of this State who is admitted to a tuberculosis hospital in another state.

All expenses incurred in returning admitted patients to other states shall be paid by this State. The expense of returning residents of this State shall be borne by the states making the return.

(g) The Board is authorized to enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the states of their residence of patients admitted to State chest hospitals in this or other states.

Sec. 13. Repealed by Acts 1979, 66th Leg., p. 1530, ch. 658, § 12, eff. Aug. 27, 1979.

No Preference in Admission

Sec. 14. (a) No patient in any state chest hospital shall be discriminated against but all patients shall be treated alike, given equal facilities, equal attention and equal treatment; it being recognized, however, that the condition of the individual patient may necessitate a greater or lesser degree of care and treatment.

(b) No patient in any such hospital shall be permitted to give any officer, servant, agent, or employee in any such hospital any tip, pay, or reward of any kind, and if such patient does so, it shall be a cause for his expulsion from said hospital, and the discharge of any servant accepting the same; and the Board shall see that this provision is rigidly enforced.

Private Additions to State Chest Hospitals

Sec. 15. (a) The Board is hereby authorized, on request of any charitable fraternity or society in this State, to permit the erection, furnishing, and maintenance by such fraternities or societies upon the grounds of any State chest hospital or dormitories and such other accommodations as may be desired by any such fraternity or society for the proper treatment and care of any member or members of such fraternity or society or for any members of their families, or for the widows and children of deceased members of such fraternity or society, who may have tuberculosis, and which accommodations so erected shall be reserved for the preferential use of such members and members of their families and of the widows and children of deceased members of the fraternity or society so erecting, furnishing, and maintaining such accommodations hereunder. The State shall be at no expense whatever in the erection, furnishing, or maintenance of such accommodations, and the fraternity or society entering a patient or patients shall provide such pro rata part for the maintenance of such patient or patients as may be found just and equitable pending the next succeeding appropriation to be made by the Legislature for the maintenance of said State chest hospitals. "Children" under this Article shall mean any minor child of a deceased member of such fraternity or society. Such accommodations or any part of them not being used or required by those entitled to such preference, may be used and occupied by other patients in said State chest hospitals at the discretion of the head of the hospital and without any charge therefor against the State.

(b) Plan of buildings.

All matters pertaining to the location, construction, style or character of buildings, term of their existence and all other questions arising in connection with the granting of the permission to erect and maintain the accommodations contemplated in the preceding Section, shall be arranged and agreed upon in writing by and between the Board on the part of the State and the properly authorized officers, board, or committee of each respective charitable fraternity or society, and such written agreement in each case shall be recorded at length upon the minutes of the Board.

(c) Rules of admission.

The members of such charitable fraternities or societies, members of their families, and the widows and children of deceased members thereof, shall be classified according to the facts the same as other patients of said State chest hospitals are classified, and shall be admitted, maintained, cared for and treated in said hospitals upon the same terms and conditions and under the same regulations as all other patients therein, save and except that they shall at all times have the preference and right to occupy the accommodations erected and maintained hereunder by their several and respective fraternities or societies when not already filled with others having the same preferential right.

Sec. 16. Repealed by Acts 1979, 66th Leg., p. 1532, ch. 658, § 15, eff. Aug. 27, 1979.

Conveyances by Counties in Establishing Chest Hospitals

Sec. 17. All counties in this State are hereby authorized to donate and convey land to the State of Texas in consideration of the establishment of a State chest hospital by the Board. The desirability, manner, and form of the donation and conveyance shall be within the discretion of the Commissioners Court of the particular county. No provision of this Section shall authorize the Commissioners Court of any such county to convey any land given or donated or granted to the county for the purpose of education in any manner other than that which is or shall be directed by law.

Appropriations

Sec. 18. All appropriations heretofore made and now effective or appropriations hereafter made by the Legislature for the use and benefit of San Antonio State Chest Hospital, San Antonio, Texas, and Harlingen State Chest Hospital, Harlingen, Texas; or in names previously used by these hospitals, shall remain available for their use and benefit.

Contracts

Sec. 19. All contracts heretofore entered into in behalf of San Antonio State Chest Hospital, San Antonio, Texas, and Harlingen State Chest Hospital, Harlingen, Texas; or in names previously used by these hospitals, are hereby ratified, confirmed, and validated for and in their behalf.

[See Compact Edition, Volume 4 for text of 20]

[Amended by Acts 1979, 66th Leg., p. 1524, ch. 658, §§ 1 to 18, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 822, ch. 293, §§ 1, 2, eff. Aug. 31, 1981.]

Repealer

Acts 1977, 65th Leg., p. 752, ch. 282, classified as Art. 3201a–4, transfers control of the East Texas Chest Hospital from the Department of Health to the University of Texas System. Section 7 of the Act provides, in part, " * * insofar as applicable to the East Texas Chest Hospital, Subsections (b) through (e) of Section 12 and all of Section 15, Texas Tuberculosis Code (Article 4477–11, Vernon's Texas Civil Statutes), are repealed."*

Art. 4477–12. Prevention, Eradication and Control of Tuberculosis

[See Compact Edition, Volume 4 for text of 1 to 3]

Examination of Pupils for Tuberculosis Infection

Sec. 4. The Texas Board of Health Resources may provide for the examination for tuberculosis infection of pupils in the first and seventh grades of the public, parochial and private schools of this state, and of pupils transferred to the public, parochial and private schools of this state from another state or country.

Certificate of Examination of School Personnel

Sec. 5. (a) The governing body of each public school within the State shall require that each individual who is employed by or who acts as a volunteer for the governing body, and who is included within certain categories designated by the Texas Board of Health, shall present to the governing body a certificate, signed by a physician licensed to practice medicine in Texas, which states that the individual has been examined for tuberculosis and discloses the results of the examination. The governing body of each public school shall verify that each individual within its jurisdiction who is included within this Act, has the required certificate and shall not permit any individual to commence his or her duties in the absence of the certificate. The Texas Board of Health may require reexamination of any individual employee or volunteer as the Board determines is necessary and appropriate to protect the public health.

(b) The Texas Board of Health shall adopt rules describing the following:

(1) the designation of the categories of employees or volunteers who are required to be examined;

(2) the form and content of the required examination certificate;

(3) the closing dates for filing such individual certificates;

(4) the transfer of such individual certificates between public school districts;

(5) the frequency of such required examinations;

(6) the criteria for requiring reexaminations; and

(7) the reporting of the results of such examinations to the Texas Department of Health.

(c) This section and the rules adopted by the Texas Board of Health by the authority of this Act, shall be the minimum acceptable standards for the examination of the named categories of individuals for tuberculosis. A school district may adopt and en-

force more stringent standards, except that the requirements for a tuberculosis examination may not include exposure to X-rays unless the person being examined consents or the examining physician determines that the X-ray examination is medically necessary and states that determination on the required certificate.

[See Compact Edition, Volume 4 for text of 6 and 7]

Sec. 8. Repealed by Acts 1977, 65th Leg., p. 1180, ch. 452, § 3, eff. Aug. 29, 1977.

[See Compact Edition, Volume 4 for text of 9 and 10]

[Amended by Acts 1977, 65th Leg., p. 1179, ch. 452, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 345, ch. 157, § 1, eff. May 11, 1979.]

Art. 4477-13. Repealed by Acts 1977, 65th Leg., p. 754, ch. 282, § 8, eff. Sept. 1, 1977

Prior to repeal, this article was amended by Acts 1975, 64th Leg., p. 2193, ch. 700, § 1.

See, now, art. 3201a-4.

CHAPTER FOUR C. KIDNEY DISEASE

Art. 4477-20. Kidney Health Care Act

[See Compact Edition, Volume 4 for text of 1 to 3]

Authority Under Act

Sec. 4. The board shall provide kidney care services directly or through public or private resources to individuals determined by the board to be eligible therefor, and in carrying out the purposes of this Act, the board is authorized to:

[See Compact Edition, Volume 4 for text of 4(1) to 4(6)]

(7) Provide for payment of the premiums required to maintain coverage under Title XVIII of the Social Security Act, as amended,[1] for certain classes of persons with end stage renal disease in individually considered instances according to the criteria established by the rules of the board.

[1] 42 U.S.C.A. § 1395 et seq.

[See Compact Edition, Volume 4 for text of 5 to 8]

Reimbursement of Health Department for Cost of Treatment

Sec. 9. (a) Subject to the limitations contained in Subsection (b) of this section, a person who is a recipient of services provided under this Act or the person or persons who have a legal obligation to support the recipient, shall reimburse the Texas Department of Health, for the cost of the services and the proceeds resulting from the reimbursement shall be deposited in the general revenue fund of the state treasury and are appropriated to the Texas Board of Health for the purposes of this Act.

(b) The reimbursement obligation of the recipient or the person or persons who have a legal obligation to support the recipient may not exceed the sum of:

(1) the proceeds of insurance, group health plan or prepaid medical care plan, if the proceeds are paid to the recipient or the person or persons who have a legal obligation to support the recipient and if the Texas Department of Health has paid for the services upon which the claims for the proceeds are based; and

(2) five percent of the adjusted gross income, as defined in the United States Internal Revenue Code, as amended, for federal income tax purposes of the recipient or the person or persons who have a legal obligation to support the recipient; minus

(3) the yearly premiums paid by the recipient or the person or persons who have a legal obligation to support the recipient for insurance, group health plan or prepaid medical care plan which provides benefits to pay the cost or part of the cost of the services required by the recipient because of end stage renal disease section; and

(4) a uniform yearly deduction of $1,000.

(c) The failure or refusal by a recipient of services under this Act and/or by a person or persons who have a legal obligation to support the recipient to provide the financial information necessary for the department to determine the recipient's reimbursement obligation may constitute cause for the modification, suspension, or termination of services in Section 9.2 of this Act.

(d) The failure or refusal by a recipient of services under this Act and/or by a person or persons who have a legal obligation to pay the reimbursement obligation determined by the department to be owed by the recipient or the person or persons who have a legal obligation to support the recipient may constitute cause for the modification, suspension, or termination of services in Section 9.2 of this Act, and/or the filing of a suit for total reimbursement obligation under Subsection 9.1(5) of this Act.

(e) This section may not be interpreted in a manner which would prevent the payment of costs by an insurance company, a group health plan, or a prepaid medical care plan directly to a medical provider.

Entitlement to Other Benefits

Sec. 9.1. (1) An applicant or recipient is not eligible to receive services provided by this Act to the extent that the applicant or recipient or other person or persons who have a legal obligation to support the applicant or recipient are eligible for some other benefit that would pay for the service or part of the service provided by this Act. This requirement may be waived by the Texas Board of Health in certain individually considered cases where its enforcement will deny services to a class of end stage renal disease patients because of conflicting state or federal laws or regulations.

(2) An applicant or recipient of services provided by this Act, or the person or persons who have a legal obligation to support the applicant or recipient, shall inform the department at the time of application or at any time during eligibility and the receipt of services of any other benefit to which the applicant or recipient or other person or persons who have a legal obligation to support the applicant or recipient may be entitled.

(3) In this section, "other benefit" means a benefit to which a person is entitled other than a benefit under this Act for payment of the costs of medical care and treatment, services, pharmaceuticals, transportation, and supplies including but not limited to benefits available under:

(a) an insurance policy, group health plan, or prepaid medical care plan;

(b) Title XVIII or Title XIX of the Social Security Act, as amended;[1]

(c) Veterans Administration;

(d) the Civilian Health and Medical Program of the Uniformed Services;

(e) workers' compensation or other compulsory employers' insurance program;

(f) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, except those benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, or a hospital district; or

(g) benefits available from a cause of action for medical expenses to a person applying for or receiving services from the department or a settlement or judgment based upon such cause or action, if the expenses are related to the need for services provided by the program.

(4) The recipient or other person or persons who have a legal obligation to support a recipient who has received services that are covered by some other benefit shall reimburse the department to the extent of the cost of the services provided when the other benefit is received.

(5) The department may recover the expenditure for services provided under this Act from a person who does not reimburse the department as required by Subsection (4) of this section or from any third party upon whom there is a legal obligation to pay other benefits and to whom notice of the department's interest in the other benefits has been given. At the request of the Commissioner of Health, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date the department provides the service to the date the department is reimbursed in a judgment in favor of the department.

(6) This section may not be interpreted in a manner which would limit the freedom of an eligible person in selecting a treating physician, a treatment facility, or a treatment modality if the physician, facility, or modality is approved by the board as required in this Act.

[1] 42 U.S.C.A. § 1395 et seq. or 1396 et seq.

Modification, Suspension, or Termination of Services

Sec. 9.2. (a) The department, after notice to an applicant or to a recipient and/or a person or persons who have a legal obligation to support the applicant or recipient, for good cause may modify, suspend, or terminate services to an applicant who has been found to be eligible for services or a recipient who is receiving services from the department.

(b) The criteria for departmental action authorized under this section shall be contained in the department's program rules.

[See Compact Edition, Volume 4 for text of 10 to 12]

[Amended by Acts 1975, 64th Leg., p. 1884, ch. 597, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 426, ch. 180, §§ 1 to 4, eff. Aug. 31, 1981.]

Sections 2 and 3 of the 1975 amendatory act provided:

"Sec. 2. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are declared to be severable.

"Sec. 3. All laws and parts of laws in conflict with or inconsistent with this Act are hereby repealed."

CHAPTER FOUR D. HEMOPHILIA

Article

4477–30. Hemophilia Assistance Program.

Art. 4477–30. Hemophilia Assistance Program

Definitions

Sec. 1. In this Act:

(1) "Hemophilia" means a human physical condition characterized by bleeding resulting from a genetically determined deficiency of a blood coagulation factor or hereditarily resulting in an abnormal or deficient plasma procoagulant.

(2) "Committee" means the hemophilia advisory committee.

(3) "Department" means the Texas Department of Health Resources.

(4) "Program" means the hemophilia assistance program.

(5) "Director" means the director of health resources.

(6) "Administrator" means a person employed or appointed by the director to administer the program.

Hemophilia Assistance Program

Sec. 2. (a) There is established in the department a hemophilia assistance program to assist persons who have hemophilia and who require continuing treatment with blood, blood derivatives, or manufactured pharmaceutical products but who are unable to pay the entire cost.

(b) The department shall, in the order of priority listed:

(1) set standards of eligibility for assistance under this Act;

(2) provide financial assistance for medically eligible persons, through approved providers, in obtaining blood, blood derivatives and concentrates, and other substances for use in medical or dental facilities or in the home.

Administrator

Sec. 3. (a) The administrator is responsible for carrying out the hemophilia assistance program.

(b) The administrator shall report to the director.

(c) The administrator may employ two persons in carrying out the program.

Funding Sources

Sec. 4. (a) The department may accept grants, gifts, and donations from individuals, private or public organizations, or federal or local funds for the support of the hemophilia assistance program.

(b) The department shall investigate any potential sources of funding from federal grants or programs.

Hemophilia Advisory Committee

Sec. 5. (a) There is established a hemophilia advisory committee which shall review the program and consult with the department in the administration of the program. The department shall make an annual report of the program to the committee.

(b) The committee consists of 12 members appointed by the director as follows:

(1) three members representing hospitals where hemophilia treatment occurs;

(2) two members representing voluntary agencies interested in hemophilia;

(3) three members who are medical specialists in hemophilia patient care;

(4) three members who are adult hemophiliacs or parents of hemophiliacs; and

(5) one member representing the general public.

(c) Except for those first appointed, members are appointed for terms of six years, expiring January 31 of odd-numbered years. If a vacancy occurs on the committee, the director shall appoint a member to serve the unexpired portion of the term.

(d) In making the initial appointments, the director shall appoint four members for terms expiring in 1983, four for terms expiring in 1981, and four for terms expiring in 1979.

(e) The committee shall meet annually, and the committee may meet at other times as necessary.

(f) The members of the committee shall serve without compensation but may be reimbursed for travel expenses incurred by committee activities. [Acts 1977, 65th Leg., p. 732, ch. 274, eff. Aug. 29, 1977.]

CHAPTER FOUR E. CANCER

Article
4477–40. Cancer Control Act.

Art. 4477–40. Cancer Control Act

Short Title

Sec. 1. This Act may be cited as the Texas Cancer Control Act.

Purpose

Sec. 2. It is the intent of the legislature to require the establishment and maintenance of a cancer registry for the State of Texas. This responsibility is delegated to the Texas Board of Health, along with the authority to exercise certain powers to implement this requirement. To insure an accurate and continuing source of data concerning cancer and certain specified precancerous and tumorous diseases, the legislature by this Act requires all general and special hospitals, clinical laboratories, and cancer treatment centers within the state to make available to the Texas Board of Health information contained in the medical records of patients who have cancer or specified precancerous or tumorous diseases. It is intended that the product of these efforts will be a central data bank of accurate, precise, and current information regarding the subject diseases which medical authorities agree would serve as an invaluable tool in their early recognition, prevention, cure, or control.

Definitions

Sec. 3. In this Act:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "Cancer" includes a large group of diseases characterized by uncontrolled growth and spread of abnormal cells; any condition of tumors having the properties of anaplasia, invasion, and metastasis; a cellular tumor the natural course of which is fatal; and malignant neoplasm.

(4) "Precancerous disease" means abnormality of development and organization of adult cells. It is a condition of early cancer, without the invasion of neighboring tissue.

(5) "Tumorous disease" means a new growth of tissue in which the multiplication of cells is uncontrolled and progressive, also called neoplasm. It is a swelling, enlargement, or abnormal mass, either benign or malignant, which performs no useful functions.

(6) "Hospital" means a general or special hospital licensed under the Texas Hospital Licensing Law, as amended (Article 4437f, Vernon's Texas Civil Statutes), or The University of Texas System Cancer Center.

(7) "Clinical laboratory" means an accredited facility where tests are performed identifying findings of anatomical changes, and where specimens are interpreted and pathological diagnoses are made.

(8) "Cancer treatment center" means a special health facility devoted to study, prevention, diagnosis, and management of neoplastic and allied diseases.

Cancer Registry

Sec. 4. The board shall establish and maintain a registry that includes a record of the cases of cancer and of precancerous disease and tumorous disease, as specified by the board, that occur within the state and such information concerning these cases as the board determines necessary and appropriate for the recognition, prevention, cure, or control of the subject diseases.

Duties of the Board

Sec. 5. In order to implement this Act, the board may:

(1) adopt rules that the board considers necessary;

(2) execute contracts that the board considers necessary;

(3) receive the data contained in the medical records that are in the custody or under the control of clinical laboratories, hospitals, and cancer treatment centers, of persons having cancer, precancerous disease, and tumorous disease, for the purpose of recording and analyzing that data directly related to the subject diseases;

(4) compile and publish statistical and other studies derived from the patient data authorized by this Act to be collected, to provide in an accessible form information useful to physicians, other medical personnel, and the general public;

(5) comply with requirements as necessary to obtain federal funds in the maximum amounts and most advantageous proportions possible; and

(6) receive and use gifts and donations made for the purpose of this Act.

Annual Report

Sec. 6. The department, in cooperation with The University of Texas System Cancer Center and other cancer research institutions, shall publish an annual report to the legislature of the information obtained under this Act.

Availability of Records

Sec. 7. (a) On the request of the board or its authorized representative, each hospital, clinical laboratory, and cancer treatment center within the state shall:

(1) produce and make available to the board or its authorized representative, on a form prescribed by the department, the data that the board determines is necessary and appropriate from each medical record in its custody or under its control of a case of cancer or of those precancerous or tumorous diseases specified by the board; or

(2) make available each medical record to the board or its authorized representative on presentation of proper identification, during normal working hours, on the premises of the respective hospital, clinical laboratory, or cancer treatment center, for the purpose of recording specific data about a patient's cancer, precancerous disease, or tumorous disease, on a form prescribed by the department.

(b) The data required to be produced shall include, but is not limited to:

(1) diagnosis;

(2) stage of disease;

(3) medical history;

(4) laboratory data;

(5) tissue diagnosis;

(6) method of treatment; and

(7) annual lifetime follow-up of each patient.

Confidentiality and Disclosure

Sec. 8. All data obtained directly from medical records of individual patients are for the confidential use of the department, the private and public entities, or the persons that the board determines are necessary to carry out the intent of this Act. The data are privileged and may not otherwise be divulged or made public so as to disclose the identity of an individual whose medical records have been used for acquiring data. Information that could possibly identify individuals whose medical records have been used for collecting data may not be included in materials available to public inspection under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes). Statistical information collected under this Act shall be open and accessible to the public.

Immunity from Liability

Sec. 9. No hospital, clinical laboratory, or cancer treatment center, no administrator, officer, or employee of a hospital, clinical laboratory, or cancer treatment center, and no physician subject to the provisions of this Act who acts in compliance with this Act shall be civilly or criminally liable for divulging the information required by this Act.

Freedom of Choice

Sec. 10. This Act does not compel an individual to submit to any medical examination or supervision or to examination or supervision by the board or its authorized representatives.

Effective Date

Sec. 11. This Act takes effect September 1, 1979. However, the provisions of this Act extend to records of all cases of cancer and the specified precancerous and tumorous diseases diagnosed on or after January 1, 1979, and to records of all ongoing cases of such diseases diagnosed before January 1, 1979. [Acts 1979, 66th Leg., p. 170, ch. 94, eff. Sept. 1, 1979.]

CHAPTER FOUR F. EPILEPSY

Article
4477–50. Epilepsy Program.

Art. 4477–50. Epilepsy Program

Definitions

Sec. 1. In this Act:

(1) "Board" means the Texas Board of Health.

(2) "Commissioner" means the commissioner of health.

(3) "Department" means the Texas Department of Health.

(4) "Epilepsy" means a variable symptom complex characterized by recurrent paroxysmal attacks of unconsciousness or impaired consciousness, usually with a succession of clonic or tonic muscular spasms or other abnormal behavior.

Program Authorized

Sec. 2. The department, with approval of the board, may establish an epilepsy program to provide diagnostic services, treatment, and support services to eligible persons who have epilepsy.

Implementation

Sec. 3. The board may adopt rules it considers necessary to define the medical and financial standards for eligibility and the scope of the program.

Administrator

Sec. 4. (a) The commissioner, with the approval of the board, may appoint an administrator who will be responsible for carrying out the program.

(b) The administrator shall report to and be under the direction of the commissioner.

Contracts

Sec. 5. The department may enter into contracts or agreements it considers necessary to facilitate the provision of services under this Act, including contracts with other departments, agencies, boards, educational institutions, individuals, county governments, municipal governments, states, and the United States.

Funds

Sec. 6. The department may seek, receive, and expend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purposes of this program.

Advisory Board

Sec. 7. The commissioner may appoint an epilepsy advisory board to assist the department in developing the epilepsy program.

Fees

Sec. 8. Program patients may be charged a fee for services according to rules adopted by the board. [Acts 1981, 67th Leg., p. 1852, ch. 435, eff. Aug. 31, 1981.]

CHAPTER FIVE. COUNTY HOSPITAL

Article
4494n–3. Validating Creation and Organization of Hospital Districts with Population of Less Than 40,000.
4494r–2.1. Advisory Elections in Issuance of Revenue Bonds.
4494r–5. Payment of Current Operating Expenses of County-Wide Hospital District in Counties of 1,000,000 or More.

Art. 4478. Authority

The commissioners court of any county shall have power to establish a county hospital and any medical or other health facilities and to enlarge any existing hospitals or facilities for the care and treatment of persons suffering from any illness, disease or injury, subject to the provisions of this chapter. At intervals of not less than twelve months, ten per cent of the qualified property tax paying voters of a county may petition such court to provide for the establishing or enlarging of a county hospital, or any medical or other health facilities, in which event said court within the time designated in such petition shall submit to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital or facilities. Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital or facilities and shall have the following powers:

1. To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings.

2. To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital or facilities. The plans for such erection, alteration, or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.

3. To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.

4. To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital or facilities and for all other necessary permanent improvements in connection therewith; to do all other things that may be required by law in order to render said bonds valid.

5. To appoint a board of managers for said hospital or facilities, or both.

6. To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital or facilities, and apply the same in accordance with the terms of the gift.

7. The Commissioners Court may sell or lease all or part of any medical facility so constructed, purchased or acquired under this Act.

8. The Commissioners Court of any county may close by order on terms it considers reasonable any medical facility constructed, purchased, or acquired under this Act, and this order shall be final thirty days after promulgation unless at least ten per cent of the qualified electors in the county petition the Commissioners Court within the thirty days requesting that an election be held in the county to determine whether or not the medical facility should be closed. On proper petition, the Commissioners Court shall set a time for an election and shall submit to the qualified electors of the county ballots providing for voting for or against the proposition: "The closing of (Name of medical facility to be closed)."

[Amended by Acts 1977, 65th Leg., p. 2, ch. 2, § 1, eff. Feb. 23, 1977; Acts 1981, 67th Leg., p. 2364, ch. 583, § 6, eff. Aug. 31, 1981.]

Section 2 of the 1977 amendatory act (which added subd. 8 to this article), provided:

"Nothing in this Act shall exempt any county commissioners court from any provision of the Health Planning and Development Act of 1975 [art. 4418h]."

Art. 4494c–1. Use of Hospital Operating Funds for Improvements to Hospitals in Counties of 23,000 to 23,100

In all counties in this State with not less than 23,000 inhabitants or more than 23,100 inhabitants according to the last preceding federal census, the Commissioners Court may use excess money in the county hospital operating fund for making permanent improvements to the county hospital and for the payment of county bonds issued for the construction and improvement of county hospital facilities.

[Amended by Acts 1981, 67th Leg., p. 589, ch. 237, § 117, eff. Sept. 1, 1981.]

Art. 4494i–1. Joint County-City Hospital Boards

[See Compact Edition, Volume 4 for text of 1 to 14]

Sec. 15. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

[See Compact Edition, Volume 4 for text of 16 to 18]

[Amended by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.]

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing § 15 of this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 4494j. Sale or Lease of County Hospital in Counties Having Assessed Valuation Under $20,000,000

Any county in this State having an assessed valuation of property for ad valorem tax purposes of less than Twenty Million Dollars ($20,000,000) and having a county hospital belonging to said county and operated by such county, may, and such county is hereby authorized to sell or lease such hospital, provided the Commissioners Court of such county shall find and determine by an order entered in the minutes of such Court that it is to the best interests of such county to sell or lease said county hospital. The proposed sale or lease shall not be considered by such Commissioners Court unless and until said proposed sale or lease shall be approved by a majority vote in an election to be held in such county for the purpose of determining the will of property taxpaying voters living in the county, in reference to such subject. Such election shall be ordered by the Commissioners Court of any such county upon petition of not less than ten per cent (10%) of such voters and shall be otherwise held under and governed by the election provisions of Article 4478, Revised Civil Statutes, 1925, of the State of Texas.

[Amended by Acts 1979, 66th Leg., p. 2315, ch. 841, § 4(b), eff. Jan. 1, 1982.]

Art. 4494l. Sale, Lease or Closure of County Hospital by County

Text of article as amended by Acts 1981, 67th Leg., p. 2365, ch. 583, § 7

Authority to Sell, Lease, or Close

Sec. 1. Any county in this State having a county hospital which is operated by said county, may sell or lease such hospital, provided the Commissioners Court of said county shall find and determine by an order entered in the minutes of said Court that it is to the best interest of said county to sell or lease all or any part, including real property of such hospital. The county may also close the hospital or a part of the hospital. The proposed sale or lease of such county hospital shall not be completed until the Commissioners Court of such county shall have complied with the provisions of this Act.

Notice and Hearing

Sec. 2. When the Commissioners Court of any such county owning and operating its hospital shall determine and find that it is to the best interest of such county that such hospital be sold or leased, it shall be the duty of the Court to fix a time and place at which such question will be heard and considered by it, which date shall be not less than fifteen (15) days nor more than thirty (30) days from the date of the order. The county clerk shall forthwith issue a notice of such time and place of hearing, which notice shall inform all qualified electors of said county and all other persons who may be interested in the question of the selling or leasing of such county hospital of the time and place of the hearing and of

their right to appear at such hearing and contend for or protest the proposed action the county clerk shall cause such notice to be published in such county once a week for two (2) consecutive weeks prior to the time set for hearing and considering such question by the Court, the date of the first publication to be at least fourteen (14) days prior to the date fixed for conducting such hearing. If there is no newspaper published in such county, notice of such hearing shall be given by posting a notice thereof at the county courthouse door for fourteen (14) days prior to the date fixed for such hearing and determination.

Petition for Referendum; Conduct of Hearing; Adjudication

Sec. 3. If, by the time fixed for such hearing and consideration by the Court, as many as ten per cent (10%) in number of the qualified voters of said county shall petition the Commissioners Court in writing to submit to a referendum vote the question as to whether or not the county hospital shall be sold or leased or shall be continued under county operation, then such Commissioners Court shall not be authorized to sell or lease such hospital and shall not finally sell or lease the same unless the proposition to sell or lease such county hospital is sustained by a majority of the votes cast at said election. Such election shall be held under and governed by the election provisions of Article 4478, Revised Civil Statutes of 1925, of the State of Texas.

If such petition is not so filed with the county clerk, then the Commissioners Court may proceed with the hearing of all evidence relative to the advisability of selling or leasing such hospital. Any person interested may appear before the Court in person or by attorney and contend for or protest the selling or leasing of such county hospital. Such hearing may be adjourned from day to day and from time to time as the Court may deem necessary. Upon the completion of such hearing the Court may proceed to adjudicate such matter by entering an order determining whether or not such hospital shall be sold or leased. Even though such petition is not filed with the county clerk, the Commissioners Court may at its discretion also submit such question to a vote of the people and may withhold its final determination of such question pending the holding of such election.

Orders When No Petition Submitted

Sec. 4. If no petition is submitted upon the date fixed for such hearing, and the Commissioners Court, after holding the hearing, finds that due notice has been given, no petition has been filed, and that the proposed selling or leasing of such hospital would be for the best interests and benefit of the county, then such Court may make and cause to be entered upon its minutes an order directing that such county hospital shall be sold or leased. Such Court shall thereupon be fully authorized and empowered to sell or lease such county hospital to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court and the lessee. The action of the Commissioners Court in selling or leasing such hospital shall be evidenced by an order duly entered, which order shall contain a complete copy of the sales or lease contract and shall be recorded in the minutes of the Court.

Application of Other Laws

Sec. 5. If a hospital is sold or leased as provided by this Act, Chapter 5, Title 71, revised Civil Statutes of Texas, 1925, as amended, does not apply to a purchaser or lessee of the hospital unless the purchaser or lessee is a county, a city and a county acting as joint purchasers or lessees, a county hospital authority, or a hospital district.

[Amended by Acts 1981, 67th Leg., p. 2365, ch. 583, § 7, eff. Aug. 1, 1981.]

For text of §§ 1 to 4 of this article as amended by Acts 1981, 67th Leg., p. 2446, ch. 629, § 1, see art. 4494l, post.

Art. 4494*l*. Lease of County Hospital by Any County or Sale by Counties of 10,000 or Less

Text of §§ 1 to 4 of this article as amended by Acts 1981, 67th Leg., p. 2446, ch. 629, § 1

Authority to Lease

Sec. 1. (a) Any county in this State having a county hospital which is operated by said county, may lease such hospital, provided the Commissioners Court of said county shall determine by an order entered in the minutes of said Court that it is to the best interest of said county to lease such hospital. A county that operates a county hospital and that has a population of 10,000 or less, according to the most recent federal census, may sell the hospital if the Commissioners Court determines by an order entered in its minutes that:

(1) the responsibilities and expense of operating the hospital are an unjustifiable burden on the taxpayers of the county and result in inadequate health care;

(2) the public interest would be served and health care in the county would be improved if the hospital were operated by another entity; and

(3) the hospital should be sold.

(b) The proposed lease or sale of such county hospital shall not be completed until the Commissioners Court of such county shall have complied with the provisions of this Act.

Sec. 2. When the Commissioners Court shall determine that it is to the best interest of such county that such hospital be leased or sold, it shall fix a time and place at which such question will be heard and considered by it, which date shall be not less than fifteen (15) days nor more than thirty (30) days from the date of the order. The county clerk shall

forthwith issue a notice of such time and place of hearing, which notice shall inform persons of the time and place of the hearing and of the right of all qualified electors and others interested in the question to appear at such hearing and contend for or protest the proposed lease or sale. The county clerk shall cause such notice to be published in such county once a week for two (2) consecutive weeks prior to the time set for hearing and considering such question by the Court, the date of the first publication to be at least fourteen (14) days prior to the date fixed for conducting such hearing. If there is no newspaper published in such county, notice of such hearing shall be given by posting a notice thereof at the county courthouse door for fourteen (14) days prior to the date fixed for such hearing and determination.

Sec. 3. If, by the time fixed for such hearing and consideration by the Court, as many as ten per cent (10%) in number of the qualified voters of said county shall petition the Commissioners Court in writing to submit to a referendum vote the question as to whether or not the county hospital shall be leased or sold or shall be continued under county operation, then such Commissioners Court shall not finally lease or sell the same unless the proposition to lease or sell such county hospital is sustained by a majority of the votes cast at said election. Such election shall be held under and governed by the election provisions of Article 4478, Revised Civil Statutes of 1925, of the State of Texas.

If such petition is not so filed with the county clerk, then the Commissioners Court may proceed with the hearing of all evidence relative to the advisability of leasing or selling such hospital. Any person interested may appear before the Court in person or by attorney and contend for or protest the leasing or selling of such county hospital. Such hearing may be adjourned from day to day and from time to time as the Court may deem necessary. Upon the completion of such hearing the Court may proceed to adjudicate such matter by entering an order determining whether or not such hospital shall be leased or sold. Even though such petition is not filed with the county clerk, the Commissioners Court may at its discretion also submit such question to a vote of the people and may withhold its final determination of such question pending the holding of such election.

Sec. 4. If no petition is submitted upon the date fixed for such hearing, and the Commissioners Court, after holding the hearing, finds that due notice has been given, no petition has been filed, and that the proposed leasing or selling of such hospital would be for the best interests and benefit of the county, then such Court may make and cause to be entered upon its minutes an order directing that such county hospital shall be leased or sold. Such Court shall thereupon be authorized to sell the hospital or to lease such county hospital to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court and the lessee. The action of the Commissioners Court in leasing or selling such hospital shall be evidenced by an order duly entered, which order shall contain a complete copy of the lease or sales contract and shall be recorded in the minutes of the Court.

Provided, however, if a petition signed by fifty (50) qualified, property taxpaying voters of the county is filed with the Commissioners Court in writing to submit to a referendum vote the question as to whether or not the county hospital shall be leased or sold or shall be continued under county operation, then such Commissioners Court shall not finally lease or sell the same until the expiration of five (5) years from the date of the election, or if no election is held, from the date the petition is filed, unless the proposition to lease or sell such hospital is sustained by a majority of votes cast at said election.

[See Compact Edition, Volume 4 for text of 5]

[Amended by Acts 1981, 67th Leg., p. 2446, ch. 629, § 1, eff. June 15, 1981.]

For text of article as amended by Acts 1981, 67th Leg., p. 2365, see art. 4494l, ante

Art. 4494n. County Hospital Districts; Counties of 190,000 or More and Galveston County

[See Compact Edition, Volume 4 for text of 1]

Taxes of District; Deposit of Taxes and Other Income

Sec. 2. The Commissioners Court of any county which has voted to create a Hospital District shall have the power and the authority, and it shall be its duty, to levy on all property subject to hospital district taxation for the benefit of the District, a tax of not to exceed Seventy-five Cents (75$) on the One Hundred Dollars ($100.00) valuation of all taxable property within the Hospital District, for the purpose of (1) paying the interest on and creating a sinking fund for bonds which may have been assumed or which may be issued by the Hospital District for hospital purposes, as herein provided; (2) providing for the operation and maintenance of the hospital or hospital system; and (3) when requested by the Board of Hospital Managers and approved by the Commissioners Court, for the purpose of making further improvements and additions to the hospital system, and for the acquisition of necessary sites therefor, by purchase, lease or condemnation.

The tax so levied shall be collected on all property subject to Hospital District taxation by the Assessor and Collector of Taxes for the county. All income of the Hospital District shall be deposited in the district depository. Warrants against Hospital District funds shall not require the signature of the County Clerk.

The Commissioners Court shall have the authority to levy the tax aforesaid for the entire year in which the said Hospital District is established, for the purpose of securing funds to initiate the operation of the Hospital District, and to pay assumed bonds.

Secs. 2a, 2b. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

El Paso County Hospital District; Assessment of Taxes; Rate

Sec. 2c. The Commissioners Court of El Paso County on its own motion may order the Assessor and Collector of Taxes to assess the property in the El Paso County Hospital District at a greater or lesser percentage of its fair cash market value than that used in assessing the property for state and county purposes.

[See Compact Edition, Volume 4 for text of 3 and 4]

Board of Hospital Managers in Counties of 650,000 to 900,000

Sec. 5(a). Notwithstanding the provision of the preceding section, in counties containing a population of more than 650,000, but less than 900,000 according to the last preceding Federal Census, the Commissioners Court shall appoint a Board of Hospital Managers consisting of not less than five (5) nor more than fifteen (15) members who shall serve for a term of two years with overlapping terms if desired, and upon such conditions, and bearing such responsibilities and duties as otherwise set out within this section.

[See Compact Edition, Volume 4 for text of 5a to 8]

Eminent Domain

Sec. 9. A Hospital District organized in pursuance of this Act shall have the right and power of eminent domain for the purpose of acquiring by condemnation any and all property of any kind or character, real, personal or mixed, or any interest therein, including outright ownership of such property in fee simple absolute, within the boundaries of the said District, necessary or convenient to the exercise of the rights, powers, privileges and functions conferred upon it by this Act, in the manner provided by General Law with respect to condemnation; provided that the said District shall not be required to make deposits in the registry of the trial court of the sum required by Paragraph Numbered 2 in Article 3268, V.C.S., 1925, or to make the bond required therein. In condemnation proceedings being prosecuted by the said District, the District shall not be required to pay in advance or to give bond or other security for costs in the trial court, nor to give any bond otherwise required for the issuance of a temporary restraining order or a temporary injunction relating to a condemnation proceeding, nor to give bond for costs or for supersedeas on any appeal or writ of error proceeding to any Court of Appeals, or to the Supreme Court.

[See Compact Edition, Volume 4 for text of 10 to 15]

[Amended by Acts 1975, 64th Leg., p. 1854, ch. 579, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 671, ch. 298, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2327, ch. 841, §§ 4(s), 6(a)(1), eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 589, ch. 237, § 118, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 788, ch. 291, § 60, eff. Sept. 1, 1981.]

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing §§ 2a and 2b of this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 4494n–3. Validating Creation and Organization of Hospital Districts with Population of Less Than 40,000

Sec. 1. All proceedings and actions had and taken in the creation of any hospital district created under the provisions of Article IX, Section 9 of the Constitution of Texas, with a population of less than 40,000 according to the last preceding federal census, the appointment or election of directors or the governing body of such districts, and all proceedings and actions had and taken by the board of directors or governing body of such districts in organizing, selecting officers, tax elections, voting, authorizing, selling, and issuing bonds of such districts and all proceedings and actions relating to any of the foregoing, are hereby in all things and all respects ratified, confirmed, approved, and validated, notwithstanding that any of the aforementioned proceedings and actions may not in all respects have been had in accordance with statutory provisions.

Sec. 2. The creation, organization, and the tax election of all of such hospital districts and all proceedings relating thereto are hereby in all things and all respects ratified, confirmed, approved, and validated, notwithstanding that same may not in all respects have been accomplished in accordance with statutory provisions.

Sec. 3. All bonds, including tax and revenue bonds, voted or authorized but undelivered bonds, as well as outstanding bonds authorized, approved, sold, or issued of any hospital district, and all elections at which bonds were voted for any purpose, are hereby in all things and all respects ratified, confirmed, approved, and validated, notwithstanding the fact that the governing body of such district may have failed to comply with all statutory requirements and notwithstanding that any election held by any such district may not in all respects have been ordered and held in accordance with statutory provisions. When the attorney general has approved such bonds and they have been registered by the Comptroller of Public Accounts of the State of Texas and sold and delivered, they shall be binding, legal, valid, and enforceable obligations of any such district, and said bonds shall be incontestable. Provided, however, that, with respect to bonds required by law to be authorized at an election held within any such district, this Act shall apply only to such bonds as were authorized at an election or elections wherein at least a majority of the votes cast by the qualified

voters in the district, voting thereat, were in favor of the issuance of the bonds.

Sec. 4. This Act shall not be construed as validating any proceedings or bonds issued or to be issued, the validity of which is contested or under attack in any suit or litigation pending at the time this Act becomes effective, if such suit or litigation is ultimately determined against the validity thereof.

Sec. 5. If any word, phrase, sentence, or portion of this Act is for any reason held unconstitutional, the unconstitutionality thereof shall not affect the remaining words, phrases, sentences, or portions of the Act.

[Acts 1977, 65th Leg., p. 845, ch. 316, eff. May 30, 1977.]

Art. 4494o. Public Hospital Districts; Counties of 75,000 or Less

[See Compact Edition, Volume 4 for text of 1 to 11]

Additional Bond Issue; Election

Sec. 12. If the proceeds of the original bond issue shall be insufficient to complete the construction and/or equipment and/or maintenance and/or purchase of hospital buildings and grounds for such district, or if the Trustees determine to provide for additional construction and/or equipment and/or maintenance and/or purchase of hospital buildings and grounds, they shall certify to said court the necessity for an additional bond issue, stating the amount required, the purpose of same, the rate of interest of said bonds and the time for which they are to run. Said court shall thereupon order an election on the issuance of said bonds to be held within such district at the earliest possible legal time. The outstanding bonds and the additional bonds so ordered shall not exceed in amount one-fourth of the assessed value of the real property in such district, as shown by the latest annual assessment thereof made for county taxation.

[See Compact Edition, Volume 4 for text of 13 to 23]

County Tax Assessor; Powers and Duties; Board of Equalization

Sec. 24. The county tax assessor-collector shall assess and collect taxes for the district.

Secs. 25 to 28. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

Elections as to Separate Officers for District; Notice

Sec. 29. After the establishment of a district, and upon the petition of not less than five per cent (5%) of the qualified taxpaying voters thereof, the court may order an election to determine whether or not such district shall have a separate tax assessor and collector. Notice of such election shall be given as in the original election, and if said proposition carries by a two-thirds vote, the said Trustees shall appoint a suitable person as assessor and collector.

[Amended by Acts 1979, 66th Leg., p. 2327, ch. 841, §§ 4(t), 6(a)(1), eff. Jan. 1, 1982.]

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing §§ 25 to 28 of this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 4494p. Optional Hospital District Law of 1957

[See Compact Edition, Volume 4 for text of 1 to 3]

Taxes of District; Deposit of Taxes and Other Income

Sec. 4. (a) The Commissioners Court of any county which has voted to create a hospital district shall have the power and the authority, and it shall be its duty, to levy on all property subject to hospital district taxation for the benefit of the district, a tax of not to exceed the amount determined by the Commissioners Court in calling the election and so stated on the ballot in which the district was approved, on the One Hundred Dollars ($100) valuation of all taxable property within the hospital district, for the purpose of (1) paying the interest on and creating a sinking fund for bonds which may have been assumed or which may be issued by the hospital district for hospital purposes, as herein provided; (2) providing for the operation and maintenance of the hospital or hospital system; and (3) for the purpose of making further improvements and additions to the hospital system, and for the acquisition of necessary sites therefor, by purchase, lease or condemnation.

(b) The tax so levied shall be collected on all property subject to hospital district taxation by the assessor and collector of taxes for the county. All income of the hospital district shall be deposited in the district depository. Warrants against hospital district funds shall not require the signature of the county clerk.

[See Compact Edition, Volume 4 for text of 4(c) to 10]

Eminent Domain

Sec. 11. A hospital district organized in pursuance of this Act shall have the right and power of eminent domain for the purpose of acquiring by condemnation any and all property of any kind or character, real, personal or mixed, or any interest therein, including outright ownership of such property in fee simple absolute, within the boundaries of the district, necessary or convenient to the exercise of the rights, powers, privileges and functions conferred upon it by this Act, in the manner provided by general law with respect to condemnation; provided that the district shall not be required to make deposits in the registry of the trial court of the sum required by Paragraph numbered 2 in Article 3268, Revised Civil Statutes, 1925, or to make the bond required therein. In condemnation proceedings being prosecuted by the district, the district shall not be required to pay in advance or to give bond or

other security for costs in the trial court, nor to give any bond otherwise required for the issuance of a temporary restraining order or a temporary injunction relating to a condemnation proceeding, nor to give bond for costs or for supersedeas on any appeal or writ of error proceeding to any Court of Appeals, or to the Supreme Court.

[See Compact Edition, Volume 4 for text of 12 to 18]

[Amended by Acts 1979, 66th Leg., p. 2328, ch. 841, § 4(u), eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 789, ch. 291, § 61, eff. Sept. 1, 1981.]

Art. 4494q. Particular Hospital Districts

[The hospital districts listed below have been created by special acts.]

HOSPITAL DISTRICTS

Name	Creation
Amarillo, City of	Acts 1957, 55th Leg., p. 298, ch. 136, amended by Acts 1971, 62nd Leg., p. 1172, ch. 275; Acts 1975, 64th Leg., p. 1178, ch. 439.
Angelina County	Acts 1977, 65th Leg., p. 1480, ch. 603.
Brazoria County Community	Acts 1979, 66th Leg., p. 935, ch. 427.
Burleson County	Acts 1977, 65th Leg., p. 1807, ch. 726.
Calhoun County	Acts 1981, 67th Leg., p. 486, ch. 205.
Chillecothe	Acts 1979, 66th Leg., p. 117, ch. 74.
Cisco	Acts 1965, 59th Leg., p. 81, ch. 30, amended by Acts 1981, 67th Leg., p. 2534, ch. 673.
East Coke County	Acts 1969, 61st Leg., p. 1485, ch. 444, amended by Acts 1977, 65th Leg., p. 662, ch. 249.
Edna	Acts 1967, 60th Leg., p. 355, ch. 172, repealed by Acts 1979, 66th Leg., p. 598, ch. 275, § 24 (see now, Jackson).
Elgin	Acts 1979, 66th Leg., p. 6, ch. 6.
Farwell	Acts 1975, 64th Leg., p. 169, ch. 73.
Fisher County	Acts 1973, 63rd Leg., p. 1236, ch. 448, amended by Acts 1975, 64th Leg., p. 807, ch. 313.
Follett	Acts 1975, 64th Leg., p. 2020, ch. 668.
Gainesville	Acts 1975, 64th Leg., p. 489, ch. 211.
Goliad County	Acts 1981, 67th Leg., p. 2287, ch. 560.
Gonzales County	Acts 1975, 64th Leg., p. 446, ch. 191.
Greenville	Acts 1967, 60th Leg., p. 230, ch. 125, amended by Acts 1969, 61st Leg., p. 2554, ch. 853; Acts 1981, 67th Leg., p. 2470, ch. 642.
Hardeman County	Acts 1979, 66th Leg., p. 462, ch. 214.
Hemphill County	Acts 1979, 66th Leg., p. 917, ch. 424.
Higgins	Acts 1975, 64th Leg., p. 2008, ch. 666.
Hood County	Acts 1971, 62nd Leg., p. 2594, ch. 852, amended by Acts 1977, 65th Leg., p. 312, ch. 145.
Jackson County	Acts 1979, 66th Leg., p. 586, ch. 275.
Karnes County	Acts 1969, 61st Leg., p. 1764, ch. 591, amended by Acts 1973, 63rd Leg., p. 147, ch. 78; Acts 1981, 67th Leg., p. 994, ch. 375.
Kleberg County	Acts 1977, 65th Leg., p. 1359, ch. 540.
Lavaca	Acts 1975, 64th Leg., p. 23, ch. 16.
Lipscomb	Acts 1975, 64th Leg., p. 2014, ch. 667.
Mabank-Kemp	Acts 1973, 63rd Leg., p. 26, ch. 22, amended by Acts 1977, 65th Leg., p. 2137, ch. 854.
Maverick County	Acts 1965, 59th Leg., p. 360, ch. 172, amended by Acts 1981, 67th Leg., p. 347, ch. 136.
Menard County	Acts 1975, 64th Leg., p. 2001, ch. 665, amended by Acts 1977, p. 1751, ch. 700.
Midland County	Acts 1977, 65th Leg., p. 232, ch. 112; amended by Acts 1979, 66th Leg., p. 1012, ch. 446.
Montgomery County	Acts 1977, 65th Leg., p. 678, ch. 258, amended by Acts 1981, 67th Leg., p. 2088, ch. 479.
Moulton	Acts 1975, 64th Leg., p. 1988, ch. 662.
Muenster	Acts 1965, 59th Leg., p. 984, ch. 477, amended by Acts 1967, 60th Leg., p. 1206, ch. 541; Acts 1975, 64th Leg., p. 498, ch. 212.
Nacogdoches County	Acts 1967, 60th Leg., p. 987, ch. 431, amended by Acts 1977, 65th Leg., p. 318, ch. 151.
Nixon	Acts 1965, 59th Leg., p. 1461, ch. 644, amended by Acts 1975, 64th Leg., p. 830, ch. 321.

Name	Creation
Parker County	Acts 1965, 59th Leg., p. 93, ch. 35, amended by Acts 1975, 64th Leg., p. 1186, ch. 444; Acts 1981, 67th Leg., p. 2081, ch. 472.
Reagan	Acts 1977, 65th Leg., p. 45, ch. 29.
Refugio County Memorial	Acts 1977, 65th Leg., p. 11, ch. 6, amended by Acts 1981, 67th Leg., p. 2413, ch. 614.
Sabine County	Acts 1975, 64th Leg., p. 1829, ch. 565, amended by Acts 1977, 65th Leg., p. 1177, ch. 450.
Shackelford County	Acts 1977, 65th Leg., p. 298, ch. 140.
Starr County	Acts 1973, 63rd Leg., p. 243, ch. 118, amended by Acts 1977, 65th Leg., p. 35, ch. 18.
Sugar Land Community	Acts 1979, 66th Leg., p. 128, ch. 76.
Teague	Acts 1969, 61st Leg., 2nd C.S., p. 143, ch. 39; Acts 1975, 64th Leg., p. 1224, ch. 457.
Terry	Acts 1965, 59th Leg., p. 1502, ch. 653, amended by Acts 1979, 66th Leg., p. 2204, ch. 838.
Titus County	Acts 1963, 58th Leg., p. 771, ch. 298, amended by Acts 1973, 63rd Leg., p. 368, ch. 165; Acts 1981, 67th Leg., p. 387, ch. 156.
Trinity Memorial	Acts 1981, 67th Leg., p. 680, ch. 265.
Val Verde County	Acts 1975, 64th Leg., p. 1977, ch. 658.
Walker County	Acts 1971, 62nd Leg., p. 2583, ch. 848, amended by Acts 1977, 65th Leg., p. 1325, ch. 527.
West Coke County	Acts 1963, 58th Leg., p. 825, ch. 315, amended by Acts 1967, 60th Leg., p. 679, ch. 283; Acts 1977, 65th Leg., p. 662, ch. 248; Acts 1979, 66th Leg., p. 1014, ch. 448.
West Columbia-Damon	Acts 1967, 60th Leg., p. 941, ch. 415, amended by Acts 1981, 67th Leg., p. 2092, ch. 482.
Wichita County	Acts 1979, 66th Leg., p. 1691, ch. 701.
Wilbarger County	Acts 1965, 59th Leg., p. 9, ch. 6, amended by Acts 1973, 63rd Leg., p. 6, ch. 5; Acts 1977, 65th Leg., p. 1303, ch. 513.
Wilson County Memorial	Acts 1977, 65th Leg., p. 1293, ch. 511, amended by Acts 1979, 66th Leg., p. 1123, ch. 535; Acts 1981, 67th Leg., p. 22, ch. 18.
Wood County Central	Acts 1967, 60th Leg., p. 705, ch. 293, amended by Acts 1979, 66th Leg., p. 378, ch. 172; Acts 1981, 67th Leg., p. 1848, ch. 430.

Art. 4494r. County Hospital Authority Act

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. As used in this law, "County" means any county in the State of Texas; "Governing Body" means the Commissioners Court of a county; "Authority" means a County Hospital Authority created under this Act; "Board" or "Board of Directors" means the board of directors of the Authority; "bond" or "bonds" means bonds or notes; "Bond Resolution" means the resolution authorizing the issuance of revenue bonds; "Trust Indenture" means the mortgage, deed of trust or other instrument pledging revenues of, or creating a mortgage lien on properties, or both, to secure the revenue bonds issued by the Authority; "Trustee" means the trustee under the Trust Indenture; "Hospital" or "Hospitals" means any "Hospital Project" as defined in Section 3(g) of Senate Bill No. 243, as enacted, Acts of the 64th Legislature, Regular Session, 1975, as now or hereafter amended.[1]

[1] Classified as art. 4437e–2.

[See Compact Edition, Volume 4 for text of 3]

Board of Directors

Sec. 4. (a) The Authority shall be governed by a Board of Directors consisting of not less than seven (7) nor more than eleven (11) members to be determined at the time of creating the Authority. Unless otherwise provided in the resolution authorizing the issuance of bonds or the Trust Indenture securing them, the number of Directors may be increased or decreased from time to time by amendment to the order creating the Authority adopted by the Governing Body of the County, but no decrease in number shall have the effect of shortening the term of any incumbent Director. Except as hereinafter in this Section provided, the first Directors shall be appointed by the Governing Body of the County, and they shall serve until their successors are appointed as hereinafter provided. When the Authority issues its revenue bonds the resolution authorizing the issuance of the bonds or the Trust Indenture securing them may prescribe the method of selecting and the term of office of a majority of the members of the Board. The remaining members of the Board shall be appointed by the Governing Body of the County. The Trust Indenture may also provide that, in the event of default as defined in the Trust Indenture, the Trustee may appoint all of the Directors, in which event the terms of the Directors then in office shall automatically terminate. Unless and until provision is made in the Bond Resolution or Indenture

in connection with the issuance of bonds for the appointment by other means of part of the Directors, all of the Directors shall be appointed by the Governing Body of the County for terms not to exceed three (3) years, but the terms of Directors appointed prior to the issuance of the first issue of revenue bonds shall be subject to the exercise of the provision herein made for appointment of a majority of the members of the Board in connection with the issuance of the bonds. No officer or employee of any such County shall be eligible for appointment as a Director. Directors shall not receive compensation for services but shall be entitled to reimbursement of their expenses incurred in performing such service.

(b) In the event the Authority purchases from a nonprofit corporation a hospital then in existence or in process of construction, the first members of the Board of Directors and their successors shall be determined as provided in the contract of purchase.

Officers; Quorum; Committees; Manager or Executive Director; Sale, Lease, or Closure; Legal Counsel

Sec. 5. The Board of Directors shall elect from among their members a president and vice president, and shall elect a secretary and a treasurer who may or may not be Directors, and may elect such other officers as may be authorized by Authority's bylaws. The offices of secretary and treasurer may be combined. The president shall have the same right to vote on all matters as other members of the Board. A majority of the members of the Board shall constitute a quorum and when a quorum is present action may be taken by a majority vote of Directors present. If the bylaws so provide, the Board of Directors, by resolution adopted by a majority of the Directors in office, may designate one or more committees, which, to the extent and in the manner provided in such resolution or in the bylaws, shall have and exercise the authority of the Board of Directors in the management of the Authority. Each such committee shall consist of two or more persons who are directors and may have additional non-voting members who, if such resolution or the bylaws so provide, need not be directors. The Board of Directors may not, however, provide for the delegation to such committees of the Authority of the power to issue bonds, enter into or amend a lease of a Hospital or a management agreement with respect to a Hospital or to employ or discharge a manager or an executive director. The Board may employ a manager or executive director of the Hospital and such other employees, experts and agents as it may see fit, or enter into a management agreement with any person and it may delegate to the manager the power to manage the Hospital and to employ and discharge employees. The Board may sell, lease, or close the Hospital as otherwise provided by law and may employ legal counsel.

Construction, Operation and Equipment of Hospitals; Location; Sale of Real Property

Sec. 6. (a) The Authority shall have the power to construct, enlarge, furnish and equip Hospitals, purchase existing Hospitals, furnishings and equipment for its Hospitals, and to operate and maintain Hospitals. A Hospital must be located within the County creating the Authority.

(b) The Board may sell real property acquired by donation, gift, or purchase that the Board determines is not needed for Hospital purposes if the sale does not contravene (1) a trust indenture or bond resolution relating to outstanding bonds of the Authority or (2) any agreement entered into either prior to or after the effective date of this Section 6(b) between the Authority and a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e–2, Vernon's Texas Civil Statutes). The Board shall sell the property through sealed bids or at a public auction. If the Board conducts the sale by sealed bids, the Board shall provide notice of the sale in the manner provided by Chapter 455, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 5421c–12, Vernon's Texas Civil Statutes). If the Board conducts the sale by public auction, the Board shall publish notice of the sale, including a description of the property and the date, time, and place of the auction in a newspaper with general circulation in the County creating the Authority once a week for three consecutive weeks, the first notice to appear at least 20 days before the auction. Nothing in this Section 6(b) is intended to affect or amend the powers granted to the Authority by the Hospital Project Financing Act (Article 4437e–2, Vernon's Texas Civil Statutes).

Revenue Bonds

Sec. 7. The Authority may issue revenue bonds to provide funds for any of its purposes. Such bonds shall be payable from and secured by a pledge of all or any part of the revenues to be derived from the operation of the Hospital or Hospitals and any other revenues resulting from the ownership of the Hospital properties. The bonds may be additionally secured by a mortgage or deed of trust on real property of Authority or by a chattel mortgage on its personal property, or by both.

Content of Bonds; Maturity

Sec. 8. The bonds shall be authorized by resolution adopted by a majority vote of a quorum of the Board of Directors, and shall be signed by the president or vice president and countersigned by the secretary, or either or both of their facsimile signatures may be printed thereon. The seal of the Authority shall be impressed or printed thereon. The bonds shall mature serially or otherwise in not to exceed forty (40) years and may be sold at a price and under terms determined by the Board of Directors to be the most advantageous reasonably obtainable, provided that the net effective interest rate

as defined by law in Article 717k–2 does not exceed ten per cent (10%) per annum, and within the discretion of the Board, may be made callable prior to maturity at such times and prices as may be prescribed in the resolution authorizing the bonds, and may be made registrable as to principal or as to both principal and interest.

[See Compact Edition, Volume 4 for text of 9]

Junior Lien Bonds; Parity Bonds

Sec. 10. Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the Bond Resolution or Trust Indenture. Parity bonds may be issued under conditions specified in the Bond Resolution or Trust Indenture.

Money Set Aside Out of Bond Sale Proceeds

Sec. 11. Money for the payment of not more than two (2) years' interest on the bonds and an amount estimated by the Board to be required for operating expenses during the first year of operation and an amount to fund any bond reserve fund or other reserve funds provided for in the Bond Resolution or Trust Indenture may be set aside for those purposes out of the proceeds from the sale of the bonds.

Refunding Outstanding Bonds

Sec. 12. Bonds may be issued for the purpose of refunding outstanding bonds in the manner provided in this Act for other bonds, and may be exchanged by the Comptroller of Public Accounts of the State of Texas or sold and the proceeds applied in accordance with the procedure prescribed in Chapter 503, Acts of the Fifty-fourth Legislature [1] or other applicable law.

[1] Article 717k.

[See Compact Edition, Volume 4 for text of 13]

Operation of Hospital; Rates Charged; Creation of Funds; Lease Conditions

Sec. 14. Unless the Hospital is being leased, the Hospital shall be operated by the Authority without the intervention of private profit for the use and benefit of the public. If the Hospital is not being used, operated, or acquired by a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e–2, Vernon's Texas Civil Statutes) or not leased it shall be the duty of the Board of Directors to charge sufficient rates for services rendered by the Hospital and to utilize other sources of its revenues that revenues will be produced sufficient to pay all expenses in connection with the ownership, operation and upkeep of the Hospital, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. In the event the Hospital is being used, operated, or acquired by a nonprofit corporation under the provisions of the Hospital Project Financing Act (Article 4437e–2, Vernon's Texas Civil Statutes) or leased, it shall be the duty of the Board of Directors to provide that such nonprofit corporation or the lessee shall charge sufficient rates for services rendered by the Hospital which together with other sources of such nonprofit corporation's or the lessee's revenues will produce revenues sufficient to enable such nonprofit corporation or the lessee to pay all expenses in connection with the operation and upkeep of the Hospital and to make payments or to pay lease rentals to the Authority which will be sufficient, when taken with other pledged sources of the Authority's estimated revenues, to pay the interest on the bonds as it becomes due, to create a sinking fund to pay the bonds as they become due, and to create and maintain a bond reserve fund and other funds as provided in the Bond Resolution or Trust Indenture. The Bond Resolution or Trust Indenture may prescribe systems, methods, routines, procedures, and policies under or in accordance with which the Hospital shall be operated, and in the event the Hospital is being used, operated, or acquired by a nonprofit corporation or leased, the Authority may delegate to such nonprofit corporation or the lessee the duty to establish the systems, methods, routines, procedures, and policies under or in accordance with which the Hospital shall be operated.

[See Compact Edition, Volume 4 for text of 15]

Sec. 16. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

[See Compact Edition, Volume 4 for text of 17]

Investment of Funds and Proceeds of Bonds

Sec. 18. The law as to the security for and the investment of funds, applicable to Counties, shall control, insofar as applicable the investment of funds belonging to Authority. The Bond Resolution or the Indenture or both may further restrict the making of such investments. In addition to other powers Authority shall have the right to invest the proceeds of its bonds, until such money is needed, in the manner authorized in the Bond Resolution or Indenture, and the proceeds of its bond may be deposited in such banks and may be paid out pursuant to such terms as may be provided in the Bond Resolution or Trust Indenture.

[See Compact Edition, Volume 4 for text of 19 and 20]

[Amended by Acts 1975, 64th Leg., p. 1907, ch. 613, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1604, ch. 679, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1606, ch. 680, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 2366, ch. 583, § 8, eff. Aug. 31, 1981.]

Section 2 of the 1975 amendatory act provided:

"If any word, phrase, clause, sentence or part of this Act shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other word, phrase, clause, sentence or part of this Act, and such remaining portions shall remain in full force and effect."

Section 2 of Acts 1979, 66th Leg., p. 1605, ch. 679, provided:

"If any word, phrase, clause, sentence, or part of this Act shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other word, phrase, clause, sentence, or part of this Act, and such remaining portions shall remain in full force and effect."

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing § 16 of this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 4494r–2.1. Advisory Elections in Issuance of Revenue Bonds

The commissioners court of each county which is authorized by law to issue revenue bonds for and on behalf of a hospital district in the county shall have the option, within its discretion and on its own motion, of calling an advisory election for the purpose of ascertaining whether or not a majority of the resident, qualified electors of the hospital district voting at an election held for such purpose favor the issuance of any such revenue bonds. In the event a commissioners court determines to exercise such option, it is authorized to call an election for such purpose, to be held in accordance with the Texas Election Code, except as hereinafter provided. The order of election shall set forth the date of the election, the proposition to be submitted and voted on, the polling places, the hours during which the polls will be open, and any other matters deemed necessary or advisable by the commissioners court. The expenses of holding the election shall be paid from hospital district funds. Notice of the election shall be given by publishing a substantial copy of the election order one time, at least 10 days prior to the date set for the election, in a newspaper of general circulation in the hospital district. The commissioners court shall canvass the returns and declare the results of the election; but the election shall be advisory only and shall not affect the authority of the commissioners court to issue revenue bonds for and on behalf of the hospital district under any applicable law if no election is required thereby. [Added by Acts 1975, 64th Leg., p. 952, ch. 359, § 1, eff. June 19, 1975.]

Art. 4494r–4. Adoption of Tax Rolls by Hospital Districts Board of Equalizations; Assessment and Collections of Taxes

Sec. 1. That a hospital district organized pursuant to the provisions of Article IX, Section 9, of the Constitution of the State of Texas, may appoint its own assessor and collector of taxes for the hospital district.

Sec. 2. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982.

[Amended Acts 1979, 66th Leg., p. 2315, ch. 841, §§ 4(c), 6(a)(1), eff. Jan. 1, 1982.]

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing § 2 of this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 4494r–5. Payment of Current Operating Expenses of County-Wide Hospital District in Counties of 1,000,000 or More

Applicability of Act

Sec. 1. This Act shall be applicable to counties now or hereafter containing a population of 1,000,000 or more according to the last preceding federal census, wherein there exists a county-wide hospital district whose taxes are levied and collected by the commissioners court and which has teaching hospital facilities that are affiliated with a state-owned medical school, such counties hereinafter referred to as "authorized counties."

Revenue Anticipation Agreements Authorized

Sec. 2. The commissioners court of any authorized county is hereby authorized to enter into and execute with any bank or banks or other corporations, partnerships, persons, financial institutions, or lending institutions revenue anticipation agreements in accordance with this Act.

Advances and Repayments: Revenue Anticipation Agreements

Sec. 3. Upon a finding and determination by the commissioners court of an authorized county that the projected revenues and tax collections of and for the hospital district will not be received by the district at the times necessary to pay when due the district's operating and maintenance expenses, the commissioners court may execute a revenue anticipation agreement by which the other contracting party (or parties) agrees to advance to the district, and the authorized county and the district agree to repay (from the sources hereinbelow specified), funds necessary for the operation and maintenance of the district's hospital facilities during the term of the revenue anticipation agreement. The revenue anticipation agreement may be upon such terms as the parties may agree, subject to the following limitations:

(a) The term of the revenue anticipation agreement shall not exceed two years.

(b) Advances made to the district during the term of the agreement shall not be made more frequently than once each month and each shall not be greater in amount than the difference between (i) the accumulated and unpaid operating and maintenance expenses of the district, and (ii) the revenues and income of the district, including tax revenues, actually received by the district to the date of the advance and lawfully available for the purpose of paying such expenses. The party or parties making the advances may conclusively rely on certifications made by authorized officers of the district as to the facts specified in this subsection.

(c) The advances under the revenue anticipation agreement may bear interest at a rate or rates not exceeding the rate permitted by law for revenue bonds of the district, shall mature and become due and payable on a date not later than the last day of the term of the revenue anticipation agreement, shall be subject to prepayment without penalty at any time before their maturity date, and they shall not be refunded or in any manner refinanced or extended. The agreement may provide that the rates or rate of interest on the advances may be determined at the time made by reference to such determinative factors and formulae as the parties may agree.

(d) If, in any month during the term of the agreement while advances are outstanding, reve-

nues, including tax revenues, are received and are not required to pay and are not lawfully committed to the payment of other obligations and expenses of the district, the commissioners court shall apply the same upon receipt to the payment or prepayment of any advances at the time outstanding and unpaid under the revenue anticipation agreement, and no advances shall be made under a subsequent revenue anticipation agreement until all advances made under the prior agreement have been paid in full, retired, and canceled.

(e) Advances made under the revenue anticipation agreement shall be and are hereby directed to be secured by and payable, either or both, (1) from a pledge of and lien upon revenues of the district derived from the operation and maintenance of its hospital facilities, and/or (2) from tax revenues when collected, levied for the purpose of operating and maintaining the district's facilities for the year during which the advances are made. Upon default in the payment or repayment of any advances made under the terms of the revenue anticipation agreement when due or when required to be prepaid under the terms of this Act, any district court may be petitioned by mandamus or otherwise to enforce the agreement and prepayment as required by this Act.

Use of Advances

Sec. 4. Funds received from advances made pursuant to revenue anticipation agreements authorized by this Act shall be used solely for the purposes authorized by this Act. However, it shall not be a defense to repayment of advances that the funds have been used for a purpose not authorized hereby. The auditor of the affairs of the hospital district shall concurrently with the regular audit thereof audit the use of said funds and shall certify to the commissioners court whether or not the funds have been used for proper operating and maintenance purposes as authorized hereby.

Bonds or Notes; Ad Valorem Taxes

Sec. 5. (a) The commissioners court of an authorized county is authorized to include in any revenue anticipation agreement provisions pursuant to which the authorized county will agree to execute and deliver, concurrently with the making of advances under the agreement, interest-bearing bonds (which also may be designated as notes) evidencing the obligation of the authorized county and the hospital district to repay the advances made pursuant to the agreement and in accordance therewith and with this Act. Such bonds or notes may be delivered upon such terms and may contain such provisions not inconsistent with Section 3 of this Act as may be prescribed in the revenue anticipation agreement.

(b) The provisions hereof relating to advances shall apply to bonds or notes evidencing the obligation to repay the same issued under this section. It is provided, however, that if such hospital district was created pursuant to the authority granted to the legislature by Article IX, Section 4, of the Texas Constitution and the creation of such hospital district was approved at an election held in such hospital district as required by Article IX, Section 4, of the Texas Constitution or if such hospital district was created pursuant to any other constitutional provision which would permit the levy and pledge of taxes as hereinafter authorized, then regardless of any restrictions in any other law of this state the commissioners court also is authorized in addition to the mandatory security required in Section 3(e) hereof to pay and secure the bonds or notes issued under this section from and by annual ad valorem taxes levied and to be levied on all taxable property in such hospital district, and such annual ad valorem taxes may be pledged to the payment of the principal of and interest on the bonds or notes to the extent required therein and in the agreement. If such annual ad valorem taxes are thus pledged it shall be the duty of the commissioners court annually to levy a tax on all taxable property in the hospital district sufficient or to the extent necessary to pay the principal of and the interest on the bonds or notes when due, but the rate of the tax, if any, for each year may be fixed after giving consideration to the amount of money estimated to be received from revenues pledged under Section 3 hereof which may be available for the payment of such principal and interest, all to the extent and in the manner provided in the revenue anticipation agreement, but provided further that such annual ad valorem tax together with all other annual ad valorem taxes levied in the hospital district shall never exceed a maximum annual rate of 75 cents on the $100 valuation of all taxable property within such hospital district. Further, if such annual ad valorem taxes are thus pledged, it shall be the duty of the commissioners court during each year while any of the bonds or notes or interest thereon is outstanding and unpaid to compute and ascertain a rate and amount of ad valorem tax, if any, which will be sufficient to raise and produce the money required to make the aforesaid payment to the extent required; and said tax shall be based on the latest approved tax rolls of such hospital district, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax shall be levied and ordered to be levied subject to the maximum limitation prescribed above against all taxable property in such hospital district for each year while any of the bonds or notes or interest thereon are outstanding and unpaid; and said tax shall be assessed and collected each such year and used for such purpose to the extent so required.

(c) Upon the issuance, sale, and delivery of bonds or notes under the authority of this section, such bonds or notes shall be incontestable in any court or other forum for any reason and shall be valid and

binding obligations in accordance with their terms and conditions for all purposes. Such bonds or notes shall constitute "investment securities" under the Uniform Commercial Code of Texas. Any such bonds or notes shall be legal and authorized security for public funds of this state and its political subdivisions and shall be legal and authorized investments by all banks, savings banks, savings and loan associations, and insurance companies of all types.

Cumulative Effect; Conflicting Provisions

Sec. 6. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the execution of revenue anticipation agreements and the issuance of bonds or notes to evidence obligations to repay advances made thereunder and the performance of the other acts and procedures authorized hereby without reference to any other laws or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds are being issued pursuant to the authority of this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provisions of any other law, the provisions of this Act shall prevail and control.

[Acts 1975, 64th Leg., p. 653, ch. 272, eff. May 20, 1975.]

CHAPTER SIX. MEDICINE

Article

4495a. Repealed.
4495b. Medical Practice Act.
4501b. Repealed.
4506a. Revocation and Suspension of License for Drug-Related Felony Conviction.
4511a. Authorized Supplementary Fees that may be Charged by the Texas State Board of Medical Examiners.
4511b. Authority to Receive Criminal Records and Fingerprint Reports.
4511c. Authority to Extend Temporary License.
4512a. Repealed.

Arts. 4495, 4495a. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981

Section 3 of the 1981 repealing act provides:

"(a) The Texas State Board of Medical Examiners previously established under the laws of this state is continued as an independent administrative agency of the executive branch of government.

"(b) A person holding office as a member of the board on the effective date of this Act continues to hold office for the term for which the member was originally appointed or until a successor is appointed and qualified. The initial appointments of the public members of the board shall be made so that one appointee serves a term that expires April 13, 1983, one appointee serves a term that expires April 13, 1985, and one appointee serves a term that expires April 13, 1987. Thereafter, at the expiration of the term of each member of the board appointed, a successor shall be appointed. The terms of office of all succeeding members expire April 13 of odd-numbered years. Members shall continue to hold office until a successor is appointed and qualified. In order to permit an orderly accomplishment of the requirements of Subsection (c) of Section 2.05 of the Medical Practice Act [art. 4495b], the governor shall not appoint nor cause to be appointed more than two physicians with the degree of doctor of osteopathic medicine (D.O.) to be members of the board prior to May 13, 1982, unless a vacancy on the board occurs sooner for those whose terms expire April 13, 1983, or thereafter. On or after that date or event, and no later than the time the appointments are to be made on or after April 13, 1983, the governor shall implement Subsection (c) of Section 2.05 of the Medical Practice Act.

"(c) All licenses which were procured legally and issued legally by the board are hereby validated and subject to no retroactive action.

"(d) All statutory references to physicians or persons licensed to practice medicine as defined by Article 4510, Revised Civil Statutes of Texas, 1925, shall be construed to have reference to this Act.

"(e) All rules and regulations adopted and promulgated by the board shall be continued until amended or repealed. The rules and regulations that are in force on the effective date of this Act are validated and are repealed only to the extent of any conflict.

"(f) Proceedings to deny an application for license or other authorization to practice medicine, cancel, revoke, suspend, or limit a license, or otherwise discipline a licensee do not abate by reason of the passage of this Act.

"(g) Where applicable, the definitions in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), apply to the Medical Practice Act.

"(h) The district review committees created and established pursuant to Subchapter C of the Medical Liability and Insurance Improvement Act of Texas are hereby continued and recreated under the jurisdiction of the board. The number of and geographic area composed of various counties designated by the board on the effective date of this Act are hereby validated. A person holding office as a member of a district review committee on the effective date of this Act continues to hold office for the term for which the person was originally appointed or until a successor shall be appointed and qualified. Thereafter, at the expiration of the term of each member appointed, a successor shall be appointed. The terms of office of all succeeding members expire January 15 of even-numbered years."

Former art. 4495a, relating to application of the Sunset Act, was added by Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.049.

See, now, art. 4495b, §§ 2.01 et seq., 5.10.

Art. 4495b. Medical Practice Act

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1.01. This Act may be cited as the Medical Practice Act.

Findings and Purposes

Sec. 1.02. The legislature makes the following declarations:

(1) the practice of medicine is a privilege and not a natural right of individuals and as a matter of policy it is considered necessary to protect the public interest through the specific formulation of this Act to regulate the granting of that privilege and its subsequent use and control;

(2) the Texas State Board of Medical Examiners should remain the primary means of licensing, regulating, and disciplining the individual physicians and surgeons who are licensed to practice medicine;

(3) the current system relating to licensing physicians and surgeons is basically a sound, workable system and should be continued;

(4) the separate laws regulating the practice of medicine should be brought together under one Act; this Act is not intended to make substantive changes or alter prior judicial interpretation unless the subject matter in this Act is substantively changed or new matter is expressly added or old matter expressly deleted;

(5) this Act is to continue the Texas State Board of Medical Examiners, previously established under the laws of this state, as an independent agency of the executive branch of government;

(6) the acts that created the Texas State Board of Medical Examiners and that regulate the practice of medicine and related subjects have been enacted as separate articles of the Revised Civil Statutes of Texas, 1925, as amended; this Act is to comply with the Texas Sunset Act and to modernize and make the laws relating to the practice of medicine more accessible and understanda-

ble in such a manner as to make no substantive changes in prior laws or interpretation of those laws unless expressly so done by this Act;

(7) consistent with the objectives of the above, one purpose of this Act is to make the laws regulating physicians and surgeons more accessible and understandable by:

(A) rearranging those laws into a more logical order;

(B) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(C) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions;

(D) bringing together in one Act multiple articles; and

(E) restating the law in more modern language where possible;

(8) the individual physician should be given the greatest opportunity to exercise his best independent professional judgment in deciding what medical acts can be safely delegated; therefore, rules of the board regulating delegation should have the purpose of promoting such exercise of professional judgment and decision by not containing, except as absolutely necessary, global prohibitions or restrictions on delegation of medical acts; and

(9) recognizing that state agencies and political subdivisions which own or operate hospitals, facilities, or institutions or administer programs are responsible for determining medical staff appointments or the qualifications of physicians for such programs, and further recognizing that all persons licensed under this Act have met certain basic educational requirements, been examined by the board, and passed the same qualifying examination which applies the same standards to all who desire to practice medicine, irrespective of academic medical degree, it is the intent of the legislature to prohibit differentiation solely on the basis of the academic medical degree held by a person licensed under this Act in determining such medical staff appointments or such qualifications. To this end such state agencies or political subdivisions shall not differentiate solely on the basis of the academic medical degree held by a person licensed under this Act. State agencies or political subdivisions which own or operate hospitals, facilities, or institutions shall, however, be free to adopt reasonable rules, regulations, and requirements relating to qualifications for medical staff appointments, reappointments, termination of appointments, the delineation of clinical privileges, or the curtailment of clinical privileges of those who are appointed to such medical staff or permitted to participate in educational programs so long as such rules, regulations, and requirements are determined upon a reasonable basis, such as professional and ethical qualifications of the physician, upon standards that are reasonable, applied untainted by irrelevant considerations, supported by sufficient evidence, free of arbitrariness, capriciousness, or unreasonableness and which do not differentiate solely upon the academic medical degree held by such physician. The provisions contained herein relating to the academic medical degree shall not be applicable to any medical school or college or any programs of a medical school or college.

Definitions

Sec. 1.03. In this Act:

(1) "Administrative Procedure Act" means the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(2) "Board" means the Texas State Board of Medical Examiners.

(3) "Medical peer review committee" means a committee of a state or local professional medical society, the governing board of a licensed hospital in this state or of a medical staff of a licensed hospital, nursing home, or other health-care facility, provided the committee or medical staff operates pursuant to written bylaws that have been approved by the policy-making body or the governing board of the society, hospital, nursing home, or other health-care facility, or other organization of physicians formed pursuant to state or federal law and authorized to evaluate medical and health-care services.

(4) "Open Meetings Law" means Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252–17, Vernon's Texas Civil Statutes).

(5) "Open Records Law" means Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252–17a, Vernon's Texas Civil Statutes).

(6) "Person" means an individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(7) "Physician" and "surgeon" shall be construed as synonymous, and the terms "practitioners," "practitioners of medicine," and "practice of medicine," as used in this Act, shall be construed to refer to and include physicians and surgeons.

(8) "Practicing medicine." A person shall be considered to be practicing medicine within this Act:

(A) who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or to effect cures thereof; or

(B) who shall diagnose, treat, or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation.

(9) "State" means any state, territory, or insular possession of the United States and the District of Columbia.

(10) "Texas Sunset Act" means Chapter 735, Acts of the 65th Legislature, Regular Session, 1977 (Article 5429k, Vernon's Texas Civil Statutes).

(11) Any term, word, word of art, or phrase that is used in this Act and not otherwise defined in this Act has the meaning as is consistent with the common law.

SUBCHAPTER B. BOARD OF MEDICAL EXAMINERS

Board

Sec. 2.01. There is continued and recreated as an independent administrative agency of the executive branch of government the Texas State Board of Medical Examiners with powers to regulate the practice of medicine and with other duties as shall be assigned to the board.

Members, Terms

Sec. 2.02. The board is composed of 15 members whose terms of office are six years or until a successor is appointed and qualified. Terms of office shall be staggered so that five terms expire biennially.

Appointment to Board

Sec. 2.03. Members of the board shall be appointed by the governor and confirmed by the senate. Any vacancy on the board shall be filled by appointment of the governor. Any appointment made shall be without regard to race, creed, sex, religion, age, or national origin, except that a person younger than 18 years of age is not eligible for appointment.

Removal from Office

Sec. 2.04. (a) It is a ground for removal from the board if, during a member's service on the board, the member fails to meet the qualifications set forth in this Act for members of the board. The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(b) Each member of the board shall be present for at least one-half of the regularly scheduled board meetings held each year. Failure of a board member to meet this requirement is grounds for removal of the member from the board and the removal creates a vacancy on the board.

Qualifications of Board Members

Sec. 2.05. (a) Board members shall be residents of Texas.

(b) Nine members of the board must:

(1) be learned and eminent physicians licensed to practice medicine within this state for at least three years prior to appointment and be graduates of a reputable medical school or college with a degree of doctor of medicine (M.D.); and

(2) have been actively engaged in the practice of medicine for at least five years immediately preceding their appointment.

(c) Three members of the board must:

(1) be learned and eminent physicians licensed to practice medicine within this state for at least three years prior to appointment and be graduates of a reputable medical school or college with a degree of doctor of osteopathic medicine (D.O.); and

(2) have been actively engaged in the practice of medicine for at least five years immediately preceding their appointment.

(d) Three members of the board must be public representatives who are not licensed to practice medicine, who are not financially involved in any organization subject to the regulation of the board, and who are not providers of health care. "Provider of health care" means:

(1) an individual who is a direct provider of health care (including but not limited to a dentist, registered nurse, licensed vocational nurse, chiropractor, podiatrist, physician assistant, psychologist, athletic trainer, physical therapist, social psychotherapist, pharmacist, optometrist, hospital administrator, or nursing home administrator) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including but not limited to hospitals, long-term care facilities, out-patient facilities, and health maintenance organizations) in which such care is provided and, when required by law or otherwise, the individual has received professional or other training in the provision of such care or in such administration and is licensed or certified or holds himself out for such provision or administration;

(2) one who is an indirect provider of health care in that the individual holds a fiduciary position with or has a fiduciary interest in an entity described below in this subdivision; for purposes of this subdivision, a fiduciary position or interest as applied to any entity means a position or interest with respect to such entity affected with the character of a trust, including members of boards of directors and officers, majority shareholders, or agents, and receivers (either directly or through their spouses) of more than one-tenth of their annual income from any one or combination of fees or other compensation for research into or instruction in the provision of health-care entities (or associations or organizations composed of such entities) engaged (or comprised of individuals who are engaged) in the provision of health care or in the provision of health care and entities (or association or organizations composed of such entities engaged in producing drugs or other such articles);

(3) one who is a member of the immediate family of an individual described in this subsection; for purposes of this subsection "immediate family" as applied to any individual includes only his parents, spouse, children, brothers, and sisters who reside in the same household;

(4) one who is engaged in or employed by an entity issuing any policy or contract of individual or group health insurance or hospital or medical service benefits; or

(5) one who is employed by, on the board of directors of, or holds elective office by or under the authority of any unit of federal, state, or local government or any organization that receives a significant part of its funding from any such unit of federal, state, or local government.

(e) The public representatives must have been residents of Texas for at least five years immediately preceding their appointment.

(f) A person currently serving as president, vice-president, secretary, or treasurer of a statewide organization incorporated for the purpose of representing the entire profession licensed to practice medicine in the State of Texas or an employee of such an organization may not serve as a member of the board. In this subsection, such an organization includes any such organization representing the practice of osteopathic medicine.

(g) A person required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252–9c, Vernon's Texas Civil Statutes), by virtue of his activities on behalf of a trade or professional association in the regulated profession may not act as a member of the board.

(h) A person is ineligible for appointment to the board if, at the time of appointment, the person is a stockholder, paid full-time faculty member, or a member of the board of trustees of a medical school.

(i) All board members must take the official oath.

Compensation of Board Members

Sec. 2.06. Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. Preparing for a board meeting is not considered to be engaging in the business of the board. Any law passed by the 67th Session of the Legislature which conflicts with this section shall supersede.

Meetings of Board

Sec. 2.07. At the first meeting of the board after each biennial appointment, the board shall elect from its members a president, vice-president, secretary-treasurer, and other officers as are required, in the opinion of the board, to carry out its duties. Regular meetings shall be held at least twice a year at times and places as the board shall consider most convenient for applicants and board members. Special meetings may be held in accordance with rules adopted by the board.

Quorum, Voting

Sec. 2.08. A majority of the appointed members of the board shall constitute a quorum for all purposes, except for those activities of the board related to examining the credentials of applicants as outlined in Subsection (m) of Section 2.09 of this Act.

Powers and Duties of Board

Sec. 2.09. (a) The board shall have, in addition to other powers and duties contained in this Act, the powers and duties prescribed by this section. The board may make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act. The board may not establish a fee schedule for medical services.

(b) The board may act under its rules through an executive committee, or other committee, unless otherwise specified in this Act. The executive committee shall be the president, vice-president, and secretary-treasurer except where otherwise provided in this Act.

(c) The board may make rules and establish fees as are reasonable relating to the granting and extension of expiration dates of temporary licenses.

(d) The board shall preserve a record of its proceedings which shall be a public record. The board shall also maintain records showing the name, age, place, and duration of residence of each applicant, the time spent in medical study in respective medical schools, and the years and schools from which degrees were granted. The record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters contained in the record. A certified copy of those permanent records, with the hand and seal of the secretary-treasurer of the board, shall be admitted in evidence in all courts.

(e) The board shall employ, compensate, and provide administrators, clerks, employees, consultants, professionals, and other persons as may be found necessary, in its opinion, to carry out the provisions of this Act. The board shall be authorized and shall reimburse the above persons for actual and necessary expenses, including investigation expenses, travel, and other incidental expenses, incurred in the performance of official duties as determined by the board.

(f) An employee of the board may not be employed or paid any fee for services rendered by a statewide organization incorporated for the purpose of representing the entire profession licensed to

practice medicine in the State of Texas or related within the second degree by affinity or within the third degree by consanguinity to a person who is employed or paid any fee for services rendered by such an organization. In this subsection, such an organization includes any such organization representing the practice of osteopathic medicine.

(g) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252–9c, Vernon's Texas Civil Statutes), may not act as the general counsel of the board.

(h) The board may receive criminal records or reports from any law enforcement agency or source pertaining to its licensees or any applicant for license. The board shall submit to the Department of Public Safety a complete set of fingerprints of every applicant for a license, and the Department of Public Safety shall cause them to be classified and checked against those in their fingerprint files and shall forthwith certify their findings concerning the criminal record of the applicant or shall report the lack of a criminal record, as the case may be, to the board. All criminal records and reports received from the Department of Public Safety shall be for the exclusive use of the board and shall be privileged and shall not be released or otherwise disclosed to any person or agency by the board except on court order. Any applicant for licensure or any licensee whose license is subject to revocation, cancellation, or suspension because of adverse information contained in the criminal records or reports shall be afforded the opportunity for a hearing before the board prior to any action on the application for license or revocation, cancellation, or suspension of license.

(i) The board shall have the power to appoint committees from its own membership and to make rules and regulations not inconsistent with this Act as may be necessary for the performance of its duties. The duties of any of the committees appointed from the board membership shall be to consider matters pertaining to the enforcement of this Act and the regulations promulgated in accordance with this Act as shall be referred to the committees, and they shall make recommendations to the board with respect to those matters. The board shall have the power, and may delegate that power to any committee, to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses, the production of books, records, and documents, to administer oaths, and to take testimony concerning all matters within its jurisdiction. There shall be appointed not less than one member of the board who meets the qualifications of Subsection (c) of Section 2.05 of this Act, and one member of the board who meets the qualifications of Subsection (d) of Section 2.05 of this Act, on all committees of the board. Should a member appointed to a committee as provided for in this subsection decline to accept or not be qualified under this Act to serve on the committee the position on the committee may be filled from any other member of the board regardless of qualification. In the event a member of the board who meets the qualifications of Subsection (c) or (d) of Section 2.05 of this Act is not elected to an office which would make the member a member of the executive committee of the board as provided for in this Act, then the board shall cause to be appointed additional members of that committee so that at least one member serves on the committee who meets the qualifications of Subsection (c) of Section 2.05 of this Act and at least one member serves on the committee who meets the qualifications of Subsection (d) of Section 2.05 of this Act.

(j) The board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. The action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law.

(k) The board shall establish by rule a reasonable charge for those fees not specifically determined but authorized by this Act. The board may not waive collection of any fee or penalty. The board shall place all fees received under authority of this Act, not otherwise specified, into the medical licensing fund. The board is authorized and shall by annual budget determine the manner of handling the funds and the purpose, consistent with this Act, for which the same may be used. The budgeted expenses authorized by the board shall not be a charge upon the general revenue of the state nor paid from the general revenue.

(*l*) The board shall be represented in court proceedings by the attorney general. The board shall assist the local prosecuting officers of any county in the enforcement of all laws of the state prohibiting the unlawful practice of medicine, this Act, and other matters; provided that all of the prosecutions shall, unless otherwise provided, be subject to the direction and control of the regularly and duly constituted prosecuting officers, and nothing in this Act shall be construed as depriving them of any authority vested in them by law.

(m) When the board is required to examine the academic and professional credentials of an applicant for licensure or to examine the applicant orally or in writing, a public member appointed to the board may not participate in the preparation of the examination process. However, the public members shall be given notice of and may be present at all of the examination processes and deliberation concerning the results thereof and may participate in the development and establishment of the procedures and criteria for such examination process.

(n) The board is subject to the Administrative Procedure Act except as provided otherwise by this Act, and in such event this Act will control.

(*o*) The board is subject to the Open Meetings Law and Open Records Law except as provided by this Act, and in such event this Act will control.

(p) The board shall disseminate at least twice a year and at other times determined necessary by the board to all licensed physicians who are practicing in the State of Texas and, upon request, to the general public information as is of significant interest to the physicians in Texas, including board activities and functions, pertinent changes in this Act or board rules and regulations, and attorney general opinions.

(q) The board shall prepare the following:

(1) an alphabetical listing of the names of the licensees;

(2) an alphabetical listing of the names of the licensees by the county in which the licensee's principal place of practice is located;

(3) a summary of the board's functions;

(4) a copy of this Act and a listing of other laws relating to the practice of medicine;

(5) a copy of the board's rules; and

(6) other information considered appropriate by the board.

(r) The board on request shall distribute a copy of information prepared under Subsection (q) of this section to the requesting person. The board shall distribute on request copies of the information to the public libraries in this state.

(s) The board shall prepare information of consumer interest describing the regulatory functions of the board and describing the board's procedures by which consumer complaints are filed with and resolved by the board. The board on request shall make the information available to the general public and appropriate state agencies.

(t) The board shall on request of a licensee issue certification on endorsement of its license to other states and charge a reasonable fee for the issuance.

(u) The board shall cause to be developed an intraagency career ladder program, one part of which shall be the intraagency posting of each job opening with the board in a nonentry-level position. The intraagency posting shall be made at least 10 days before any public posting.

(v) The board shall cause to be developed a system of annual performance evaluations of the board's employees based on measurable job tasks. Any merit pay authorized by the board must be based on the system established under this subsection.

SUBCHAPTER C. LICENSURE

Registration of Practitioners and Interns

Sec. 3.01. (a) All persons now lawfully qualified to practice medicine in this state, or who are hereafter licensed for the practice of medicine by the board, shall be registered as practitioners with the board on or before the first day of January and thereafter shall register in like manner annually, on or before the first day of January of each succeeding year. Each person so registered with the board shall pay, in connection with each annual registration and for the receipt hereinafter provided for, a fee established by the board which fee shall accompany the application of each person for registration. The payment shall be made to the board. Every person so registered shall file with the board a written application for annual registration, setting forth his name and mailing address, the place or places where the applicant is engaged in the practice of medicine, and other necessary information prescribed by the board.

(b) Any person desiring to serve in this state as an intern, resident, or fellow in graduate medical education programs herein described who is not otherwise licensed by the board shall register with the board within 30 days after beginning service as an intern, resident, or fellow, and annually thereafter, and shall pay the fee as the board may determine to be reasonable. Upon registration, a permit shall be issued annually to the interns, residents, and fellows participating in graduate medical education programs at hospitals and other medical institutions approved by the board on request of the hospitals or medical institutions as provided by rules of the board. The fees shall be deposited in the medical registration fund. Registration as an intern, resident, or fellow does not authorize the performance of medical acts except as the acts are performed as a part of graduate medical education programs and under the supervision of a licensed practitioner of medicine.

(c) Failure of any licensee to pay the annual license renewal fee on or before the 90th day after the date it is due automatically cancels his licensure. Any licensee whose license has been canceled because of failure to pay the annual license renewal fee may secure reinstatement of his license at any time within that license year upon payment of the delinquent fee together with a penalty in an amount as the board may determine to be reasonable. After expiration of the license year for which the license fee was not paid, no license shall be reinstated except upon application and satisfaction of other conditions as the board may establish and payment of delinquent fees and a penalty to be assessed by the board.

(d) Practicing medicine as defined in this Act without an annual registration receipt for the current year as provided in this Act has the same force and effect as and is subject to all penalties of practicing medicine without a license.

(e) On receipt of an application, accompanied by the proper registration fee, the board, after ascertaining, either from the records of the board or from other sources considered by it to be reliable, that the applicant is a licensed practitioner of medicine in this state, shall issue to the applicant an annual registration receipt certifying that the applicant has filed the application and has paid the registration fee for the year in question. The filing of the application, the payment of the registration fee, and the issuance of the receipt shall not entitle the

holder to practice medicine in Texas unless he has in fact been previously licensed as a practitioner by the board, as prescribed by law, and unless the license to practice medicine is in full force and effect. In any prosecution for the unlawful practice of medicine the receipt showing payment of the annual registration fee required by this Act may not be treated as evidence that the holder is lawfully entitled to practice medicine.

(f) In performing its duties as provided in this Act, the board may act through the secretary-treasurer of the board. The secretary-treasurer is entitled to a salary to be fixed by the legislature in its General Appropriations Act for the performance of duties under this Act. The secretary-treasurer of the board shall file a surety bond with the board. The bond shall be in an amount not less that $10,000, be in compliance with the insurance laws of the state, and be payable to the state for the use of the state if the secretary-treasurer does not faithfully discharge the duties of the office. The board shall pay the premium on the bond. The salary shall be paid out of said medical registration fund and shall not be in any way a charge upon the general revenue of the state.

(g) The annual registration fee shall apply to all persons licensed by the board, whether or not they are practicing within the borders of this state.

(h) The secretary-treasurer shall determine the eligibility of each applicant for licensure by examination or reciprocity and shall recommend to the board all applicants eligible for licensure. If the secretary-treasurer cannot determine the eligibility of an applicant, then a committee of the board shall determine eligibility of the applicant. If the committee of the board cannot determine the eligibility of an applicant, then the board shall determine eligibility of the applicant. If a physician's application is denied by the secretary-treasurer, the applicant may request within 20 days of receipt of denial that a committee of the board determine his eligibility. If a physician's application is denied by the committee of the board, then the applicant may request within 20 days of denial a hearing to appeal the committee's decision. The board shall decide at the next regular board meeting the final administrative decision as to licensure. This hearing is not a contested case under the Administrative Procedure Act, but the applicant is entitled to legal counsel of his choice and may appeal the decision of the board to a district court under Section 19 of the Administrative Procedure Act. The denied applicant is entitled to know in writing why he was denied, but all reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Open Records Law.

(i) The board must notify each delinquent licensee of his impending license cancellation by registered or certified mail sent to the licensee's address listed with the board not less than 30 days prior to the cancellation.

Renewals

Sec. 3.02. (a) On application on forms provided by the board for this purpose and receipt of renewal fees, licenses shall be renewed annually by the board.

(b) The board by rule may adopt a system under which registrations expire on various dates during the year. The date for license cancellation due to nonpayment shall be adjusted accordingly. For the year in which the expiration date is changed, registration fees payable on or before January 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration fee is payable.

Reciprocal Agreements

Sec. 3.03. (a) The board, at its sole discretion and upon payment by an applicant of a fee prescribed by the board under this Act, may grant a license to practice medicine to any reputable physician who is a graduate of a reputable medical college and who:

(1) is a licensee of another state or Canadian province having requirements for physician registration and practice substantially equivalent to those established by the laws of this state; or

(2) is qualified by an examination for a certificate to practice medicine under a commission in the uniformed services of the United States.

(b) An application for a license under this section must be in writing and upon a form prescribed by the board. The application must be accompanied by:

(1) a diploma or photograph of a diploma awarded to the applicant by a reputable medical college and a certified transcript or a certificate, license, or commission issued to the applicant by the Medical Corps of the uniformed services of the United States;

(2) a license or a certified copy of a license to practice medicine lawfully issued to the applicant, on examination, by some other state or a Canadian province that requires in its examination the same general degree of fitness required by this state and that grants the same reciprocal privileges to persons licensed by the board; or

(3) a certification made by an executive officer of the uniformed services of the United States, the president or secretary of the board that issued the license, or a duly constituted registration office of the state or Canadian province that issued the certificate or license, reciting that the accompanying certificate or license has not been canceled, suspended, or revoked except by honorable discharge from the Medical Corps of the uniformed services of the United States and reciting that the statement of the qualifications made in the appli-

cation for medical license in Texas is true and correct.

(c) Applicants for a license under this section must subscribe to an oath in writing before an officer authorized by law to administer oaths. The written oath must be a part of the application. The application must state that:

(1) the license, certificate, or authority under which the applicant practiced medicine in the state or Canadian province from which the applicant is removed or in the uniformed service in which the applicant served was at the time of the removal or completion of service in full force and not canceled, suspended, or revoked;

(2) the applicant is the identical person to whom the certificate, license, or commission and the diploma were issued;

(3) no proceeding has been instituted against the applicant for the cancellation, suspension, or revocation of the certificate, license, or authority to practice medicine in the state, Canadian province, or uniformed service of the United States in which it was issued; and

(4) no prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony.

(d) A "reputable physician" means one who would be eligible for examination by the board. A "reputable medical school or college" means a medical school or college that was approved by the board at the time the applicant's degree was conferred.

(e) In addition to other licensure requirements, the board may require by rule and regulation that graduates of medical schools located outside of the United States and Canada, or the schools themselves, provide additional information to the board concerning the medical school attended prior to approval.

(f) The board may refuse to issue a license to an applicant who graduated from a medical school outside of the United States and Canada if it finds that the applicant does not possess the requisite qualifications to provide the same standard of medical care as provided by a licensed physician in this state.

(g) In addition to the requirements prescribed by this section, the board may require applicants to comply with other requirements that the board considers appropriate.

Qualification of Licensee

Sec. 3.04. (a) An applicant, to be eligible for the examination, must present satisfactory proof to the board that the applicant:

(1) is at least 21 years of age;

(2) is of good professional character;

(3) has completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas for credit on a bachelor of arts degree or a bachelor of science degree; and

(4) is a graduate of a medical school or college that was approved by the board at the time the degree was conferred.

(b) Applications for examination must be made in writing, verified by affidavit, filed with the board on forms prescribed by the board, and accompanied by a fee as the board determines to be reasonable.

Examination

Sec. 3.05. (a) All examinations for license to practice medicine shall be conducted in writing in the English language and in a manner as to be entirely fair and impartial to all individuals and to every school or system of medicine. All applicants shall be known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the board may be able to identify the applicants or examinees, until after the general averages of the examinees' numbers in the class have been determined and license granted or refused. Examinations shall be conducted on and cover those subjects generally taught by medical schools, a knowledge of which is commonly and generally required of candidates for the degree of doctor of medicine or doctor of osteopathy conferred by schools or colleges of medicine approved by the board, and the examinations shall also be conducted on and cover the subject of medical jurisprudence. On satisfactory examination conducted as required by this Act under rules of the board, applicants shall be granted licenses to practice medicine. All questions and answers, with the grades attached, shall be preserved for one year in the executive office of the board or such other repository as the board by rule may direct. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the board. The board in its discretion may give the examination for license in two parts.

(b) In addition to the requirements prescribed by this Act, the board may require applicants to comply with other requirements that the board considers appropriate and establish reasonable fees for examination.

(c) All applicants for license to practice medicine in this state not otherwise licensed under the provisions of law must successfully pass an examination by the board. The board is authorized to adopt and enforce all rules of procedure not inconsistent with statutory requirements. All applicants shall be given due notice of the date and place of the examination; provided that the partial examinations provided for in this Act shall not be disturbed by this section. If any applicant, because of failure to pass the required examination, is refused a license, the applicant, at a time as the board may fix, shall be permitted to take a subsequent examination upon any subjects required in the original examination as the board may prescribe on the payment of a fee as the board may determine to be reasonable. In the event satisfactory grades shall be made on the sub-

jects prescribed and taken on the reexamination, the board may grant the applicant a license to practice medicine. The board shall determine the credit to be given examinees on answers turned in on the subjects of complete and partial examination, and its decision is final.

(d) Examination questions that may be used in the future, examinations other than the one taken by the person requesting it, and deliberations and records relating to the professional character and fitness of applicants are exempted from the Open Meetings Law and the Open Records Law. The records, however, shall be disclosed to individual applicants upon written request, unless the person supplying the information to the board requests that it not be disclosed.

(e) Within 30 days after the day on which an examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within four weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination, the board shall notify the examinee of the reason for the delay before the 90th day.

(f) If requested in writing by a person who fails the examination administered under this Act, the board shall furnish the person with a summarized analysis of the person's performance on the examination consisting of the person's score on each portion of the examination.

Construction

Sec. 3.06. (a) Nothing in this Act shall be construed so as to discriminate against a school or system of medical practice or to affect or limit in any way the application or use of the principles, tenets, or teachings of any church in the ministration to the sick or suffering by prayer or pastoral counseling without the use of any drug or material substance represented as being medically effective.

(b) This Act does not apply to:

(1) dentists, duly qualified and registered under the laws of this state who confine their practice strictly to dentistry;

(2) duly licensed optometrists who confine their practice strictly to optometry as defined by law;

(3) duly licensed chiropractors who confine their practice strictly to chiropractic as defined by law;

(4) registered or professional nurses and licensed vocational nurses registered or licensed under the laws of this state who confine their practice strictly within the provisions of such applicable licensing Acts and the laws of this state;

(5) duly licensed podiatrists who confine their practice strictly to podiatry as defined by law;

(6) duly licensed or certified psychologists who confine their activities or practice strictly to psychology as defined by law;

(7) duly licensed physical therapists who confine their activities or practice strictly to physical therapy and who are not in violation of any law relating to physical therapy practice;

(8) commissioned or contract surgeons of the uniformed services of the United States or in the Public Health Service in the performance of their duties and not engaged in private practice;

(9) any person furnishing medical assistance in case of an emergency or disaster situation if no charge is made for the medical assistance;

(10) a student in training in a medical school approved by the board while performing the duties assigned in the course of training, providing the duties are performed under the supervision of a licensed practitioner, except that medical residents, interns, and fellows shall be required to register and be subject to the other applicable provisions of this Act;

(11) legally qualified physicians of other states called in consultation but who have no office in Texas and who appoint no place in this state for seeing, examining, or treating patients; or

(12) any other activities that the board may designate as exempt from the application of this Act.

(c) Nothing in this Act shall be construed to prohibit any person from providing nutritional advice or giving advice concerning proper nutrition. However, this subsection confers no authority to practice medicine or surgery or to undertake the prevention, treatment, or cure of disease, pain, injury, deformity, or physical or mental conditions or to state that any product might cure any disease, disorder, or condition in violation of any provision of law. In this subsection, the terms "providing nutritional advice" and "giving advice concerning proper nutrition" mean the giving of information as to the use and role of food and food ingredients, including dietary supplements.

(d) This Act shall be so construed that:

(1) a person licensed to practice medicine shall have the authority to delegate to any qualified and properly trained person or persons acting under the physician's supervision any medical act which a reasonable and prudent physician would find is within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed by the person to whom the medical act is delegated and the act is performed in its customary manner, not in violation of any other statute, and the person does not hold himself out to the public as being authorized to practice medicine. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts. The board

may determine whether or not an act constitutes the practice of medicine, not inconsistent with this Act, and may determine whether any medical act may or may not be properly or safely delegated by physicians;

(2) a person licensed to practice medicine is authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing, in the physician's office, dangerous drugs, as ordered by the physician which are used or required to meet the immediate needs of the physician's patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The administration or provision of dangerous drugs shall be in compliance with laws relating to the practice of medicine and Texas and federal laws relating to the dangerous drugs. This subdivision does not permit the physician or person or persons acting under the supervision of the physician to keep a pharmacy, advertised or otherwise, for the retailing of the dangerous drugs without complying with the applicable laws relating to the dangerous drugs;

(3) a person licensed to practice medicine shall be authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing dangerous drugs, if the provision is provided through a facility licensed by the State Board of Pharmacy pursuant to applicable law, as ordered by the physician, which are used or required to meet the immediate needs of the physician's patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, Texas or federal drug laws, and rules that may be properly issued by the State Board of Pharmacy. The administration shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, and Texas or federal drug laws. This subdivision does not permit the physician or person or persons acting under the supervision of the physician to keep a pharmacy, advertised or otherwise, for the retailing of the dangerous drugs without complying with the applicable laws relating to the retailing of dangerous drugs. In this subdivision and in Subdivision (2) of this subsection, "administering" means the direct application of a drug by injection, inhalation, ingestion, or any other means to the body of the physician's patient; "provision" means to supply one or more unit doses of a drug, medicine, or dangerous drug. The drug or medicine shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws. However, a qualified and trained person or persons, acting under the supervision of a physician, may be permitted to specify at the time of the provision the inclusion of the date of provision and the patient's name and address;

(4) in the provision of services and the administration of therapy by public health departments, as officially prescribed by the Texas Department of Health for the prevention or treatment of specific communicable diseases or health conditions for which the Texas Department of Health is responsible for control under state law, a person licensed to practice medicine shall be authorized and shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing dangerous drugs, as ordered by the physician that are used or required to meet the needs of the patients. The administration or provision, as ordered by a physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as the orders are defined by the board. The provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of pharmacy, and laws relating to the practice of professional nursing. The orders may not be inconsistent with this Act and may not be used for the performance of acts and duties that require the exercise of independent medical judgment. In this subdivision, "administering" means the direct application of a drug by injection, inhalation, ingestion, or any other means to the body of the patient; "provision" means to supply one or more unit doses of a drug, medicine, or dangerous drug. The drug or medicine shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws. However, a qualified and trained person or persons, acting under the supervision of a physician, may be permitted to specify at the time of the provision the inclusion of the date of provision and the patient's name and address.

(5)(A) A duly licensed and qualified optometrist may administer topical ocular pharmaceutical agents in the practice of optometry as provided by this subdivision. These pharmaceutical agents may not be used for therapeutic purposes.

(B) To be entitled to use topical ocular pharmaceutical agents in the practice of optometry,

an optometrist must possess a valid standing delegation order that:

(i) is issued to the optometrist by an area physician licensed to practice medicine in this state; and

(ii) authorizes the use of the pharmaceutical agents authorized by this subdivision.

(C) On request, an optometrist will be issued a standing delegation order described by Paragraph (B) of this subdivision unless the physician acting as a reasonable and prudent physician determines that denial is within the scope of sound medical judgment as it pertains to optometry, or that it is not in the public interest, and the basis for denial shall be given to the requesting optometrist in writing if requested. It is necessary that the physician have knowledge of the requesting optometrist, and if not, then same shall be good cause for denial.

(D) A standing delegation order issued under this subdivision or a representation of the order will be prominently displayed in the office of the optometrist. The board will prescribe the form of the standing delegation order and the certificate or representation of the order. The standing delegation order, as a minimum, will:

(i) be in writing, dated and signed by the physician;

(ii) specify the available topical ocular pharmaceutical agents, including but not limited to topical anesthetics and dilating agents, to be administered in the office; and

(iii) specify that said agents shall not be used for therapeutic purposes.

(E) On the complaint of any person or on its own initiative, the board of medical examiners may cancel a standing delegation order issued under this section if it determines that the optometrist possessing the order has violated the standing delegation order or this section.

(F) Except as provided by Paragraph (E) of this subdivision, a standing delegation order issued under this subdivision remains valid as long as:

(i) the physician who issued the order is a resident of this state and is licensed to practice medicine in this state;

(ii) no irregularities are found on annual review; and

(iii) the order is not canceled for good cause by either party.

(G) A physician who has issued a standing delegation order in compliance with this subdivision is immune from liability in connection with acts performed pursuant to the standing delegation order so long as he has used prudent judgment in the issuance or the continuance of the standing delegation order.

(H) Nothing herein is intended to limit or expand the practice of optometry as defined by law.

(6) Authority to delegate medical acts to properly qualified persons as provided in this section is recognized as applicable to emergency care rendered by emergency medical personnel certified by the Texas Department of Health.

(e) Nothing in this Act shall be construed to prohibit or discourage any person from providing or seeking advice or information pertaining to that person's own self-treatment or self-care, nor shall any portion of this Act be construed to prohibit the dissemination of information pertaining to self-care. However, this subsection confers no authority to practice medicine.

Unlawful and Prohibited Practices; Penalties

Sec. 3.07. (a) A person practicing medicine in violation of this Act commits an offense. Except as provided by this section, an offense under this section is a Class A misdemeanor. If it be shown in the trial of a violation of this Act that the person has once before been convicted of a violation of this Act, on conviction the person shall be punished for a third degree felony. Each day of violation constitutes a separate offense. On final conviction of an offense under this section, a person forfeits all rights and privileges conferred by virtue of his licensure under this Act.

(b) Whoever makes any false statement in his application for examination or licensure by the board or who makes any false statement under oath to obtain a license or to secure the registration of a license to practice medicine shall be guilty of tampering with a government record or perjury under the penal code and punished on conviction accordingly.

(c) A physician or surgeon may not employ or agree to employ, pay or promise to pay, or reward or promise to reward any person, firm, association of persons, partnership, or corporation for securing, soliciting, or drumming patients or patronage. A physician or surgeon may not accept or agree to accept any payment, fee, reward, or anything of value for securing, soliciting, or drumming for patients or patronage for any physician or surgeon. Whoever violates any provision of this section commits a Class A misdemeanor. Each payment, reward, or fee or agreement to pay or accept a reward or fee is a separate offense. The preceding shall not be construed to prohibit advertising except that which is false, misleading, or deceptive or that which advertises professional superiority or the performance of professional service in a superior manner and that is not readily subject to verification.

(d) Any person who is required to register annually to practice medicine in this state and who fails or refuses to apply for and pay the annual registration fee as provided for in this Act and who practices

medicine is an illegal practitioner and shall, on conviction, be punished in the same manner as for the offense of practicing medicine without a license.

(e) It shall be unlawful for any individual, partnership, trust, association, or corporation by the use of any letters, words, or terms as an affix on stationery or on advertisements, or in any other manner, to indicate that the individual, partnership, trust, association, or corporation is entitled to practice medicine if the individual or entity is not licensed to do so.

(f) It shall be unlawful for any person to do any act described in Subdivision (1), (8), (9), (10), (11), (12), (13), or (15) of Section 3.08 of this Act.

(g) A violation of this Act or a rule or regulation of the board for which a specific other penalty is not provided is a Class A misdemeanor.

(h) If any person licensed to practice medicine has had any charges filed against him when his license was not in force or was suspended, revoked, or canceled, or if any penalties have been incurred by the practitioner during that period, any reinstatement of the license in no way abates the prosecution or penalties.

(i) A person to whom a physician has delegated a medical act to perform is not guilty of practicing medicine without a license unless the person acts with knowledge that the delegation and action thereunder is a violation of this Act.

Grounds for Refusal to Admit Persons to Examination and to Issue License and Renewal License

Sec. 3.08. The board may refuse to admit persons to its examinations and to issue a license to practice medicine to any person for any of the following reasons:

(1) submission of a false or misleading statement, document, or certificate to the board in an application for examination or licensure; the presentation to the board of any license, certificate, or diploma that was illegally or fraudulently obtained; the practice of fraud or deception in taking or passing an examination;

(2) conviction of a crime of the grade of a felony or a crime of a lesser degree that involves moral turpitude;

(3) intemperate use of alcohol or drugs that, in the opinion of the board, could endanger the lives of patients;

(4) unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public. Unprofessional or dishonorable conduct likely to deceive or defraud the public includes but is not limited to the following acts:

(A) committing any act that is in violation of the laws of the State of Texas if the act is connected with the physician's practice of medicine. A complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine is sufficient for action by the board under this section;

(B) failing to keep complete and accurate records of purchases and disposals of drugs listed in the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes), or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91–513).[1] A physician shall keep records of his purchases and disposals of these drugs to include without limitation the date of purchase, the sale or disposal of the drugs by the physician, the name and address of the person receiving the drugs, and the reason for the disposing or dispensing of the drugs to the person. A failure to keep the records for a reasonable time is grounds for revoking, canceling, suspending, or probating the license of any practitioner of medicine;

(C) writing prescriptions for or dispensing to a person known to be a habitual user of narcotic drugs, controlled substances, or dangerous drugs or to a person who the physician should have known was a habitual user of the narcotic drugs, controlled substances, or dangerous drugs. This provision does not apply to those persons being treated by the physician for their narcotic use after the physician notifies the board in writing of the name and address of the person being so treated;

(D) writing false or fictitious prescriptions for dangerous drugs as defined by Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476–14, Vernon's Texas Civil Statutes), of controlled substances scheduled in the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes), or of controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91–513);

(E) prescribing or administering a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed;

(F) prescribing, administering, or dispensing in a manner not consistent with public health and welfare dangerous drugs as defined by Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476–14, Vernon's Texas Civil Statutes), controlled substances scheduled in the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes), or controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91–513);

(G) persistently and flagrantly overcharging or overtreating patients;

(H) failing to supervise adequately the activities of those acting under the supervision of the physician; or

(I) delegating professional medical responsibility or acts to a person if the delegating physician knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts;

(5) violation or attempted violation, direct or indirect, of any valid rules issued under this Act, either as a principal, accessory, or accomplice;

(6) use of any advertising statement that is false, misleading, or deceptive;

(7) advertising professional superiority or the performance of professional service in a superior manner if the advertising is not readily subject to verification;

(8) purchase, sale, barter, or use or any offer to purchase, sell, barter, or use any medical degree, license, certificate, diploma, or transcript of license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9) altering, with fraudulent intent, any medical license, certificate, diploma, or transcript of a medical license, certificate, or diploma;

(10) using any medical license, certificate, diploma, or transcript of a medical license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(11) impersonating or acting as proxy for another in any examination required by this Act for a medical license;

(12) impersonating a licensed practitioner or permitting or allowing another to use his license or certificate to practice medicine in this state for the purpose of diagnosing, treating, or offering to treat sick, injured, or afflicted human beings;

(13) employing, directly or indirectly, any person whose license to practice medicine has been suspended or association in the practice of medicine with any person or persons whose license to practice medicine has been suspended or any person who has been convicted of the unlawful practice of medicine in Texas or elsewhere;

(14) performing or procuring a criminal abortion or aiding or abetting in the procuring of a criminal abortion or attempting to perform or procure a criminal abortion or attempting to aid or abet the performance or procurement of a criminal abortion;

(15) aiding or abetting, directly or indirectly, the practice of medicine by any person, partnership, association, or corporation not duly licensed to practice medicine by the board;

(16) inability to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this subdivision the board shall, upon probable cause, request a physician to submit to a mental or physical examination by physicians designated by the board. If the physician refuses to submit to the examination, the board shall issue an order requiring the physician to show cause why he should not be required to submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the physician. The physician shall be notified by either personal service or certified mail with return receipt requested. At the hearing, the physician and his attorney are entitled to present any testimony and other evidence to show why the physician should not be required to submit to the examination. After a complete hearing, the board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination. An appeal from the decision of the board shall be taken under the Administrative Procedure Act;

(17) judgment by a court of competent jurisdiction that a person licensed to practice medicine is of unsound mind;

(18) professional failure to practice medicine in an acceptable manner consistent with public health and welfare;

(19) being removed, suspended, or having disciplinary action taken by his peers in any professional medical association or society, whether the association or society is local, regional, state, or national in scope, or being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if that action in the opinion of the board was based on unprofessional conduct or professional incompetence that was likely to harm the public, provided that the board finds that the actions were appropriate and reasonably supported by evidence submitted to it. The action does not constitute state action on the part of the association, society, or hospital medical staff;

(20) repeated or recurring meritorious health-care liability claims that in the opinion of the board evidence professional incompetence likely to injure the public; or

(21) suspension, revocation, or restriction by another state of a license to practice medicine, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of the state taking the action is conclusive evidence of it.

[1] Generally, 21 U.S.C.A. § 801 et seq.

Loss or Destruction of License; Change of Name of Licensee; Duplicate License

Sec. 3.09. (a) If any license issued under this Act is lost or destroyed, the holder of the license may

present an application for a duplicate license to the board, on a form to be prescribed by the board, together with an affidavit of the loss or destruction, stating that the applicant is the same person to whom the license was issued, and other information concerning its loss or destruction as the board requires and shall, upon payment of a fee as the board may determine to be reasonable, be granted a duplicate license.

(b) The board may issue a new license if the licensee has changed his name.

Fees

Sec. 3.10. (a) All annual registration fees collected by the board shall be placed in the State Treasury to the credit of the medical registration fund. The fees deposited to this special fund shall be credited to the appropriations of the board and shall be expended only for items set out in the General Appropriations Act, this Act, or other applicable statutes, to be used by the board and under its direction in the enforcement of this Act, the prohibition of the unlawful practice of medicine, and the dissemination of information to prevent the violation of the laws and to aid in the prosecution of those who violate the laws. All distributions from the fund may be made only upon written approval of the secretary-treasurer of the board or his designated representative, and the comptroller shall upon requisition of the board from time to time draw warrants upon the State Treasurer for the amounts specified in the requisition.

(b) The board may not set, charge, collect, receive, or deposit any of the following fees in excess of:

(1) for processing and granting a license by reciprocity to a licensee of another state ----- $300

(2) for processing an application and administration of a partial examination for licensure ----- $250

(3) for processing an application and administration of a complete examination for licensure ----- $300

(4) for processing an application and issuance of a temporary license ----- $ 50

(5) for processing an application and issuance of a duplicate license ----- $ 50

(6) for processing an application and issuance of a license of reinstatement after a lapse or cancellation of a license ----- $150

(7) for processing an application and issuance of an annual registration of a licensee ----- $ 50

(8) for processing and issuance of an institutional permit for interns, residents, and others in approved medical training programs ----- $ 50

(9) for processing an application and issuance of an endorsement to other state medical boards ----- $ 50.

(c) The board may set and collect a sales charge for making copies of any paper of record in the office of the board and for any printed material published by the board. The charges shall be in amounts considered sufficient to reimburse the board for the actual expense.

(d) The State Auditor shall audit the financial transactions of the board during each fiscal year.

(e) On or before the first day of January each year, the board shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year.

SUBCHAPTER D. DISCIPLINARY ACTION

Grounds for Cancellation, Revocation, Suspension, and Probation of License

Sec. 4.01. Except for practitioners convicted of a felony under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), the board may cancel, revoke, or suspend the license of any practitioner of medicine or impose any other authorized means of discipline upon proof of the violation of this Act in any respect or for any cause for which the board is authorized to refuse to admit persons to its examination and to issue a license and renewal license. On proof that a practitioner of medicine has been initially convicted of a felony under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), the board shall suspend the practitioner's license. On the practitioner's final conviction for such a felony offense, the board shall revoke the practitioner's license.

Initiation of Charges

Sec. 4.02. Proceedings, unless otherwise specified, under this Act and charges against a licensee may be instituted by the board on its own initiative or by any person. Charges must be in writing and on sworn affidavit filed with the board detailing the nature of the charges. The president or his designee shall set a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served on the respondent or the respondent's counsel.

Notice

Sec. 4.03. (a) Service of process notifying the respondent of the time and place of a hearing and the nature of the charges against the person shall be made in person or by mail. Notice shall be sufficient if made in person or if sent by registered or certified mail to the person charged at the address shown in the board files or on his most recent application for registration or renewal, no later than 10 days before the hearing.

(b) If service of notice as prescribed by Subsection (a) of this section is impossible or cannot be effected, the board shall cause to be published once a week for two successive weeks a notice of the hearing in a newspaper published in the county of the last known place of practice in Texas of the person, if known. If the licensee is not currently practicing in Texas as evidenced by information in the board files, or if the last county of practice is unknown, publication shall be in a newspaper in Travis County. When publication of notice is used, the date of hearing may not be less than 10 days after the date of the last publication of notice.

Investigation

Sec. 4.04. All investigations shall be conducted by the board or persons authorized by the board to conduct them.

Hearings, Rules

Sec. 4.05. (a) All hearings conducted under this subchapter by the board shall comply with the provisions of the Administrative Procedure Act and the board's rules.

(b) The licensee shall have the right to produce witnesses or evidence on the person's behalf, to cross-examine witnesses, and to have subpoenas issued by the board.

(c) The board shall, after the hearing, determine the charges upon their merits.

(d) All complaints, adverse reports, and investigation files and reports received or gathered by the board relating to a licensee, an application for license, or a criminal investigation or proceedings are privileged. The board shall keep information on file about each complaint filed with the board, consistent with this Act. If a written complaint is filed with the board relating to a person licensed by the board, the board, at least as often as quarterly and until final determination of the action to be taken relative to the complaint, shall notify the complaining party consistent with this Act of the status of the complaint unless the notice would jeopardize an active investigation.

(e) The board in its discretion may accept the voluntary surrender of a license. No license may be returned unless the board determines, under rules established by it, that the licensee is competent to resume practice.

Right to Counsel

Sec. 4.06. In all hearings under this subchapter, the respondent shall have the right to appear either personally or by counsel or both.

Criminal Prosecutions Not Barred

Sec. 4.07. Nothing in this Act shall be construed to bar criminal prosecutions for violations of this Act or any regulation promulgated under this Act.

Status of Licensure Pending Appeal

Sec. 4.08. The decision of the board on any disciplinary matter may not be enjoined or stayed except on application to the appropriate court after notice to the board. A person may not practice medicine or deliver health-care services in violation of any disciplinary order or action of the board while the appeal is pending unless otherwise stayed by the district court in which venue of the appeal lies. A stay may not be granted if the licensee's continued practice presents any danger to the public.

Judicial Review

Sec. 4.09. (a) Any person whose license to practice medicine has been canceled, revoked, suspended, or otherwise disciplined by the board may, within 30 days after the decision complained of is final and appealable, take an appeal to any of the district courts in the licensee's county of residence, if the county of residence is at the time of the hearing in Texas. Otherwise, the appeal shall be taken to one of the district courts of Travis County.

(b) The proceedings on appeal shall be under the substantial evidence rule as provided for in the Administrative Procedure Act.

Petition for Reinstatement

Sec. 4.10. Upon application, the board may reissue a license to practice medicine to a person whose license has been canceled, revoked, or suspended, but the application, in the case of revocation, may not be made prior to one year after the revocation was issued or became final and must be made upon payment of the fees as established by the board and in the manner and form and under the conditions as the board may require. Further, the board may not reinstate or reissue a license to a person whose license has been canceled, revoked, or suspended because of a felony conviction under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been canceled, revoked, or suspended.

Probation

Sec. 4.11. (a) The board upon majority vote may provide that the order canceling, revoking, or suspending a license or imposing any other method of discipline be probated so long as the probationer conforms to the orders, conditions, and rules that the board may set out as the terms of probation. However, the board may not grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chap-

ter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), except on an express determination, based on substantial evidence, that the grant of probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled. The board, at the time of probation, shall set out the period of time that constitutes the probationary period.

(b) The board may at any time while the probationer remains on probation hold a hearing and, upon majority vote, rescind the probation and enforce the board's original action.

(c) The hearing to rescind the probation shall be governed by the same provisions as are set forth in this subchapter for other charges.

Methods of Discipline

Sec. 4.12. Except as otherwise provided in Section 4.01, if the board finds any person to have committed any of the acts set forth in Section 3.08 of this Act, it may enter an order imposing one or more of the following:

(1) deny the person's application for a license or other authorization to practice medicine;

(2) administer a public or private reprimand;

(3) suspend, limit, or restrict the person's license or other authorization to practice medicine, including limiting the practice of the person to or by the exclusion of one or more specified activities of medicine;

(4) revoke the person's license or other authorization to practice medicine;

(5) require the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for the initial, continued, or renewal of a license or other authorization to practice medicine;

(6) require the person to participate in a program of education or counseling prescribed by the board;

(7) require the person to practice under the direction of a physician designated by the board for a specified period of time; or

(8) require the person to perform public service considered appropriate by the board.

Temporary Suspension of License

Sec. 4.13. If the executive committee of the board determines from the evidence or information presented to it that a person licensed to practice medicine in this state by his continuation in practice would constitute an immediate danger to the public, the executive committee of the board may temporarily suspend the license of that person without notice or hearing on the complaint, provided institution of proceedings for a hearing before the board is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under the Administrative Procedure Act and this Act.

Report of Board Actions

Sec. 4.14. The board shall report within 30 days the restriction, suspension, or revocation of a physician's license or other disciplinary action by the board against a physician to the appropriate health facilities and hospitals, professional societies of physicians in this state, any entity responsible for the administration of Medicare and Medicaid in this state, and the complainant.

SUBCHAPTER E. OTHER PROVISIONS

Certification of Certain Organizations

Sec. 5.01. (a) The board shall, on a form adopted by the board and under the rules promulgated by the board, approve and certify any health organization formed solely by persons licensed by the board upon application by the organization and presentation of satisfactory proof to the board that the organization:

(1) is a nonprofit corporation under the provisions of the Texas Non-Profit Corporation Act (Article 1396–1.01, et seq., Vernon's Texas Civil Statutes);

(2) is organized for any or all of the following purposes: the carrying out of scientific research and research projects in the public interest in the fields of medical sciences, medical economics, public health, sociology, and related areas; the supporting of medical education in medical schools through grants and scholarships; the improving and developing of the capabilities of individuals and institutions studying, teaching, and practicing medicine; the delivery of health care to the public; and the engaging in the instruction of the general public in the area of medical science, public health, and hygiene and related instruction useful to the individual and beneficial to the community; and

(3) shall be organized and incorporated by persons licensed by the board and that the directors and trustees of the organization and their successors in office shall be persons licensed by the board and actively engaged in the practice of medicine.

(b) The board may, at its discretion, refuse to approve and certify any such health organization making application to the board if in the board's determination the applying nonprofit corporation is established or organized or operated in contravention to or with the intent to circumvent any of the provisions of this Act.

Supervision of Physician Assistants

Sec. 5.02. (a) The board by rule shall adopt standards to regulate the extent to which a physician licensed by the board may delegate his responsibilities as a physician to a physician assistant. The standards shall take into consideration:

(1) the skill of the physician assistant to whom the physician is to delegate the responsibility;

(2) the skill of the physician who is to delegate the responsibility;

(3) the nature of the responsibility delegated;

(4) the extent and nature of the supervision that the physician is to give to the physician assistant to whom the responsibility is delegated;

(5) the risks to the patient who is the subject of the delegated responsibility; and

(6) other factors considered relevant by the board.

(b) A physician licensed by the board shall comply with the standards adopted by the board as provided by this section.

(c)(1) The physician assistants advisory committee is established.

(2) The physician assistants advisory committee consists of not more than six physician assistants appointed by the board. A member of the advisory committee serves for a term of one year expiring on May 1 of each year.

(3) The advisory committee shall advise the board on matters relating to physician assistants. In order to assure that the advisory committee is able to exercise properly its advisory powers, the board shall provide the advisory committee with timely notice of all board meetings and a copy of the minutes of all board meetings. In addition, the board may not adopt any rule relating to the practice of physician assistants that is not an emergency matter unless the proposed rule has been submitted to the advisory committee for review and comment at least 30 days prior to the adoption of the rule.

District Review Committees

Sec. 5.03. (a) In this section:

(1) "Committee" means a district review committee created under Subchapter C [1] of the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes).

(2) "District" means the district established pursuant to the Medical Liability and Insurance Improvement Act of Texas.

(b) The number of and geographic area composed of various counties shall be designated by the board. The board, after a public hearing, may revise the number of districts and the composition of the various counties as it considers appropriate. In the event of change of the number or the composition of the various counties, the board shall follow the same procedure as applied to the initial designations.

(c) Each committee is composed of three persons appointed by the governor from among persons who have resided and practiced medicine in the district for more than three years before their appointment.

(d) Each member of each committee shall be appointed by the governor, after designation of the districts, for a term of six years, except the terms of the initial members. Each member shall hold office for the term appointed as long as qualified and until the appointment and qualification of his successor.

(e) Vacancies in the membership of a committee shall be filled by the governor by appointment for the unexpired term in the manner provided for making other appointments to a committee.

(f) Each member of the committee is entitled to receive a per diem as provided for board members for actual duty.

(g) Each member of a committee is subject to law and the rules of the board as if he were a member of the board, except members are not subject to the provisions of Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252–9b, Vernon's Texas Civil Statutes).

(h) The board may adopt, amend, or repeal rules as may be reasonably necessary to carry into effect the provisions of this section relating to:

(1) per diem and expenses of members;

(2) matters to be heard by or considered by the committees;

(3) the conduct of any hearings and the authority the board may delegate to the committees; and

(4) other matters relating to the committee's actions, duties, and responsibilities as may be reasonable.

(i) A committee may not exercise final authority over the disposition of a complaint against a person licensed by the board and may not issue a final order or rule. The board must make final disposition of complaints against persons licensed by it and shall have the sole authority to issue final orders and rules.

[1] Repealed.

Foreign Medical School Students

Sec. 5.04. (a) Notwithstanding any other provision of law, an individual who has been a student of a foreign medical school is eligible for licensure to practice medicine in this state if he:

(1) has studied medicine in a reputable medical school as defined by the board located outside the United States;

(2) has completed all of the didactic work of the foreign medical school;

(3) has attained a score satisfactory to a medical school in the United States approved by the Liaison Committee on Medical Education on a qualifying examination and has satisfactorily completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education under the direction of the medical school in the United States;

(4) has attained a passing score on the Educational Council for Foreign Medical Graduates examination, or other examination, if required by the board; and

(5) has passed the examination required by the board of all applicants for license.

(b) Satisfaction of the requirements of Subsection (a) of this section are in lieu of the completion of any requirements of the foreign medical school beyond completion of the didactic work, and no other requirements shall be a condition of licensure to practice medicine in this state.

(c) Satisfaction of the requirements specified in Subsection (a) of this section shall be in lieu of certification by the Educational Council for Foreign Medical Graduates, and the certification is not a condition of licensure to practice medicine in this state for candidates who have completed the requirements of Subsection (a) of this section.

(d) A hospital that is licensed by this state, that is operated by the state or a political subdivision of the state, or that receives state financial assistance, directly or indirectly, may not require an individual who has been a student of a foreign medical school to satisfy any requirements other than those contained in Subdivisions (1), (2), (3), and (4) of Subsection (a) of this section prior to commencing an internship or residency.

(e) A document granted by a medical school located outside the United States issued after the completion of all the didactic work of the foreign medical school shall, on certification by the medical school in the United States in which the training was received of satisfactory completion by the person to whom the document was issued of the requirements listed in Subdivision (3) of Subsection (a) of this section, be considered the equivalent of a degree of doctor of medicine or doctor of osteopathy for purposes of licensure.

Reports and Data From Insurers

Sec. 5.05. (a) Every insurer providing medical professional liability insurance covering a physician or physicians in this state shall submit to the board the report or data described in Subsections (b) and (c) of this section at the time prescribed. The report or data shall be provided with respect to a complaint filed against an insured in a court, if the complaint seeks damages relating to the insured's conduct in providing or failing to provide medical or health-care services, and with respect to settlement of a claim or lawsuit made on behalf of the insured. In the event a physician practicing medicine in this state does not carry or is not covered by medical professional liability insurance or is insured by a nonadmitted carrier the information required to be reported in Subsections (b) and (c) of this section shall be the responsibility of the physician.

(b) The following report or data shall be furnished to the board within 90 days after receipt by the insurer of the complaint from the insured:

(1) the name of the insured;

(2) the policy number;

(3) the policy limits;

(4) a copy of the complaint;

(5) a copy of the answer; and

(6) other pertinent data and information within the knowledge of the insurer as the board may require.

(c) The following report or data and information shall be furnished to the board within 90 days from a judgment, dismissal, or settlement of suit involving the insured or settlement of any claim on behalf of the insured without the filing of a lawsuit:

(1) the date of a judgment, dismissal, or settlement;

(2) whether an appeal has been taken and by which party;

(3) the amount of the settlement or judgment against the insured; and

(4) other pertinent information within the knowledge of the insurer as the board may require.

(d) There shall be no liability on the part of and no cause of action of any nature arises against an insurer reporting under this section, its agents or employees, or the board or its employees or representatives for any action taken by them pursuant to this section.

(e) In the trial of a suit against a physician based on his conduct in providing or failing to provide medical or health-care services, no report or data submitted to the board under this section nor the fact that the report or data has been submitted to the board may be offered in evidence or in any manner used in the trial of the case.

Reporting by Medical Peer Review Committee or Physicians

Sec. 5.06. (a) Any medical peer review committee in this state and any physician licensed to practice medicine or otherwise lawfully practicing medicine in this state may report relevant facts to the board relating to the acts of any physician in this state if, in the opinion of the medical peer review committee or the physician, they have knowledge relating to the physician that reasonably raises a question with respect to his competency.

(b) A professional society in this state comprised primarily of physicians that takes formal disciplinary action against a member relating to professional ethics, medical incompetency, moral turpitude, or drug or alcohol abuse may report in writing to the board the name of the member, together with the pertinent information relating to the action.

(c) The filing of a report with the board pursuant to this section, investigation by the board, or any disposition by the board does not, in itself, preclude any action by a hospital or other health-care facility or professional society composed primarily of physicians to suspend, restrict, or revoke the privileges or membership of the physician.

(d) On a determination by the board that a report submitted by a medical peer review committee is

without merit, the report shall be expunged from the physician's or applicant's individual historical record in the board's office. A physician or applicant or his authorized representative is entitled on request to examine the physician's or applicant's medical peer review report submitted to the board under the provisions of this section and to place into the record a statement of reasonable length of the physician's or applicant's view with respect to any information existing in the report. The statement shall at all times accompany that part of the record in contention.

(e)(1) Reports, information, or records received and maintained by the board pursuant to this section and Section 5.05 of this Act, including any material received or developed by the board during an investigation or hearing, are strictly confidential and subject to the provisions of Subdivision (4) of this subsection. However, the board may disclose this confidential information only:

(A) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(B) to the physician licensing or disciplinary authorities of other jurisdictions, to a local, state, or national professional medical society, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(C) pursuant to an order of a court of competent jurisdiction; or

(D) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any person or physician is first deleted.

(2) Orders of the board relating to disciplinary action against a physician are not confidential.

(3) In no event may records and reports received, maintained, or developed by the board, or disclosed by the board to others, pursuant to this article, be available for discovery or court subpoena or introduced into evidence in a medical professional liability suit or other action for damages arising out of the provision of or failure to provide medical or healthcare services.

(4) A person who unlawfully discloses this confidential information possessed by the board commits a Class A misdemeanor.

(f) The following persons are immune from civil liability:

(1) a person reporting to or furnishing information to a medical peer review committee;

(2) a member, employee, or agent of the medical peer review committee who assists in the organization, investigation, or preparation of information or who makes a report on other information available to the board pursuant to this subsection; and

(3) any member or employee of the board or any person who assists the board in carrying out its duties or functions provided by law.

(g) The reporting or assistance provided for in this section does not constitute state action on the reporting or assisting medical peer review committee or its parent organization.

Report of Felony Convictions

Sec. 5.07. Within 30 days after the conviction of a person known to be a physician, licensed or otherwise lawfully practicing in this state or applying to be so licensed to practice, of a felony under the laws of this state, the clerk of the court of record in which the conviction was entered shall prepare and forward to the board a certified true and correct abstract of record of the court governing the case. The abstract shall include the name and address of the physician or applicant, the nature of the offense committed, the sentence, and the judgment of the court. The board shall prepare the form of the abstract and shall distribute copies of it to all clerks of courts of record within this state with appropriate instructions for preparation and filing.

Physician-Patient Communication

Sec. 5.08. (a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this section continue to apply to confidential communications or records concerning any patient irrespective of when the patient received the services of a physician.

(e) The privilege of confidentiality may be claimed by the patient or physician acting on the patient's behalf.

(f) The physician may claim the privilege of confidentiality, but only on behalf of the patient. The authority to do so is presumed in the absence of evidence to the contrary.

(g) Exceptions to confidentiality or privilege in court or administrative proceedings exist:

(1) when the proceedings are brought by the patient against a physician, including but not limited to malpractice proceedings, and any criminal

or license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a physician;

(2) when the patient or someone authorized to act on his behalf submits a written consent to the release of any confidential information, as provided in Subsection (j) of this section;

(3) when the purpose of the proceedings is to substantiate and collect on a claim for medical services rendered to the patient;

(4) in any civil litigation or administrative proceeding, if relevant, brought by the patient or someone on his behalf if the patient is attempting to recover monetary damages for any physical or mental condition including death of the patient. Any information is discoverable in any court or administrative proceeding in this state if the court or administrative body has jurisdiction over the subject matter, pursuant to rules of procedure specified for the matters;

(5) in any disciplinary investigation or proceeding of a physician conducted under or pursuant to this Act, provided that the board shall protect the identity of any patient whose medical records are examined, except for those patients covered under Subdivision (1) of Subsection (g) of this section or those patients who have submitted written consent to the release of their medical records as provided by Subsection (j) of this section;

(6) in any criminal investigation of a physician in which the board is participating or assisting in the investigation or proceeding by providing certain medical records obtained from the physician, provided that the board shall protect the identity of any patient whose medical records are provided in the investigation or proceeding, except for those patients covered under Subdivision (1) of Subsection (g) of this section or those patients who have submitted written consent to the release of their medical records as provided by Subsection (j) of this section. This section does not authorize the release of any confidential information for the purpose of instigating or substantiating criminal charges against a patient;

(7) when the disclosure is relevant to an involuntary civil commitment or hospitalization proceeding under:

(A) the Texas Mental Health Code (Article 5547–1 et seq., Vernon's Texas Civil Statutes);

(B) the Mentally Retarded Persons Act of 1977 (Article 5547–300, Vernon's Texas Civil Statutes);

(C) Section 9, Chapter 411, Acts of the 53rd Legislature, Regular Session, 1953 (Article 5561c, Vernon's Texas Civil Statutes);

(D) Section 2, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes).

(h) Exceptions to the privilege of confidentiality, in other than court or administrative proceedings, allowing disclosure of confidential information by a physician, exist only to the following:

(1) governmental agencies if the disclosures are required or authorized by law;

(2) medical or law enforcement personnel if the physician determines that there is a probability of imminent physical injury to the patient, to himself, or to others, or if there is a probability of immediate mental or emotional injury to the patient;

(3) qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, but the personnel may not identify, directly or indirectly, a patient in any report of the research, audit, or evaluation or otherwise disclose identity in any manner;

(4) those parts of the medical records reflecting charges and specific services rendered when necessary in the collection of fees for medical services provided by a physician or physicians or professional associations or other entities qualified to render or arrange for medical services;

(5) any person who bears a written consent of the patient or other person authorized to act on the patient's behalf for the release of confidential information, as provided by Subsection (j) of this section;

(6) individuals, corporations, or governmental agencies involved in the payment or collection of fees for medical services rendered by a physician; or

(7) other physicians and personnel under the direction of the physician who are participating in the diagnosis, evaluation, or treatment of the patient.

(i) Exceptions to the confidentiality privilege in this Act are not affected by any statute enacted before the effective date of this Act.

(j)(1) Consent for the release of confidential information must be in writing and signed by the patient, or a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incompetent to manage his personal affairs, or an attorney ad litem appointed for the patient, as authorized by the Texas Mental Health Code (Article 5547–1 et seq., Vernon's Texas Civil Statutes); the Mentally Retarded Persons Act of 1977 (Article 5547–300, Vernon's Texas Civil Statutes); Section 9, Chapter 411, Acts of the 53rd Legislature, Regular Session, 1953 (Article 5561c, Vernon's Texas Civil Statutes); Section 2, Chapter 543, Acts of the 61st Legislature, Regular Session,

1969 (Article 5561c–1, Vernon's Texas Civil Statutes); Chapter 5, Texas Probate Code; [1] and Chapter 11, Family Code; or a personal representative if the patient is deceased, provided that the written consent specifies the following:

(A) the information or medical records to be covered by the release;

(B) the reasons or purposes for the release; and

(C) the person to whom the information is to be released.

(2) The patient, or other person authorized to consent, has the right to withdraw his consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal.

(3) Any person who receives information made confidential by this Act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

(k) A physician shall furnish copies of medical records requested, or a summary or narrative of the records, pursuant to a written consent for release of the information as provided by Subsection (j) of this section, except if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, and the physician may delete confidential information about another person who has not consented to the release. The information shall be furnished by the physician within a reasonable period of time and reasonable fees for furnishing the information shall be paid by the patient or someone on his behalf. In this subsection, "medical records" means any records pertaining to the history, diagnosis, treatment, or prognosis of the patient.

(*l*) A person aggrieved by a violation of this section relating to the unauthorized release of confidential and privileged communications may petition the district court of the county in which the person resides, or in the case of a nonresident of the state, the District Court of Travis County, for appropriate injunctive relief, and the petition takes precedence over all civil matters on the docketed court except those matters to which equal precedence on the docket is granted by law. A person aggrieved by a violation of this section relating to the unauthorized release of confidential and privileged communications may prove a cause of action for civil damages.

(m) "Patient" for the purposes of this section means any person who consults or is seen by a person licensed to practice medicine to receive medical care.

[1] Probate Code, § 72 et seq.

Authority to Supply Drugs

Sec. 5.09. A person licensed to practice medicine under this Act is authorized to supply the needs of his patients with any drugs or remedies as are necessary to meet the patients' immediate needs; provided, however, this section does not permit the practitioner to operate a pharmacy without first complying with the Texas Pharmacy Act.[1]

[1] Article 4542a–1.

Application of Sunset Act

Sec. 5.10. The board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the board is abolished and this Act expires September 1, 1993.

[Acts 1981, 67th Leg., 1st C.S., p. 1, ch. 1, § 1, eff. Aug. 5, 1981.]

Sections 3 to 5 of the 1981 Act provide:

"Sec. 3. (a) The Texas State Board of Medical Examiners previously established under the laws of this state is continued as an independent administrative agency of the executive branch of government.

"(b) A person holding office as a member of the board on the effective date of this Act continues to hold office for the term for which the member was originally appointed or until a successor is appointed and qualified. The initial appointments of the public members of the board shall be made so that one appointee serves a term that expires April 13, 1983, one appointee serves a term that expires April 13, 1985, and one appointee serves a term that expires April 13, 1987. Thereafter, at the expiration of the term of each member of the board appointed, a successor shall be appointed. The terms of office of all succeeding members expire April 13 of odd-numbered years. Members shall continue to hold office until a successor is appointed and qualified. In order to permit an orderly accomplishment of the requirements of Subsection (c) of Section 2.05 of the Medical Practice Act, the governor shall not appoint nor cause to be appointed more than two physicians with the degree of doctor of osteopathic medicine (D.O.) to be members of the board prior to May 13, 1982, unless a vacancy on the board occurs sooner for those whose terms expire April 13, 1983, or thereafter. On or after that date or event, and no later than the time the appointments are to be made on or after April 13, 1983, the governor shall implement Subsection (c) of Section 2.05 of the Medical Practice Act.

"(c) All licenses which were procured legally and issued legally by the board are hereby validated and subject to no retroactive action.

"(d) All statutory references to physicians or persons licensed to practice medicine as defined by Article 4510, Revised Civil Statutes of Texas, 1925, shall be construed to have reference to this Act.

"(e) All rules and regulations adopted and promulgated by the board shall be continued until amended or repealed. The rules and regulations that are in force on the effective date of this Act are validated and are repealed only to the extent of any conflict.

"(f) Proceedings to deny an application for license or other authorization to practice medicine, cancel, revoke, suspend, or limit a license, or otherwise discipline a licensee do not abate by reason of the passage of this Act.

"(g) Where applicable, the definitions in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), apply to the Medical Practice Act.

"(h) The district review committees created and established pursuant to Subchapter C of the Medical Liability and Insurance Improvement Act of Texas are hereby continued and recreated under the jurisdiction of the board. The number of and geographic area composed of various counties designated by the board on the effective date of this Act are hereby validated. A person holding office as a member of a district review committee on the effective date of this Act continues to hold office for the term for which the person was originally appointed or until a successor shall be appointed and qualified. Thereafter, at the expiration of the term of each member appointed, a successor shall be appointed. The terms of office of all succeeding members expire January 15 of even-numbered years.

"Sec. 4. The requirements of Subsections (u) and (v) of Section 2.09, Medical Practice Act, that the Texas State Board of Medical Examiners develop a career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement of Subsection (v) of Section 2.09 that merit pay is to be based on the system of annual performance evaluations shall be implemented before September 1, 1983.

"Sec. 5. If any provision of this Act or its application to any person or circumstance is held invalid or unconstitutional, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision and does not affect, impair, invalidate, or nullify the remainder of this Act. The effect shall be confined to the provision of the Act so adjudged to be invalid or unconstitutional and to this end the provisions of this Act are declared to be severable."

Section 6(c) of the 1981 Act provides:

"No substantive changes in prior law or interpretation of prior law have been intended unless expressly done so in this Act. Consistent with this intention, unless expressly provided otherwise in this Act, any previous judicial opinion, attorney general's opinion, board practice, or interpretation is not to be considered modified or declared inapplicable."

Arts. 4496 to 4498b. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981

See, now, art. 4495b.

For provisions as to rules and regulations adopted prior to repeal of these articles, see note under art. 4495b.

Art. 4498c. State Rural Medical Education Board

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The State Rural Medical Education Board is subject to the Texas Sunset Act,[1] but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 6]

Amount and Proportioning of Loans, Grants and Scholarships; Repayment; Credit for Rural Practice; Default

Sec. 7. Applicants who are granted loans, grants or scholarships by the Board shall receive an amount which may defray his or her tuition and other expenses in any reputable, accepted and accredited medical school or medical college or school listed by the World Health Organization, or a scholarship to any such medical college or school for a term not exceeding four (4) years, same to be paid at such time and in such manner as may be determined by the Board. The loans, grants and scholarships herein provided may be proportioned in any such manner as to pay to the medical school to which any applicant is admitted such funds as are required by that school, and the balance to be paid directly to the applicant; all of which shall be under such terms and conditions as may be provided under rules and regulations of the Board. The said loans, grants, or scholarships shall be based upon the condition that the full amount thereof shall be repaid to the State of Texas in cash in full with five percent interest from the date of each payment by the State on such loan, grant or scholarship or by satisfaction of other conditions of the Board or this Act. If the applicant practices his profession in a rural area as defined by this Act the Board is authorized and shall credit one fifth of the loan, grant or scholarship together with interest thereon to the applicant for each year of such practice as certified by the Board. At the end of the second full year of practice in a rural area as provided for herein, the applicant shall be privileged to pay off the balance of the loan, grant or scholarship as the case may be with accrued interest thereon, and upon such payment shall be relieved from further obligation under his contract. Should the applicant default under his contract at any time the full principal and accrued interest plus a penalty of 10% of the outstanding balance plus attorneys' fees as defined by said contract shall be due and owing to the State.

Priority for Texas Residents

Sec. 7A. Texas residents who attend a medical school within the United States shall have first priority in the distribution of loan funds. Funds shall then be made available to Texas residents who attend a medical school outside the United States. A "Texas resident," as used in this Act, shall be a person who has actually resided in the State of Texas for two (2) years immediately prior to becoming an applicant hereunder.

[See Compact Edition, Volume 4 for text of 8 to 20]

[Amended by Acts 1977, 65th Leg., p. 130, ch. 60, §§ 1 and 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.154, eff. Aug. 29, 1977.]

Arts. 4499 to 4505. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981

See, now, art. 4495b, § 3.01 et seq.

Prior to repeal, art. 4500 was amended by Acts 1979, 66th Leg., p. 1151, ch. 556.

Former art. 4501b, relating to foreign medical school students, was derived from Acts 1975, 64th Leg., p. 462, ch. 197.

Prior to repeal, art. 4502 was amended by Acts 1975, 64th Leg., p. 296, ch. 127, § 1.

Art. 4505a. Soliciting Patients

Sec. 1. No masseur, optometrist, or any other person who practices the art of healing the sick or afflicted, with or without the use of medicine shall employ or agree to employ, pay or promise to pay, or reward or promise to reward any person, firm, association of persons, partnership or corporation for securing, soliciting or drumming patients or patronage. No person shall accept or agree to accept any payment, fee or reward, or anything of value, for securing, soliciting or drumming for patients or patronage for any masseur, optometrist, or any other person who practices the art of healing with or without medicine. Whoever violates any provision of this Article shall be fined not less than One Hundred nor more than Two Hundred Dollars for each offense. Each payment or reward or fee or agreement to pay or accept a reward or fee shall be a separate offense.

Sec. 2. This Article does not apply to a practitioner of medicine subject to regulation under the Medical Practice Act.[1]

[Amended by Acts 1981, 67th Leg., 1st C.S., p. 34, ch. 1, § 2, eff. Aug. 5, 1981.]

[1] Article 4495b.

Art. 4506. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981

Prior to repeal, art. 4506 was amended by Acts 1981, 67th Leg., p. 101, ch. 52, § 1.

See, now, art. 4495b, § 4.01 et seq.

For effect of 1981 repealing act on pending proceedings to cancel, suspend, or revoke a license, see note under art. 4495b.

Art. 4506a. Revocation and Suspension of License for Drug-Related Felony Conviction.

On conviction of a person licensed by the board of a felony under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article

4476–14, Vernon's Texas Civil Statutes), the board shall, after an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), in which the fact of conviction is determined, suspend the person's license. On the person's final conviction, the board shall revoke the person's license. The board may not reinstate or reissue a license to a person whose license is suspended or revoked under this article except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

[Added by Acts 1981, 67th Leg., p. 102, ch. 52, § 2, eff. Sept. 1, 1981.]

Arts. 4509 to 4512a. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981

For construction of statutory references to physicians or persons licensed to practice medicine as defined by art. 4510, see note under art. 4495b.

Former art. 4511a, relating to authorized supplementary fees charged by Texas State Board of Medical Examiners, was added by Acts 1975, 64th Leg., p. 333, ch. 140, § 1.

Former art. 4511b, relating to authority to receive criminal records and fingerprint reports, was added by Acts 1975, 64th Leg., p. 948, ch. 356, § 1.

Former art. 4511c, relating to authority to extend temporary license, was added by Acts 1975, 64th Leg., p. 332, ch. 139, § 1.

Former art. 4512a, relating to responsibilities delegated to physicians assistants, was added by Acts 1979, 66th Leg., p. 1554, ch. 670, § 1.

See, now, art. 4495b.

CHAPTER SIX A. CHIROPRACTORS

Article
4512b(1). Peer Review.
4512b(2). Civil Immunity, Official Acts.

Art. 4512b. Practice of Chiropractic

[See Compact Edition, Volume 4 for text of 1]

Expenses; Audits

Sec. 2. (a) The Texas Board of Chiropractic Examiners hereinafter provided for shall defray all expenses under this Act from fees provided in this Act, and no appropriation shall ever be made from the State Treasury for any expenditures made necessary by this Act; and all fees remaining in the "Chiropractic Examiners Fund" at the end of any fiscal year in excess of Twenty Thousand Dollars ($20,000) shall be transferred into the General Fund of the State of Texas.

(b) The state auditor shall audit the financial transactions of the board in each fiscal biennium.

Texas Board of Chiropractic Examiners Created; Personnel and Terms; Application of Sunset Act

Sec. 3. (a) A Board to be known as "The Texas Board of Chiropractic Examiners" is hereby created. No member of said Board shall be a member of the faculty or Board of Trustees of any chiropractic school; and all appointments to said Board shall be subject to the confirmation of the Senate. The Texas Board of Chiropractic Examiners, which hereinafter may be referred to as "The Board," shall be composed of nine (9) members, appointed by the Governor, whose duty it shall be to carry out the purposes and enforce the provisions of this Act. Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(b) Six (6) members must be reputable practicing chiropractors who have resided in this State for a period of five (5) years preceding their appointment. Three (3) members must be members of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufacturers, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, more than a ten percent (10%) interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(c) Five (5) members of the Board shall constitute a quorum. No school shall ever have a majority representation on the Board. No member of said Board shall be a stockholder, or have any financial interest whatsoever in any chiropractic school or college.

(d) A member or employee of the Board may not be an officer, employee, or paid consultant of a statewide or national trade association in the health-care industry.

(e) A member or employee of the Board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a statewide or national trade association in the regulated industry.

(f) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(g) The members of the Texas Board of Chiropractic Examiners shall be divided into three (3) classes, one, two and three, and their respective terms of office shall be determined by the Governor at the time of the first appointments hereunder. Members hold office for six (6) years and until their successors are duly appointed and qualified. In case of death or resignation of a member of the Board, the Governor shall appoint another to take his place for the unexpired term only.

(h) The Texas Board of Chiropractic Examiners is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

Information of Consumer Interest; Informational Sign in Licensee's Place of Business

Sec. 3a. (a) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and describing the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.

(b) There shall at all times be prominently displayed in the place of business of each licensee regulated under this Act a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against licensees can be directed to the Board.

Grounds for Removal From Board; Validity of Actions

Sec. 3b. (a) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (b) of Section 3 of this Act for appointment to the Board;

(2) does not maintain during the service on the Board the qualifications required by Subsection (b) of Section 3 of this Act for appointment to the Board;

(3) violates a prohibition established by Subsection (d), (e), or (f) of Section 3 of this Act; or

(4) does not attend at least one-half of the regularly scheduled meetings held by the Board in a calendar year, excluding meetings held while the person was not a member of the Board.

(b) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

Oath; Officers; Rules, Regulations, By-Laws, and Guidelines; Bond of Secretary-Treasurer; Accounting; Intraagency Career Ladder Program; Performance Evaluations

Sec. 4. (a) Each member of the Texas Board of Chiropractic Examiners shall qualify by taking the Constitutional Oath. At the first meeting of said Board after each biennial appointment, the Board shall elect a president, a vice-president and a secretary-treasurer from its members. Regular meetings shall be held to examine applicants and for the transaction of business at least twice a year at such time and place as may be determined by the Board. Special meetings may be held on a call of three (3) members of the Board. The Board may prescribe rules, regulations and bylaws in harmony with the provisions of this Act for its own proceedings and government for the examination of applicants for license to practice chiropractic. The secretary-treasurer shall make and file a surety bond in favor of the Texas Board of Chiropractic Examiners in the sum of not less than Five Thousand Dollars ($5,000) conditioned that he will faithfully discharge the duties of his office.

(b) The Board/commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(c) If the appropriate standing committees of both houses of the Legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board/commission receives the committee's statements.

(d) The Board shall adopt guidelines for educational preparation and acceptable practices for all aspects of the practice of chiropractic.

(e) On or before January 1 of each year, the Board shall file with the Governor and the presiding officer of each house of the Legislature a complete and detailed written report accounting for all funds received and disbursed by the Board in the preceding year.

(f) The Board shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of each job-opening with the Board in a nonentry level position. The intraagency posting shall be made at least ten (10) days before any public posting is made.

(g) The Board shall develop a system of annual performance evaluations of the Board's employees based on measurable job tasks. Any merit pay authorized by the Board shall be based on the system established under this subsection.

[See Compact Edition, Volume 4 for text of 4a to 5]

Practice Without License Prohibited

Sec. 5a. A person may not practice chiropractic without being licensed to do so by The Texas Board of Chiropractic Examiners.

Secs. 6, 7. Repealed by Acts 1981, 67th Leg., p. 2963, ch. 781, § 5, eff. Sept. 1, 1981.

Annual Registration

Sec. 8. It shall be unlawful for any person who shall be licensed for the practice of chiropractic by the Texas Board of Chiropractic Examiners as created by this Act, unless such person be registered as provided by this Act on or before the first day of

January each year to practice chiropractic in this State. Each person so licensed and registered shall be deemed to have complied with the requirements and prerequisites of the laws governing the practice of chiropractic in this State. Each person so registered with the Texas Board of Chiropractic Examiners shall pay in connection with each annual registration and for the receipt hereafter provided for, a fee fixed by the Texas Board of Chiropractic Examiners, which fee shall accompany the application of every such person for registration. Such payment shall be made to the Texas Board of Chiropractic Examiners. Every person so registered shall file with said Board a written application for annual registration, setting forth his full name, his age, post office address, his place of residence, and the place or places where he is engaged in the practice of chiropractic, as well as the college of chiropractic from which he graduated, and the number and date of his license certificate. Upon receipt of such application, accompanied by the registration fee, the Texas Board of Chiropractic Examiners, after ascertaining either from the records of the Board or from other sources deemed by it to be reliable, that the applicant is a licensed practitioner of chiropractic in this State, shall issue to the applicant an annual registration receipt certifying that the applicant has filed such application and has paid the registration fee mentioned for the year in question; provided, that the filing of such application, the payment of the registration fee and the issuance of such receipt shall not entitle the holder thereof to lawfully practice chiropractic within the State of Texas unless he has in fact been previously licensed as such chiropractor by the Texas Board of Chiropractic Examiners, as prescribed by law, and unless his license to practice chiropractic is in full force and effect; and provided further that, in any prosecution for the unlawful practice of chiropractic as denounced in Section 6 hereof, such receipt showing payment of the annual registration fee required by this Section shall not be treated as evidence that the holder thereof is lawfully entitled to practice chiropractic.

Practicing Without Annual Registration Receipt; Renewal of License

Sec. 8a. (a) Practicing chiropractic as defined in Section 1 of this Act without an annual registration receipt for the current year as provided herein shall have the same force and effect and be subject to all penalties of practicing chiropractic without a license.

(b) A person may renew an unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

(c) If a persons's license has been expired for not longer than ninety (90) days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for longer than ninety (90) days but less than two (2) years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two (2) years or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Application of Act and Registration Provisions; Prerequisites to Annual Registration or Renewal

Sec. 8b. (a) The provisions of this Act shall apply to all persons licensed by the Texas Board of Chiropractic Examiners and the annual registration fee shall apply to all persons licensed by the Texas Board of Chiropractic Examiners, whether or not they are practicing within the borders of this State. Provided, however, that as a prerequisite to the annual registration or renewal and before such chiropractic registration or renewal may be issued, the licensee shall present to the Board:

(1) satisfactory evidence that in the year preceding the application for renewal said licensee attended two (2) days of continuing educational courses approved by the Board; or

(2) satisfactory evidence that he was unavoidably prevented by sickness or otherwise from attending such educational or post-graduate program, together with a recommendation of two (2) reputable licensed Texas Chiropractors who personally know the licensee and vouch for his good standing in the profession; provided that new licensees during twelve (12) months immediately preceding said January 1st, by examination, shall be granted renewal without attending said educational programs.

(b) The Board shall notify licensees of approved continuing education courses at least annually.

[See Compact Edition, Volume 4 for text of 8c]

License to Practitioners of Other States or Territories

Sec. 9. The Texas Board of Chiropractic Examiners shall upon payment by an applicant of a fee grant license to practice chiropractic to licentiates of other states or territories having requirements and practices equal to those established by the laws of this State. Applications for license under the provisions of this Section shall be in writing, and upon a form to be prescribed by the Texas Board of Chiropractic Examiners. Said application shall be accompanied by a license, or a certified copy of license to practice chiropractic, lawfully issued to the applicant, upon examination, by some other state or territory of the United States. Said application shall also be accompanied by an affidavit made by the president or secretary of the Board of Chiropractic Examiners which issued the said license, or by a legally constituted chiropractic registration officer of the state or territory by which the license was granted, and on which the application for chiroprac-

tic registration in Texas is based, reciting that the accompanying license has not been cancelled or revoked, and that the statement or qualifications made in the application for chiropractic license in Texas is true and correct. Applicants for license under the provisions of this Section shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of said application, stating that the license under which the applicant practiced chiropractic in the State or territory from which the applicant removed, was at the time of such removal in full force, and not suspended or cancelled. Said application shall also state that the applicant is the identical person to whom the said certificate was issued, and that no proceeding has been instituted against the applicant for the cancellation of said certificate to practice chiropractic in the State or territory by which the same was issued; and that no prosecution is pending against the applicant in any State or Federal Court for any offense which, under the law of Texas is a felony.

Examination of Applicants for License; Evidence of College Credits

Sec. 10. (a) All applicants for license to practice chiropractic in this State, not otherwise licensed under the provisions of this law, must successfully pass an examination by the Texas Board of Chiropractic Examiners established by this law. The Board is authorized to adopt and enforce rules of procedure not inconsistent with the statutory requirements. All applicants shall be eligible for examination who present satisfactory evidence to the Board that they are more than eighteen (18) years of age, of good moral character, have completed sixty (60) semester hours of college courses, other than a chiropractic school, and are graduates of bona fide reputable chiropractic schools (whose entrance requirements and course of instruction are as high as those of the better class of chiropractic schools in the United States); a reputable chiropractic school shall maintain a resident course of instruction equivalent to not less than four (4) terms of eight (8) months each, or a resident course of not less than the number of semester hours required by The University of Texas for the granting of a Bachelor of Arts degree; shall give a course of instruction in the fundamental subjects named in Section 12 of this Act; and shall have the necessary teaching force and facilities for proper instruction in all of said subjects. Applications for examination must be made in writing, verified by affidavit, and filed with the secretary of the Board, on forms prescribed by the Board, accompanied by a fee. All applicants shall be given due notice of the date and place of such examination.

(b) The Board shall grant a license without a written examination to an applicant that holds a National Board of Chiropractic Examiners certificate who meets the requirements of this chapter and who has satisfactorily passed a practical examination. The Board shall periodically determine to its satisfaction whether those applicants who hold National Board of Chiropractic Examiners certificates have been adequately examined. When the Board determines that those applicants have not been adequately examined, the Board shall require those applicants to be examined in accordance with other provisions of this Act.

(c) If any applicant, because of failure to pass the required examination, shall be refused a license, he or she, at such time as the Texas Board of Chiropractic Examiners may fix, not exceeding one (1) year, shall be permitted to take a subsequent examination, upon such subjects required in the original examination as the Board may prescribe except that the applicant shall not be required to take a re-examination on subjects in which he has made a grade of seventy-five per cent (75%) or more, provided the applicant shall apply for re-examination within one (1) year. In the event satisfactory grades shall be made in the subjects prescribed and taken on such re-examination, the Board shall grant to the applicant a license to practice chiropractic. The Board shall determine the grade to be given the examinees on the answers turned in on the subjects of complete and partial examination, and its decision thereupon shall be final.

(d) Prior to the issuance of a license to practice chiropractic, the Board shall require from a person otherwise qualified by law, evidence, verified by transcript of credits, certifying that the person has satisfactorily completed sixty (60) or more semester hours of college credits at a college or university which issues credits acceptable by The University of Texas at Austin leading toward a Bachelor of Acts or a Bachelor of Science degree. The credits shall include the satisfactory completion of courses in anatomy, physiology, chemistry, bacteriology, pathology, hygiene, and public health with an average of seventy-five percent (75%) or better in each of the courses. The sequence of the courses shall be in the manner as from time to time is required by The University of Texas at Austin.

(1) The Board may charge a fee of not more than Fifty Dollars ($50) for verification of the satisfaction of the completion of the courses described in this subsection.

(2) Any license to practice issued after September 1, 1981, contrary to this Act shall be void.

(e) Within thirty (30) days after the day on which a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination within two (2) weeks after the day that the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than ninety (90) days after the examination date, the Board shall notify the examinee of the reason for the delay before the ninetieth (90th) day.

(f) If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

Chiropractic Examiners Fund; Fees; Per Diem and Expenses of Board Members

Sec. 11. (a) The funds realized from the fees collected under this Act shall constitute the "Chiropractic Examiners Fund," and shall be applied to the necessary expenses of the Texas Board of Chiropractic Examiners, including the expenses authorized by said Board in enforcing the provision of this Act.

(b) The Board shall establish reasonable and necessary fees for the administration of this Act, not to exceed:

(1) annual renewal: $120;

(2) reciprocal license: $120;

(3) examination fee: $120;

(4) reexam fee: $75; and

(5) verification of licensing requirements fee: $75.

(c) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act.

(d) Provided also that the premium of any bond required by the Board of any officer or employee of the Board shall be paid out of said fund, as well as the necessary expenses of any employee incurred in the performance of his duties.

(e) All disbursements from said fund shall be made only upon written approval of the President and Secretary-Treasurer or of the designated staff member of the Texas Board of Chiropractic Examiners upon warrants drawn by the Comptroller to be paid out of said fund.

Conduct of Examinations; Subjects

Sec. 12. All examinations for license to practice chiropractic shall be conducted in writing in the English language and in such manner as to be entirely fair and impartial to all applicants. All applicants shall be known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the Board may be able to identify such applicants, or examinees, until after the general averages of the examinees' numbers in the class have been determined, and license granted or refused. Examinations shall be conducted on practical and theoretical chiropractic and in the subjects of anatomy-histology, chemistry, bacteriology, physiology, symptomatology, pathology and analysis of the human spine, and hygiene and public health. Upon satisfactory examination, conducted as aforesaid under the rules of the Board, which shall consist of an average grade of not less than seventy-five per cent (75%) with not less than sixty per cent (60%) in any one subject, applicants shall be granted license to practice chiropractic. All questions and answers, with the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the Board for one (1) year. All applicants examined at the same time shall be given identical questions. All certificates shall be attested by the seal of the Board, and signed by all members of the Board, or a quorum thereof.

[See Compact Edition, Volume 4 for text of 13]

Disciplinary Powers; Appeals

Sec. 14. (a) The Texas Board of Chiropractic Examiners shall revoke or suspend a license, probate a license suspension, or reprimand a licensee for any violations of the Act or rules of the Board.

(b) The Board shall keep an information file about each complaint filed with the Board relating to a licensee.

(c) If a written complaint is filed with the Board relating to a licensee, the Board at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) Any person whose license to practice chiropractic has been cancelled, revoked or suspended by the Board may take an appeal to any of the district courts in the county of his residence, but the decision of the Board shall not be enjoined or stayed except on application to such district court after notices to the Board.

(e) Upon application, the Board may reissue a license to practice chiropractic to a person whose license has been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation, and shall be made in such manner and form as the Board may require.

(f) If the Board proposes to refuse a person's application for a license, to suspend or revoke a person's license, or to probate or reprimand a person, the person is entitled to a hearing before the Board.

(g) Disciplinary proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Grounds for Refusing, Revoking or Suspending License

Sec. 14a. The Texas Board of Chiropractic Examiners may refuse to admit persons to its examinations and may cancel, revoke or suspend licenses or place licensees upon probation for such length of time as may be deemed proper by the Board for any one or more of the following causes:

1. For failure to comply with, or the violation of, any of the provisions of this Act;

2. If it is found that said person or persons are in any way guilty of deception or fraud in the practice of chiropractic;

3. The presentation to the Board or use of any license, certificate or diploma, which was illegally or fraudulently obtained, or the presentation to the Board of any untrue statement or any document or testimony which was illegally practiced in passing the examination;

4. Conviction of a crime of the grade of a felony, or one which involves moral turpitude, or the procuring or assisting in the procuring of an abortion;

5. Grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public, habits of intemperance or drug addiction, or other habits calculated in the opinion of the Board to endanger the lives of patients;

6. The use of any advertising statement of a character to mislead or deceive the public;

7. Employing directly or indirectly any person whose license to practice chiropractic has been suspended, or associate in the practice of chiropractic with any person or persons whose license to practice chiropractic has been suspended, or any person who has been convicted of the unlawful practice of chiropractic in Texas or elsewhere;

8. The advertising of professional superiority, or the advertising of the performance of professional services in a superior manner;

9. The purchase, sale, barter, use, or any offer to purchase, sell, barter or use, any chiropractic degree, license, certificate, or diploma, or transcript of license, certificate, or diploma in or incident to an application to the Board of Chiropractic Examiners for license to practice chiropractic;

10. Altering with fraudulent intent any chiropractic license, certificate or diploma, or transcript of chiropractic license, certificate or diploma;

11. The impersonation of, or acting as proxy for, another in any examination required by this Act for a chiropractic license;

12. The impersonation of a licensed practitioner, or the permitting or allowing another to use his license or certificate to practice chiropractic as defined by statute by a licensed practitioner;

13. Proof of insanity of the holder of a certificate, as adjudged by the regularly constituted authorities;

14. Failure to use proper diligence in the practice of chiropractic by the holder of a certificate, or grossly inefficient practice of chiropractic;

15. Failing to clearly differentiate a chiropractic office or clinic from any other business or enterprise; or

16. Personally soliciting patients, or causing patients to be solicited, by the use of case histories of patients of other chiropractors.

Evidence Regarding Use of X-Ray; Construction

Sec. 14b. The Board may require evidence of proper training, precaution, and safety in the use of analytical and diagnostic x-ray in conformity with the provisions of Chapter 72, Acts of the 57th Legislature, 1961 (Article 4590f, Vernon's Texas Civil Statutes), and in conformity with all rules and regulations of the Texas Radiation Control Agency and the Texas State Department of Health. Nothing herein shall be deemed to alter, modify or amend the provisions of Section 1, Chapter 94, Acts of the 51st Legislature, 1949, as amended (Article 4512b, Vernon's Texas Civil Statutes), or to enlarge in any manner the scope of the practice of chiropractic or the acts which a chiropractor is authorized to perform; and, provided further, that nothing herein shall be deemed to alter, modify or amend the provisions of Article 4510, Revised Civil Statutes of Texas, 1925, as amended.[1]

[1] Repealed; see, now, art. 4495b, § 1.03(8).

[See Compact Edition, Volume 4 for text of 15 to 17]

Requests for Information From Peer Review Committee

Sec. 17a. The Texas Board of Chiropractic Examiners may request from a chiropractic peer review committee established under Chapter 286, Acts of the 64th Legislature, 1975 (Article 4512b(1), Vernon's Texas Civil Statutes), information pertaining to actions taken by the peer review committee.

Rules Restricting Competitive Bidding or Advertising

Sec. 17b. The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his personal voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

[See Compact Edition, Volume 4 for text of 18 to 24]

[Amended by Acts 1975, 64th Leg., p. 19, ch. 14, § 1, eff. March 13, 1975; Acts 1975, 64th Leg., p. 21, ch. 15, §§ 1, 2, eff. March 13, 1975; Acts 1977, 65th Leg., p. 151, ch. 75, § 1, eff. April 25, 1977; Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.042, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2955, ch. 781, §§ 1, 2, 5, eff. Sept. 1, 1981.]

Section 3 of Acts 1975, 64th Leg., p. 22, ch. 15, read: "If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or application thereof to any person or circumstance is held invalid, such holding shall not affect the validity of the remaining portions of this Act, and the Legislature hereby declares it would have passed such remaining portions despite such invalidity."

Sections 3, 4, and 6 of Acts 1981, 67th Leg., p. 2963, ch. 781, provide: "Sec. 3. A rule adopted by the Texas Board of Chiropractic Examiners before September 1, 1981, that conflicts with Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the Board shall repeal the rule.

"Sec. 4. (a) A person holding office as a member of the Texas Board of Chiropractic Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall appoint three public members to fill the offices of incumbent members who are chiropractic examiners and whose terms expire in 1983, 1985, and 1987."

"Sec. 6. (a) This Act takes effect September 1, 1981.

"(b) The requirements of Subsections (f) and (g), Section 4, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949 (Article 4512b, Vernon's Texas Civil Statutes), as added by this Act, that the Texas Board of Chiropractic Examiners develop a career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement of Subsection (g) of Section 4 that merit pay is to be based on the system of annual performance evaluations shall be implemented before September 1, 1983."

Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6 (b), provides:

"Section 3, Chapter 556, Acts of the 66th Legislature, 1979 (Article 4590c-1, Vernon's Texas Civil Statutes), is repealed. The repeal of that section does not affect Subsection (d) of Section 10, Chapter 94, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 4512b, Vernon's Texas Civil Statutes)."

Art. 4512b(1). Peer Review

Definition

Sec. 1. In this article "chiropractor" means a person licensed to practice chiropractic by the Texas Board of Chiropractic Examiners.

Peer Review Committee

Sec. 2. The chiropractors practicing in this state may elect from their membership a committee which may be denominated a chiropractic peer review committee. The committee shall be elected or appointed by the organization forming such peer review committee.

Duties

Sec. 3. The chiropractic peer review committee shall:

(1) review and evaluate chiropractic treatment and services in disputes involving a chiropractor and a patient or a person obligated to pay a fee for chiropractic services or treatment rendered; and

(2) act as arbitrator in a dispute involving a chiropractor and a patient or person obligated to pay a fee for chiropractic services or treatment.

Liability of Committee Member in Civil Action

Sec. 4. Unless fraud, conspiracy, or malice can be shown, a member of a chiropractic peer review committee is not liable in a civil action for a finding, evaluation, recommendation, or other action made or taken by him as a member of the committee, or by the committee.

Conflict of Interest

Sec. 5. A member of a chiropractic peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by him.

Rights or Remedies Not Deprived

Sec. 6. Except for the express immunity provided by Section 4 of this article, this article deprives no person of a right or remedy, legal or equitable. [Added by Acts 1975, 64th Leg., p. 686, ch. 286, § 1, eff. May 22, 1975.]

Art. 4512b(2). Civil Immunity, Official Acts

In the absence of fraud, conspiracy, or malice, no member of the Texas Board of Chiropractic Examiners, its employees, nor any witness called to testify by said board, nor any consultant or hearing officer appointed by said board shall be liable or subject to suit or suits for damages for alleged injury, wrong, loss, or damage allegedly caused by any of said persons for any investigation, report, recommendation, statement, evaluation, finding, order, or award made in the courts of any of said persons' performing assigned, designated, official or statutory duties. This immunity is enacted to relieve and protect the persons named from being harassed and threatened with legal action while attempting to perform official duties.

[Added by Acts 1977, 65th Leg., p. 606, ch. 217, § 1, eff. Aug. 29, 1977.]

Sections 2 and 3 of the 1977 Act provided:

"Sec. 2. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

CHAPTER SIX B. PSYCHOLOGY

Art. 4512c. Psychologists' Certification and Licensing Act

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. In this Act, unless the context otherwise requires:

(a) "Board" means the Texas State Board of Examiners of Psychologists provided for by this Act.

(b) A person represents himself to be a "psychologist" within the meaning of this Act when he holds himself out to the public by any title or description of services incorporating the words "psychological," "psychologists," or "psychology," or offers to render or renders psychological services to individuals, corporations, or the public for compensation.

(c) The term "psychological services," means acts or behaviors coming within the purview of the practice of psychology, including, but not limited to, the application of psychological principles to the evaluation and remediation of learning, emotional, interpersonal, and behavioral disorders.

[See Compact Edition, Volume 4 for text of 3]

State Board of Examiners; Members; Appointment and Terms; Oath

Sec. 4. (a) The Texas State Board of Examiners of Psychologists shall consist of nine qualified persons appointed by the governor with the advice and consent of the senate, for regular terms of six years.

(b) Before entering upon the duties of his office, each member of the Board shall take the constitutional oath of office and file it with the secretary of state.

(c) Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

Application of Sunset Act

Sec. 4a. The Texas State Board of Examiners of Psychologists is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the Board is abolished, and this Act expires effective September 1, 1993.

Qualifications of Board Members; Terms; Vacancies

Sec. 5. (a) Each member of the Board shall be a citizen of the United States and a resident of this state.

(b) Six members must be persons certified as psychologists under this Act, who have engaged in independent practice, teaching, or research in psychology for a period of at least five years. To assure adequate representation of the diverse fields of psychology, the governor shall so make his appointments that at least two of these members are engaged in rendering services in psychology, at least one of these members is engaged in research in psychology, and at least one of these members is a member of the faculty of a training institution in psychology.

(c) One member must be certified as a psychological associate under this Act for at least five years.

(d) Two members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(e) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a), (b), (c), or (d) of this section for appointment to the Board;

(2) does not maintain during the service on the Board the qualifications required by Subsection (a), (b), (c), or (d) of this section for appointment to the Board;

(3) violates a prohibition established by Subsection (g) or (h) of this section; or

(4) does not attend at least one-half of the regularly scheduled meetings held by the Board in a calendar year, excluding meetings held while the person was not a member of the Board.

(f) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

(g) A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the psychology field. A member or employee of the Board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

(h) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(i) A member of the Board who is appointed for a term of less than six years may be appointed to succeed himself for one six-year term. A member of the Board who is appointed for a six-year term is ineligible for reappointment for a period of six years following expiration of the term. Any vacancy in the membership of the Board occurring otherwise than by expiration of term shall be filled for the unexpired term by appointment by the governor.

Compensation and Expenses of Board Members

Sec. 6. Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. All per diem and compensation for expense authorized by this section shall be paid from the "Psychologists Licensing Fund." No money shall ever be paid from the General Revenue Fund for the Administration of this Act.

[See Compact Edition, Volume 4 for text of 7]

Powers and Duties of the Board

Sec. 8. (a) In addition to the powers and duties granted the Board by other provisions of this Act, the Board may make all rules, not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it. The Board shall adopt and publish a Code of Ethics.

(b) The Board may certify specialties within the field of psychological services and may employ con-

sultants when necessary for the implementation of this Act. The Board shall adopt rules applicable to the certification of specialties and to the employment of consultants. Specialty certifications by the Board may include certifications for clinical psychologists, counseling psychologists, industrial psychologists, school psychologists, and psychologists designated as health service providers.

(c) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and describing the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make information available to the general public and appropriate state agencies.

(d) Each written contract for services in this state of a licensed or certified psychologist must contain the name, mailing address, and telephone number of the Board.

(e) There shall at all times be prominently displayed in the place of business of each licensee regulated under this Act a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against licensees can be directed to the Board.

(f) The Board shall keep an information file about each complaint filed with the Board relating to a licensee.

(g) If a written complaint is filed with the Board relating to a licensee, the Board at least as frequently as quarterly and until final disposition of the complaint shall notify the parties to the complaint of the status of the complaint unless the notification would jeopardize an undercover investigation.

(h) The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his personal voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

(i) The Board may recognize, prepare, or administer continuing education programs for persons regulated by the Board under this Act. Participation in the programs is voluntary.

(j) The Board shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of each job opening with the Board in a nonentry level position. The intraagency posting shall be made at least 10 days before any public posting is made.

(k) The Board shall develop a system of annual performance evaluations of the Board's employees based on measurable job tasks. Any merit pay authorized by the Board shall be based on the system established under this subsection.

(*l*) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 4 for text of 9 and 10]

Qualification of Applicant for Examination for Certification

Sec. 11. An applicant is qualified to take the examination for certification as a psychologist:

(a) if he has received the doctoral degree based upon a program of studies whose content was primarily psychological or its substantial equivalent in both subject matter and extent of training from a regionally accredited educational institution,

(b) if he has attained the age of majority,

(c) if he is of good moral character,

(d) if, in the judgment of the Board, he is physically and mentally competent to render psychological services with reasonable skill and safety to his patients and is afflicted with no disease or condition, either mental or physical, which would impair his competency to render psychological services, and

(e) if he has not been convicted of a felony or a crime involving moral turpitude, has not used drugs or intoxicating liquors to an extent that would affect his professional competency, has not been guilty of fraud or deceit in making his application, or has not aided or abetted a person, not a licensed psychologist, in representing himself as a psychologist in this state.

Applications

Sec. 12. Application under Section 14 of this Act for examination for certifications as a psychologist or for certification without examination as a psychologist shall be upon the forms prescribed by the Board. The Board may require that the application be verified. The required certification fee and examination fee shall accompany the application.

[See Compact Edition, Volume 4 for text of 13]

Examinations

Sec. 14. (a) The Board shall administer examinations to qualified applicants for certification at least once a year. The Board shall determine the subject and scope of the examinations and establish appropriate fees for examinations administered. Part of the examinations shall test applicant knowledge of the discipline and profession of psychology and part shall test applicant knowledge of the laws and rules

governing the profession of psychology in this state. This latter part of the examination is to be known as the Board's jurisprudence examination. An applicant who fails his examination may be reexamined at intervals specified by the Board upon payment of another examination fee corresponding to the examination failed.

(b) Within 30 days after the day on which a certification examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination within two weeks after the day that the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.

(c) The Board may waive the discipline and professional segment of the examination requirement for Diplomats of the American Board of Examiners in Professional Psychology and/or when in the Board's judgment the applicant has already demonstrated competence in areas covered by the examination. However, the jurisprudence examination shall be administered to and passed by all applicants before certification.

(d) If requested in writing by a person who fails an examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

Certification

Sec. 15. (a) A qualified applicant for certification who has successfully passed the examinations prescribed by the Board and has paid the certification fee shall be certified by the Board as a psychologist.

(b) The Board may waive any licensure or certification requirement for an applicant with a valid license or certificate from another state having licensing or certification requirements substantially equivalent to those of this state. However, all applicants must take and pass the Board's jurisprudence examination before licensing or certification.

Fees

Sec. 16. The fees shall be fixed by the Board in amounts not to exceed:

1.	Certification application:	
a.	Doctoral level	$105
b.	Master's level	90
2.	Examination	120
3.	Jurisprudence examination	20
4.	Licensure application	75
5.	Certification renewal:	
a.	Doctoral level	25
b.	Master's level	25
6.	License renewal	70
7.	Health Service Provider application	55
8.	Health Service Provider renewal	10
9.	Inactive status	10

The Board shall not maintain unnecessary fund balances, and fee amount shall be set in accordance with this requirement.

Renewal

Sec. 17. (a) The Board shall issue a certificate to each person whom it certifies and a license to those persons licensed. The certificate or license shall show the full name of the psychologist and his address and shall bear a serial number. The certificate or license shall be signed by the Chairman and the Secretary of the Board under the seal of the Board.

(b) Certificates and licenses will be renewed no less than once every two years. Certificates and licenses expire on December 31st in the appropriate year following their issuance or renewal and are invalid thereafter unless renewed.

(c) The Board shall notify every person certified or licensed under this Act of the date of expiration of his certificate or license and the amount of the renewal fee. A person may renew an unexpired certificate or license by paying to the Board before the expiration date of the certificate or license the required renewal fee. If a person's certificate or license has been expired for not longer than 90 days, the person may renew the certificate or license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the certificate or license. If a person's certificate or license has been expired for longer than 90 days but less than two years, the person may renew the certificate or license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the certificate or license. If a person's certificate or license has been expired for two years or longer, the person may not renew the certificate or license. The person may obtain a new certificate or license by submitting to reexamination and complying with the requirements and procedures for obtaining an original certificate or license.

(d) A psychologist who wishes to place his certificate or license upon an inactive status may do so upon application by payment of a fee established by the Board; such a psychologist shall not accrue any penalty for late payment of the renewal fee.

(e) The Board may refuse to renew the certification of any person who is not qualified to take the examination for certification under Section 11 of this Act.

(f) Any person holding a license issued under Section 21 of this Act shall be required to renew his license and not his certificate.

(g) The renewal procedures prescribed by this section apply to the renewal of doctoral level certificates, licenses, or specialty certifications.

(h) The renewal of certificates held by psychological associates as established by Section 19 of this Act is subject to the renewal procedures prescribed by this section except that the certificates expire May 31 in the appropriate year following their issuance or renewal.

[See Compact Edition, Volume 4 for text of 17A to 19]

Representation as a Psychologist, Psychological Associate, or Psychologist's Assistant Prohibited

Sec. 20. After December 31, 1970, no person shall represent himself as a psychologist or psychological associate within the meaning of this Act unless he is certified and registered under the provisions of this Act.

Licensing

Sec. 21. Any person who offers psychological services as defined herein for compensation, must apply to the Board and upon payment of a fee shall be granted a license by the Board. No person may be licensed unless:

(1) he is certified as a psychologist under the authority of this Act; and

(2) he has had at least two years' experience in the field of psychological services, at least one year of which was after the person's doctoral degree was conferred, and one of which was under the supervision of a licensed psychologist.

Exemptions

Sec. 22. Nothing in this Act shall be construed to apply to:

(a) the activities, services and use of official title on the part of a person employed as a psychologist by any: (1) governmental agency, (2) public school district, (3) regionally accredited institution of higher education or any hospital licensed by the Texas State Department of Health, including medical clinics associated with such hospitals and are organized as an unincorporated association, provided such employee is performing those duties for which he is employed by such agency, district, institution, or clinic and within the confines of such agency, district, institution, or clinic insofar as such activities and services are a part of the duties of his office or position as a psychologist with such agency, district, or institution, or clinic; except that persons employed as psychologists who offer or provide psychological services to the public (other than lecture services) for a fee, monetary or otherwise, over and above the salary that they receive for the performance of their regular duties, and/or persons employed as psychologists by organizations that sell psychological services to the public (other than lecture services) for a fee, monetary or otherwise must be licensed under the provisions of this Act;

(b) the activities and services of a student, intern or resident in psychology, pursuing a course of study in preparation for the profession of psychology under qualified supervision in recognized training institutions or facilities, if these activities and services constitute a part of his supervised course of study, provided that such an individual is designated by a title such as "psychological intern," "psychological trainee," or others clearly indicating such training status;

(c) the activities and services of members of other professional groups licensed, certified, or registered by this state, Christian Scientist practitioners who are duly recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal, or duly ordained religions doing work of a psychological nature consistent with their training and consistent with any code of ethics of their respective professions, provided that they do not represent themselves by any title or in any manner prohibited by this Act.

Revocation, Cancellation, or Suspension of License or Certification

Sec. 23. (a) The Texas State Board of Examiners of Psychologists shall have the right to cancel, revoke, suspend, or refuse to renew the license or certification of any psychologist or the certificate of any psychological associate or reprimand any psychologist upon proof that the psychologist:

(1) has been convicted of a felony or of a violation of the law involving moral turpitude by any court; the conviction of a felony shall be the conviction of any offense which if committed within this state would constitute a felony under the laws of this state; or

(2) used drugs or intoxicating liquors to an extent that affects his professional competency; or

(3) has been guilty of fraud or deceit in connection with his services rendered as a psychologist; or

(4) has aided or abetted a person, not a licensed psychologist, in representing himself as a psychologist within this state; or

(5) has been guilty of unprofessional conduct as defined by the rules established by the Board; or

(6) for any cause for which the Board shall be authorized to take that action by another section of this Act.

The Board shall have the right to order corrective advertising when a psychologist, individually or under his assumed name, engages in false, misleading, or deceptive advertising.

(b) If the Board proposes to refuse a person's application for a license or certification, to suspend or revoke a person's license or certificate, or to reprimand a person, the person is entitled to a hearing before the Board.

(c) Proceedings for the refusal, suspension, or revocation of a license or certificate or for the reprimand of a person are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(d) An appeal of an action of the Board is governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes). Judicial review of an action of the Board shall be conducted under the substantial evidence rule.

(e) The Board shall have the right and may, upon majority vote, rule that the order revoking, cancelling, or suspending the psychologists' license or certification be probated so long as the probationer conforms to such orders and rules as the Board may set out as the terms of probation. The Board, at the time of probation, shall set out the period of time which shall constitute the probationary period. Provided further, that the Board may at any time while the probationer remains on probation hold a hearing, and upon majority vote, rescind the probation and enforce the Board's original action in revoking, cancelling, or suspending the psychologists' license or certification, the said hearing to rescind the probation shall be called by the Chairman of the Texas State Board of Examiners of Psychologists who shall cause to be issued a notice setting a time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his counsel at least ten (10) days prior to the time set for the hearing. When personal service is impossible, or cannot be effected, the same provisions for service in lieu of personal service as heretofore set out in this Act shall apply. At said hearing the respondent shall have the right to appear either personally or by counsel or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board shall thereupon determine the charges upon their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged. The order revoking or rescinding the probation shall not be subject to review or appeal.

(f) On application, the Board may recertify the applicant or reissue a license to a person whose license has been cancelled, revoked, or suspended. However, in the case of cancellation or revocation, the application may not be made before one year after the cancellation or revocation and must be made in the manner and form as the Board may require.

[See Compact Edition, Volume 4 for text of 24]

Enforcement of Competency Requirements

Sec. 24A. (a) If the Board reasonably believes that a person applying to take the certification examination, or applying for renewal of certification, is not physically and mentally competent to render psychological services with reasonable skill and safety to his patients, or is afflicted with a disease or condition, either physical or mental, which would impair his competency to render psychological services, the Board may request that that person submit to a physical examination by a medical doctor approved by the Board or submit to a mental examination by a medical doctor or licensed psychologist approved by the Board.

(b) If the applicant or person seeking renewal of certification refuses to submit to the examination, the Board shall issue an order requiring that person to show cause for his refusal and shall schedule a hearing on the order within thirty (30) days after notice is served on the person who has refused to submit to the examination. Notice shall be given either by personal service or by registered mail return receipt requested. At the hearing the person may appear personally and by counsel and present evidence in justification of his refusal to submit to the examination. After a complete hearing the Board shall issue an order either requiring the person to submit to the examination or withdrawing the request for the examination. Unless the request is withdrawn the person who has refused to take the examination may not take the certification examination, and is not entitled to renewal of his certification. An appeal from the order of the Board may be made under Section 23 of this Act.

[See Compact Edition, Volume 4 for text of 25 to 27]

[Amended by Acts 1975, 64th Leg., p. 956, ch. 362, §§ 1 to 9, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.045, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2849, ch. 766, § 1, eff. Sept. 1, 1981.]

Sections 2 to 4 of the 1981 amendatory act provide:

"Sec. 2. (a) A person holding office as a member of the Texas State Board of Examiners of Psychologists on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall appoint as additional members of the board a psychological associate and two members of the public. The governor shall designate the psychological associate for a term expiring October 31, 1981, one public member for a term expiring October 31, 1983, and one public member for a term expiring October 31, 1985.

"Sec. 3. A rule adopted by the Texas State Board of Examiners of Psychologists before September 1, 1981, that conflicts with the Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule.

"Sec. 4. (a) This Act takes effect September 1, 1981.

"(b) The requirements of Subsections (j) and (k), Section 8, Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes), as added by this Act, that the Texas State Board of Examiners of Psychologists develop a career ladder program and a system of annual performance evaluation shall be implemented before September 1, 1982. The requirement of Subsection (k) of Section 8 that merit pay is to be based on the system of annual performance evaluations shall be implemented before September 1, 1983."

CHAPTER SIX C. ATHLETIC TRAINERS

Art. 4512d. Advisory Board of Athletic Trainers

Definitions

Sec. 1. In this Act:

[See Compact Edition, Volume 4 for text of 1(1)]

(2) "Board" means the Advisory Board of Athletic Trainers.

[See Compact Edition, Volume 4 for text of 1(3) and (4)]

Advisory Board of Athletic Trainers

Sec. 2. (a) The Advisory Board of Athletic Trainers, composed of six members, is created. The

board is created as a part of the State Department of Health and shall perform its duties as a board within the State Department of Health. To qualify as a member, a person must be a citizen of the United States and a resident of Texas for five years immediately preceding appointment. Members must be licensed athletic trainers.

(b) The members of the board shall be appointed by the governor with the advice and consent of the Senate. Except for the initial appointees, members hold office for terms of six years. The terms expire on January 31 of odd-numbered years.

(c) Each appointee to the board shall qualify by taking the constitutional oath of office within 15 days from the date of his appointment. On presentation of the oath, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members of the board.

(d) In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

Appropriations to Department of Health

Sec. 2A. The State Department of Health [1] may expend funds appropriated to it for the purpose of implementing the provisions of this Act.

[1] Name changed to Texas Department of Health; see art. 4414a.

Board Organization and Meetings

Sec. 3.

[See Compact Edition, Volume 4 for text of 3(a)]

(b) The board shall meet at least twice a year. Additional meetings may be held on the call of the chairman or at the written request of any three members of the board.

(c) The quorum required for any meeting of the board is four members. No action by the board or its members has any effect unless a quorum of the board is present.

[See Compact Edition, Volume 4 for text of 4]

Powers and Duties of the Board

Sec. 5.

[See Compact Edition, Volume 4 for text of 5(a) and 5(b)]

(c) The board shall establish guidelines, which may include requirements for continuing education, for athletic trainers in the state and prepare and conduct an examination for applicants for a license.

[See Compact Edition, Volume 4 for text of 5(d) to 7]

Prohibited Acts

Sec. 8. No person may hold himself out as an athletic trainer or perform any of the activities of an athletic trainer as defined in this Act without first obtaining a license or a temporary license under this Act.

Qualifications

Sec. 9. An applicant for an athletic trainer license must possess one of the following qualifications:

(1) have met the athletic training curriculum requirements of a college or university approved by the board and give proof of graduation; or

(2) hold a degree or certificate in physical therapy and have completed a basic athletic training course from an accredited college or university, and have completed an apprenticeship of 720 hours in two years under the direct supervision of a licensed athletic trainer acceptable to the board or as per board approval. Actual working hours will include a minimum of 20 hours per week during each fall semester; or

(3) hold a degree in corrective therapy with at least a minor in physical education or health which included a basic athletic training course and meet apprenticeship or any other requirement established by the board.

(4) An out-of-state applicant must fulfill one of the above stated qualifications, (1), (2), or (3), and submit proof of active engagement as an athletic trainer in the State of Texas as set forth in Section 16(b) of this Act.

Issuance of License

Sec. 10.

[See Compact Edition, Volume 4 for text of 10(a) and 10(b)]

(c) The board may issue a temporary license to an applicant under Subsection (a) of this section if the applicant meets the requirements of Section 9 of this Act and any other requirement established by the board. The board by rule shall prescribe the time during which temporary licenses are valid.

[See Compact Edition, Volume 4 for text of 11 and 12]

Procedures for Denial, Suspension, or Revocation of a License

Sec. 13. (a) A person whose application for a license or license renewal is denied is entitled to a hearing before the board in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), if the person submits to the board, not later than the 30th day after the day the license or license renewal is denied, a written request for a hearing.

(b) Proceedings for revocation or suspension of a license and appeals from those proceedings are governed by the Administrative Procedure and Texas Register Act, as amended.

[See Compact Edition, Volume 4 for text of 13(c) to 13(g)]

Sec. 14. Repealed by Acts 1981, 67th Leg., p. 1857, ch. 437, § 5, eff. Sept. 1, 1981.

[See Compact Edition, Volume 4 for text of 15 to 17]

[Amended by Acts 1975, 64th Leg., p. 859, ch. 328, §§ 1 to 4, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 1856, ch. 437, §§ 1 to 5, eff. Sept. 1, 1981.]

Sections 5 and 6 of the 1975 amendatory act provided:

"Sec. 5. Members serving on the Texas Board of Athletic Trainers on the effective date of this Act shall serve on the Advisory Board of Athletic Trainers for the terms for which they were appointed. The governor shall appoint three additional members to the Advisory Board of Athletic Trainers. Of the three additional members the governor shall designate one for a term expiring in 1981, one for a term expiring in 1979, and one for a term expiring in 1977.

"Sec. 6. This Act takes effect September 1, 1975, on which date all property, files, and records in the custody of the Texas Board of Athletic Trainers are transferred to the State Department of Health to be used by the Advisory Board of Athletic Trainers in the performance of its duties."

CHAPTER SIX D. PHYSICAL THERAPY

Art. 4512e. Board of Physical Therapy Examiners

Definitions

Sec. 1. In this Act:

(1) "Physical therapy" means the examination, treatment, or instruction of human beings to detect, assess, prevent, correct, and alleviate physical disability and pain from injury, disease, disorders, or physical deformities and includes the administration and evaluation of tests and measurements of bodily functions and structures in aid of diagnosis or treatment; the planning, administration, evaluation, and modification of treatment and instruction, including the use of physical measures, activities, and devices for preventive and therapeutic purposes on the basis of approved test findings and the provision of consultative, educational, and advisory services for the purpose of reducing the incidence and severity of physical disability and pain. Physical therapy shall also include the delegation of selective forms of treatment to supportive personnel with assumption of the responsibilities for the care of the patient and continuing direction and supervision of the supportive personnel. The use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used herein, and a license issued hereunder shall not authorize the diagnosis of diseases or the practice of medicine as defined by law.

(2) "Physical therapist" or "physiotherapist" means a person who practices physical therapy. "Hydrotherapist," "massage therapist," "mechanotherapist," "functional therapist," "physical therapy practitioner," "physical therapy specialist," "physiotherapy practitioner," "physical therapy technician," and "myofunctional therapist" are equivalent terms; any derivation of the above terms or any reference to any one of them in this Act includes the others.

(3) "Physical therapist assistant" means a person who works under the supervision of a licensed physical therapist and assists a physical therapist in the practice of physical therapy and whose activities require an understanding of physical therapy but do not require a professional education equivalent for licensing as a physical therapist.

(4) "Physical therapy aide" means a person who aids in the practice of physical therapy and whose activities require on-the-job training and on-site supervision by the physical therapist or a physical therapist assistant.

(5) "Board" means the Texas Board of Physical Therapy Examiners.

(6) "Discipline" means the revocation or suspension of a license, the placing on probation of a licensee whose license has been suspended, or the reprimand of a licensee in accordance with this Act and rules adopted by the board.

Creation of Board

Sec. 2. (a) There is created a Texas Board of Physical Therapy Examiners. The board shall consist of nine members appointed by the governor with the advice and consent of the senate for staggered terms of six years, with three members' terms expiring on January 31 of each odd-numbered year. Six members must be licensed physical therapists and three members must be members of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufacturers, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, any interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(b) A vacancy on the board shall be filled by appointment by the governor with the advice and consent of the senate for the remainder of the term.

(c) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(d) The board may appoint an executive director at an annual salary as determined by legislative appropriation.

(e) The executive director shall administer this Act and carry out the instructions of the board, including the employment of investigators and other staff as required to implement the purpose of this Act. The executive director or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting. The executive director or his designee shall develop a system of annual perform-

ance evaluations based on measurable job tasks. All merit pay authorized by the executive director must be based on the system established under this subsection.

(f) A member of the board is not liable to civil action for any act performed in good faith in the execution of his duties in this capacity.

(g) The board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless the board is continued in existence as provided by that Act, the board is abolished effective September 1, 1993.

(h) A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the health-care industry. A member or employee of the board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board.

(i) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by this section for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by this section for appointment to the board;

(3) violates a prohibition prescribed by Subsection (h) of this section; or

(4) fails to attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a board member.

(j) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

Powers and Duties of Board

Sec. 3. (a) The board shall examine applicants for licenses at least once each year at such reasonable places and times as shall be designated by the board in its discretion.

(b) The board may employ additional employees to aid in administering examinations.

(c) The examination shall embrace the following subjects: anatomy; pathology; physiology; psychology; physics; electrotherapy; radiation therapy; hydrotherapy; massage therapy; exercises; physical therapy as applied to medicine; neurology; orthopedics; psychiatry; and procedures in the practice of physical therapy.

(d) The board shall revoke or suspend a license, place on probation a licensee whose license has been suspended, or reprimand a licensee for a violation of this Act or a rule adopted by the board.

(e) The board may adopt rules consistent with this Act to carry out its duties in administering this Act.

(f) Within 30 days after the date a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(g) The board shall maintain an information file about each complaint filed with the board relating to a licensee. If a written complaint is filed with the board relating to a licensee, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(h) The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

(i) Each written contract for services in this state of a licensed physical therapist shall contain the name, mailing address, and telephone number of the board.

(j) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(k) The board may recognize, prepare, or implement continuing education programs for licensees. Participation in the programs is voluntary.

(*l*) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committee's statements.

Organization of Board

Sec. 4. (a) The members of the board shall, on appointment, elect from their number a chairman,

secretary, and other officers required for the conduct of business. Special meetings of the board shall be called by the chairman and secretary, acting jointly, or on the written request of any two members. The board may adopt bylaws and rules necessary to govern its proceedings and to implement the purposes of this Act.

(b) The secretary shall keep a record of each meeting of the board and maintain a register containing the names of all physical therapists licensed under this Act, which shall be at all times open to public inspection. On March 1 of each year, the executive director shall transmit an official copy of the list of the licensees to the secretary of state for permanent record, a certified copy of which shall be admissible as evidence in any court of this state.

(c) The board shall assist the proper legal authorities in the prosecution of all persons violating any provisions of this Act.

Compensation and Bond

Sec. 5. (a) Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

(b) The executive director of the board shall execute a bond in the amount of $10,000 for board and staff members payable to the board, conditioned on the faithful performance of the duties of the board members and office staff and an accounting of funds received in the board office. The bond shall be signed by two or more good and sufficient sureties or by a surety company authorized to do business in this state and shall be approved by the chairman of the board.

Exemptions

Sec. 6. This Act does not apply to:

(1) a licensee of another state agency performing health-care services within the scope of the applicable licensing act, an occupational therapist who confines his practice to occupational therapy, a certified corrective therapist who confines his practice to corrective therapy, and a speech pathologist or an audiologist who confines his practice to the treatment of communication disorders;

(2) a physical therapy aide;

(3) a physical therapy student or physical therapy assistant student in an accredited curriculum and under the supervision of a licensee under this Act; or a student of an accredited allied health science curriculum under the supervision of properly licensed, certified, or registered personnel;

(4) a physical therapist doing special projects in patient care while working toward an advanced degree from an accredited college or university; or

(5) a physical therapist who does not live in this state and is licensed by the appropriate authorities who comes into this state to attend educational activities. The duration of this exemption shall be no more than six months.

Prohibited Acts

Sec. 7. (a) A person may not practice or represent himself as able to practice physical therapy, or act or represent himself as being a physical therapist unless he is licensed under this Act.

(b) A person may not act or represent himself as being a physical therapist assistant unless he is licensed under this Act.

(c) It is unlawful for any person or for any business, its employees, or other agents or representatives to use in connection with its name or business activity the words "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "licensed physical therapist," "registered physical therapist," or assistant thereto, or the letters "PT," "PhT," "LPT," or "RPT" or any other words, letters, abbreviations, or insignia indicating or implying orally or in writing, in print or by sign, or in any other way, directly or by implication, that physical therapy is provided or supplied, or to extend or provide physical therapy services unless the services are provided by a physical therapist licensed under this Act.

Physical Therapist License

Sec. 8. (a) An applicant for a license as a physical therapist must file a written application, on a form provided by the board, accompanied by an examination fee prescribed by the board, which is refundable if the applicant does not take the examination, and an application fee prescribed by the board, which is not refundable. The applicant must present evidence satisfactory to the board that he has completed an accredited curriculum in physical therapy education that has provided adequate instruction in the basic sciences, clinical sciences, and physical therapy theory and procedures as determined by the board and has completed a minimum of 60 academic semester credits or the equivalent from a recognized college in which semester hour credits are acceptable for transfer to The University of Texas, including courses in biological, social, and physical science.

(b) The board shall issue a license to each applicant who passes the examination, meets the qualifications prescribed by Subsection (a) of this section, and has not committed an act that constitutes grounds for denial of a license under Section 19 of this Act.

Physical Therapist Assistant License

Sec. 9. (a) An applicant for a physical therapist assistant license must file a written application with the board, on a form provided by the board, accompanied by an examination fee prescribed by the board, which is refundable if the applicant does not take the examination, and an application fee prescribed by the board, which is not refundable. The applicant must present evidence satisfactory to the board that he has completed an accredited physical therapist assistant program including courses in the anatomical, biological, and physical sciences, and clinical procedures as prescribed and approved by the board.

(b) The board shall issue a license to each applicant who passes the examination, meets the qualifications prescribed by Subsection (a) of this section, and has not committed an act that constitutes grounds for denial of a license under Section 19 of this Act.

License by Endorsement

Sec. 10. A person who is licensed or otherwise registered as a physical therapist or as a physical therapist assistant by another state, the District of Columbia, or a commonwealth or territory of the United States whose requirements for licensing or registration were at the date of licensing or registration substantially equal to the requirements prescribed by this Act may receive a physical therapist license without examination on submission of an application on a form prescribed by the board and payment of an endorsement license fee prescribed by the board.

Temporary License

Sec. 11. (a) The board shall issue a temporary license without examination to a physical therapist or physical therapist assistant who meets the qualifications prescribed by Sections 8 and 9 of this Act on submission of a written application on a form prescribed by the board, proof that the applicant is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project, and payment of a fee prescribed by the board for a physical therapist temporary license or a physical therapist assistant temporary license. This license expires one year from the date of issuance.

(b) The board shall issue a temporary license to a person who has applied for a license and meets the qualifications prescribed by Sections 8 and 9 of this Act. This license expires on completion of scoring of the next administered examination whether the applicant passes the examination or not. Issuance of a temporary license following failure of part or all of the examination shall be according to rules adopted by the board.

Title

Sec. 12. (a) A licensed physical therapist may use the title "Physical Therapist." No other person may be so designated or permitted to use the term "Physical Therapist." The license as a physical therapist does not authorize the use of the prefix "Dr.," the word "Doctor," or any suffix or affix indicating or implying that the licensed person is a physician.

(b) A licensed physical therapist assistant may use the title "Physical Therapist Assistant." No other person may be so designated or permitted to use the term "Physical Therapist Assistant." The license as physical therapist assistant does not authorize the use of the prefix "Dr.," the word "Doctor," or any suffix or affix indicating or implying that the licensed person is a physician.

Reexamination

Sec. 13. (a) An applicant who fails to pass a one-part examination or any part or parts of a divided examination given by the board may take another one-part examination or the part or parts of the divided examination that he failed on payment of an additional examination fee. The applicant must be reexamined not less than six months nor more than 12 months after the unsuccessful examination.

(b) On the failure of an applicant to pass a second or subsequent examination, the board shall require him to complete additional courses of study designated by the board, in which case the applicant shall be required to present to the board satisfactory evidence of having completed the required additional courses before taking subsequent examinations and shall pay additional fees equal to the fee required for filing the original application.

(c) If requested in writing by a person who fails the licensing examination administered under this Act, the board shall furnish the person with a analysis of the person's performance on the examination.

Display of License

Sec. 14. (a) Each licensee under this Act shall display his license and renewal certificate in a conspicuous place in the principal office where he practices physical therapy.

(b) There shall at all times be prominently displayed in the place of business of each licensee under this Act a sign containing the name, mailing address, and telephone number of the board and a statement informing consumers that complaints against licensees can be directed to the board.

Renewal of License

Sec. 15. (a) A license issued under this Act, except a temporary license, expires one year from the date of issuance.

(b) A person may renew his unexpired license by paying to the board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) The board shall notify each licensee in writing of the licensee's impending license expiration at least 30 days before the expiration date and shall attempt to obtain from the licensee a signed statement confirming receipt of the notice.

Alternative Expiration Date System

Sec. 16. (a) The board may adopt a system under which licenses expire on various dates during the year.

(b) For the year in which the license expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee pays only that portion of the license fee that is allocable to the number of months during which the license is valid.

(c) On renewal of the license on the new expiration date, the total license renewal fee is payable.

Fees

Sec. 17. (a) The board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

Examination	
1. Physical Therapist	$75
2. Physical Therapist Assistant	70
Application	
1. Physical Therapist	40
2. Physical Therapist Assistant	40
License Fee	
Endorsement	
1. Physical Therapist	75
2. Physical Therapist Assistant	70
Temporary License	
1. Physical Therapist	30
2. Physical Therapist Assistant	20
Renewal	
1. Physical Therapist	55
2. Physical Therapist Assistant	45
Issuance Fee	
1. Physical Therapist	45
2. Physical Therapist Assistant	45
Duplicate License	
1. Physical Therapist	25
2. Physical Therapist Assistant	25
Transfer Fee	
1. Physical Therapist	25
2. Physical Therapist Assistant	25

(b) The board may not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

Penalties

Sec. 18. (a) A person who knowingly or intentionally violates a provision of this Act commits a Class A misdemeanor.

(b) Each day of violation constitutes a separate offense.

(c) The attorney general, a district attorney, a county attorney, or any other person or any group of persons may institute injunction proceedings or any other proceedings to enforce this Act and to enjoin or restrain a physical therapist, physical therapist assistant, or any other person from the practice of physical therapy without having complied with this Act. A physical therapist, physical therapist assistant, or any other person found by a court of competent jurisdiction to have violated a provision of this Act shall forfeit to the State of Texas the sum of $200 per day as a penalty for each day's violation, the sums to be recovered in a suit by the attorney general, a district attorney, a county attorney, or any other person or any group of persons. A person other than the attorney general, a district attorney, or a county attorney who brings an action for injunction or to enforce this Act may recover his court costs and attorney's fees.

Grounds for Denial of a License or Discipline of a Licensee: Competitive Bidding and Advertising

Sec. 19. (a) A license may be denied, or after hearing, suspended or revoked, or a licensee otherwise disciplined if the applicant or licensee has:

(1) provided physical therapy treatment to a person other than on the referral of a physician licensed to practice medicine by the Texas State Board of Medical Examiners, or by a dentist licensed by the State Board of Dental Examiners, or a doctor licensed to practice chiropractic by The Texas Board of Chiropractic Examiners or a podiatrist licensed by the Texas State Board of Podiatry Examiners, or by any other qualified, licensed health-care personnel who are authorized to prescribe treatment of individuals, or in the case of a physical therapist assistant, has treated a person

other than under the direction of a licensed physical therapist;

(2) used drugs or intoxicating liquors to an extent that affects his professional competence;

(3) been convicted of a felony in this state or in any other state, territory, or nation; conviction as used in this subdivision includes a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere;

(4) obtained or attempted to obtain a license by fraud or deception;

(5) been grossly negligent in the practice of physical therapy or in acting as a physical therapist assistant;

(6) been adjudged mentally incompetent by a court of competent jurisdiction;

(7) practiced physical therapy in a manner detrimental to the public health and welfare;

(8) had his license to practice physical therapy revoked or suspended or had other disciplinary action taken against him or had his application for a license refused, revoked, or suspended by the proper licensing authority of another state, territory, or nation.

(b) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Procedures for Denial of a License or Discipline of a Licensee

Sec. 20. (a) A person whose application for a license is denied is entitled to a hearing before the board if he submits a written request for a hearing to the board.

(b) Proceedings for the denial, suspension, or revocation of a license or for other discipline of a licensee and appeals from those proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(c) On application, the board may reissue a license to a person whose license has been revoked, but the application may not be made before the 180th day after the date the order of revocation became final, and the application must be made in the manner and form required by the board.

(d) On application, the board may issue a license to a person whose application for license has been denied, but the application may not be made prior to one year after the date of denial.

Disposition of Funds

Sec. 21. (a) Fees received by the board under this Act shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(b) The state auditor shall audit the financial transactions of the board during each fiscal biennium.

(c) On or before January 1 of each year, the board shall make in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the board during the preceding year.

[Amended by Acts 1975, 64th Leg., p. 795, ch. 307, §§ 1 to 4, eff. May 27, 1975; Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.043, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2936, ch. 779, § 1, eff. Sept. 1, 1981.]

Sections 2 to 4 of the 1981 amendatory act provide:

"Sec. 2. On the effective date of this Act, a person who is licensed as a physical therapist or a physical therapist assistant in this state shall be issued an appropriate license under this Act.

"Sec. 3. (a) Incumbent members of the board on the effective date of this Act serve the remainder of their terms.

"(b) The successors to the board members whose terms expire on January 31, 1983, are the three required public members.

"Sec. 4. (a) This Act takes effect September 1, 1981.

"(b) The requirements under Section 2(e), Chapter 836, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512e, Vernon's Texas Civil Statutes), as revised by this Act, that the executive director of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement under Section 2(e) that merit pay is to be based on the performance evaluation system shall be implemented before September 1, 1983."

CHAPTER SIX E. SOCIAL PSYCHOTHERAPY

Art. 4512f. Social Psychotherapist Regulation Act

Short Title

Sec. 1. This Act may be cited as the Social Psychotherapist Regulation Act.

Definitions

Sec. 2. In this Act:

(1) A person represents himself to be a "social psychotherapist" within the meaning of this Act if he states or implies he is a "social psychotherapist," or uses the letters "S.P." as part of his professional identification in conjunction with his name.

(2) The term "social psychotherapy" includes acts or behaviors coming within the purview of the practice of social psychotherapy as defined in this Act.

(3) The practice of social psychotherapy means a service in which a special knowledge of social resources, human capabilities, and the part conscious and unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive

emotional adjustments. The application of social psychotherapy includes, but is not restricted to, counseling and using applied psychotherapy of a nonmedical nature with individuals, families, and groups, and doing related research.

(4) Psychotherapy, within the meaning of this Act, is the use of psychotherapeutic methods within a professional relationship to assist the person or persons to achieve a better emotional adaptation, to acquire greater realization of human potential and adaptation, to modify internal and external conditions that affect individuals or groups with respect to behavior, emotions, and thinking with respect to intrapersonal and interpersonal process.

(5) "Board" means the Texas State Board of Examiners in Social Psychotherapy.

(6) "Department" means the State Department of Health.

Practice of Medicine Not Authorized

Sec. 3. Nothing in this Act permits the practice of medicine as defined by the laws of this state.

State Board

Sec. 4. The Texas State Board of Examiners in Social Psychotherapy is created. The board consists of six qualified persons appointed by the governor with the advice and consent of the senate. Except for those members first appointed to the board, a member is appointed for a term of six years, expiring January 31 of odd-numbered years. The members of the first board shall be appointed within 90 days after this Act takes effect to serve the following terms: two for terms which expire on January 31, 1981, two for terms which expire January 31, 1979, and two for terms which expire January 31, 1977. Thereafter, at the expiration of the term of each member, the governor shall appoint a successor for each. Before entering on the duties of his office, each member of the board shall take the constitutional oath of office which shall be filed with the secretary of state.

Application of Sunset Act

Sec. 4a. The Texas State Board of Examiners in Social Psychotherapy is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

[1] Article 5429k.

Qualifications of Members of the Board

Sec. 5. Each member of the board shall be a citizen of the United States, a resident of this state, licensed under this Act, and have been actively engaged in the practice of social psychotherapy for five years preceding his appointment, provided, however, that the members comprising the board as first appointed shall meet these requirements with the exception of being licensed under this Act. To assure adequate representation of the diverse field of social psychotherapy, the governor shall appoint six members primarily engaged in rendering social psychotherapeutic services, three who provide such services as a social psychotherapist in private practice; one social psychotherapist who is engaged primarily in the administration of social psychotherapeutic services; one social psychotherapist who is a member of the faculty of an accredited university training program whose graduates may be eligible for certification under the provisions of this Act; and one social psychotherapist who is employed in a private or public agency. A member of the board who has served a six-year term may not succeed himself. Any vacancy in the membership of the board occurring otherwise than by expiration of term shall be filled for the unexpired term by appointment of the governor.

Per Diem; Expenses

Sec. 6. A member of the board is not entitled to a salary for duties performed as a member of the board. A member is entitled to $25 for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing, or other authorized business, and is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties, as evidenced by vouchers approved by the executive secretary.

Executive Secretary

Sec. 7. (a) The executive secretary shall be an employee of the State Department of Health; the state commissioner of health, after consulting with the board, shall designate the employee to serve as executive secretary.

(b) The executive secretary shall be the administrator of social psychotherapy activities for the board. In addition to his other duties prescribed in this Act and by the State Department of Health, the executive secretary shall

(1) keep full and accurate minutes of all transactions and proceedings of the board;

(2) be the custodian of all of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to effectuate the purposes and objectives of this Act, including but not limited to rules and regulations, and proposals on administrative procedures not inconsistent with this Act;

(4) exercise general supervision over all persons employed by the State Department of Health in the administration of this Act; and

(5) be responsible for the investigation of complaints and for the presentation of formal complaints.

(c) The executive secretary, or his authorized representative, shall

(1) attend all meetings of the board but is not entitled to vote; and

(2) handle or arrange for the handling of the correspondence, make or arrange for the inspections and investigations, and obtain, assemble, or prepare the reports and data that the board may direct or authorize.

Staff Services

Sec. 8. The basic personnel and necessary facilities as may be required to carry out the provisions of this Act shall be the personnel and facilities of the State Department of Health acting as the agents of the board. The department may by agreement secure such services as it may deem necessary from any other departments and agencies of this state, may arrange for compensation for these services, and may employ and compensate, within appropriations available, the professional consultants, technical assistants, and employees on a full- or part-time basis necessary to carry out the provisions of this Act. The board may request, and on request is entitled to receive, the assistance of state educational institutions or other state agencies.

Organization and Meetings of the Board

Sec. 9. The board shall hold a regular annual meeting at which time a chairman and a vice-chairman shall be elected. Other regular meetings shall be held at the times that the rules of the board may provide but not less than two times a year. Special meetings may be held at the times that may be deemed necessary or advisable by the board or a majority of its members. Reasonable notice of all meetings shall be given in the manner prescribed by the rules of the board. The board may employ other persons it deems necessary or desirable to carry out the provisions of this Act. The board shall adopt and have an official seal.

Enforcement Proceedings

Sec. 10. The board, or the executive secretary when duly authorized, generally or specifically, by the department, may cause legal proceedings to be instituted in courts of competent jurisdiction to compel compliance with the provisions of this Act or the rules, regulations, orders, variances, or other decisions of the board.

Rulemaking

Sec. 11. (a) The board may, in accordance with the procedures in this section and subject to the approval of the State Board of Health, make rules and regulations consistent with the general intent and purposes of this Act and amend any rule or regulation it makes.

(b) Before adopting, amending, or repealing rules or regulations, the board shall hold a public hearing. If the rule or regulation, or amendment or repeal, will have statewide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days prior to the scheduled date of the hearing in at least three newspapers whose combined circulation will, in the judgment of the board, give reasonable circulation throughout the state. If the rule or regulation, or amendment or repeal, will have effect in only a part of the state, the notice shall be published one time at least 10 days prior to the scheduled date of the hearing in a newspaper or newspapers having general circulation in the area or areas to be affected. The board shall also comply, as appropriate, with the requirements of Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252–13, Vernon's Texas Civil Statutes).

(c) Any person may appear and be heard at the hearing on any rules or regulations. The executive secretary shall record the names and addresses of the persons appearing. The executive secretary shall send written notice to any person heard or represented at the hearing or requesting notice of the action taken by the board.

(d) Before it becomes effective, a rule or regulation, or amendment or repeal, shall be approved in writing by at least four members of the board and approved by the State Department of Health and a certified copy filed with the secretary of state for the time specified in Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252–13, Vernon's Texas Civil Statutes).

Contents of the Rules

Sec. 12. The board is authorized to adopt rules and regulations, subject to the approval of the State Board of Health, relating to the professional behavior and ethics of the social psychotherapy profession and the qualifications and licensing of social psychotherapists, consistent with the protection of the health and general welfare of the people.

Qualification of Applicant for Examination for Licensing

Sec. 13. An applicant is qualified to take the examination for licensing as a social psychotherapist if

(1) he presents evidence of having received a master's degree based on a program of studies whose content was designed to develop skill and competence in the use of psychotherapeutic treatment methods with the degree being from a graduate school accredited by the Council on Social Work Education or from a graduate school equivalent in both subject matter and extent of training for social psychotherapists which meets accreditation requirements of the board;

(2) he has at least two years of full-time experience acceptable to the board subsequent to the granting of the master's degree in the use of psychotherapeutic methods under the supervision of a licensed social psychotherapist or a person qualified to become licensed under this Act, except that if the applicant works in a geographical area where no licensed social psychotherapist is available to provide the supervision, he shall have two

years of full-time experience subsequent to the granting of the master's degree acceptable to the board in the use of psychotherapeutic methods under the supervision of a licensed psychologist or a board certified psychiatrist;

(3) he is at least 21 years of age;

(4) he is a resident of this state; and

(5) he is of good moral character.

Applications

Sec. 14. Application for examination for the social psychotherapy licensure shall be on the forms prescribed by the board. The board may require that the application be verified. The licensing fee shall accompany the application.

Evaluation of Experience

Sec. 15. In determining the acceptability of the applicant's professional experience, the board may require documentary evidence of the quality, scope, and nature of the applicant's experience the board deems necessary.

Examinations

Sec. 16. The department shall administer examinations to qualified applicants for licensure at least once a year. The board, with the approval of the State Board of Health, shall determine the subject matter, scope, and necessary scores for successful completion of the examinations. Written examinations may be supplemented by oral examinations. An applicant who fails his examination may be reexamined at a subsequent examination on payment of another examination fee. An applicant who fails his written examination has the right to review this examination and to have a full hearing.

Licensing

Sec. 17. (a) A qualified applicant for licensing who has successfully passed the examination prescribed by the board and has paid the licensing fee may be issued a license to hold himself forth as a social psychotherapist by the board.

(b) Until August 31, 1976, a person meeting the requirements of Section 13 of this Act and possessing the equivalent of the education and training requirements of that section as determined by the board, shall be issued a license on application.

(c) The board may, on application and payment of the licensing fee, license as a social psychotherapist a person who is licensed to practice social psychotherapy by another state, territory, or possession of the United States if the requirements of that state, territory, or possession for the license are the substantial equivalent of the requirements of this Act as determined by the board.

Licenses

Sec. 18. (a) The board shall issue a license to each person whom it licenses as a social psychotherapist. The license shall show the full name of the social psychotherapist and his address and shall bear a serial number. The license shall be signed by the chairman and the secretary of the board under the seal of the board.

(b) Licenses must be renewed at least once every two years. Licenses expire on August 31 and are invalid thereafter unless renewed.

(c) Social psychotherapists desiring to renew a license and who have maintained the status required by the board to qualify for licenses shall

(1) pay the renewal fee for the license; and

(2) if the board requires, give evidence that the social psychotherapist has participated in continuing education courses acceptable to the board toward the furthering of his professional development as a social psychotherapist.

(d) The board shall notify every person licensed under this Act of the amount of the renewal fee. This notice shall be mailed at least 60 days before the expiration of the license. Renewal may be made at any time during the months of July or August on application therefor by meeting the renewal requirements provided for in this Act. Failure to pay the renewal fee prior to September 1 shall not deprive a social psychotherapist of his right to renew his license, but the fee to be paid for renewal after August 31 shall be increased by 50 percent of the regular renewal fee.

Exemptions

Sec. 19. Nothing in this Act restricts the activities of the following; provided, however, no person shall state or imply that he is a "social psychotherapist" or use the letters "S.P." as part of his professional identification in conjunction with his name unless he is licensed under the provisions of this Act:

(1) a licensed physician, licensed psychologist, licensed attorney, social worker, lecturer, duly ordained priest, rabbi, minister of the gospel, Christian Science practitioner, or other licensed professional or ordained religious practitioner;

(2) a person who is performing activities of a psychotherapeutic nature, provided that he is performing those activities as part of the duties for which he is employed or under contract, and the activities are performed solely within the confines or under the control and supervision of one exempt under Section 19(1) of this Act or the jurisdiction of the organization in which he is employed or under contract, and provided that he does not state or imply that he is licensed to practice social psychotherapy, and provided that he may not offer to engage in the practice of social psychotherapy to the public for a fee, monetary or otherwise, over and above the salary or fee he receives for the performance of his official duties with the organization in which he is employed, or under contract, unless he is licensed under this Act;

(3) a person engaging in activities of a psychotherapeutic nature who is employed by accredited

academic institutions, public schools, government agencies, or nonprofit institutions engaged in the training of graduate students or interns pursuing the course of study leading to a master's degree from a school accredited by the Council on Social Work Education, or working in a recognized training program, provided that these activities constitute a part of a supervised course of study and that the student is designated by a title such as social psychotherapy intern, social psychotherapy trainee, or other title clearly indicating the training status appropriate to his level of training; or

(4) a person from another state offering social psychotherapeutic services in this state; provided the services are performed for no more than five days in a calendar month, except that if the person meets the qualifications and requirements provided in this Act and resides in a state or territory of the United States, or foreign country, or province that does not grant a certification or license to practice social psychotherapy, he may offer social psychotherapeutic services in this state for a total of not more than 30 days in any calendar year without being licensed under this Act.

Revocation, Cancellation, or Suspension of License

Sec. 20. (a) The Texas State Board of Examiners in Social Psychotherapy may cancel, revoke, or suspend the license of any social psychotherapist on proof that the social psychotherapist:

(1) has been convicted of a felony or of a violation of the law involving moral turpitude by any court; or

(2) has the habit of intemperance or drug addiction such as the use of morphine, opium, cocaine, or other drugs having similar effects; or

(3) has been guilty of fraud or deceit in connection with his services rendered as a social psychotherapist or in connection with application for license renewal; or

(4) has aided or abetted a person, not a licensed social psychotherapist, in representing himself as a social psychotherapist within this state; or

(5) has been guilty of unprofessional conduct as defined by the rules established by the board; or

(6) for any cause for which the board shall be authorized to refuse to admit persons to its examination.

(b) Proceedings under this section shall be begun by filing charges with the Texas State Board of Examiners in Social Psychotherapy in writing and under oath. The charges may be made by any person. The chairman of the board shall set a time and place for hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for hearing, to be served on the respondent or his counsel at least 30 days prior to the hearing date. When personal service is impossible, the board shall cause to be published, once a week for two successive weeks, a notice of the hearing in a newspaper published in the county wherein the respondent was last known to live and shall mail a copy of the charges and of such notice to the respondent at his last known address. When publication of the notice is necessary, the date of the hearing shall not be less than 30 days after the date of the last publication of the notice. At the hearing the respondent has the right to appear either personally, by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the board. The board shall thereupon determine the charges on their merits. All charges, complaints, notices, orders, records, and publications authorized or required by the terms of this Act are privileged.

(c) A person whose license has been cancelled, revoked, or suspended by the board may, within 30 days after the making and entering of the order, appeal to a district court in the county of his residence, but the decision of the board may be enjoined or stayed only on application to the district court after notice to the board. The proceeding on appeal is tried according to the substantial evidence rule, and the appeal shall be taken in a district court of the county in which the person whose license is involved resides. On application, the board may reissue a license to a person whose license has been cancelled or suspended, but the application may not be made until one year after the cancellation or revocation and shall be made in the manner and form as the board requires.

(d) The board may, by a majority vote, rule that the order revoking, cancelling, or suspending the social psychotherapist's license be probated so long as the probationer conforms to the orders and rules the board may set out as the terms of probation. The board, at the time of probation, shall set out the period of time that shall constitute the probationary period.

(e) The board may at any time, while the probationer remains on probation, hold a hearing and by majority vote rescind the probation and enforce the board's original action in revoking, cancelling, or suspending the social psychotherapist's license. The hearing to rescind the probation shall be called by the chairman of the board who shall cause to be issued a notice setting the time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his counsel at least 30 days prior to the time set for the hearing. When personal service is impossible, the same provisions for service of process by publication in lieu of personal service as set out in Subsection (b) of this section apply. At the hearing the probationer has the right to appear either personally, by counsel, or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses, and to have subpoenas issued by the board. The board shall determine the charges on the merits. All charges, complaints, notices, orders, records, and publications authorized or required by

the terms of this Act are privileged. The order revoking or rescinding the probation is not subject to review or appeal.

Injunctions

Sec. 21. The department may institute an action to enjoin the violation of any provisions of this Act. The action is in addition to any other action, proceeding, or remedy provided by law. The board shall be represented by the attorney general or a county or district attorney of this state.

Violations and Prohibitions Under this Act

Sec. 22. (a) No person, after one calendar year from the effective date of this Act, may represent himself to be a social psychotherapist within this state without being licensed in accordance with the provisions of this Act.

(b) No social psychotherapist may continue to practice as a social psychotherapist without renewing his license six months after expiration of his license.

(c) No person may represent himself as a social psychotherapist, or use the letters "S.P." as part of his professional identification in conjunction with his name, unless he is licensed under the provisions of this Act.

(d) No person licensed under the provisions of this Act may violate a rule or regulation promulgated by the Texas State Board of Examiners in Social Psychotherapy.

Penalties

Sec. 23. A person who violates a provision of this Act, or a rule or regulation or other order of the board, is subject to a civil penalty of not less than $50 nor more than $1,000 for each day of violation.

Enforcement

Sec. 24. (a) When it appears that a person has violated or is violating or is threatening to violate any provision of this Act or any rule, regulation, or order of the board, then the board, or the executive secretary when duly authorized by the department, may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of a civil penalty of not less than $50 nor more than $1,000 for each day of violation, as the court may deem proper, or for both injunctive relief and civil penalty. On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or any rule, regulation, variance, or order of the board, the district court may grant the injunctive relief the facts warrant.

(b) At the request of the board, or the executive secretary when authorized by the department, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in Subsection (a) of this section.

Revenue, Receipts, and Disbursements

Sec. 25. The State Department of Health shall receive and account for all money derived under this Act and shall pay the money weekly to the state treasurer who shall keep it in a separate fund to be known as the "Social Psychotherapist's Licensure Fund." The State Department of Health may make expenditures from this fund for any purpose which is reasonably necessary to carry out the provisions of this Act. The State Department of Health may impose examination, license, and renewal fees, in an amount fixed by the State Department of Health. The State Department of Health shall fix the amount of the fees sufficient to meet the expenses of administering this Act without unnecessary surpluses. Surpluses, if any, are reserved for the use of the State Department of Health in this program.

Annual Report of the Board

Sec. 26. Within 90 days after the close of each fiscal year, the board shall submit a report to the governor and the presiding officer of each house of the legislature concerning the work of the board during the preceding fiscal year.

Appropriation

Sec. 27. For the biennium ending August 31, 1977, the funds received in the Social Psychotherapist's Licensure Fund are appropriated to the State Department of Health to be expended by it in the administration of this Act. The salaries paid to persons employed by the State Department of Health shall be comparable to those prescribed in the general appropriations act for persons holding comparable positions. To the extent applicable, the general rules of the general appropriations act apply to the expenditure of funds under this appropriation. [Acts 1975, 64th Leg., p. 2286, ch. 714, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.050, eff. Aug. 29, 1977.]

CHAPTER SIX F. PROFESSIONAL COUNSELORS

4512g. Licensed Professional Counselor Act.

Art. 4512g. Licensed Professional Counselor Act

Short Title

Sec. 1. This Act may be cited as the Licensed Professional Counselor Act.

Definitions

Sec. 2. In this Act:

(1) "Licensed professional counselor" means a person who represents himself to the public by any title or description of services incorporating the words "Licensed Counselor," who offers to render professional counseling services in private practice to individuals, groups, organizations, corporations,

institutions, government agencies, or the general public for compensation, implying that he is licensed and trained, experienced, or expert in counseling, and who holds a valid license to engage in the private practice of counseling.

(2) "Board" means the Texas State Board of Examiners of Professional Counselors.

(3) "Department" means the Texas Department of Health.

(4) "Applicant" means an individual who seeks licensing under this Act.

(5) "Graduate semester hour" means a semester hour or the quarter hour equivalent as defined by regional accrediting educational associations when applied only to domestic training programs.

(6) "Counseling services" means those acts and behaviors coming within the meaning of the private practice of counseling.

(7) "Private practice of counseling" means rendering or offering to render to individuals, groups, organizations, or the general public counseling services, in private practice for compensation, involving the application of principles, methods, or procedures of the counseling profession that include but are not restricted to:

(A) "counseling" which means assisting an individual or groups, through the counseling relationship, to develop understanding of personal problems, to define goals, and to plan action reflecting an individual's or group's interests, abilities, aptitudes, and needs as they are related to personal-social concerns, educational progress, and occupations and careers;

(B) "appraisal activities" which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, and personal characteristics but does not include the use of projective techniques in the assessment of personality;

(C) "counseling, guidance, and personnel consulting" which means interpreting or reporting on scientific fact or theory in counseling, guidance, and personnel services to provide assistance in solving some current or potential problems of individuals, groups, or organizations;

(D) "referral activities" which means the evaluating of data to identify problems and to determine advisability of referral to other specialists; and

(E) "research activities" which means the designing, conducting, and interpreting of research with human subjects.

Exemptions

Sec. 3. This Act does not apply to:

(1) the activities and services of or use of an official title by a person employed as a counselor by a federal, state, county, or municipal agency or public or private educational institution, provided the person is performing counseling or counseling-related activities within the scope of his employment;

(2) the activities and services of a student, intern, or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher education or training institution, if these activities and services constitute a part of the supervised course of study, provided that the person is designated a "counselor intern";

(3) the activities and services of a nonresident rendered not more than 30 days during any year, provided the person is authorized to perform the activities and services under the law of the state or country of his residence;

(4) the activities and services of licensed members of other professions, such as physicians, registered nurses, psychologists, social psychotherapists, licensed optometrists in the evaluation and remediation of learning or behavioral disabilities associated with or caused by a defective or abnormal condition of vision, Christian Science practitioners who are recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal, or other recognized religious practitioners performing counseling consistent with the law of the state, their training, and any code of ethics of their professions, provided they do not represent themselves by any title or description in the manner prescribed by Section 2 of this Act;

(5) the activities, services, titles, and descriptions of persons licensed to practice law; or

(6) the activities, services, titles, and descriptions of persons employed as professionals or as volunteers in the practice of counseling for public and private nonprofit organizations or charities.

Nature and Composition of Board

Sec. 4. (a) The Texas State Board of Examiners of Professional Counselors is created.

(b) The board is composed of nine members appointed by the governor with the advice and consent of the senate.

(c) Not later than the 30th day after the effective date of this Act, the executive committee of the Texas Personnel and Guidance Association shall submit to the governor a list of qualified candidates for the board, including the names of four qualified counselor educators and 12 qualified practicing counselors. Not later than the 60th day after the date the list is received, the governor shall select from the list the membership of the board consisting of one counselor educator and four counselors in private practice. The governor shall appoint four citizens from the general public who have no direct or indirect affiliation with the practice of counseling or delivery of mental health services.

(d) Except for the initial appointees, members hold office for staggered terms of six years, with three members' terms expiring February 1 of each odd-numbered year. In making an appointment, the governor shall specify which member each new appointee succeeds. Before entering on the duties of his office, each member of the board shall take the constitutional oath of office and file it with the secretary of state.

(e) A member of the board or an employee of the board or of the department that carries out the functions of the board may not:

(1) be an officer, employee, or paid consultant of a trade association in the counseling services industry;

(2) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the counseling services industry; or

(3) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the board unless notice and an opportunity to participate are given to each party to the proceeding, if the member or agent is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding.

(f) A member of the board who is the designated representative of the general public may not have personally, nor be related to a person within the second degree by affinity or third degree by consanguinity who has, except as a consumer, a financial interest in counseling services as an officer, director, partner, owner, employee, attorney, or paid consultant.

(g) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board.

Board Member Qualifications

Sec. 5. (a) To be qualified for appointment as a professional member of the board, a person must:

(1) be a citizen of the United States and a resident of this state for the 30 months immediately preceding appointment;

(2) have engaged in the field of counseling for at least 24 months or 2,000 hours;

(3) be licensed under this Act, except that an initial appointee to the board must, instead of being licensed under this Act, meet the requirements of Section 9 of this Act except that he must possess a graduate degree, 30 graduate semester hours in the field of counseling or its equivalent, and have engaged in the field of counseling for at least 24 months or 2,000 hours after the granting of a graduate degree; and

(4) be appointed in accordance with Section 4 of this Act.

(b) To be qualified for appointment as a member who is a representative of the general public, a person must:

(1) be a citizen of the United States and a resident of this state for the 30 months immediately preceding appointment; and

(2) be at least 18 years old.

(c) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) or (b) of this section, as appropriate, for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Subsection (a) or (b) of this section, as appropriate, for appointment to the board; or

(3) violates a prohibition established by Subdivision (1) or (2) of Subsection (e) of Section 4 of this Act.

(d) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

Board Responsibilities

Sec. 6. (a) The board shall meet not later than the 30th day after the day its members are appointed by the governor. The board shall elect a chairman and a vice-chairman who shall hold office according to the rules adopted by the board.

(b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board and approved by the department. Five members constitute a quorum.

(c) The board may delegate functions and activities required by this Act to individuals and committees on a permanent or temporary basis if a quorum of the board agrees to the delegation and if the delegates clearly possess the professional and personal qualifications to act as delegates of the board.

(d) The board shall keep an information file about each complaint filed with the board. If a written complaint is filed with the board relating to a licensee under this Act, the board, at least as frequently as quarterly and until the complaint is finally disposed of, shall notify the complainant of the status of the complaint.

(e) The board shall:

(1) determine the qualifications and fitness of applicants for licenses, renewal of licenses, and reciprocal licenses;

(2) adopt and revise, with the approval of the department, rules not inconsistent with the law of this state that are necessary to administer this Act. However, the board may not adopt rules

restricting competitive bidding or advertising by licensees except to prohibit false, misleading, or deceptive practices. The board may not include in its rules to prohibit false, misleading, or deceptive practices by licensees a rule that:

(A) restricts a licensee's use of any medium for advertising;

(B) restricts a licensee's personal appearance or use of his personal voice in an advertisement;

(C) relates to the size or duration of an advertisement by a licensee; or

(D) restricts a licensee's advertisement under a trade name;

(3) adopt and publish a code of ethics and adopt an official seal;

(4) examine for, deny, approve, issue, revoke, suspend, and renew the licenses of counselor applicants and licensees under this Act and conduct hearings in connection with these actions;

(5) conduct hearings on complaints concerning violations of this Act and the rules adopted under this Act and cause the prosecution and enjoinder of the violations;

(6) expend money necessary for the proper administration of its assigned duties;

(7) set fees with the approval of the department for the board's services in amounts that are sufficient to meet the expenses of administering this Act;

(8) request and receive the assistance of state educational institutions or other state agencies; and

(9) prepare information of consumer interest describing the regulatory functions of the board and describing the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

Reimbursements of Board Expenses

Sec. 7. A member of the board may not receive a fixed salary for his services, but each member is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

Board Personnel

Sec. 8. (a) The executive secretary must be an employee of the department. The Commissioner of Health, after consulting with the board, shall designate an employee to serve as executive secretary of the board. The executive secretary shall be the administrator of professional counselor licensing activities for the board. In addition to his other duties prescribed by this Act and by the department, the executive secretary shall:

(1) keep full and accurate minutes of the transactions and proceedings of the board;

(2) be the custodian of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this Act, including rules and proposals on administrative procedures not inconsistent with this Act;

(4) exercise general supervision over persons employed by the department in the administration of this Act;

(5) be responsible for the investigation of complaints and for the presentation of formal complaints;

(6) attend all meetings of the board, but the executive secretary is not entitled to vote at board meetings; and

(7) handle or arrange for the handling of the correspondence of the board, make or arrange for necessary inspections and investigations, and obtain, assemble, or prepare the reports and information that the board may direct or authorize.

(b) The basic personnel and necessary facilities that are required to administer this Act shall be the personnel and facilities of the department acting as the agents of the board. The department may secure by agreement services that it considers necessary and provide for compensation for these services and may employ and compensate, within appropriations available, the professional consultants, technical assistants, and employees on a full- or part-time basis necessary to administer this Act.

Initial Licensing Period

Sec. 9. (a) For one year beginning on the effective date of this Act, a person may apply for licensing without examination, except that if the board cannot establish competence to its satisfaction through an examination of credentials, it may require examination of an applicant under the initial licensing period. For the initial licensing period an applicant must:

(1) be at least 18 years old;

(2) have submitted a completed application as required by the board accompanied by the application fee set by the board; the board may require that the statements on the application be made under oath; and

(3) have:

(A) a master's degree;

(B) at least 30 graduate semester hours in the field of counseling or the substantial equivalent in both subject matter and extent of training; and

(C) 24 months or 2,000 hours of professional experience working in a counseling setting that meets the requirements established by the board.

(b) For two years beginning on the effective date of this Act, a person may apply for licensing in a counseling specialty authorized by Section 13 of this Act without examination, except that if the board cannot establish competence to its satisfaction through an examination of credentials, it may require examination of an applicant under the initial licensing period. For the initial licensing period an applicant must:

(1) meet the requirements prescribed by Subsection (a) of this section; and

(2) have attained professional credentials consistent with the standards of the counseling specialty required by Section 13 of this Act.

Applicant Qualifications

Sec. 10. An applicant is qualified for a license to practice counseling if the applicant:

(1) is at least 18 years old;

(2) has submitted an application as required by the board, accompanied by the application fee set by the board; the board may require that the statements on the application be made under oath;

(3) has met requirements prescribed by the board;

(4) has successfully completed at a regionally accredited institution of higher education a planned graduate program of 45 semester hours or the substantial equivalent, including 300 clock hours of supervised practicum that is primarily counseling in nature and that meets the specific academic course content and training standards established by the board. The board shall use the standards as developed by the appropriate professional association; and

(5) has 24 months or 2,000 hours of supervised experience working in a counseling setting that meets the requirements established by the board.

Application Review

Sec. 11. After investigation of the application and other evidence submitted, the board shall, not later than the 30th day before the examination date, notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for the rejection.

Examination

Sec. 12. (a) Examinations to determine competence shall be administered to qualified applicants at least twice each calendar year. The examinations shall be in any of the following forms as determined by the board for each applicant:

(1) a field examination through questionnaires answered by the applicant's instructors, employers, supervisors, references, and others who are competent in the board's judgment to evaluate the applicant's professional competence, which may include the submission of written case studies and taped interviews with the applicant's instructors, employers, supervisors, references and others or submission of documentary evidence of the quality, scope, and nature of the applicant's experience and competence as the board considers necessary; or

(2) other examinations as prescribed by the board.

(b) If a written examination is required, the board shall grade the examination and recommend to the chairman action to be taken. To ensure impartiality, written examination documents shall be identified by number, and no paper may be marked with the name of an applicant but shall be anonymously graded by the board. In the event an applicant fails to receive a passing grade on the entire examination, he may reapply and shall be allowed to take a subsequent examination. An applicant who has failed two successive examinations may not reapply until two years have elapsed from the date of the last examination or he has satisfactorily completed nine graduate semester hours in the applicant's weakest portion of the examination.

(c) Within 30 days after the day a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the day the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(d) If requested by a person who fails the examination for a license, the board shall furnish to the person an analysis of the person's performance on the examination.

Licensed Professional Counselor Specialties

Sec. 13. A specialty designation may be added on demonstration to the board that the applicant has met the recognized minimum standards as established by nationally recognized certification agencies. On passage of an examination, written, oral, or situational, or all three, and on receipt of credentials from certifying agencies, the board may, by a simple majority of the board members present and voting, consider the credentials adequate evidence of professional competence and recommend to the chairman of the board that a license with appropriate specialty designation, if any, be approved. A professional counselor may not claim or advertise a counseling specialty unless the qualifications of that specialty have been met and have been approved by the board.

Licenses and Renewal of Licenses

Sec. 14. (a) A license certificate issued by the board is the property of the board and must be surrendered on demand.

(b) The licensee shall display the license certificate in an appropriate and public manner.

(c) The licensee shall inform the board of his current address at all times.

(d) Each year the board shall prepare a registry of licensed professional counselors with specialties, if any, identified. The registry shall be made available to the licensees, other state agencies, and the general public on request.

(e) The license may be renewed annually if the licensee is not in violation of this Act at the time of application for renewal and if the applicant fulfills current requirements of continuing education as established by the board.

(f) Each person licensed under this Act is responsible for renewing his license before the expiration date.

(g) The board shall adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable. Failure to renew a license by the expiration date shall result in an increase of the renewal fee by an amount to be determined by the board with the approval of the department. If failure to renew continues for more than 30 days after the date of expiration, the board shall notify the person licensed under this Act of the expiration date of his license and the amount of the fee required for renewal. If failure to renew continues for more than 90 days after the date of expiration of the license, the license shall be revoked. Any licensee whose license is revoked because of failure to pay the annual license renewal fee may secure reinstatement of his license at any time within one year from the expiration date on payment of the license fee and a penalty fee in an amount to be determined by the board with the approval of the department. After the expiration of the year for which the license fee was not paid, a license may not be reinstated unless the licensee fulfills current requirements applicable to all licensees as provided by the rules adopted by the board.

(h) A licensee may request that his license be declared inactive. The licensee then foregoes the licensing rights granted under this Act but is relieved of renewal fees and penalty fees. At any time in the future, the license shall be declared active on the payment of a license fee if the applicant is not in violation of this Act at the time of application for reactivation or renewal of the license and if the applicant fulfills current requirements applicable to all licensees as provided by the rules adopted by the board.

Penalty

Sec. 15. (a) A person commits an offense if the person, after one year from the effective date of this Act, knowingly or intentionally acts as a licensed professional counselor without a license issued under this Act.

(b) An offense under this section is a Class B misdemeanor.

Revocation or Suspension of License

Sec. 16. (a) The board may revoke or suspend the license of a counselor on proof that the counselor:

(1) has violated this Act or a rule or code of ethics adopted by the board; or

(2) is legally committed to an institution because of mental incompetence for any cause.

(b) Proceedings for revocation or suspension of a license and appeals from those proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Power to Sue

Sec. 17. The board or the department may institute a suit in its own name to enjoin the violation of this Act. The suit is in addition to any other action, proceeding, or remedy authorized by law. The board shall be represented by the attorney general or the appropriate county or district attorney.

Reciprocity

Sec. 18. The board may grant, on application and payment of fees, a license without examination to a person who at the time of application holds a valid license or certificate as a counselor issued by another state or any political territory or jurisdiction acceptable to the board if in the board's opinion the requirements for that license or certificate are substantially the same as the requirements of this Act.

Revenue, Receipts and Disbursements

Sec. 19. The department shall receive and account for funds derived under this Act. The funds shall be deposited in the State Treasury to the credit of a special fund to be known as the professional counselors licensing fund and may be used only for the administration of this Act. The board may impose application, examination, license, and renewal fees and any other appropriate fees in an amount fixed by the board. The board shall fix the amounts of the fees to collect sufficient revenue to meet the expenses of administering this Act without accumulating unnecessary surpluses.

Annual Report

Sec. 20. Not later than the 90th day after the last day of each state fiscal year, the board shall submit to the governor, lieutenant governor, and

speaker of the house a report about the activities of the board during the preceding fiscal year.

Application of Sunset Act

Sec. 21. The board is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless the board is continued in existence as provided by that Act, the board is abolished effective September 1, 1993.

Initial Board Appointments

Sec. 22. In making the initial appointments to the board, the governor shall designate three members for terms expiring February 1, 1983, three members for terms expiring February 1, 1985, and three members for terms expiring February 1, 1987.
[Acts 1981, 67th Leg., p. 2913, ch. 775, §§ 1 to 22, eff. Sept. 1, 1981.]

CHAPTER SEVEN. NURSES

Article
4513a. Application of Sunset Act.
4526b. Inactive Status List.
4527c. Injunction.

Art. 4513. Board of Examiners

Composition of Board; Programs of Study

Sec. 1. The Board of Nurse Examiners is composed of nine members appointed by the governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The Board of Nurse Examiners shall prescribe three programs of study to prepare professional nurse practitioners, to wit: (1) The Baccalaureate Degree Program—A program leading to a baccalaureate degree in nursing conducted by an educational unit in nursing (department, division, school, or college) which is a part of a senior college or university; (2) The Associate Degree Program—A program leading to an associate degree in nursing conducted by an educational unit in nursing within the structure of a college or a university; and (3) The Diploma Program—A program leading to a diploma in nursing conducted by a single purpose school usually under the control of a hospital. Six of the board members must be Registered Nurses, three of whom shall be engaged in professional nurse education and shall be representative of said three programs in that one shall be a nurse faculty member in a school of nursing pursuing the Baccalaureate Degree Program; one shall be a nurse faculty member in a school of nursing pursuing the Associate Degree Program; and one shall be a nurse faculty member in a school of nursing pursuing the Diploma Program. Three members must be members of the general public.

Terms; Requirements of Professional Nurse Members and Public Members

Sec. 2. The members of the board shall hold office for staggered terms of six years, with the terms of one practicing registered nurse, one professional nurse engaged in nurse education, and one public member expiring on January 31 of odd-numbered years. The professional nurse members must be actually employed in the nursing profession for at least three years before their appointment. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufacturers, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization that provides health-care services or that sells, manufacturers, or distributes health-care supplies or equipment.

Restrictions on Members, Employees, and General Counsel

Sec. 3. A member or employee of the board may not be an officer, employee, or paid consultant of a national or statewide trade association in the health-care industry. A member or employee of the board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a national or statewide trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), by virtue of his activities on behalf of a national or statewide trade or professional association in a health-service industry may not serve as a member of the board or act as the general counsel to the board.

Grounds for Removal

Sec. 4. It is grounds for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during the service on the board the qualifications for appointment to the board;

(3) violates a prohibition imposed on members of the board; or

(4) fails to attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a board member.

Validity of Actions

Sec. 5. The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.
[Amended by Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Section 5 of the 1981 amendatory act provides:

"(a) A person holding office as a member of the Board of Nurse Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall appoint three public members to the board. The governor shall designate one public member for a term expiring in 1983, one for a term expiring in 1985, and one for a term expiring in 1987."

Art. 4513a. Application of Sunset Act

The Board of Nurse Examiners is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes; and unless continued in existence as provided by that Act the board is abolished effective September 1, 1993.

[Added by Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.041, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Art. 4514. Organization of Board

President; Special Meetings; Powers

Sec. 1. The members of the board shall elect from their number a president. Special meetings of said board shall be called by the president acting upon the written request of any two members. The board shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

Legislative Disapproval of Rules

Sec. 2. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committee's statements.

Rules Restricting Competitive Bidding or Advertising Prohibited

Sec. 3. The board may not promulgate rules restricting competitive bidding or advertising by licensees except to prohibit false, misleading, or deceptive practices by the person. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his or her voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Records; Consumer Information; Assistance to Legal Authorities

Sec. 4. The executive secretary shall be required to keep a record of each meeting of said board, including a register of the names of all nurses registered under this law, which shall be at all times open to public inspection. The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies. Said board shall assist the proper legal authorities in the prosecution of all persons violating any provision of this law. Nothing herein shall either expand or contract the board's present powers as they relate to the regulation of nursing education.

Open Meetings; Administrative Procedure

Sec. 5. The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Recommendation of Rules Relating to Delegation of Medical Acts by Physicians

Sec. 6. The board may recommend to the Texas State Board of Medical Examiners the adoption of rules relating to physician's delegating medical acts to persons licensed by the board. The recommendations shall be acted on in the same manner as a petition for the adoption of a rule by an interested party under the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes). The board in making recommendations may distinguish between nurses on the basis of special training and education. The Board of Nurse Examiners in recommending rules and the Texas State Board of Medical Examiners in acting on recommended rules shall act, to the extent allowable under state and federal statutes and regulations, so as to permit the state to obtain its fair share of federal funds available for the delivery of health care in this state.

[Amended by Acts 1979, 66th Leg., p. 1220, ch. 590, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Section 6 of the 1981 amendatory act provides:

"A rule adopted by the Board of Nurse Examiners before September 1, 1981, that conflicts with laws relating to the practice of nursing, as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule."

Art. 4515. Per Diem, Salary, Travel and Other Expenses

Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for

meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act. The board shall determine the salaries and compensation to be paid to employees and persons retained by the board.
[Amended by Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Art. 4516. Educational Secretary

"The board shall appoint an educational secretary who shall have had at least five years teaching experience in educational work among nurses. The duties of said secretary shall be determined by the board.
[Amended by Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Art. 4517. Executive Secretary and Bonds

Sec. 1. The board shall employ a qualified executive secretary, who shall not be a member of the board. Under the direction of the board, the executive secretary shall perform duties required by this Act and duties designated by the board. Also, the board shall employ all other persons necessary to carry on the work of the board. The executive secretary shall upon employment execute a bond in the sum of One Thousand Dollars payable to the Governor. The bond is conditioned that the executive secretary shall faithfully perform the duties of his or her office and shall account for funds coming into his or her hands as executive secretary. The bond shall be signed by two or more sufficient sureties or by a surety company authorized to do business in this state and approved by the president of the board.

Sec. 2. The executive secretary or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive secretary must be based on the system established under this section.
[Amended by Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Section 8(b) of the 1981 amendatory act provides:

"The requirement under Section 2, Article 4517, Revised Civil Statutes of Texas, 1925, as added by this Act, that the executive secretary of the board develop a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement under Section 2 that merit pay be based on the performance evaluation system shall be implemented before September 1, 1983."

Art. 4518. Accreditation of Schools of Nursing and Educational Programs; Certification of Graduates; Examination by Board and Requirement of Registration; Continuing Education

Sec. 1. It shall be the duty of the Board of Nurse Examiners to prescribe and publish the minimum requirements and standards for a course of study in programs which prepare professional nurse practitioners. All other regulations necessary to conduct accredited schools of nursing and educational programs for the preparation of professional nurses shall be as prescribed by the Board, provided, however, that the minimum period of time that the Board may require shall be at least two (2) academic years and the maximum period of time shall not exceed four (4) calendar years. The Board shall accredit such schools of nursing and educational programs as meet its requirements and shall deny or withdraw accreditation from schools of nursing and educational programs which fail to meet the prescribed course of study or other standards.

The Board shall give those persons and organizations affected by its orders or decisions under this Article reasonable notice thereof, not less than twenty (20) days, and an opportunity to appear and be heard with respect to same. The Board shall hear all protests or complaints from such persons and organizations affected by such rule, regulation or decision as to the inadequacy or unreasonableness of any rule, regulation or order promulgated or adopted by it, or the injustice of any order or decision by it. If any person or organization which shall be affected by such order or decision shall be dissatisfied with any regulation, rule or order by such Board, such person or organization shall have the right, within thirty (30) days from the date such order is entered, to bring an action against said Board in the District Court of Travis County, Texas, to have such regulation, rule or order vacated or modified, and shall set forth in a petition therefor the principal grounds of objection to any or all of such rules, regulations or orders. Such appeal as herein provided shall be de novo as that term is known and understood in appeals from the Justice Court to the County Court.

[See Compact Edition, Volume 4 for text of 2]

Sec. 3. Every applicant for registration under this law shall present to the Board of Nurse Examiners evidence of successful completion of an accredited program of professional nursing education and a sworn application and shall upon payment of required fees be entitled to take the examination prescribed by the Board. Upon making a passing grade, the applicant shall be entitled to receive from said Board a certificate attested by the seal of said Board, entitling such person to practice as a registered nurse in the State of Texas. The Board shall determine the score, not to exceed a score required by a majority of the states, that constitutes a passing grade on the examination.

[See Compact Edition, Volume 4 for text of 4]

Sec. 5. Insofar as any of the following acts require substantial specialized judgment and skill and insofar as the proper performance of any of the following acts is based upon knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing, "Professional Nursing" shall be defined as the performance for compensation of any nursing act (a) in the observation, assessment, intervention, evaluation, rehabil-

itation, care and counsel and health teachings of persons who are ill, injured or infirm or experiencing changes in normal health processes; (b) in the maintenance of health or prevention of illness; (c) in the administration of medications or treatments as prescribed by a licensed physician or dentist; (d) in the supervision or teaching of nursing; (e) in the administration, supervision, and evaluation of nursing practices, policies, and procedures. The foregoing shall not be deemed to include acts of medical diagnosis or prescription of therapeutic or corrective measures.

[See Compact Edition, Volume 4 for text of 6]

Sec. 7. The Board may recognize, prepare, or implement continuing education programs for its licensees. Participation in the programs is voluntary.

[Amended by Acts 1977, 65th Leg., p. 1755, ch. 703, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1221, ch. 590, §§ 2, 4, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2891, ch. 772, § 2, eff. Sept. 1, 1981.]

Art. 4519. Examination and Fee

Upon filing application for examination each applicant shall pay an examination fee which shall in no case be returned to the applicant. If the applicant passes the examination, then no further fee shall be required for registration. Any applicant for registration who fails to successfully pass the examination herein provided for shall have the right to stand a second examination. The examination shall be given in various cities throughout the State and shall be of such character as to determine the fitness of the applicant to practice professional nursing. Within 30 days after the date on which a licensing examination is administered, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination. If the result of the examination be satisfactory to the board, a certificate shall be issued to the applicant, signed by the president and executive secretary and attested by the seal of said board, which certificate shall qualify the person receiving the same to practice professional nursing in this State.

[Amended by Acts 1979, 66th Leg., p. 1222, ch. 590, § 5, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Art. 4520. Exempt from Examination

No nurse who is engaged in professional nursing at the time of the passage of this law and who has qualified under any previous law of this State and received a certificate from the board under such provisions of law regulating professional nursing, shall be required to stand any further examination under this law.

[Amended by Acts 1979, 66th Leg., p. 1222, ch. 590, § 6, eff. Aug. 27, 1979.]

Art. 4521. Certificate from Another State

Any applicant who holds a registration certificate as a registered nurse from another state, district, territory or possession of the United States, or from a foreign country, may be issued a license to practice as a registered nurse in the State of Texas by endorsement and without examination upon the payment of a fee established by the board, provided in the opinion of the Board of Nurse Examiners such other board issuing such other certificate in its examination required the same general degree of fitness required by this state.

[Amended by Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Art. 4522. Use of Title "R.N."; Registration Bureaus

A nurse who has received his or her license according to the provisions of this law, shall be styled a "Registered Nurse," and may use the title or abbreviation "R.N." When a licensed registered nurse is on duty providing direct care to patients, the nurse shall wear an insignia identifying the nurse as a registered nurse.

[Amended by Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Art. 4523. Temporary Permit

(a) Any nurse who has graduated from an accredited school of nursing, who holds a registration certificate as a Registered Nurse from another state or from a possession of the United States, and who is actually engaged in the pursuit of his or her profession, shall be permitted to practice in the state under a permit issued by the board of nurse examiners, upon the payment of a fee established by the board.

(b) The board may issue a permit to practice professional nursing under the direct supervision of a Registered Nurse to graduates of approved educational programs pending the results of the licensing examination. The permit expires on receipt of a permanent license or on receipt of a notice of failing the examination from the board. The permit may not be issued to any applicant who has previously failed an examination administered by the board or by another state.

[Amended by Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Art. 4524. Repealed by Acts 1979, 66th Leg., p. 1222, ch. 590, § 7, eff. Aug. 27, 1979

Art. 4525. Disciplinary Proceedings

(a) The board of nurse examiners may refuse to admit persons to its examinations, may refuse to issue a license or certificate of registration or to issue a certificate of re-registration, may refuse to issue a temporary permit, may issue a warning or reprimand, may suspend for any period not to exceed 2 years, or may revoke the license or certificate of any practitioner of professional nursing, for any of the following reasons:

(1) The violation of any of the provisions of this law, any rule, regulation not inconsistent with this law, or order issued hereinunder.

(2) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice professional nursing.

(3) Conviction of a crime of the grade of felony, or a crime of lesser grade which involves moral turpitude.

(4) The use of any nursing license, certificate, diploma or permit, or transcript of such license, certificate, diploma or permit, which has been fraudulently purchased, issued, counterfeited, or materially altered.

(5) The impersonation of, or the acting as a proxy for, another in any examination required by law to obtain a license to practice professional nursing.

(6) Aiding or abetting, directly or indirectly, or in any manner whatsoever, any unlicensed person in connection with the unauthorized practice of professional nursing.

(7) Revocation, suspension, or denial of the license to practice nursing in another jurisdiction. Certified copy of the order of denial, suspension, or revocation shall be conclusive evidence thereof.

(8) Intemperate use of alcohol or drugs if the nurse knows or should know that the effects of that use endangers or could endanger patients. Intemperate use includes but is not limited to practicing professional nursing or being on duty or call while under the influence of alcohol or drugs.

(9) Unprofessional or dishonorable conduct which, in the opinion of the board, is likely to deceive, defraud, or injure patients or the public.

(10) Adjudication of mental incompetency.

(11) Lack of fitness to practice by reason of mental or physical health that could result in injury to patients or the public.

(b) Proceedings under this Article shall be begun by filing charges with the board of nurse examiners in writing and under oath. Such charges may be made by any person or persons. An information file about each complaint filed relating to a licensee shall be maintained by the board. If a written complaint is filed with the board relating to a licensee, the board at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation. The board shall make such preliminary investigation of the charges as it deems necessary and may issue a warning or reprimand to the person charged. If the board proposes to refuse to admit a person to its examination, to refuse to issue a temporary permit, license, certificate of registration, certificate of re-registration, or to suspend or revoke a person's permit, license, or certificate, the person is entitled to a hearing before the board. Proceedings for these disciplinary actions are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes). If a licensed professional nurse voluntarily surrenders said license to the board and executes a sworn statement that he or she no longer desires to be licensed, the board may revoke said license without the necessity of formal charges, notice, or opportunity of hearing.

(c) Any person whose license or certificate to practice professional nursing has been revoked or suspended by the board or who has been otherwise disciplined by the board may take an appeal to any of the district courts in the county of residence, but the decision of the board shall not be enjoined or stayed except on application to such district courts after notice to the board. Upon application the board may reissue a license or certificate to practice professional nursing to a person whose license has been revoked or suspended but such application, in case of revocation, shall not be made prior to one year after the revocation was issued and shall be made in such manner and form as the board may require.

(d) The board shall have the right and may, upon majority vote, rule that the order denying an application for a license or suspending any license be probated so long as the probated practitioner conforms to such orders and rules as the board may set out in the terms of probation. The board, at the time of probation, shall set out the period of time which shall constitute the probationary period; provided further that the board may at any time while the probationer remains on probation hold a hearing and upon majority vote rescind the probation and enforce the board's original action in denying or suspending such license. The said hearing to rescind the probation shall be called by the president of the board who shall cause to be issued a notice setting the time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his or her counsel at least 20 days prior to the time set for the hearing. Notice shall be sufficient if sent by registered or certified mail to the person charged at the address shown on his or her most recent application for certificate of registration or re-registration.

(e) The board of nurse examiners is charged with the duty of aiding in the enforcement of the provisions of this chapter, and may retain legal counsel to represent the board, but prior to retaining outside

legal counsel, the board shall request the attorney general to perform such services and may only retain outside counsel if the attorney general so certifies to the board that the attorney general cannot provide such services. The board shall have the power to issue subpoenas, compel the attendance of witnesses, administer oaths to persons giving testimony at hearings, and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor. Any member of the board may present to a prosecuting officer complaints relating to violations of any of the provisions of this chapter, and the board through its members, officers, counsel, or agents shall assist in the trial of any cases involving alleged violation of this chapter, subject to the control of the prosecuting officers. The Attorney General is directed to render such legal assistance as may be necessary in enforcing and making effective the provisions of this chapter; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

[Amended by Acts 1979, 66th Leg., p. 1222, ch. 590, § 8, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2892, ch. 772, § 3, eff. Sept. 1, 1981.]

Art. 4526. Re-registration

The board shall adopt a system under which licenses issued by the board shall be renewed each biennium. For the year in which the expiration date is changed, registration fees payable on or before March 31 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the re-registration fee that is allocable to the months in which the registration is valid. On the new expiration date, the total re-registration fee is payable. The board shall notify each licensee at least 30 days in advance of the date of expiration of the license. The application for re-registration shall be mailed by United States mail to the address shown in the board's records. Any application received after the expiration date shall be charged a late fee. If a license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half the examination fee for the license. If a license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a license has been expired for two years or more, the person may renew the license on meeting the requirements that the board considers necessary. If any registered nurse continues to practice professional nursing beyond the time for which the nurse is registered or re-registered, the nurse shall be considered to be an illegal practitioner and the license may be revoked or suspended.

[Amended by Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Art. 4526a. Repealed by Acts 1981, 67th Leg., p. 2894, ch. 772, § 7, eff. Sept. 1, 1981

Art. 4526b. Inactive Status List

Any nurse licensed under the provisions of this law, not actively or actually engaged in the practice of professional nursing, at the expiration of any such license upon written request to the board in such form and manner as the board shall determine may be placed on an inactive status list which shall be maintained by the board. No professional nurse on such inactive status list shall perform any professional nursing services or work or violate any of the provisions of this law or any rule or regulation of the board so long as on such inactive status. At any time such person desires to reenter the active practice of professional nursing or again begin performing or offering to perform professional nursing services, such person shall notify the board and upon payment of appropriate fees and meeting requirements as determined by the board shall be removed from the inactive status list.

[Added by Acts 1979, 66th Leg., p. 1224, ch. 590, § 9, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

Art. 4527. Fees

The Board of Nurse Examiners shall establish reasonable and necessary fees for the administration of its functions in amounts not to exceed:

Admission fee to examinations	$ 75
Duplicate or substitute of current certificate	10
Duplicate or substitute of permanent certificate	10
Duplicate permits	5
Endorsement with or without examination	75
Re-registration	25
Issuance of a temporary permit under Article 4523	15
Reactivating from inactive status	30
Accreditation of new schools and programs	150
Approval of exchange visitor programs	75
Proctoring of examinations of examinees from other states	115
Filing of affidavits in re-change of name [1]	10
Verification of records	10
Bad checks	15

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement. The Board shall set and collect a sales charge for copies of any paper or record in the office of the Board and for any printed material published by the Board. The charges are to be in an amount considered sufficient to reimburse the Board for its actual expenses. All fees received by said Board under this law shall be placed in the State Treasury to the credit of a special fund to be known as the "Professional Nurse Registration Fund" and the Comptroller shall upon requisition of the Board from time to time draw warrants upon the State Treasurer for the amounts specified in such requisition; provided, however, all fees collect-

ed by the Board and deposited in the Professional Nurse Registration Fund shall be expended as specified by itemized appropriation in the General Appropriations Act and shall be used by the Board, and under its directions, only for purposes of carrying out this Act. This provision shall apply to all fees on hand on September 1, 1981, and all fees of whatsoever nature as permitted by law now or as amended. The state auditor shall audit the financial transactions of the Board during each fiscal biennium.

[Amended by Acts 1979, 66th Leg., p. 1225, ch. 590, § 12, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2886, ch. 772, § 1, eff. Sept. 1, 1981.]

[1] So in enrolled bill; probably should read "in re change of name".

Art. 4527a. Prohibited Practices

[See Compact Edition, Volume 4 for text of 1 and 2]

Sec. 3. No person, unless he or she is licensed under this chapter, may use in connection with his or her name the abbreviation "R.N." or any designation tending to imply that he or she is a licensed registered nurse.

Sec. 4. No person may practice professional nursing during the time his or her license is suspended or revoked.

[Amended by Acts 1981, 67th Leg., p. 2893, ch. 772, § 4, eff. Sept. 1, 1981.]

Art. 4527b. Penalty

A person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $50 nor more than $500, confinement in jail for a term not to exceed 30 days, or both.

[Amended by Acts 1979, 66th Leg., p. 1225, ch. 590, § 11, eff. Aug. 27, 1979.]

Art. 4527c. Injunction

In addition to any other action, proceeding, or remedy authorized by law, the board shall have the right to institute any action in its own name to enjoin any violation or any provision of this law or rule or regulation of the board, and in order for the board to sustain such action, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof; provided, however, that in any such proceeding for injunction the defendant may assert and prove as a complete defense to such action that the actions or proceedings of the board were: (1) arbitrary or capricious; (2) contrary to legal requirements; or (3) conducted without due process of law. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The board shall not be required to give any appeal bond in any cause arising under this law.

[Added by Acts 1979, 66th Leg., p. 1221, ch. 590, § 3, eff. Aug. 27, 1979.]

Art. 4527–1. Repealed by Acts 1981, 67th Leg., p. 2894, ch. 772, § 7, eff. Sept. 1, 1981

Prior to repeal, this article was amended by Acts 1979, 66th Leg., p. 1225, ch. 590, § 10.

See, now, art. 4527.

Art. 4528b. Tuberculosis Nurses

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The Board of Tuberculosis Nurses Examiners is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1981.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 9]

[Amended by Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.037, eff. Aug. 29, 1977.]

Art. 4528c. Licensed Vocational Nurses

Definitions

Sec. 1. In this Act:

(a) "Board" means the Board of Vocational Nurse Examiners.

(b) "Licensed Vocational Nurse" means a person who is licensed by the Board of Vocational Nurse Examiners.

(c) "Nursing" or "nursing services" means attending or caring for a person's illness or health for compensation.

(d) "Practical Nurse" or "Licensed Practical Nurse" means the title used in some other states for nurses with licensure requirements similar to those for licensed vocational nurses in this state.

(e) "Vocational nursing" or "vocational nursing services" means nursing services that generally require experience and education in biological, physical, and social sciences sufficient to qualify for licensure as a Licensed Vocational Nurse.

Prohibited Practices

Sec. 2. (a) A person may not use the designation Licensed Vocational Nurse or the abbreviation L.V.N., unless such person shall hold a license issued by the Board pursuant to the provisions of this Act.

(b) A person may not:

(1) sell, fraudulently obtain, or fraudulently furnish to the Board a vocational nursing diploma, license, or other document or assist another person to do so;

(2) practice vocational nursing with a vocational nursing diploma, license, or other document that is obtained unlawfully or that is signed or issued unlawfully or because of a false representation;

(3) practice vocational nursing while the person's license is suspended or revoked; or

(4) use the designation "Licensed Practical Nurse," "L.P.N.," "Practical Nurse," "P.N.," "Licensed Technical Nurse," "L.T.N.," "Technical Nurse," or "T.N."

Exceptions

Sec. 3. The provisions of this Act shall not apply to gratuitous nursing of the sick by friends or members of the family; nor shall the provisions of this Act requiring a license apply to persons who do not hold themselves out to the public as being Licensed Vocational Nurses or using the abbreviation L.V.N.

L.V.N. Registries

Sec. 4. Licensed Vocational Nurses Organizations operating nonprofit registries for the enrollment of its members for the purpose of providing nursing services to the public shall not be liable for the payment of any occupation taxes and/or license fees imposed by any law unless such Licensed Vocational Nurses registries are specifically named therein.

Sec. 4½. Repealed by Acts 1981, 67th Leg., p. 2999, ch. 787, § 4, eff. Sept. 1, 1981.

Term of Office, Organization, Meetings of Board

Sec. 5. (a) There is hereby created a board to be known as the Board of Vocational Nurse Examiners, consisting of twelve (12) members to be appointed by the Governor and confirmed by the State Senate. Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

Seven (7) members of the Board must be Licensed Vocational Nurses who are graduates of approved schools of vocational nursing, who have been actively engaged in the practice of vocational nursing for five (5) years immediately preceding their appointments, and who are not licensed physicians, registered professional nurses, or hospital administrators.

One (1) member of the Board must be a Registered Nurse licensed by the Board of Nurse Examiners who is actively engaged in a teaching, administrative, or supervisory capacity in a vocational nursing educational program and who is not a licensed physician, hospital administrator, or licensed vocational nurse.

One (1) member of the Board must be a physician licensed by the Texas State Board of Medical Examiners who has been actively engaged in the practice of medicine for five (5) years immediately preceding appointment and who is not a hospital administrator, registered professional nurse, or licensed vocational nurse.

One (1) member of the Board must be a hospital administrator who has been actively engaged in hospital administration for a period of five (5) years and who is not a licensed physician, registered professional nurse, or licensed vocational nurse.

Two (2) members of the Board must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse is licensed by an occupational regulatory agency in the field of health care or is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization that provides health-care services or that sells, manufacturers, or distributes health-care supplies or equipment.

(b) The term of office of each member of the Board shall be six (6) years. A member may not immediately succeed himself (or herself) in office. In case of death, resignation or vacancy from any cause on the Board, the vacancy of the unexpired term shall be filled by the Governor within sixty (60) days after the occurrence of such vacancy.

Each appointee to the Board of Vocational Nurse Examiners shall, within fifteen (15) days of the date of his appointment, qualify by taking the constitutional oath of office.

(c) A member or employee of the Board may not be an officer, employee, or paid consultant of a national or state trade association in the vocational nursing field.

(d) A member or employee of the Board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a national or state trade association in the vocational nursing field.

(e) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the Board;

(2) does not maintain during his service on the Board the qualifications required by Subsection (a) of this section for appointment to the Board;

(3) violates a prohibition prescribed by Subsection (c) or (d) of this section; or

(4) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a Board member.

(f) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

(g) The Board shall elect a President, Vice-president, and Secretary-treasurer, yearly at an annual meeting. The Board may make such rules and regulations as may be necessary to govern its proceedings and to carry in effect the purposes of this law. The Secretary-treasurer shall be required to keep minutes of each meeting of said Board, a register of the names of all nurses licensed under this law, and books of account of fees received and disbursements; and all minutes, the register of Licensed Vocational Nurses and books of account shall be at all times

open to public inspection. The State Auditor shall audit the books of this Board annually. The Board shall employ a person other than a member of the Board as the executive director of the Board. The executive director shall perform the administrative functions of the Board. The Board shall employ other persons that it considers necessary in carrying out the provisions of this law. The Secretary-treasurer shall be bonded by the Board in such amount as may be recommended by the State Auditor.

(h) The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive director must be based on the system established under this subsection.

(i) The Board shall employ a full-time Director of Education, who shall have had a least five (5) years experience in teaching nursing in an accredited school of nursing or an approved program in vocational nursing. The Board may select either a Licensed Vocational Nurse or a Registered Nurse as the Director of Education. The duties of the Director of Education shall be to visit and inspect all schools of vocational nursing to determine whether the Board's minimum requirements for vocational nursing programs are being met. The Board shall prescribe such methods and rules of visiting, and such methods of reporting by the Director of Education as may in its judgment be deemed proper.

(j) Regular meetings of the Board shall be held at least twice a year, one of which shall be designated as an Annual Meeting for election of officers and the reading of auditors' reports. At least twice each year the Board shall hold examinations in various cities in the state for qualified applicants for licensure. Examinations may be held under the supervision of a Board member or such other person as the Board may specify. Not less than sixty (60) days notice of the holding of the examination shall be given by publication in at least three (3) daily newspapers of general circulation, to be selected by the Board; special meetings shall be held upon request of four (4) members of the Board or upon the call of the president; six (6) members of the Board shall constitute a quorum for the transaction of business, and should a quorum not be present on the day appointed for any meeting, those persons present may adjourn from day to day until a quorum shall be present, providing that such period shall not be longer than three (3) successive days; each member of said Board is entitled to a per diem set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

(k) The Board may not adopt rules restricting competitive bidding or advertising by a licensee of the Board except to prohibit false, misleading, or deceptive practices by the licensee. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a licensee a rule that:

(1) restricts the licensee's use of any medium for advertising;

(2) restricts the licensee's personal appearance or use of his voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee; or

(4) restricts the licensee's advertisement under a trade name.

(*l*) The Board may recognize, prepare, or implement continuing education programs for licensees. Participation in the programs is voluntary.

(m) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.

(n) The Board shall enforce this Act. The Board may retain outside legal counsel to represent the Board. However, before the Board may retain outside counsel, the Board shall request the attorney general to perform the necessary services and may retain the outside counsel only if the attorney general certifies to the Board that the services cannot be performed.

(*o*) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(p) The Board of Vocational Nurse Examiners is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

(q) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(r) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committee's statements.

Examination and Licenses

Sec. 6. (a) Except as provided in Section 7 of this Act, every person desiring to be licensed as a Licensed Vocational Nurse or use the abbreviation L.V.N. in the State of Texas, shall be required to pass the examination given by the Board of Vocational Nurse Examiners or its delegate. The applicant shall make application by presenting to the secretary of the Board, on forms furnished by the Board, satisfactory sworn evidence that the applicant has had at least two (2) years of high school education or its equivalent and has completed an approved course of not less than twelve (12) months in an approved school for educating vocational nurses. An approved school as used herein shall mean one approved by the Board. Application for examination by the Board or its delegate shall be made at least thirty (30) days prior to the date set for the examination.

(b) The Board in its discretion may waive the requirement in subdivision (a) of this Section for completion of a course in an approved school for educating Vocational Nurses upon presentation of satisfactory sworn evidence that the applicant has completed at least two (2) years of education in a nursing school approved by the State Board of Nurse Examiners of Texas or in some other school of professional nurse education approved by a similar board or licensing agency of another State of the United States.

(c) Within 30 days after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the date the Board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination or other information which the Board has available to it after the tests are scored.

(d) If an examinee has graduated from an approved educational program in vocational nursing in this or another state or successfully completed two years of an associate degree program or diploma program in professional nursing education in this or another state, the Board may issue to the examinee, pending the results of the licensing examination, a temporary permit to practice vocational nursing under the direct supervision of a licensed vocational nurse, registered professional nurse, or licensed physician. A permit issued to an applicant who fails the examination expires on the applicant's receipt of the results of the examination. A permit issued to an applicant who passes the examination expires on the applicant's receipt of a license from the Board. A permit may not be issued to an applicant who has previously failed an examination administered by the Board or by another state.

(e) Any nurse who is licensed under the provisions of this Act, when on duty in a public or private hospital, nursing home, or licensed health-care facility, shall wear identifying insignia on white caps or uniforms.

Endorsement

Sec. 7. Any applicant who holds a license as a Vocational Nurse or Practical Nurse issued by another state whose requirements are equal to those of Texas, and whose individual qualifications shall be equivalent to those required by this law, may be granted a license to practice nursing as a Licensed Vocational Nurse in this State without examination provided the required fee is paid to the Board by such applicant.

License Renewal

Sec. 8. (a) The board by rule shall adopt a system under which licenses expire every two years. For the year in which the expiration date is changed, license fees payable on September 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(b) The Board shall notify each licensee about the expiration date of the person's license at least 30 days before the expiration date. The Board by United States mail shall send with the notice an application for license renewal to the licensee's address contained in the Board's records. A licensee whose completed application for renewal is received by the Board after the expiration date of the license shall be charged a late fee.

(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a person's license has been expired for two years or more, the person may renew the license by complying with the requirements set forth in substantive rules adopted by the Board.

(d) If a person practices vocational nursing after the person's license has expired, the person is an illegal practitioner and the Board may suspend or revoke the license.

(e) A person licensed under this Act who is not actively engaged in the practice of vocational nurs-

ing, at the expiration of the person's license and on written request to the Board in the manner required by the Board, may be placed on an inactive status list by the Board. A Licensed Vocational Nurse on the inactive status list may not practice vocational nursing nor violate the Act or any rule of the Board. If the person desires to reenter the active practice of vocational nursing, the person must notify the Board. On payment by the person of fees required by the Board and compliance with other requirements set forth in substantive rules adopted by the Board, the Board shall remove the person from the inactive status list.

Fees

Sec. 9. (a) The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

(1) examination and application fee: $40;

(2) reexamination fee: $40;

(3) renewal fee: $10;

(4) endorsement fee: $40;

(5) accreditation of new programs fee: $75;

(6) duplicate temporary permit or license fee: $10;

(7) filing of affidavits in rechange of name fee: $10;

(8) endorsement to another state fee: $40; and

(9) reactivating from inactive status fee: $30.

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

(b) All expenses under this Act shall be paid from fees collected by the Board under this Act, and no expense incurred under this Act shall ever be charged against the funds of the State of Texas.

(c) On or before January 1 of each year, the Board shall make in writing to the Governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the Board during the preceding year.

Disciplinary Action

Sec. 10. (a) The Board may refuse to admit persons to its examinations, may refuse to issue or renew a license, may refuse to issue a temporary permit, may issue a warning or reprimand, may place on probation a person whose license has been suspended, or may suspend or may revoke the license of any practitioner of vocational nursing for any of the following reasons:

(1) violation of this Act or of any rule, regulation, or order issued under this Act;

(2) commission of fraud or deceit in procuring or attempting to procure a license to practice vocational nursing;

(3) conviction of a crime of the grade of felony or a crime of a lesser grade which involves moral turpitude;

(4) use of any nursing license, certificate, diploma, or permit or transcript of the license, certificate, diploma, or permit, which has been fraudulently purchased, issued, counterfeited, or materially altered;

(5) impersonation of or the acting as a proxy for another in any examination required by law to obtain a license to practice vocational nursing;

(6) knowingly aiding or abetting any unlicensed person in connection with the unauthorized practice of vocational nursing;

(7) revocation, suspension, or denial of a license to practice vocational or practical nursing in another jurisdiction or revocation, suspension, or denial of a license to practice professional nursing in this state or in another jurisdiction; certified copy of the order of denial, suspension, or revocation shall be conclusive evidence of that fact;

(8) intemperate use of alcohol or drugs;

(9) unprofessional or dishonorable conduct that, in the opinion of the Board, is likely to deceive, defraud, or injure the public;

(10) adjudication of mental incompetency; or

(11) lack of fitness to practice by reason of mental or physical health that may result in injury to patients or the public.

(b) The Board may issue subpoenas, compel the attendance of witnesses, administer oaths to persons giving testimony at Board hearings, and initiate the prosecution of any person who has violated this Act. The Board shall keep a record of its proceedings.

(c) If a Licensed Vocational Nurse voluntarily surrenders a license to the Board and executes a sworn statement that he or she no longer desires to be licensed, the Board may revoke the license without formal charges, notice, or a hearing.

(d) Disciplinary action by the Board shall be accomplished by a majority vote of the Board after hearing held on specific charges filed against such licensee, which charges shall be made in writing, under oath and filed by the Secretary.

(e) If the Board shall make and enter an order disciplining a person, the person may take an appeal to the District Court of the county of residence of the person. Said trial shall be subject to the substantial evidence rule in sustaining administrative action by the Board. In all such cases the burden of proof shall be on the Board to sustain its action by a preponderance of the evidence.

(f) The Board shall maintain an information file about each complaint filed with the Board relating to a licensee. If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(g) If the Board proposes to refuse a person's application for a license, to reprimand a licensee, to place on probation a person whose license has been suspended, or to suspend or revoke a person's license, the person is entitled to a hearing before the Board. These proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Sec. 10A. Repealed by Acts 1981, 67th Leg., p. 2999, ch. 787, § 4, eff. Sept. 1, 1981.

Penalties

Sec. 11. (a) A person who is in violation of this Act may be enjoined and restrained by a District Court from continuing the violation upon petition of the Board.

(b) A person commits an offense if the person knowingly or intentionally violates this Act. An offense under this subsection is a Class B misdemeanor.

Approval of Vocational Nursing Programs

Sec. 12. (a) Any hospital in regular use for patients which has a registered nurse in charge of nursing, and whose staff consists of one or more licensed physicians licensed by the State Board of Medical examiners, may qualify as an approved hospital for Vocational Nurse Education, provided it can and will meet requirements of the Board for the education of Vocational Nurses.

(b) Any institution which shall be qualified under Section 5, and under regulations promulgated by the Board to conduct a course in Vocational Nursing shall apply to the Board and shall accompany said application with evidence that it is prepared to give a course of not less than twelve (12) months for the education of Vocational Nurses; such application shall be accompanied by the appropriate fee provided for in Section 9 of this Act; upon receipt of such application the Board shall cause a survey of the institution making such application to be made by a qualified representative of such Board. If in the opinion of a majority of the members of the Board, the requirements for an approved course for Vocational Nursing are met by such institution, such institution shall be placed on a list of such institutions given for educating Vocational Nurses. It shall further be the duty of the Board, from time to time, to survey all courses for such education of Vocational Nurses offered within the State. Written reports of such surveys shall be submitted to the Board. If the Board shall determine as a result of such surveys that any school, hospital or institution heretofore approved as an institution of Vocational Nursing is not maintaining the standards required by law and by the rules and regulations promulgated by the Board, notice thereof shall immediately be given to such school, hospital or institution. If the requirements of the Board are not complied with within a reasonable time set by the Board in such notices, such institution shall be removed from the list of approved schools, hospitals or institutions offering courses for Vocational Nurses within this State.

[See Compact Edition, Volume 4 for text of 13 and 14]

[Amended by Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.038, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2990, ch. 787, §§ 1, 4, eff. Sept. 1, 1981.]

Former § 6 of this article was repealed by Acts 1981, 67th Leg., p. 2999, ch. 787, § 4, eff. Sept. 1, 1981.

Sections 2, 3, and 5 of the 1981 amendatory act provide:

"Sec. 2. A rule adopted by the Board of Vocational Nurse Examiners before September 1, 1981, that conflicts with Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 4528c, Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule.

"Sec. 3. (a) A person holding office as a member of the Board of Vocational Nurse Examiners on the effective date of this Act continues to hold the office for the term for which the person was originally appointed.

"(b) The governor shall appoint the two public members to the board and one licensed vocational nurse member to the board. The term of the licensed vocational nurse member shall expire in 1985; and the term of the public members shall expire in 1983 and 1987, respectively."

"Sec. 5. (a) This Act takes effect September 1, 1981.

"(b) The requirement under Section 5(h), Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), as added by this Act, that the executive director of the board develop a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement under Section 5(h) that merit pay be based on the performance evaluation system shall be implemented before September 1, 1983."

CHAPTER EIGHT. PHARMACY

Article

4542a–1. Texas Pharmacy Act.
4542c. Labeling Requirements for Prescriptions Drugs.

Art. 4542a. State Board of Pharmacy to Regulate Practice of Pharmacy

Revocation or Suspension of License; Appeal

Sec. 12. The State Board of Pharmacy may in its discretion refuse to issue a license to any applicant, and may cancel, revoke, or suspend the operation of any license by it granted for any of the following reasons:

(a) That said applicant is guilty of gross immorality;

(b) That said applicant or licensee is guilty of any fraud, deceit, or misrepresentation in the practice of pharmacy or in his seeking admission to such practice;

(c) That said applicant or licensee is unfit or incompetent by reason of negligence;

(d) That said applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;

(e) That said applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine, or other drugs having similar effect, or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

(f) That said licensee, directly or indirectly, aids or abets in the practice of pharmacy any person not duly licensed to practice under this Act; pro-

vided further, that the said licensee is responsible for the legal operation of the pharmacy, dispensary, prescription laboratory or apothecary shop as long as his name appears on the permit issued for the operation of such establishments;

(g) That said applicant or licensee has been convicted in either a State or Federal Court of the illegal use, sale, or transportation of intoxicating liquor, narcotic drugs, barbiturates, amphetamines, desoxephedrine, their compounds or derivatives, controlled substances as defined in the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), dangerous drugs as defined in Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), or any other dangerous or habit-forming drugs;

(h) That said licensee has engaged in the act of "substitution" as that term is hereinafter defined. The term "substitution" as used in this Act shall mean the dispensing of a drug or a brand of drug other than that which is ordered or prescribed without the express consent of the orderer or prescriber. If the consent of the orderer or prescriber for substitution by the licensee is obtained, a notation shall be made by the licensee on the prescription stating that such consent has been obtained and by whom such consent was given, and such notation shall, in addition, specify the drug or brand of drug so substituted;

(i) That said licensee is a member of the Communist Party or affiliated with such party.

Revocation, cancellation, or suspension of a license shall be only after ten (10) days notice and a full hearing. Any person whose license to practice pharmacy has been refused, revoked, or suspended by the Board may, within twenty (20) days after the effective date of the order, decision, or ruling of the Board, take an appeal to any of the District Courts where said applicant resided at the time the offense was committed which resulted in the Board's action refusing, revoking or suspending said license.

This section does not apply to revocation, cancellation or suspension of the license of a person convicted of a felony under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes.)

Felony Drug Conviction; Suspension and Revocation of License

Sec. 12A. On conviction of a person licensed by the board of a felony under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), the board shall, after an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), in which the fact of conviction is determined, suspend the person's license. On the person's final conviction, the board shall revoke the person's license. The board may not reinstate or reissue a license to a person whose license is suspended or revoked under this section except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

Felony Drug Conviction; Suspension and Revocation of Permit

Sec. 17A. On conviction of a person who has been issued a permit under Section 17 of this Act or, if the permit holder is an association, joint-stock company, partnership, or corporation, on conviction of a managing officer of the permit holder of a felony under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), the board shall, after an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), in which the fact of conviction is determined, suspend the permit. On final conviction, the board shall revoke the permit. The board may not reinstate or reissue a permit that has been suspended or revoked under this section except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the permit is in the best interests of the public and of the person, association, joint-stock company, partnership, or corporation whose permit has been suspended or revoked.

[Amended by Acts 1981, 67th Leg., p. 104, ch. 52, §§ 3, 4, eff. Sept. 1, 1981.]

Repeal

Acts 1981, 67th Leg., p. 662, ch. 255, § 43, eff. Sept. 1, 1981 without reference to the amendment of § 12 and the addition of §§ 12A and 17A of this article by Acts 1981, 67th Leg., p. 103, ch. 52, §§ 3, 4, provides:

"All laws or parts of laws inconsistent with this Act, including Section 1, Chapter 447, Acts of the 55th Legislature, Regular Session, 1957 (Article 4542b, Vernon's Texas Civil Statutes), and Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), are repealed."

Prior to repeal by Acts 1981, 67th Leg., p. 662, ch. 255, § 43, this article was amended by:

Acts 1975, 64th Leg., p. 1384, ch. 532, §§ 1 to 3.
Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.040.
Acts 1977, 65th Leg., p. 2108, ch. 844, § 1.
Acts 1979, 66th Leg., p. 2202, ch. 837, §§ 1 to 5.

See, now, art. 4542a–1.

Art. 4542a–1. Texas Pharmacy Act

Short Title

Sec. 1. This Act may be cited as the "Texas Pharmacy Act."

Legislative Declaration

Sec. 2. The practice of pharmacy in this state is declared a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy as defined by this Act merit and received the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in this state. This Act shall be liberally construed to carry out these objects and purposes.

Application of Sunset Act

Sec. 3. The Texas State Board of Pharmacy is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the board is abolished, and this Act expires effective September 1, 1993.

Purpose

Sec. 4. It is the purpose of this Act to promote, preserve, and protect the public health, safety, and welfare by and through the effective control and regulation of the practice of pharmacy and the registration of pharmacies engaged in the sale, delivery, or distribution of prescription drugs and devices used in the diagnosis and treatment of injury, illness, and disease.

Definitions

Sec. 5. In this Act, unless the context of its use clearly indicates otherwise:

(1) "A.C.P.E." means the American Council on Pharmaceutical Education.

(2) "Administer" means the direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner or an authorized agent under his supervision; or

(B) the patient at the direction of a practitioner.

(3) "Administrative Procedure Act" means the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(4) "Board" means the Texas State Board of Pharmacy.

(5) "Class A pharmacy license" or "community pharmacy license" means a license issued to a pharmacy dispensing drugs or devices to the general public pursuant to a prescription drug order.

(6) "Class B pharmacy license" or "nuclear pharmacy license" means a license issued to a pharmacy dispensing or providing radioactive drugs or devices for administration to an ultimate user.

(7) "Class C pharmacy license" or "institutional pharmacy license" means a license issued to a pharmacy located in a hospital or other in-patient facility that is licensed under the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) or to a pharmacy located in a hospital maintained or operated by the state.

(8) "Class D pharmacy license" or "clinic pharmacy license" means a license issued to a pharmacy dispensing a limited type of drugs or devices pursuant to a prescription drug order.

(9) "College of pharmacy" means a school, university, or college of pharmacy that satisfies the accreditation standards of A.C.P.E. as adopted by the board; or that has degree requirements which meet the standards of accreditation set by the board.

(10) "Controlled substance" means a drug, immediate precursor, or other substance listed in Schedules I–V or Penalty Groups 1–4 of the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91–513).[1]

(11) "Controlled Substances Act" means the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91–513).

(12) "Dangerous drug" means any drug or device that is not included in Penalty Groups 1–4 of the Controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription"; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) "Dangerous Drug Act" means Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes).

(14) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(15) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, includ-

ing any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(16) "Dispense" means preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(17) "Distribute" means the delivery of a prescription drug or device other than by administering or dispensing.

(18) "Drug" means:

(A) a substance recognized as drugs in the current official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium or any supplement to any of them;

(B) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(C) a substance, other than food, intended to affect the structure or any function of the body of man or other animals;

(D) a substance intended for use as a component of any articles specified in Paragraph (A), (B), or (C) of this subdivision;

(E) a dangerous drug; or

(F) a controlled substance.

(19) "Internship" means a practical experience program that is approved by the board.

(20) "Label" means written, printed, or graphic matter on the immediate container of a drug or device.

(21) "Labeling" means the process of affixing a label including all information required by federal and state law or regulation to any drug or device container. The term does not include the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged prescription drug or device, or unit dose packaging.

(22) "Medication order" means a written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(23) "Nonprescription drug" means a nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with applicable state or federal law.

(24) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(25) "Pharmacist" means a person licensed by the board to practice pharmacy.

(26) "Pharmacist-in-charge" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(27) "Pharmacist-intern" means an undergraduate student enrolled in the professional sequence of a college of pharmacy approved by the board and participating in a school-based, board-approved internship program or a graduate of a college of pharmacy who is participating in a board-approved internship.

(28) "Pharmacy" means a facility where the practice of pharmacy occurs.

(29) "Practice of pharmacy" means interpreting and evaluating prescription or medication orders, dispensing and labeling drugs or devices, selecting drugs and reviewing drug utilization, storing prescription drugs and devices and maintaining prescription drug records in a pharmacy, advising or consulting when necessary or required by law about therapeutic value, content, hazard, or use of drugs or devices, or offering or performing the services and transactions necessary to operate a pharmacy.

(30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to distribute or dispense a prescription drug or device in the course of professional practice in this state or a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs. "Practitioner" does not include a person licensed under this Act.

(31) "Preceptor" means a pharmacist in good standing licensed in this state to practice pharmacy and certified by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in the internship program.

(32) "Prescription drug" means:

(A) a substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) a drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) "Caution: federal law prohibits dispensing without prescription"; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(33) "Prescription drug order" means a written order from a practitioner or verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed.

(34) "Provide" means to supply one or more unit doses of a nonprescription drug or dangerous drug to a patient.

(35) "Radioactive drug" means a drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons, including any nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of any such substance.

(36) "Substitution" means the dispensing of a drug or a brand of drug other than that which is ordered or prescribed.

(37) "Supportive personnel" means those individuals utilized in pharmacies whose responsibility it shall be to provide nonjudgmental technical services concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist.

(38) "Ultimate user" means a person who has obtained and possesses a prescription drug or device for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(39) "Unit dose packaging" means the ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(40) "Authorized agent" means an individual under the supervision of a practitioner, designated by the practitioner, and for whom the practitioner assumes legal responsibility, who communicates the practitioner's instructions to the pharmacist.

[1] Generally, 21 U.S.C.A. § 801 et seq.

Board

Sec. 6. The board shall enforce this Act and all laws that pertain to the practice of pharmacy and shall cooperate with other state and federal governmental agencies regarding any violations of any drug or drug-related laws. The board shall have all of the duties, powers, responsibilities, and authority specifically granted and necessary to the enforcement of this Act, as well as other duties, powers, responsibilities, and authority that may be granted by appropriate statutes.

Membership

Sec. 7. (a) The board consists of nine members, seven of whom must be licensed pharmacists and two of whom must be representatives of the general public.

(b) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities as a member of a trade or professional association in the regulated profession may not act as general counsel or serve as a member of the board.

Qualifications

Sec. 8. (a) A licensed pharmacist member of the board may not be a salaried faculty member at a college of pharmacy and must at the time of his appointment:

(1) be a resident of this state;

(2) be licensed for the five years immediately preceding appointment and be in good standing to engage in the practice of pharmacy in this state;

(3) be engaged in the practice of pharmacy in this state; and

(4) not be an officer, employee, or paid consultant of a trade association in the regulated industry or be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

(b) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of an agency or business entity that provides health care services or that sells, manufactures, or distributes health care supplies or equipment; or

(3) owns, controls, or has an interest in, directly or indirectly, more than 10 percent of a business entity that provides health care services or that sells, manufactures, or distributes health care supplies or equipment.

(c) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment or does not maintain during his service on the board the qualifications required by Subsection (a) or (b) of this section, as appropriate; or

(2) violates the prohibition prescribed by Section 7(b) of this Act.

Appointment

Sec. 9. (a) The governor shall appoint the members of the board with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

(b) The board shall be properly constituted in all respects from the time of commencement of each member's term, including during pendency of senate confirmation proceedings and until the senate has acted on each appointment. Any action taken by the board prior to the rejection of an appointee in which the appointee has participated is valid, but any action taken after the rejection and in which the rejected appointee participates as a board member is voidable.

Terms of Office

Sec. 10. (a) Except as provided by Subsection (b) of this section, members of the board shall be appointed for a term of six years, except that members of the board who are appointed to fill vacancies that occur prior to the expiration of a former member's full term shall serve the unexpired portion of the term.

(b) The terms of the members of the board shall be staggered so that the terms of three members expire every other year.

(c) A member of the board may not serve more than two consecutive full terms. The completion of the unexpired portion of a full term does not constitute a full term for purposes of this section.

(d) An appointee to a full term on the board shall be appointed by the governor before the expiration of the term of the member being succeeded and shall become a member of the board on the first day of the state fiscal year next following his appointment. An appointee to an unexpired portion of a full term shall become a member of the board on the day next following the appointment. Each appointee to the board shall within 15 days from the date of appointment qualify by taking the constitutional oath of office.

(e) Each term of office on the board expires at midnight on the last day of the state fiscal year in the final year of the board member's term or on the date his successor is appointed and qualified, except for senate confirmation, whichever is later.

(f) Failure of a board member to attend at least half of the regularly scheduled board meetings held in a calendar year, excluding meetings held while the person was not a member of the board, is a ground for removal.

Vacancies

Sec. 11. A vacancy that occurs in the membership of the board for any reason, including expiration of term, removal, resignation, death, disability, or disqualification, shall be filled by the governor in the manner prescribed by Section 9 of this Act.

Organization

Sec. 12. (a) The board shall elect from its members a president, vice-president, treasurer, and other officers it considers appropriate and necessary to the conduct of its business. The president of the board shall preside at each meeting of the board and shall be responsible for the performance of the duties and functions of the board required by this Act. Each additional officer elected by the board shall perform those duties normally associated with his position and other duties assigned to him by the board.

(b) Officers elected by the board shall serve terms of one year commencing on the first day of the state fiscal year following their election and ending on election of their successors, and shall serve no more than two consecutive full terms in each office to which they are elected.

(c) The board shall employ a licensed pharmacist who shall serve as a secretary to and be an ex officio member of the board without vote to serve as a full-time employee of the board in the position of executive director. The executive director shall be responsible for the performance of the regular administrative functions of the board and other duties as the board may direct. The executive director may not perform any discretionary or decision-making functions for which the board is solely responsible.

(d) The executive director or his designee shall develop within one year of the effective date of this Act an intra-agency career ladder program, one part of which shall be the intra-agency posting of all nonentry level positions for at least 10 days prior to any public posting.

(e) The executive director or his designee shall develop within one year of the effective date of this Act a system of annual performance evaluations based on measurable job tasks. Within two years of the effective date of this Act, all merit pay authorized by the executive director must be based on the system established by this subsection.

Compensation

Sec. 13. (a) Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act.

(b) The executive director of the board shall receive, as compensation, an annual salary payable monthly, the amount of which shall be determined by legislative appropriation, and reimbursement for expenses incurred in connection with performance of his official duties.

Meetings

Sec. 14. (a) The board shall meet at least once every four months to transact its business and at least twice each year for the examination of applicants. Any additional meetings may be called by the president of the board or by two-thirds of the members of the board.

(b) A majority of the members of the board constitute a quorum for the conduct of a board meeting and, except when a greater number is required by this Act, or by any rule of the board, all actions of the board shall be by a majority of a quorum.

(c) All board meetings and hearings shall be open to the public. The board may, in its discretion and in accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), conduct any portion of its meeting in

executive session. The board may in its discretion conduct deliberations relative to licensee disciplinary actions in executive session. At the conclusion of its deliberations relative to licensee disciplinary action, the board shall vote and announce its decision relative to the licensee in open session.

Employees

Sec. 15. (a) The board may provide for the employment of persons in addition to the executive director in other positions or capacities it considers necessary to the proper conduct of board business and to the fulfillment of the board's responsibilities under this Act.

(b) The employees of the board other than the executive director shall receive, as compensation, an annual salary payable monthly, the amount of which shall be determined by the board, and reimbursement for all expenses in accordance with current state government policies.

(c) An employee of the board may not be an officer, employee, or paid consultant of a trade association in the regulated industry or be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

Rules

Sec. 16. (a) The board shall adopt rules for the proper administration and enforcement of this Act, consistent with this Act. The rules shall be adopted in accordance with the Administrative Procedure Act.

(b) The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

Board Responsibilities

Sec. 17. (a) The board is responsible for the regulation of the practice of pharmacy in this state, including the following:

(1) the licensing by examination or by reciprocity of applicants who are qualified to engage in the practice of pharmacy and the licensing of pharmacies under this Act;

(2) the renewal of licenses to engage in the practice of pharmacy and licenses to operate pharmacies;

(3) the determination and issuance of standards for recognition and approval of degree requirements of colleges of pharmacy whose graduates shall be eligible for licensing in this state and the specification and enforcement of requirements for practical training, including internship;

(4) the enforcement of those provisions of this Act relating to the conduct or competence of pharmacists practicing in this state and the conduct of pharmacies operating in this state and the suspension, revocation, fining, reprimanding, cancellation, or restriction of licenses to engage in the practice of pharmacy or to operate a pharmacy;

(5) the regulation of the training, qualifications and employment of pharmacist-interns; and

(6) the enforcement of this Act and any rules adopted under this Act.

(b) The board has the following responsibilities relating to the practice of pharmacy and to prescription drugs and devices used in this state in the diagnosis, mitigation, and treatment or prevention of injury, illness, and disease:

(1) regulation of the delivery or distribution of prescription drugs and devices, including the right to seize, after notice and hearing, any prescription drugs or devices posing a hazard to the public health and welfare, but the board may not regulate:

(A) manufacturers' representatives or employees acting in the normal course of business;

(B) persons engaged in the wholesale drug business and registered with the commissioner of health as provided by the Texas Food, Drug and Cosmetic Act, as amended (Article 4476–5, Vernon's Texas Civil Statutes); or

(C) employees of persons engaged in the wholesale drug business and registered with the commissioner of health as provided by the Texas Food, Drug and Cosmetic Act, as amended (Article 4476–5, Vernon's Texas Civil Statutes), if the employees are acting in the normal course of business;

(2) specification of minimum standards for professional environment, technical equipment, and security in the prescription dispensing area; and

(3) specification of minimum standards for drug storage, maintenance of prescription drug records, and procedures for the delivery, dispensing in a suitable container appropriately labeled, or providing of prescription drugs or devices within the practice of pharmacy.

(c) The board may join professional organizations and associations organized to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public.

(d) In addition to any statutory requirements, the board may require surety bonds it considers necessary to guarantee the performance and discharge of the duties of the executive director, treasurer, and any other officer or employee receiving and disbursing funds. The minimum amount of the bond for the executive director and treasurer shall be $100,000.

(e) The executive director shall keep the seal of the board and shall affix it only in the manner prescribed by the board.

(f) The board shall submit whatever reports are required by state law. Before December 1 of each year, the board shall file a written report with the

legislature and the governor in which the board accounts for all funds received and disbursed by the board during the preceding year.

(g) Revenue, other than fines, collected under this Act constitutes a fund outside the state treasury from which the expenses of administering this Act are paid. Money in the fund may not be expended except pursuant to specific legislative appropriation in the General Appropriations Act. Nothing in this Act shall be construed to prohibit the board from expending money for the administration of this Act for a period not to exceed two years from the effective date of this Act. An appropriation is not required for the investment of the fund by the board and for payment of customary fees or charges in connection with the investment. Investment income shall be deposited in the fund. The fines collected under this Act shall be deposited to the credit of the general revenue fund and may not be used for the administration of this Act. The board shall defray all expenses under this Act from fees provided in this Act, and the State of Texas shall never be liable for the compensation or expenses of any member of the board, or its officers or employees, or any other expenses thereof. The state auditor shall audit the board's books and records in accordance with state law.

(h) The board may receive and expend funds, in addition to funds collected under Subsection (g) of this section, from parties other than the state in accordance with state law.

(i) The board or its authorized representatives may investigate and gather evidence concerning alleged violations of this Act or of the rules of the board.

(j) The board or any officer of the board may issue subpoenas ad testificandum and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents, may administer oaths, and may take testimony concerning the matters within its or his jurisdiction.

(k) If a person violates any provision of this Act, the board may petition the district court to restrain or enjoin the person from continuing the violation. In a suit for injunctive relief, venue is in Travis County. On application for injunctive relief and a finding that a person is violating any provision of this Act, the district court shall grant the injunctive relief the facts warrant.

(*l*) The board shall cooperate with other state or federal agencies in the enforcement of dangerous drug and controlled substances laws or other laws pertaining to the practice of pharmacy.

(m) The board shall maintain an office where permanent records are kept and preserve a record of its proceedings. The board shall maintain an information file about each complaint filed with the board relating to a licensee. If a written complaint is filed with the board relating to a licensee, the board shall, at least semiannually, notify the parties to the complaint as to the status of the complaint until final disposition, unless the notification would jeopardize an undercover investigation.

(n) The board may appoint committees from its membership and advisory committees from the pharmacy profession and other groups to assist in administering this Act.

(*o*) The board may establish rules for the use of supportive personnel and the duties of those personnel in pharmacies licensed by the board, provided that those personnel are responsible to and directly supervised by a pharmacist licensed by the board; provided however that the board may not adopt rules or regulations establishing ratios of pharmacists to supportive personnel in Class C pharmacies.

(p) The board may be represented by the attorney general, the district attorney, county attorney, or other counsel if necessary in any legal action taken under this Act.

(q) Board investigative files are not considered open records for purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes).

(r) Board employees are authorized to possess dangerous drugs and controlled substances when acting in their official capacity.

(s) The board may lease or purchase vehicles for use in official board business. The vehicles are exempt from bearing state government identification. The vehicles may be registered with the State Department of Highways and Public Transportation in an alias name for investigative personnel only.

(t) The board has the other duties, powers, and authority necessary to administer this Act.

(u) The board may commission employees as peace officers for the purpose of enforcing this Act if the employees have been certified as being qualified to be peace officers by the Commission on Law Enforcement Officer Standards and Education. Any employee commissioned as a peace officer under this Act has the powers, privileges, and immunities of a peace officer while carrying out his duties under this Act. However, employees of the board so commissioned as peace officers may not carry a firearm or exercise arrest powers.

(v) The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

Administrative Inspections and Warrants

Sec. 18. (a) In this section, "facility" means:

(1) a place that has applied for licensing as a pharmacy under this Act;

(2) a place licensed as a pharmacy under this Act; or

(3) a place operating as a pharmacy in violation of this Act.

(b) The board or its representative may enter and inspect a facility relative to the following:

(1) drug storage and security;

(2) equipment;

(3) sanitary conditions; or

(4) records, reports, or other documents required to be kept or made under this Act or the Controlled Substances Act or Dangerous Drug Act or rules adopted under those acts.

(c) Prior to an entry and inspection, the board employee shall:

(1) state his purpose;

(2) present appropriate credentials to the owner, pharmacist, or agent in charge of a facility; and

(3) present to the owner, pharmacist, or agent in charge of a facility a written notice of his inspection authority, which notice in the case of an inspection requiring or in fact supported by an administrative inspection warrant, shall consist of the warrant.

(d) Except as may otherwise be indicated in an applicable inspection warrant, the board employee may:

(1) inspect and copy records, reports, and other documents required to be kept or made under this Act, the Controlled Substances Act, or Dangerous Drug Act, or rules adopted under those acts;

(2) inspect, within reasonable limits and in a reasonable manner, a facility's storage, equipment, security, prescription drugs or devices, or records; or

(3) inventory any stock of any prescription drugs or devices in the facility and obtain samples of those substances.

(e) Except when the owner, pharmacist, or agent in charge of the facility consents in writing, an inspection authorized by this section may not extend to:

(1) financial data;

(2) sales data other than shipment data; or

(3) pricing data.

(f) A warrant is not required under this section for the inspection of books and records under an administrative subpoena issued under this Act or for entries and administrative inspections under the following conditions:

(1) with the consent of the owner, pharmacist, or agent in charge of the facility;

(2) in situations presenting imminent danger to the public health and safety;

(3) in situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant; or

(4) in any other exceptional situation or emergency involving an act of God or natural disaster when time or opportunity to apply for a warrant is lacking.

(g) Issuance and execution of administrative inspection warrants shall be as follows:

(1) a judge of a state district court of record may, within the territorial jurisdiction of the district court and on proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this Act or the rules adopted under this Act and seizures of property appropriate to the inspections; for purposes of this subsection, the term "probable cause" means a valid public interest in the effective enforcement of this Act or rules, sufficient to justify administrative inspections of the area, facility, building, or conveyance, or their contents, in the circumstances specified in the application for the warrant;

(2) a warrant shall issue only on an affidavit of a board employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant; if the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, facility, building, or conveyance to be inspected, the purpose of the inspection, and when appropriate, the type of property to be inspected; the warrant shall identify the items or types of property to be seized, if any; the warrant shall be directed to a person authorized under this Act to execute it; the warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support of the warrant; it shall command the person to whom it is directed to inspect the area, facility, building, or conveyance identified for the purpose specified, and when appropriate, shall direct the seizure of the property specified; the warrant shall direct that it be served during normal business hours; it shall designate the judge to whom it shall be returned;

(3) a warrant issued under this section shall be executed and returned within 10 days of its date unless, on a showing by the board of a need therefor, the judge allows additional time in the warrant; if property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose facility the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken; the return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken; the inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least

one credible person other than the person making the inventory, and shall be verified by the person executing the warrant; the judge, on request, shall deliver a copy of the inventory to the person from whom or from whose facility the property was taken and to the application for the warrant; and

(4) the judge who issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection with the warrant and file them with the clerk of the district court in which the inspection was made.

(h) Any property seized under this section shall be disposed of in a manner considered appropriate by the board or district court, whichever has jurisdiction over the property.

(i) Before a complaint may be filed with the board as a result of an inspection authorized by this section, the licensee must be given a reasonable time, as determined by the board, to comply with this Act or rules adopted by the board as provided by this Act.

Unlawful Practice

Sec. 19. (a) A person may not dispense or distribute prescription drugs unless he is a licensed pharmacist or is authorized by this Act to dispense or distribute prescription drugs.

(b) Wholesalers and manufacturers may distribute prescription drugs as provided by state or federal law.

(c) This Act does not apply to a practitioner licensed by the appropriate state board who supplies his patients with drugs in a manner authorized by state or federal law and who does not operate a pharmacy for the retailing of prescription drugs.

(d) This Act does not prevent a practitioner licensed by the appropriate state board from administering drugs to his patients.

(e) This Act does not prevent the sale by a person, other than a registered pharmacist, firm, joint stock company, partnership, or corporation, of:

(1) a nonprescription drug that is harmless if used according to instructions on a printed label on the drug's container unless the drug contains a narcotic;

(2) an insecticide, fungicide, or a chemical used in the arts if the insecticide, fungicide, or chemical is properly labeled; or

(3) an insecticide or fungicide that is mixed or compounded for agricultural purposes only.

(f) This Act does not apply to:

(1) a member of the faculty of a college of pharmacy that is recognized by the board if the faculty member is a licensed pharmacist and performs his services for the benefit of the college only;

(2) a pharmacist-intern; or

(3) a person who procures prescription drugs for lawful research, teaching, or testing and not for resale.

(g) Any person found by the board to have unlawfully engaged in the practice of pharmacy is subject to a fine to be imposed by the board not to exceed $1,000 for each offense. Each violation of this Act or the rules adopted under this Act pertaining to unlawfully engaging in the practice of pharmacy also constitutes a Class A misdemeanor.

Pharmacist-Intern Registration

Sec. 20. (a) A person must register with the board before beginning the board-approved internship in this state. An application for the registration of a pharmacist-intern must be on a form prescribed by the board. Registration shall remain in effect during internship training and thereafter until the earlier of the following occurs:

(1) the failure of the pharmacist-intern to take the next regularly scheduled examination; or

(2) the failure to pass the next regularly scheduled examination.

(b) The board may in its discretion refuse to issue a registration to an applicant and may suspend or revoke a pharmacist-intern registration for any violation of this Act.

Qualifications for Licensing by Examination

Sec. 21. (a) To qualify for a license to practice pharmacy, an applicant for licensing by examination must submit to the board a license fee as determined by the board and a completed application on a form prescribed by the board with satisfactory sworn evidence that he:

(1) is at least 18 years old;

(2) is of good moral character;

(3) has completed a minimum of a 1,000-hour internship or other program that has been approved by the board or has demonstrated, to the board's satisfaction, experience in the practice of pharmacy that meets or exceeds the minimum internship requirements of the board;

(4) has graduated and received a professional degree from an accredited college of pharmacy that has been approved by the board; and

(5) has passed the examination required by the board.

(b) A person who falsely makes the affidavit prescribed by Subsection (a) of this section is guilty of fraudulent and dishonorable conduct and malpractice and is subject to all penalties that may be prescribed for making a false affidavit.

(c) The examinations for licensing required under this section shall be given by the board at least two times during the fiscal year of the state. The board shall determine the content and subject matter of each examination and determine which persons have successfully passed the examination. An applicant

who fails the examination may retake the examination. If a person who fails the licensing examination administered under this Act so requests in writing, the board shall furnish the person an analysis of his performance on the examination.

(d) The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ and cooperate with any organization or consultant in the preparation and grading of an appropriate examination, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed the examination.

(e) Within 30 days after the date a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(f) Each applicant for licensing by examination shall obtain practical experience in the practice of pharmacy concurrent with college attendance or after college graduation, or both, under conditions that the board shall determine.

(g) The board shall establish standards for internship or any other program necessary to qualify an applicant for the licensing examination and shall also determine the necessary qualifications of any preceptors used in any internship or other program.

Qualification for Licensing by Reciprocity

Sec. 22. (a) To qualify for a license to practice pharmacy by reciprocity, an applicant for licensing must:

(1) submit to the board a reciprocity fee as determined by the board and a completed application given under oath, in the form prescribed by the board;

(2) have good moral character;

(3) have graduated and received a professional degree from an accredited college of pharmacy that has been approved by the board;

(4) have possessed at the time of initial licensing as a pharmacist other qualifications necessary to have been eligible for licensing at that time in this state;

(5) have presented to the board proof of initial licensing by examination and proof that the license and other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled or otherwise restricted for any reason; and

(6) pass the Texas Drug and Pharmacy Jurisprudence examination.

(b) A person who falsely makes the affidavit prescribed by Subsection (a) of this section is guilty of fraudulent and dishonorable conduct and malpractice and is subject to all penalties that may be prescribed for making a false affidavit.

(c) An applicant is not eligible for licensing by reciprocity unless the state in which the applicant was initially licensed as a pharmacist also grants reciprocal licensing to pharmacists duly licensed by examination in this state, under like circumstances and conditions.

Display of Pharmacist License

Sec. 23. A pharmacist shall publicly display the license to practice pharmacy and the license renewal certificate in his primary place of practice.

License Renewal Certificate

Sec. 24. (a) A license to practice pharmacy expires on December 31 of each year or of every other year, as determined by the board.

(b) The license may be renewed for one or two years, as determined by the board, by payment of a renewal fee as determined by the board and by filing a completed application, given under oath, with the board for a license renewal certificate before the expiration date of the license or license renewal certificate.

(c) On timely receipt of the completed application and renewal fee, the board shall issue a license renewal certificate bearing the pharmacist's license number, the period for which it is renewed, and other information the board determines necessary.

(d) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(e) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(f) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(g) The board shall notify each licensee in writing of the licensee's impending license expiration at least 30 days prior to the expiration date.

(h) The board shall specify by rule the procedures to be followed and the fees to be paid for renewal and penalties for late renewal of licenses.

(i) Practicing pharmacy without an annual or biennial renewal certificate for the current year, as provided by this Act, shall have the same effect and be subject to all penalties of practicing pharmacy without a license.

(j) A license to practice pharmacy or annual or biennial renewal certificate issued by the board may not be duplicated in any manner except as expressly provided by this Act. The board may in its discretion issue duplicate copies of either the license to practice pharmacy or the annual or biennial renewal certificate on request from the holder and on payment of a fee as determined by the board.

Alternative License Renewal

Sec. 25. (a) The board may adopt a system in which licenses to practice pharmacy expire on various dates during the year.

(b) In the year the expiration date is changed, the board shall prorate the license renewal fee due December 31 of each year or of every other year, as determined by the board, to cover the months for which the license is valid. The total license renewal fee is due on the new expiration date.

Grounds for Discipline

Sec. 26. (a) The board shall refuse to issue a pharmacist license for failure to meet the requirements of Section 21 or 22 of this Act. The board may in its discretion refuse to issue or renew a license or may fine, reprimand, revoke, restrict, cancel, or suspend any license granted by the board, and may probate any license suspension if the board finds that the applicant or licensee has:

(1) violated any provision of this Act or any of the rules of the board adopted under this Act;

(2) engaged in unprofessional conduct as that term is defined by the rules of the board;

(3) engaged in gross immorality as that term is defined by the rules of the board;

(4) developed an incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public. In enforcing this subdivision, the board shall, on probable cause, request a pharmacist to submit to a mental or physical examination by physicians designated by the board. If the pharmacist refuses to submit to the examination, the board shall issue an order requiring the pharmacist to show cause why he will not submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the pharmacist. The pharmacist shall be notified by either personal service or certified mail with return receipt requested. At the hearing, the pharmacist and his attorney are entitled to present any testimony and other evidence to show why the pharmacist should not be required to submit to the examination. After the hearing, the board shall issue an order either requiring the pharmacist to submit to the examination or withdrawing the request for examination;

(5) engaged in any fraud, deceit, or misrepresentation as those words are defined by the rules of the board in the practice of pharmacy or in seeking a license to act as a pharmacist;

(6) been convicted of a felony or misdemeanor involving moral turpitude by a court of competent jurisdiction;

(7) a drug or alcohol dependency;

(8) failed to keep and maintain records required by this Act or failed to keep and maintain complete and accurate records of purchases and disposals of drugs listed in the Controlled Substances Act or the Dangerous Drug Act;

(9) violated any provision of the Controlled Substances Act or Dangerous Drug Act or rules relating to those acts;

(10) aided or abetted an unlicensed individual to engage in the practice of pharmacy;

(11) refused an entry into any pharmacy for any inspection authorized by this Act;

(12) violated the pharmacy or drug laws or rules of any other state or of the United States;

(13) been negligent in the practice of pharmacy;

(14) failed to submit to an examination after hearing and being ordered to do so by the board pursuant to Subdivision (4) of this subsection; or

(15) had a license to practice pharmacy issued by another state canceled, revoked, or suspended for conduct substantially equivalent to conduct described in Subdivisions (1)–(14) of this subsection. A certified copy of the record of the state taking action as set out above shall be conclusive evidence of the action taken by such state.

(b) The board shall refuse to issue a pharmacy license for failure to meet the requirements of Section 29 or 30 of this Act. The board may in its discretion refuse to issue or renew a license or may fine, reprimand, revoke, restrict, cancel, or suspend any license granted by the board, and may probate any license suspension if the board finds that the applicant or licensee has:

(1) been convicted of a felony or a misdemeanor involving moral turpitude, or if the applicant is an association, joint stock company, partnership, or corporation, that a managing officer has been convicted of a felony or a misdemeanor involving moral turpitude under the law of this state, another state, or the United States;

(2) advertised any prescription drugs or devices in a deceitful, misleading, or fraudulent manner;

(3) violated any provision of this Act or any rule adopted under this Act or that any owner or employee of a pharmacy has violated any provision of this Act or any rule adopted under this Act;

(4) sold without legal authorization prescription drugs or devices to persons other than:

(A) a pharmacy licensed by the board;

(B) a practitioner;

(C) a person who procures prescription drugs or devices for the purpose of lawful research, teaching, or testing, and not for resale;

(D) a manufacturer or wholesaler registered with the commissioner of health as required by the Texas Food, Drug, and Cosmetic Act, as amended (Article 4476–5, Vernon's Texas Civil Statutes); or

(E) a carrier or warehouseman;

(5) allowed an employee who is not a licensed pharmacist to practice pharmacy;

(6) sold mislabeled prescription or nonprescription drugs;

(7) failed to engage in or ceased to engage in the business described in the application for a license;

(8) failed to keep and maintain records as required by this Act, the Controlled Substances Act, Dangerous Drug Act, or rules adopted under this Act or the Dangerous Drug Act; or

(9) failed to establish and maintain effective controls against diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by this Act or other state or federal laws or rules.

Procedure

Sec. 27. Unless otherwise provided, any disciplinary action taken by the board under Section 26 of this Act is governed by the Administrative Procedure Act and the rules of practice and procedure before the board.

Penalties and Reinstatement

Sec. 28. (a) On the finding of the existence of grounds for discipline of any person holding a license or seeking a license or a renewal license under this Act, the board may impose one or more of the following penalties:

(1) suspension of the offender's license;

(2) revocation of the offender's license;

(3) restriction of the offender's license to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy or operating a pharmacy in a particular manner for a term and under conditions to be determined by the board;

(4) imposition of a fine not to exceed $1,000 for each offense involving diversion of controlled substances or a fine not to exceed $250 for any other offense;

(5) refusal to issue or renew the offender's license;

(6) placement of the offender's license on probation and supervision by the board for a period to be determined by the board;

(7) reprimand; or

(8) cancellation of the offender's license.

(b) A person whose pharmacy license or license to practice pharmacy in this state has been canceled, revoked, or restricted under this Act, whether voluntarily or by action of the board, may, after 12 months from the effective date of the cancellation, revocation, or restriction, petition the board for reinstatement or removal of the restriction of the license. The petition shall be in writing and in the form prescribed by the board. On investigation and hearing, the board may in its discretion grant or deny the petition or it may modify its original finding to reflect any circumstances that have changed sufficiently to warrant the modification.

(c) Nothing in this Act shall be construed as barring criminal prosecutions for violations of this act if the violations are considered criminal offenses in this Act or other laws of this state or of the United States.

(d) A final decision by the board is subject to judicial review in accordance with the Administrative Procedure Act. Any review by the court of a final action by the board shall be under the substantial evidence rule.

(e) Upon a finding that a rule of the board has been violated, the board may impose only those sanctions listed in Subsections (a)(1), (3), (4), (6), and (7) of this section; provided, however, nothing in this subsection shall be construed to preclude imposition of sanctions for violation of board rules regarding controlled substances.

Registration of Pharmacies

Sec. 29. (a) A pharmacy shall annually register with the board.

(b) Each pharmacy shall apply for a license in one or more of the following classifications:

(1) Class A;

(2) Class B;

(3) Class C; or

(4) Class D.

(c) Each pharmacy shall be under the supervision of a pharmacist as follows:

(1) a Class A pharmacy shall be under the continuous on-site supervision of a pharmacist during the time it is open for pharmacy services;

(2) a Class B pharmacy shall be under the continuous on-site supervision of a pharmacist during the time it is open for pharmacy services;

(3) a Class C pharmacy shall be under the continuous on-site supervision of a pharmacist in institutions with more than 100 beds during the time it is open for pharmacy services; in institutions with 100 beds or fewer, the services of a pharmacist shall be required on a part-time or consulting basis according to the needs of the institution; and

(4) a Class D pharmacy shall be under the continuous supervision of a pharmacist whose services shall be required according to the needs of the pharmacy.

(d) The board shall establish by rule the standards that each pharmacy and its employees or personnel

involved in the practice of pharmacy shall meet to qualify for the licensing or relicensing as a pharmacy in each classification.

(e) The board shall have the discretion to determine under which classifications a pharmacy applicant may be licensed. With respect to Class C pharmacies, the board may establish rules for the use of supportive personnel and the duties of those personnel in Class C pharmacies licensed by the board, provided that these personnel are responsible to and directly supervised by a pharmacist licensed by the board; provided, however, the board may not adopt any rule setting ratios with respect to pharmacists and supportive personnel or limiting the number of supportive personnel that may be utilized.

(f) The board shall have the authority to inspect facilities licensed under this Act for compliance with this Act.

(g) A pharmacy operated by the state or a local government that qualifies for a Class D license may not be required to pay a fee to obtain a license.

Application

Sec. 30. (a) The board shall specify by rule the licensing procedures to be followed, including specification of forms for use in applying for a license and fees for filing an application.

(b) To qualify for a pharmacy license, the applicant must submit to the board a license fee as determined by the board and a completed application on a form prescribed by the board that shall include the following information and be given under oath:

(1) ownership;

(2) location;

(3) the license number of each pharmacist employed by the pharmacy;

(4) the license number of the pharmacist-in-charge, who shall have the authority or responsibility for the pharmacy's compliance with laws and rules pertaining to the practice of pharmacy; and

(5) any other information the board determines necessary.

(c) A person who falsely makes the affidavit prescribed by Subsection (b) of this section is subject to all penalties that may be prescribed for making a false affidavit.

(d) A pharmacy license issued by the board under this Act is not transferable or assignable.

(e) The board shall specify by rule minimum standards for professional responsibility in the conduct of a pharmacy.

(f) A separate license is required for each principal place of business, and only one pharmacy license may be issued to a specific location.

(g) A pharmacy shall display in full public view the license in the pharmacy operating under the license.

(h) A Class A or Class C pharmacy that serves the general public shall:

(1) display the word "pharmacy" in a prominent place on the front of the pharmacy or a similar word or symbol as determined by the board; and

(2) display in public view the licenses of the pharmacists employed in the pharmacy.

Renewal of Pharmacy Licenses

Sec. 31. (a) A license to operate a pharmacy expires on May 31 of each year.

(b) A license may be renewed by payment of a renewal fee as determined by the board and by filing with the board a completed application given under oath for a license renewal certificate before the expiration date of the license or license renewal certificate.

(c) On timely receipt of the completed application and renewal fee, the board shall issue a license renewal certificate bearing the pharmacy license number, the year for which it is renewed, and other information the board determines necessary.

(d) The board shall remove the name from the register of licensed pharmacies and suspend the license of a pharmacy that does not file a completed application and pay the renewal fee before June 1 of each year.

(e) The board shall specify by rule the procedures to be followed, the fees to be paid for renewal, and the penalties for late renewal of licenses.

Notifications

Sec. 32. (a) A pharmacy shall report in writing to the board within 10 days of any of the following:

(1) permanent closing;

(2) change of ownership;

(3) change of location;

(4) change of pharmacist-in-charge;

(5) the theft or significant loss of any controlled substances on discovery of the theft or loss; the notification of theft or loss shall contain a list of all controlled substances stolen or lost;

(6) the sale or transfer of controlled substances or dangerous drugs on the permanent closing or change of ownership of the pharmacy;

(7) any matters and occurrences that the board may require by rule; and

(8) out-of-state purchases of controlled substances as determined by the board.

(b) A pharmacist shall report in writing to the board within 10 days a change of address or place of employment.

(c) Disasters, accidents, and emergencies that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of injury, illness, and disease shall be immediately reported to the board.

(d) A copy of any notification required by this section shall be maintained by the reporting pharmacy for two years and be available for inspection.

Administration and Provision of Dangerous Drugs

Sec. 33. (a) A person licensed to practice medicine shall have the authority to delegate to any qualified and properly trained person or persons, acting under the physician's supervision, the act or acts of administering or providing, in the physician's office, dangerous drugs, as ordered by the physician, that are used or required to meet the immediate needs of such physician's patients. Such administration or provision as ordered by a physician may be delegated through the physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as such orders are defined by the Texas State Board of Medical Examiners. Such administration or provision of dangerous drugs shall be in compliance with laws relating to the practice of medicine and Texas and federal laws relating to dangerous drugs. Nothing in this section shall permit the physician or person or persons acting under the supervision of such physician to keep a pharmacy, advertised or otherwise, for the retailing of such drugs without complying with the applicable laws relating to same.

(b) A person licensed to practice medicine shall have the authority to delegate to any qualified and properly trained person or persons, acting under such physician's supervision, the act or acts of administering or providing dangerous drugs, if such provision is provided through a facility licensed by the board pursuant to Section 29(b)(4) of this Act, as ordered by such physician, that are used or required to meet the needs of such physician's patients. Such administration or provision, as ordered by physician, may be delegated through physician's orders, standing medical orders, standing delegation orders, or other orders, where applicable, as such orders are defined by the Texas State Board of Medical Examiners. Such provision of dangerous drugs shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, Texas or federal drug laws, and rules that may be properly issued by the board. Such administration shall be in compliance with any laws relating to the practice of medicine, laws relating to the practice of professional nursing, laws relating to the practice of pharmacy, and Texas or federal drug laws. Nothing in this section shall permit the physician or person or persons acting under the supervision of such physician to keep a pharmacy, advertised or otherwise, for the retailing of such dangerous drugs without complying with applicable laws relating to same. Such dangerous drug shall be supplied in a suitable container that has been labeled in compliance with applicable drug laws; provided, however, a qualified and trained person or persons acting under the supervision of a physician may be permitted to specify at the time of such provision the inclusion of the date of provision and the patient's name and address.

Violations and Penalties

Sec. 34. (a) No pharmacy designated in Section 29 of this Act may be operated until a license or renewal certificate has been issued to the pharmacy by the board. On the finding of a violation of this Act or rules adopted under this Act, the board may impose one or more of the penalties prescribed by Section 28(a) of this Act.

(b) Reinstatement of a pharmacy license that has been canceled, revoked, or restricted by the board may be granted in accordance with Section 28(b) of this Act.

Unlawful Use of "Pharmacy"

Sec. 35. A person may not display in or on any store or place of business the word "pharmacy," either in English or any other language, any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public unless it is a pharmacy licensed under this Act.

Unlawful to Impersonate Applicant, Licensed Pharmacist, or Fraudulently Acquire License

Sec. 36. A person may not impersonate before the board an applicant applying for licensing under this Act, fraudulently acquire a license in any other manner than provided by this Act, impersonate a licensed pharmacist, or use the title "Registered Pharmacist" or "R.Ph.," or words of similar intent unless the person is licensed to practice pharmacy in this state.

Penalties

Sec. 37. (a) A person commits an offense if the person knowingly or intentionally violates the licensing requirements of this Act or Section 35 or 36 of this Act.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of violation is a separate offense.

Burden of Proof; Liabilities

Sec. 38. (a) It is not necessary for the state to negate any exemption or exception set forth in this Act in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceedings under this Act, and the burden of going forward with the evidence with respect to any exemption or exception is on the person claiming its benefit.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate license issued under this Act, he is presumed not to be the holder of the license. The presumption is subject to rebuttal by a person charged with an offense under this Act.

(c) No liability is imposed by this Act on any authorized board employee or person acting under the supervision of a board employee, or on any state, county, or municipal officer, engaged in the lawful enforcement of this Act.

Fees

Sec. 39. The board may not charge more than the following fees for the performance of the following duties and functions to carry out the purposes of this Act:

(1) for processing application and administration of examination for licensure—$150;

(2) for processing application for licensure by reciprocity—$250 (plus the applicable license fee);

(3) for processing application and issuance of a pharmacist license or renewal of a pharmacist license—$85 a year; and

(4) for processing of an application and issuance of a pharmacy license or renewal of a pharmacy license—$150.

Substitution

Sec. 40. (a) It is the intent of the legislature to save consumers money by allowing the substitution of lower-priced generically equivalent drug products for certain brand name drug products and for pharmacies and pharmacists to pass on the net benefit of the lower costs of the generically equivalent drug product to the purchaser.

(b) Except as otherwise provided by this section, a pharmacist who receives a prescription for a drug product for which there exists one or more generic equivalents, as defined herein, may dispense any of the generically equivalent products.

(c) In this section:

(1) "Generically equivalent" means a drug that is "pharmaceutically equivalent" and "therapeutically equivalent" to the drug prescribed.

(2) "Pharmaceutically equivalent" means drug products which have identical amounts of the same active chemical ingredients in the same dosage form and which meet the identical compendial or other applicable standards of strength, quality, and purity according to the United States Pharmacopoeia or other nationally recognized compendium.

(3) "Therapeutically equivalent" means pharmaceutically equivalent drug products which, when administered in the same amounts, will provide the same therapeutic effect, identical in duration and intensity.

(d) Unless otherwise directed by the practitioner, the label on the dispensing container shall indicate the actual drug product dispensed, either (1) the brand name, or if none (2) the generic name, the strength, and the name of the manufacturer or distributor. In instances where a drug product has been selected other than the one prescribed, the pharmacist shall place on the container the words "Substituted for brand prescribed." The brand name of the prescribed drug shall not appear on the prescription container label unless it is the drug product actually dispensed.

(e) A pharmacist may not select a generically equivalent drug unless the generically equivalent drug selected costs the patient less than the prescribed drug product. A pharmacist may not charge a higher professional fee for dispensing a generically equivalent drug product than the fee he or she customarily charges for dispensing the brand name product prescribed.

(f) A pharmacist who selects a generically equivalent drug product as authorized by this section shall:

(1) personally, or through his or her agent or employee and prior to delivery of a generically equivalent drug product, inform the patient or the patient's agent that a less expensive generically equivalent drug product has been substituted for the brand prescribed and the patient or patient's agent's right to refuse such substitution; or

(2) cause to be displayed, in a prominent place that is in clear public view where prescription drugs are dispensed, a sign in block letters not less than one inch in height that reads, in both English and Spanish:

"TEXAS LAW ALLOWS A LESS EXPENSIVE GENERICALLY EQUIVALENT DRUG TO BE SUBSTITUTED FOR CERTAIN BRAND NAME DRUGS UNLESS YOUR PHYSICIAN DIRECTS OTHERWISE. YOU HAVE A RIGHT TO REFUSE SUCH SUBSTITUTION. CONSULT YOUR PHYSICIAN OR PHARMACIST CONCERNING THE AVAILABILITY OF A SAFE, LESS EXPENSIVE DRUG FOR YOUR USE."

Only one sign displayed in a pharmacy, as required above, shall be deemed compliance with this subsection.

(3) A pharmacist complies with the requirements of this section if an employee or agent of the pharmacist notifies a purchaser as required by Subdivision (1) of this subsection. The patient or patient's agent shall have the right to refuse such product selection.

(g) No written prescription may be dispensed unless it is ordered on a form containing two signature lines of equal prominence, side by side, at the bottom of the form. Under either signature line shall be printed clearly the words "product selection permitted," and under the other signature line shall be printed clearly the words "dispense as written." The practitioner shall communicate dispensing instructions to the pharmacist by signing on the appropriate line. If the practitioner's signature does not clearly indicate that the prescription must be dispensed as written, generically equivalent drug selection is permitted. No prescription form furnished a

practitioner shall contain a preprinted order for a drug product by brand name, generic name, or manufacturer.

(h) If a prescription is transmitted to a pharmacist orally, the pharmacist shall note any dispensing instructions by the practitioner or the practitioner's agent on the file copy of the prescription and retain the prescription for the period of time specified by law. Properly authorized prescription refills shall follow the original dispensing instructions unless otherwise indicated by the practitioner or practitioner's agent.

(i) A pharmacist shall record on the prescription form the name, strength, and manufacturer or distributor of any drug product dispensed as herein authorized.

(j) A pharmacist who selects a generically equivalent drug to be dispensed pursuant to this section assumes the same responsibility for selecting the generically equivalent drug that he does in filling a prescription for a drug product prescribed by generic name. There shall be no liability on the prescriber for an act or omission by a pharmacist in selecting, preparing, or dispensing a drug product pursuant to this section.

(k) Drug product selection as authorized in this section shall not apply to enteric-coated tablets; controlled release products; injectable suspensions, other than antibiotics; suppositories containing active ingredients for which systemic absorption is necessary for therapeutic activity; and different delivery systems for aerosol or nebulizer drugs. This subsection shall not apply to any drug product which is determined to be generically equivalent to the brand prescribed.

Code of Professional Responsibility

Sec. 41. (a) The board shall adopt a code of professional responsibility to regulate the conduct of board employees responsible for inspections and surveys of pharmacies.

(b) The code shall contain a procedure to be followed by agency personnel:

(1) on entering a pharmacy;

(2) during inspection of the pharmacy; and

(3) during the exit conference.

(c) The code shall contain standards of conduct that agency personnel are to follow in dealing with the staff and management of the pharmacy and the general public.

(d) The board shall establish a procedure for receiving and investigating complaints of code violations. The board shall investigate all complaints of code violations. The results of an investigation shall be forwarded to the complainant.

(e) The board may adopt rules establishing sanctions for violations of the code.

[Acts 1981, 67th Leg., p. 638, ch. 255, §§ 1 to 39, 41, eff. Sept. 1, 1981; § 40, eff. Jan. 1, 1982.]

Sections 42 to 44 of the 1981 Act provide:

"Sec. 42. (a) The board may discipline an applicant or licensee as provided by Section 26 of this Act if the applicant or licensee has engaged in the act of 'substitution' as that term is hereinafter defined. The term 'substitution' as used in this Act shall mean the dispensing of a drug or a brand of drug other than that which is ordered or prescribed without the express consent of the orderer or prescriber. If the consent of the orderer or prescriber for substitution by the licensee is obtained, a notation shall be made by the licensee on the prescription stating that such consent has been obtained and by whom such consent was given, and such notation shall, in addition, specify the drug or brand of drug so substituted.

"(b) This section expires January 1, 1982. The expiration of this section does not affect the imposition of discipline on or after January 1, 1982, for conduct committed in violation of this section before that date, and this section remains in effect on and after January 1, 1982, for this limited purpose.

"Sec. 43. All laws or parts of laws inconsistent with this Act, including Section 1, Chapter 447, Acts of the 55th Legislature, Regular Session, 1957 (Article 4542b, Vernon's Texas Civil Statutes), and Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), are repealed.

"Sec. 44. (a) The validity of licenses and renewal certificates issued under the law repealed by this Act is not affected by the repeal. Those licenses and renewal certificates shall be treated as if issued under this Act.

"(b) A license application pending on the effective date of this Act is governed by the law repealed by this Act and the repealed law is continued in effect for this purpose.

"(c) A person required to obtain a pharmacy license under this Act who was not required to obtain a pharmacy permit under the law repealed by this Act is not required to have a pharmacy license until January 1, 1982.

"(d) An offense prescribed by this Act applies only to conduct committed on or after the effective date of this Act and a criminal or administrative action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For the purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date of this Act.

"(e) A member of the board constituted under the law repealed by this Act who is serving a term on the effective date of this Act shall continue as a board member and shall serve the duly appointed term as governed by the law repealed by this Act, and the repealed law is continued in effect for this purpose. A current board member appointed initially for a term of less than six years is eligible to serve for two additional full terms.

"(f) Rights and obligations of the board existing on the effective date of this Act are governed by the law repealed by this Act, which law is continued in effect for the purpose of continuing and governing those rights and obligations as if this Act were not in force.

"(g) Any proceeding pending before the board on the effective date of this Act is governed by the law existing before the effective date of this Act, which law is continued in effect for this purpose as if this Act were not in force.

"(h) The rules of the board existing on the effective date of this Act are governed by the law repealed by this Act, which rules are continued in effect for the purpose of continuing and governing those rights and obligations as if this Act were not in force until the board adopts similar rules under this Act."

Art. 4542b. Repealed by Acts 1981, 67th Leg., p. 662, ch. 255, § 43, eff. Sept. 1, 1981

See, now, art. 4542a–1, § 4.

Art. 4542c. Labeling Requirements for Prescription Drugs

(a) All prescription drugs manufactured and sold or distributed to a pharmacist in this state after the effective date of this Act to be subsequently dispensed to the consumer of the drug or drug product shall have affixed to the labeling the name and business address of the original manufacturer of the finished dosage form, and the names and business address of all repackagers or distributors of the prescription drug or drug product prior to its delivery to the pharmacist. This information does not need to be affixed to the container delivered to the patient. Provided, however, that the name and business address of the distributor need not be so affixed if the distributor acts only as a wholesaler or supplier and does not repackage the drug or in any way modify the individual drug package or container or its contents as such was received from the manufacturer, repackager, or other distributor.

(b) An individual, corporation, or association who violates any provision of this Act commits a Class C misdemeanor.

[Acts 1975, 64th Leg., p. 1360, ch. 517, § 1, eff. Jan. 1, 1976. Amended by Acts 1977, 65th Leg., p. 1225, ch. 473, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act repealed conflicting laws.

CHAPTER NINE. DENTISTRY

Article
4543a. Application of Sunset Act.
4547a. Aid to the Board.
4549. Disciplinary Actions.
4549b. Consumer Information.
4549–1. Revocation and Suspension of License for Drug-Related Felony Conviction.
4551c–1. Repealed.
4551e–1. Permitted Duties for Dental Assistants.
4551i. Civil Immunity—Peer Review, Judicial or Grievance Committees.
4451j. Civil Immunity, Official Acts.
4551k. Case Histories and Physical Evaluations.
4551*l*. Equivalency Data.

Art. 4543. Appointment; Qualifications

Sec. 1. (a) The State Board of Dental Examiners, also known as the Texas State Board of Dental Examiners, shall consist of 12 members. Nine members must be reputable, practicing dentists who have resided in the State of Texas and have been actively engaged in the practice of dentistry for five years next preceding their appointment, none of whom shall be members of the faculty of any dental or dental hygiene school or college or of the dental or dental hygiene department of any medical school or college or shall have a financial interest in any such school or college. Three members must be members of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(b) Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

Sec. 2. The term of office of each member of said Board shall be limited to one six-year term or until their successors shall be appointed and qualify. Board terms are limited to one six-year term except that this restriction shall not prohibit those Board members holding office on May 1, 1981, from being reappointed to one additional six-year term. The terms shall be staggered with the terms of one-third of the members expiring every two years. The members of said Board shall be appointed by the Governor of the State. Before entering upon the duties of his office each member of the Board shall take the constitutional oath of office, same to be filed with the Secretary of State. At its first meeting the Board shall organize by electing one member President and one Secretary chosen to serve one year. Said Board shall hold regular meetings at least twice a year at such times and places as the Board shall deem most convenient for applicants for examination. Due notice of such meetings shall be given by publication in such papers as may be selected by the Board. The Board may prescribe rules and regulations, in harmony with the provision of this title governing its own proceedings and the examinations of applicants for the practice of dentistry. The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Sec. 3. A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the dental industry. A member or employee of the Board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), by virtue of his activities on behalf of a trade or professional association in the profession regulated by the Board, may not serve as a member of the Board or act as the general counsel to the Board.

Sec. 4. (a) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Section 1 of this article for appointment to the Board;

(2) does not maintain during the service on the Board the qualifications required by Section 1 of this article for appointment to the Board;

(3) violates a prohibition established by Section 3 of this article; or

(4) fails to attend at least one-half of the regularly scheduled meetings held each year.

(b) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

[Amended by Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

Section 9 of the 1981 amendatory act provides:

"(a) A person holding office as a member of the State Board of Dental Examiners on the effective date of this Act continues to hold office for the term for which the member was originally appointed.

"(b) The governor shall make initial appointments to the board of three public members. The governor shall designate one public member for a term expiring in 1983, one for a term expiring in 1985, and one for a term expiring in 1987."

Art. 4543a. Application of Sunset Act

The State Board of Dental Examiners is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished effective September 1, 1993.

[Added by Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.047, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

Art. 4544. Examination for License to Practice Dentistry

Duty to Examine; Fee; Subjects

Sec. 1. It shall be the duty of the Board to examine all applicants for license to practice dentistry in this State. Each person applying for an examination shall pay to said Board a fee set by the Board and shall be granted a license to practice dentistry in this State upon his satisfactorily passing an examination given by said Board on subjects and operations pertaining to dentistry which shall include Anatomy, Physiology, Anaesthesia, Biochemistry, Dental Materials, Diagnosis, Treatment Planning, Ethics, Jurisprudence, Hygiene, Pharmacology, Operative Dentistry, Oral Surgery, Orthodontia, Periodontia, Prosthetic Dentistry, Pathology, Microbiology, and such other subjects as are regularly taught in reputable Dental Schools as the Board may in its discretion require. The examination shall be given either orally or in writing, or by giving a practical demonstration of the applicant's skill, or by any combination of such methods or subjects as the Board may in its discretion require.

Foreign and Nonaccredited Dental School Graduates

Sec. 2. The Texas State Board of Dental Examiners may provide in its rules and regulations the procedures, fees, and requirements for graduates of foreign and/or nonaccredited Dental Schools to become licensed to practice dentistry in Texas.

Notification of Results or Reason for Delay

Sec. 3. Within 30 days after the day on which a licensing examination is administered under this article, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination within two weeks after the day that the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.

Analysis of Performance

Sec. 4. If requested in writing by a person who fails the licensing examination administered under this article, the Board shall furnish the person with an analysis of the person's performance on the examination as prescribed by Board rule.

Continuing Education

Sec. 5. The Board may recognize, prepare, or carry out continuing education programs for persons it licenses or certifies. Participation in the programs in voluntary.

[Amended by Acts 1977, 65th Leg., p. 356, ch. 174, § 4, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

Art. 4545. Qualifications of Applicants

Each applicant for a license to practice dentistry in this state shall be not less than twenty-one (21) years of age and shall present proof of graduation from a reputable dental college and evidence of good moral character. A dental college shall be held reputable whose entrance requirements and course of instruction are as high as those adopted by the better class of dental colleges of the United States, and whose course of instruction shall be the equivalent of not less than four (4) terms of eight (8) months each.

[Amended by Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

Art. 4545a. Reciprocal Arrangements

The State Board of Dental Examiners may, in the discretion of the Board in each instance, upon payment by the applicant for registration of a fee set by the Board, grant license to practice dentistry to any reputable dentist who is a graduate of a reputable dental college or has qualified on examination for the certificate of dental qualification for a commission as a dentist in the Armed Forces of the United States and to licentiates of other States or territories having requirements for dental registration and practice equal to those established by this law. Applications for license under the provisions of this Article shall be in writing and upon a form to be prescribed by the State Board of Dental Examiners. Said application shall be accompanied by a diploma or a photograph thereof, awarded to the applicant by a reputable dental college, or a certified transcript of the certificate or license or commission issued to the applicant by the Armed Forces of the United States, or by a license or a certified copy of license to practice dentistry, lawfully issued to the applicant by some other State or territory; and shall also be accompanied by an affidavit from an executive officer of the Armed Forces of the United States, the President or Secretary of the Board of Dental Examiners who issued the said license, or by a legally constituted dental registration officer of the State or territory in which the certificate or license was granted upon which the applications for dental registration in Texas is based. Said affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked except by honorable discharge by the Armed Forces of the United States, and that the statement of qualifications made in the application for dental registration in Texas is true and correct. Applicants for license under the provisions of this Article shall subscribe to

an oath in writing which shall be a part of said application, stating that the license, certificate, or authority under which the applicant practiced dentistry in the State or territory from which the applicant removed, was at the time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate, license, or commission and the said dental diploma were issued, and that no proceeding was pending at the time of such removal, or is at the present time pending against the applicant for the cancellation of such certificate, license or authority to practice dentistry in the State or territory in which the same was issued, and that no prosecution was then, or is at the time of the application, pending against the applicant in any State or Federal Court for any offense which under the law of Texas is a felony.

[Amended by Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

Arts. 4546, 4546a. Repealed by Acts 1977, 65th Leg., p. 616, ch. 225 § 4, eff. Aug. 29, 1977

Art. 4547. Duplicate License

If any license issued under this or any former law in Texas shall be lost or destroyed, the holder of said license may pay a reasonable fee to the board and present his application to the board for a duplicate license together with his affidavit of such loss or destruction and that he is the same person to whom said license was issued, and shall be granted a license under this law. If the records of said board fail to show that such person was ever licensed, the board may exercise its discretion in granting said duplicate license.

[Amended by Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

Art. 4547a. Aid to the Board

The Texas State Board of Dental Examiners shall have power and authority to appoint such clerks, advisors, consultants, hygienists, and/or examiners to aid the board to carry out its duties as it deems necessary and advisable and may reimburse said persons so appointed in such amounts as is reasonable and in conformity with the provisions of the general appropriations bill as enacted by the Texas Legislature.

[Added by Acts 1977, 65th Leg., p. 969, ch. 365, § 1, eff. Aug. 29, 1977.]

Art. 4548b. Repealed by Acts 1981, 67th Leg., p. 2844, ch. 763, § 10(1), eff. Sept. 1, 1981

Art. 4548e. Use of Trade Name

It shall be unlawful for any person or persons to practice dentistry in this State under the name of a corporation, company, association, or trade name unless included as a prominent portion of such name is the proper name used on the license, as issued by the State Board of Dental Examiners, of the dentist or dentists practicing under such corporate, company, association, or trade name. Provided, however, any corporate, company, association, or trade name used by a group of dentists in a nonprint medium shall only be required to include prominently the name of one dentist practicing under such name. Each day of violation of this Article shall constitute a separate offense.

[Amended by Acts 1977, 65th Leg., p. 1165, ch. 444, § 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1 1981.]

Art. 4548f. Unlawful Advertising

False, Misleading, or Deceptive Advertising Unlawful; Other Advertising not Restricted

Sec. 1. (a) It shall be unlawful for any person, firm, or corporation to engage in false, misleading, or deceptive advertising arising out of or in connection with the practice of dentistry. Provided, however, nothing herein shall be construed to restrict or prohibit:

(1) the type of advertising medium;

(2) the size or duration of any advertisement;

(3) the truthful advertising of prices for any type of dental services;

(4) the use of agents or employees in advertising;

(5) a person's personal appearance or use of his personal voice in an advertisement.

(b) The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person.

Prohibiting Advertising of Out-of-State Practice of Dentistry

Sec. 2. It shall be unlawful for any person, firm, or corporation to advertise in this state or cause or permit to be advertised, published directly or indirectly, printed or circulated in this state any notice, statement or offer of, any service, skill, method, drug or fee in the practice of dentistry by any person, firm, or corporation, which is not domiciled and located in this state and subject to the laws of this state.

[Amended by Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

Art. 4548g. Unprofessional Conduct

It shall be unlawful for any person, firm, or corporation to engage in or be guilty of any unprofessional conduct pertaining to dentistry directly or indirectly. Any unprofessional conduct, as used herein, means and includes any one or more of the following acts:

(1) obtaining any fee by fraud or misrepresentation;

(2) soliciting dental business by means of verbal communication, in person or otherwise, directed to an individual or group of less than five individu-

als, which is primarily for the purpose of attracting the patronage of such individual or group to a particular practice of dentistry;

(3) employing, directly or indirectly, or permitting any unlicensed person to perform dental services upon any person, except as otherwise authorized by law or the rules and regulations of the State Board of Dental Examiners;

(4) claiming or circulating any statement of professional superiority or the performance of professional services in a superior manner;

(5) forging, altering, or changing any diploma, license, registration certificate, transcript, or any other legal document pertaining to the practice of dentistry, being a party thereto or beneficiary thereof, or making any false statement about or in securing such document, or being guilty of misusing the same;

(6) accepting employment as a dentist under any referral scheme which is false, misleading, or deceptive;

(7) advertising to perform any dental work without pain or discomfort to the patient;

(8) advertising predictions of future satisfaction or success of any dental service."

[Amended by Acts 1981, 67th Leg., p. 2826, ch. 763, § 1, eff. Sept. 1, 1981.]

Art. 4548h. Refusing, Revoking, Cancelling, and Suspending Licenses

Authority to Grant License

Sec. 1. The State Board of Dental Examiners shall be and they are hereby authorized to refuse to grant a license to practice dentistry to any person or persons who have been guilty, in the opinion of said Board, of violating any of the provisions of the Statutes of the State of Texas relating to the practice of dentistry, or any provisions of Chapter 9, Title 71, Revised Civil Statutes of Texas, 1925, as amended, within twelve (12) months prior to the filing of an application for such license.

Revocation, Cancellation, or Suspension of License

Sec. 2. The State Board of Dental Examiners shall, and it shall be their duty, and they are hereby authorized to revoke, cancel, or suspend any license or licenses that may have been issued by such Board, if in the opinion of a majority of such Board, any person or persons to whom a license has been issued by said Board to practice dentistry in this State, shall have, after the issuance of such license, violated any of the provisions of the Statutes of the State of Texas relating to the practice of dentistry in this State, or any of the provisions of Chapter 9, Title 71, Revised Civil Statutes of Texas, 1925, as amended, or any amendments that may hereafter be made thereto. All revocations, cancellations or suspensions of licenses by the Texas State Board of Dental Examiners shall be made as hereinafter provided.

All complaints to be considered by the Board shall be made in writing, subscribed and sworn to by the person presenting such complaint, which complaint shall set out the alleged violations of such Statutes and declaring it to be the opinion of the person presenting such complaint that the person or persons so accused have so violated said Statutes.

All complaints as received shall be presented to the Secretary of the Board or an authorized employee of the Board who shall cause copies of all complaints to be made and mailed or delivered to each member of the Board. When a complaint is made by a member of the Board, its agents or employees, the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes. When a complaint is made by others than the members of the Board, its agents or employees, the Board or its duly authorized representative shall cause an investigation of such complaint to be made to determine the facts in such case, and if the facts as determined by such investigation, in the discretion of the Secretary of the Board, justify the docketing of such complaint for hearing before the Board, then the Secretary of the Board shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes.

The Secretary of the Board or its authorized officer or employee shall not less than ten (10) days prior to the next meeting of the board called for the purpose of hearing and considering such complaint, mail by registered mail to the last known address of such person or persons against whom a complaint has been so docketed a notice of hearing, which notice shall contain the date, time, and place of the meeting of the Texas State Board of Dental Examiners called to consider such complaint, and such notice shall contain the alleged violations of such Statutes, and shall state that such accused person may appear and offer such evidence as is pertinent to his defense to such complaint. Such hearing shall be governed by such rules and regulations as may be prescribed by the Board, and the Board shall have the authority to subpoena and compel the attendance of such licensees or other persons deemed to have knowledge which would aid the board in reaching a proper decision and for the enforcement of this Act. After such hearing, the Board shall enter an order in its minutes, as in the opinion of the majority of the Board the facts brought out at such hearing

justify and require. Provided, however, that any order cancelling or revoking or suspending such license or licenses shall be signed by a majority of such Board and by all the members of such Board present at such hearing. Provided that when the license of such licensee is revoked or cancelled he shall be allowed to continue the practice of his profession pending appeal upon his giving a supersedeas bond in such amount as shall be set by the District Court, conditioned to faithfully observe the law.

Appeal to Court

Sec. 3. (a) A person aggrieved by a ruling, order, or decision of the Board has the right to appeal to a district court in the county of his residence or in the county where the alleged offense occurred within thirty (30) days from the service of notice of the action of the State Board of Dental Examiners.

(b) The appeal having been properly filed, the court may request of the Board and the Board on receiving the request shall within thirty (30) days prepare and transmit to the court a certified copy of its entire record in the matter in which the appeal has been taken. The appeal shall be tried in accordance with the Texas Rules of Civil Procedure.

(c) In the event an appeal is taken by a licensee, the appeal shall act as a supersedeas providing the appealing party files a bond as the court may direct, and the court shall dispose of the appeal and enter its decision promptly.

(d) If an aggrieved person fails to perfect an appeal as provided in this section, the Board's ruling shall become final.

(e) Review by the court shall be by the substantial evidence rule and not de novo.

Additional Offices

Sec. 4. No statute relating to the practice of dentistry in this State shall be construed to prohibit any duly authorized, licensed, and registered dentist from maintaining any number of offices in this State, provided said dentist assumes full legal responsibility and liability for the dental services rendered in such offices and further provided that the dentist complies with such requirements as may be prescribed by the Board in its Rules and Regulations for the purpose of protecting the health and safety of the patients receiving dental care at such offices.

Appeal to Court

Sec. 5. If said Board shall make and enter any order cancelling or suspending any license or licenses as hereinabove provided, the person or persons whose license shall have been so cancelled and revoked or suspended may, within thirty (30) days after the making and entering of such order, take an appeal to the District Court of the county in which the alleged offense occurred by filing an appropriate petition for such purpose. Said cause shall be placed on the docket of said Court in the name of the party or parties filing same, as plaintiff, and the State Board of Dental Examiners, as defendant. It shall be the duty of said Board, upon the filing of a petition asking for an appeal and review of such proceedings of said Board by the person or persons accused, and after citation in such cause has been issued and served as in other civil cases, to prepare and transmit to such District Court upon notice from such Court a transcript of the orders hereinabove provided for, the same to be certified as true and correct by the Secretary of said Board. Such District Court shall thereafter and under the rules of procedure applicable to other civil cases, proceed to set such cause for hearing as in other civil cases. Upon the hearing of such cause, if such Court shall find that the action of such Board, in cancelling or revoking or suspending such license or licenses is not well taken or that same would or might deprive such licensee unjustly of his license to practice dentistry in this State, such Court shall by appropriate order and judgment set aside such action of said Board; but if such Court shall sustain such action of said Board in cancelling and revoking or suspending such license or licenses, and order shall be made and entered in appropriate form sustaining and affirming the action of such Board, from which order and appeal may be taken to the Court of Appeals, as in other civil causes. If no appeal be taken from such order of such Court within thirty (30) days, the same shall become final. If an appeal be taken from the District Court to a Court of Appeals, the order of such Court shall become final within thirty (30) days after the making and entry of such order by such Court of Appeals. Provided in all such cases of appeal that the Court shall give preference to same, and advance them on the docket of said Court so that speedy action may be had; providing also that trial in the District Court shall be de novo.

Secs. 5, 6. [Renumbered as §§ 4 and 5 and amended by Acts 1981, 67th Leg., p. 2830, ch. 763, § 2]

[See Compact Edition, Volume 4 for text of 8]

[Amended by Acts 1981, 67th Leg., p. 789, ch. 291, § 62, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2830, ch. 763, § 2, eff. Sept. 1, 1981.]

Acts 1981, 67th Leg., p. 820, ch. 291, § 149, provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

Acts 1981, 67th Leg., p. 2830, ch. 763, § 2, in its introductory language stated only that it was amending §§ 3, 4 and 5 (now §§ 1, 2, and 3), but what followed included an amendment of § 6 (now, § 4).

Art. 4548j. Repealed by Acts 1981, 67th Leg., p. 2844, ch. 763, § 10(1), eff. Sept. 1, 1981

Art. 4549. Disciplinary Actions

Grounds for Refusal to Examine or Issue License

Sec. 1. The Texas State Board of Dental Examiners shall have authority to refuse to examine any person or refuse to issue a dental license or a dental hygienist license to any person for any one or more of the following causes:

(a) Proof of presentation to the Board of any dishonest or fake evidence of qualification, or being guilty of any illegality, fraud or deception in the process of examination, or for the purpose of securing a license or certificate.

(b) Proof of chronic or habitual intoxication or addiction to drugs on the part of the applicant.

(c) Proof that the applicant has been guilty of dishonest or illegal practices in or connected with the practice of dentistry or dental hygiene.

(d) Proof of conviction of the applicant of a felony involving moral turpitude under the laws of this State or any other State or of the United States.

Application of Law

Sec. 2. The provisions of this Article relating to the suspension or revocation of a license do not apply to a person convicted of a felony under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes).

Jurisdiction to Suspend or Revoke License, Place on Probation, or Reprimand; Grounds

Sec. 3. The Texas State Board of Dental Examiners and the District Courts of this State shall have concurrent jurisdiction and authority, after notice and hearing as hereinafter provided, to suspend or revoke a dental license or a dental hygienist license, to place on probation a person whose license or certificate is suspended, or to reprimand a licensee or certificate holder for any one or more of the following causes:

(a) Proof of insanity of the holder of a license or certificate, as adjudged by the regularly constituted authorities.

(b) Proof of conviction of the holder of a license or certificate of a felony involving moral turpitude under the laws of this State or any other State or of the United States.

(c) That the holder thereof has been or is guilty of dishonorable conduct, malpractice or gross incompetency in the practice of dentistry or dental hygiene.

(d) That the holder thereof has been or is guilty of any deception or misrepresentation for the purpose of soliciting or obtaining patronage.

(e) That the holder thereof procured a license or certificate through fraud or misrepresentation.

(f) That the holder thereof is addicted to habitual intoxication or the use of drugs.

(g) That a dentist employs or permits or has employed or permitted persons to practice dentistry in the office or offices under his control or management, who were not licensed to practice dentistry.

(h) That the holder thereof has failed to use proper diligence in the conduct of his practice or to safeguard his patients against avoidable infections.

(i) That the holder thereof has failed or refused to comply with any State law relating to the regulation of dentists or dental hygienists.

(j) That the holder thereof has failed or refused to comply with the adopted and promulgated rules and regulations of the Board.

(k) That the holder thereof is physically or mentally incapable of practicing with safety to dental patients.

(*l*) That the holder thereof has been negligent in the performance of dental services which injured or damaged dental patients.

Hearing and Appeal

Sec. 4.[1] (a) If the Board proposes to refuse to examine a person, to suspend or revoke a license or certificate, to place on probation a person whose license or certificate has been suspended, or to reprimand a licensee or certificate holder, the person is entitled to a hearing before the Board.

(b) The hearing and an appeal from the hearing are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

[1] Inserted as Sec. 3 by Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, and editorially renumbered.

Procedure

Sec. 5.[1] (a) All complaints to be considered by the Board shall be made in writing, subscribed and sworn to by the person presenting such complaint, which complaint shall set out the alleged violations of such Statutes or rules and declaring it to be the opinion of the person presenting such complaint that the person or persons so accused have so violated said Statutes or rules.

(b) All complaints as received shall be presented to the Secretary of the Board or an authorized employee of the Board who shall cause copies of all complaints to be made and mailed or delivered to each member of the Board. When a complaint is made by a member of the Board, its agents or employees, the Secretary of the Board or its authorized employee shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered or certified mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes or rules. When a complaint is made by others than the members of the Board, its agents or employees, the Board or its duly authorized representative shall cause an investigation of such complaint to be made to determine the facts in such

case, and if the facts as determined by such investigation, in the discretion of the Secretary of the Board or its authorized employee, justify the docketing of such complaint for hearing before the Board, then the Secretary of the Board or its authorized employee shall cause such complaint to be docketed on its records in the name of the Texas State Board of Dental Examiners versus the person against whom such complaint has been made, and shall mail a copy of such docketed complaint by registered or certified mail to the accused person under the jurisdiction of the Texas State Board of Dental Examiners charged with having violated such Statutes or rules.

(c) The Board shall keep an information file about each complaint filed with the Board relating to a licensee or certificate holder. If a written complaint is filed with the Board relating to a licensee or certificate holder, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) The Board may request a dental peer review or grievance committee to submit information to the Board about the activities of the committee.

[1] Designated Sec. 4 by Acts 1981, 67th Leg., p. 105, ch. 52, § 5, and by Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, and editorially renumbered.

Procedure in Taking Appeals

Sec. 6.[1] If said Board shall make and enter any order revoking or suspending any person's license or certificate, placing a person on probation, or reprimanding a person as hereinabove provided, the person may take an appeal to the District Court of the County of the residence of the person by filing an appropriate petition for such purpose. Said cause shall be placed on the docket of said Court in the name of the party or parties filing same, as plaintiff, and the Texas State Board of Dental Examiners, as defendants

[1] Designated as Sec. 5 by Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, and editorially renumbered.

Procedure in District Courts

Sec. 7.[1] Proceedings before the District Courts of this State shall be as follows:

It shall be the duty of the several District and County Attorneys of this State, on the request of any member of the Texas State Board of Dental Examiners or by complaint presented to any District Court of the State or county in which such alleged offense occurred, to file and prosecute appropriate judicial proceedings in the name of the State against the person or persons alleged to have so violated such Statute. Such complaint shall be made in writing and filed in the District Court of the State or county in which the alleged offense occurred, and such complaint shall distinctly set forth the charges and grounds thereof and shall be subscribed and sworn to. When such complaint is made by any County or District Attorney, as herein provided, it shall be subscribed and sworn to by the prosecutor and shall be filed with the Clerk of the Court. The Court, upon the filing of said complaint, shall order the accused dentist to show cause why his license to practice dentistry in this State shall not be suspended or revoked.

Citation therein shall be issued in the name of the State of Texas and in manner and form as in other cases and the same shall be served upon the defendant at least twenty (20) days before the trial date set therein. Upon the return of said citation executed, if the defendant shall appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the State of Texas against the defendant. A jury of twelve (12) persons shall be summoned as in cases during term time of the court when no regular jury is available and as prescribed by cause shall be tried in like manner as in other civil cases. If the said accused dentist be found guilty or shall fail to appear and deny the charge after being cited as aforesaid, the Court may by proper order entered on the minutes, suspend his license for a time or revoke and cancel it entirely and may also give proper judgment of cost, from which order an appeal may be taken to the Court of Civil Appeals as in other civil cases.

[1] Designated as Sec. 6 by Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, and editorially renumbered.

[Amended by Acts 1977, 65th Leg., p. 799, ch. 296, § 1, eff. May 28, 1977; Acts 1981, 67th Leg., p. 105, ch. 52, § 5, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, eff. Sept. 1, 1981.]

Sections 2 and 3 of the 1977 amendatory act provided:

"Sec. 2. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4549b. Consumer Information

The Board shall prepare information of consumer interest describing the regulatory functions of the Board and describing the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.

[Added by Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, eff. Sept. 1, 1981.]

Art. 4549–1. Revocation and Suspension of License for Drug-Related Felony Conviction

On conviction of a person licensed by the board of a felony under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), the board shall, after an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a,

Vernon's Texas Civil Statutes), in which the fact of conviction is determined, suspend the person's license. On the person's final conviction, the board shall revoke the person's license. The board may not reinstate or reissue a license to a person whose license is suspended or revoked under this article except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

[Added by Acts 1981, 67th Leg., p. 108, ch. 52, § 6, eff. Sept. 1, 1981.]

Art. 4550. Records of the Board

Sec. 1. The Board shall keep records in which shall be registered the name and residence or place of business of all persons authorized under this law to practice dentistry, dental hygiene and such other professions or businesses under its jurisdiction as provided by law. Each dentist, dental hygienist, dental laboratory, and dental technician registered with the Board shall timely notify the Board of:

(1) any change of address of the place of business of the dentist, hygienist, laboratory, or technician; and

(2) any change of employers by the dentist, hygienist, laboratory, or technician.

The Board is timely notified if it receives the notice within 60 days after the date the change occurs.

Sec. 2. All of the records and files of the Texas State Board of Dental Examiners shall be public records and open to inspection at reasonable times, except the investigation files and records which shall be confidential and their contents may not be forced to be divulged until after the investigation is complete or has been inactive for 60 days at which time this exception expires and the records open to inspection subject to the open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 1165, ch. 444, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, eff. Sept. 1, 1981.]

Section 2 of the 1977 amendatory act amended art. 4548e; §§ 3 and 4 thereof provided:

"Sec. 3. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 4. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4550a. Application, Fund, and Secretary or Director

Sec. 1. It shall be the duty of all persons holding a dental license or dental hygienist license issued by the State Board of Dental Examiners, to annually apply and to be registered as such practitioners with the State Board of Dental Examiners on or before March 1st of each calendar year. Each person so registering shall pay in connection with such annual registration for the receipt hereinafter provided for, a fee as determined by said Board according to the needs of said Board, such payment to be made by each person to such Board, and every person so registering shall file with said Board a written application setting forth such facts as the Board may require. Upon receipt of such applications, accompanied by such fees, said Board, after ascertaining either from its records or other sources deemed by it to be reliable, that the applicant holds a valid license or certificate to practice in this State, shall issue to the applicant an annual registration certificate or receipt certifying that he has filed such application and has paid the required fee; provided, that the filing of such application, the payment of such fee, and the issuance of such receipt therefor, shall not entitle the holder thereof to lawfully practice within the State of Texas unless he in fact holds a license or certificate as such practitioner issued by the State Board of Dental Examiners, as provided by this law, and unless said license or certificate is in full force and effect; and provided further, that in any prosecution for unlawful practice such receipt showing payment of the annual registration fee required by this chapter shall not be treated as evidence that the holder thereof is lawfully entitled to practice.

Sec. 2 If any person required to register as a practitioner under the provisions hereof shall fail or refuse to apply for such registration and pay such fee on or before March 1st of each calendar year, as hereinabove set forth, his license or certificate to practice issued to him, shall thereafter stand suspended so that thereafter in practicing he shall be subject to the penalties imposed by law upon any person unlawfully practicing. A person may renew an unexpired license or certificate by paying to the Board before the expiration of the license or certificate the required renewal fee. If a person's license or certificate has been expired for not longer than ninety (90) days, the person may renew it by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license or certificate. If a person's license or certificate has been expired for longer than ninety (90) days but less than two years, the person may renew it by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license or certificate. If a person's license or certificate has been expired for two years or longer, the person may not renew it. The person may obtain a new license or certificate by submitting to reexamination and complying with the requirements and procedures for obtaining an original license or certificate. The Board must notify each licensee in writing of that licensee's impending license expiration 30 days prior to said expiration and shall attempt to obtain from the licensee signed receipt confirming receipt of notification. Provided, however, that the

requirements governing the payment of the annual registration fees and penalties for late registration shall not apply to licensees who are on active duty with the Armed Forces of the United States of America, and are not engaged in private or civilian practice.

Sec. 3. (a) All funds collected by the State Board of Dental Examiners under this Act shall be placed in the State Treasury every thirty (30) days, as collected, to the credit of a special fund to be known as the "Dental Registration Fund," and all expenditures from this fund shall be on order of the State Board of Dental Examiners, on warrants issued by the State Comptroller for the purposes and in the amounts fixed by the Legislature in the General Appropriations Bills.

(b) The State Auditor shall audit the financial transactions of the Board during each fiscal year.

(c) On or before the first day of January each year, the Board shall make in writing a complete and detailed report accounting for all funds received and disbursed by the Board/commission during the preceding year to the governor and to the presiding officer of each house of the legislature.

(d) The State Board of Dental Examiners shall be authorized to employ and to compensate from such special funds employees and such other persons as may be found necessary to assist the local prosecuting officers of any county in the enforcement of all laws of the State prohibiting the unlawful practice of dentistry, and to carry out the other purposes for which said fund is hereby appropriated. Provided, that all such prosecutions shall be subject to the direction and control of the regularly and duly constituted prosecuting officers, and nothing in this Act shall be construed as depriving them of any authority vested in them by law.

Sec. 4. (a) To aid the Board in performing its duties, the Board is hereby authorized to employ an Executive Secretary or Director who shall receive a salary to be fixed by the Board, and who shall make and file a surety bond in a sum of not less than Five Thousand Dollars ($5,000) conditioned for the faithful performance of all the duties of his office and the safekeeping and proper disbursement of said "Dental Registration Fund" and all other funds coming into his hands; such salary shall be paid out of said "Dental Registration Fund" and shall not be in any way a charge upon the general revenue of the State. Said Board shall employ and provide such other employees as may be needed to assist the Executive Secretary or Director in performing his duties and in carrying out the purposes of this Act, provided that their compensation shall be paid only out of the said "Dental Registration Fund." All disbursements from "Dental Registration Fund" shall be made only upon the written approval of the President of the Board, Secretary of said Board, or an employee designated by the Board and upon warrants drawn by the Comptroller to be paid out of said fund.

(b) The Executive Director or his designee shall develop within one year of the effective date of this Act an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least ten (10) days prior to any public posting.

(c) The Executive Director or his designee shall develop within one year of the effective date of this Act a system of annual performance evaluations based on measurable job tasks. Within two years of the effective date of this Act all merit pay authorized by the Executive Director must be based on the system established by this section.

[Amended by Acts 1977, 65th Leg., p. 353, ch. 174, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, eff. Sept. 1, 1981.]

Section 2 of the 1977 amendatory act amended §§ 5 and 6 of art. 4551e; § 3 amended art. 4551; § 4 amended art. 4544; §§ 5 and 6 thereof provided:

"Sec. 5. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 6. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Section 11(b) of the 1981 amendatory act provides:

"The requirements under Section 4(b), Article 4550a, Revised Civil Statutes of Texas, 1925, as amended as revised by this Act, that the executive director of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement under Section 4(c), Article 4550a, Revised Civil Statutes of Texas, 1925, as amended, as revised by this Act, that merit pay be based on the performance evaluation system shall be implemented before September 1, 1983."

Art. 4551. Fees and Expenses

(a) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expense as prescribed by the General Appropriations Act.

(b) The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

(1) dental examination fee: $150;

(2) dental hygiene examination fee: $75;

(3) annual renewal fees:

dentists: $75,

dental hygienists: $50,

dental labs: $200;

(4) reciprocal registration fee: $150;

(5) duplicate license fee: $15.

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

[Amended by Acts 1977, 65th Leg., p. 356, ch. 174, § 3, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2832, ch. 763, § 2, eff. Sept. 1, 1981.]

Art. 4551a. Persons Regarded as Practicing Dentistry

Any person shall be regarded as practicing dentistry within the meaning of this Chapter:

(1) Who publicly professes to be a dentist or dental surgeon or who uses or permits to be used for himself or for any other person, the title of "Doctor," "Dr.," "Doctor of Dental Surgery," "D.D.S.," "Doctor of Dental Medicine," "D.M.D.," or any other letters, titles, terms or descriptive matter which directly or indirectly represents him as being able to diagnose, treat, remove stains or concretions from teeth, provide surgical and adjunctive treatment for any disease, pain, injury, deficiency, deformity or physical condition of the human teeth, oral cavity, alveolar process, gums, jaws or directly related and adjacent masticatory structures.

(2) Who shall offer or undertake by any means or methods whatsoever, to clean teeth or to remove stains, concretions or deposits from teeth in the human mouth, or who shall undertake or offer to diagnose, treat, operate, or prescribe by any means or methods for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, or jaws.

(3) Any person who shall offer or undertake in any manner to prescribe or make, or cause to be made, an impression of any portion of the human mouth, teeth, gums, or jaws, for the purpose of diagnosing, prescribing, treating, or aiding in the diagnosing, prescribing or treating, any physical condition of the human mouth, teeth, gums or jaws, or for the purpose of constructing or aiding in the construction of any dental appliance, denture, dental bridge, false teeth, dental plate or plates of false teeth, or any other substitute for human teeth.

(4) Any one who owns, maintains or operates any office or place of business where he employs or engages, under any kind of contract whatsoever, any other person or persons to practice dentistry as above defined shall be deemed to be practicing dentistry himself and shall himself be required to be duly licensed to practice dentistry as hereinabove defined, and shall be subject to all of the other provisions of this Chapter, even though the person or persons so employed or engaged by him shall be duly licensed to practice dentistry as hereinabove defined, unless otherwise provided by law.

(5) Any person, firm, group, association, or corporation who shall offer or undertake to fit, adjust, repair, or substitute in the human mouth or directly related and adjacent masticatory structures any dental appliance, structure, prosthesis, or denture, or who shall aid or cause to be fitted, adjusted, repaired, or substituted in the human mouth or directly related and adjacent masticatory structures any dental appliance, structure, prosthesis, or denture.

(6) Who makes, fabricates, processes, constructs, produces, reproduces, duplicates, repairs, relines, or fixes any full or partial denture, any fixed or removable dental bridge or appliance, any dental plate or plates of false teeth, any artificial dental restoration, or any substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part thereof for another, or who in any manner offers, undertakes, aids, abets, or causes another person so to do for another, without a written prescription or work-order therefor signed by the dentist legally engaged in the practice of dentistry in this state or in the jurisdiction where such dentist maintains his dental office and who prescribed and ordered same.

(7) Who shall offer or undertake or cause another to do, directly or indirectly, for any person any act, service, or work in the practice of dentistry or any part thereof as provided for in the laws of Texas relating to the practice of dentistry including without limitation the inducing, administering, prescribing, or dispensing any anesthesia, anesthetic drug, medicine, or agent in anywise incidental to or in connection with the practice of dentistry; or who permits or allows another to use his license or certificate to practice dentistry in this state for the purpose of performing any act described in this Article; or who shall aid or abet, directly or indirectly, the practice of dentistry by any person not duly licensed to practice dentistry by the Texas State Board of Dental Examiners.

[Amended by Acts 1975, 64th Leg., p. 1836, ch. 566, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1955, ch. 778, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, eff. Sept. 1, 1981.]

Sections 2 and 3 of the 1977 amendatory act provided:

"Sec. 2. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4551a–1. Repealed by Acts 1975, 64th Leg., p. 1837, ch. 566, § 2, eff. June 19, 1975

See, now, art. 4551a.

Art. 4551b–1. Repealed by Acts 1977, 65th Leg., p. 616, ch. 225, § 4, eff. Aug. 29, 1977

Art. 4551c–1. Repealed by Acts 1981, 67th Leg., p. 2844, ch. 763, § 10(1), eff. Sept. 1, 1981

The repealed article, relating to peer review or grievance committees, was added by Acts 1975, 64th Leg., p. 974, ch. 371, § 1.

Art. 4551d. Rules and Regulations of Board

(a) The Texas State Board of Dental Examiners may adopt and enforce such rules and regulations not inconsistent with the laws of this state as may be necessary for the performance of its duties and/or to ensure compliance with state laws relating

to the practice of dentistry to protect the public health and safety.

(b) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committee's statements.

[Amended by Acts 1981, 67th Leg., p. 2832, ch. 763, § 3, eff. Sept. 1, 1981.]

Art. 4551d(1). Repealed by Acts 1981, 67th Leg., p. 2844, ch. 763, § 10(1), eff. Sept. 1, 1981

Art. 4551e. Dental Hygienists; Regulation and Licensing

Definitions

Sec. 1. The term "dental hygiene," and the practice thereof as used in this Act shall mean and is hereby defined as (a) the removal of accumulated matter, tartar, deposits, accretions or stains, except mottled enamel stains, from the natural and restored surfaces of exposed human teeth, and restorations therefor in the human mouth and the polishing of said surfaces; (b) the making of topical application of drugs to the surface tissues of the human mouth and to the exposed surface of human teeth; (c) the making of Dental X-rays; and (d) such other services and procedures as may be prescribed by the Texas State Board of Dental Examiners in its Rules and Regulations; provided, however, that such services, tasks, or procedures defined as dental hygiene are performed in compliance with Section 3 of this Article.

The term "dental hygienist," as used in this Act shall mean and is hereby defined as a person who practices "dental hygiene," who possesses the qualifications prescribed by the laws of this State, and who possesses a valid license and current receipt by the Texas State Board of Dental Examiners to so practice.

Qualifications

Sec. 2. A dental hygienist shall be not less than eighteen (18) years of age and a graduate of an accredited high school or hold a certificate of high school equivalency (GED) and be a graduate of a recognized and accredited school or college of dentistry or dental hygiene approved by the Texas State Board of Dental Examiners in which the course of instruction shall be the equivalent of not less than two (2) terms of eight (8) months each and who shall have thereafter passed an examination given by and before the Texas State Board of Dental Examiners on subjects pertaining to dental hygiene, and who shall have complied with all of the provisions of this Act and the rules and regulations promulgated by the Texas State Board of Dental Examiners.

Delegation of Duties

Sec. 3. (a) The Texas State Board of Dental Examiners may by rule permit a licensed dentist to delegate the performance of a service, task, or procedure to a licensed hygienist under the direct or general supervision of the dentist; provided, however, that the licensed hygienist shall not be permitted to diagnose a dental disease or ailment, prescribe any treatment or a regimen thereof, prescribe, order, or dispense medication, or perform any procedure which is irreversible or which involves the intentional cutting of the soft or hard tissue by any means. Nothing herein shall be construed to prevent a dentist from authorizing a dental hygienist employed by said dentist to instruct and educate a patient in good oral hygiene technique or to provide a medication as ordered by said dentist to said patient.

(b) For the purposes of this Act, direct supervision shall mean that the supervising dentist shall, at all times during the performance of the permitted services and procedures, be physically present on the premises of the dental office.

(c) For the purposes of this Act, general supervision shall mean that the supervising dentist shall be physically present on the premises of the dental office no less than eight hours per week and shall verify the quality of the permitted services and procedures performed by a manner or method that the dentist deems appropriate; provided that the permitted services and procedures are performed only on patients of record and the supervising dentist has examined the patient at least once within the preceding 12-month period.

(d) All work performed by a dental hygienist in the practice of dental hygiene, as defined in this Act, shall be performed in the dental office of a dentist or dentists legally engaged in the practice of dentistry in this state, by whom he or she must be employed, except where employed by schools, hospitals, state institutions, public health clinics or other institutions approved by the Texas State Board of Dental Examiners. It shall be unlawful for more than two dental hygienists to practice dental hygiene for one dentist at any one time, and it shall be unlawful for a dentist legally engaged in the practice of dentistry in this state to employ, under any contractual relationship whatsoever, more than two dental hygienists to practice dental hygiene at any one time.

[See Compact Edition, Volume 4 for text of 4]

Dental Hygiene Advisory Committee

Sec. 4A. (a) The Dental Hygiene Advisory Committee is hereby established.

(b) The Dental Hygiene Advisory Committee shall consist of not more than six dental hygienists ap-

pointed by the Texas State Board of Dental Examiners. A member of such advisory committee shall serve for a term of one year expiring on May 1 of each year.

(c) The advisory committee shall advise the Texas State Board of Dental Examiners on matters relating to dental hygiene. In order to assure that the advisory committee is able to exercise properly its advisory powers, the Texas State Board of Dental Examiners shall provide the advisory committee with timely notice of all Board meetings and a copy of the minutes of all Board meetings. In addition, the Board shall not adopt any rule relating to the practice of dental hygiene unless said proposed rule has been submitted to the advisory committee for review and comment at least thirty (30) days prior to the adoption of said rule.

Examination

Sec. 5. The Texas State Board of Dental Examiners shall hold meetings at such times and places as the Board shall designate for the purpose of examining qualified applicants for licensure as dental hygienists in this State. All applicants for examination shall pay a fee set by the Board to said Board as determined by said Board according to its needs and shall apply upon forms furnished by the Board and shall furnish such other information as the Board may in its discretion require to determine any applicant's qualifications. The Board shall have authority to employ the services of such examiners and clerks as may be needed to aid the Board in the performance of such duties. The examination shall be taken by all applicants on such subjects and operations pertaining to dentistry and dental hygiene which shall include Dental Anatomy, Pharmacology, X-Ray, Ethics, Jurisprudence, and Hygiene, and such other subjects as are regularly taught in reputable schools of dentistry and dental hygiene, as the Board in its discretion may require. The examination shall be given orally or in writing, or by giving a practical demonstration of the applicant's skill or by any combination of such methods or subjects as the Board may in its discretion require. The Board shall grade each applicant upon the various phases of the examination and shall report such grades to the applicant within a reasonable time after such examination, and each applicant who has satisfactorily passed all phases of the examination as determined by the Board shall be entitled to and shall be issued a license permitting such applicant to practice dental hygiene in the State of Texas as is defined and regulated by the law of this State.

Secs. 6 to 12. Repealed by Acts 1981, 67th Leg., p. 2844, ch. 763, § 10(2), eff. Sept. 1, 1981.

[See Compact Edition, Volume 4 for text of 13]

Sec. 14. Repealed by Acts 1981, 67th Leg., p. 2844, ch. 763, § 10(2) eff. Sept. 1, 1981.

[See Compact Edition, Volume 4 for text of 15 to 20]

[Amended by Acts 1977, 65th Leg., p. 355, ch. 174, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 615, ch. 225, §§ 2, 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 970, ch. 365, § 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 790, ch. 291, § 63, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2839, ch. 763, §§ 4, 10(2), eff. Sept. 1, 1981.]

Art. 4551e–1. Permitted Duties for Dental Assistants

A dental assistant is one who is employed by and works in the office of a licensed, registered, and practicing dentist and who performs one or more of the following acts or services under the direct supervision, direction, and responsibility of such dentist, to wit:

(1) service as the dentist's chairside assistant;

(2) topical applications of drugs prescribed by the dentist;

(3) exposure and development of dental radiographs under the direct or general supervision of the dentist;

(4) taking and recording of pulse, blood pressure, and temperature;

(5) preliminary inspection of mouth and teeth using floss and mouth mirror only and charting of the findings;

(6) receipt of removable dental prostheses for cleaning and repair;

(7) placement or removal of celluloid or plastic strips between teeth for subsequent placement of filling by the dentist, placement or removal of temporary nonmetallic separating devices, placement or removal of preformed crowns or bands for determining size only; the dentist shall shape, festoon, contour, fit, seat, or cement all crowns and bands;

(8) placement of ligature wires only on those sections of arch wires which have been securely seated in the bracket or tube by the dentist;

(9) removal of ligatures, cutting and tucking ligatures, and removal of tension devices and any loose or broken bands or arch wires;

(10) placement in the patient's mouth of a retaining device usually or normally placed in the mouth of a patient by such patient; a retaining device not controllable by the patient shall only be placed or activated by the dentist;

(11) placement or removal of rubber dam;

(12) removal of sutures;

(13) removal of cement, food, and loose debris from dental restorations and appliances from the tooth crown and soft tissues with hand instruments or consumer items available to the public;

(14) insertion of temporary medicinal fillings with hand instruments under the direct or general supervision of the dentist; this does not include alloy, gold, plastics, porcelain, composites, or other restorative material;

(15) removal of temporary medicinal fillings with hand instruments, such fillings not to include alloy, gold, plastics, porcelain, composites, or other restorative material;

(16) removal of socket dressing;

(17) removal of periodontal pack;

(18) making of dental placque or oral mucosal smears;

(19) application of topical fluoride immediately after oral prophylaxis by the dentist or the dental hygienist.

Note A: The fitting, adaptation, seating, and cementation of any fixed dental appliance or restoration, including but not limited to inlays, crowns, bands, space maintainers or retainers, habit devices, or splints, whether temporary or permanent, shall only be done by the dentist.

[Added by Acts 1981, 67th Leg., p. 2842, ch. 763, § 5, eff. Sept. 1, 1981.]

Art. 4551f. Dental Technicians and Laboratories; Regulation of Acts and Services

[See Compact Edition, Volume 4 for text of (1) to (5)]

Registration; Offenses

(6). (a) It shall be the duty of the owner, owners, and manager of each dental laboratory in this State to annually apply to and register each dental laboratory in this State with which he has any connection or interest with the Texas State Board of Dental Examiners and to pay in connection with such application a fee as determined by the Board according to the needs of the Board to the Dental Registration Fund, and such application shall set forth such facts as the Board may require, including the names and addresses of each dental technician employed by said dental laboratory.

(b) From and after the effective date of this Act, it shall be unlawful for anyone other than a dental laboratory or dental technician duly registered hereunder, to fill any prescription for a dental prosthetic appliance or the repair thereof, to be delivered by a licensed dentist in this State to a dental patient. At the time said dental prosthetic appliance is delivered to the dentist, the dental laboratory which prepared or repairs the appliance shall provide to the dentist in writing its registration number as assigned by the Texas State Board of Dental Examiners.

(c) It shall be unlawful for any person, firm, association, corporation, or combination thereof to offer or undertake in any manner to operate a dental laboratory or to do or perform any of the acts described in this Article in this State without having first obtained a certificate from the Texas State Board of Dental Examiners so to do.

(d) The Board shall have the authority to commence in its name injunctive proceedings to enjoin any person, firm, association, corporation, or combination thereof in violation of this Act.

(e) The Board may refuse to issue or to renew or may suspend or revoke any certificate or license provided in this Act where, after notice and hearing, it has been determined by the Board that any person requesting or possessing such license or certificate has violated any of the provisions of this Act, and the procedures to be followed in any complaint or disciplinary action, including the right of appeal for failure to issue or to renew or the suspension or revocation of a certificate or license hereunder, shall be the same as those prescribed for dentists and dental hygienists by Sections 3, 4, 5, and 6, Article 4549, Revised Civil Statutes of Texas, 1925, as amended.

(f) From and after the effective date of this Act, it shall be unlawful for a dentist licensed in this State knowingly to prescribe, order, or receive any dental prosthetic appliance which is to be prepared or repaired by a dental laboratory not registered as required herein.

(g) The Texas State Board of Dental Examiners shall have no rule-making authority as it applies to the dental laboratories except for the following provisions: processing applications for registration; prescribing the form and content of applications and other forms necessary to administer this Article; prescribing fees in accordance with this Article and prescribing procedures for renewal of registrations; and monitoring any records as necessary to administer this Article.

[Amended by Acts 1981, 67th Leg., p. 2843, ch. 763, § 6, eff. Sept. 1, 1981.]

Art. 4551g–1. Repealed by Acts 1977, 65th Leg., p. 616, ch. 225, § 4, eff. Aug. 29, 1977

Art. 4551h. Narcotic Drugs, Dangerous Drugs, Controlled Substances

It shall be unlawful for a dentist to prescribe, provide, obtain, order, administer, give, or deliver to or for any person, narcotic drugs, dangerous drugs or any controlled substances not necessary or required, or where the use or possession of same would promote or further addiction thereto, or to aid, abet, or cause any of same to be done in any manner. For purposes of this article the terms narcotic drugs, dangerous drugs, and controlled substances shall mean those defined or recognized as such by any law of the State of Texas or of the United States.

[Amended by Acts 1977, 65th Leg., p. 615, ch. 225, § 1, eff. Aug. 29, 1977.]

Sections 2 and 3 of the 1977 amendatory act amended §§ 2 and 3 of art. 4551e; § 4 repealed arts. 4546, 4546a, 4551b–1, and 4551g–1; §§ 5 and 6 thereof provided:

"Sec. 5. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 6. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4551i. Civil Immunity—Peer Review, Judicial or Grievance Committees

In the absence of fraud, conspiracy, or malice, the elected members of the dental peer review, judicial or grievance committees of a dental society or association which has not less than 75 percent of the licensed dentists in such area as members, shall not be subject to suit or suits for damages for alleged injury, wrong, loss, or damage for and while performing duties of investigating disagreements or complaints, holding hearings to determine facts, or in making evaluations, recommendations, decisions, or awards involving dentists, dental patients and/or third parties. The Texas State Board of Dental Examiners shall determine the various areas and shall certify the percentage requirements from its records of the dental licensees in such area or areas. This immunity is enacted to relieve and protect the persons named herein from being harassed and threatened with legal action while attempting to perform required duties.

[Added by Acts 1977, 65th Leg., p. 1150, ch. 436, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act added art. 4551j; §§ 3 and 4 thereof provided:

"Sec. 3. All laws or parts of laws in conflict or inconsistent with the provisions of this Act are hereby repealed.

"Sec. 4. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or the application thereof to any person or circumstance for any reason is held invalid or unconstitutional, such holding shall not affect the validity or enforceability of the remaining portions of this Act, and the legislature hereby declares that it would have passed such remaining portions of this Act despite such invalidity or unconstitutionality of any part or portion thereof."

Art. 4551j. Civil Immunity, Official Acts

In the absence of fraud, conspiracy, or malice, no member of the Texas State Board of Dental Examiners, its employees, nor any witness called to testify by said board, nor any consultant or hearing officer appointed by said board shall be liable or subject to suit or suits for damages for alleged injury, wrong, loss, or damage allegedly caused by any of said persons for any investigation, report, recommendation, statement, evaluation, finding, order, or award made in the course of any of said persons performing assigned, designated, official, or statutory duties. This immunity is enacted to relieve and protect the persons named from being harassed and threatened with legal action while attempting to perform official duties.

[Added by Acts 1977, 65th Leg., p. 1151, ch. 436, § 2, eff. Aug. 29, 1977.]

Art. 4551k. Case Histories and Physical Evaluations

A qualified dentist is authorized to take complete case histories and perform complete physical evaluations, which may be used for the purpose of admitting patients to hospitals for the practice of dentistry, to the extent such activities are necessary in the exercise of due care in conjunction with the practice of dentistry as defined by this Act, provided further that no dentist shall be automatically entitled to membership on the medical staff or to the exercise of any clinical privileges at a hospital merely because he has a license to practice dentistry or because he is authorized to take case histories and perform physical evaluations as stated herein.

[Added by Acts 1981, 67th Leg., p. 2843, ch. 763, § 7, eff. Sept. 1, 1981.]

Art. 4551*l*. Equivalency Data

The Texas State Board of Dental Examiners shall annually collect and licensed dentists shall provide their name, age, practice location(s), hours worked per week, weeks worked per year, and number and type of auxiliaries employed. Such information shall be compiled by practice composition and by county in report form with overall full-time equivalency tabulations as defined by the Department of Health and Human Services.

[Added by Acts 1981, 67th Leg., p. 2844, ch. 763, § 8, eff. Sept. 1, 1981.]

CHAPTER TEN. OPTOMETRY

ARTICLE 2. TEXAS OPTOMETRY BOARD

Article
4552–2.01a. Application of Sunset Act.

ARTICLE 4. LICENSES—RENEWAL, REVOCATION, ETC.

4552–4.01B. Educational Requirement for Renewal.

ARTICLE 5. DUTIES OF LICENSEES; CONDUCT OF LICENSEES AND OTHERS.

4552–5.19. Penalty.

ARTICLE 1. GENERAL PROVISIONS

Art. 4552–1.02. Definitions

As used in this Act:

[See Compact Edition, Volume 4 for text of (1) to (3)]

(4) "Person" means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

(5) For the purposes of this Act, "dispensing optician" or "ophthalmic dispenser" means a person not licensed as an optometrist or physician who sells or delivers to the consumer fabricated and finished spectacle lenses, frames, contact lenses, or other ophthalmic devices prescribed by an optometrist or physician.

(6) Nothing in this Act shall be construed as preventing a licensed optometrist from performing vision therapy, hand-eye coordination exercises, visual training, and developmental vision therapy, or from the evaluation and remediation of learning or behavioral disabilities associated with or caused by a defective or abnormal condition of vision.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 1, eff. Aug. 31, 1981.]

ARTICLE 2. TEXAS OPTOMETRY BOARD

Art. 4552–2.01. Board Created

The Texas Optometry Board is created. The board is composed of nine members appointed by the governor with the advice and consent of the Senate. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–2.01a. Application of Sunset Act

The Texas Optometry Board is subject to the Texas Sunset Act as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

[Added by Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.039, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–2.02. Qualifications of Members

(a) Six members must be licensed optometrists who have been residents of this state actually engaged in the practice of optometry in this state for the period of five years immediately preceding their appointment. Three of the six optometrist members must be affiliated with the Texas Optometric Association, Inc., and the other three optometrist members must be affiliated with the Texas Association of Optometrists, Inc. A board member may not simultaneously be a member of both the Texas Optometric Association, Inc., and the Texas Association of Optometrists, Inc.

(b) Three members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of or is an officer or paid consultant of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, a financial interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(c) A member or employee of the board may not be:

(1) a member of the faculty of any college of optometry, an agent, paid consultant, officer, or employee of any wholesale optical company, or have a financial interest in such a college or company;

(2) an officer, employee, or paid consultant of a trade association in the health-care industry; or

(3) related within the second degree by affinity or consanguinity to a person who is and officer, employee, or paid consultant of a trade association in the field of health care.

(d) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board.

(e) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) or (b) of this section for appointment to the board;

(2) does not maintain during his service on the board the qualifications required by Subsection (a), (b), (c), or (d) of this section for appointment to the board; or

(3) fails to attend at least half of the regularly scheduled board meetings held on calendar year, excluding meetings held while the person was not a board member.

(f) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(g) It shall be the duty of any board member who no longer maintains the qualifications required by Subsection (a), (b), (c), or (d) of this section to immediately inform the governor and the attorney general of that fact and to resign from the board.

(h) Upon complaint by any person to the attorney general that a member of the board no longer maintains the qualifications required by Subsection (a), (b), (c), or (d) of this section, the attorney general shall investigate the complaint; and if the attorney general determines that there is reason to believe the complaint is valid, the attorney general shall institute suit in Travis County district court to have the board member in question removed from office.

(i) No person may serve more than a total of 12 years on the board. Time served on the board prior to September 1, 1981, shall not count toward this limitation.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Subsections (a) to (e) of § 4 of the 1981 amendatory act provide:

"(a) A person who holds office as a member of the Texas Optometry Board on the effective date of this Act shall continue to hold the office for the term for which the member was originally appointed and shall for the balance of the member's current term be deemed to satisfy the qualifications for office set forth in Section 2.02, Texas Optometry Act, as amended (Article 4552–1.01 et seq., Vernon's Texas Civil Statutes), if the member satisfies the qualifications for office under the Texas Optometry Act as it existed immediately prior to the effective date of this Act.

"(b) After the effective date of this Act, the governor shall appoint two initial public members and one initial optometrist member affiliated with the Texas Association of Optometrists, Inc., to the board. The governor shall designate one public member for a term expiring January 31, 1985, one public member for a term expiring January 31, 1987, and the initial optometrist member affiliated with the Texas Association of Optometrists, Inc., for a term expiring January 31, 1985.

"(c) After January 31, 1983, the governor shall appoint one optometrist member affiliated with the Texas Association of Optometrists, Inc., to fill the office of an incumbent optometrist member whose term expires January 31, 1983. After January 31, 1983, the governor shall appoint one public member to fill the office of an incumbent optometrist member whose term expires January 31, 1983.

"(d) After January 31, 1985, the successor of one of the incumbent optometrist members whose terms expire January 31, 1985, shall be appointed by the governor for a term expiring January 31, 1989.

"(e) Successors of board members whose terms expire on January 31, 1981, shall be appointed by the governor under the optometry laws existing immediately prior to the effective date of this Act."

Art. 4552–2.03. Terms of Office

The members of the board hold office for staggered terms of six years, with the terms of one member affiliated with the Texas Optometric Association, Inc., one member affiliated with the Texas Association of Optometrists, Inc., and one public member expiring on January 31 of each odd-numbered year.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

For transition provisions of the 1981 amendatory act relating to terms of office, see note under art. 4552–2.02.

Art. 4552–2.04. Organization of Board

Every two years the board shall elect a chairman, a vice-chairman, and a secretary-treasurer, provided that the chairman and vice-chairman shall not be from the same group of the three groups represented on the board.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–2.05. Meetings

(a) The board shall hold regular meetings at least twice a year at which examinations of applicants for licenses shall be given.

(b) Special meetings shall be held upon the request of five members of the board or upon the call of the chairman.

(c) Five members constitute a quorum for the transaction of business. If a quorum is not present on the day set for any meeting, those present may adjourn from day to day until a quorum is present, but this period may not be longer than three successive days.

(d) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–2.06. Records

(a) The board shall preserve a record of its proceedings in a book kept for that purpose.

(b) A record shall be kept showing the name, age, and present legal and mailing address of each applicant for examination, the name and location of the school of optometry from which he holds credentials, and the time devoted to the study and practice of optometry, together with such information as the board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. The secretary of the board shall on or before March 1 of each year send a certified copy of said record to the secretary of state for permanent record. A certified copy of said record with the hand and seal of the secretary of said board to the secretary of state, shall be admitted as evidence in all courts.

(c) Every license and annual renewal certificate issued shall be numbered and recorded in a book kept by the secretary of the board.

(d) The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

(e) Within a reasonable time after the completion of an examination of each patient, the examining optometrist shall present to the patient a prescription, a bill, or a receipt containing the license number and name of the optometrist performing the examination. Individual professional liability of the examining optometrist is not affected by this subsection.

(f) The board shall maintain an information file about each complaint filed with the board relating to a licensee. If a written complaint is filed with the board relating to a licensee, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notification would jeopardize an undercover investigation.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–2.08. Employees of Board

(a) The board shall have the power to employ an executive director as the executive head of the agency and to employ the services of stenographers, secretaries, inspectors, legal assistants, and other personnel necessary to carry out the provisions of this Act. In all hearings before the board, and in all suits in the courts in which the board is a party, the staff attorney employed by the board may at the board's discretion be an attorney of record for the board; provided, however, that when the county attorney, district attorney, or attorney general is also an attorney of record, the board's staff attorney shall be subordinated to such county attorney, district attorney, or attorney general, and nothing herein shall be construed to deprive, limit, or exclude the county attorney, district attorney, or attorney general from their right to appear as the board's attorney in the respective courts to which they are assigned by the constitution to represent the state. In all suits in which the board is a party, the board's staff attorney may also be appointed as special assistant to the county attorney, district attorney, or attorney general, provided, however, that such members of the board's staff shall be paid by the board.

(b) The executive director of the board or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.

(c) The executive director of the board or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Section 4(g) of the 1981 amendatory act provides:

"The requirements under Subsections (b) and (c), Section 2.08, Texas Optometry Act (Article 4552–2.08, Vernon's Texas Civil Statutes), as added by this Act, that the executive director of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented within one year of the effective date of this Act. The requirement under Subsection (c), Section 2.08, that merit pay be based on the performance evaluation system shall be implemented within two years of the effective date of this Act."

Art. 4552–2.14. Rules and Regulations

(a) The board may by a majority vote of a quorum promulgate procedural rules and regulations. The board may by a majority vote of each of the three groups represented on the board promulgate substantive rules and set fees. However, the board may not promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this Act or make any rule or regulation which is unreasonable, arbitrary, capricious, or illegal. The board may not promulgate any substantive rule prior to submitting the proposed rule to the attorney general for a ruling on the proposed rule's validity.

(b) If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that subsection, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the board receives the committee's statements.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Sections 4(f) and 5 of the 1981 amendatory act provide:

"Sec. 4. (f) The portion of Section 2.14, Texas Optometry Act, as amended (Article 4552–1.01 et seq., Vernon's Texas Civil Statutes), which authorizes the board to promulgate substantive rules shall not become effective until January 31, 1983.

"Sec. 5. A rule adopted by the Texas Optometry Board before the effective date of this Act that conflicts with the Texas Optometry Act (Article 4552–1.01 et seq., Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after the effective date of this Act, the board shall repeal the rule."

Art. 4552–2.15. Disposition of Fees

(a) Except as provided by Subsection (b) of this section, the fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the board, and the remainder shall be applied, by order of the board, to compensate members of the board. Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act. Each board member shall make out, under oath, a complete statement of the number of days engaged and the amount of his expenses when presenting same for payment.

(b) The funds realized from annual renewal fees shall be distributed as follows: $10 of each renewal fee collected by the board shall be dedicated to the University of Houston Development Fund. The license money placed in the development fund pursuant hereto shall be utilized solely for scholarships and improvements in the physical facilities, including library, of the School of Optometry.

The remainder of the fees attributable to annual renewal fees and all other fees payable under this Act shall be placed in the state treasury to the credit of a special fund to be known as the "Optometry Fund," and the comptroller shall upon requisition of the board from time to time draw warrants upon the state treasurer for the amounts specified in such requisition; provided, however, the fees from this optometry fund shall be expended as specified by itemized appropriation in the General Appropriations bill and shall be used by the Texas Optometry Board, and under its direction in carrying out its statutory duties.

(c) The state auditor shall audit the financial transactions of the board during each fiscal biennium.

(d) On or before January 1 of each year, the board shall make in writing to the governor and the presiding officer of each house of the legislature a complete and detailed annual report accounting for all funds received and disbursed by the board during the preceding year.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

ARTICLE 3. EXAMINATIONS

Art. 4552–3.01. Must Pass Examination

Every person hereafter desiring to be licensed to practice optometry in this state shall be required to pass the examination given by the Texas Optometry Board. However, the board may adopt substantive rules to authorize the waiver of this or other license requirements for an applicant with a valid license from another state having, at the time of the applicant's initial licensure in that state, license requirements and continuing education requirements substantially equivalent to those currently required in this state.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–3.02. Application

(a) The applicant shall make application, furnishing to the secretary of the board, on forms to be furnished by the board, satisfactory sworn evidence that he has attained the age of majority, is of good moral character, and has at least graduated from a first grade high school, or has a preliminary education equivalent to permit him to matriculate in The University of Texas, and that he has attended and graduated from a reputable university or college of optometry which meets with the requirements of the board, and such other information as the board may deem necessary for the enforcement of this Act.

(b) A university or school of optometry is reputable whose entrance requirements and course of instruction are as high as those adopted by the better class of universities and schools of optometry and whose course of instruction shall be equivalent to not less than six terms of eight months each, and approved by the board. Provided, however, that the provisions of this subsection shall only apply to those students enrolling in school from and after the effective date of this Act.

(c) Any person who has met all requirements of Subsection (a) above shall be eligible to take the examination given by the Texas Optometry Board. The board may cancel, revoke, or suspend the license of such person if it finds that such licensee has violated any provision of Section 4.04 of this Act.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–3.03. Fees

The board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

1.	Examination	$ 55
2.	Re-examination	20
3.	License	40
4.	License renewal	135
5.	Lost license	15

The board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement. If anyone successfully passing the examination and meeting the requirements of the board has not paid the fee for issuance of a license within 90 days after having been notified by registered mail at the address given on his examination papers, or at the time of the examination that he is eligible for same, such person shall by his own act have waived his right to obtain his license, and the board may at its discretion refuse to issue such license until such person has taken and successfully passed another examination.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–3.06. Conduct of Examination

All examinations shall be conducted in writing and by such other means as the board shall determine adequate to ascertain the qualifications of applicants and in such manner as shall be entirely fair and impartial to all individuals and every recognized school of optometry. All applicants examined at the same time shall be given the same written examination. Within 30 days after the date a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

ARTICLE 4. LICENSES—RENEWAL, REVOCATION, ETC.

Art. 4552–4.01. Annual Renewal

(a) On or before January 1 of each year, every licensed optometrist in this state shall pay to the secretary-treasurer of the board an annual renewal fee for the renewal of his license to practice optometry for the current year. The amount of the fee shall be as determined by the board. A person may renew an unexpired license by paying to the board before the expiration date of the license the required renewal fee. If a person's license has been expired for not more than 180 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license. If a person's license has been expired for more than 180 days but less than three years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a person's license has been expired for three years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(b) On receipt of the required fees, the board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed, and such other information from the records of the board as said board may deem necessary for the proper enforcement of this Act.

(c) When the person's license has been expired for three years, the board shall notify the county clerk of the county in which such license may have been recorded of the cancellation, and such clerk, upon receipt of such notice from said board, shall enter upon the optometry register of such county the fact that such license has been cancelled for nonpayment of annual renewal fee and shall notify the board in writing that such entry has been made.

(d) Practicing optometry without an annual renewal certificate for the current year as provided herein, shall have the same force and effect and be subject to all penalties of practicing optometry without a license.

[Amended by Acts 1977, 65th Leg., p. 199, ch. 98, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–4.01B. Educational Requirement for Renewal

(a) Each optometrist licensed in this state shall take annual courses of study in subjects relating to the utilization and application of scientific, technical, and clinical advances in vision care, vision therapy, visual training, and other subjects relating to the practice of optometry regularly taught by recognized optometric universities and schools.

(b) The length of study required is 12 hours per calendar year.

(c) The continuing education requirements established by this section shall be fulfilled by attendance in continuing education courses sponsored by an accredited college of optometry or in a course approved by the board. Attendance at a course of study shall be certified to the board on a form provided by the board and shall be submitted by each licensed optometrist in conjunction with his application for renewal of his license and submission of renewal fee.

(d) The board may take action necessary in order to qualify for funds or grants made available by the United States or an agency of the United States for the establishment and maintenance of programs of continuing education.

(e) Licensees who have not complied with the requirement of this section may not be issued a renewal license, except for the following persons who are exempt:

(1) a person who holds a Texas license but who does not practice optometry in Texas;

(2) a licensee who served in the regular armed forces of the United States during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits proof that he suffered a serious or disabling illness or physical disability which prevented him from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee first licensed within the 12 months immediately preceding the annual renewal date.

[Added by Acts 1975, 64th Leg., p. 1875, ch. 591, § 1, eff. Sept. 1, 1975.]

Art. 4552–4.02. Renewal After Discharge From Military

Any licensed optometrist whose renewal certificate has expired while he has been engaged in active duty with any United States military service or with the United States Public Health Service, engaged in full-time federal service, or engaged in training or education under the supervision of the United States, preliminary to induction into the military service, may have his renewal certificate reinstated without paying any lapsed renewal fee or registration fee, or without passing an examination, if within one year after termination of said service, training or education, other than by dishonorable discharge, he furnishes the board with affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–4.03. Lost or Destroyed License

If any license issued under this law shall be lost or destroyed, the holder of said license shall make an affidavit of its loss or destruction, and that he is the same person to whom such license was issued, and such other information as may be desired by the board, and shall upon payment of a fee of $10 be granted a license under this law.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–4.04. Revocation, Suspension, etc.

(a) By five or more votes, the board may refuse to issue a license to an applicant, revoke or suspend a license, probate a license suspension, or reprimand a licensee if it finds that:

(1) the applicant or licensee is guilty of any fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or in his seeking admission to such practice;

(2) the applicant or licensee is unfit or incompetent by reason of negligence;

(3) the applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;

(4) the applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

(5) the licensee has directly or indirectly employed, hired, procured, or induced a person, not licensed to practice optometry in this state, to so practice;

(6) the licensee directly or indirectly aids or abets in the practice of optometry any person not duly licensed to practice under this Act;

(7) the licensee lends, leases, rents or in any other manner places his license at the disposal or in the service of any person not licensed to practice optometry in this state;

(8) the applicant or licensee has willfully or repeatedly violated any of the provisions of this Act;

(9) the licensee has willfully or repeatedly presented to the public or any member thereof that he is authorized or competent to cure or treat diseases of the eye; or

(10) the licensee has his right to practice optometry suspended or revoked by any federal agency for a cause which in the opinion of the board warrants such action.

(b) Any person may begin proceedings under this section by filing charges with the board in writing and under oath. If charges are filed against a person or if the board proposes to refuse a person's application for a license or to suspend or revoke a person's license, the person is entitled to a hearing before the board. Except as provided by Subsection (c) of this section, proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(c) The petition for judicial review of a board action may be filed in a district court in the county of residence of the person against whom the original charges were filed.

(d) Upon application, the board may reissue a license to practice optometry to a person whose license has been revoked but such application shall not be made prior to one year after the revocation and shall be made in such manner and form as the board may require.

(e) Nothing in this Act shall be construed to prevent the administrator or executor of the estate of a deceased optometrist from employing a licensed optometrist to carry on the practice of such deceased during the administration of such estate nor to prevent a licensed optometrist from working for such person during the administration of the estate when the legal representative thereof has been authorized by the county judge to continue the operation of such practice.

(f) A violation of this Act which occurs four or more years prior to the filing of a complaint which results in a disciplinary hearing before the board on that complaint shall not be considered a violation for purposes of disciplinary action under Subdivisions (8) and (9) of Subsection (a) of this section.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

ARTICLE 5. DUTIES OF LICENSEES; CONDUCT OF LICENSEES AND OTHERS

Art. 4552–5.09. Deceptive Advertising

(a) A person may not publish or display or cause or permit to be published or displayed in any newspaper or by radio, television, billboard, window display, or any other means or medium, any statement or advertisement concerning ophthalmic services or materials, including but not limited to lenses, frames, spectacles, contact lenses, or parts thereof, which is false, deceptive, or misleading.

(b) Any advertisement of prescription spectacles or contact lenses is required to contain language to the effect that an eye doctor's prescription is required for the purchase of such prescription spectacles or contact lenses.

(c) Any advertisement of the price of prescription spectacles or contact lenses is required to contain the following information:

(1) a statement of whether or not the cost of an examination by an eye doctor is included in the price;

(2) if the advertised goods are to be available to the public at the advertised price for less than 30 days after the date of publication of the advertisement, the advertisement shall state the time limitation on the offer;

(3) if the advertised goods are to be available to the public in limited quantities and no rainchecks are given upon total depletion of the inventory of the goods advertised, the advertisement shall state the total quantity available to all customers; and

(4) if the advertised goods are to be available to the public at a limited number per customer, the advertisement shall state the limit per customer.

(d) Any person who fails to satisfy the requirements of Subsection (b) or (c) above shall be deemed to have published a false, deceptive, or misleading statement within the meaning of this section.

(e) Any person who shall be injured by another person who violates any provision of this section may institute suit in any district court of the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and to recover damages sustained, plus costs of court and reasonable attorney's fees.

(f) The attorney general or the Texas Optometry Board may institute suit in any district court of the county in which a violation of this section is alleged to have occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed $10,000 per violation, plus costs of court and reasonable attorney's fees.

(g) Violations of this section are actionable under the Deceptive Trade Practices-Consumer Protection Act, as amended (Subchapter E, Chapter 17, Title 2, Business & Commerce Code).[1]

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

[1] Business and Commerce Code, § 17.41 et seq.

Art. 4552–5.10. Board Rules Restricting Advertising

The board may not adopt substantive rules restricting competitive bidding or advertising by a person regulated by the board except to adopt such rules as are necessary to prevent false, misleading, or deceptive practices.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–5.11. Control of Optometry Prohibited

(a) Any person who is a manufacturer, wholesaler, or retailer of ophthalmic goods is prohibited from:

(1) directly or indirectly controlling or attempting to control the professional judgment, the manner of practice, or the practice of an optometrist; or

(2) directly or indirectly employing or hiring or contracting for the services of an optometrist if any part of such optometrist's duties involve the practice of optometry; or

(3) directly or indirectly making any payment to an optometrist for any service not actually rendered.

(b) For purposes of this section "controlling or attempting to control the professional judgment, the manner of practice, or the practice of an optometrist" shall include but not be limited to:

(1) setting or attempting to influence the professional fees of an optometrist;

(2) setting or attempting to influence the office hours of an optometrist;

(3) restricting or attempting to restrict an optometrist's freedom to see patients on an appointment basis;

(4) terminating or threatening to terminate any lease, agreement, or other relationship in an effort to control the professional judgment, manner of practice, or practice of an optometrist;

(5) providing, hiring, or sharing employees or business services or similar items to or with an optometrist; or

(6) making or guaranteeing a loan to an optometrist in excess of the value of the collateral securing the loan.

(c) It is the intent of the legislature to prevent manufacturers, wholesalers, and retailers of ophthalmic goods from controlling or attempting to control the professional judgment, manner of practice, or the practice of an optometrist, and the provisions of this section shall be liberally construed to carry out this intent.

(d) Any person who shall be injured by another person who violates any provision of this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement of this section by injunctive procedures and to recover damages sustained, plus costs of court and reasonable attorney's fees. Where a manufacturer, wholesaler, or retailer of ophthalmic goods has been found to be in violation of this section, any person injured as a result of such violation, including any optometrist who is a lessee of such manufacturer, wholesaler, or retailer, shall be entitled to all remedies in this section.

(e) The attorney general or the Texas Optometry Board may institute suit against a manufacturer, wholesaler, or retailer of ophthalmic goods in any district court of the county in which a violation of this section is alleged to have occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed $1,000 for each day that a violation of this section is found to have occurred, plus costs of court and reasonable attorney's fees.

(f) Violations of this section are actionable under the Deceptive Trade Practices-Consumer Protection Act, as amended (Subchapter E, Chapter 17, Title 2, Business & Commerce Code).[1]

(g) This section shall not apply where the manufacturer, wholesaler, or retailer of ophthalmic goods is a licensed optometrist or a licensed physician or legal entity 100 percent owned and controlled by one or more licensed optometrists or licensed physicians; however, the exception set forth in this subsection shall not apply where the optometrist or legal entity has offices at more than three locations.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

[1] Business and Commerce Code, § 17.41 et seq.

Art. 4552–5.13. Professional Responsibility

(a) The provisions of this section are adopted in order to protect the public in the practice of optometry, better enable members of the public to fix professional responsibility, and further safeguard the doctor-patient relationship.

(b) No optometrist shall divide, share, split, or allocate, either directly or indirectly, any fee for optometric services or materials with any lay person, firm or corporation, provided that this rule shall not be interpreted to prevent an optometrist from paying an employee in the regular course of employment, and provided further, that it shall not be construed as a violation of this Act for any optometrist to lease space from an establishment on a percentage or gross receipts basis or to sell, transfer or assign accounts receivable.

(c) No optometrist shall divide, share, split or allocate, either directly or indirectly, any fee for optometric services or materials with another optometrist or with a physician except upon a division of service or responsibility provided that this rule shall not be interpreted to prevent partnerships for the practice of optometry. This Act does not prohibit an optometrist from being employed on a salary, with or without bonus arrangements, by a licensed optometrist or physician, regardless of the amount of supervision exerted by the employing optometrist or physician over the office in which the employed optometrist works, provided such bonus arrange-

ments, if any, shall not be based in whole or in part on the business or income of any optical company.

(d) An optometrist may practice optometry under a trade name or an assumed name or under the name of a professional corporation or a professional association. Every optometrist practicing in the State of Texas, including those practicing under a trade or assumed name, shall be required to display the actual name under which he is licensed by the board in a manner such that his name will be visible to the public prior to entry of the optometrist's office reception area.

(e) No optometrist shall use, cause or allow to be used, his name or professional identification, as authorized by Article 4590e, as amended, Revised Civil Statutes of Texas, 1925, on or about the door, window, wall, directory, or any sign or listing whatsoever, of any office, location or place where optometry is practiced, unless said optometrist is actually present and practicing optometry therein during the hours such office, location or place of practice is open to the public for the practice of optometry.

(f) No optometrist shall practice or continue to practice optometry in any office, location or place of practice where any name, names or professional identification on or about the door, window, wall, directory, or any sign or listing whatsoever, or in any manner used in connection therewith, shall indicate or tend to indicate that such office, location or place of practice is owned, operated, supervised, staffed, directed or attended by any person not actually present and practicing optometry therein during the hours such office, location or place of practice is open to the public for the practice of optometry.

(g) The requirement of Subsections (e) and (f) of this section that an optometrist be "actually present" in an office, location or place of practice holding his name out to the public shall be deemed satisfied if the optometrist is, as to such office, location or place of practice, either:

(1) physically present therein more than half the total number of hours such office, location, or place of practice is open to the public for the practice of optometry during each calendar month for at least nine months in each calendar year; or

(2) physically present in such office, location, or place of practice for at least one-half of the time such person conducts, directs, or supervises any practice of optometry.

(h) Nothing in this section shall be interpreted as requiring the physical presence of a person who is ill, injured, or otherwise incapacitated temporarily.

(i) The requirement of Subsections (e) and (f) of this section that an optometrist be "practicing optometry" at an office, location, or place of practice holding his name out to the public shall be deemed satisfied if the optometrist regularly makes personal examination at such office, location, or place of practice of the eyes of some of the persons prescribed for therein or regularly supervises or directs in person at such office, location or place of practice such examinations.

(j) The willful or repeated failure or refusal of an optometrist to comply with any of the provisions of this section shall be considered by the board to constitute prima facie evidence that such optometrist is guilty of violation of this Act, and shall be sufficient ground for the filing of charges to cancel, revoke or suspend his license. The charges shall state the specific instance or instances in which it is alleged that the rule was not complied with. Alternatively, or in addition to the above, it shall be the duty of the board to institute and prosecute an action in a court of competent jurisdiction to restrain or enjoin the violation of any of the preceding rules.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–5.14. Lease of Premises from Mercantile Establishment

[See Compact Edition, Volume 4 for text of (a) to (h)]

(i) Repealed by Acts 1981, 67th Leg., p. 2811, ch. 758, § 6, eff. Aug. 31, 1981.

[Amended by Acts 1981, 67th Leg., p. 2811, ch. 758, § 6, eff. Aug. 31, 1981.]

Art. 4552–5.15. Relationships of Optometrists with Dispensing Opticians

(a) The purpose of this section is to insure that the practice of optometry shall be carried out in such a manner that it is completely and totally separated from the business of any dispensing optician, with no control of one by the other and no solicitation for one by the other, except as hereinafter set forth.

(b) If an optometrist occupies space for the practice of optometry in a building or premises in which any person, firm, or corporation engages in the business of a dispensing optician, the space occupied by the optometrist shall be separated from the space occupied by the dispensing optician by solid partitions or walls from floor to ceiling. The space occupied by the optometrist shall have a patient's entrance opening on a public street, hall, lobby, corridor, or other public thoroughfare. An entrance is not a patient's entrance within the meaning of this subsection unless actually used as an entrance by the optometrist's patients.

(c) An optometrist may engage in the business of a dispensing optician, own stock in a corporation engaged in the business of a dispensing optician, or be a partner in a firm engaged in the business of a dispensing optician, but the books, records, and accounts of the firm or corporation must be kept separate and distinct from the books, records, and accounts of the practice of the optometrist.

(d) No person, firm, or corporation engaged in the business of a dispensing optician, other than a li-

censed optometrist or physician, shall have, own, or acquire any interest in the practice, books, records, files, equipment, or materials of a licensed optometrist, or have, own, or acquire any interest in the premises or space occupied by a licensed optometrist for the practice of optometry other than a lease for a specific term without retention of the present right of occupancy on the part of the dispensing optician. In the event an optometrist or physician who is also engaged in the business of a dispensing optician (whether as an individual, firm, or corporation) does own an interest in the practice, books, records, files, equipment or materials of another licensed optometrist, he shall maintain a completely separate set of books, records, files, and accounts in connection therewith.

(e) If, after examining a patient, an optometrist believes that lenses are required to correct or remedy any defect or abnormal condition of vision, the optometrist shall so inform the patient and shall expressly indicate verbally or by other means that the patient has two alternatives for the preparation of the lenses according to the optometrist's prescription: First, that the optometrist will prepare or have the lenses prepared according to the prescription; and second, that the patient may have the prescription filled by any dispensing optician but should return for an optometrical examination of the lenses.

[Amended by Acts 1981, 67th Leg., p. 2798, ch. 758, § 2, eff. Aug. 31, 1981.]

Art. 4552–5.18. Practice of Optometry Without a License

(a) It shall be a violation of this Act for any person who is not a licensed optometrist or a licensed physician to engage in the practice of optometry as such practice is defined by this Act.

(b) Any person who shall be injured by another person who violates this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and to recover damages sustained, plus costs of court and reasonable attorney's fees.

(c) The attorney general's office or the Texas Optometry Board may institute suit in any district court of the county in which a violation of this section is alleged to have occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed $10,000 per violation, plus costs of court and reasonable attorney's fees.

(d) Violations of this section are actionable under the Deceptive Trade Practices-Consumer Protection Act, as amended (Subchapter E, Chapter 17, Title 2, Business & Commerce Code).[1]

[Amended by Acts 1981, 67th Leg., p. 2810, ch. 758, § 3, eff. Aug. 31, 1981.]

[1] Business and Commerce Code, § 17.41 et seq.

Former art. 4552–5.18 was renumbered by Acts 1981, 67th Leg., p. 2810, ch. 758, § 3. See, now, art. 4558–5.19.

Art. 4552–5.19. Penalty

A person who violates any provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $50 nor more than $500 or by confinement in the county jail for not less than two months nor more than six months, or both. A separate offense is committed each day a violation of this Act occurs or continues.

[Renumbered from art. 4552–5.18 by Acts 1981, 67th Leg., p. 2810, ch. 758, § 3, eff. Aug. 31, 1981.]

CHAPTER TEN A. HEARING AIDS

Article

4566–1.04A. Personnel Policies.
4566–1.04B. Legislative Review of Rules.
4566–1.12A. Advertisements
4566–1.12B. Consumer Information and Complaint.

Art. 4566–1.01. Definitions

In this Act, unless the context requires a different definition:

(a) "Board" means the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) "License" means license issued by the Board under this Act to a person authorized to fit and dispense hearing aids.

(c) "Temporary Training Permit" means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the supervision of a person who holds a license under this Act.

(d) "Hearing aid" means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, but as used herein shall not mean repair services, replacements for defective parts and shall not include batteries, cords and accessories.

(e) "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. Provided, for the purpose of this Act, the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to distributors for distribution and sale to persons licensed under this Act.

(f) "Fitting and Dispensing hearing aids" means the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids. The term also includes the sale of hearing aids, and the making of impressions for earmolds to be used as a part of the hearing aid.

(g) "30-day trial period" means the period in which a person may cancel the purchase of a hearing aid.

[Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

Art. 4566–1.02. Board of Examiners

(a) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is hereby created.

The Board shall be composed of nine members appointed by the Governor with the advice and consent of the Senate. Appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The Board members must have the following qualifications, to-wit:

(1) Five of such members shall possess the necessary qualifications to fit and dispense hearing aids in this state and have been residents of this state actually engaged in fitting and dispensing hearing aids for at least five years immediately preceding their appointment. No more than two of such five members shall be employed by, franchised by, or associated exclusively with the same hearing aid manufacturer;

(2) Two Board members must be members of the general public. A person is eligible for appointment as a public member if the person and the person's spouse are not licensed by an occupational regulatory agency in the field of health care; are not employed by and do not participate in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; and do not own, control, or have, directly or indirectly, an interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment;

(3) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment, shall be an active practicing physician or surgeon duly licensed to practice in this state by the Texas State Board of Medical Examiners, and specialize in the practice of otolaryngology. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company; and

(4) One of such members shall be a citizen of the United States and a resident of this state for a period of at least two years immediately preceding his appointment and shall be an active practicing audiologist. Such member shall not have a financial interest in a hearing aid manufacturing company or a wholesale or retail hearing aid company.

(b) One who has served two full consecutive terms on the Board shall not be eligible for a reappointment to the Board for a period of 12 months immediately following the expiration of the second full term.

(c) In the event of death, resignation or removal of any members, the vacancy of the unexpired terms shall be filled by the Governor in the same manner as other appointments. Each appointee to the Board shall, within 15 days from the date of his appointment, qualify by taking the constitutional oath of office. Upon presentation of such oath, the Secretary of State shall issue commissions to appointees as evidence of their authority to act as members of the Board.

(d) Members hold office for staggered terms of six years, and each member shall continue until a successor is appointed and qualifies.

(e) The Board shall be represented by the Attorney General and the District and County Attorneys of the state.

(f) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(g) A member or employee of the Board may not be an officer, employee, or paid consultant of a statewide or national trade association in the hearing aid industry. A member or employee of the Board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a statewide or national trade association in the regulated industry.

(h) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the Board;

(2) does not maintain during his service on the Board the qualifications required by Subsection (a) of this section for appointment to the Board;

(3)violates a prohibition established by Subsection (f) or (g) of this section; or

(4) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a Board member.

(i) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

(j) The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

(k) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.028, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

Section 4 of Acts 1981, 67th Leg., p. 2912, ch. 774, provides:

"A person holding office as a member of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids on the effective date of this Act continues to hold the office for the term for which the member was originally appointed."

Art. 4566–1.03. Board Organization and Meetings

Within 60 days after their appointment and qualification the initial Board shall hold its first meeting and elect a President, Vice-President, and Secretary-Treasurer. The term of office for all officers of the Board shall be for a period of one year.

The Board shall hold regular meetings at least twice a year at which an examination of applicants for license shall be given. Special meetings of the Board shall be held upon request of a majority of the members or upon the call of the President. A majority of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present provided such period shall not be longer that three successive days.

[Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

Art. 4566–1.04. Powers and Duties of the Board

Section 3 of Acts 1981, 67th Leg., p. 2912, ch. 774, provides:

"A rule adopted by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids before September 1, 1981, that conflicts with Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566–1.01 et seq., Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect; the rule is repealed effective on the date the board/commission receives the committee's statements."

Art. 4566–1.04A. Personnel Policies

(a) The President of the Board or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.

(b) The President of the Board or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this subsection.

The Board may recognize, prepare, or carry out continuing education programs for its licensees. Participation in the programs is voluntary.

[Added by Acts 1981, 67th Leg., p. 2910, ch. 774, § 2, eff. Sept. 1, 1981.]

Section 8(b) of Acts 1981, 67th Leg., p. 2912, ch. 774, provides:

"The requirements under Section 4A, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, as added by this Act, that the president of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement of Section 4A that merit pay be based on the performance evaluation system shall be implemented before September 1, 1983."

Art. 4566–1.04B. Legislative Review of Rules

If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements.

[Added by Acts 1981, 67th Leg., p. 2910, ch. 774, § 2, eff. Sept. 1, 1981.]

Section 3 of Acts 1981, 67th Leg., p. 2912, ch. 774, provides:

"A rule adopted by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids before September 1, 1981, that conflicts with Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566–1.01 et seq., Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect; the rule is repealed effective on the date the board/commission receives the committee's statements."

Art. 4566–1.06. Examination: Application

(a) Every person desiring to engage in fitting and dispensing hearing aids in the State of Texas shall be required to pass an examination given by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids.

(b) The applicant shall make application, furnishing to the Secretary-Treasurer of the Board on forms to be furnished by the Board, sworn evidence that he has attained the age of majority and has graduated from an accredited high school or equivalent, and such other information as the Board may deem necessary for the enforcement of this Act.

(c) The examination shall consist of written, oral or practical tests that shall be objective in method and applied in a consistent manner. The examination shall cover the following areas as they relate to the fitting and dispensing of hearing aids:

(1) Basic physics of sound;

(2) The structure and function of hearing aids;

(3) Fitting of hearing aids;

(4) Pure tone audiometry, including air conduction testing and bone conduction testing;

(5) Live voice and/or record voice speech audiometry;

(6) Masking when indicated;

(7) Recording and evaluation of audiograms and speech audiometry to determine the hearing aid candidacy;

(8) Selection and adaption of hearing aids and testing of hearing aids; and

(9) Taking of earmold impressions.

(d) No part of the examination shall consist of tests requiring knowledge of the diagnosis and/or treatment of any disease or injury to the human body.

(e) Each applicant shall be given due notice of the date and place of the examination and the subjects, areas, and/or skills that will be included within such examination, and there shall be no changes in said subjects, areas, and/or skills after the date of the examination has been announced and publicized. All examinations shall be conducted in writing and by such other means as the Board shall determine adequate to ascertain the qualifications of applicants. Upon reexamination, a person who has previ-

ously failed shall be examined only on those portions of the examination which he failed. Every applicant successfully passing the examination and meeting all the requirements of this Act shall be registered by the Board as possessing the qualifications required by this Act and shall receive from the Board a license to fit and dispense hearing aids in this state.

(f) The Board, in its discretion, may refuse to examine an applicant if he has been convicted of a felony or a misdemeanor that involved moral turpitude.

(g) Within 30 days after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the date the Board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

[Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

Art. 4566–1.07. Repealed by Acts 1981, 67th Leg., p. 2912, ch. 774, § 5, eff. Sept. 1, 1981

Art. 4566–1.09. Temporary Training Permit

(a) The Board shall grant a temporary training permit to fit and dispense hearing aids to any person applying to the Board who has never taken the examination provided in the Act and who possesses the qualifications in Subsection (b) of Section 6, of this Act, upon written application to the Secretary-Treasurer of the Board, the applicant shall make application on forms to be furnished by the Board furnishing sworn evidence that he possesses the qualifications contained in Subsection (b), Section 6, of this Act, that he has never taken the examination provided in this Act, and that he has never previously been issued a temporary training permit to fit and dispense hearing aids by the Board.

(b) The application for a temporary permit shall be accompanied by the affidavit of a person duly licensed and qualified to fit and dispense hearing aids in this state. The accompanying affidavit shall state that the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by applicant under such temporary training permit, that affiant will notify the Board within 10 days following applicant's terminating of supervision by affiant.

(c) A temporary training permit shall authorize the holder thereof, to fit and dispense hearing aids for a period of one year or until the holder thereof shall have successfully passed the examination required for a license under this Act, whichever occurs first.

(d) A temporary training permit shall automatically become void at the end of the period of 6 months from the date of its issuance unless extended for an additional period not to exceed 6 months by the Board. The Board shall never extend a temporary training permit more than one time.

(e) The Board shall establish educational guidelines, both formal and practical, for the training of temporary permit holders. The training guidelines shall include directions to the training supervisor about subject matter to be taught, length of the training period, extent of trainee contact with the public, and responsibility of the training supervisor for direct supervision of all aspects of the training period.

[Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

Art. 4566–1.10. Grounds for Disciplinary Action

The Board shall revoke or suspend a permit or license, place on probation a person whose permit or license has been suspended, or reprimand a permittee or licensee for any of the following violations:

(1) The temporary trainee or licensee is guilty of any fraud, deceit or misrepresentation in the fitting and dispensing of hearing aids or in his seeking of a license under this Act.

(2) The temporary trainee or licensee is convicted of a felony or a misdemeanor which involves moral turpitude.

(3) The temporary trainee or licensee is unable to fit and dispense hearing aids with reasonable skill and safety to customers by reason of incompetence, age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any condition causing the temporary trainee or licensee to become mentally or physically incapable as determined by a court of competent jurisdiction.

(4) The temporary trainee or licensee has violated any of the provisions of this Act or Board rules.

(5) The licensee has knowingly, directly or indirectly employed, hired, procured, or induced a person not licensed to fit and dispense hearing aids in this state, to so fit and dispense hearing aids.

(6) The licensee aids or abets any person not duly licensed under this Act in the fitting or dispensing of hearing aids.

(7) The licensee lends, leases, rents, or in any other manner places his license at the disposal or in the service of any person not licensed to fit and dispense hearing aids in this state.

(8) The licensee knowingly used or caused or promoted the use of any advertising matter, promotional literature, guarantees, warranty, disseminated or published with misleading, deceiving or

false information. It is the intention of the Legislature that the provisions of this subdivision be interpreted insofar as possible to coincide with the orders and rules of the Federal Trade Commission on such subjects.

(9) The licensee represented that the service or advice of a person licensed to practice medicine by the Texas State Board of Medical Examiners is used or made available in the selection, fitting, adjustment, maintenance, or repair of a hearing aid when such representation was not true.

(10) The licensee used the term "doctor," "clinic" or any like words, abbreviations or symbols in the conduct of his business which would tend to connote that the licensee was a physician or surgeon.

(11) The licensee obtained or attempted to obtain information concerning the business of another licensee under this Act by bribery, or attempting to bribe an employee or agent of such other licensee or by the impersonation of one in authority.

(12) The licensee directly or indirectly gave, or offered to give or permitted or caused to be given money or anything of value to any person who advises others in a professional capacity as an inducement to influence such person to influence those persons such person advises in a professional capacity to purchase or contract to purchase products sold or offered for sale by licensee or to refrain from purchasing or contracting to purchase products sold or offered for sale by any other licensee under this Act.

(13) The licensee falsely represented to a purchaser that a hearing aid was "custom-made," "made to order," "prescription-made" or any other representations that such hearing aid was specially fabricated for the purchaser.

(14) The licensee refused to accept responsibility for the acts of a temporary training permittee in a licensee's employ and under licensee's supervision.

(15) The licensee with fraudulent intent, engaged in the fitting and dispensing of hearing aids under a false name or alias.

[Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

Art. 4566–1.11. Disciplinary Actions

(a) If the Board proposes to refuse a person's application for examination, to suspend or revoke a person's license, or to probate or reprimand a person, the person is entitled to a hearing before the Board.

(b) The proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(c) Proceedings shall be commenced by filing charges with the Board in writing and under oath. The charges may be made by any person or persons.

(d) The president of the Board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served upon the applicant or licensee against whom charges have been filed at least 30 days prior thereto. Service of such charges and notice of hearing thereon may be given by certified mail to the last known address of such licensee or applicant.

(e) At the hearing, such applicant or licensee shall have the right to appear either personally or by counsel or both to produce witnesses, and to have subpoenas issued by the Board and cross-examine opposing or adverse witnesses.

(f) The Board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

(g) The Board shall determine the charges upon their merits. The Board shall enter an order in the permanent records of the Board setting forth the findings of fact and law of the Board and its action thereon. A copy of such order of the Board shall be mailed to such applicant or licensee to his last known address by certified mail.

(h) Any person whose license to fit and dispense hearing aids has been refused or has been cancelled, revoked or suspended by the Board, may, within 20 days after making and entering of such order, take an appeal to any district court of Travis County or any district court of the county of his residence.

(i) Appeal from the judgment of such district court will lie as other civil cases.

(j) Upon application, the Board may reissue a license to fit and dispense hearing aids to a person whose license has been cancelled or revoked but such application shall not be made prior to the expiration of a period of six months after the order of cancellation or revocation has become final, and such application shall be made in such manner and form as the Board may require.

[Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

Art. 4566–1.12. Fees and Expenses

(a) The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

1.	Temporary Training Permit	$ 40
2.	Examination Fee	125
3.	License Fee	75
4.	License Renewal Fee	195
5.	Duplicate Document Fee	10

(b) Every person passing the examination and meeting the requirements of the Board shall be notified that he is eligible for such license upon payment of the fee herein provided. Such notice shall be by certified mail at the address given on his

examination papers. The fee for issuance of such license must be paid by the applicant within 90 days after having been notified. Failure to pay such fee within such time shall constitute a waiver of the right to such person to obtain his license.

(c) The Secretary-Treasurer of the Board shall, on or before the 10th day of each month, remit to the State Treasurer all of the fees collected by the Board during the preceding month for deposit in the General Revenue Fund.

(d) Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. The travel expenses allowance for members of the Board and its employees shall be provided in the General Appropriations Act. The executive director of the Board shall be allowed his actual expenses incurred while traveling on official business for the Board.

(e) The number of days for which compensation may be paid to members of the Board shall not exceed two days in any calendar month except in those months in which examinations are held, but compensations may never be allowed to exceed six days in those months in which examinations are held.

(f) The Board may authorize all necessary disbursements to carry out the provisions of this Act, including payment of the premium on the bond of the Secretary-Treasurer, stationery expenses, purchase and maintain or rent equipment and facilities necessary to carry out the examinations of applications for license; pay for printing of all licenses; rent and furnish an office to maintain the permanent records of the Board.

(g) Funds for the administration of this Act shall be provided by the General Appropriations Act from the General Revenue Fund. The State Auditor shall audit the financial transactions of the Board each fiscal year.

[Amended by Acts 1977, 65th Leg., p. 1750, ch. 699, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2048, ch. 802, § 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

Art. 4566–1.12A. Advertisements

The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

[Added by Acts 1981, 67th Leg., p. 2910, ch. 774, § 2, eff. Sept. 1, 1981.]

Art. 4566–1.12B. Consumer Information and Complaint

(a) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.

(b) Each written contract for services in this state of a licensed hearing aid fitter and dispenser shall contain the name, mailing address, and telephone number of the Board. There shall at all times be prominently displayed in the place of business of each licensee regulated under this Act a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against licensees can be directed to the Board.

(c) The Board shall establish guidelines for a 30-day trial period on every hearing aid purchased from a licensed hearing aid fitter and dispenser.

(d) The Board shall keep an information file about each complaint filed with the Board relating to a licensee. If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

[Added by Acts 1981, 67th Leg., p. 2910, ch. 774, § 2, eff. Sept. 1, 1981.]

Art. 4566–1.13. Renewal of License

(a) Each license to fit and dispense hearing aids shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually on September 1 on payment of the renewal fee.

(b) A person may renew his unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) Before a license can be renewed, the Board shall require certification that all testing equipment, both portable and stationary, used by the licensee has been calibrated within one year prior to the renewal date.

(g) Fitting and dispensing hearing aids without an annual renewal certificate for the current year as provided herein shall have the same force and effect and be subject to the same penalties as fitting and dispensing hearing aids without a license.

(h) The Board shall issue a duplicate license to any licensee whose license has been lost or destroyed and the Board shall have the authority to prescribe the procedure and requirements for the issuance of the duplicate license.

[Amended by Acts 1977, 65th Leg., p. 1750, ch. 699, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

Art. 4566–1.14. Duty of a Licensee

[See Compact Edition, Volume 4 for text of (a) to (d)]

(e) Any individual licensed under this Act shall seek personally or through proper referral channels to obtain the following minimal information on each prospective candidate for amplification:

(1) pertinent case history;

(2) otoscopic inspection of the outer ear, including canal and drumhead;

(3) evaluation of hearing acuity utilizing pure-tone techniques via air and bone conduction pathways through a calibrated system; and

(4) an aided and unaided speech reception threshold and ability to differentiate between the phonemic elements of the language through speech audiometry, utilizing a calibrated system.

[Amended by Acts 1981, 67th Leg., p. 2912, ch. 774, § 7, eff. Sept. 1, 1981.]

Art. 4566–1.15. Prohibited Acts

(a) It is unlawful for any person to:

[See Compact Edition, Volume 4 for text of (a)(1) to (a)(6)]

(7) Repealed by Acts 1981, 67th Leg., p. 2912, ch. 774, § 6, eff. Sept. 1, 1981.

[See Compact Edition, Volume 4 for text of (b) and (c)]

[Amended by Acts 1981, 67th Leg., p. 2912, ch. 774, § 6, eff. Sept. 1, 1981.]

Art. 4566–1.19. Exceptions

Nothing in this Act shall be construed to apply to the following:

(1) Persons engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning, provided such persons or their employees do not sell hearing aids.

(2) Physicians and surgeons duly licensed by the Texas State Board of Medical Examiners and qualified to practice in the State of Texas.

(3) An individual with a master's or doctorate degree in audiology from an accredited college or university may engage in the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections and adaptations of or recommendations for a hearing aid, provided such persons do not sell hearing aids.

[Amended by Acts 1981, 67th Leg., p. 2903, ch. 774, § 1, eff. Sept. 1, 1981.]

Art. 4566–1.20. Repealed by Acts 1981, 67th Leg., p. 2912, ch. 774, § 5, eff. Sept. 1, 1981

CHAPTER ELEVEN. PODIATRY

Article

4568b. Application of Sunset Act.
4569a. Licensure of Podiatry Faculty Members.
4573a. Revocation and Suspension of License for Drug-Related Felony Conviction.
4575b. Advertising.
4575c. Consumer Information.

Art. 4567b. Practice of Podiatry; Penalty

Any person shall be regarded as practicing podiatry within the meaning of this law, and shall be deemed and construed to be a podiatrist, who shall treat or offer to treat any disease or disorder, physical injury or deformity, or ailment of the human foot by any system or method and charge therefor, directly or indirectly, money or other compensation, or who shall publicly profess or claim to be a chiropodist, podiatrist, pedicurist, foot specialist, doctor or use any title, degree, letter, syllable, word or words that would tend to lead the public to believe such person was a practitioner authorized to practice or assume the duties incident to the practice of podiatry. Whoever professes to be a podiatrist, practices or assumes the duties incident to the practice of podiatry within the meaning of this law or Article, without first obtaining from the Texas State Board of Podiatry Examiners a license authorizing such person to practice podiatry, shall be punished by a fine of not less than Fifty Dollars ($50), nor more than Five Hundred Dollars ($500), or by imprisonment in the county jail of not less than thirty (30) days, nor more than six (6) months, or by both fine and imprisonment.

[Amended by Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

Art. 4567c. Improper Practice; Penalty

If any licensed podiatrist shall amputate the human foot, he shall be punished by a fine of not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500) or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months or by both such fine and imprisonment for each offense.

[Amended by Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

Art. 4568. State Board of Podiatry Examiners; Appointment; Terms of Members; Oath; Bond of Secretary-Treasurer; Meetings; Regulations and Bylaws; Powers; Records

(a) The Texas State Board of Podiatry Examiners shall consist of nine (9) members. Six (6) members must be reputable practicing podiatrists who have resided in this state and who have been actively engaged in the practice of podiatry for five (5) years immediately preceding their appointment. Three (3) members must be representatives of the general public. However, a public member may not participate in any part of the examination process for applicants for a license issued by the Board that requires knowledge of the practice of podiatry. Appointments to the Board shall be made by the Governor without regard to the race, creed, sex, religion, or national origin of the appointees.

(b) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of an agency or business entity that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(3) has, other than as a consumer, a financial interest in a business entity that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(c) A member or employee of the Board may not be an officer, employee, or paid consultant of a statewide or national trade association in the health-care industry. A member or employee of the Board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a statewide or national trade association in the health-care industry.

(d) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252—9c, Vernon's Texas Civil Statutes) may not serve as a member of the Board or act as the general counsel to the Board.

(e) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Section (a) or (b) of this article for appointment to the Board;

(2) violates Section (c) or (d) of this article; or

(3) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a Board Member.

(f) If a ground for removal of a member of the Board exists, the Board's actions during the existence of the ground for removal are not invalid for that reason.

(g) The term of office of each member of said Board shall be six (6) years. At the expiration of the term of each member, his successor shall be appointed by the Governor of this State and he shall serve for a term of six (6) years, or until his successor shall be appointed and qualified. The members of the Texas State Board of Podiatry Examiners shall, before entering upon the duties of their offices, qualify, by subscribing to, before a notary public or other officer authorized by law to administer oaths, and filing with the Secretary of State, the constitutional oath of office. They shall, biennially thereafter in the month of January, elect from their number a president, vice-president and secretary-treasurer. The secretary-treasurer, before entering upon his duties, shall file a bond with the Secretary of State for such sum as will be twice the amount of cash on hand at the time the bond is filed; provided, however, that the amount of said bond shall, in no case, be less than Five Thousand Dollars ($5,000). Said bond shall be payable to the Governor of this State, for the benefit of said Board; shall be conditioned upon the faithful performance of the duties of such officer; and shall be in such form as may be approved by the Attorney General of this State; and shall be executed by a surety company, as surety, and be approved by the Texas State Board of Podiatry Examiners.

(h) Said Texas State Board of Podiatry Examiners shall hold meetings at least twice a year and special meetings when necessary at such times and places as the Board deems most convenient for applicants for examinations for license. Special meetings shall be held upon request of a majority of the members of the Board, or upon the call of the president. Five (5) members of the Board shall constitute a quorum for the transaction of business and should a quorum not be present on the day appointed for any meeting, those present may adjourn from day to day until a quorum be present.

(i) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(j) The Board shall adopt all reasonable or necessary rules, regulations, and bylaws, not inconsistent

with the law regulating the practice of podiatry, the laws of this State, or of the United States, to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry. If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that subsection, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements. The Board shall have power to appoint committees from its own membership, the duties of which shall be to consider such matters pertaining to the enforcement of the law regulating the practice of podiatry and the regulations promulgated in accordance therewith as shall be referred to said committees, and to make recommendations to the Board with respect thereto. The Board may contract with the Texas State Board of Medical Examiners or any other appropriate state agency for the provision of some or all of the services necessary to carry out the activities of the Board. The Board, any committee, or any members thereof shall have the power to issue subpoenas and to compel the attendance of witnesses and the production of books, records, and documents, to administer oaths and to take testimony concerning all matters within its or his jurisdiction. The Board shall not be bound by the strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be founded upon sufficient legal evidence to sustain it. The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of the law regulating the practice of podiatry or the regulations promulgated in accordance therewith, and in such connection a temporary injunction may be granted. Said action for an injunction shall be in addition to any other action, proceeding or remedy authorized by law. The Board shall keep a correct record of all the proceedings of the Board, and of all moneys received or expended by the Board, which record shall be open to public inspection at all reasonable times. The records shall include a record of proceedings relating to examination of applicants, and the issuance, renewal, or refusal of certificates of registration; and they shall also contain the name, age, known place of residence, the name and location of the school of podiatry from which he holds credentials and the time devoted to the study and practice of the same, together with such other information as the Board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. A certified copy of said record, with the hand and seal of the secretary of said Board, shall be admitted as evidence in all courts. Every license and annual renewal certificate issued shall be numbered and recorded in a book kept by the Board. The records shall be kept by the Board.

The Board shall cause the prosecution of all persons violating any of the provisions of the law regulating the practice of podiatry and may incur the expense reasonably necessary in that behalf.

(k) Offices of the Board shall be located in Austin, Travis County, Texas.

(*l*) The Board may recognize, prepare, or implement continuing education programs for licensees. Participation in the programs is voluntary.

[Amended by Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

Sections 5 and 6 of Acts 1981, 67th Leg., p. 3015, ch. 789, provide:

"Sec. 5. A rule adopted by the Texas State Board of Podiatry Examiners before September 1, 1981, that conflicts with laws relating to the regulation and practice of podiatry, as amended by this Act, is void. Not later than the 90th day after September 1, 1981, the board shall repeal the rule.

"Sec. 6. (a) A person holding office as a member of the Texas State Board of Podiatry Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall appoint three public members to the board. The governor shall designate one public member for a term expiring on the regular expiration date in 1983, one for a term expiring on the regular expiration date in 1985, and one for a term expiring on the regular expiration date in 1987."

Art. 4568b. Application of Sunset Act

The Texas State Board of Podiatry Examiners is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act the board is abolished effective September 1, 1993. [Added by Acts 1977, 65th Leg., p. 1838, ch. 735, § 2.044, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

Art. 4569. Examination Grades; Fee; Subjects; Re-examination

(a) Except as provided in Article 4569a, Revised Civil Statutes of Texas, 1925, all applicants for license to practice podiatry in this State must successfully pass an examination by the Texas State Board of Podiatry Examiners.

(b) The Board is authorized to adopt and enforce rules of procedure for administering this Article that are not inconsistent with the statutory requirements.

(c) The examinations shall be written and practical and in the English language, and all applicants that possess the qualifications required for an examination and who shall pass the examinations prescribed with a general average of seventy-five per cent (75%) in all subjects and not less than sixty per cent (60%) in any one subject shall be issued a license by the Board to practice podiatry in this State.

(d) The subjects the applicant must be examined in are anatomy, chemistry, dermatology, diagnosis, materia-medica, pathology, physiology, microbiology, orthopedics and podiatry, limited in their scope to ailments of the human foot.

(e) The Board shall determine the credit to be given on the answers turned in on the subjects in which examined and the discretion of the Board on the examinations shall be final.

(f) All applicants shall pay to the secretary-treasurer of the Board an examination fee at least fifteen (15) days before the dates of the regular examinations.

(g) Applicants who fail to satisfactorily pass an examination and are refused a license for such failure shall be required to pay the regular examination fee for all subsequent re-examinations.

(h) All examinations or re-examinations shall be in all subjects as provided for in this Article.

(i) The secretary-treasurer of the Board shall report to each applicant the grade made in each subject and the general average on the examination within sixty (60) days from the date of the examination.

(j) The Board may accept all or any part of an examination given by a national testing service in lieu of its written examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the day the Board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day.

(k) If requested in writing by a person who fails the licensing examination, the Board shall furnish the person with an analysis of the person's performance on the examination.

[Amended by Acts 1979, 66th Leg., p. 320, ch. 149, § 1, eff. May 11, 1979; Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

Art. 4569a. Licensure of Podiatry Faculty Members

(a) The board may issue a license to practice podiatry without administering the examination specified in Article 4569, Revised Civil Statutes of Texas, 1925, as amended, to any podiatrist who at the time of applying for a license has accepted an appointment or is serving as a full-time member of the faculty of an educational institution in this state offering an approved or accredited course of study or training leading to a degree in podiatry, who is licensed to practice podiatry in any other state or territory of the United States having requirements for licensing substantially equivalent to those established by the laws of this state, and who otherwise satisfies the requirements of Article 4570, Revised Civil Statutes of Texas, 1925, as amended.

(b) In this article a course of study, training, or education is considered approved or accredited if it is approved or accredited by the Texas State Board of Podiatry Examiners as constituting a bona fide reputable course of training, study, or education. In making a decision relating to the approval or accreditation of a course of study, training, or education, the board shall consider whether the course is approved or accredited by the Council on Education of the American Podiatry Association or its successor organization.

(c) Except for the requirement of an examination, any person applying for a license under this article must comply with all application, licensure, and relicensure requirements relating to podiatry and is subject to all laws relating to the practice of podiatry.

(d) A license granted under this article permits the practice of podiatry only for purposes of instruction in the educational institution.

(e) If the faculty appointment of a podiatrist licensed under this article is terminated, his license issued under this article terminates. However, nothing in this article is to be construed to prohibit the podiatrist from applying for and obtaining a license or in any way affect a license obtained by the podiatrist by complying with Article 4569, Revised Civil Statutes of Texas, 1925, as amended, and other applicable laws relating to the practice of podiatry.

[Added by Acts 1979, 66th Leg., p. 321, ch. 149, § 2, eff. May 11, 1979.]

Art. 4570. Application for License

[See Compact Edition, Volume 4 for text of (a)]

(b) The applicant shall submit any information reasonably required by the Board, including evidence satisfactory to the Board that the applicant:

(1) has attained the age of twenty-one (21) years;

(2) is of good moral character;

(3) has completed at least ninety (90) semester hours of college courses acceptable at the time they were completed for credit on a Bachelor's Degree at The University of Texas;

(4) is a graduate of a bona fide reputable school of podiatry or chiropody, and shall furnish a diploma from the school; and

(5) has successfully completed any other course of training reasonably required by rule of the Board relating to the safe care and treatment of patients.

[See Compact Edition, Volume 4 for text of (c)]

(d) The State Board of Podiatry Examiners may refuse to admit persons to its examinations, and to issue a license to practice podiatry to any person, for any of the following reasons:

(1) The presentation to the Board of any license, certificate, or diploma, which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

(2) Conviction of a crime of the grade of a felony or any crime which involves moral turpitude, or conviction of a violation of Article 4567c, Revised Civil Statutes of Texas, 1925, as amended.

(3) Habits of intemperance, or drug addiction, calculated, in the opinion of the Board, to endanger the health, well-being, or welfare of patients.

(4) Grossly unprofessional or dishonorable conduct, of a character which in the opinion of the Board is likely to deceive or defraud the public.

(5) The violation, or attempted violation, direct or indirect, of any of the provisions of this Act (Title 71, Chapter 11, Revised Civil Statutes of Texas, 1925, as amended),[1] or any rule adopted under this Act, either as a principal, accessory, or accomplice.

(6) The use of any advertising statement of a character tending to mislead or deceive the public.

(7) Advertising professional superiority, or the performance of professional service in a superior manner.

(8) The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use, any podiatry degree, license, certificate, diploma, or transcript of license, certificate, or diploma, in or incident to an application to the Board of Podiatry Examiners for a license to practice podiatry.

(9) Altering, with fraudulent intent, any podiatry license, certificate, diploma, or transcript of a podiatry license, certificate, or diploma.

(10) The use of any podiatry license, certificate, diploma, or transcript of any such podiatry license, certificate, or diploma, which has been fraudulently purchased, issued, counterfeited, or materially altered.

(11) The impersonation of, or acting as proxy for, another in any examination required by this Act for a podiatry license.

(12) The impersonation of a licensed practitioner, or permitting, or allowing, another to use his license, or certificate to practice podiatry in this State, for the purpose of treating, or offering to treat, conditions and ailments of the feet of human beings by any method.

(13) Employing, directly or indirectly, any person whose license to practice podiatry has been suspended, or association in the practice of podiatry with any person or persons whose license to practice podiatry has been suspended, or any person who has been convicted of the unlawful practice of podiatry in Texas or elsewhere.

(14) The wilful making of any material misrepresentation or material untrue statement in the application for a license to practice podiatry.

(15) The inability to practice podiatry with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition. In enforcing this subsection the Board shall, upon probable cause, request a podiatrist to submit to a mental or physical examination by medical doctors designated by it. If the podiatrist refuses to submit to the examination, the Board shall issue an order requiring the podiatrist to show cause why he will not submit to the examination and shall schedule a hearing on the order within 30 days after notice is served on the podiatrist. The podiatrist shall be notified by either personal service or by certified mail with return receipt requested. At the hearing, the podiatrist and his attorney are entitled to present any testimony and other evidence to show why the podiatrist should not be required to submit to the examination. After a complete hearing, the Board shall issue an order either requiring the podiatrist to submit to the examination or withdrawing the request for examination.

(16) The failure to practice podiatry in an acceptable manner consistent with public health and welfare.

(17) Being removed, suspended, or disciplined in another manner by the podiatrist's peers in any professional podiatry association or society, whether the association or society is local, regional, state, or national in scope or being disciplined by a licensed hospital or the medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if any of these actions in the opinion of the Board were based on unprofessional conduct or professional incompetence that was likely to harm the public, provided that the Board finds that the action taken was appropriate and reasonably supported by evidence submitted to the association, society, hospital, or medical staff.

(18) Repeated or recurring meritorious health care liability claims against the podiatrist that in the opinion of the Board are evidence of professional incompetence likely to injure the public.

[See Compact Edition, Volume 4 for text of (e) and (f)]

(g) The board may waive any license requirement for an applicant holding a valid license from another state having license requirements substantially equivalent to those of this state.

[Amended by Acts 1979, 66th Leg., p. 321, ch. 149, § 3, eff. May 11, 1979; Acts 1981, 67th Leg., p. 3013, ch. 789, § 2, eff. Sept. 1, 1981.]

[1] Article 4567 et seq.

Art. 4571. Licenses

Annual License Renewal

Sec. 1. (a) The Texas State Board of Podiatry Examiners shall set and may from time to time change the amount of the annual license renewal fee as in the Board's judgment may be needed to provide for the reasonable costs and expenses of the Board in performing its duties and the administration of the law regulating the practice of podiatry. The annual license renewal fee shall be paid to the Board.

(b) The Texas State Board of Podiatry Examiners on or before August first of each year shall notify, by mail, all Texas licensed podiatrists at their last

known address that the annual license renewal fee is due on the following September first.

(c) A person may renew his unexpired license by paying to the Board before the expiration date of the license the required renewal fee.

(d) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license.

(e) The Board by rule may adopt a system under which licenses expire on various dates during the year, and the dates for sending notice that payment is due and dates of suspension, revocation, and assessment of a penalty for nonpayment shall be adjusted accordingly. For the year in which the license renewal date is changed, license fees payable on September 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(f) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the Board renewal fees and a fee that is equal to the examination fee for the license.

(g) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Effect of Practicing Without Renewing License

Sec. 2. Practicing podiatry without an annual renewal certificate for the current year, as provided herein, shall have the same force and effect and be subject to all penalties of practicing podiatry without a license.

Re-Examination If License Revoked

Sec. 3. After the Board has declared a license suspended or revoked for nonpayment of the annual license renewal fee as provided for in this Article, the Board may thereafter in its discretion refuse to reinstate the license or issue a new license until the podiatrist, whose license has been declared suspended or revoked has passed the regular examination for license.

Reissuance of Lost or Amended License

Sec. 4. If any license issued by the Board is lost, destroyed or stolen from the legally qualified and authorized person to whom it was issued, the owner of the license shall report the fact to the Secretary-Treasurer of the Board, in an affidavit form. The affidavit shall set forth detailed information as to the loss, destruction or theft, giving dates, place and circumstances. If the owner of a license desires to have an amended license issued to him because of a lawful change in the name or degree designation of the licensee or for any other lawful and sufficient reason, the owner of the license shall make application for such amended license to the Secretary-Treasurer of the Board setting forth the reasons the issuance of an amended license is requested. A duplicate or amended license shall be issued upon regular application of the owner of the original license and payment of a fee set by the Board for the duplicate or amended license; however, the Board shall not issue a duplicate or amended license until sufficient evidence by the owner of the original license has been submitted to prove the license has been lost or to establish the lawful reason an amended license should be issued, and unless the records of the Board show a license had been issued and been in full force and effect at the time of such loss, destruction or theft, or such request for an amended license. If an amended license is issued, the original license shall be returned to the Board.

Display of License

Sec. 5. Every person licensed by the State Board of Podiatry Examiners to practice in the state shall conspicuously display both his license and an annual renewal certificate for the current year of practice in the place or office wherein he practices and shall be required to exhibit such license and renewal certificate to a representative of the Board upon such representative's official request for its examination or inspection.

Renewal After Military Service

Sec. 6. (a) Any licensed podiatrist whose license has been suspended or revoked or whose annual renewal certificate has expired while he has been engaged in Federal service or on active duty with the Army of the United States, the United States Navy, the United States Marine Corps, the United States Coast Guard, the United States Air Force, or the United States Maritime Service or the State Militia, called into service or training of the United States of America or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without paying any lapsed renewal fee or without passing any examination, if, within one (1) year after termination of said service, training or education, other than by dishonorable discharge, he furnishes the State Board of Podiatry Examiners an affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated.

(b) This section does not apply to a person whose license is revoked under Article 4573a of this chapter.

[Amended by Acts 1977, 65th Leg., p. 1219, ch. 469, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 109, ch. 52, § 8, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 3013, ch. 789, § 3, eff. Sept. 1, 1981.]

Section 2 of the 1977 amendatory act repealed art. 4571a and § 3 thereof provided:

"All laws or parts of laws in conflict with this Act are repealed to the extent of such conflict."

Art. 4571a. Repealed by Acts 1977, 65th Leg., p. 1221, ch. 469, § 2, eff. Aug. 29, 1977

See, now, § 1(d) of art. 4571.

Art. 4573. Revocation, Probation, Cancellation, and Suspension of License; Complaints

(a) The Board shall maintain an information file about each complaint filed with the Board relating to a licensee. If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize and undercover investigation.

(b) The Board shall revoke or suspend a license, probate a license suspension, or reprimand a licensee for violation of the law regulating the practice of podiatry or a rule adopted by the Board.

(c) If the Board proposes to suspend or revoke a person's license, the person is entitled to a hearing before the Board.

(d) Proceedings for the suspension or revocation of a license are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(e) Any person whose license to practice podiatry has been cancelled, revoked or suspended by order of the Board may take an appeal to a district court of Travis County, but the decision of the Board shall not be enjoined or stayed except on application to the district court after notice to the Board. The proceeding on appeal shall be under the substantial evidence rule.

(f) The Board may, upon majority vote, rule that the order revoking, cancelling, or suspending the practitioner's license be probated so long as the probationer conforms to such orders and rules as the Board may set out as the terms of probation. The Board, at the time of probation, shall set out the period of time constituting the probationary period.

(g) At any time while the probationer remains on probation, the Board may hold a hearing and, upon majority vote, rescind the probation if the terms of the probation have been violated, and enforce the Board's original action in revoking, cancelling, or suspending the practitioner's license. The hearing to rescind the probation shall be called by the President of the Texas State Board of Podiatry Examiners, who shall cause to be issued a notice setting a time and place for the hearing and containing the charges or complaints against the probationer. The notice shall be served on the probationer or his counsel, and any person or persons complaining of the probationer or their counsel, at least ten (10) days prior to the time set for the hearing. When personal service is impossible, or cannot be effected, the same provisions for service in lieu of personal service set out in Subsection (d) of this Article shall apply. The respondent and any person or persons complaining of the respondent have the right to appear at the hearing either personally or by counsel, or both, to produce witnesses or evidence, to cross-examine witnesses, and to have subpoenas issued by the Board. The Board may also issue subpoenas on its own motion. The subpoenas of the Board may be enforced through any district court having jurisdiction and venue in the county where the hearing is held. The Board shall determine the charges upon their merits. The order revoking or rescinding the probation is not subject to review or appeal.

(h) Upon application, the Board may reissue a license to practice podiatry to a person whose license has been cancelled or suspended, but the application, in the case of cancellation or revocation, may not be made prior to one (1) year after the cancellation or revocation, and shall be made in such manner and form as the Board may require.

Text of (g) as added by Acts 1981, 67th Leg., p. 109, ch. 52, § 9

(g) This article does not apply to a person convicted of a felony under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes).

[Amended by Acts 1981, 67th Leg., p. 109, ch. 52, § 9, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

Art. 4573a. Revocation and Suspension of License for Drug-Related Felony Conviction

On conviction of a person licensed by the board of a felony under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), the board shall, after an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), in which the fact of conviction is determined, suspend the person's license. On the person's final conviction, the board shall revoke the person's license. The board may not reinstate or reissue a license to a person whose license is suspended or revoked under this article except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

[Added by Acts 1981, 67th Leg., p. 109, ch. 52, § 10, eff. Sept. 1, 1981.]

Art. 4574. Compensation and Expenses

(a) The board shall establish reasonable and necessary fees for the administration of this article in amounts not to exceed:

1.	Examination	$115
2.	Reexamination	115
3.	Renewal	150
4.	Duplicate license	15

(b) Funds received by the board under this article shall be deposited in the State Treasury to the credit of a special fund to be known as the podiatry examiners fund and may be used only for the administration of this article.

(c) The board may not maintain unnecessary fund balances, and fee amounts shall be established in accordance with this requirement.

(d) Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. The secretary shall receive his necessary expenses for services actually performed for the board.

(e) The state auditor shall audit the financial transactions of the board during each fiscal biennium.

(f) On or before January 1 of each year, the board shall file with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year.

[Amended by Acts 1977, 65th Leg., p. 137, ch. 66, § 1, eff. April 18, 1977; Acts 1981, 67th Leg., p. 3008, ch. 789, § 1, eff. Sept. 1, 1981.]

Per Diem Allowance

Acts 1967, 60th Leg., p. 181, ch. 96, § 5 [see Compact Edition, Volume 4], was repealed by Acts 1977, 65th Leg., p. 137, ch. 66, § 2.

Art. 4575b. Advertising

The board may not adopt rules restricting competitive bidding or advertising by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

[Added by Acts 1981, 67th Leg., p. 3014, ch. 789, § 4, eff. Sept. 1, 1981.]

Art. 4575c. Consumer Information

(a) The board shall prepare information of consumer interest describing the regulatory functions of the board and the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies.

(b) Each written contract for services in this state of a licensed podiatrist shall contain the name, mailing address, and telephone number of the board.

(c) There shall at all times be prominently displayed in the place of business of each licensed podiatrist a sign containing the name, mailing address, and telephone number of the board and a statement informing consumers that complaints against licensees may be directed to the board.

[Added by Acts 1981, 67th Leg., p. 3014, ch. 789, § 4, eff. Sept. 1, 1981.]

CHAPTER TWELVE. EMBALMING

Art. 4582b. Funeral Directing and Embalming

Definitions

Sec. 1. A. 1. A "funeral director" as that term is used herein, is a person who for compensation engages in or conducts, or who holds himself out as being engaged, for compensation, in preparing, other than by embalming, for the burial or disposition of dead human bodies, and maintaining or operating a funeral establishment for the preparation and disposition, or for the care of dead human bodies.

2. A person who acts as a funeral director without holding a funeral director license violates this Act. This subdivision does not apply to a registered apprentice who works under the supervision of a licensed funeral director. A person who is engaged in the business of funeral directing or who professes to be engaged in that business or who holds himself or herself out to the public as a funeral director shall be a licensed funeral director.

[See Compact Edition, Volume 4 for text of B and C]

D. The term "embalmer" as herein used is a person who for compensation disinfects or preserves a dead human body, entire or in part by the use of chemical substances, fluids, or gases in the body, or by the introduction of the same into the body by vascular or hypodermic injection, or by direct application into the organs or cavities, or by any other method intended to disinfect or preserve a dead human body, or restore body tissues and structures. The placing of any such chemicals or substances on or in a dead human body by any person who is not a

licensed embalmer shall be deemed a violation of this Act, provided that this shall not apply to a registered apprentice working under the supervision of a licensed embalmer. All persons who are engaged in the business of embalming or who profess to be engaged in such business, or hold themselves out to the public as embalmers, shall be licensed embalmers.

[See Compact Edition, Volume 4 for text of E to I]

J. An "accredited school or college of mortuary science" is a school or college which maintains a course of instruction of not less than forty-eight (48) calendar weeks or four (4) academic quarters or college terms and which gives a course of instruction that includes but is not limited to the following fundamental subjects: (a) mortuary management and administration; (b) legal medicine and toxicology as it pertains to funeral directing; (c) public health, hygiene and sanitary science; (d) mortuary science, to include embalming technique, in all its aspects; chemistry of embalming, color harmony; discoloration, its causes, effects and treatment; treatment of special cases; restorative art; funeral management; and professional ethics; (e) anatomy and physiology; (f) chemistry, organic and inorganic; (g) pathology; (h) bacteriology; (i) sanitation and hygiene; (j) public health regulations; (k) other courses of instruction in fundamental subjects prescribed by the Board; and (*l*) local, state, and federal rules and laws relating to the care and disposition of dead human bodies.

[See Compact Edition, Volume 4 for text of K]

L. A "commercial embalmer" or "commercial embalming establishment" is one that embalms for licensed funeral establishments and does not sell any services or merchandise directly or at retail to the public, and shall otherwise meet the requirements of a licensed embalmer as provided in this Act. A commercial embalmer or a commercial embalming establishment may not employ an embalmer who is not licensed under this Act.

M. "Solicitation" means a direct or indirect contact with the family, next of kin, or one who has custody of a person who is deceased or near death for the purpose of securing the right to provide funeral services or merchandise for the deceased or the person near death. Provided, however, that the term "solicitation" shall not be deemed to include any attempt to secure funeral business pursuant to a permit issued under the provisions of Chapter 512, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 548b, Vernon's Texas Civil Statutes), or to include any method of advertising by publication or broadcasting.

N. "Funeral merchandise" means merchandise sold primarily for use in funeral ceremonies, for embalming, or for the care and preparation of deceased human bodies for burial, cremation, or other disposition.

O. "Funeral services" means services performed incident to funeral ceremonies or for the care and preparation of deceased human bodies for burial, cremation, or other disposition and includes embalming.

P. "Outer enclosure" means an enclosure or container placed in a grave above or around the casket and includes burial vaults, grave boxes, and grave liners.

Q. "Suitable container" means a container other than a casket that can be used to hold and transport a deceased human body.

The Board

Sec. 2. A. (1) There is hereby created the State Board of Morticians, with offices located in Austin, Texas, consisting of nine (9) members who shall be citizens of the United States and residents of the State of Texas. Five (5) members must be licensed embalmers or funeral directors in the State of Texas and each of these members must have a minimum of five (5) years, consecutively, of such experience in this state immediately preceding appointment. At least three (3) such licensed members shall be embalmers. Four (4) members must be representatives of the general public who are not regulated under this Act.

(2) The members of said Board shall be appointed by the Governor, by and with the consent of the Senate for staggered terms of six (6) years. Each member shall be subject to removal by the Governor for neglect of duty, incompetence, or fraudulent or dishonest conduct. The Governor shall remove from the Board any member whose license to practice funeral directing and/or embalming has been voided, revoked or suspended. Any vacancy in an unexpired term shall be filled by appointment of the Governor for the unexpired term. No member of the Board shall be appointed for more than one (1) full term of service.

(3) A member of the Board or an employee of the State Board of Morticians who carries out the functions of the Board may not:

(a) be an officer, employee, or paid consultant of a trade association in the funeral industry;

(b) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the funeral industry; or

(c) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the Board unless notice and an opportunity to participate is given to all parties to the proceeding, if the member or agent is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding.

(4) Members of the Board, except those members who are duly licensed embalmers or funeral directors, may not have personally, nor be related to

persons within the second degree by affinity or third degree by consanguinity who have, except as consumers, financial interests in funeral establishments as officers, directors, partners, owners, employees, attorneys, or paid consultants of the funeral establishments or otherwise.

(5) No member shall be appointed to the Board who is an officer or employee of a corporation or other business entity controlling or operating, directly or indirectly, more than three funeral establishments, if another member of the Board is also an officer or employee of the same corporation or other business entity.

(6) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the Board or serve as a member of the Board.

(7) Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(8) Each member of the Board shall be present for at least one-half of the regularly scheduled meetings held each year by the Board. The failure of a member to meet this requirement automatically removes the member from the Board and creates a vacancy on the Board.

[See Compact Edition, Volume 4 for text of B and C]

D. The Board shall elect, after thirty (30) days' written notice is given to members, a President, Vice-President, and Secretary from the members of the said Board who shall serve one (1) year, or until their successor shall be elected and qualified in cases of resignation or death. In the absence of an Executive Secretary, the Secretary shall be bonded to the State of Texas in a sum equal to the maximum annual anticipated receipts of the Board and any premium payable for such bond shall be paid from the funds of the Board; likewise, the Board will require a bond of the Executive Secretary, if any, and such bond shall be deposited with the State Auditor of the State of Texas. The President of the Board shall preside at all meetings of the Board unless otherwise ordered, and he shall exercise all duties and performances incident to the office of the President of the Board, and in his absence the Vice-President shall preside. A majority of the membership of the Board shall constitute a quorum for the transaction of business.

E. The Board shall make an annual report covering the work of the Board for the preceding fiscal year, and such report shall be filed with the Governor and shall include:

1. An itemized account of money received and expended and the purpose therefor which has been duly certified by the State Auditor;

2. The names of all duly licensed funeral directors, embalmers, and funeral establishments. A copy shall be filed with the Secretary of State for permanent record, a certified copy of which, under the hand and seal of the Secretary of State, shall be admissible as evidence in all courts; and

3. A description of the activities of the Board during the preceding fiscal year.

[See Compact Edition, Volume 4 for text of F to H]

I. Membership of the Board shall be reimbursed for necessary traveling expenses incident to attendance upon the business of the Board, and in addition thereto, each shall receive a per diem allowance of Fifty Dollars ($50) for each day actually spent by such member upon attendance to the business of the Board, not to exceed sixty (60) days within a calendar year. The Secretary, in the absence of an Executive Secretary, notwithstanding membership on the Board, shall receive and be paid a salary for the time he devotes to the business of the Board, and the amount and method of payment shall be fixed by the Board and in addition thereto, he shall receive necessary traveling expenses incurred in the performance of such duty; provided, however, he shall not be paid a per diem allowance during the time he is compensated on a salary basis; and provided that all such expenses, per diem allowance and compensation shall be paid out of the receipts of the Board. All fees and other funds received by the Board shall be deposited in the State Treasury to the credit of the General Revenue Fund. No claim for traveling expenses or per diem allowance shall be allowed or paid unless the claim be in writing and signed by the claimant under oath.

[See Compact Edition, Volume 4 for text of J to M]

N. The State Board of Morticians is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

O. The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

P. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements.

Licenses—Funeral Directors and Embalmers

Sec. 3.

[See Compact Edition, Volume 4 for text of A]

B. The minimum requirements for the issuance of licenses by this Board to practice funeral directing and/or embalming in Texas are as follows, to wit:

1. For a license to practice funeral directing: the applicant shall be found by the Board to be not less than eighteen (18) years of age, a resident of the State of Texas, having graduated from an accredited high school or passed examination prescribed by the Texas Education Agency, having graduated from an accredited school or college of mortuary science approved by this Board, having served as an apprentice for at least one (1) year under the personal supervision and instruction of a licensed funeral director and having satisfied the Board through written examination as to his proficiency by examination on the subjects of: (a) the art and technique of funeral directing; (b) signs of death; (c) the manner by which death may be determined; (d) sanitation; (e) hygiene; (f) mortuary management and mortuary law; (g) business and professional ethics; (h) laws applicable to vital statistics pertaining to dead human bodies; (i) local, state, and federal rules and laws relating to the preparation, transportation, care, and disposition of dead human bodies; and such other subjects as may be taught in a recognized school or college of mortuary science. Not later than the 30th day after the day on which a person completes an examination administered by the Board, the Board shall send to the person his examination results. If requested by a person who fails the examination, the Board shall send to the person not later than the 30th day after the day on which the request is received by the Board an analysis of the person's performance on the examination.

2. For a license to practice embalming: the applicant shall have been found by the Board to be not less than eighteen (18) years of age, a resident of the State of Texas, having graduated from an accredited high school or passed examination prescribed by the Texas Education Agency, having graduated from an accredited school or college of mortuary science approved by this Board, having served as an apprentice for one (1) year under the personal supervision of a licensed embalmer, and having satisfied the Board as to his proficiency through written and practical examination on the subjects of: (a) anatomy of the human body; (b) the cavities of the human body; (c) the arterial and venous system of the human body; (d) blood and discoloration; (e) bacteriology and hygiene; (f) pathology; (g) chemistry and embalming; (h) arterial and cavity embalming; (i) restorative art; (j) disinfecting; (k) embalming special cases; (*l*) contagious and infectious diseases; (m) mortuary management; (n) care, preservation, transportation and disposition of dead human bodies; (*o*) laws applicable to vital statistics pertaining to dead human bodies; (p) sanitary science; (q) local, state, and federal rules and laws relating to the care and disposition of dead human bodies; and such other subjects as may be taught in a recognized school or college of mortuary science. Not later than the 30th day after the day on which a person completes an examination administered by the Board, the Board shall send to the person his examination results. If requested in writing by a person who fails the examination, the Board shall send to the person not later than the 30th day after the day on which the request is received by the Board an analysis of the person's performance on the examination.

[See Compact Edition, Volume 4 for text of C]

D. It shall be the duty of the Board to prescribe and supervise the course of instruction received by an apprentice while serving his or her apprenticeship, consistent with the following requirements to establish such an apprenticeship registration procedure:

1. Apprenticeship for embalmer: A license to practice the science of embalming shall not be issued unless and until the applicant therefor has served an apprenticeship period of not less than twelve (12) consecutive months under the personal supervision and instruction of a licensed embalmer and has successfully completed all requirements of apprenticeship. The only exception to this requirement shall be in the case of an applicant under reciprocity.

(a) Any person, eighteen (18) years of age or more, who desires to practice the science of embalming in this state, files application therefor, meets the requirements of the law and this Board, and possesses such qualification to enter into apprenticeship training, may be registered as an apprentice. Apprenticeship for a license to practice the science of embalming must be served by the person after graduation from a school or college of mortuary science. Applicant shall pay a fee not to exceed Ten Dollars ($10) at the time he requests such apprenticeship registration.

(1) An applicant for a license to practice the science of embalming who attains a grade of 70% or higher on the written examination given by the Board upon payment of a fee not to exceed Ten Dollars ($10) therefor, shall be registered as an apprentice within six (6) months of such examination.

(b) Each registered apprentice embalmer shall be issued a certificate of apprenticeship or other means of apprenticeship identification by the Board to be served in the State of Texas. During the period of apprenticeship he shall assist in embalming a minimum of sixty (60) dead human bodies, six (6) of which bodies the

apprentice shall embalm without aid but in the immediate presence and under the personal supervision of an embalmer duly and currently licensed in the State of Texas. No more than two (2) apprentices may receive credit due for work on any one body.

(c) An apprentice embalmer must report within ten (10) days after the end of each month each separate case handled by him or with which he has assisted in handling. Each such report shall be certified by the licensee under whom the apprentice performed his work. Throughout the period of apprenticeship, the apprentice shall report on at least one (1) such case of embalming each calendar month, within the month. In any month in which he did not embalm at least one (1) case under the direction of a licensed embalmer, a report shall be made to the Board notwithstanding.

2. Apprentice for Funeral Director: The term of apprenticeship for a funeral director's license shall be a period of not less than twelve (12) months, and may be served concurrently with apprenticeship for an embalmer's license; however, apprenticeship must be served in twelve (12) consecutive months. A person desiring to become an apprentice funeral director shall make application to the Board on a form provided by the Board, and if the Board desires, he shall appear before at least one (1) member of the Board, or a designated representative thereof, for approval of his application, subject to review of it by the entire Board. Applicant must be not less than eighteen (18) years of age and have completed the educational requirements prescribed for a funeral director, except an applicant for a funeral director's license may elect to serve apprenticeship therefor in like manner to that of one who has applied for a license to practice the science of embalming, by serving one (1) year of apprenticeship prior to completing a course of study in funeral directing prescribed by the Board and graduating from a school of embalming or college of mortuary science. The application for registration shall be sworn to and accompanied by a fee of not to exceed Ten Dollars ($10). If the application is accepted, applicant will be issued a certificate of apprenticeship registration upon determination by the Board that his qualifications are satisfactory.

(a) An applicant for a funeral director's license and the examination therefor who has not completed one (1) year of apprenticeship prior to graduation from a school of embalming or college of mortuary science shall be admitted to apprenticeship only in the event he shall have attained a grade of 70% or higher on the written and practical examination given by the Board, and the payment of a fee of not to exceed Ten Dollars ($10) therefor, whereupon he shall be registered as an apprentice. Provided, however, applicant must register as an apprentice within six (6) months of such examination.

(b) An apprentice funeral director must report within ten (10) days after the end of each month each separate case with which he has assisted in handling. Each such report shall be certified to by the licensee under whom the apprentice performed the work. Throughout the period of apprenticeship the apprentice shall report on at least one (1) such case each calendar month, within the month. In any month within which he did not assist a funeral director in handling a funeral, a report shall be made to the Board notwithstanding.

(c) During the course of apprenticeship each apprentice shall assist a licensed funeral director in this state to prepare, other than by embalming, and to make final disposition of not less than sixty (60) dead human bodies, six (6) of which bodies the apprentice shall handle after the first six months of the apprenticeship. No more than two (2) apprentices may receive credit for work done on any one body.

3. Annual renewal apprenticeship certificate: Each certificate of apprenticeship issued by the Board to an apprentice embalmer or apprentice funeral director must be renewed on the first day of January of each year and will be renewed upon payment by the apprentice of a renewal fee not to exceed Ten Dollars ($10), provided the apprentice has observed the rules and regulations of the Board with respect to his apprenticeship. Notice shall be mailed, during the month of December each year, to each registered apprentice at his last known address, notifying him that the renewal fee is due. If the renewal fee is not paid on or before the 31st day of January in the year in which it became due, a penalty in the sum of not to exceed Ten Dollars ($10) will be added to the renewal fee of each certificate when paid. Thirty (30) days after the grace period as above provided, if said annual renewal fee and penalty still remain unpaid, it shall be the duty of the Board, acting through its Secretary, to suspend his certificate for nonpayment of the annual renewal fee and to notify such apprentice of such suspension by registered mail, addressed to his last known address. If the said renewal fee and penalty is not then paid within ninety (90) days from the date of such notice of suspension, the Board shall then cancel such certificate. Provided, however, after an apprentice certificate has been cancelled, the apprentice may apply for reinstatement within eighteen (18) months from the date such apprentice certificate was cancelled and the Board may reinstate said apprentice provided he meets all other requirements of the Board. It is provided that the registration fee of any apprentice who is actively engaged in the military service of the United States may be remitted for the duration of such service or for such fees and such time as the Board may deem advisable upon presentation of proper evidence required by the Board.

3a. The board by rule shall adopt a system under which certificates expire on various dates during the year. The date for sending notice that payment is due, the dates of the grace period, the date on which penalty attaches, and the date for suspension due to nonpayment shall be adjusted accordingly. For the year in which the certificate expiration date is changed, certification fees payable on January 1 shall be prorated on a monthly basis so that each certificate holder shall pay only that portion of the certification fee which is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date the total renewal fee is payable.

4. Notification of the Board upon entry into apprenticeship: When an apprentice enters the employ of a licensed embalmer or funeral director, he shall immediately notify the Board the name and place of business of the licensed embalmer or funeral director whose service he has entered and the name of the funeral director or embalmer under whom he will train, and such notification shall be signed by the embalmer or funeral director in each case. If at any time thereafter such apprentice leaves the employ of the licensed embalmer or funeral director whose services he has entered, the said licensed embalmer or funeral director shall give to such apprentice an affidavit showing the length of time he has served as an apprentice with him and the number of cases handled while so employed; the original of said affidavit shall be filed with the Board and made a matter of record, and a copy shall be furnished to the apprentice. The Board shall furnish report forms to be used by each apprentice.

(a) Any apprentice registration shall be cancelled, and the applicant required to re-register, including paying the required fees, for failure to pass the Board's examination of such apprentice after only part of the apprenticeship has been completed. Provided, however, such applicant shall be given credit for apprenticeship time served under the cancelled license in any new registration.

5. Certificate of Apprenticeship may be suspended or revoked as provided and set forth in Section 3, subsection H.

E. Any person engaged or desiring to engage in the practice of embalming or funeral directing in this state, in connection with the care and disposition of dead human bodies, shall make written application to the Board for a license accompanying same with a fee not to exceed Fifty Dollars ($50). The license or licenses when issued shall be signed by a majority of the Board and shall authorize the licensee to practice the science of embalming and/or funeral directing. All licenses shall be registered in the office of the County Clerk in any county in which the holder thereof resides and practices embalming and/or funeral directing and shall be displayed conspicuously in the place of business. Every licensed embalmer and/or funeral director who desires to continue his practice shall biennially pay to the Secretary of the said Board a fee not to exceed Forty Dollars ($40) for the renewal of each funeral director's license and each embalmer's license. Said license shall become due and payable biennially on the 31st day of May, and the Board will give written notice on or before April 1st, of each year that the license fees are due and payable.

When a licensee under this Act shall fail to pay his biennial registration fee, it shall be the duty of the Board to notify such licensee at his last known address that his biennial registration fee is due and unpaid and that a penalty equal to the amount of the registration fee has been added. If such fee and penalty are not paid within thirty (30) days after notification by regular mail, it shall be the duty of the Board to suspend the license and notify the licensee by certified mail, return receipt requested, of such suspension. Ninety (90) days after the Board shall have declared a license suspended, as provided herein, the license shall be automatically cancelled and the Board may thereafter refuse to reinstate the licensee until the applicant has passed a regular examination for license as provided in this Act. If any license issued under this Act shall be lost or destroyed, the holder of any such license may present his application for duplicate license to the State Board of Morticians, on a form to be prescribed by the Board, together with his affidavit of such loss or destruction, and that he is the same person to whom such license was issued, and such other information concerning its loss or destruction as the State Board of Morticians shall require, and shall, upon payment of a fee not to exceed Ten Dollars ($10), as determined by the Board, be granted a duplicate license. The Board shall adopt rules to carry out the biennial licensing system.

1. Any license that has been cancelled, suspended or lapsed for a period of five (5) years or more may be reinstated only after the applicant shall have passed a written and practical examination by the Board on embalming and/or a written examination on funeral directing.

2. The board by rule shall adopt a system under which licenses expire on various dates during the year. All dates for sending notice regarding payment of fees and dates for license suspension for nonpayment shall be adjusted accordingly. For the year in which the license expiration date is changed, license fees payable on May 31 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

F. (1) On a reciprocal basis with other states, countries, or territories the Board may issue, without

examination, a license to an applicant who has a corresponding certificate or license issued by another state, country, or territory having standards for the license that are at least substantially equivalent to those of this state and who pays a fee of Fifty Dollars ($50). The person's application shall be accompanied by an affidavit made by the President or Secretary of the Board of Mortician Examiners which issued the license, or by a duly constituted registration officer of the state, country, or territory by which the certificate or license was granted, and on which the application for registration in Texas is based, reciting that the accompanying certificate or license has not been cancelled, suspended or revoked, and that the statement of the qualifications made in the application for a license in Texas is true and correct. Applicants for a license under the provisions of this Act shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of such application, stating that the license, certificate, or authority under which the applicant practiced as a funeral director or embalmer in the state, country, or territory from which the applicant removed, was at the time of such removal in full force and effect and not cancelled or suspended or revoked. Said application shall also state that the applicant is the identical person to whom the said certificate, license, or commission was issued, and that no proceeding has been instituted against the applicant for the cancellation, suspension or revocation of such certificate or license in the state, country, or territory in which the same was issued; and that no prosecution is pending against the applicant in any state or federal court for any offense which, under the laws of the State of Texas, is a felony, or is a misdemeanor related to the practice of embalming or funeral directing.

(2) Licenses granted under this subsection shall be on the following basis: Before a license is granted, the applicant shall receive a temporary permit good for one (1) year from date of issuance by the Board. At the end of one (1) year, the holder of said temporary permit shall again be considered by the Board, and if his application for license has been maintained and he meets all other requirements, the Board may grant said applicant a license.

[See Compact Edition, Volume 4 for text of G]

H. The State Board of Morticians may seek appropriate injunctive relief against a funeral establishment, licensed embalmer, or funeral director who fails to comply with any provision of this Act. This Act does not affect any remedy or enforcement power under other laws. The State Board of Morticians may revoke, suspend, or place on probation any licensed funeral director and/or embalmer, or apprentice and may refuse to license or admit persons to examination for any of the following reasons all of which are offenses as provided in Section 6A of this Act:

1. The presentation to the Board of any license, certificate, or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination;

2. Conviction of a crime of the grade of a felony or of a misdemeanor that is related to the practice of embalming or funeral directing;

3. Being unfit to practice as a funeral director and/or embalmer by reason of insanity and having been adjudged by a court of competent jurisdiction to be of unsound mind;

4. The use of any statement that misleads or deceives the public, including but not limited to false or misleading statements regarding (1) any legal, religious, or cemetery requirement for funeral merchandise or funeral services, (2) the preservative qualities of funeral merchandise or funeral services in preventing or substantially delaying natural decomposition or decay of human remains, (3) the airtight or watertight properties of a casket or outer enclosure, or (4) representations as to licensed personnel in the operation of a funeral establishment;

5. The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use any license, certificate, or transcript of license or certificate, in or incident to an application to the Board of Morticians for license to practice as a funeral director and/or embalmer;

6. Altering, with fraudulent intent, any funeral director and/or embalmer license, certificate, or transcript of license or certificate;

7. The use of any funeral director and/or embalmer license, certificate, diploma, or transcript of any such funeral director and/or embalmer license, certificate, or diploma, which has been fraudulently purchased, issued, counterfeited, or materially altered;

8. The impersonation of, or acting as proxy for, another in any examination required by this Act for a funeral director and/or embalmer license;

9. The impersonation of a licensed funeral director or embalmer as authorized hereunder, or permitting, or allowing another to use his license, or certificate to practice as a funeral director or embalmer in this state;

10. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a decedent, in proximity to a deceased person whose body has not yet been interred or otherwise disposed of; or the indecent exposure of a dead human body;

11. Taking custody of, embalming, or refusing to promptly surrender a dead human body to a person or his agent authorized to make funeral arrangements for the deceased or embalming a body without the express written or oral permission of a person authorized to make funeral ar-

rangements for the deceased or without making a documented reasonable effort over a period of at least two (2) hours to obtain the permission;

12. Wilfully making any false statement on a certificate of death;

13. Employment directly or indirectly of any apprentice, agent, assistant, embalmer, funeral director, employee, or other person on a part or full-time basis, or on commission, for the purpose of soliciting individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director or embalmer;

14. Presentation of false certification of work done as an apprentice on apprenticeship records;

15. Unfitness by reason of present drug addiction;

16. Whenever a licensee, apprentice, or any other person, whether employee, agent or representative, or one in any manner associated with a funeral establishment shall engage in solicitation as defined in this Act;

17. Failure by the Funeral Director in Charge to provide licensed personnel for attendance, direction, or personal supervision for a "first call," as that term is defined in this Act;

18. Failure by a funeral director or embalmer to inform customers by a written notice on or near the casket of the different colors in which the three least expensive caskets displayed are available; or failure by the funeral director or embalmer to provide a casket in an available color requested by a customer if the customer has expressed an intent to purchase the casket and if the casket can be obtained from regular commercial suppliers under normal delivery conditions within twelve (12) hours;

19. Performing acts of funeral directing or embalming, as those terms are defined in this Act, which are outside the licensed scope and authority of the licensee;

20. Engaging in fraudulent or deceptive conduct in providing funeral services or merchandise to a consumer;

21. Statement or implication by a funeral director or embalmer that a customer's concern with the cost of any funeral service or funeral merchandise is improper or indicates a lack of respect for the deceased;

22. Failure by any person arranging for funeral services or merchandise to make available to the customer at the time of discussion or selection of funeral services or funeral merchandise a printed or typewritten list of the retail price of at least the following items, provided they are available for purchase through the establishment: (a) transferring the deceased to the funeral home; (b) embalming; (c) use of facilities for viewing; (d) use of facilities for funeral ceremonies; (e) hearses; (f) limousines; (g) the itemized services of the funeral establishment staff; (h) caskets; (i) outer enclosures; and which contains the name, address, and telephone number of the funeral establishment, an effective date for the prices, and a notice which reads, "You may choose only the items you desire. You will be charged only for the items you use. If you have to pay for any items you did not specifically ask for, we will explain the reason in writing on the memorandum of agreement. Please note that there may be charges for such items as cemetery fees, flowers, and newspaper notices." The person arranging the funeral service shall make known to the customer the availability of the list and shall provide the list, which the customer may keep, before any contractual agreement between the parties;

23. Failure of any person arranging for funeral services or merchandise to provide each customer a written memorandum itemizing the cost of funeral services and funeral merchandise selected by the customer as enumerated in the price list, the requirements of which are set forth in Section 3, Subsection H(22) of this Act; each amount paid or owed to another on behalf of the customer; each fee for the cost of advancing funds or becoming indebted to another on behalf of the customer; and including the name, address, and telephone number of the funeral establishment and the following notice: "Charges are only for those items that are used. If the type of funeral selected requires extra items, we will explain the reasons in writing on this memorandum." Provided, however, that any person arranging for funeral services on merchandise may satisfy the itemization requirements of this Subsection H(23) by providing prices to the purchaser on a component or unit pricing basis that provides a discount to the purchaser if any component or unit is declined or if all components or units are selected. The written memorandum shall also include the name, mailing address, and telephone number of the State Board of Morticians and a statement indicating that complaints can be directed to the Board;

24. Restricting, hindering, or attempting to restrict or hinder (1) the advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers, or (2) agreements for funeral services between any consumer or group of consumers and funeral directors or embalmers;

25. Failure to retain and make available to the State Board of Morticians, upon request, copies of all price lists, written notices, and memoranda of agreement required by this article for two years after the date of their distribution or signing.

[See Compact Edition, Volume 4 for text of I]

J. Repealed by Acts 1979, 66th Leg., p. 1249, ch. 592, § 11, eff. Sept. 1, 1979.

Funeral Establishments

Sec. 4.

[See Compact Edition, Volume 4 for text of A and B]

C. Each funeral establishment shall be required to have a physical plant, equipment and personnel consisting of the following:

1. Some facilities in which funeral services may be conducted;

2. A physical plant which meets building standards and fire safety standards of the state and of the municipality in which the establishment is located;

3. Access to rolling stock consisting of at least one motor hearse;

4. A preparation room containing an operating table, sewer facilities, hot and cold running water, and other facilities necessary to comply with the sanitary code of the state and the municipality in which the room is located;

5. A display containing sufficient merchandise to permit reasonable selection, including five (5) or more adult caskets, provided that the least expensive casket offered for sale by a funeral establishment must be displayed in the same general manner as other caskets are displayed;

6. Sufficient licensed personnel who will be available to conduct the operation of the funeral establishment;

7. A physical plant located at a fixed place, and not located on any tax-exempt property or cemetery; and

8. A physical plant which meets the health standards or health ordinances of the state and of the municipality in which the establishment is located.

It is expressly provided, however, that an establishment which functions solely as a commercial embalmer, as that term is defined in this Act, shall have a commercial embalmers establishment license, but shall not be required to meet the requirements of subsections 1 and 5 of this paragraph C.

D. 1. The Board may initiate formal complaint or other action against a funeral establishment or in regard to the license of a funeral establishment only upon the following grounds:

[See Compact Edition, Volume 4 for text of 1(a) to 1(e)]

2. As to asserted violations of provisions of this Section, the Board shall have the following powers, rights and duties:

(a) The Board may, in any case, require a sworn statement setting forth matter complained of as a condition to taking further action.

(b) The Board shall cause an investigation to be made whenever a complaint is filed with or by the Board.

(c) As to the licenses of funeral establishments, except when the accused admits a violation and agrees in writing to a judgment of the Board suspending or revoking the license in question or placing the accused on probation, the Board shall have no power or authority to suspend or revoke the license of the accused. However, the Board shall have the right to initiate a civil action in a District Court in the county in which the accused resides for the purpose of seeking a revocation or suspension of such license or probationary action or fine all as hereinafter provided.

If the Board shall be of the opinion that the license of the accused should be revoked or suspended for a period not to exceed three years, and if the accused will accept a decision of the Board to such effect, it shall prepare a formal judgment and submit the same to him; and upon his agreement to its entry, evidenced by memorandum in writing signed and acknowledged by him, the Board shall enter judgment accordingly and the same shall have the force and effect of a judgment of the District Court of the county of the residence of the accused. A copy of the judgment, together with a copy of the complaint, shall be mailed to the clerk of the District Court of the county of residence of the accused for entry in the minutes of the court.

(d) The term "Accusation" or "Complaint" shall embrace all complaints brought before the Board. By the terms "civil suit," "court action" or "formal complaint" is meant the pleading by which disciplinary action is instituted by the Board in a District Court of this state.

The Texas rules of civil procedure shall govern the procedure in all proceedings under Civil Actions (Formal Complaint).

The District Attorney or the County Attorney of the county of residence of the accused licensee as defendant, or the Attorney General or such counsel as the Board may designate shall represent the Board as it shall determine.

The formal complaint shall be the pleading by which the proceeding is instituted. The formal complaint shall be filed in the name of the Texas State Board of Morticians as plaintiff against the accused licensee as defendant and shall set forth the violation with which the defendant is charged. The prayer may be that the defendant "be placed on probation or his (its) license suspended or revoked or he (it) be fined as the facts shall warrant."

The answer of the defendant to the formal complaint shall either admit or deny each allegation of the petition, except where the defendant is unable to admit or deny the allegation, in which case defendant shall set forth the reasons he (it) cannot admit or deny.

Proceedings under formal complaint shall be entitled to preferred setting at the request of either party.

If the court shall find from the evidence in a case tried without a jury, or from the verdict of the jury, if there be one, that the defendant is guilty of no violation, he shall enter judgment so declaring and dismiss the complaint; but if he shall find the defendant guilty, he shall determine whether the party shall be (a) placed under probation (in which case he shall specify the terms thereof), (b) the license suspended (in which case he shall fix the term of suspension), (c) the license revoked, or (d) fined (in which case he shall set the amount thereof); and he shall enter the judgment accordingly. If the judgment be one finding the defendant guilty as aforesaid, it shall direct transmittal of certified copies of the judgment and complaint to the Secretary of the Board of Morticians; and the latter shall make proper notation on the membership rolls.

At any time after the expiration of one year from the date of final judgment or revocation of a license, such party may petition the District Court of the county of his residence for reinstatement. Notice of such action shall be given to the Secretary of the State Board of Morticians.

The Board shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Section. Said action for an injunction shall be in addition to any other action, proceeding, or remedy recognized by law. The Board shall be represented by counsel designated by it, or, by the Attorney General and/or County and District Attorney of this state.

Any fine imposed on the accused through judicial proceedings shall be no less than Two Hundred Dollars ($200) nor more than Two Thousand Dollars ($2,000). Any fines collected by the court shall be deposited in the General Fund of the State of Texas.

[See Compact Edition, Volume 4 for text of 4E to 5]

Revocation, Cancellation or Suspension of Licenses of Funeral Directors, Embalmers and Apprentices

Sec. 6. The State Board of Morticians shall have the right to cancel, revoke, or suspend or place on probation the license of any individual person licensed under this Act as provided by subparagraph H of Section 3 above.

Proceedings under this Section shall be initiated by filing charges with the State Board of Morticians in writing and under oath. Said charges may be made by any person or persons. The President of the State Board of Morticians shall set a time and place for hearing. Upon application, the Board may reissue a license to practice as a funeral director or embalmer to a person whose license has been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation, and shall be made in such a manner and form as the Board may require.

The State Board shall have the power to appoint committees from the membership. The duties of any committees appointed from the State Board of Morticians membership may consider such matters pertaining to the enforcement of this Act as shall be referred to such committees, and they shall make recommendations to the State Board of Morticians with respect thereto. The State Board of Morticians shall have the power, and may delegate the said power to any committee, to issue subpoenas,[1] duces tecum, and to compel the attendance of witnesses, the production of books, records and documents, to administer oaths, and to take testimony concerning all matters within its jurisdiction. The determination shall be founded on sufficient legal evidence to sustain it. The State Board of Morticians shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The State Board of Morticians shall be represented by the Attorney General and/or the County or District Attorneys of this state, or counsel designated and empowered by the Board. Before entering any order cancelling, suspending, refusing to renew, or revoking a license to practice as a funeral director and/or embalmer, the Board shall hold a hearing in accordance with the procedure as set forth in this Act.

The provisions of this Section shall not apply to funeral establishments or licenses pertaining to funeral establishments.

[1] So in enrolled bill.

Offenses

Sec. 6A. A person commits an offense if the person:

(1) acts or holds himself out as a funeral director, embalmer, or apprentice, as those terms are defined in this Act, without being properly licensed under this Act or shall make a "first call" without the authorization or supervision as provided in Section 1C of this Act;

(2) is a licensed funeral director or embalmer and engages in a funeral practice that is grounds for suspension or revocation of the person's license.

[See Compact Edition, Volume 4 for text of 6B]

Administrative Procedure and Texas Register Act

Sec. 6C. (a) A person who is denied a license or certificate by the Board is entitled to a hearing before the Board in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), if the person requests the hearing in writing.

(b) A proceeding conducted by the Board relating to the suspension or revocation of a license or certificate is governed by the Administrative Procedure and Texas Register Act. Judicial review of the

proceeding is by trial de novo and is governed by the Administrative Procedure and Texas Register Act.

Complaints

Sec. 6D. (a) The Board shall investigate and keep an information file about each complaint received by the Board relating to a funeral director, embalmer, apprentice, or funeral establishment.

(b) The Board shall include in each information file a description of the complaint, the date on which the complaint was filed, the name of the complainant, a description of any information obtained by the Board after investigating the complaint, a description and date of any formal actions taken by the Board relating to the complaint, a description of the current status of the complaint, and other information that the Board considers appropriate.

(c) The Board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.

(d) The information file, except for information in the file obtained by the Board after investigating the complaint, is public information. The information obtained after investigating the complaint is not public information.

(e) If a person files a complaint with the Board relating to a licensed funeral director, embalmer, or funeral establishment, the Board shall furnish to the person an explanation of the remedies that are available to the person under this Act and information about appropriate state or local agencies or officials with which the person may file a complaint.

(f) The Board shall employ at least one person who is a licensed private investigator under the laws of this state and who is not regulated under this Act. The private investigator may investigate complaints of consumer interest and other complaints received by the Board.

Consumer Information

Sec. 6E. (a) The Board shall prepare information of consumer interest explaining matters relating to funerals, describing the regulatory functions of the Board, and describing the Board's procedures by which consumer complaints are filed with and resolved by the Board.

(b) The Board shall disseminate the information to the general public.

Ex Parte Communications

Sec. 6F. The members and employees of the Board are subject to the provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), relating to ex parte communications.

Penalty

Sec. 7. (a) An offense under Section 6A of this Act is a Class B misdemeanor.

(b) The Board may file a complaint with the appropriate governmental authorities to begin prosecution of a person who commits an offense under Section 6A of this Act. The State Board of Morticians or any adversely affected party may sue a funeral establishment or licensed embalmer or funeral director who fails to comply with any provision of this Act for appropriate injunctive relief. This Act does not affect a remedy or enforcement power under other laws. Any person who practices as a funeral director, embalmer or apprentice in violation of any provisions of this Act shall be fined not less than Fifty Dollars ($50) nor more than Five Hundred Dollars ($500) or shall be imprisoned in the county jail for not more than thirty (30) days, or both. Each day of such practice shall constitute a separate offense.

[See Compact Edition, Volume 4 for text of 8]

[Amended by Acts 1977, 65th Leg., p. 859, ch. 324, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.013, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1233, ch. 592, §§ 1 to 8, eff. Sept. 1, 1979.]

Sections 9 and 10 of the 1979 amendatory act provided:

"Sec. 9. (a) A person holding office as a member of the State Board of Morticians on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall make initial appointments of three public members, one for a term expiring on January 31, 1981, one for a term expiring on January 31, 1983, and one for a term expiring on January 31, 1985. The additional public member shall be appointed upon expiration of the term of one incumbent funeral industry member on May 31, 1981.

"(c) The terms of office of the appointees who fill the offices of incumbent members whose terms expire on May 31, 1981, and May 31, 1983, shall expire on January 31, 1987, and January 31, 1989, respectively.

"Sec. 10. This board shall promulgate no rule or regulation requiring embalming. No other state agency shall promulgate or enforce a rule or regulation requiring embalming without a finding that such rule or regulation is necessary to protect the public health."

CHAPTER THIRTEEN. ANATOMICAL BOARD

Article

4583a. Application of Sunset Act.
4590–2a. Kidney Donation by Mentally Retarded Person.
4590–4. Justice of the Peace or Medical Examiner; Permitting Removal of Corneal Tissue.
4590–5. Eye Enucleation for Anatomical Donations.

Art. 4583. Board and Duties

The professor of anatomy and the professor of surgery of each of the medical schools or colleges, and two professors from each chiropractic school or college now incorporated, and of the several medical, chiropractic, and dental schools and colleges which may hereafter be incorporated in this State are constituted a board, to be known as the Anatomical Board of the State of Texas, for the distribution and delivery of dead human bodies, hereinafter described, to and among such institutions as, under the provisions of this law, are entitled thereto. The board shall have power to establish rules and regulations for its government, and to appoint and remove proper officers of such board, and shall keep full and complete minutes of its transactions. Records sufficient for identification shall also be kept, under its direction, of all bodies received and distributed by

said board and of persons to whom the same may be distributed, which minutes and records shall be open at all times to the inspection of each member of said board and of any district attorney or county attorney of this State.
[Amended by Acts 1977, 65th Leg., p. 147, ch. 72, § 1, eff. April 25, 1977.]

Art. 4583a. Application of Sunset Act

The Anatomical Board of the State of Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985.
[Added by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.112, eff. Aug. 29, 1977.]
[1] Article 5429k.

Art. 4585. Distribution of Bodies to Institutions

The board, or their duly authorized agents, may take and receive such bodies so delivered as aforesaid, and shall, upon receiving them, distribute and deliver them to and among the schools, colleges, physicians and surgeons aforesaid, including chiropractic colleges, in the manner following: Those bodies needed for lecture and demonstration in the said incorporated schools and colleges shall first be supplied; the remaining bodies shall then be distributed proportionately and equitably, the number assigned to each to be based upon the number of students receiving instruction or demonstration in normal or morbid anatomy and operative surgery, which number shall be certified by the dean of each school or college to the board at such times as it may direct. Instead of receiving and delivering said bodies themselves through their agent or servant, the said board may, from time to time, either directly or by their designated officer or agent authorize physicians and surgeons to receive them, and the number which each shall receive.
[Amended by Acts 1977, 65th Leg., p. 147, ch. 72, § 2, eff. April 25, 1977.]

Art. 4590–2. Anatomical Gift Act

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2.

[See Compact Edition, Volume 4 for text of 2(a) to 2(h)]

(i) "Eye Bank" means a nonprofit corporation, chartered under the laws of Texas, to obtain, store, and distribute donor eyes to be used by ophthalmologists for corneal transplants, for research, or for other medical purposes.

[See Compact Edition, Volume 4 for text of 3]

Persons who May Become Donees, and Purposes for Which Anatomical Gifts May be Made

Sec. 4. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

[See Compact Edition, Volume 4 for text of 4(1)]

(2) any accredited medical, chiropractic, or dental school, college or university for education, research, advancement of medical or dental science or therapy; or

[See Compact Edition, Volume 4 for text of 4(3)]

(4) any individual specified by a licensed physician for therapy or transplantation needed by him; or

(5) any eye bank whose medical activities are directed by a licensed physician or surgeon.

[See Compact Edition, Volume 4 for text of 5 to 8]

[Amended by Acts 1977, 65th Leg., p. 28, ch. 12, §§ 5, 6, eff. March 10, 1977; Acts 1977, 65th Leg., p. 148, ch. 72, § 3, eff. April 25, 1977.]

Art. 4590–2a. Kidney Donation by Mentally Retarded Person

Sec. 1. (a) "Mentally retarded" as used in this Act means a person who is mentally retarded pursuant to the terms and provisions of the Mentally Retarded Persons Act of 1977 (Article 5547–300, Vernon's Texas Civil Statutes).

(b) The guardian of the person of a mentally retarded ward, 12 chronological years of age or more, may petition a district court which has jurisdiction of the guardian for an order authorizing said ward to donate one of his or her two kidneys to a father, mother, son, daughter, sister, or brother as hereinafter set out.

Sec. 2. (a) The court shall hold a hearing on the petition. An attorney ad litem and a guardian ad litem, neither of which shall be related to the ward within the second degree by consanguinity, shall be appointed by the court to represent the interest of the prospective donor.

(b) Petitioners shall have the burden of establishing good cause for the kidney donation by establishing the statutory prerequisites set out herein. The court may enter an order authorizing the kidney donation if it is established that: (1) the guardian of the prospective donor consents to the donation; (2) the prospective donor assents to the kidney transplant; (3) absent the transplant the donee will soon die or suffer severe and progressive deterioration; and with the transplant the donee will probably benefit substantially; (4) there are no medically preferable alternatives to a kidney transplant for the donee; (5) the risks of the operation and the long-term risks are minimal to the donor, and the donor will not likely suffer psychological harm; and (6) the transplant will promote the proposed donor's best interests.

(c) Within seven days of the hearing, the court shall conduct an "in chambers" interview with the mentally retarded ward, out of the presence of the guardian, to determine whether the prospective do-

nor assents to the donation. If the court deems it necessary, it may order a comprehensive diagnosis and evaluation, described in Section 3(24), Mentally Retarded Persons Act of 1977 (Article 5547–300, Vernon's Texas Civil Statutes), to be performed to aid the court in evaluating the prospective donor's capacity to agree to the donation.

(d) In order to secure a complete record, the hearing shall be adversary in nature. The attorney ad litem shall advocate the ward's interest, if any, in not being a donor.

(e) Upon request, any party to a proceeding instituted pursuant to this Act shall be entitled to a preferential setting.

[Acts 1979, 66th Leg., p. 886, ch. 406, §§ 1, 2, eff. Sept. 1, 1979.]

Sections 3 and 4 of the 1979 Act provided:

"Sec. 3. This Act takes effect on September 1, 1979.

"Sec. 4. If any sentence, paragraph, or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other sentence, paragraph, or section hereof, and the legislature hereby expressly dictates that it would have passed such remaining sentences, paragraphs, and sections despite such invalidity."

Art. 4590–4. Justice of the Peace or Medical Examiner; Permitting Removal of Corneal Tissue

Permission to Take Tissue

Sec. 1. On a request from an authorized official of a nonprofit corporation chartered under the laws of Texas, to obtain, store, and distribute donor eyes to be used by those licensed to practice medicine for corneal transplants, for research, or for other medical purposes and whose medical activities are directed by one licensed to practice medicine in Texas, for corneal tissue, the justice of the peace or the medical examiner may permit the taking of corneal tissue if:

(1) the decedent from whom the tissue is to be taken died under circumstances requiring an inquest by the justice of the peace or the medical examiner;

(2) no objection by a person listed in Section 2 of this Act is known by the justice of the peace or the medical examiner; and

(3) the removal of corneal tissue will not interfere with the subsequent course of an investigation or autopsy, or alter the postmortem facial appearance.

Objection to Taking

Sec. 2. Objection may be made known to the justice of the peace or the medical examiner by the following persons:

(1) the decedent's spouse;

(2) if no spouse, the decedent's adult children;

(3) if no adult children or spouse, the decedent's parents; or

(4) if no parents, adult children, or spouse, the decedent's brothers or sisters.

Liability for Damages

Sec. 3. The justice of the peace, the medical examiner, and the eye bank official are not liable for damages in a civil action brought by a person listed in Section 2 of this Act who has not objected prior to the removal of the corneal tissue on any theory of civil recovery based on a contention that the consent of plaintiff was required prior to the removal of corneal tissue as authorized by this Act.

[Acts 1977, 65th Leg., p. 26, ch. 11, §§ 1 to 3, eff. March 10, 1977.]

Art. 4590–5. Eye Enucleation for Anatomical Donations

Persons Who May Enucleate Eye as Anatomical Gift

Sec. 1. Only the following persons may enucleate an eye when an eye is an anatomical gift:

(1) a licensed physician or surgeon;

(2) a licensed doctor of dental surgery or medical dentistry;

(3) a licensed embalmer; or

(4) a technician supervised by a physician or surgeon.

Eye Enucleation Course

Sec. 2. All persons, except licensed physicians, who perform eye enucleations must complete a course in eye enucleation that is taught by an ophthalmologist as defined in this Act and must possess a certificate showing the fulfillment of this requirement.

Requisites of Course

Sec. 3. The course must include anatomy and physiology of the eye, instruction in maintaining a sterile field during the procedure, use of the appropriate instruments, and sterile procedures for removing the corneal button and preserving it in a preservative fluid.

"Ophthalmologist" Defined

Sec. 4. "Ophthalmologist" means for the limited purpose of this Act one licensed to practice medicine who specializes in the treatment of diseases of the eye.

[Acts 1977, 65th Leg., p. 27, ch. 12, §§ 1 to 4, eff. March 10, 1977.]

CHAPTER SIXTEEN. BASIC SCIENCES

Article

4590c–1. Board of Examiners in Basic Sciences Abolished.

Art. 4590c. Repealed by Acts 1979, 66th Leg., p. 1153, ch. 556, eff. Sept. 1, 1979

Art. 4590c–1. Board of Examiners in Basic Sciences Abolished

Sec. 1. [Amends art. 4500]

Sec. 2. The State Board of Examiners in the Basic Sciences is abolished. The records and other property in the custody of the board are transferred to the State Board of Control.[1]

Sec. 3. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(b), eff. Aug. 5, 1981.

[Acts 1979, 66th Leg., p. 1153, ch. 556, §§ 2, 3, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(b), eff. Aug. 5, 1981.]

[1] State Board of Control abolished and State Purchasing and General Services Commission created by Acts 1979, 66th Leg., p. 1908, ch. 773. See, now, art. 601b.

CHAPTER NINETEEN. NUCLEAR AND RADIOACTIVE MATERIALS

4590f–1. Low-Level Radioactive Waste Disposal Authority Act.

Art. 4590f. Nuclear and Radioactive Materials; Sources of Radiation; Licensing and Registration

Declaration of Policy

Sec. 1. It is the policy of the State of Texas in furtherance of its responsibility to protect occupational and public health and safety and the environment:

(1) To institute and maintain a regulatory program for sources of radiation so as to provide for (a) compatibility with the standards and regulatory programs of the Federal Government, (b) a single, effective system of regulation within the state, and (c) a system consonant insofar as possible with those of other states; and

(2) To institute and maintain a program to permit development and utilization of sources of radiation for peaceful purposes consistent with the health and safety of the public and protection of the environment.

Purpose

Sec. 2. It is the purpose of this Act to effectuate the policies set forth in Section 1 by providing for:

(1) A program of effective regulation of sources of radiation for the protection of the occupational and public health and safety and the environment;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the Federal Government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of radiation; and

(4) A program to permit maximum utilization of sources of radiation consistent with the health and safety of the public and protection of the environment.

Definitions

Sec. 3. (a) "By-product material" means:

(1) Any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(2) The tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics.

(b) "Radiation" means one or more of the following:

(1) Gamma and x-rays; alpha and beta particles and other atomic or nuclear particles or rays;

(2) Stimulated emission of radiation from any electronic device to such energy density levels as to reasonably cause bodily harm; or

(3) Sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(c) "License"—General and Specific.

(1) "General license" means a license effective pursuant to rules promulgated by the Agency without the filing of an application to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(2) "Specific license" means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own, possess, process, or dispose of quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(d) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than the Commission and other than Federal Government Agencies licensed or exempted by the Commission.

(e) "Source materials" means:

(1) uranium, thorium, or any other material which the Governor declares by order to be source material after the Commission has determined the material to be such; or

(2) ores containing one or more of the foregoing materials, in such concentration as the Governor declares by order to be source material after the Commission has determined the material in such concentration to be source material.

(f) "Special nuclear material" means:

(1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Governor declares by order to be special nuclear material after the Commission has determined the material to be such, but does not include source material; or

(2) any material artificially enriched by any of the foregoing, but does not include source material.

(g) "Registration" means notification of the Agency of an activity involving the operation of radiation producing equipment or the manufacture, use, handling, or storage of radioactive material. Said notice shall state the location, nature, and scope of such operation, manufacture, use, handling, or storage.

(h) "Excessive exposure" means the exposure to radiation in excess of the maximum permissible levels as provided under rules adopted by the Texas Board of Health.

(i) "Radioactive material" means any material, solid, liquid or gas, which emits radiation spontaneously, whether occurring naturally or produced artificially.

(j) "Source of radiation" means any radioactive material, or any device or equipment emitting or capable or producing radiation, whether intentional or incidental.

(k) "Electronic product" means any manufactured product or device or component part of such a product or device that has an electronic circuit which during operation can generate or emit a physical field of radiation.

(*l*) "Security" means:

(1) cash deposits;

(2) surety bonds;

(3) certificates of deposit;

(4) deposits of government securities;

(5) irrevocable letters of credit; or

(6) other security acceptable to the Agency.

(m) "Fund" means the Radiation and Perpetual Care Fund.

(n) "Agency" means the Texas Radiation Control Agency.

(o) "Director" means the Director of the Radiation Control Program.

(p) "Commission" means the United States Nuclear Regulatory Commission or any successor to that agency.

(q) "Radioactive waste" means any discarded or unwanted radioactive material unless exempted by Agency rule adopted under Subsection (c) of Section 6 of this Act or any radioactive material that would require processing before it could be put to a beneficial reuse. The term does not include by-product material defined in Subdivision (2) of Subsection (a) of Section 3 of this Act or uranium ore.

(r) "Person affected" means a person:

(1) who is a resident of a county, or a county adjacent to the county, in which nuclear or radioactive materials subject to this Act are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and

(2) who shall demonstrate that he has suffered or will suffer actual injury or economic damage.

(s) "Local government" means a county, an incorporated city or town, a special district, or other political subdivision of the state.

(t) "Processing" means the storage, extraction of materials, transfer, volume reduction, compaction, or other separation and preparation of radioactive waste for reuse or disposal, including any treatment or activity that renders the waste less hazardous, safer for transport, or amenable to recovery, storage, or disposal.

(u) "Disposal" means isolation or removal of radioactive wastes from mankind and his environment with no intention of subsequent retrieval. The term does not include emissions and discharges under rules of the Agency.

Texas Radiation Control Agency

Sec. 4. (a) The Texas Department of Health is designated as the Texas Radiation Control Agency.

(b) The Commissioner of the Texas Department of Health shall designate an individual to be Director of the Radiation Control Program, who shall perform the functions vested in the Agency pursuant to the provisions of this Act with the exception of the issuance of licenses under Section 6B of this Act. The Texas Board of Health or the Commissioner, if designated by the Board, shall issue licenses under Section 6B of this Act. Nothing in this Act shall require the licensing or registration under this Act of a nuclear reactor facility licensed by the Commission.

(c) In accordance with the laws of the State of Texas, the Agency may employ, compensate, and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of this Act.

(d) The Agency shall, for the protection of the occupational and public health and safety and the environment:

(1) Develop programs for evaluation of hazards associated with use of sources of radiation;

(2) Develop programs with due regard for compatibility with federal programs for regulation of sources of radiation;

(3) Formulate, adopt, promulgate and repeal rules and guidelines, which shall provide for licensing and registration, relating to control and transport of sources of radiation with due regard for compatibility with the regulatory programs of the Federal Government;

(4) Issue such orders or modifications thereof as may be necessary in connection with proceedings under this Act;

(5) Advise, consult, and cooperate with other agencies of the state, the Federal Government, other states and interstate agencies, local governments, and with groups concerned with control and transport of sources of radiation;

(6) Have the authority to accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the Federal Government and from other sources, public or private;

(7) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation;

(8) Collect and disseminate information relating to control and transport of sources of radiation, including:

(A) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

(B) Maintenance of a file of registrants possessing sources of radiation requiring registration under the provisions of this Act and any administrative or judicial action pertaining thereto;

(C) Maintenance of a file of all rules and guidelines relating to regulation of sources of radiation, pending or promulgated, and proceedings thereon; and

(D) Maintenance of a file of all known locations in Texas where radioactive material has been disposed of and where soils or facilities have been contaminated, together with any information on inspection reports concerning the material disposed of and on radiation levels at the locations;

(9) Have the authority to acquire by purchase, gift, or under any other authority of law any by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act and fee simple title in any land, affected mineral rights, and in buildings at which by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act has been disposed of and abandoned, so that it can be managed in a manner consistent with public health, safety, and the environment;

(9A) Have the authority to acquire, by purchase or gift, fee simple title in any land, affected mineral rights, and in buildings at which radioactive waste is being or can be disposed of in a manner consistent with public health and safety and the environment. Property acquired under this subsection shall be dedicated to use only for disposing of radioactive waste until the Agency determines that another use would not endanger the health, safety, or general welfare of the public or the environment. All right, title, and interest in, of, and to radioactive waste accepted for disposal at these facilities shall become the property of the state and shall be administered and controlled in the name of the state;

(9B) Have the authority to lease property acquired under Subsection (9A) of this section to persons to operate sites for disposing of radioactive waste. A person's actions in disposing of radioactive waste shall be under the direct regulation of the Agency and shall be in accordance with rules adopted by the Agency;

(9C) Formulate, adopt, promulgate, and repeal rules and guidelines providing for the transport and routing of radioactive material within the State of Texas;

(9D) Conduct studies of the need for radioactive waste processing and disposal facilities and technologies as considered necessary by the Agency to minimize the risks to the public and the environment from the management of radioactive waste;

(9E) Establish, as considered necessary by the Agency, a classification system for radioactive waste based on radiological, chemical, and biological characteristics and on physical state so that radioactive wastes can be managed safely and compatibly; and

(9F) Cooperate with and encourage the use of interstate compacts, including the Southern States Energy Board, for the development of regional sites that divide the burden of disposal of radioactive waste generated in the region among the states;

(10) Administer the fund in accordance with Section 16 of this Act; and

(11) Prepare and update emergency and environmental surveillance plans for fixed nuclear facilities within the State of Texas.

Radiation Advisory Board

Sec. 5. (a) There is hereby established a Radiation Advisory Board consisting of eighteen (18) members. The Governor shall appoint to the Board individuals as follows: one (1) from industry, who shall be trained in the field of nuclear physics, science and/or nuclear engineering; one (1) from labor; one (1) from agriculture; one (1) from insurance; one (1) engaged in the use and application of nuclear physics in medicine; one (1) from public safety; one (1) hospital administrator; two (2) representatives of the general public; three (3) persons licensed by the Texas State Board of Medical Examiners specializing in: one (1) from nuclear medicine,

one (1) from pathology, and one (1) from radiology; two (2) representatives from the nuclear utility industry; one (1) representative of the radioactive waste processing industry; one (1) representative of the petroleum well-servicing industry; one (1) health physicist; and one (1) representative from the uranium mining industry. A person is not eligible for appointment as a representative of the general public if the person or the person's spouse is engaged in an occupation in the field of health care or is employed by, participates in the management of, or has, other than as a consumer, a financial interest in part of the nuclear utility industry or in a business entity or other organization that is licensed under Section 6A or 6B of this Act. Members of the Board hold office for staggered terms of six (6) years. Provided, members of the Board shall receive no salary for services but may be reimbursed for actual expenses incurred in connection with attendance at Board meetings or for authorized business of the Board.

(b) The Advisory Board shall:

(1) Review and evaluate policies and programs of the state relating to radiation;

(2) Make recommendations to the Agency and furnish such technical advice as may be required on matters relating to development, utilization, and regulation of sources of radiation;

(3) Review proposed rules and guidelines of the Agency relating to regulation of sources of radiation and recommend changes in proposed or existing rules and guidelines relating to those matters; and

(4) A majority of the Board shall constitute a quorum for the transaction of business. The Board shall elect from its membership a Chairman, Vice-Chairman, and Secretary. A record of all meetings shall be kept and the Board shall meet quarterly, on a date to be fixed by the Board, and shall hold such special meetings as may be called by the Commissioner of Health or any three (3) members of the Board. Such meetings may be held at any designated place within the State of Texas as determined by the Commissioner of Health to best serve the purpose for which the meeting is called. Timely notice of such meetings shall be given to each member.

Licensing and Registration of Sources of Radiation

Sec. 6. (a) The Agency shall provide by rule for general or specific licensing of radioactive materials, or devices or equipment utilizing such materials. Such rules shall provide for issuance, amendment, suspension or revocation of licenses. Such rules shall provide that:

(1) Each application for a specific license shall be in writing and shall state such information as the Agency by rule may determine to be necessary to decide the technical, insurance and financial qualifications or any other qualification of the applicant as the Agency may deem reasonable and necessary to protect the occupational and public health and safety and the environment. The Agency may at any time after the filing of the application, and before the expiration of the license, require further written statements and may make such inspections as the Agency may deem necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The Agency may require any applications or statements to be made under oath or affirmation;

(2) Each license shall be in such form and contain such terms and conditions as the Agency may prescribe;

(3) No license issued under the authority of this Act shall be assigned except to persons qualified pursuant to rules of the Agency;

(4) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, or orders issued in accordance with the provisions of this Act;

(5) For each application for a specific license that involves the disposal or processing of any radioactive waste from other persons, the applicant shall provide any additional information that is necessary for Agency consideration of the following factors in making its licensing decisions:

(A) site suitability, including geological, hydrological, and meteorological factors, and natural hazards;

(B) compatibility with present uses of the land in the vicinity of the site;

(C) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of radioactive material;

(D) need for and alternatives to the proposed activity including an alternative siting analysis prepared by the applicant;

(E) qualifications of the applicant including financial, technical, and past operating practices;

(F) background monitoring plans for the proposed site;

(G) suitability of facilities associated with the proposed activities;

(H) chemical, radiological, and biological characteristics of the radioactive waste and waste classification under Section 4(d)(9E) of this Act;

(I) adequate insurance of the applicant to cover potential injury to any property or any person, including potential injury from transportation-associated risks;

(J) training and retraining programs for the applicant's employees;

(K) monitoring and record-keeping and reporting program;

(L) spill detection and cleanup plans for the licensed site and related to associated transportation of radioactive material;

(M) decommissioning and postclosure care plans;

(N) security plans;

(O) worker monitoring and protection plans;

(P) emergency plans; and

(Q) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and chemical characteristics of the soils, groundwater, and vegetation;

(6) The Agency by rule shall provide specific criteria for the different types of licensed radioactive waste activities for the factors listed in Subdivision (5) of this subsection and may include additional factors and criteria that the Agency determines necessary for full consideration of a license.

(7) In adopting rules for the issuance of licenses for new sites for processing or disposal of radioactive waste from other persons, the Agency shall adopt criteria for the designation of unsuitable sites, including but not limited to:

(A) flood hazard areas;

(B) areas with characteristics of discharge from or recharge of any groundwater aquifer systems; or

(C) areas where soil conditions are such that spill cleanup would be impracticable.

Under this Subdivision, the Agency shall consult with the State Soil and Water Conservation Board, the Bureau of Economic Geology, and other appropriate State agencies in the development of proposed rules and shall issue rules that:

(A) require selection of sites in areas where natural conditions minimize potential contamination of surface water and groundwater; and

(B) prohibit issuance of licenses for unsuitable sites as defined by the rules of the Agency.

(8) No licensee may operate a facility to dispose of or process radioactive waste until the licensee has obtained licenses or permits from other agencies as required by law; and

(9) No license to dispose of radioactive waste shall be issued to any person other than a public entity specifically authorized by law for radioactive waste disposal.

(b) The Agency is authorized to require registration or licensing of other sources of radiation.

(c) The Agency is authorized to issue rules that exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this Section when the Agency makes a finding that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public and the environment.

(d) Rules promulgated pursuant to this Act may provide for recognition of other state or federal licenses as the Agency shall deem desirable subject to such registration requirements as the Agency may prescribe.

(e) Each applicant for a license or for the renewal of a license shall demonstrate to the Agency, before the issuance or renewal of a license, that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal. The licensee shall submit proof to the Agency of its financial qualifications at such intervals as the Agency may require by rule or in the license. The qualifications of and security provided by a licensee under Section 6A or 6B of this Act shall be reevaluated every five (5) years and such reevaluation may coincide with license renewal procedures if both are to occur in the same year.

(f) A licensee may be required to provide security acceptable to the Agency to assure performance of its obligations under this Act.

(g) The amount and type of security required shall be determined under rules of the Agency in accordance with criteria that include the following:

(1) consideration of the need for and scope of any decontamination, decommissioning, reclamation, or disposal activity reasonably required to protect the public health and safety and the environment;

(2) reasonable estimates of the costs of decontamination, decommissioning, reclamation, and disposal as provided by Section 16 of this Act; and

(3) the costs of perpetual maintenance and surveillance, if any.

(h) In making the determination of whether to grant, deny, amend, revoke, suspend, or restrict a license or registration, the Agency may consider those aspects of an applicant's or licensee's background that, in its judgment, bear materially on ability to fulfill the obligations of licensure, including but not limited to technical competency and its record in areas involving radiation.

Additional Requirements for Certain By-Product Materials

Sec. 6A. (a) A radioactive materials license issued or renewed after the effective date of this Act, for any activity that results in the production of by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act, shall minimize and to the maximum extent practicable eliminate the need for long-term maintenance and monitoring and shall contain terms and conditions the Agency determines to be necessary to assure that before termination of the license:

(1) the licensee will comply with decontamination, decommissioning, reclamation, and disposal standards prescribed by the Agency, which shall be equivalent to or more stringent than those of the Commission for sites at which such ores were

processed and at which such by-product material is deposited; and

(2) the ownership of any disposal site other than a disposal well covered by a permit issued under Chapter 27, Water Code, as amended, and the by-product material resulting from the licensed activity shall, subject to the provisions of Subsections (b) through (f) of this Section and Subdivision (9) of Subsection (d) of Section 4 of this Act, be transferred to the State of Texas or the United States, if the State of Texas declines to acquire either the site or the by-product material, or both.

(b) The Agency may require by rule or order that before the termination of a license that is issued after the effective date of this Act, title to the land, including any affected interests in the land, other than land held in trust by the United States for any Indian tribe or owned by an Indian tribe subject to a restriction against alienation imposed by the United States, or land already owned by the United States, or by the State of Texas, that is used for the disposal of by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act, pursuant to the license, shall be transferred to the United States or the State of Texas, unless the Commission determines, before the termination, that transfer of title to the land and the by-product material is not necessary to protect the public health, safety, or welfare or to minimize danger to life or property.

(c) If transfer to the State of Texas of title to by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act and land is required, the Agency shall maintain the by-product material and land in a manner that will protect the public health, safety, and the environment.

(d) The Agency is authorized to undertake in connection with the by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act and property for which it has assumed custody under this Act any monitoring, maintenance, and emergency measures necessary to protect the public health and safety and the environment.

(e) The transfer of title to land and buildings and by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act to the State of Texas does not relieve any licensee of liability for any fraudulent or negligent acts done before the transfer.

(f) Except for administrative and legal costs incurred in carrying out the transfer, by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act and land transferred to the State of Texas under this Act shall be transferred without cost to the State of Texas.

Additional Requirements for Radioactive Waste Licenses

Sec. 6B. (a) A person who applies for a license to dispose of radioactive waste from other persons must:

(1) arrange for and pay all of the costs of management, control, stabilization, and disposal of radioactive waste and for the decommissioning of the licensed activity;

(2) before applying for a license, acquire any interest in and title to any land and buildings as required by Agency rule;

(3) convey to the State of Texas at the time of issuance of the license to dispose of radioactive waste all right, title, and interest in, of, and to any land and buildings acquired, together with requisite rights of access to the property; and

(4) before termination of the license to dispose of radioactive waste, formally acknowledge the conveyance to the State of Texas of all right, title, and interest in, of, and to all radioactive waste located on the property that has been conveyed.

(b) A licensee may not accept radioactive waste generated in another state for processing or disposal under a license issued by the Agency except:

(1) under a compact entered into by the State of Texas;

(2) from another state that has in operation a radioactive waste disposal site and that is willing to accept at that site radioactive waste generated in Texas; or

(3) radioactive waste generated from manufactured sources or devices originating in Texas.

(c) A licensee may not accept for disposal under a license issued by the Agency, any high-level radioactive waste as defined in Title 10, Code of Federal Regulations, any irradiated reactor fuel, or any radioactive waste containing ten (10) or more nanocuries per gram of transuranics. The Agency shall by rule establish special criteria for disposal of radioactive waste with a half-life greater than thirty-five (35) years and radioactive waste containing less that ten (10) nanocuries per gram of transuranics.

(d) The Agency is authorized to undertake in connection with the wastes and property for which it has assumed custody under this Act any monitoring, maintenance, and emergency measures necessary to protect the public health and safety and the environment.

(e) The transfer of title to land and buildings and radioactive waste to the State of Texas does not relieve any licensee of liability for any fraudulent or negligent acts done before the transfer or for any fraudulent or negligent acts done while the land and buildings or radioactive waste is in the possession or control of the licensee.

(f) Except for administrative and legal costs incurred in carrying out the transfer, radioactive waste and land and buildings transferred to the State of Texas under this Act shall be transferred without cost to the State of Texas.

(g) The Agency may require at any disposal site that the licensee provide facilities for a resident inspector who is employed by the Agency. The

licensee shall reimburse the Agency for the salary and other expenses of the inspector.

Inspection

Sec. 7. (a) The Agency or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violations of the provisions of this Act and rules, licenses, registrations, and orders issued thereunder, except that entry into areas under the jurisdiction of the Federal Government shall be effected only with the concurrence of the Federal Government or its duly designated representative.

(b) The authorized agents or employees of local governments may have access to examine and copy at their expense during regular business hours any records pertaining to activities licensed under Section 6B of this Act, subject to the limitations of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes). Records copied pursuant to this section shall be public records, except that if a showing satisfactory to the Director is made by the owner of the records that the records divulge trade secrets if made public, then the Agency shall consider those copied records as confidential. Agents and employees shall not enter private property having management in residence without notifying the management, or the person in charge at the time, of their presence and exhibiting proper credentials. The agents and employees shall observe the rules and regulations of the establishment being inspected concerning safety, internal security, and fire protection.

Records

Sec. 8. (a) The Agency shall require each person who possesses or uses a source of radiation to maintain records relating to its utilization, receipt, storage, transfer, or disposal and such other records as the Agency may require subject to such exemptions as may be provided by rules.

(b) The Agency shall require each person who possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules, licenses, registrations, and orders of the Agency. Copies of these records and those required to be kept by Subsection (a) of this Section shall be submitted to the Agency on request. Any person possessing or using a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of such employee's personal exposure record at any time such employee has received excessive exposure and upon termination of employment. A copy of his annual exposure record shall be furnished to the employee upon his request.

Federal-State Agreements

Sec. 9. (a) The Governor, on behalf of this state, is authorized to enter into agreements with the Federal Government providing for discontinuance of certain of the Federal Government's responsibilities with respect to sources of radiation and the assumption thereby by this state.

(b) Any person who, on the effective date of an agreement under Subsection (a) above, possesses a license issued by the Federal Government, shall be deemed to possess the same pursuant to a license issued under this Act, which shall expire either ninety (90) days after receipt from the Agency of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is earlier.

Inspection Agreements and Training Programs

Sec. 10. (a) The Agency is authorized to enter into, subject to the approval of the Governor, an agreement or agreements with the Federal Government, other states or interstate agencies, whereby this state will perform on a cooperative basis with the Federal Government, other states or interstate agencies, inspections or other functions relating to control of sources of radiation.

(b) The Agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this Act, and may make said personnel available for participation in any program or programs of the Federal Government, other states, or interstate agencies in furtherance of the purposes of this Act.

Administrative Procedure and Judicial Review

Sec. 11. (a) The Agency may promulgate, amend, and revoke rules and guidelines relating to control of sources of radiation in the manner provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(b) The Agency shall afford an opportunity for a hearing in accordance with the Agency's formal hearing procedures and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), on written request of any person affected by the following procedures:

(1) the grant, denial, suspension, revocation, or amendment of any license or registration; or

(2) the determination of compliance with or the grant of exemptions from a rule or order of the Agency.

(c) Whenever the Agency finds that an emergency exists requiring immediate action to protect the public health and safety and the environment, the Agency may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as it shall direct

to meet the emergency. Notwithstanding any other provision of this Act, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately. On written application to the Agency within thirty (30) days of the date of the emergency order, the person to whom the order was directed shall be afforded an opportunity for a hearing. The hearing shall be held within not less than ten (10) days nor more than twenty (20) days after the Agency receives the written application. On the basis of such hearing, the emergency order shall be continued, modified, or revoked by the Agency.

(d) Judicial review of Agency decisions, rules, guidelines, and orders made, promulgated, issued, amended, or revoked under the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), shall be under the substantial evidence rule. A person who has exhausted all administrative remedies available within the Agency and who is affected by a final decision of the Agency is entitled to judicial review under the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Special Procedures for Licensing Certain By-Product Material

Sec. 11A. (a) On issuance or renewal, if the Agency determines that a license to process materials resulting in by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act will have a significant impact on the human environment, the Agency shall prepare or secure the preparation of a written analysis that shall be available to the public for written comment at least thirty (30) days before the beginning of the hearing, shall be made a part of the record, and shall include:

(1) an assessment of the radiological and nonradiological impacts on the public health of the activity;

(2) an assessment of any impact on any waterway and groundwater resulting from the activity;

(3) consideration of alternatives, including but not limited to alternative sites and engineering methods, to the activities to be conducted under the license; and

(4) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted under the license, including the management of by-product material as defined by Subdivision (2) of Subsection (a) of Section 3 of this Act.

(b) The Agency shall give notice of the environmental impact analysis as provided by Agency rule and afford an opportunity for a public hearing in the manner provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), with right of appearance with or without counsel, examination, and cross-examination of witnesses under oath or affirmation, and a record made of the proceedings.

(c) After notice is given, the Agency shall afford an opportunity for written comments by persons affected, who may be made parties to the proceedings on a determination of their possessing a justiciable interest in the outcome.

(d) The Agency shall afford an opportunity to obtain a transcript of any public hearing on request and payment for the transcript or the posting of a sufficient deposit to assure the payment by the person requesting the transcript.

(e) The Agency shall afford an opportunity to obtain a written determination of the action to be taken that is based on the evidence presented and the findings included in the determination, and that is subject to judicial review as provided by Subsection (d) of Section 11 of this Act.

(f) The Agency shall prohibit any major construction with respect to the activities to be licensed until the requirement in Subsection (a) of this Section is completed.

(g) The Agency shall assure that the management of by-product material as defined by Subdivision (2) of Subsection (a) of Section 3 of this Act is carried out in conformity with applicable standards promulgated by the Commission.

(h) Notwithstanding any other provision of this Section, if the Agency finds that an emergency relating to the management of by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act exists that requires immediate action to protect the public health and safety and the environment, the Agency may take action under Subsection (c) of Section 11 of this Act.

Special Procedures for Licensing Radioactive Waste

Sec. 11B. (a) Before a license to either process or dispose of radioactive waste from other persons is granted or renewed, the Agency shall give at least thirty (30) days' notice as provided by this subsection and provide an opportunity for a public hearing in the manner provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), and in the formal hearing procedures of the Agency. In addition to other notice requirements, notice of a hearing under this subsection shall be given by publishing a notice stating the subject of the hearing and the time, place, and date of the hearing in the manner provided by Articles 2 through 9, Revised Civil Statutes of Texas, 1925, as amended, for publication of notice for a special law in the county where the proposed facility is to be located. Written notice of the hearing stating the same information that appears in the newspaper notice shall be sent by certified mail to persons who own property adjacent to the proposed site pursuant to rules promulgated by the Agency. Notice specifically required by this section shall be sent at least thirty (30) days before the date of the hearing. The Agency or the appli-

cant shall certify to this mailing, and the certificate shall be accepted at the hearing as conclusive evidence of the fact of such mailing.

(b) If the Agency amends a license, the amendment may take effect immediately. Notice of the amendment shall be published one time in the Texas Register and one time in a newspaper of general circulation in the county in which the licensed activity is located and notice shall be given to anyone who notified the Agency, in advance, of his desire to be notified of any proposed amendment to the license. The notice shall contain a short and plain statement of the substance of the amendment identifying the license amended and the licensee. If a person affected files a written complaint with the Agency within thirty (30) days after notice is published, notice shall be given and a public hearing held to consider the amendment as provided by Subsection (a) of this section.

(c) Before beginning a hearing required under this section, for each proposed activity that the Agency determines has a significant impact on the human environment, the Agency shall prepare or secure the preparation of a written analysis, that shall be available to the public at least thirty (30) days before the hearing begins, of the impact of the licensed activity on the environment. The analysis shall include:

(1) an assessment of the radiological and nonradiological impacts on the public health of the activity;

(2) an assessment of any impact on any waterway and groundwater resulting from the activity;

(3) consideration of alternatives to the activities to be conducted under the license; and

(4) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted under the license, including the management of radioactive waste.

(d) The Agency shall prohibit any major construction with respect to the activities to be licensed until requirements in Subsections (a) and (c) of this section are completed.

(e) The Agency shall assure that the management of radioactive waste is carried out in compatibility with applicable standards promulgated by the Commission.

(f) Notwithstanding any other provision of this section, if the Agency finds that an emergency relating to the management of radioactive waste exists that requires immediate action to protect the public health and safety and the environment, the Agency may take action under Subsection (c) of Section 11 of this Act.

Injunction Proceedings

Sec. 12. Whenever, in the judgment of the Agency, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any rule, license, registration, or order issued thereunder, and at the request of the Agency, the Attorney General shall make application to any District Court either in Travis County or in any county in which the violation occurred or is about to occur, at his option, for an order enjoining such acts or practices, or for an order directing compliance and for reimbursement to the Radiation and Perpetual Care Fund if applicable, and for civil penalties as provided in Section 15 of this Act, and upon a showing by the Agency that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other appropriate order may be granted.

Threat of Damage by Certain By-Product Material

Sec. 12A. (a) If the Agency determines that by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act or the operation by which that by-product material is derived threatens the public health and safety and the environment and that the licensee is unable to correct or neutralize the threat, the Agency shall issue an order directing any action and corrective measures it finds necessary to correct or neutralize the threat and shall use the security provided by the licensee under this Act to pay the costs of actions and corrective measures taken or to be taken.

(b) The Agency shall send a copy of its order to the Comptroller of Public Accounts together with necessary written requests authorizing the Comptroller to enforce security supplied by the licensee, to convert the necessary amount of security into cash, if necessary, and to disburse from this security in the fund the amount necessary to pay costs of the actions and corrective measures taken or to be taken by the Agency.

Threat of Damage by Radioactive Waste

Sec. 12B. (a) Under procedures in Subsection (c) of Section 11 of this Act, if the Agency finds that radioactive waste threatens the public health and safety and the environment and that the licensee managing the radioactive waste is unable to neutralize the threat, the Agency shall issue an order directing any action and corrective measures it finds necessary to neutralize the threat and shall use the security provided by the licensee under this Act to pay the costs of actions and corrective measures taken or to be taken.

(b) The Agency shall send a copy of its order to the Comptroller of Public Accounts together with necessary written requests authorizing the Comptroller to enforce security supplied by the licensee, to convert the necessary amount of security into cash, if necessary, and to disburse from this security in the fund the amount necessary to pay costs of the actions and corrective measures taken or to be taken by the Agency.

Actions of Local Government and Persons Affected

Sec. 12C. (a) If a local government is denied access to records, as provided in this Act, the local government may bring suit in a District Court in the county in which the violation occurs for an appropriate order to obtain the records or to recover civil penalties or for both an order and the penalties provided by Subsection (b) of this section. Civil penalties recovered in a suit under this subsection shall be paid to the local government.

(b) A person who denies access to records to a local government as provided by this Act is liable to a civil penalty of not less than One Hundred Dollars ($100) and not more than One Thousand Dollars ($1,000) for each violation.

(c) A local government or person affected may file a written complaint with the Agency and request an investigation of an alleged violation by a person licensed under Section 6A or 6B of this Act. The Agency shall reply to the complaint in writing within sixty (60) days after receipt of the complaint and shall provide a copy of any investigation reports relevant to the complaint together with a determination of whether or not the alleged violation was committed.

(d) If the Agency does not have a suit brought in court under Section 12A or 12B of this Act within one hundred twenty (120) days after the written complaint is filed under Subsection (c) of this section, the local government or person affected may bring suit in the appropriate court in the county in which the alleged violation occurred or is about to occur in the manner provided for suits by the Agency under Section 12A or 12B of this Act. Penalties collected in a suit under this subsection shall be paid to the state. In a suit brought by a local government or person affected under this subsection, the court shall include in any final judgment in favor of the local government or person affected an award to cover reasonable court costs and attorney's fees.

Prohibited Uses

Sec. 13. It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, possess, process, or dispose of any source of radiation unless licensed, registered, or exempted by the Agency in accordance with the provisions of this Act.

Impounding of Sources of Radiation

Sec. 14. The Agency shall have the authority in the event of any emergency to impound or order the impounding of sources of radiation, in the possession of any person who is not equipped to observe or fails to observe the provisions of this Act or any rules issued thereunder.

Civil Penalties

Sec. 15. (a) A person who violates this Act or a rule, order, license, or registration of the Agency is subject to a civil penalty of not less than One Hundred Dollars ($100) nor more than Twenty-five Thousand Dollars ($25,000) for each act of violation and for each day of violation.

(b) A suit to recover a civil penalty under this section may be brought, at the option of the Attorney General, in a District Court in Travis County or in the county in which the violation occurred. If the Attorney General is seeking to recover civil penalties for violations that have occurred in more than one county, the Attorney General may join all of the violations in one suit and may bring suit either in a District Court in Travis County or in a District Court in any one of the counties in which one of the violations occurred.

(c) The civil penalties provided by this section are cumulative of any other remedies provided by law.

Criminal Penalties

Sec. 15A. (a) A person commits an offense if he intentionally or knowingly commits a violation of this Act for which a specific penalty is not provided in Subsection (b) of this section. An offense under this subsection is a Class B misdemeanor, unless the person has been previously convicted of an offense under this subsection, in which event it is a Class A misdemeanor.

(b) A person commits an offense if he intentionally or knowingly receives, processes, concentrates, stores, transports, or disposes of radioactive waste without a valid license issued under this Act. An offense under this subsection is a Class A misdemeanor, unless the person has been previously convicted of an offense under this subsection, in which event the offense is punishable by a fine of not less than Two Thousand Dollars ($2,000) nor more than One Hundred Thousand Dollars ($100,000) or confinement in the county jail for up to one (1) year or both the fine and imprisonment.

Recovery of Security

Sec. 15B. (a) If the Agency uses security from the fund to pay for actions or corrective measures to remedy spills or contamination by radioactive material resulting from a violation of this Act or a rule, license, registration, or order of the Agency, the Agency shall seek reimbursement either through an Agency order or suit filed by the Attorney General at the Agency's request.

(b) On request of the Agency, the Attorney General shall file suit to recover security under Subsection (a) of this section.

Radiation and Perpetual Care Fund

Sec. 16. (a) The Radiation and Perpetual Care Fund is established in the State Treasury and may be used for the purposes described in Subsection (c) of this section.

(b) Except for fees collected under Sections 17 and 18 of this Act, the Agency shall deposit in the

fund all money and security received by the Agency under this Act.

(c) Money and security deposited in the fund may be used by the Agency only for decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive material for the protection of the public health and safety and the environment under this Act.

(d) Money and security deposited in the fund may not be used for normal operating expenses of the Agency.

(e) If a licensed activity may require maintenance, surveillance, or other care on a continuing or perpetual basis after termination of the licensed activity, the Agency may require the licensee to pay annually to the Agency for deposit in the fund an amount determined by the Agency.

(f) Each year the Agency shall review a licensee's payments to the fund made under Subsection (e) of this section to determine if the payment schedule is adequate for the maintenance and surveillance that the licensed activity requires or may require in the future.

(g) Any estimates of costs required to be made under this Act are subject to review and change by the Agency according to the need, nature, and cost of any decontamination, stabilization, decommissioning, reclamation, and disposal activity and the maintenance and surveillance required for public health and safety and the environment. Any charges imposed for maintenance and perpetual care shall be established at a level consistent with existing technology. The charges imposed by the Agency may not exceed the estimated amount that is projected by the Agency to be required for the maintenance and surveillance and other necessary care required after termination of the licensed activity. Any increase in costs may not be applied retroactively but may result in increases in subsequent annual payments.

(h) If a licensee has satisfied all obligations under this Act, the Agency shall have the Comptroller of Public Accounts promptly refund to the licensee from the fund any excess of the amount of Subdivision (1) of this subsection over the amount of Subdivision (2) of this subsection:

(1) all payments made by the licensee to the Agency for deposit into the fund under this Act and all investment earnings on such payments; and

(2) the amount determined to be required for the continuing maintenance and surveillance of the land, buildings, and radioactive material conveyed to the state under this Act.

Fees

Sec. 17. (a) The Agency may prescribe and collect a fee for each license and registration.

(b) The amount of these fees shall be established by Agency rule and may not exceed the actual expenses incurred annually:

(1) in processing applications for a license or registration;

(2) for amendments to or renewals of licenses or registrations;

(3) for making inspections of licensees and registrants; and

(4) for enforcement of this Act and rules, orders, licenses, and registrations of the Agency.

(c) Fees collected by the Agency under this section shall be deposited in the General Revenue Fund.

Nuclear Reactor and Fixed Nuclear Facility Fee

Sec. 18. The Agency may prescribe and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facility in the state that utilizes special nuclear material. The amount of fees collected may not exceed the actual expenses arising from emergency planning and implementation and environmental surveillance activities. The annual fees collected shall be deposited in the General Revenue Fund.

[Amended by Acts 1981, 67th Leg., p. 31, ch. 21, § 1, eff. April 1, 1981; Acts 1981, 67th Leg., p. 381, ch. 155, §§ 1 to 3, eff. May 20, 1981.]

Section 2 of Acts 1981, 67th Leg., p. 46, ch. 21, as amended by Acts 1981, 67th Leg., p. 386, ch. 155, § 4, provides:

"(a) A person holding office as a member of the Radiation Advisory Board on the effective date of this Act shall continue to hold that office for the term for which he was originally appointed.

"(b) The governor shall appoint to the board a public member, a representative of the petroleum well-servicing industry, and one representative of the nuclear utility industry for terms expiring in 1983; a representative engaged in the use and application of nuclear physics in medicine, a representative of the radioactive waste processing industry, and one representative of the nuclear utility industry for terms expiring in 1985; and a public member, a health physicist, and a representative from the uranium mining industry for terms expiring in 1987. These terms shall expire on the same date in those years as terms of other members of the advisory board."

Art. 4590f-1. Low-Level Radioactive Waste Disposal Authority Act

ARTICLE 1. GENERAL PROVISIONS

Findings, Purpose, and Intent

Sec. 1.01. (a) Low-level radioactive wastes are generated as by-products of medical, research, and industrial activities and through the operation of nuclear power plants. Loss of capability to dispose of low-level radioactive waste would pose a threat to the health and welfare of the citizens of the state and would ultimately lead to the loss of the benefits of these activities that are dependent on reliable facilities for low-level radioactive waste disposal.

(b) This state is currently dependent on low-level radioactive waste disposal sites in other states. Recent events have demonstrated that the availability of these sites for low-level radioactive waste disposal is increasingly uncertain and as a consequence, medical institutions, research facilities, and industries within the state could be adversely affected.

(c) It is the purpose and intent of this Act to establish the Texas Low-Level Radioactive Waste Disposal Authority with responsibility for assuring much-needed disposal capability for specific categories of low-level radioactive wastes generated within this state.

Short Title

Sec. 1.02. This Act may be cited as the Texas Low-Level Radioactive Waste Disposal Authority Act.

Definitions

Sec. 1.03. In this Act:

(1) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government or governmental subdivision or agency, or other legal entity or any legal successor to or representative, agent, or agency of any of these.

(2) "Authority" means the Texas Low-Level Radioactive Waste Disposal Authority.

(3) "Agency" means the Texas Radiation Control Agency.

(4) "Radioactive material" means any solid, liquid, or gaseous material, whether occurring naturally or produced artificially, that emits radiation spontaneously.

(5) "Low-level waste" means any radioactive material that has a half-life of 35 years or less or that has less than 10 nanocuries per gram of transuranics and may include radioactive material not excluded by this subdivision with a half-life of more than 35 years if special criteria are established by the agency for disposal of that waste. The term does not include irradiated reactor fuel and high-level radioactive waste as defined by Title 10, Code of Federal Regulations.

(6) "Disposal site" means the property and facilities acquired, constructed, and owned by the authority at which low-level waste may be processed and may be disposed of permanently.

(7) "On-site operator" means a person who is employed by or who contracts with the authority and who is responsible for supervising the overall operations of the disposal site.

(8) "Management" means establishing, adopting, and entering into and assuring compliance with the general policies, rules, and contracts that govern the operation of a disposal site.

(9) "Operation" means the control, supervision, and implementation of the actual physical activities involved in the receipt, processing, packaging, storage, disposal, and monitoring of low-level waste at a disposal site and the maintenance of the disposal site and any other responsibilities designated by the board as part of the operation.

ARTICLE 2. CREATION AND ADMINISTRATIVE PROVISIONS

Creation of Authority

Sec. 2.01. The Texas Low-Level Radioactive Waste Disposal Authority is created as an agency of the state under Article XVI, Section 59(a), of the Texas Constitution.

Boundaries

Sec. 2.02. The jurisdiction of the authority is coextensive with the state.

Board of Directors

Sec. 2.03. (a) The authority is governed by a board of directors composed of six members that shall manage and control the authority and shall administer and implement this Act.

(b) Members of the board shall be appointed by the governor with the advice and consent of the senate. One member of the board must be a medical doctor licensed to practice medicine in Texas, one member of the board must be a certified health physicist, one member of the board must be an attorney licensed to practice law in Texas, one member of the board must be a geologist, and two members of the board must represent the general public.

(c) A representative of the general public on the board or a person related within the second degree by affinity or within the third degree by consanguinity to that member may not be an employee of or otherwise have a financial interest in any person that has a contract with or that uses the services of any low-level waste storage, processing, or disposal site in the United States.

(d) After a disposal site is selected under Subsection (c) of Section 3.07 of this Act, the governor shall appoint to the board, at the earliest opportunity, at least one representative of the general public as a representative of the local interests. The representative of the general public representing local interests must be a resident of the county in which the disposal site is proposed to be located.

Term of Office; Vacancy

Sec. 2.04. (a) Members of the board serve for staggered terms of six years with the terms of two directors expiring February 1 of each odd-numbered year.

(b) A vacancy on the board shall be filled for the unexpired term in the manner provided by Subsection (b) of Section 2.03 of this Act for selection of other directors.

Oath

Sec. 2.05. Each member of the board shall take the constitutional oath of office required of other appointed state officers.

Compensation

Sec. 2.06. Each member of the board is entitled to receive compensation as provided by the authority's budget.

Officers

Sec. 2.07. (a) The members of the board shall select from their number at the first directors' meeting after appointment of members to the board one person to serve as chairman, one person to serve as vice-chairman, and one person to serve as secretary.

(b) Persons selected to serve as chairman, vice-chairman, and secretary shall serve for terms of two years.

(c) The chairman shall preside over meetings of the board, and in his absence, the vice-chairman shall preside.

(d) The chairman, vice-chairman, and secretary shall perform the duties and may exercise the powers specifically given them in this Act or in orders of the board.

Organization of Board

Sec. 2.08. Every two years after the appropriate number of directors are appointed and have qualified for office by taking the oath, the board shall meet at the authority's central office in Austin and shall organize by selecting officers and shall begin to discharge its duties.

Quorum

Sec. 2.09. A majority of the members of the board constitute a quorum for the transaction of business of the authority, but no official act of the board is valid without the affirmative vote of a majority of the members of the board.

General Manager

Sec. 2.10. (a) The board shall employ a general manager who shall be the chief administrative officer of the authority and may delegate to him full authority to manage and operate the affairs of the authority subject only to orders of the board.

(b) The general manager shall execute a bond in the amount determined by the board, payable to the authority, conditioned on the faithful performance of the general manager's duties. The authority shall pay for the bond.

(c) The general manager is entitled to receive compensation as provided in the authority's budget.

Employees

Sec. 2.11. (a) The general manager may employ persons necessary for the proper handling of the business and operation of the authority.

(b) The board shall determine the terms of employment.

Authority Office

Sec. 2.12. (a) The board shall maintain a central office in the City of Austin for conducting the business of the authority.

(b) The board also shall maintain an authority office at each disposal site under construction or operated under this Act.

Meetings of the Board

Sec. 2.13. The board shall hold regular quarterly meetings on dates established by rule of the board and shall hold special meetings at the call of the chair or on written request to the chairman by one member of the board.

Minutes and Records

Sec. 2.14. (a) The board shall keep a complete written account of all its meetings and other proceedings and shall preserve its minutes, contracts, records, plans, notices, accounts, receipts, and records of all kinds in a secure manner.

(b) Minutes, contracts, records, plans, notices, accounts, receipts, and other records are the property of the authority and are subject to public inspection.

Contracts

Sec. 2.15. The board may enter into contracts as provided by this Act, and those contracts shall be executed by the chairman of the board and attested by the secretary of the board in the name of the authority.

Suits

Sec. 2.16. The authority may, through its board, sue and be sued in any and all courts of this state in the name of the authority. Service of process in a suit may be had by serving the general manager.

Payment of Judgment

Sec. 2.17. A court of this state that renders a money judgment against the authority may require the board to pay the judgment from fees collected under this Act.

Seal

Sec. 2.18. The board shall adopt a seal for the authority.

ARTICLE 3. POWERS AND DUTIES

Jurisdiction of Authority

Sec. 3.01. The authority has jurisdiction over site selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of disposal sites.

General Powers

Sec. 3.02. For the purpose of carrying out this Act, the authority may:

(1) apply for, accept, receive, and administer gifts, grants, and other funds available from any source;

(2) enter into contracts with the federal government and its agencies, the state and its other agencies, interstate agencies, local governmental entities, and private entities for the purpose of

carrying out this Act and rules, orders, and standards adopted under this Act;

(3) conduct, request, and participate in studies, investigations, and research relating to selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of sites and disposal of low-level waste; and

(4) advise, consult, and cooperate with the federal government and its agencies, the state and its other agencies, interstate agencies, local governmental entities within the state, and private entities.

Rules, Standards, and Orders

Sec. 3.03. (a) The board may adopt and amend rules, standards, and orders necessary to properly carry out this Act and to protect the public health and safety and the environment from activities of the authority.

(b) The board may set reasonable civil penalties for the breach of any rule, standard, or order that shall not exceed amounts of $1,000.

(c) These penalties shall be in addition to any other penalties provided by the laws of this state and may be enforced by complaints filed by the attorney general in an appropriate court of jurisdiction in Travis County.

Development and Operation of Disposal Site

Sec. 3.04. The authority shall develop and operate or contract for operation of one disposal site for the disposal of low-level waste in Texas.

Studies for Site Selection

Sec. 3.05. (a) The authority shall make studies or contract for studies to be made of the future requirements for disposal of low-level waste in this state and to determine the areas of the state that are relatively more suitable than others for low-level waste disposal activities.

(b) In studying future requirements and relative suitability, the authority and any persons with which it contracts under this section shall consider the following:

(1) the volume of low-level waste generated by type and source categories for the expected life of the site;

(2) geology;

(3) surface characteristics (topography);

(4) other aspects of transportation and access;

(5) meteorology;

(6) population density;

(7) surface and subsurface hydrology;

(8) flora and fauna;

(9) current land use;

(10) criteria established by the agency for site selection;

(11) the proximity to sources of low-level waste, including related transportation costs, to the extent that the proximity and transportation costs do not interfere with selection of the best site for protecting public health and the environment; and

(12) other site characteristics as may need study on a preliminary basis that would require detailed study to prepare any application or license required for site operation.

(c) The studies may be performed either by the authority's staff or under contract with others.

Additional Analysis

Sec. 3.06. (a) On completion of the studies required by Section 3.05 of this Act, the board shall select two or more potential disposal sites for further analysis.

(b) The authority shall evaluate or contract to have evaluated the preoperating costs, operating costs, maintenance costs, and costs of decommissioning and extended care and the socioeconomic, environmental, and public health impacts associated with each of these potential sites.

(c) Socioeconomic impacts to be evaluated shall include fire, police, educational, utility, public works, public access, planning, and other governmental services and assumed and perceived risks of the disposal sites and disposal activities.

(d) Public officials and members of local boards or governing bodies of local political subdivisions of the state within which a potential site is located shall be invited to participate in appropriate evaluation activities.

Site Selection

Sec. 3.07. (a) On receiving the results of the studies and evaluations required under Sections 3.05 and 3.06 of this Act, the board shall select the site that appears from the studies to be the most suitable for a disposal site and shall hold a public hearing to consider whether or not that site should be selected as the disposal site and give 30 days notice thereof, published in the English language once a week for four consecutive weeks preceding the hearing, in some newspaper published in the county of the disposal site. If there is no newspaper published in the county or none which will publish the notice, the board shall then post such notice in writing in three public places in the county, one of which shall be at the courthouse door of the county courthouse, for at least 30 days successively before the day of the hearing. The hearing shall be commenced in the county seat at the county courthouse in which the proposed disposal site is located.

(b) Before giving notice of the hearing, the authority shall prepare a report that includes detailed information regarding all aspects of the disposal site selection process, criteria for site selection as established by the appropriate licensing authority, and

summaries of the studies required under Section 3.05 of this Act and the evaluations under Section 3.06 of this Act and shall make this report available to the public. The authority may contract for the distribution of the report and may hold or contract with others to hold informational seminars for the public.

(c) On a thorough consideration of the studies and evaluations relating to site selection required under Sections 3.05 and 3.06 of this Act, the criteria required to be used in those studies, and testimony and evidence presented at the hearing, the board shall determine if the proposed disposal site should be selected, and if the board selects that site as the disposal site, the board shall issue an order designating that site as the proposed disposal site, shall issue a final report, and shall direct the general manager to prepare necessary applications, disposal plans, and other material for obtaining licenses and other authorizations for the disposal site. If the board determines that the proposed site should not be selected, it shall issue an order rejecting selection of the site and shall call another hearing to consider another site that appears from the studies and evaluations under Sections 3.05 and 3.06 of this Act to be suitable. The board shall continue to follow the procedures under Subsection (a) of this section and this subsection until a suitable disposal site is selected.

(d) A copy of the final report and order selecting a disposal site shall be submitted to the governor and to the legislature for informational purposes.

(e) The authority may appoint a mediator to consider the views of parties interested in the selection of a disposal site. The mediator may conduct a series of meetings with delegates from groups of interested parties. The selection of delegates shall be determined by criteria established by the board. Mediation meetings may be held in the counties in which the potential sites are located and shall be held prior to the public hearing required by Subsection (a) of this section. The mediator shall prepare a report and submit it to the board before the notice is given of the public hearing.

(f) None of the proceedings under this section are a contested case as defined by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Acquisition of Necessary Licenses

Sec. 3.08. (a) The authority shall submit to all federal and state agencies from which it must obtain licenses and other types of authorization to construct and operate disposal sites necessary applications and information to obtain those licenses and authorizations.

(b) The authority shall cooperate with appropriate federal and state agencies in the licensing and authorization process and shall supply any additional information and material requested by those agencies.

(c) If the application of the authority for a license for the proposed disposal site is denied, the board shall give notice and hold a hearing on an alternative site, as provided by Section 3.07 of this Act and shall consider and select an alternative site for the disposal site in the manner provided by this Act for the selection of the original proposed disposal site.

(d) The authority shall provide financial security in the form and manner required by federal and state agencies under federal and state laws and rules adopted under those laws. Supplemental financial security shall be provided as required by any federal or state agency.

Acquisition of Property for Site

Sec. 3.09. (a) The authority may acquire by gift, grant, or purchase any land, easements, rights-of-way, and other property interests necessary to construct and operate a disposal site.

(b) The authority must acquire the fee simple title to all land and property that is a part of the licensed disposal site.

(c) The authority also may lease property on terms and conditions the board determines advantageous to the authority, provided no lease may be made on land that is part of a licensed disposal site.

Site Construction

Sec. 3.10. (a) The authority shall construct on the disposal site all works and facilities and from time to time make improvements necessary to prepare for disposal and permanently dispose of low-level waste.

(b) Preparation and construction of works and facilities at the disposal site shall be done in a manner that will comply with the rules and standards for disposal sites adopted by federal and state agencies and with the disposal plans of the authority.

Authority to Enter into Construction Contracts

Sec. 3.11. The authority may contract with any person to construct any part of the works and facilities or from time to time make improvements at the disposal site, provided the contract specifically provides for termination by the authority for failure of the contractor to comply with federal and state standards and rules or with the authority's disposal plans.

Bids on Contracts for Construction

Sec. 3.12. Construction contracts requiring an expenditure of more than $5,000 may be made only after competitive bidding as provided by Chapter 770, Acts of the 66th Legislature, Regular Session, 1979 (Article 2368a.3, Vernon's Texas Civil Statutes).

Additional Work

Sec. 3.13. After a construction contract is awarded, if the authority determines that additional work is needed or if the character or type of work, facili-

ties, or improvements should be changed, the board may authorize change orders to the contract on terms the board approves. A change made under this section shall not increase nor decrease the total cost of the contract by more than 25 percent.

Attachments to Construction Contracts

Sec. 3.14. A construction contract shall contain or have attached to it the specifications, plans, and details for work included in the contract, and work shall be done according to these plans and specifications under the supervision of the authority.

Execution and Availability of Construction Contract

Sec. 3.15. (a) A construction contract shall be in writing and signed by an authorized representative of the authority and the contractor.

(b) The contract shall be kept in the authority's records and shall be available for public inspection.

Contractor's Bond

Sec. 3.16. (a) A contractor shall execute a bond in an amount determined by the board, not to exceed the contract price, payable to the authority and approved by the board, conditioned on the faithful performance of the obligations, agreements, and covenants of the contract.

(b) The bond shall provide that if the contractor defaults on the contract, he will pay to the authority all damages sustained as a result of the default. The bond shall be deposited in the authority's depository, and a copy of the bond shall be kept in the authority's central office.

Monitoring Construction Work

Sec. 3.17. (a) The board has control of construction being done for the authority under contract and shall determine whether or not the contract is being fulfilled.

(b) The board shall have the construction work inspected by engineers, inspectors, and other personnel of the authority.

(c) During the progress of the construction work, the engineers, inspectors, and other personnel doing the inspections shall submit to the board written reports that show whether or not the contractor is complying with the contract.

(d) On completion of construction work, the engineers, inspectors, and other personnel shall submit to the board a final detailed written report including information necessary to show whether or not the contractor has fully complied with the contract.

Payment for Construction Work

Sec. 3.18. (a) The authority shall pay the contract price of construction contracts as provided in this section.

(b) The authority will make progress payments under construction contracts monthly as the work proceeds or at more frequent intervals as determined by the board.

(c) If requested by the board, the contractor shall furnish an analysis of the total contract price showing the amount included for each principal category of the work in such detail as requested to provide a basis for determining progress payments.

(d) In making progress payments, 10 percent of the estimated amount shall be retained until final completion and acceptance of the contract work. However, if the board, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full. Also, if the work is substantially complete, the board, if it finds the amount retained to be in excess of the amount adequate for the protection of the authority, may release to the contractor all or a portion of the excess amount.

(e) On completion and acceptance of each separate project, work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage.

(f) When construction work is completed according to the terms of the contract, the board shall draw a warrant on the depository to pay any balance due on the contract.

Contracts for Purchase of Equipment, Materials, Supplies, etc., Over $5,000

Sec. 3.19. (a) If the estimated amount of a proposed contract for the purchase of materials, machinery, equipment, or supplies is more than $5,000, the board shall ask for competitive bids as provided by Section 3.12 of this Act.

(b) This section does not apply to purchases of property from public agencies or to contracts for personal or professional services.

Management and Operation of Sites

Sec. 3.20. (a) The board has general authority to manage and, if necessary, operate the disposal sites under this Act and take any actions necessary under this Act to manage and operate the disposal sites in a manner that will protect the public health and safety and the environment.

(b) The board may enter into contracts with persons to perform overall operation in the operation of a disposal site, but no contract may include provisions that relieve the authority of its management responsibility under this Act. The board shall adopt rules establishing criteria for determining the competence of a person to perform the overall operation of a disposal site in the operation of a disposal site.

(c) The board shall manage and, if necessary, operate the authority's disposal sites in a manner that complies with laws and with rules and standards of appropriate federal and state agencies having jurisdiction over disposal sites.

(d) Each disposal site shall be supervised by an on-site operator with responsibility for all operations

at the site. If the authority contracts under Subsection (b) of this section for the overall operation of a disposal site, the on-site operator shall be a representative of the contractor. If the authority operates the disposal site, the on-site operator shall be employed by the general manager.

(e) The board shall adopt rules governing the operation of disposal sites, acceptance of low-level waste, maintenance and monitoring of disposal sites, and activities relating to the management and operation of disposal sites. Rules adopted by the board may not be less stringent than those adopted by the agency.

(f) A contract with a person under Subsection (b) of this section shall specify that:

(1) the board retains management authority over the low-level disposal site and may monitor and inspect any part of the disposal site and operations taking place on the disposal site at any time;

(2) the contract operator must operate the site in a manner that complies with laws and licenses regulating operations at the site issued by the agency and the federal government;

(3) the contract operator must comply with the rules governing operation of the site promulgated by the board; and

(4) should the contract operator fail to comply with any license issued for the site by the agency or by the federal government, fail to comply with the rules of the authority, or fail to comply with the contract the contract is subject to termination after notice and hearing.

(g) In contracting with a person under Subsection (b) of this section, the board may:

(1) select the person with whom it will contract before it obtains the license for the disposal site so that it may allow the person with whom it contracts to advise and consult with the board, general manager, and staff of the authority on the design and disposal plans for the site;

(2) require the person with whom it contracts to make all tests, keep all records, and prepare all reports required by licenses issued for disposal site operations;

(3) require standards of performance;

(4) require posting of a bond or giving of other financial security by the person with whom it contracts to ensure safe operation and decommissioning of the disposal site; and

(5) establish other requirements that are necessary to assure that the disposal site is properly operated and that the public health and safety and the environment are protected.

Acceptance of Low-Level Waste at Disposal Sites

Sec. 3.21. (a)(1) Subject to the limitations in this section and Section 3.22 of this Act, each disposal site shall accept for disposal all low-level waste that is presented to it and that is properly processed and packaged.

(2) The Texas Department of Health shall adopt rules relating to the packaging of radioactive waste, and an inspector employed by the department shall inspect all packaged radioactive waste before it is transported to a Texas permanent disposal site. The rules of the department shall provide that the department charge a reasonable fee for the inspection. The fee shall be limited to the cost of the inspection of the radioactive waste.

(b) For shipments of low-level waste that are in excess of 75 cubic feet, the person making the shipment shall give the on-site operator of the disposal site written notice of the shipment containing information required by the board at least 72 hours before shipment of the low-level waste to the disposal site begins.

(c) On arrival of a shipment of low-level waste at a disposal site, the on-site operator or his agent shall determine that the waste complies with all laws, rules, and standards relating to processing and packaging of low-level waste before the waste is accepted for disposal at the disposal site.

(d) If low-level waste that is not properly processed or packaged arrives at a disposal site, the on-site operator or his agent shall properly process and package the waste for disposal and charge the person making the shipment the fee required by Section 4.03 of this Act.

(e) The on-site operator or his agent shall report to the federal and state agencies that establish rules and standards for processing, packaging, and transportation of low-level waste any person who delivers to a disposal site low-level waste that is not properly processed or packaged.

Limitations on Waste Disposal

Sec. 3.22. (a) Only low-level waste that is generated within the State of Texas may be accepted by a disposal site.

(b) The board by rule shall exclude certain types of low-level waste from a disposal site if the low-level waste is incompatible with disposal operations.

Disposal Site Activities

Sec. 3.23. Disposal sites shall be used for permanent storage of low-level wastes, and the authority may adopt any methods and techniques for permanent disposal that comply with federal and state standards for low-level waste disposal and that protect the public health and safety and the environment. Also, the authority may provide facilities at disposal sites for processing and packaging low-level waste for disposal.

Emergency Response

Sec. 3.24. (a) To protect the public health and safety and the environment, the board, after notice and hearing, shall adopt an emergency response plan

for each disposal site to be implemented in the event a disposal site becomes a threat to the public health or safety or the environment.

(b) The authority shall cooperate with and seek the cooperation of federal and state agencies responsible for regulating disposal sites and of federal, state, and local agencies engaged in disaster relief activities.

Decommissioning and Closing Disposal Sites

Sec. 3.25. (a) On a finding by the board, after notice and hearing, that a disposal site should be closed, the authority and any operator with which it has contracted shall proceed with decommissioning of the disposal site in compliance with federal and state laws and rules and standards adopted under those laws and with rules and plans of the authority.

(b) On completion of decommissioning activities and receipt of necessary approval from any federal and state agencies, the board shall, if required by law, transfer fee simple title to the disposal site to the agency.

Reports

Sec. 3.26. At least 60 days before each regular session, the authority shall submit to the appropriate committees of the legislature a biennial report that shall serve as a basis for periodic oversight hearings on the authority's operations and on the status of interstate compacts and agreements.

Health Surveillance Survey

Sec. 3.27. The board, in cooperation with the Texas Department of Health and local public health officials, shall study the feasibility of developing a health surveillance survey for the population in the disposal site vicinity.

ARTICLE 4. FINANCIAL PROVISIONS

Financing Authority Activities

Sec. 4.01. Expenses of the authority shall be paid from fees authorized and collected under this article and appropriations made by the legislature.

Waste Disposal Fee

Sec. 4.02. (a) The board shall adopt and have collected a waste disposal fee to be paid by each person who delivers to the authority low-level waste for disposal.

(b) The board shall adopt and periodically revise by rule a schedule of waste disposal fees based on the volume of low-level waste delivered for disposal and the relative hazard presented by each type of low-level waste that is delivered to the disposal site. In determining relative hazard, the board shall consider the radioactive, physical, and chemical properties of each type of low-level waste.

(c) Waste disposal fees adopted by the board shall be sufficient to allow the authority to recover operating and maintenance costs, expenses incurred before beginning operation of the site amortized over a period of not more than 20 years beginning on the first day of operation of the disposal site, an amount necessary to meet future costs of decommissioning and closing the disposal site, an amount sufficient to meet needs for impact assistance under Section 4.04 of this Act, an amount necessary to pay licensing fees and to provide security required by the agency under laws and rules of the agency.

Processing and Packaging Fee

Sec. 4.03. The board shall adopt and periodically revise by rule a schedule of processing and packaging fees based on the volume of improperly processed or packaged low-level waste delivered for disposal and on the cost to the authority for processing and packaging the waste properly in compliance with federal and state standards.

Low-Level Radioactive Waste Disposal Impact Assistance

Sec. 4.04. (a) The board may make grants to a city, county, hospital district, school district, water district, or other political subdivision of this state to reimburse that entity for actual costs or to pay expenses anticipated in connection with additional fire, police, educational, utility, public access, and other governmental services, public works projects, and planning that are required by the city, county, hospital district, school district, water district, or other political subdivision of this state as a result of the construction and operation of a disposal site within or adjacent to the affected city, county, hospital district, school district, water district, or other political subdivision of this state.

(b) The board shall adopt rules establishing:

(1) procedures for the application for grants under this section;

(2) criteria for determining the adverse effect that the construction and operation of a disposal site will have on cities, counties, hospital districts, school districts, water districts, and other political subdivisions of this state;

(3) priorities of needs for affected cities, counties, hospital districts, school districts, water districts, and other political subdivisions of this state; and

(4) methods for monitoring the uses and effectiveness of grants made under this section.

(c) On approval of a grant under this section, the board shall issue an order stating the name of the city, county, hospital district, school district, water district, or other political subdivision of the state receiving the grant and the amount of the grant and shall direct payment of the grant.

[Acts 1981, 67th Leg., p. 713, ch. 273, §§ 1.01 to 4.04, eff. June 1, 1981.]

"(h) The district review committees created and established pursuant to Subchapter C of the Medical Liability and Insurance Improvement Act of Texas are hereby continued and recreated under the jurisdiction of the board. The number of and geographic area composed of various counties designated by the board on the effective date of this Act are hereby validated. A person holding office as a member of a district review committee on the effective date of this Act continues to hold office for the term for which the person was originally

appointed or until a successor shall be appointed and qualified. Thereafter, at the expiration of the term of each member appointed, a successor shall be appointed. The terms of office of all succeeding members expire January 15 of even-numbered years."

Section 5.01 of the 1981 Act provides:

"Immediately after this Act takes effect, the governor shall appoint, with the advice and consent of the senate, two board members whose terms expire on February 1, 1983, two board members whose terms expire on February 1, 1985, and two board members whose terms expire on February 1, 1987. Successors to these initial appointees serve for full six-year terms."

CHAPTER TWENTY. NATURAL DEATH

Art. 4590h. Natural Death Act

Short Title

Sec. 1. This Act shall be known and may be cited as the Natural Death Act.

Definitions

Sec. 2. In this Act:

(1) "Attending physician" means the physician selected by, or assigned by the physician selected by, the patient who has primary responsibility for the treatment and care of the patient.

(2) "Directive" means a written document voluntarily executed by the declarant in accordance with the requirements of Section 3 of this Act. The directive, or a copy of the directive, shall be made part of the patient's medical records.

(3) "Life-sustaining procedure" means a medical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function, which, when applied to a qualified patient, would serve only to artificially prolong the moment of death and where, in the judgment of the attending physician, noted in the qualified patient's medical records, death is imminent whether or not such procedures are utilized. "Life-sustaining procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(4) "Physician" means a physician and surgeon licensed by the Texas State Board of Medical Examiners.

(5) "Qualified patient" means a patient diagnosed and certified in writing to be afflicted with a terminal condition by two physicians, one of whom shall be the attending physician, and the other shall be chosen by the patient or the attending physician, who have each personally examined the patient.

(6) "Terminal condition" means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining procedures serves only to postpone the moment of death of the patient.

Directive for Withholding or Withdrawal of Life-Sustaining Procedures in Event of Terminal Condition

Sec. 3. Any adult person may execute a directive for the withholding or withdrawal of life-sustaining procedures in the event of a terminal condition. The directive shall be signed by the declarant in the presence of two witnesses not related to the declarant by blood or marriage and who would not be entitled to any portion of the estate of the declarant on his decease under any will of the declarant or codicil thereto or by operation of law. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarant is a patient, a patient in a health care facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease at the time of the execution of the directive. The signature of the declarant shall be acknowledged, and the witnesses shall subscribe and swear to the directive before a notary public. The directive shall be in the following form:

"DIRECTIVE TO PHYSICIANS

"Directive made this _____ day of _____ (month, year).

"I _____, being of sound mind, willfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare:

"1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my attending physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

"2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

"3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

"4. I have been diagnosed and notified as having a terminal condition by _____, M.D., whose address is _____, and whose telephone number is _____. I understand that if I have not filled in the physician's name and address, it shall be presumed that I did not have a terminal condition when I made out this directive.

"5. This directive shall be in effect until it is revoked.

"6. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

"7. I understand that I may revoke this directive at any time.

"Signed _____

City, County, and State of Residence _____

The declarant has been personally known to me and I believe him or her to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate on his decease, nor am I the attending physician of declarant or an employee of the attending physician or a health facility in which declarant is a patient, or a patient in the health care facility in which the declarant is a patient, or any person who has a claim against any portion of the estate of the declarant upon his decease.

"Witness _____

"Witness _____

"STATE OF TEXAS

COUNTY OF _____

"Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the declarant and witnesses whose names are subscribed to the foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the declarant, _____, declared to me and to the said witnesses in my presence that said instrument is his Directive to Physicians, and that he had willingly and voluntarily made and executed it as his free act and deed for the purposes therein expressed.

"Declarant _____

"Witness _____

"Witness _____

"Subscribed and acknowledged before me by the said Declarant, _____, and by the said witnesses, _____ and _____, on this ___ day of _____, 19___.

_____

Notary Public in and for

_____ County,

Texas"

Revocation of Directive

Sec. 4. (a) A directive may be revoked at any time by the declarant, without regard to his mental state or competency, by any of the following methods:

(1) by being canceled, defaced, obliterated, or burnt, torn, or otherwise destroyed by the declarant or by some person in his presence and by his direction;

(2) by a written revocation of the declarant expressing his intent to revoke, signed and dated by the declarant. Such revocation shall become effective only on communication to an attending physician by the declarant or by a person acting on behalf of the declarant or by mailing said revocation to an attending physician. An attending physician or his designee shall record in the patient's medical record the time and date when he received notification of the written revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical records; or

(3) by a verbal expression by the declarant of his intent to revoke the directive. Such revocation shall become effective only on communication to an attending physician by the declarant or by a person acting on behalf of the declarant. An attending physician or his designee shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when he received notification of the revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical records.

(b) Except as otherwise provided in this Act, there shall be no criminal or civil liability on the part of any person for failure to act on a revocation made pursuant to this section unless that person has actual knowledge of the revocation.

Duration of Directive

Sec. 5. A directive shall be effective until it is revoked in a manner prescribed in Section 4 of this Act. Nothing in this Act shall be construed to prevent a declarant from reexecuting a directive at any time in accordance with the formalities of Section 3 of this Act, including reexecution subsequent to a diagnosis of a terminal condition. If the declarant has executed more than one directive, such time shall be determined from the date of execution of the last directive known to the attending physician. If the declarant becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarant's condition renders him or her able to communicate with the attending physician.

Civil or Criminal Liability

Sec. 6. No physician or health facility which, acting in accordance with the requirements of this Act, causes the withholding or withdrawal of life-sustaining procedures from a qualified patient, shall be subject to civil liability therefrom unless negligent. No health professional, acting under the direction of a physician, who participates in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this Act shall be subject to any civil liability unless negligent. No physician, or health professional acting under the direction of a physician, who participates in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this Act shall be guilty of any criminal act or of unprofessional conduct unless negligent. No physician, health care facility, or health care professional shall be liable either civilly or criminally for failure to act pursuant to the declarant's directive where such physician, health care facility, or health care professional had no knowledge of such directive.

Failure to Execute Directive

Sec. 7. (a) Prior to effecting a withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to the directive, the attending physician shall determine that the directive complies with the form of the directive set out in Section 3 of this Act, and, if the patient is mentally competent, that the directive and all steps proposed by the attending physician to be undertaken are in accord with the existing desires of the qualified patient and are communicated to the patient.

(b) If the declarant was a qualified patient prior to executing or reexecuting the directive, the directive shall be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life-sustaining procedures. No physician, and no health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection. A failure by a physician to effectuate the directive of a qualified patient pursuant to this subsection may constitute unprofessional conduct if the physician refuses to make the necessary arrangements or fails to take the necessary steps to effect the transfer of the qualified patient to another physician who will effectuate the directive of the qualified patient.

(c) If the declarant becomes a qualified patient subsequent to executing the directive, and has not subsequently re-executed the directive, the attending physician may give weight to the directive as evidence of the patient's directions regarding the withholding or withdrawal of life-sustaining procedures and may consider other factors, such as information from the affected family or the nature of the patient's illness, injury, or disease, in determining whether the totality of circumstances known to the attending physician justifies effectuating the directive. No physician, and no health professional acting under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection.

Effect on Offense of Aiding Suicide and Insurance Policies

Sec. 8. (a) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of this Act shall not, for any purpose, constitute an offense under Section 22.08, Penal Code.

(b) The making of a directive pursuant to Section 3 of this Act shall not restrict, inhibit, or impair in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health facility, or other health provider, and no health care service plan, or insurer issuing insurance, may require any person to execute a directive as a condition for being insured for, or receiving, health care services nor may the execution or failure to execute a directive be considered in any way in establishing the premiums for insurance.

Tampering with Directive

Sec. 9. A person who willfully conceals, cancels, defaces, obliterates, or damages the directive of another without such declarant's consent shall be guilty of a Class A misdemeanor. A person who falsifies or forges the directive of another, or willfully conceals or withholds personal knowledge of a revocation as provided in Section 4 of this Act, with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the declarant, and thereby, because of any such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to thereby be hastened, shall be subject to prosecution for criminal homicide under the provisions of the Penal Code.

Mercy Killing not Condoned

Sec. 10. Nothing in this Act shall be construed to condone, authorize, or approve mercy killing, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying as provided in this Act.

Act as Cumulative

Sec. 11. Nothing in this Act shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this Act are cumulative.

[Acts 1977, 65th Leg., p. 1085, ch. 398, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1783, ch. 724, §§ 1 to 3, eff. Aug. 27, 1979.]

CHAPTER TWENTY-ONE. MEDICAL LIABILITY AND INSURANCE IMPROVEMENT

Art. 4590i. Medical Liability and Insurance Improvement Act

Text of article effective until August 31, 1993

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1.01. This part may be cited as the Medical Liability and Insurance Improvement Act of Texas.

Findings and Purposes

Sec. 1.02. (a) The Legislature of the State of Texas finds that:

(1) the number of health care liability claims (frequency) has increased since 1972 inordinately;

(2) the filing of legitimate health care liability claims in Texas is a contributing factor affecting medical professional liability rates;

(3) the amounts being paid out by insurers in judgments and settlements (severity) have likewise increased inordinately in the same short period of time;

(4) the effect of the above has caused a serious public problem in availability of and affordability of adequate medical professional liability insurance;

(5) the situation has created a medical malpractice insurance crisis in the State of Texas;

(6) this crisis has had a material adverse effect on the delivery of medical and health care in Texas, including significant reductions of availability of medical and health care services to the people of Texas and a likelihood of further reductions in the future;

(7) the crisis has had a substantial impact on the physicians and hospitals of Texas and the cost to physicians and hospitals for adequate medical malpractice insurance has dramatically risen in price, with cost impact on patients and the public;

(8) the direct cost of medical care to the patient and public of Texas has materially increased due to rising cost of malpractice insurance protection for physicians and hospitals in Texas;

(9) the crisis has increased the cost of medical care both directly through fees and indirectly through additional services provided for protection against future suits or claims; and defensive medicine has resulted in increasing cost to patients, private insurers, and the state and has contributed to the general inflation that has marked health care in recent years;

(10) satisfactory insurance coverage for adequate amounts of insurance in this area is often not available at any price;

(11) the combined effect of the defects in the medical, insurance, and legal systems has caused a serious public problem both with respect to the availability of coverage and to the high rates being charged by insurers for medical professional liability insurance to some physicians, health care providers, and hospitals;

(12) the adoption of certain modifications in the medical, insurance, and legal systems, the total effect of which is currently undetermined, may or may not have an effect on the rates charged by insurers for medical professional liability insurance;

(13) these facts have been verified by the Medical Professional Liability Study Commission, which was created by the 64th Legislature.[1] For further amplification of these facts the legislature adopts the findings of the report of the commission.

(b) Because of the conditions stated in Subsection (a) of this section, it is the purpose of this Act to improve and modify the system by which health care liability claims are determined in order to:

(1) reduce excessive frequency and severity of health care liability claims through reasonable improvements and modifications in the Texas insurance, tort, and medical practice systems;

(2) decrease the cost of those claims and assure that awards are rationally related to actual damages;

(3) do so in a manner that will not unduly restrict a claimant's rights any more than necessary to deal with the crisis;

(4) make available to physicians, hospitals, and other health care providers protection against potential liability through the insurance mechanism at reasonably affordable rates;

(5) make affordable medical and health care more accessible and available to the citizens of Texas;

(6) make certain modifications in the medical, insurance, and legal systems in order to determine whether or not there will be an effect on rates charged by insurers for medical professional liability insurance; and

(7) make certain modifications to the liability laws as they relate to health care liability claims only and with an intention of the legislature to not extend or apply such modifications of liability laws to any other area of the Texas legal system or tort law.

[1] See note under Insurance Code, art. 21.49–3.

Definitions

Sec. 1.03. (a) In this part:

(1) "Court" means any federal or state court.

(2) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(3) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed or chartered by the State of Texas to provide health care as a registered nurse, hospital, dentist, podiatrist, pharmacist, or nursing home, or an officer, employee, or agent thereof acting in the course and scope of his employment.

(4) "Health care liability claim" means a cause of action against a health care provider or physician for treatment, lack of treatment, or other claimed departure from accepted standards of medical care or health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(5) "Hospital" means a duly licensed public or private institution as defined in Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes), or in Section 88, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Article 5547–88, Vernon's Texas Civil Statutes).

(6) "Medical care" means any act defined as practicing medicine in Article 4510, Revised Civil Statutes of Texas, 1925, as amended, performed or furnished, or which should have been performed, by one licensed to practice medicine in Texas for, to, or on behalf of a patient during the patient's care, treatment, or confinement.

(7) "Pharmacist" means one licensed under Chapter 107, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 4542a, Vernon's Texas Civil Statutes), who, for the purposes of this Act, performs those activities limited to the dispensing of prescription medicines which result in health care liability claims and does not include any other cause of action that may exist at common law against them, including but not limited to causes of action for the sale of mishandled or defective products.

(8) "Physician" means a person licensed to practice medicine in this state.

(9) "Representative" means the spouse, parent, guardian, trustee, authorized attorney, or other authorized legal agent of the patient or claimant.

(b) Any legal term or word of art used in this part, not otherwise defined in this part, shall have such meaning as is consistent with the common law.

SUBCHAPTER B. ADDITIONAL DISCIPLINARY POWERS [REPEALED]

Secs. 2.01 to 2.15. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981.

SUBCHAPTER C. DISTRICT REVIEW COMMITTEES [REPEALED]

Secs. 3.01 to 3.09. Repealed by Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981.

SUBCHAPTER D. NOTICE

Notice

Sec. 4.01. (a) Any person or his authorized agent asserting a health care liability claim shall give written notice of such claim by certified mail, return receipt requested, to each physician or health care provider against whom such claim is being made at least 60 days before the filing of a suit in any court of this state based upon a health care liability claim.

(b) In such pleadings as are subsequently filed in any court, each party shall state that it has fully complied with the provisions of this section and shall provide such evidence thereof as the judge of the court may require to determine if the provisions of this Act have been met.

(c) Notice given as provided in this Act shall toll the applicable statute of limitations to and including a period of 75 days following the giving of the notice, and this tolling shall apply to all parties and potential parties.

(d) All parties shall be entitled to obtain complete and unaltered copies of the claimant's medical records from any other party within 10 days from the date of receipt of a written request for such records; provided, however, that the receipt of a medical authorization executed by the claimant herein shall be considered compliance by the claimant with this section.

SUBCHAPTER E. AD DAMNUM CLAUSE

Pleadings not to State Damage Amount; Special Exception; Exclusion from Section

Sec. 5.01. Pleadings in a suit based on a health care liability claim shall not specify an amount of money claimed as damages. The defendant may file a special exception to the pleadings on the ground the suit is not within the court's jurisdiction, in which event, the plaintiff shall inform the court and defendant in writing of the total dollar amount claimed. This section does not prevent a party from mentioning the total dollar amount claimed in examining prospective jurors on voir dire or in argument to the court or jury.

SUBCHAPTER F. INFORMED CONSENT

Definition

Sec. 6.01. In this subchapter, "panel" means the Texas Medical Disclosure Panel.

Theory of Recovery

Sec. 6.02. In a suit against a physician or health care provider involving a health care liability claim that is based on the failure of the physician or health care provider to disclose or adequately to disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider, the only theory on which recovery may be obtained is that of negligence in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent.

Texas Medical Disclosure Panel

Sec. 6.03. (a) The Texas Medical Disclosure Panel is created to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure.

(b) The panel established herein is administratively attached to the Texas Department of Health. The Texas Department of Health, at the request of the panel, shall provide administrative assistance to the panel; and the Texas Department of Health and the panel shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services. The Texas Department of Health, at the request of the panel, shall submit the panel's budget request to the legislature. The panel shall be subject, except where inconsistent, to the

rules and procedures of the Texas Department of Health; however, the duties and responsibilities of the panel as set forth in the Medical Liability and Insurance Improvement Act of Texas, as amended (Article 4590i, Vernon's Texas Civil Statutes), shall be exercised solely by the panel and the board or Texas Department of Health shall have no authority or responsibility with respect to same.

(c) The panel is composed of nine members, with three members licensed to practice law in this state and six members licensed to practice medicine in this state. Members of the panel shall be selected by the Commissioner of Health.

(d) The commissioner shall select members of the panel according to the following schedule:

(1) one attorney and two physicians to serve a term of two years, which term shall begin on September 1, 1979, and expire on August 31, 1981, or until a successor is qualified;

(2) one attorney and two physicians to serve a term of four years, which terms shall begin September 1, 1979, and expire August 31, 1983, or until a successor is qualified;

(3) one attorney and two physicians to serve a term of six years, which term shall begin September 1, 1979, and expire on August 31, 1985, or until a successor is qualified.

Thereafter, at the expiration of the term of each member of the panel so appointed, the commissioner shall select a successor, and such successor shall serve for a term of six years, or until his successor is selected. Any member who is absent for three consecutive meetings without the consent of a majority of the panel present at each such meeting may be removed by the commissioner at the request of the panel submitted in writing and signed by the chairman. Upon the death, resignation, or removal of any member, the commissioner shall fill the vacancy by selection for the unexpired portion of the term.

(e) Members of the panel are not entitled to compensation for their services, but each panelist is entitled to reimbursement of any necessary expense incurred in the performance of his duties on the panel including necessary travel expenses.

(f) Meetings of the panel shall be held at the call of the chairman or on petition of at least three members of the panel.

(g) At the first meeting of the panel each year after its members assume their positions, the panelists shall select one of the panel members to serve as chairman and one of the panel members to serve as vice-chairman, and each such officer shall serve for a term of one year. The chairman shall preside at meetings of the panel, and in his absence, the vice-chairman shall preside.

(h) Employees of the Texas Department of Health shall serve as the staff for the panel.

Duties of Panel

Sec. 6.04. (a) To the extent feasible, the panel shall identify and make a thorough examination of all medical treatments and surgical procedures in which physicians and health care providers may be involved in order to determine which of those treatments and procedures do and do not require disclosure of the risks and hazards to the patient or person authorized to consent for the patient.

(b) The panel shall prepare separate lists of those medical treatments and surgical procedures that do and do not require disclosure and for those treatments and procedures that do require disclosure shall establish the degree of disclosure required and the form in which the disclosure will be made.

(c) Lists prepared under Subsection (b) of this section together with written explanations of the degree and form of disclosure shall be published in the Texas Register.

(d) At least annually, or at such other period the panel may determine from time to time, the panel will identify and examine any new medical treatments and surgical procedures that have been developed since its last determinations, shall assign them to the proper list, and shall establish the degree of disclosure required and the form in which the disclosure will be made. The panel will also examine such treatments and procedures for the purpose of revising lists previously published. These determinations shall be published in the Texas Register.

Duty of Physician or Health Care Provider

Sec. 6.05. Before a patient or a person authorized to consent for a patient gives consent to any medical care or surgical procedure that appears on the panel's list requiring disclosure, the physician or health care provider shall disclose to the patient, or person authorized to consent for the patient, the risks and hazards involved in that kind of care or procedure. A physician or health care provider shall be considered to have complied with the requirements of this section if disclosure is made as provided in Section 6.06 of this subchapter.

Manner of Disclosure

Sec. 6.06. Consent to medical care that appears on the panel's list requiring disclosure shall be considered effective under this subchapter if it is given in writing, signed by the patient or a person authorized to give the consent and by a competent witness, and if the written consent specifically states the risks and hazards that are involved in the medical care or surgical procedure in the form and to the degree required by the panel under Section 6.04 of this subchapter.

Effect of Disclosure

Sec. 6.07. (a) In a suit against a physician or health care provider involving a health care liability claim that is based on the negligent failure of the physician or health care provider to disclose or ade-

quately to disclose the risks and hazards involved in the medical care or surgical procedure rendered by the physician or health care provider:

(1) both disclosure made as provided in Section 6.05 of this subchapter and failure to disclose based on inclusion of any medical care or surgical procedure on the panel's list for which disclosure is not required shall be admissible in evidence and shall create a rebuttable presumption that the requirements of Section 6.05 and 6.06 of this subchapter have been complied with and this presumption shall be included in the charge to the jury; and

(2) failure to disclose the risks and hazards involved in any medical care or surgical procedure required to be disclosed under Sections 6.05 and 6.06 of this subchapter shall be admissible in evidence and shall create a rebuttable presumption of a negligent failure to conform to the duty of disclosure set forth in Sections 6.05 and 6.06 of this subchapter, and this presumption shall be included in the charge to the jury; but failure to disclose may be found not to be negligent if there was an emergency or if for some other reason it was not medically feasible to make a disclosure of the kind that would otherwise have been negligence.

(b) If medical care or surgical procedure is rendered with respect to which the panel has made no determination either way regarding a duty of disclosure, the physician or health care provider is under the duty otherwise imposed by law.

SUBCHAPTER G. RES IPSA LOQUITUR

Application of Res Ipsa Loquitur

Sec. 7.01. The common-law doctrine of res ipsa loquitur shall only apply to health care liability claims against health care providers or physicians in those cases to which it has been applied by the appellate courts of this state as of the effective date of this subchapter.

SUBCHAPTER H. BAD FAITH CAUSE OF ACTION

Separate Cause of Action for Bad Faith

Sec. 8.01. With respect to a health care liability claim actually filed, a cause of action based on bad faith may be filed and litigated in a separate lawsuit.

Definition

Sec. 8.02. As used in this subchapter, "bad faith" means to file and maintain a claim with reckless disregard as to whether or not reasonable grounds exist for asserting the claim.

Notice of Bad Faith Claim

Sec. 8.03. At least 60 days before the filing of a suit based on bad faith in any court of this state, a person or his authorized agent asserting a bad faith cause of action shall give written notice by certified mail, return receipt requested, of the claim, to the defendant or his attorney against whom the claim is being made.

Persons Against Whom Claims May be Made; Damage Limits

Sec. 8.04. The right of action created in this subchapter shall lie against any claimant or defendant or claimant's or defendant's attorney, or both, who file a health care liability claim in bad faith, or file a claim under this article in bad faith, and the measure of damages with respect thereto shall be limited to $100,000 for compensatory and exemplary damages, as applicable.

Effective Date

Sec. 8.05. This subchapter will take effect if and only if the State Bar of Texas fails to certify to the Supreme Court of Texas by January 31, 1979, that it has adopted rules for appropriate disciplinary measures against an attorney who has been determined to have filed a claim in bad faith. If the provisions of this section are held unconstitutional or invalid for any reason, the legislature specifically declares this section to be severable and that such holding shall in no way affect the validity of the other sections of this subchapter.

SUBCHAPTER I. ADVANCE PAYMENTS

Advance Payments not Admission of Liability

Sec. 9.01. In an action brought to recover damages based on a health care liability claim, no advance payment made on that claim by the defendant health care provider or physician, or the professional liability insurer, to or for the claimant, or any other person, shall be construed as an admission of liability by the health care provider or physician or any person for any injuries or damages suffered by the claimant or anyone else.

Admissibility of Advance Payments

Sec. 9.02. Except as provided in this subchapter, evidence of an advance payment shall not be admissible during the trial of an action based on a health care liability claim at any stage of the proceedings, unless and until there is a final award in favor of the claimant, in which event the trial judge shall reduce the award to the claimant to the extent of the advance payment.

Adjustments for Advance Payments

Sec. 9.03. The advance payment shall inure to the exclusive benefit of the defendant or his or its carrier making the advance payment, and in the event the advance payment exceeds the pro rata liability of the defendant or the carrier making the payment, the trial judge shall order any adjustment necessary to equalize the amount which each defendant is obligated to pay under this subchapter, exclusive of costs.

Certain Advance Payments Exempt from Repayment

Sec. 9.04. In no case shall an advance payment in excess of an award be repayable by the person receiving it.

SUBCHAPTER J. STATUTE OF LIMITATIONS

Limitations on Health Care Liability Claims

Sec. 10.01. Notwithstanding any other law, no health care liability claim may be commenced unless the action is filed within two years from the occurrence of the breach or tort or from the date the medical or health care treatment that is the subject of the claim or the hospitalization for which the claim is made is completed; provided that, minors under the age of 12 years shall have until their 14th birthday in which to file, or have filed on their behalf, the claim. Except as herein provided, this subchapter applies to all persons regardless of minority or other legal disability.

Causes of Action Covered by Other Law

Sec. 10.02. Causes of action accruing between the effective date of this Act and the effective date of Article 5.82, Insurance Code, shall be filed pursuant to Section 4 of Article 5.82.

SUBCHAPTER K. LIABILITY LIMITS

Definition

Sec. 11.01. In this subchapter, "consumer price index" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone.

Limit on Civil Liability

Sec. 11.02. (a) In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability for damages of the physician or health care provider shall be limited to an amount not to exceed $500,000.

(b) Subsection (a) of this section does not apply to the amount of damages awarded on a health care liability claim for the expenses of necessary medical, hospital, and custodial care received before judgment or required in the future for treatment of the injury.

(c) This section shall not limit the liability of any insurer where facts exist that would enable a party to invoke the common law theory of recovery commonly known in Texas as the "Stowers Doctrine."

(d) In any action on a health care liability claim that is tried by a jury in any court in this state, the following shall be included in the court's written instructions to the jurors: Do not consider, discuss, nor speculate whether or not liability, if any, on the part of any party is or is not subject to any limit under applicable law.

Alternative Partial Limit on Civil Liability

Sec. 11.03. In the event that Section 11.02(a) of this subchapter is stricken from this subchapter or is otherwise invalidated by a method other than through legislative means, the following shall become effective:

In an action on a health care liability claim where final judgment is rendered against a physician or health care provider, the limit of civil liability of the physician or health care provider for all past and future noneconomic losses recoverable by or on behalf of any injured person and/or the estate of such person, including without limitation as applicable past and future physical pain and suffering, mental anguish and suffering, consortium, disfigurement, and any other nonpecuniary damage, shall be limited to an amount not to exceed $150,000.

Adjustment of Liability Limits

Sec. 11.04. When there is an increase or decrease in the consumer price index with respect to the amount of that index on the effective date of this subchapter each of the liability limits prescribed in Section 11.02(a) or in Section 11.03 of this subchapter, as applicable, shall be increased or decreased, as applicable, by a sum equal to the amount of such limit multiplied by the percentage increase or decrease in the consumer price index between the effective date of this subchapter and the time at which damages subject to such limits are awarded by final judgment or settlement.

Subchapter's Application Prevails over Certain Other Laws

Sec. 11.05. The provisions of this subchapter shall apply notwithstanding the provisions contained in Article 4671, Revised Civil Statutes of Texas, 1925, as amended, and the provisions of Article 5525, Revised Civil Statutes of Texas, 1925, as amended.

SUBCHAPTER L. MISCELLANEOUS PROVISIONS

Exception From Certain Laws

Sec. 12.01. (a) Notwithstanding any other law, no provisions of Sections 17.41–17.63, Business & Commerce Code, shall apply to physicians or health care providers as defined in Section 1.03(3) of this Act, with respect to claims for damages for personal injury or death resulting, or alleged to have resulted, from negligence on the part of any physician or health care provider.

(b) This section shall not apply to pharmacists.

[Acts 1977, 65th Leg., p. 2039, ch. 817, Part 1, eff. Jan. 1, 1978. Amended by Acts 1979, 66th Leg., p. 1259, ch. 596, §§ 1, 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., 1st C.S., p. 36, ch. 1, § 6(a), eff. Aug. 5, 1981.]

Sections 41.01 to 41.04 of the 1977 Act provide as follows:

"Sec. 41.01. The provisions of this Act shall apply only to causes of action based on health care liability claims accruing after the effective date of this Act.

"Sec. 41.02. This Act expires at midnight on August 31, 1993.

"Sec. 41.03. Art. 5.82, Ins.Code, and Section 3, Chapter 331, Acts of the 64th Legislature, Regular Session, 1975, are repealed.

"Sec. 41.04. If any provision of this statute or its application to any person or circumstance is held invalid or unconstitutional, such invalidity does not affect other provisions or applications of this statute which can be given effect without the invalid clause, sentence, subsection, section, article, or provision or application, and shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection, section, article, or provision of the Act so adjudged to be invalid or unconstitutional and to this end the above are declared to be severable."

Subsections (a), (f), and (h) of § 3 of the 1981 amendatory act provide:

"(a) The Texas State Board of Medical Examiners previously established under the laws of this state is continued as an independent administrative agency of the executive branch of government."

"(f) Proceedings to deny an application for license or other authorization to practice medicine, cancel, revoke, suspend, or limit a license, or otherwise discipline a licensee do not abate by reason of the passage of this Act."

"(h) The district review committees created and established pursuant to Subchapter C of the Medical Liability and Insurance Improvement Act of Texas are hereby continued and recreated under the jurisdiction of the board. The number of and geographic area composed of various counties designated by the board on the effective date of this Act are hereby validated. A person holding office as a member of a district review committee on the effective date of this Act continues to hold office for the term for which the person was originally appointed or until a successor shall be appointed and qualified. Thereafter, at the expiration of the term of each member appointed, a successor shall be appointed. The terms of office of all succeeding members expire January 15 of even-numbered years."

TITLE 72

HOLIDAYS—LEGAL

Article

4591.3. Holidays for Institutions of Higher Education.
4591b–1. Sam Rayburn Day.

Art. 4591. Enumeration

The first day of January, the 19th day of January, the third Monday in February, the second day of March, the 21st day of April, the last Monday in May, the 19th day of June, the fourth day of July, the 27th day of August, the first Monday in September, the second Monday in October, the 11th day of November, the fourth Thursday in November, and the 25th day of December, of each year, and every day on which an election is held throughout the state, are declared legal holidays, on which all the public offices of the state may be closed and shall be considered and treated as Sunday for all purposes regarding the presenting for the payment or acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. The nineteenth day of January shall be known as "Confederate Heroes Day" in honor of Jefferson Davis, Robert E. Lee and other Confederate heroes. The 19th day of June is designated "Emancipation Day in Texas" in honor of the emancipation of the slaves in Texas on June 19, 1865.

[Amended by Acts 1975, 64th Leg., p. 14, ch. 11, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1051, ch. 481, § 1, eff. Jan. 1, 1980.]

Art. 4591.3. Holidays for Institutions of Higher Education

The governing body of an institution of higher education as defined by Section 61.003, Texas Education Code, as amended (other than a public junior college as defined by that section), may establish the holiday schedule for the institution. However, the number of holidays to be observed by the institution may not exceed the number of holidays on which an employee of a state agency is entitled by law to a day off.

[Added by Acts 1981, 67th Leg., p. 2091, ch. 480, § 1, eff. Sept. 1, 1981.]

Art. 4591b–1. Sam Rayburn Day

January 6 of each year is designated as "Sam Rayburn Day," in memory of that great Texas and American statesman, Sam Rayburn. This day shall be regularly observed by appropriate programs in the public schools and other places to commemorate the birthday of Sam Rayburn. This day shall not be a legal holiday.

[Acts 1977, 65th Leg., p. 1411, ch. 571, § 1, eff. Aug. 29, 1977.]

TITLE 75

HUSBAND AND WIFE

CHAPTER FOUR. DIVORCE

Art. 4639b. Repealed by Acts 1975, 64th Leg., p. 1273, ch. 476, § 57 eff. Sept. 1, 1975

TITLE 76

INJUNCTIONS

1. IN GENERAL

Art. 4662. Appeals

Any party to a civil suit wherein a temporary injunction may be granted or refused or when motion to dissolve has been granted or overruled, under any provision of this title, in term time or in vacation, may appeal from such order or judgment to the Court of Appeals.

[Amended by Acts 1981, 67th Leg., p. 790, ch. 291, § 64, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

2. IN PARTICULAR CASES

Art. 4667. Injunctions to Abate Public Nuisances

[See Compact Edition, Volume 4 for text of (a)]

(b) Any person who may use or be about to use, or who may be a party to the use of any such premises for any purpose mentioned in this Article may be made a party defendant in such suit. The Attorney General or any District or County Attorney or City Attorney may bring and prosecute all suits that either may deem necessary to enjoin such uses, and need not verify the petition; or any citizen of this State may sue in his own name and shall not be required to show that he is personally injured by the acts complained of.

[Amended by Acts 1975, 64th Leg., p. 1962, ch. 647, § 1, eff. June 19, 1975.]

TITLE 77

INJURIES RESULTING IN DEATH

Art. 4671. Cause of Action

No agreement between any owner of any railroad, street railway, steamboat, stage-coach or other vehicle for transporting passengers or goods, or any industrial or public utility plant, or other machinery, and any person, corporation, trustee, receiver, lessee, joint stock association or other person in control of, or operating the same, shall release such owner, person, trustee, lessee, corporation or joint stock association from any liability fixed by the provisions of this article. An action for actual damages on account of the injuries causing the death of any person may be brought in the following cases:

1. When an injury causing the death of any person, occurring either within or without this state, is caused by the wrongful act, neglect, carelessness, unskillfulness, or default of another person, association of persons, joint stock company, corporation or trustee or receiver of any person, corporation, joint stock company, or association of persons, his, its or their agents or servants, such persons, association of persons, joint stock company, corporation, trustee or receiver, shall be liable in damages for the injuries causing such death. The term "corporation," as used in this article, shall include all municipal corporations, as well as all private and public and quasi public corporations, except counties and common and independent school districts.

2. When an injury causing the death of any person occurring either within or without this state, is caused by the wrongful act, neglect, carelessness, unskillfulness, or default of the proprietor, owner, charterer or hirer of any industrial or public utility plant, or any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or by the unfitness, wrongful act, neglect, carelessness, unskillfulness or default of his, their or its servants or agents, such proprietor, owner, charterer or hirer shall be liable in damages for the injuries causing such death.

3. When an injury causing the death of any person, occurring either within or without this state, is caused by the wrongful act, neglect, carelessness, unskillfulness or default of the receiver, trustee or other person in charge of or in control of any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or any industrial plant, public utility plant, or any other machinery, or by the wrongful act, neglect, carelessness, unfitness, unskillfulness or default of his or their servants or agents, such receiver, trustee, or other person shall be liable in damages for the injuries causing such death, and the liability here fixed against such receiver, trustee, or other person shall extend to all cases in which the death is caused by reason of any bad or unsafe condition of the railroad, street railway or other machinery under the control or operation of such receiver, trustee or other person, and to all other cases in which the death results from any other reason or cause for which an action may be brought for damages on account of personal injuries, the same as if said railroad, street railway or other machinery were being operated by the owner thereof.

[Amended by Acts 1975, 64th Leg., p. 1381, ch. 530, § 1, eff. Sept. 1, 1975.]

Art. 4678. Death in Foreign State

Whenever the death or personal injury of a citizen of this State or of the United States, or of any foreign country having equal treaty rights with the United States on behalf of its citizens, has been or may be caused by the wrongful act, neglect or default of another in any foreign State or country for which a right to maintain an action and recover damages thereof is given by the statute or law of such foreign State or country or of this State, such right of action may be enforced in the courts of this State within the time prescribed for the commencement of such actions by the statutes of this State. All matters pertaining to procedure in the prosecution or maintenance of such action in the courts of this State shall be governed by the law of this State, and the court shall apply such rules of substantive law as are appropriate under the facts of the case.

[Amended by Acts 1975, 64th Leg., p. 1382, ch. 530, § 2, eff. Sept. 1, 1975.]

TITLE 79

INTEREST—CONSUMER CREDIT—CONSUMER PROTECTION

SUBTITLE ONE—INTEREST

Chapter Article
1A. Alternative Credit Provisions ____5069–1A.01

CHAPTER ONE. INTEREST

Article
5069–1.07. Determination of the Rate of Interest on Loans Secured by a Lien on any Interest in Real Property.
5069–1.08. Interest Charges by Registered Securities Brokers or Dealers.
5069–1.09. Loans Guaranteed or Insured by an Agency of the United States of America.

Art. 5069–1.01. Definitions

[See Compact Edition, Volume 4 for text of (a) to (e)]

(f) "Open-end Account" means any account, under a written contract under which the creditor may permit the obligor to make purchases or borrow money from time to time, and under which interest or time price differential may from time to time be computed on an outstanding unpaid balance. The term includes, but is not limited to, accounts under agreements described by Section (4), Article 3.15; Section (4), Article 4.01; and Chapters 6 and 15 of this Title.

[Amended by Acts 1981, 67th Leg., p. 273, ch. 111, § 4, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year.

Art. 5069–1.03. Legal Rate Applicable

When no specified rate of interest is agreed upon by the parties, interest at the rate of six percent per annum shall be allowed on all accounts and contracts ascertaining the sum payable, commencing on the thirtieth (30th) day from and after the time when the sum is due and payable.

[Amended by Acts 1979, 66th Leg., p. 1718, ch. 707, § 1, eff. Aug. 27, 1979.]

Art. 5069–1.04. Limit on Rate

(a) The parties to any written contract may agree to and stipulate for any rate of interest, or in an agreement described in Chapter 6, 6A, or 7 of this Title, any rate or amount of time price differential producing a rate, that does not exceed:

(1) an indicated rate ceiling that is the auction average rate quoted on a bank discount basis for 26-week treasury bills issued by the United States government, as published by the Federal Reserve Board, for the week preceding the week in which the rate is contracted for, multiplied by two, and rounded to the nearest one-quarter of one percent; or, as an alternative,

(2) an annualized or quarterly ceiling that is the average of the computations under Subsection (1) of this section and is computed pursuant to Section (d) of this Article.

(b)(1) If a computation under Section (a)(1), (a)(2), or (c) of this Article is less than 18 percent a year, the ceiling under that provision is 18 percent a year. If a computation under Section (a)(1), (a)(2), or (c) of this Article is more than 24 percent a year, the ceiling under that provision is 24 percent a year.

(2) Notwithstanding the provisions of Subsection (1) of this Section (b), on any contract under which credit in an amount in excess of $250,000 is or is to be extended, or any extension or renewal of such a contract, and under which the credit is extended for business, commercial, investment, or other similar purpose, but excluding any contract that is not for any of those purposes and is primarily for personal, family, household, or agricultural use, the 24 percent limitation on the ceilings in Section (b)(1) above that is applicable to the computations under Section (a)(1), (a)(2), or (c) of this Article shall not apply, and the limitation on the ceilings determined by those computations shall be 28 percent a year.

(3) References in this Article to the indicated rate ceiling, annualized ceiling, quarterly ceiling, or monthly ceiling mean such a ceiling as modified by this Section (b).

(c) A monthly ceiling is available only in variable rate contracts, including contracts for open-end accounts, that are not made for personal, family, or household use. Subject to Section (b) of this Article, the monthly ceiling is the average of all the computations under Section (a)(1) of this Article for auctions occurring during the preceding calendar month

and shall be computed by the consumer credit commissioner on the first business day of the calendar month in which the rate applies. In contracts for which the monthly ceiling is available under this section, if the parties agree that the rate is subject to being adjusted on a monthly basis in accordance with Section (f) of this Article they may further contract that the rate from time to time in effect may not exceed the monthly ceiling from time to time in effect under this section and the monthly ceiling from time to time in effect is the ceiling on those contracts, instead of any ceiling under Article 1.04(a) of this Title.

(d) The consumer credit commissioner shall compute, on the computation dates of December 1, March 1, June 1, and September 1 of each year, the quarterly and annualized ceilings for the next succeeding calendar quarter beginning January 1, April 1, July 1, and October 1, respectively. For each computation date, the computation under Section (a)(2) of this Article for the quarterly ceiling is the average of all the computations under Section (a)(1) of this Article for auctions occurring during the three calendar months preceding the computation date. For each computation date, the computation under Section (a)(2) of this Article for the annualized ceiling is the average of all the computations under Section (a)(1) of this Article for auctions occurring during the 12 calendar months preceding the computation date.

(e) In a contract that does not involve an open-end account, as an alternative to the indicated rate ceiling, the parties may contract for a rate not exceeding the quarterly ceiling in effect at the time the rate is contracted for, but the creditor may not rely on the annualized ceiling in such a contract, and in a contract subject to Section (f) of this Article may not rely on both the indicated rate ceiling and the quarterly ceiling in any given contract.

(f) The parties to any contract, including a contract for an open-end account, may agree to and stipulate for a rate or amount by contracting for any index, formula, or provision of law, by or under which the numerical rate or amount can from time to time be determined. However, the rate or amount so produced may not exceed the ceiling that may from time to time be in effect and applicable to the contract, for so long as debt is outstanding under the contract. Provided, further, that variable contract rates as described in this Section (f) are not allowed in a contract in which the interest or time price differential is precomputed and added into the amount of the contract at the time of the contract.

(f)–(1) Any agreement or amendment to an agreement for credit extended primarily for personal, family, or household use, entered under the authority of Article1.04 and providing for a variable rate or amount on the balance under the agreement or amendment shall disclose the following in not less than 10-point type or computer equivalent on or with the agreement or amendment:

"NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS 24 PERCENT PER YEAR."

This section shall not apply to or affect any agreement or amendment for which a disclosure relating to variable rates or amounts is required or provided by federal law, regulation, or interpretation. In the event that the contract provides for a maximum rate of less than 24 percent per year, then the above disclosure may be amended to reflect the actual maximum rate of the contract.

(g) Unless otherwise agreed, when the parties have agreed to a rate, they are considered also to have agreed to any lesser rate that the creditor may elect, or is required under Section (h) of this Article to implement.

(h)(1) If the agreement of the parties so provides, or is amended pursuant to Section (i) of this Article or Article 1A.01 of this Title to so provide, a creditor of an open-end account may, as an alternative to the indicated rate ceiling, from time to time implement any rate permitted under the quarterly or annualized ceiling, as to any current and future balances in any of its open-end accounts by giving notice of the rate at any time or times after the computation date for the quarterly or annualized ceiling and before the last day of the next succeeding calendar quarter. The creditor may implement a rate, not exceeding the annualized ceiling, for a 12-month period from the date it becomes effective as to an account, or the creditor may implement a rate not exceeding the quarterly ceiling for a three-month period from the date it becomes effective as to an account. The rate may not exceed the ceiling for the period elected. If the period elected is 12 months, and the rate in effect is less than or equal to the annualized ceiling in effect at the end of 12 months, the creditor may leave the election in effect for the succeeding 12-month period, which is then the new elected period. If the period elected is three months, and the rate in effect is less than or equal to the quarterly ceiling in effect at the end of the three months, the creditor may leave the election in effect for the succeeding three-month period, which is then the new elected period. No further notice of the renewal of an election, or of any successive renewals of elections, is required if the creditor has previously disclosed to the obligor that the election may be renewed in accordance with this section and the rate does not exceed the rate previously agreed to by the obligor. If a rate in excess of that previously agreed to is to be implemented by the creditor under Section (a) of this Article, or other applicable law, the creditor shall comply with Section (i) of this Article before the end of the calendar quarter in which the prior period elected ends, and the ceiling previously in effect remains the ceiling until a new rate is agreed to.

(2) If an open-end account agreement provides, or is amended pursuant to Article 1A.01 of this Title or Section (i) of this Article to provide, for a variable rate or amount, according to any index, formula, or provision of law disclosed to the obligor, the applicable rate ceiling is the annualized ceiling, quarterly ceiling, or indicated rate ceiling as disclosed to the obligor, except for variable rate commercial contracts subject to Section (c) of this Article. The annualized ceiling shall be adjusted every 12 months, the quarterly ceiling shall be adjusted every three months, and the indicated rate ceiling shall be adjusted weekly.

Except to the extent inconsistent with any federal law, regulation, or interpretation from time to time in effect, on any open-end account entered under authority of this Article 1.04 which is primarily for personal, family, or household use, the creditor shall disclose any changes in the rate resulting from operation of the index, formula, or provision of law by giving notice of the change in the rate on or with the billing statement for a billing cycle preceding the first cycle as to which the change in the rate is effective or by a separate document mailed on or before the beginning of the first cycle as to which the change in the rate is effective. Variations in the rate on the account due to operation of the previously disclosed index, formula, or provision of law need not be further disclosed under this Section (h) or under Section (i) of this Article.

(i)(1) In any open-end account, the creditor may provide in the agreement covering the open-end account or, pursuant to Article 1A.01 of this Title, amend the agreement to provide that the terms, including the rate, or index, formula, or provision of law used to compute the rate on the open-end account will be subject to revision as to current and future balances, from time to time, by notice from the creditor to the obligor. Any creditor revising a rate, or index, formula, or provision used to compute the rate, shall disclose in the notice:

(A) the new rate or the new index, formula, or provision to be used in computing the rate;

(B) the date on which it will become effective;

(C) the period for which it is elected, or at which the ceiling will be adjusted and whether or not it will affect current as well as future balances;

(D) the obligor's rights under this section and the procedures for the obligor to exercise those rights; and

(E) the address to which the obligor may send notification of the obligor's election not to continue the open-end account.

(F) If the amendment increases the rate, the notice shall contain the following printed in not less than 10-point type or computer equivalent:

"YOU MAY TERMINATE THIS AGREEMENT IF YOU DO NOT WISH TO PAY THE NEW RATE."

(2) With a notice required by Subsection (1) of this section, the creditor shall include a form which may be returned at the expense of the creditor and on which the obligor may indicate his or her decision not to continue the account by checking or marking an appropriate box, or similar arrangement. The form may be included on a portion of the account statement to be returned to the creditor or on a separate sheet. Any obligor who is mailed a notice required by Subsection (1) of this section addressed to the obligor's last known address as shown by the creditor's records, is considered to have agreed to the revision if the obligor, or a person authorized by the obligor, after the expiration of five days after the notice is mailed, accepts or uses any extensions of credit, or if the obligor elects to retain the privilege of using the open-end account. Such an election is considered to have occurred unless the obligor notifies the creditor in writing before the 21st day after the date on which the notice is sent that the obligor does not wish to continue the open-end account. The parties may also amend the contract by any other means of amending those agreements permitted by any applicable law. Any obligor who rejects a rate change in accordance with this section has the right to pay off the then existing balance on the open-end account at the rate, and over the time period, in effect prior to the change, and at the same minimum payment terms previously agreed to, unless the obligor agrees to the new rate in accordance with this section. Rejection of a new rate may not accelerate the balance due.

(j) If a creditor implements an annualized or quarterly ceiling as to a majority of its open-end accounts that are under a particular plan or arrangement and are for obligors in this state, that ceiling is also the ceiling for all open-end accounts that are opened or activated under that plan for obligors in this state during the period that the election is in effect.

(k)(1) The consumer credit commissioner shall cause the annualized, quarterly, and monthly ceilings to be published in the Texas Register before the 11th day after the day on which they are computed, and shall cause the indicated rate ceiling in effect under Section (a) of this Article to be published from time to time. If the furnishing of any of the information required to compute the ceilings is discontinued so that it is no longer available to the consumer credit commissioner from the Federal Reserve Board on a timely basis, the consumer credit commissioner shall obtain that information from reliable sources satisfactory to the commissioner.

(2) If the information required to compute a ceiling is not available, then that ceiling remains at the level at which it was when the information became unavailable until the information again becomes available.

(3) Any court may take judicial notice of the ceilings, and related information, caused to be published in the Texas Register by the consumer credit commissioner pursuant to this Article and of the information published pursuant to Article 2.08 of this Title.

(*l*) The maximum rate on any contract to renew or extend the terms of payment of any indebtedness at any time incurred, is the applicable ceiling allowed by this Article for a contract entered at the time the renewal or extension is made or agreed to.

(m) The ceilings provided by this Article for a contract, including a contract for an open-end account, are optional and any person may, notwithstanding any other law, contract for, charge, and receive the rates or amounts allowed by this Article for that contract, or the rates or amounts allowed by any other applicable provision of this Title or any other law applicable to such a contract, except as restricted under Section (q) of this Article.

(n)(1) Any loan made under authority of this Article that is extended either primarily for personal, family, or household use but not for business, commercial, investment, agricultural, or other similar purposes, or primarily for the purchase of a motor vehicle, and that is payable in two or more installments, not secured by a lien on real estate, and that is entered by a person engaged in the business of making or negotiating those types of loans, is subject to Chapter 4 of this Title, and any person except a bank or savings and loan association engaged in that business shall obtain a license under Chapter 3 of this Title.

(2) Any loan made under this Article that is extended primarily for personal, family, or household use but not for business, commercial, investment, agricultural, or other similar purposes, and that is payable in consecutive monthly installments and is described by Section (1), Article 5.01, of this Title and that is made by a person engaged in the business of making those types of loans, is subject to Chapter 5 of this Title, and any person except a bank or savings and loan association engaged in that business shall obtain a license under Chapter 3 of this Title.

(3) In any contract, including any contract for an open-end account, subject to Chapter 6, 6A, or 7 of this Title, the rate or amount contracted for, charged, or received under this Article is considered to be the rate or amount of time price differential within the meanings given to that term in those respective Chapters, and those contracts are not subject to the provisions of Chapters 3, 4, and 5 of this Title.

(4) In any contract, including a contract for an open-end account, which is subject to Chapter 4, 5, 6, 6A, or 7 of this Title, the parties and their assignees may contract for any rate or amount allowed by that Chapter, or any simple or precomputed contract rate or amount not exceeding those allowed by this Article, but except to the extent inconsistent with this Article in any event the parties to any contract under any of such Chapters or to any contract under Chapter 3 of this Title shall comply with all of the other rights, duties, and obligations under the applicable Chapter and the parties and their assignees have all other rights under the applicable Chapter, including those provisions requiring certain refund credits in event of prepayment or acceleration.

(5) Any person (except a person subject to Chapter 24 of the Insurance Code) engaged in the business of extending open-end credit primarily for personal, family, or household use and charging a rate or amount under authority of this Article 1.04 shall be subject to either the applicable Chapter in Subtitle 2 of this Title or Chapter 15 of this Title, as applicable, except to the extent inconsistent with this Article; the parties to such open-end accounts and their assignees shall comply with and have all other rights, duties and obligations under the applicable Chapter, except to the extent inconsistent with this Article.

(6) Any person subject to the Texas Credit Union Act, as amended (Article 2461–1.01 et seq., Vernon's Texas Civil Statutes), who contracts for, charges, or receives a rate authorized by this Article shall comply with all other duties, obligations, and prohibitions of that Act and the parties to the transaction have all other rights provided by that Act, except to the extent inconsistent with this Article. Notwithstanding this Article, credit unions are not subject to Chapter 15 or Subtitle 2 of this Title and are not required to obtain a license under this Title.

(7) Any person subject to a provision of Chapter 24 of the Insurance Code who contracts for, charges, or receives a rate authorized by this Article shall comply with all other applicable duties, obligations, and prohibitions in that law and the parties to those contracts, including those for open-end accounts, have all other rights applicable to those transactions under Chapter 24 of the Insurance Code, except to the extent inconsistent with this Article. The licensing requirements of Subtitle 2 of this Title are not applicable to those persons.

(*o*)(1) All other written contracts whatsoever, except those otherwise authorized by law, which may in any way, directly or indirectly, provide for a greater rate of interest shall be subject to the appropriate penalties prescribed in this Subtitle.

(2) If, in any contract, including one for an open-end account, subject to Chapter 4, 5, 6, 6A, 7, or 15 of this Title, any person contracts for, charges, or receives a rate or amount of interest or time price differential that exceeds the rate allowed by that Chapter and the rate allowed by this Article, the amount of the penalty for that overcharge shall be determined under Chapter 8 of

this Title rather than under this Subtitle and all of the provisions of Articles 8.01, 8.02, 8.03, 8.04, 8.05, and 8.06 of this Title are in effect as to that contract and are applicable to this Article as if it were a part of Subtitle 2 of this Title. The failure to perform any duty or comply with any prohibition required by Article 1.04, in a contract entered under authority of Article 1.04, shall be subject to the penalties set out in Article 8.01(b) and shall be subject to such of the other provisions of Articles 8.01 through 8.06 which apply to failures to perform duties or comply with prohibitions to the same extent as if the duties and prohibitions in Article 1.04 were contained in Subtitle 2.

(3) The consumer credit commissioner, subject to Section (*l*), Article 2.01, of this Title, shall enforce Chapters 2, 3, 4, 5, 6, 6A, 7, 8, 15, and 51 of this Title, as modified by this Article and Article 2.08 of this Title, and shall enforce this Article as applicable to contracts subject to those Chapters. Article 3.08 of this Title is applicable to transactions made by licensees pursuant to this Article that otherwise are subject to Chapters 4, 5, or 15 of this Title. The provisions of Article 3.12 of this Title will apply to loans made under authority of this Article which are subject to Chapter 4 of this Title. In any contracts subject to the Texas Credit Union Act, as amended (Article 2461–1.01 et seq., Vernon's Texas Civil Statutes), the credit union commissioner shall enforce this Article.

(4) In any contract subject to Chapter 24 of the Insurance Code, the State Board of Insurance shall enforce this Article.

(p) A person does not violate this Title by contracting for, charging, or receiving any rate or dollar amount, or by any acts done or omitted, that conform to the provisions of this Article, or to the provisions determined by the consumer credit commissioner, or that conform to an interpretation of this Title by the consumer credit commissioner or by a decision of an appellate court of this state or of the United States in effect at the time that the acts were done or omitted.

(q) The maximum rates authorized by this Article do not apply to agreements under which credit is extended for a home solicitation transaction as defined in Chapter 13 of this Title if the agreement is secured by a lien on the obligor's homestead and the credit is extended by the seller or its owner, subsidiary, or corporate affiliate.

(r) In the event of any inconsistency or conflict between the disclosure or notice requirements under this Article and disclosures or notices required or provided under any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation, or interpretation shall control and the inconsistent or conflicting requirements under this Article need not be complied with. A creditor may modify the disclosure and notice requirements under this Article to conform to the terminology or other provisions required or provided under federal law, regulation, or interpretation. [Amended by Acts 1981, 67th Leg., p. 274, ch. 111, § 5, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069–1.05. Rate of Judgments

All judgments of the courts of this State shall bear interest at the rate of nine percent per annum from and after the date of the judgment, except where the contract upon which the judgment is founded bears a specified interest greater than nine percent per annum, in which case the judgment shall bear the same rate of interest specified in such contract, but shall not exceed ten percent per annum, from and after the date of such judgment. [Amended by Acts 1975, 64th Leg., p. 730, ch. 288, § 1, eff. Sept. 1, 1975.]

Art. 5069–1.06. Penalties

(1) Any person who contracts for, charges or receives interest which is greater than the amount authorized by this Subtitle, shall forfeit to the obligor three times the amount of usurious interest contracted for, charged or received, such usurious interest being the amount the total interest contracted for, charged, or received exceeds the amount of interest allowed by law, and reasonable attorney fees fixed by the court except that in no event shall the amount forfeited be less than Two Thousand Dollars or twenty percent of the principal, whichever is the smaller sum; provided, that there shall be no penalty for any usurious interest which results from an accidental and bona fide error.

[See Compact Edition, Volume 4 for text of (2)]

[Amended by Acts 1979, 66th Leg., p. 605, ch. 281, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of this subsection as originally enacted."

Art. 5069–1.07. Determination of the Rate of Interest on Loans Secured by a Lien on Any Interest in Real Property

(a) On any loan or agreement to loan secured or to be secured, in whole or in part, by a lien, mortgage, security interest, or other interest in or with respect to any interest in real property, determination of the rate of interest for the purpose of determining whether the loan is usurious under all appli-

cable Texas laws shall be made by amortizing, prorating, allocating, and spreading, in equal parts during the period of the full stated term of the loan, all interest at any time contracted for, charged, or received from the borrower in connection with the loan. However, in the event the loan is paid in full by the borrower prior to the end of the full stated term of the loan and the interest received for the actual period of the existence of the loan exceeds the maximum lawful rate, the lender contracting for, charging, or receiving all such interest shall refund to the borrower the amount of the excess or shall credit the amount of the excess against amounts owing under the loan and shall not be subject to any of the penalties provided by law for contracting for, charging, or receiving interest in excess of the maximum lawful rate.

(b) Notwithstanding any contrary provisions of law, any person may agree to pay, and may pay pursuant to such an agreement, any rate of interest not exceeding 18 percent per annum, if such agreement is evidenced by a written bond, note, or other contract of such person providing for a loan or other extension of credit in the original principal amount of $250,000 or more, or any series of advances of money if the aggregate of all sums advanced or agreed or contemplated to be advanced pursuant to such agreement equals or exceeds $250,000, or any extension or renewal of such loan or other extension of credit (regardless of whether or not the outstanding principal balance thereof at the time of such renewal or extension is $250,000 or more); and as to any such agreement to pay or payment, the claim or defense of usury by such person or such person's heirs, personal representatives, successors, substitutes, or anyone else on such person's behalf, or by any person acting as guarantor, surety, accommodation maker, or endorser for or with respect to such agreement to pay or payment, or by any person assuming the obligation of such payment or otherwise becoming liable therefor, or by any person owning or acquiring property subject to a lien securing such agreement to pay or such payment is prohibited. Notwithstanding anything to the contrary contained herein, this Subsection (b) shall not apply to any loan or other extension of credit secured by (i) a lien on a building, constructed or to be constructed, which both is used or intended to be used as a single one-to-four family residence and is occupied or intended to be occupied by a person obligated to pay such loan or other extension of credit or (ii) a lien on land intended to be used primarily for agricultural or ranching purposes. Nothing herein shall be construed to limit or otherwise affect the provisions or application of Article 2.09, Texas Miscellaneous Corporation Laws Act, as amended (Article 1302–1.01 et seq., Vernon's Texas Civil Statutes), with respect to loans or other extensions of credit not covered hereby.

(c) Notwithstanding any contrary provisions of law, any person may agree to pay, and may pay pursuant to such an agreement, the same rate of interest as corporations (other than nonprofit corporations) on any loan in the principal amount of $500,000 or more, which is made for the purpose of the payment of the direct or indirect costs of exploration for oil and gas, the development of oil and gas properties, or the reworking of oil or gas wells, provided that the value of the collateral securing such loan is reasonably estimated by the lender at the time of the making of the loan to be in excess of the amount of the loan. Such a loan shall not be subject to the defense of usury or the penalties for usury unless the interest rate exceeds the maximum lawful interest rate for corporations (other than nonprofit corporations).

Text of (d) as added by Acts 1979, 66th Leg., p. 1766, ch. 715, § 1

(d)(1) On any loan or agreement to loan secured or to be secured in whole or in part by a lien, mortgage, security interest, or other interest in or with respect to real property on which is located one or more single family dwellings, or dwelling units for not more than four families in the aggregate, interest may be charged at such rates as may be permitted by other applicable law or at the lesser of the following rates:

(i) 12 percent per annum; or

(ii) a rate equivalent to the average per annum market yield rate adjusted to constant maturities on 10-year United States Treasury notes and bonds as published by the board of governors of the Federal Reserve System for the second calendar month preceding the month in which the lender becomes legally bound to make the loan plus an additional two percent per annum rounded off to the nearest quarter of one percent per annum.

A "dwelling unit" shall mean for the purpose of this section a unified combination of rooms that is designed for residential use by one family.

(2) Before the 20th day of each month, the savings and loan commissioner shall ascertain the average per annum market yield rate adjusted to constant maturities on 10-year United States Treasury notes and bonds for the preceding calendar month and cause such rate to be published in the Texas Register.

(3) The interest rates authorized by this subsection shall not be applicable to any loan made on or after September 1, 1981, unless the lender had become legally bound to make such loan prior to such date.

(4) No prepayment charge or penalty may be collected on any loan transaction of the class defined in Subsection (d)(1) bearing a rate of interest in excess of that authorized by Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925,[1] except where such collection is required by an agency created by federal law.

Text of (d) as added by Acts 1979, 66th Leg., p. 1766, ch. 715, § 3, effective if floating rate provisions of (d) as added by § 1 thereof are held to be unconstitutional

(d)(1) On any loan or agreement to loan secured or to be secured in whole or in part by a lien, mortgage, security interest, or other interest in or with respect to real property on which is located one or more single family dwellings, or dwelling units for not more than four families in the aggregate, interest may be charged at the rate of 12 percent per annum. A "dwelling unit" shall mean for the purpose of this section a unified combination of rooms that is designed for residential use by one family.

(2) The interest rates authorized by this subsection shall not be applicable to any loan made on or after September 1, 1981, unless the lender had become legally bound to make such loan prior to such date.

(3) No prepayment charge or penalty may be collected on any loan transaction of the class defined in Subsection (d)(1) bearing a rate of interest in excess of that authorized by Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, except where such collection is required by an agency created by federal law.

(e)(1) In this subsection "financial institution" means a state bank, state savings and loan association, mortgage banking institution, credit union, national bank, or federal savings and loan association, and "housing accommodation" means improved or unimproved real property, or a portion of that property, that is used or occupied or is intended, arranged, or designed to be used or occupied as the residence of one or more individuals.

(2) A financial institution may not charge interest under Subsection (d), Section 1 or Subsection (d) of Section 3 of this Act and the maximum rate of interest that it may charge is limited to 10 percent if the financial institution in connection with such loan discriminates in providing or granting financial assistance to purchase, rehabilitate, improve, or refinance a housing accommodation due, in whole or in part, to the consideration of:

(i) conditions, characteristics, or trends in the neighborhood where the property is located, unless the financial institution can demonstrate that such a consideration in the particular case is required to avoid an unsafe or unsound business practice; or

(ii) race, color, religion, sex, marital status, national origin, or ancestry; or

in appraising a housing accommodation or in determining whether or not, or under what terms and conditions, to provide financial assistance to purchase, rehabilitate, improve, or refinance a housing accommodation, considers:

(i) the racial, ethnic, religious, or national origin composition of the neighborhood or geographic area surrounding the property; or

(ii) whether or not that composition is undergoing change, or is expected to undergo change.

(f) Notwithstanding the provisions of this Article relating to the date of expiration of authority to charge certain rates of interest, as an alternative to the rates of interest provided for by this Article, any person may agree to pay, and may pay pursuant to such an agreement, any rate of interest that does not exceed a rate authorized by Article 1.04 of this Title. If a loan for property that is to be the residential homestead of the borrower is made at a rate of interest that is greater than the rate prescribed by subsection (d) of this Article, a prepayment charge or penalty may not be collected on the loan unless the charge or penalty is required by an agency created by federal law.

[Added by Acts 1975, 64th Leg., p. 47, ch. 26, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1697, ch. 673, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 704, ch. 305, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1766, ch. 715, §§ 1, 3, 4, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 280, ch. 111, § 6, eff. May 8, 1981.]

[1] Article 5069–1.04.

Sections 2 and 3 of the 1975 Act provided:

"Sec. 2. If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid.

"Sec. 3. This Act applies from and after its effective date prospectively and does not have any application to any right or duty, contract, obligation, cause of action, or claim of defense arising prior to its effective date."

Sections 2 and 3 of Acts 1979, 66th Leg., p. 705, ch. 305, provided:

"Sec. 2. If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid.

"Sec. 3. This Act applies from and after its effective date prospectively and does not have any application to any right or duty, contract, obligation, cause of action, or claim or defense arising prior to its effective date."

Sections 2 and 5 of Acts 1979, 66th Leg., ch. 715, provided:

"Sec. 2. The savings and loan section of the finance commission and the savings and loan commissioner are hereby directed to exercise the rule-making powers delegated to them by law and promulgate specific rules and regulations with respect to the procedure to be followed in making variable interest rate real estate loans by savings and loan associations subject to the Texas Savings and Loan Act [art. 852a]."

"Sec. 5. If any provision of this Act or any rate of interest fixed hereby is held invalid, such invalidity shall not affect any other provision of this Act which can be given effect without the invalid provision and the legislature hereby declares it would have passed such valid provisions despite such invalidity."

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069–1.08. Interest Charges by Registered Securities Brokers or Dealers

Interest charged by a broker or dealer registered under the Federal Securities and Exchange Act of 1934, as now or hereafter amended,[1] and The Securities Act, as now or hereafter amended,[2] for carrying

a debit balance in an account for a customer shall not be subject to any of the limitations or other provisions of Title 79, Revised Civil Statutes of Texas (Article 5069–1, et seq., Vernon's Texas Civil Statutes) as now or hereafter amended, if such debit balance is payable on demand, or at will by the customer without penalty, and is secured by stocks, bonds, or other securities, and if such interest does not exceed the greater of the rate allowed by Article 1.04 of this Title or the rate of 1½ percent per month on the monthly debit balance.

[Added by Acts 1977, 65th Leg., p. 945, ch. 355, § 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 280, ch. 111, § 7, eff. May 8, 1981.]

[1] 15 U.S.C.A. § 77b et seq.

[2] Article 581–1 et seq.

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069–1.09. Loans Guaranteed or Insured by an Agency of the United States of America

Any loan insured by the Federal Housing Administration, pursuant to the provisions of the National Housing Act approved June 27, 1934, its amendments and supplements (12 U.S.C.A., Section 17.01 et seq. (1969), as amended), may bear such rate of interest, or be discounted at such rate as is permitted under the National Housing Act, its amendments and supplements, and the regulations promulgated from time to time by the Federal Housing Administration or its successor; and provided further that any loan guaranteed or insured by the Veterans Administration or its successor pursuant to the provisions of the Veterans' Benefits code approved September 2, 1958, its amendments and supplements (Title 38 U.S.C.A. (1959), as amended), may bear such rate of interest or be discounted at such rate as is permitted under the Veterans' Benefits code, its amendments and supplements, and the regulations promulgated from time to time by the Veterans Administration or its successor.

[Added by Acts 1977, 65th Leg., p. 172, ch. 84, § 1, eff. April 28, 1977.]

Section 2 of the 1977 Act provided:

"If any paragraph, phrase, clause, or section of this statute be held invalid, it shall not affect the balance of this statute, but it is expressly declared to be the intention of the legislature that it would have passed the balance of the Act without such portion as may be held invalid."

CHAPTER 1A. ALTERNATIVE CREDIT PROVISIONS

Article

5069–1A.01. Conversion of Open-End Accounts.

Art. 5069–1A.01. Conversion of Open-End Accounts

Any creditor electing to implement the provisions of Article 1.04 of this Title, as amended, to an open-end account existing on the effective date of this Act and not previously subject to Article 1.04, as amended, must allow the obligor to pay the balance then existing at the rate previously agreed to and at the minimum payment terms previously agreed to. For this purpose, payments on an account may be applied by the creditor to the balance existing on the account on the effective date of this Act prior to applying same to credit extended after the effective date of this Act.

[Added by Acts 1981, 67th Leg., p. 286, ch. 111, § 26, May 8, 1981.]

Sections 27 and 28 of the 1981 Act adding this article provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

SUBTITLE TWO—CONSUMER CREDIT

6A. Manufactured Home Credit Transactions ----------5069–6A.01

CHAPTER TWO. GENERAL PROVISIONS

Article

5069–2.08. Bracket and Ceiling Index.

Art. 5069–2.02. Creation of the Office of Consumer Credit Commissioner and Division of Consumer Protection

[See Compact Edition, Volume 3 for text of (1) to (3)]

(4) The Consumer Credit Commissioner shall enforce the provisions of Chapters 2, 3, 4, 5, 6, 7, 8, 9, and 15 of this Title in person or through assistant commissioners or any examiner or employee. The Consumer Credit Commissioner, each assistant commissioner, each examiner, and each employee shall not be personally liable for damages occasioned by his official acts or omissions except when such acts or omissions are corrupt or malicious. The Attorney General shall defend any action brought against any of the above-mentioned officers or employees by reason of his official act or omission whether or not at the time of the institution of the act the defendant has terminated his services with the Office of the Consumer Credit Commissioner.

[See Compact Edition, Volume 4 for text of (5) to (7)]

(8) The office of Consumer Credit Commissioner is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.069, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1503, ch. 648, § 2, eff. Aug. 27, 1979.]

[1] Article 5429k.

Art. 5069–2.03. Investigation and Enforcement

[See Compact Edition, Volume 4 for text of (1) and (2)]

(3) In the course of any investigation looking to the enforcement or administration of any provision of Subtitles Two or Three of this Title,[1] the Consumer Credit Commissioner may require by subpoena or summons, issued by the Consumer Credit Commissioner addressed to any peace officer within this State, the attendance and testimony of witnesses, and the production of books, accounts, papers, correspondence, or records (excepting such as are absolutely necessary for the continued course of business which shall not be removed from the office or place of business) which such books, accounts, papers, correspondence, or records the Consumer Credit Commissioner shall have the right to examine or cause to be examined, at the office, or place of business, and to require copies of such portions thereof as may be deemed necessary touching the matter in question, which copies shall be verified by affidavit of such concern or an officer of such concern, and shall, when certified by the Consumer Credit Commissioner, be admissible in evidence in any investigation or hearing under Subtitles Two and Three of this Title or in an appeal to the District Court as provided by Subtitles Two and Three of this Title and for this purpose the Consumer Credit Commissioner may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence. In case of disobedience of any subpoena, or of the contumacy of any witness appearing before the commissioner, the Consumer Credit Commissioner may invoke the aid of the district court within whose jurisdiction any witness may be found, and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence, or produce books, accounts correspondence, records and other documents touching the matter in question. Upon the filing of such application to enforce such subpoena, which application shall be treated in the same manner as a motion in a civil suit pending in said court, the court shall forthwith set such application for hearing and shall cause a notice of the filing of such application and of such hearing to be served upon the party to whom such subpoena is directed. Such notice may be served by any peace officer in the State of Texas. Any failure to obey such order of the court may be punished by such court as contempt thereof.

[See Compact Edition, Volume 4 for text of (4) to (7)]

[Amended by Acts 1981, 67th Leg., p. 2627, ch. 707, § 4(2), eff. Aug. 31, 1981.]

[1] Articles 5069–2.01 et seq. and 5069–9.01 et seq.

Art. 5069–2.05. Repealed by Acts 1975, 64th Leg., p. 2239, ch. 707 § 2, eff. Sept. 1, 1975

Section 1 of the 1975 Act revised and amended the Credit Union Act, art. 2461–1.01 et seq.

Art. 5069–2.07. Credit and Loans to Individuals

No licensee under Chapter 3 of this Title or other person involved in transactions subject to this Title may deny an individual credit or loans in his or her name, or restrict or limit the credit or loan granted solely on the basis of sex, race, color, religion, or national origin. In interpreting this section, the courts and administrative agencies shall be guided by the federal Equal Credit Opportunity Act [1] and regulations thereunder and interpretations thereof by the Federal Reserve Board to the extent that that Act and those regulations and interpretations pertain to conduct prohibited by this section.

[Amended by Acts 1981, 67th Leg., p. 280, ch. 111, § 8, eff. May 8, 1981.]

[1] 15 U.S.C.A. § 1691 et seq.

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069–2.08. Bracket and Ceiling Index

(1) The dollar amount of the ceilings on the cash advance, and the brackets establishing ranges of cash advances or balances to which certain rates of charges apply in this Title, except the brackets in Section (1), Article 3.16; Section (2), Article 3.16; Article 3.21; Section (9)(e), Article 6.02; Section (12)(a), Article 6.02; and Article 15.02, are changed as of the effective date of this Act and shall be, subject to Subsections (a) and (b), Section (2) of this Article, changed from time to time in accordance with the changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U. S. City Average, All Items, 1967 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, and referred to in this Article as the Index. The Index for December 1967 is the Reference Base Index period for the purpose of determining the adjustment to be made in the rate brackets and ceilings.

(2) The designated dollar amounts of the brackets and ceilings shall be calculated on the effective date of this Act and on July 1 of each year thereafter to

reflect the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index except that:

(a) the portion of the percentage of change in the Index in excess of a multiple of 10 percent shall be disregarded and the dollar amounts of those brackets and ceilings shall change only in multiples of 10 percent of the amounts appearing in this Title on the date of enactment; and

(b) the dollar amounts of those brackets and ceilings shall not change if the amounts required by this section are those currently in effect pursuant to this Act as a result of earlier application of this section.

(3) If the Index is revised, the percentage of change pursuant to this section after that revision shall be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index shall be determined by multiplying the Reference Base Index then applicable by the ratio of the revised Index to the current Index, as each was for the first month in which the revised Index is available. If the Index is canceled or superseded by the Bureau of Labor Statistics, the Index referred to in this section is to be the Index chosen by the Bureau of Labor Statistics as reflecting most accurately the changes in the purchasing power of the dollar for consumers.

(4) The consumer credit commissioner shall issue and cause to be published in the Texas Register:

(a) before May 1 of each year in which dollar amounts of the brackets and ceilings are to change, the designated changes in dollar amounts of those brackets required by Section (2) of this Article; and

(b) promptly after the changes occur, changes in the Index required by Section (3) of this Article including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index.

(5) A person does not violate this Title by contracting for, charging, or receiving any rate, amount, ceiling, or bracket, or by any acts done or omitted, that conform to the provisions of this Article or to the provisions determined by the consumer credit commissioner or that conform to an interpretation of this Title by the consumer credit commissioner or a decision of an appellate court of this state or of the United States in effect at the time that the acts were done or omitted.

[Added by Acts 1981, 67th Leg., p. 281, ch. 111, § 9, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 Act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

CHAPTER 3. REGULATED LOANS

Art. 5069-3.01. Scope

[See Compact Edition, Volume 4 for text of (1) and (2)]

(3) The dollar amount of the ceiling on the cash advance prescribed by Section (1) of this Article is subject to adjustment from time to time under Article 2.08 of this Title.

[Amended by Acts 1981, 67th Leg., p. 282, ch. 111, § 10, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069-3.05. License, Annual Fee, Minimum Assets

[See Compact Edition, Volume 3 for text of (1)]

(2) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. Every licensee shall, on or before each December 1st, pay the Consumer Credit Commissioner an annual fee for each license held by him for the succeeding calendar year. The annual fee shall be Two Hundred Dollars, except if on September 30 immediately preceding the due date of the annual fee, the gross unpaid balance of regulated loans in a licensed office is One Hundred Thousand Dollars or less the annual fee for that office shall be One Hundred Dollars. If the annual fee remains unpaid fifteen days after written notice of delinquency has been given to the licensee by the Consumer Credit Commissioner, the license shall thereupon expire but not before December 31st of any year for which an annual fee has been paid.

[See Compact Edition, Volume 3 for text of (3)]

[Amended by Acts 1977, 65th Leg., p. 877, ch. 329, § 1, eff. May 30, 1977.]

Art. 5069–3.06. Officers, Removal

[See Compact Edition, Volume 4 for text of (1) and (2)]

(3) The Consumer Credit Commissioner may issue one or more licenses to any one person on compliance with this Chapter as to each license. Any person holding a license under this Chapter which shall violate any provision hereof shall be subject to forfeiture of his license, and if a corporation, its charter shall be subject to forfeiture, and it shall be the duty of the Attorney General, when any such violation is called to his attention, to file suit for such forfeiture of charter and cancellation of the license in a District Court in Travis County, Texas.

[See Compact Edition, Volume 4 for text of (4) and (5)]

[Amended by Acts 1979, 66th Leg., p. 1556, ch. 672, § 1, eff. Aug. 27, 1979.]

Art. 5069–3.08. Examination of Licensees, Access to Records, Investigation

At such times as the Commissioner shall deem necessary, the Commissioner, or his duly authorized representative shall make an examination of the place of business of each licensee and shall inquire into and examine the loans, transactions, books, accounts, papers, correspondence, and records of such licensee insofar as they pertain to the business regulated by this Chapter. In the course of such examination, the Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes and vaults of such licensee, and shall have the right to make copies of such books, accounts, papers, correspondence and records. The Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Chapter to consider, investigate, or secure information. Any licensee who shall fail or refuse to let the Commissioner or his duly authorized representative examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this Chapter and such failure or refusal shall constitute grounds for the suspension or revocation of such license. The information obtained in the course of such examination shall be confidential. Each licensee shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect cost of such examination and a proportionate share of general administrative expense, and the total cost so assessed and charged a licensee in any one calendar year shall not exceed Five Hundred Dollars for each licensed office.

[Amended by Acts 1977, 65th Leg., p. 877, ch. 329, § 2, eff. May 30, 1977.]

Art. 5069–3.13. Advertising

No licensee shall advertise or cause to be advertised, in any manner whatsoever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions of any loan. [Amended by Acts 1979, 66th Leg., p. 1556, ch. 672, § 2, eff. Aug. 27, 1979.]

Art. 5069–3.15. Maximum Rates of Interest

(1) Every licensee may contract for and receive on any loan made under this Chapter repayable in consecutive monthly installments, substantially equal in amount, an interest charge, however calculated or shown, that does not exceed an add-on interest charge computed on the cash advance for the full term of the loan contract in accordance with the following schedule:

Eighteen Dollars per One Hundred Dollars per annum on that part of the cash advance not in excess of Three Hundred Dollars, and Eight Dollars per One Hundred Dollars per annum on that part of the cash advance in excess of Three Hundred Dollars but not in excess of Twenty-five Hundred Dollars.

(2) Interest authorized in Section (1) of this Article may be computed at the time the loan is made for the full term of the loan contract notwithstanding the requirement of the loan contract for payment in substantially equal regular installments and may be computed on the basis of a full month for any fractional period in excess of fifteen days. Precomputed interest authorized by Section (1) of this Article shall be added to the cash advance and said sum shall be the amount of the loan.

(3) Notwithstanding the foregoing, a licensee may make loans which require repayment in other than substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or periods of the installments or in equal successive monthly installments followed by or interspersed with an irregular, unequal, or larger installment or installments, or in other than monthly installments or if the first installment is not payable one month from the date of the contract and may compute, contract for, charge, or receive interest charges under any method or formula different from that prescribed in Section (1) of this Article if the interest charges do not exceed an amount that, having due regard for the schedule of installment payments, will provide the same effective return as if the loan were repayable in equal successive monthly installments beginning one month from the date of the contract.

(4) Notwithstanding any other provision of this Chapter, a borrower and a licensee may enter into a written agreement pursuant to which one or more loans or advances to or for the account of the borrower may be made from time to time. The agreement shall contain the date of the agreement and the name and address of each borrower and of

the licensee and shall be signed by the parties. A copy of the agreement shall be delivered to the borrower. The agreement may provide for a maximum loan charge on the unpaid principal amounts from time to time outstanding not in excess of a rate producing an interest yield equivalent to that which would be permitted on a similar loan made under Section (1) of this Article. The Commissioner shall prescribe monthly rates of charge which produce an interest yield equal to that permitted under Section (1) of this Article on a loan of the same amount. The loan agreement shall clearly set forth the insurance coverages afforded the borrower through the lender and, if a charge for insurance is to be made to the borrower, a simple statement of the amount of such charge or the method by which it will be calculated.

(5) On any loan contract which includes precomputed interest and is payable in substantially equal successive monthly installments, additional interest for default, if contracted for, may equal but shall not exceed Five Cents for each One Dollar of any scheduled installment when any portion of such installment continues unpaid for ten days or more following the date such payment is due, including Sundays and holidays. Interest for such default shall not be collected more than once on the same installment. If the payment date of each wholly unpaid installment, on which no interest for default has been collected is deferred as of an installment date for one or more full months and the maturity of the contract is extended for a corresponding period of time, the licensee may charge and collect additional interest for such deferment. The interest for such deferment may be equal to the difference between the refund which would be required for prepayment in full, as of the date of deferment and the refund which would be required for prepayment in full as one month prior to such date multiplied by the number of months in the deferment period as defined below. The portion of the interest contracted for under Section (1) of this Article applicable to each deferred balance and installment period following a deferment period shall remain the same as that applicable to such balance and period under the original contract of loan. If a loan is prepaid in full during the deferment period defined below, the borrower shall receive, in addition to the refund required under Section (6) of this Article, a pro-rata refund of that portion of the interest for deferment applicable to any unexpired full month or months of such period. The deferment period is that period beginning with the day following the due date of the scheduled installment preceding the first installment being deferred, and during which no payment is made or required by reason of such deferment. The interest for default or interest for deferment may be collected at the time of its accrual, or at any time thereafter. On any loan contract which includes precomputed interest but which is not payable in substantially equal successive monthly installments, the loan contract may provide for interest from the maturity date of any installment until paid at a rate not exceeding the highest lawful contract rate.

(6)(a) When any loan contract which includes precomputed interest and is payable in substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract is prepaid in full by cash, a new loan, renewal, or otherwise, or when the licensee makes demand for payment in full of the unpaid balance, after the first installment due date but before the final installment due date, the licensee shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full or demand for payment in full, bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full or demand for payment in full occurs before the first installment due date the licensee shall retain for each elapsed day from the date the loan was made, one-thirtieth of the portion of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower.

(b) When any loan contract which includes precomputed interest and is payable in other than substantially equal successive monthly installments beginning within one month plus fifteen days after the date the contract is prepaid in full by cash, a new loan, renewal, or otherwise, or when the licensee makes demand for payment in full of the unpaid balance prior to final maturity, the licensee may retain earned interest for the period from the date of the loan to the date of prepayment in full or date of demand for payment in full in an amount not to exceed that which would accrue at the simple annual interest rate which the loan contract would have produced over its full term if each scheduled payment had been paid on the date due when applied to the unpaid principal amounts determined to be outstanding from time to time according to the schedule of payments, having due regard for the amount of each scheduled installment and the time of each scheduled installment period. In the event prepayment in full or demand for payment in full occurs on a date during an installment period, the licensee, in addition to interest earnings for the installment period or periods that have elapsed, may retain for each day elapsed from the immediately preceding installment due date to the date of prepayment in full or demand for payment in full an interest charge produced by applying the simple annual interest rate under the contract as heretofore described to the unpaid principal bal-

ance of the loan determined to be outstanding according to the schedule of payments as of the immediately preceding installment due date and dividing that product by three hundred sixty-five. All interest contracted for and precomputed in the amount of loan in excess of the interest authorized to be retained by this Subsection shall be refunded or credited to the borrower.

The licensee may also retain earned interest on any additions to principal or other permissible charges added to the loan subsequent to the date of the loan contract, at the simple annual interest rate as described above, from the date such additions are made until paid or until demand for payment in full of the total unpaid balance under the loan contract is made by the licensee.

If the loan contract does not contain precomputed interest, then interest may be earned on the principal balance, including additions to principal subsequent to the loan contract, from time to time unpaid, at the rate contracted for, until the date of payment in full or demand for payment in full.

(c) No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

[See Compact Edition, Volume 4 for text of (7) and (8)]

(9) The dollar amounts of the rate brackets and ceiling prescribed by Section (1) of this Article are subject to adjustment from time to time under Article 2.08 of this Title.

[Amended by Acts 1979, 66th Leg., p. 1556, ch. 672, §§ 3 to 6, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 282, ch. 111, § 11, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069-3.16. Alternative Rates of Interest Authorized

(1) On a loan made under this section, a licensee may charge, in lieu of charges specified in Article 3.15, the following amounts:

(a) On any amount up to and including Twenty-nine Dollars and Ninety-nine Cents a charge may be added at the ratio of One Dollar for each Five Dollars advanced to the borrower.

(b) On any cash advance in an amount in excess of Twenty-nine Dollars and Ninety-nine Cents up to and including the amount of Thirty-five Dollars there shall be allowed an acquisition charge for making the advance not in excess of one-tenth of the amount of the cash advance. In addition thereto, an installment account handling charge shall be allowed not to exceed Three Dollars per month.

(c) On any cash advance of an amount in excess of Thirty-five Dollars but not more than Seventy Dollars there shall be allowed an acquisition charge for making the advance not in excess of one-tenth of the amount of the cash advance. In addition thereto, an installment account handling charge shall be allowed not to exceed Three Dollars and Fifty Cents per month.

(d) On any cash advance of an amount in excess of Seventy Dollars but not in excess of One Hundred Dollars there shall be allowed an acquisition charge for making the advance not in excess of one-tenth of the amount of the cash advance. In addition thereto, an installment account handling charge shall be allowed not to exceed Four Dollars per month.

(e) On any cash advance in an amount in excess of One Hundred Dollars, the maximum acquisition charge may not exceed Ten Dollars and the maximum monthly installment account handling charge may not exceed the ratio of Four Dollars per month per One Hundred Dollars of cash advance.

(2) The maximum term of any loan made under the terms of this Article shall be one month for each Ten Dollars of cash advance up to a maximum term of six months on loans of One Hundred Dollars or less, and one month for each Twenty Dollars of cash advance on loans in excess of One Hundred Dollars as provided for by Section (1)(e) of this Article.

(3) On such loans under this Article, no insurance charges or any other charges of any nature whatsoever shall be permitted.

(4) The acquisition charge authorized on loans made pursuant to Articles 3.16(1)(a), (b), (c), and (d) shall be deemed to be earned at the time a loan is made and shall not be subject to refund. On the prepayment of any loan made pursuant to Articles 3.16(1)(a), (b), (c), and (d) the installment account handling charge shall be subject to the provisions of Article 3.15 as it relates to refunds. On the prepayment of any loan made pursuant to Article 3.16(1)(e) both the acquisition charge and the installment account handling charge shall be subject to the provisions of Article 3.15 as it relates to refunds. Provisions of Article 3.15 relating to default charges on loans and the deferment of loans shall apply to loans made under this Article.

(5) The Commissioner shall have authority to formulate schedules providing for repayment in weekly, bi-weekly or semi-monthly installments for use by licensees on loans made under the authority of this Article provided the ratio of charges permitted under such schedules do not exceed the maximum rates authorized in this Article.

(6) The maximum cash advance of any loan made under this Article shall be One Hundred Dollars as from time to time may be adjusted by the provisions of Article 2.08 of this Title.

[Amended by Acts 1981, 67th Leg., p.282, ch. 111, § 12, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069–3.18. Insurance

[See Compact Edition, Volume 4 for text of (1) and (2)]

(3) When insurance is required in connection with a loan made under this Chapter, the lender shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is required in connection with the loan, and that the borrower shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the licensee at a premium or rate of charge not fixed or approved by the State Board of Insurance, the licensee shall include such fact in the foregoing statement, and the borrower shall have the option for a period of five days from the date of loan of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made as separate written statements delivered in conjunction with the loan contract or may be included as a part of the loan contract.

(4) All insurance for which a charge is included in the loan contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) Where insurance for which a charge is included in the loan contract is to be procured by the lender, the lender shall within thirty days after execution of the loan contract deliver, mail, or cause to be mailed to the borrower at his address as specified in the contract, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all of the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(6) If a borrower is obligated under the terms of a loan contract to obtain or maintain required insurance coverages and fails to do so or requests the lender to procure that insurance, the lender may procure substitute insurance coverage, which coverage is substantially equivalent to or more limited than that originally required, in accordance with Sections (4) and (5) of this Article, and may procure insurance to cover only the interest of the lender as a secured party if the borrower does not request that the borrower's interest be covered. The lender may add the premium advanced by the lender for that insurance to the unpaid balance of the loan contract and may charge interest on that amount from the time of its addition to the unpaid balance of the loan contract until it is paid at a rate not in excess of the rate that the loan contract would produce over its full term if each scheduled payment were paid on the date due. If any insurance for which a charge is included in or added to the loan contract is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the lender shall be credited, except to the extent applied to the purchase by the lender of similar insurance, to any amounts then unpaid on the account and the balance shall be promptly refunded to the borrower; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

[See Compact Edition, Volume 4 for text of (7) to (9)]

[Amended by Acts 1979, 66th Leg., p. 1559, ch. 672, §§ 7, 8, eff. Aug. 27, 1979.]

Art. 5069–3.19. Licensee's Duty to Borrower

(1) When a loan is made under the authority of this Chapter, the licensee shall deliver to the borrower, or if more than one to one of them, a copy of the note or agreement and all other documents signed by the borrower and a statement in writing in the English language showing the following information:

(a) The names and addresses of the borrower and of the licensee; and

(b) The types of insurance, if any, for which a charge is included in the loan contract in connection with the loan, and the charge to the borrower for such insurance.

If the note or loan contract shows the information required above, a copy of such note or loan contract may be delivered rather than a separate statement.

[See Compact Edition, Volume 4 for text of (2) to (4)]

[Amended by Acts 1979, 66th Leg., p. 1561, ch. 672, § 9, eff. Aug. 27, 1979.]

Art. 5069-3.20. Prohibited Practices

[See Compact Edition, Volume 4 for text of (1) to (3)]

(4) No licensee shall take any promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments.

[See Compact Edition, Volume 4 for text of (5) and (6)]

[Amended by Acts 1979, 66th Leg., p. 1561, ch. 672, § 10, eff. Aug. 27, 1979.]

Art. 5069-3.21. Limitation of Loan Period

(1) No licensee shall enter any contract of loan having a cash advance of Fifteen Hundred Dollars or less under this Chapter, under which the borrower agrees to make any scheduled payment of principal more than thirty-seven calendar months from the date of making such contract.

(2) No licensee shall enter any contract of loan having a cash advance in excess of Fifteen Hundred Dollars but not in excess of Three Thousand Dollars under this Chapter, under which the borrower agrees to make any scheduled payment of principal more than forty-nine calendar months from the date of making such contract.

(3) A licensee may not enter into a contract for a loan having a cash advance in excess of Three Thousand Dollars under this Chapter, under which the borrower agrees to make any scheduled payment of principal more than sixty months from the date of making that contract.

[Amended by Acts 1981, 67th Leg., p. 283, ch. 111, § 13, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

CHAPTER FOUR. INSTALLMENT LOANS

Art. 5069-4.01. Installment Loans Authorized

(1) Any bank or savings and loan association doing business under the laws of this State or of the United States, and any person licensed to do business under the provisions of Chapter 3 of this Subtitle relating to regulated loans may contract for and receive on any loan made under the authority of this Chapter repayable in consecutive monthly installments, substantially equal in amount, an interest charge, however calculated or shown, which does not exceed an add-on interest charge of Eight Dollars per One Hundred Dollars per annum for the full term of the loan contract.

(2) Interest authorized in Section (1) of this Article may be computed on the cash advance at the time the loan is made for the full term of the loan contract notwithstanding the requirement of the loan contract for payment in substantially equal regular installments and may be computed on the basis of a full month for any fractional period in excess of fifteen days. Precomputed interest authorized by Section (1) of this Article shall be added to the cash advance and said sum shall be the amount of the loan.

(3) Notwithstanding the foregoing, a lender may make loans which require repayment other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or period of the installments or in equal successive monthly installments followed by or interspersed with an irregular, unequal, or larger installment or installments, or in other than monthly installments, or if the first installment is not payable one month from the date of the contract and may compute, contract for, charge, or receive interest charges under any method or formula different from that prescribed in Section (1) of this Article if the interest charges do not exceed an amount that, having due regard for the schedule of installment payments, will provide the same effective return as if the loan were repayable in equal successive monthly installments beginning one month from the date of the contract.

(4) Notwithstanding any other provision of this Chapter, a borrower and a lender may enter into a written agreement pursuant to which one or more loans or advances to or for the account of the borrower shall be made from time to time. The agreement shall contain the date of the agreement and the name and address of each borrower and of the lender and shall be signed by the parties. A copy of the agreement shall be delivered to the borrower. The agreement may provide for a maximum loan charge on the unpaid principal amounts from time to time outstanding not in excess of a rate producing an interest yield equivalent to that which would be permitted on a similar loan made under Section (1) of this Article. The Commissioner shall prescribe monthly rates of charge which produce an interest yield equal to that permitted under Section (1) of this Article on a loan of the same amount. The loan agreement shall clearly set forth, if a charge for insurance is to be included in the contract, a simple statement of the amount of such charge or the method by which it will be calculated.

(5) On any loan contract which includes precomputed interest, and is payable in substantially equal, successive monthly installments, additional interest for default, if contracted for, may equal but shall not exceed Five Cents for each One Dollar of any scheduled installment when any portion of such installment continues unpaid for ten days or more following the date such payment is due, including Sundays and holidays. Interest for such default

shall not be collected more than once on the same installment. If the payment date of each wholly unpaid installment, on which no interest for default has been collected is deferred as of an installment date for one or more full months and the maturity of the contract is extended for a corresponding period of time, the lender may charge and collect additional interest for such deferment. The interest for such deferment may be equal to the difference between the refund which would be required for prepayment in full as of the date of deferment and the refund which would be required for prepayment in full as of one month prior to such date multiplied by the number of months in the deferment period as defined below. The portion of the interest contracted for under Section (1) of this Article applicable to each deferred balance and installment period following a deferment period shall remain the same as that applicable to such balance and period under the original contract of loan. If a loan is prepaid in full during the deferment period defined below, the borrower shall receive, in addition to the refund required under Section (6) of this Article, a pro-rata refund of that portion of the interest for deferment applicable to any unexpired full month or months of such period. The deferment period is that period beginning with the day following the due date of the scheduled installment preceding the first installment being deferred, and during which no payment is made or required by reason of such deferment. The interest for default or interest for deferment may be collected at the time of its accrual or deferment or at any time thereafter. On any loan contract which includes precomputed interest but which is not payable in substantially equal successive monthly installments, the loan contract may provide for interest from the maturity date of any installment until paid at a rate not exceeding the highest lawful contract rate.

(6)(a) When any loan contract payable in substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract and containing precomputed interest is prepaid in full by cash, a new loan, renewal, or otherwise, or when the lender demands payment in full of the unpaid balance after the first installment due date but before the final installment due date, the lender shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full or demand for payment in full bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full or demand for payment in full occurs before the first installment due date the lender shall retain for each elapsed day from date the loan was made, one-thirtieth of the portion of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower.

When any loan contract which includes precomputed interest and is payable in other than substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract is prepaid in full by cash, a new loan, renewal, or otherwise, or if the lender demands payment in full of the unpaid balance before the final installment due date, the lender shall retain earned interest for the period from the date of the loan to the date of prepayment in full or demand for payment in full in an amount not to exceed that which would accrue at the simple annual interest rate which the loan contract would have produced over its full term if each scheduled payment had been paid on the date due when applied to the unpaid principal amounts determined to be outstanding from time to time according to the schedule of payments having due regard for the amount of each scheduled installment and the time of each scheduled installment period. In the event prepayment in full or demand for payment in full occurs on a date during an installment period, the lender, in addition to interest earnings for the installment period or periods that have elapsed, may retain for each day elapsed from the immediately preceding installment due date to the date of prepayment in full or demand for payment in full an interest charge produced by applying the simple annual interest rate under the contract as heretofore described to the unpaid principal balance of the loan determined to be outstanding according to the schedule of payments as of the immediately preceding installment due date and dividing that product by three hundred sixty-five. All interest contracted for and precomputed in the amount of loan in excess of the interest authorized to be retained by this subsection shall be refunded or credited to the borrower.

The lender may also retain earned interest on any additions to principal or other permissible charges added to the loan subsequent to the date of the loan contract, at the simple annual interest rate as described above, from the date such additions are made until paid or until demand for payment in full of the total unpaid balance under the loan contract is made by the lender.

If the loan contract does not contain precomputed interest, then interest may be earned on the principal balance, including additions to principal subsequent to the loan contract, from time to time unpaid, at the rate contracted for, until the date of payment in full or demand for payment in full.

(c) [1] No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

[See Compact Edition, Volume 4 for text of (7)]

(8) As an alternative to the rate provided by Section (1) of this Article, the parties may agree to any rate not exceeding a rate authorized by Article 1.04 of this Title.

[Amended by Acts 1979, 66th Leg., p. 1561, ch. 672, §§ 11 to 14, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 283, ch. 111, § 14, eff. May 8, 1981.]

[1] So in enrolled bill; there is no (b).

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069–4.02. Insurance

[See Compact Edition, Volume 4 for text of (1) and (2)]

(3) When insurance is required in connection with a loan made under this Chapter, the lender shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is required in connection with the loan, and that the borrower shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the lender at a premium or rate of charge not fixed or approved by the State Board of Insurance, the lender shall include such fact in the foregoing statement, and the borrower shall have the option for a period of five days from the date of loan of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made as separate written statements delivered in conjunction with the loan contract or may be included as a part of the loan contract.

(4) All insurance for which a charge is included in the loan contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) Where insurance for which a charge is included in the loan contract is to be procured by the lender, the lender shall within thirty days after execution of the loan contract deliver, mail, or cause to be mailed to the borrower at his address as specified in the contract, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all of the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(6) If a borrower is obligated under the terms of a loan contract to obtain or maintain required insurance coverages and fails to do so or requests the lender to procure that insurance, the lender may procure substitute insurance, which coverage is substantially equivalent to or more limited than that originally required, in accordance with Sections (4) and (5) of this Article and may procure insurance to cover only the interest of the lender as a secured party if the borrower does not request that the borrower's interest be covered. The lender may add the premium advanced by the lender for that insurance to the unpaid balance of the loan contract and may charge interest on that amount from the time of its addition to the unpaid balance of the loan contract until it is paid at a rate not in excess of the rate that the loan contract would produce over its full term if each scheduled payment were paid on the date due. If any insurance for which a charge is included in or added to the loan contract is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the lender shall be credited, except to the extent applied to the purchase by the lender of similar insurance, to any amounts then unpaid on the account and the balance shall be promptly refunded to the borrower; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

[See Compact Edition, Volume 4 for text of (7) to (9)]

[Amended by Acts 1979, 66th Leg., p. 1564, ch. 672, §§ 15 to 18, eff. Aug. 27, 1979.]

Art. 5069–4.03. Lender's Duty to Borrower

(1) When a loan is made under the authority of this Chapter, the lender shall deliver to the borrower, or if more than one to one of them, a copy of the note or agreement and all other documents signed by the borrower and a statement in writing in the English language showing the following information:

(a) The names and addresses of the borrower and of the lender; and

(b) The types of insurance, if any, for which a charge is included in the loan contract in connection with the loan, and the charge to the borrower for such insurance.

If the note or loan contract shows the information required above, a copy of such note or loan contract may be delivered rather than a separate statement.

[See Compact Edition, Volume 4 for text of (2) to (4)]

[Amended by Acts 1979, 66th Leg., p. 1565, ch. 672, § 19, eff. Aug. 27, 1979.]

Art. 5069-4.04. Prohibited Practices

[See Compact Edition, Volume 4 for text of (1) to (3)]

(4) Except as specifically provided by Article 4.01(4), no lender shall take any promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments.

[See Compact Edition, Volume 4 for text of (5) and (6)]

[Amended by Acts 1979, 66th Leg., p. 1566, ch. 672, § 20, eff. Aug. 27, 1979.]

CHAPTER FIVE. SECONDARY MORTGAGE LOANS

Art. 5069-5.02. Secondary Mortgage Loans Authorized

[See Compact Edition, Volume 4 for text of (1) to (3)]

(4) When any loan contract is prepaid in full by cash, a new loan, renewal, or otherwise, or when the lender demands payment in full of the unpaid balance, after the first installment due date but before the final installment due date, the lender shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full or demand for payment in full bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full or demand for payment in full occurs before the first installment due date the lender shall retain for each elapsed day from date the loan was made, one-thirtieth of the portion of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower. No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

(5) In addition to the authorized charges provided in this Chapter no further or other charge or amount whatsoever shall be directly, or indirectly, charged, contracted for, or received. This includes (but is not limited by) all charges such as fees, compensation, bonuses, commissions, brokerage, discounts, expenses and every other charge of any nature whatsoever, whether of the types listed herein or not. Without limitation of the foregoing, such charges may be any form of costs or compensation whether contracted for or not, received by the lender, or any other person, in connection with (a) the investigating, arranging, negotiation, procuring, guaranteeing, making, servicing, collecting or enforcing of a loan; or (b) for the forbearance of money, credit, goods or things in action; or (c) for any other service or services performed or offered. However, the prohibition set out herein shall not apply to amounts actually incurred by a lender as:

(i) court costs;

(ii) attorney's fees assessed by a court;

(iii) lawful fees paid to any public office for filing, recording, or releasing any instrument securing a loan;

(iv) the reasonable cost expended for repossessing, storing, preparing for sale, or selling any security;

(v) the premiums or identifiable charge received in connection with the sale of insurance authorized under this Chapter including a premium or charge for title insurance;

(vi) an attorney's reasonable fee for title examination and opinion not in excess of the charge or premium set by the State Board of Insurance for title insurance for such a transaction; or

(vii) the reasonable and necessary charges paid to persons not salaried employees of the lender for: appraisal and inspection of collateral, investigation of the credit standing or credit worthiness of the borrower, legal fees to an attorney for the preparation of documents in connection with the transaction, or official fees for construction permits.

(6) As an alternative to the rate provided by Section (1) of this Article, the parties may agree to any rate not exceeding a rate authorized by Article 1.04 of this Title.

[Amended by Acts 1979, 66th Leg., p. 1566, ch. 672, §§ 21, 22, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 284, ch. 111, § 15, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069-5.03. Insurance

[See Compact Edition, Volume 4 for text of (1) and (2)]

(3) When insurance is required in connection with a loan made under this Chapter, the lender shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is required in connection with the loan, and that the borrower shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact busi-

ness in Texas. In addition when any requested or required insurance is sold or procured by the lender at a premium or rate of charge not fixed or approved by the State Board of Insurance, the lender shall include such fact in the foregoing statement, and the borrower shall have the option for a period of five days from the date of loan of furnishing the required insurance coverages either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made as separate written statements delivered in conjunction with the loan contract or may be included as a part of the loan contract.

(4) All such insurance for which a charge is included in the loan contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

[See Compact Edition, Volume 4 for text of (5) to (9)]

[Amended by Acts 1979, 66th Leg., p. 1567, ch. 672, §§ 23, 24, eff. Aug. 27, 1979.]

Art. 5069–5.04. Lender's Duty to Borrower

(1) When a secondary mortgage loan is made under the authority of this Chapter, the lender shall deliver to the borrower, or if more than one to one of them, a copy of the note and all other documents signed by the borrower and a statement in writing in the English language showing the following information:

(a) The names and addresses of the borrower and of the lender; and

(b) The types of insurance, if any, for which a charge is included in the loan contract in connection with the loan, and the charge to the borrower for such insurance.

If the note or loan contract shows the information required above, a copy of such note or loan contract may be delivered rather than a separate statement.

[See Compact Edition, Volume 4 for text of (2) to (4)]

[Amended by Acts 1979, 66th Leg., p. 1567, ch. 672, § 25, eff. Aug. 27, 1979.]

Art. 5069–5.05. Prohibited Practices

[See Compact Edition, Volume 4 for text of (1) and (2)]

(3) No lender shall take any promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments.

[See Compact Edition, Volume 4 for text of (4) and (5)]

[Amended by Acts 1979, 66th Leg., p. 1568, ch. 672, § 26, eff. Aug. 27, 1979.]

CHAPTER SIX. RETAIL INSTALLMENT SALES

Art. 5069–6.01. Definitions

As used in this Chapter, unless the context otherwise requires:

(a) "Goods" means all tangible personal property when purchased primarily for personal, family or household use and not for commercial or business use, including such property which is furnished or used at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable therefrom. The term also includes, but is not limited to, a structure, except a mobile home, to be used as a residence, any boat, boat-trailer, motor scooter, motor-assisted bicycle, motorcycle, camper-type trailer, horse trailer, any vehicle propelled or drawn exclusively by muscular power, and merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller.

The term does not include (i) money, things in action or intangible personal property, other than merchandise certificates or coupons as herein described; or (ii) any automobile, mobile home, truck, trailer, semi-trailer, truck tractor or bus designed and used primarily to transport persons or property on a public highway; or (iii) any vehicle designed to run only on rails or tracks or in the air, as defined in Chapter 7 of this Subtitle; or (iv) any goods which are authorized to be and are included in a contract subject to Chapter 7 of this Subtitle.

(b) "Services" means work, labor, or services of any kind when purchased primarily for personal, family or household use and not for commercial or business use, and includes a maintenance or service contract or agreement or warranty, but does not include (i) the services of a professional person licensed by the State except when those services are rendered in connection with the purchase of goods; or (ii) services for which the cost is by law fixed or approved by, or filed with or subject to approval or disapproval by the United States or the State of Texas, or any agency, instrumentality or subdivision thereof; or (iii) educational services provided by an accredited college or university or a primary or secondary school providing education required by the State of Texas or services of a kindergarten or nursery school; (iv) any services which are authorized to be and are included in a contract subject to Chapter 7 of this Subtitle; or (v) any medical or legal services.

[See Compact Edition, Volume 4 for text of (c)]

(d) "Retail seller" or "seller" means a person regularly and substantially engaged in the busi-

ness of selling goods or services to retail buyers, but does not include the services of a member of a learned profession.

(e) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement, as defined in this Article, which provides for a time price differential, as defined in this Article, and under which the buyer agrees to pay the unpaid balance in one or more installments, together with a time price differential. The term includes transactions made pursuant to a retail credit card arrangement as defined in this Article.

[See Compact Edition, Volume 4 for text of (f)]

(g) "Retail charge agreement" means an instrument or instruments prescribing the terms of retail installment transactions which may be made thereunder from time to time (whether secured or unsecured), and under the terms of which a time price differential, as defined in this Article, is to be computed in relation to the buyer's unpaid balance from time to time. The term includes an instrument or instruments prescribing the terms of a retail credit card arrangement.

(h) "Time price differential," however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. The term includes the amounts authorized by this Chapter when the parties have amended the contract to renew, restate, or reschedule the unpaid balance thereof or to extend or defer the scheduled due date of all or any part of any installment or installments.

In addition the term also includes any amounts paid or payable to a seller or holder as consideration for accepting payment in installments over time for goods and services charged under a retail credit card arrangement as defined by this Chapter.

The term does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs or official fees. Nor shall the term be in anywise considered as interest as defined by the laws of this State.

(i) "Cash price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge agreement, for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash price may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements and any of the charges described in Subsections (i), (iii), (iv), and (vi) of Section (j) of this Article which are not separately itemized on the contract.

(j) "Itemized Charges" however denominated or expressed means those amounts included in the contract or agreement but not included in the cash price for charges made to the buyer for:

(i) the amount of the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying, a retained title lien or other security interest created in connection with a retail installment transaction;

(ii) license registration or certificate of title fees;

(iii) any taxes;

(iv) any other fees or charges set or prescribed by law, and not in excess of the amounts allowed by law, that are connected with the sale or inspection of the goods or services;

(v) any premiums or charges for insurance permitted by Article 6.04;

(vi) official filing, recording, and construction permit fees; and

(vii) in a retail installment transaction involving modernization, rehabilitation, repair, alteration, improvement, or construction of real property, the reasonable and necessary fees and costs paid by the seller or holder for charge for title insurance or for title examination and opinion not to exceed the charge or premium promulgated by the State Board of Insurance for title insurance for such a transaction and the reasonable and necessary fees and costs paid by the seller or holder to persons not the salaried employees of the seller or holder of the contract for appraisal and inspection fees, fees and costs of investigation of the credit standing or credit worthiness of applicant, and legal fees to an attorney for the preparation of any and all documents in connection with the transaction.

(k) "Principal balance" means the cash price of the goods or services which are the subject matter of a retail installment contract plus the amounts, if any, included therein for itemized charges, less the amount of the buyer's down payment in money or goods or both.

[See Compact Edition, Volume 4 for text of (l)]

(m) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge agreement or the credit card issuer under the retail credit card arrangement or the assignee if the retail installment contract or the retail charge agreement or outstanding balance under either has been sold or otherwise transferred.

[See Compact Edition, Volume 4 for text of (n) to (o)]

(p) "Retail credit card arrangement" means an arrangement, payable in one or more installments,

pursuant to which a retail seller or credit card issuer gives to a retail buyer or lessee the privilege of using a credit card for the purpose of purchasing or leasing goods or services from that person, a person related to that person, others licensed or franchised to do business under his business or trade name or designation, or other persons authorized to honor the card. The term does not include arrangements operated pursuant to any other Chapter of this Title.

(q) "Credit card issuer" means a person who issues a card, plate, or other identification device used to obtain goods or services under a retail credit card arrangement. The term does not include any person who honors the credit card but did not issue it, nor any bank, savings and loan association, credit union, person licensed to do business under the provisions of Chapter 3 or 4 of this Subtitle, nor any other person who is regularly and principally engaged in the business of lending money to persons for personal, family, and household purposes.

[Amended by Acts 1977, 65th Leg., p. 212, ch. 104, § 2, eff. May 4, 1977; Acts 1977, 65th Leg., p. 2080, ch. 830, §§ 1, 2, eff. June 16, 1977; Acts 1979, 66th Leg., p. 1568, ch. 672, §§ 27, 28, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2018, ch. 792, §§ 1 to 6, eff. Aug. 27, 1979.]

Art. 5069–6.02. Retail Installment Contracts—Requirements—Disclosure

[See Compact Edition, Volume 4 for text of (1)]

(2) The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least eight-point type. The contract shall be designated "Retail Installment Contract" and shall contain substantially the following notice printed or typed in a size equal to at least ten-point bold type:

"NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."

[See Compact Edition, Volume 4 for text of (3) and (4)]

(5) The retail installment contract shall contain and disclose the following items:

(a) The cash price of the goods or services;

(b) The amount of the buyer's down payment, specifying the amounts paid in money and allowed for goods traded in;

(c) Any itemized charges, as defined in Article 6.01. Any charges for insurance permitted by Article 6.04 may be disclosed in the manner described in Article 6.04;

(d) In the event of any inconsistency or conflict between the disclosure requirements of this Chapter and those of a federal law, regulation, or an interpretation thereof, the requirements of the federal law, regulation, or interpretation shall control and the inconsistent or conflicting disclosures required by this Chapter need not to be given;

(e) Any promise, whether made in writing or orally, by the seller, made as an inducement to the buyer to become a party to the contract or which is part of the contract or which is made incidental to negotiations between the seller and the buyer with respect to the sale of the goods or services that are the subject of the contract, that the seller will compensate the buyer for referring customers or prospective customers to the seller for goods or services which the seller has for sale or for referring the seller to such customers or prospective customers. In any case in which, pursuant to the preceding provisions, the contract contains a promise to compensate the buyer for referring customers or prospective customers to the seller or the seller to such customers, the contract must contain a provision to the effect that the amount otherwise owing under the contract at any time is reduced by the amount of compensation owing pursuant to such promise.

[See Compact Edition, Volume 4 for text of (6)]

(7)(a) Retail installment contracts or retail charge agreements negotiated and entered into by mail or telephone, without solicitations in person by salesmen or other representatives of the seller, and based upon a catalog of the seller or other printed solicitation which clearly sets forth the cash prices of sales to be made through such medium, may be made as provided in this section. The provisions of this Article with respect to retail installment contracts shall be applicable to such sales, except that the designation and notice provisions of Section (2) of this Article shall not be applicable to such contract.

[See Compact Edition, Volume 4 for text of (7)(b) to (9)]

(10) Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full the unpaid time balance thereof at any time before its final due date and, if he does so, or if the holder demands payment in full of the unpaid balance prior to its final due date, he shall receive a refund credit thereon for such prepayment or upon such demand for payment in full. The amount of such refund credit shall represent at least as great a proportion of the original time price differential, after first deducting therefrom an amount equivalent to the minimum charge authorized in this Article, as

(a) the sum of the monthly unpaid balances under the schedule of payments in the contract (beginning as of the date after such prepayment or demand for payment in full which is the next succeeding monthly anniversary date of the due

date of the first installment under the contract, or, of the prepayment or demand for payment in full is prior to the due date of the first installment under the contract, then as of the date after such prepayment or demand for payment in full which is the next succeeding monthly anniversary date of the date of the contract) bears to

(b) the sum of all the monthly unpaid balances under the schedule of installment payments in the contract. Where the amount of refund credit is less than One Dollar, no refund credit need be made. On contracts payable in other than substantially equal successive monthly installments commencing one month after the date of the contract, the refund shall be computed in a manner proportionate to the above described method, having due regard for the amount of each installment and to the irregularity of each installment period.

If, subsequent to demand of payment in full under a contract, the buyer and holder agree to reinstate such contract, they may do so and may amend the contract pursuant to Section (12) of this Article.

[See Compact Edition, Volume 4 for text of (11)]

(12)(a) The holder of a retail installment contract, upon request of the buyer, may agree to one or more amendments to extend or defer the scheduled due date of all or any part of any installment or installments and may collect for same a charge computed on the amount of the scheduled installment or installments extended or deferred for the period of extension or deferment at the rate of Fifteen Cents for each Ten Dollars per month; provided that a minimum extension or deferment charge of One Dollar may be charged and collected. Such amendments may also include payment by the buyer of the additional cost to the holder of premiums for continuing in force any insurance provided for in the contract and of any additional necessary official fees.

(b) The holder of a retail installment contract, upon request of the buyer may agree to an amendment to renew, restate or reschedule the unpaid balance of the contract and may collect for same a charge to be computed as follows: The sum of the unpaid balance as of the date of the amendment and the cost of any insurance, any additional necessary official fees and any accrued delinquency charges, after deducting an amount which would be equivalent to the required refund credit applicable in the case of prepayment in full as of the date of the amendment charges, shall constitute a principal balance on which a charge may be computed for the term of the amended contract at the applicable rate of charge as provided in Article 6.02.

(c) Any amendment to a retail installment contract must be confirmed in writing and signed by the buyer, and a copy of the writing shall be delivered to the buyer at the time of execution of same. Said writing together with the original contract and any previous amendments thereto shall constitute the retail installment contract.

[See Compact Edition, Volume 4 for text of (13)]

(14)(a) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of such previous contract or contracts. Each subsequent purchase shall be a separate retail installment contract under this Chapter, notwithstanding that the same may be included in and consolidated with one or more of such previous contract or contracts. All the provisions of this Chapter with respect to retail installment contracts shall be applicable to such subsequent purchases except as hereinafter stated in this section.

(b) In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this Article, it shall be sufficient if the seller shall prepare a written memorandum of each subsequent purchase, in which case the provisions of Sections (1), (2), (3), and (5) of this Article shall not be applicable. The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

(c) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation, the entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied to the previous purchases; and each payment after such subsequent purchase made on the consolidated contract shall be deemed to have been allocated to all of the various purchases in the same ratio as the original cash sale prices of the various purchases bear to the total of all. Where the amount of each installment payment is increased in connection with such subsequent purchases, at the seller's option, the subsequent payments may be deemed to be allocated as follows: an amount equal to the original periodic payment to the previous purchase, the balance to the subsequent purchase. However, the amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase. The provisions of this Subsection (c) shall not apply to cases where such previous and subsequent purchases involve equipment, parts, or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request.

(15) The dollar amount of the rate brackets prescribed by Section (9)(a) of this Article are subject to

adjustment from time to time under Article 2.08 of this Title. As an alternative to the rates and amounts of time price differential provided by Section (9)(a) of this Article, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Article 1.04 of this Title.

[Amended by Acts 1979, 66th Leg., p. 1569, ch. 672, §§ 29 to 34, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 284, ch. 111, § 16, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069-6.03. Retail Charge Agreements—Requirements—Disclosure

(1) A retail charge agreement may be established by a seller or credit card issuer upon the request of a buyer or prospective buyer. The retail charge agreement shall be in writing and signed by the buyer. A copy of such agreement executed on or after the effective date of this Chapter shall be delivered or mailed to the buyer prior to the date on which the first payment is due thereunder. Any acknowledgment by the buyer of delivery of a copy of the agreement contained in the body thereof shall be in a size equal to at least ten-point bold type and shall appear directly above the buyer's signature. No agreement executed on or after the effective date of this Chapter shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed. The buyer's acknowledgment, conforming to the requirements of this section, of delivery of a copy of an agreement, shall be presumptive proof, in any action or proceeding, of such delivery and that the agreement, when signed, did not contain any blank spaces as herein provided. If no copy of the agreement is retained by the seller, a notation in his permanent record showing that such agreement was mailed and the date of mailing shall serve as presumptive proof of such mailing. Any such agreement shall contain substantially the following notice printed or typed in a size equal to at least ten-point bold type:

"NOTICE TO THE BUYER—DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE AGREEMENT YOU SIGN. KEEP THIS AGREEMENT TO PROTECT YOUR LEGAL RIGHTS."

(2) The buyer under the retail charge agreement shall be supplied with a statement as of the end of each monthly period (which need not be a calendar month), or other regular period agreed upon in writing, at the end of which there is any unpaid balance thereunder, which statement shall recite and disclose a legend to the effect that the buyer may at any time pay his total unpaid balance or any part thereof.

(2a) A retail charge agreement that complies with the applicable duties and requirements regarding disclosure under the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.), shall be deemed to comply with the duties and requirements regarding disclosure included in Section (2) of this Article.

[See Compact Edition, Volume 4 for text of (3) and (4)]

(5) The dollar amount of the rate brackets in this Article is subject to adjustment from time to time under Article 2.08 of this Title. As an alternative to the rates or amounts of time price differential provided by Section (3) of this Article, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Article 1.04 of this Title. The provisions of Article 1.04 of this Title applicable to open-end accounts apply to this Article.

[Amended by Acts 1979, 66th Leg., p. 1573, ch. 672, §§ 35, 36, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2020, ch. 792, §§ 7, 8, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 284, ch. 111, § 17, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069-6.04. Insurance

(1) On any retail installment contract or retail charge agreement made under the authority of this Chapter, a seller or holder may request or require a buyer to provide credit life insurance and credit health and accident insurance as additional protection for such contract or agreement and include the cost of such insurance as a separate charge in such contract or agreement. Only one policy of life insurance and one policy of health and accident insurance on any one buyer may be in force with respect to any one contract or agreement at any one time.

(2) A seller or holder may, in addition, request or require a buyer to insure the property purchased in, or improved by, goods and services provided under a retail installment transaction subject to this Chapter, including title insurance on real property involved in the retail installment contract or retail charge agreement and subject to a lien or security

interest of seller or holder, and include the cost of such insurance as a separate charge in such contract or agreement. If the property involved in such contract or agreement is a boat which may be enrolled or licensed as a yacht with the United States Coast Guard and be subject to the maritime laws of the United States, a seller or holder may also require a buyer to provide protection and indemnity insurance, longshoremen's and harbor worker's compensation insurance and medical payments insurance in connection with the boat, and include the cost of such insurance as a separate charge in such contract or agreement. Such insurance and the premiums or charges for that insurance shall bear a reasonable relationship to the amount, term and conditions of the contract or agreement, the existing hazards or risk of loss, damage or destruction, or the potential liability and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.

Additionally, the buyer and seller may agree to include in the retail installment contract charges for insurance coverages which (1) cover risks of loss or liability reasonably related to the goods or services sold, the anticipated use thereof, or goods or services related to the goods or services sold and which may be insured with the goods and services sold; and (2) are written on policies or endorsement forms prescribed or approved by the State Board of Insurance; and (3) are ordinarily offered in policies or endorsements offered to the general public. The retail installment contract shall clearly identify the type of coverage for each such type of coverage purchased and the premiums therefor and shall clearly indicate that such coverage is optional.

(3) When insurance is required in connection with such a contract or agreement made under this Chapter, the seller or holder shall furnish the buyer a statement which shall clearly and conspicuously state that insurance is required in connection with the contract or agreement, and that the buyer shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the seller or holder and a premium or rate of charge not fixed or approved by the State Board of Insurance is included in the retail installment contract or under the retail charge agreement, the seller or holder shall include or cause to be included such fact in a written statement delivered or mailed to the buyer, and the buyer shall have the option for a period of ten days from the date of the contract or agreement or the mailing of the written statement to the buyer of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverage through any insurance company authorized to transact business in Texas. Such statement or statements may be made in conjunction with or as part of the retail installment contract required by Article 6.02 or the retail charge agreement required by Article 6.03, respectively, or may be made in a separate written statement or statements.

(4) All such insurance subject to Section (1) or (2) of this Article for which a separate charge is included in the retail installment contract or under the retail charge agreement shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company or companies authorized to do business in this State.

(5) The contract or agreement, separate written statement, or a specimen copy of a certificate or policy of insurance delivered to the buyer shall identify the type of coverage, term and amount of premium for such insurance coverages described in Sections (1) and (2) of this Article for which a separate charge is included in the retail installment contract or under the retail charge agreement.

(6) The buyer shall have the privilege at the time of execution of the contract or agreement of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the seller or holder, but, in such case the inclusion of the insurance premium in the contract or agreement shall be optional with the seller or holder.

(7)(a) Subsequent to the execution of the retail installment contract, a buyer and holder may agree to add to the unpaid balance of the contract premiums for insurance policies obtained subsequent to the retail installment transaction and covering the goods or services sold or goods or services related thereto, including premiums for renewal of policies originally included in the contract. Such policies shall comply with the limitations set out in Sections (1), (2), and (4) above, as applicable.

(b) If the buyer fails to present to the holder reasonable evidence that he or she has obtained or maintained a coverage required by the retail installment contract or retail charge agreement, the holder may but shall not be required to procure substitute insurance coverage which is substantially equivalent to or more limited than the coverages originally required and may add the premium advanced for that insurance to the unpaid balance of the contract or under the retail charge agreement. The substitute insurance may cover only the interest of the holder or the interest of the holder and the buyer. The substitute insurance shall be written at lawful rates and in accordance with the Texas Insurance Code by a company authorized to do business in this State.

(c) If any premium is added to the unpaid balance of a retail installment contract under this Section, the rate of time price differential previously agreed to in the retail installment contract remains in effect

and shall be applied to the new unpaid balance or the contract may be rescheduled in accordance with Article 6.02. If any premium is added under a retail charge agreement, the premium shall be added to the unpaid balance under the retail charge agreement. When any substitute insurance is obtained by the holder of a retail installment contract or retail charge agreement when the buyer has failed to obtain or maintain a required coverage, the amendment adding the premium or rescheduling the contract need not be signed by the buyer but the holder shall deliver to the buyer or send to the buyer's last known address as shown by the records of the holder specific written notification of that action.

(8) If the insurance is to be procured by the seller or holder, he shall, within forty-five days after delivery of the goods or furnishing of the services under the contract or agreement, deliver, mail, or cause to be mailed to the buyer at his address as specified in the contract or agreement, a policy, or policies, or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms, options, limitations, restrictions and conditions of the policy or policies of insurance.

(9) If the insurance is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the seller or the holder shall, at the seller or holder's option, be applied to replace required insurance coverages or be credited to the final maturing installments of the retail installment contract or retail charge agreement, and the remaining balance of the unearned insurance premiums shall be refunded to the buyer; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(10) Any gain, or advantage to the seller or holder, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as an additional charge or further time price differential in connection with any contract or agreement made under this Chapter except as specifically provided herein.

[Amended by Acts 1979, 66th Leg., p. 309, ch. 142, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1573, ch. 672, § 37, eff. Aug. 27, 1979.]

Art. 5069–6.05. Prohibited Provisions

No retail installment contract or retail charge agreement shall:

[See Compact Edition, Volume 4 for text of (1) to (6)]

(7) Provide for or grant a first lien upon real estate to secure such obligation, except, (a) such lien as is created by law upon the recording of an abstract of judgment or (b) such lien as is provided for or granted by a contract or series of contracts for the sale or construction and sale of a structure to be used as a residence so long as the time price differential does not exceed an annual percentage rate permitted under either this Chapter or Article 1.04 of this Title.

[Amended by Acts 1977, 65th Leg., p. 212, ch. 104, § 1, eff. May 4, 1977; Acts 1981, 67th Leg., p. 284, ch. 111, § 18, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069–6.08. Application

None of the provisions of this Chapter shall affect or apply to any loans or to the business of making loans under or in accordance with the laws of this State, nor shall any of the provisions of the loan or interest statutes of this State affect or apply to any retail installment transaction. Nor shall any seller pay, promise to pay, or otherwise tender cash to any buyer as a part of any transaction made pursuant to this Chapter unless otherwise specifically authorized by this Chapter. Nothing in this Chapter shall be construed to impair or in any way affect any rule of law applicable to or governing retail installment sales not otherwise subject hereto. This Chapter shall apply exclusively to retail installment transactions as defined in Article 6.01 hereof. The provisions of this Chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made shall be deemed to control over any contrary Texas law respecting those subjects. Except as displaced by the particular provisions of this Chapter, the Uniform Commercial Code as adopted in Texas,[1] other applicable statutes, and the principles of the common law shall remain applicable to transactions hereunder to the extent they are applicable.

[Amended by Acts 1979, 66th Leg., p. 1576, ch. 672, § 38, eff. Aug. 27, 1979.]

[1] Business and Commerce Code, § 1.101 et seq.

CHAPTER SIX A—MANUFACTURED HOME CREDIT TRANSACTIONS

Former Chapter 6A, Manufactured Homes Installment Sales, added by Acts 1979, 66th Leg., p. 1576, ch. 672, § 39, was revised by Acts 1981, 67th Leg., p. 2126, ch. 496.

Article

5069–6A.01. Purpose.
5069–6A.02. Definitions.
5069–6A.03. Credit Charge.
5069–6A.04. Adjustment of Rate Charged.
5069–6A.05. Requirements and Disclosures.

Article
5069-6A.06. Prepayment.
5069-6A.07. Amendment to Extend or Defer.
5069-6A.08. Insurance.
5069-6A.09. Transfer.
5069-6A.10. Default.
5069-6A.11. Land and Home Transactions.
5069-6A.12. Tax Escrow.
5069-6A.13. Prohibited Provisions.
5069-6A.14. Transfer of Creditor's Rights in a Credit Transaction.
5069-6A.15 Waiver.
5069-6A.16. Consumer Credit Commissioner.
5069-6A.17. Interpretations by Commissioner and Court Decisions.

Disposition Table

Showing where provisions of former Chapter 6A are now covered in revised Chapter 6A.

Former Article	New Article
5069-6A.01	5069-6A.01
5069-6A.02	5069-6A.02
5069-6A.03	5069-6A.03
5069-6A.04	5069-6A.05
5069-6A.05	5069-6A.06
5069-6A.06	5069-6A.07
5069-6A.07	5069-6A.08
5069-6A.08	5069-6A.09
5069-6A.09	5069-6A.10
5069-6A.10	5069-6A.13
5069-6A.11	5069-6A.14
5069-6A.12	———
5069-6A.13	5069-6A.15
5069-6A.14	5069-6A.16

Art. 5069-6A.01. Purpose

The legislature finds that manufactured homes have become a major source of single family housing and that a large number of manufactured homes are being placed on private property as permanent residences. Accordingly, the legislature has determined that credit transactions, both credit sales and consumer loans, for the purchase of manufactured homes should be regulated equally and in the same chapter. The legislature also finds that there have been substantial revisions in the Federal Truth-in-Lending Act [1] and regulations issued pursuant to that Act and has determined that disclosure requirements should be modified to eliminate duplications and inconsistencies and that certain definitions should be revised to coordinate with federal law and regulations. The legislature also desires to make it clear that, before the effective date of Chapter 6A, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-6A.01 et seq., Vernon's Texas Civil Statutes), mobile home credit sales were regulated exclusively by Chapter 7, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-7.01 et seq., Vernon's Texas Civil Statutes), and modular homes by Chapter 6, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-6.01 et seq., Vernon's Texas Civil Statutes). The legislature also finds that there is a growing need for creative and flexible financing plans for the purchase of manufactured homes in this state.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981.]

[1] 15 U.S.C.A. § 1601 et seq.

Art. 5069-6A.02. Definitions

(1) Except as expressly defined by this section, all words or phrases used in this chapter are defined in accordance with Part I of the Consumer Credit Protection Act (also known as the Truth-in-Lending Act), 15 U.S.C. Sec. 1601 et seq., as amended, and as implemented by Regulation Z as promulgated by the Board of Governors of the Federal Reserve System. [1]

(2) In this chapter:

(a) "Manufactured home" is defined in accordance with the definition of manufactured home contained in the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes). The term includes any furniture, appliances, drapes, carpets, wall coverings, or other items that are attached to or contained in the dwelling and that are included in the cash price and sold in conjunction with the dwelling.

(b) "Consumer" means a person to whom credit is extended in a credit transaction and includes a comaker, endorser, guarantor, surety, or other person that is obligated to repay the extension of credit.

(c) "Creditor" means a person involved in a credit transaction who:

(i) extends or arranges for the extension of the credit; or

(ii) is a retailer or broker, as defined by the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), and participates in arranging for the extension of credit.

(d) "Credit transaction" means a retail purchase of a manufactured home under which the consumer, in a credit document, grants to a creditor a purchase money lien on the manufactured home to secure the extension of credit that is subject to a finance charge or is payable by written agreement in more than four installments, not including a down payment, whether in connection with a sale, loan, or otherwise. The term includes a bailment or lease, unless terminable without penalty at any time by the consumer, under which the consumer:

(i) agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved; and

(ii) will become or has the option to become, for no additional consideration or for nominal consideration, the owner of the property on compliance with the agreement.

(e) "Credit document" means the credit sale contract or the loan instruments and includes all

the written agreements between the consumer and creditor that relate to the credit transaction. The document may consist of one or more pages.

[Amended by Acts 1981, 67th Leg., p. 2126, ch. 496, § 1, eff. Sept. 1, 1981.]

[1] 12 C.F.R. § 226.1 et seq.; 15 U.S.C.A., foll. § 1700.

Art. 5069–6A.03. Credit Charge

(1) Subject to Subsection (2) of this section, the interest or time price differential in a credit transaction may not exceed the sum obtained by applying a simple interest rate equal to 13.32 percent a year to the unpaid balance for the scheduled term of the transaction.

(2) The rate and limitation prescribed by Subsection (1) of this section are effective only if the federal usury preemptions for residential mortgage loans contained in the Veterans' Disability Compensation and Survivors' Benefits Act of 1979, Public Law 96–128, [1] the Housing and Community Development Act of 1979, Public Law 96–153, [2] and the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96–221, [3] are expressly made inapplicable to transactions made in this state by an Act of the legislature of this state. The limitation prescribed by Subsection (1) of this section becomes effective on the effective date of such an Act.

(3) By agreement between the consumer and the creditor expressly set forth in the credit document, the credit transaction may provide for an adjustable rate by which the initial contract rate of interest or time price differential is to be adjusted at certain stated regular intervals in accordance with Section 4 of this chapter. Such an interval is the "rate adjustment period."

(4) For purposes of disclosure only, the finance charge is computed on the unpaid balance from the effective date of the credit transaction as set forth in the credit document until the maturity of the final installment, notwithstanding that the total of payments is required to be paid in installments; if the credit document includes an adjustable rate provision, the finance charge shall be computed on the amount financed using the initial contract rate.

(5) For a period less or greater than 12 months or for amounts less or greater than $100, the amount of the maximum charge shall be decreased or increased proportionately. A fractional monthly period of 15 days or more may be considered a full month.

(6) If a credit transaction is payable other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments, either in amounts or periods, or in equal successive monthly installments followed by or interspersed with an irregular, unequal, or larger installment or installments, or in other than monthly installments, or if the first installment is not payable one month from the date of the contract, the finance charge may not exceed an amount that, having due regard for the schedule of installment payments, will provide the same effective return as if the credit transaction were payable in substantially equal successive monthly installments, beginning one month from the date of the credit document.

(7) The provisions of this chapter shall apply to credit transactions as defined by Subsection 2(d) notwithstanding any provision of Article 1.04 of this title.

[Amended by Acts 1981, 67th Leg., p. 2127, ch. 496, § 1, eff. Sept. 1, 1981.]

[1] 38 U.S.C.A. § 1828.
[2] 12 U.S.C.A. § 1735f–7.
[3] 12 U.S.C.A. § 371b–1 (repealed); 12 U.S.C.A. § 371b–1 note.

This article was revised by Acts 1981, 67th Leg., p. 2126, ch. 496, eff. Sept. 1, 1981, without reference to amendment of this article by Acts 1981, 67th Leg., p. 285, ch. 111, § 19, eff. May 8, 1981, which added a § G to read:

"G. Alternate Rate. As an alternative to the rates and amounts of time price differential provided by Subsection A of this section, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by article 1.04 of this Title."

Sections 27 and 28 of the 1981 amendatory act adding § G provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069–6A.04. Adjustment of Rate Charged

(1) Adjustments in the rate charged as permitted by Subsection (3) of Section 3 of this chapter must be based on changes in a specific index, as set forth in the credit document, with the index base being fixed by the index value on the first day of the month in which the credit document is dated. The index may be only:

(a) the monthly average gross yield to the Federal National Mortgage Association on accepted bids in weekly or biweekly auctions for four-month commitments to purchase FHA-insured or VA-guaranteed home mortgages, as published in the Federal Reserve Bulletin;

(b) the monthly average yield on United States Treasury securities adjusted to a constant maturity of five years as published in the Federal Reserve Bulletin; or

(c) an index expressly approved by the Federal Home Loan Bank Board or by the Office of the Comptroller of the Currency, Department of the Treasury, for adjustable or variable interest rates on residential mortgage loans.

(2)(a) Rate adjustments may not exceed one-half of one percent a year for any six-month period. If the stated regular interval for rate adjustments is a 12-month period or longer, rate adjustments may not exceed one percent a year. In no event shall the total of all rate adjustments over the term of the credit transaction exceed the lesser of:

(i) one-half of the initial rate; or

(ii) eight percent; or

(iii) the quotient, expressed as a percentage, of the term of the loan in years divided by two.

(b) It is expressly provided, however, that any credit transaction which contains rate adjustment provisions pursuant to Subsection (2)(a) shall not contain any other provision which would additionally allow a creditor to renegotiate, modify, or otherwise adjust the rate or term of the credit transaction within a 60-month period. It is intended that this Subsection (2)(b) shall prohibit rate adjustments authorized by Subsection (2)(a) in combination with "rollover" type mortgage loans having a term of five years or less.

(3) Changes in the index shall be calculated by determining the change in the number of points in the index from the index base, or for changes after the initial change from the index value used for the immediately preceding rate adjustment, to the index value on the first day of the month that is more than 50 days before the next rate adjustment period. This change is the rate adjustment. The rate adjustment shall be applied to the initial contract rate or the current adjusted rate, and after proper notice is given to the consumer, the rate shall be increased or decreased by that amount. The rate may not be adjusted unless the rate adjustment is at least one-eighth of one percent a year.

(4) Any increase in the rate authorized or permitted by this section may be waived at the option of the creditor. Any decrease in the rate resulting from a decrease in the index is mandatory, subject to the limitations prescribed by this section. If the creditor agrees to impose periodic or aggregate limitations on rate adjustments that are smaller or more restrictive than the limitations prescribed by this section, those limitations also apply to decreases.

(5) Before the 40th day preceding the payment date on which a rate adjustment is effective, the creditor shall mail to the consumer, postage prepaid, a notice that sets forth:

(a) the initial contract rate or the current adjusted rate if different from the initial contract rate;

(b) the index base, or the index value used for the immediately preceding rate adjustment, if any, and the dates on which the index base or value, as appropriate, was determined;

(c) the index value, and the date of the index value, used to calculate the change in the index;

(d) the rate adjustment;

(e) the new adjusted rate;

(f) the amount of current monthly payments on the indebtedness;

(g) the adjusted amount of monthly payments and the date on which the adjustment is effective; and

(h) a statement of the prepayment rights of the consumer as set forth in the credit document.

(6) A creditor may not charge any fees or assess a consumer any costs in connection with the processing of any rate adjustment.

(7) Notwithstanding any of the requirements and limitations set forth by Subsections (1) through (6) of this section, a creditor and consumer may agree on any terms or provisions in the credit transaction as may be expressly authorized or permitted in any program for residential mortgage loans by the Federal Home Loan Bank Board or by the Office of the Comptroller of the Currency, Department of the Treasury, or any other federal department, agency, or board. If the creditor and consumer agree on such an alternative residential mortgage loan, the creditor shall comply with all limitations, requirements, and disclosures of the agency that relate thereto.

[Amended by Acts 1981, 67th Leg., p. 2128, ch. 496, § 1, eff. Sept. 1, 1981.]

Art. 5069–6A.05. Requirements and Disclosures

(1) The creditor shall comply with all applicable requirements and disclosures pursuant to Part I of the Consumer Credit Protection Act (also known as Truth-in-Lending Act), 15 U.S.C. Sec. 1601 et seq., as amended, and as implemented by Regulation Z as promulgated by the Board of Governors of the Federal Reserve System.[1] In the event of any inconsistency or conflict between the provisions of this chapter and federal requirements, disclosures, or interpretations thereof, the federal requirements, disclosures, or interpretations control, and the inconsistent or conflicting provisions of this chapter do not apply.

(2) In a transaction involving more than one creditor, each creditor whose identity is known at the time of the execution of the credit document shall be clearly identified. The disclosure of any one item by any creditor satisfies the requirement to disclose that item regardless of which creditor makes the disclosure.

(3) In a credit transaction involving more than one consumer, the creditor is required to furnish the disclosures required by this chapter to only one of the consumers.

(4) The printed portion of the credit transaction, other than instructions for completion, must be in a size equal to at least eight-point type. The document must contain substantially:

"NOTICE TO THE CONSUMER–DO NOT SIGN THIS DOCUMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE DOCUMENT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND OBTAIN A SUBSTANTIAL REFUND OF THE CREDIT CHARGE. KEEP THIS DOCUMENT TO PROTECT YOUR LEGAL RIGHTS."

(5) The creditor may collect, on each installment in default for a period of more than 15 days, a delinquency charge that may not exceed an amount equal to five percent of each installment or $20, whichever is less. Only one delinquency charge may be collected on any installment, regardless of the period for which it remains in default. The creditor shall disclose in the credit document the amount or method of computing the amount of any default, delinquency, or similar charges payable in the event of late payments. The charge or collection of a delinquency charge does not affect the right of a creditor to accelerate the debt under Section 10 of this chapter.

(6) The consumer's acknowledgment of delivery of a copy of the credit document is conclusive proof:

(a) of the document's delivery;

(b) that the document, when signed by the consumer, did not contain any blank spaces except as provided by this chapter; and

(c) in any action or proceeding by or against a subsequent creditor who does not have knowledge to the contrary, of compliance with this section by the creditor.

(7) If a consumer desires to order from a creditor a manufactured home that is not in the inventory of the creditor and must be ordered from the manufacturer, or if a consumer desires that the creditor hold a particular manufactured home that is in inventory for a period of 30 days or more for purchase by the consumer at the later time, and the consumer desires to make the purchase by entering into a credit transaction under this chapter, the creditor may require the consumer to pay a deposit that may not exceed five percent of the estimated cash price. On arrival of the specially ordered manufactured home or on the last day that the creditor is obligated to hold the manufactured home, the consumer shall execute a credit document under this chapter and the creditor shall apply the deposit toward payment of the cash price. Before the execution of the credit document, the consumer may cancel the purchase or hold order. If the order is canceled, the creditor may retain all or any portion of the deposit, and the consumer is not responsible for any costs or expenses other than the forfeited deposit. A creditor who is an arranger of credit and who has failed to qualify the consumer for a loan or credit sale may not retain more than 10 percent of the total deposit or $50, whichever is less. If the creditor fails to order or fails to hold the manufactured home in accordance with a deposit agreement, the creditor forfeits and shall pay to the consumer an amount equal to two times the amount of the deposit.

[Amended by Acts 1981, 67th Leg., p. 2129, ch. 496, § 1, eff. Sept. 1, 1981.]

[1] 12 C.F.R. § 226.1 et seq.; 15 U.S.C.A., foll. § 1700.

Art. 5069–6A.06. Prepayment

Notwithstanding the provisions of any credit transaction to the contrary, a consumer may prepay the debt in full at any time before maturity. On prepayment, after the deduction of an acquisition charge not exceeding $50, the consumer is entitled to a refund credit of the time price differential, or interest in the case of loans, calculated on an actuarial basis in accordance with Federal Home Loan Bank Board regulations promulgated pursuant to the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96–221,[1] for the prepayment of mortgage loans that are secured by first liens on residential manufactured homes. In making the calculation, the creditor may assume that the payments have been made as originally scheduled and ignore any differences created by late or early payments.

[Amended by Acts 1981, 67th Leg., p. 2131, ch. 496, § 1, eff. Sept. 1, 1981.]

[1] Generally, see 12 U.S.C.A. § 3501 et seq.; 12 C.F.R. § 1201.1 et seq.

Art. 5069–6A.07. Amendment to Extend or Defer

(1) The creditor, on request by the consumer, may agree to an amendment to extend or defer the scheduled due date of all or any part of any installment or installments, to renew, restate, or reschedule the unpaid balance of the debt, or to increase or reduce the number of installments and may collect for such an amendment a charge that may not exceed the amount obtained by the application of the actual contract rate of interest or time price differential, as adjusted, to the remaining amount of the unpaid balance, calculated under Section 6 of this chapter, for the period that any sum is extended or deferred. The creditor and consumer may agree to an unlimited number of different extensions, with each extension for as long a period as agreed to by both parties.

(2) Alternatively, the creditor, on request by the consumer, may agree to amend the original credit transaction by renewal, restatement, or rescheduling of the unpaid portion of the total of payments. In such an event, the charge shall be computed in accordance with this subsection. If the original credit transaction is amended, the sum of the unpaid balance as of the date of amendment, the cost of any insurance incidental to the amendment, any additional necessary official fees, and any accrued delinquency and collection charges remaining after deducting the prepayment refund credit required by Section 6 of this chapter constitutes an unpaid balance on which the charge for the amended transaction may be computed for the term of the amended transaction at the applicable rate provided by Section 3 of this chapter. The provisions of this chapter relating to minimum charges and acquisition costs do not apply in calculating the unpaid balance for the amended transaction.

(3) An amendment to the transaction as authorized by Subsection (2) of this section must be confirmed in writing and signed by the consumer. The writing must set forth the terms of the amendment and the new due dates and amounts of the install-

ments. The creditor shall deliver to the consumer or mail to the consumer at the address shown on the credit document a copy of the writing. The writing together with the original credit document and any previous amendments to the original credit document constitute the credit document.

[Amended by Acts 1981, 67th Leg., p. 2131, ch. 496, § 1, eff. Sept. 1, 1981.]

Art. 5069–6A.08. Insurance

(1) In a credit transaction under this chapter, a creditor may require a consumer to insure the property involved in a credit transaction with coverage designated by the creditor. That insurance may include federal flood coverage. The cost of the insurance permitted by this subsection may be included as a separate charge in the credit transaction.

(2) When insurance is required in connection with a credit transaction made under this chapter, the creditor shall furnish to the consumer a statement that clearly and conspicuously states that insurance is required in connection with the transaction and that the consumer has the option of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in this state subject to the limitations of Subsection (9) of this section. Such a statement may be made in conjunction with or be a part of the credit document.

(3) If the consumer fails to obtain the required insurance at any time, the creditor may treat the failure as an event of default or may purchase the required insurance and add the premium of the insurance, together with interest, at the contract rate of interest or time price differential or last adjusted rate to the credit transaction. In addition, the consumer may agree to purchase any insurance allowed by this chapter after the date of the credit document and include the amount of the premium for the insurance in the unpaid balance. The additional insurance premium bears interest at a rate not in excess of the contract rate of interest or time price differential or last adjusted rate. The additional premium and interest may be paid in any period and any number of installments agreed to by the parties. In the case of forced place insurance, the creditor shall notify the consumer that the insurance has been forced placed and that the premium for the insurance and interest on the premium have been added to the debt. The creditor may require the consumer to pay the premium and interest in any period and in the number of installments as the creditor elects, including but not limited to a lump-sum payment on the date of the last installment, equal increments added to each of the remaining installments, or a lesser number of installments or unequal increments. In addition, the consumer and creditor may agree that the purchase of any additional insurance will be handled in accordance with an insurance premium financing agreement made under the Insurance Code and will be treated separately from the transaction.

(4) A creditor may finance as part of the credit transaction any insurance required in accordance with Subsection (1) of this section, as well as any other insurance coverage requested by the consumer. However, vendor's single interest insurance is prohibited and may not be financed as part of the credit transaction. If the consumer elects to purchase the optional insurance, the consumer must sign a statement indicating the consumer's desire to purchase the insurance and describing the term, premium, and type of insurance purchased. That statement may be included as part of the credit document or may be part of a separate document.

(5) The credit document must disclose the term, premium, and type of insurance that is included in the unpaid balance. If required insurance is not included in the unpaid balance, the creditor shall disclose only the term and type of insurance required.

(6) The premium of any insurance included in the credit transaction may be included in the unpaid balance and paid as part of the total of payments even if the term of the insurance is less than the term of the credit transaction.

(7)(a) If the creditor and consumer agree, the consumer may elect to purchase any insurance through the creditor and include the premiums of the insurance in the credit transaction. In the alternative, the consumer may elect to include in the credit transaction, or pay to the creditor, the first year's premium and, on the date each installment is due, pay a sum equal to one-twelfth of the yearly premium for the insurance as reasonably estimated.

(b) The creditor shall deposit and hold the insurance premium installments paid to the creditor in an institution, the deposits or accounts of which are insured or guaranteed by a federal or state agency. The creditor shall apply those funds to pay the insurance premiums. The creditor may not charge for holding and applying the funds, analyzing the account, or verifying and compiling the bills. The creditor is not required to pay the consumer any interest or earnings on those funds. The creditor shall give to the consumer, without charge, an annual accounting of the funds showing credits and debits to the funds and the purpose for which each debit to the funds was made.

(c) If the sum of the insurance premium installments held by the creditor and the future insurance premium installments of funds payable before the due dates of insurance premiums exceeds the amount required to pay the insurance premiums as they come due, the creditor, at the consumer's option, shall either repay the excess to the consumer or credit the excess to the payment of the consumer's future insurance premium installments. If the amount of the insurance premium installments held by the creditor is not sufficient to pay insurance premiums as they come due, the consumer shall pay to the creditor before the 31st

day after the day on which the creditor mails to the consumer notice requesting the consumer to pay the amount of the deficiency an amount equal to the amount of the deficiency. If the consumer fails to make such an adjustment with regard to insurance required under Subsection (1) of this section, the creditor may treat the deficiency in the same manner as forced placed insurance described by Subsection (3) of this section.

(d) If the consumer agrees to enter into an insurance escrow agreement, the creditor may require the consumer to use that method of payment for the full term of the debt. However, the creditor may not in any way require the consumer initially to enter into an escrow agreement.

(8) All insurance required by the credit transaction or included in the credit transaction shall be written at lawful rates and in accordance with the Insurance Code by a company authorized to do business in this state.

(9) If the consumer procures required insurance from someone other than the creditor, the creditor has the right for good cause to refuse to accept certain insurance policies from insurance companies designated by the creditor. The reason for such a refusal shall, on request by the consumer, be set forth in writing and delivered to the consumer.

(10) If the insurance is canceled, adjusted, or terminated for any reason, the refund for unearned insurance premiums received by the creditor shall be credited to the final maturing installments of the credit transaction; if there is a remaining balance of the unearned insurance premiums, it shall be refunded to the consumer, except that a cash refund is not required if the remaining balance is less than $1.

(11) Any gain or advantage to the creditor or any employee, officer, director, agent, general agent, affiliate, or associate of the creditor from insurance or its provision or sale may not be considered as an additional charge or further finance charge in connection with any credit transaction made under this chapter except as specifically provided by this chapter.

[Amended by Acts 1981, 67th Leg., p. 2132, ch. 496, § 1, eff. Sept. 1, 1981.]

Art. 5069-6A.09. Transfer

A creditor may agree to accept a subsequent consumer as an obligor under an existing obligation and, if so, may charge and receive a transfer fee not in excess of one-half of one percent of the outstanding balance computed under Section 6 of this chapter or $50, whichever is greater.

[Amended by Acts 1981, 67th Leg., p. 2134, ch. 496, § 1, eff. Sept. 1, 1981.]

Art. 5069-6A.10. Default

(1) A creditor may accelerate the maturity of any part or all of the amount owing on a credit transaction only if the consumer is in default on the performance of any obligation under the credit transaction.

(2) Before the 31st day before the day on which the creditor takes any action to accelerate the maturity of any debt, to start any legal action to recover under such an obligation, or to take possession of any security under the credit transaction, the creditor shall mail by registered or certified mail to the address where the manufactured is home located a written notice of intent to take the action. The notice must set forth in a clear and concise manner:

(a) the particular obligation or security interest, including the date of the credit transaction according to the records of the creditor, as well as a brief description of the manufactured home;

(b) the nature of the default claimed, which may be stated in general terms, for example: "failure to maintain property damage insurance";

(c) the action that the creditor proposes to take at the expiration of the notice period; and

(d) the right of the consumer to cure the default and the exact manner in which to cure, including the sum of money that must be tendered, if any, in order to cure, the individual or office address to whom it must be tendered, and the form of acceptable payment in accordance with the provisions of this title.

(3) If the consumer has abandoned or voluntarily surrendered the property that is the subject of the credit transaction, the creditor is not required to give the notice required by Subsection (2) of this section if the creditor retains evidence of the abandonment or surrender to the satisfaction of the commissioner.

(4) In calculating the amount owing, the creditor shall grant to the consumer a refund of the finance charge calculated in accordance with Section 6 of this chapter. In addition, the credit document may provide for the payment of an attorney's reasonable fee and for court costs and disbursements. In the event of repossession, sequestration, or other action necessary to secure possession of the manufactured home securing the payment of the credit transaction, the credit document may provide for the charge and collection of actual and reasonable out-of-pocket expenses incurred in connection with repossession or foreclosure, including costs of storing, reconditioning, and reselling the manufactured house, subject to the standards of good faith and commercial reasonableness set by the Business & Commerce Code, as amended. In the event of default, any sum in the insurance and tax escrow account established under this chapter shall be applied to the remaining balance of the credit transaction.

(5) In the event of acceleration, the outstanding debt as calculated in accordance with this section, including any expenses actually incurred and authorized by this section, bears interest at a rate equal to the contract rate or last adjusted rate. The creditor who possesses the first recorded perfected security interest may repossess the manufactured home. If the manufactured home has been affixed to real

property, the creditor, after notice pursuant to this section, may remove the manufactured home from the real property in accordance with the applicable provisions of the Business & Commerce Code, as amended, as if it were personal property.

[Amended by Acts 1981, 67th Leg., p. 2134, ch. 496, § 1, eff. Sept. 1, 1981.]

Art. 5069–6A.11. Land and Home Transactions

(1) If real estate, not to exceed 200 acres, is purchased by the consumer at the same time as, or in conjunction with, the purchase of a manufactured home, with the agreement that the manufactured home will be attached to the real property within a reasonable time, the real estate, on agreement of the parties, may be considered to be a part of the credit transaction under this chapter and included in the cash price even if the real estate and manufactured home are sold by separate persons.

(2) If the real estate is included in the cash price under Subsection (1) of this section, the creditor may charge fees that are ordinarily associated with real estate transactions, and are not otherwise prohibited by law, including but not limited to those fees associated with real estate transactions that are excluded from the finance charge by the Federal Truth-in-Lending Act [1] and Regulation Z.[2]

(3) In a land and home credit transaction permitted in this section the creditor may elect to treat the manufactured home as if it were residential real estate for all purposes in connection with the credit transaction. The election must be conspicuously disclosed to the consumer. On such an election the provisions of this chapter, except the definitions in Section 2, are not applicable to the credit transaction, and the credit transaction is considered to be a residential real estate loan for all purposes.

[Amended by Acts 1981, 67th Leg., p. 2135, ch. 496, § 1, eff. Sept. 1, 1981.]

[1] 15 U.S.C.A. § 1601 et seq.
[2] 12 C.F.R. § 226.1 et seq.; 15 U.S.C.A. foll. § 1700.

Art. 5069–6A.12. Tax Escrow

(1) If the creditor and consumer agree, the consumer may elect to pay ad valorem taxes on the manufactured home through the creditor and include these taxes as reasonably estimated for the first year in the credit transaction or pay the tax estimate for the first year to the creditor and, on the date each installment is due, pay a sum equal to one-twelfth of the annual ad valorem taxes as reasonably estimated.

(2) The creditor shall deposit and hold the tax installments paid to the creditor in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency. The creditor shall apply those funds to pay the ad valorem taxes on the manufactured home. The creditor may not charge for holding and applying the funds, analyzing the account, or verifying and compiling the bills. The creditor is not required to pay the consumer any interest or earnings on those funds. The creditor shall give to the consumer, without charge, an annual accounting of the funds showing credits and debits to the funds and the purpose for which each debit to the funds was made.

(3) If the sum of the tax installments held by the creditor and the future tax installments of funds payable before the due dates of taxes on the manufactured home exceeds the amount required to pay the taxes as they come due, the creditor, at the consumer's option, shall either repay the excess to the consumer or credit the excess to the payment of the consumer's future tax installments. If the amount of the tax installments held by the creditor is not sufficient to pay taxes as they come due, the consumer shall pay to the creditor before the 31st day after the day on which the creditor mails to the consumer notice requesting the consumer to pay the amount of the deficiency an amount equal to the amount of the deficiency. If the consumer fails to make such an adjustment with regard to the tax installments, the creditor may treat the deficiency in the same manner as forced placed insurance pursuant to Subsection (3) of Section 8 of this chapter.

(4) If the consumer agrees to enter into a tax escrow agreement, the creditor may require the consumer to use that method of payment for the full term of the debt. However, the creditor may not in any way require the consumer initially to enter into a escrow agreement.

[Amended by Acts 1981, 67th Leg., p. 2135, ch. 496, § 1, eff. Sept. 1, 1981.]

Art. 5069–6A.13. Prohibited Provisions

A credit transaction may not:

(a) contain a power of attorney to confess judgment in this state or an assignment of wages;

(b) provide that the consumer agrees not to assert against a creditor or any assignee of the credit transaction any claim or defense arising out of the sale; or

(c) authorize the creditor or other person acting on the creditor's behalf to enter on the consumer's premises unlawfully or to commit any breach of the peace in the repossession of a manufactured home.

[Amended by Acts 1981, 67th Leg., p. 2136, ch. 496, § 1, eff. Sept. 1, 1981.]

Art. 5069–6A.14. Transfer of Creditor's Rights in a Credit Transaction

(1) Any person may purchase or acquire or agree to purchase or acquire any credit transaction or any outstanding balance from any other person on the terms and conditions and for the price on which the parties agree.

(2) Notice to the consumer of the transfer of rights and any requirement that the creditor be deprived of dominion over payments on a credit transaction or over the manufactured home, if re-

turned to or repossessed by the creditor, is not necessary to the validity of a written transfer of the credit transaction or any outstanding balance as against creditors, subsequent purchasers, pledgees, mortgagees, and lien claimants of the creditor.

(3) Unless the consumer has notice of the transfer of the credit transaction or any outstanding balance under the transaction, payment made before notice by the consumer to the creditor last known to the consumer is binding on all subsequent creditors.
[Amended by Acts 1981, 67th Leg., p. 2136, ch. 496, § 1, eff. Sept. 1, 1981.]

Art. 5069–6A.15. Waiver

No act or agreement of the consumer before or at the time of the making of a credit transaction or purchase under the transaction constitutes a valid waiver of any of the provisions of this chapter.
[Amended by Acts 1981, 67th Leg., p. 2136, ch. 496, § 1, eff. Sept. 1, 1981.]

Art. 5069–6A.16. Consumer Credit Commissioner

The Consumer Credit Commissioner of Texas has the same powers and authority to enforce this chapter as those provided by Chapter 2 of this title.
[Amended by Acts 1981, 67th Leg., p. 2136, ch. 496, § 1, eff. Sept. 1, 1981.]

Art. 5069–6A.17. Interpretations by Commissioner and Court Decisions

A person does not violate this chapter by any act done or omitted that conforms to an interpretation of any provision of this chapter by the Consumer Credit Commissioner or by a final decision of an appellate court of this state or of the United States in effect at the time the act was done or omitted. If such an interpretation or decision is modified, whether in whole or part, or is rescinded or invalidated by either a subsequent interpretation or final decision, the subsequent interpretation or final decision does not apply to a credit transaction made before the effective date of the subsequent interpretation or final decision.
[Amended by Acts 1981, 67th Leg., p. 2136, ch. 496, § 1, eff. Sept. 1, 1981.]

CHAPTER SEVEN. MOTOR VEHICLE INSTALLMENT SALES

Art. 5069–7.01. Definitions

For the purposes of this Chapter, unless the context otherwise requires:

(a) "Motor Vehicle" means and is limited to any automobile, mobile home, truck, truck tractor, trailer, semi-trailer and bus designed and used primarily to transport persons or property on a public highway, including any commercial vehicles and heavy commercial vehicles as defined in this article, excepting however, any boat trailer, any vehicle propelled or drawn exclusively by muscular power or which is designed to run only on rails or tracks or in the air, or other machinery not designed primarily for highway transportation, but which may incidentally transport persons or property on a public highway.

[See Compact Edition, Volume 4 for text of (b) to (e)]

(f) "Cash Price" means the price stated in a retail installment contract for which the seller would have sold to the buyer and the buyer would have bought from the seller, the motor vehicle and other goods and services which are the subject matter of such contract if such sale had been a sale for cash. The cash price may include any taxes and charges for delivering, servicing, repairing, altering or improving the motor vehicle, or for installation of the motor vehicle or of goods to the motor vehicle, and charges for accessories and goods related to or used with the motor vehicle, if such charges are made to both cash and credit buyers alike and may include any of the charges described in Subsections (ii) and (iii) of Section (g) of this Article if they are not separately itemized on the contract.

(g) "Itemized Charges" however denominated or expressed means those amounts, if any, included in the contract but not included in the cash price for charges made to the buyer for:

(i) any registration, certificate of title, and license fees;

(ii) any taxes;

(iii) any other fees or charges that are set or prescribed by law, that are not more than the amounts allowed by law, and that are connected with the sale or inspection of a motor vehicle; and

(iv) any charges permitted by Article 7.06 for insurance, service contracts, or warranties permitted by Article 7.06.

(h) "Principal Balance" means the cash price plus the amounts, if any, included in the retail installment contract for itemized charges, less the amount of the buyer's down payment, if any, in money or goods or both.

(h–1) In addition to the provisions of Section (h) of this article, "principal balance" includes a motor vehicle inspection fee and a documentary fee for services actually rendered to, for, or on behalf of the retail buyer in preparing, handling, and processing documents relating to the motor vehicle and the closing of the transaction evidenced by the retail installment contract. If a documentary fee is charged:

(i) it must be charged to both cash and credit buyers;

(ii) it may not exceed $25;

(iii) it shall be disclosed on the retail installment contract as a separate itemized charge; and

(iv) all preliminary worksheets which are exhibited to the buyer in which the motor vehicle retail seller calculates a sale price for the buyer, the buyer's order, and the retail installment contract shall include in reasonable proximity to the point in the worksheet, buyer's order, and retail installment contract where the documentary fee is disclosed the amount of the documentary fee to be charged and the following notice in boldface type:

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS AND PERFORMING SERVICES RELATING TO THE CLOSING OF A SALE. BUYERS MAY AVOID PAYMENT OF THE FEE TO THE SELLER BY HANDLING THE DOCUMENTS AND PERFORMING THE SERVICES RELATING TO THE CLOSING OF THE SALE. A DOCUMENTARY FEE MAY NOT EXCEED $25. THIS NOTICE IS REQUIRED BY LAW."

(v) If the language primarily used in the oral sales presentation is not the same as that in which the retail installment contract is written, the seller shall furnish to the buyer a written statement containing the notice set out in Subsection (iv) in the language primarily used in the oral sales presentation.

[See Compact Edition, Volume 4 for text of (i) and (j)]

(k) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any legal entity however organized.

(*l*) Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

(m) [Blank]

(n) "Heavy Commercial Vehicle" means any domestic or foreign truck or truck tractor that weighs 25,000 or more pounds gross vehicular weight (GVW) or any trailer or semitrailer designed for use in combination with any truck or truck tractor weighing 25,000 or more pounds gross vehicular weight (GVW) and that is not used primarily for personal, family, or household use.

[Amended by Acts 1979, 66th Leg., p. 87, ch. 52, §§ 1, 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1016, ch. 450, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1587, ch. 672, §§ 40, 41, eff. Aug. 27, 1979.]

Art. 5069-7.02. Requirements and Prohibitions as to Retail Installment Contracts

(1) Each retail installment contract shall be in writing, dated, signed by both the buyer and the seller, and completed as to all essential provisions before it is signed by the buyer; provided, however, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks or similar information and the due date of the first installment may be inserted in the contract after its execution. A retail installment contract need not be contained in a single document.

(2) The printed portion of the retail installment contract, other than instructions for completion, shall be in a size equal to at least eight-point type. Such contract shall contain substantially the following notice in a size equal to at least ten-point bold type:

"NOTICE TO THE BUYER—DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."

(3) A retail installment contract or separate written statement shall also contain, in a size equal to at least ten-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case.

(4) The seller shall deliver to the buyer, or mail to him at his address shown on the retail installment contract, a copy of such contract as accepted by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind his contract and to receive a refund of all payments made and a return of all goods traded in to the seller on account of or in contemplation of such contract, or if the goods traded in cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the retail installment contract shall be in a size equal to at least ten-point bold type and shall appear directly above the buyer's signature.

(5) The retail installment contract shall contain the names of the seller and the buyer, the place of business or address of the seller, the residence or other address of the buyer as specified by the buyer, and a description of the motor vehicle sold or to be sold.

(6) The retail installment contract shall specifically set out the following items:

(a) The cash price as defined in Article 7.01;

(b) The amount of the buyer's down payment, if any, specifying the amounts paid in money and in goods traded in;

(c) Any itemized charges, as defined in Article 7.01. Any charges for insurance, service contracts, or warranties permitted by Article 7.06 may be disclosed in the manner described in Article 7.06;

(d) In the event of any inconsistency or conflict between the disclosure requirements of this Chapter and those of a federal law or regulation or an interpretation thereof, the requirements of the federal law, regulation, or interpretation shall control and the inconsistent or conflicting disclosures required by this Chapter need not be given.

(e) The above items need not be stated in the sequence or order set forth and additional information may be included.

(7) The buyer's acknowledgment, conforming to the requirements of this Article, of delivery of a copy of the retail installment contract shall be conclusive proof of such delivery, that such contract when signed by the buyer did not contain any blank spaces except as herein provided, and of compliance with this Article in any action or proceeding by or against a holder of such contract without knowledge to the contrary when he purchases it.

(8) Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of installment payments and the total amount unpaid under such contract. Such a statement shall be given the buyer once every six months without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of One Dollar for each additional statement. A buyer shall be given a written receipt for any payment when made in cash.

(9)(a) Except as provided in Subsection (b) of this Section, if any scheduled installment of a retail installment contract is more than twice as large as the average of all prior scheduled installments (except the down payment), the buyer has the right, at the buyer's option, to refinance, without being charged an acquisition cost, that payment at the time it is due. The buyer has the right to refinance that payment in installments which are neither larger nor more frequent than the average amount and frequency of payments preceding that payment, and the rate of time price differential applicable to such refinancing shall not exceed that originally agreed upon.

(b) Section (9)(a) of this Article does not apply to:

(i) a lease;

(ii) a retail installment transaction for a vehicle to be used primarily for purposes other than personal, family, or household use;

(iii) a transaction for which the payment schedule is adjusted to the seasonal or irregular income or scheduled payments or obligations of the buyer; or

(iv) a transaction of a kind determined by the Commissioner as not requiring the protection of the buyer provided in Section (9)(a) of this Article.

[Amended by Acts 1979, 66th Leg., p. 1587, ch. 672, § 42, eff. Aug. 27, 1979.]

Art. 5069-7.03. Finance Charge Limitations

(1) Notwithstanding the provisions of any other law, the time price differential in a retail installment contract payable in substantially equal successive monthly installments beginning one month after the date of the contract shall not exceed the larger of Twenty-five Dollars or an amount determined under the following schedule:

Class 1. Except the heavy commercial vehicles provided for in Class 2, any new domestic motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made and any new foreign motor vehicle—Seven Dollars and Fifty Cents per One Hundred Dollars per annum.

Class 2. Any new domestic motor vehicle not in Class 1, any used domestic motor vehicle designated by the manufacturer by a year model of the same or not more than two years prior to the year in which the sale is made, any used foreign motor vehicle not more than two years old, and any new or used heavy commercial vehicle not more than two years old—Ten Dollars per One Hundred Dollars per annum.

Class 3. Any used motor vehicle not in Class 2 and, if a domestic motor vehicle, designated by the manufacturer by a year model not more than four years prior to the year in which the sale is made, and, if a foreign motor vehicle, not more than four years old—Twelve Dollars and Fifty Cents per One Hundred Dollars per annum.

Class 4. Any used motor vehicle not in Class 2 or Class 3—Fifteen Dollars per One Hundred Dollars per year. Provided, however, if the principal balance is Three Hundred Dollars or less, the time price differential shall be Eighteen Dollars per One Hundred Dollars per annum.

(2) Such charge shall be computed on the principal balance as defined under Article 7.01(h) of this Chapter from the date of the contract until the maturity of the final installment, notwithstanding that the balance thereof is required to be paid in installments.

[See Compact Edition, Volume 4 for text of (3) and (4)]

(5) A buyer under a retail installment contract may, upon written consent of the holder, transfer his equity in the motor vehicle at any time to another person, but in that event the holder shall be entitled to a transfer of equity fee not exceeding Twenty-five Dollars or Fifty Dollars in the case of a heavy commercial vehicle retail installment transaction.

[See Compact Edition, Volume 4 for text of (6)]

(7) As an alternative to the time price differential authorized by Section (1) of this Article, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Article 1.04 of this Title.

[Amended by Acts 1979, 66th Leg., p. 88, ch. 52, § 3, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1589, ch. 672, § 43, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 285, ch. 111, § 20, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b)(2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069-7.04. Refunds on Prepayment

Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay it in full at any time before maturity, and if he does so, or when the holder demands payment in full of the unpaid balance of the contract before its final installment is due, the buyer is entitled to receive the following refund credit thereon:

On a contract payable in substantially equal successive monthly installments commencing one month after the date of the contract, the amount of such refund credit shall represent at least as great a proportion of the finance charge, after first deducting therefrom an acquisition cost of Twenty-five Dollars, as (i) the sum of the monthly balances under the schedule of payments in the contract beginning as of the date after such prepayment or demand for payment in full which is the next succeeding monthly anniversary date of the due date of the first installment under the contract, or, if the prepayment or demand for payment in full is prior to the due date of the first installment under such contract, then as of the date after such prepayment or demand for payment in full, which is one month after the next succeeding monthly anniversary date of the date of such contract, bears to (ii) the sum of all the monthly balances under the schedule of payments in such contract. When the amount of refund credit is less than One Dollar no refund credit need be made. On contracts payable in other than substantially equal successive monthly installments commencing one month after the date of the contract, the refund shall be computed in a manner proportionate to the above-described method, having due regard to the amount of each installment, to the irregularity of each installment period and to the provisions of Sections (2) and (4) of Article 7.03 hereof.

If, subsequent to demand of payment in full under a contract, the buyer and holder agree to reinstate such contract, they may do so and may amend the contract pursuant to Article 7.05 hereof.

[Amended by Acts 1979, 66th Leg., p. 1589, ch. 672, § 44, eff. Aug. 27, 1979.]

Art. 5069-7.05. Amendments of Retail Installment Contracts

(1) The holder of a retail installment contract upon request by the buyer, may agree to one or more amendments thereto to extend or defer the scheduled due date of all or any part of any installment or installments or to renew, restate or reschedule the unpaid balance of such contract, and may collect for same a charge not to exceed an amount computed under either of the following:

(a) If all or any part of any installment or installments is deferred for not more than three months per amendment, the holder may at his election charge and collect on the amount deferred for the period deferred a charge computed at a rate which will not exceed the same effective return as is permitted on monthly payment contracts under Article 7.03; provided that the minimum charge shall be One Dollar. Such amendment may also include payment by the buyer of the additional cost to the holder of premiums for continuing in force any insurance coverages provided for in the contract and any additional necessary official fees.

(b) In any other extension, renewal, restatement or rescheduling of the unpaid balance, the charge may be computed as follows: The sum of the unpaid balance as of the date of amendment and the cost of any insurance incidental to the amendment, any additional necessary official fees, and any accrued delinquency and collection charges, after deducting the prepayment refund credit required by Article 7.04, shall constitute a principal balance on which the charge may be computed for the term of the amended contract at the applicable time price differential provided in Article 7.03 after reclassifying the motor vehicle by its year model at the time of the amendment. The provisions of this Chapter relating to minimum charges under Article 7.03 and acquisition costs under the refund schedule in Article 7.04 shall not apply in calculating the principal balance of the amended contract. The amendment to the contract must be confirmed in a writing signed by the buyer, and a copy of the writing shall either be delivered to the buyer or mailed to him at his last known address as shown by the records of the holder. Said writing together with the original contract and any previous amendments thereto shall constitute the retail installment contract.

[Amended by Acts 1979, 66th Leg., p. 1590, ch. 672, § 45, eff. Aug. 27, 1979.]

Art. 5069-7.06. Insurance

(1) On any retail installment contract made under the authority of this Chapter, a seller or holder may request or require a buyer to provide credit life insurance and credit health and accident insurance as additional protection for such contract, and include the cost of such insurance as a separate charge in such contract. Only one policy of life insurance and one policy of health and accident insurance on any one buyer may be in force with respect to any one loan contract at any one time.

(2) A seller or holder may, in addition, request or require a buyer to insure tangible personal property purchased in a retail installment transaction subject to this Chapter and accessories and related goods subject to the seller's security interest, and include the cost of such insurance as a separate charge in such contract. Such insurance and the premiums or charges therefrom shall bear a reasonable relationship to the amount, term and conditions of the contract, the existing hazards or risk of loss, damage or destruction, and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public. Additionally, the buyer and seller may agree to include in the retail installment contract charges for insurance coverages which (1) cover risks of loss or liability reasonably related to the motor vehicle, the use thereof, or goods or services related to the motor vehicle and which may ordinarily be insured with the motor vehicle; and (2) are written on policies or endorsement forms prescribed or approved by the State Board of Insurance; and (3) are ordinarily available in policies or endorsements offered to the general public. The retail installment contract shall clearly identify the type of coverage for each such type of coverage purchased and the premiums therefor and shall clearly indicate that such coverage is optional.

(3) When insurance is required in connection with such a contract or agreement made under this Chapter, the seller or holder shall furnish the borrower a statement which shall clearly and conspicuously state that insurance is required in connection with the contract, and that the buyer shall have the option of furnishing the required insurance either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. In addition when any requested or required insurance is sold or procured by the seller or holder and a premium or rate of charge not fixed or approved by the State Board of Insurance is included in the contract for that insurance, the seller or holder shall include or cause to be included such fact in a written statement delivered or mailed to the buyer, and the buyer shall have the option for a period of ten days from the date of the contract or agreement or the mailing or delivery of the written statement to the buyer of furnishing the required insurance coverage either through existing policies of insurance owned or controlled by him or of procuring and furnishing equivalent insurance coverages through any insurance company authorized to transact business in Texas. Such statement or statements may be made in conjunction with or as part of the retail installment contract required by Article 7.02 or may be made in a separate written statement or statements.

(4) All insurance described in Sections (1) and (2) of this Article for which a separate charge is included in the retail installment contract shall be written at lawful rates and in accordance with the provisions of the Texas Insurance Code by a company authorized to do business in this State.

(5) The retail installment contract must identify the type of coverage, term and amount of premium for such insurance coverages described in Sections (1) and (2) of this Article for which separate charges are included in the retail installment contract.

(6) If dual interest insurance on the motor vehicle is purchased by the seller or seller's assignee, as the case may be, it shall within a reasonable time after execution of the retail installment contract, send or cause to be sent to the buyer a policy, or policies, or certificates of insurance written by an insurance company authorized to do business in this State, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverage and all the terms, options, limitations, restrictions and conditions of the policy or policies of insurance. The buyer shall have the privilege at the time of execution of the contract of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the holder, but in such case the inclusion of the insurance premium in the retail installment contract shall be optional with the seller.

(7)(a) Subsequent to the execution of the retail installment contract, a buyer and holder may agree to add to the unpaid balance of the contract premiums for insurance policies obtained subsequent to the retail installment transaction and covering the motor vehicle or use thereof or goods or services related thereto, including premiums for renewal of policies originally included in the contract. Such policies shall comply with the limitations set out in Sections (1), (2), and (4) above, as applicable.

(b) If the buyer fails to present to the holder reasonable evidence that he or she has obtained or maintained a coverage required by the contract, the holder may but shall not be required to procure substitute insurance coverage, which coverage is substantially equivalent to or more limited than that originally required, and may add the additional premium to the unpaid balance of the contract. The substitute insurance may at the holder's option cover only the interest of the holder or the interest of the holder and the buyer. The substitute insurance shall be written at lawful rates in accordance with the Texas Insurance Code by a company authorized to do business in this State.

(c) If any premium is added to the unpaid balance under this Section, the rate of time price differential previously agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance or the contract may be rescheduled in accordance with Article 7.05, without reclassifying the motor vehicle by its year model at the time of the amendment. When any substitute insurance is obtained by the holder

when the buyer has failed to obtain or maintain a required coverage, the amendment adding the premium or rescheduling the contract need not be signed by the buyer but the holder shall deliver to the buyer or send to the buyer's last known address as shown by the records of the holder specific written notification of that action.

(8) If the insurance is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the seller or the holder shall, at holder's option, be applied to replace required insurance coverages, or be credited to the final maturing installments of the retail installment contract, and the remaining balance of the unearned insurance premiums shall be refunded to the buyer; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.

(9) A buyer and seller may agree to include motor vehicle property damage or bodily injury liability insurance, mechanical breakdown insurance, or a warranty or service contract relating to the motor vehicle as a separate charge in a contract for the sale of a motor vehicle. If a charge is added to a contract as provided by this section, the contract shall clearly and conspicuously disclose that fact.

(10) Any gain, advantage to the seller or holder, or any employee, officer, director, agent, general agent, affiliate or associate from such insurance or its provision or sale shall not be considered as an additional charge or further time price differential in connection with any retail installment contract made under this Chapter except as specifically provided herein.

[Amended by Acts 1977, 65th Leg., p. 1355, ch. 536, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 1591, ch. 672, § 46, eff. Aug. 27, 1979.]

Art. 5069-7.07. Prohibited Provisions

No retail installment contract or retail charge agreement shall:

(1) Provide that the seller or holder may accelerate the maturity of any part or all of the amount owing thereunder unless (a) the buyer is in default on the performance of any of his obligations or (b) the seller or holder in good faith believes that the prospect of payment or performance is impaired;

(2) Contain a power of attorney to confess judgment in this State or an assignment of wages;

(3) Authorize the seller or holder or other person acting on his behalf to enter upon the buyer's premises in violation of Chapter 9, Business & Commerce Code, as amended, or to commit any breach of the peace in the repossession of a motor vehicle;

(4) Provide for a waiver of the buyer's rights of action against the seller or holder or other person acting therefor for any illegal act committed in the collection of payments under the contract or agreement or in the repossession of a motor vehicle;

(5) Contain any provision by which the buyer executes a power of attorney appointing the seller or holder or other person acting on his behalf, as the buyer's agent in the repossession of a motor vehicle;

(6) Provide that the buyer agrees not to assert against the seller or holder of any claim or defense arising out of the sale;

(7) Contain an authorization for the seller or holder or any person acting on the seller's or holder's behalf to retain or dispose of other tangible personal property that is not subject to a security interest and that is acquired in the repossession of a motor vehicle, except property attached to the vehicle, unless the contract or a separate writing requires the seller or holder to send written notice of such an acquisition to the last known address of the buyer as shown by the records of the holder within fifteen days of the discovery of the personal property by the seller or holder. Such notice shall disclose to the buyer:

(a) that the buyer may identify and claim the property at a reasonable time before the end of the thirtieth day after the day on which the notice was mailed or delivered; and

(b) the location at which and reasonable times at which the buyer may identify and claim the property during that period.

If a contract contains an authorization complying with this Section and such property is not claimed within the thirty days after notice is mailed or delivered, the seller or holder may retain such property subject to any legal rights of buyer or dispose of such property in a reasonable manner and distribute any proceeds of such disposition according to applicable law.

[Amended by Acts 1979, 66th Leg., p. 1593, ch. 672, § 47, eff. Aug. 27, 1979.]

Art. 5069-7.08. Assignment and Negotiation

[See Compact Edition, Volume 4 for text of (1) to (3)]

(4) Repealed by Acts 1979, 66th Leg., p. 1594, ch. 672, § 48, eff. Aug. 27, 1979.

[Amended by Acts 1979, 66th Leg., p. 1594, ch. 672, § 48, eff. Aug. 27, 1979.]

Art. 5069-7.09. Application

None of the provisions of this Chapter shall affect or apply to any loans or to the business of making loans under or in accordance with the laws of this State, nor shall any of the provisions of the loan or interest statutes of this State affect or apply to any retail installment transaction. Nor shall any seller pay, promise to pay, or otherwise tender cash to any buyer as a part of any transaction made pursuant to this Chapter unless otherwise specifically authorized by this Chapter. Nothing in this Chapter shall be

construed to impair or in any way affect any rule of law applicable to, or governing retail installment sales not otherwise subject hereto. This Chapter shall apply exclusively to all retail installment transactions as defined in Article 7.01.

The provisions of this Chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made shall be deemed to control over any contrary Texas law respecting those subjects. Except as displaced by the particular provisions of this Chapter, the Uniform Commercial Code as adopted in Texas,[1] other applicable statutes, and the principles of the common law shall remain applicable to transactions hereunder to the extent they are applicable.

[Amended by Acts 1979, 66th Leg., p. 1594, ch. 672, § 49, eff. Aug. 27, 1979.]

[1] Business and Commerce Code, § 1.101 et seq.

CHAPTER EIGHT. PENALTIES

Art. 5069-8.01. Contracting For, Charging or Receiving Interest, Time Price Differential or Other Charges Greater Than Authorized; Failure to Perform Duty or Committing Prohibited Act; Correction of Violations

(a) Any person who violates this Subtitle by contracting for, charging or receiving interest, time price differential or other charges which are greater than the amount authorized by this Subtitle, shall forfeit to the obligor twice the amount of interest or time price differential and default and deferment charges contracted for, charged or received, and reasonable attorneys' fees fixed by the court.

(b) Any person who violates this Subtitle or Chapter 14 of this Title by

(i) failing to perform any duty or requirement specifically imposed on him by any provision of this Subtitle or Chapter 14 of this Title, or by

(ii) committing any act or practice prohibited by this Subtitle or Chapter 14 of this Title, shall be liable to the obligor for a penalty in an amount equal to twice the time price differential or interest contracted for, charged, or received but not to exceed $2,000 in a transaction in which the amount financed is $5,000 or less, and not to exceed $4,000 in a transaction in which the amount financed is in excess of $5,000 and reasonable attorneys' fees fixed by the court.

(c)(1) A person has no liability to an obligor for a violation of this Subtitle or of Chapter 14 of this Title if within 60 days after having actually discovered such violation such person corrects such violation as to such obligor by performing the required duty or act or by refunding any amount in excess of that authorized by law; provided, however, that such person gives written notice to such obligor of such violation prior to such obligor having given written notice of or having filed an action alleging such violation of this Subtitle or of Chapter 14 of this Title.

As used herein, the term "actually discovered" shall not be construed, interpreted, or applied in such manner as to refer to the time or date when, through reasonable diligence, an ordinarily prudent person could or should have discovered or known as a matter of law or fact of the violation in question, but such term shall be construed, interpreted, and applied to refer to the time of the discovery of the violation in fact, provided, however, that the actual discovery of such violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation actually discovered is of such nature that it would necessarily be repeated and would be clearly apparent in such other transactions without the necessity of examining all such other transactions.

(2) A person has no liability to an obligor for a violation of this Subtitle or of Chapter 14 of this Title if prior to the effective date of the Act or within 60 days after the effective date of the Act such person corrects such violation as to such obligor by performing the required duty or act or by refunding any amount in excess of that authorized by law; provided, however, that such person gives written notice to such obligor of such correction prior to such obligor having given written notice of or having filed an action alleging such violation of this Subtitle or of Chapter 14 of this Title.

(3) If, subsequent to the times specified in Article 8.01(c)(1) and (2) of this Act but prior to the obligor having given written notice of or having filed an action alleging a violation for which a penalty is provided in Article 8.01(b) of this Act, such violation is corrected as to such obligor by performing the required duty or act and written notice of such violation is given to such obligor, then the liability of any person to such obligor shall be limited in each transaction to a penalty in an amount equal to the time price differential or interest contracted for, charged, or received but not to exceed $2,000 and reasonable attorneys' fees fixed by the court.

(4) If, subsequent to the times specified in Article 8.01(c)(1) and (2) of this Act but prior to the obligor having given written notice of or having filed an action alleging a violation for which a penalty is provided in Article 8.01(a) of this Act for contracting for, charging, or receiving

(i) other charges in excess of the amount authorized by law, or

(ii) interest or time price differential in excess of the amount authorized by law, where such excess is directly and solely attributable to and calculated upon the amount of such other charges, or

(iii) both of the foregoing, such violation is corrected as to such obligor by refunding the

amount of the excess and written notice of such refund is given to such obligor, then the liability of any person to such obligor shall be limited in each transaction to a penalty in an amount equal to the time price differential or interest contracted for, charged, or received but not to exceed $2,000 and reasonable attorneys' fees fixed by the court.

(5) For purposes of this Article the giving of written notice shall be accomplished by and upon the delivery of such notice to the person to whom such notice is directed or to such person's duly authorized agent or attorney of record, such delivery to be made either in person or by United States mail to the address shown on the most recent documents in the transaction. Deposit of such notice as registered or certified mail in a postage paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service shall constitute prima facie evidence of the delivery of such notice to such person.

(d) The action of a person who corrects a violation of this Subtitle or of Chapter 14 of this Title pursuant to Article 8.01(c) of this Act shall be effective as to all persons in the same transaction, and such persons shall be entitled to the same protection as that provided by Article 8.01(c) of this Act to the person who makes the correction.

(e) If a person has violated both Articles 8.01(a) and 8.01(b) of this Act as part of the same transaction, then he shall be liable only for the penalties set forth in Article 8.01(a) of this Act.

(f) A person may not be held liable in any action brought under this Article for a violation of this Subtitle or of Chapter 14 of this Title if such person shows by a preponderance of evidence that (1) the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such violation or that (2) the violation was an act done or omitted in good faith in conformity with any rule, regulation, or interpretation of this Title by any state agency, board, or commission, or with the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) or with any rule, regulation, or interpretation thereof by any federal agency, board, or commission, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) Multiple violations of this Subtitle or Chapter 14 of this Title occurring in a single transaction shall entitle the obligor to a single recovery.

(h) The liability of any person under this Article for a violation of this Subtitle is in lieu of and not in addition to his liability under the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.). A final judgment granting or denying relief under the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) shall bar any subsequent action under this Article by the same obligor with respect to the same violation. If a final judgment has been rendered against any person in favor of an obligor pursuant to this Article and thereafter an action is instituted with respect to the same violation by the obligor under the federal Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) against the same person, then such person may in the same or in an independent action have a cause of action against the obligor who obtained such judgment to recover the amount of the judgment rendered under this Article and reasonable attorneys' fees fixed by the court.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Section 2 of the 1977 amendatory act added subsec. (i) to art. 5069-14.19; §§ 3 to 5 thereof provided:

"Sec. 3. The provisions of this Act shall become effective at midnight on August 31, 1977, and shall apply to all transactions entered into prior to such date; provided, however, that this Act shall not apply to any action brought under Subtitle 2 or Chapter 14 of Title 79 that is pending on such date; and provided further, that the penalty for any violation of Title 79 of the type referred to in Article 8.01(b) of Section 1 of this Act occurring in a transaction entered into prior to July 1, 1976, which violation has not been corrected as provided in Article 8.01(c) of Section 1 of this Act, shall be determined by the law in effect prior to the effective date of this Act so that the penalty provided for in Article 8.01(b) shall apply only to violations in transactions entered into after June 30, 1976, which have not been corrected as provided in Article 8.01(c).

"Sec. 4. This Act shall supersede any other act passed at the Regular Session of the 65th Legislature which amends any article or section of Chapter 8 or Chapter 14 of Title 79, Revised Civil Statutes of Texas, 1925, as amended, regardless of the relative date of the passage or approval of such other act.

"Sec. 5. If any provision, paragraph, subsection, or section of this Act or the application thereof to any person or circumstance is determined to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other application thereof which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions, paragraphs, subsections, and sections of the Act are severable."

Art. 5069-8.02. Contracting For, Charging or Receiving Interest, Time Price Differential or Other Charges in Excess of Double the Amount Authorized

Any person who violates this Subtitle by contracting for, charging or receiving interest, time price differential or other charges which are in the aggregate in excess of double the total amount of interest, time price differential and other charges authorized by this Subtitle shall forfeit to the obligor as an additional penalty all principal or principal balance, as well as all interest or time price differential, and all other charges, and shall pay reasonable attorneys' fees actually incurred by the obligor in enforcing the provisions of this Article; provided further that any such person violating provisions of this Article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Hundred Dollars. Each contract or transaction in violation of this Article shall constitute a separate offense punishable hereunder.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Art. 5069-8.03. Engaging in Lending Business Without License

In addition to the foregoing penalties, if applicable, any person engaging in any business under the scope of Chapters 3, 4, or 5 of this Subtitle without

first securing a license provided, or without the authorization prescribed, in such Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than One Thousand Dollars, and each such loan made without the authority granted by such license shall constitute a separate offense punishable hereunder; and in addition such person shall forfeit all principal and charges contracted for or collected on each such loan, and shall pay reasonable attorneys' fees incurred by the obligor.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Art. 5069–8.04. Venue and Limitation Periods

(a) Actions under this Chapter may be brought in the county where the transaction was entered into or where the Defendant resides at the time the action was filed. Such actions may be brought within four years from the date of the loan or retail installment transaction or within two years from the date of the occurrence of the violation, whichever is later; provided, however, that in the case of open-end credit transactions, such actions may be brought within two years from the date of the occurrence of the violation.

(b) If an action alleging any violation or violations of this Subtitle or Chapter 14 of this Title [1] is brought as a class action and is determined by the court to be maintainable as a class action, the class may recover the amount of actual damages proximately caused to the members of the class as a result of a violation or violations. The court may assess a penalty of: (i) such amount for each obligor who is named as a class representative at the time that the action is determined to be maintainable as a class action as could be recovered by such persons under this Chapter; (ii) such amount as the court may allow for all other class members, except as to each such member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of $100,000 or five percent of the net worth of the person; and (iii) in the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court. In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional or reckless.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977; Acts 1979, 66th Leg., p. 1594, ch. 672, § 50, eff. Aug. 27, 1979.]

[1] Repealed.

Art. 5069–8.05. Violating Terms of Injunction

Any person who violates the terms of an injunction duly issued under this Subtitle shall forfeit and pay to the State a civil penalty of not more than One Thousand Dollars per violation. For the purposes of this Article, the District Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General may petition for recovery of such civil penalties.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

Art. 5069–8.06. Violation of Art. 5069–2.07

(a) Any person who violates the terms of Article 2.07 of this Title is liable to the aggrieved individual for the actual damages caused by the denial, or for $50.00, whichever is greater, and court costs.

(b) In addition to the liabilities prescribed in Subsection (a) of this section, any licensee under this Subtitle who violates Article 2.07 of this Subtitle is subject to revocation or suspension of his license.

[Amended by Acts 1977, 65th Leg., p. 228, ch. 111, § 1, eff. Aug. 31, 1977.]

SUBTITLE THREE—CONSUMER PROTECTION

Chapter	Article
14. Alternative Disclosure Requirements in Coordination with Federal Law [Repealed]	5069–14.01
15. Revolving Loan and Revolving Tri-party Accounts	5069–15.01
16. Business Opportunities	5069–16.01
17 to 49. [Reserved for expansion].	

CHAPTER TWELVE. FINANCING OF INSURANCE PREMIUMS [REPEALED]

Article
5069–12.20. Repealed.

Art. 5069–12.01 to 5069–12.20. Repealed by Acts 1979, 66th Leg., p. 2158, ch. 825, § 3, eff. Jan. 1, 1980

Former art. 5069–12.20, relating to financing of insurance premiums, was added by Acts 1975, 64th Leg., p. 947, ch. 355, § 1.

CHAPTER THIRTEEN. HOME SOLICITATION TRANSACTIONS

Art. 5069–13.01. Definitions

As used in this Act:

(1) "Person" means an individual, corporation, trust, partnership, association, or any other legal entity.

(2) "Consumer" means an individual who seeks or acquires real or personal property, services, money, or credit for personal, family, or household purposes.

(3) "Consumer transaction" means a transaction in which one or more of the parties is a consumer.

(4) "Merchant" means a party to a consumer transaction other than a consumer.

(5) "Home solicitation transaction" means a consumer transaction:

(A) for the purchase of goods, other than farm equipment, and insurance sales regulated by the State Board of Insurance, or services, payable in installments or in cash where the consideration exceeds $25, in which the merchant or person acting for him engages in a personal solicitation of the sale to the consumer at a residence and the consumer's agreement or offer to purchase is given at the residence to the merchant or person acting for him, but it does not include a sale made pursuant to a preexisting revolving charge account or retail charge agreement, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale; or

(B) for the purchase of realty, payable in installments or in cash where the consideration exceeds $100 in which the merchant or person acting for him engages in a solicitation of the sale to the consumer at the residence of the consumer and the consumer's agreement or offer to purchase is given at the residence of the consumer; but it does not include a sale of realty in which transaction the purchaser is represented by a licensed attorney or in which the transaction is being negotiated by a licensed real estate broker or in which the transaction is being negotiated by the person who owns the realty not at the residence of the consumer.

[Amended by Acts 1975, 64th Leg., p. 124, ch. 59, § 1, eff. Sept. 1, 1975.]

Section 3 of the 1975 amendatory act provided: "All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

Art. 5069–13.02. Consumer's Right to Cancel

[See Compact Edition, Volume 4 for text of (a) to (c)]

(d) Use of the forms and notices of the right to cancel prescribed by the Federal Trade Commission's trade-regulation rule providing a cooling-off period for door-to-door sales constitutes compliance with this section.

(e) A home solicitation sale in which the contract price does not exceed $200 complies with the notice requirements of this Act if:

(1) the consumer may at any time cancel the order, refuse to accept delivery of the goods without incurring any obligation to pay for them, or return the goods to the merchant and receive a full refund of the amount the consumer has paid; and

(2) the consumer's right to cancel the order, refuse delivery, or return the goods without obligation or charge at any time is clearly and conspicuously set forth on the face or reverse side of the sales ticket.

[Amended by Acts 1975, 64th Leg., p. 124, ch. 59, § 2, eff. Sept. 1, 1975.]

Section 3 of the 1975 amendatory act provided: "All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict."

CHAPTER 14. ALTERNATIVE DISCLOSURE REQUIREMENTS IN COORDINATION WITH FEDERAL LAW [REPEALED]

Article

5069–14.01 to 5069–14.28. Repealed.

Arts. 5069–14.01 to 5069–14.28. Repealed by Acts 1979, 66th Leg., p. 1595, ch. 672, § 51, eff. Aug. 27, 1979

The repealed articles, relating to alternative disclosure requirements in coordination with federal law, were derived from Acts 1975, 64th Leg., p. 421, ch. 184, § 1. *Prior to repeal*, art. 5069–14.19 was amended by Acts 1977, 65th Leg., p. 231, ch. 111, § 2.

CHAPTER 15. REVOLVING LOAN AND REVOLVING TRIPARTY ACCOUNTS

Article

5069–15.01. Definitions.
5069–15.02. Maximum Rates of Interest.
5069–15.03. More Than One Account.
5069–15.04. Credit Covered.
5069–15.05. Amendments.
5069–15.06. Compliance with Federal Consumer Credit Protection Act.
5069–15.07. Collateral and Insurance.
5069–15.08. Recovery of Expenses.
5069–15.09. Conflicts.
5069–15.10. Application of This Chapter 15.
5069–15.11. Penalties.

Art. 5069–15.01. Definitions

The following terms used in this chapter shall have the meanings shown:

(a) "Account" means a revolving loan account or a revolving triparty account.

(b) "Arrangement" means a written agreement that makes an account available to a person and that is accepted by use of the account.

(c) "Average daily balance" means the sum of each day's ending balance in an account during the previous billing cycle (less any interest included in such balance), divided by the number of days in the previous billing cycle. Such sum may include purchases and loans posted to the account during the previous billing cycle and such sum shall be reduced by all payments and credits during the previous billing cycle.

(d) "Bank" means a person doing business under the authority of and as permitted by The Texas Banking Code of 1943, as amended (Article 342–101 et seq., Vernon's Texas Civil Statutes), and any person organized under Title 12, United States Code, as amended.

(e) "Billing cycle" means the time interval between periodic billing statements. Billing cycles in any 12-month period may be considered equal if no billing cycle within such 12-month period varies more than eight days in length from any other billing cycle and if the number of billing cycles in such 12-month period does not exceed 12.

(f) "Creditor" means a bank, savings and loan association, or licensee who lends money or other-

wise extends credit to a customer under a credit card or cards and who may authorize other persons to honor such credit card or cards.

(g) "Credit card" means a card, confirmation or identification, or check or other written request by which a customer obtains access to an account.

(h) "Customer" means a person who has accepted an arrangement.

(i) "Licensee" means the holder of a license issued pursuant to Chapter 3 of Subtitle 2 of this Title 79.[1]

(j) "Person" means an individual or a partnership, corporation, joint venture, trust, association, or other legal entity however organized.

(k) "Revolving loan account" means an arrangement between a creditor and a customer establishing an open-end line of credit under which

(1) the customer may obtain loans from the creditor;

(2) the unpaid balance of the loans and any interest thereon are debited to an account;

(3) interest is not precomputed but may be computed on the balances of the customer's account outstanding from time to time; and

(4) the customer may defer payment of any part of the balance.

(*l*) "Revolving triparty account" means an arrangement between a creditor and a customer establishing an open-end line of credit under which

(1) by means of a credit card, the customer may obtain loans from the creditor, which may be advanced by other participating persons, and lease goods or purchase goods or services from participating lessors or sellers, and the creditor will pay the other participating persons, lessors, or sellers and the customer is obligated to pay the creditor the amount of such loans or the cost of such leases or purchases;

(2) the unpaid balance of such loans, leases, and purchases and any interest thereon are debited to an account;

(3) interest is not precomputed but may be computed on the balances of the customer's account outstanding from time to time; and

(4) the customer may defer payment of any part of the balance.

(m) "Savings and loan association" means any person doing business under the authority of and as permitted by the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes) or any person incorporated under the provisions of the Home Owners Loan Act of 1933, as amended.[2]

[Added by Acts 1979, 66th Leg., p. 1501, ch. 648, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 285, ch. 111, § 21, eff. May 8, 1981.]

[1] Article 5069-3.01 et seq.

[2] 12 U.S.C.A. § 1461 et seq.

Section 3 of the 1979 Act provided:

"The invalidity for any reason of any paragraph, phrase, clause, article, or section of this statute shall not affect the validity or the enforceability of any portion of the remainder."

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (B) (2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069-15.02. Maximum Rates of Interest

(a) A creditor may charge and collect interest on an account either

(1)(i) on that portion of the average daily balance not above $1,500 at an annual rate not above 18 percent; and (ii) on that portion of the average daily balance above $1,500 and not above $2,500 at an annual rate not above 12 percent; and (iii) on that portion of the average daily balance above $2,500 at an annual rate not above 10 percent; or

(2) on the entire average daily balance at the annual rate of 14.4 percent.

(b) A creditor may charge one-twelfth of the applicable annual rate under Section (a) of Article 15.02 of this chapter in any billing cycle on the average daily balance of an account during such billing cycle, if billing cycles may be considered equal under Article 15.01(e) of this chapter.

(c) The maximum interest which may be contracted for and collected under this article may be computed by a method other than the average daily balance method as defined in this chapter if the amount of interest computed by the other method will not exceed the amount of interest computed under such average daily balance method.

(d) Interest may not accrue upon transactions except for the amount or portion thereof which remains unpaid at the time of the billing cycle immediately following the billing cycle in which the customer was given an initial opportunity to pay for the purchases.

(e) As an alternative to the rates authorized by Section (a) of this Article, the parties may agree to any rate calculated pursuant to Section (d) of this Article not exceeding a rate authorized by Article 1.04 of this Title.

[Added by Acts 1979, 66th Leg., p. 1502, ch. 648, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 285, ch. 111, § 22, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price

differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b) (2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069–15.03. More Than One Account

Any customer may request and a creditor may make available to any customer more than one account, and the creditor may charge interest at the rates set out in Article 15.02 of this chapter on each such account, but no creditor may require that a customer have more than one such account for the purpose of collecting more interest.

[Added by Acts 1979, 66th Leg., p. 1502, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069–15.04. Credit Covered

The provisions of this Chapter 15 shall apply to loans and extensions of credit for both consumer and business purposes under an arrangement.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069–15.05. Amendments

A creditor unilaterally may amend an agreement covering an arrangement and account, but no change adverse to the customer shall be effective as to existing balances or future credit until the first billing cycle beginning more than 90 days after written notice of the change to the customer. However, a creditor may amend an agreement or contract covering an open-end account by complying with Section (i), Article 1.04, of this Title.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 285, ch. 111, § 23, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 amendatory act provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b) (2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069–1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069–15.06. Compliance with Federal Consumer Credit Protection Act

Nothing in this chapter shall be construed to alter any creditor's obligation to comply with the federal Consumer Credit Protection Act.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069–15.07. Collateral and Insurance

Creditors may require and take in connection with an account only such insurance and collateral as are allowed under Chapter 4 of Subtitle 2 of this Title 79.[1]

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

[1] Article 5069–4.01 et seq.

Art. 5069–15.08. Recovery of Expenses

Creditors may recover from customers amounts actually incurred by a creditor as court costs; attorneys' fees set by a court; lawful fees for filing, recording, or releasing in any public office any document securing an account; the reasonable cost actually expended for repossessing, storing, preparing for sale, or selling any collateral; fees for noting a lien on or transferring a certificate of title to any motor vehicle securing an account; and premiums or other identifiable charges received in connection with permitted sale of insurance.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069–15.09. Conflicts

Arrangements and accounts covered by this chapter shall not be subject to the provisions of any other chapters of this title except as herein specifically provided.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069–15.10. Application of This Chapter 15

This Chapter 15 on and after its effective date shall apply

(a) to arrangements and accounts existing on the date of enactment when, before or after the effective date hereof, the creditor shall amend agreements covering such arrangements and accounts to give notice of the application of this Chapter 15 to such arrangements and accounts in compliance with Section 15.05 of this Chapter 15; and

(b) to all arrangements and accounts created after the enactment of this Chapter 15 unless the agreement providing for such arrangement or account provides otherwise.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

Art. 5069–15.11. Penalties

The provisions of Chapter 8 of Subtitle 2 of this Title 79 [1] shall apply to violations of this Chapter 15.

[Added by Acts 1979, 66th Leg., p. 1503, ch. 648, § 1, eff. Aug. 27, 1979.]

[1] Article 5069–8.01 et seq.

CHAPTER 16. BUSINESS OPPORTUNITIES

Article

5069–16.01. Short Title.
5069–16.02. Waivers: Public Policy.
5069–16.03. Cumulative Remedies.
5069–16.04. Construction and Application.
5069–16.05. Definitions.
5069–16.06. Exemptions.
5069–16.07. Relation to Other Regulatory Agencies.
5069–16.08. Registration and Filing.
5069–16.09. Required Disclosure Statement.
5069–16.10. Writing Requirement.
5069–16.11. Business Opportunity Contract.
5069–16.12. Transfer of Business Opportunity.

Article
5069–16.13. Record Keeping.
5069–16.14. Bond or Trust Account Required.
5069–16.15. Prohibited Acts and Remedies.

Art. 5069–16.01. Short Title

This statute may be cited as the Business Opportunity Act.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

Art. 5069–16.02. Waivers: Public Policy

Any waiver by a person of the provisions of this statute is contrary to public policy and is unenforceable and void.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

Art. 5069–16.03. Cumulative Remedies

The provisions of this statute are not exclusive. The remedies provided in this statute are in addition to any other procedures or remedies provided for in any other law.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1 eff. Aug. 31, 1981.]

Art. 5069–16.04. Construction and Application

This statute shall be liberally construed and applied to promote its underlying purposes which are to protect persons against false, misleading, or deceptive practices in the advertising, offering for sale or lease, and sale or lease of business opportunities to provide efficient and economical procedures to secure such protection.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1 eff. Aug. 31, 1981.]

Art. 5069–16.05. Definitions

As used in this statute:

(1) "Person" means an individual, partnership, corporation, association, or other group, however organized.

(2) "Business opportunity" means the sale or lease of any products, equipment, supplies, or services:

(A) which are sold to the purchaser upon payment of an initial required consideration exceeding $500 which will be used by or on behalf of the purchaser to begin a business; and

(B) in which the seller represents that the purchaser will earn or is likely to earn a profit in excess of the initial consideration paid by the purchaser; and

(i) that the seller will provide locations or assist the purchaser in finding locations for the use or operation of the products, equipment, supplies, or services on premises neither owned nor leased by the purchaser or seller; or

(ii) that the seller will provide a sales, production, or marketing program; provided that this subsection shall not apply to sales, production, or marketing programs offered in conjunction with a federally registered trademark or service mark; or

(iii) that the seller will buy back or is likely to buy back any products, supplies, or equipment purchased or any product made, produced, fabricated, grown, or bred by the purchaser using in whole or in part the product, supplies, equipment, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller.

(3) "Seller" is a principal or agent who sells or leases or offers to sell or lease a business opportunity.

(4) "Purchaser" means a person who is solicited to become obligated or does become obligated on a business opportunity contract.

(5) "Equipment" includes machines, all electrical devices, video and audio devices, molds, display racks, vending machines, coin-operated game machines, machines which dispense products, and display units of all kinds.

(6) "Supplies" includes any and all materials used to produce, grow, breed, or make any product or item.

(7) "Product" includes any tangible chattel, including food or living animals.

(8) "Services" includes any assistance, guidance, direction, work, labor, or services provided by the seller to initiate or maintain a business opportunity.

(9) "Business opportunity contract" means any agreement which is intended to or does obligate a purchaser to a seller.

(10) "Initial consideration" means the total amount a purchaser is obligated to pay under the terms of a business opportunity contract prior to or at the time of delivery of the equipment, supplies, products, or services or within six months of the purchaser commencing operation of the business opportunity plan. If the contract sets forth a specific total sale price for purchase of the business opportunity plan which total price is to be paid partially as a down payment and then in an additional payment or installments, then "initial consideration" means the entire total sale price. Initial consideration shall not include the not-for-profit sale of sales demonstration materials, samples, and equipment, not to exceed $500.

(11) "Buy-back" or "secured investment" means any representation which implies in any manner that the purchaser's payment is protected from loss.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

Art. 5069–16.06. Exemptions

As used in this statute:

(1) "Business opportunity" does not include:

(A) the sale or lease of an established and ongoing business or enterprise, whether com-

prised of one or more than one component businesses or enterprises, where the sale or lease represents an isolated transaction or series of transactions involving a bona fide change of ownership or control of such business or enterprise or liquidation thereof; or

(B) any contract or agreement by which a retailer of goods or services sells the inventory of one or more ongoing leased departments to a purchaser who is granted the right to sell the goods or services within or adjoining the retail business establishment as a department or division thereof; or

(C) the sale of a "product franchise" or "package franchise" as defined by the Federal Trade Commission Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures; or

(D) transactions regulated by the Texas Motor Vehicle Commission, Texas Department of Labor and Standards, State Board of Insurance, or the Texas Real Estate Commission when engaged in by persons licensed by such agencies; or

(E) real estate syndications; or

(F) a sale or lease to an existing or beginning business enterprise which also sells or leases equipment, products, and supplies or performs services (1) which are not supplied by the seller and (2) which the purchaser does not utilize with the equipment, products, supplies, or services of the seller.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

Art. 5069–16.07. Relation to Other Regulatory Agencies

Whenever any disclosures are required by this statute, a seller may use copies of similar disclosure documents which are required by the State Securities Board, Securities Exchange Commission, or Federal Trade Commission in transactions with purchasers or prospective purchasers or for purposes of filing with the secretary of state. Copies of such documents may be used, however, only when such copies contain all of the information required to be disclosed by this statute.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

Art. 5069–16.08. Registration and Filing

(a) Prior to the sale or offer for sale, including advertising, of a business opportunity, the seller shall register said business opportunity with the secretary of state by filing a copy of all disclosure statements required under Sections 16.09 and 16.11 of this chapter, as well as a list of the names and resident addresses of those individuals who sell or will sell the business opportunity on behalf of the seller. The disclosure statements on file shall be updated through a new filing whenever material changes occur, but at least once a year. The list of salespersons shall be updated through a new filing every six months. If the seller is required to provide a bond or establish a trust account, he shall contemporaneously file with the secretary of state a copy of the bond or a copy of the formal notification by the depository that the trust account is established.

(b) The secretary of state may charge a reasonable fee to cover the costs incurred as a result of the filing herein required.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

Art. 5069–16.09. Required Disclosure Statement

At least 10 business days prior to the time the purchaser signs a business opportunity contract or at least 10 business days prior to the receipt of any consideration by the seller, whichever occurs first, the seller must provide the prospective purchaser a written document, the cover sheet of which is entitled, in at least 12-point bold face capital letters **"DISCLOSURES REQUIRED BY TEXAS LAW."** Under this title shall appear the following statement in at least 10-point bold face type: **"The State of Texas has not reviewed and does not endorse, approve, recommend, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement."** Nothing except the title and required statement shall appear on the cover sheet. The disclosure document shall contain the following information:

(1) the name of the seller, whether the seller is doing business as an individual, partnership, corporation, or other business entity; the names under which the seller has done, is doing, or intends to do business; and the name of any parent of affiliated company that will engage in business transactions with the purchasers or who takes responsibility for statements made by the seller;

(2) the names, addresses, and titles of the seller's officers, directors, trustees, general partners, general managers, principal executives, stockholders owning more than 20 percent of the stock shares of the seller, and any other persons charged with the responsibility for the seller's business activities relating to the sale of business opportunities;

(3) the length of time the seller has:

(A) sold business opportunities; and

(B) sold business opportunities involving the products, equipment, supplies, or services currently being offered to the purchaser;

(4) a full and detailed description of the actual services that the business opportunity seller undertakes to perform for the purchaser;

(5) a copy of a current (not older than 13 months from date prepared) financial statement of the seller prepared according to generally accepted accounting principles, updated to reflect material changes in the seller's financial condition;

(6) if training is promised by the seller, a complete description of the training, the length of training, and the cost or travel and lodging expenses of that training, which cost or expense the purchaser will be required to incur;

(7) if the seller promises services to be performed in connection with the placement of equipment, products, or supplies at a location, the full nature of those services as well as the nature of the agreements to be made with the owners or managers of the location where the purchaser's equipment, product, or supplies will be placed;

(8) if the business opportunity seller is required to secure a bond or establish a trust account, either of the following statements:

(A) "As required by Texas law, the seller has secured a bond issued by _____, a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond's status with the surety company."; or

(B) "As required by Texas law, the seller has established a trust account with _____. Before signing a contract to purchase this business opportunity, you should confirm with the bank or savings institution the current status of the trust account.";

(9) the following statement: "If the seller fails to deliver the product, equipment, or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and cancel your contract.";

(10) if the seller makes any statement concerning sales or earnings that may be made through this business opportunity, a statement disclosing:

(A) the total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered who to the seller's knowledge have actually achieved sales of or received earnings in the amount or range specified, within three years prior to the date of the disclosure statement;

(B) the total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered within three years prior to the date of the disclosure statement;

(11) a statement disclosing which, if any, of the persons listed in Subdivisions (1) and (2) of this article:

(A) has, at any time during the previous seven fiscal years, been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(B) has, at any time during the previous seven fiscal years, been held liable in a civil action resulting in a final judgment, or has settled out of court any civil action or is a party to any civil action involving allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful, or deceptive business practices; or

(C) is subject to any currently effective injunction or restrictive order relating to business activity as a result of an action brought by a public agency or department; such statement shall set forth the identity and location of the court or agency, the date of conviction, judgment, or decision, the penalty imposed, the damages assessed, the terms of the settlement or the terms of the order, and the date, nature, and issuer of each such order or ruling;

(12) a statement disclosing who, if any, of the persons listed in Subdivisions (1) and (2) of this article at any time during the previous seven years has:

(A) filed in bankruptcy;

(B) been adjudged bankrupt;

(C) been reorganized due to insolvency;

(D) been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized, during or within one year after the period that such person held such position in relation to such other person; if so, the name and location of the person having so filed or having been adjudged or reorganized, the date thereof, or any other material facts relating thereto, shall be set forth;

(13) a copy of the business opportunity contract which the seller uses as a matter of course and which is to be presented to the purchaser at closing.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

Art. 5069-16.10. Writing Requirements

Every business opportunity contract shall be in writing and shall be subject to the provisions of this statute. A copy of the fully completed contract and all other documents the seller requires the purchaser to sign shall be given to the purchaser at the time he signs the contract.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

Art. 5069–16.11. Business Opportunity Contract

Every business opportunity contract shall set forth the following in 10-point type or equivalent size, if handwritten:

(1) the terms and conditions of payment including the initial consideration, additional payments, and down payment required;

(2) a full and detailed description of the acts or services the seller will undertake to perform for the purchaser;

(3) the seller's principal business address and the name and the address of its agent in the State of Texas authorized to receive service of process;

(4) the delivery date, or when the contract provides for staggered delivery times to the purchaser, the approximate delivery date of those products, equipment, or supplies the seller is to deliver to the purchaser's home or business address or are to be placed by the seller at locations owned or managed by persons other than the purchaser;

(5) a complete description of the nature of the "buy-back" or "security" arrangement, if the seller has represented orally or in writing when selling or leasing, soliciting, or offering a business opportunity that there is a "buy-back" or that the initial consideration is "secured."

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

Art. 5069–16.12. Transfer of Business Opportunity

Any assignee of the business opportunity contract or the seller's rights is subject to all equities, rights, and defenses of the purchaser against the seller.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

Art. 5069–16.13. Record Keeping

Every seller shall at all times keep and maintain a complete set of books, records, and accounts of business opportunity sales made by the seller. All documents relating to each specific business opportunity sold or leased shall be maintained for four years after the date of the business opportunity contract.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

Art. 5069–16.14. Bond or Trust Account Required

If the business opportunity seller guarantees, orally or in writing, any of the representations set forth in Paragraph (A), (C), or (D) of Subdivision (2) of Article 16.05 of this chapter,[1] the seller must either have obtained a surety bond by a surety company authorized to do business in this state or have established a trust account. The amount of the bond or trust account shall be in an amount not less than $25,000. The bond or trust account shall be in the favor of the State of Texas. Any person who is damaged by any violation of this chapter, or by the seller's breach of contract for the business opportunity sale or of any obligation arising therefrom may bring an action against the bond or trust account to recover damages suffered; provided that the aggregate liability of the surety or trustee shall be only for actual damages and in no event shall exceed the amount of the bond or trust account.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

[1] So in enrolled bill; there is no art. 5069–16.05(2)(C) or (D).

Art. 5069–16.15. Prohibited Acts and Remedies

(a) A business opportunity seller shall not:

(1) fail to comply with any provision of this statute; or

(2) employ any representation, device, scheme, or artifice to deceive a purchaser; or

(3) make any untrue statement of a material fact or omit to state a material fact in connection with the documents and information required to be furnished to the secretary of state or prospective purchaser; or

(4) represent that the business opportunity provides or will provide income or earning potential of any kind unless the seller has documented data to substantiate the claims of income or earning potential and discloses this data to the prospective purchaser at the time such representations are made; or

(5) make any claim or representation in advertising or promotional material or in any oral sales presentation, solicitation, or discussion between the seller and the prospective purchaser, which is inconsistent with the information required to be disclosed by this statute.

(b) Any violation of the provisions of this chapter is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Deceptive Trade Practices-Consumer Protection Act, Subchapter E, Chapter 17, Title 2 of the Business & Commerce Code, as amended. Any public or private right or remedy set forth in Chapter 17 of the Business & Commerce Code may be used to enforce the provisions of this chapter.

(c) The attorney general may review the required disclosure statements filed with the secretary of state pursuant to Articles 16.08 and 16.09. If a disclosure statement fails to comply with the requirements of this Act in any way, the attorney general may:

(1) notify the secretary of state and the seller in writing of such deficiency; the secretary of state shall attach a copy of the notice from the attorney general to the front of the disclosure statement; upon inquiry of the status of such a disclosure statement, the secretary of state shall disclose that a statement has been filed but that its correctness has been questioned by the attorney general's office; and

(2) file suit to enjoin a seller from doing business until such failure to comply has been corrected.

[Added by Acts 1981, 67th Leg., p. 2555, ch. 682, § 1, eff. Aug. 31, 1981.]

[Chapters 17 to 49 reserved for expansion]

CHAPTER FIFTY-ONE. PAWNSHOPS

Article
5069-51.01A. Purpose.
5069-51.03A. Eligibility for a Pawnshop License.
5069-51.07A. Employee License; Eligibility Application.
5069-51.07B. Issuance or Denial of an Employee License; Fee.
5069-51.07C. Suspension, Revocation, Surrender, or Reinstatement of Employee License.
5069-51.07D. Expiration Dates of Licenses.
5069-51.12A. Bracket and Ceiling Adjustment.
5069-51.17A. Records Supplied by Department of Public Safety.

Art. 5069-51.01A. Purpose

The making of pawn loans and the acquisition and disposition of tangible personal property by and through pawnshops vitally affects the general economy of this state and the public interest and welfare of its citizens. To prevent frauds, unfair practices, discriminations, impositions, and abuses of the citizens of the state, it is the policy of this state and the purpose of the Texas Pawnshop Act to:

(1) exercise the state's police power to ensure a sound system of making pawn loans and acquiring and disposing of tangible personal property by and through pawnshops and to prevent unlawful property transactions, particularly in stolen property, through licensing and regulating pawnbrokers and certain persons employed by or in pawnshops;

(2) provide for licensing fees, investigation fees, and minimum capital requirements of licensees;

(3) ensure financial responsibility to the state and the public;

(4) ensure compliance with federal, state, and local laws, rules, regulations, and ordinances; and

(5) assist local governments in the exercise of their police power.

[Added by Acts 1981, 67th Leg., p. 221, ch. 99, § 1, eff. Aug. 31, 1981.]

Art. 5069-51.02. Definitions

The following definitions apply where such words appear in this Act:

[See Compact Edition, Volume 4 for text of (a) to (f)]

(g) "Net assets"—means the book value of the current assets of a person or pawnbroker less its applicable liabilities as stated in this subsection. Current assets include the investment made in cash, bank deposits, merchandise inventory, and loans due from customers excluding the pawn service charge. Current assets do not include the investments made in fixed assets of real estate, furniture, fixtures, or equipment; investments made in stocks, bonds, or other securities; or investments made in prepaid expenses or other general intangibles. Applicable liabilities include trade or other accounts payable; accrued sales, income, or other taxes; accrued expenses; and notes or other payables that are unsecured or secured in whole or part by current assets. Applicable liabilities do not include liabilities secured by assets other than current assets. Net assets must be represented by a capital investment unencumbered by any liens or other encumbrances to be subject to the claims of general creditors. If the pawnshop is a corporation, the capital investment consists of common or preferred shares and capital or earned surplus as those terms are defined by the Texas Business Corporation Act, as amended; if it is any other form of business entity, the capital investment consists of a substantial equivalent of that of a corporation and is determined by generally accepted accounting principles.

[Amended by Acts 1981, 67th Leg., p. 221, ch. 99, § 2, eff. Aug. 31, 1981.]

Art. 5069-51.03. License Required

(a) A person may not engage in business as a pawnbroker unless the person has a valid license authorizing engagement in the business. A separate license is required for each place of business operated under this Act. The commissioner may issue more than one license to a person if the person complies with this Act for each license. A new license or application to transfer an existing license is required upon any change, directly or beneficially, in the ownership of any licensed pawnshop, and an application must be made to the commissioner in accordance with this Act.

(b) A pawnbroker may not employ an individual for the purpose of writing pawn transactions after the 30-day grace period for filing an application for a pawnshop employee license unless the person:

(1) has timely filed an application for a pawnshop employee license and is awaiting the commissioner's decision on the application; or

(2) possesses a valid pawnshop employee license.

(c) Notwithstanding the requirement of Subsection (b) of this section, a pawnbroker may employ an individual without a pawnshop employee license if the individual:

(1) owns the pawnshop; or

(2) owns a controlling interest in the person who owns the pawnshop and is named in the application for the pawnshop's license.

[Amended by Acts 1981, 67th Leg., p. 222, ch. 99, § 3, eff. Aug. 31, 1981.]

Art. 5069-51.03A. Eligibility for a Pawnshop License

(a) To be eligible for a pawnshop license, an applicant must:

(1) be of good moral character and not have been convicted of or be under indictment for theft, fraud, forgery, or any crime involving moral turpitude;

(2) have net assets of at least $75,000 readily available for use in conducting the business of each licensed pawnshop; and

(3) show that the pawnshop will be operated lawfully and fairly within the purposes of this Act.

(b) If an applicant for a pawnshop license is a business entity, the requirements of Subdivision (1) of Subsection (a) of this section apply to each operator and each legal or beneficial owner, and, as to a corporation, to each officer, shareholder, and director.

[Added by Acts 1981, 67th Leg., p. 222, ch. 99, § 4, eff. Aug. 31, 1981.]

Art. 5069–51.04. Application for Pawnshop License—Contents, Bond

(a) An application for a new pawnshop license, the transfer of an existing pawnshop license, or the approval of a change in the ownership of a licensed pawnshop must be under oath and must state the full name and place of residence of the applicant, the place where the business is to be conducted, and other relevant information required by the Commissioner. If the applicant is a partnership, the application must state the full name and address of each member. If the applicant is a corporation, the application must state the full name and address of each officer, shareholder, and director.

(b) The application must be accompanied by:

(1) an investigation fee of $500 if the applicant is unlicensed at the time of applying for the pawnshop license or $250 if the application involves a second or additional license to an applicant previously licensed for a separate location or involves substantially identical principals and owners of a licensed pawnshop at a separate location;

(2) proof of general liability and fire insurance coverage if and as required by the Commissioner; and

(3) an annual fee of $100.

(c) Each applicant for a pawnshop license at the time of filing application shall file with the Commissioner, if he so requires, a bond satisfactory to him and in an amount not to exceed $5,000 for each license with a surety company qualified to do business in this State. The aggregate liability of such surety shall not exceed the amount stated in the bond. The said bond shall run to the State for the use of the State and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of this Act. Such bond shall be conditioned that the obligor will comply with the provisions of this Act and of all rules and regulations lawfully made by the Commissioner hereunder, and will pay to the State and to any such person or persons any and all amounts of money that may become due or owing to the State or to such person or persons from said obligor under and by virtue of the provisions of this Act during the time such bond is in effect.

[Amended by Acts 1981, 67th Leg., p. 222, ch. 99, § 5, eff. Aug. 31, 1981.]

Art. 5069–51.05. Issuance or Denial of License; Fees

(a) When an application and the required fees are received, the Commissioner shall investigate the facts and shall notify the Department of Public Safety and all local law enforcement agencies in the county in which the business is to be conducted that the application has been filed. In the notice, the Commissioner shall state the names and addresses of the persons that are required to be listed on the license application under Subsection (a) of Section 4 of this Act.[1] The Commissioner shall give those law enforcement agencies a reasonable time to respond with information concerning those persons or with any other relevant information.

(b) The Commissioner shall conduct a public hearing before issuing a pawnshop license and shall approve an application and issue to the applicant a license that will evidence the authority to do business under the provisions of this Act if the Commissioner:

(1) finds that the eligibility requirements for the license are satisfied; and

(2) finds that the financial responsibility, experience, character, and general fitness of the applicant or of its owners and managers are such as to warrant belief that the business will be operated lawfully and fairly within the purposes of this Act.

(c) If the Commissioner does not so find, he shall notify the applicant, who shall, on request within thirty days, be entitled to a hearing on such application within sixty days after the date of said request. The investigation fee shall be retained by the Commissioner, but the annual fee shall be returned to the applicant in the event of denial.

(d) The Commissioner shall grant or deny each application for a license within sixty days from its filing with the required fees, or, from the hearing thereon, if any, unless the period is extended by written agreement between the applicant and the Commissioner.

(e) If a license is granted pursuant to an application filed after June 30 of any year, the annual license fee for the remainder of that year is $50 and the Commissioner shall return to the applicant the balance of the annual fee filed with the application. If a license is denied, the Commissioner shall retain the investigation fee but shall return the annual license fee to the applicant.

(f) Any license issued to a pawnshop before October 1, 1981, remains valid as long as the licensee complies with this Act.

(g) Notwithstanding the other provisions of this Act, the Commissioner may issue a temporary license authorizing the operation of a pawnshop on the receipt of an application to transfer a license from one person to another or on the receipt of an application for a license involving principals and owners that are substantially identical to those of an

existing licensed pawnshop. The temporary license is effective until the permanent license is issued or denied.

[Amended by Acts 1981, 67th Leg., p. 223, ch. 99, § 6, eff. Aug. 31, 1981.]

[1] Article 5069-51.04.

Art. 5069-51.06. Effect of License; Annual Fee; Statutory Agent; Minimum Assets

(a) Each license shall state the name of the licensee and the address at which the business is to be conducted. The license shall be displayed at the place of business named in the license. The license shall not be transferable or assignable except upon approval by the Commissioner.

(b) When a licensee wishes to move a pawnshop to another location, the licensee must give thirty days' written notice to the Commissioner, who shall amend the license accordingly.

(c) Each licensee shall maintain on file with the Commissioner a written appointment of a resident of this state as his agent for service of all judicial or other process or legal notice unless the licensee has appointed an agent under another statute of this state. In case of noncompliance, the service may be made on the Commissioner.

(d) Each licensee shall maintain net assets either used or readily available for use in the conduct of the business of each licensed pawnshop in the amount of $75,000, as determined by using the definition of net assets prescribed by this Act; provided, however,

(1) as to licenses in force on the effective date of this Act, the then applicable net assets requirement shall continue to apply to such license until there is a change of ownership of the licensed business; and

(2) as to license applications pending on the effective date of this Act, the net assets requirement shall be $25,000, as determined by the definition and policy of the Commissioner in force at the time the application was filed, and shall remain $25,000 until there is a change of ownership of the licensed business.

(e) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. Every licensee, on or before each December 1st, shall pay the Commissioner $100 for each license held by him as the annual fee for the succeeding calendar year. If the annual fee remains unpaid fifteen days after written notice of delinquency has been given to the licensee by the Commissioner, the license shall thereupon expire, but not before December 31st of any year for which an annual fee has been paid.

[Amended by Acts 1981, 67th Leg., p. 224, ch. 99, § 7, eff. Aug. 31, 1981.]

Art. 5069-51.07. Revocation, Suspension, Surrender, Reinstatement of Licenses

(a) The Commissioner may, after notice and hearing, suspend or revoke any license if he finds that:

(1) The licensee has failed to pay any fee or charge properly imposed by the Commissioner under the authority of this Act;

(2) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of this Act;

(3) Any fact or condition exists which, if it has existed or had been known to exist at the time of the original application for such license, clearly would have justified the Commissioner in refusing to issue such license;

(4) The licensee has established an association with an unlicensed person who, with the knowledge of the licensee, has acted in violation of this Act;

(5) The licensee has aided, abetted, or conspired with a person to circumvent the requirements of this Act; or

(6) The licensee or a legal or beneficial owner of the licensee is not of good moral character or has been convicted of theft, fraud, forgery, or any crime involving moral turpitude.

[See Compact Edition, Volume 4 for text of (b) to (f)]

[Amended by Acts 1981, 67th Leg., p. 225, ch. 99, § 8, eff. Aug. 31, 1981.]

Art. 5069-51.07A. Employee License; Eligibility; Application

(a) To be eligible for a pawnshop employee license an individual must be of good business repute and must not have been convicted of or be under indictment for theft, fraud, forgery, or any crime involving moral turpitude.

(b) An individual who begins employment at a licensed pawnshop must file an application with the commissioner for a pawnshop employee license within 30 days after the day employment begins. The application must state:

(1) the applicant's name and address;

(2) the name of the pawnshop at which the applicant is employed;

(3) whether the applicant has been convicted of or is under indictment for theft, fraud, forgery, or any crime involving moral turpitude;

(4) whether the applicant has had a license to engage in any occupation, business, or profession revoked or suspended and the reason for the action;

(5) whether the applicant has been refused a pawnshop employee license or any other occupational, business, or professional license in this or any other state;

(6) the business or occupation engaged in by the applicant for five years immediately preceding the date of application; and

(7) other relevant information that the commissioner requires.

(c) The application for an employee license must be accompanied by an investigation and annual fee of $25.

(d) Any individual employed at a licensed pawnshop on October 1, 1981, must file an application accompanied by an investigation and annual fee of $10 with the commissioner before December 1, 1981.
[Added by Acts 1981, 67th Leg., p. 225, ch. 99, § 9, eff. Aug. 31, 1981.]

Art. 5069–51.07B. Issuance or Denial of an Employee License; Fee

(a) If the application for a pawnshop employee license is timely made, the applicant may continue employment until the license is granted or denied. The commissioner shall determine whether the applicant is qualified for a license within 60 days after the date the application is filed. If the commissioner finds that an applicant is qualified for a license, the commissioner shall approve the application and issue a license. Otherwise, the commissioner shall notify the applicant and the employing pawnbroker licensee in writing that the application will be denied unless the applicant, not later than the 30th day after the date of the notice, makes a written request for a hearing on the application.

(b) If an applicant who is given notice of his opportunity for a hearing does not request a hearing within the time allowed, the application is denied on the day after the last day for requesting a hearing. If the applicant requests a hearing within the time allowed, the commissioner shall conduct a hearing on the application in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes). On the conclusion of the hearing, the commissioner shall either grant or deny the application.

(c) A pawnshop employee license is effective until surrendered, suspended, revoked, or expired. On or before December 1, a licensee shall pay the commissioner a $10 annual fee to renew the license for the succeeding calendar year. The commissioner shall send a written notice of delinquency to the licensee if the licensee does not pay the fee on or before December 1. The licensee has 15 days after the date of the delinquency notice to pay the annual fee. If the licensee does not pay the fee within this period, the license expires on January 1 of the year for which the renewal fee was not paid or on the 16th day after the date of the delinquency notice, whichever date is later.
[Added by Acts 1981, 67th Leg., p. 225, ch. 99, § 9, eff. Aug. 31, 1981.]

Art. 5069–51.07C. Suspension, Revocation, Surrender, or Reinstatement of Employee License

(a) The commissioner may, after notice and hearing, suspend or revoke a pawnshop employee license if the commissioner finds that:

(1) the licensee knowingly or recklessly violated a provision of this Act or a rule or order issued under this Act; or

(2) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application, clearly would have justified the refusal to issue the license.

(b) The commissioner shall send written notice of the hearing to the licensee and the employing pawnbroker licensee and shall hold the hearing not less than 20 days after the day the notice was sent. The commissioner shall conduct the hearing in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(c) A licensed employee may surrender his license by delivering it to the commissioner with written notice of the surrender. The surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

(d) The commissioner may reinstate a suspended license or issue a new license to an individual whose license has been revoked if no fact or condition exists that clearly would have justified the refusal to issue the license under this Act.

(e) On application and payment of the cost, the commissioner shall furnish, under the commissioner's seal and signature, a certificate of good standing and a certified copy of a pawnshop employee license.
[Added by Acts 1981, 67th Leg., p. 225, ch. 99, § 9, eff. Aug. 31, 1981.]

Art. 5069–51.07D. Expiration Dates of Licenses

The commissioner by rule may adopt a system under which the licenses issued under this Act expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.
[Added by Acts 1981, 67th Leg., p. 225, ch. 99, § 9, eff. Aug. 31, 1981.]

Art. 5069–51.08. Examinations

(a) At such times as the Commissioner may deem necessary, the Commissioner, or his duly authorized representative, may make an examination of the place of business of each licensee and may inquire into and examine the transactions, books, accounts, papers, correspondence and records at such licensee insofar as they pertain to the business regulated by

this Act. Such books, accounts, papers, correspondence and records shall also be open for inspection at any reasonable time by any peace officer, without need of judicial writ or other process. In the course of an examination, the Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes, and vaults of such licensee, and shall have the right to make copies of any books, accounts, papers, correspondence and records. The Commissioner or his duly authorized representative may, during the course of such examination, administer oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Act to consider, investigate, or secure information. Any licensee who fails or refuses to let the Commissioner or his duly authorized representative or any peace officer examine or make copies of such books, or other relevant documents shall thereby be deemed in violation of this Act and such failure or refusal shall constitute grounds for the suspension or revocation of such license. The information obtained in the course of any examination or inspection shall be confidential and privileged, except for use in a criminal investigation or prosecution. Each licensee shall pay to the Commissioner an amount assessed by the Commissioner to cover the direct and indirect cost of such examinations and a proportionate share of general administrative expense, not to exceed $500 in any calendar year, and in the event a licensee hereunder is also licensed to do business under Chapter 3, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), in the same place of business licensed hereunder, the aggregate charges for examinations authorized by the said Chapter 3, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), and by this Act shall not exceed $500 in any calendar year.

(b) If the Commissioner questions the net assets requirement of a licensed pawnshop, the Commissioner may require certification by an independent certified public accountant that the accountant has reviewed a licensee's books, records, and transactions during the reporting year, that the books and records are maintained using generally accepted accounting principles, and that the licensee fulfills the net assets requirement of this Act.

[Amended by Acts 1977, 65th Leg., p. 878, ch. 329, § 3, eff. May 30, 1977; Acts 1981, 67th Leg., p. 227, ch. 99, § 10, eff. Aug. 31, 1981.]

Art. 5069-51.12A. Bracket and Ceiling Adjustment

The dollar amounts of the brackets establishing rates of charge, and the ceilings on the size of transactions that are subject to this Chapter, are subject to adjustment from time to time under Article 2.08 of this Title.

[Added by Acts 1981, 67th Leg., p. 286, ch. 111, § 24, eff. May 8, 1981.]

Sections 27 and 28 of the 1981 Act adding this article provide:

"Sec. 27. This Act shall be applicable to all claims of forfeiture made after the effective date of this Act but, with respect to claims of forfeiture in litigation pending at such effective date, the amount forfeited shall be determined under the provisions of the law as it existed prior to the effective date of this Act.

"Sec. 28. If any provision of this Act is held to be unconstitutional, no liability or forfeiture shall attach under Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.01 et seq., Vernon's Texas Civil Statutes), or any other law of this state to any person conforming his conduct to the applicable provisions of this Act. If any provision of this Act under which a rate or amount is determined or made available is determined by a court of competent jurisdiction to be unconstitutional, the maximum rate of interest or time price differential on contracts, including those for open-end accounts that would be subject to such a provision if it were constitutional is 24 percent a year except that in the case of contracts subject to Section (b) (2), Article 1.04, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes), as amended by this Act, the maximum rate of interest or time price differential is 28 percent a year."

Art. 5069-51.16. Prohibited Practices

A pawnbroker shall not:

(a) Accept a pledge from a person under the age of eighteen years.

(b) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction.

(c) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this Act.

(d) Fail to exercise reasonable care to protect pledged goods from loss or damage.

(e) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with like kind(s) of merchandise. All such replacements are subject to the approval or rejection of the Commissioner.

(f) Make any charge for insurance in connection with a pawn transaction.

(g) Enter any pawn transaction which has a maturity date more than one month after the date of the transaction.

(h) Display for sale in storefront windows or sidewalk display case so that same may be viewed from the street, any pistol, dirk, dagger, blackjack, hand chain, sword cane, knuckles made of any metal or any hard substance, switchblade knife, springblade knife, or throwblade knife, or depict same on any sign or advertisement which may be viewed from the street.

[Amended by Acts 1981, 67th Leg., p. 228, ch. 99, § 11, eff. Aug. 31, 1981.]

Art. 5069-51.17 Penalties and Administrative Enforcement

(a) Any person who engages in the business of operating a pawnshop without first securing the license prescribed by this Act shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not in excess of $10,000 or by confinement in the County Jail for not more than one year, or both. Any person who accepts employment at a pawnshop writing pawn loan transactions

and does not timely file an application for an employee license or any person who continues employment at a pawnshop after his employee license application has been denied or after his employee license has expired or has been revoked, suspended, or surrendered commits a Class B misdemeanor.

[See Compact Edition, Volume 4 for text of (b) to (e)]

(f) When the commissioner has reasonable cause to believe that a person is violating any provision of this Act, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this Act, may enter an order requiring the person to stop or to refrain from the violation. At the request of the commissioner, the attorney general or an attorney authorized to respect the state in the district court shall sue in any district court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

[Amended by Acts 1981, 67th Leg., p. 228, ch. 99, §§ 12, 13, eff. Aug. 31, 1981.]

Art. 5069-51.17A. Records Supplied by Department of Public Safety

The Department of Public Safety on request shall supply to the Consumer Credit Commissioner any available arrest and conviction records of an individual applying for or holding a license under this Act.

[Added by Acts 1981, 67th Leg., p. 229, ch. 99, § 14, eff. Aug. 31, 1981.]

TITLE 81

JAILS

Article
5115.1. Commission on Jail Standards.
5115c. Intercounty Cooperation Regarding Furnishing and Operating Jail Facilities.

Art. 5115. Jails Provided

The Commissioners Court shall provide safe and suitable jails for their respective counties, and shall cause the same to be maintained in good sanitary condition at all times, properly ventilated, heated and lighted; structurally sound, fire resistant and kept in good repair. Furthermore, they shall cause the jails in their respective counties to be kept in a clean and healthy condition, provided with water of safe quality and ample quantity and sewer disposal facilities in accordance with good sanitary standards, and provided with clean, comfortable mattresses and blankets, sufficient for the comfort of the prisoners, and that food is prepared and served in a palatable and sanitary manner and according to good dietary practices and of a quality to maintain good health. Such jails shall comply with the provisions of this Act and with the rules and procedures of the Commission on Jail Standards.

SUITABLE SEGREGATION

The term "safe and suitable jails," as used in this Act, shall be construed to mean jails which provide adequate segregation facilities by having separate enclosures, formed by solid masonry or solid metal walls, or solid walls of other comparable material, separating witnesses from all classifications of prisoners; and males from females; and juveniles from adults; and first offenders, awaiting trial, from all classifications of convicted prisoners; and prisoners with communicable or contagious diseases from all other classifications of prisoners. Furthermore, the term "safe and suitable" jails shall be construed to mean jails either now or hereafter constructed, except that, in lieu of maintaining its own jail, any county whose population is not large enough to justify building a new jail or remodeling its old jail shall be exempt from the provisions of this Act by contracting with the nearest available county whose jail meets the requirements set forth in this Act for the incarceration of its prisoners at a daily per capita rate equal to the cost of maintaining prisoners in said jail, or at a daily rate mutually agreed to by the contracting counties.

No person suspected of insanity, or who has been legally adjudged insane, shall be housed or held in a jail, except that such a person who demonstrates homicidal tendencies, and who must be restrained from committing acts of violence against other persons, may be held in a jail for a period of time not to exceed a total of twenty-four (24) hours, during which period he shall be kept under observation continuously. At the end of the twenty-four (24) hour period, such person shall be released or taken to a hospital or mental hospital. Furthermore, for such temporary holding of each person suspected of insanity, or who has been legally adjudged insane, there shall be provided a special enclosure or room, not less than forty (40) square feet and having a ceiling height of not less than eight (8) feet above the floor. Furthermore, the floor and the walls of such enclosure shall be provided with a soft covering designed to protect a violent person, temporarily held therein, from self-injury or destruction. One hammock, not less than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, made of elastic or fibrous material shall be provided in each such special enclosure.

SUITABLE SECURITY AND SAFETY

For the purpose of this Act, the term "safe and suitable jails" is further defined to mean jails which provide adequate security and safety facilities by having separate cells or compartments, dormitories, and day rooms, of varying dimensions and capacities for prisoners confined therein, except that, if practicable, no one such cell or compartment shall be designed for confining two (2) prisoners only. Cells or compartments shall be designed to accommodate from one (1) to eight (8) prisoners each, and furthermore, such dormitories and day rooms shall be designed to accommodate not more than twenty-four (24) prisoners each. Furthermore, in each such jail there shall be provided individual one-man or one-woman cells to accommodate not less than thirty per cent (30%) of the total designated prisoner capacity of the jail and dormitory-type space may be provided to accommodate not more than forty per cent (40%) of the total designated prisoner capacity of the jail. All cells, compartments and dormitories for sleeping purposes, where each such cell, compartment or dormitory is designed to accommodate three (3) or more prisoners, shall be accessible to a day room to which prisoners may be given access during the day. Cells for one (1) prisoner only shall have a minimum floor area of forty (40) square feet and all other cells, compartments, dormitories and day rooms (including safety vestibule area) shall have a minimum floor area equal to eighteen (18) square feet for each

prisoner to be confined therein. The ceiling height above finished floor shall be not less than eight (8) feet for any cell, compartment, dormitory or day room where prisoners are confined.

The term "safe and suitable jails," as used in this Act, is further defined to mean that, for reasons of safety to officers and security, the entrance and/or exit to each group of enclosures forming a cell block or group of cells and/or compartments used for the confinement of three (3) or more prisoners shall be through a safety vestibule having one (1) or more interior doors in addition to the main outside entrance door to such cell block, all arranged to be locked, unlocked, opened or closed by control means located outside of any such enclosure or cell block.

SUITABLE SANITATION AND HEALTH

The term "safe and suitable jails" is further defined to mean jails which provide adequate facilities for maintaining proper standards in sanitation and health. Each cell designed for one (1) prisoner only shall be provided with a water closet and a combination lavatory and drinking fountain, table and seat. Each cell, compartment or dormitory designed for three (3) or more prisoners, shall be provided with one (1) water closet and one (1) combination lavatory and drinking fountain for each twelve (12) prisoners or fraction thereof to be confined therein. Furthermore, all such cells, compartments and dormitories shall be provided with one (1) bunk, not less in size than two (2) feet, three (3) inches wide and six (6) feet, three (3) inches long, for each prisoner to be confined therein. Furthermore, each day room for the confinement of three (3) or more prisoners shall be provided with one (1) water closet, one (1) combination lavatory and drinking fountain and one (1) shower bath for each twelve (12) prisoners, or fraction thereof, to be confined therein. Furthermore, each day room shall be otherwise suitably furnished.

The provision of this Act, as amended, shall become applicable to all jails upon its effective date. The standards prescribed by this Act are minimum standards only. The provisions of this Act are enforceable by the Commission on Jail Standards. [Amended by Acts 1975, 64th Leg., p. 1283, ch. 480, § 15, eff. June 19, 1975.]

Art. 5115.1. Commission on Jail Standards

Policy

Sec. 1. It is the policy of the State of Texas that all county jail facilities in the state conform to certain minimum standards of construction, maintenance, and operation. It is the purpose of the legislature by this Act to implement this policy by establishing a commission on jail standards with the authority and responsibility to administer the provision of this Act and other laws relating to standards for county jails.

Definitions

Sec. 2. In this Act:

(1) "Commission" means the Commission on Jail Standards.

(2) "Executive director" means the executive director of the Commission on Jail Standards.

(3) "County jail" means any jail, lockup, or other facility that is operated by or for a county for the confinement of persons accused or convicted of an offense.

(4) "Prisoners" means persons confined in a county jail.

Commission Created

Sec. 3. The Commission on Jail Standards is created.

Application of Sunset Act

Sec. 3a. The Commission on Jail Standards is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1987.

[1] Article 5429k.

Membership—Appointment, Terms, Vacancies

Sec. 4. (a) The commission consists of nine members appointed by the governor with the advice and consent of the senate. Two members shall be county sheriffs, one from a county with a population of over 200,000 persons and one from a county with a population of 200,000 or less, according to the latest United States census. One member shall be a county judge; one shall be a practitioner of medicine licensed by the State Board of Medical Examiners; the other five positions shall be filled by citizens of the state who hold no public office. The sheriffs and the county judge appointed to the commission shall perform the duties of a member of the commission in addition to their other duties.

(b) Except as provided by Subsection (c) of this section, members are appointed for a term of six years expiring on January 31 of an odd-numbered year.

(c) For terms that begin within 60 days after the effective date of this Act, the governor shall appoint:

(1) three members for terms that expire on January 31, 1981;

(2) three members for terms that expire on January 31, 1979; and

(3) three members for terms that expire on January 31, 1977.

(d) If a sheriff or county judge on the commission ceases to hold office or if a vacancy otherwise occurs in the membership of the commission, the governor shall appoint a replacement who possesses the same qualifications as the member who vacated his position, with the advice and consent of the senate, to serve the unexpired portion of the term. If a vacan-

cy occurs at a time when the senate is not in session, the vacancy shall nevertheless be filled on an interim basis, and the interim appointee shall serve as a member of the commission until his nomination has been acted on by the senate.

Chairman; Vice-Chairman

Sec. 5. The commission shall biennially elect one of its members chairman and one vice-chairman for a term of two years beginning on February 1 of each odd-numbered year.

Meetings; Quorum; Rules

Sec. 6. (a) The commission shall hold a regular meeting each calendar quarter and may hold special meetings at the call of the chairman or on the written request of three members. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the commission.

(b) Five members constitute a quorum for the transaction of business.

(c) The commission shall adopt, amend, and rescind rules for the conduct of its proceedings.

Expenses

Sec. 7. Members of the commission are not entitled to compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their official duties.

Director; Staff

Sec. 8. (a) The commission shall employ an executive director to serve at the will of the commission. The executive director is subject to the policy direction of the commission and is the chief executive officer of the commission.

(b) The executive director may employ personnel as necessary to enforce and administer this Act.

(c) The executive director and employees are entitled to compensation and expenses as provided by legislative appropriation.

Duties of the Commission

Sec. 9. (a) The commission shall:

(1) promulgate reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) promulgate reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) promulgate reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) promulgate reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary, in a manner not inconsistent with this Act;

(6) provide consultation and technical assistance to local government officials with respect to county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules promulgated under this Act;

(9) review the reports submitted under Subdivision (8) of this subsection and require its employees to inspect county jails regularly to insure compliance with state law, commission orders, and rules and procedures promulgated under this Act; and

(10) determine annually, or more often, whether each county jail is in compliance with the rules and procedures promulgated under this Act.

(b) The fact that compliance with a commission rule or procedure requires major modification or renovation of an existing jail or construction of a new jail does not render a commission rule or procedure unreasonable.

Annual Report

Sec. 10. The commission shall make a report to the governor, the lieutenant governor, and the speaker of the house of representatives, not later than January 31 of each year, covering its operations, its findings concerning county jails during the preceding year, and whatever recommendations it deems appropriate.

Enforcement of Jail Standards

Sec. 11. (a) The commission shall be granted access at any reasonable time to any county jail facility or part of any county jail facility and shall be granted access to all books, records, and data pertaining to any county jail which the commission or the executive director deems necessary for the administration of the commission's functions, powers, and duties. The commissioners and sheriff of each county shall furnish the commission or any of its members, or the executive director or any employee designated by the executive director, any information which he states is necessary to enable the commission to discharge its functions, powers, and duties, to determine whether its rules are being observed or whether its orders are being obeyed and otherwise to implement the purposes of this Act. In the exercise of its function, powers, and duties, the commission may issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and

the production of books, records, and documents, administer oaths, and take testimony concerning all matters within its jurisdiction. The commission is not bound by strict rules of evidence or procedure in the conduct of its proceedings, but its determinations shall be founded on sufficient legal evidence to sustain them. The commission may delegate to the executive director the authority conferred by this subsection.

(b) When the commission finds that a county jail is not in compliance with state law, or the rules and procedures of the commission, or fails to meet the minimum standards prescribed by the commission or by state law, it shall report the noncompliance to the commissioners and sheriff of the county responsible for the jail that is not in compliance. The commission shall send a copy of the report to the governor.

(c) The commission shall grant the county or sheriff a reasonable time, not to exceed one year after a report of noncompliance, to comply with its rules and procedures and with state law. On application of the sheriff or commissioners of a county, if clearly justified by the facts and circumstances, the commission may grant reasonable variances for operation of county jails not in strict compliance with state law, except that no variance may be granted to permit unhealthy, unsanitary, or unsafe conditions.

(d) If the commissioners or sheriff does not comply within the time granted by the commission, the commission may, by order, prohibit the confinement of prisoners in the noncomplying jail and designate another detention facility for their confinement. If a prohibition and transfer order is issued, the sheriff of the county in which the noncomplying jail is situated shall immediately transfer all prisoners to the detention facility specified by the commission.

(e) The county responsible for a nonconforming jail shall bear the cost of transportation and maintenance of prisoners transferred from a noncomplying jail by order of the commission. The costs of transportation and maintenance shall be determined by the commission and shall be paid into the treasury of the entity operating the detention facility to which the prisoners are transferred.

(f) The commission, in lieu of closing a county jail, may institute an action in its own name to enforce, or enjoin the violation of, its orders, rules, or procedures, or of Article 5115, Revised Civil Statutes of Texas, 1925, as amended. The commission shall be represented by the attorney general. An action brought pursuant to this subsection is in addition to any other action, proceeding, or remedy provided by law, and may be brought in a district court of Travis County. A suit brought under this subsection shall be given preferential setting and shall be tried by the court, without a jury. The court shall issue an injunction ordering compliance if it finds:

(1) that the county jail is being operated in such a manner that it does not comply with the rules and procedures promulgated by the commission or with state law; and

(2) that the commissioners or sheriff has been given a reasonable time to comply with the rules and procedures and has failed to do so.

Judicial Review

Sec. 12. (a) A county may appeal a commission order issued under Subsection (d), Section 11, of this Act by filing a petition in a district court of Travis County.

(b) The petition must be filed within 30 days after the date of the commission's order.

(c) Service of citation on the commission must be accomplished within 30 days after the date the petition is filed. Citation may be served on the executive director.

(d) In an action brought under this section, the court is confined to the record developed by the commission, and the only issues before the court are:

(1) whether the order of the commission is based on substantial evidence; and

(2) whether the order is arbitrary, capricious, or illegal.

Regulations

Sec. 13. (a) The commission shall promulgate the regulations required by Section 9 of this Act on or before January 1, 1977.

(b) On or before March 1, 1977, the commission shall mail a copy of the regulations promulgated pursuant to Section 9 of this Act to each county sheriff in this state. The chairman shall certify to the governor that the commission has complied with the requirements established by this section.

Qualifications of Jail Personnel

Sec. 14. (a) The Commission on Law Enforcement Officer Standards and Education shall establish minimum physical, mental, educational, and moral standards for persons employed or utilized in the operation of county jails.

(b) The authority and power of the Commission on Law Enforcement Officer Standards and Education is extended to cover all county jail personnel. The staff of the Commission on Law Enforcement Officer Standards and Education shall be enlarged sufficiently to discharge the additional responsibilities imposed by this section. Counties shall have a period of one year following establishment of standards for county jail personnel within which to have all jail personnel certified by the Commission on Law Enforcement Officers Standards and Education.

(c) A standard requiring a person to have any degree of formal education or the equivalent is not applicable to a person who was employed or whose services were utilized in the operation of a county jail on August 29, 1977.

[Acts 1975, 64th Leg., p. 1278, ch. 480, §§ 1 to 14, eff. June 19, 1975. Amended by Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.131, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1596, ch. 673, § 1, eff. Aug. 27, 1979.]

Art. 5115b. Counties of 84,000 to 86,000; Contracts with Cities for Jails or Jail Facilities

Sec. 1. That any county having a population of not less than 84,000 nor more than 86,000 according to the last preceding federal census, in lieu of providing and maintaining its own jail, is hereby authorized to provide safe and suitable jail, jails or jail facilities for such counties by contracting with the city which is the county seat of any such county, for incarceration of the counties' prisoners in the jail, jails or jail facilities owned by said city or cities, on a daily per capita basis, for the lease of a portion of the jail, jails or jail facilities owned by such city or for joint operation and maintenance of the jail, jails or jail facilities owned and operated by such city for the mutual use and benefit of any such county and city, provided said jail, jails or jail facilities meet the requirements set forth in Chapter 277, Section 1, page 637, Acts 1957, 55th Legislature (Article 5115, Revised Civil Statutes of Texas, 1925, as amended). The Commissioners Court of any such county and the governing body of any such city are hereby authorized and empowered to enter into contracts for the incarceration of any such county's prisoners at a daily per capita rate equal to the cost of maintaining prisoners in said jail, jails or jail facilities or at a daily rate mutually agreed upon by the contracting counties and cities; contracts for lease of a portion of the jail, jails or jail facilities at a rate based upon the proportion of the total area of the jail, jails or jail facilities that is occupied by such counties' prisoners; and contracts for the joint maintenance and operation of such jail, jails or jail facilities determining the respective obligations of each for the maintenance and operation of any such jail or jails, provided that any such contract for lease or for joint maintenance and operation shall not exceed 20 years. Such contracts where not in conflict with the Constitution of the State of Texas may provide for custody, control and operation of such jail, jails or jail facilities, including providing for a jailer to be custodian of such jail, jails or jail facilities, which said jailer shall be under the control and supervision of the sheriff of such county and shall be appointed by the sheriff with the advice and consent of the Commissioners Court and the governing body of such city; providing that the salary of such jailer shall be in an amount as may be now or hereafter authorized by law for a deputy sheriff of such county and may be paid by such city or cities and by such counties in such proportions as may be agreed upon by such contracts as herein provided. Where not expressly provided to the contrary herein, any such jailer, his rights, duties, salary and tenure of office shall be controlled by the laws governing deputy sheriffs.

[See Compact Edition, Volume 4 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 589, ch. 237, § 119, eff. Sept. 1, 1981.]

Art. 5115c. Intercounty Cooperation Regarding Furnishing and Operating Jail Facilities

Sec. 1. Two or more counties, acting through their commissioners courts, may contract with one another for the joint operation of a jail to serve the contracting counties. The contract may provide for the construction or acquisition of a facility for this purpose or for the use of an existing facility. The joint facility is not required to be located at the county seat of one of the contracting counties.

Sec. 2. A county that is party to a contract under this Act may use any method of financing its share of the capital expenditures under the contract for acquisition, construction, enlargement, or improvement of the joint facility, including necessary acquisition of land, as would be available to it if the county operated its own jail, including the issuance as provided by law of general obligation bonds or other evidences of indebtedness.

Sec. 3. (a) The administration of a jail operated under this Act is the responsibility of the sheriff of the county where the jail is located unless he declines that responsibility by filing a written statement to that effect with the commissioners court of that county. If the sheriff so declines, the commissioners courts of the contracting counties by joint action shall appoint a jail administrator for the jail.

(b) The sheriff or jail administrator responsible for the administration of the jail has all the powers, duties, and responsibilities with regard to the keeping of prisoners and operation of the jail that are conferred by law on a sheriff in a county that operates its own jail.

(c) Action by a sheriff declining the responsibility for the administration of a jail operated under this Act does not take effect until a jail administrator has been appointed and has assumed his duties. If there is a vacancy in the position of jail administrator, the sheriff of the county where the jail is located is responsible for the administration of the jail until a new jail administrator is appointed and assumes the position.

[Acts 1977, 65th Leg., p. 1436, ch. 581, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 5117. Federal Officer May Use Jail

(a) Sheriffs and jailers may receive into their jails such federal prisoners as may be delivered or tendered to them by any federal law enforcement officer, unless the sheriff or jailer determines that to receive the federal prisoners may result in a violation of a state or federal court order or statute or a rule promulgated by the Commission on Jail Standards. The sheriff or jailer shall safely keep such prisoners until they are transferred or until they are discharged by due course of law. The federal law enforcement officer by whose authority such prisoners are received and kept shall be directly and per-

sonally liable to the sheriff or jailer for the jail fees and all other expenses of the keeping of such prisoners, such fees and expenses to be estimated according to the laws regulating the same in other cases.

(b) In this article "federal law enforcement officer", has the meaning given by 5 U.S.C. Section 8331(20).

[Amended by Acts 1981, 67th Leg., p. 603, ch. 241, § 1, eff. May 28, 1981.]

Art. 5118a. Commutation for Good Conduct; Forfeiture of Commutation; Record

In order to encourage county jail discipline, a distinction may be made in the terms of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts; the reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict county jail rules, and extension of social privileges as may be consistent with proper discipline. Commutation of time for good conduct, industry and obedience may be granted the inmates of each county jail by the sheriff in charge. A deduction in time not to exceed one (1) day for each day of the original sentence actually served may be made from the term or terms of sentences when no charge of misconduct has been sustained against the prisoner. This Act shall be applicable regardless of whether the judgment of conviction is a fine or jail sentence or a combination of jail sentence and fine; provided, however, that such deduction in time shall not exceed one-third (⅓) of the original sentence as to fines and court costs assessed in the judgment of conviction. A prisoner under two (2) or more cumulative sentences shall be allowed commutation as if they were all one sentence. For such sustained charge of misconduct in violation of any rule known to the prisoner (including escape or attempt to escape) any part or all of the commutation which shall have accrued under this Act in favor of the prisoner to the date of said misconduct may be forfeited and taken away by the sheriff, provided that the sheriff has complied with discipline proceedings as approved by the Texas Commission on Jail Standards. No other time allowance or credits in addition to the commutation of time for good conduct herein provided for may be deducted from the term or terms of sentences. The sheriff shall keep or cause to be kept a conduct record in card or ledger form and a calendar card on each inmate showing all forfeitures of commutation time and the reasons therefor.

[Amended by Acts 1981, 67th Leg., p. 850, ch. 299, § 1, eff. June 8, 1981; Acts 1981, 67th Leg., p. 2648, ch. 708, § 2, eff. Aug. 31, 1981.]

Section 4 of Acts 1981, 67th Leg., p. 2649, ch. 708, provides:

"This Act affects the term of a prisoner serving a sentence in a county jail on the effective date of this Act only to the extent that the sentence is served on or after the effective date of this Act."

TITLE 82

JUVENILES

Article
5119a–1. Transfer of Gatesville State School for Boys to Department of Corrections.
5138d. Establishment of Juvenile Probation Departments in All Counties.
5139H–6. Juvenile Boards in 24th and 135th Judicial Districts.
5139*II*–1. Juvenile Placement Special Fund; Comal County.
5139JJJ. Webb County Juvenile Board.
5139KKK. East Texas Juvenile Board.
5139LLL. Colorado, Lavaca, Gonzales and Guadalupe Counties; Juvenile Boards.
5139MMM. Rockwall County Juvenile Board.
5139NNN. Somervell County Juvenile Board.
5139*OOO*. Juvenile Boards in Carson, Childress, Collingsworth, Donley, and Hall Counties.
5139PPP. Galveston County Juvenile Board.
5139QQQ. Grayson County Juvenile Board.
5139RRR. Hemphill, Roberts, and Lipscomb Counties Juvenile Boards.
5139SSS. Brazoria, Fort Bend, Matagorda, and Wharton Counties Juvenile Boards.
5139TTT. Brewster, Crockett, Jeff Davis, Pecos, Presidio, Regan, Sutton, Upton Counties Juvenile Boards.
5139UUU. Dallas County Juvenile Board, Juvenile Probation Department, and Court Service Department.
5139VVV. Palo Pinto County Juvenile Board.

Art. 5119a–1. Transfer of Gatesville State School for Boys to Department of Corrections

Sec. 1. In consideration of the benefit to the public health, safety, and welfare, and the benefit to the state of relieving congested facilities in the Texas Department of Corrections, the chairman of the Texas Youth Council, on behalf of the Texas Youth Council, shall transfer and convey title to the land, buildings, and facilities of the Gatesville State School for Boys to the Texas Board of Corrections for the use and benefit of the Texas Department of Corrections, effective September 1, 1979.

Sec. 2. The Texas Department of Corrections is hereby authorized to take possession, for the purposes of renovation, alteration, and construction, of the buildings and facilities of the Gatesville State School for Boys, according to the following schedule:

(a) On the effective date of this Act, the Texas Department of Corrections shall take possession of the Valley, Riverside, and Live Oak units of the Gatesville State School for Boys.

(b) On June 1, 1979, the Texas Department of Corrections shall take possession of the Terrace and Sycamore units of the Gatesville State School for Boys.

(c) On September 1, 1979, the Texas Department of Corrections shall take possession of the Hackberry and Hilltop units, the administration buildings, and all other land, buildings, and facilities of the Gatesville State School for Boys.

Sec. 3. From funds appropriated to the Texas Youth Council for the Gatesville State School Building and Repair Program for the biennium ending August 31, 1979, the sum of $571,000 is hereby transferred and appropriated to the Texas Department of Corrections for renovation, remodeling, and alteration of buildings and facilities of the Gatesville State School for Boys as required to house adult inmates. From funds appropriated for the same biennium for operation of the Gatesville State School for Boys, the Texas Youth Council may transfer to the Texas Department of Corrections for the same purpose an amount determined by agreement between the Texas Youth Council and the Texas Board of Corrections.

Sec. 4. The Texas Youth Council and the Texas Board of Corrections by agreement shall provide for the transfer or retention by the Texas Youth Council of all items of state property now located at the Gatesville State School for Boys, including furniture, equipment, vehicles, tools, supplies, linens, machinery, utensils, livestock, and agricultural implements. The Texas Youth Council and the Texas Board of Corrections shall inform the State Board of Control of the disposition made of all such property on or before September 1, 1979.

[Acts 1978, 65th Leg., 2nd C.S., p. 10, ch. 4, §§ 1–4, eff. Aug. 14, 1978.]

Art. 5138. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979.

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Art. 5138d. Establishment of Juvenile Probation Departments in All Counties

(a) "Juvenile probation services" means services performed under the direction of a juvenile court including protective services, prevention of delinquent conduct and conduct indicating a need for supervision, diversion, informal adjustment, foster care, diagnostic, supervision, counseling, correctional, and educational services if provided by or under the direction of a juvenile probation officer in response to orders issued by the juvenile court and also including services provided by juvenile probation departments and related to the operation of juvenile detention facilities.

(b) In all Texas counties, the juvenile board or, if there is none, the juvenile court may, with the advice and consent of the commissioners court, employ and designate the titles and fix the salaries of probation officers and of administrative, supervisory, stenographic, and other clerical personnel who are necessary to provide juvenile probation services according to the standards established by the Texas Juvenile Probation Commission and the needs of the local jurisdiction as determined by the juvenile board or, if there is none, the juvenile court. This determination, if inconsistent with salaries established by laws governing the creation of a juvenile probation department for a particular jurisdiction, supersedes and controls over those statutory provisions.

(c) In Texas counties with insufficient case loads to justify a juvenile probation department, the juvenile board or juvenile judge may contract with the county adult probation department to provide juvenile probation services, or may contract with surrounding counties to form a multicounty juvenile probation department.

[Added by Acts 1981, 67th Leg., p. 2425, ch. 453, § 3, eff. Sept. 1, 1981.]

Art. 5139E–1. Smith County Juvenile Board

[Sec. 1.] (1) There is established a Juvenile Board in Smith County to be composed of the County Judge of the county, the District Judges of the Judicial Districts therein and the Judge of the Court of Domestic Relations. The County Judge of said county shall be chairman of such Board and its chief administrative officer. The official title of the Board in said county shall be the name of the county followed by the words: "County Juvenile Board."

(2) Deleted by Acts 1977, 65th Leg., p. 1330, ch. 528, § 1, eff. Aug. 29, 1977.

(3) As compensation for the added duties hereby imposed upon members of such Juvenile Board, each member thereof may be compensated by an annual salary as determined by the Commissioners Court of the county, payable in 12 equal monthly installments; and such compensation shall be in addition to all other compensation now provided for or allowed the Judges of the Domestic Relations, County, and District Courts by law, and shall be paid out of the general fund of the county.

Sec. 2. (a) The Juvenile Board of Smith County may create a child support office in the district clerk's office of the county to receive payments for the support of children made under the order of a District Court or other court having jurisdiction of a District Court. The child support office shall receive the payments and shall disburse the funds in the manner the court determines to be for the best interest of the parties involved in each case.

(b) The Juvenile Board may appoint an administrator and such assistants as in its judgment may be necessary for a term of two years and shall determine the duties to be assigned the administrator and his assistants and the salaries of the personnel of the child support office to be paid in equal monthly installments out of the general fund of the county, the child support fund, or other available fund. All claims for expenses of the administrator and his assistants and administrative expenses for operation of the child support office, including all necessary equipment and supplies, shall, before payment, be approved by the Board.

(c) The administrator of the child support office shall make a surety bond in a solvent surety company authorized to make such bonds in Texas, conditioned on the faithful performance of the duties of his position and further conditioned on his properly accounting for the money entrusted to him. The bond shall be in an amount to be fixed by the County Auditor and subject to approval of the County Auditor. The county shall pay the premiums for the bond out of the general fund, the child support fund, or other available fund.

(d) The child support office shall keep an accurate and complete record of its receipts and disbursements of support payment funds. The record is open to inspection by the public. It is the duty of the County Auditor or other duly authorized person in the county to inspect and examine the records and audit the accounts quarterly and to report his findings and recommendations to the Judges.

(e) A service fee for receiving and disbursing payments, not to exceed $2.50 per month, may be assessed in the discretion of the court against each payor or payee of child support that is ordered by a court to be paid to a child support office. However, if the payor is a member of the armed services and the monthly payments for child support exceed the amount ordered by the court, the recipient (payee) of the support payments shall be the person responsible for paying the service fee into the child support office. The service fee applies to all support payments ordered paid to a child support office after the effective date of this amendment and to all other such payments, even though ordered prior to the effective date of this amendment, when the person ordered to make such payments has defaulted and has been cited for contempt of court. The service fee shall be collected by the child support office from the payor annually in advance and shall be paid to the County Treasurer on the last day of each calendar month, to be kept in a separate account to be known as the child support fund. This fund shall be administered by the Juvenile Board, subject to the approval of the Commissioners Court, for the purpose of assisting in the payment of the salaries and operating expenses of the child support office. The first service fee shall be due on the date the payor of support payments has been ordered by the court to commence payments for child support and thereafter on each succeeding annual anniversary of the original court order for payment. In those instances where the payee is charged with the responsibility of making the service fee payments, the first payment shall be due on the date of receipt of

the initial support payment and annually thereafter on the anniversary of the date of the receipt of the first support allotment check so long as the payor is a member of the armed services and so long as support allotment payments exceed the amount of support ordered by the court. Failure or refusal of a person to pay the service fee on time and in the amount ordered by the court shall make that person susceptible to an action of contempt of court. A record shall be kept of all service fees collected and expended. The child support fund is subject to regular audit by the County Auditor or other duly authorized person. Annual reports of receipts and expenditures in this account shall be made to the Commissioners Court.

(3) As compensation for the added duties hereby imposed upon members of such Juvenile Board, each member thereof may be compensated by an annual salary as determined by the Commissioners Court of the county, payable in 12 equal monthly installments; and such compensation shall be in addition to all other compensation now provided for or allowed the Judges of the Domestic Relations, County, and District Courts by law, and shall be paid out of the general fund of the county.

[Amended by Acts 1975, 64th Leg., p. 1970, ch. 653, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1330, ch. 528, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2094, ch. 484, § 1, eff. Aug. 31, 1981.]

Art. 5139E–2. Appointment of Judge of Court of Domestic Relations as Juvenile Board Member in Counties of 99,400 to 100,000

In any county having a population of not less than 99,400 and not more than 100,000 according to the last preceding federal census, the Commissioners Court may name the judge of the court of domestic relations as an additional member of the juvenile board and may pay him for his services on the board in an amount not to exceed the additional compensation allowed other members of the county juvenile board.

[Amended by Acts 1981, 67th Leg., p. 590, ch. 237, § 120, eff. Sept. 1, 1981.]

Art. 5139F. Juvenile Board in Counties of 121,000 to 128,000 or 155,000 to 160,000; Additional Compensation

Sec. 1. In any county having a population of more than one hundred and twenty-one thousand (121,000) inhabitants and less than one hundred twenty-eight thousand (128,000) inhabitants or more than one hundred fifty-five thousand (155,000) inhabitants and less than one hundred sixty thousand (160,000) inhabitants according to the last preceding Federal Census, the Judges of the several District Courts of such county, together with the County Judge of such county, are hereby constituted a Juvenile Board for such county. Subject to the approval of the Commissioners Court, the members composing such Juvenile Board in such county may each be allowed additional compensation in an amount which shall be designated by the County Commissioners and which shall be paid in twelve (12) equal installments out of the general fund of such county.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1975, 64th Leg., p. 331, ch. 138, § 1, eff. May 8, 1975; Acts 1981, 67th Leg., p. 590, ch. 237, § 121, eff. Sept. 1, 1981.]

Art. 5139G. Juvenile Board in Counties Comprising 9th, Second 9th, and 221st Judicial District

Sec. 1. In each county comprising the 9th Judicial District, the Second 9th Judicial District, and the 221st Judicial District, the judges of the district courts having jurisdiction in the county, together with the county judge of the county and the judges of the county courts at law, if there are any, shall constitute the juvenile board of such county. The members of each board shall each be allowed additional compensation not less than $3,000 per annum nor more than $10,000 per annum to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the general fund of the county.

Sec. 2. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts, county courts, and county courts at law.

[See Compact Edition, Volume 4 for text of 3]

[Amended by Acts 1975, 64th Leg., p. 439, ch. 186, § 11, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 825, ch. 372, § 1, eff. June 6, 1979.]

Art. 5139H–1. Juvenile Boards in Counties of 38th and 63rd Judicial Districts; Additional Compensation

Sec. 1. In each county comprising the 38th Judicial District and in each county comprising the 63rd Judicial District, the Judge of the District Court, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of such Board in each county may each be allowed additional compensation of not less than One Thousand, Two Hundred Dollars ($1,200) per annum and not more than Three Thousand, Six Hundred Dollars ($3,600) per annum, to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the General Fund of the County; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[See Compact Edition, Volume 4 for text of 2]

[Amended by Acts 1975, 64th Leg., p. 243, ch. 93, § 1, eff. April 30, 1975.]

Art. 5139H–4. Juvenile Boards in Atascosa, Frio, LaSalle, Wilson, and Karnes Counties

In each of the counties of Atascosa, Frio, LaSalle, Wilson, and Karnes, the Judge of each judicial district that includes the county, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members of

such Board in each county shall each be allowed additional compensation of not less than One Thousand, Two Hundred Dollars ($1,200) per annum and not more than Four Thousand, Eight Hundred Dollars ($4,800) per annum, to be fixed by the Commissioners Court and paid monthly in twelve (12) equal installments out of the general fund of the county; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office.

[Amended by Acts 1977, 65th Leg., p. 1267, ch. 490, § 1, eff. Aug. 29, 1977.]

Art. 5139H–5. Juvenile Boards in 36th and 156th Judicial Districts; Additional Compensation

Sec. 1. In each county comprising the 36th Judicial District and in each county comprising the 156th Judicial District, the Judges of the District Courts, together with the County Judge of the county, shall constitute the Juvenile Board of such county. The members composing each County Juvenile Board within the Judicial Districts may, as compensation for the added duties imposed on members of such Juvenile Board, each be allowed additional compensation which shall be paid in twelve (12) equal installments out of the General Fund of each county, such additional compensation to each member of the Board to be fixed by the Commissioners Court of each county; and provided that the compensation allowed County Judges hereunder shall not be counted as fees of office. The additional compensation for services rendered on the Juvenile Board shall not be set lower than that additional compensation was set on the effective date of this amendment and is in addition to all other compensation provided or allowed by law for County and District Judges.

[See Compact Edition, Volume 4 for text of 2]

[Amended by Acts 1975, 64th Leg., p. 1929, ch. 629, § 1, eff. June 19, 1975; Acts 1981, 67th Leg., p. 2531, ch. 671, § 1, eff. Sept. 1, 1981.]

Art. 5139H–6. Juvenile Boards in 24th and 135th Judicial Districts

In each of the counties comprising the 24th Judicial District and the 135th Judicial District, except Victoria County, the judge of each judicial district having jurisdiction in the county and the county judge of each county constitute the juvenile board of the county. The members of the board in each of those counties may each be allowed, for additional duties as a member of the board, additional compensation in a reasonable amount to be set by the commissioners court of each county, which shall be paid in 12 equal installments out of the general funds of each county. In no event shall the additional compensation for services rendered on the juvenile board be set lower than that existing on the effective date of this Act. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges. The provisions of this Act do not apply to nor affect the Victoria County Juvenile Board.

[Acts 1977, 65th Leg., p. 1440, ch. 585, § 1, eff. Aug. 29, 1977.]

Art. 5139J. Juvenile Boards in Harrison and Rusk Counties

[See Compact Edition, Volume 4 for text of 1]

Sec. 2. As compensation for the added duties imposed upon members of each juvenile board, each member thereof may be allowed additional compensation to be determined by the commissioners court of the county and paid monthly in twelve (12) equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

[See Compact Edition, Volume 3 for text of 3 and 3a]

Sec. 3b. The juvenile board of Rusk County may appoint a juvenile officer whose salary shall be fixed by the Commissioners Court of said county in an amount not less than Three Thousand Dollars ($3,000) per year. In addition, the Commissioners Court shall fix a reasonable allowance for the expenses of such officer. The juvenile officer shall have the powers and duties prescribed by Article 5142, of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court of the county shall have authority to accept contributions by way of gifts, grants or donations from cities, towns, other political subdivisions, organizations, or individuals, to be used in part payment of the salary and expenses of the juvenile officer. Such gifts, grants, or donations, shall be placed in a special fund and disbursed in payment of the salary and expenses of the juvenile officer as fixed by the order of the Commissioners Court of the county. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer from the special fund established for that purpose and created by contributions or from the general fund of the county as may be necessary; provided, however, that the total amount payable from all sources to the juvenile officer for salary and expenses in any one year shall not exceed the amount authorized to be paid to such officer by this Section.

[Amended by Acts 1977, 65th Leg., p. 1529, ch. 622, § 1, eff. Aug. 29, 1977.]

Art. 5139Q. Midland County Juvenile Board

Sec. 1. There is a county juvenile board in and for Midland County, which shall be composed of the county judge of Midland County, the judge of each judicial district which includes Midland County, the judge of the court of domestic relations in Midland County, and the judge of the county court at law of Midland County. The official title of the board shall be the Midland County Juvenile Board. The judge

of the court which is designated as the juvenile court of the county shall be the chairman of the board and its chief administrative officer.

[See Compact Edition, Volume 3 for text of 2 and 3]

[Amended by Acts 1977, 65th Leg., p. 1628, ch. 640, § 11, eff. Jan. 1, 1978.]

Art. 5139W. Lamar County Juvenile Board

[See Compact Edition, Volume 4 for text of 1]

Sec. 2. As compensation for the added duties hereby imposed upon him, the chairman of such board may be allowed additional compensation in the amount of Two Thousand, Four Hundred Dollars ($2,400) per annum, which shall be paid in twelve (12) equal installments out of the general fund or any other available fund of Lamar County. The Commissioners Court of Lamar County may allow each other member of the board additional compensation in an amount not to exceed Two Thousand, Four Hundred Dollars ($2,400) per annum, to be paid in twelve (12) equal installments out of the general fund or any other available fund of Lamar County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

[Amended by Acts 1975, 64th Leg., p. 1933, ch. 631, § 1, eff. June 19, 1975.]

Art. 5139Z. Andrews County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Andrews County, which shall be known as the Andrews County Juvenile Board. It shall be composed of the county judge of Andrews County, the judge of each judicial district which includes Andrews County, and the county attorney of Andrews County or his successor. The judge of the court which is designated as the juvenile court for Andrews County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, and any amendments thereto.

[See Compact Edition, Volume 3 for text of 2]

[Amended by Acts 1977, 65th Leg., p. 1789, ch. 717, § 1, eff. June 15, 1977.]

Art. 5139AA. Marion County Juvenile Board

Sec. 1. There is established the Marion County Juvenile Board, which shall be composed of the County Judge of Marion County and the Judge of each judicial district that includes Marion County. The Judge of the Court which is designated as the Juvenile Court for Marion County shall be Chairman of the Board and its chief administrative officer.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1981, 67th Leg., p. 57, ch. 25, § 12, eff. April 8, 1981.]

Art. 5139BB. Liberty County Juvenile Board

Sec. 1. There is hereby established a county juvenile board in Liberty County, which shall be composed of the county judge of the County Court of Liberty County, who shall act as juvenile judge if he qualifies under the provisions of Section 51.04, Family Code, to serve as judge of the juvenile court, and two (2) or more citizens of Liberty County, which citizens shall be appointed by the county judge, with the approval of the County Commissioners Court of Liberty County, for a period of two (2) years. If the county judge is not qualified to act as juvenile judge under the Family Code, a district judge having Liberty County within his jurisdiction shall act as the juvenile judge of Liberty County. The official title of the board shall be the Liberty County Juvenile Board.

Sec. 2. As compensation for the added duties imposed upon the juvenile board, the juvenile judge shall be allowed an additional compensation in an amount to be fixed by the Commissioners Court of the County; such other members of the juvenile board shall be allowed additional compensation in an amount to be fixed by the Commissioners Court of the County. The additional compensation provided in this section shall be paid monthly in twelve (12) equal installments out of the general fund or any other appropriate fund of the County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges or any salary now received by said citizen members of the Liberty County Juvenile Board.

Sec. 3. The juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925 and any amendments thereto. The board may appoint a juvenile officer and such assistants as may be necessary, whose salary shall be fixed by the Commissioners Court of said Liberty County, Texas. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. All claims for expenses of the juvenile officer and his assistants shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The Commissioners Court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer and his assistants. The same person may serve as the juvenile officer and as a citizen member of the Liberty County Juvenile Board; however, if a citizen member of the Liberty County Juvenile Board also is appointed to serve as the juvenile officer then he shall receive only the compensation set forth herein for the juvenile officer. All salaries referred to in this amendment shall be effective as of January 1, 1978.

[Amended by Acts 1977, 65th Leg., p. 1178, ch. 451, § 1, eff. Aug. 29, 1977.]

Art. 5139CC. Hunt County Juvenile Board

Sec. 1. There is hereby established a County Juvenile Board in Hunt County, which shall be composed of the county judge, the judge of the county court at law in Hunt County, the judge of the 196th Judicial District, and three non-salaried members who are citizens of Hunt County, one to be appointed by the county judge, one by the judge of the county court at law, and one by the district judge. The terms of office of the non-salaried appointed members of the Board are for one year each. The terms of the non-salaried appointed members expire on December 31st of each year.

[See Compact Edition, Volume 3 for text of 2 and 3]

Sec. 4. As compensation for the added duties imposed upon the judicial members of the Juvenile Board, the judges of the county court, county court at law, and district court may be allowed additional compensation not to exceed Three Thousand, Six Hundred Dollars ($3,600) per year, and the clerk of the juvenile court may be allowed additional compensation not to exceed Eight Hundred Dollars ($800) per year. Any additional compensation allowed shall be fixed by the Commissioners Court of Hunt County, and paid monthly in twelve (12) equal installments out of the general fund or any other available fund of the county. Such compensation shall be in addition to all other compensation not provided or allowed by law for the county judges, district judges, judges of the county court at law, and clerk of the juvenile court and shall not be counted as fees of office. Each other member of the Board serves without compensation. This Act shall be cumulative of existing laws relating to compensation for judges of district courts, county courts, and county courts at law, and clerks of juvenile courts. [Amended by Acts 1977, 65th Leg., p. 1356, ch. 537, § 1, eff. June 15, 1977.]

Art. 5139DD. Gray County Juvenile Board

[See Compact Edition, Volume 4 for text of 1]

Sec. 2. Members of the juvenile board shall be reimbursed by the county for their actual and necessary expenses incurred in the performance of their duties. The commissioners court may pay the members of a juvenile board such sums as will reasonably compensate them for their added duties as members of the juvenile board, which shall be in addition to all other compensation provided or allowed by law, but may not reduce the compensation or expenses below the amount paid to juvenile board members as compensation and expenses on the effective date of this Act. Each member of the juvenile board shall receive the same rate of compensation.

Sec. 3. The juvenile board shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended. The board may appoint juvenile officers whose salaries shall be fixed by the juvenile board. The juvenile officers shall have the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, as amended. All claims for expenses of the juvenile officers shall be certified by the juvenile board as being necessary in the performance of the duties of that juvenile officer. [Amended by Acts 1979, 66th Leg., p. 1077, ch. 506, § 1, eff. June 6, 1979.]

Art. 5139II. Juvenile Boards in Comal, Hays, Caldwell, Austin and Fayette Counties

Sec. 1. There are hereby established juvenile boards in Comal, Hays, Caldwell, Austin and Fayette Counties, each of which shall be composed of the county judge of the county and the district judge of one of the two judicial districts comprised of these five (5) counties, as the commissioners court in each county shall determine, except that in Hays County the juvenile board shall be composed of the county judge of the county, the district judges of the two judicial districts of said county, the Hays County Attorney or his successor and the Hays County Court at Law Judge.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1975, 64th Leg., p. 1037, ch. 401, § 1, eff. June 19, 1975.]

Art. 5139II-1. Juvenile Placement Special Fund; Comal County

Creation of Fund

Sec. 1. The juvenile placement special fund is created in the general fund of Comal County. The juvenile board in Comal County shall use this special fund to assist organizations providing housing facilities or treatment programs for juveniles as authorized by this Act.

Fees in Civil Cases

Sec. 2. (a) For each civil suit filed in a district or statutory county court of Comal County, the clerk of the court shall collect from the person filing the suit at the time of filing a fee of $4. The clerk of a justice court of Comal County shall collect from each person filing a civil suit in the justice court or small claims court a fee of $1.50. A fee under this section is in addition to other fees imposed for filing a civil suit in a district, statutory county, justice, or small claims court of Comal County.

(b) The clerk collecting the fee shall keep separate records of the fees collected under this section and shall deposit the fees in the juvenile placement special fund.

Costs in Criminal Cases

Sec. 3. (a) A person shall pay $4 as a court cost, in addition to other court costs, on conviction in a district or statutory county court of Comal County

of a criminal offense defined by statute. A person convicted in a justice court of Comal County of a criminal offense defined by statute shall pay $1.50 as a court cost, in addition to other court costs imposed on conviction in the justice court.

(b) A court cost under this section is collected in the same manner as other fines or costs.

(c) The officer collecting the costs in a district, statutory, county, or justice court case shall keep separate records of the funds collected as costs under this section and shall deposit the funds in the juvenile placement special fund.

Disbursement of Funds

Sec. 4. (a) The juvenile board in Comal County may direct the county treasurer for the county to disburse money from the juvenile placement special fund to an organization if the organization:

(1) is a nonprofit organization as defined by the Texas Non-Profit Corporation Act (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes);

(2) provides a temporary or permanent housing facility or treatment program for delinquent children, children in need of supervision, or children otherwise dependent, neglected, or in need of care; and

(3) is approved by the board for the provision of housing facilities or treatment programs for juveniles.

(b) The county treasurer for Comal County shall keep records of the amount of funds on deposit in and the disbursements from the juvenile placement special fund. The juvenile board in Comal County may direct the treasurer to file reports on the status of the special fund.

[Acts 1981, 67th Leg., p. 2275, ch. 554, §§ 1 to 4, eff. Sept. 1, 1981.]

Section 6 of the 1981 Act provides:

"(a) Section 2 of this Act applies only to civil cases filed in a district, statutory county, justice, or small claims court of Comal County on or after this Act's effective date.

"(b) Section 3 of this Act applies only to convictions for offenses committed on or after this Act's effective date. For purposes of this subsection, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

Art. 5139JJ. Victoria County Juvenile Board

Sec. 1. There is established a juvenile board in Victoria County, which shall be composed of the county judge of Victoria County, the judge of each judicial district which includes Victoria County, and the judge of each county court at law in Victoria County. The judge of the court which is designated the juvenile court for Victoria County shall be chairman of the board and its chief administrative officer. The board may designate a district court, the county court, or a county court at law with juvenile jurisdiction to be the juvenile court of the county. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1979, 66th Leg., p. 1010, ch. 443, § 12, eff. Aug. 27, 1979.]

Art. 5139PP. Bell County Juvenile Board

Sec. 1. There is hereby established a Juvenile Board for Bell County, which shall be known as the Bell County Juvenile Board. It shall be composed of the district judges of the several judicial districts of the county, the county judge of Bell County, the judge of the County Court at Law of Bell County, and the judge of the County Court at Law No. 2 of Bell County. The county judge of Bell County shall be chairman of the board and its chief administrative officer. The board shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of 1925, and any amendments thereto.

[See Compact Edition, Volume 4 for text of 2]

[Amended by Acts 1975, 64th Leg., p. 79, ch. 37, § 6, eff. April 3, 1975.]

Art. 5139VV. Harris County Juvenile and Child Welfare Boards

[See Compact Edition, Volume 4 for text of Subchapter A]

SUBCHAPTER B. CHIEF JUVENILE PROBATION OFFICER

[See Compact Edition, Volume 4 for text of 6 to 9]

Support Payments

Sec. 10. (a) If the juvenile board directs the chief juvenile probation officer to receive payments for the support of wives and children made under the order of the district courts, courts of domestic relations or the juvenile courts of Harris County, he shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interests of the parties involved in each case.

(b) If the juvenile board directs the district clerk to receive support payments, the clerk shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interests of the parties involved in each case.

(c) In all cases in which the juvenile board directs the chief juvenile probation officer to receive support payments, he shall enter into a surety bond with some solvent surety company authorized to execute bonds of this type in Texas. The bond shall be conditioned upon the chief juvenile probation officer's faithful performance of the duties of his position and upon his properly accounting for any moneys entrusted to him. The Commissioners Court shall fix the amount of the bond and shall approve its terms. The Commissioners Court shall pay the premium for the bond out of the general funds of the county.

(d) The chief juvenile probation officer shall keep an accurate and complete record of all his receipts and disbursements of support payment funds. The record is open to inspection by the public. The County Auditor shall inspect the record and shall audit the accounts quarterly, making a report of his findings and recommendations to the juvenile board.

(e) If the juvenile board directs the chief juvenile probation officer to receive support payments, a fee, not to exceed One Dollar ($1.00) per month, may be assessed for each individual transaction of receiving and disbursing each individual payment of support moneys. Such fee may be assessed, subject to the approval of the Commissioners Court, upon a determination of the juvenile board that additional funds are necessary to assist in the maintenance of a support office by the chief juvenile probation officer. The fee shall be collected by the chief juvenile probation officer from the payor annually in advance and shall be paid to the County Treasurer to be kept in a separate fund. This fund shall be administered by the juvenile board, subject to the approval of the Commissioners Court, for the purpose of assisting in the payment of the operating expenses of the support office in the juvenile probation office.

[See Compact Edition, Volume 4 for text of Subchapters C to E]

[Amended by Acts 1975, 64th Leg., p. 1177, ch. 438, § 1, eff. June 19, 1975.]

Art. 5139ZZ. Orange County Juvenile Board

[See Compact Edition, Volume 4 for text of 1]

Sec. 2. (a) The commissioners court may authorize and pay each member of the juvenile board an annual sum as compensation for serving as a member of the juvenile board.

(b) The commissioners court may reimburse the judge of the juvenile court for actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems.

Sec. 3. The juvenile board may

(1) appoint a qualified person, trained or experienced in the field of juvenile and parental counseling, as juvenile probation officer;

(2) suspend or remove any employee at any time for good cause;

(3) require any person employed by the board to enter into a bond, payable to the board, conditioned on the faithful performance of his duties, with the premium for the bond payable by the board;

(4) authorize the use of foster homes for the temporary care of delinquent children, predelinquent children, children in need of supervision, or status offenders; and

(5) accept gifts or grants of real or personal property, subject to the terms and conditions on which they are made.

Sec. 4. The juvenile board shall

(1) prescribe the duties and conditions of employment of its employees;

(2) control and supervise all homes, schools, farms, and other institutions or places of housing maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;

(3) appoint superintendents of institutions maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;

(4) designate the juvenile court in accordance with Section 51.04 of the Family Code;

(5) submit an annual proposed budget to the Orange County Commissioners Court; and

(6) set all fees and costs related to the functions of those programs and services administered by the board.

[See Compact Edition, Volume 4 for text of 5 to 7]

Sec. 8. (a) For the purpose of maintaining a child support collection function within Orange County, the juvenile board shall establish an Orange County Child Support Office and appoint a child support collector charged with the duty of collecting and dispersing child support payments as ordered by the judicial courts of Orange County. To assist in the financial maintenance of the child support office, there shall be taxed, collected, and paid as other costs the minimum sum of $5 in each divorce case hereafter filed in a proper court of jurisdiction of Orange County. Such costs shall be collected by the district clerk and when collected shall be paid to the treasurer of Orange County to be kept in a separate fund known as the "Child Support Fund." This fund shall be administered by the Juvenile Board of Orange County for the purpose of assisting in paying the costs of maintaining the child support office, including payment of salaries and other expenses of the collector of child support and his assistants, including the purchase of supplies and equipment and all other necessary expenses of the office. This fund shall be supplemented out of the general fund or other available funds of the county where necessary.

(b) Each month for which a person has been ordered by a court of Orange County to pay child support, alimony, or separate maintenance into the Orange County Child Support Office, the payor of such child support, alimony, or separate maintenance shall pay into the Orange County Child Support Office a child support service fee in the minimum sum of $1 per month payable annually in advance, or monthly, as ordered by the court; provided, how-

ever, that in those instances where the payor of child support, alimony, or separate maintenance is a member of the armed services and where such child support, alimony, or separate maintenance is paid into the Orange County Child Support Office by government check in behalf of such military personnel, and wherein the monthly payments exceed that amount ordered by the court, the recipient (payee) of such child support, alimony, or separate maintenance shall be the person responsible for paying such annual child support service fee into the Orange County Child Support Office.

(c) The first such child support service fee shall be due on the date such payor of child support, alimony, or separate maintenance has been ordered by a court of Orange County to commence payments of child support, alimony, or separate maintenance and thereafter for all such persons ordered to pay child support, alimony, or separate maintenance on each succeeding annual anniversary, or each succeeding month, or as otherwise ordered in the original court order for payment. In those instances where the payee is charged with the responsibility of making such service fee payments, the first such payment shall become due on the date of receipt of the initial child support payment and annually thereafter on the anniversary of the date of the receipt of the first child support allotment check, or monthly, or as otherwise ordered by the court, so long as the payor is a member of the armed services and so long as child support allotment payments exceed the amount of child support ordered by the court.

(d) Such child support service fees shall be for the purpose of meeting certain expenses of the child support office, including postage, equipment, stationery, office supplies, subpoenas, salaries and other expenses of the child support office authorized by the Orange County Juvenile Board.

(e) A record shall be kept of all child support service fees collected and expended, and such moneys shall be deposited in the child support fund and shall be administered by the Juvenile Board of Orange County.

(f) Failure or refusal of a person to pay such child support service fee on time and in the amount ordered by the court shall make such person susceptible to an action for contempt of court.

(g) This fund shall be subject to regular audit by the county auditor or other duly authorized persons. Annual report of receipts and expenditures in this account shall be made to the commissioners court.

Sec. 8a. (a) For purposes of providing legal services, court costs, and expenses of service in the handling of child support, separate maintenance, and temporary alimony, there shall be assessed costs of court, as designated by the district clerk, in all matters involving contempt of court for failure and refusal to pay such child support, separate maintenance, or temporary alimony, and in matters involving contempt of court for failure or refusal to abide by orders of the court with respect to child visitation privileges.

(b) Such costs of court shall be paid into the Orange County District Clerk's Office by the person initiating such contempt proceedings, but this sum, in addition to any other expenses incurred by the complainant in the prosecution of the contempt action may, in the judgment of the court, be assessed against the contemner for reimbursement to the complainant.

(c) Receipts of all disbursements of moneys paid into the child support office for matters involving actions of contempt shall be kept on file and all such funds received by the child support office shall be deposited to the child support account. This fund shall be administered by the Orange County Juvenile Board and shall be subject to regular audit by the county auditor or other duly authorized person. Annual report of receipts and expenditures in this account shall be made to the commissioners court.

(d) The costs of court prescribed by this section shall not be collected from any person who qualifies as, proclaims to be, and is adjudged a pauper and files an affidavit in support thereof.

Sec. 9. For the purpose of maintaining adoption investigation services, there shall be taxed, collected, and paid as other costs the minimum sum of $25 in each adoption case hereafter filed in any court of Orange County. Such cost shall be collected by the district clerk, and when collected, shall be placed in a separate fund known as the "Adoption Investigation Fund." This fund shall be administered by the Juvenile Board of Orange County for the purpose of maintaining the costs of adoption investigation services. This fund shall be supplemented out of the general fund or other available funds of the county where necessary.

Sec. 10. Repealed by Acts 1981, 67th Leg., p. 398, ch. 160, § 2, eff. Aug. 31, 1981.

Sec. 11. It shall be the duty of the chief probation officer to keep a record which will at all times show the names of all children in Orange County determined to be delinquent, predelinquent, children in need of supervision, or status offenders, and the names and addresses of the persons having custody of such juveniles; and visitations by such officer and his assistants shall be made at such reasonable times as seem necessary or proper or as may be directed by the juvenile board, and a written report shall be made to the judge of the juvenile court showing such facts relating to the environment, treatment, education, welfare and other information which may assist the court in determining the proper disposition to be made of any juvenile.

[Amended by Acts 1981, 67th Leg., p. 395, ch. 160, §§ 1, 2, eff. Aug. 31, 1981.]

Art. 5139AAA. Anderson, Henderson and Houston Counties; Juvenile Boards

Sec. 1. (a) The Juvenile Board of Anderson County is created. The board consists of the County Judge of Anderson County, the judges of the district courts in Anderson County, the District Attorney for the 3rd Judicial District, the District Attorney for the 173rd Judicial District, and the County Attorney of Anderson County. The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

[See Compact Edition, Volume 4 for text of 1(b) to 1(d)]

(e) The County Attorney of Anderson County has the duty to file, prosecute, and try on behalf of the state all juvenile cases in the Juvenile Court of Anderson County. In the event the county attorney is ill or unable for any reason to perform that duty, the District Attorney for the 3rd Judicial District or the District Attorney for the 173rd Judicial District shall perform the duty when called on by the Judge of the Juvenile Court of Anderson County.

Sec. 2. (a) The Juvenile Board of Henderson County is created. The board consists of the County Judge of Henderson County, the judges of the district courts in Henderson County, the District Attorney for the 3rd Judicial District, the District Attorney for the 173rd Judicial District, and the County Attorney of Henderson County. The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

[See Compact Edition, Volume 4 for text of 2(b) to 2(d)]

(e) The Juvenile Board of Henderson County shall appoint a juvenile officer for Henderson County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of the state. The juvenile officer shall be paid a salary and an allowance for expenses as fixed by the juvenile board and approved by the commissioners court, to be paid out of the general fund or any other available fund of Henderson County. The juvenile board by a majority vote shall have the power to discharge any appointee, and such discharge need not be approved by the commissioners court.

(f) The County Attorney of Henderson County has the duty to file, prosecute, and try on behalf of the state all juvenile cases in the juvenile court of Henderson County. In the event the county attorney is ill or unable for any reason to perform that duty, the District Attorney for the 3rd Judicial District or the District Attorney for the 173rd Judicial District shall perform the duty when called on by the judge of the juvenile court of Henderson County.

Sec. 3. (a) The Juvenile Board of Houston County is created. The board consists of the County Judge of Houston County, the judges of the district courts in Houston County, the District Attorney for the 3rd Judicial District, and the District Attorney for the 173rd Judicial District. The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

[See Compact Edition, Volume 4 for text of 3(b) to (d)]

[Amended by Acts 1975, 64th Leg., p. 336, ch. 142, §§ 1 to 3, eff. Jan. 1, 1976; Acts 1975, 64th Leg., p. 1192, ch. 449, § 1, eff. June 19, 1975; Acts 1981, 67th Leg., p. 2086, ch. 476, § 1, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 2497, ch. 656 § 1, eff. Jan. 1, 1982.]

Art. 5139BBB. Nueces County Juvenile Board

[See Compact Edition, Volume 3 for text of 1 to 14]

Compensation of Board Members; Payment

Sec. 15. The members of the Nueces County Juvenile Board, in consideration of the additional duties imposed upon them, shall receive additional annual compensation of not less than $4,200 nor more than $8,000, as determined by the commissioners court. The compensation provided for in this section shall be paid by the commissioners court and is in addition to all other compensation allowed by law to such officers; provided that the compensation herein provided shall be the sole and only compensation which may be paid to members of the juvenile board in consideration of their services on such Board, such compensation to be in lieu of any compensation for such services which may be provided by other statutory provisions concerning juvenile boards.

[See Compact Edition, Volume 3 for text of 16 and 17]

[Amended by Acts 1977, 65th Leg., p. 1758, ch. 706, § 1, eff. Sept. 1, 1977.]

Sections 2 and 3 of the 1977 Act provided as follows:

"Sec. 2. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

"Sec. 3. This Act shall be effective on and after September 1, 1977."

Art. 5139CCC. Johnson County Juvenile Board

[See Compact Edition, Volume 4 for text of 1]

Sec. 2. As compensation for the additional duties imposed upon them, the county and district judges who are members of the board shall each be allowed additional compensation payable in 12 equal monthly installments out of the general fund or any other available fund of Johnson County. The compensation shall be set by the Commissioners Court of Johnson County.

[See Compact Edition, Volume 4 for text of 3 and 4]

[Amended by Acts 1979, 66th Leg., p. 386, ch. 176, § 1, eff. May 15, 1979.]

Art. 5139HHH. Collin County Juvenile Board

Sec. 1. The county judge of Collin County, the judges of the district courts having jurisdiction in Collin County, and the judges of the county courts at law shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Collin County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed upon them, the county, county court at law, and district judges who are members of the board may each receive additional compensation of not more than $6,000.00 per year, payable in 12 equal monthly installments out of the general fund or any other available fund of Collin County.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts, county judges, and county court at law judges.

[See Compact Edition, Volume 4 for text of 4]

[Amended by Acts 1975, 64th Leg., p. 375, ch. 166, § 8, eff. Jan. 1, 1975; Acts 1979, 66th Leg., p. 839, ch. 375, § 9, eff. Jan. 1, 1981.]

Art. 5139JJJ. Webb County Juvenile Board

Sec. 1. The Webb County Juvenile Board is composed of the County Judge of Webb County, the judge of the County Court at Law of Webb County, and the judge of each judicial district that includes Webb County.

Sec. 2. The Webb County Juvenile Board may:

(a) appoint a qualified person, trained or experienced in the field of juvenile and parental counseling, as juvenile probation officer;

(b) suspend or remove any employee at any time for good cause;

(c) require any person employed by the board to enter into a bond, payable to the board, conditioned on the faithful performance of his duties, with the premium for the bond payable by the board;

(d) authorize the use of foster homes for the temporary care of children charged with engaging in delinquent conduct or children deemed to be in need of supervision; and

(e) accept gifts or grants of real or personal property, subject to the terms and conditions on which they are made, for the use and benefit of the juvenile justice system.

Sec. 3. The Webb County Juvenile Board shall:

(a) prescribe the duties and conditions of employment of its employees;

(b) control and supervise all homes, schools, farms, and other institutions or places of housing maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;

(c) appoint superintendents of institutions maintained and used chiefly by the county for the training, education, detention, support, or correction of juveniles;

(d) designate the juvenile court in Webb County in accordance with Section 51.04, Family Code; and

(e) submit an annual proposed budget to the Webb County Commissioners Court.

Sec. 4. (a) As compensation for the added duties imposed on members of the Webb County Juvenile Board, each member thereof may be allowed additional compensation of not more than $4,800 per year, to be fixed by the commissioners court of the county and paid monthly in 12 equal installments out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

(b) The Commissioners Court of Webb County may reimburse the judge of the juvenile court for actual and necessary expenses incurred in attending seminars and other educational or instructional meetings pertaining to juvenile problems. The amount payable under this subsection is limited to a maximum of $600 per year.

Sec. 5. The juvenile probation officer for Webb County has all the powers of a peace officer for the purpose of performing his duties under this Act.

Sec. 6. The juvenile probation officer for Webb County shall:

(a) appoint assistant juvenile probation officers with the advice and consent of the juvenile board;

(b) investigate all cases referred to him by the board;

(c) investigate all cases brought before the juvenile court;

(d) take charge of juveniles and perform services for them as directed by the board or the juvenile court;

(e) in carrying out the duties required in this Act, act in the best interest of the juvenile;

(f) furnish the board and the juvenile court any information and assistance required by them;

(g) make a written report to the judge of the juvenile court showing facts relating to the environment, treatment, education, welfare, and other information that may assist the court in determining the proper disposition to be made of any juvenile; and

(h) keep a record that will at all times show the names of all referrals and delinquent juveniles within Webb County and the names and addresses of the persons having custody of them.

Sec. 7. The Commissioners Court of Webb County shall fix the salary of persons employed by the juvenile board. The commissioners court may appropriate money from the general fund to the juvenile board for the administration of this Act. The juvenile board shall administer this Act with money appropriated by the commissioners court.

[Acts 1975, 64th Leg., p. 17, ch. 13, art. 1, eff. March 13, 1975. Amended by Acts 1977, 65th Leg., p. 670, ch. 252, § 1, eff. May 25, 1977.]

Art. 5139KKK. East Texas Juvenile Board

Sec. 1. (a) The East Texas Juvenile Board, having jurisdiction in the counties of Jasper, Newton, Sabine, and San Augustine, is created.

(b) The board is composed of the county judges of Jasper, Newton, Sabine, and San Augustine counties and the judge of each district court having jurisdiction in any of those counties.

(c) The District Judge of the First Judicial District is chairman of the board and its chief administrative officer. The board shall elect a vice-chairman from among its members who are county judges.

Sec. 2. Within the area of jurisdiction of the East Texas Juvenile Board, the board may designate the juvenile courts, provide a juvenile probation program, and perform all powers and duties prescribed by law for juvenile boards.

Sec. 3. As compensation for the added duties imposed on the members of the East Texas Juvenile Board, each member who is a district judge may be allowed additional compensation to be fixed by a majority of the county commissioners of the participating counties and paid monthly in 12 equal installments out of the general fund or any available fund of the counties on a pro rata basis according to the population of each county in the last preceding federal census, and each member who is a county judge may be allowed additional compensation to be fixed by the commissioners court of his county and paid monthly in 12 equal installments out of the general fund or any available fund of the county. Such compensation shall be in addition to all other compensation provided or allowed by law for county judges and district judges.

[Acts 1975, 64th Leg., p. 17, ch. 13, art. 2, eff. March 13, 1975.]

Art. 5139LLL. Colorado, Lavaca, Gonzales and Guadalupe Counties; Juvenile Boards

Sec. 1. There is hereby established a county juvenile board in each of the counties of Colorado, Lavaca, Gonzales, and Guadalupe, which shall be composed of the county judge and the judge of each judicial district that includes the county; provided, however, that the County Judge of Guadalupe County, at his option, from time to time, can substitute the Judge of the County Court at Law of Guadalupe County for himself, or provide that both the County Judge and the Judge of the County Court at Law of Guadalupe County shall serve. The official title of the board in each county shall be the name of the county followed by the words "County Juvenile Board." The judge of the court that is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the added duties imposed on members of each juvenile board, each member shall be allowed additional compensation of not less than $100 per month and not more than $400 per month, to be fixed by the commissioners court of the county and paid out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. The board may appoint a juvenile officer, with the concurrence of the commissioners court, whose salary shall be fixed by the commissioners court of the county. The juvenile officer shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of Texas, 1925, and any amendments thereto. All claims for expenses of the juvenile officer shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of the juvenile officer. The commissioners court shall provide the necessary funds for payment of the salary and expenses of the juvenile officer.

[Acts 1975, 64th Leg., p. 850, ch. 324, eff. May 29, 1975.]

Art. 5139MMM. Rockwall County Juvenile Board

Sec. 1. There is established a juvenile board for Rockwall County to be known as the Rockwall County Juvenile Board. It is composed of the judges of the district courts having jurisdiction in Rockwall County and the county judge of Rockwall County. The judge of the court which is designated as the juvenile court of Rockwall County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed on them, the judges who are members of the board may each receive additional compensation, as determined by the commissioners court, payable in 12 equal monthly installments out of the general fund or any other available fund of Rockwall County. This Act is cumulative of all other laws relating to compensation of judges of the district and county courts.

Sec. 3. The Rockwall County Juvenile Board may appoint a juvenile probation officer for Rockwall County, who shall meet all the qualifications and perform all the duties of a juvenile probation

officer as prescribed by the laws of this state. The juvenile probation officer shall be paid a salary as fixed by the commissioners court, to be paid out of the general fund or any other available fund of Rockwall County. The juvenile board may discharge an appointee and the discharge need not be approved by the commissioners court.
[Acts 1975, 64th Leg., p. 1363, ch. 519, eff. Sept. 1, 1975.]

Art. 5139NNN. Somervell County Juvenile Board

Sec. 1. The county judge of Somervell County and the judge of the judicial district which includes Somervell County shall constitute the juvenile board of that county. The judge of the court which is designated as the juvenile court of Somervell County shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the additional duties imposed upon them, the county and district judge or judges who are members of the board may, if approved by the commissioners court of the county, be compensated by an annual salary to be set by the commissioners court, payable in 12 equal monthly installments out of the general fund or any other available fund of Somervell County. Such compensation shall be in addition to all other compensation now provided or allowed by law for county and district judges.

Sec. 3. This Act shall be cumulative of existing laws relating to compensation of judges of the district courts and county judges.

Sec. 4. The Juvenile Board of Somervell County shall appoint a juvenile officer for Somervell County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this state. The juvenile officer shall be paid a salary to be fixed by the commissioners court and to be paid out of the general fund or any other available fund of Somervell County. The juvenile board by majority vote shall have the power to hire and discharge any appointee and such action need not be approved by the commissioners court.
[Acts 1977, 65th Leg., p. 890, ch. 334, §§ 1 to 4, eff. Aug. 29, 1977.]

Art. 5139*OOO*. Juvenile Boards in Carson, Childress, Collingsworth, Donley, and Hall Counties

Sec. 1. There is hereby established a county juvenile board in Carson County, Childress County, Collingsworth County, Donley County, and Hall County, which shall be composed of the county judge and the judge of the judicial district which includes the county. The official title of the board shall be the name of the county followed by the words, "County Juvenile Board." The judge of the court which is designated as the juvenile court of the county shall be chairman of the board and its chief administrative officer.

Sec. 2. As compensation for the duties imposed on members of each juvenile board, each member shall be paid compensation of not less than $50 per month and not more than $150 per month to be fixed by the commissioners court of the county and paid out of the general fund of the county. Such compensation shall be in addition to all other compensation now provided or allowed by law for county judges and district judges.

Sec. 3. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto. Each board may, with the concurrence of the commissioners court, appoint a juvenile officer whose salary shall be fixed by the commissioners court. The juvenile officer shall have the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto. All claims for expenses of the juvenile officer in each county shall be certified by the chairman of the juvenile board as being necessary in the performance of the duties of that juvenile officer. Providing funding for the payment of the salary and expenses of the juvenile officer shall be within the discretion of the commissioners court of each county.
[Acts 1977, 65th Leg., p. 1239, ch. 478, §§ 1 to 3, eff. June 15, 1977.]

Art. 5139PPP. Galveston County Juvenile Board

Juvenile Board

Sec. 1. There is a juvenile board to be known as the Galveston County Juvenile Board, which is composed of the county judge, the judge of each statutory county court in Galveston County, and the judge of each district court in Galveston County. The juvenile board shall elect its chairman and other officers annually.

Duties

Sec. 2. The juvenile board shall meet at least once each month to review the work of the chief juvenile officer and juvenile officers and to consider any other matters concerning juveniles and the disposition of cases concerning juveniles pending before the juvenile courts. The juvenile board shall appoint a person of good moral character with at least a bachelor's degree in a field of study related to work with juveniles to serve as chief juvenile officer and shall appoint persons of good moral character to serve as juvenile officers for the county. The juvenile board shall fix the salaries and allowance for the chief juvenile officer and juvenile officers and shall employ a clerk for the office. The commissioners court shall provide the necessary funds for the payment of the salaries and expenses. All claims for expenses shall be certified by the chairman of the juvenile board to the commissioners court as being necessary in the performance of the duty of the officer. The appointment of the chief juvenile offi-

cer and juvenile officers shall be filed in the office of the county clerk and the officers shall take the oath to perform their duties and shall file the oaths in the office of the county clerk. The juvenile board may remove the chief juvenile officer or a juvenile officer at any time.

Compensation

Sec. 3. The members of the juvenile board shall receive no compensation for their services on the board.

Advisory Board

Sec. 4. The commissioners court shall appoint a Citizens Juvenile Advisory Board composed of at least 15 interested citizens to consult with the Galveston County Juvenile Board and the commissioners court in regard to matters concerning juveniles. The Citizens Juvenile Advisory Board shall elect its chairman and other officers annually and may meet at its own discretion.

[Acts 1979, 66th Leg., p. 782, ch. 345, §§ 1 to 4, eff. Aug. 27, 1979.]

For similar provisions, see art. 5139PPP–1

Art. 5139PPP–1. Galveston County Juvenile Board

Sec. 1. [Amends § 1(b) of art. 1970–357]

Sec. 2. [Adds §§ 12a and 12b to art. 1970–110.3]

Sec. 3. [Repeals § 13 of art. 1970–110a]

Sec. 4. [Amends art. 3883i–2]

Sec. 5. [Enacts art. 3883i–3]

Juvenile Board

Sec. 6. There is a juvenile board to be known as the Galveston County Juvenile Board, which is composed of the county judge, the judge of each statutory county court in Galveston County, and the judge of each district court in Galveston County. The juvenile board shall elect its chairman and other officers annually.

Duties

Sec. 7. The juvenile board shall meet at least once each month to review the work of the chief juvenile officer, juveniles, and the disposition of cases concerning juveniles pending before the juvenile courts. The juvenile board shall appoint a person of good moral character with at least a bachelor's degree in a field of study related to work with juveniles to serve as chief juvenile officer and shall appoint persons of good moral character to serve as juvenile officers for the county. The juvenile board shall fix the salaries and allowance for the chief juvenile officer and juvenile officers and shall employ a clerk for the office. The commissioners court shall provide the necessary funds for the payment of the salaries and expenses. All claims for expenses shall be certified by the chairman of the juvenile board to the commissioners court as being necessary in the performance of the duty of the officer. The appointment of the chief juvenile officer and juvenile officers shall be filed in the office of the county clerk and the officers shall take the oath to perform their duties and shall file the oaths in the office of the county clerk. The juvenile board may remove the chief juvenile officer or a juvenile officer at any time.

Compensation

Sec. 8. The members of the juvenile board shall receive no compensation for their services on the board.

Advisory Board

Sec. 9. The commissioners court shall appoint a Citizens Juvenile Advisory Board composed of at least 15 interested citizens to consult with the Galveston County Juvenile Board and the commissioners court in regard to matters concerning juveniles. The Citizens Juvenile Advisory Board shall elect its chairman and other officers annually and may meet at its own discretion.

[Acts 1979, 66th Leg., p. 1640, ch. 686, §§ 6 to 9, eff. Aug. 27, 1979.]

For similar provisions, see art. 5139PPP

Art. 5139QQQ. Grayson County Juvenile Board

Composition of Board

Sec. 1. The county judge of Grayson County and the judges of the district courts having jurisdiction in Grayson County constitute the Juvenile Board of Grayson County. The judge of the court which is designated as the juvenile court of Grayson County is chairman of the board and its chief administrative officer.

Compensation

Sec. 2. As compensation for the additional duties imposed on them, the county judge and the district judges who are members of the board may each receive additional compensation in an amount to be fixed by the commissioners court, payable in 12 equal monthly installments out of the general fund or any other available fund of Grayson County.

Cumulative Effect

Sec. 3. This Act is cumulative of existing laws relating to compensation of the judges of the district courts and the county judge.

[Acts 1979, 66th Leg., p. 916, ch. 423, §§ 1 to 3, eff. Aug. 27, 1979.]

Art. 5139RRR. Hemphill, Roberts, and Lipscomb Counties Juvenile Boards

County Juvenile Boards

Sec. 1. There is established a juvenile board in each of the counties of Hemphill, Roberts, and Lipscomb, which shall be composed of the county judge and the judges of the judicial districts which are included in the county. The official title of the board shall be the name of the county followed by the words, "County Juvenile Board."

Chairman

Sec. 2. Unless otherwise provided by law, the juvenile board of each county shall select a member to act as chairman.

Powers

Sec. 3. Each juvenile board established by this Act shall have all the powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto and conferred by general law. Each board may appoint a juvenile officer whose salary shall be fixed by the juvenile board. The juvenile officer shall have the powers and duties prescribed by Article 5142, Revised Civil Statutes of Texas, 1925, as amended, and any amendments thereto and by general law. All claims for expenses of the juvenile officer in each county shall be certified by the juvenile board as being necessary in the performance of the duties of that juvenile officer.

Compensation

Sec. 4. (a) Members of a juvenile board shall be reimbursed by the county for their actual and necessary expenses incurred in the performance of their duties.

(b) The commissioners court of each county may pay the members of a juvenile board such sums as will reasonably compensate them for their added duties as members of the juvenile board, which shall be in addition to all other compensation provided or allowed by law. All board members shall receive the same rate of compensation for their services.

[Acts 1979, 66th Leg., p. 1186, ch. 577, §§ 1 to 4, eff. Aug. 27, 1979.]

Art. 5139SSS. Brazoria, Fort Bend, Matagorda, and Wharton Counties Juvenile Boards

In each of the Counties of Brazoria, Fort Bend, Matagorda, and Wharton, the judge of each district court of the county, the county judge of the county, and the judge of each county court at law in the county constitute a juvenile board for the county. The members composing the juvenile board in each county shall each be allowed additional compensation which shall be paid in 12 equal monthly installments out of the general fund of the county in an amount to be fixed by the commissioners court of each county.

[Acts 1981, 67th Leg., p. 54, ch. 25, § 7, eff. April 8, 1981.]

Art. 5139TTT. Brewster, Crockett, Jeff Davis, Pecos, Presidio, Reagan, Sutton, Upton Counties Juvenile Boards

County Juvenile Boards

Sec. 1. There is established a juvenile board in each of the counties of Brewster, Crockett, Jeff Davis, Pecos, Presidio, Reagan, Sutton, and Upton, which shall be composed of the county judge and the judges of the judicial districts having jurisdiction in the county. The official title of the board for each county is the name of the county followed by the words, "County Juvenile Board."

Chairman

Sec. 2. The judge of the court that is designated as the juvenile court of the county is the chairman of the board and its chief administrative official.

Powers

Sec. 3. Each juvenile board established by this Act has all powers conferred on juvenile boards created under Article 5139, Revised Civil Statutes of Texas, 1925, as amended, and conferred by general law.

Compensation

Sec. 4. As compensation for the added duties imposed on members of the juvenile board, each member of a juvenile board established by this Act may be compensated by an annual salary in an amount not less than $1,200 per annum and not more than $3,600 per annum, to be fixed by the commissioners court and paid monthly in 12 equal installments out of the general fund of the county. Such compensation is in addition to all other compensation provided or allowed by law for county judges and district judges and must be approved by the commissioners court of the county.

[Acts 1981, 67th Leg., p. 80, ch. 41, eff. April 15, 1981.]

Art. 5139UUU. Dallas County Juvenile Board, Juvenile Probation Department, and Court Service Department

ARTICLE 1. JUVENILE BOARD

Establishment

Sec. 1.01. The Juvenile Board of Dallas County is established.

Composition

Sec. 1.02. The juvenile board consists of the county judge and the judges of each district court in Dallas County whose service thereon shall constitute a portion of their judicial duties of said district and this state.

Officers

Sec. 1.03. The chairman of the board shall be selected from the members of the board at an election to be held annually at its first meeting in January of each year.

Meetings

Sec. 1.04. (a) The board shall hold regular meetings as determined by the board at its first meeting in January. It may hold other meetings at the call of the chairman or at the request to the chairman of at least two members of the board.

(b) The board shall keep accurate and complete minutes of its meetings. The minutes are open to inspection by the public.

Executive Committee

Sec. 1.05. The board may designate an executive committee to conduct board business, subject to review of the board. The committee shall consist of the county judge, the chairman of the board, the judges of the district courts giving preference to juvenile cases, one judge of the district courts giving preference to family law matters, one judge from the district courts giving preference to criminal law cases, and one judge from the district courts handling civil cases, without preference to kind or character of case.

Duties

Sec. 1.06. (a) The director of juvenile services and chief juvenile probation officer, under the direction of the juvenile board, shall prepare the annual budget of the juvenile probation department, the court services department, and the county and other institutions for the care of neglected, dependent, and delinquent children, which are under the control of the board. The juvenile board shall approve and submit the budget to the commissioners court.

(b) The juvenile board may make an annual, written report to the commissioners court concerning the operations and efficiency of the juvenile probation department, the court services department, and the county and other institutions for the care of neglected, dependent, and delinquent children, which are under the jurisdiction and control of the board, and concerning the general adequacy of juvenile services provided by the county. The board shall include within its report any recommendations for improvements which it finds are needed.

(c) At the request of the judges of the district courts of Dallas County, the juvenile board may investigate the operations of the juvenile probation department and the county institutions for the care of neglected, dependent, and delinquent children. The juvenile board shall make a written report of the results of its investigations to the commissioners court. The juvenile board may make any special studies or investigations that it finds necessary to improve the operations of the juvenile probation department and the institutions under its control.

(d) The juvenile board has no judicial power or function. The membership of the juvenile board being required of the judicial officers of this state, said officers shall have judicial immunity as provided by the laws of this state.

(e) The juvenile board shall determine whether the director of juvenile services and chief juvenile probation officer or the director of court services shall receive and disburse payments for the support of spouses and children made under the orders of the district courts of Dallas County.

(f) The juvenile board shall determine whether the director of juvenile services and chief juvenile probation officer and his staff or the director of court services and his staff shall perform home and adoption and other studies under the orders of the district courts of Dallas County.

(g) The juvenile board shall set policies for the juvenile probation department, court services department, and other departments and facilities under its direction and control and shall have full authority given to juvenile boards under general law.

ARTICLE 2. DIRECTOR OF JUVENILE SERVICES

Establishment

Sec. 2.01. The office of director of juvenile services and chief juvenile probation officer of Dallas County is established.

Appointment

Sec. 2.02. The juvenile board shall appoint one person who shall be the director of juvenile services and chief juvenile probation officer. The juvenile board may remove this person at any time, and the appointee shall serve at the pleasure of the juvenile board.

Compensation

Sec. 2.03. The board shall set the salary for the director of juvenile services.

Duties

Sec. 2.04. The director of juvenile services is the chief administrative officer for the court services department and for all programs of the juvenile probation department and of the county and other facilities which are under the direction and control of the juvenile board, as authorized by the board.

Support Payments

Sec. 2.05. (a) If the juvenile board determines that the director of juvenile services shall receive payments for the support of spouses and children made under the orders of the district courts of Dallas County, he shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interest of the parties involved in each case. A fee for this service shall be collected as provided by this Act.

(b) In all cases in which the juvenile board determines that the director of juvenile services shall receive support payments, the director may enter into a surety bond with a solvent surety company authorized to execute bonds of this type in Texas. The bond shall be conditioned on the officer's faithful performance of the duties of the position and on the officer properly accounting for any money entrusted to him. The commissioners court shall fix the amount of the bond and shall approve its terms. The commissioners court shall pay the premium for the bond out of the general funds of the county.

(c) In all cases in which the juvenile board determines that the director of juvenile services shall receive and disburse support payments, the director

shall keep an accurate and complete record of all the receipts and disbursements of support payment funds. The record is open to inspection by the public. The county auditor shall inspect the records and shall audit the accounts at least annually, making a report of his findings and recommendations to the juvenile board.

ARTICLE 3. JUVENILE PROBATION DEPARTMENT

Establishment

Sec. 3.01. The Juvenile Probation Department of Dallas County is established.

Employees

Sec. 3.02. The director of juvenile services shall hire the employees of the juvenile probation department and may remove an employee at any time.

Compensation

Sec. 3.03. The Commissioners Court of Dallas County shall pay the salaries and expenses of the employees of the juvenile probation department as determined by the annual budget prepared by the juvenile board.

Duties

Sec. 3.04. (a) The juvenile probation officers of Dallas County shall:

(1) investigate all cases referred to them by the courts;

(2) furnish to the courts and the juvenile board any information or assistance required; and

(3) perform such other duties as may be assigned by the director of juvenile services.

(b) The juvenile probation officers of Dallas County shall have all other powers granted to juvenile probation officers by general law.

ARTICLE 4. COUNTY JUVENILE INSTITUTIONS

Employees

Sec. 4.01. The director of juvenile services shall hire the employees of the county institutions and other facilities which are under the direction and control of the juvenile board.

Compensation

Sec. 4.02. The Commissioners Court of Dallas County shall pay the salaries and expenses of the employees of the county and other facilities under the direction and control of the juvenile board as determined by the annual budget prepared by the juvenile board.

Gifts and Grants

Sec. 4.03. The juvenile board may apply for, accept, hold in trust, spend, and use for the county juvenile facilities and institutions any gift, grant, or devise of land, money, or other personal property and any donation that is to be applied for the benefit of the juvenile facilities and institutions from any governmental, corporate, personal, or other source.

ARTICLE 5. DIRECTOR OF COURT SERVICES

Establishment

Sec. 5.01. The office of director of court services of Dallas County may be established by the juvenile board. The director of juvenile services shall also be the director of court services, unless the juvenile board directs that this position be held by another person, in which case the director of court services shall be under the direction and control of the director of juvenile services.

Appointment

Sec. 5.02. The juvenile board shall appoint the director of court services, who shall serve at the pleasure of the board.

Compensation

Sec. 5.03. The juvenile board shall set the annual salary of the director of court services.

Duties

Sec. 5.04. The director of court services is the chief administrative officer of the court services department. The director shall have supervision and control of the Dallas County Child Support Office and family court counselors and shall supervise the other duties, functions, and personnel of the court services department that the juvenile board may authorize.

Support Payments

Sec. 5.05. (a) When the juvenile board determines that the director of court services or the director of juvenile services shall receive payments for the support of spouses and children made under the order of the district courts of Dallas County or any other court of competent jurisdiction, the director shall receive the payments and shall disburse the funds in the manner the courts determine to be for the best interests of the parties involved in each case. A fee for this service shall be collected as provided by this Act.

(b) If the juvenile board determines that the director of court services shall receive support payments when the position is not held by the director of juvenile services, the director of court services may enter into a surety bond with a solvent surety company authorized to execute bonds of this type in Texas. The bond shall be conditioned on the director's faithful performance of the duties of the position and on the director properly accounting for any funds entrusted to him. The commissioners court shall fix the amount of the bond and shall pay the premium for the bond out of the general funds of the county.

(c) The director of court services shall keep an accurate and complete record of all the receipts and disbursements of support payment funds. The rec-

ord is open to inspection by the public. The county auditor shall inspect the record and shall audit the accounts at least annually, making a report of his findings and recommendations to the juvenile board.

(d) When the juvenile board determines that the director of juvenile services or the director of court services shall receive spouse and child support payments, the juvenile board shall direct how the fee for this service shall be assessed against the payor or the payee of the support payments.

(e) If the juvenile board directs that the fee shall be assessed against the payee or the payor, the director or agent of the director shall attempt, in a cost-effective manner, to collect annually and in advance from the payee or the payor a fee set by the board in an amount not to exceed $3 per month, unless the fee is specifically waived by order of a district court as to a particular payor or payee. The first such fee shall be due on the date the payor or payee of spouse and child support has been ordered by the district court, or any court of competent jurisdiction, to commence payments of spouse or child support, or both, and thereafter, the fee shall be paid on each succeeding annual anniversary of the original court order for payment, unless the juvenile board establishes a different method and manner of receiving the fees.

(f) Failure or refusal of a person to pay the fees on the date due and in the amount ordered by the court shall make the person subject and susceptible to an action for contempt of court, which may be brought on the court's own motion or as otherwise provided by law.

(g) An annual fee payment that is unpaid for five years from its due date shall be barred from collection. This limitation shall not be construed to apply to spouse and child support payments, which shall be governed by general law.

(h) The juvenile board may exempt from payment of the fee provided by this Act spouse and child support payments made by virtue of interstate pacts, fees involving payments in cases arising through the Texas Department of Human Resources, and other classes of payments when it appears to the juvenile board that collection of the fee in such cases would not be practical or in the interests of justice.

(i) All records concerning spouse and child support and the fees authorized by this Act may be kept, maintained, used, and stored by computer, on microfilm, or other methods of record keeping authorized by the juvenile board. The board may authorize a fee, not to exceed $2 per page, to be collected for copies of the records furnished to payors or payees or to persons authorized to receive copies by any payee or payor. The courts are authorized to take judicial notice of spouse and child support and fee records kept under the provisions of this Act.

(j) The juvenile board may direct that the fee shall be assessed against the payee of spouse and child support payments and may set the fee percentage, not to exceed four percent of the support payment funds collected. The director designated to do so by the juvenile board shall collect the fee from each and every payment made through the court services department, unless the payment is specifically waived by court order as to a particular payor or payee.

(k) The judges of the district courts of Dallas County giving preference to family law matters and juvenile matters may assess a fee, not to exceed $100 per case, for adoption, family, and home study investigations ordered by the judge regarding cases pending before the judge, when the investigation is done by the court services department or other county funded department or agency, and shall set the manner and method of payment which shall be assessed against the parties to the suit.

(*l*) All such fees and other fees provided for by this Act, including fees for adoption, family, and home studies made by the court services department or other county agency, shall be paid to the county treasurer to be kept in a separate fund. This fund shall be administered by the juvenile board for the purpose of assisting in the payment of the operating expenses of the court services department and of the court masters and referees in the district courts giving preference to juvenile matters and family law matters of Dallas County.

(m) The director of court services shall keep an accurate and complete record of all fees collected and uncollected. The record is open to inspection by the public. The county auditor shall inspect the records and shall audit the fee accounts, making a report of his findings and recommendations to the juvenile board and commissioners court.

ARTICLE 6. COURT SERVICES DEPARTMENT

Establishment

Sec. 6.01. The Court Services Department of Dallas County is established.

Employees

Sec. 6.02. The director of court services shall hire the employees of the court services department, subject to the approval of the director of juvenile services and the juvenile board, and may remove an employee at any time, subject to approval of the director of juvenile services.

Compensation

Sec. 6.03. The Commissioners Court of Dallas County shall pay the salaries and expenses of the employees of the court services department as determined by the annual budget prepared by the juvenile board and approved by the commissioners court.

Duties

Sec. 6.04. The employees of the court services department may:

(1) initiate contempt and civil legal actions to establish or enforce, or both, court orders for child support, including attorney's fees and court costs, and to collect the fees authorized by this Act, including attorney's fees and court costs, under the direction of the director of court services, which provision is cumulative of other laws and does not diminish the right, power, and authority of other persons or agencies of government to initiate contempt and legal actions to establish and enforce orders for child support and to collect fees provided by general law;

(2) perform case studies and report the findings and recommendations to the court when requested by the judge of a district court of Dallas County;

(3) perform the other duties that are assigned by the director of court services, the director of juvenile services, or the juvenile board; and

(4) collect, receive, and disburse support payments ordered by any court of competent jurisdiction and to collect, receive, and deposit any and all fees authorized by this Act.

[Acts 1981, 67th Leg., p. 868, ch. 311, eff. June 8, 1981.]

Art. 5139VVV. Palo Pinto County Juvenile Board

Juvenile Board

Sec. 1. The county judge of Palo Pinto County and the judge of each judicial district that includes Palo Pinto County shall constitute the Palo Pinto County Juvenile Board. The judge of the court that is designated as the juvenile court of Palo Pinto County shall be chairman of the board and its chief administrative officer.

Compensation

Sec. 2. As compensation for the additional duties imposed on them, the county and district judge or judges who are members of the juvenile board may, if approved by the commissioners court, be compensated by an annual salary to be set by the commissioners court, payable in 12 equal monthly installments out of the general fund or any other available fund of Palo Pinto County. The compensation authorized by this section shall be in addition to all other compensation provided or allowed by law for county and district judges.

Juvenile Officer

Sec. 3. The Palo Pinto County Juvenile Board shall appoint a juvenile officer for Palo Pinto County, who shall meet all the qualifications and perform all the duties of a juvenile officer as prescribed by the laws of this state. The juvenile officer shall be paid a salary to be fixed by the commissioners court and to be paid out of the general fund or any other available fund of Palo Pinto County. The juvenile board by majority vote has the power to hire and discharge any appointee without the approval of the commissioners court.

[Acts 1981, 67th Leg., p. 2498, ch. 658, eff. June 15, 1981.]

Art. 5142a–2. Wichita County Family Court Services Department

Sec. 1. There is hereby established the Wichita County Family Court Services Department.

Sec. 2. The Wichita County Juvenile Board, as heretofore established and composed of the County Judge of Wichita County and the Judge of each Judicial District which includes Wichita County, shall have all powers conferred upon the Juvenile Board created under Article 5139 of Revised Civil Statutes of 1925 and any amendments thereto. The Wichita County Juvenile Board shall have authority to appoint an Administrator and such assistants as may be necessary, and to determine the duties to be assigned such Administrator and his assistants, and the rate of pay which shall be paid all the personnel comprising the Wichita County Family Court Services.

Sec. 3. The Wichita County Family Court Services Administrator shall have the powers and duties prescribed by Article 5142 of the Revised Civil Statutes of 1925 and any amendments thereto. The Administrator shall appoint assistants subject to confirmation by the Juvenile Board. The number of assistants shall be determined by the Juvenile Board. The term of office of the Administrator and assistants shall be for a period of two (2) years; provided, however, that the Juvenile Board may at any time, for good cause, suspend or remove an Administrator or an assistant.

Sec. 4. All claims for expenses of the Administrator, the assistants, and administrative expenses for operation of the Family Court Services Department, including all necessary equipment and supplies, shall, before payment thereof, be approved by the Juvenile Board.

Sec. 5. Subject to the advice and consent of the Commissioners Court of Wichita County, the Wichita County Juvenile Board shall determine the funds needed for the operation of the department including payment of salaries and expenses of the Administrator and assistants. Any such funds appropriated shall be in addition to funds received by the Family Court Services Department from any other source.

Sec. 6. The Wichita County Juvenile Board shall have authority to require and approve a good and sufficient surety or personal bond for the faithful performance of duty of any assistant or employee of any institution, under the jurisdiction of the Juvenile Board, in such sum as may be determined by said Board, and paid as an expense of the Family Court Services Department.

Sec. 7. All homes, schools, farms and any and all other institutions or places of housing maintained and used chiefly by the county for the training, education, detention and support or correction of juveniles shall be under the control and supervision

of the Juvenile Board, and the superintendent of each such institution shall be appointed by the Wichita County Family Court Services Department Administrator and each such appointment shall be confirmed by the Juvenile Board. The salaries of such superintendents and assistants shall be fixed by the Wichita County Juvenile Board and such superintendent or assistant may at any time, for good cause, be suspended or removed by the appointing authority.

Sec. 8. When, in the opinion of the Wichita County Juvenile Board, the best welfare of any child or children coming within the provisions of Title 2 [1] or Title 3 [2] of the Family Code and any amendments thereto will be served by placement of said child or children in a foster home, said Juvenile Board may authorize the use of such foster home or homes for the temporary care of said child or children. The rate of pay for such foster care shall be determined by said Juvenile Board and payment of the cost of such foster care shall, when authorized by said Juvenile Board, be considered to be a necessary operating expense of the Wichita County Family Court Services Department.

Sec. 9. The Wichita County Juvenile Board shall have power and authority to accept and hold in trust for the operation of the Wichita County Family Court Services Department or any duties or functions of the Wichita County Family Court Services Department, any grant or devise of land or any gift or bequest, or any donation to be applied for the benefit of the Family Court Services Department and to apply same in accordance with the terms of such gift.

Sec. 10. (a) Each month for which a person has been ordered by a District Court of Wichita County to pay child support, alimony, or separate maintenance into the Wichita County Family Court Services Department, the payor of such child support, alimony, or separate maintenance shall also be responsible for payment of a child support service fee in the sum of $1.50 per month, payable annually in advance. However, in those instances where the payor is a member of the Armed Services and wherein the monthly child support, alimony, or separate maintenance payments exceed that amount ordered by the court, the recipient (payee) of such child support, alimony, or separate maintenance shall be the person responsible for paying such annual child support service fee into the Family Court Services Department.

(b) The first such child support service fee shall be due on the date such payor of child support, alimony, or separate maintenance has been ordered by the District Court to commence payments of child support, alimony, or separate maintenance and thereafter for all such persons ordered to pay child support, alimony, or separate maintenance on each succeeding annual anniversary of the original court order for payment. In those instances where the payee is charged with the responsibility of making such service fee payments, the first such payment shall become due on the date of receipt of the initial child support payment and annually thereafter on the anniversary of the date of the receipt of the first child support allotment check so long as the payor is a member of the Armed Services and so long as child support allotment payments exceed the amount of child support ordered by the court.

(c) Such child support service fees shall be for the purpose of meeting certain expenses of the child support office, including postage, equipment, stationery, office supplies, subpoenas, salaries and other expenses of the Family Court Services Department authorized by the Wichita County Juvenile Board.

(d) A record shall be kept of all child support service fees collected, and expended, and such moneys shall be deposited in the child support fund and shall be administered by the Juvenile Board of Wichita County.

(e) Failure or refusal of a person to pay such child support service fee on time and in the amount ordered by the court shall make such person susceptible to an action for contempt of court.

(f) This fund shall be subject to regular audit by the county auditor or other duly authorized persons. Annual report of receipts and expenditures in this account shall be made to the Commissioners Court.

Sec. 10a. (a) For purposes of providing legal services, court costs and expenses of service in the handling of child support, separate maintenance, and temporary alimony, there shall be assessed the sum of Ten Dollars ($10) in all matters involving contempt of court for failure and refusal to pay such child support, separate maintenance, or temporary alimony, and in matters involving contempt of court for failure or refusal to abide by orders of the court with respect to child visitation privileges in all such contempt action initiated through the Wichita County Family Court Services Department.

(b) Such fee of Ten Dollars ($10) shall be paid into the Wichita County Family Court Services Department by the person initiating such contempt proceedings but this sum, in addition to any other expenses incurred by the complainant in the prosecution of the contempt action may, in the judgment of the court, be assessed against the contemner for reimbursement to the complainant.

(c) In any such actions filed with the Wichita County Family Court Services Department for alleged contempt of court, the $10 assessment shall be used, as needed, for the payment of services rendered by the office of the District Clerk and/or any peace officer. Provided, however, that the complainant may be required to deposit an additional sum when the cost of service in such action for contempt is expected to exceed the $10 assessment. In such instance, however, any unused funds over

and above the $10 assessment shall be refunded to the depositor by the Family Court Services Department.

(d) Receipts of all disbursements of moneys paid into the Family Court Services Department for matters involving actions of contempt shall be kept on file and all such funds received by the Family Court Services Department shall be deposited to the Child Support Account. This fund shall be administered by the Wichita County Juvenile Board and shall be subject to regular audit by the county auditor or other duly authorized person. Annual report of receipts and expenditures in this account shall be made to the Commissioners Court.

(e) The fee prescribed by this Section shall not be collected from any person who has applied for or receives public assistance under the law of this State.

Sec. 11. For the purpose of maintaining adoption investigation services, there shall be taxed, collected and paid as other costs the sum of Ten Dollars ($10) in each adoption case hereafter filed in any District Court in Wichita County. Such cost shall be collected by the District Clerk, and when collected, shall be paid by said District Clerk to the Wichita County Family Court Services Department to be kept by that Department in a separate fund and such fund to be known as the "Adoption Investigation Fund." This Fund shall be administered by the Juvenile Board of Wichita County for the purpose of assisting in paying the cost of maintaining adoption investigation services in the Family Court Services Department of Wichita County, including salaries and other expenses of the Adoption Investigator and his assistants, the purchase of supplies and equipment, and all other necessary expenses of the Investigator. This Fund shall be supplemented out of the General Fund or other available funds of the County where necessary.

Sec. 12. In all suits for divorce filed in any District Court in Wichita County, where it appears from the petition or otherwise that the parties to such suit have a child or children under eighteen (18) years of age, it shall be the duty of the Administrator, upon order of the Court, to make a complete and thorough examination into the merits of the claim of the parties for custody of the children involved and to report his findings to the Court in connection therewith, and to make a thorough and complete investigation as to the necessities of the child or children, and to make a report thereof to the Court prior to the trial of said case, and if desired by the Court, to produce such evidence as may have been developed in connection with such matters.

Sec. 13. It shall be the duty of the Administrator to keep a record which will at all times show the names of all dependent, neglected or delinquent juveniles within Wichita County, and the names and addresses of the persons having custody of such juveniles; and visitations by such officer and his assistants shall be made at such reasonable times as seem necessary or proper or as may be directed by the Juvenile Board, and a written report shall be made to the Judge of the Juvenile Court showing such facts relating to the environment, treatment, education, welfare and other information which may assist the Court in determining the proper disposition to be made of any juvenile.

[Amended by Acts 1975, 64th Leg., p. 573, ch. 232, § 1, eff. May 20, 1975; Acts 1981, 67th Leg., p. 327, ch. 131, § 1, eff. Aug. 31, 1981.]

[1] Family Code, § 11.01 et seq.
[2] Family Code, § 51.01 et seq.

Art. 5142c–1. Juvenile Officers for Counties Within 23rd and 130th Judicial Districts

[See Compact Edition, Volume 3 for text of 1 to 7]

Child Support Office

Sec. 7a. (a) Notwithstanding any other provision of this Act, the judges of the District Courts and Domestic Relations Courts in each of the counties of Brazoria, Fort Bend, Matagorda, and Wharton may create a child support office in the juvenile office of the county to receive payments for the support of children made under the order of a District Court or Domestic Relations Court. A child support office may serve more than one county. The child support office shall receive the payments and shall disburse the funds in the manner the court determines to be for the best interest of the parties involved in each case.

(b) The judges of the District Courts and Domestic Relations Courts may appoint an administrator and such assistants as in their judgment may be necessary for a term of two years. The judges of the District Courts and Domestic Relations Courts shall determine the duties to be assigned the administrator and his assistants and the salaries of the personnel of the child support office to be paid in equal monthly installments out of the general fund of the county, the child support fund, or other available fund. All claims for expenses of the administrator and his assistants and administrative expenses for operation of the child support office, including all necessary equipment and supplies, shall, before payment, be approved by the judges.

(c) If a child support office serves more than one county, the judges of the District Courts and the Domestic Relations Courts in those counties shall determine the location of the child support office. The powers and duties of the county officials and employees prescribed in this section shall be performed by the officials and employees of the county in which the child support office is located. The counties served by the child support office shall pay the salaries of the personnel, premiums for a bond, and other expenses in accordance with the propor-

tion that the population of each county bears to the total population of all counties served by that office.

(d) Each administrator of a child support office shall make a surety bond in a solvent surety company authorized to make such bonds in Texas, conditioned on the faithful performance of the duties of his position and further conditioned on his properly accounting for the money entrusted to him. The bond shall be in an amount to be fixed by the County Auditor and subject to approval of the County Auditor. The county shall pay the premiums for the bond out of the general fund, the child support fund, or other available fund.

(e) Each child support office shall keep an accurate and complete record of its receipts and disbursements of support payment funds. The record is open to inspection by the public. It is the duty of the County Auditor or other duly authorized person in each county with a child support office to inspect and examine the records and audit the accounts quarterly and to report his findings and recommendations to the judges.

(f) A service fee for receiving and disbursing payments, not to exceed $1 per month, shall be assessed each payor or payee of child support who is ordered by a court to pay support to a child support office. However, if the payor is a member of the armed services and the monthly payments for child support exceed the amount ordered by the court, the recipient (payee) of the support payments shall be the person responsible for paying the service fee into the child support office. The service fee applies to all support payments ordered paid to a child support office after the effective date of this amendment and to all other such payments, even though ordered prior to the effective date of this amendment, when the person ordered to make such payments has defaulted and has been cited for contempt of court. The service fee shall be collected by the child support office from the payor annually in advance and shall be paid to the county treasurer on the last day of each calendar month, to be kept in a separate account to be known as the "Child Support Fund." This fund shall be administered by the judges of the District Courts and Domestic Relations Courts, subject to the approval of the Commissioners Court, for the purpose of assisting in the payment of the salaries and operating expenses of the child support office. The first service fee shall be due on the date the payor of support payments has been ordered by the court to commence payments for child support and thereafter on each succeeding annual anniversary of the original court order for payment. In those instances where the payee is charged with the responsibility of making the service fee payments, the first payment shall be due on the date of receipt of the initial support payment and annually thereafter on the anniversary of the date of the receipt of the first support allotment check so long as the payor is a member of the armed services and so long as support allotment payments exceed the amount of support ordered by the court. Failure or refusal of a person to pay the service fee on time and in the amount ordered by the court shall make that person susceptible to an action of contempt of court. A record shall be kept of all service fees collected and expended. The Child Support Fund is subject to regular audit by the County Auditor or other duly authorized person. Annual reports of receipts and expenditures in this account shall be made to the Commissioners Court.

[See Compact Edition, Volume 3 for text of 8 and 9]

[Amended by Acts 1977, 65th Leg., p. 2069, ch. 821, § 1, eff. Aug. 29, 1977.]

Art. 5143c. Repealed by Acts 1977, 65th Leg., p. 108, ch. 52, § 1, eff. April 5, 1977

Art. 5143d. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Prior to repeal, this article was amended by:

Acts 1975, 64th Leg., p. 279, ch. 121, §§ 1, 2.
Acts 1975, 64th Leg., p. 2159, ch. 693, § 25.
Acts 1975, 64th Leg., p. 2164, ch. 696, § 1.
Acts 1977, 65th Leg., p. 327, ch. 158, § 1.
Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.143.
Acts 1979, 66th Leg., p. 1116, ch. 532, § 1.

Art. 5143f. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

TITLE 83

LABOR

CHAPTER ONE. DEPARTMENT

Article
5144a. Application of Sunset Act.

Art. 5144. Appointment of Commissioner

A Commissioner of Labor and Standards, whose office shall be in Austin, shall be biennially appointed by the Governor for a term of two years. The Commissioner may be removed for cause by the Governor, record thereof being made in his office. The Commissioner shall give a good bond in the sum of two thousand dollars, to be approved by the Governor, conditioned for the faithful discharge of the duties of his office.

[Amended by Acts 1975, 64th Leg., p. 1903, ch. 611, § 1, eff. June 19, 1975.]

Art. 5144a. Application of Sunset Act

The office of Commissioner of Labor and Standards is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the office is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.167, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 5145a. Duties of Commissioner

Sec. 1. The Commissioner of Labor and Standards shall collect, systematize and present in biennial reports to the Governor, statistical details relating to all departments of labor in Texas, and especially as bearing upon the commercial, social, educational and sanitary conditions of the employees and their families, the means of escape from dangers incident to their employment, the protection of life and health in factories and other places of employment, the labor of women and children and the hours of labor exacted of them, and in general all matters which tend to affect the prosperity of the mechanical, manufacturing and productive industries of this State, and of the persons employed therein.

Sec. 2. The commissioner may perform functions that are assigned to him under an agreement between the commissioner and the Texas Energy and Natural Resources Advisory Council and that are prescribed by a state residential energy conservation plan adopted by the advisory council pursuant to 42 United States Code, Sections 8211 et seq., and regulations issued by the United States Department of Energy in accordance therewith. The functions may include:

(1) preparation of a master list of persons who are willing to sell or install or finance residential energy conservation measures, as defined by 42 United States Code, Section 8211;

(2) inspection of the installed residential energy conservation measures; and

(3) establishment of consumer grievance procedures to resolve the complaints of persons against persons who sell or install the residential energy conservation measures or who finance the purchase or installation of the measures.

In performance of his assigned responsibilities, the commissioner may establish such rules and regulations as are needed to administer the program including, if necessary in the judgment of the commissioner, security requirements as a prerequisite for master listing of sellers or installers of residential energy conservation measures. The commissioner is additionally authorized to establish and adopt, after consultation with the Texas Energy and Natural Resources Advisory Council, necessary fees to be collected by the commissioner to contribute to the costs of the department associated with the program.

Sec. 3. Fees collected by the commissioner in the performance of functions under Section 2 of this article shall be deposited in the state treasury to the credit of a special fund to be known as the residential conservation fund. The fund may be used only for the administration of the commissioner's functions under Section 2 of this article.

[Amended by Acts 1981, 67th Leg., p. 999, ch. 378, § 1, eff. June 10, 1981.]

Art. 5151a. Change of Names

(a) The names of the Bureau of Labor Statistics and the Commissioner of Labor Statistics are changed to the "Texas Department of Labor and Standards" and the "Commissioner of Labor and Standards."

(b) Wherever the names Bureau of Labor Statistics and/or Commissioner of Labor Statistics appear in any legislative Act in this state, such names shall hereafter mean and apply to the Texas Department of Labor and Standards and the Commissioner of Labor and Standards.

[Amended by Acts 1975, 64th Leg., p. 1903, ch. 611, § 2, eff. June 19, 1975.]

CHAPTER TWO. LABOR ORGANIZATIONS

Art. 5154a. Labor Unions, Regulations of

[See Compact Edition, Volume 4 for text of 1 and 2]

Reports

Sec. 3. It shall be the duty of every labor union required to file reports with the Secretary of Labor pursuant to Section 201 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C.A. 431), or any similar statute subsequently enacted, to file a copy of each report with the Secretary of State not later than the 30th day following the date the report was filed with the Secretary of Labor.

[See Compact Edition, Volume 4 for text of 4 to 15]

[Amended by Acts 1975, 64th Leg., p. 355, ch. 150, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:

"The secretary of state is authorized to remove from the files and destroy all reports filed pursuant to Section 3, Chapter 104, Acts of the 48th Legislature, 1943 (Article 5154a, Vernon's Texas Civil Statutes), as that section existed prior to the effective date of this Act."

Art. 5154c-1. The Fire and Police Employee Relations Act

[See Compact Edition, Volume 4 for text of 1 to 16]

Strikes and Lockouts

Sec. 17.

[See Compact Edition, Volume 4 for text of 17(a) to 17(c)]

(d) If an association appeals a fine imposed pursuant to the preceding paragraph, such employee organization shall not be required to pay such fine until such appeal is finally determined.

[See Compact Edition, Volume 4 for text of 17(e) to 20]

[Amended by Acts 1981, 67th Leg., p. 2634, ch. 707, § 4(12), eff. Aug. 31, 1981.]

CHAPTER THREE. PAYMENT OF WAGES

Art. 5159d. Minimum Wage Act of 1970

[See Compact Edition, Volume 4 for text of 1 to 3]

Exemptions

Sec. 4.

[See Compact Edition, Volume 4 for text of 4(a) to (c)]

(d) Notwithstanding the provisions of any other section of this Act the provisions of this Act shall not apply to any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children:

(1) who are orphans or one of whose natural parents is deceased, or

(2) who are enrolled in such institution and reside in residential facilities of the institution while such children are in residence at such institution, if such employee and his spouse reside in such facilities and received, without cost, board and lodging from such institution.

[See Compact Edition, Volume 4 for text of 5 to 10]

Mental Health and Retardation Department Patient-Student Workers

Sec. 10a. Patients and students who are clients of any facility of the Texas Department of Mental Health and Mental Retardation, whose productive capacity is impaired and who are assisting in the operation of the institutions as part of their therapy, or who are receiving occupational training in sheltered workshops or other programs operated by the Texas Department of Mental Health and Mental Retardation, where the institution or department derives an economic benefit from their services, may be compensated for such services at a percentage of the base wage, which percentage corresponds to the percentage of their productive capacity when compared with employees not so impaired performing the same or similar tasks. The Texas Department of Mental Health and Mental Retardation shall promulgate rules for determining said base wage and said percentage of productive capacity of such clients and such other rules as may be necessary to fulfill the provisions of this section of the Act. It is the specific intent of the legislature that this provision be enacted in order to prevent the curtailment of appropriate occupational training or therapeutic opportunities for such clients. To further such purpose, it is specifically provided that the services rendered and the payment provided for such services herein shall not be construed to create an employer-employee relationship between the Texas Department of Mental Health and Mental Retardation and the patients and students engaged in such training, therapeutic or rehabilitative services.

[See Compact Edition, Volume 3 for text of 11 to 16]

[Amended by Acts 1975, 64th Leg., p. 1237, ch. 462, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 269, ch. 130, § 1, eff. May 11, 1977.]

Section 2 of the 1977 amendatory act provided:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the provision or application, and to this end the provisions of this Act are declared to be severable."

CHAPTER FOUR. CONTRACTORS' PERFORMANCE AND PAYMENT BONDS

Art. 5160. Bond for Labor and Material; Performance Bond

Contractors' Bonds for Performance and Payment for Labor and Material

A. Any person or persons, firm, or corporation, hereinafter referred to as "prime contractor," enter-

ing into a formal contract in excess of $25,000 with this State, any department, board or agency thereof; or any county of this State, department, board or agency thereof; or any municipality of this State, department, board or agency thereof; or any school district in this State, common or independent, or subdivision thereof; or any other governmental or quasi-governmental authority, whether specifically named herein or not, authorized under any law of this State, general or local, to enter into contractual agreements for the construction, alteration or repair of any public building or the prosecution or completion of any public work, shall be required before commencing such work to execute to the aforementioned governmental authority or authorities, as the case may be, the statutory bonds as hereinafter prescribed, but no governmental authority may require a bond if the contract does not exceed the sum of $25,000. Each such bond shall be executed by a corporate surety or corporate sureties duly authorized to do business in this State. In the case of contracts of the State or a department, board, or agency thereof, the aforesaid bonds shall be payable to the State and shall be approved by the Attorney General as to form. In case of all other contracts subject to this Act, the bonds shall be payable to the governmental awarding authority concerned, and shall be approved by it as to form. Any bond furnished by any prime contractor in an attempted compliance with this Act shall be treated and construed as in conformity with the requirements of this Act as to rights created, limitations thereon, and remedies provided.

(a) A Performance Bond in the amount of the contract conditioned upon the faithful performance of the work in accordance with the plans, specifications, and contract documents. Said bond shall be solely for the protection of the State or the governmental authority awarding the contract, as the case may be.

(b) A Payment Bond, in the amount of the contract, solely for the protection of all claimants supplying labor and material as hereinafter defined, in the prosecution of the work provided for in said contract, for the use of each such claimant.

[See Compact Edition, Volume 4 for text of B to G]

[Amended by Acts 1975, 64th Leg., p. 2284, ch. 713, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2028, ch. 809, § 1, eff. Aug. 29, 1977.]

Art. 5160a. Repealed by Acts 1981, 67th Leg., p. 2621, ch. 704, § 1, eff. Aug. 31, 1981

CHAPTER FIVE. HOURS OF LABOR

Art. 5165a. Weekly Working Hours of State Office Employees

Sec. 1. All state employees who are employed in the offices of state departments or institutions or agencies, and who are paid on a fulltime salary basis, shall work forty (40) hours a week. Provided, however, that the administrative heads of agencies whose functions are such that certain services must be maintained on a twenty-four (24) hours per day basis are authorized to require that essential employees engaged in performing such services be on duty for a longer work-week in necessary or emergency situations. Provided further that the provisions of this Act do not apply to houseparents who are employed by and who live at the facilities of the Texas Youth Council.

[See Compact Edition, Volume 3 for text of 2]

[Amended by Acts 1977, 65th Leg., p. 315, ch. 148, § 1, eff. May 13, 1977.]

Art. 5167a. Hours of Peace Officers and Compensation for Extra Hours in Counties over 500,000

Except in cases of emergency, as determined by the sheriff or constable of such county, it shall be unlawful for any county having more than five hundred thousand (500,000) inhabitants according to the last preceding Federal Census to require any Peace Officer to work more hours during any calendar week than the number of hours in the normal work week of the majority of the employees of said county other than Peace Officers. If a Peace Officer elects to work extra hours during any calendar week, the county shall compensate the officer for the overtime work on a basis consistent with the overtime provisions of the county personnel policy.

[Amended by Acts 1979, 66th Leg., p. 1115, ch. 531, § 1, eff. June 11, 1979.]

CHAPTER EIGHT. CHILD LABOR

Article
5181.1. Child Labor.

Art. 5181.1. Child Labor

Purpose

Sec. 1. The purpose of this Act is to ensure that no child is employed in an occupation or in a manner that is detrimental to the child's safety, health, or well-being.

Definitions

Sec. 2. In this Act:

(1) "Child" means an individual under 18 years of age.

(2) "Commissioner" means the commissioner of labor and standards.

(3) "Department" means the Texas Department of Labor and Standards.

(4) "Person" means an individual, corporation, partnership, unincorporated association, or other legal entity.

Minimum Age

Sec. 3. Except as provided by this Act or by a rule of the commissioner of labor and standards, a person commits an offense if that person employs a child under 14 years of age.

Rulemaking

Sec. 4. The commissioner of labor and standards may adopt rules necessary to promote the purpose of this Act. Except as expressly authorized by this Act, a rule may not permit the employment of a child under 14 years of age.

Hours

Sec. 5. (a) A person who employs a child commits an offense if that person permits a child 14 or 15 years of age to work more than 8 hours in one day or more than 48 hours in one week.

(b) A person who employs a child commits an offense if that person permits a child 14 or 15 years of age who is enrolled in the fall, spring, or summer session of a public or private school to work between the hours of 10 p.m. and 5 a.m. on a day that is followed by a school day or between the hours of midnight and 5 a.m. on a day that is not followed by a school day.

(c) A person who employs a child commits an offense if that person permits a child 14 or 15 years of age who is not enrolled in summer school to work between the hours of midnight and 5 a.m. on any day during the time school is recessed for the summer.

Hardship

Sec. 6. (a) The commissioner may adopt rules to determine whether a hardship exists in the case of an individual child.

(b) The department may determine whether a hardship exists in the case of an individual child under the rules adopted by the commissioner.

(c) If the department determines that a hardship exists in the case of an individual child, Sections 5(a), (b), and (c) of this Act do not apply in that case.

Inspectors

Sec. 7. (a) The commissioner or any deputy or inspector of the commissioner may, during working hours, inspect a place where there is good reason to believe a child is employed and collect information concerning the employment of a child who works at that place.

(b) A person commits an offense if the person knowingly or intentionally hinders an inspection or the collection of information authorized by this section.

Hazardous Occupations

Sec. 8. (a) If the commissioner finds that any occupation is particularly hazardous for the employment of a child and that occupation has been declared to be hazardous by an agency of the federal government, the commissioner by rule shall declare that occupation to be hazardous.

(b) The commissioner by rule may restrict the employment of children 14 years of age or older in hazardous occupations.

(c) A person commits an offense if that person employs a child in violation of a rule adopted under this section.

Certificate of Age

Sec. 9. (a) A child who is at least 14 years of age may apply to the department for a certificate of age.

(b) When applying for a certificate of age, a child must present documentary proof of age that the department finds necessary.

(c) After the department has approved a child's documentary proof of age, the department shall issue to the child a certificate stating the date of birth of the child.

(d) It is a defense to prosecution of a person employing a child who does not meet the minimum age standard for a type of employment that the person in good faith relied on an apparently valid certificate of age presented by the child showing the child to be the required minimum age.

Actors

Sec. 10. The commissioner by rule may authorize the employment of a child under 14 years of age as an actor or performer in a motion picture or in a theatrical, radio, or television production.

Exemptions

Sec. 11. (a) This Act does not apply to employment of a child who is:

(1) employed in a nonhazardous occupation under the direct supervision of the child's parent or an adult having custody of the child in a business or enterprise owned or operated by the parent or custodian;

(2) engaged in delivery of newspapers to the consumer;

(3) participating in a school-supervised and school-administered work-study program approved by the department;

(4) employed in agriculture during a period of time when the child is not legally required to be attending school;

(5) employed through a rehabilitation program supervised by a county judge; or

(6) engaged in casual nonhazardous employment with parental consent or the consent of an adult having custody of such child which will not endanger the safety, health, or well-being of such child.

(b) In this section, "employed in agriculture" means engaged in producing crops or livestock and includes:

(1) cultivating and tilling the soil;

(2) producing, cultivating, growing, and harvesting an agricultural or horticultural commodity;

(3) dairying; and

(4) raising livestock, bees, fur-bearing animals, or poultry.

(c) The commissioner by rule may define nonhazardous casual employment which the commissioner determines is dangerous to the safety, health, or well-being of a child.

Penalty

Sec. 12. An offense under this Act is a Class C misdemeanor.

[Acts 1981, 67th Leg., p. 2233, ch. 531, §§ 1 to 12, eff. Jan. 1, 1982.]

Section 14 of the 1981 Act provides:

"This Act takes effect January 1, 1982, and applies only to the employment of a child after that date. Employment of a child before the effective date of this Act is subject to Articles 5181a through 5181g, Revised Civil Statutes of Texas, 1925, as amended, and those laws are continued in effect for that purpose."

Arts. 5181a to 5181g. Repealed by Acts 1981, 67th Leg., p. 2235, ch. 531, § 13, eff. Jan. 1, 1982

Section 14 of the 1981 repealing act provides:

"This Act takes effect January 1, 1982, and applies only to the employment of a child after that date. Employment of a child before the effective date of this Act is subject to Articles 5181a through 5181g, Revised Civil Statutes of Texas, 1925, as amended, and those laws are continued in effect for that purpose."

Prior to repeal, art. 5181g was amended by Acts 1979, 66th Leg., p. 1046, ch. 476, § 1.

See, now, art. 5181.1.

CHAPTER NINE-A. OCCUPATIONAL SAFETY

Art. 5182a. Occupational Safety

[See Compact Edition, Volume 3 for text of 1 to 3]

Occupational Safety Board

Sec. 4.

[See Compact Edition, Volume 3 for text of 4(a) to (c)]

(d) The Occupational Safety Board is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1985.

[1] Article 5429k.

[See Compact Edition, Volume 3 for text of 5 to 16]

[Amended by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.115, eff. Aug. 29, 1977.]

CHAPTER TEN. INDUSTRIAL COMMISSION

Article

5183a. Application of Sunset Act.
5186a. Small and Minority Business Enterprise Division.
5190.3. Small Business Assistance Act of 1975.
5190.4. Metric System Advisory Council.
5190.5. Loans for Manufacture of Fuel from Agricultural Products.
5190.6. Development Corporation Act of 1979.

Art. 5183a. Application of Sunset Act

The Industrial Commission is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.057, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 5186a. Small and Minority Business Enterprise Division

Sec. 1. The Small and Minority Business Enterprise Division is established as a division of the Texas Industrial Commission.

Sec. 2. The Small and Minority Business Enterprise Division shall be under the direction of a director for Small and Minority Business Enterprise who shall serve under the direction and at the pleasure of the executive director of the Texas Industrial Commission.

Sec. 3. The division shall be responsible to the Texas Industrial Commission for implementation of the Small Business Assistance Act of 1975 (Article 5190.3, Vernon's Texas Civil Statutes), and for the encouragement, support, and development of small and minority business ownership throughout the state. The division is authorized to cooperate with the federal government and with any political subdivisions of the state in research designed to encourage small and minority business ownership and to accept any federal funds available for this purpose.

[Acts 1977, 65th Leg., p. 2074, ch. 825, § 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 1851, ch. 434, § 1, eff. Aug. 31, 1981.]

Art. 5190.2. Rural Industrial Development Act

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. When used in this Act, unless otherwise apparent from the context:

[See Compact Edition, Volume 4 for text of 2(a) to (c)]

(d) "Industrial Development Agency" means a corporation established under the Texas Non-Profit Corporation Act to promote and encourage industrial development within the State or a designated area of the State whose articles of incorporation provide that upon dissolution or winding up of its corporate affairs any property remaining

after payment of debts of the corporation shall be conveyed, transferred, or vest in the Rural Industrial Development Fund of the State, a school district, a city, or county or be conveyed to a nonprofit corporation established for similar purposes.

[See Compact Edition, Volume 4 for text of 2(e) to (g)]

(h) "Rural area" means an area which is predominately rural in character, being one which the Commission after public hearing defines and declares to be a rural area in that it (1) sustained out-migration of population between the then last two federal censuses, or (2) an area that sustained a gain in population less than the average for standard State statistical metropolitan areas between the then last two federal censuses, or (3) an area in which manufacturing employment is less than the average for standard State statistical metropolitan areas according to the then preceding federal census, or (4) an incorporated city with a population of less than 20,000 according to the then preceding federal census; provided, however, no area of the State shall be included in more than one rural area, nor shall any one rural area contain territory in more than four counties. Rural areas may be defined and redefined by the Commission from time to time, after public hearing.

[See Compact Edition, Volume 4 for text of 3 to 10]

[Amended by Acts 1975, 64th Leg., p. 626, ch. 257, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1511, ch. 611, § 1, eff. Aug. 29, 1977.]

Art. 5190.3. Small Business Assistance Act of 1975

Title of Act

Sec. 1. This Act may be cited as the Small Business Assistance Act of 1975.

Legislative Intent

Sec. 2. The legislature finds that an indispensable element of the American economic system is free and vigorous competition and that the preservation and expansion of economic competition is essential to the economic well-being of this state and of the United States. The legislature further finds that the continuing vitality of small business entities is of utmost importance to economic competition and that it is the policy of this state to insure economic competition by assisting small business entities to the greatest extent possible. It is the intent of the legislature, by this Act, to provide that assistance to small business entities and, by doing so, to promote economic competition to the benefit of all persons in this state. It is the intent of the legislature that each state agency shall attempt to award ten percent of all purchases of articles, supplies, commodities, materials, services, or contracts for services to small business.

Definitions

Sec. 3. In this Act:

(1) "Small business" means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than $1,000,000 in annual gross receipts, and is designated a small business as provided by this Act.

(2) "Council" means the Advisory Council on Small Business Assistance.

(3) "State agency" means all agencies, departments, councils, commissions, or boards of the State of Texas.

Advisory Council on Small Business Assistance

Sec. 4. (a) The Advisory Council on Small Business Assistance is created.

(b) The council consists of the executive director of the industrial commission as chairman ex officio, and nine members, appointed by the governor with the advice and consent of the senate, at least six of whom are owners or employees of small businesses.

(c) Service as chairman ex officio of the council is an additional duty of the office of the executive director of the industrial commission.

Appointment and Terms

Sec. 5. (a) Except as provided by Subsection (b) of this section, appointive members of the council are appointed for terms of six years that terminate on January 1 of odd-numbered years.

(b) For terms beginning on the effective date of this Act the governor shall appoint:

(1) three members for terms that expire January 31, 1981;

(2) three members for terms that expire January 31, 1979; and

(3) three members for terms that expire January 31, 1977.

Meetings; Quorum

Sec. 6. (a) The council shall meet at least once each quarter at the call of the chairman.

(b) Five members constitute a quorum.

Expenses

Sec. 7. Members of the council receive no salary for service on the council, but each is entitled to reimbursement for his expenses incurred in attending a meeting of the council.

Assistance to Industrial Commission

Sec. 8. The council shall provide assistance, guidance, and expertise to the industrial commission in the administration of this Act.

Administration by Industrial Commission

Sec. 9. (a) The industrial commission has the primary responsibility for the administration of the provisions of this Act. In order to meet this responsibility the industrial commission may:

(1) provide technical and managerial assistance to small businesses by offering advice and counsel with particular emphasis on how to bid on state supply requirements to which end the board of control may also help;

(2) provide technical and managerial assistance to small businesses by offering advice and counsel on sound management procedures;

(3) cooperate with business, professional, educational, and other organizations and with agencies of this state, and make available to any of these information concerning the management, financing, and operation of small businesses; and

(4) promulgate rules necessary for the proper administration of this Act.

(b) The industrial commission and the board of control may conduct research necessary to:

(1) ascertain which business associations qualify as small businesses under the terms of this Act, designate each as a small business, maintain a master list of small businesses, and revoke the designation when an entity ceases to be a small business;

(2) determine the methods and practices of prime contractors and encourage the letting of subcontracts to small businesses; and

(3) ascertain the means by which the productive capacity of small businesses can be used most effectively.

Assistance by State Agencies

Sec. 10. (a) The industrial commission shall obtain from the agencies of this state appropriate information needed by the industrial commission to carry out its responsibilities under this Act.

(b) The agencies of this State, including, but not limited to, the State Highway Department, Department of Mental Health and Mental Retardation, Texas Youth Council, Texas Department of Corrections, State Building Commission, and State Board of Control, are charged by this Act with the responsibility to assist the industrial commission in furthering the purposes of this Act; and shall take positive steps to include small businesses on master bid lists, shall take positive steps to inform small businesses of state procurement opportunities, waive bond requirements where feasible, inform small business entrepreneurs as to applicable rules and procedures relating to bidding and the procurement of contracts, and continually monitor the effectiveness of this Act in improving the ability of designated small businesses to do business with the State.

(c) Each state agency shall prepare a written report of its performance each year and shall submit it to the Texas Industrial Commission who will consolidate the reports and, on or before December 1 of each year, shall deliver a copy of the consolidated report to the governor, the lieutenant governor, and the speaker of the house of representatives.

Procurement and Assistance Goals by State Agencies

Sec. 11. Each state agency shall establish annually small business procurement and assistance goals for which positive action will be taken by the state agency.

Inapplicability of Act

Sec. 12. This Act does not apply to purchases made pursuant to Article XVI, Section 21, of the Texas Constitution.

Effective Date

Sec. 13. This Act takes effect September 1, 1975. [Acts 1975, 64th Leg., p. 2301, ch. 718, §§ 1 to 13, eff. Sept. 1, 1975.]

Art. 5190.4. Metric System Advisory Council

Text of article effective until August 31, 1983

Definitions

Sec. 1. As used in this Act:

(1) "advisory council" means the Metric System Advisory Council;

(2) "metric system" means the International System of Units as established by the General Conference of Weights and Measures in 1960 and interpreted or modified for the United States by the United States Secretary of Commerce.

Advisory Council

Sec. 2. There is created within the Industrial Commission a Metric System Advisory Council.

Membership; Appointment; Vacancies

Sec. 3. (a) The advisory council consists of 12 appointed members and an ex officio member. The executive director of the Industrial Commission shall be an ex officio member with no voting privileges and shall serve as executive secretary. The members shall be appointed by the governor, with the advice and consent of two-thirds of the membership of the senate, on the following basis:

(1) one member representing the Central Education Agency;

(2) one member representing all other state agencies of the executive branch except the Central Education Agency;

(3) one member representing the Office of the Governor;

(4) one member representing trade and labor organizations;

(5) one member representing universities and colleges;

(6) one member representing private small businesses and industries with less than 100 employees and less than $1,000,000 annual gross sales;

(7) one member representing private businesses and industries which do not fit into category six;

(8) one member representing consumer interests;

(9) four members to be appointed at large at the discretion of the governor.

(b) Each member is appointed to serve a term of two years.

(c) If a vacancy occurs on the advisory council, the governor shall appoint a member to serve the unexpired term.

Officers; Meetings; Quorum

Sec. 4. (a) The advisory council shall elect a chairman from its membership.

(b) The advisory council shall meet four times annually, once in each quarter of the calendar year, at the call of the chairman. In each calendar year, the advisory council shall hold two of its meetings in Austin and two meetings at locations in this state selected by the advisory council.

(c) Seven members constitute a quorum of the advisory council. A majority of the members of a subcommittee of the advisory council constitutes a quorum of the subcommittee.

Expenses of Members

Sec. 5. (a) Members of the advisory council receive no salary for their services on the advisory council.

(b) Members of the advisory council are entitled to reimbursement for actual and necessary expenses incurred in attending a meeting of the advisory council. The total amount of reimbursement, excluding that for travel, shall not exceed the amount allowed for employees of the Industrial Commission at the time the expenses are incurred. Reimbursement for travel is at the same rate as for employees of state agencies, and reimbursement is allowed only for travel between the meeting and the home of the member.

(c) An advisory council member who is not employed by and does not represent a unit of state government on the advisory council shall be reimbursed by the Industrial Commission. A member who is employed by and represents a unit of state government on the advisory council shall be reimbursed by the unit of government with which the member is employed.

Executive Director; Staff

Sec. 6. The advisory council may employ an executive director to supervise the administration of this Act. The executive director may employ additional persons if necessary.

Duties of Advisory Council

Sec. 7. The advisory council shall:

(1) conduct appropriate research to determine the statutory changes that will be required for transition to the metric system;

(2) conduct appropriate research and investigation to determine the problems faced by business, industry, science, engineering, education, labor, consumers, and government agencies at the state and local levels in making a transition to the metric system;

(3) disseminate information to business, industry, science, engineering, labor, education, consumers, and government agencies at the state and local level that pertains to the transition to the metric system;

(4) recommend to the Industrial Commission and the legislature ways to help affected groups or individuals who face problems in making a transition to the metric system;

(5) cooperate with the United States Metric Board where appropriate;

(6) report to the legislature and the governor on the work of the advisory council in January of odd-numbered years; and

(7) perform such other activities as may be deemed necessary to carry out the intent of this Act.

Acceptance of Grants

Sec. 8. The advisory council may accept, on behalf of the state, a gift, grant, or donation from any source, or funds from an agency of the United States, to be used by the advisory council in the performance of its duties.

Expiration and Abolishment

Sec. 9. This Act expires and the Metric System Advisory Council is abolished on August 31, 1983. [Acts 1977, 65th Leg., p. 1380, ch. 552, §§ 1 to 9, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2217, ch. 519, § 1, eff. June 12, 1981.]

Art. 5190.5. Loans for Manufacture of Fuel from Agricultural Products

Definition

Sec. 1. In this Act, "agricultural product" includes a processed or refined agricultural product, such as molasses or sugar, as well as an agricultural product in its natural state.

Loans for Fuel Development

Sec. 2. (a) The Texas Industrial Commission may make loans from the industrial development fund to individuals or other legal entities for the establishment of plants in this state to manufacture alcohol or other fuels from agricultural products as authorized by law. The commission may contract to loan to one or more legal entities an amount not in excess of 90 percent of the cost of any one plant and

no more than $25,000 may be loaned to any one legal entity for the establishment of a plant or plants, except that a loan not exceeding $500,000 may be made to a small business corporation as defined by the Internal Revenue Code, Chapter 1, Subchapter S.[1]

(b) A recipient of a loan may use the proceeds of the loan only for the following purposes related to the establishment of a plant of the type described in Subsection (a) of this section:

(1) the purchase of land; and

(2) the acquisition of buildings, machinery, and fixtures.

(c) The Industrial Commission may include in the loan agreement any conditions not inconsistent with this Act that the commission considers proper. The commission shall require that the loan be wholly secured by a first lien on real property. Each loan must be payable to the state.

(d) All loans must be repayable not later than 10 years from the date of the loan. The Industrial Commission may require that a loan agreement provide for a shorter repayment period.

(e) Interest shall be charged on a loan made under this Act at a rate determined by the Industrial Commission.

[1] 26 U.S.C.A. § 1371 et seq.

Maximum Amount of Loans

Sec. 3. (a) The Industrial Commission may not make a loan that will cause the total unpaid principal balance of all loans made under this Act then outstanding to exceed $15 million.

(b) In applying the limit prescribed by Subsection (a) of this section, the unpaid principal balance of a loan is not counted if the loan:

(1) is in default; and

(2) the state has obtained a final judgment against the borrower or the borrower's heirs or assigns for the amount owed.

Loan Repayments

Sec. 4. The Industrial Commission shall deposit all repayments on loans made under this Act in the state treasury to the credit of the industrial development fund.

Rules

Sec. 5. The Industrial Commission may adopt rules to implement this Act.

[Acts 1979, 66th Leg., p. 1073, ch. 503, §§ 1 to 5, eff. June 7, 1979.]

Art. 5190.6. Development Corporation Act of 1979

Short Title

Sec. 1. This Act may be cited as the "Development Corporation Act of 1979."

Definitions

Sec. 2. Wherever used in this Act unless a different meaning clearly appears in the context, the following terms, whether singular or plural, shall mean as follows:

(1) "Board of directors" shall mean the board of directors of any corporation organized pursuant to the provisions of this Act.

(2) "Commission" shall mean the Texas Industrial Commission.

(3) "Corporation" shall mean any industrial development corporation organized pursuant to the provisions of this Act.

(4) "Cost" as applied to a project shall mean and embrace the cost of acquisition, construction, reconstruction, improvement, and expansion, including the cost of the acquisition of all land, rights-of-way, property rights, easements, and interests, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving, and expanding any such project, administrative expense and such other expense as may be necessary or incident to the acquisition, construction, reconstruction, improvement, and expansion thereof, the placing of the same in operation, and the financing or refinancing of any such project, including the refunding of any outstanding obligations, mortgages, or advances issued, made or given by any person for any of the aforementioned costs.

(5) "City" shall mean any municipality of the state incorporated under the provisions of (i) any general or special law or (ii) the home-rule amendment to the constitution.

(6) "County" shall mean a county of this state.

(7) "District" shall mean a conservation and reclamation district established under authority of Article XVI, Section 59, of the Texas Constitution.

(8) "Governing body" shall mean the board, council, commission, commissioners court, or legislative body of the unit.

(9) "Industrial development corporation" shall mean a corporation created and existing under the provisions of this Act as a constituted authority for the purpose of financing one or more projects.

(10) "Project" shall mean the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required or suitable for the promotion of manufacturing development and expansion and for the industrial development and expansion of airport and port facilities, distribution centers, truck ter-

minals operated by regulated common carriers, sewage or solid waste disposal facilities, air or water pollution control facilities, and other industrial facilities, and facilities which are related to any of the foregoing, and in furtherance of the public purposes of this Act, all as defined in the rules of the commission, irrespective of whether in existence or required to be acquired or constructed thereafter. In addition, in blighted or economically depressed areas or federally assisted new communities located within a home-rule city or a federally designated economically depressed county of less than 50,000 persons according to the last federal decennial census, a project may include the land, buildings, equipment, facilities, and improvements (one or more) found by the board of directors to be required or suitable for the promotion of commercial development and expansion and in furtherance of the public purposes of this Act, or for use by commercial enterprises, all as defined in the rules of the commission, irrespective of whether in existence or required to be acquired or constructed thereafter. As used in this Act, the term blighted or economically depressed areas shall mean those areas and areas immediately adjacent thereto within a city which by reason of the presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures, or which suffer from a high relative rate of unemployment, or which have been designated and included in a tax incremental district created under Chapter 695, Acts of the 66th Legislature, Regular Session, 1979 (Article 1066d, Vernon's Texas Civil Statutes),[1] or any combination of the foregoing, the city finds and determines, after a hearing, substantially impair or arrest the sound growth of the city, or constitute an economic or social liability and are a menace to the public health, safety, or welfare in their present condition and use. Notice of the hearing at which the city considers establishment of an economically depressed or blighted area shall be posted at the city hall prior to such hearing.

"Federally assisted new communities" shall mean those federally assisted areas which have received or will receive assistance in the form of loan guarantees under Title X of the National Housing Act[2] and a portion of the federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974, as amended.[3]

(11) "Resolution" shall mean the resolution, order, ordinance, or other official action by the governing body of a unit.

(12) "Unit" shall mean a city, county, or district which may create and utilize a corporation.

(13) "Bonds" includes bonds, notes, and other evidences of indebtedness.

[1] Repealed; see, now, art. 1066e.
[2] 12 U.S.C.A. § 1749aa et seq.
[3] 42 U.S.C.A. § 5307(a)(1).

Findings and Construction

Sec. 3. It is hereby found, determined, and declared:

(1) that the present and prospective right to gainful employment and general welfare of the people of this state require as a public purpose the promotion and development of new and expanded industrial and manufacturing enterprises;

(2) that the existence, development, and expansion of industry are essential to the economic growth of the state and to the full employment, welfare, and prosperity of its citizens;

(3) that the means and measures authorized by this Act and the assistance provided in this Act, especially with respect to financing, are in the public interest and serve a public purpose of the state in promoting the welfare of the citizens of the state economically by the securing and retaining of private industrial and manufacturing enterprises and the resulting maintenance of a higher level of employment, economic activity and stability;

(4) that community industrial development corporations in Texas have themselves invested substantial funds in successful industrial development projects and have experienced difficulty in undertaking such additional projects by reason of the partial inadequacy of their own funds or funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable first mortgage loans; and

(5) that communities in this state are at a critical disadvantage in competing with communities in other states for the location or expansion of such enterprises by virtue of the availability and prevalent use in all other states of financing and other special incentives; therefore, the issuance of revenue bonds by corporations on behalf of political subdivisions of the state as hereinafter provided for the promotion and development of new and expanded industrial and manufacturing enterprises to provide and encourage employment and the public welfare is hereby declared to be in the public interest and a public purpose.

This Act shall be liberally construed in conformity with the intention of the legislature herein expressed.

Creation of Corporation and Texas Small Business Industrial Development Corporation

Sec. 4. (a) Any number of natural persons, not less than three, each of whom is at least 18 years of age and a qualified elector of the unit may file with the governing body of a unit a written application requesting that the unit authorize and approve creation of a corporation to act on behalf of the unit. The governing body of the unit may not charge a filing fee for the application. If the governing body by appropriate resolution finds and determines that

it is advisable that the corporation be authorized and created and approves the articles of incorporation proposed to be used in organizing the corporation, then the articles of incorporation for the corporation may be filed as hereinafter provided. A unit may authorize and approve creation of one or more corporations, provided that the resolution approving the creation of each corporation shall specify the public purpose or purposes of the unit which the corporation may further on behalf of the unit, which purpose or purposes shall be limited to the promotion and development of industrial and manufacturing enterprises to promote and encourage employment and the public welfare. No corporation may be formed unless the unit has properly adopted a resolution as herein described.

(b) There is hereby created the Texas Small Business Industrial Development Corporation which shall act on behalf of the state to carry out the public purposes of this Act. The Texas Small Business Industrial Development Corporation shall be considered to be a corporation within the meaning of this Act, shall be organized and governed in accordance with the provisions of this Act, and shall have all of the powers, and shall be subject to all of the limitations, provided for corporations by this Act. For purposes of this Act, the state shall be considered to be the unit under whose auspices the Texas Small Business Industrial Development Corporation is created and the commission shall be considered to be the governing body. The articles of incorporation of the Texas Small Business Industrial Development Corporation shall be signed by at least three members of the commission, shall set forth the information requested by Subdivisions (1) through (9), Section (6), of this Act, and shall be approved by the commission, as governing body. The corporate existence of the Texas Small Business Industrial Development Corporation shall begin upon the issuance of a certificate of incorporation by the secretary of state. To the extent that the provisions of this section are inconsistent with other provisions of this Act, the provisions of this section shall control as to the creation, organization, administration, operation, and affairs of the Texas Small Business Industrial Development Corporation.

Form of Corporation

Sec. 5. The corporation shall be a nonmember, nonstock corporation.

Articles of Incorporation

Sec. 6. The articles of incorporation shall set forth:

(1) the name of the corporation;

(2) a statement that the corporation is a nonprofit corporation;

(3) the period of duration which may be perpetual;

(4) the specific purpose or purposes for which the corporation is organized and may issue bonds on behalf of the unit;

(5) that the corporation has no members and is a nonstock corporation;

(6) any provision not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws, for the regulation of the internal affairs of the corporation;

(7) the street address of its initial registered office and the name of its initial registered agent at such street address;

(8) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(9) the name and street address of each incorporator; and

(10) a recital that the unit has specifically authorized the corporation by resolution to act on its behalf to further the public purpose or purposes stated in the resolution and in the articles of incorporation and has approved the articles of incorporation.

Certificate of Incorporation

Sec. 7. (a) Triplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to the requirements of this Act, he shall, when a fee of $25 has been paid:

(1) endorse on each original the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

(3) issue two certificates of incorporation to each of which he shall affix one of such originals.

(b) A certificate of incorporation together with an original of the articles of incorporation affixed thereto by the secretary of state shall be delivered to the incorporators or their representatives and to the governing body of the unit under whose auspices the corporation was created.

(c) Upon the issuance of the certificate of incorporation, the corporate existence shall begin. After the issuance of the certificate of incorporation, the incorporation of the corporation shall be incontestable for any cause, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators and by the unit have been complied with and that the corporation has been incorporated under this Act.

Registered Office and Agent

Sec. 8. Each corporation shall have and continuously maintain in this state:

(1) a registered office which may be, but need not be, the same as its principal office; and

(2) a registered agent, which agent may be an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this state which has a principal or business office identical with such registered office.

Change of Registered Office or Agent

Sec. 9. (a) A corporation may change its registered office or change its registered agent or both upon filing in the office of the secretary of state a statement setting forth:

(1) the name of the corporation;

(2) the post-office address of its then registered office;

(3) if the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent is to be changed, the name of its successor registered agent;

(6) that the post-office address of its registered office and the post-office address of the business office of its registered agent as changed will be identical; and

(7) that such change was authorized by its board of directors or by an officer of the corporation so authorized by the board of directors.

(b) Duplicate originals of such statement shall be executed by the corporation by its president or vice-president and verified by him and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the requirements of this Act, he shall, when a fee of $25 has been paid:

(1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

(3) return the other original to the corporation or its representative.

(c) Upon such filing, the change of address of the registered office or the appointment of a new registered agent or both, as the case may be, shall become effective.

(d) Any registered agent of a corporation may resign:

(1) by giving written notice to the corporation at its last known address; and

(2) by giving written notice in triplicate to the secretary of state within 10 days after mailing or delivery of said notice to the corporation.

Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

(e) If the secretary of state finds that such written notice conforms to the provisions of this Act, he shall:

(1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office;

(3) return one original to such resigning registered agent; and

(4) return one original to the corporation at the last known address of the corporation as shown in such written notice.

Service of Process on President or Vice-President; Service on Secretary of State

Sec. 10. (a) The president and all vice-presidents of the corporation and the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this state or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any process, notice, or demand shall be made by delivering to and leaving with him or with the assistant secretary of state or with any clerk having charge of the corporation department of his office duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than 30 days.

(c) The secretary of state shall keep a record of all processes, notices, and demands served upon him under this article and shall record therein the time of such service and his action with reference thereto.

Board of Directors

Sec. 11. The corporation shall have a board of directors in which all powers of the corporation shall be vested and which shall consist of any number of directors, not less than three, each of whom shall be appointed by the governing body of the unit under whose auspices the corporation was created for a term of no more than six years, and each of whom shall be removable by the unit for cause or at will. The directors shall serve as such without compensation except that they shall be reimbursed for their

actual expenses incurred in the performance of their duties hereunder.

Organizational Meeting of Board

Sec. 12. After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held within this state for the purpose of adopting bylaws, electing officers, and for such other purposes as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting.

Adoption and Approval of Initial Bylaws

Sec. 13. The initial bylaws of a corporation shall be adopted by its board of directors and approved by resolution of the governing body of the unit under whose auspices the corporation was created.

Quorum; Actions of Majority at Meeting; Action Without Meeting

Sec. 14. (a) A quorum for the transaction of business by the board of directors shall be whichever is less:

(1) a majority of the number of directors fixed by the bylaws or in the absence of a bylaw fixing the number of directors a majority of the number of directors stated in the articles of incorporation; or

(2) any number, not less than three, fixed as a quorum by the articles of incorporation or the bylaws.

(b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

(c) Any action required by this Act to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the directors. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this Act.

Indemnification of Directors and Officers; Notice of Meetings; Waiver of Notice

Sec. 15. (a) The corporation shall have the power to indemnify any director or officer or former director or officer of the corporation for expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection with any claim asserted against him by action in court or otherwise by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

(b) If the corporation has not fully indemnified him, the court in the proceeding in which any claim against such director or officer has been asserted or any court having the requisite jurisdiction of an action instituted by such director or officer on his claim for indemnity may assess indemnity against the corporation, its receiver, or trustee for the amount paid by such director or officer (including attorneys' fees) in satisfaction of any judgment or in compromise of any such claim (exclusive in either case of any amount paid to the corporation), actually and necessarily incurred by him in connection therewith to the extent that the court shall deem reasonable and equitable; provided, nevertheless, that indemnity may be assessed under this section only if the court finds that the person indemnified was not guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

(c) Regular meetings of the board of directors may be held within the state with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

(d) Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Officers

Sec. 16. The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors. One person may hold more than one office, except that the president may not hold the office of secretary.

Amendment of Articles

Sec. 17. (a) The articles of incorporation may at any time and from time to time be amended, provided that the board of directors files with the governing body of the unit under whose auspices the corporation was created a written application requesting

that the unit approve such amendment to the articles of incorporation, specifying in such application the amendment or amendments proposed to be made. If the governing body by appropriate resolution finds and determines that it is advisable that the proposed amendment be made, authorizes the same to be made, and approves the form of the proposed amendment, the board of directors shall proceed to amend the articles as hereinafter provided.

(b) The articles of incorporation may also be amended at any time by the governing body of the unit under whose auspices the corporation was created at its sole discretion by adopting an amendment to the articles of incorporation of the corporation by resolution of such governing body and delivering the articles of amendment to the secretary of state as hereinafter provided.

Execution and Verification of Amendments

Sec. 18. The articles of amendment shall be executed in duplicate by the corporation by its president or by a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the unit under whose auspices the corporation was created, shall be verified by one of the officers signing such articles, and shall set forth:

(1) the name of the corporation;

(2) if the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read; if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added; and

(3) the fact that such amendment was adopted or approved by the governing body of the unit and the date of the meeting at which the amendment was adopted or approved by such governing body.

Certificate of Amendment; Effect of Amendment

Sec. 19. (a) Triplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to the requirements of this Act, he shall, when a fee of $25 has been paid:

(1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

(3) issue two certificates of amendment to each of which he shall affix an original.

(b) A certificate of amendment together with an original of the articles of amendment affixed thereto by the secretary of state shall be delivered to the corporation or its representative and to the governing body of the unit under whose auspices the corporation was created.

(c) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(d) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party or the existing rights of persons other than members; and in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

Restated Articles of Incorporation and Restated Certificate of Incorporation

Sec. 20. (a) A corporation may, by following the procedure to amend the articles of incorporation provided by this Act including obtaining the approval of the governing body of the unit under whose auspices the corporation was created, authorize, execute, and file restated articles of incorporation which may restate either:

(1) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state; or

(2) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation.

(b) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state without making any further amendment thereof, the introductory paragraph shall contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and that the instrument contains no change in the provisions thereof, provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the name and address of each incorporator may be omitted.

(c) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation, the instrument containing such articles shall:

(1) set forth for any amendment made by such restated articles of incorporation a statement that each such amendment has been effected in conformity with the provisions of this Act and shall further set forth the statements required by this Act to be contained in articles of amendment, provided that the full text of such amendments need not be set forth except in the restated articles of incorporation as so amended;

(2) contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof; provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the names and addresses of each incorporator may be omitted; and

(3) restate the text of the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by the restated articles of incorporation.

(d) Such restated articles of incorporation shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall be verified by one of the officers signing such articles. Triplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, he shall, when a fee of $25 has been paid:

(1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

(3) issue two restated certificates of incorporation to each of which he shall affix one of such originals.

(e) A restated certificate of incorporation together with a triplicate original of the restated articles of incorporation affixed thereto by the secretary of state shall be delivered to the corporation or its representative and to the governing body of the unit under whose auspices the corporation was created.

(f) Upon the issuance of the restated certificate of incorporation by the secretary of state, the original articles of incorporation and all amendments thereto shall be superseded and the restated articles of incorporation shall be deemed to be articles of incorporation of the corporation.

Authority to Issue Obligations; Approval of Programs and Expenditures; Financial Statements, Books and Records

Sec. 21. Every unit is hereby authorized to utilize a corporation to issue bonds on its behalf to finance the cost of projects to promote and develop industrial and manufacturing enterprises to promote and encourage employment and the public welfare. No unit is or shall be authorized to lend its credit or grant any public money or thing of value in aid of a corporation. The unit will approve all programs and expenditures of the corporation and annually review any financial statements of the corporation, and at all times the unit will have access to the books and records of the corporation.

Bonds Not Debt of State or Political Subdivision; Corporation as Constituted Authority and Instrumentality but not Political Subdivision or Corporation

Sec. 22. Bonds issued under the provisions of this Act shall be deemed not to constitute a debt of the state, of the unit, or of any other political corporation, subdivision, or agency of this state or a pledge of the faith and credit of any of them, but such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the state, the unit, nor any political corporation, subdivision, or agency of the state shall be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the state, the unit, or any other political corporation, subdivision, or agency thereof is pledged to the payment of the principal of or the interest on such bonds. The corporation shall not be authorized to incur financial obligations which cannot be paid from proceeds of the bonds or from revenues realized from the lease or sale of a project or realized from a loan made by the corporation to finance or refinance in whole or in part a project. The corporation when established and created pursuant to the terms of the Act shall be a constituted authority and an instrumentality (within the meaning of those terms in the regulations of the treasury and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code of 1954, as amended [1]) and shall be authorized to act on behalf of the unit under whose auspices it is created for the specific public purpose or purposes authorized by such unit; but the corporation is not intended to be and shall not be a political subdivision or a political corporation within the meaning of the constitution and the laws of the state, including without limitation Article III, Section 52, of the Texas Constitution, and a unit shall never delegate to a corporation any of such unit's attributes of sovereignty, including the power to tax, the power of eminent domain, and the police power.

[1] 26 U.S.C.A. § 103.

Powers of Corporation

Sec. 23. (a) The corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations incorporated under the Texas Non-Profit Corporation Act, as amended (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes); but to the extent that the provisions of the general laws are in conflict or inconsistent with this Act, this Act prevails. In addition, the corporation shall have the following powers with respect to projects together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

(1) to acquire, whether by construction, devise, purchase, gift, lease, or otherwise or any one or more of such methods and to construct, improve,

maintain, equip, and furnish one or more projects located within the state or within the coastal waters of the state and within or partially within the limits of the unit under whose auspices the corporation was created or within the limits of a different unit where the governing body thereof requests the corporation to exercise its powers therein;

(2) to lease to a lessee all or any part of any project for such rentals and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(3) to sell by installment payments or otherwise and convey all or any part of any project for such purchase price and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(4) to make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the cost of any project, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of a project; and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(5) to issue bonds for the purpose of defraying all or part of the cost of any project, to secure the payment of such bonds as provided in this Act, and to sell bonds at a price or prices determined by the board of directors or to exchange bonds for property, labor, services, material, or equipment comprising a project or incidental to the acquisition of a project, and those bonds may bear interest at any rate or rates determined by the board of directors, subject to the limitations set forth in this Act;

(6) as security for the payment of the principal of and interest on any bonds issued and any agreements made in connection therewith, to mortgage and pledge any or all of its projects or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the corporation to secure any loan made by the corporation and to pledge the revenues and receipts therefrom;

(7) to sue and be sued, complain and defend, in its corporate name;

(8) to have a corporate seal and to use the same by causing it or a facsimile thereof to be impressed on, affixed to, or in any manner reproduced upon instruments of any nature required to be executed by its proper officers;

(9) to make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state with the approval of the unit under whose auspices the corporation was created by resolution of the governing body for the administration and regulation of the affairs of the corporation;

(10) to cease its corporate activities and terminate its existence by voluntary dissolution as provided herein; and

(11) whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized which powers shall be subject at all times to the control of the governing body of the unit under whose auspices the corporation was created.

(b) The corporation shall not have the power to own or operate any project as a business other than as lessor, seller, or lender or pursuant to the requirements of any trust agreement securing the credit transaction. Accordingly, the lessee, purchaser, or borrower pursuant to any lease, sale, or loan agreement relating to a project shall be considered to be the owner of the project for the purposes of the application of any ad valorem, sales, and use taxes or any other taxes levied or imposed by this state or any political subdivision of this state. The purchase and holding of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof shall not be deemed the operation of a project.

Leases, Sales, and Loan Agreements; Approval of Bonds and Permit for Offer and Sale of Securities

Sec. 24. (a) The commission shall approve the contents of any lease, sale, or loan agreement made under this Act. The commission shall prescribe rules and regulations setting forth minimum standards for project eligibility and for lease, sale, and loan agreements and guidelines with respect to the business experience, financial resources, and responsibilities of the lessee, purchaser, or borrower under any such agreement, but in no event shall the commission approve any agreement unless it affirmatively finds that the project sought to be financed is in furtherance of the public purposes of this Act. Appeal from any adverse ruling or decision of the commission under this subsection may be made by the corporation to the District Court of Travis County. The substantial evidence rule shall apply. Rules, regulations, and guidelines promulgated by the commission and amendments thereto shall be effective only after they have been filed with the secretary of state.

(b) The corporation may submit a transcript of proceedings in connection with the issuance of the bonds to the commission and request that the commission approve such bonds. On filing a request for the commission's approval of issuance of the bonds, the corporation shall pay to the commission a nonrefundable filing fee of $1,500. If the commission refuses to approve such bond issue solely on the basis of law, the corporation may seek a writ of mandamus from the Supreme Court, and for this purpose

the chairman of the commission shall be considered a state officer as provided in Article 1733, Revised Civil Statutes of Texas, 1925.

(c) The commission may delegate to the executive director of the commission the authority to approve a lease, sale, or loan agreement made under this Act or bonds issued by a corporation or any documents submitted as provided herein.

(d) No corporation shall sell or offer for sale any bonds or other securities until a permit authorizing the corporation to offer and sell such securities has been granted by the securities commissioner under the registration provisions of The Securities Act, as amended (Article 581–1 et seq., Vernon's Texas Civil Statutes), except as the State Securities Board may exempt from registration by rule, regulation, or order. Appeal from any adverse decision of the securities commissioner or the State Securities Board shall be as provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes). The substantial evidence rule shall apply in all such appeals.

(e) The commission by rule shall require corporations to file fee schedules and bond procedures. Bond counsel and financial advisors participating in an issue shall be mutually acceptable to the corporation and the user.

(f) The commission shall adopt rules and regulations governing programs for small businesses receiving loans guaranteed in whole or in part by the Small Business Administration or other federal agencies. The commission may also adopt rules and regulations governing the terms and conditions of loans by a corporation to banks or other lending institutions the proceeds of which are reloaned as permanent or temporary financing of a project.

Bonds and Proceeds of Bonds

Sec. 25. (a) The principal of and the interest on any bonds issued by a corporation shall be payable solely from the funds provided for such payment and from the revenues of the one or more projects for which the bonds were authorized. The bonds of each issue shall be dated, shall bear interest at such rate or rates that are fixed, variable, floating, or otherwise, shall mature at such time or times not exceeding 40 years from their date as may be determined by the board of directors, and may be made redeemable before maturity at the option of the board of directors at such price or prices and under such terms and conditions as may be fixed by the board of directors of the corporation prior to the issuance of the bonds.

(b) The board of directors shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature for all purposes the same as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form or both as the board of directors of the corporation may determine, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The corporation may sell bonds at public or private sale and at an interest rate not to exceed that permitted by the constitution or laws of the state.

(c) The proceeds of the bonds of each issue shall be used for the payment of all or part of the cost of or for the making of a loan in the amount of all or part of the cost of the project or projects for which authorized as defined herein and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the same. Bond proceeds may be used to pay all costs incurred in issuing the bonds, interest on the bonds for such time as may be determined by the board of directors of the corporation, and to establish reserve funds and sinking funds for the bonds. If the proceeds of the bonds of any series issued with respect to the cost of any project shall exceed the cost of the project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or used to purchase bonds in the open market.

(d) Prior to the preparation of definitive bonds, the corporation may under like restrictions issue interim or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. Bonds may be issued and lease, sale, and loan agreements entered into under the provisions of this Act without obtaining the consent or approval of any department, division, commission, board, bureau, or agency of the state except as otherwise provided herein.

(e) The principal of and interest on any bonds issued by the corporation shall be secured by a pledge of the revenues and receipts derived by the corporation from the lease or sale of the project so financed or from the loan made by the corporation with respect to the project so financed or refinanced and may be secured by a mortgage covering all or any part of such project, including any enlargements of and additions to such project thereafter made. The resolution under which the bonds are authorized to be issued and any such mortgage may contain any agreements and provisions respecting the maintenance of the project covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the

board of directors shall deem advisable and not in conflict with the provisions hereof. Each pledge, agreement, and mortgage made for the benefit or security of any of the bonds of the corporation shall continue effective until the principal of and interest on the bonds for the benefit for which the same were made have been fully paid.

(f) No issue of bonds, including refunding bonds, shall be delivered by the corporation without a resolution of the governing body adopted no more than 60 days prior to the date of delivery of the bonds specifically approving the resolution of the corporation providing for the issuance of the bonds.

(g) Bonds issued under this Act, and coupons, if any, representing interest on the bonds, are securities as defined by Chapter 8, Business & Commerce Code, as amended, and are negotiable if issued in accordance with this Act.

Refunding Bonds

Sec. 26. Each corporation is hereby authorized to provide by resolution for the issuance of its refunding bonds for the purpose of refunding any bonds then outstanding, issued on account of a project, which shall have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds and, if deemed advisable by the corporation, for the additional purpose of financing improvements, extensions, or enlargements to the project in connection with which the bonds to be refunded shall have been issued or for another project. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the corporation in respect to the same shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the corporation, the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

Trust Agreements

Sec. 27. Any bonds issued under the provisions of this Act may be secured by a trust agreement by and between the corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Any such trust agreement may evidence a pledge or assignment of the lease, sale, or loan revenues to be received from a lessee or purchaser of or borrower with respect to a project for the payment of principal of and interest and any premium on such bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for such purposes. Any such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project in connection with which such bonds shall have been authorized, and the custody, safeguarding, and application of all money. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the corporation. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the corporation may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the project.

Enforcement of Agreements or Mortgages

Sec. 28. (a) Any agreement relating to any project shall be for the benefit of the corporation. Any such agreement shall contain a provision that, in the event of a default in the payment of the principal of or the interest or premium on such bonds or in the performance of any agreement contained in such proceedings, mortgage, or instrument, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with such resolution, mortgage, or instrument.

(b) Any mortgage to secure bonds issued thereunder may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

Option to Purchase Granted to Lessee

Sec. 29. A corporation may grant a lessee an option to purchase all or any part of a project when all bonds of the corporation delivered to provide such facilities have been paid or provision has been made for their final payment. The provisions of this law are procedurally exclusive for authority to convey or grant an option to purchase, and reference to no other law shall be required.

Authority of Corporation Regarding Bonds, Lease, Sale, or Loan Agreements

Sec. 30. Except as limited by the provisions of this Act or as limited by the rules, regulations, and guidelines of the commission, each corporation shall have full and complete authority with respect to bonds, lease, sale, or loan agreements and the provisions thereof.

Bonds as Legal and Authorized Investments

Sec. 31. Any bonds issued pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

Exemption from Taxation

Sec. 32. The legislature finds, determines, and declares that the activities of a corporation created and organized under the provisions of this Act affect all the people of the unit under whose auspices it is created by assuming to a material extent that which might otherwise become the obligation or duty of such unit, and therefore such corporation is an institution of purely public charity within the tax exemption of Article VIII, Section 2, of the Texas Constitution. However, a corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

Nonprofit Nature of Corporation

Sec. 33. The corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm, or corporation, except that in the event the board of directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation, then any net earnings of the corporation thereafter accruing shall be paid to the unit under whose auspices the corporation was created.

Authority to Alter or Dissolve Corporation

Sec. 34. At any time the unit may in its sole discretion alter the structure, organization, programs, or activities of the corporation or terminate and dissolve the corporation, subject only to any limitation provided by the constitution and laws of the state on the impairment of contracts entered into by the corporation. Such alteration or dissolution shall be made by written resolution of the governing body of the unit and as hereinafter provided.

Dissolution Upon Completion of Purposes

Sec. 35. Whenever the board of directors of the corporation by resolution shall determine that the purposes for which the corporation was formed have been substantially complied with and that all bonds theretofore issued by the corporation have been fully paid, the members of the board of directors of the corporation shall, with the approval by written resolution of the unit under whose auspices the corporation was created, thereupon dissolve the corporation as hereinafter provided.

Dissolution and Certificate of Dissolution

Sec. 36. (a) Articles of dissolution shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary or by the presiding officer and secretary or clerk of the governing body under whose auspices the corporation was created. Triplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to the requirements of this Act, he shall, when a fee of $25 has been paid:

(1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

(3) issue two certificates of dissolution to each of which he shall affix an original.

(b) A certificate of dissolution together with an original of the articles of dissolution affixed thereto by the secretary of state shall be returned to the representative of the dissolved corporation and to the governing body of the unit. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this Act.

(c) Whenever dissolution occurs, whether instituted by the governing body unit or by the board of directors of the corporation, the dissolution proceedings shall transfer the title to all funds and properties then owned by the corporation to the unit under whose auspices the corporation was created.

Construction With Other Laws and Federal and State Constitutions; Severability

Sec. 37. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the creation of the corporations authorized herein and all actions by such corporations authorized hereby without reference to any other general or special laws or specific acts or any restrictions or limitations contained therein; and in any case, to the extent of any conflict or inconsistency between any provisions of

this Act and any other provisions of law, this Act shall prevail and control; provided, however, any unit and any corporation shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

No proceedings, notice, or approval shall be required for the organization of the corporation or the issuance of any bonds or any instrument as security therefor, except as is herein provided, any other law to the contrary notwithstanding; provided that nothing herein shall be construed to deprive the state and its governmental subdivisions of their respective police powers over any properties of the corporation or to impair any police power thereover of any official or agency of the state and its governmental subdivisions as may be otherwise provided by law.

Nothing in this Act shall be construed to violate any provision of the federal or state constitution, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the corporation shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provisions of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof.

[Acts 1979, 66th Leg., p. 1675, ch. 700, §§ 1 to 37, eff. June 13, 1979. Amended by Acts 1981, 67th Leg., p. 1777, ch. 389, § 25, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 3025, ch. 792, §§ 1 to 12, eff. June 17, 1981.]

Section 1 of Acts 1981, 67th Leg., p. 1490, ch. 389, enacted Title 2 of the Tax Code.

Sections 15 and 16 of Acts 1981, 67th Leg., p. 3036, ch. 792, provide:

"Sec. 15. All corporations for which certificates of incorporation were issued under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), before the effective date of this Act are validated in all respects and such a corporation may not be held invalid because the incorporation proceedings were not in accordance with the requirements of the Development Corporation Act of 1979.

"Sec. 16. If a resolution is adopted by the board expressing its intent to issue bonds for the purpose of financing a project or other similar official action is taken by a corporation toward the issuance of such bonds, under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), and the regulations of the commission in effect before the effective date of this Act, the corporation may issue such obligations, and any obligations to refund the same, for the purpose of such project as if the Development Corporation Act of 1979 had not been amended by this Act."

CHAPTER TWELVE. RESTRICTIONS ON LABOR

Article
5207b. Jury Service; Right to Reemployment.

Art. 5207b. Jury Service; Right to Reemployment

(a) No private employer may terminate the employment of a permanent employee because such employee serves as a juror. The employee is entitled to return to the same employment that he or she held at the time he or she was summoned for jury service.

(b) To be entitled to take advantage of the right to reemployment granted in Subsection (a) of this section, the employee must, as soon as practical upon his or her release from jury service, give actual notice of his or her intention to return to his or her employment.

(c) A person who is injured because of a violation of this section is entitled to just damages, recoverable at law, in an amount not to exceed six months' compensation at the rate at which he or she was compensated at the time he or she was summoned for jury duty. In addition to damages, the injured person is entitled to recover reasonable attorney's fees, to be approved by the court.

(d) It is a defense in an action brought under this section that the employer's circumstances changed to such an extent during the time that the employee served as a juror that reemployment was impossible or unreasonable.

[Acts 1975, 64th Leg., p. 244, ch. 94, § 1, eff. Sept. 1, 1975.]

CHAPTER THIRTEEN. EMPLOYMENT AGENTS

Article
5221a–7. Personnel Employment Services.

Art. 5221a–5. Labor Agency Law

Definitions as Used in the Act

Sec. 1.

[See Compact Edition, Volume 4 for text of (a)]

(b) "Fee" means anything of value including money or other valuable consideration or services or the promise of any of the foregoing received by a Labor Agent or Agency from or on behalf of any person seeking employment, or employers seeking employees, in payment for any service, either directly or indirectly. The term "fee" includes the difference between the amount received by a Labor Agent and the amount paid out by him to persons employed to render personal services to, for, or under the direction of a third person.

[See Compact Edition, Volume 4 for text of 1(c) and 1(d)]

(e) "Labor Agent" means any person in this State who, for a fee, offers or attempts to procure, or procures employment for employees, or without a fee offers or attempts to procure, or procures employment for common or agricultural workers; or any person who for a fee attempts to procure, or procures employees for an employer, or without a fee offers or attempts to procure common or agricultural workers for employers, or any person, regardless whether a fee is received or due, offers or attempts to supply or supplies the services of com-

mon or agricultural workers to any person. The term "Labor Agent" includes any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for such workers; supervises, times, checks, counts, weighs, or otherwise directs or measures the work; or disburses wage payments to the workers.

[See Compact Edition, Volume 4 for text of 1(f) and 1(g)]

Exceptions

Sec. 2. The provisions of this Act shall not apply to persons who charge a fee of not more than Two Dollars ($2) for registration only for procuring employment for school teachers; provisions of this Act shall not apply to any employment agency established and operated by this State, the United States Government, or any municipal government of this State; the provisions of this Act shall not apply to any person who may operate a labor bureau or employment office in conjunction with his own business for the sole and exclusive purpose of employing help for his own use within this State, nor to any common carrier operating in this State who may operate an employment office in conjunction with his own business for the exclusive purpose of employing help for his own use within or without this State, provided, that no fee or other charge or reduction is exacted from the salary or wages of the worker for employment given. If a fee or charge of any kind, either directly or indirectly, is exacted of the worker, then said employer is deemed an employment or labor agent and is subject to the provisions of this Act. The provisions of this Act shall not apply to farmers or stock raisers acting jointly or severally in securing laborers for their own use in this State where no fee is charged or collected, either directly or indirectly, for employment given; the provisions of this Act shall not apply to any farm labor contractor registered under the Farm Labor Contractor Registration Act of 1963, as amended (7 USC 2041 et seq.); the provisions of this Act shall not apply to any person, corporation, or charitable association chartered under the laws of Texas for the purpose of conducting a free employment bureau or agency; nor to any veterans' organization or labor union; nor to any nurses' organizations operated not for profit, to be conducted by recognized professional registered nurses for the enrollment of its professional members only for the purpose of providing professional service to the public; nor shall the provisions of this Act apply to employers, their representatives and/or crew leaders engaged in agricultural production and/or agricultural related services (packing, packaging, and processing), who recruit workers through the Texas Employment Commission.

Application and Bond

Sec. 3. (a) Application and Bond for a Labor Agency license shall be executed on blank forms prescribed and furnished by the Commissioner. Application for license to act as a Labor Agent may be made in person or by mail to the Commissioner upon blank application form which shall be verified by the applicant. Such application shall also be accompanied by affidavits of at least five (5) creditable citizens who have resided in the county in which said applicant resides for at least three (3) years prior thereto, to the effect that applicant or applicants are persons of good moral character. The application must state the names and addresses of all partners, associates, and profit sharers of the business and shall list the amount of their respective interests.

(b) The Commissioner shall investigate each applicant and the Department of Public Safety shall make available to the Commissioner all arrest and conviction records, of their files, on any applicant for license under this Act.

(c) The application shall be examined by the Commissioner. If he finds that the same complies with the law and that the applicant is entitled to a license and pays the annual license fee of Fifty Dollars ($50), then he shall issue a license to the applicant. Each license issued by the Commissioner shall be good for a period of one year from date of issuance.

(d) Each application for a labor agency license must be accompanied by a surety or cash performance bond in the principal amount of Two Thousand Five Hundred Dollars ($2,500). The bond shall be payable to the State for the use and benefit of any damaged party and conditioned that the licensee will pay any judgment recovered by any consumer, the State, or any political subdivision thereof in any suit for damages, penalties or expenses, including reasonable attorney's fees resulting from a cause of action involving the licensee's labor agency activities.

Fees

Sec. 3A. Where a fee is charged for obtaining employment such fee in no event shall exceed the sum of Three Dollars ($3), which may be collected from the applicant only after employment has been obtained and accepted by the applicant. A labor agent may not charge a registration fee.

Persons Disqualified

Sec. 3B. No license to operate as a labor agent may be granted to:

(1) a person who sells or proposes to sell alcoholic beverages in a building or on premises where he operates or proposes to operate as a labor agent; or

(2) a person whose license has been revoked within three (3) years preceding the date of application.

Notice of Cancellation of Bond

Sec. 3C. Where the surety intends to cancel a bond, thirty (30) days' notice of the cancellation shall be furnished by the surety to the Commissioner prior to the effective date of the cancellation.

Sec. 4. Repealed by Acts 1979, 66th Leg., p. 259, ch. 134, § 9, eff. May 9, 1979.

Revocation or Suspension of License

Sec. 5. The Commissioner shall have the authority, and it shall be his duty, to revoke the license of any labor agent when it shall appear to his satisfaction, upon hearing, that such agent has been convicted in a State or Federal Court of an offense which under the laws of this State is a felony, or for any offense involving moral turpitude, or that the agent had obtained his license illegally or fraudulently or was guilty of fraud, false swearing, or deception in securing his license. The Commissioner shall have the authority, and it shall be his duty, to revoke or suspend the license of any labor agent when it shall appear to his satisfaction, upon hearing, that the agent has violated any provision of this Act.

The Commissioner shall not revoke or suspend the license of any agent until complaint in writing, made by a credible person, shall be filed with him, specifying in general terms the grounds of the proposed revocation or suspension, and a full and fair hearing given to him thereon. Upon the filing of such complaint, the Commissioner shall fix a time and place, reasonably accessible to the agent complained against of the hearing of said complaint. The Commissioner shall notify the agent so complained against of the time and place fixed for said hearing by a registered letter addressed to him at his post-office address as the same appears upon his application for license, accompanied by an exact copy of the complaint against him; and mailing of such notice and copy shall be sufficient and conclusive evidence of proper service of the procedure upon the agent so complained against. The agent so complained against shall have at least ten (10) days after the date said notice is mailed, exclusive of the day of mailing and the day of hearing, before hearing upon said complaint shall be had, and shall have the right to file answer, introduce evidence and to be heard both in person and by counsel. The Commissioner shall have the power to summon and compel the attendance of witnesses before him to testify in relation to any such complaint, and may require the production of any book, paper or document deemed pertinent thereto. Said Commissioner shall also have the power to provide for the taking of depositions of witnesses and evidence may be heard either from witnesses present testifying orally, or by deposition taken under such rules, and in such fair and impartial manner as the Commissioner may prescribe. Said hearing shall be had before the Commissioner and shall be conducted in a fair and orderly manner, and in accordance with rules of procedure to be adopted by the Commissioner, which must be in accordance with the terms and provisions of the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes). Any appeal from the decisions of the Commissioner shall be filed in the District Court of Travis County and said appeal shall not have the effect of automatically staying the decisions of the Commissioner.

Failure to File Bond; Suspension of License

Sec. 5A. If a licensee fails to file a bond with the Commissioner within 30 days after notice of cancellation by the surety of the bond, the license issued to the principal under the bond is automatically suspended until such time as a bond is filed. A person whose license is suspended pursuant to this section shall not operate as a labor agent during the period of the suspension.

[See Compact Edition, Volume 4 for text of 6]

Reports to Workers

Sec. 7. Any labor agent hiring, enticing, or soliciting common or agricultural workers in this State to be employed beyond the limits of this State, shall provide to each person who was hired, enticed, or solicited to be employed beyond the limits of this State a report correctly showing:

(a) The name and address of the person.

(b) The name and address of the employer.

(c) The kind of work to be performed.

(d) The place where the person is to be employed.

(e) The term of employment.

(f) The wages to be paid, and

(g) Whether or not transportation is to be furnished, arranged for, or paid for any such common laborer or agricultural worker either leaving or returning to this State.

The said Commissioner shall have the authority and it shall be his duty to issue the forms necessary for this section.

Duties of Licensee

Sec. 7A. (a) In addition to the duties inherent in being a labor agent and the duties required by this Act or any other provision of law, a licensee has the duties set forth in this section if he employs workers to render services for third persons.

(b) A licensee shall promptly pay or distribute to the proper individuals all money or other things of value entrusted to the licensee by a third person for such purpose.

(c) A licensee shall comply with the terms and provisions of legal and valid agreements and contracts entered into between the licensee in his capacity as a labor agent and third persons.

(d) A licensee shall have available for inspection by his employees and by the third persons with

whom he has contracted a written statement in English and Spanish showing the rate of compensation he receives from the third persons and the rate of compensation he is paying to his employees for services rendered to, for, or under the control of such third persons.

(e) A licensee shall take out a policy of insurance with an insurance carrier authorized to do business in the State of Texas in an amount satisfactory to the Commissioner, which insures the licensee against liability for damage to persons or property arising out of the licensee's operation of, or ownership of, any motor vehicle for the transportation of individuals in connection with his business, activities, or operations as a labor agent.

(f) A licensee shall have displayed prominently at the site where the work is to be performed and on all vehicles used by the licensee for the transportation of employees the rate of compensation the licensee is paying to his employees for their services, printed in both English and Spanish.

(g) All vehicles used by a licensee for the transportation of individuals in his operations as a labor agent shall have displayed prominently at the entrance of the vehicle the name of the labor agent and the number of his license issued by the Commissioner.

(h) Each licensee shall, semimonthly or at the time of each payment of wages, furnish each worker employed by him either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing in detail each and every deduction made from the wages.

[See Compact Edition, Volume 4 for text of 7C to 9]

To Display License

Sec. 10. (a) A labor agent shall keep conspicuously posted in his office the license issued to him under this law.

(b) A labor agent shall display a duplicate of his license to each person with whom he deals in his capacity as a labor agent.

Doing Business Without License

Sec. 11. Any person acting as a Labor Agent, as defined by this Act, without having first filed with the Commissioner of Labor and Standards of the State of Texas, an application for license as Labor Agent, as provided by this Act, and without having first secured a State license as provided, shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not less than Fifty Dollars ($50) nor more than Three Hundred Dollars ($300).

Authority of the Commissioner

Sec. 12. The Commissioner of Labor and Standards and his deputies or inspectors are hereby empowered to enforce the provisions of this Act, and shall have the authority of peace officers in making arrests of any person or persons who violate, in their presence, any of the provisions of this Act; and when such arrest has been made, the Commissioner or his duly appointed deputies or inspectors may enter any employment office at any time when such employment office is open for business and inspect the registers and all other records of whatsoever kind and character of such employment or labor agent for the purpose of ascertaining whether the provisions of this law are being violated, and the refusal of any employment or labor agent to permit such inspection shall be a violation of the Act, and be sufficient reason for the Commissioner to suspend or revoke the license of such agent in accordance with the provisions of Section 5 of this Act.

Rules and Regulations

Sec. 12A. The Commissioner shall promulgate rules and regulations to carry out the provisions of this Act.

[See Compact Edition, Volume 4 for text of 13 to 15]

[Amended by Acts 1975, 64th Leg., p. 409, ch. 182, §§ 1, 2, eff. May 13, 1975; Acts 1979, 66th Leg., p. 256, ch. 134, §§ 1 to 9, eff. May 9, 1979; Acts 1981, 67th Leg., p. 3221, ch. 846, § 1, eff. Aug. 31, 1981.]

Art. 5221a-6. Repealed by Acts 1979, 66th Leg., p. 574, ch. 263, § 9

Prior to repeal, this article was amended by Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.014; Acts 1977, 65th Leg., p. 1953, ch. 777, §§ 1, 2. See, now, art. 5221a-7.

Art. 5221a-7. Personnel Employment Services

Definitions

Sec. 1. In this Act:

(1) "Person" means an individual, partnership, association, corporation, legal representative, trustee in bankruptcy, or receiver.

(2) "Fee" means anything of value. The term includes money or other valuable consideration or services or the promise of money or other valuable consideration or services received directly or indirectly by a personnel service from a person seeking employment in payment for a service.

(3) "Employer" means a person employing or seeking to employ an employee.

(4) "Applicant" means a person engaging the services of a personnel service for the purpose of securing employment or a person placed by a personnel service with an employer.

(5) "Personnel service" means a person who for a fee or without a fee offers or attempts to procure directly or indirectly permanent employment for an employee or procures or attempts to procure a permanent employee for an employer.

(6) "Counselor" means an individual who interviews and refers an applicant to a prospective employer or who solicits job orders from an employer.

(7) "Owner" means a person possessing a proprietary interest in a personnel service.

(8) "Service file" means a job order, resume, application, workpaper, or other record containing any information relating to an applicant, employer, or position or the operations of a personnel service.

(9) "Job order" means a verbal or written notification from an employer of a job opening.

(10) "Principal location" means the place at which the day-to-day business of the personnel service is operated. An owner may have more than one principal location.

(11) "Management search consultant" means a personnel service that is retained by, acts solely on behalf of, and is compensated only by an employer and that does not collect directly or indirectly any fee from an applicant on account of any service performed by the personnel service.

(12) "Commissioner" means the commissioner of labor and standards.

Exemption

Sec. 2. (a) This Act does not apply to:

(1) a person regulated by Chapter 234, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 5221a–5, Vernon's Texas Civil Statutes);

(2) a personnel service operated by this state, the United States government, or any municipal government of this state;

(3) a personnel service operated by a person in conjunction with the person's own business for the exclusive purpose of employing help for use in the business; or

(4) a labor union.

(b) Section 7 of this Act does not apply to a management search consultant.

Conduct

Sec. 3. (a) A person who acts as a personnel service in the capacity of an owner, operator of the service, counselor, or agent or employee of the service may not:

(1) impose a fee for the registration of an applicant for employment or other fee on an applicant except for the furnishing of an employment referral that results in the applicant obtaining employment;

(2) engage or attempt to engage in splitting or sharing with an employer, an agent or other employee of an employer, or other person to whom the personnel service has furnished services a payment received by a personnel service from a person seeking employment or from an employer;

(3) make, give, or cause to be made or given to any applicant for employment any false promise, misrepresentation, or misleading statement or information;

(4) refer any applicant for employment except on a valid job order for the referral;

(5) advertise a position without there first being a valid job order verifiable by the employer;

(6) procure or attempt to procure the discharge of a person from his or her current employment;

(7) induce, solicit, or attempt to induce or solicit an employee to terminate his or her employment in order to obtain new employment if the employee's present employment was obtained by the efforts of the inducing or soliciting personnel service or any other personnel service having a common ownership with the inducing or soliciting personnel service unless the employee initiates the new contact;

(8) deliver, disclose, distribute, receive, or otherwise communicate any service file or any information contained in a service file to or from a person except as authorized by the personnel service owning the file;

(9) advertise in any medium, including a newspaper, trade publication, billboard, radio, television, card, printed notice, circular, contract, letterhead, and any other material made for public distribution, except an envelope, without clearly stating that the advertisement is by a firm providing a private personnel service;

(10) refer an applicant to a place where a strike or lockout exists without first furnishing the applicant a written statement of the existence of the strike or lockout if the personnel service has knowledge of the fact of the strike or lockout;

(11) refer an applicant to employment deleterious to his or her health or morals if the personnel service has knowledge of the deleterious condition of the employment; or

(12) charge a fee of more than 20 percent of the applicant's gross wages if the position that the applicant accepted as a result of a referral by a personnel service lasts less than 30 calendar days and if the applicant leaves the position with good cause.

(b) An employer seeking employees or a person seeking employment may not:

(1) make any false statement or conceal any material fact for the purpose of obtaining employees or employment by or through a personnel service; or

(2) engage or attempt to engage in the splitting or sharing of fees or payments for services of a personnel service with any person to whom this Act is applicable.

Service File as Trade Secret

Sec. 4. A service file and its contents are trade secrets as defined by Section 31.05 of the Penal Code.

Criminal Penalty

Sec. 5. A person who knowingly or intentionally violates or fails to comply with a provision of this Act commits an offense. An offense under this section is a Class A misdemeanor.

Civil Remedy

Sec. 6. (a) A person who violates a provision of this Act is liable to a person adversely affected by the violation for the amount of all actual damages produced by the violation. In the event a person adversely affected establishes that a violation was committed knowingly, the person shall be awarded three times the amount of actual damages. In this subsection, "knowingly" means actual awareness of the act or practice that is the alleged violation, but actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

(b) In an action filed under this section, a plaintiff who prevails shall receive court costs and attorney's fees reasonable in relationship to the amount of reasonably necessary work expended.

(c) In an action filed under this section, a plaintiff may seek and the court in its discretion may grant:

(1) an order enjoining the defendant in the suit from violating this Act;

(2) any order necessary to restore to the person any property acquired by the defendant in the suit in violation of this Act; or

(3) other relief that the court considers proper, including the appointment of a receiver if the court's judgment against the defendant in the suit is not satisfied within three months after the date of the final judgment, the revocation of a certificate authorizing the defendant in the suit to engage in business in this state, or an order enjoining the defendant in the suit from acting as a personnel service.

(d) If a court finds that a civil action filed under this section is groundless and brought in bad faith or for the purpose of harassment, the court may award court costs and reasonable attorney's fees to the defendant.

(e) This Act does not affect any public or private remedy or enforcement power available under other laws.

Certificate of Authority

Sec. 7. (a) Any person desiring to own a personnel service that is to operate in this state shall file notification of that fact with the commissioner. The notice shall be filed by the owner of the personnel service not later than the 30th day before the commencement of the operation. The notice shall include the principal location of the personnel service, the name and residence address of each owner, the assumed name, if any, under which the personnel service is to operate, and a statement that each owner has read and is familiar with the provisions of this Act. The notice shall be signed and sworn to by the owner before a notary public or other officer authorized to administer oaths.

(b) The notice shall be accepted by the commissioner, and on payment of a filing fee of $50, the commissioner shall issue to the owner a certificate of authority to do business as a personnel service in this state not later than the 15th day after the day of the filing.

(c) The owner shall file with each notification or renewal a good and sufficient bond executed by the applicant with a good and sufficient surety in the sum of $5,000 payable to the State of Texas, conditioned that the obligor will not violate any of the provisions of this Act. The bond shall recite that any person injured or aggrieved by any violation of this Act by the principal or his or her agents or representatives is entitled to bring suit on the bond. One bond is sufficient if an owner has more than one principal location. The commissioner may not issue the certificate of authority until the bond is filed. An owner may deposit $5,000 in cash in lieu of the bond.

(d) The certificate of authority shall be valid for a period of one year from the date of its issuance. It shall be displayed in a prominent place in the principal location of the personnel service.

(e) Renewals of the certificate of authority shall be issued by the commissioner on the filing by an owner of a notice containing the same information specified in Subsection (a) of this section and on the receipt by the commissioner of a filing fee of $50.

(f) Each person who holds on the effective date of this Act a license under the terms of Chapter 245, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 5221a–6, Vernon's Texas Civil Statutes), must file the notice required by this section not later than the 60th day after the effective date of this Act if the person is required to do so by this Act. The commissioner shall notify these persons of this Act and shall furnish, not later than the 30th day after the effective date of this Act, the persons with the forms necessary for filing in compliance with this section.

Disposition of Fees

Sec. 8. The commissioner shall deposit all money received by him or her from fees under this Act in the State Treasury to the credit of the General Revenue Fund.

[Acts 1979, 66th Leg., p. 570, ch. 263, §§ 1 to 8, eff. Aug. 27, 1979.]

Section 9 of the 1979 Act repealed art. 5221a–6.

CHAPTER FOURTEEN. UNEMPLOYMENT COMPENSATION

Article

5221b–12A. Liens.
5221b–22dd. Coverage for Out-of-State Employees.

Art. 5221b-1. Benefits

[See Compact Edition, Volume 4 for text of (a)]

(b) Benefit Amount for Total Unemployment: Each eligible individual who is totally unemployed in any benefit period shall be paid with respect to such benefit period, benefits at the rate of one twenty-fifth (1/25) of his wages received from employment by employers during that quarter in his base period in which wages were highest, provided that:

[See Compact Edition, Volume 4 for text of (b)(1)]

(2) Such rate shall not be more than Eighty-four Dollars ($84) per benefit period nor less than Fifteen Dollars ($15) per benefit period on valid initial claims filed on or after October 1, 1977; provided that if the annual average of the manufacturing production workers average weekly wage in Texas exceeds by Ten Dollars ($10) the average weekly wage for those workers in 1976 as determined by the Texas Employment Commission and published in its report, "The Average Weekly Wage," the maximum weekly benefit amount shall be increased by Seven Dollars ($7) and the minimum weekly benefit amount shall be increased by One Dollar ($1) above the maximum and minimum amounts established herein, the increases to become effective on valid initial claims filed on or after October 1 following publication of "The Average Weekly Wage" report. Thereafter, each cumulative (additional) Ten Dollar ($10) increase in the average weekly wage for manufacturing production workers in Texas, as annually determined and reported by the Texas Employment Commission, shall cumulatively increase the maximum weekly benefit amount by an additional Seven Dollars ($7) and the minimum weekly benefit amount by an additional One Dollar ($1) beginning with the next October 1 following publication of "The Average Weekly Wage" report. The maximum benefit amount payable per benefit period under this section to any individual on the effective date of a valid claim shall remain the maximum benefit amount payable to that individual until that individual establishes a new benefit year.

[See Compact Edition, Volume 4 for text of (c) and (d)]

(e) Benefit Wage Credits: "Benefit wage credits" means those wages as defined in this subsection of the Act, which are used in determining an individual's right to benefits. "Wages" as used in this Section shall be as defined in subsection (n) of Section 19 of this Act,[1] except that the six-thousand-dollar limitation on wages as set out in subsection (n)(1) of Section 19 shall not be applicable for the purposes of this Section 3; provided that, for the purposes of this Section 3, wages received by an individual in any calendar year shall include all remuneration from each employer for employment up to the maximum amount of wages as defined in the Federal Insurance Contributions Act (Section 3121, Chapter 21, Subtitle C, Internal Revenue Code of 1954),[2] as amended, or as it may hereafter be amended; and provided further, that wages which have been used to qualify an individual for regular benefits under this Act or under any other unemployment compensation law shall not be used again to qualify such individual for regular benefits.

If an employer fails to report wages which were paid to a claimant during a base period when requested by the Commission, the Commission may establish wage credits for such claimant for such base period on the basis of the best information which has been obtained by the Commission.

(f) Equal Treatment: Benefits based on services for all employers in employment defined in subsection 19(f) shall be payable in the same amount, on the same terms, and subject to the same conditions; except that:

(1) with respect to services in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be payable based on those services for any week commencing during the period between two (2) successive academic years or terms (or, when an agreement provides instead for a similar period between two (2) regular but not successive terms, during that period) to any individual if the individual performs those services in the first of the academic years (or terms) and if there is a contract or reasonable assurance that the individual will perform services in that capacity for any educational institution in the second of the academic years (or terms);

(2) with respect to services in any other capacity for an educational institution (other than an institution of higher education), benefits shall not be payable on the basis of those services to any individual for any week which commences during a period between two (2) successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform those services in the second of the academic years or terms; and

(3) with respect to any services described in Paragraphs (1) and (2), benefits shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(g) Athletes: Benefits shall not be payable to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two (2) successive sport seasons (or

similar periods) if the individual performed those services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform those services in the later of the seasons (or similar periods).

(h) Aliens: Benefits shall not be payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act),[3] provided that:

(1) any data or information required of individuals applying for benefits to determine whether or not benefits are payable to them because of their alien status shall be uniformly required from all applicants for benefits; and

(2) in the case of an individual whose application for benefits would otherwise be approved, no determination that benefits are not payable to that individual because of his alien status may be made except on a preponderance of the evidence.

Provided that any modifications to the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act as provided by Public Law 94–566 [4] which specify other conditions or other effective date for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act shall be considered applicable under the provisions of this Section.

(i) Previously Uncovered Services: With respect to weeks of unemployment beginning after December 31, 1977, benefit wage credits shall include wages for previously uncovered services, provided that benefit payments based on those services are reimbursable from the federal government in accordance with provisions of Public Law 94–566 and provided that no employer's account shall be charged with payments based on those benefit wage credits either as chargebacks or reimbursements. For the purpose of this subsection, the term "previously uncovered services" means services which were not employment and which were not services for an employer under any provision of this Act at any time during the one-year period ending December 31, 1975, and which constitute employment and services for an employer after December 31, 1977, in accordance with the provisions of Section 19 of this Act as services in agricultural labor, domestic services, services for a governmental employer, or services for a nonprofit educational institution which is not an institution of higher education, except to the extent that assistance under Title II of the federal Emergency Jobs and Unemployment Assistance Act of 1974 [5] was paid on the basis of those services.

[Amended by Acts 1975, 64th Leg., p. 897, ch. 334, § 9, eff. June 6, 1975; Acts 1977, 65th Leg., p. 981, ch. 368, §§ 1, 2, eff. Jan. 1, 1978.]

[1] Article 5221b–17(n).
[2] 26 U.S.C.A. § 3121.
[3] 8 U.S.C.A. §§ 1153(a)(7), 1182(d)(5).
[4] 26 U.S.C.A. § 3304(a)(14).
[5] Public Law 93–567; see 26 U.S.C.A. § 3304 note.
Sections 20 to 22 of the 1977 amendatory act provided:

"Sec. 20. All laws or parts of laws in conflict herewith, insofar as they do conflict herewith, are hereby repealed, but such repeal may in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Employment Commission which have accrued thereunder, including but not limited to the right to collect contributions, interest, or penalties that have accrued and the right of prosecution for violation of any provision thereof; nor may this repeal in any way be construed as forfeiting or waiving the rights of any individual to benefits which accrued thereunder; provided that the commission's determination of the benefit year, the benefit amount for total unemployment, and the duration of benefits made with respect to an initial claim filed prior to January 1, 1978, shall be effective for the remainder of that benefit year.

"Sec. 21. The amendment to Subsection (b), Section 3, Texas Unemployment Compensation Act, as amended (Article 5221b–1, Vernon's Texas Civil Statutes), contained in Section 1 of this Act takes effect on October 1, 1977. All other provisions of this Act take effect on January 1, 1978.

"Sec. 22. If any provision of this Act is held invalid, the invalidity does not affect any provision of this Act which can be given effect without the invalid provision. Provided further, should any part or parts of Public Law 94–566 or the federal acts it amends be finally adjudged unconstitutional or invalid by any court of competent jurisdiction, then this Act is automatically repealed to the extent of such invalidity."

Art. 5221b–2. Benefit Eligibility Conditions

An unemployed individual shall be eligible to receive benefits with respect to any benefit period only if the Commission finds that:

(a) He has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulations as the Commission may prescribe;

(b) He has made a claim for benefits in accordance with the provisions of Subsection 6(a) of this Act; [1]

(c) He is able to work;

(d) He is available for work;

(e) He has within his base period received benefit wage credits for employment by employers of not less than Five Hundred Dollars ($500) and has total benefit wage credits in his base period of not less than one and one-half (1½) times his high quarter benefit wage credits in his base period, or within at least one quarter of his base period received wages for employment by employers equal to two-thirds (⅔) of the maximum amount of wages as defined in the Federal Insurance Contributions Act (Section 3121, Chapter 21, Subtitle C, Internal Revenue Code),[2] as amended, or as it may hereafter be amended, provided that any claimant who has had a prior benefit year must have earned wages of Two Hundred Fifty Dollars ($250) or more subsequent to the beginning date of the prior benefit year.

(f) Prior to the first payment of benefits following an initial claim he has been totally or partially unemployed for a waiting period of seven (7) consecutive days. No week shall be counted as a waiting period week for the purposes of this Subsection:

(1) Unless he has registered for work at an employment office in accordance with Subsection (a) of this Section;

(2) Unless it is a week following the filing of an initial claim;

(3) Unless he reports at an office of the Commission and certifies that he has met the waiting period requirements herein prescribed for the preceding seven (7) days;

(4) If benefits have been paid or are payable with respect thereto;

(5) If the individual does not meet the eligibility conditions of Subsections (c) and (d) of this Section 4;

(6) If the individual has been disqualified for benefits for such seven (7) day period under the provisions of Subsections (a), (b), (c), or (d) of Section 5 of this Act; [3]

(7) Provided, notwithstanding any other provision of this Subsection (f), when an individual has been paid benefits in his current benefit year equal to three times his weekly benefit amount, he shall be eligible to receive benefits on his waiting period claim in accordance with the terms of the Act.

[Amended by Acts 1977, 65th Leg., p. 984, ch. 368, § 3, eff. Aug. 29, 1977.]

[1] Article 5221b–4(a).
[2] 26 U.S.C.A. § 3121.
[3] Article 5221b–3.

Art. 5221b–2a. Prohibitions Against Denial of Benefits

[See Compact Edition, Volume 4 for text of (a) and (b)]

(c) Benefits shall not be denied to an individual solely on the basis of pregnancy or termination of pregnancy.

[Amended by Acts 1977, 65th Leg., p. 985, ch. 368, § 4, eff. Jan. 1, 1978.]

Art. 5221b–3. Disqualification for Benefits

An individual shall be disqualified for benefits:

(a) If the Commission finds that he has left his last work voluntarily without good cause connected with his work. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount, unless the individual left work to move with a spouse from the area in which the individual worked. In that case, the disqualification shall be for not less than six (6) nor more than twenty-six (26) benefit periods following the filing of a valid claim, as determined by the Commission according to the circumstances in each case. Provided no claimant shall be disqualified because of his or her leaving due to medically verified illness, injury, disability, or pregnancy and is still available for work. Military personnel who do not reenlist may not be considered to have left work voluntarily without good cause connected with work.

(b) If the Commission finds he has been discharged for misconduct connected with his last work. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount.

(c) If the Commission finds that during his current benefit year he has failed, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. The disqualification continues until the claimant has returned to employment and either worked for six weeks or earned wages equal to six times his weekly benefit amount.

(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals at the place of performance of his work, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any benefit period with respect to which the Commission finds that his total or partial unemployment is (i) due to the claimant's stoppage of work because of a labor dispute at the factory, establishment, or other premises (including a vessel) at which he is or was last employed, or (ii) because of a labor dispute at another place, either within or without this State, which is owned or operated by the same employing unit which owns or operates the premises at which he is or was last employed, and supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed; provided that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or financing or directly interested in the labor dispute; provided, however, that failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept and perform his available and customary work at

the factory, establishment, or other premises (including a vessel) where he is or was last employed shall be considered as participation and interest in the labor dispute; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises (including a vessel) at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; and where a disqualification arises from the employee's failure to meet the requirements of this paragraph (2) of this subsection (d) his disqualification shall cease if he shall show that he is not, and at the time of the labor dispute was not, a member of a labor organization which is the same as, represented by, or directly affiliated with, or that he, or such organization of which he is a member, if any, is not acting in concert or in sympathy with a labor organization involved in the labor dispute at the premises at which the labor dispute occurred, and he has made an unconditional offer to return to work at the premises at which he is or was last employed.

(e) For any benefit period with respect to which he is receiving or has received remuneration in the form of:

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability, temporary total disability or total and permanent disability under the Workmen's Compensation Law of any State or under a similar law of the United States;

(3) Old Age Benefits under Title II of the Social Security Act as amended,[1] or similar payments under any Act of Congress, or a State Legislature; provided, that if such remuneration is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such benefit period, if otherwise eligible, benefits reduced by the amount of such remuneration. If any such benefits, payable under this subsection, after being reduced by the amount of such remuneration, are not an even multiple of One Dollar ($1), they shall be adjusted to the next higher multiple of One Dollar ($1).

(f) Deleted by Acts 1981, 67th Leg., p. 15, ch. 12, § 1, eff. March 20, 1981.

(g) For the duration of any period of unemployment with respect to which the Commission finds that such individual has left his most recent work for the purpose of attending an established educational institution; provided, that this subsection shall not apply during a period in which an individual is in training with the approval of the Commission.

(h) For weeks of unemployment beginning after March 31, 1980, for any benefit period with respect to which the individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of the individual and which is reasonably attributable to that benefit period; provided that if the remuneration is less than the benefits which would otherwise be due under this Act, the individual shall be entitled to receive for that benefit period, if otherwise eligible, benefits reduced by the amount of the remuneration. If those benefits payable under this subsection, after being reduced by the amount of the remuneration, are not an even multiple of One Dollar ($1), they shall be adjusted to the next higher multiple of One Dollar ($1).

The Legislature declares that the preceding paragraph is enacted because Section 3304(a)(15) of the Federal Unemployment Tax Act as provided in Public Law 94-566[2] requires this provision in State law as of January 1, 1978, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act; and it further declares that if Section 3304(a)(15) is amended to provide modifications of these requirements, the modified requirements, to the extent that they are required for full tax credit, shall be considered applicable under the provisions of this Section rather than the provisions stated in the preceding paragraph.

(i) This Section does not disqualify a claimant whose work-related reason for separation from employment was urgent, compelling, and of a necessitous nature so as to make separation involuntary.

[Amended by Acts 1977, 65th Leg., p. 985, ch. 368, § 5, eff. Jan. 1, 1978; Acts 1981, 67th Leg., p. 15, ch. 12, § 1, eff. March 20, 1981.]

[1] 42 U.S.C.A. § 401 et seq.

[2] 26 U.S.C.A. § 3304(a)(15).

Section 3 of the 1981 amendatory act provides:

"The disqualification for benefits of a person who, on the effective date of this Act, is disqualified under Subsection (a), (b), or (c), Section 5, Texas Unemployment Compensation Act, as amended [this article], is governed by the law as it existed before amendment by this Act. For that purpose, the prior law is continued in effect as if it had not been amended by this Act."

Prior to amendment in 1981, subsecs. (a) to (c) of this article read:

"(a) If the Commission finds that he has left his last work voluntarily without good cause connected with his work. Such disqualification shall be for not less than one (1) nor more than twenty-five (25) benefit periods following the filing of a valid claim, as determined by the Commission according to the circumstances in each case.

"(b) If the Commission finds he has been discharged for misconduct connected with his last work. Such disqualification shall be for not less than one (1) nor more than twenty-six (26) benefit periods following the filing of a valid claim, as determined by the Commission according to the seriousness of the misconduct.

"(c) If the Commission finds that during his current benefit year he has failed, without good cause, either to apply for available, suitable work when so directed by the Commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the Commission. Such disqualification shall be for not less than one (1) nor more than thirteen (13) benefit periods following the failure, as described above to apply for or accept suitable work, the degree of disqualification to be determined by the Commission according to the circumstances in each case.

"(1) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals at the place of performance of his work, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

"(2) Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization."

Art. 5221b–4. Claims for Benefits

[See Compact Edition, Volume 4 for text of (a)]

(b) An unemployed individual who has no current benefit year may file an initial claim in accordance with rules or regulations prescribed by the Commission. The Commission shall mail a notice of the filing of such initial claim to the individual or organization for which the claimant last worked prior to the effective date of the initial claim. If the individual or organization has more than one branch or division operating at different locations, notice of the filing of such initial claim shall be mailed to the branch or division where claimant last worked. Mailing of notice of the initial claim to the correct address of the individual or organization or the branch or division where claimant last worked shall constitute due notice to such individual or organization. A governmental employer may designate in writing to the Commission an address for mail service. When a governmental employer has so designated a mailing address, mailing of notice of claims, determinations, or other decisions to such address shall constitute due notice to the governmental employer. If the individual or organization to which such notice is mailed has knowledge of any facts that may adversely affect such claimant's right to benefits, or that may affect a charge to its account, it shall notify the Commission of such facts promptly. If such individual or organization does not mail or deliver such notification to the Commission within twelve (12) days from the date notice of a claim was mailed to it by the Commission, such individual or organization shall be deemed to have waived all rights in connection with such claim, including any rights it may have under subsection 7(c)(2) of this Act,[1] except with respect to a clerical or machine error as to the amount of its chargeback or maximum potential chargeback in connection with such claim.

The Commission shall determine whether such initial claim is valid. If such initial claim is valid, the Commission shall determine the benefit year, the benefit amount for total unemployment and the duration of benefits. A notice of the determination of the initial claim shall be mailed to the claimant at his last known address as reflected by Commission records. The claimant may within twelve (12) calendar days from the date such notice was mailed request a redetermination or appeal in the manner provided in this Section.

If such individual or organization for which claimant last worked has filed a notification with the Commission in accordance with this Section, an examiner shall make a determination as to whether the claimant is disqualified from receipt of benefits under Section 5 (Article 5221b–3) of this Act,[2] as to any other issue affecting the claimant's right to receive benefits which may have arisen under any other provision of this Act, and as to whether a chargeback shall be made to the account of the individual or organization if benefits are paid, and shall mail a copy of the determination to the claimant and to such individual or organization, or the branch or division for which the claimant last worked, or to the address for mail service designated by a governmental employer. In the absence of such notification from such individual or organization, if, from information on the claim or other information secured, an issue is raised affecting the claimant's rights to benefits under any provision of this Act, an examiner shall prepare a determination reflecting his decision and mail a copy of it to the claimant at his last known address.

Unless the claimant or the individual or organization or branch thereof to which the copy of the determination is mailed files an appeal from such determination within twelve (12) calendar days after such copy of the determination is mailed to his or its last known address as reflected by Commission records, such determination shall be final for all purposes and benefits shall be paid or denied in accordance therewith; provided, that within the same period of time, an examiner may file an appeal from such determination, or may, if he discovers error in connection therewith or additional information not previously available, reconsider and redetermine any such determination, and such redetermination shall replace such determination and shall become final unless an appeal therefrom is filed by such claimant or such individual or organization within twelve (12) calendar days after a copy of such redetermination was mailed to his or its last known address as reflected by Commission records.

Notwithstanding any provision in this Act under which benefits may be paid or denied, benefits shall be paid promptly in accordance with a determination or redetermination of an examiner, a decision of an appeal tribunal, the Commission, or a reviewing court, on the issuance of that determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review, or the pendency of that application, filing, or petition), unless and until that determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied in accordance with the modifying or reversing redetermination or decision. If a determination or decision is finally modified or reversed to deny benefits, no chargeback shall be made to the employer's account by reason of payments made to the claimant for any benefit period with respect to which he is finally denied benefits, and any benefits paid to the claimant which were not in accordance with the final decision shall be refunded

by the claimant to the Commission or in the discretion of the Commission shall be deducted from future benefits payable to him under this Act.

[See Compact Edition, Volume 4 for text of (c) to (e)]

(f) Procedure: The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, or other individuals or organizations, and the conduct of hearings and appeals shall be in accordance with rules or regulations prescribed by the Commission for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim and all testimony at any hearing upon a disputed claim shall be recorded.

[See Compact Edition, Volume 4 for text of (g) to (i)]

[Amended by Acts 1977, 65th Leg., p. 987, ch. 368, § 6, eff. Jan. 1, 1978; Acts 1981, 67th Leg., p. 940, ch. 354, § 1, eff. June 10, 1981.]

[1] Article 5221b-5(c)(2).
[2] Article 5221b-3.

Art. 5221b-4a. Extended Benefits

(a) Definitions: As used in this Section, unless the context clearly requires otherwise:

[See Compact Edition, Volume 4 for text of (a)(1)]

(2) There is a national "on" indicator for a week if, for the period consisting of that week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths percent (4.5%). The rate of insured unemployment, for the purposes of this subsection, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four (4) of the most recent six (6) calendar quarters ending before the close of that period.

(3) There is a national "off" indicator for a week if, for the period consisting of that week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than four and five-tenths percent (4.5%). The rate of insured unemployment, for the purposes of this subsection, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four (4) of the most recent six (6) calendar quarters ending before the close of that period.

[See Compact Edition, Volume 5 for text of (a)(4)]

(5) There is a State "off" indicator for this State for a week if the Commission determines, in accordance with the regulations of the United States Secretary of Labor, that, for the period consisting of such week and the immediately preceding twelve (12) weeks, either paragraph (A) or (B) of subdivision (4) is not satisfied. Provided that with respect to benefits for weeks of unemployment beginning after December 31, 1977, the determination of whether there has been a State "on" or "off" indicator beginning or ending any extended benefit period shall be made under this section as if subdivision (4) did not contain paragraph (A) thereof, and as if the figure "four" (4) contained in paragraph (B) thereof were "five" (5); except that, notwithstanding any other provision of this Section, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator.

[See Compact Edition, Volume 4 for text of (a)(6) to (a)(9)]

(10) "Exhaustee" means an individual who, with respect to any benefit period of unemployment in his eligibility period:

(A) has received, prior to such benefit period, all of the regular benefits that were available to him under this Act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85) in his current benefit year that includes such benefit period;

Provided, that, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wage credits that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or

(B) had a benefit year that expired prior to such benefit period and has no, or insufficient, wage credits on the basis of which he could establish a new benefit year that would include such benefit period; and

(C)(i) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act,[2] the Trade Expansion Act of 1962,[3] the Automotive Products Trade Act of 1965,[4] or such other federal laws as are specified in regulations issued by the United States Secretary of Labor, and

(ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

[See Compact Edition, Volume 4 for text of (a)(11) to (f)]

(g) Financing:

[See Compact Edition, Volume 4 for text of (g)(1) to (g)(5)]

(6) Notwithstanding any other provision in this Act, with respect to weeks of unemployment beginning after December 31, 1978, extended benefit payments based on benefit wage credits earned from a state, or any political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions shall be charged to the employer at the rate of one hundred per cent (100%) rather than at the rate of fifty per cent (50%) as provided for other employers under this Act, and any such employer which is a taxed employer shall receive notice that its maximum potential chargeback may be increased by as much as fifty per cent (50%) rather than twenty-five per cent (25%) as provided for other employers.

(h)(1) Notwithstanding the provisions of Subsection (b) of this section, an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the commission finds that during such period:

(A) he failed to accept any offer of suitable work as defined under Subdivision (3) of this subsection or failed to apply for any suitable work to which he was referred by the commission; or

(B) he failed to engage actively in seeking work as prescribed under Subdivision (5) of this subsection.

(2) Any individual who has been found ineligible for extended benefits by reason of the provisions of Subdivision (1) of this subsection shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times the extended weekly benefit amount;

(3) For purposes of this Subsection (h), the term "suitable work" means, with respect to any individual, any work which

(A) is within such individual's capabilities; provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:

(i) the individual's weekly extended benefit amount as determined under Subsection (d) of this section plus

(ii) the amount, if any, of supplemental unemployment compensation benefits, as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954,[8] payable to such individual for such week; and further,

(B) pays wages not less than the higher of

(i) the minimum wage provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C.A. Sec. 206), without regard to any exemption; or

(ii) the applicable state or local minimum wage.

(C) Provided, however, that no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:

(i) the position was not offered to such individual in writing and was not listed with the employment service;

(ii) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in Section 5(c) of this Act, as amended (Article 5221b–3, Vernon's Texas Civil Statutes), to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this Subdivision (3);

(iii) the individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in Section 5(c) of this Act without regard to the definition specified by this Subdivision (3).

(4) Notwithstanding the provisions of Subsection (b) to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code of 1954.

(5) For the purposes of Paragraph (B) of Subdivision (1) of this subsection, an individual shall be treated as actively engaged in seeking work during any week if

(A) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

(B) the individual furnishes tangible evidence that he has engaged in such effort during such week.

(6) The employment service shall refer any claimant entitled to extended benefits under this Act to any suitable work which meets the criteria prescribed in Subdivision (3) of this subsection.

(7) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular or extend-

ed benefits under this Act because he or she voluntarily left work, was discharged for misconduct, or failed to accept an offer of or apply for suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this Act requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

[Amended by Acts 1975, 64th Leg., p. 1, ch. 1, § 1, eff. Jan. 20, 1975; Acts 1977, 65th Leg., p. 989, ch. 368, §§ 7, 8, 19, eff. Jan. 1, 1978; Acts 1981, 67th Leg., p. 330, ch. 133, § 1, eff. May 13, 1981.]

[2] 45 U.S.C.A. § 8501 et seq.
[3] 19 U.S.C.A. § 1801 et seq.
[4] 19 U.S.C.A. § 2001 et seq.
[5] 26 U.S.C.A. § 501(c)(17)(D).

Sections 2 and 3 of Acts 1975, 64th Leg., p. 1, ch. 1, provided:

"Sec. 2. All laws or parts of laws in conflict herewith, insofar as they do conflict herewith, are hereby repealed, but such repeal shall in no way be construed as forfeiting or waiving any rights of the State of Texas or of the Texas Employment Commission which have accrued thereunder.

Sec. 3. "If any word, phrase, sentence, paragraph, subsection, or section of this Act shall be held invalid or unconstitutional, such holding shall not invalidate any other word, phrase, sentence, paragraph, subsection, or section hereof, and the legislature hereby expressly declares that it would have passed such remaining words, phrases, sentences, paragraphs, subsections, and sections despite such invalidity."

Art. 5221b–5. Contributions

(a) Payment: Contributions shall accrue and become payable by each employer for each calendar year, or portion thereof, in which he is subject to this Act, with respect to wages for employment paid during such calendar year, or portion thereof. Such contributions shall become due and be paid by each employer to the Commission for the fund in accordance with such rules or regulations as the Commission may prescribe, and shall not be deducted in whole or in part from the wages of individuals in such employer's employ. For agricultural employers subject to this Act, the Commission may require estimated contributions quarterly, but shall require a full report only once each year.

[See Compact Edition, Volume 4 for text of (b)]

(c) Experience rating:

[See Compact Edition, Volume 4 for text of (c)(1) and (c)(2)(A)]

(2)(B) To each employer to whom notice of an initial claim has not already been mailed under subsection 6(b) of this Act,[2] and whose account is potentially chargeable with benefits as the result of such initial claim and payment of benefits, a notice of his maximum potential chargebacks shall be mailed when benefits are first paid and an opportunity afforded for protest of his potential chargebacks. If any such employer desires to protest his potential chargebacks, he shall, within twelve (12) days after such notice was mailed to him, mail his protest, including a statement of the facts upon which his protest is based, to the Commission at Austin, Texas. Any employer who does not protest his potential chargebacks within twelve (12) days after notice was mailed to him shall be deemed to have waived his right to protest such chargebacks. If a timely protest is filed, the examiner shall promptly decide the issues involved in such protest and shall mail a notice of his decision thereon to the protesting employer. Such decision shall become final twelve (12) days from the date of mailing thereof, unless such employer mails to the Commission at Austin, Texas, a written appeal therefrom within such twelve (12) days. Administrative review hereunder shall be in accordance with Commission rules or regulations, and appeals to the Courts shall be permitted only after such employer has exhausted his administrative remedies (not including a motion for rehearing) before the Commission, and within the time prescribed by subsection 6(h) and subsection 6(i) of this Act[3] with respect to Commission decisions on benefits. Venue and jurisdiction of appeals to the Courts with respect to chargebacks shall be the same as venue and jurisdiction of suits to collect contributions and penalties under this Act.

If notice of the claim has been sent previously to the employer under the provisions of Section 6 of this Act,[4] the employer shall be mailed a notice of the amount of his potential chargeback resulting from the claim, and may, within twelve (12) days from the date such notice was mailed, protest any clerical or machine error as to amounts. Such employer shall be mailed a decision on such protest and may appeal within twelve (12) days from the date notice of such decision was mailed to him.

[See Compact Edition, Volume 4 for text of (c)(3) and (c)(4)]

(5) The replenishment ratio for a calendar year is a quotient, stated to the nearest hundredth, derived from the following numerator and denominator.

The numerator of the replenishment ratio shall be the amount of benefits paid from the Unemployment Compensation Fund during the twelve (12) months ending September 30 of the preceding year after deductions have been made for:

(A) benefit warrants canceled,

(B) repayment of benefits which have been overpaid, and

(C) benefits paid which are repayable from reimbursing employers, the federal government, or any other governmental entity.

The denominator of the replenishment ratio shall be the total amount of chargebacks to the accounts of all taxed employers during the twelve (12) months ending September 30, of the preceding year.

The replenishment ratio for each calendar year shall be determined prior to the due date of the first contribution payment with respect to wages for employment paid in that year and such replenishment ratio thus determined shall not be affected or revised by virtue of any subsequent adjustment of any chargebacks of any employer.

[See Compact Edition, Volume 4 for text of (c)(6) to (d)]

(e) Repealed by Acts 1977, 65th Leg., p. 1001, ch. 368, § 19, eff. Jan. 1, 1978.

[Amended by Acts 1977, 65th Leg., p. 991, ch. 386, §§ 9, 19, eff. Jan. 1, 1978; Acts 1979, 66th Leg., p. 910, ch. 418, § 1, eff. June 6, 1979.]

[2] Article 5221b–4(b).
[3] Article 5221b–4(h), (i).
[4] Article 5221b–4.

Art. 5221b–5a. Reimbursements

[See Compact Edition, Volume 4 for text of (a) to (h)]

(i) Authority to Terminate Elections: If any reimbursing employer is delinquent in making reimbursements as provided under this Section, the Commission may terminate such reimbursing employer's election to make reimbursements as of the beginning of the next taxable year and such termination shall be effective for that and the succeeding taxable year.

(j) Bond: In the discretion of the Commission, any reimbursing employer (or group of such employers) that elects to become liable for reimbursements may be required to execute and file with the Commission a surety bond approved by the Commission. The amount of such bond shall be determined in accordance with rules prescribed by the Commission. The Commission may require adjustments to be made in a previously filed bond if it deems such action appropriate. Failure by any reimbursing employer covered by such bond to pay the full amount of reimbursements when due, together with any applicable interest and penalties provided for under this Act, shall render the surety liable on such bond to the extent of the bond, as though the surety was such employer. If any reimbursing employer fails to make bond when directed to do so by the Commission, the Commission may terminate such employer's election to make reimbursements as of the beginning of the next taxable year and such termination shall be effective for that and the succeeding taxable year.

[See Compact Edition, Volume 5 for text of (k) and (l)]

(m) Notwithstanding any other provision in this Act, with respect to benefits paid for weeks of unemployment beginning after December 31, 1978, if the reimbursing employer is a state or political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions, that employer shall pay one hundred percent (100%) of the extended benefits based on benefit wage credits earned from that employer instead of one-half (½) or fifty percent (50%) as indicated for other employers covered under this Act.

[Amended by Acts 1977, 65th Leg., p. 992, ch. 368, §§ 10, 11, eff. Jan. 1, 1978.]

Art. 5221b–5b. Special Contributions for Governmental Employers

(a) Notwithstanding any provision in this Act to the contrary, after December 31, 1977, a governmental employer subject to the provisions of this Act and which pays contributions shall pay in accordance with the following.

(b) Contributions:

(1) Payments: Contributions shall accrue and become payable by each governmental employer for each calendar year, or portion thereof, in which it is subject to this Act with respect to wages for employment paid during the calendar year or portion thereof. The contributions shall become due and be paid by each such employer to the Commission for the fund in accordance with rules prescribed by the Commission and shall not be deducted in whole or in part from the wages of individuals in the employer's employ.

(2) Rate of Contributions: Each governmental employer shall pay contributions equal to one percent (1%) of the wages paid by the employer with respect to employment during each quarter for calendar years 1978 and 1979. The contribution rate for calendar year 1980 shall be a percentage adjusted to the next higher one-tenth of one percent (1/10 of 1%) based on the following numerator and denominator: The numerator shall include all benefits paid during the preceding two (2) calendar years based on wage credits earned from employers which pay contributions under this Section (not including benefit payments which are reimbursable from any other source), and the denominator shall include the total wages paid by all employers which pay contributions under this Section for the same period. The contribution rate for calendar year 1981 and each calendar year thereafter shall be derived in the same manner as for calendar year 1980, except the numerator and denominator shall include benefit payments and wages paid by the employers for only the one calendar year prior to the calendar year for which the rate is computed.

Provided, if the total benefits paid during the period used for determining the rate are greater than the total contributions paid by these same employers for the same period, the amount of benefits paid in excess of the amount of contributions collected for the period shall be added to the numerator in determining the contribution rate, and if the amount of benefits paid for the period is less than the contributions paid by these employers for the same period, that amount shall be deducted from the numerator in computing the rate; provided that in no year shall the contribution rate under this Section be less than one-tenth of one percent (1/10 of 1%).

(3) Interest and Penalties on Past Due Contributions: If any governmental employer shall fail to pay contributions due under this Section on the

date on which they are due and payable as prescribed by the Commission, the employer shall be subject to the same penalties as provided for other employers under subsection 14(a) of this Act.[1]

(c) Collections:

(1) The provisions for collecting delinquent contributions provided under Section 14 of this Act[2] shall be applicable with respect to governmental employers.

(2) If any governmental employer is delinquent in payment of contributions or reimbursements under any section of this Act, the Commission shall notify the Comptroller of Public Accounts in writing of the name of the governmental employer and the amount of the delinquency. On receipt of this notice, the Comptroller shall pay a sum to the Commission in the amount of the delinquency from any funds which would otherwise be due from the State to the delinquent governmental employer.

(d) Reports: Each governmental employer shall keep such records and file such reports with the Commission with respect to individuals in its employment as the Commission may prescribe by rules. A governmental employer failing to keep or file these reports when due shall be subject to the same penalties as provided for other employers under subsection 14(c) of this Act.[3]

(e) Separate Accounting: Benefit payments based on wages from employers under this Section shall be paid from the fund; provided the Commission shall establish separate accounting with respect to benefits paid and contributions collected under this Section and these benefits and contributions shall not be used in determining contribution rates under Section 7 of this Act.[4]

[Added by Acts 1977, 65th Leg., p. 992, ch. 368, § 12, eff. Jan. 1, 1978.]

[1] Article 5221b–12(a).
[2] Article 5221b–12.
[3] Article 5221b–12(c).
[4] Article 5221b–5.

Art. 5221b–6. Duration of Coverage and Elections

[See Compact Edition, Volume 4 for text of (a) and (b)(1)]

(2) A State or an instrumentality thereof may voluntarily elect, for a period of not less than two (2) calendar years, to pay reimbursements for benefits paid or to pay contributions.

(3) A political subdivision of a State or any instrumentality thereof may voluntarily elect for a period of not less than two (2) calendar years to pay reimbursements for benefits paid or to pay contributions.

(4) An election by an employer under subsection 8(b)(2) or 8(b)(3) of this Act to be a reimbursing employer shall be made within forty-five (45) days after the date notice is mailed to the employer that it is subject to the provisions of this Act. The election will be effective January 1 of the year in which the employer became subject to the Act. All elections under subsections 8(b)(2) and 8(b)(3) of this Act may be terminated after the minimum required period by filing with the Commission a written request for termination not later than thirty (30) days preceding the last day of a calendar year, and such termination shall be effective January 1 of the following year.

[See Compact Edition, Volume 4 for text of (b)(5) and (6)]

(c)(1) No employing unit shall cease to be an employer subject to this Act except as of the first day of January of any calendar year, and only then if such employer files with the Commission, within the period from January 1 through March 31 of such year, a written application for termination of coverage, and the Commission finds that the employing unit was not an employer as defined in subsection 19(f) of this Act[1] during the preceding year.

[See Compact Edition, Volume 4 for text of (c)(2) and (d)]

[Amended by Acts 1977, 65th Leg., p. 994, ch. 368, §§ 13, 14, eff. Jan. 1, 1978.]

[1] Article 5221b–17(f).

Art. 5221b–8. Texas Employment Commission

[See Compact Edition, Volume 4 for text of (a) to (f)]

(g) The Texas Employment Commission is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.059, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 5221b–12A. Liens

All sums due by any employing unit to the Commission under this Act shall become a lien on all the property both real and personal belonging to such employing unit or to any individual so indebted. The lien shall attach at the time any contributions, penalties, interest, or other charges become delinquent. The provisions of Subchapters A and B of Chapter 113, Tax Code,[1] govern the enforcement of this lien. The Commission has all the duties imposed, and the power and authority in administering and enforcing the lien created by this section that is conferred on the Comptroller for the enforcement of other liens under Subchapters A and B of Chapter 113, Tax Code. This lien is cumulative of the other lien provided in this Act and that lien is effective according to its terms.

[Added by Acts 1981, 67th Leg., p. 1780, ch. 389, § 35, eff. Jan. 1, 1982.]

[1] Tax Code, §§ 113.001 et seq. and 113.101 et seq.
Section 1 of the 1981 Act enacted Title 2 of the Tax Code.

Art. 5221b–15a. Reciprocal Arrangements

[See Compact Edition, Volume 4 for text of (a) to (d)]

(e) The commission is authorized to enter into reciprocal arrangements with the appropriate agency of another state or the District of Columbia whereby employees of one state or the District of Columbia performing services in the other state or the District of Columbia shall be considered to be engaged in employment performed entirely within the employing state or the District of Columbia. The commission shall enter the arrangement on request of an agency of this state that has employees performing services in another state or the District of Columbia.

[Amended by Acts 1981, 67th Leg., p. 83, ch. 44, § 2, eff. April 15, 1981.]

Art. 5221b–17. Definitions

As used in this Act, unless the context clearly requires otherwise:

[See Compact Edition, Volume 4 for text of (a) to (c)]

(d) "Contributions" means the money payments (taxes) to the State Unemployment Compensation Fund required under this Act. Employers who pay contributions under this Act may be referred to as "taxed employers".

[See Compact Edition, Volume 4 for text of (e)]

(f) "Employer" means:

(1) Any employing unit, other than one to which paragraph (3) or (6) below is applicable, which during any calendar quarter in the current calendar year or the preceding calendar year paid wages of One Thousand Five Hundred Dollars ($1,500) or more, or on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one (1) individual in employment for some portion of the day;

(2) Any individual or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this Act;

(3) Any employing unit which is a nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code of 1954 [1] which is exempt from income tax under Section 501(a) of such Code [2] and which on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed four (4) or more individuals in employment for some portion of the day;

(4) Any employing unit which has elected to become an employer under Section 8 of this Act; [3]

(5) Any employing unit which is liable for the payment of taxes under the Federal Unemployment Tax Act [4] for the current calendar year;

(6) A state or any political subdivision thereof, or any instrumentality of any one (1) or more of the foregoing which is wholly owned by one (1) or more states or political subdivisions;

(7) Any employing unit not an employer by reason of any other paragraph of this subsection which, as a condition for approval of this Act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such Act, to be an "employer" under this Act;

(8) Any employing unit which paid wages for or employed individuals in agricultural labor in accordance with the following; notwithstanding any other provision in this Act, agricultural labor as defined in subsection 19(g)(5)(B) of this Act shall constitute employment if performed for any employing unit which during any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of Twenty Thousand Dollars ($20,000) or more for such services, or on each of some twenty (20) days during the current calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least ten (10) or more individuals in that employment for some portion of the day; provided that

(A) for purposes of this provision, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of the crew leader,

(i) if:

(I) the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; [5] or

(II) substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment which is provided by the crew leader; and

(ii) if the individual is not an employee of such other person;

(B) for purposes of this provision, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of the crew leader under paragraph (A) of this subdivision:

(i) the other person and not the crew leader shall be treated as the employer of that individual; and

(ii) the other person shall be treated as having paid cash remuneration to that individual in an amount equal to the amount of cash remuneration paid to that individual by

the crew leader (either on his behalf or on behalf of the other person) for the agricultural labor performed for the other person;

(C) for purposes of this provision, the term "crew leader" means an individual who:

(i) furnishes individuals to perform agricultural labor for any other person,

(ii) pays (either on his behalf or on behalf of the other person) the individuals so furnished by him for the agricultural labor performed by them, and

(iii) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person;

(D) for the purposes of this provision, wages shall not include remuneration paid in any medium other than cash;

(E) this provision shall not be applicable to agricultural labor performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act.[6]

(9) Any employing unit which paid wages for domestic service in accordance with the following: notwithstanding any other provision in this Act, domestic service in a private home, local college club, or a local chapter of a college fraternity or sorority shall constitute employment if performed for any employing unit which during any calendar quarter in the current calendar year or the preceding calendar year paid wages in cash of One Thousand Dollars ($1,000) or more for the domestic service, provided that an employer under this provision shall not be treated as an employer with respect to wages paid for any service other than domestic service unless the employer is treated as an employer under some other provision of this Act with respect to the service.

[See Compact Edition, Volume 4 for text of (g)(1) to (g)(3)(C)]

(D) The term "employment" shall include any service (other than service which is deemed "employment" under the provisions of subsections (g)(2) and (g)(3) of this Section or the parallel provisions of another state's law) performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer, if:

(i) the employer's principal place of business in the United States is located in this State; or

(ii) the employer has no place of business in the United States, but:

(I) the employer is an individual who is a resident of this State; or

(II) the employer is a corporation which is organized under the laws of this State; or

(III) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this State is greater than the number who are residents of any one (1) other state; or

(iii) none of the criteria of divisions (i) and (ii) of this subparagraph is met but the employer has elected coverage in this State or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this State.

[See Compact Edition, Volume 4 for text of (g)(3)(E)]

(F) The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

[See Compact Edition, Volume 4 for text of (g)(3)(G) and (g)(4)]

(5) The term "employment" shall not include:

(A) Service with respect to which unemployment compensation is payable under an Unemployment Compensation System established by an Act of Congress; provided that the Commission is hereby authorized to enter into agreements with the proper agencies under such Act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in subsection 11(b) of this Act[10] for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Act, acquired rights to unemployment compensation under such Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this Act.

(B) Agricultural labor, which is hereby defined as all services performed:

(i) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(ii) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) in connection with the production or harvesting of any commodity defined as an agricultural commodity in Section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, 3; 12 U.S.C. 1141j),[11] or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(I) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (½) of the commodity with respect to which such service is performed;

(II) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (I) above, but only if such operators produced more than one-half (½) of the commodity with respect to which such service is performed;

(III) the provisions of subparagraphs (I) and (II) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(v) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(C) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) years in the employ of his father or mother;

(E) Service performed in the employ of a church, convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(F) Services performed in the employ of a political subdivision or any instrumentality thereof which is wholly owned by one (1) or more political subdivisions:

(i) as an elected official;

(ii) as a member of a legislative body;

(iii) as a member of the judiciary;

(iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(v) in a position which, under or pursuant to law, is designated as a major nontenured policy-making or advisory position, or a policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week;

(G) Service performed in the employ of a foreign government (including services as a consular or other officer or employee, or a nondiplomatic representative);

(H) Service performed in the employ of an instrumentality wholly owned by a foreign government (i) if the service is of a character similar to that performed in foreign countries by the employees of the United States Government or of an instrumentality thereof; and (ii) if the Commission finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar services performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(I) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to State law;

(J) Service performed by an individual for a person as an insurance agent or an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(K) Service performed by an individual under the age of eighteen (18) years in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(L) Service covered by an arrangement between the Commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law;

(M) Service performed in the employ of the United States Government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this Act, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this Act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this State shall not be certified for any year by the Social Security Board or successor under Section 1603(c) of the Internal Revenue Code of 1954,[12] the payments required by such instrumentalities with respect to such year shall be refunded by the Commission from the fund in the same manner and within the same period as is provided in subsection 14(j) of this Act [13] with respect to contributions erroneously collected;

(N) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(O) [Deleted]

(P) Service performed in the employ of a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitative or remunerative work;

(Q) Service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training;

(R) Service performed by an inmate of a custodial or penal institution which is owned or operated by the State or a political subdivision thereof;

(S) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(T) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employing unit, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers; and

(U) Service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(V) Service performed on a fishing vessel normally having a crew of fewer than ten (10) if the crew member's reimbursement for services performed is a share of the catch and the services are determined not to be employment under the Federal Unemployment Tax Act.[14]

[See Compact Edition, Volume 4 for text of (g)(6) to (j)]

(k) "State" includes, in addition to the States of the United States of America, Puerto Rico, the District of Columbia, and the Virgin Islands.

[See Compact Edition, Volume 4 for text of (l) and (m)]

(n) "Wages" means all remuneration paid for personal services, including the cash value of all remuneration paid in any medium other than cash and gratuities received by any employee in the course of employment to the extent that the gratuities are considered as wages in the computation of taxes under the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3301 et seq., except that such term shall not include:

(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to Six Thousand Dollars ($6,000) with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during any such calendar year;

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents), or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of:

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical or hospitalization expenses in connection with sickness or accident disability, or

(D) Death;

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six (6) calendar months following the last calendar month in which the employee worked for such employer;

(5) Any payment made to, or on behalf of, an employee or his beneficiary:

(A) From or to a trust described in Section 401(a) of the Internal Revenue Code of 1954 [15] which is exempt from tax under Section 501(a) of said Code [16] at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the Internal Revenue Code of 1954,[17] or

(C) Under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in Section 405(a) of the Internal Revenue Code of 1954; [18]

(6) The payment by an employer (without deduction from the remuneration of the employee):

(A) Of the tax imposed upon an employee under Section 3101 of the Internal Revenue Code of 1954 [19] (or the corresponding section of prior law);

(7) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of sixty-five (65), if he did not work for the employer in the period for which such payment is made;

(9) Within any calendar year that part of an individual's remuneration from a single employer which, after Six Thousand Dollars ($6,000) has been paid him upon which contributions have been paid under the unemployment law of any state, is paid with respect to employment.

[See Compact Edition, Volume 4 for text of (o) and (p)]

(q) "Misconduct" means mismanagement of a position of employment by action or inaction, neglect that places in jeopardy the lives or property of others, intentional wrongdoing or malfeasance, intentional violation of a law, or violation of a policy or rule adopted to ensure orderly work and the safety of employees, but does not include an act of misconduct that is in response to an unconscionable act of an employer or superior.

[Amended by Acts 1977, 65th Leg., p. 994, ch. 368, §§ 15 to 19, eff. Jan. 1, 1978; Acts 1979, 66th Leg., p. 384, ch. 175, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 17, ch. 12, § 2, eff. March 20, 1981.]

[1] 26 U.S.C.A. § 501(c)(3).
[2] 26 U.S.C.A. § 501(a).
[3] Article 5221b–6.
[4] 26 U.S.C.A. § 3301 et seq.
[5] 7 U.S.C.A. § 2041 et seq.
[6] 8 U.S.C.A. §§ 1101(a)(15)(H), 1184(c).
[10] Article 5221b–9(b).
[11] 26 U.S.C.A. § 1141j, subsec. (g).
[12] 26 U.S.C.A. § 1603(c).
[13] Article 5221b–12(j).
[14] Subsection (g)(5)(A) of this article.
[15] 26 U.S.C.A. § 401(a).
[16] 26 U.S.C.A. § 501(a).
[17] 26 U.S.C.A. § 403(a).
[18] 26 U.S.C.A. § 405(a).
[19] 26 U.S.C.A. § 3101.

Art. 5221b–22a. Unemployment Compensation Special Administration Fund

There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an Unemployment Compensation Special Administration Fund which may be used by the Commission for the purposes of paying costs of the administration of this Act including the costs of reimbursing the Unemployment Compensation Benefit Accounts for unemployment compensation benefits paid to former employees of the State of Texas which are based on service for the state, and the costs of construction and purchase of buildings and land necessary in such administration. The State Treasurer shall be the Treasurer and custodian of the fund. He shall administer such fund in accordance with the directions of the Commission, and the Comptroller shall issue warrants upon it in accordance with the directions of the Commission. All interest and penalties collected under the provisions of this Act and all moneys now on deposit in the Unemployment Compensation Special Administration Fund shall be paid into this fund. Said moneys

shall not be expended or available for expenditure in any manner which would permit their substitution for (or a corresponding reduction in) Federal funds which would, in the absence of said moneys, be available to finance expenditures for the administration of the Texas Unemployment Compensation Act. Nothing in this Section, however, shall prevent said moneys from being used as a revolving fund, to cover expenditures, necessary and proper under the Texas Unemployment Compensation Act, for which Federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The Commission may, by resolution duly entered in its Minutes, authorize to be charged against said moneys any expenditures which it deems proper in the interest of good administration of this Act, provided the Commission in such resolution finds that no other funds are available or can properly be used to finance such expenditures. All moneys which are deposited or paid into the Unemployment Compensation Special Administration Fund may be expended in accordance with the provisions of this Act, upon appropriation by the legislature, and shall not lapse at any time or be transferred to any other fund. All moneys in the Unemployment Compensation Special Administration Fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Unemployment Compensation Special Administration Fund provided herein. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any Surety Bond for losses sustained by the Unemployment Compensation Special Administration Fund shall be deposited in said Unemployment Compensation Special Administration Fund. If it be determined by the Commission in accordance with the provisions of subsection 14(j) of this Act that the Commission should refund penalties which have been erroneously collected and which have been deposited in the Unemployment Compensation Special Administration Fund, the refund of such penalties shall be made, without interest, out of the Unemployment Compensation Special Administration Fund, notwithstanding the provisions of subsection 14(j) of this Act [1] that payment of all refunds shall be made out of the Unemployment Compensation Fund. Such refunds paid out of the Unemployment Compensation Special Administration Fund shall be paid upon warrants issued by the Comptroller under the direction of the Commission.

[Amended by Acts 1979, 66th Leg., p. 1870, ch. 755, § 1, eff. Aug. 27, 1979.]

[1] Article 5221b–12(j).

Art. 5221b–22dd. Coverage for Out-of-State Employees

If the commission is unable to execute a reciprocal agreement under Subsection (e) of Section 17–A of this Act [1] to cover state employees who work outside the state, the employing agency shall become a reimbursing employer if permitted by the law of the state or the District of Columbia in which the employees work. If the agency is not permitted to be a reimbursing employer, the agency may pay the required contributions for those employees from funds available for that purpose.

[Added by Acts 1981, 67th Leg., p. 83, ch. 44, § 3, eff. April 15, 1981.]

[1] Article 5221b–15a(e).

CHAPTER FIFTEEN. INSPECTION OF STEAM BOILERS

Art. 5221c. Boiler Inspection Law

Definitions

Sec. 1. The following terms used in this Act mean:

(1) "Act" or "The Act"—The Boiler Inspection Law.

(2) "Alteration"—A change in a boiler that substantially alters the original design.

(3) "Approved"—Approved by the Commissioner.

(4) "ASME Code"—The American Society of Mechanical Engineers Boiler and Pressure Vessel Code with addenda Code cases, and interpretations adopted by the Council of the Society.

(5) "Authorized Inspector"—Any Inspector of boilers holding a commission issued by the Commissioner pursuant to Section 10 of this Act.

(6) "Board"—The Board of Boiler Rules.

(7) "Boiler"—Any heating boiler, nuclear boiler, power boiler, or unfired steam boiler.

(A) "Power Boiler"—A boiler in which steam is generated at a pressure in excess of 15 psi (103 kPa) or a High-Temperature Water Boiler.

(B) "High-Temperature Water Boiler"—A water boiler intended for operation at pressures in excess of 160 psi (1,103 kPa) and/or temperatures in excess of 250 degrees F. (121 degrees C.).

(C) "Electric Boiler"—A boiler in which the source of heat is electricity.

(D) "Unfired Steam Boiler"—A steam generating system that includes:

(i) Vessels known as evaporators or heat exchangers.

(ii) Vessels in which steam is generated by the use of heat resulting from operation of a processing system containing a number of pressure vessels such as used in the manufacture of chemical and petroleum products.

(iii) Waste Heat Boilers.

(E) "Miniature Boiler"—Any power boiler which does not exceed the following limits:

(i) Sixteen-inch (406 mm) inside diameter of shell.

(ii) Twenty-square-foot (1.86 square meter) heating surface (not applicable to electric boiler).

(iii) Five-cubic-foot gross (0.14 cubic meter) volume exclusive of casing and installation.

(iv) One hundred psi (689 kPa) maximum allowable working pressure.

(F) "Nuclear Boiler"—A nuclear power plant system which produces and controls an output of thermal energy from nuclear fuel and those associated systems essential to the functions of the power system. The components of the system include such items as pressure vessels, piping systems, pumps, valves, and storage tanks.

(G) "Heating Boiler"—Any steam heating boiler, hot water heating boiler, hot water supply boiler, or lined potable water heater, which is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuels.

(i) "Steam Heating Boiler"—A boiler for operation at pressures not exceeding 15 psi.

(ii) "Hot Water Heating Boiler"—A boiler for operation at a pressure not exceeding 160 psi and/or temperatures not exceeding 250 degrees F. at or near the boiler outlet.

(iii) "Hot Water Supply Boiler"—A boiler for operation at pressures not exceeding 160 psi and/or temperatures not exceeding 250 degrees F. at or near the boiler outlet when any of the following limitations is exceeded:

(a) Heat input of 200,000 Btu/hour.

(b) Water temperatures of 210 degrees F.

(c) Nominal water-containing capacity of 120 gallons (454.21).

(iv) "Potable Water Heater"—A boiler for operation at pressures not exceeding 160 psi and water temperatures not in excess of 210 degrees F. when any of the following limitations is exceeded:

(a) Heat input of 200,000 Btu/hour.

(b) Nominal water-containing capacity of 120 gallons.

(8) "Chief Inspector"—The Inspector appointed in accordance with Section 8 of this Act.

(9) "Code"—ASME Code.

(10) "Commissioner"—The Commissioner of the Department of Labor and Standards of the State of Texas.

(11) "Condemned Boiler"—A boiler inspected and declared unfit for further service by the Chief Inspector, the Deputy Inspector, or the Commissioner.

(12) "Certificate Inspection"—An inspection, the report of which is used by the Chief Inspector to decide whether or not a Certificate of Operation may be issued.

(13) "Certificate of Operation"—A Certificate issued by the Commissioner permitting the operation of a boiler.

(14) "Deputy Inspector"—An Inspector appointed by the Commissioner.

(15) "Existing Installation"—Any boiler constructed, installed, placed in operation, or contracted for before June 3, 1937.

(16) "External Inspection"—An inspection of the exterior of the boiler and its appurtenances made when a boiler is in operation, where possible.

(17) "Electric Boiler"—See Boiler, "Electric".

(18) "Heating Boiler"—See Boiler, "Heating".

(19) "High-Temperature Water Boiler"—See Boiler, "High Temperature Water".

(20) "Hot Water Heating Boiler"—See Boiler, "Hot Water Heating".

(21) "Hot Water Supply Boiler"—See Boiler, "Hot Water Supply".

(22) "Inspection Agency"—An authorized inspection agency providing inspection services in accordance with Section 10 of this Act.

(23) "Inspector"—Chief Inspector, Deputy Inspector, or Authorized Inspector.

(24) "Internal Inspection"—A complete and thorough inspection of the interior of the boiler where construction will permit.

(25) "Lined Potable Water Heater"—See Boiler, "Potable Water Heater".

(26) "Major Repair"—A repair upon which the strength of the boiler will depend.

(27) "Miniature Boiler"—See Boiler, "Miniature".

(28) "National Board"—The National Board of Boiler and Pressure Vessel Inspectors.

(29) "National Board Inspection Code"—The Manual for Boiler and Pressure Vessel Inspectors published by the National Board.

(30) "New Installations"—A boiler constructed, installed, or placed in operation after June 3, 1937.

(31) "Nuclear Boiler"—See Boiler, "Nuclear".

(32) "Non-Standard Boiler"—A boiler that does not qualify as a standard boiler.

(33) "Owner or User"—Any person, firm, or corporation owning or operating boilers within the State.

(34) "Portable Boiler"—A boiler which is primarily intended for use in a temporary location.

(35) "Power Boiler"—See Boiler, "Power".

(36) "Preliminary Order"—A written order issued by the Chief Inspector or any Deputy Inspector to require repairs or alterations to render a boiler safe for use or to require that operation of the boiler be discontinued.

(37) "Reinstalled Boiler"—A boiler removed from its original setting and reinstalled at the same location or at a new location without change of ownership.

(38) "Repair"—The work necessary to return a boiler to a safe and satisfactory operating condition without changing the original design.

(39) "Rules and Regulations"—The Code of Rules and Regulations promulgated and enforced by the Commissioner in accordance with Section 6 of this Act.

(40) "Safety Appliance"—Safety devices such as safety valves or safety relief valves (within the jurisdictional limits of the boiler as prescribed by the ASME Code and the Rules and Regulations) provided for the purpose of diminishing the danger of accidents.

(41) "Secondhand Boiler"—A boiler of which both the location and ownership have changed.

(42) "Special Inspection"—An inspection by the Chief Inspector or Deputy Inspector other than those in Sections 4, 4a, and 5 in this Act.

(43) "Standard Boiler"—A boiler which bears a Texas stamp, the ASME stamp, or the stamp of any jurisdiction which has adopted a standard of construction equivalent to that required by the Commissioner.

(44) "Steam-Heating Boiler"—See Boiler, "Steam Heating".

(45) "Unfired Steam Boiler"—See Boiler, "Unfired".

Registration of Boilers; Certificate of Operation; Injunction Against Operation of Unsafe Boiler

Sec. 2. Unless otherwise specifically exempted in this Act, all boilers operated within the State shall be registered with the Department of Labor and Standards. In addition, such boilers shall not be operated unless they have satisfactorily passed a Certificate Inspection and have qualified for a Certificate of Operation. The Certificate of Operation shall remain in full force and effect until expiration unless cancelled for cause by the Commissioner and shall be placed under glass in a conspicuous place on or near the boiler for which it is issued. No prosecution shall be maintained where the issuance of or the renewal of such Certificate of Operation shall have been requested and shall remain unacted upon. However, if the operation of such boiler without a Certificate of Operation shall constitute a serious menace to the life and safety of any person or persons in or about the premises, the Commissioner, as hereinafter provided for, shall apply to the District Court in a suit brought by either the Attorney General of the State, or any District or County Attorney, in the county in which such boiler is located, for an injunction restraining the operation of said boiler until the unsafe condition restraining its use shall be corrected and a Certificate of Operation issued. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute a bond as a condition precedent to the issuing of any injunction or restraining order hereunder. The affidavit of the Commissioner that no application for or no Certificate of Operation exists for such boiler, and the affidavit of the Chief Inspector or any Deputy Inspector that its operation constitutes a menace to the life and safety of any person or persons in or about the premises, shall be sufficient proof to warrant the immediate granting of a temporary restraining order. The Commissioner may revoke any Certificate of Operation issued for a boiler within this State after good cause is shown and after notice and opportunity for a hearing on the revocation.

Board of Boiler Rules

Sec. 2a. There is established within the Department of Labor and Standards a Board of Boiler Rules, consisting of nine members appointed by the Commissioner. Except for the initial appointees, members hold office for terms of six years expiring on January 31 of odd-numbered years. In making the initial appointments, the Commissioner shall designate three for terms expiring in 1979, three for terms expiring in 1981, and three for terms expiring in 1983.

The Commissioner may remove any member of the Board for inefficiency or neglect of duty in office. Upon the resignation, death, suspension, or incapacity of any member, the Commissioner shall fill the vacancy for the remainder of the vacated term with an individual representative of the same interests with which the predecessor was identified.

The nine members shall have experience with boilers, and at least four, when available, shall be registered professional engineers licensed in the State of Texas. Three members shall be representatives of owners or users of boilers, one shall be representative of boiler manufacturers or installers, three shall be representatives of companies insuring boilers in this State, one shall be a mechanical engineer on the faculty of a recognized engineering college within the State, and one shall be a representative of a labor union.

The Chief Inspector shall serve as chairman, and the Commissioner shall be an ex officio member. At the call of the chairman, the Board shall meet at least twice each year at a place designated by the Board. No decision of the Board shall be effective unless supported by the vote of at least five members.

The Board shall act in an advisory capacity to the Commissioner in formulating definitions, rules and regulations for the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

The Board members shall serve without salary, but are entitled to reimbursement for actual expenses incurred in the performance of their duties as board members.

Exemptions from Act

Sec. 3. The following are exempt from the provisions of this Act:

(1) Boilers owned or operated by the Federal Government;

(2) Pressure Vessels and unfired steam boilers, except:

a. Steam drums of unfired steam boilers.

b. Waste heat boilers.

Exemptions from Sections 4, 5, and 11 of Act

Sec. 3a. The following shall be exempt from the requirements of Sections 4, 5, and 11 of this Act:

1. Heating Boilers used for heating in buildings occupied solely for residence purposes with accommodations not to exceed four (4) families.

Inspections; Ordering Repairs to Unsafe Boiler; Hearing; Temporary Certificate of Operation

Sec. 4. The Commissioner shall cause boilers subject to the provisions of this Act to be inspected internally and externally (except as provided for in Sections 4 and 4a) as follows:

(1) Power boilers shall receive a certificate inspection annually and shall also be externally inspected annually while under pressure if possible.

(2) Steam heating boilers and hot water heating boilers shall receive a certificate inspection biennially.

(3) Hot water supply boilers and lined potable water heaters shall receive a certificate inspection triennially.

(4) Portable steam boilers shall be inspected externally each time it is moved to a new location, provided that an internal inspection shall be made of each such boiler at least once each twelve (12) months.

(5) Nuclear boilers shall be inspected and reported in such form and with such appropriate information as the Commissioner shall designate.

If such boilers referred to herein are found, upon inspection, to be in a safe condition for operation, a Certificate of Operation shall be issued by the Commissioner for its operation for a period not longer than the interval required for certificate inspections. If any inspection authorized hereunder shall show the inspected boiler to be in an unsafe or dangerous condition, the Chief Inspector or any Deputy Inspector shall issue a preliminary order requiring such repairs and alterations to be made to such boiler as may be necessary to render it safe for use, and may also order the use of such boiler discontinued until such repairs and alterations are made or such dangerous and unsafe conditions are remedied. Unless such preliminary order be complied with by the owner or user, a hearing before the Commissioner shall be allowed, upon written request, at which the owner or user, making the request, shall have opportunity to appear and show cause why the preliminary order should not be complied with. If it shall thereafter appear to the Commissioner that such boiler is unsafe and that the requirements contained in said preliminary order should be complied with, or that other things should be done to make said boiler safe, the Commissioner may order or confirm the withholding of the Certificate of Operation for said boiler and may make such requirements as may be deemed proper for the repair or alteration of said boiler or the correction of such dangerous and unsafe conditions. The Chief Inspector may issue a temporary Certificate of Operation for a period not to exceed thirty (30) days, pending the completion of replacements or repairs. Nothing in this Section shall be construed to limit the authority of the Commissioner as set forth in Section 6 of this Act. Any boiler which cannot be rendered safe for use shall be condemned and the use of such boiler shall be prohibited.

Interval Between Internal Inspections

Sec. 4a. Upon the approval of the Commissioner and the inspection agency having jurisdiction, the interval between internal inspections may be extended to a period not to exceed twenty-four (24) months for power boilers and forty-eight (48) months for waste heat boilers and for other unfired steam boilers using heat resulting from the operation of a process system, the interval may be extended to the next scheduled down time, but not to exceed 60 months provided: (1) continuous water treatment under competent and experienced supervision has been in effect since the last internal inspection for the purpose of controlling and limiting corrosion and deposits; (2) accurate and complete records are available showing that since the last internal inspection samples of boiler water have been taken or monitored at regular intervals not greater than twenty-four (24) hours of operation and that the water condition in the boiler is satisfactorily controlled; (3) accurate and complete records are available showing the dates such boiler has been out of service and the reasons therefor since the last internal inspection, and such records shall include the nature of all repairs to the boiler, the reasons why such repairs were made; and (4) the last internal and current external inspection of the boiler indicates the inspection period may be safely extended. The Commissioner and inspection agency having jurisdiction may grant an additional extension for up to one hundred twenty (120) days to the inspection interval covered by the Certificate of Operation on receipt of a request stating that an emergency exists. However, before an extension is allowed, the Authorized Inspector shall make an external inspection and items (1) through (4) of this Section must be compiled with. When such an extended period between internal inspections has been approved by the Commissioner and the inspection agency having jurisdiction, as outlined in this Section, a new Certificate of Operation shall be issued for that extended period of operation.

Intervals of Inspection for Nuclear Boilers

Sec. 4b. Intervals of inspection for Nuclear Boilers shall be as established by the Commissioner and the owner.

Insurance Company Reports; Inspection by Authorized Inspector; Certificate of Operation; Notice of Cancellation or Expiration of Insurance Policy

Sec. 5. Every insurance company authorized to insure and inspect boilers in this State shall, within thirty (30) days after a certificate inspection file a report with the Commissioner stating the condition of the boiler. The report shall also include the location of the boiler, date inspected, and the name of the inspector.

Any boiler inspected by an authorized inspector shall be exempt from other inspections and inspection fees under the provisions of this Act; provided nothing in this Section shall prevent the Commissioner from authorizing the inspection of any boiler at any reasonable time when, in the opinion of the Commissioner, such boiler may be in an unsafe condition. The Commissioner shall contact the insurance company carrying insurance on the boiler and request the authorized inspector to participate with the Chief Inspector or Deputy Inspector to jointly inspect the boiler, within twenty (20) days. No additional charge shall be made for this inspection.

The Commissioner is authorized to issue a Certificate of Operation to the owner or user of all boilers subject to inspection under this Act. The fee for the Certificate of Operation shall not exceed the sum of Fifteen Dollars ($15).

Every insurance company shall notify the Commissioner in writing of the cancellation or expiration of every policy of insurance issued by it with reference to boilers in this State, after the expiration or cancellation of said policy, giving the cause or reason for such cancellation or expiration. Such notice of cancellation or expiration shall show the date of the policy and the date when the cancellation or expiration has or will become effective.

Rules and Regulations; Special Inspection Service; Exchange of Information

Sec. 6. The Commissioner is hereby authorized and empowered to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers. The Commissioner may adopt rules and regulations to provide inspection procedures for use of nondestructive examination equipment to comply with the inspection requirements specified in Section 4 of this Act. The Commissioner is empowered to provide special inspection service to owner-users and manufacturers including surveys required for certification to construct, assemble or repair boilers or pressure vessels. Provided that the Commissioner or any employee of the Department, shall not have authority to prescribe the make, brand or kind of boilers to buy or purchase.

The Commissioner may exchange information and experience data with other authorities having boiler inspection divisions or departments in assembling data for the promulgation of rules and regulations authorized under the provisions of this Act.

Prior to the adoption, amendment, or repeal of any rules, the Commissioner shall give at least 30 days' notice of the intended action. Notice of the proposed rule shall be filed with the secretary of state and published by the secretary of state in the Texas Register. The notice must include:

(1) a brief explanation of the proposed rule;

(2) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(3) a statement of the statutory or other authority under which the rule is proposed to be promulgated;

(4) a request for comments on the proposed rule from any interested person; and

(5) any other statement required by law.

Each notice of a proposed rule becomes effective as legal notice when published in the Texas Register. The notice shall be mailed to all persons who have made timely written requests of the Commissioner for advance notice of the rulemaking proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted.

Prior to the adoption of any rule, the Commissioner shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for public hearing must be granted if requested by at least 25 persons or by any association having at least 25 members. The Commissioner shall consider fully all written and oral submissions concerning the proposed rule. On adoption of a rule, the Commissioner if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption.

If the Commissioner finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice and states in writing his reasons for that finding, he may proceed without prior notice or hearing or on any abbreviated notice and hearing that he finds practicable to adopt an emergency rule. The rule may be effective for a period of not longer than 120 days renewable once for a period not exceeding 60 days, but the adoption of an identical rule under the provisions of this section is not precluded. An emergency rule adopted under these provisions and the Commissioner's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the Texas Register.

No rule adopted is valid unless adopted in substantial compliance with this section and the provisions of the Administrative Procedure and Texas Register Act.[1]

[1] Article 6252–13a.

Grievance Procedure

Sec. 7. When any person is aggrieved by any fundamental rule, regulation or order promulgated by the Commissioner, that person shall notify the Commissioner of such grievance by formal notice in writing, whereupon the Commissioner shall give consideration of such grievance and may modify, change, alter or amend same by motion upon failure or refusal of the Commissioner, within ten (10) days, to change, alter or modify such fundamental rule, regulation or order, the Commissioner, shall, upon written application for hearing, cause the same to be held within five (5) days thereafter, at which the person complaining shall have opportunity to show cause, if any, why such fundamental rule, regulation or order complained of should be set aside, altered, amended or repealed.

Appointment and Qualifications of Chief and Deputy Inspectors

Sec. 8. The Commissioner shall appoint a Chief Inspector of boilers who shall be the Administrator of the boiler program. The Chief Inspector shall be a resident of Texas and a citizen of the U.S.A. The appointee shall have at least five (5) years experience in the construction, installation, inspection, operation, maintenance, or repair of boilers and shall have passed a written examination demonstrating the necessary ability to judge the safety of boilers for use. The Chief Inspector shall not have a commercial interest in the manufacture, ownership, insurance, or agency of boilers or their appurtenances. The Commissioner shall appoint Deputy Inspectors, as needed, with qualifications similar to those of the Chief Inspector, and such clerical assistants as may be necessary to carry out the provisions of this Act.

Salaries and Expenses

Sec. 9. The salaries and expenses of persons employed or appointed pursuant to the terms of this Act shall be established by the Legislature.

Persons Authorized to Inspect; Commission of Authorized Inspectors; Revocation of Certificate of Operation

Sec. 10. The Commissioner may cause the inspection provided for in this Act to be made either by the Chief Inspector, a Deputy Inspector, or an Authorized Inspector. However, Authorized Inspectors shall be continuously employed by an insurance company and shall first obtain from the Commissioner a Texas commission as an inspector of boilers. The Commissioner is vested with full power and authority to determine the qualifications (by written examination) of any applicant seeking a commission as inspector. The Commissioner may accept, after proper investigation, the commission issued to an inspector by any other jurisdictional authority having a written examination equal to that of the State of Texas. The Commissioner may rescind for good cause, any Texas commission issued to any person.

Fees

Sec. 11. (a) The Commissioner may fix and collect fees for the inspection of boilers and the issuance of Certificates of Operation.

Such fees must be paid by the owner or user before the issuance of a Certificate of Operation for the boiler inspected.

(b) The Commissioner may fix and collect fees for administering examinations as provided by this Act.

(c) With the advice of the Board of Boiler Rules, the Commissioner shall fix the fees provided by this Act in amounts that produce income sufficient to cover the expenses incurred in the administration of this Act. Fees collected by the Commissioner under the provisions of this Section of the Act shall be paid into the State Treasury to the credit of the General Revenue Fund.

(d) The Commissioner may fix and collect fees for special inspections as referred to in Section 6 of this Act. Such fees, travel, and per diem collected under the provisions of this Section of the Act shall be reappropriated to the credit of the Boiler Inspection Division.

Penalty for Violations by Persons in Charge of Boilers

Sec. 12. Any person, firm, corporation, or agent thereof, owning or having the custody, management, use or operation of any boiler in this State, who shall violate any provision of this Act, or who violates any rule, regulation or order promulgated by authority hereof by the Commissioner or any regularly employed inspector authorized to enforce any provision or any rule, regulation or order authorized herein, or any person, firm, corporation, or agent thereof coming within any provision of this Act, or any rule, regulation or order authorized herein, who shall fail or refuse to comply therewith, shall be deemed guilty of a misdemeanor and upon conviction therefor shall be subject to a fine of not less than Fifty Dollars ($50) nor more than Two Hundred Dollars ($200), or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

Penalty for Violations by Operators of Factory, Mill, Workshop, Mine, Store, Business House, Public or Private Work

Sec. 13. Any owner, manager, superintendent or other person in charge or in control of any factory, mill, workshop, mine, store, business house, public or private work, or the lessee or operator of same, or the owner or lessee of any place where a boiler subject to inspection hereunder is located, who shall refuse to allow any official or employee of the Department of Labor and Standards to enter the same and remain thereon or therein for such time as reasonably necessary, or who shall hinder any such official or employee in any way, or who shall in any way prevent or deter said official or employee from carrying out the provisions of this Act, shall be

deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed One Hundred Dollars ($100) or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

Notice of Rule, Regulation or Order Violation Prerequisite to Criminal Action

Sec. 14. Whenever there shall have been adopted, amended or repealed as provided for under this Act, any rule, regulation or order, no criminal action shall be maintained against any person involving the violation of any provision of such rule, regulation or order, until the Commissioner shall have given notice of such rule, regulation or order.

Admission in Evidence of Affidavit Setting Forth Terms of Order

Sec. 15. An affidavit under the Seal of the Commissioner executed by the said Commissioner or the Chief Inspector or any Deputy Inspector, setting forth the terms of any order of the Commissioner and that it has been adopted, promulgated and published, and was in effect at any date during any period specified in such affidavit, shall be admitted in evidence in any action, civil or criminal, involving such order and the publication thereof without further proof of such promulgation, adoption or publication and without further proof of its contents.

Partial Invalidity

Sec. 16. Should any section, subsection, sentence, clause, phrase, provision or exemption of this Act be declared unconstitutional or invalid for any reason such invalidity shall not affect the remaining portions or provisions hereof.

[Amended by Acts 1977, 65th Leg., p. 162, ch. 82, § 1, eff. April 25, 1977; Acts 1979, 66th Leg., p. 149, ch. 81, §§ 1, 2, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 542, ch. 223, §§ 1, 2, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2486, ch. 648, §§ 1 to 3, eff. Sept. 1, 1981.]

The 1979 amendatory act, inter alia, redesignated former § 11a, relating to a special inspection fee, as subsec. (e) of § 11.

CHAPTER SIXTEEN. MISCELLANEOUS PROVISIONS

Article

5221g. Employment Counseling Program for Displaced Homemakers.
5221h. Transfer of License.
5221i. Purchase of Unexpired License.
5221j. Agricultural Laborers; Length of Hoes.

Art. 5221e–1. Migrant Labor Camps; Licensing

Sec. 1. The following words and phrases shall mean:

(a) Migrant labor camp: One or more buildings, structures, trailers, or vehicles, contiguous or grouped, together with the land appertaining thereto, established, operated, or used as living quarters for two or more seasonal, temporary, or migrant families or three or more seasonal, temporary, or migrant workers and accompanying dependents for more than three days, whether or not rent is paid or reserved in connection with the use or occupancy of such premises.

(b) Person: An individual or group of individuals, association, partnership, corporation, or political subdivision.

(c) Migrant agricultural worker: An individual working or available for work, primarily in agricultural or related industry on a seasonal or temporary basis, who moves one or more times from one place to another for the purpose of such employment or availability for seasonal or temporary employment.

[See Compact Edition, Volume 4 for text of 2 to 9]

Sec. 10. All decisions of the State Commissioner of Health hereunder may be reviewed in the county, or district court of the county in which such migrant labor camp is located or contemplated.

Sec. 11. (a) Any person, as defined in this Act, establishing, conducting, maintaining, or operating any migrant labor camp, within the meaning of this Act, without first obtaining a license therefor as provided herein or without having secured renewal of license as provided by this Act or who shall violate any of the provisions of this Act, or regulations lawfully promulgated thereunder is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $25 or confinement in county jail for not more than 30 days or both. Each day of violation shall be considered a separate offense.

(b) Any individual, employee or occupant who commits an act of vandalism or misuse of the facilities, or who violates applicable regulations lawfully promulgated within the meaning of this Act shall be guilty of a misdemeanor, and upon conviction hereof be subject to a fine of not more than $25 or confinement in county jail for not more than 10 days or both.

(c) In addition to other remedies, the Commissioner of Health or his designated representative is hereby authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for good cause shown to grant, a temporary or permanent injunction restraining and enjoining any person, as defined in this Act, employee, or occupant from violating any of the provisions of this Act. Such person, employee, or occupant, so enjoined, shall have the right to appeal such injunction, temporary or permanent, to the Supreme Court of the State of Texas, as in other cases.

[See Compact Edition, Volume 4 for text of 12 to 14]

[Amended by Acts 1975, 64th Leg., p. 954, ch. 361, § 1, eff. June 19, 1975.]

Art. 5221f. Manufactured Housing Standards Act

Short Title

Sec. 1. This Act may be cited as the Texas Manufactured Housing Standards Act.

Purpose

Sec. 2. The legislature finds that there is a growing need to provide the citizens of the state with safe, affordable, and well-constructed housing. The legislature finds that manufactured housing has become a primary housing source of many of the state's citizens. It is the specific intent of the legislature to encourage the construction of housing for the state's citizens and to improve the general welfare and safety of purchasers of manufactured housing in this state. The legislature finds that existing statutes and regulations are not adequate to provide for the full protection of the consumer and to prevent certain discriminations that exist in the state with regard to manufactured housing. The legislature finds that it is the responsibility of the state to provide for the protection of its citizens who desire to purchase housing by imposing certain regulations on the construction and installation, to provide economic stability of manufactured housing manufacturers, retailers, installers, and brokers, and to provide fair and effective consumer remedies. In recognition of these findings, the legislature deems it necessary to expand various regulatory powers to deal with these problems. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally construed and applied to promote its underlying policies and purposes.

Definitions

Sec. 3. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

(a) "Mobile home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(b) "Retailer" means any person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a retailer unless engaged in the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

(c) "Manufacturer" means any person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase within the state.

(d) "Department" means the Texas Department of Labor and Standards.

(e) "Person" means an individual, partnership, company, corporation, association, or other group, however organized.

(f) "Broker" means a person engaged by others to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease-purchase of their manufactured homes at the site where installed to consumers. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in brokerage activities related to the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

(g) "Consumer" means any person who seeks or acquires by purchase, exchange, or lease-purchase a manufactured home.

(h) "Decal" means a device or insignia issued by the department that is permanently affixed to each transportable section of each modular home to indicate compliance with the standards, rules, and regulations established by the department.

(i) "Seal" means a device or insignia issued by the department to be affixed to used mobile homes to indicate compliance with the standards, rules, and regulations established by the department. The seal shall remain the property of the department.

(j) "Label" means a device or insignia issued by the department to indicate compliance with the standards, rules, and regulations established by the Department of Housing and Urban Development, and is permanently affixed to each transportable section of each mobile home manufactured after June 15, 1976, for sale to a consumer.

(k) "Installation," when used in reference to manufactured housing, means the transporting of manufactured homes to the place where they will be used by the consumer, the construction of the foundation system, whether temporary or permanent, and the placement of a manufactured home on the foundation system, and includes supporting, blocking, leveling, securing, anchoring, and proper connection of multiple or expandable units and minor adjustments.

(*l*) "Installer" means any person, including a retailer or manufacturer, who performs installation functions on manufactured housing.

(m) "Alteration" means the replacement, addition, and modification, or removal of any equipment or its installation after sale by a manufacturer to a retailer but prior to sale and installation by a retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced.

It also does not include the addition of an appliance requiring "plug-in" to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

(n) "Lease-purchase" means to enter into a lease contract with a provision conferring on the lessee an option to purchase the manufactured home.

(o) "Commissioner" means the Commissioner of the Texas Department of Labor and Standards.

(p) "Code" means the Texas Manufactured Housing Standards Code.

(q) "Modular home" means a dwelling that is manufactured in two or more modules at a location other than the homesite and which is designed to be used as a residence when the modules are transported to the homesite, and the modules are joined together and installed on a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. It is expressly provided, however that the term modular home shall not mean nor apply to, and that the following items are expressly excluded from the purview of this Article: (i) sectional or panelized housing in which the basic components assembled at the homesite are not at least three dimensional modules; (ii) a ready-built home which is constructed so that entire living area is contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location; and (iii) a home constructed in modules incorporating concrete or masonry as the primary structural component.

(r) "Salesperson" means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured housing to consumers as an employee or agent of a retailer or broker.

(s) "Manufactured housing" or "manufactured home" means a mobile home or a modular home or both.

(t) "Registrant" means any person who has registered with the department and has been issued a certificate of registration as a manufactured housing manufacturer, retailer, broker, or installer.

Manufactured Housing Standards

Sec. 4. (a) The department shall adopt standards and requirements for the installation and for the construction of manufactured housing, that are reasonably necessary in order to protect the health, safety, and welfare of the occupants and the public. The collection of these standards and requirements is the Texas Manufactured Housing Code.

(1) The requirements and standards for the plumbing, heating, air-conditioning, and electrical systems and construction of mobile homes in effect on September 1, 1979, remain in full force and effect until amended in accordance with the procedure set forth in this section.

(2) The department shall adopt standards and requirements for the construction of mobile homes in compliance with the federal standards and requirements established under Title VI of the Housing and Community Development Act of 1974, entitled the National Mobile Home Construction and Safety Standards Act of 1974.[1]

(3) The department shall adopt standards and requirements for the construction of modular homes which shall not be less stringent than the standards and requirements for the construction of mobile homes.

(b) The department shall adopt standards and requirements for the installation of all manufactured housing in the state that are necessary for the protection of the health, safety, and welfare of all the citizens. The standards must assure that manufactured housing in the first two tiers of coastal counties in the state is capable of withstanding winds of hurricane-force velocity of not less than 105 miles per hour and that manufactured housing in all other counties of the state is capable of withstanding winds of a minimum gale-force velocity.

(1) The requirements and standards for the installation of mobile homes as adopted by the department in existence on August 31, 1979, remain in force until amended in accordance with the procedure set forth in this section.

(2) All manufactured housing must be installed in compliance with the standards, rules, regulations, or administrative orders of the department.

(3) The department may cooperate with all units of local government within this state in the establishment of inspection training programs and, when requested, may authorize local units of government to make and perform inspection and enforcement activities related to the installation of manufactured housing pursuant to contracts or other official designations and the rules and regulations of the department.

(c) A political subdivision of this state, without the express approval of the department following a hearing on the matter, may not adopt different standards from those promulgated by the department for the construction or installation of manufactured housing within the political subdivision.

(d) Before the adoption or promulgation of any standards or requirements authorized by this section, any change in or addition to the standards authorized in this section, or the approval of different standards by any political subdivision, the department shall publish a notice and conduct a public hearing in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), not sooner than the 30th day following the publication of notice.

(e) Every requirement or standard or modification, amendment, or repeal of a requirement or standard adopted by the department shall state the date it shall take effect.

[1] 42 U.S.C.A. § 5401 et seq.

Sec. 5. Repealed by Acts 1979, 66th Leg., p. 1417, ch. 625, § 18, eff. Sept. 1, 1979.

Regulations

Sec. 6. (a) It is unlawful for any manufacturer to construct mobile homes in this state for sale or resale unless such manufacturer has supplied the department with proof of acceptance by a Design Approval Primary Inspection Agency authorized by the Department of Housing and Urban Development, has purchased the required labels, and has all mobile homes manufactured in this state inspected by an accepted In-Plant Inspection Agency authorized by the Department of Housing and Urban Development. It is unlawful for a manufacturer to ship mobile homes into the state for sale or resale unless the manufacturer has complied with all requirements of the National Mobile Home Construction and Safety Standards Act of 1974 and all standards, rules, and regulations of the Department of Housing and Urban Development.

(b) It is unlawful for any manufacturer to construct modular homes in the state or to ship modular homes into the state for sale or resale unless constructed to the code and unless the manufacturer has received approval by the department of the design and specifications for the construction of its modular homes and of its quality control program to assure compliance with the requirements and standards of the Texas Manufactured Housing Standards Code, has purchased the required decals, and has the modular homes inspected pursuant to the regulations of the department.

(c) Before the sale of a manufactured home to a consumer and before its installation, it is unlawful for any manufacturer, retailer, broker, or installer to make any alteration on a manufactured home to which a seal, label, or decal has been affixed or cause such an alteration to be made, unless prior written approval has been obtained from the department.

(d) It is unlawful for any retailer, broker, or salesperson to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase any manufactured home to a person in the state for use as a residence or dwelling, unless the manufactured home has affixed to it the appropriate seal, label, or decal.

(e) It is unlawful for a manufacturer to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to any person in the state other than a registered retailer.

(f) A person may not sell, exchange, or lease-purchase any manufactured home to another person in the state for use as a dwelling or residence, unless the manufactured home is habitable.

Registration

Sec. 7. (a) A person may not construct or assemble a manufactured home in the state or ship a manufactured home into the state, unless the person is registered as a manufactured housing manufacturer by the department and possesses a valid manufacturer's certificate of registration.

(b) A person may not sell, exchange, lease-purchase, or offer to sell, exchange, or lease-purchase two or more manufactured homes to consumers in the state in any consecutive 12-month period, unless the person possesses a valid manufactured housing retailer's certificate of registration.

(c) A person may not offer to negotiate or negotiate for others a bargain or contract for the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in the state in any 12-month period, unless the person possesses a valid manufactured housing broker's certificate of registration.

(d) A person may not perform any installation functions on manufactured housing in the state, unless the person possesses a valid installer's certificate of registration.

(e) Each applicant for a certificate of registration as a manufacturer, retailer, broker, or installer must file with the department an application for registration containing the following information:

(1) the legal name, address, and telephone number of the applicant;

(2) the trade name by which the applicant does business and, if incorporated, the name registered with the secretary of state and the address of the business; and

(3) the dates on which the applicant became the owner and operator of the business.

(f) Each application for a certificate of registration must be accompanied by proof of the security required by this Act and payment of the required fee for the issuance of the certificate.

(g) All certificates of registration are valid for one year from the date of issue and are renewable annually on payment of the annual fee; provided, however, that the initial certificates of registration issued to registrants as of September 1, 1979, may be issued for periods of less than one year and the annual fee shall be prorated proportionally.

(h) The department by rule may adopt a system under which the licenses issued under this article expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

(i) If a change occurs in the information filed with the department under Subsection (e) of this section, the applicant shall file an amendment to his or her application that states the correct information.

(j) While acting as an agent for a registrant, an employee is covered by the business entity's certifi-

cate of registration and is not required to be individually registered. An independent contractor or business entity may not operate under the certificate of registration of another business entity except as an agent or subcontractor of a registered installer who shall remain fully responsible for all installation functions performed by such agent as subcontractor.

(k) The commissioner, after notice and hearing, may revoke or suspend for a definite period of time and for a particular geographic area any certificate of registration issued under this Act if the commissioner finds that the registrant:

(1) knowingly and willfully violated any provision of this Act or any rule or regulation made pursuant to this Act after receipt of actual notice of any failure to comply;

(2) without lawful authorization retained or converted any money, property, or any other thing of value from consumers in the form of down payments, sales and use taxes, deposits, or insurance premiums;

(3) failed to deliver proper title documents or certificates of title to consumers;

(4) failed to give or breached any manufactured home warranty required by this Act or by the Federal Trade Commission;

(5) engaged in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code; [1] or

(6) failed to furnish or file any reports required by the department for the administration and enforcement of this Act.

(*l*) The commissioner shall conduct any hearing involving the revocation or suspension of a certificate of registration in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

[1] Business and Commerce Code, § 17.41 et seq.

Used Mobile Homes

Sec. 8. A retailer or broker may not sell, exchange, or lease-purchase or negotiate for the sale, exchange, or lease-purchase of a used mobile home manufactured after December 12, 1969, unless an appropriate seal or label is affixed to it. If the used mobile home does not have a seal or label, the retailer or broker must apply to the department for a seal with an affidavit that the manufactured home is habitable.

Administration and Enforcement

Sec. 9. (a) The department is hereby charged with the administration and enforcement of this Act.

(b) The department shall adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of this Act to effectuate and to provide for uniform enforcement of all provisions of this Act and of the Texas Manufactured Housing Standards Code. The department shall make and enforce rules and regulations reasonably required to effectuate the notification and correction procedures provided in Section 615 of the National Mobile Home Construction and Safety Standards Act of 1974.[1]

(c) The department shall adopt rules and regulations, promulgate administrative orders, and take all actions necessary to comply with the provisions of the National Mobile Home Construction and Safety Standards Act of 1974 and to provide for the effective enforcement of all mobile home construction and safety standards in order to have its state plan approved by the secretary of the United States Department of Housing and Urban Development.

(d) At least 30 days before the adoption or promulgation of any change in or addition to the rules and regulations authorized in Subsections (b) and (c) of this section, the department shall publish in the Texas Register a notice including:

(1) a copy of the proposed changes and additions; and

(2) the time and place that the department will consider any objections to the proposed changes and additions.

(e) After giving the notice required by Subsection (d) of this section, the department shall afford interested persons an opportunity to participate in the rule-making through submission of written data, views, or arguments with or without opportunity to present the same orally on any matter.

(f) Every rule or regulation or modification, amendment, or repeal of a rule or regulation adopted by the department shall state the date it shall take effect.

(g) Immediately after their promulgation, the department shall publish in the Texas Register all rules and regulations or amendments thereto.

(h) The department through its authorized representatives is authorized to enter at reasonable times and without advance notice any factory, warehouse, establishment, or location of a registrant to make any inspections that are reasonably required to determine whether a registrant is in compliance with this Act and the rules, regulations, and administrative orders promulgated under this Act.

(i) The department is authorized to inspect, at reasonable times and within reasonable limits and in a reasonable manner, any such factory, warehouse, or establishment, and to inspect such books, papers, records, plans, and documents as may reasonably be required. Each such inspection shall be commenced and completed with reasonable promptness.

(j) The department may employ state inspectors to carry out the functions required of the department pursuant to this Act, to effectuate the provisions of this Act, and to enforce the rules, regulations, and administrative orders promulgated pursu-

ant to this Act. The department may authorize state inspectors to travel inside or outside of the state to inspect manufacturing facilities in connection with the enforcement of this Act.

(k) The department may contract with any federal agency or any agency or political subdivision of any state for the performance of any inspections or inspection programs pursuant to this Act or the rules and regulations of the department to assure that manufactured homes sold or installed in the state comply with the Texas Manufactured Housing Standards Code.

(*l*) The department may enter into contracts with the Department of Housing and Urban Development or its designees to monitor the Department of Housing and Urban Development programs.

(m) When necessary or required by law, the department may obtain inspection search warrants.

[1] 42 U.S.C.A. § 5414.

Sec. 10. Repealed by Acts 1979, 66th Leg., p. 1417, ch. 625, § 18, eff. Sept. 1, 1979.

Sec. 11. (a) There shall be a fee of $15 for the inspection of the installation of mobile homes which shall be paid by the installer of the mobile home. Said fee shall be paid to the state and shall accompany notification to the department of the exact location of the mobile home. The department shall make fee distributions to local governmental subdivisions performing inspections pursuant to contracts or other official designations.

(b) Looking for guidance to the rules and regulations promulgated under Title VI of the Housing and Community Development Act of 1974 [1] and to that Act itself, the commissioner shall set fees for the following functions:

(1) There shall be a schedule of fees for the review of mobile home blueprints and supporting data when the department acts as a Design Approval Primary Inspection Agency. This fee shall be paid by the manufacturer seeking approval.

(2) There shall be an inspection fee on all mobile homes manufactured or assembled within the State of Texas. This fee shall be paid by the manufacturer of the home. The manufacturer shall also be charged for the actual cost of travel for representatives of the department to and from the manufacturing facility.

(3) The fees in Subsections (1) and (2) shall not be applicable when an accepted inspection agency authorized by the Department of Housing and Urban Development, other than the department, acts as the Design Approval Primary Inspection Agency or the In-Plant Inspection Agency.

(4) There shall be a fee for inspection of used mobile homes at retailer locations to check compliance with the code and to determine if the mobile home has been damaged in transit. This fee shall be paid by the retailer in possession of the mobile homes at the time the inspection was made. For any given mobile home at a retailer location, this fee may not be assessed more than one time.

(5) There shall be a fee charged on an hourly basis for inspection of alterations made upon the structure, plumbing, heating, or electrical systems of mobile homes. This fee shall be paid by the person making the alteration. The person shall also be charged for the actual cost of travel for representatives of the department to and from the place of inspection.

(6) There shall be a fee for the issuance of seals for used mobile homes which shall be paid by the retailer or broker.

(c) The installer of a modular home shall pay to the state a fee set by the commissioner for the inspection of the installation of the modular home. Before installation the installer shall notify the department of the exact location of the modular home and shall pay the fee.

(d) Following a hearing pursuant to the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), the commissioner shall set fees for the following functions:

(1) a fee paid by the manufacturer for the review of modular home designs, blueprints, and specifications;

(2) an inspection fee paid by the manufacturer for all modular homes manufactured in the state and for all modular homes manufactured outside of the state to be transported to retailers or consumers in the state;

(3) a fee charged on an hourly basis and paid by the person making the alteration for an inspection of the alterations made on a modular home after construction and certification by the manufacturer and before the closing of a sale to the consumer;

(4) annual fees for the issuance and renewal of manufacturers', retailers', brokers', and installers' certificates of registration; and

(5) a fee for the issuance of decals that shall be paid by the manufacturer.

(e) The person required to pay an inspection fee set in accordance with Subsection (d) of this section shall pay the cost of travel to and from the place of the inspection for representatives of the department who make the inspection.

(f) All fees assessed under this Act shall be paid to the State Treasurer and placed in the General Revenue Fund.

(g) The fees charged by the department in effect August 31, 1979, shall remain in effect until the new schedule of fees set forth in this section has been promulgated and adopted.

[1] 42 U.S.C.A. § 5401.

Sec. 12. [Deleted.]

Security Required

Sec. 13. (a) The department may not issue a certificate of registration, unless the applicant first files a surety bond, a cash deposit, or other security in such form as the commissioner may prescribe and a written irrevocable designation of the commissioner as agent for service of legal process.

(b) If a surety bond is filed, it shall be continuous and remain in effect until cancelled by the surety company with notice as provided by this Act. A cash deposit or other security need not be posted annually so long as the applicable amount specified in this section remains posted. If a claim is made against a cash deposit causing the deposit to be lessened, the depositor has 20 calendar days in which to deposit additional money or other security so that compliance may be had with the requirements of this section. If the deficit is not eliminated within 20 days, the certificate of registration of the inadequately covered manufacturer, retailer, broker, or installer is immediately suspended. If a bond is cancelled, the certificate of registration is immediately suspended.

(c) If a cash deposit or other security is posted, the interest from said deposit shall go to the depositor.

(d) The bond shall be a surety bond issued by a company authorized to do business in this state and shall be in conformity with the Insurance Code. The cash deposit or other security shall be in such a form as the commissioner may deem appropriate.

(e) The bond, cash deposit, or other security shall be to the state for the use by a consumer, the state, or any political subdivision thereof who secures any judgment against a manufacturer, retailer, broker, installer or salesperson for damages, restitution, or expenses including reasonable attorney's fees resulting from a cause of action connected with the sale, lease-purchase, exchange, brokerage, or installation of a manufactured home, including but not limited to

(1) retention or conversion of money, property, or any other thing of value from consumers in the form of down payments, any sales and use taxes, deposits, or insurance premiums;

(2) failure to deliver proper title documents or certificates of title to consumers;

(3) failure to give or the breach of any manufactured home warranty required by this Act or by the Federal Trade Commission; or

(4) engaging in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts or practices are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code. The bond or other security shall not be liable for judgments resulting from tort claims, except as expressly set forth hereinabove, nor for any punitive, exemplary, or treble damages. A consumer, the state, or any political subdivision thereof may recover against the principal or surety jointly and severally for such damages, restitution, or expenses; provided, however, that in no event shall a surety or the cash deposit or other security posted under this section be liable for an amount in excess of actual damages, restitution, or expenses, including reasonable attorney's fees. Any judgment obtained against a principal is conclusive against the surety or other security if notice of the filing of suit is given as required by this section. The bond or other security shall be open to successive claims up to the amount of face value of the bond or other required security. The surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.

(f) A consumer shall inform the manufacturer, retailer, installer, or salesperson, and the department of any claim against the bond or security no later than two years after the purchase of the mobile home. Whenever the department receives notice of the claim against a bond, the department shall promptly notify the bonding company involved. If the consumer claim results in a private lawsuit being filed by the consumer, the consumer shall notify the attorney general's office and the surety company by certified mail of the filing of the lawsuit. At the time of sale or delivery of a manufactured home to a consumer, the consumer must be given conspicuous written notification of this two-year limit and the notice requirements.

(g) Any manufacturer, retailer, broker, or installer who maintains a place of business at one or more locations shall file with the department a separate bond or other security for each location. A manufactured home installed on a permanent foundation system and offered for sale as real estate is not a business location that requires a bond.

(h) A manufacturer shall be bonded, supply a cash deposit or other security in the amount of $100,000. A retailer shall be bonded, supply a cash deposit, or other security in the amount of $25,000. A salesperson shall be bonded, supply a cash deposit or other security in the amount of $2,000. A broker shall be bonded, supply a cash deposit or other security in the amount of $15,000. An installer shall be bonded, supply a cash deposit or other security in the amount of $2,000. A retailer holding a valid certificate of registration shall not be required to be bonded or file any security to secure a certificate of registration as a broker or an installer.

(i) The bonding company must provide written notification to the department at least 60 days prior to the cancellation of any bond required by this Act. Any cash deposit or other security on file with the department shall remain on file with the department two years after the person ceases business as a manufacturer, retailer, broker, or installer or salesperson or at such time as the department may determine that no claims exist against the cash deposit or security.

Warranties

Sec. 14. (a) After the effective date of this Act, all new manufactured homes sold to consumers in the state shall be covered by the manufactured home warranty set forth in this section.

(b) The manufactured home warranty provided for in this Act is given by the manufacturer of the manufactured home.

(c) The manufactured home warranty shall be set forth in a separate written document; shall be delivered to the consumer by the retailer at the time the contract of sale is signed; and shall contain, but is not limited to, the following terms:

(1) that the manufactured home complies with the code;

(2) that the warranty shall be in effect for a period of at least one year from date of sale or initial installation, whichever is later;

(3) that the manufactured home and all appliances and other equipment installed and included therein by the manufacturer or retailer are free from defects in materials or workmanship;

(4) that the manufactured home is installed in accordance with all standards, rules, regulations, administrative orders, and requirements of the department;

(5) that the manufacturer or the retailer or both shall take appropriate corrective action within a reasonable period of time in instances of defects in materials or workmanship, or failures to comply with the code;

(6) that the warranty contains the address of the retailer and manufacturer where notices of defects may be given; and

(7) that the purchaser shall notify either the manufacturer or the retailer or both in writing of the need for appropriate corrective action in instances of defects in materials or workmanship or in failures to comply with the code.

(d) The manufacturer and retailer are jointly and severally liable to the consumer for the fulfillment of the manufactured home warranty.

(e) For all installations not covered by the warranty as set forth in Subsection (c) of this section, the installer shall give each manufactured home owner a written warranty that the installation of the home was done in accordance with all standards, requirements, rules, regulations, and administrative orders of the department.

Sec. 15. Repealed by Acts 1979, 66th Leg., p. 1417, ch. 625, § 18, eff. Sept. 1, 1979.

Penalties

Sec. 17. (a) A person, individual, or director, officer, or agent of a corporation who knowingly and willfully violates a provision of this Act or any rule, regulation, or administrative order of the department in a manner that threatens the health or safety of any purchaser or consumer commits a misdemeanor and on conviction shall be fined not more than $1,000 or shall be confined in the county jail not longer than one year or both.

(b) Any person who violates any provision of this Act or the rules and regulations of the department may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed $1,000 for each such violation as the court may deem proper, except that the maximum civil penalty may not exceed $1,000,000 for any related series of violations occurring within one year from the date of the first violation.

(c) Whenever it appears that any person has violated or is threatening to violate any of the provisions of this Act or of the rules, regulations, and administrative orders of the department, either the attorney general or the department may cause a civil suit to be instituted either for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of the civil penalty or for both.

(d) Failure by a manufacturer or retailer to comply with the warranty provisions of this Act or any implied warranties or the violation of any provision of this Act by any person is a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code [1] and is actionable pursuant to said subchapter. As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative of the remedies in this Act.

[1] Business and Commerce Code, § 17.41 et seq.

Miscellaneous Provisions

Sec. 18. (a) Any waiver by a consumer of the provisions of this Act is contrary to public policy and is unenforceable and void.

(b) No provision of this Act shall exclude any other remedy available at law or equity to the consumer.

(c) If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

(d) If a retailer, broker, or installer does not possess a valid certificate of registration at the time of entering into any contract with a consumer, the contract between the consumer and the retailer, broker, or installer is voidable at the option of the consumer.

(e) Nothing in this Act shall be construed to modify or amend any provisions of The Real Estate License Act, as amended (Article 6573a, Vernon's Texas Civil Statutes). The provisions of this article, as amended, shall not apply to a person licensed as a real estate broker or salesman pursuant to The Real

Estate License Act, as amended (Article 6573a, Vernon's Texas Civil Statutes), who, as agent of the buyer or seller, negotiates the sale or lease of a mobile home and the real property to which it is affixed; provided that the ownership of the mobile home and real property are of record in the same person and that such sale or lease shall be in a single real estate transaction.

(f) Notwithstanding any provisions of any other statute, regulation, or ordinance to the contrary, an installer is not required to secure any permit, certificate, or license or pay any fee for the transportation of manufactured housing to the place where it is to be installed except as required by the department or the State Department of Highways and Public Transportation. The State Department of Highways and Public Transportation shall cooperate with the department in the routing of the transportation of housing and shall not issue any permits for the transportation of manufactured housing except to persons holding valid certificates of registration issued by the department.

Manufactured Home Titles

Sec. 19. (a) In this section:

(1) "Debtor" has the same meaning as given it by Section 9.105(a)(4), Business & Commerce Code.

(2) "Document of title" means a written instrument issued solely by and under the authority of the department that sets forth:

(A) the name and address of the purchaser and seller at the first retail sale, or the transferee and transferor at any subsequent sale or transfer;

(B) the manufacturer's name and address and, if any, the model designation;

(C) in accordance with applicable rules of the department, the outside dimensions of the manufactured home when installed for occupancy exclusive of the tongue or other towing device as measured to the nearest one-half of one foot at the base of the home, and the approximate square footage of the home when installed for occupancy;

(D) the identification number or numbers for each section or module of the manufactured home;

(E) the county of this state in which the manufactured home is installed for occupancy;

(F) the dates of any liens, and the names and addresses of the lienholders, in chronological order of recordation, and if no liens are registered or recorded on the manufactured home, a statement of that fact;

(G) the signature of the owner signed with pen and ink on receipt of the certificate;

(H) that if a husband and wife file, with the application for document of title, an agreement signed by both providing that the manufactured home is to be held jointly with rights of survivorship, the department will issue the document of title in both names; and

(I) any other data the department requires.

(3) "First retail sale" means the initial acquisition by a consumer of a manufactured home by purchase, exchange, or lease-purchase from a retailer and includes a bargain, sale, transfer, or delivery with intent to pass an interest other than a lien, to a manufactured home for which a document of title has not been previously issued by the department.

(4) "Identification number" means the permanent number affixed to, or imprinted on, a manufactured home or section of the home as prescribed by the rules of the department.

(5) "Inventory" has the meaning given it by Section 9.109(4), Business & Commerce Code, as amended.

(6) "Lien" means a security interest that is created by any kind of lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title, or other security agreement of whatever kind or character if an interest, other than an absolute title, is sought to be held or given in a manufactured home, and any lien on a manufactured home that is created or given by the constitution or a statute.

(7) "Manufacturer's certificate" means a document, or a form prescribed by the department, that shows the original transfer of a manufactured home from the manufacturer to the retailer, and if presented with an application for a document of title, the certificate must show, on a form prescribed by the department, each subsequent transfer between retailers and retailer to owner.

(8) "Mortgagee" means a secured party or any other person who holds a lien on a manufactured home.

(9) "Mortgagor" means a debtor or other person who gives a lien on a manufactured home, any person who agrees that a lien may be retained on the home or any part of it, or any person against whom a lien arises under the constitution or a statute.

(10) "Secured party" has the meaning given it by Section 9.105(a)(13), Business & Commerce Code.

(11) "Security interest" has the meaning given it by Section 1.201(37), Business & Commerce Code.

(12) "Security agreement" has the meaning given it by Section 9.105(a)(12), Business & Commerce Code.

(13) "Subsequent sale" means a bargain, sale, transfer, or delivery with intent to pass an interest, other than a lien, to a manufactured home from a person to another person subsequent to the first retail sale and initial issuance of a document of title.

(b) The department shall prescribe forms and adopt rules relating to manufacturer's certificates, to applications for documents of title, and to the issue of documents of title at the first retail sale and for each subsequent sale or transfer of a manufactured home.

(c) At the first retail sale, the retailer and purchaser shall apply for the issuance of a document of title. As a part of the application, the retailer shall surrender the original manufacturer's certificate. At a subsequent sale or transfer the seller and purchaser, or the transferor and transferee, shall apply for the issuance of a new document of title. As a part of the application, the seller or transferor shall surrender the original document of title. The department shall review the application and issue a document of title if the department is satisfied that the document of title should be issued.

(d) If there are no liens registered or recorded, the department shall issue a document of title marked "ORIGINAL" on its face and shall send the original by first class mail to the purchaser or transferee at the address on the application. If a lien is shown in the application or recorded with the department, the department shall issue a document of title marked "ORIGINAL" on its face and send the original by first class mail to the first lienholder. The department shall mail, first class, a copy of the document of title conspicuously marked "NONTRANSFERABLE COPY" on its face to the purchaser or transferee and any other lienholder at the address shown on the application.

(e) The owner designated in the original document of title must transfer the title on a form prescribed by the department executed before a notary public and must file the form with the department before a manufactured home may be conveyed, transferred, or otherwise disposed of at a subsequent sale. The form must include any information the department requires and must include an affidavit that the person signing is the owner of the manufactured home and that there are no liens on the home except a lien shown on the document of title or described in the affidavit. A title to a manufactured home may not pass or vest at a subsequent sale until the transfer is executed as provided by this section and an application for the issuance of a new document of title is sent to the department.

(f) When the ownership of a manufactured home in this state is transferred by operation of law, as in an inheritance, a devise, or a bequest, bankruptcy, receivership, judicial sale, or any involuntary divestiture of ownership, the department shall issue a new document of title when the department is provided with a certified copy of the order or bill of sale from an officer making a judicial sale, or the order appointing a temporary administrator, the probate proceedings, the letters testamentary, the letters of administration, or an affidavit by all of the heirs at law showing that no administration is necessary and showing in whose name the certificate should be issued. If a security interest or other lien is foreclosed in accordance with law by nonjudicial means and the secured party or other mortgagee files an affidavit with the department showing the nonjudicial foreclosure in accordance with law, the department may issue a new document of title in the name of the purchaser at the foreclosure sale. If the foreclosure is of a constitutional or statutory lien and the mortgagee files an affidavit showing the creation of the lien and of the divestiture of title because of the lien in accordance with law, the department may issue a new document of title in the name of the purchaser. If an agreement providing for right of survivorship is signed by the husband and wife and if on the death of either spouse the department is provided with a copy of the death certificate of the deceased spouse, the department shall issue a new document of title to the surviving spouse.

(g) If an original document of title is lost or destroyed, the owner or lienholder may obtain a certified copy of the original from the department by making an affidavit on a form prescribed by the department; but the department shall issue the certified copy only to the first lienholder if a lien is disclosed on the original. The certified copy shall be conspicuously marked "CERTIFIED COPY OF ORIGINAL" on its face. If the original is recovered, the owner or lienholder shall immediately surrender the original to the department with the certified copy of the original document of title, and the department shall issue a new original document of title.

(h) The department shall record all state tax liens as filed by the comptroller on manufactured homes installed for use and occupancy in this state. The department may not issue or transfer the title to a manufactured home on which a state tax lien has been filed until the tax, penalties, and interest are paid. On receipt of a notice that the comptroller has filed a lien, the department shall notify the owner and all lienholders.

(i) A lien on the manufactured homes in the inventory is perfected by filing a security agreement with the department in a form that contains the information the department requires. Failure to pay or satisfy any inventory lien filed and recorded against a manufactured home pursuant to the terms of the security agreement by the retailer is sufficient cause to revoke or suspend the retailer's registration with the department.

(j) If a manufactured home is affixed to real estate by installation on a permanent foundation, as defined by the department, the manufacturer's certificate or the original document of title may be surrendered to the department for cancellation. The address and location of the real estate must be given to the department when the certificate or document of title is surrendered. The department may require the filing of other information. The department may not cancel a manufacturer's certificate or a

document of title if a lien has been registered or recorded on the manufactured home. If a lien has been registered or recorded, the department shall notify the owner and each lienholder that the title and a description of the lien have been surrendered to the department and that the department will not cancel the title until the lien is released. Permanent attachment to real estate does not affect the validity of a lien recorded or registered with the department before the manufactured home is permanently attached. The rights of a prior lienholder pursuant to a security agreement or the provisions of a credit transaction and the rights of the state pursuant to a tax lien are preserved.

(k) The registration and recordation of a lien with the department is notice to all persons that the lien exists. Liens recorded or registered with the department have priority, in the chronological order of recordation, over other liens or claims against the manufactured home.

(*l*) Notwithstanding any other provisions of this section, the filing of a security agreement by a secured party perfecting a lien in the inventory of a retailer shall not prevent a buyer in the ordinary course of business as defined by Sections 1.201(9) and 9.307(a) of the Business & Commerce Code from acquiring good title free and clear of such interest, and the department shall not consider such security interest as a lien for the purpose of title issuance.

(m) The department shall furnish each county tax assessor-collector in this state a quarterly report that lists the name of the owner of each manufactured home installed in the county during the preceding calendar quarter, the name of the manufacturer, the model designation, the identification number of each section or module, and the address or location where the manufactured home is installed.

(n) The express provisions of this article supersede any conflicting provisions of the Business & Commerce Code; otherwise, the provisions of the Business & Commerce Code apply to transactions relating to manufactured housing.

(*o*) A certificate of title to a manufactured home issued pursuant to the Certificate of Title Act, as amended (Article 6687–1, Vernon's Texas Civil Statutes), before March 1, 1982, is subject to this article. A lien registered or recorded with the State Department of Highways and Public Transportation before March 1, 1982, for the purposes of this article is registered or recorded with the department.

(p) Each month the State Department of Highways and Public Transportation shall send the department either a copy of each permit issued in the preceding month for the movement of manufactured housing on the highways or a list of the permits issued and the information on the permits. The department shall pay the reasonable cost of providing the copies or the list and information.

(q) The department shall adopt rules consistent with this article for the titling of a manufactured home that has been previously registered or titled in this state or any other state. The rules must protect a lienholder recorded on a certificate or document of title.

(r) The department shall set a fee for issuing titles to manufactured housing; it shall not be higher than is necessary to pay the estimated expenses of administering this section. These fees shall be paid to the State Treasurer and placed in the general revenue fund.

Notice to Consumers Before Title Transfer

Sec. 20. (a) A retailer or manufacturer shall not transfer title to a manufactured home nor otherwise sell, assign or convey a manufactured home to a consumer without delivering the notice required by this section subject to applicable rules of the department and Subsection (c) of this section. The notice shall be delivered to the consumer prior to the execution of any mutually binding sales agreement or retail installment sales contract.

(b) The notice shall be of such type, size, and format as prescribed by the department. A retailer or manufacturer shall not vary the provisions or form of the notice; it shall read as follows:

WARNING

* CERTAIN BUILDING MATERIALS USED IN THE CONSTRUCTION OF RESIDENTIAL DWELLINGS MAY RELEASE FORMALDEHYDE GAS INTO YOUR HOME OVER A LONG PERIOD OF TIME AND CAUSE OR CONTRIBUTE TO ADVERSE HEALTH EFFECTS.

* FORMALDEHYDE GAS MAY CAUSE EYE, NOSE, AND THROAT IRRITATION, COUGHING, SHORTNESS OF BREATH, SKIN IRRITATION, NAUSEA, DROWSINESS, HEADACHES, AND DIZZINESS. PEOPLE WITH ASTHMA OR OTHER RESPIRATORY PROBLEMS OR ALLERGIES MAY SUFFER MORE SERIOUS REACTIONS, ESPECIALLY PERSONS ALLERGIC TO FORMALDEHYDE.

* PROPER VENTILATION OF YOUR HOME MAY HELP REDUCE THE LEVEL OF FORMALDEHYDE. THEREFORE, PERIODIC AIRING OF YOUR HOME IS RECOMMENDED.

* IF YOU HAVE QUESTIONS CONCERNING FORMALDEHYDE, CONTACT THE TEXAS DEPARTMENT OF LABOR AND STANDARDS. IF YOU HAVE HEALTH PROBLEMS, CONSULT YOUR DOCTOR.

Texas Department of Labor and Standards

P.O. Box 12157

Capitol Station

Austin, TX 78711

Telephone: 512/475–5712

(c)(1) The legislature finds that substantial questions currently exist as to the health effects, if any, of formaldehyde gas; that sufficient evidence is not now available to determine whether or not formaldehyde is a health hazard; and further that additional research, testing, and hearings are necessary to make these determinations.

(2) The department shall determine whether or not formaldehyde emitted by building products and materials into the ambient air of manufactured housing is a serious health hazard and at what levels or concentrations, if any, it becomes a serious health hazard. This determination shall be made by contracting for appropriate research and for the testing of homes, by collecting data and information through coordination with all appropriate federal agencies and with the Texas Department of Health and Texas Air Control Board, and by conducting and holding hearings as necessary.

(3) If the department determines that there is not a serious health hazard, or that there is not a serious health hazard at or below certain levels or concentrations, the notice requirement contained in Subsection (a) of this section shall not apply except to those manufactured homes in which there is a level or concentration of formaldehyde, if any, deemed by the department to be a serious health hazard.

(4) If it is determined that a serious health hazard exists at certain levels or concentrations, the department shall establish performance standards for building products and materials, prescribe testing procedures and the standards and conditions under which tests shall be conducted, and shall adopt rules and regulations, all as may be deemed necessary for the protection of the health, safety, and welfare of the consumer. The department shall also amend or modify the warning set forth in Subsection (b) of this section as required to assure that the consumer receives adequate information and notice of the health effects, if any, of formaldehyde in indoor ambient air and the risks, if any, of living in the home.

(d) The provisions of this section shall not be deemed to imply or infer that the retailer or manufacturer had, or did not have, prior to the passage of this Act any duty to warn any consumer concerning possible health effects of formaldehyde. Failure to comply with the notice provisions of this section or the performance standards for building products and materials which may be established by the department shall, after the effective date of this section, be evidence of wanton disregard for the health and safety of the consumer; compliance with such notice provisions and standards shall be evidence that the home is habitable and that the manufacturer and retailer had due regard for the health and safety of the consumer.

[Amended by Acts 1975, 64th Leg., p. 2036, ch. 674, §§ 1 to 18, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 288, ch. 139, § 1, eff. May 13, 1977; Acts 1979, 66th Leg., p. 1405, ch. 625, §§ 1 to 19, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 113, ch. 55, § 1, eff. April 15, 1981; Acts 1981, 67th Leg., p. 380, ch. 154, § 1, eff. May 20, 1981; Acts 1981, 67th Leg., p. 3084, ch. 815, §§ 3, 4, eff. Aug. 31, 1981.]

Section 19 of the 1979 amendatory act provided:

"This Act takes effect September 1, 1979. The standards and requirements for the construction and installation of modular homes established by this Act are effective January 1, 1980."

Sections 2 and 3 of Acts 1981, 67th Leg., p. 113, ch. 55, provide:

"Sec. 2. All laws and parts of laws in conflict with this Act are repealed.

"Sec. 3. If any word, phrase, clause, paragraph, sentence, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, or provision."

Art. 5221g. Employment Counseling Program for Displaced Homemakers

Purpose

Sec. 1. Because of the increasing number of persons in this state who, having fulfilled a role as homemaker, find themselves "displaced" through divorce, death of spouse, or other loss of family income, and because of homemakers' unique and invaluable contribution to the welfare of society as unpaid workers, it is the intention of the legislature in enacting this legislation to provide the counseling necessary to enable displaced homemakers to assume or resume a valuable role commensurate with their talents and abilities in the paid work force.

Definitions

Sec. 2. In this Act:

(1) "Commission" means the Texas Employment Commission.

(2) "Displaced homemaker" means an individual:

(A) who:

(i) has worked without pay as a homemaker for his or her family;

(ii) is not gainfully employed; and

(iii) has had, or would have, difficulty in finding employment; and

(B) who also:

(i) has depended for financial support on the income of a family member and has lost that income; or

(ii) has depended on government assistance as the parent of dependent children, but is no longer eligible for the assistance.

Establishment

Sec. 3. The Texas Employment Commission shall establish a special assistance job-counseling program for displaced homemakers. The commission shall design the program specifically for a person reentering the paid work force after a number of years as a homemaker. The counseling shall consider and build upon the skills and experiences of a homemaker and shall prepare the person through employment counseling to reenter the paid work force as well as

develop and hone job skills. The program shall assist displaced homemakers in obtaining training and education as well as place displaced homemakers in suitable employment. The commission may not charge a fee for participation by a displaced homemaker in the program.

Utilization of Existing Personnel, Equipment, Etc.

Sec. 4. In establishing the job-counseling program, the commission shall utilize existing commission personnel, services, facilities, and equipment.

Cooperation in Securing Employment

Sec. 5. Agencies, departments, and commissions of the state and political subdivisions of the state shall cooperate with the commission in securing suitable employment for displaced homemakers counseled by the commission.

[Acts 1977, 65th Leg., p. 328, ch. 159, eff. May 17, 1977.]

Art. 5221h. Transfer of License

Any person, firm, corporation, or association of persons, who shall be the legal owners or holders of any unexpired occupation license issued in accordance with the laws of this State, may transfer the same on the books of the officer by whom the same was issued.

[Acts 1925, S.B. 84. Renumbered from art. 7055 by Acts 1981, 67th Leg., p. 1784, ch. 389, § 38, eff. Jan. 1, 1982.]

Art. 5221i. Purchaser of Unexpired License

The assignee or purchaser of such unexpired occupation license shall be authorized to pursue such occupation under such unexpired license for and during the unexpired term thereof, provided that such assignee or purchaser shall, before following such occupation, comply in all other respects with the requirements of the law provided for in the original applications for such licenses. Nothing in this law shall be so construed as to authorize two or more persons, firms, corporations or associations of persons to follow the same occupation under one license at the same time. Whenever any person, firm, corporation or association of persons following an occupation shall be closed out by legal process, the occupation license shall be deemed an asset of said person, firm, corporation or association of persons, and sold as other property belonging to said person, firm, corporation, or association; and the purchaser thereof shall have the right to pursue the occupation named in said license, or transfer it to any other person; provided, such occupation license shall under no circumstances be transferred more than one time.

[Acts 1925, S.B. 84. Renumbered from art. 7056 by Acts 1981, 67th Leg., p. 1784, ch. 389, § 38, eff. Jan. 1, 1982.]

Art. 5221j. Agricultural Laborers; Length of Hoes

Use of Certain Hoes Prohibited

Sec. 1. An employer of agricultural laborers may not require an employee to use a hoe that has a handle less than four feet in length in performing agricultural labor in commercial farming operations.

Exemptions

Sec. 2. This Act shall not apply to employers who are engaged in the operation of greenhouses or nurseries.

Penalty

Sec. 3. (a) An employer who violates Section 1 of this Act commits an offense.

(b) An offense under this section is a Class C misdemeanor.

[Acts 1981, 67th Leg., p. 929, ch. 344, eff. Aug. 31, 1981.]

TITLE 84

LANDLORD AND TENANT

Article
5236f. Rights and Duties of Landlord and Tenant.
5236g. Termination of Lease by Landlord.
5236h. Security Devices; Landlords Duty to Install, Change, or Rekey on Dwelling Units.
5236i. Disclosure of Ownership and Management of Dwelling Unit by Landlord to Tenant.
5236j. Smoke Detection in Dwelling Units.
5238b. Self-Service Storage Facility Lien.

Art. 5236e. Security Deposits; Minimum Age for Entering Into Rental Agreements

Sec. 1. As used in this Act:

[See Compact Edition, Volume 4 for text of (1)]

(2) "Landlord" means the owner, lessor, or sublessor of a residential dwelling unit.

[See Compact Edition, Volume 4 for text of 1(3) to 12]

[Amended by Acts 1981, 67th Leg., p. 2477, ch. 643, § 15, eff. Sept. 1, 1981.]

Art. 5236f. Rights and Duties of Landlord and Tenant

Definitions

Sec. 1. In this Act:

(a) "Landlord" means the owner, lessor, or sublessor of a residential rental unit. A managing agent, leasing agent, or resident manager shall be considered the agent of the landlord for purposes of notice and other communications required or allowed under this Act. Otherwise, a managing agent, leasing agent, or resident manager shall be considered a landlord under this Act only if such agent purports to be the owner or lessor in the rental agreement.

(b) "Tenant" means any person entitled under a rental agreement to occupy a residential rental unit to the exclusion of others.

(c) "Premises" means a residential rental unit and the appurtenances, grounds, and facilities held out for the use of the tenants generally, and any other area or facility the use of which is provided to the tenant in the rental agreement.

(d) "Rental agreement" means any agreement, written or oral, which establishes or modifies the terms, conditions, rules, regulations, or any other provisions regarding the use and occupancy of a residential rental unit, including any rental agreement as modified or changed pursuant to the provisions of Section 6(b) of this Act.

(e) "Normal wear and tear" means that deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or members of his household, or his invitees or guests. Provided, however, "accident" shall not include breakage or malfunction due to age or deteriorated condition.

Landlord's Duty to Repair Certain Conditions

Sec. 2. (a) The landlord shall have a duty upon actual notice as provided herein, to make a diligent effort to repair or remedy any condition which materially affects the physical health or safety of an ordinary tenant.

(b) The landlord shall not have a duty to repair or remedy any condition which is caused by the tenant or the tenant's family, guests, or invitees during the term of the rental agreement or any renewal or extension period. The foregoing shall not relieve the landlord from a duty to repair a condition which was caused by normal wear and tear and which also materially affects the physical health or safety of an ordinary tenant.

(c) This Act shall not require a landlord to furnish utilities from a utility company if, as a practical matter, the utility lines of the utility company are not reasonably available. This Act shall not require a landlord to furnish security guards for the premises. This Act shall not extend to breakages, malfunctions, or other conditions which do not materially affect the health or safety of an ordinary tenant.

Landlord's Failure to Repair: Prerequisites for Statutory Remedies

Sec. 3. The tenant shall be entitled to all of the rights and remedies set forth in this Act if all of the following have occurred:

(a) the tenant has given notice to the person or place where rent is normally paid, specifying such condition. Written notice may be required only if such requirement is contained in a written rental agreement;

(b) the tenant was not delinquent in payment of rent under the rental agreement, as defined in Section 1(d), or any portion thereof at the time of notice of the condition to the landlord;

(c) the condition materially affects the physical health or safety of an ordinary tenant;

(d) the landlord has failed to make a diligent effort to repair or remedy the condition;

(e) the landlord has had a reasonable time, after receipt of notice as provided above, to repair or remedy the condition, considering the nature of the problem and the reasonable availability of material, labor, and utilities from a utility company.

In any judicial action for enforcement of rights and remedies which are conditioned on the above requirements, the tenant shall have the burden of proof. Provided, however, the landlord shall have the burden to prove that the landlord made a diligent effort to repair and that a reasonable time for repair did not elapse if the landlord fails to provide a written explanation of the reasons for delay within five days after receipt of written demand from the tenant for such explanation.

Fire or Casualty Loss

Sec. 4. (a) Where the condition is the result of an insured casualty loss such as fire, smoke, hail, explosion, or similar cause, the time period for repair shall not commence until insurance proceeds are received by the landlord.

(b) If the rental premises are as a practical matter totally unusable for residential purposes after a casualty loss, and if the casualty loss is not due to the negligence or fault of the tenant or the tenant's family, guests, or invitees, either landlord or tenant may terminate the rental agreement at any time prior to completion of repairs by giving written notice to the other. In such event, the tenant shall only be entitled to a pro rata refund of rent from date of move-out and a refund of any security deposit as required by law.

(c) If the rental premises are partially unusable for residential purposes after a casualty loss, and if the casualty loss is not due to the negligence or fault of the tenant or the tenant's family, guest, or invitees, a tenant occupying the premises shall have a right of partial rent reduction only upon application by the tenant to the county or district court; provided, however, a landlord and tenant may agree otherwise in the written rental agreement. Any partial rent reduction shall be in relation to the extent of unusability of the premises due to the casualty.

Nonjudicial Remedy for the Tenant

Sec. 5. (a) The tenant shall have the right to terminate the rental agreement if:

(1) all the events in Sections 3(a), (b), (c), (d), and (e) have occurred; and

(2) after the lapse of a reasonable time for repair as set forth in Section 3(e), the tenant has given the landlord written notice that the tenant will terminate the rental agreement unless the condition is repaired or remedied within seven days.

(b) In the event of termination of the rental agreement by the tenant under this section and delivery of possession to the landlord, the tenant shall be entitled to a pro rata refund of rent from date of termination or move-out (whichever occurs later) and a refund of any security deposit as required by law. Termination of the rental agreement by the tenant shall preclude the remedies of Sections 6(a) and (b) of this Act.

Judicial Remedies for the Tenant

Sec. 6. The tenant shall have the right to recover judgment for any one or more of the remedies as set forth below, provided that all of the events in Sections 3(a), (b), (c), (d), and (e) have occurred and that the tenant has given the landlord written notice that the tenant will file suit under this Act unless the condition is repaired or remedied within seven days:

(a) a court order directing the landlord to take reasonable action to repair or remedy the condition which materially affects the physical health or safety of an ordinary tenant;

(b) a court order for a partial rent reduction in proportion to the reduction in rental value due to the condition in question until the condition is repaired or remedied;

(c) a court order imposing a civil penalty against the landlord in the amount of one month's rent plus $100;

(d) a court order awarding actual damages to the tenant; and

(e) a court order assessing against the landlord court costs and attorney's fees pursuant to Section 10 hereof; provided, however, nothing in this Act shall authorize the recovery of attorney's fees for a cause of action for damages of any kind or nature relating to or arising out of personal injuries.

Retaliation by Landlord

Sec. 7. (a) A landlord shall not, within six months from the date of the tenant's repair notice, do any of the following acts in retaliation for the tenant's notice to repair or exercise of remedies for nonrepair of a condition which materially affects the health and safety of the ordinary tenant: (1) filing an eviction proceeding on grounds other than those set forth in Section 7(b) below, (2) depriving the tenant of the use of the premises except where authorized by law, (3) decreasing services to the tenant, or (4) giving the tenant notice of termination of the rental agreement or notice of rent increase, which is effective within six months from the date of such notice. The landlord shall have a defense to a cause of action for retaliation by proving that the landlord's actions were not for purposes of retaliation.

(b) The following shall not constitute retaliation and shall constitute valid grounds for eviction in any event:

(1) where the tenant was delinquent in rent as of the time of the landlord's written notice to vacate or as of the time of the filing of the eviction lawsuit;

(2) where property damage to the premises was intentionally caused by the tenant or the tenant's family, guests, or invitees;

(3) where the tenant or the tenant's family, guest, or invitee has threatened, by word or conduct, the personal safety of the landlord, the landlord's employees or other tenants;

(4) where the tenant has materially breached the rental agreement; provided, however, material breach for purposes of this subsection shall not include holding over except as provided below;

(5) where the tenant has held over after the tenant has given notice of termination of the rental agreement or notice of intent to vacate;

(6) where the tenant has held over after the landlord has given notice of termination of the rental agreement at the end of the rental term, and the landlord's termination notice was prior to receipt of actual notice to repair from the tenant; or

(7) where the tenant has held over and the landlord's notice of termination was motivated by a good faith belief that the tenant or the tenant's family, guests, or invitees may: (i) adversely affect the quiet enjoyment by other tenants or neighbors, or (ii) materially affect the health or safety of the landlord, other tenants, or neighbors, or (iii) cause damage to property of the landlord, other tenants, or neighbors.

(c) The following shall not constitute retaliation under this Act unless prohibited by previous court order under Section 6 hereof: (1) increases in rent pursuant to an escalation clause for utilities, taxes, or insurance in a written rental agreement, and (2) increases in rent or reduction in services which are part of a pattern of rental increases or service reductions for an entire multidwelling project.

(d) If the landlord has retaliated against the tenant in violation of this section, the tenant shall be entitled to recover from the landlord the following: (1) a court order imposing against the landlord a civil penalty of one month's rent plus $100, (2) a court order against the landlord awarding the tenant reasonable moving costs, and (3) a court order assessing against the landlord court costs and attorney's fees pursuant to Section 10 hereof.

Retaliation by the Tenant

Sec. 8. The landlord shall be entitled to recover from the tenant a civil penalty of one month's rent plus $100 and attorney's fees as defined in Section 10 hereof if the tenant has, after written notice by the landlord to the tenant of the penalties of this section, withheld payment of any portion of the rent due the landlord in retaliation for an alleged failure by the landlord to repair or remedy a condition of the premises complained of by the tenant. Written notice by the landlord may be in person, by mail, or by delivery to the rental premises.

Forcible Entry and Detainer Suits

Sec. 9. The landlord's failure to repair or remedy a condition pursuant to the provisions of Sections 2 and 3 of this Act shall not be a defense to eviction; however, retaliation by the landlord pursuant to Section 7 of this Act shall be a defense to eviction and shall entitle the tenant to all other remedies set forth in Section 7.

Attorney's Fees

Sec. 10. Any party who prevails in a lawsuit brought under this Act shall be entitled to recover from the other party reasonable attorney's fees, together with costs of court. Attorney's fees, as referred to in this Act, shall mean attorney's fees in relation to work reasonably expended.

Harassment

Sec. 11. Any tenant or landlord who files or prosecutes a lawsuit under this Act in bad faith or for purposes of harassment shall be liable to the defendant for a civil penalty of one month's rent plus $100 and attorney's fees as defined in Section 10 hereof.

Closing of the Rental Premises

Sec. 12. (a) Notwithstanding any provision of this Act, the landlord may at any time give written notice by certified mail return receipt requested, to the tenant and to the local health officer and to the local building inspector, if there is one, stating: (1) that the landlord is terminating the rental agreement as soon as legally possible, and (2) that when the tenant moves out, the landlord will immediately either demolish the rental unit or refrain from further use of the rental unit for residential purposes. Reoccupancy and reconnection of utilities shall be allowed only pursuant to Section 12(b) below.

(b) After such notice is received by the tenant and after the tenant moves out, the local health officer and/or building inspector shall not permit further occupancy or utility service by separate meter to the rental unit until such official certifies that there is no condition, known to said official, which materially affects the physical health or safety of an ordinary tenant. The landlord shall not allow reoccupancy or reconnection of utilities by separate meter within six months after the tenant moves out. Nothing herein shall be construed as prohibiting occupancy of other apartments. Nothing in this Act shall be construed as prohibiting occupancy of or utility service by master meter or individual meter to other rental units in an apartment complex which have not been closed down by the landlord pursuant to Section 12(a) of this Act.

(c) If such notice of closing of the rental unit occurs prior to the tenant's repair notice to the landlord, the remedies of this Act shall not apply.

(d) If such notice of closing of the rental unit occurs after the tenant's repair notice to the landlord but before a reasonable time has elapsed for

repair by the landlord, only the remedies of Sections 12(f) and (g) shall apply.

(e) If such notice of closing of the rental unit occurs after the tenant's repair notice to the landlord and after a reasonable time has elapsed for repair by the landlord, only the remedies of Sections 6(c), (d), and (e) and Sections 12(f) and (g) shall apply.

(f) In the event a tenant moves out on or before the ending of the rental term after receiving notice as referred to in Section 12(d) and (e) above, the landlord shall pay to the tenant reasonable moving expenses actually incurred and the landlord shall make a pro rata return of rent from date of move-out and a return of any security deposit as required by law.

(g) Violation by the landlord of Section 12(b) or (f) shall entitle the tenant to recover a penalty of one month's rent plus $100 and attorney's fees as defined in Section 10 hereof.

Waiver

Sec. 13. The provisions of this Act may not be waived except where the rental agreement is in writing and the waiver is underlined or in bold print in the written rental agreement or in a separate written addendum. Such waiver must be specific and must list with clarity what duties are being waived. Such waiver must be made knowingly, voluntarily, and for consideration.

Other Rights

Sec. 14. The duties of the landlord and remedies of the tenant as set forth in this Act shall apply in lieu of existing common law and statutory law regarding the landlord's warranties or duties of maintenance, repair, security, habitability, and nonretaliation, and the tenant's remedies for violation thereof. Otherwise, nothing in this Act shall serve to affect or diminish any other rights of the landlord or tenant under contract, statute, or common law which are consistent with the purposes of this Act or any right the landlord or tenant may have to bring actions for personal injury or property damage under the laws of this state. Nothing in this Act shall be construed as imposing obligations on the landlord or tenant other than those expressly stated herein.

Laws in Conflict

Sec. 15. All laws in conflict or inconsistent herewith are hereby repealed to the extent of such conflict or inconsistency.

Jurisdiction and Venue Actions Under This Act

Sec. 16. The repair-order and rent-abatement remedies contained in Section 6(a) and (b) of this Act shall be available only in the county and district courts of this state. Venue for all actions under this Act shall be in the county where the premises are located.

Effective Date

Sec. 17. This Act shall take effect on September 1, 1979, and shall apply only to residential rental agreements executed or entered into, renewed, or extended after that date.

[Acts 1979, 66th Leg., p. 1978, ch. 780, eff. Sept. 1, 1979.]

Section 18 of the 1979 Act provided in part: "If any portion or provision of this Act or application thereof is held unconstitutional, the remainder of this Act shall nevertheless be valid."

Art. 5236g. Termination of Lease by Landlord

Notwithstanding any of the terms or provisions of a lease, a landlord may terminate either written or oral lease entered into or renewed after the effective date of this Act if the tenant or occupant uses said property for any activity for which he or his employee or agent is convicted under any provision of Chapter 43 of the Penal Code. Within 6 months after the option to terminate the lease arises and 10 days after the fee owner or any intermediate lessor gives notice in writing to the tenant or occupant that he is exercising his option to terminate the lease, the right of possession to the property reverts to the person exercising the option. This option does not arise until all avenues of direct appeal from the conviction have been exhausted or abandoned by the tenant or occupant or his employee.

[Added by Acts 1981, 67th Leg., p. 2375, ch. 588, § 1, eff. June 15, 1981.]

Art. 5236h. Security Devices; Landlord's Duty to Install, Change or Rekey on Dwelling Units

Definitions

Sec. 1. In this Act:

(1) "Deadbolt lock" means an operable deadbolt lock in a door, with the lock operated from the exterior by a key and from the interior without a key by knob or lever.

(2) "Doorknob lock" means an operable lock in a doorknob, with the lock operated from the exterior by a key and from the interior without a key.

(3) "Dwelling unit" means one or more rooms that are subject to a single rental agreement and that are rented for use by persons as a permanent residence.

(4) "Exterior door" means any exterior door of a dwelling unit, including a door between a garage and the living area of the dwelling unit, except a screen door or garage door.

(5) "Landlord" means the owner, lessor, or sublessor of a dwelling unit. A managing agent or leasing agent, whether residing or maintaining an office on or off of the site, is considered the agent of the landlord for purposes of notice and other communications required or allowed by this Act. Otherwise, a manager or agent of the landlord is considered a landlord under this Act only if the manager or agent purports to be the owner, lessor, or sublessor in the rental agreement.

(6) "Night latch" means an operable door chain latch or an operable door lock, with the lock operated without a key and only from the interior by chain, knob, or lever.

(7) "Pin lock" means an operable sliding glass door lock, with the lock operated without a key and only from the interior by inserting a pin or rod to prevent movement.

(8) "Sliding glass door" means a sliding glass door on the exterior of a dwelling unit.

(9) "Security device" means a window latch, deadbolt lock, night latch, or pin lock that is selected by the landlord or any other latch or lock that is acceptable to a landlord and a tenant.

(10) "Tenant" means a person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay rent for the dwelling unit under a written or oral rental agreement.

(11) "Window latch" means an operable window latch, with the lock operated without a key and only from the interior.

Landlord's Obligation to Install, Change, or Rekey a Security Device

Sec. 2. (a) After receiving a written request from a tenant, a landlord shall install, change, or rekey a security device on any exterior door or window of a dwelling unit rented by the tenant. The landlord may designate the manner and location of installation of a security device.

(b) If there is more than one tenant in the dwelling unit, the landlord may require all the tenants to approve the request prior to the installation, change, or rekeying.

(c) A landlord shall comply with a tenant's request under Subsection (a) of this section within a reasonable time. For the purposes of this subsection, a "reasonable time" is presumed to be before the 15th day after the landlord receives the tenant's request. The landlord has the burden of proving that a reasonable time is longer than 14 days. The presumption may be rebutted by evidence that, despite the diligence of the landlord's representative, a longer time is reasonable in view of:

(1) lack of knowledge of the tenant's request without fault of the landlord or the landlord's representative;

(2) delay or failure of cotenants to approve the tenant's request if required by the landlord under Subsection (b) of this section;

(3) failure of the tenant to pay, in advance, charges requested by the landlord and authorized by Section 4(a) of this Act;

(4) unavailability of materials, labor, or utilities; or

(5) extenuating circumstances, such as the illness or death of the landlord or a member of the landlord's family, or other circumstances beyond the landlord's control.

Limitation on Number and Kinds of Locks

Sec. 3. (a) The tenant may not require the installation of an additional security device under this Act if installation of the security device requested by the tenant would result in more than one window latch per window, more than one deadbolt lock per door, more than one night latch per door, or more than one pin lock per sliding glass door. Except as provided by this Act, there is no limit on the number of times a tenant may require the change or rekeying of a security device.

(b) The landlord's duty to install, change, or rekey a security device under this Act is limited to installing, changing, or rekeying:

(1) window latches on exterior windows;

(2) deadbolt locks and night latches on exterior doors, except sliding glass doors; and

(3) pin locks on exterior sliding glass doors.

Payment of Costs

Sec. 4. (a) Except as provided by this section, a tenant who requests the installation, change, or rekeying of a security device under this Act shall pay for the total cost to a landlord for compliance with the request, regardless of whether the work is performed by the landlord's employees or agents or by an independent contractor selected by the landlord.

(b) The total cost that a landlord may charge a tenant may not exceed the cost for labor, materials, taxes, and extra keys. If the landlord's employees perform the installation, change, or rekeying, the total cost may also include a reasonable amount for overhead expense, but may not include a profit to the landlord. The landlord may require advance payment of the charges authorized by this subsection.

(c) A landlord may not charge a tenant for any portion of the cost to:

(1) install a window latch on a window if there has been no window latch on the window since the beginning of the tenant's occupancy to the time of the tenant's request for the window latch;

(2) install a deadbolt lock on a door if there has not been either a deadbolt or a doorknob lock on the door since the beginning of the tenant's occupancy to the time of the tenant's request for a deadbolt lock on the door; or

(3) install a pin lock on a sliding glass door if there has not been a pin lock or other operable lock on the sliding glass door since the beginning of the tenant's occupancy to the time of the tenant's request for a pin lock on the sliding glass door.

Removal of a Security Device by a Tenant

Sec. 5. If a landlord complies with a tenant's request to install, change, or rekey a security device, the security device becomes a fixture of the dwelling unit and the tenant may not remove it or have it

removed without permission of the landlord. A written rental agreement may require the landlord's permission for removal to be in writing.

Landlord's Failure to Comply

Sec. 6. (a) A tenant may exercise a remedy provided by Section 8 of this Act only if:

(1) the tenant requests the landlord to install, change, or rekey a security device on a specific exterior door or window in the dwelling unit rented by the tenant;

(2) the landlord fails to comply with a request under Subdivision (1) of this subsection within a reasonable time, as defined by Section 2(c) of this Act;

(3) after the landlord fails to comply within a reasonable time, the tenant gives the landlord written notice that if the landlord does not comply with the request before the eighth day after receiving the written notice under this subdivision, the tenant will be entitled to exercise the remedies provided by this Act; and

(4) the landlord fails to comply with the tenant's request before the eighth day after the tenant gives notice under Subdivision (3) of this subsection.

(b) A request under Subsection (a)(1) of this section need not be in writing unless a written request is required by a written rental agreement.

Landlord's Defenses

Sec. 7. The remedies provided by Section 8 of this Act are not available to a tenant if:

(1) at the time the notices required by Section 6 of this Act are given, all rent due by the tenant to the landlord is not paid in full; or

(2) at the time a suit is filed or a lease is unilaterally terminated by authority of this Act, the costs that were requested by the landlord by authority of Section 4 of this Act have not been paid in full.

Tenant Remedies

Sec. 8. If a landlord violates a provision of this Act, and if a tenant has met the requirements of Section 6 of this Act, the tenant may:

(1) obtain a court order directing the landlord to install, change, or rekey a security device requested by the tenant by authority of this Act, if the tenant is in possession of the dwelling unit at the time the court order is effective;

(2) obtain a judgment against the landlord for actual damages suffered by the tenant as a result of the landlord's violation;

(3) obtain a judgment against the landlord for the amount of one month's rent plus $100;

(4) obtain a judgment against the landlord for court costs and attorney's fees as provided by Section 10 of this Act; and

(5) unilaterally terminate the rental agreement without court proceedings.

Harassment

Sec. 9. A person who files or prosecutes a lawsuit under this Act in bad faith or for purposes of harassment is liable to the defendant for one month's rent plus $100 and attorney's fees as provided by Section 10 of this Act.

Attorney's Fees

Sec. 10. A party who prevails in a lawsuit brought by authority of this Act is entitled to recover reasonable attorney's fees and costs of court. Attorney's fees as referred to in this Act shall mean attorney's fees in relation to work reasonably expended. This Act does not authorize a recovery of attorney's fees for a cause of action for damages of any type or nature that relate to or arise from property damages, personal injuries, or criminal acts.

Waiver

Sec. 11. A landlord's duties and a tenant's remedies provided by this Act may not be waived. The landlord's duties and the tenant's remedies provided by this Act may be enlarged only by specific written agreement.

Other Rights

Sec. 12. The duties of the landlord and the remedies of the tenant as provided by this Act apply in lieu of common law, statutory law, and local ordinances relating to a residential landlord's duty to install, change, or rekey security devices at the request of a tenant. However, this Act does not affect the landlord's duties or the tenant's remedies under Chapter 780 Acts of the 66th Legislature, 1979 (Article 5236f, Vernon's Texas Civil Statutes).

Venue

Sec. 13. Venue for all actions under this Act is in the county where the residential dwelling is located. [Acts 1981, 67th Leg., p. 949, ch. 358, §§ 1 to 13, eff. Sept. 1, 1981.]

Art. 5236i. Disclosure of Ownership and Management of Dwelling Unit by Landlord to Tenant

Definitions

Sec. 1. As used in this Act:

(a) "Address" means a mailing address and may be either a street address or post office box address, unless otherwise indicated.

(b) "Dwelling unit" means one or more rooms which are subject to a single rental agreement and which are rented to a tenant or tenants for use by persons as a permanent residence.

(c) "Name" means the actual name or names of an entity or, if an assumed name certificate for the entity has been recorded with the county clerk, the assumed name of the entity.

(d) "Landlord" means the owner, lessor, or sublessor of a dwelling unit. A managing agent or leasing agent, whether residing or officing on-site or off-site, shall be considered the agent of the landlord for purposes of notice and other communications required or allowed under this Act. Otherwise, a manager or agent of the landlord shall be considered a landlord under this Act only if the manager or agent purports to be the owner, lessor, or sublessor in the rental agreement.

(e) "Owner" means the holder of record title of a dwelling unit according to the deed records maintained by the county clerk.

(f) "Property management company" means any entity which is located off-site from a dwelling unit and which is primarily responsible for managing the dwelling unit rented to the tenant.

(g) 'Tenant" means any person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay rent for the dwelling unit under a written or oral rental agreement.

Duty to Furnish Information

Sec. 2. (a) A landlord shall have a duty to disclose to the tenant the name and address of the owner of the dwelling unit rented by the tenant, in a manner provided in Section 3 of this Act.

(b) A landlord shall have a duty to disclose to the tenant the name and street address of any property management company which is managing the dwelling unit rented by the tenant, in a manner provided in Section 3 of this Act.

Manner of Furnishing Information

Sec. 3. The information required to be furnished under Section 2 of this Act may be furnished or corrected by any of the following methods:

(a) by giving a written copy of the information to the tenant prior to the tenant's request for the information or within seven days after receipt of the tenant's request;

(b) by having the information posted continuously in a conspicuous place in the dwelling unit or office of the on-site manager, or on the outside of the entry door to the office of the on-site manager, at the time of the tenant's request for the information, or within seven days after receipt of the tenant's request; or

(c) by having the information included in the tenant's copy of the written rental agreement or written rules and regulations furnished to the tenant prior to the tenant's request for the information.

Landlord's Failure to Furnish Written Copy of Information

Sec. 4. The tenant is entitled to the remedies in Section 8 of this Act if all of the following have occurred:

(a) the tenant has given notice to the landlord, requesting any of the information required to be furnished under this Act. The notice to the landlord need not be in writing unless written notice is required in the written rental agreement;

(b) the landlord has failed to furnish the information requested by the tenant and required by this Act;

(c) the tenant thereafter has given written notice to the landlord that if the information is not furnished to the tenant within seven days the tenant may exercise remedies under this Act; and

(d) the information was not furnished to the tenant by the landlord prior to or within the seven days referred to above.

Landlord's Failure to Correct Posted Information

Sec. 5. The tenant is entitled to the remedies in Section 8 of this Act if all of the following have occurred:

(a) the name or address of the owner or property management company was furnished to the tenant by posting the information in a conspicuous place in the dwelling unit or office of the on-site manager, or on the outside of the entry door of the office of the on-site manager, or by stating the information in the written rental agreement or written rules and regulations;

(b) the above information became incorrect when the name or address of the owner or property management company changed;

(c) the tenant thereafter has given written notice to the landlord that if the above incorrect information is not corrected within seven days, the tenant may exercise remedies under this Act; and

(d) the landlord failed to correct the above incorrect information within seven days referred to above.

Landlord's Wilful Posting of Wrong Information

Sec. 6. The tenant is entitled to the remedies in Section 8 of this Act if the landlord in bad faith furnished an incorrect name or address of the owner or property management company by:

(a) wilfully posting the incorrect information in the dwelling unit, dwelling complex, or office of the on-site manager;

(b) wilfully stating the incorrect information in the written rental agreement or written rules and regulations; or

(c) wilfully failing to correct information so posted or stated which is known by the landlord to be incorrect.

Landlord's Defense

Sec. 7. The landlord shall have a defense to any of the remedies under this Act if, at the time of the notices required under Section 4 or 5, all rent due by the tenant to the landlord was not paid in full. Provided, however, rent delinquency shall not be a

defense to any remedy under this Act for the landlord's violation of Section 6.

Tenant Remedies

Sec. 8. The tenant is entitled to one or more of the following remedies if the provisions of either Section 4, 5, or 6 of this Act are satisfied:

(a) a court order requiring the landlord to disclose the information required by this Act;

(b) a court order awarding judgment against the landlord for actual costs incurred by the tenant in discovering the information required by this Act;

(c) a court order imposing a civil penalty against the landlord in the amount of one month's rent plus $100;

(d) a court order assessing against the landlord court costs and attorney's fees as set forth in Section 10 of this Act; or

(e) unilateral termination of the rental agreement by the tenant without court proceedings.

Harassment

Sec. 9. Any party who files or prosecutes a lawsuit under this Act in bad faith or for purposes of harassment shall be liable to the defendant for a civil penalty of one month's rent plus $100 and attorney's fees as set forth in Section 10 of this Act.

Attorney's Fees

Sec. 10. Any party who prevails in a lawsuit brought under this Act shall be entitled to recover reasonable attorney's fees, together with costs of court. Attorney's fees as referred to in this Act shall mean attorney's fees in relation to work reasonably expended. Nothing in this Act shall authorize recovery of attorney's fees for a cause of action for damages of any kind or nature relating to or arising from property damages, personal injuries, or criminal acts.

Waiver

Sec. 11. The landlord's duties and the tenant's remedies under this Act may not be waived. The landlord's duties and the tenant's remedies under this Act may be enlarged only by specific written agreement contained in either the rental agreement or a separate instrument.

Other Rights

Sec. 12. The duties of the landlord and the remedies of the tenant as set forth in this Act shall apply in lieu of common law, statutory law, and local ordinances regarding a residential landlord's duty to disclose the name and address of the owner and any management company managing a dwelling unit. Nothing in this Act shall be construed as imposing obligations on the landlord or tenant other than those expressly stated in this Act. Nothing in this Act shall prevent the adoption of local ordinances which relate to disclosure of ownership and management of a dwelling unit by a landlord to a tenant and which conform to the provisions in this Act and contain additional enforcement provisions.

Laws in Conflict

Sec. 13. All laws in conflict or inconsistent with this Act are repealed to the extent of the conflict or inconsistency.

Venue Under This Act

Sec. 14. Venue for all actions under this Act shall be in the county where the dwelling unit is located.

[Acts 1981, 67th Leg., p. 2474, ch. 643, §§ 1 to 14, eff. Sept. 1, 1981.]

Art. 5236j. Smoke Detection in Dwelling Units

Definitions

Sec. 1. In this Act:

(1) "Bedroom" means any room which is designed with the intent that it be used for sleeping purposes.

(2) "Corridor" means a passage which connects parts of the dwelling unit.

(3) "Dwelling unit" means a home, mobile home, duplex unit, apartment unit, condominium unit, or any dwelling unit in a multiunit residential structure. It also means one or more rooms which are subject to a single rental agreement and which are rented to a tenant or tenants for use by persons as a permanent residence.

(4) "Landlord" means the owner, lessor, or sublessor or a dwelling unit. A managing agent or leasing agent, whether residing or officing on-site or off-site, shall be considered the agent of the landlord for purposes of notice and other communications required or allowed under this Act. Otherwise, a manager or agent of the landlord shall be considered a landlord under this Act only if the manager or agent purports to be the owner, lessor, or sublessor in the rental agreement.

(5) "Smoke detector" means a device which is (1) designed to detect visible or invisible products of combustion, (2) designed with an alarm audible to the bedrooms it serves, (3) powered by either battery, alternating current, or other power source, (4) tested and listed for use as a smoke detector by Underwriters Laboratories, Inc., Factory Mutual Research Corporation, or United States Testing Company, Inc., and (5) in good working order.

(6) "Tenant" means any person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay rent for the dwelling unit under a written or oral rental agreement.

(7) "Test of smoke detector" means the performance of the act or acts which the manufacturer of a smoke detector recommends for that particular model of smoke detector as a simple test of whether or not the smoke detector is in good working order.

(8) "Units constructed after September 1, 1981" means any unit for which a building permit was issued after September, 1, 1981, or, if no building permit is issued, any unit which is occupied as a residence for the first time after September, 1, 1981.

(9) "Units constructed on or before September 1, 1981" means any unit for which a building permit was issued on or before September 1, 1981, or which was occupied as a residence for the first time on or before such date.

Duty to Install in New Units

Sec. 2. (a) For all dwelling units constructed after September 1, 1981, at least one smoke detector shall be installed by the landlord outside of each separate bedroom in the immediate vicinity of the bedroom, except that:

(1) where the dwelling unit is designed with the intent that a single multipurpose room be used for dining, living, and sleeping purposes, the smoke detector shall be located inside the room rather than outside;

(2) where the bedrooms are served by the same corridor, at least one smoke detector shall be installed in the corridor in the immediate vicinity of the bedrooms; and

(3) where one or more bedrooms are located on a level above the cooking and living area, the smoke detector for the bedrooms shall be placed at the center of the ceiling directly above the top of the stairway.

(b) A smoke detector required by this section shall be installed prior to commencement of possession of the dwelling unit by the tenant in accordance with manufacturer's recommended procedures, subject to the following:

(1) a smoke detector shall be installed on a ceiling or wall;

(2) if installed on a ceiling, the smoke alarm shall be installed no closer than six inches to a wall;

(3) if installed on a wall, the smoke detector shall be installed no closer than 6 inches to the ceiling and no farther than 12 inches from the ceiling;

(4) a smoke detector may be located elsewhere if permitted by local ordinance or by a local, city, county, or state fire marshal; and

(5) if a smoke detector is electrically operated rather than battery operated, the power system and installation procedures for the smoke detector shall comply with applicable local ordinances.

Duty to Install in Existing Units

Sec. 3. (a) For all dwelling units constructed on or before September 1, 1981, at least one smoke detector shall be installed by the landlord in accordance with Section 2 above on or before September 1, 1984. A smoke detector required by this section shall be installed in accordance with the location and installation procedure requirements of Section 2 of this Act. Installation of smoke detectors prior to September 1, 1984, shall be at the discretion of the landlord or tenant.

(b) Prior to September 1, 1984, a tenant may install a battery-operated smoke detector in a unit covered by Subsection (a) of this section without prior consent of the landlord, provided the smoke detector is installed in accordance with the location and installation procedure requirements of Section 2 of this Act.

(c) At the end of the rental period or the renewal or extension of the rental period, the tenant may remove a smoke detector installed by the tenant; but the tenant shall be liable to the landlord for any unnecessary damages to the dwelling unit in removing the smoke detector.

Duty to Inspect and Repair

Sec. 4. (a) Upon commencement of a tenant's possession of a dwelling unit containing a smoke detector, the landlord shall have a duty to test the smoke detector to verify that it is in good working order. Upon installation of a smoke detector by a landlord after commencement of the tenant's possession of a dwelling unit, the landlord shall have a duty to test the smoke detector at that time to verify that it is in good working order.

(b) During the term of the rental agreement or any renewal or extension thereof, the landlord shall have a duty to inspect and repair a smoke detector only if the tenant has given notice to the landlord of malfunction or made a request to the landlord for inspection or repair. The notice to the landlord need not be in writing unless written notice is required in the written rental agreement. The landlord shall comply with the tenant's request for inspection and repair within a reasonable time, considering the availability of material, labor, and utilities.

(c) A landlord shall not have a duty to inspect or repair a smoke detector if the damage or malfunction is caused by the tenant or the tenant's family, guests, or invitees during the term of the rental agreement or any renewal or extension period of the rental agreement. Provided, however, a landlord shall have a duty to repair or replace a smoke detector covered by this subsection if the tenant pays in advance for the reasonable cost of the repair or replacement, including labor, materials, taxes, and overhead.

(d) A landlord shall have satisfied his duty to inspect or repair a damaged or malfunctioning smoke detector if, after a test of the smoke detector, the test indicates that the smoke detector is in good working order.

Duty to Replace Batteries

Sec. 5. After commencement of possession by the tenant of a dwelling unit, the landlord shall have

no duty to provide replacement batteries for a battery-operated smoke detector which was in good working order according to a test of the smoke detector at the time of commencement of possession by the tenant.

Landlord's Failure to Install

Sec. 6. The tenant is entitled to the remedies in Section 9 of this Act if all of the following occur:

(1) the tenant has given notice to the landlord, requesting the landlord to install a smoke detector in the dwelling unit rented by the tenant, and the smoke detector is required by this Act. The notice to the landlord need not be in writing unless written notice is required in the written agreement;

(2) the tenant has thereafter given written notice to the landlord that if the above request is not complied with within seven days, the tenant may exercise remedies under this Act; and

(3) the landlord has failed to install the smoke detector as required by this Act within the seven-day period referred to above.

Landlord's Failure to Inspect or Repair

Sec. 7. The tenant is entitled to the remedies in Section 9 of this Act if all of the following occur:

(1) the tenant has given notice to the landlord requesting the landlord to inspect or repair a smoke detector in the dwelling unit rented by the tenant, and the smoke detector is required by this Act. The notice to the landlord need not be in writing unless written notice is required in the written agreement;

(2) the landlord has failed to comply with the tenant's request within a reasonable time, considering the availability of materials, labor and utilities;

(3) the tenant has thereafter given written notice to the landlord that if the above request is not complied with within seven days, the tenant may exercise remedies under this Act; and

(4) the landlord has failed to inspect or repair the smoke detector as required by this Act within the seven-day period referred to above.

Landlord's Defense

Sec. 8. The landlord shall have a defense to any of the remedies set forth in Section 9 if:

(1) at the time of the notices required under Section 6 or 7 of this Act, all rent due to the landlord by the tenant was not paid in full; or

(2) at the time of filing suit or unilateral lease termination under this Act, the costs which were requested by the landlord and which are authorized by Section 4(c) to be collected from the tenant in advance, were not paid in full.

Tenant Remedies

Sec. 9. The tenant is entitled to one or more of the following remedies if the provisions of either Section 6 or 7 of this Act are satisfied:

(1) a court order directing the landlord to comply with the tenant's request;

(2) a court order awarding judgment against the landlord for damages suffered by the tenant as a result of violation of this Act by the landlord;

(3) a court order imposing a civil penalty against the landlord in the amount of one month's rent plus $100;

(4) a court order assessing against the landlord court costs and attorney's fees set forth in Section 11 of this Act; and

(5) unilateral termination of the rental agreement by the tenant without court proceedings.

Harassment

Sec. 10. Any party who files or prosecutes a lawsuit under this Act in bad faith for purposes of harassment shall be liable to the defendant for a civil penalty of one month's rent plus $100 and attorney's fees as set forth in Section 11 of this Act.

Attorney's Fees

Sec. 11. Any party who prevails in a lawsuit brought under this Act shall be entitled to recover reasonable attorney's fees, together with costs of court. Attorney's fees as referred to in this Act shall mean attorney's fees in relation to work reasonably expended. Nothing in this Act shall authorize recovery of attorney's fees for a cause of action for damages of any kind or nature relating to or arising from property damages, personal injury, or criminal acts.

Exemptions

Sec. 12. This Act shall not apply to dwelling units which are owner-occupied and not rented or leased to a tenant, in whole or in part. This Act shall not apply to dwelling units in a building over four stories in height if a local ordinance is adopted to require or regulate smoke detectors in the building. Nursing and convalescent homes licensed by the Texas Department of Health and certified to meet the Life Safety Code under federal law and regulations shall be exempt from the provisions of this Act.

Regulated Installers

Sec. 13. Notwithstanding any other provisions of this Act, if a person or firm is registered or licensed by the State Board of Insurance to install fire alarms or fire detection devices under Article 5.43–2 of the Texas Insurance Code, that person or firm shall comply with the provisions of that article when installing smoke detectors.

Waiver

Sec. 14. The landlord's duty of installation of smoke detectors under this Act may not be waived.

The tenant's remedies for the landlord's noninstallation and the tenant's limited rights of installation and removal may not be waived. The landlord's duty of inspection or repair may be waived only by written agreement. The landlord's duties regarding installation, inspection, or repair may be enlarged only by specific written agreement contained in either the rental agreement or a separate instrument.

Other Rights

Sec. 15. The duties of the landlord and the remedies of the tenant under this Act shall apply in lieu of common law, statutory law, and local ordinances regarding a residential landlord's duty to install, inspect, or repair smoke detectors in dwelling units. Nothing in this Act shall be construed as imposing obligations on the landlord or the tenant other than those expressly stated in this Act. Nothing in this Act shall prevent the adoption of a local ordinance conforming to this Act and containing additional enforcement provisions. A local ordinance adopted prior to September, 1, 1981, and requiring installation of smoke detectors by landlords in new or remodeled dwelling units prior to September 1, 1981, shall be unaffected by this Act, provided that the ordinance conforms with or is amended to conform with the provisions of this Act. Otherwise, nothing in this Act shall limit or prevent adoption of local ordinances relating to building codes or housing codes.

Venue Under This Act

Sec. 16. Venue for all actions under this Act shall be in the county where the dwelling unit is located.

Laws in Conflict

Sec. 17. All laws in conflict or inconsistent with this Act are repealed to the extent of the conflict or inconsistency.

[Acts 1981, 67th Leg., p. 2742, ch. 749, §§ 1 to 17, eff. Sept. 1, 1981.]

Art. 5238b. Self-Service Storage Facility Lien

Applicability

Sec. 1. This article applies to all self-service storage facility rental agreements that are extended, renewed, or entered into after the effective date of this article.

Statutory Construction in Relation to Other Laws

Sec. 2. (a) Article 5238, Revised Civil Statutes of Texas, 1925, as amended, does not apply to a self-service storage facility.

(b) Chapter 2, Title 93, Revised Civil Statutes of Texas, 1925, as amended,[1] and Chapter 7, Business & Commerce Code, as amended, are not applicable to a self-service storage facility unless a lessor issues a warehouse receipt, bill of lading, or other document of title relating to property stored at the self-service storage facility.

[1] Article 5568 et seq.

Definitions

Sec. 3. In this article:

(1) "Lessor" means the owner, lessor, sublessor, or managing agent of a self-service storage facility.

(2) "Rental agreement" means any agreement, written or oral, that establishes or modifies the terms relating to the use of a self-service storage facility.

(3) "Self-service storage facility" means real property or a building or part of a building that is rented for use exclusively as a storehouse or storeyard of property that is cared for and controlled by the tenant.

(4) "Tenant" means a person entitled under a rental agreement to the use of storage space at a self-service storage facility to the exclusion of all others.

(5) "Last known address" means the address of a tenant as stated in a rental agreement or in a written notice from the tenant to the lessor furnished after the execution of the rental agreement.

Lien

Sec. 4. A lessor has a lien on all property in a self-service storage facility for the payment of rents or other charges that are due and unpaid by the tenant.

Enforcement of Lien

Sec. 5. (a) Except as provided by Subsection (b) of this section, property against which a lien has attached under this article may be seized and sold only in accordance with a judgment by a court of competent jurisdiction that forecloses the lien and orders the sale of the property.

(b) A lessor may seize and sell property against which a lien has attached under this article if:

(1) the seizure and sale are made under the terms of a contractual landlord's lien as underlined or printed in conspicuous bold print in a written rental agreement between the lessor and a tenant; and

(2) the seizure and sale are made in accordance with this article.

Sale Under Contractual Landlord's Lien

Sec. 6. (a) A lessor may not sell or otherwise dispose of property seized under a contractual landlord's lien:

(1) unless the landlord has given the notices required by Sections 7 and 8 of this article; and

(2) until the 15th day after the day on which the first notice under Section 8 of this article was published.

(b) A lessor shall sell property seized under a contractual landlord's lien by public sale to the highest bidder at the self-service storage facility or at a reasonably nearby public place.

(c) A lessor who sells property seized under a contractual landlord's lien shall conduct the sale in conformity with the terms contained in the notice published or posted under Section 8 of this article.

(d) A lessor shall hold the proceeds of a sale under this section that exceed the amount necessary to satisfy the lien and the reasonable expenses of sale for delivery on demand to the tenant. A lessor shall furnish written notice to a tenant at the tenant's last known address of the existence of excess proceeds. A lessor may retain all of the proceeds of a sale if the balance remains unclaimed two years after the date of sale.

Notice of Claim

Sec. 7. (a) A lessor may not enforce a contractual landlord's lien against a tenant until the lessor delivers to the tenant a written notice that states:

(1) an itemized account of the claim;

(2) the name, address, and telephone number of the lessor or agent of the lessor;

(3) that the contents of the self-service storage facility have been seized under the contractual landlord's lien; and

(4) that if the claim is not satisfied before the 15th day after delivery of the notice, the seized property may be sold at public auction.

(b) A lessor shall deliver the notice required under this section in person or by certified mail to the last known address of a tenant. If notice is by mail, delivery occurs when the notice is deposited, properly addressed and postage prepaid, with the United States Postal Service.

Notice of Sale

Sec. 8. (a) A lessor may not sell property seized under a contractual landlord's lien until the landlord has published two notices advertising the sale that contain:

(1) a general description of the property being sold;

(2) a statement that the sale is being made to satisfy a landlord's lien;

(3) the name of the tenant;

(4) the address of the self-service storage facility; and

(5) the time, place, and terms of sale.

(b) A lessor may not publish the first of the notices required under this section until the notice period required by Section 7 of this article has expired.

(c) A lessor shall publish the notices required by this section once each week for two consecutive weeks in a newspaper of general circulation in the county where the self-service storage facility is located.

(d) If there is no newspaper of general circulation in the county where a self-service storage facility is located, a lessor satisfies the requirements of this section by posting the notice in a least six conspicuous locations in the vicinity of the self-service storage facility at least 10 days before a sale or other disposition is made. The lessor shall post one of the notices on the self-service storage facility.

Redemption

Sec. 9. A tenant may redeem property that has been seized under a judicial order or a contractual landlord's lien prior to its sale or other disposition by paying the lessor the amount necessary to satisfy the lien and the lessor's reasonable expenses incurred under this article.

Priority of Lien

Sec. 10. A lien under this article attaches against a tenant's property and has priority over any other lien or security interest on the date the tenant places the property at a self-service storage facility.

Residential Use

Sec. 11. A tenant may not use a self-service storage facility, or allow a self-service storage facility to be used, as a residence.

Variation by Agreement

Sec. 12. Except as expressly provided by this article, the provisions of this article may not be varied by an agreement of a lessor and a tenant, and the rights conferred by this article may not be waived.

Good Faith Purchaser

Sec. 13. Despite noncompliance by a lessor with the requirements of this article, a good faith purchaser of property sold to satisfy a lien under this article takes the property free of any claim by a person against whom the lien was valid.

Breach of Duty

Sec. 14. A person who is injured by the breach of a duty imposed by this article may maintain an action for damages under the Deceptive Trade Practices-Consumer Protection Act, as amended (Subchapter E, Chapter 17, Title 2, Business & Commerce Code).[1]

[1] Business and Commerce Code, § 17.41 et seq.

Supplemental Effect

Sec. 15. This article does not affect the rights of a lessor or tenant under contract, statute, or common law that are consistent with the provisions of this article.

[Added by Acts 1981, 67th Leg., p. 538, ch. 222, § 1, eff. Sept. 1, 1981.]

TITLE 85

LANDS—ACQUISITION FOR PUBLIC USE

2. FEDERAL USE

Article
5248g–1. Grant of Portions of Bed and Banks of Rio Grande to United States.

2. FEDERAL USE

Art. 5248. Repealed by Acts 1979, 66th Leg., p. 2329, ch. 841, § 6(a)(1), eff. Jan. 1, 1982

Section 1 of Acts 1979, 66th Leg., ch. 841, repealing this article, enacted the Property Tax Code, constituting Title 1 of the Tax Code.

Art. 5248g–1. Grant of Portions of Bed and Banks of Rio Grande to United States

Sec. 1. The Governor of the State of Texas is authorized to grant to the United States of America, in accordance with the conditions set out in this Act, those portions of the bed and banks of the Rio Grande or easements thereupon in Hudspeth, Jeff Davis, Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Hidalgo, and Cameron Counties consisting of the bed and banks as exist on the United States side of the boundary, as may be necessary or expedient to facilitate the accomplishment of projects for the relocation and rectification of the Rio Grande and construction of works for flood control in the Presidio-Ojinaga Valley, the rectification of and channel stabilization on the Rio Grande between Fort Quitman in Hudspeth County and Haciendita in Presidio County, the relocation and rectification of the Rio Grande upstream from Hidalgo-Reynosa in Hidalgo County, the preservation of the Rio Grande as the boundary by prohibiting the construction of works which may cause deflection or obstruction of the normal flow of the Rio Grande or of its floodflows, and other channel relocations and rectifications and boundary adjustments approved by the governments of the United States and Mexico, as provided for in the Treaty to Resolve Pending Boundary Differences and Maintain the Rio Grande and Colorado River as the International Boundary between the United States of America and the United Mexican States, which entered into force April 18, 1972, and the American-Mexican Boundary Treaty Act of 1972, Public Law 92–549 (86 Stat. 1161), approved October 25, 1972.[1]

Sec. 2. When the Commissioner of the United States Section of the International Boundary and Water Commission, United States and Mexico, shall make application to the Governor of the State of Texas describing the area and the interest therein which is determined necessary or expedient for use under the treaty and the Act, the governor shall issue a grant of such interest for and on behalf of the State of Texas to the United States of America, conveying to it the area and the interest described in the application, and the grant, except as provided in Section 3 of this Act, shall reserve to the State of Texas all minerals, except rock, sand, and gravel needed by the United States in the operation or construction by the United States or its agents of any of the works described in Section 1 of this Act, subject to the proviso that the minerals so reserved to the state may not be explored for, developed, or produced in a manner which will at any time prevent or interfere with the operation or construction by the United States of America of any of the works described in Section 1 of this Act, and providing further, that prior to exploring for or developing the reserved minerals, the written consent and approval of the United States Section, International Boundary and Water Commission, United States and Mexico, or its successor agency, shall be obtained as to the proposed area sought to be explored or developed by the State of Texas, including, but not by way of limitation, the location of and production facilities for oil and/or gas wells and/or other minerals.

Sec. 3. In locations where the United States Commissioner applies for fee title to the bed and banks of the Rio Grande to be granted to the United States for the relocation and rectification of the channel under the treaty causing a portion of the existing channel to be within the territorial limits of Mexico after its relocation and rectification, the grant shall contain the same reservations and provisos as those prescribed in Section 2 of this Act on that portion only of the existing channel which will remain within the territorial limits of the United States on completion of the relocation and rectification project.

Sec. 4. Successive applications may be made by the United States Commissioner, and successive grants may be made to the United States of America by the governor for and on behalf of the State of Texas, embracing various tracts within the limits herein specified, and no time limit shall be imposed upon the grants. However, nothing in this Act shall be construed as divesting, limiting, or otherwise affecting the property rights, including, but not by way of limitation, the riparian rights, under the laws

of the State of Texas, of private owners of land abutting the Rio Grande in the counties referred to in this Act. The authority granted by this Act to the Governor of the State of Texas extends only to the bed and banks of the Rio Grande to the extent that title to the bed and banks is by law vested in the State of Texas, whether under the civil law, or common law, or court decisions of the State of Texas, or otherwise.

[Acts 1975, 64th Leg., p. 584, ch. 238, §§ 1 to 4, eff. May 20, 1975.]

[1] 22 U.S.C.A. § 277d-34 et seq.

TITLE 86

LANDS—PUBLIC

Repeal

This Title 86, with certain enumerated exceptions, was repealed by art. 1, § 2(a)(I) of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting the Natural Resources Code, effective September 1, 1977.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

CHAPTER ONE. ADMINISTRATION

Arts. 5249 to 5267. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

CHAPTER TWO. SURVEYORS AND SURVEYS

1B. LICENSED STATE LAND SURVEYORS

Article

5282b. Repealed.

1C. LAND SURVEYING PRACTICES

5282c. Land Surveying Practices Act of 1979.

Arts. 5268 to 5282. Repealed by Acts 1977, 65th Leg., p. 1451, ch. 589, § 20, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1), eff. Sept. 1, 1977

Without reference to repeal of these articles by Acts 1977, 65th Leg., p. 1451, ch. 589, § 20, art. 5268a was added by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.026, to read:

"The Board of Examiners of State Land Surveyors is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the board is abolished effective September 1, 1979."

See, now, the Licensed State Land Surveyors' Act, art. 5282b.

1A. REGISTERED PUBLIC SURVEYORS

Art. 5282a. Repealed by Acts 1979, 66th Leg., p. 1277, ch. 597, § 30(1), eff. June 13, 1979

Prior to repeal, this article was amended by Acts 1977, 65th Leg., p. 72, ch. 36, §§ 1 to 3; Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.025.

See, now, art. 5282c.

1B. LICENSED STATE LAND SURVEYORS

Art. 5282b. Repealed by Acts 1979, 66th Leg., p. 1278, ch. 597, § 30(2), eff. June 13, 1979

The repealed article, the Licensed State Land Surveyors Act of 1977, was derived from Acts 1977, 65th Leg., p. 1445, ch. 589.

See, now, art. 5282c.

1C. LAND SURVEYING PRACTICES

Art. 5282c. Land Surveying Practices Act of 1979

Short Title

Sec. 1. This Act may be cited as the Land Surveying Practices Act of 1979.

Definitions

Sec. 2. In this Act:

(1) "Public surveying" means the practice for compensation of determining the boundaries or the topography of real property or of delineating routes, spaces, or sites in real property for public or private use by using relevant elements of law, research, measurement, analysis, computation, mapping, and land description writing. Public surveying includes the practice for compensation of land, boundary, or property surveying or other similar professional practices.

(2) "Registered public surveyor" is any person registered as a public surveyor by the Texas Board of Land Surveying.

(3) "State land surveying" means the science or practice of land measurement according to established and recognized methods engaged in and practiced as a profession or service available to the public for compensation and comprises the determination by means of survey of the location or relocation of original land grant boundaries and corners; the calculation of area and the preparation of field note descriptions of both surveyed and unsurveyed land or any land in which the state or the public free school fund has an interest; the preparation of maps showing such survey results; and the field notes and/or maps of which are to be filed in the General Land Office of the State of Texas.

(4) "Licensed state land surveyor" is a surveyor licensed by the Texas Board of Land Surveying to survey land in which the state or the public free school fund has an interest, or other original surveys, for the purpose of filing field notes in the General Land Office. When acting in this official

capacity, such a surveyor is an agent of the State of Texas.

(5) "Board" means the Texas Board of Land Surveying created by this Act.

(6) "Commissioner" means the Commissioner of the General Land Office of the State of Texas.

(7) "Chief clerk" means the chief clerk of the General Land Office of the State of Texas appointed by the commissioner to perform any of the duties of the commissioner if he is sick, is absent, dies, or resigns.

(8) "Secretary" means the executive secretary of the board as herein provided.

(9) "Land surveyor" means a registered public surveyor or licensed state land surveyor.

(10) "Responsible charge" means the direct control and personal direction of the investigation, design, construction, or operation of land surveying work requiring initiative, professional skill, and independent judgment.

(11) "Practice or offer to practice" means to engage in land surveying or by verbal claim, sign, letterhead, card, or in any other way to represent oneself as legally able to perform land surveying in this state.

Practice of Surveying

Sec. 3. In order to safeguard the life, health, or property of the public, the practice of public or state land surveying in Texas is hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or offer to practice land surveying in this state as defined in this Act or to use in connection with his or her name or otherwise assume or advertise any title or description tending to convey the impression that such person is a land surveyor, unless that individual is duly registered, licensed, or exempted under the provisions of this Act.

Exemptions

Sec. 4. The provisions of this Act do not apply to any of the following:

(1) a county surveyor acting in an official capacity as authorized by law in counties under 25,000 population, but only until the expiration of the term of persons currently holding such office;

(2) an officer of a state, county (except as provided by Subsection (1) of this section when applicable), city, or other political subdivision whose official duties include land surveying when acting in his official capacity, but only until the expiration of the term of persons currently holding such office;

(3) a deputy, assistant, or employee of any person exempt from the provisions of this Act by Subsections (1) and (2) of this section when acting under the direction and supervision of such exempt person;

(4) a land surveyor engaged in public surveying acting solely as an officer or as an employee of the government of the United States;

(5) a land surveyor engaged in public surveying who is not a resident of this state and has no established place of business in this state, who is legally qualified for professional service in his own state, and who gives prior written notification to the board of his intent to practice temporarily in this state and of the nature and duration of that intended practice; or

(6) an assistant or employee of any Public Surveyor registered under this Act when he works for, receives a substantial part of his income from, and acts under the direction and supervision of the Registered Public Surveyor.

Texas Sunset Act

Sec. 5. The Texas Board of Land Surveying is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes), and unless continued in existence as provided by that Act, the board is abolished and this Act expires effective September 1, 1991.

Texas Board of Land Surveying; Qualifications for Board Members; Appointment of Members; Oath of Office

Sec. 6. (a) There is hereby created a Texas Board of Land Surveying which shall consist of the following 10 members, each of whom shall be a citizen of the United States and a resident of this state:

(1) the commissioner;
(2) three members of the general public;
(3) two licensed state land surveyors; and
(4) four registered public surveyors.

The chief clerk shall perform the duties of the commissioner as a member of the board if the commissioner is sick, is absent, resigns, or dies and in such capacity shall have the same powers and authority as the commissioner.

The licensed state land surveyor members of the board shall be appointed by the governor upon the recommendation of the commissioner and with the advice and consent of the senate and shall have been actively engaged in the practice of state land surveying for not less than five consecutive years immediately prior to his or her appointment. Such members may also be registered as registered public surveyors.

The registered public surveyor members of the board shall be appointed by the governor with the advice and consent of the senate and shall have been actively engaged in the practice of public surveying in this state for not less than five years immediately prior to his or her appointment. The teaching of surveying in a recognized school of engineering or surveying may be regarded as the practice of public surveying. Such members may also be licensed as licensed state land surveyors.

The public members of the board shall be appointed by the governor with the advice and consent of the senate and such members shall not hold a certificate of registration or license as a surveyor.

(b) The members of the board shall serve a term of six years or until a successor shall be appointed and qualified. Upon the appointment of the first board under this Act and upon February 10th of each odd-numbered year thereafter, the governor shall appoint from among the membership of the board a chairman. Before entering upon the duties of his or her office, each member of the board shall take and subscribe to the constitutional oath of office, and the same shall be filed with the secretary of state. All vacancies occurring in the membership of the board shall be filled by appointment by the governor for the unexpired term of the membership in the manner provided by this Act. All appointments made under this Act shall be made without regard to race, creed, sex, religion, or national origin. A member of the board may be appointed to succeed himself or herself, except that no member shall be eligible to serve more than two consecutive terms.

(c) The persons serving on the effective date of this Act as appointed members of the Board of Examiners of Licensed State Land Surveyors and of the State Board of Registration for Public Surveyors plus one public member constitute the initial Texas Board of Land Surveying.

A person who holds office on the effective date of this Act as a member of the State Board of Registration for Public Surveyors holds office as a member of the Texas Board of Land Surveying for the term for which the member was originally appointed. A person who holds office on the effective date of this Act as a member of the Board of Examiners of Licensed State Land Surveyors and whose term as a member of that board would expire December 2, 1980, holds office as a member of the Texas Board of Land Surveying for a term expiring September 6, 1979. A person who holds office on the effective date of this Act as a member of the Board of Examiners of Licensed State Land Surveyors and whose term as a member of that board would expire December 2, 1983, holds office as a member of the Texas Board of Land Surveying for a term expiring September 6, 1983.

The governor shall appoint to the Texas Board of Land surveying a public member for a term expiring September 6, 1981. The governor shall appoint to the board two public members to fill the offices of the two registered public surveyors whose terms expire September 6, 1979.

The term of office succeeding a Texas Board of Land Surveying member's term that expires September 6, 1979, expires January 31, 1985. The term of office succeeding a board member's term that expires September 6, 1981, expires January 31, 1987. The term of office succeeding a board member's term that expires September 6, 1983, expires January 31, 1989. Each succeeding term of office expires January 31 of an odd-numbered year.

Conflict of Interest Provisions for Board Members and Employees

Sec. 7. (a) A member or employee of the board may not be at any time during the member's term in office or the employee's term of employment any of the following:

(1) an executive officer, employee, or paid consultant of a trade or professional association in the regulated profession or industry; or

(2) related within the second degree of affinity or consanguinity to a person who is an executive officer, employee, or paid consultant of a trade or professional association in the regulated profession or industry.

(b) Members of the board, except those members who are licensed or registered under this Act, may not personally have nor be related to persons within the second degree by affinity or third degree by consanguinity who have, except as consumers, financial interests in the practice of public or state land surveying as officers, directors, partners, owners, employees, attorneys, or paid consultants.

(c) Any person who violates this section is ineligible to hold or continue to hold office or a position of employment with the board.

(d) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the board or act as the general counsel to the board. The general counsel and board members may appear and represent the board at committee hearings and other formal meetings of organs of the legislative or executive departments of government when invited to do so.

Organization and Meetings of the Board

Sec. 8. (a) The first board created under the provisions of this Act shall hold its first meeting within 90 days after the effective date of this legislation and shall elect from its number a vice-chairman, who shall thereafter be elected at the first meeting of the board subsequent to February 10th of each odd-numbered year. An executive secretary shall be appointed by the board to hold office at the pleasure of the board. The secretary shall make and file a bond with the comptroller of public accounts in an amount not less than $2,500. The premium for the bond shall be paid out of the "Land Surveying Fund" as provided in this Act. It is the duty of the Texas Board of Land Surveying to hold meetings at least twice each year at such times and places as the board may determine for the purpose of transacting its business and to examine all applicants for registration or licensure as a public surveyor or state land surveyor. Regular meetings of the board shall be held at such times as the board may fix and deter-

mine. Special meetings of the board shall be held at such times as the board may fix and determine. Special meetings of the board may be called by the chairman or in his absence from the state or inability to act by the vice-chairman of the board. A majority of the membership of the board constitutes a quorum.

(b) Each member of the board shall be present for at least one-half of the regularly scheduled meetings held each year by the board. The failure of a member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.

(c) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Powers of the Board

Sec. 9. (a) The board shall have the authority and power to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act for the performance of its duties in administering this Act and for the purpose of establishing standards of conduct and ethics for surveyors registered or licensed under this Act. The board shall not promulgate rules restricting competitive bidding by licensees and shall not promulgate rules restricting advertising by licensees except to the extent necessary to prohibit false, misleading, and deceptive practices. The violation by any registered public surveyor or licensed state land surveyor of any provision of this Act or any rule or regulation of the board is sufficient reason or ground to suspend or revoke the certificate of registration or licensure of the surveyor. In addition to any other action, proceeding, or remedy authorized by law, the Texas Board of Land Surveying has the right to institute an action in its own name in a district court of Travis County against any person, firm or corporation, partnership, or any other group or combination of persons to enjoin a violation of any provision of this Act or any rule or regulation of the board. Either party to such an action may appeal to the appellate court having jurisdiction of the cause. The board shall not be required to give an appeal bond in any cause under this Act. The attorney general or his assistants shall act as legal advisor to the board and render such legal assistance as shall be necessary. If the appropriate standing committees of both houses of the legislature, acting under Subsection (g) of Section 5 of the Administrative Procedure and Texas Register Act, as added (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under this section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective as of the date upon which the board receives the committees' statements.

(b) All rules and regulations promulgated by the State Board of Registration for Public Surveyors and the Board of Examiners of Licensed State Land Surveyors prior to the effective date of this Act shall remain in full force and effect until 180 days from the effective date of this Act or until sooner ratified by the board in the manner provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(c) A roster showing the names and places of business of all licensed state land surveyors and registered public surveyors, the rules and regulations promulgated by the board, and a copy of this Act and any amendments thereto shall be prepared by the secretary of the board during the month of July of each odd-numbered year. Copies of this roster shall be mailed to each person so registered or licensed, placed on file with the secretary of state, and furnished to the public upon request without charge.

(d) The board may adopt rules and regulations creating and providing for the administration of a staggered renewal program for all certificates of registration and licensure issued by it beginning in 1981.

(e) The board shall establish a public information program for the purpose of informing the public regarding the practice and regulation of land surveying in this state, including a standard complaint form, and such information shall be made readily available to the general public and other appropriate agencies of the state. Such program shall also include information designed to inform prospective applicants regarding the qualifications and requirements for registration or licensure under this Act.

(f) The board shall employ an executive secretary to conduct the administrative affairs of the board under the board's direction. The board may also employ or retain such other persons as are necessary for the proper performance of its work under this Act, including services of an investigative nature, and may make expenditures for this purpose. The board is authorized to accept at no cost to the board such services from private sources. The compensation paid under this Act shall not be in excess of compensation paid for similar work in other state departments.

(g) The board shall arrange for such suitable office space and equipment as it may deem necessary, and the rental for such office space and the cost of such equipment shall be considered administration expenses.

Compensation and Expenses of Board Members

Sec. 10. Members of the board, other than the commissioner, shall receive as compensation the sum of $25 per day for each day they are actually engaged in official board duties, including time spent in necessary travel, together with all legitimate expenses incurred in the performance of their duties.

All per diem and expenses incurred under this Act shall be paid from the "Land Surveying Fund" as provided in this Act. The commissioner shall not receive per diem compensation or actual expenses for the discharge of his duties as a member of the board, except as otherwise provided by law.

Records and Reports

Sec. 11. (a) The board shall keep a record of its proceedings, which is open to public inspection at all reasonable times, and which includes a record of all money received and expended by the board and a register of all applicants for registration or licensure, showing the following:

(1) the name, age, and residence of each applicant;

(2) the date of application;

(3) the place of business of such applicant;

(4) the applicant's qualifications;

(5) any reasons for rejection of an application;

(6) the dates and results of all examinations;

(7) the date and number of all certificates of registration or licensure issued; and

(8) such other information as may be deemed necessary by the board.

(b) The board also shall keep a record of all registered professional engineers engaged in public surveying who register with the board, which includes the following:

(1) the name, age, and residence of all registrants;

(2) the place of business of the registrant;

(3) the date and serial number of registration as a professional engineer;

(4) the date of registration with the board; and

(5) any other information that may be deemed necessary by the board.

Provisions for the Transfer of Personnel, Property, and Assets

Sec. 12. The personnel employed by the State Board of Registration for Public Surveyors and the records, property, and assets in the custody of the State Board of Registration for Public Surveyors and the Board of Examiners of Licensed State Land Surveyors on the effective date of this Act are hereby transferred to the Texas Board of Land Surveying.

Receipts and Disbursements

Sec. 13. The secretary of the board shall receive and account for all fees received under the provisions of this Act and shall deposit these funds in the State Treasury to the credit of a special fund to be known as the "Land Surveying Fund." At the beginning of each biennium all money then in such fund which is not then appropriated or obligated shall be set over and paid into the General Revenue Fund. This fund shall be paid out only by warrants of the comptroller of public accounts upon itemized vouchers approved by the secretary of the board. Under no circumstances shall the total amount of warrants issued by the comptroller of public accounts in payment of the expenses and compensation provided for in this Act exceed the amount in the Land Surveying Fund. All payments to persons retained or employed by the board or to members of the board and all per diem and expenses incurred under this Act shall be paid out of the Land Surveying Fund provided herein, and no part of the expense of administering this Act shall ever be a charge against the general funds of the State of Texas. The board shall as of August 31 of each year after the passage of this Act make a report to the governor, lieutenant governor, and speaker of the house of representatives for all receipts and disbursements under this Act. The financial transactions of the board shall be audited annually by the state auditor.

Practitioners at the Time of Enactment

Sec. 14. (a) All persons holding valid certificates of registration or licenses on the effective date of this Act from either the State Board of Registration for Public Surveyors or the Board of Examiners of Licensed State Land Surveyors shall be automatically registered or licensed under this Act. Those holding a certificate of registration as a registered public surveyor shall be registered as registered public surveyors and those holding a licensed state land surveyor's license shall be licensed as licensed state land surveyors. Those so registered shall retain their same registration numbers and those so registered or licensed shall retain their former certificate or license until such certificate or license is renewed as provided herein.

(b) Any person holding a valid license on the effective date of this Act from the State Board of Registration for Professional Engineers who has been engaged in the practice of surveying for a period of not less than one year immediately preceding the effective date of this Act may apply for registration as a public surveyor within a period of one year from the effective date of this Act and on payment of the registration fee shall be registered as a public surveyor. The Texas Board of Land Surveying and the State Board of Registration for Professional Engineers shall determine whether an applicant qualifies for registration under this subsection. If the boards disagree about whether an applicant qualifies for registration under this subsection, the decision of the State Board of Registration for Professional Engineers controls.

(c) All persons registered or licensed under this section are presumed to be qualified as long as they annually renew their certificate of registration or licensure as required under this Act.

Qualifications for Registration and Licensure

Sec. 15. (a) No person, except those exempt from the operation of this Act, shall engage or

continue in the practice of public surveying as defined in this Act, unless the person is registered or licensed as provided by this Act.

(b) The following classes of persons are qualified for registration or licensure:

(1) all registered professional engineers engaged in the practice of surveying on the effective date of this Act who register with the board in accordance with this Act;

(2) all persons who apply to take and successfully pass a written examination developed and given as provided by this Act under rules developed by the board to determine the knowledge and ability of the applicant shall be qualified for registration as a registered public surveyor; and

(3) all registered public surveyors who apply to take and successfully pass a written examination as provided by this Act under rules developed by the board on the theory of surveying, the law of land boundaries, the history and functions of the General Land Office, and such other matters pertaining to surveying as the board may determine shall be qualified for licensure as a licensed state land surveyor.

(c) All applicants for licensure as a registered public surveyor, except a registered professional engineer, must meet the following minimum requirements:

(1) be of good professional character and reputation;

(2) have satisfied one of the following educational and experience requirements:

(i) have successfully completed a full four-year course of study at an accredited college or university leading to a bachelor's or higher degree and have a specific experience of two or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying of a character indicating the applicant was in delegated responsible charge of the accuracy and correctness of the surveying work performed. The course of study shall have included not less than 32 semester hours of study or its academic equivalent in any combination of courses in civil engineering, land surveying, mathematics, photogrammetry, forestry, or land law and the physical sciences; or

(ii) have successfully completed a course of study in land surveying or board-approved survey-related courses of 32 semester hours of study or its academic equivalent and have a specific experience record of four or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying of a character indicating that the applicant was in delegated responsible charge as defined herein; or

(iii) have graduated from an accredited high school and have a specific experience record of six or more years as a subordinate to a registered public surveyor or a person qualified in land surveying in the active practice of land surveying of a character indicating that the applicant was in delegated responsible charge of the accuracy and correctness of the surveying work performed. Applicants under this subsection without the college, university, or board-approved courses listed in paragraphs (i) and (ii) must show they have become self-educated in the surveying field.

(d) Notwithstanding the requirements for registration set forth in Subdivision (2) of Subsection (c) of this section, the board shall adopt reasonable rules and regulations necessary to establish a surveyor-in-training program designed to reduce the educational and experience requirements set forth in said Subsection (c) through a concentrated course of study and training. Such program shall include the following provisions:

(i) minimum educational requirements of a lesser degree than those set forth in said Subsection (c);

(ii) examination for basic mathematical skills necessary to the practice of public surveying;

(iii) a board-approved program of intensive study through formal educational programs, private educational and professional programs and seminars, or both; and

(iv) a board-approved program of intensive experience covering a lesser period of time than that set forth in said Subsection (c); and

(v) examination for other basic skills and knowledge necessary to the practice of public surveying.

Upon proof of qualification under Paragraph (i) of this subsection and successful completion of the basic examination required by Paragraph (ii) of this subsection, an applicant shall receive a certificate declaring him or her a surveyor-in-training in a form to be approved by the board, and a record shall verify and note successful completion of each additional requirement of the surveyor-in-training program by the applicant. Upon successful completion of the program, the applicant shall receive a certificate of registration as a registered public surveyor upon payment of the necessary fee.

Applications, Examinations, and Fees for Licensure

Sec. 16. Any applicant seeking registration as a registered public surveyor or licensure as a licensed state land surveyor shall file an application in writing with the Texas Board of Land Surveying. An application fee, not to exceed $50, shall be submitted with the application. If the board determines that the applicant is qualified to take the examination, it shall set and notify the applicant of the time and place of the examination. The applicant may take

the examination on payment of an examination fee determined by the board, not to exceed $100 for registered public surveyor examinations or $50 for licensed state land surveyor examinations.

Applications for registration or licensure shall be on forms prescribed and furnished by the board and shall contain statements made under oath showing the applicant's education and experience. Applications for registration shall contain a detailed summary of the applicant's technical work and references of at least three surveyors having personal knowledge of his surveying experience.

The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability in order to insure the public safety, welfare, and property rights.

Not later than the 30th day after the day on which a person completes an examination administered by the board, the board shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the board shall send to the person not later than the 30th day after the day on which the request is received by the board an analysis of the person's performance on the examination.

An applicant failing an examination may apply for and take a subsequent examination at the expiration of six months from the date of the preceding examination by filing an updated application and paying an additional examination fee not to exceed $100.

On passing the appropriate examination, the applicant is entitled to a certificate of registration as a registered public surveyor or a certificate of licensure as a licensed state land surveyor. No certificate of licensure as a licensed state land surveyor shall be issued until the applicant has taken the oath of office and filed the bond as required by this Act. Each registered public surveyor shall also be issued a registration number which shall not thereafter be assigned to nor used by any other surveyor. The number shall be placed on the certificate of registration and recorded in the permanent records of the board and shall constitute the registration number of that surveyor to be used on all official documents. The certificate of registration and the certificate of licensure shall also show the full name of the registrant or licensee and shall be signed by the chairman and secretary of the board.

Renewal, Renewal Fees, Penalty for Late Renewals

Sec. 17. All certificates of registration or licensure shall expire on December 31 of each year or on a date set by the board as part of a staggered renewal system and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify every person registered under this Act of the date of expiration of his or her certificate and the amount of the fee that shall be required for its renewal for one year. The notice shall be mailed at least one month in advance of the date of expiration of the certificate. For this and other purposes, each registrant or licensee shall notify the secretary of any change of address as it occurs. For the year in which the expiration date is changed, renewal fees payable on December 31 shall be prorated on a monthly basis so that each registrant or licensee shall pay only that portion of the renewal fee which is allocable to the number of months during which the renewal is valid. On renewal of the registration or license on the new expiration date, the total renewal fee is payable. Renewal may be effected at any time during the month of expiration by the payment of a fee set by the board, not to exceed $50 for certificates of registration of registered public surveyors or $25 for certificates of licensure for licensed state land surveyors. On receipt of the required fee within the time and in the manner prescribed by the board, the designated officer or employee of the board shall issue to the licensed or registered surveyor a certificate of renewal of his or her certificate for the term of one year. The failure on the part of a surveyor to renew a certificate annually by the expiration date established by the board shall not deprive an individual of the right of renewal, but shall result in an increase in the renewal fee of $20. If failure to renew shall continue for more than 90 days after the date of expiration of the certificate of registration or licensure, the board may require such registrant or licensee to reapply for registration or licensure and he or she must qualify and pay all fees provided herein as an original applicant therefor. All renewal certificates of registration shall carry the same registration number as the original certificate. All original and renewal certificates of registration or licensure shall be evidence that the person whose name and registration number appears thereon is qualified to practice as a registered public surveyor or a licensed state land surveyor so long as the certificate is valid and in force. Each person holding a certificate of registration or licensure shall display it at his or her place of business or practice and be prepared to substantiate annual renewal for the current year. The secretary shall immediately notify the commissioner whenever the license of any licensed state land surveyor is rendered invalid for his or her failure to timely renew such license.

Official Seals

Sec. 18. Each registered public surveyor on receiving a certificate of registration shall obtain an authorized seal bearing the registrant's name and number and the legend "Registered Public Surveyor." No licensee shall affix his or her name, seal, or certification to any plat, design, specification, or other work constituting the practice of the occupation regulated by this Act and prepared by an unlicensed person, unless the work was performed under the direction and supervision of the licensee and the

unlicensed person is an employee of the same firm and under the licensee's direct supervision. For the purpose of this section, an "employee" means an individual who receives compensation for work performed from a firm which employs or has a principal licensed or registered surveyor on a full-time basis. No licensee shall allow a nonlicensed person to exert control over the end product of his or her professional work. Only one surveyor's seal is required for the documents of a single project as prepared by each firm. However, the surveyor whose seal is to be used must be a principal in the firm who has the primary responsibility for the particular project. In addition, the seals of other professionals in the firm may be used. When there is a joint surveying venture comprising an association of two or more firms, each firm shall use the seal of the surveyor who has the primary responsibility for the firm. Each licensed state land surveyor shall procure a seal of office. Around the margin shall be the words "Licensed State Land Surveyor," which shall be his or her official title, and between the points of the star in the seal shall be the word "Texas." A licensed state land surveyor shall attest with the seal all official acts authorized under the provisions of the law. No act, paper, or map of a licensed state land surveyor shall be filed in the county records of the General Land Office unless certified to under the seal of the surveyor.

Oath and Bond

Sec. 19. (a) Before a licensed state land surveyor's license is issued and before one who has successfully passed the examination as provided in this Act is authorized to perform the duties of a licensed state land surveyor, he or she shall take the official oath and shall make a good and sufficient bond in the sum of $1,000, payable to the governor and conditioned that he or she will faithfully, impartially, and honestly perform all the duties of a licensed state land surveyor to the best of his or her skill and ability in all matters wherein he or she may be employed. No state land surveyor's license may be issued under this Act to any person residing outside the State of Texas.

(b) The bond may be executed by two or more solvent personal sureties or by a solvent surety company authorized to transact business in this state. If the bond is signed by personal sureties, each shall take and subscribe an oath that he or she is worth, over and above all debts and exemptions, at least double the penalty of the bond. A personal bond also shall be approved by the commissioners court of the county where the applicant resides. After the oath and bond have been executed as provided by this Act, they shall be recorded in the office of the county clerk of the county in which the applicant resides and after being so recorded shall be filed at the Texas Board of Land Surveying, accompanied by a filing fee in an amount to be fixed by the board. Thereupon a license shall be issued to the applicant, and he or she is authorized to enter upon the discharge of the duties of a licensed state land surveyor. If for any reason the liability on the bond provided for by this Act is terminated, the licensee is not authorized to perform the duties of a licensed state land surveyor until a new bond is made as in the first instance. No surety on a bond shall be relieved of liability on the bond without first giving the board 30 days' notice in writing. The termination of a bond as provided in this Act or the revocation of a surveyor's license does not relieve the sureties on the bond from any liability that may have theretofore accrued on the bond. The board is directed to provide the General Land Office with a current list of bondholders.

(c) The secretary shall immediately advise the commissioner whenever any applicant has qualified for and has been issued a license as a licensed state land surveyor under this Act. The secretary shall also immediately advise the commissioner whenever the liability on the bond of any licensee under this Act has been terminated for any reason.

Reciprocal Certificate

Sec. 20. The Texas Board of Land Surveying shall issue a certificate of registration as a registered public surveyor on a reciprocal basis to any person who:

(1) holds a public surveyor license or other form of permission issued by a governmental authority outside of this state if the licensing standards of the governmental authority are substantially equivalent to those of this state; and

(2) applies with the board for the certificate of registration and pays a fee set by the board not to exceed $50.

Firm Names; Assumed Names

Sec. 21. Registrants and licensees holding current certificates of registration or licensure may organize or engage in any form of individual or group practice of surveying allowed by the statutes of this state, if the firm identity of that practice does not publicly imply registration authority to practice public or state land surveying without properly identifying the registrant responsible for that practice. Any person engaging in the practice of surveying in this state under any business title other than the real name or names of those legally authorized to engage in public or state land surveying, whether individually or as an association, partnership, or corporation, shall file in the office of this board a certificate stating the full name and residence of each person engaging in that practice and the place, including street, number, city, and zip code, where that practice or business is principally conducted.

Resignation of a Licensed State Land Surveyor

Sec. 22. A licensed state land surveyor may resign as such surveyor at any time by filing a resignation in writing with the Texas Board of Land Sur-

veying. On the receipt of the resignation, the board shall note the receipt and inform the General Land Office. Resignation does not relieve the principal and sureties of the surveyor's official bond of any liability that may have accrued prior to the effectiveness of the resignation.

Penalties

Sec. 23. (a) The Texas Board of Land Surveying has the power to reprimand or suspend or to revoke the license and/or registration of any surveyor found guilty of:

(1) the practice of any fraud or deceit in obtaining a certificate of registration for registered public surveyors or a certificate of licensure for licensed state land surveyors;

(2) any gross negligence, incompetency, or misconduct in the practice of surveying as a registered public surveyor or licensed state land surveyor; or

(3) the violation of a provision of this Act or a rule or regulation promulgated by the board.

(b) The license of any licensed state land surveyor found to be directly or indirectly interested in the purchase or acquisition of title to public land is subject to revocation.

(c) After the effective date of this Act, any person found guilty of the following offenses shall be deemed guilty of a Class B misdemeanor:

(1) practicing or offering to practice public surveying or state land surveying in this state without being registered or licensed or exempt in accordance with the provisions of this Act;

(2) presenting or attempting to use the certificate of registration or licensure or seal of another;

(3) giving any false or forged evidence in order to obtain or assist another in obtaining a certificate of registration or licensure; or

(4) violating any of the provisions of this Act or any rules or regulations promulgated by the board.

Enforcement; Complaints; Hearings

Sec. 24. (a) Any person may file a complaint with the Texas Board of Land Surveying regarding a violation of this Act or any rule or regulation of the board. The board may also institute proceedings against a registrant or licensee on its behalf without a formal written third party complaint. Each alleged violation of applicable statutes, when duly reported and substantiated by sworn affidavits, shall be investigated. The board may employ the investigators or inspectors necessary to enforce properly the provisions of this Act.

(b) If it is determined that the complaint is not within the board's jurisdiction, the complainant shall be notified in writing within 30 days. If the board determines the complaint to be within its statutory jurisdiction, a written notice stating the nature of the charge or charges and the time and place of the hearing before the board shall be served on the accused not less than 20 days prior to the date of the hearing and within three months after the date on which the complaint was filed. The board or its legal counsel is authorized to hold conferences before or during the hearing process for the settlement or simplification of the issues and for such purposes as the demands of justice require. At any hearing, the respondent is entitled to appear in person and by counsel, present all relevant evidence and witnesses on his or her own behalf, cross-examine witnesses, and examine such evidence as may be produced against him or her. The failure of a respondent to appear at a hearing may be deemed a waiver of all rights except the right to be served with any sanction imposed by the board. The board may, however, grant continuances on a written request, indicating good cause for failure to appear, filed with the board prior to the date of the hearing. The board is empowered to issue notices, subpoena witnesses, administer oaths, hear testimony, rule on objections and motions, and otherwise regulate and expedite the course and conduct of the hearing. Any individual appearing at a hearing in response to a subpoena or by request or permission of the board may be accompanied, represented, or advised by counsel.

(c) After all the parties have been given an opportunity to present proposed findings and arguments, the board shall prepare findings of fact, conclusions of law, and any subsequent order, ruling, or decision of the board to be served on all parties. In the proceedings under this section and the other sections of this Act, a majority of the board shall constitute a quorum.

(d) A stenographic record or tape recording of all hearings shall be kept and transcribed. A transcript shall be made available to any party on payment of the lawfully prescribed cost.

(e) A person, firm, partnership, or corporation aggrieved by an order, ruling, or decision of the board may file a motion for rehearing which must be filed within 15 days after the rendition of the order, ruling, or decision. Replies to motions for rehearings must be filed within 25 days after the rendition of the order, ruling, or decision. A party aggrieved by a final order, ruling, or decision of the board has the right to file suit in a district court of Travis County. The petition must be filed within 30 days after the decision, ruling, or order in question is final and appealable. The board may not be required to give bond in any cause or appeal arising under this Act. Neither the Texas Board of Land Surveying nor any member of the board is liable to any person, firm, or corporation charged or investigated by the board for any damages incident to the investigation or incident to any complaint, charge, prosecution, proceeding, or trial of the results of the investigation.

(f) The board for reasons it may deem sufficient may reissue a certificate of registration or licensure to any surveyor whose certificate has been revoked provided five or more members vote in favor of the reissuance. A new certificate of registration or licensure to replace a certificate revoked, lost, destroyed, or mutilated may be issued, subject to the rules of the board and a charge of $5.

(g) The attorney general or his assistants shall act as legal advisor to the board and shall render such legal assistance as may be necessary in enforcing the provisions of this Act and the rules and regulations of the board.

(h) The board shall keep an information file on the disposition of each complaint filed with the board relating to a registrant or licensee. If a written complaint is filed with the board relating to a registrant or licensee, the board at least as frequently as quarterly shall notify the complainant of the status of the complaint until finally determined.

Authority of Licensee and Method of Obtaining Right to Survey on Private Land

Sec. 25. (a) Licensed state land surveyors licensed under this Act are authorized to perform surveys under the provisions of Section 21.011, Natural Resources Code, and to perform the duties that may be performed by the county surveyors and are subject to the direction of the Commissioner of the General Land Office in matters of land surveying in such cases as may come under the supervision of such authorities. The jurisdiction of such licensees shall be coextensive with the limits of the state.

(b) Licensed state land surveyors may hold the office of county surveyor, and if so elected shall qualify as provided by law for county surveyors. The election of a county surveyor for a particular county does not limit the jurisdiction of the surveyor to that county, and the election of a county surveyor for any particular county does not prevent any licensed state land surveyor from performing the duties of a surveyor in that county.

(c) All official field notes made by a surveyor licensed under this Act shall be signed by the surveyor, followed by the designation, "Licensed State Land Surveyor."

(d) If a licensed state land surveyor is denied permission to cross the land owned by a private party when surveying in his or her official capacity, the county attorney of the county in which the land is located shall promptly seek an order from a court of competent jurisdiction giving the licensee authority to cross the private lands.

Field Notes to be Recorded

Sec. 26. The field notes and plats of every survey of public land made by a licensed state land surveyor licensed under this Act shall be recorded in the county surveyor's records of the county in which the land is situated. The field notes and plats of public land made by a licensed state land surveyor affecting the lines, boundaries, and areas of such land shall be forwarded to the General Land Office after the same have been recorded under the provisions of this Act. All field notes made by licensed state land surveyors in any county in this state have the same force and effect and are admissible in evidence the same as field notes made by a county surveyor.

Undisclosed Land

Sec. 27. If a licensed state land surveyor discovers any undisclosed tract of public land, the surveyor shall not make known that fact to anyone except to such person as may have it enclosed, except that the surveyor shall forward to the Commissioner of the General Land Office a report of the existence of the tract, the acreage in the tract, and its probable value.

County Surveyor Authorized to Record Field Notes and Documents in County Surveyor's Records; Exceptions; Fees; Access to Records

Sec. 28. (a) In cases where a county has a county surveyor, the county surveyor alone is authorized to file and record field notes and plats of all surveys made in that county and other documents required by law to be recorded in the county surveyor's records and to issue certificates of fact and certify the correctness of copies of any document, record, or entry shown by the records of a county surveyor. However, if a county surveyor and his or her authorized deputy or deputies are absent from the office, the county clerk of the county has free access to the county surveyor's office and public records and, in such event, is authorized to record field notes, plats, and other documents required to be recorded in the county surveyor's records and to issue certificates of fact and certify the correctness of copies of any document, record, or entry shown on the official records of the county surveyor. In cases where a county has no county surveyor, the county clerk of the county is the legal custodian of the surveyor's records and is authorized to make all the certificates and certify the copies that a legally authorized county surveyor may make.

(b) The fees for recording documents in the surveyor's records and issuing certificates and making certified copies are the fees now or hereafter provided by law. The county surveyor is entitled to fees for all documents recorded by the county surveyor or his or her deputies and for all certificates and certified copies issued by the county surveyor or his or her deputies. The county clerk is entitled to all fees for documents recorded by the county clerk and for all certificates and certified copies issued by the county clerk under the provisions of this Act.

(c) All licensed state land surveyors shall for the purpose of information and examination have access to the records of county surveyors, and no examination fee shall be charged in cases where an investigation of the records is being made with a view to making surveys of public lands under the laws regu-

lating the sale or lease of the same or of identifying and establishing the boundaries of public land. All examinations shall be made under such regulations as may be provided by the county surveyor or the commissioners court for the safekeeping and preservation of the records.

Informing the Public Concerning the Regulation of Surveying

Sec. 29. All written contracts for surveying services in this state shall contain the name, mailing address, and telephone number of the regulatory board having jurisdiction over that licensed individual in responsible charge of providing those services and shall contain a statement that complaints abouts [1] surveying services may be forwarded to that regulatory board.

[1] So in enrolled bill.

[Acts 1979, 66th Leg., p. 1261, ch. 597, §§ 1 to 29, eff. June 13, 1979.]

2. COUNTY SURVEYORS

Arts. 5283 to 5298. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5298a. Abolition of Office of County Surveyor in Counties of 39,800 to 39,900

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5299 to 5305a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

CHAPTER THREE. SURFACE AND TIMBER RIGHTS

Arts. 5306 to 5311a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5311b. Validating Sales

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5312 to 5326h. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5326i. Reinstatement of Purchases in Hutchinson County

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5326j to 5330. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5330a. Regulating Sale and Patenting of Lands Formerly Part of Oklahoma; Special Land Board Abolished; Powers and Duties of General Land Office

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5330b. Sale of Public Lands Along Western Oklahoma and Eastern Texas Boundary Authorized

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5331 to 5337–1. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5331 was amended by Acts 1975, 64th Leg., p. 745, ch. 291, § 1 and art. 5337 was amended by Acts 1975, 64th Leg., p. 577, ch. 233, § 1.

Art. 5337–2. Execution in Favor of Nueces County Water Control and Improvement District No. 4 for Water Supply

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

CHAPTER FOUR. OIL AND GAS

Arts. 5339 to 5341c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5341d. Extension of Leases on University Land; War Agency Restriction

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5341e. Suspension of Running of Terms of Leases While Owner is Denied Access by United States

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5342 to 5366. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5344d was amended by Acts 1975, 64th Leg., p. 590, ch. 241, § 1.

Art. 5366a. Extension of Oil and Gas Leases on Areas Covered by Coastal Waters or Within Gulf

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5367 to 5379. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5372 was amended by Acts 1975, 64th Leg., p. 1938, ch. 635, § 1.

Arts. 5380 to 5382b. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5380 was amended by Acts 1975, 64th Leg., p. 1939, ch. 635, § 2.

Art. 5382b–1. Validation of Leases Advertised for 30 Days Prior to Act of 1949

Saved from Repeal

This article was expressly saved from repeal by art. I, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5382c to 5382f. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5382d was amended by Acts 1975, 64th Leg., p. 1824, ch. 560, § 1.

Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.095, added § 1a to art. 5382d to read:

"The Boards for Lease of State-Owned Lands are subject to the Texas Sunset Act [art. 5429k]; and unless each board is continued in existence as provided by that Act the board is abolished effective September 1, 1985."

Former art. 5382f, relating to sale of gas for use outside state by certain persons, agencies, and entities, was derived from Acts 1975, 64th Leg., p. 82, ch. 38.

CHAPTER SIX. PATENTS

Arts. 5404 to 5414. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5414a. Validating Patents on Lands Lying Across or Partly Across Water Courses or Navigable Streams

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5414a–1. Validating Deeds of Acquittance on Lands Lying Across or Partly Across Water Courses or Navigable Streams

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5414c. Effect of Judgment in Action to Recover Abandoned Land Titled Before Adoption of Common Law

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

CHAPTER SEVEN. GENERAL PROVISIONS

Article
5415e–1.5. Repealed.
5415e–3. Repealed.
5415e–4. Dredge Materials Act.
5415i. Deepwater Port Procedures Act.
5415j. Repealed.
5421s. Geothermal Resources Act of 1975.

Arts. 5415 to 5415c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5415d. Study Committee to Study Development of State Beaches

Secs. 1 to 6. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977.

Saved from Repeal

Section 7 of this article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Secs. 8 to 10. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977.

Arts. 5415d–1 to 5415d–4. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Acts 1977, 65th Leg., p. 1263, ch. 487, § 1, amended § 7 of art. 5415d-3, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1). As so amended (with deletions in brackets and additions underscored), § 7 reads:

Jurisdiction and Powers of Board

"Sec. 7. All lands used as parks in connection with public beaches but not located within the boundaries of any incorporated city and not within the area bordering on the Gulf of Mexico from the line of mean low tide to the line of vegetation as that term is defined in Chapter 19, Acts of the 56th Legislature, 2nd Called Session, 1959, as amended (Article 5415d, Revised Civil Statutes of Texas), and all public beaches owned in fee by the county, shall be under the jurisdiction of the board. The commissioners court of such county may designate any additional parks and facilities owned by the county, or to be managed by the county under the terms of a written contract, to be under the management and control of the board. In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority:

"(a) To manage, operate, maintain, equip, improve, and finance any and all existing public parks placed under its jurisdiction by the commissioners court;

"(b) To improve, manage, operate, maintain, equip, and finance additional parks acquired by gift or otherwise, but not by the exercise of the power of eminent domain;

"(c) To accept, receive, and expend gifts of money or other things of value from any person, group of persons, corporation, or association for the purpose of performing any function, power or authority herein invested in the board;

"(d) To publish brochures and otherwise advertise the county's recreational advantages for the purposes of attracting tourists, residents, and other users of the public facilities operated by the board;

"(e) To accept and receive from the county and to expend such funds as may be appropriated by the county from time to time for the purpose of improving, equipping, maintaining, operating, and promoting recreational facilities under the board's supervision and control;

"(f) To enter into contracts, leases, or other agreements connected with or incident to or in any manner affecting the financing, construction, equipping, maintaining, or operating all facilities located or to be located on or pertaining to any lands under its jurisdiction, or any facilities under its control, and to execute and perform its lawful powers and functions on lands leased from others;

"(g) To have general power to make and enter into all contracts, leases, and agreements with persons, associations, and corporations relating to the management, operation, and maintenance of any concession, facility, improvement, leasehold, lands, or other property of any nature whatsoever over which such board shall have jurisdiction and control; provided that the board shall not enter into any such lease or agreement for a longer term than 40 years;

"(h) To adopt, promulgate, and enforce all reasonable rules and regulations for the use of parks and facilities under the jurisdiction and control of the board by the public or by lessees, concessionaires, and other persons or corporations carrying on any business activity within the area of such public parks and facilities;

"(i) To employ secretaries, stenographers, bookkeepers, accountants, technical experts, and other such agents and employees, permanent or temporary, as it may require, and shall determine their qualifications, duties, and compensation. In addition, the board may also employ and compensate a manager for any parks or facilities and may give him full authority in the management and operation of the park or parks or facilities subject only to the direction and orders of the board. For such legal services as it may require the board may call upon the county attorney of such county and in lieu thereof or in addition thereto the board may employ and compensate its own counsel and legal staff. The board shall adopt a seal which shall be placed on all leases, deeds, and other instruments which are usually executed under seal, and on other such instruments as may be required by the board;

"(j) To sue and be sued in its own name;

"(k) To expend any moneys appropriated by the commissioners court for the purpose of cleaning and maintaining lands within its jurisdiction and public beaches including any moneys appropriated to the commissioners court by the State of Texas for such purpose;

"(l) To issue revenue bonds in the name of the board which shall be payable solely from the revenues of all or any designated part or parts of the properties or facilities under the jurisdiction and control of the board or from any other source of funds the board may wish to dedicate for that purpose, for the purpose of acquiring, developing, improving, and enlarging public recreational areas [parks] and facilities. Such bonds may be issued in one or more installments or series by resolutions adopted by the board without the necessity of an election, shall bear interest at a rate not to exceed 10 [six] percent per annum, shall mature serially or otherwise within 40 years from their date or dates, shall be sold by the board on the best terms obtainable, except that the annual interest rate and discount may not exceed 10 percent per annum, [but not for less than par and accrued interest], shall be executed by the chairman and secretary of the board, shall be signed by the chairman and the secretary of the board, or shall bear the facsimile signature of either or both, shall display the seal of the board either impressed, printed, or lithographed thereon, shall not be delivered until a transcript of the proceedings authorizing their issuance has been submitted to the Attorney General of Texas and by him approved as to legality and the bonds registered by the Comptroller of Public Accounts of the State of Texas, and shall be issued upon such terms and conditions in regard to the security, manner, place and time of payment, pledge of designated revenue, redemption before maturity, and the issuance of additional parity or junior lien bonds as the board shall specify in the resolution or resolutions authorizing such bonds. All bonds issued under the provisions of this Act are hereby declared to be legal and authorized investments for banks, saving banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, or other political corporations or subdivisions of the State of Texas, and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured interest coupons appurtenant thereto;

"(m) The board shall not have the power or authority to issue any bonds payable in whole or in part from ad valorem taxes but shall be authorized to receive and expend the proceeds of any bonds payable from taxes which may be issued by the governing body of the county for park purposes after the same have been authorized at an election held in the manner required by law;

"(n) To issue refunding bonds for the purpose of refunding one or more series or installments of original or refunding revenue bonds of the board outstanding which refunding bonds shall be issued, approved as to legality by the Attorney General of Texas, and registered by the Comptroller of Public Accounts of Texas, in the manner and upon the terms and conditions prescribed for the issuance of original revenue bonds herein, such refunding bonds to bear interest at a rate or rates not exceeding that herein provided for the original bonds;

"(o) To enter into contracts with adjacent counties, with Beach Park Boards in adjacent counties, and with Beach Park Boards in any city of the same county as the board, to accomplish any of the purposes authorized by this Act;

"(p) To charge and collect a reasonable fee for access or entrance to, or parking upon, any lands under its jurisdiction other than public beaches owned by the county, or for the use of any facility located on land under the jurisdiction of the board."

Art. 5415e–1. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 5415e–1.5. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979

The repealed article, derived from Acts 1977, 65th Leg., p. 1900, ch. 757, related to a coastal resources coordination program.

See, now, Natural Resources Code, § 33.201 et seq.

Art. 5415e–2. Coastal Waterway Act of 1975

Short Title

Sec. 1. This Act may be cited as the "Texas Coastal Waterway Act of 1975."

Policy

Sec. 2. It is the policy of the State of Texas (i) to support the marine commerce and economy of this state by providing for the shallow draft navigation of the state's coastal waters in an environmentally sound fashion, and (ii) to prevent waste of both publicly and privately owned natural resources, to prevent or minimize adverse impacts on the environment, and to maintain, preserve, and enhance wildlife and fisheries; and to accomplish such policy the State of Texas shall act as the nonfederal sponsor of the main channel of the Gulf Coast Intracoastal Waterway from the Sabine River to the Brownsville Ship Channel, and shall satisfy the responsibilities of the nonfederal sponsor as determined by federal law consistent with the policy of the State of Texas as declared in this section.

Findings

Sec. 3. The legislature finds and declares that:

(a) Marine commerce is a vital element of the state's economy and the benefits derived therefrom are realized directly or indirectly by the entire state.

(b) The coastal public lands and the coastal marshes and similar coastal areas located on both publicly and privately owned lands are similarly vital elements of the state's economy, and to the maintenance, preservation, and enhancement of the environment, wildlife, and fisheries, the benefits of which are similarly realized directly or indirectly by the entire state.

(c) The coastal public lands and related natural resources constitute a vital asset of the state to be managed for the benefit of all citizens of the State of Texas.

(d) The Gulf Intracoastal Waterway traverses coastal public lands and areas in close proximity to the coastal marshes and similar coastal areas located on both publicly and privately owned lands.

(e) The Gulf Intracoastal Waterway can be maintained, operated, and improved in such a way as to prevent waste of both publicly and privately owned natural resources, that adverse environmental impacts are avoided or minimized, and that in some cases beneficial environmental effects can be realized.

(f) It is in the best interest of all citizens to accomplish the policy of the State of Texas as stated in Section 2 of this Act for the State of Texas to meet the responsibilities as required by federal law of the nonfederal sponsor of the Gulf Intracoastal Waterway.

Definitions

Sec. 4. As used in this chapter:

(a) "Coastal public lands" means all or any portion of the state-owned submerged land, the waters overlying those lands, and all state-owned islands or portions of islands that may be affected by the ebb and flow of the tide.

(b) "Coastal marshes and similar areas" means those soft, low-lying watery or wet lands and drainage areas in the coastal areas of the state which may or may not be subject to the ebb and flow of the tide but which are of ecological significance to the environment and to the maintenance, preservation, and enhancement of wildlife and fisheries.

(c) "Commission" means the State Highway Commission.

(d) "Gulf Intracoastal Waterway" means the main channel, not including tributaries or branches, of the shallow draft navigation channel running from the Sabine River southward along the Texas coast to the Brownsville Ship Channel near Port Isabel that is generally referred to as the Gulf Intracoastal Canal.

(e) "Person" means any individual, firm, partnership, association, corporation (public or private, profit or nonprofit), trust, or political subdivision or agency of the state.

Administrative Provisions

Sec. 5. (a) This Act shall be administered by the State Highway Commission.

(b) The provisions of this Act are cumulative of all other Acts relating to the commission.

(c) Nothing in this Act shall diminish the duties, powers, and authorities of the School Land Board to manage the coastal public lands of the state.

Duties and Powers

Sec. 6. (a) The commission shall cooperate and work with the Department of the Army, all other appropriate federal and state agencies, navigation districts and port authorities, counties, and other appropriate persons to determine specifically what must be done by the State of Texas to satisfy federal local sponsorship requirements relating to the Gulf Intracoastal Waterway in a manner consistent with the policy of the State of Texas as stated in Section 2 of this Act.

(b) The commission shall fulfill, in a manner consistent with the policy of the state as stated in Section 2 of this Act, the local sponsorship requirements of the Gulf Intracoastal Waterway as agent for the state.

(c) Subject to the provisions of Subsection (g) of this section, the commission is authorized to acquire by gift, purchase, or condemnation any property or interest in property of any kind or character deemed necessary by the commission to fulfill its responsibilities under this Act as the nonfederal sponsor of the Gulf Intracoastal Waterway, including but not limited to easements and rights-of-way for dredge material disposal sites and easements and rights-of-way for channel expansion, relocation, or alteration, save and except oil, gas, sulphur, and other minerals of any kind or character which can be recovered without utilizing the surface of any such land for explo-

ration, drilling, or mining purposes. All other provisions relating to the exercise of the power of eminent domain shall be in accord with the commission's existing powers and authority relating to eminent domain. However, the commission does not have the authority to condemn any submerged public lands under the jurisdiction of the School Land Board.

(d) Proposed actions and actions of the commission pursuant to this Act which have potential for significant environmental impact or effect upon coastal public lands, coastal marshes and similar areas, wildlife, and fisheries shall be coordinated with appropriate state and federal agencies having environmental, wildlife, and fisheries responsibilities.

(e) All agencies and political subdivisions of the State of Texas shall, within their legal authority and available resources, assist the commission in carrying out the purposes of this Act. All such agencies and political subdivisions are hereby authorized without any form of advertisement to make conveyance of title or rights and easements, owned by any such body, to any property needed by the commission to meet its responsibilities under this Act as the nonfederal sponsor of the Gulf Intracoastal Waterway.

(f) The commission, in cooperation with all appropriate persons, shall continually evaluate the Gulf Intracoastal Waterway as it relates to Texas. Such evaluations shall include an assessment of the importance of the Gulf Intracoastal Waterway, including an identification of direct and indirect beneficiaries; identification of principal problems and possible solutions to such problems, including estimated costs, economic benefits, and environmental effects; evaluation of the need for significant modifications to the Gulf Intracoastal Waterway; and specific recommendations for legislative actions that the commission believes to be in the best interest of the state in carrying out the policy of the state as declared in Section 2 of this Act. The results of this evaluation shall be published in a report to be presented to each regular session of the legislature.

(g) Prior to approval or implementation by the commission of any plan or project for acquisition or acquisition of any property or interest in property for any dredge material disposal site, or for the widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway which requires the acquisition of any additional property or interest in property, to satisfy federal local sponsor requirements, the commission shall hold public hearings for the purpose of receiving evidence and testimony concerning the desirability of such proposed dredge material disposal site and of any such widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, prior to which hearing the commission shall publish notice of such plan, project, and hearing, at least once a week for three successive weeks in a newspaper of general circulation published in the county seat of each county in which any such proposed dredge material disposal site or part thereof is located and in which the channel or any portion of the channel of the Gulf Intracoastal Waterway to be widened, relocated, or altered is located, of the date, time, and place of such hearing. If after such public hearing the commission shall determine that such proposed dredge material site plan or project or such proposed plan or project for widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, as the case may be, can be accomplished without unjustifiable waste of publicly or privately owned natural resources and without permanent substantial adverse impact on the environment, wildlife, or fisheries, the commission may then, upon its approval of such plan or project, proceed to implement such plan or project and acquire, in such manner as is provided in Section 6(c) of this Act, such additional property or interest in property necessary to satisfy federal local sponsorship requirements for implementation of such plans for such dredge material site or for such widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway.

Funding

Sec. 7. The legislature is hereby authorized to appropriate from the General Revenue Fund funds in the amount necessary to accomplish the purposes of this Act.

[Acts 1975, 64th Leg., p. 405, ch. 181, §§ 1 to 7, eff. Sept. 1, 1975.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5415e–3. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979

The repealed article, derived from Acts 1977, 65th Leg., p. 1902, ch. 758, related to coastal wetlands acquisition.

See, now, Natural Resources Code, § 33.231 et seq.

Art. 5415e–4. Dredge Materials Act

Short Title

Sec. 1. This Act may be cited as the Dredge Materials Act.

Policy

Sec. 2. (a) It is the declared policy of the state to seek, to the fullest extent permissible under all applicable federal law or laws, the delegation to the state of the authority which the corps of engineers exercises under Section 404, as defined in this Act, over the discharge of dredged or fill material in the navigable waters of the State of Texas.

(b) It is the declared policy of the state that the state should not duplicate the exercise of such authority by the corps of engineers, but should instead exercise such authority in lieu of the corps of engineers, so that no permit application is subject to duplicate levels of regulation.

Definitions

Sec. 3. As used in this Act, unless the context clearly requires otherwise:

(a) "Agency" means the Texas Water Quality Board.

(b) "Agreement" means a written agreement or contract between the State of Texas and the United States, authorizing the State of Texas, through (name of an existing agency), to regulate the discharge of dredged or fill material in the navigable waters of the state under the authority granted by Section 404, as defined in this Act.

(c) "Corps of engineers" means the United States Army Corps of Engineers.

(d) "Discharge of dredged or fill material" has the same meaning as it has in Section 404 as defined in this Act.

(e) "Navigable waters" has the same meaning within the boundaries of the State of Texas as it has in Section 404 as defined in this Act.

(f) "Section 404" means Section 404, Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1344), as it may be amended, and such regulations as may be from time to time promulgated thereunder.

Limitations

Sec. 4. (a) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner different from or inconsistent with the requirements of Section 404.

(b) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state:

(1) by the corps of engineers;

(2) by persons operating under contract with the corps of engineers;

(3) when the corps of engineers certifies that such discharge is incidental to a project undertaken by the corps of engineers or persons operating under contract with the corps of engineers, and that such incidental discharge was announced and reviewed at the same time and under the same conditions as such project; or

(4) by cities which own and operate deepwater port facilities, or by navigation districts or port authorities, or by persons operating under contract with such cities, navigation districts, or port authorities, when such discharges are part of or incidental to a navigation project to be paid for with public funds or when such navigation project is to be owned by such cities, navigation districts, or ports.

(c) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner unless and until an agreement as described in this Act is validly entered into and in effect.

(d) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to exercise any authority under this Act except in accordance with an executive order of the governor.

(e) Nothing in this Act shall be construed as authorizing any state agency or political subdivision to regulate the discharge of dredged or fill material in the navigable waters of the state in any manner different from, or inconsistent with, the agreement described in this Act.

(f) Nothing in this Act shall be construed as affecting any application for a permit from the corps of engineers to discharge dredged or fill material in the navigable waters of the state if such application is received by the corps of engineers or postmarked before the effective date of the agreement described in this Act.

Agreement

Sec. 5. (a) The governor is hereby authorized to enter into an agreement on behalf of the State of Texas, with the United States, acting through its authorized officials, under the terms of which the agency will regulate the discharge of dredged or fill material in the navigable waters of the state.

(b) The governor is expressly authorized to include whatever terms and conditions in such agreement he may deem to be in the best interest of the state, including provisions regarding the termination of such agreement.

(c) The authority of the governor under the Act to enter into such an agreement shall not be delegated.

(d) The legislature expressly finds that the provisions of this section are necessary to enable the governor to carry out his responsibilities under this Act.

Not Severable

Sec. 6. The provisions of this Act are expressly declared not to be severable, and if any provision of this Act shall be found to be invalid, the entire Act shall be null and void and of no further force or effect.

[Acts 1977, 65th Leg., p. 1906, ch. 759, §§ 1 to 6, eff. Aug. 29, 1977.]

Arts. 5415f to 5415h. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, § 12A was added to art. 5415g by Acts 1975, 64th Leg., p. 2218, ch. 705, § 12.

Art. 5415i. Deepwater Port Procedures Act

Short Title

Sec. 1. This Act shall be entitled the Texas Deepwater Port Procedures Act.

Purpose

Sec. 2. The purpose of this Act is to authorize state and local governmental agencies to perform and fulfill the responsibilities of the State of Texas under the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and to establish the procedures by which such state and local agencies will determine that applications for deepwater ports off the Texas Gulf Coast are in compliance with applicable state and local laws.

Definitions

Sec. 3. In this Act:

(1) "Adjacent coastal county" means any Texas county, bordering on the Gulf of Mexico, in which are located the onshore storage facilities of a deepwater port, as defined in Subdivision (5) herein.

(2) "Applicant" means a person who has filed an application, as defined in Subdivision (3) below.

(3) "Application" means any application submitted under the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license.

(4) "Commissioner" means the commissioner of the general land office, or his designated representative.

(5) "Deepwater port" means (A) the facilities defined in Section 3(10) of the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and also includes (B) the onshore storage tank facilities and the pipelines located within the State of Texas which connect such onshore storage facilities with the offshore facilities of a deepwater port.

(6) "Governor" means the Governor of the State of Texas.

(7) "Person" means any individual, association, organization, trust, partnership, or corporation.

(8) "State" means the State of Texas.

(9) "State or local agency" means any board, commission, department, office, agency, or political subdivision of the state or of any county or city in the state, or any other public body created by or pursuant to state law.

Administration of the Act

Sec. 4. The governor is hereby designated as the officer of the state to approve or disapprove an application to the secretary of transportation to own, construct, or operate a deepwater port off the Texas Gulf Coast. The commissioner of the general land office is hereby designated the officer of the state charged with the administration, implementation, and coordination of the provisions of this Act relating to the determination by state or local agencies that such an application complies with state and local laws relating to environmental protection, land and water use, and coastal zone management.

Determination of Compliance with State and Local Law

Sec. 5. (a) Upon receipt of a copy of an application transmitted from the secretary of transportation pursuant to the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., the governor shall immediately transmit a copy of the application to the commissioner of the general land office and to the Attorney General of Texas.

(b) If the governor determines that the application transmitted from the secretary of transportation is substantially similar to a previous application already reviewed under the terms of this Act, the governor may notify the secretary of transportation whether the governor approves or disapproves the application, and there shall be no further proceedings under this Act on such application.

(c) Within 15 days after the receipt of an application from the governor, the commissioner shall publish notice of the application in any official register of the State of Texas, in the newspaper of greatest general circulation in Travis County and in each of the five most populous counties in Texas, according to the latest United States census, and in a newspaper in the adjacent coastal county and in any county adjoining the adjacent coastal county in which such notice would not have otherwise been published under this subsection.

(d) Within 30 days after the receipt of an application from the governor, the attorney general shall determine and forward to the governor and to the commissioner a list of the state or local agencies which have jurisdiction to administer laws relating to environmental protection, land and water use, and coastal zone management, and also within whose boundaries are located facilities constituting a deepwater port, as defined by Section 3(5) herein.

(e) Upon receipt of the list of state or local agencies prepared by the attorney general pursuant to Subsection (c) of this section, the commissioner shall immediately transmit a copy of the application to each such state or local agency for review and determination of whether the application complies with the laws or regulations administered by such state or local agency.

(f) The state or local agency shall report such determination to the commissioner in writing within 60 days after its receipt of a copy of the application from the commissioner.

(g) If any state or local agency reports to the commissioner that the application is not in compli-

ance, such agency shall set forth in detail the manner in which the application does not comply with any law or regulation administered by the agency and shall report to the commissioner how the application can be brought into compliance with the law or regulation involved. A copy of such report shall be forwarded by the commissioner to the applicant, and the applicant shall be entitled to respond in writing to the state or local agency which issued such report and to request that a public hearing be held by the commissioner on the provisions of the application determined by the state or local agency not to comply with state or local law.

(h) The failure of a state or local agency to forward a determination report to the commissioner within the time period established in Subsection (e) of this section shall constitute a presumption that the application complies with the law or regulations administered by that agency.

(i) One copy of the application shall be filed in the general land office and in the office of the county judge of the adjacent coastal county for public inspection and shall be available to the public for inspection or duplication during normal business hours. A person requesting a copy of the application may be charged a reasonable fee for duplicating and mailing costs. The applicant may be charged a reasonable fee to cover the costs of reproducing and mailing copies of applications to state and local agencies, unless the applicant provides the number of copies required by such agencies.

Hearings on the Application

Sec. 6. (a) As provided in Section 5(f) of this Act, an applicant shall be entitled to a public hearing on the provisions in his application which have been determined by a state or local agency not to be in compliance with the laws which they have jurisdiction to administer.

(b) Upon receipt of a request from an applicant for such a hearing, the commissioner shall publish notice of such hearing as provided in Section 5(b) of this Act. The notice shall describe the purpose of the hearing and the date, time, and place of the hearing. The date of the publication and of any personal notice of the hearing shall be not less than 10 days before the date set for the hearing.

(c) The commissioner may also hold a public hearing on the determination of compliance reports submitted to him by the state and local agencies. Notice of such hearing shall be given as provided by Subsection (b) of this section.

(d) The commissioner may consolidate any hearing held under this section with the hearing required by the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., to be held in Texas by the secretary of transportation.

(e) All hearings on the application shall be concluded not later than 120 days after the date on which the commissioner received the application from the governor; provided, however, that the commissioner shall be entitled to hold a hearing after such 120 day period if the federal hearing required to be held in Texas has not been held and the commissioner has determined and given notice that a hearing provided for in this section will be held in conjunction with the federal hearing.

(f) Notwithstanding Subsection (e) of this section, the commissioner shall be required to comply with the date provided in Section 7(a) for transmitting his report to the governor.

Report to the Governor

Sec. 7. (a) Within 150 days after the receipt of an application from the governor, the land commissioner shall transmit to the governor a report in the form of a written summary of the determination of compliance reports submitted by any state or local agency, together with the transcript and testimony from any public hearing held by the commissioner or any joint hearing held in the state with the secretary of transportation.

(b) If the commissioner's report contains a determination by a state or local agency that the application does not comply with a law relating to environmental protection, land and water use, or coastal zone management, the commissioner shall include in his report the manner in which the application does not comply and how the application can be brought into compliance.

(c) The failure of the commissioner to transmit his summary report to the governor within the time period established in Subsection (a) of this section shall constitute a presumption that the application complies with state and local law.

Action on the Application by the Governor

Sec. 8. (a) Upon receipt of the report from the commissioner, and not later than 45 days after the last public hearing held on the application by the secretary of transportation pursuant to Section 5(g) of the federal Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., the governor shall notify the secretary of transportation whether he approves or disapproves the application.

(b) If the governor concludes that the application does not comply with state laws relating to environmental protection, land and water use, and coastal zone management, he may disapprove the application. However, if he concludes that the application can be amended to comply with such laws, he may approve the application and shall notify the secretary of transportation of the manner in which the application does not comply and how the application can be brought into compliance with such laws.

(c) The governor shall transmit copies of his notification to the secretary, the applicant, the commissioner, and to the state and local agencies to whom were transmitted copies of the application by the commissioner pursuant to Section 5(d) herein.

MISCELLANEOUS PROVISIONS

Secs. 9 to 12. [Amends art. 6020a, §§ 1, 3; adds § 4 of art. 6020b and § 12A of art. 5415g].

Effect on Other Laws

Sec. 13. Nothing herein shall be construed in any way to limit, impair, diminish, change, or curtail the power, authority, and activities of any state or local governmental agency, but all power and authority vested in and exercised by such agencies are hereby specifically reserved as to them; and none of the statutory law pertaining to those existing authorities or districts is amended, changed, or repealed by the provisions hereof.

[Acts 1975, 64th Leg., p. 2213, ch. 705, §§ 1 to 13, eff. June 21, 1975. Amended by Acts 1977, 65th Leg., 1st C.S., p. 73, ch. 5, § 2, eff. July 26, 1977.]

Art. 5415j. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979

The repealed article, derived from Acts 1977, 65th Leg., p. 565, ch. 200, related to cavern protection.

See, now, Natural Resources Code, § 201.001 et seq.

Arts. 5417 to 5421a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5421b. Withdrawal from Market of Lands Adjacent to Caddo Lake

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421b-1. Leasing for Minerals of Lands Under and Adjacent to Caddo Lake and Tributaries

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421c. Regulating Sale and Lease of School Lands, Public Lands and River Bed; Board of Mineral Development Created

Repeal

This article was repealed by art. 1, § 2(a)(1) of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting the Natural Resources Code except for sec. 8-A, subsecs. 6b and 6c [see Compact Edition, Volume 4], which were expressly saved from repeal by § 2(b) of the 1977 Act.

Arts. 5421c-1 to 5421c-3. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5421c-1 was amended by Acts 1975, 64th Leg., p. 969, ch. 368, § 1.

Without reference to repeal of art. 5421c-3 by Acts 1977, 65th Leg., p. 2689, art. 1, § 2(a)(1), Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.099, added subd. 3a thereto to read:

"The School Land Board is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985."

Art. 5421c-4. Easements or Surface Leases of Gulf Lands to United States for National Defense; Authority of School Land Board

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421c-5. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 5421c-6. Patents Validated

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5421c-7, 5421c-8. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 5421c-9. Sale of School Land; Extension of Time for Payment of Notes or Obligations

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5421c-10, 5421c-11. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Art. 5421c-12. Publication of Notice of Intended Sale or Trade of Land by Political Subdivision

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421c-13. Trades of Interests in Public Free School Fund Lands

Sec. 1. (a) The School Land Board in conjunction with the General Land Office is authorized to trade fee and lesser interests in Public Free School Fund Lands for fee and lesser interests in lands not dedicated to the Public Free School Fund upon a decision by the School Land Board and the Commissioner of the General Land Office that such trade or trades are in the best public interest of the People of Texas. Such trade or trades may be made either for the purpose of aggregating sufficient acreage of contiguous lands to create a manageable unit; for acquiring lands having unique biological, geological, cultural, or recreational value; or to create a buffer zone for the enhancement of already existing public land, facilities, or amenities. Such trades shall be on an appraised value basis (such appraisal to be made by appraisers of the General Land Office and concurred in by the School Land Board, and such appraisal shall be conclusive proof of the value of the land). The trades shall be for land of at least equal value. Such trades shall be by a deed to be signed jointly by the Commissioner of the General Land Office and the Governor. Failure of the Governor to sign such a deed constitutes his veto of the proposed trade, and the proposed trade shall not be made.

(b) All lands acquired by trade under the authority of this Act shall be dedicated to the Public Free School Fund.

Sec. 1A. If the State of Texas retains the subsurface mineral rights to all oil, gas, and other minerals in public free school fund land traded under Section 1 of this Act, an unrestricted right of ingress to and egress from the land by the state and its lessees shall be retained for the purpose of exploration, development, and production of the oil, gas, and other minerals to which rights are retained by the state. The state is entitled to lease the subsurface mineral rights retained under this section in the same manner and under the same conditions as subsurface mineral rights in permanent school fund land in which the state owns the surface title and the subsurface mineral rights. A lessee of the subsurface mineral rights retained under this section is liable to the owner of the land for actual damages to the land that may occur as a result of exploration for and development and production of the oil, gas, and other minerals to which rights are retained under this section. Notwithstanding anything to the contrary in this article, the School Land Board, in order to consummate a trade of equal value, is given the discretionary right to convey the surface estate and to reserve all the oil, gas, and other minerals with the surface owner acting as agent for the state under what is commonly known as the Relinquishment Act,[1] thereby receiving one-half the bonus, rental, and royalty as agent for the state in leasing the land and for surface damages in the leasing of oil and gas. The surface owner shall also receive 40 percent of the bonus, rental, and royalty for leasing and as compensation for surface damages for all leases negotiated by such agent covering sulphur, coal, lignite, uranium, and potash as set out under Chapter 16, Acts of the 62nd Legislature, Regular Session, 1967, as amended (Article 5421c–10, Vernon's Texas Civil Statutes).[2]

Sec. 2. In the event any such trade or trades be made, the School Land Board shall report each trade to the succeeding legislature, setting out such facts as warranted the trade or trades.

Sec. 3. The authority granted by this Act to trade Public Free School Fund Lands shall expire on December 31, 1982, and no trades shall be made after that date.

[Amended by Acts 1975, 64th Leg., p. 1296, ch. 487, §§ 1 to 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 823, ch. 307, §§ 1, 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 73, ch. 47, § 1, eff. April 11, 1979.]

[1] See Natural Resources Code, § 52.171 et seq.
[2] Repealed; see, now, Natural Resources Code, § 53.061 et seq.

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421d. Patents to Lands Formerly Claimed as in New Mexico

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421e. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 5421f. Extension of Payment of Unpaid Balances of Principal on Purchases of School Lands

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421f–1. Extension of Time for Payment of Installments of Principal of School Land Purchase Contracts

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421f–2. Reinstatement of Claims to Lands Forfeited Under Article 5326

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421i. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 5421j. Grant of Filled-in Land to City of Corpus Christi

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421j–1. Lease of Filled-in Land by City of Corpus Christi

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421j–2. Lease by City of Corpus Christi of Submerged Lands Previously Relinquished to City by State

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421k. Submerged Lands Across Nueces Bay and Pass Conveyed to State Highway Commission

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421k–1. Conveyance of Lands to Widen State Highway No. 24 in Denton County

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421k–2. Submerged Right-of-Way Across Cayo Del Oso in Nueces County; Conveyance to State Highway Commission

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421k–3. Sale of Land in Cayo Del Oso to City of Corpus Christi; Validation

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421l. Control of Certain Property in Austin Transferred to University Regents

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 5421m, 5421n. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 5421m was amended by Acts 1975, 64th Leg., p. 158, ch. 67, § 1.

Without reference to repeal of art. 5421m, Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.098, added § 2(D) thereto, which reads:

"The Veterans' Land Board is subject to the Texas Sunset Act [art. 5429k], but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1985 and of every 12th year after 1985 are reviewed."

Art. 5421o. Oil, Gas and Mineral Leases by Cities, Towns and Political Subdivisions; Failure to Publish Notice of Intent; Effect

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421p. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Prior to repeal, this article was amended by Acts 1975, 64th Leg., p. 1234, ch. 459, §§ 1, 2.

Art. 5421q. Taking Park, Recreational, etc., Land for Other Public Use; Notice; Hearing

[See Compact Edition, Volume 4 for text of 1]

Sec. 1a. The department, agency, board, or political subdivision having control of the public land is not required to comply with Section 1 of this Article if:

(1) The land is originally obtained and designated for another public use and is temporarily used as a park, recreation area, or wildlife refuge pending its utilization for the originally designated purpose;

(2) The program or project that requires the use or taking of the land being used temporarily as a park, recreation area, or wildlife refuge is the same program or project for which the land was originally obtained and designated; and

(3) The land was not designated by the department, agency, political subdivision, county, or municipality for use as a park, recreation area, or wildlife refuge prior to the effective date of Section 1a of this Act.

[See Compact Edition, Volume 4 for text of 2 and 3]

[Amended by Acts 1975, 64th Leg., p. 1295, ch. 486, § 1, eff. Sept. 1, 1975.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421r. Lists of Public Lands for Sale or Lease; Reproducing, Preparing, Selling or Furnishing

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 5421s. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(1), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

The repealed article, the Geothermal Resources Act of 1975, was enacted by Acts 1975, 64th Leg., p. 592, ch. 243.

Art. 5421z. Indian Commission

SUBCHAPTER A. STRUCTURE OF COMMISSION

Texas Indian Commission

Sec. 1. The Texas Indian Commission, formerly the Commission for Indian Affairs, is an agency of the state.

Application of Sunset Act

Sec. 1a. The Texas Indian Commission is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1989.

[1] Article 5429k.

Members of Commission

Sec. 2. The commission consists of three members, one of whom shall be an Indian, appointed by the governor with the advice and consent of the senate.

Terms of Office

Sec. 3. Each member holds office for a term of six years and until his successor is appointed and qualified. One member's term expires on January 31 of each odd-numbered year.

Chairman

Sec. 4. The commission shall elect a chairman from among its members, who shall serve for a period of two years or until his successor is elected. The chairman shall preside over all meetings, appoint committees, make periodic reports to the governor and the legislature, represent the Texas Indian Commission at ceremonies and public functions, and make policy and budget recommendations to the legislature and fellow commission members.

Meetings of Commission

Sec. 5. The commission shall hold at least three public meetings per year at times and places fixed by rule of the commission. One public meeting shall be held at the Alabama-Coushatta Indian Reservation one at the Tigua Indian Reservation, and one in the Dallas area each year. The chairman shall notify each member at least two weeks prior to each regular meeting date and three days before each special meeting date. Two members of the commission constitute a quorum for the transaction of business.

Compensation of Members

Sec. 6. Each member is entitled to receive per diem compensation for each day he actually attends a meeting or travels or attends to commission business, and is entitled to reimbursement for actual and necessary expenses incurred in attending meetings, as provided in the General Appropriations Act.

SUBCHAPTER B. ALABAMA—COUSHATTA INDIAN RESERVATION

Commission Responsibilities

Sec. 7. A responsibility of the commission is the development of the human and economic resources of the Alabama-Coushatta Indian Reservation and the Tigua Indian Reservation, and to assist the Texas Indian people in making their reservations self-sufficient. Specifically, the commission shall assist the Texas Indian tribes in improving their health, educational, agricultural, business, and industrial capacities.

Executive Director

Sec. 8. The commission shall appoint an executive director. The executive director serves at the will of the commission. He is responsible for the management, supervision, and implementation of the policies of the commission in carrying out the responsibilities of the commission as set forth in Section 7 of this Act. The executive director shall employ a superintendent for each reservation. The superintendents shall answer to the executive director and carry out the programs and policies of the commission. The executive director, at the direction of the commission, shall seek all possible federal funds, grants, gifts, and other types of assistance available to help expedite the commission's expressed policy for development and responsibility as outlined in Section 7 of this Act.

Contracts with Local Agencies

Sec. 9. The commission may cooperate, negotiate, and contract with local agencies and with private organizations and foundations concerned with the development of the human and economic resources of the reservations in order to implement the planning and development of the reservations. Counties and local units of government are authorized to cooperate with the commission and may furnish the use of any equipment necessary in the development of the reservations.

Gifts; Grants

Sec. 10. The commission may accept gifts, grants, and donations of money, personal property, and real property for use in development of the reservations. It may acquire by gift or purchase any additional land necessary for improvement of the reservations, their income, and their economic self-sufficiency.

Federal Grants

Sec. 11. The commission may negotiate with any agency of the United States in order to obtain grants to assist in the development of the reservations.

Assistance to Kickapoo Indians and Intertribal Indian Organizations

Sec. 11A. (a) The Traditional Kickapoo Indians of Texas are recognized as a Texas Indian tribe.

(b) The commission shall assist the Traditional Kickapoo Indians and the intertribal Indian organizations chartered in this state in applying for and managing, jointly with the commission, federal programs and funds secured from the federal government or private sources for the purpose of improving health, education, and housing standards of these Indians or increasing their economic capabilities.

(c) The commission may seek the cooperation of local and state agencies in administering programs or funds covered by Subsection (b) of this section.

Tribal Councils May Issue Bonds

Sec. 12. Subject to the written approval of the commission, the Tribal Councils may issue revenue bonds or any other evidence of indebtedness in order to finance the construction of improvements on the reservations and for the purchase of additional land necessary therefor or for improvement of the income and economic conditions of the reservations. The bonds or other evidences of indebtedness may be secured by the income from one or more revenue-producing properties, interests, or facilities of the land which is held in trust by the State of Texas for the benefit of the Indians.

Maturity; Redemption

Sec. 13. All bonds issued by either Tribal Council shall mature serially or otherwise not more than 40 years from the date of issuance, and they may be made redeemable prior to maturity, at the option of the Tribal Council, with the written approval of the commission, at times and prices and under terms and conditions prescribed in the authorizing proceedings.

Form, Conditions, Details of Bonds

Sec. 14. Subject to the restrictions contained in this Act, either Tribal Council and the commission have complete discretion in fixing the form, conditions, and details of the bonds; and the bonds may be refunded or otherwise refinanced whenever the Tribal Council, with the approval of the commission, deems such action to be necessary or appropriate.

Sale; Terms; Price; Interest

Sec. 15. The bonds may be sold, either at public or private sale, at a price and under terms determined by the Tribal Council and the commission to be the most advantageous price and terms reasonably obtainable. Interest on loans and bonds shall not exceed interest limits approved by the appropriate Tribal Council and the commission; provided, however, that interest on loans and bonds shall not exceed 10 percent per annum.

Expenses; Fees

Sec. 16. Each Tribal Council, with the approval of the commission, may employ attorneys, fiscal agents, and financial advisors in connection with the issuance and sale of bonds; and proceeds from the sale of the bonds may be used to pay their fees and all other expenses of the issuance and sale of the bonds.

Bonds as Investments and Security

Sec. 17. All bonds issued under this Act are legal, authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of all political subdivisions and public agencies of the state, and when accompanied by all unmatured coupons appurtenant to the bonds, are lawful and sufficient security for deposits in the amount of the par value of the bonds.

Pledge of Revenues and Income

Sec. 18. Each Tribal Council, with the approval of the commission, may pledge the rents, royalties, revenue, and income from revenue-producing properties and facilities of the state trust lands to the payment of the interest on and the principal of the bonds, and may enter into agreements regarding the imposition of sufficient charges and other revenues and the collection, pledge, and disposition of them. In making such a pledge, the Tribal Council may specifically reserve the right to issue, with the approval of the commission, additional bonds which will be on a parity with, or subordinate to, the bonds then being issued.

Disposition of Oil and Gas Revenue

Sec. 19. All revenue realized from leasing of Indian reservation land shall be paid to the Commissioner of the General Land Office, and he shall immediately place such money in a depository or depositories designated by the appropriate Tribal Council and commission. These funds shall be placed in a special account known as either the Alabama-Coushatta Mineral Fund or the Tigua Mineral Fund and shall be expended for such purposes as the appropriate Tribal Council shall recommend and the commission shall approve.

Debt Against State

Sec. 20. No obligation created by a contract, bond, note, or other evidence of indebtedness issued by either Tribal Council under this Act shall be construed as creating a debt against the state; and every such contract, bond, note, or other evidence of indebtedness shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

Leases to Tribal Members for Residential Purposes

Sec. 21. The Tribal Council, with the approval of the commission, may execute lease agreements under which any member of the tribe, as lessee, may occupy for residential purchase, for a term of not more than 50 years with the option to renew for a term of not more than 50 years, any designated lot or tract of land which may be included in the 1,280-acre tract conveyed to the Alabama Indians by authority of Chapter XLIV, Acts of the 5th Legislature, 1854.

[Amended by Acts 1975, 64th Leg., p. 435, ch. 185, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1090, ch. 399, §§ 1, 2, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.160, eff. Aug. 29, 1977.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Section 2 of the 1975 Act repealed art. 5421z–1; § 3 thereof provided: "Those persons holding office as members of the Commission for Indian Affairs on the effective date of this Act continue to hold office as members of the Texas Indian Commission for the terms for which they were originally appointed."

The 1977 Act, amending §§ 2 and 5 of this article, and adding § 11A, provides in § 3 as follows:

"Those persons holding office as members of the Texas Indian Commission on the effective date of this Act continue to hold office as members of the Texas Indian Commission for the terms for which they were originally appointed."

Art. 5421z–1. Repealed by Acts 1975, 64th Leg., p. 435, ch. 185, § 2, eff. Sept. 1, 1975

TITLE 87
LEGISLATURE

Article
5429c–4. Limit on Rate of Growth of Appropriations.
5429g. Cooperation between Legislative Houses and Agencies.
5429h. State of the Judiciary Message by Supreme Court Chief Justice.
5429i. Economic Impact Statement Act.
5429j. Biennial Reports by Governor on Organization and Efficiency.
5429k. Sunset Act.
5429*l*. Faculty Information and Research Service for Texas; Project FIRST.

Art. 5428a. Candidate for Speaker: Campaign Financing

Saved from Repeal

Acts 1975, 64th Leg., p. 2272, ch. 711, enacting the Political Funds Reporting and Disclosure Act of 1975, provided in § 15: "Nothing in this Act repeals or otherwise affects Article 5428a, Vernon's Texas Civil Statutes, as added by Chapter 48, Acts of the 63rd Legislature, Regular Session, 1973."

Art. 5429b. Texas Legislative Council

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The State Legislative Council is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1989.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 9]

[Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.163, eff. Aug. 29, 1977.]

Art. 5429c. Legislative Budget Board

[See Compact Edition, Volume 4 for text of 1]

Application of Sunset Act

Sec. 1a. The Legislative Budget Board is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1989.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 2 to 6]

[Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.162, eff. Aug. 29, 1977.]

Art. 5429c–4. Limit on Rate of Growth of Appropriations

Limit

Sec. 1. In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by the constitution exceed the estimated rate of growth of the state's economy.

Board to Establish

Sec. 2. (a) Prior to submission of the budget adopted by the Legislative Budget Board, the board shall establish the following:

(1) the estimated rate of growth of the state's economy from the then current biennium to the next biennium;

(2) the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and

(3) the amount of state tax revenues not dedicated by the constitution which could be appropriated for the succeeding biennium within the limit established by the estimated rate of growth of the state's economy.

(b) Estimated rate of growth of the state's economy shall be the quotient of the estimated Texas total personal income for the next following fiscal biennium divided by the estimated Texas total personal income for the current biennium. The estimate shall be made by projecting through the biennium estimates of Texas total personal income as reported by the United States Department of Commerce, or its successor in this function, using standard statistical methods. However, if a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee, the board may utilize this definition in its calculation of the limit on appropriations.

Publication; Hearing

Sec. 3. Prior to final board approval of the stipulated items of information in Section 2 of this article, the board shall publish in the Texas Register the proposed items of information together with a description of the methodology and sources utilized in the calculations. In addition, the board shall hold a public hearing no later than December 1 of each even-numbered year at which testimony shall be solicited with regard to the proposed items of information and the methodology utilized in the calculations.

Adoption by Committee

Sec. 4. (a) After the board approves the items of information required by Section 2 of this article, it

shall submit them for final adoption to a committee composed of the governor, the lieutenant governor, the speaker of the house of representatives, and the comptroller of public accounts.

(b) The committee shall meet within 10 days after the date the board submits the items and finally adopt the items, either as submitted by the board or as amended by the committee.

(c) If the committee fails to act within the allotted 10-day period, the items of information as submitted by the board are treated as if the committee had adopted them.

Limit on Budget Recommendations

Sec. 5. Unless authorized by a majority vote of house and senate members of the board separately, the budget recommendations of the board with respect to proposed appropriations of state tax revenues not dedicated by the constitution may not exceed the limit adopted by the committee under Section 4 of this article.

Transmission to Legislature, Governor

Sec. 6. The proposed limit of appropriations from state tax revenues not dedicated by the constitution shall be included in the recommendations of the Legislative Budget Board and shall be transmitted to all members of the legislature and the governor.

Effect of Proposed Limit; Enforcement

Sec. 7. The proposed limit is binding on the legislature with respect to all appropriations of tax revenue not dedicated by the constitution made for the ensuing biennium unless the legislature adopts a resolution raising the limit under the provisions of Article VIII, Section 22(b), of the Texas Constitution. Enforcement of this provision shall be provided for in the rules of the house of representatives and the senate.

[Added by Acts 1979, 66th Leg., p. 695, ch. 302, art. 9, § 1, eff. May 31, 1979.]

Art. 5429f. Legislative Reorganization Act of 1961

[See Compact Edition, Volume 5 for text of 1 to 12]

Refusal to Testify

Sec. 13. No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of the Legislature, or by any Committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous. Any person called upon to testify or to give testimony or to produce papers upon any matter under inquiry before either House or in the committee of either House of the Legislature or Joint Committee of both Houses, who refuses to testify, give testimony or produce papers upon any matter under inquiry upon the ground that his testimony or the production of papers would incriminate him, or tend to incriminate him, may nevertheless be required to testify and to produce papers but when so required, over his objections for the reasons above set forth, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produces evidence, documentary, or otherwise. Any person testifying before the Legislature or any committee thereof shall have the right to counsel.

[See Compact Edition, Volume 4 for text of 14 to 19]

Travel Expenses of Legislative Members and Employees

Sec. 20. Members and employees of each House of the Legislature, while in travel status properly authorized by that House, are entitled to receive, as provided by resolution, either actual and necessary expenses or a per diem not to exceed that provided by law for state officials or state employees, and shall also be reimbursed for mileage or other transportation expenses at the same rate as provided by law for state officials or state employees. While in authorized travel status outside the state, members and employees shall be reimbursed for actual and necessary expenses if in excess of the per diem.

[See Compact Edition, Volume 4 for text of 21]

[Amended by Acts 1975, 64th Leg., p. 1975, ch. 656, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1104, ch. 405, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 998, ch. 437, § 1, eff. Aug. 27, 1979.]

Art. 5429g. Cooperation between Legislative Houses and Agencies

Sec. 1. In this Act, "legislative agency" means:

(1) the Senate;

(2) the House of Representatives;

(3) a committee, division, department, or office of the Senate or the House;

(4) the Texas Legislative Council;

(5) the Legislative Budget Board;

(6) the Legislative Reference Library;

(7) the State Auditor's Office; or

(8) the Legislative Information System Committee.

Sec. 2. A legislative agency may provide administrative, professional, clerical, and other services to another legislative agency with or without reimbursement. Reimbursement, if any, shall be made pursuant to a written contract executed by the officer or officers who are authorized to execute contracts for each agency.

[Acts 1977, 65th Leg., p. 3, ch. 3, §§ 1, 2, eff. Feb. 23, 1977.]

Section 3 of the 1977 Act provided:

"From funds appropriated to the House of Representatives for the fiscal year ending August 31, 1977, there is hereby transferred and appropriated to the Texas Legislative Council the sum of $125,000, and from funds appropriated by Section 10(e), Chapter 334, Acts of the 64th Legislature, Regular Session, 1975, there is hereby transferred and appropriated to the Texas Legislative Council the sum of $250,000, to provide for document processing, printing, distribution, computer services, and other services for the legislature."

Art. 5429h. State of the Judiciary Message by Supreme Court Chief Justice

At a convenient time at the commencement of each regular session of the legislature, the chief justice of the supreme court of the state shall deliver a "state of the judiciary" message evaluating the accessibility of the courts to the citizens of the state and the future directions and needs of the courts of the state. It is the intent of the legislature that such "state of the judiciary" message promote better understanding between the legislative and judicial branches of government and thereby promote the more efficient administration of justice in Texas.
[Acts 1977, 65th Leg., p. 172, ch. 83, § 1, eff. Aug. 29, 1977.]

Art. 5429i. Economic Impact Statement Act

Short Title

Sec. 1. This Act may be cited as the Economic Impact Statement Act.

Definition

Sec. 2. In this Act, "state agency" means:

(1) any department, commission, board, office, or other agency that:

(A) is in the executive branch of state government;

(B) has authority that is not limited to a geographical portion of the state; and

(C) was created by the constitution or a statute of this state; or

(2) an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college or community college.

State Policy

Sec. 3. The Legislature of the State of Texas, recognizing the impact of the laws, rules, and regulations of this state on the economy, employment, and enterprise of its people, hereby declares it to be the continuing policy of this state to maintain and create conditions which will sustain and promote the economy, employment, and economic opportunities of the people of Texas.

Economic Impact Statement

Sec. 4. (a) At the request of the lieutenant governor or the speaker of the house of representatives, a state agency shall prepare an economic impact statement for any pending bill or joint resolution that directly affects that agency. Preparation of the economic impact statement shall be coordinated through the director of the Legislative Budget Board.

(b) The economic impact statement shall include:

(1) a brief description of the nature and effect of the proposal; and

(2) the manner and extent to which the proposal, if implemented, will directly or indirectly during each of the two years following its effective date:

(A) affect employment in the state, including the number of people affected, the geographic area or areas affected, and the existing level of employment and unemployment in those areas;

(B) affect the construction, modification, alteration, or utilization of any structure, equipment, facility, process, or other asset in the state, the estimated dollar measure of the action, and the geographic area or areas affected;

(C) result in changes in costs of goods and services in the state;

(D) result in changes in revenue and expenditures of state and local governments;

(E) have economic impacts within the state other than those specifically described by this subsection.

(c) An economic impact statement that omits any information required by this Act shall specifically note its omission, state the reason for its omission, and estimate the additional time and effort required to obtain the information.
[Acts 1977, 65th Leg., p. 653, ch. 243, eff. May 25, 1977.]

Art. 5429j. Biennial Reports by Governor on Organization and Efficiency of State Agencies

Definitions

Sec. 1. In this Act:

(1) "State agency" means a department, commission, board, office, or other agency, except a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, that:

(A) is in the executive branch of the state government;

(B) has authority that is not limited to a geographical portion of the state; and

(C) was created by the constitution or a statute of this state.

(2) "Functional area" means one of the following areas of concern to the state government: natural resources, health and human resources, education, economic development and transportation, agriculture, public protection, consumer protection, manpower, and other areas in which the governor creates an interagency planning council.

Governor's Report

Sec. 2. (a) Before the end of each even-numbered year, the governor shall prepare and submit to the legislature a report on the organization and efficiency of state agencies.

(b) In preparing the report, the governor shall use the staff of the Governor's Budget and Planning Office.

(c) In the report, the governor shall group state agencies into functional areas and shall include the following matters about the state agencies in each functional area;

(1) information regarding the efficiency with which the state agencies operate;

(2) recommendations regarding the reorganization of the state agencies and the consolidation, transfer, or abolition of their functions; and

(3) any other material relating to the organization or efficiency of state agencies that the governor considers necessary to include.

(d) The Legislative Budget Board shall coordinate the collection of information in this report.

Recommendations of Interagency Planning Councils

Sec. 3. (a) In preparing the report, the governor shall request and consider information from each interagency planning council regarding the efficiency of state agencies within the functional area represented by that interagency planning council and recommendations regarding the need for reorganization of state agencies within the functional area.

(b) Before submitting the report to the legislature, the governor shall present to each interagency planning council for review and comment the part of the proposed report dealing with the state agencies in the functional area represented by that interagency planning council, and the comments of each interagency planning council shall accompany the report when it is submitted to the legislature.

Preparation of Legislation

Sec. 4. The staff of the Texas Legislative Council shall draft any legislation required to put the governor's recommendations into effect.

[Acts 1977, 65th Leg., p. 939, ch. 350, eff. Aug. 29, 1977.]

Art. 5429k. Sunset Act

Short Title

Sec. 1.01. This Act may be cited as the Texas Sunset Act.

Definitions

Sec. 1.02. In this Act:

(1) "State agency" means:

(A) an agency that is expressly made subject to this Act; or

(B) a department, commission, board, or other agency (except a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended) that:

(i) is created by statute after January 1, 1977;

(ii) is part of any branch of state government; and

(iii) has authority that is not limited to a geographical portion of the state.

(2) "Advisory committee" means a committee, council, commission, or other entity created by or pursuant to state law whose primary function is to advise a state agency.

(3) "Commission" means the Sunset Advisory Commission.

Sunset Advisory Commission

Sec. 1.03. (a) The Sunset Advisory Commission is created.

(b) The commission is composed of four members of the senate and one public member appointed by the lieutenant governor and four members of the house and one public member appointed by the speaker of the house. Each appointing authority may designate himself as one of the legislative appointees. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is regulated by a state agency that is to be reviewed by the commission during the term for which the person would serve; or

(2) is employed by, participates in the management of, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by a state agency that is to be reviewed by the commission during the term for which the person would serve.

(c) It is a ground for removal of a public member from the commission if the member does not have at the time of appointment or maintain during the service on the commission the qualifications required by Subsection (b) of this section for appointment to the commission. The validity of an action of the commission is not affected by the fact that it was taken when a ground for removal of a public member from the commission existed.

(d) Legislative members appointed by the lieutenant governor and the speaker of the house serve four-year terms, with terms staggered so that the terms of one-half of the legislative members appointed by the lieutenant governor and of one-half of the legislative members appointed by the speaker expire every two years. If the lieutenant governor or the speaker serves on the commission, he continues to serve until resignation from the commission or until he ceases to hold the office. Public members appointed by the lieutenant governor or speaker serve two-year terms.

(e) Once a person has served six years on the commission, he is not eligible for appointment to another term or part of a term. A member who has served more than half of a full term may not be appointed to an immediately succeeding term. These restrictions do not apply to the lieutenant governor or the speaker of the house.

(f) Each appointing authority shall make his appointments to the commission before July 1 of each odd-numbered year.

(g) A legislative member of the commission vacates his position on the commission when he ceases to be a member of the house from which he was appointed.

(h) A vacancy on the commission shall be filled for the unexpired part of the term in the same manner as the original appointment.

(i) The commission shall have, as presiding officers, a chairman and a vice-chairman. The chairmanship and vice-chairmanship must alternate every two years between the two membership groups appointed by the lieutenant governor and the speaker of the house. The chairman and vice-chairman may not be from the same membership group. The lieutenant governor shall designate a presiding officer from his appointed membership group and the speaker of the house shall designate the other presiding officer from his appointed membership group.

(j) A quorum shall consist of at least six members of the commission. No final action or recommendation may be made unless approved by a record vote of a majority of the full membership of the commission.

(k) Each member of the commission is entitled to reimbursement for the expenses he actually and necessarily incurs in performing the duties of the commission. Each legislative member is entitled to reimbursement from the appropriate fund of the member's respective house. Each public member is entitled to reimbursement from funds appropriated to the commission.

Staff

Sec. 1.04. (a) The commission shall employ an executive director to act as the executive head of the commission.

(b) The executive director shall employ persons necessary to carry out the provisions of this Act through funds made available by the legislature.

(c) The chairman and vice-chairman of the commission each may employ staff to work for them on matters related to the activities of the commission.

Report on Advisory Committees

Sec. 1.05. Before October 30 of each calendar year, each state agency shall file an annual report with the Secretary of State to register all of its advisory committees and report the following information regarding the agency's advisory committees:

(1) the official names of the advisory committees;

(2) the statutory authority, if any, for the advisory committees;

(3) the advisory committees' objectives and functions;

(4) the period of time necessary for the advisory committees to carry out their objectives;

(5) a reference to the reports that the advisory committees have presented to the agency;

(6) the names and occupations of the current members of the advisory committees; and

(7) other available information that will assist the staff and the commission to determine the need for continuing the advisory committees.

Agency Report to Commission

Sec. 1.06. Before October 30 of the odd-numbered year before the year a state agency is abolished according to this Act, the agency shall report to the commission:

(1) information regarding the application to the agency of the criteria in Section 1.10 of this Act;

(2) information specified in Section 1.05 of this Act regarding each of the agency's advisory committees; and

(3) any other information that the agency considers appropriate or that is requested by the commission.

Commission Duties

Sec. 1.07. Before September 1 of the even-numbered year before the year a state agency and its advisory committees are abolished according to this Act, the commission shall:

(1) review and take action necessary to verify the reports submitted by the agency under Section 1.06 of this Act;

(2) consult the Legislative Budget Board, the Governor's Budget and Planning Office, the state auditor, and the comptroller of public accounts, or their successors, on the application to the agency of the criteria provided in Section 1.10 of this Act; and

(3) conduct a performance evaluation of the agency based on the criteria provided in Section 1.10 of this Act and prepare a written report, which is a public record; and

(4) review the implementation of commission recommendations contained in the reports presented to the legislature during the preceding legislative session.

Public Hearings

Sec. 1.08. Between September 1 and December 1 of the calendar year before the year a state agency and its advisory committees are abolished according to this Act, the commission shall conduct public hearings on but not limited to the application to the agency of the criteria provided in Section 1.10 of this Act, except that the commission may hold the public hearings before September 1 if the evaluation required by Section 1.07(3) of this Act has been completed and made available to the public.

Commission Report

Sec. 1.09. At each regular session, the commission shall present to the legislature and the governor a report on agencies and advisory committees scheduled to be abolished. In the report the commission shall include its specific findings with regard to each of the criteria set forth in Section 1.10 of this Act, its recommendations based on the matters set forth

in Section 1.11 of this Act, and other information considered necessary by the commission for a complete evaluation of the agency.

Criteria for Review

Sec. 1.10. The staff and the commission shall consider the following criteria in determining whether a public need exists for the continuation of a state agency or its advisory committees or for the performance of the functions of the agency or its advisory committees:

(1) the efficiency with which the agency or advisory committee operates;

(2) an identification of the objectives intended for the agency or advisory committee and the problem or need which the agency or advisory committee was intended to address, the extent to which the objectives have been achieved, and any activities of the agency in addition to those granted by statute and the authority for these activities;

(3) an assessment of less restrictive or other alternative methods of performing any regulation that the agency performs which could adequately protect the public;

(4) the extent to which the advisory committee is needed and is used;

(5) the extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies;

(6) whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution that the agency regulates;

(7) the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency;

(8) the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates, and the extent to which the public participation has resulted in rules compatible with the objectives of the agency;

(9) the extent to which the agency has complied with applicable requirements of an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals;

(10) the extent to which changes are necessary in the enabling statutes of the agency so that the agency can adequately comply with the criteria listed in this section;

(11) the extent to which the agency issues and enforces rules relating to potential conflict of interests of its employees;

(12) the extent to which the agency complies with the "Open Records Act," Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes), and with the "Open Meetings Act," Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes); and

(13) the impact in terms of federal intervention or loss of federal funds if the agency is abolished.

Recommendations

Sec. 1.11. In its report on a state agency, the commission shall:

(1) make recommendations on the abolition, continuation, or reorganization of each affected state agency and its advisory committees and on the need for the performance of the functions of the agency and its advisory committees;

(2) make recommendations on the consolidation, transfer, or reorganization of programs within state agencies not under review when such programs duplicate functions performed in agencies under review;

(3) recommend appropriation levels for each state agency and advisory committee for which abolition or reorganization is recommended under Subdivisions (1) and (2) of this section; and

(4) include drafts of legislation necessary to carry out the commission's recommendations under Subdivisions (1) and (2) of this section.

Rules

Sec. 1.12. The commission shall adopt rules necessary to carry out this Act.

Abolition of Advisory Committees

Sec. 1.13. Except as otherwise expressly provided by law, every advisory committee whose primary function is to advise a particular state agency is abolished on the date set for abolition of the agency unless the advisory committee is expressly continued by law.

Agencies Created in Future

Sec. 1.14. Every state agency created by law enacted after January 1, 1977, is subject to this Act and to this section except as otherwise expressly provided by the law creating the agency. A state agency created by law enacted in a fiscal biennium is abolished at the end of the sixth succeeding fiscal biennium unless continued by law.

Continuation by Law

Sec. 1.15. (a) During the regular session immediately preceding the abolition of a state agency or an advisory committee that is subject to this Act, the legislature by law may continue the agency or advisory committee for a period not to exceed 12 years.

(b) Nothing in this Act shall be construed to prohibit the legislature from terminating a state agency or advisory committee subject to this Act at a date earlier than that provided in this Act. Nothing in

this Act shall be construed to prohibit the legislature from considering any other legislation relative to a state agency or advisory committee subject to this Act.

Legislative Consideration

Sec. 1.16. (a) No more than one state agency and its functions and advisory committees may be considered for continuation, transfer, or modification in a bill, except that when consolidation of agencies or advisory committees or their functions is proposed, only the agencies or advisory committees involved in the consolidation may be considered in a legislative bill.

(b) In a bill to continue a state agency, to transfer its functions, or to consolidate it with another agency, the affected agency or agencies shall be mentioned in the title of the bill.

After Termination

Sec. 1.17. (a) On abolishment in the odd-numbered year, each state agency may continue in existence until September 1 of the next succeeding year for the purpose of concluding its business. Unless otherwise provided by law abolishment does not reduce or otherwise limit the powers or authority of each respective state agency during such concluding year. Upon the expiration of the one-year period after abolishment each respective state agency is terminated and shall cease all activities.

(b) Any unobligated and unexpended appropriations of a state agency or advisory committee lapse on September 1 of the even-numbered year after abolishment of the agency or advisory committee.

(c) All money in a dedicated fund of an abolished state agency or advisory committee on September 1 of the even-numbered year after abolishment of the agency or advisory committee is transferred to the General Revenue Fund, except as provided in subsection (f) of this section and as otherwise provided by law. The part of the law dedicating the money to a specific fund of an abolished agency becomes void on September 1 of the even-numbered year after abolishment of the agency.

(d) If an abolished state agency or advisory committee is funded in the General Appropriations Act for both years of the biennium, the abolished agency or advisory committee may not spend or obligate any of the money appropriated to it for the second year of the biennium, unless otherwise provided by law or rider in the appropriations bill.

(e) Property and records in the custody of a state agency or advisory committee on September 1 of the even-numbered year after abolishment of the agency or advisory committee are transferred to the State Board of Control, except that where an appropriate state agency is designated by the governor pursuant to Subsection (f) of this section, the property and records are transferred to the state agency so designated.

(f) The legislature recognizes the state's continuing obligation to pay bonded indebtedness incurred by any agency abolished by the terms of this Act, and it is not the intention of this Act to impair or impede the payment of bonded indebtedness in accordance with its terms. If an abolished state agency has remaining outstanding bonded indebtedness, the bonds remain valid and enforceable in accordance with their terms and subject to all applicable terms and conditions of the laws and proceedings authorizing the bonds, notwithstanding the abolishment of the agency that issued the bonds. The governor shall designate an appropriate state agency, which shall continue to carry out all covenants contained in the bonds and the proceedings authorizing them, including the issuance of bonds to complete the construction of projects, and shall provide payment from the sources of payment of the bonds in accordance with the terms of the bonds, whether from taxes, revenues, or otherwise, until the bonds and interest on the bonds are paid in full. All funds established by laws or proceedings authorizing the bonds shall remain with the State Treasurer or previously designated trustees, if so provided in the proceedings; if not so provided, the funds shall be transferred to the designated state agency.

Subpoena Power

Sec. 1.18. The commission may issue process to witnesses at any place in the state and compel their attendance and the production of books, records, papers, and other objects that may be necessary or proper for the purposes of the committee proceedings. The commission may issue attachments when necessary to obtain compliance with subpoenas or other process, which may be addressed to and served by any peace officer in this state. The chairman of the commission shall issue, in the name of the commission, the subpoenas that a majority of the commission may direct. In the event the chairman is absent, the designee of the chairman is authorized to issue subpoenas or any other process in the same manner as the chairman. Witnesses attending proceedings of the commission under process are entitled to the same mileage and per diem as allowed witnesses before a grand jury in this state. The testimony taken under subpoena must be reduced to writing and must be given under oath subject to the penalties of perjury.

Assistance of and Access to State Agencies

Sec. 1.19. (a) The commission may request the assistance of state agencies and officers, and they shall assist the commission when requested to do so.

(b) In carrying out their functions under this Act, the commission or its designated staff member may inspect the records, documents, and files of any state agency.

Relocation of Employees

Sec. 1.20. When an employee is displaced because of the abolishment, reorganization, or continu-

ation of a state agency or its advisory committees, the agency and the Texas Employment Commission shall make a reasonable effort to relocate the displaced employee.

Saving Clause

Sec. 1.21. Except as otherwise expressly provided, abolition of a state agency does not affect rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun before the effective date of the abolition.

[Acts 1977, 65th Leg., p. 1826, ch. 735, art. 1, eff. Aug. 29, 1977. Amended by Acts 1977, 65th Leg., 1st C.S., p. 56, ch. 3, § 1, eff. July 22, 1977; Acts 1981, 67th Leg., p. 2617, ch. 702, § 1, eff. Sept. 1, 1981.]

Section 2 of the 1981 amendatory act provides:

"(a) A person holding office as a member of the Sunset Advisory Commission on the effective date of this Act continues to hold the office for the term for which the member was appointed.

"(b) The lieutenant governor and the speaker shall each appoint a public member before October 1, 1981, to serve until regular appointments are made in 1983.

"(c) The lieutenant governor shall appoint the chairman and the speaker of the house shall appoint the vice-chairman before October 1, 1981."

Art. 5429*l*. Faculty Information and Research Service for Texas; Project FIRST

Committee

Sec. 1. The FIRST Committee is created as the governing body of Project FIRST, the Faculty Information and Research Service for Texas.

Membership

Sec. 2. (a) The committee is composed of the following ex officio members:

(1) chairman of the Senate Committee on Natural Resources;

(2) chairman of the House Committee on Environmental Affairs;

(3) director of the Legislative Reference Library;

(4) president of the Texas Association of College Teachers (TACT);

(5) president of the Texas chapter of the American Association of University Professors (AAUP);

(6) representative of the Independent Colleges and Universities of Texas (ICUT);

(7) representative of the Texas Junior College Teachers Association (TJCTA);

(8) representative of the Texas Public Community/Junior Colleges Association (TPC/JCA);

(9) representative from the University Council of Presidents; and

(10) representative of the Texas Legislative Council.

(b) A member of the committee may designate a representative to act in his place at a meeting of the committee.

(c) Organizations representing the interests of accredited public or private institutions of higher education, their administrators or faculties, and which are not included as members of the committee in this section, may participate in the FIRST network and send a representative to the committee by requesting and receiving permission of the chairman.

Officers, Meetings, Quorum

Sec. 3. (a) The committee annually shall elect from its members a chairman and other officers that it considers necessary.

(b) The committee shall meet at the call of the chairman or as provided by a rule of the committee.

(c) A majority of the members of the committee constitutes a quorum.

Additional Functions of Other Public Office

Sec. 4. The functions performed by a member of the committee who holds public office are additional functions of the public office.

Compensation and Expenses

Sec. 5. A member of the committee or his designated representative may not receive compensation for his services on behalf of the committee. A member of the committee or his designated representative may not receive reimbursement for actual or necessary expenses incurred in performing services on behalf of the committee unless the reimbursement is provided by the organizations represented on the committee.

Staff

Sec. 6. (a) To administer its functions, the committee may employ staff and may use the voluntary assistance of the faculty and administrators of institutions of higher education in this state.

(b) The committee may use services and facilities contributed to the committee by an officer or employee of the legislature.

Gifts, Grants, Donations

Sec. 7. The community may accept, on behalf of the state, gifts, grants, or donations from any source to be used by the committee to administer its functions.

Project FIRST

Sec. 8. (a) The committee shall establish the Faculty Information and Research Service for Texas, Project FIRST. As part of FIRST, the committee:

(1) shall make available to legislative members, committees, and agencies the expertise of the faculties and administrators of the public and private institutions of higher education in this state;

(2) shall use that expertise to attempt to provide answers to requests for information from legislative members, committees, and agencies; and

(3) may direct, as a supplement to existing sources of information, a legislative member, committee, or agency to a source of information locat-

ed at an agency or other organization of this state before the committee uses the expertise of the faculties and administrators.

(b) If requested by the governor and approved by the committee, the committee shall provide to the governor's office the services that the committee provides to legislative members, committees, and agencies.

(c) Faculty and administrators providing information for FIRST are volunteers and provide information to FIRST only if their time permits and if they have expertise relating to the information requested. A faculty member or administrator is not required to respond to a request for information from FIRST.

Funding

Sec. 9. The committee is to be financed with funds appropriated to the committee or to another organization in the state government designated by the committee as having operational control of FIRST.

Rules

Sec. 10. The committee may adopt rules necessary for it to administer its functions.

Application of Sunset Act

Sec. 11. The committee is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the committee is abolished and this Act expires on September 1, 1993.

Organizational Meeting

Sec. 12. The committee shall meet in an organizational meeting at a time and place designated by the chairman of the Senate Committee on Natural Resources.

[Acts 1981, 67th Leg., p. 1853, ch. 436, §§ 1 to 12, eff. Sept. 1, 1981.]

TITLE 89

STATE LIBRARY AND ARCHIVES COMMISSION

Article
5434a. Application of Sunset Act.
5434b. Change of Name.
5442c. Maintenance and Disposition of Certain County Records.
5446b. Central Media Depository for Individuals Unable to Use Ordinary Print.

Art. 5434. Organization

The Governor shall, by and with the advice and consent of the Senate, appoint six (6) persons who shall constitute the Texas State Library and Archives Commission. Appointments shall be made for a term of six (6) years.

Members of the Commission holding office at the time of passage of this Act shall continue in office until the expiration of their present terms.

Upon the expiration of the terms of office of the two (2) members which expire in 1953, the Governor shall, by, and with the advice of the Senate, appoint three (3) persons as members of the Commission. The Governor shall designate one (1) of the appointees to serve a term of two (2) years to expire concurrent with the term of the present member of the Commission whose term of office expires in 1955.

The other two (2) appointees shall serve for six (6) years.

Thereafter all appointments shall be for a six-year term, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

The Commission shall be assigned suitable offices at the Capitol where they shall hold at least one regular meeting annually, and as many special meetings as may be necessary. Each such member while in attendance at said meetings shall receive his actual expenses incurred in attending the meetings, and shall be paid a per diem as set out in the General Appropriations Act.

[Amended by Acts 1979, 66th Leg., p. 856, ch. 382, § 2, eff. Aug. 27, 1979.]

Art. 5434a. Application of Sunset Act

The Texas State Library and Archives Commission is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.082, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 857, ch. 382, § 4, eff. Aug. 27, 1979.]

[1] Article 5429k.

Art. 5434b. Change of Name

The name of the Texas Library and Historical Commission is changed to the Texas State Library and Archives Commission.

[Acts 1979, 66th Leg., p. 856, ch. 382, § 1, eff. Aug. 27, 1979.]

Art. 5435. Purpose; Powers and Duties of Commission; Director and Librarian

The appointed members of the Commission shall be responsible for the adoption of all policies, rules and regulations so as to aid and encourage libraries, collect materials relating to the history of Texas and the adjoining states, preserve, classify and publish the manuscript archives and such other matters as it may deem proper, diffuse knowledge in regard to the history of Texas, encourage historical work and research, mark historic sites and houses and secure their preservation, and aid those who are studying the problems to be dealt with by legislation. The Commission also is responsible for passing on the qualifications of persons wanting to become county librarians in this state and shall adopt rules necessary to administer this responsibility. The educational requirement for permanent certification as a county librarian is: (1) graduation from a library school accredited by the American Library Association if the Commission determines that the association has accreditation standards to ensure a high level of scholarship for students; or (2) graduation with a master's degree in library science from an institution of higher education accredited by an organization that the Commission determines has accreditation standards to ensure a high level of scholarship for students. The Commission shall appoint a Director and Librarian who shall perform all of the duties heretofore provided for the State Librarian, and all authority, rights and duties heretofore assigned by statute to the State Librarian are hereby transferred to and shall be performed by the Director and Librarian. He shall be the Executive and Administrative Officer of the Commission and shall discharge all administrative and executive functions of the Commission. He shall have had at least two years' training in library science or the equivalent thereof in library, teaching or research experience and shall have had at least two years of administrative experience in library, research or related fields. The Director and Librarian shall serve at the will of the Commission and shall give bond in the sum of Five Thousand Dollars ($5,000) for the proper care of the State Library and its equipment. He shall be

allowed his actual expenses when travelling in the service of the Commission on his sworn account showing such expenses in detail. The Director and Librarian shall appoint, subject to the approval of the Commission, an Assistant State Librarian, a State Archivist, and such other assistants and employees as are necessary for the maintenance of the Library and Archives of the State of Texas.
[Amended by Acts 1981, 67th Leg., p. 2845, ch. 764, § 1, eff. Sept. 1, 1981.]

Section 3 of the 1981 amendatory act provided:
"The State Board of Library Examiners is abolished and its records and other property are transferred to the Texas State Library and Archives Commission."

Art. 5436a. State Plan for Library Services and Library Construction

The Texas State Library and Archives Commission is authorized to adopt a state plan for improving public library services and for public library construction. The plan shall include county and municipal libraries. The Texas State Library shall prepare the plan for the commission, and shall administer the plan adopted by the commission. Money to be used may include that available from local, state, and federal sources, and will be administered according to local, state, and federal requirements. The state plan shall include a procedure by which county and municipal libraries may apply for money under the state plan and a procedure for fair hearings for those applications that are refused money.
[Amended by Acts 1979, 66th Leg., p. 857, ch. 382, § 5, eff. Aug. 27, 1979.]

Art. 5438a. Historical Relics

The Texas State Library and Archives Commission is hereby authorized in their discretion to place temporarily in the custody of the Daughters of the Republic of Texas and the United Daughters of the Confederacy, Texas Division, all or part of the historical relics belonging to the Texas State Library, under such conditions and terms of agreement as will insure the safekeeping of these relics in the Texas Museum.
[Amended by Acts 1979, 66th Leg., p. 857, ch. 382, § 3, eff. Aug. 27, 1979.]

Art. 5438c. Removal of Relics

The Texas State Library and Archives Commission shall retain the right to remove these relics at any time they may see fit.
[Amended by Acts 1979, 66th Leg., p. 857, ch. 382, § 6, eff. Aug. 27, 1979.]

Art. 5441a. Records Management Division

Establishment and Maintenance; Duties; Qualifications of Assistant

Sec. 1. The Texas State Library and Archives Commission is hereby authorized to establish and maintain in the State Library a records management division which (1) shall manage all public records of the state with the cooperation of the heads of the various departments and institutions in charge of such records and (2) shall also conduct a photographic laboratory for the purpose of making photographs, microphotographs, or reproductions on film, or to arrange for all or part of such work to be done by an established commercial agency which meets the specifications established by this Article for the proper accomplishment of the work. The assistant who shall be appointed by the Commission to head such division shall have had appropriate training and experience in the field of public records management.

[See Compact Edition, Volume 4 for text of 2 to 6a]

[Amended by Acts 1979, 66th Leg., p. 857, ch. 382, § 7, eff. Aug. 27, 1979.]

Art. 5441c. Destruction of Worthless Records

[See Compact Edition, Volume 4 for text of 1]

Sec. 2. The State Auditor, Board of Barber Examiners, Board of Control, Board of Cosmetology, Board of Medical Examiners, Board of Pardons and Paroles, Board of Regents of the State Teachers Colleges, Bureau of Labor Statistics, Comptroller, Court of Appeals for the Third Supreme Judicial District, Governor's Office, Health Department, Insurance Commission, Legislative Budget Board, Parks and Wildlife Commission, Railroad Commission, Real Estate Commission, Secretary of State, State Securities Board, Teacher Retirement System, Texas Education Agency, Texas State Library, Texas Water Commission, and the Treasury Department shall examine all books, papers, correspondence and records of any kind belonging to each respective agency, dated prior to 1952, which are stored with the Records Management Division.

[See Compact Edition, Volume 4 for text of 3]

[Amended by Acts 1981, 67th Leg., p. 791, ch. 291, § 65, eff. Sept. 1, 1981.]

Art. 5441d. Preservation of Essential Records Act

[See Compact Edition, Volume 4 for text of 1 to 3]

Records Preservation Advisory Committee

Sec. 4. (a) A Records Preservation Advisory Committee is established to advise the Records Preservation Officer and to perform other duties as this Act requires. The committee is composed of the State Librarian, Secretary of State, State Auditor, State Comptroller, Attorney General, or their delegated agents, the Secretary of the Senate and the Chief Clerk of the House of Representatives, all of whom serve as ex officio members of the committee. The committee shall work with and is a part of the Records Management Division of the Texas State Library and Archives Commission.

[See Compact Edition, Volume 4 for text of 4(b) to 16]

[Amended by Acts 1979, 66th Leg., p. 858, ch. 382, § 8, eff. Aug. 27, 1979.]

Art. 5442. Repealed by Acts 1979, 66th Leg., p. 1776, ch. 720, § 3, eff. Aug. 27, 1979

See, now, art. 4413(33a).

Art. 5442a. State Publications and Depository Libraries for State Documents

Sec. 1. In this Act:

(1) "State publication" means printed matter that is produced in multiple copies by the authority of or at the total or partial expense of a state agency. The term includes publications sponsored by or purchased for distribution by a state agency and publications released by private institutions, such as research and consulting firms, under contract with a state agency, but does not include correspondence, interoffice memoranda, or routine forms.

(2) "State agency" means any state office, officer, department, division, bureau, board, commission, legislative committee, authority, institution, substate planning bureau, university system or institution of higher education as defined by Section 61.003, Texas Education Code, as amended, or any of their subdivisions.

(3) "Depository libraries" means the Texas State Library, the Texas Legislative Reference Library, the Library of Congress, the Center for Research Libraries, and other libraries that the Texas Library and Historical Commission [1] designates as depository libraries.

Sec. 2. The Texas Library and Historical Commission shall adopt rules to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications. The commission may contract with a depository library to receive all or a part of the state publications that are distributed.

Sec. 3. (a) Each state agency shall furnish to the Texas State Library its state publications in the quantity specified by the rules of the Texas Library and Historical Commission. The commission may not require more than 75 copies of a state publication.

(b) On the printing of or the awarding of a contract for the printing of a publication, a state agency shall arrange for the required number of copies to be deposited with the Texas State Library.

Sec. 4. The Texas State Library shall:

(1) acquire, organize, and retain the state publications;

(2) collect state publications and distribute them to depository libraries;

(3) establish a microform program for the preservation and management of state publications and make available state publications in microform to depository and other libraries at a reasonable cost;

(4) periodically issue a list of all state publications that it has received to all depository libraries and to other libraries on request;

(5) catalog, classify, and index all state publications that it has received and distribute the cataloging, classification, and indexing information to depository libraries and to other libraries on request; and

(6) ensure that state publications are fully represented in regional and national automated library networks.

Sec. 5. Each state agency shall designate one or more staff persons as the agency's publications contact person and shall notify the Texas State Library of the identity of each person selected. A state agency's contact person shall furnish to the Texas State Library each month a list of all of the agency's state publications that were produced during the preceding month.

Sec. 6. If a state agency's printing is done by contract, an account for the printing may not be approved and a warrant for the printing may not be issued unless the agency first furnishes to the State Board of Control a receipt from the state librarian for the publication or a written waiver from the state librarian exempting the publication from the requirements of this Act.

Sec. 7. The state librarian may specifically exempt a publication from the requirements of this Act.

[Amended by Acts 1979, 66th Leg., p. 858, ch. 382, § 9, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1775, ch. 720, § 2, eff. Aug. 27, 1979.]

[1] Name changed to Texas State Library and Archives Commission; see art. 5434b.

Art. 5442b. Regional Historical Resource Depositories

Definitions

Sec. 1. In this Act, unless the context requires a different meaning:

(1) "Commission" means the Texas State Library and Archives Commission.

[See Compact Edition, Volume 4 for text of 1(2) to (4)]

Designation of Regional Depositories

Sec. 2. In order to provide for an orderly, uniform, state-wide system for the retention and preservation of historical resources on a manageable basis and under professional care in the region of origin or interest, the Texas State Library and Archives Commission is hereby authorized to designate to serve as a regional historical resources depository

any institution which meets standards established by the commission in accordance with Section 3, Chapter 503, Acts of the 62nd Legislature, Regular Session, 1971 (Article 5442b, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 4 for text of 2A to 4]

Offer, Acceptance and Loan of Resources

Sec. 5. (a) County commissioners, other custodians of public records, and private parties may offer, and the Texas Library and Historical Commission [1] may accept, historical resources for preservation and retention in a depository.

[1] Name changed to Texas State Library and Archives Commission; see art. 5434b.

[See Compact Edition, Volume 4 for text of 5(b) to 8]

Appropriations

Sec. 9. The legislature may appropriate funds to the Texas State Library and Archives Commission sufficient for the purpose of carrying out the provisions of this Act.

[See Compact Edition, Volume 4 for text of 10]

[Amended by Acts 1979, 66th Leg., p. 858, ch. 382, §§ 10, 12, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1448, ch. 637, § 1, eff. Aug. 27, 1979.]

Art. 5442c. Maintenance and Disposition of Certain County Records

Definitions

Sec. 1. In this Act:

(1) "County record" means any record required or authorized by law to be maintained in a county or precinct office or the office of district clerk.

(2) "Custodian" means the officer responsible for keeping a county record.

Records Manual

Sec. 2. (a) The state librarian shall direct the staff of the regional historical resource depository program in the preparation of a county records manual. Those preparing the manual shall consult with affected local officials and other interested persons.

(b) The manual shall list the various types of county records, state the minimum retention period prescribed by law for those records for which a minimum retention period is so prescribed, and prescribe a minimum retention period for all other county records except those subject to Section 8 of this Act. When the manual takes effect, those retention periods prescribed by it for county records for which no retention period is prescribed by law have the same effect as if they were prescribed by law.

(c) The manual also shall contain information to assist local officials in carrying out their functions under this Act, including model records schedules and implementation plans, and may prescribe rules consistent with this Act governing the disposition of obsolete county records.

(d) The manual has no legal effect until it is approved by a majority of the members of a review committee constituted as provided in Section 3 of this Act. The committee's approval is effective when a copy of the manual and a statement of its approval, signed and acknowledged by a majority of the members of the committee, is filed in the office of the Secretary of State.

(e) The state librarian may amend the manual from time to time. An amendment is effective when the state librarian files a certified copy of the amendment in the office of the Secretary of State, except that an amendment must first be approved by a review committee in the same manner as provided for approval of the original manual if it:

(1) prescribes a minimum retention period for a county record required by law to be kept and for which a minimum retention period is not prescribed by state law;

(2) changes a minimum retention period established by the manual; or

(3) changes the rules governing disposition of obsolete county records.

Review Committee

Sec. 3. (a) A review committee required under this Act is composed of:

(1) the state librarian, who is chairman of the committee;

(2) the attorney general;

(3) a representative of the Texas Historical Commission, appointed by the commission; and

(4) one county clerk; one district clerk; one county judge or county commissioner; one county auditor; one county, district, or criminal district attorney; one county treasurer; one sheriff; and one county assessor-collector of taxes, each of whom shall be appointed by the state librarian.

(b) Except as provided in Subsection (d) of this section, an officer is eligible for appointment to the review committee under Subdivision (4), Subsection (a) of this section only if:

(1) he has been nominated by a petition signed by at least 50 other officers of the type nominated; or

(2) he has been nominated by an organization representing officers of the type nominated that has as members at least 50 of those officers.

(c) For the purposes of Subsection (b) of this section, county judges and commissioners are of the same type and county, district, and criminal district attorneys are of the same type.

(d) At least 30 days before making an appointment under Subdivision (4), Subsection (a) of this

section, the state librarian shall cause to be published in the Texas Register a notice of his intention to make the appointment. If the state librarian does not receive a nomination for a particular type of officer meeting the requirements of Subsection (b) of this section before the 31st day after the notice is published, a nomination is not required.

(e) Service on a review committee by a public officer is an additional duty of his office.

(f) Members of the committee receive no compensation, but they are entitled to be paid their actual expenses incurred on committee business. The payment of the expenses of the attorney general and the representative of the Texas Historical Commission shall be paid from funds of the attorney general's office and the commission, respectively. The payment of the expenses of other members of the committee shall be from funds of the Texas State Library and Archives Commission.

(g) A review committee ceases to exist when it completes the work for which it was constituted unless it is sooner discharged by the state librarian.

Records Schedule and Implementation Plan

Sec. 4. (a) A custodian of county records may prepare a records schedule applicable to his office and a plan for its implementation. On the request of the custodian, the state librarian and the staff of the regional historical resource depository program shall assist the custodian in this regard by furnishing him recommended model records schedules and implementation plans and other information.

(b) A records schedule, if prepared, shall contain an inventory of county records kept by the custodian. It shall prescribe a minimum retention period for each type of record. The retention period for each type of record must be at least as long as that prescribed by law or established in the county records manual.

(c) If a custodian prepares a records schedule, he shall also prepare an implementation plan that prescribes, in conformity with this Act, the manner and procedure for disposing of records no longer needed on the expiration of the applicable retention period.

(d) The records schedule and implementation plan take effect when the custodian files a certified copy of the schedule and plan in the office of the county clerk. The custodian may amend an existing schedule or plan. An amendment takes effect when the custodian files a certified copy of it in the office of the county clerk.

Disposition of Obsolete Records

Sec. 5. (a) When the retention period expires for a county record subject to an approved records schedule and implementation plan, and in the judgment of the custodian the record is no longer needed, he may dispose of the record in accordance with the implementation plan, the county records manual, and the provisions of this Act.

(b) No county record may be destroyed pursuant to an implementation plan unless at least 60 days before the day it is destroyed the custodian gives written notice to the state librarian of his intention to destroy the record. The notice must sufficiently describe the record to enable the state librarian to determine if it should be transferred to the state library for preservation in a regional historical resource depository. If the state librarian requests that a record be transferred, the custodian shall comply with the request. Otherwise, the record may be destroyed.

(c) County records may be destroyed only by the sale of them for recycling purposes or by shredding them or burning them. Regardless of the method used, adequate safeguards must be employed to insure that they do not remain in their original state and are no longer recognizable as county records.

(d) No later than the 10th day before records are destroyed, the custodian shall file and record with the county clerk a notice stating which records are to be destroyed, how they are to be destroyed, and the date they are to be destroyed. The same day the notice is filed, the county clerk shall post a copy of it in the same manner that notices of meetings are posted under Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes).

(e) No person is civilly liable for the destruction of a record in accordance with this Act and an approved records schedule and implementation plan.

Transferral of Records to State Library

Sec. 6. (a) A custodian may transfer to the state library for preservation in a regional historical resource depository any county record that is not needed for administrative purposes.

(b) When a custodian transfers a county record to the state library under Subsection (a) of this section or under Subsection (b), Section 5 of this Act, the state librarian shall give the custodian a receipt for the record. The custodian is not required to make a microfilm or other copy of the record before transferring it.

(c) The state librarian may make certified copies of county records that have been transferred to the state library. Each certified copy shall state that it is a true and correct copy of the record in the state librarian's custody. A certified copy made under the authority of this subsection has the same force and effect for all purposes as a copy certified by the county clerk or other custodian as provided by law.

Microfilming of Records

Sec. 7. This Act does not require the microfilming of county records, but an implementation plan may include provision for microfilming of records in accordance with other state law.

Exceptions

Sec. 8. This Act does not permit the establishment of a retention period for:

(1) any county record that affects the title to real property, other than a recorded lien that is no longer enforceable;

(2) a will;

(3) the minutes of a commissioners court; or

(4) the pleadings or any order, decree, or judgment, or any instrument incorporated by reference in an order, decree, or judgment, in a civil case in a court of record.

[Acts 1977, 65th Leg., p. 1198, ch. 463, §§ 1 to 8, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 859, ch. 382, § 13, eff. Aug. 27, 1979.]

Art. 5444a. Legislative Reference Library

[See Compact Edition, Volume 4 for text of 1 and 2]

Application of Sunset Act

Sec. 2a. The Legislative Reference Library is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the library is abolished, and this Act expires effective September 1, 1989.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 9]

[Amended by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.164, eff. Aug. 29, 1977.]

Art. 5444b. State Law Library

[See Compact Edition, Volume 4 for text of 1 and 2]

Application of Sunset Act

Sec. 2a. The State Law Library is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the library is abolished, and this Act expires effective September 1, 1987.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 9]

[Amended by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.141, eff. Aug. 29, 1977.]

Art. 5446a. Library Systems Act

CHAPTER A. GENERAL PROVISIONS

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. In this Act, unless the context requires a different definition:

[See Compact Edition, Volume 4 for text of 2(1)]

(2) "Commission" means the Texas State Library and Archives Commission.

[See Compact Edition, Volume 4 for text of 2(3) to 5]

CHAPTER C. MAJOR RESOURCE SYSTEM

[See Compact Edition, Volume 4 for text of 6]

Membership in System

Sec. 7.

[See Compact Edition, Volume 4 for text of 7(a)]

(b) To meet population change, economic change, and changing service strengths of member libraries, a major resource system may be reorganized, merged with another system, or partially transferred to another system by the Commission with the approval of the majority of the appropriate governing bodies of the libraries comprising the system.

[See Compact Edition, Volume 4 for text of 8]

Withdrawal From Major Resource System

Sec. 9.

[See Compact Edition, Volume 4 for text of 9(a)]

(b) The provision for termination of all or part of a major resource system does not prohibit revision of the system by the Commission, with the approval of the majority of the appropriate governing bodies, by reorganization, by transfer of part of the system, or by merger with other systems.

[See Compact Edition, Volume 4 for text of 9(c)]

Advisory Council

Sec. 10.

[See Compact Edition, Volume 4 for text of 10(a)]

(b) The governing body of each member library of the system shall elect or appoint a representative for the purpose of electing council members. The representatives shall meet following their selection and shall elect the initial council from their group. Thereafter, the representatives in an annual meeting shall elect members of their group to fill council vacancies arising due to expiration of terms of office. Other vacancies shall be filled for the unexpired term by the remaining members of the council. The major resource center shall always have one member on the council.

[See Compact Edition, Volume 4 for text of 10(c) to 13]

CHAPTER E. STATE GRANTS-IN-AID TO LIBRARIES

[See Compact Edition, Volume 4 for text of 14 to 16]

Funding

Sec. 17.

[See Compact Edition, Volume 4 for text of 17(a) and (b)]

(c) State grants may not be used for site acquisition, construction, or for acquisition of buildings, or for payment of past debts.

[See Compact Edition, Volume 4 for text of 17(d)]

(e) Exclusive of the expenditure of funds for administrative expenses as provided in Section 17(a) of this Act, all funds appropriated pursuant to Section 14 of this Act shall be apportioned among the major resource systems on the following basis:

Twenty-five percent of such funds shall be apportioned equally to the major resource systems and the remaining seventy-five percent shall be apportioned to them on a per capita basis determined by the last decennial census or the most recent official population estimate of the U.S. Department of Commerce, Bureau of the Census. This section takes effect September 1, 1979.

[See Compact Edition, Volume 4 for text of 18 and 19]

[Amended by Acts 1977, 65th Leg., p. 809, ch. 301, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 859, ch. 382, § 14, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1774, ch. 720, § 1, eff. Sept. 1, 1979.]

Art. 5446b. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

The repealed article, relating to a central media depository for individuals unable to use ordinary print, was added by Acts 1975, 64th Leg., p. 2389, ch. 734, § 15, as amended by Acts 1979, 66th Leg., p. 677, ch. 301, § 4.

TITLE 90

LIENS

CHAPTER ONE. JUDGMENT LIENS

Article
5449(a). Discharge of Judgments and Judgment Liens Against Bankrupts.

Art. 5449(a). Discharge of Judgments and Judgment Liens Against Bankrupts

Application for Discharge and Cancellation of Judgment and Lien

Sec. 1. At any time after one year has elapsed since a bankrupt or debtor has been discharged from his debts, before or after the effective date of this Act, pursuant to the acts of Congress relating to bankruptcy, the bankrupt or debtor, or his, her, or its receiver, trustee, or any other interested person, including a corporation, may apply, upon proof of the discharge of the bankrupt or debtor, to the court in which a judgment was rendered against the bankrupt or debtor for an order directing the discharge and cancellation of the judgment, any abstract or abstracts of said judgment, and the lien represented thereby.

Order of Discharge and Cancellation: Entry; Effect; Recording

Sec. 2. If it appears upon the hearing that the bankrupt or debtor has been discharged from the payment of the obligation or debt represented by the judgment, the court shall enter an order of discharge and cancellation of said judgment and any abstracts of said judgment, which order of discharge shall be entered upon the docket of the court. Said order of discharge shall constitute a release, discharge, and cancellation of said judgment and any unsatisfied judgment liens represented by all abstracts of said judgment then or thereafter of record; provided, however, that a certified copy of said order of discharge must be duly recorded in the judgment lien records of a county in which an abstract of judgment has been or is thereafter recorded in order to discharge and cancel said abstract of judgment in said county.

Notice of Application for Discharge: Service; Publication

Sec. 3. Notice of said application for discharge, accompanied by copies of the papers upon which it is made, shall be served on the judgment creditor or his attorney of record in the action in which said judgment was rendered, in the manner prescribed for service of a notice in an action, if the residence or place of business of the judgment creditor, or of his attorney, is known. Upon proof by affidavit that the address of neither the judgment creditor nor his attorney is known, and that the address of neither can be ascertained after due diligence, or that the judgment creditor is a nonresident of this state, and his attorney is dead, or removed from the state, or cannot be found within the state, a judge or justice of the court may by order direct that the notice of the application be published in a newspaper designated in the order once a week for not more than three consecutive weeks. Such publication, shown by the affidavit of the publisher, shall be sufficient service upon the judgment creditor of the application.

Judgment as Lien on Real Property

Sec. 4. Where the judgment was a lien on real property owned by the bankrupt or debtor prior to the time that he, she, or it was adjudged a bankrupt, or that a petition for debtor relief under the federal Bankruptcy Act of July 1, 1898, as amended (Title 11, U.S.C.A.), was filed, and the debt or obligation evidenced by said judgment was not discharged under the provisions of the Bankruptcy Act, the lien thereof upon said real estate shall not be affected by said order and may be enforced, but in all other respects the judgment shall be of no force or validity, nor shall the same be a lien on real property acquired by the bankrupt or debtor subsequent to the discharge in bankruptcy.

Judgment as Lien on Nonexempt Real Property

Sec. 5. Where the judgment was a lien on nonexempt real property owned by the bankrupt or debtor prior to the time he, she, or it was adjudged a bankrupt or that a petition for debtor relief under the federal Bankruptcy Act of July 1, 1898, as amended (Title 11, U.S.C.A.), was filed, and said real property is abandoned during the course of the proceeding, the lien thereof upon said real estate shall not be affected by said order and may be enforced, but in all other respects the judgment shall be of no force or validity, nor shall the same be a lien on real property acquired by the bankrupt or debtor subsequent to the discharge in bankruptcy.

[Amended by Acts 1975, 64th Leg., p. 1030, ch. 396, § 1, eff. June 19, 1975.]

Sections 2 and 3 of the 1975 Act provided:

"Sec. 2. All laws or parts of law in conflict with the provisions of this Act are hereby repealed, to the extent of the conflict only.

"Sec. 3. If any provision or provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

CHAPTER TWO. MECHANICS, CONTRACTORS AND MATERIAL MEN

Art. 5472a. Lien for Material Furnished Public Contractor; Notice

Any person, firm, corporation, or trust estate, furnishing any material, apparatus, fixtures, machinery, or labor to any contractor under a prime contract where such prime contract does not exceed the sum of $25,000 for any public improvements in this State, shall have a lien on the moneys, or bonds, or warrants due or to become due to such contractor for such improvements provided such person, firm, corporation, trust estate, or stock association shall before any payment is made to such contractor, notify in writing the officials of the state, county, town, or municipality whose duty it is to pay such contractor of his claim, such written notice to provide and be given within the prescribed time as follows:

(a) Such notice to be given by certified or registered mail, with a copy to the contractor at his last known business address, or at his residence, and given within thirty (30) days after the 10th of the month next following each month in which labor, material, apparatus, fixtures, or machinery were furnished for such lien is claimed.

(b) Such notice, whether based on a written or oral agreement shall state the amount claimed, the name of the party to whom such was delivered or for whom it was performed, with dates and place of delivery or performance and describing the same in such manner as to reasonably identify said material, apparatus, fixtures, machinery, or labor and the amount due therefor, and identify the project where material was delivered or labor performed.

(c) Such notice shall be accompanied by a statement under oath stating that the amount claimed is just and correct and that all payments, lawful offsets, and credits known to the affiant have been allowed.

(d) Any person who shall file a willfully false and fraudulent notice and statement shall be subject to the penalties for false swearing.

[Amended by Acts 1975, 64th Leg., p. 2285, ch. 713, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2028, ch. 809, § 2, eff. Aug. 29, 1977.]

CHAPTER SEVEN. OTHER LIENS

Article
5504a. Sale of a Motor Vehicle.

Art. 5504. Sale of Property

When possession of any of the property embraced in Articles 5502 and 5503, except property covered under Article 5504a, Revised Civil Statutes of Texas, 1925, as amended, has continued for sixty days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said property to notify the owner, if in the state and his residence be known, to come forward and pay the charges due, and on his failure within ten days after such notice has been given him to pay said charges, the persons so holding said property, after twenty days notice, are authorized to sell said property at public sale and apply the proceeds to the payment of said charges, and shall pay over the balance to the person entitled to the same. If the owner's residence is beyond the state or is unknown, the person holding said property shall not be required to give such notice before proceeding to sell.

[Amended by Acts 1979, 66th Leg., p. 1059, ch. 490, § 1, eff. Aug. 27, 1979.]

Art. 5504a. Sale of a Motor Vehicle

(a) When a person having a possessory lien on a motor vehicle that is subject to the Certificate of Title Act (Article 6687–1, Vernon's Texas Civil Statutes) retains possession of the vehicle for 30 days after the day on which the charges accrue and the charges are unpaid, the person shall give written notice of the amount of charges to the owner and all lienholders whose liens are recorded on the certificate of title and shall request payment. A person shall send the notice by certified mail, return receipt requested.

(b) If a person entitled to notice under Section (a) of this article does not pay the charges due within 30 days after the day on which notice of the amount of charges was mailed, the possessory lienholder may sell the motor vehicle at a public sale. The possessory lienholder shall apply the proceeds to the payment of the charges and shall pay the balance to the person entitled to it.

(c) Notwithstanding Sections (a) and (b) of this article, if possession of a motor vehicle subject to a lien acquired under Article 5502, Revised Civil Statutes of Texas, 1925, was obtained pursuant to the provisions of state law or city ordinance, the person having the special lien shall within 10 days after the day of obtaining such possession notify the last known registered owner and all lien holders of record to pick up the vehicle and shall request payment. Such notice shall be sent by certified mail, return receipt requested, and shall state the location of the vehicle and the accrued charges. A person shall be entitled to towing, preservation, and notification charges and to reasonable storage fees for a maximum of 10 days only until such notice is mailed. After such notice is mailed, storage fees may continue until the vehicle is removed and all accrued charges are paid.

[Added by Acts 1979, 66th Leg., p. 1060, ch. 490, § 2, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 3079, ch. 811, § 6, eff. Aug. 31, 1981.]

Art. 5506a. Hospital or Clinic's Lien for Services on Cause of Action of Persons Injured

[See Compact Edition, Volume 4 for text of 1 and 2]

Release Ineffectual as Against Claims; Exceptions as to Liens

Sec. 3. No release of any claim or demand on account of any such injuries, or in respect of any

such verdict, report, decision, decree, award, judgment, or final order, made and rendered, as hereinbefore mentioned, executed by any such injured person, or by any person entitled thereto, shall be valid or effectual between the parties thereto or otherwise, unless prior to the execution and delivery thereof, all such charges of any such hospital or institution or clinic, furnishing hospital services, which has filed its, his, or their lien as hereinafter provided, shall have been paid in full, or to the extent of a full and true consideration paid and given to the injured person by the other party or parties to such release named therein or paid and given by any other person or corporation in behalf of such other party or parties, or unless such release shall also have been executed by the person, corporation, association, or institution maintaining such hospital; and every such verdict, report, decision, decree, award, judgment, or final order shall remain in force and effect until all such charges of any hospital or institution shall have been paid in full or to the extent of any such verdict, report, decision, decree, award, judgment or order; provided the lien does not apply to the extent that charges for operating costs are in excess of the routine operating costs prescribed by 42 C.F.R., Section 405.460, that charges for other services are in excess of a reasonable and regular rate for those services, or that charges are for costs that accrued or services that were provided after the first 100 days of hospitalization; and the fact that such hospital's method of classification regarding ability to pay for said services is intended solely to secure such hospital's lien on a medically indigent's cause of action for personal injuries shall not be construed as avoiding the provisions of this lien statute; provided that a notice in writing containing the name and address of the injured person, the date of the accident, the name and location of the hospital or clinic rendering the service, and if known, the name of the person or persons, firm or firms, corporation or corporations, alleged to be liable to pay damages to such injured person for such injuries so received, shall be filed in the office of the County Clerk of the county in which such injury shall have occurred, prior to the payment of any moneys to such injured person or his legal representative or other person entitled thereto as damages for or on account of such injuries. Provided further that this lien shall not attach to any claim for amounts due the injured person under the Workers' Compensation Act of the State of Texas, or Federal Liability Act, or Federal Longshoremen's or Harbor Workers' Act. Provided further, that the lien provided for in this Act shall not attach to any claim for amounts due the injured person by any person, firm, association, corporation, or receiver, or receivers, or his, its, or their employees, owning and/or operating a railroad in this State, where such person, firm, association, corporation, or receivers, or receiver, or his, its, or their employees, maintain a hospital, furnishing hospitalization to injured persons, where the said injured person is actually receiving treatment, care and maintenance in the hospital so owned by such person, firm, association, corporation, receiver or receivers, or his, its, or their employees.

[See Compact Edition, Volume 4 for text of 4]

Hospital Records Subject to Inspection; Admissibility

Sec. 4a. The records of any such association, corporation, or other institution or body maintaining such hospital in reference to such treatment, care, and maintenance of such injured person shall be made available as promptly as possible for examination to any party's attorney by, for, or against whom a claim shall be asserted for compensation for such injuries, under such reasonable rules and regulations as such hospital may require, except that access shall not be denied on the basis of such records being incomplete. The records are admissible as evidence in any civil suit based on those personal injuries subject to applicable rules of evidence.

[See Compact Edition, Volume 4 for text of 4b and 4c]

[Amended by Acts 1979, 66th Leg., p. 1080, ch. 509, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 953, ch. 359, § 1, eff. Aug. 31, 1981.]

Section 2 of the 1981 amendatory act provides:

The change in law made by this Act applies to a lien only to the extent that it is based on hospital services provided on or after the Act's effective date. To the extent a lien applies to charges for hospital services that were provided before this Act's effective date, the lien is governed by the law in effect when the services were provided, and the former law is continued in effect for this purpose.

TITLE 91

LIMITATIONS

1. LIMITATIONS OF ACTIONS FOR LANDS

Article
5523b. Attorney's Fees in Land Possession Suits.

3. GENERAL PROVISIONS

5539d. Statutes of Limitations Ending on Weekend or Holiday.

1. LIMITATIONS OF ACTIONS FOR LANDS

Art. 5523b. Attorney's Fees in Land Possession Suits

Sec. 1. Subject to the provisions of Section 2 of this Act, if, in an action for possession of land between a party claiming under the record title to the land and a party claiming by adverse possession, the prevailing party recovers possession from a party unlawfully in actual possession, the court may award reasonable attorney's fees to the prevailing party, in addition to his claim, if any, and costs of suit.

Sec. 2. (a) To recover attorney's fees as provided in Section 1 of this Act, the party seeking recovery of possession must give the party unlawfully in possession written notice and demand to vacate the premises, by registered or certified mail, at least 10 days prior to filing the claim for the recovery of possession.

(b) In the written notice and demand to vacate the premises, the party seeking recovery of possession shall give notice that in the event the party unlawfully in possession has not vacated the premises within 10 days and a claim is filed by the party seeking recovery of possession, judgment may be entered against the party unlawfully in possession for attorney's fees in an amount determined by the court to be reasonable, plus costs of suit.

[Acts 1977, 65th Leg., p. 1105, ch. 406, eff. Aug. 29, 1977.]

2. LIMITATIONS OF PERSONAL ACTIONS

Art. 5526. Actions to be Commenced in Two Years

There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions of trespass for injury done to the estate or the property of another.

2. Actions for detaining the personal property of another, and for converting such property to one's own use.

3. Actions for taking or carrying away the goods and chattels of another.

4. Action for injury done to the person of another.

5. Action for injury done to the person of another where death ensued from such injury; and the cause of action shall be considered as having accrued at the death of the party injured.

6. Actions of forcible entry and forcible detainer.

[Amended by Acts 1979, 66th Leg., p. 1768, ch. 716, § 1, eff. Aug. 27, 1979.]

Art. 5527. What Actions Barred in Four Years

There shall be commenced and prosecuted within four years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions for debt.

2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.

3. Actions by one partner against his co-partner for a settlement of the partnership accounts, actions upon stated or open accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together.

[Amended by Acts 1979, 66th Leg., p. 1769, ch. 716, § 2, eff. Aug. 27, 1979.]

Art. 5536a. Architects, Engineers and Persons Performing or Furnishing Construction or Repair of Improvement to Real Property

Sec. 1. There shall be commenced and prosecuted within ten years after the substantial completion of any improvement to real property or the commencement of operation of any equipment attached to real property, and not afterward, all actions or suits in court for damages for any injury, damages or loss to property, real or personal, or for any injury to a person, or for wrongful death, arising out of the defective or unsafe condition of any such real property or any equipment or improvement attached to such real property, for contribution or indemnity for damages sustained on account of such injury, damage, loss or death against any registered or licensed engineer or architect in this state performing or

furnishing the design, planning, inspection of construction of any such improvement, equipment or structure or against any such person so performing or furnishing such design, planning, inspection of construction of any such improvement, equipment, or structure; provided, however, if the claim for damages, contribution or indemnity has been presented in writing to the registered or licensed engineer or architect performing such services within the ten-year period of limitation, said period shall be extended to include two years from the time such notice in writing is presented.

Sec. 2. There shall be commenced and prosecuted within ten years after the substantial completion of any improvement to real property, and not afterward, all actions or suits in court for damages for any injury, damages, or loss to property, real or personal, or for any injury to a person, or for wrongful death, or for contribution or indemnity for damages sustained on account of such injury, damage, loss, or death arising out of the defective or unsafe condition of any such real property or any deficiency in the construction or repair of any improvements on such real property against any person performing or furnishing construction or repair of any such improvement; provided, however, if the claim for damages, contribution or indemnity has been presented in writing to the person performing such services within the ten-year period of limitation, said period shall be extended to include two years from the time such notice in writing is presented, or if said injury, damage, loss, or death occurs during the tenth year, all actions or suits in court may be brought within two years from the date of such injury, damage, loss, or death; and provided further, however, this section shall not apply and will not operate as a bar to an action or suit in court (a) on a written warranty, guaranty, or other contract which expressly is effective for a period in excess of the period herein prescribed; (b) against persons in actual possession or control of the real property as owner, tenant, or otherwise at the time the injury, damage, loss, or death occurs; or (c) based on willful misconduct or fraudulent concealment in connection with the performing or furnishing of such construction or repair. Nothing in this section shall be construed as extending or affecting the period prescribed for the bringing of any action under Articles 5526, 5527, and 5529, Revised Civil Statutes of Texas, 1925, or any other law of this state.

[Amended by Acts 1975, 64th Leg., p. 649, ch. 269, § 1, eff. Sept. 1, 1975.]

3. GENERAL PROVISIONS

Art. 5539d. Statutes of Limitations Ending on Weekend or Holiday

If the last day of a limitations period under any statute of limitations falls on a Saturday, Sunday, or holiday, the period for filing suit is extended to the next day that the offices of the county are open for business.

[Acts 1977, 65th Leg., p. 1403, ch. 567, § 1, eff. Aug. 29, 1977.]

TITLE 92

MENTAL HEALTH

Subtitle		Article
I.	Mental Health Code	5547–1
II.	Mental Health and Retardation Act	5547–201
III.	Mentally Retarded Persons Act	5547–300
IV.	Miscellaneous Provisions	5557

I. MENTAL HEALTH CODE

CHAPTER ONE. GENERAL PROVISIONS

Article
5547–13. County Attorney to Represent State.
5547–14. Costs.
5547–15. Fees Allowed Court-Appointed Attorneys and Physicians.

Art. 5547–13. County Attorney to Represent State

This article was repealed by Acts 1967, 60th Leg., p. 1785, ch. 680, § 2. However, according to Op.Atty.Gen.1967, No. M–135, the repeal was in violation of Const. art. 3, § 35, since the title to the act gave no notice of an attempt to repeal said article.

Art. 5547–14. Costs

(a) The county from which a patient is committed under an Order of Temporary Hospitalization shall pay the costs of Temporary Hospitalization, Indefinite Commitment and Reexamination and Hearing proceedings, including attorneys' fees and physicians' examination fees, and expenses of transportation to a State mental hospital or to an agency of the United States. If a patient under Order of Temporary Hospitalization requires indefinite commitment, the court from which the patient was committed shall arrange with the appropriate court of the county in which the patient is hospitalized for a hearing on indefinite commitment to be held before the date of expiration of the temporary commitment, or the county in which the committing court is located shall pay the expenses of transportation of the patient back to the county of the committing court for such hearing.

(b) For the amounts of these costs actually paid, the county is entitled to reimbursement by the patient or any person or estate liable for his support in a State hospital.

(c) Unless the patient or someone responsible for him is able to do so, the State shall pay the cost of transportation home of a discharged patient and the return of a patient absent without authority.

(d) Neither the county nor the State shall pay any costs for a patient committed to a private hospital. [Amended by Acts 1977, 65th Leg., p. 1469, ch. 596, § 3, eff. Sept. 1, 1977.]

This article was repealed by Acts 1967, 60th Leg., p. 1785, ch. 680, § 2. However, according to Op.Atty.Gen.1967, No. M–135, the repeal was in violation of Const. art. 3, § 35, since the title to the act gave no notice of an attempt to repeal said article.

Art. 5547–15. Fees Allowed Court-Appointed Attorneys and Physicians

The county judge may allow reasonable compensation to attorneys and physicians appointed by him under this Code, provided that any compensation he allows to an attorney is not less than $25. The compensation paid shall be taxed as costs in the case. [Amended by Acts 1975, 64th Leg., p. 455, ch. 192, § 1, eff. Sept. 1, 1975.]

This article was repealed by Acts 1967, 60th Leg., p. 1785, ch. 680, § 2. However, according to Op.Atty.Gen.1967, No. M–135, the repeal was in violation of Const. art. 3, § 35, since the title to the act gave no notice of an attempt to repeal said article.

CHAPTER THREE. INVOLUNTARY HOSPITALIZATION

PART 2. TEMPORARY HOSPITALIZATION FOR OBSERVATION AND/OR TREATMENT

5547–32A. Recommendation for Treatment.

PART 4. ORDERS, TRANSPORTATION, PROTECTIVE CUSTODY

Article
5547–68. Admission and Detention.

PART 1. EMERGENCY ADMISSION PROCEDURE

Art. 5547–27. Authority of Health or Peace Officer

(a) Any health or peace officer, who has reason to believe and does believe upon the representation of a credible person, in writing, or upon the basis of the conduct of a person or the circumstances under which he is found that the person is mentally ill and because of his mental illness is likely to cause injury to himself or others if not immediately restrained, may upon obtaining a warrant from any magistrate, take such person into custody, and immediately transport him to the nearest hospital or other facility deemed suitable by the county health officer, except in no case shall a jail or similar detention facility be deemed suitable unless such jail or detention facility is specifically equipped and staffed to provide psychiatric care and treatment, and make application for his admission, pursuant to the warrant of the magistrate. Such person admitted upon such warrant may be detained in custody for a period not to exceed twenty-four (24) hours, unless a further written order is obtained from the County Court or Probate Court of such county, ordering further detention. Provided, however, that should the person be taken into custody after 12:00 o'clock

noon on Friday, or on a Saturday or Sunday, or a legal holiday, then the twenty-four-hour period allowed for obtaining the court order permitting further detention shall begin at 9:00 o'clock a. m. on the first succeeding business day.

(b) Any person licensed to practice medicine in this state who has reason to believe and does believe that a person is mentally ill and because of such mental illness is likely to cause injury to himself or others if not immediately restrained may present such information in writing at any time to any magistrate, and if the facts so justify, the magistrate may issue a warrant ordering any health or peace officer to take such person into custody and immediately transport such person to the nearest state hospital, hospital, or other facility deemed suitable by such officer, except in no event shall a jail or similar detention facility be deemed suitable unless such jail or detention facility is specifically equipped and staffed to provide psychiatric care and treatment, and make application for admission for such person, pursuant to the warrant of the magistrate. Such person admitted upon such warrant may be detained in custody for a period not to exceed twenty-four (24) hours, unless a further written order is obtained from the County Court or Probate Court of such county, ordering further detention. Provided, however, that should the person be taken into custody after 12:00 o'clock noon on Friday, or on a Saturday or Sunday, or a legal holiday, then the twenty-four-hour period allowed for obtaining the court order permitting further detention shall begin at 9:00 o'clock a. m. on the first succeeding business day."

[Amended by Acts 1975, 64th Leg., p. 1913, ch. 616, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1093, ch. 402, § 1, eff. Aug. 29, 1977.]

Art. 5547–28. Emergency Admission

The head of a mental hospital, a general hospital, or other facility deemed suitable by the county health officer shall not admit nor detain any person for emergency observation and treatment unless:

(a) A warrant has been obtained from a magistrate ordering the apprehension and taking into custody of such person to be admitted, or an order of protective custody has been issued pursuant to Section 66 of this Code; and

(b) A written and certified opinion is made by the medical officer on duty at the hospital or other facility, that after a preliminary examination, the person has symptoms of mental illness and is likely to cause injury to himself or others if not immediately restrained.

[Amended by Acts 1975, 64th Leg., p. 1913, ch. 616, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1092, ch. 401, § 1, eff. Aug. 29, 1977.]

Art. 5547–29. Notification of Admission

The head of the facility admitting a person for emergency observation and treatment shall immediately give notice thereof by registered mail to the person's guardian or responsible relative, and shall report the admission to the Board.

[Amended by Acts 1975, 64th Leg., p. 1913, ch. 616, § 1, eff. Sept. 1, 1975.]

Art. 5547–30. Examination and Certification

The head of the facility shall have a physician examine every person within twenty-four (24) hours after his admission to a hospital for emergency observation and treatment and prepare a Certificate of Medical Examination for Mental Illness. A copy of the Certificate shall be sent forthwith to the person's guardian or responsible relative.

[Amended by Acts 1975, 64th Leg., p. 1913, ch. 616, § 1, eff. Sept. 1, 1975.]

PART 2. TEMPORARY HOSPITALIZATION FOR OBSERVATION AND/OR TREATMENT

Art. 5547–31. Application for Temporary Hospitalization

A sworn Application of Temporary Hospitalization of a proposed patient may be filed with the county court of the county in which the proposed patient resides or in which the proposed patient is found or in which the proposed patient is hospitalized by court order. The Application may be made by any adult person, or by the county judge, and shall state upon information and belief that the proposed patient is not charged with a criminal offense, that he is mentally ill, and that for his own welfare and protection or the protection of others he requires observation and/or treatment in a mental hospital. An Order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on temporary commitment pursuant to Section 7 of Article 46.02, Code of Criminal Procedure, 1965, shall state that all such charges have been dismissed and the Order shall serve as the Application for Temporary Hospitalization of the proposed patient.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1470, ch. 596, § 4, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 790, ch. 351, § 1, eff. Aug. 27, 1979.]

Art. 5547–32A. Recommendation for Treatment

(a) The Commissioner of Mental Health and Mental Retardation shall designate a facility or provider in the county in which an Application for Temporary Hospitalization is filed to file with the court a recommendation for the most appropriate treatment alternative for the proposed patient. The commissioner may designate a community mental health and mental retardation center established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547–203, Vernon's Texas Civil Statutes), or any other appropriate facility or provider in the county to make the recommendation.

(b) The court shall direct the designated facility or provider to file its recommendation with the court before the date set for the hearing.

(c) Except in an emergency as determined by the court, a hearing on an application may not be held before the recommendation required by this section is filed.

(d) This section does not relieve a county of any of its responsibilities under other provisions of this Code for the diagnosis, care, or treatment of the mentally ill.

(e) The extent to which a designated facility must comply with the provisions of this section shall be based on the commissioner's determination that the facility has sufficient resources to perform the necessary services.

(f) This section does not apply to a person for whom treatment in a private mental hospital is proposed.

[Added by Acts 1981, 67th Leg., p. 2350, ch. 578, § 6, eff. Jan. 1, 1982.]

Art. 5547–36. Hearing on the Application

(a) The Judge may hold the hearing on an Application for Temporary Hospitalization at any suitable place within the county. The hearing should be held in a physical setting not likely to have a harmful effect on the mental condition of the proposed patient in the event he is present.

(b) The proposed patient is not required to be present at the hearing, but he shall not be denied the right to be present.

(c) The Court may exclude all persons not having a legitimate interest in the proceedings, provided the consent of the proposed patient first shall have been obtained.

(d) The hearing shall be conducted in as informal a manner as is consistent with orderly procedure.

(e) The hearing shall be before the Court without a jury, unless a jury is demanded by a person authorized to make such demand or by the proposed patient or by the Court.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1470, ch. 596, § 5, eff. Sept. 1, 1977.]

Art. 5547–38. Order Upon Hearing

[See Compact Edition, Volume 4 for text of (a) and (b)]

(c) If upon the hearing the court finds that the proposed patient is mentally ill and requires observation or treatment for his own welfare and protection or the protection of others but that the required observation or treatment can be accomplished without commitment to a mental hospital, the court may order the proposed patient to submit to other treatment, observation, or care as may be found by the court to be likely to promote the welfare or protection of the proposed patient and the protection of others. If the proposed patient fails to fulfill the terms of the court's order, the court may, on its own motion or on the motion of any interested party, order that the mentally ill person be committed as a patient for observation or treatment in a mental hospital for a period not exceeding 90 days.

[Amended by Acts 1975, 64th Leg., p. 486, ch. 209, § 1, eff. Sept. 1, 1975.]

Art. 5547–39b. Transcript on Appeal

When notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the Court of Civil Appeals of the county.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 1, eff. June 19, 1975.]

Art. 5547–39c. Stay Order

Pending the appeal, the County Judge or District Judge in whose court the cause is pending may stay the Order of Temporary Hospitalization, and release the proposed patient from custody if the Judge is satisfied that the proposed patient is not dangerous to himself or to others, and provided that the proposed patient posts an appearance bond in an amount to be determined by the Court.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 2, eff. June 19, 1975.]

Art. 5547–39d. Hearing of Appeals

In those counties where there is a statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court in mental illness matters, all proceedings for temporary commitment shall be heard in such courts and the constitutional county courts, rather than in the district courts. In such counties all final orders in such matters shall be appealable to the Courts of Civil Appeals. Such cases shall be advanced on the docket and given a preference setting over all other cases. The Courts of Civil Appeals may suspend all rules concerning the time for filing briefs and the docketing of cases.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 2, eff. June 19, 1975.]

PART 3. INDEFINITE COMMITMENT

Art. 5547–40. Prerequisite to Commitment

No person may be committed to a mental hospital for an indefinite period unless he has been under observation and/or treatment in a mental hospital for at least sixty (60) days pursuant to an Order of Temporary Hospitalization entered within the twelve (12) months immediately preceding the filing of the Petition or unless he has been under observation and/or treatment in a mental hospital under an Order entered pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, for at least sixty (60) days within the twelve (12) months immediately preceding the date of the indefinite commitment hearing.

[Amended by Acts 1977, 65th Leg., p. 1471, ch. 596, § 6, eff. Sept. 1, 1977.]

Art. 5547–41. Petition

A sworn Petition for the indefinite commitment of a person to a mental hospital may be filed with the county court of the county in which the proposed patient is hospitalized, the county from which he is temporarily committed, the county in which he resides or is found. The Petition may be filed by any adult person, or by the county judge, and shall be styled "THE STATE OF TEXAS, FOR THE BEST INTEREST AND PROTECTION OF _____, AS A MENTALLY ILL PERSON." The Petition shall contain the following statements upon information and belief:

(1) Name and address of the proposed patient.

(2) Name and address of the proposed patient's spouse, parents, children, brothers, sisters, and legal guardian.

(3) Name and address of petitioner and a statement of his interest in the proceeding, including his relationship, if any, to the proposed patient.

(4) Name and address of the mental hospital, if any, in which the proposed patient is a patient.

(5) That the proposed patient is not charged with a crime.

(6) That the proposed patient has been under observation and/or treatment in a mental hospital for at least sixty (60) days pursuant to an Order of Temporary Hospitalization entered within the twelve (12) months immediately preceding the filing of the Petition or that he has been under observation and/or treatment in a mental hospital under an Order entered pursuant to Section 5 of Article 46.02, Code of Criminal Procedure, 1965, for at least sixty (60) days within the twelve (12) months immediately preceding the date of the indefinite commitment hearing.

(7) That the proposed patient is mentally ill and requires hospitalization in a mental hospital for his own welfare and protection or the protection of others.

(8) An Order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on indefinite commitment pursuant to Section 7 of Article 46.02, Code of Criminal Procedure, 1965, shall state that all such charges have been dismissed and shall serve as the Petition for indefinite commitment of the proposed patient to a mental hospital.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 3, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1471, ch. 596, § 7, eff. Sept. 1, 1977.]

Art. 5547–44. Notice of Hearing

At least seven (7) days prior to the date of the hearing a copy of the Petition and Notice of Hearing shall be personally served on the proposed patient. A copy of the Petition and Notice of Hearing shall be sent by registered mail to the guardian or a responsible relative of the proposed patient. The Notice of Hearing shall read substantially as follows:

THE STATE OF TEXAS FOR THE BEST INTEREST AND PROTECTION OF _____ As a Mentally Ill Person	NO. _____ IN THE COUNTY COURT OF _____ COUNTY, TEXAS

NOTICE OF HEARING

TO: _____ (Proposed Patient):

You are hereby notified that on the _____ (date and time), at _____ (place), in _____ County, Texas, a hearing will be held on the attached Petition to determine whether or not you shall be indefinitely committed to a mental hospital and to determine the issue of your mental competency.

You are advised that you have a right to demand a trial by jury or to have a hearing before the judge alone if you wish to waive trial by jury.

Unless a waiver of trial by jury, signed by you or your next of kin, and your attorney, is filed with the court, a jury will hear and determine the issues in this case.

Mr. _____, attorney at law, whose address is _____ and whose telephone number is _____, has been appointed by the county judge to represent you in this case for your best interest and protection. However, if you desire you may employ a lawyer of your own choosing to represent you. You may consult with your attorney concerning this Petition and your rights in this case.

You have the right to be present at this hearing, but you are not required to be present.

_____
County Judge

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 4, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1472, ch. 596, § 8, eff. Sept. 1, 1977.]

Art. 5547–45. Waiver of Trial by Jury

Waiver of trial by jury shall be in writing under oath and may be signed and filed at any time subsequent to service of the Petition and Notice of Hearing upon the proposed patient. The waiver of trial by jury shall be signed and sworn to by the proposed patient, or his next of kin, and by the attorney ad litem appointed to represent the proposed patient.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 5, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1472, ch. 596, § 9, eff. Sept. 1, 1977.]

Art. 5547–55. Transcript on Appeal

When notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the Court of Civil Appeals.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 5, eff. June 19, 1975.]

Art. 5547–56. Stay Order

For good cause shown, the county judge, or district judge in whose court the cause is pending, may stay the Order of Indefinite Commitment pending the appeal.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 6, eff. June 19, 1975.]

Art. 5547–57. Hearing of Appeals

In those counties where there is no statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court in mental illness matters, all proceedings for indefinite commitment shall be heard by the county court, except that the proposed patient may request that such proceeding shall then be transferred by the County Judge to the district court of the county, and such proceeding shall be heard in the district court as if originally filed in such court. In such counties all final orders in such matters shall be appealable to the Courts of Appeals. Such cases shall be advanced on the docket and given a preference setting over all other cases. The Courts of Appeals may suspend all rules concerning the time for filing briefs and the docketing of cases.

In those counties where there is a statutory probate court, county court at law, or other statutory courts exercising the jurisdiction of a probate court in mental illness matters, all proceedings for indefinite commitment shall be heard in such courts and the constitutional county courts, rather than in the district courts. In such counties all final orders in such matters shall be appealable to the Courts of Appeals. Such cases shall be advanced on the docket and given a preference setting over all other cases. The Courts of Appeals may suspend all rules concerning the time for filing briefs and the docketing of cases.

[Amended by Acts 1975, 64th Leg., p. 981, ch. 377, § 4, eff. June 19, 1975; Acts 1981, 67th Leg., p. 791, ch. 291, § 66, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

CHAPTER FOUR. GENERAL HOSPITALIZATION PROVISIONS

Article

5547–80A. Plan for Continuing Care.

Art. 5547–68. Admission and Detention

(a) The head of a mental hospital is authorized to admit and detain any patient in accordance with the following procedures provided in this Code:

(1) Voluntary Hospitalization

(2) Emergency Admission

(3) Temporary Hospitalization

(4) Indefinite Commitment

(b) Nothing in this Code prohibits the admission of voluntary patients to private mental hospitals in any lawful manner.

(c) This Code does not affect the admission to a State mental hospital of an alcoholic admitted in accordance with Acts 1951, Fifty-second Legislature, Chapter 398 (compiled as Texas Civil Statutes, Article 3196c (Vernon's 1952 Supplement)) nor the admission of a person charged with a criminal offense admitted in accordance with Section 5 of Article 46.02, Code of Criminal Procedure.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 6, eff. June 19, 1975.]

Art. 5547–69. Persons Charged with Criminal Offense

The sections of this Code concerning the discharge, furlough and transfer of a patient are not applicable to a person charged with a criminal offense who is admitted in accordance with Section 5 of Article 46.02, Code of Criminal Procedure.

[Amended by Acts 1975, 64th Leg., p. 1103, ch. 416, § 7, eff. June 19, 1975.]

Art. 5547–80. Discharge of Patients

(a) The head of a mental hospital may at any time discharge a patient if he determines after examination that the patient no longer requires hospitalization.

(b) The head of a mental hospital may at any time discharge a patient on furlough, and shall discharge a patient who has been on furlough status for a continuous period of eighteen (18) months.

(c) The head of a mental hospital may discharge a non-resident patient who has been absent without authority for a continuous period of thirty (30) days.

(d) The head of a mental hospital may discharge a resident patient who has been absent without authority for a continuous period of eighteen (18) months.

(e) Upon the discharge of a patient, the head of the mental hospital shall prepare a Certificate of Discharge stating the basis therefor. The Certificate of Discharge shall be filed with the committing court, if any, and a copy thereof delivered or mailed to the patient.

[Amended by Acts 1977, 65th Leg., p. 104, ch. 49, § 1, eff. Aug. 29, 1977.]

Art. 5547–80A. Plan for Continuing Care

(a) Before the furlough or discharge of a patient, the head of the mental hospital shall, in consultation with the patient and on accordance with department rules, develop a plan for continuing care for a patient for whom he determines the care is required. The plan will address the mental health and physical

needs of the client. A patient to be discharged may refuse the services provided for by this section.

(b) If the county in which the patient will reside is served by a community mental health and mental retardation center established pursuant to Section 3.01, Texas Mental Health and Mental Retardation Act, as amended (Article 5547–203, Vernon's Texas Civil Statutes), that has been designated by the commissioner to perform continuing care services or if a patient seeks continuing care from a provider other than a facility or other provider designated by the commissioner, and of continuing care by that facility or by another provider that agrees to accept the referral is appropriate, the head of the mental hospital shall deliver the plan and other appropriate records to the community center or provider.

(c) A community mental health and mental retardation center's involvement in discharge planning and continuing care services shall be to the extent that the center's resources have been determined by the commissioner to be available for those purposes.

[Added by Acts 1981, 67th Leg., p. 2351, ch. 578, § 7, eff. Jan. 1, 1982.]

Art. 5547–87. Disclosure of Information

(a) Hospital records which directly or indirectly identify a patient, former patient, or proposed patient shall be kept confidential except where

(1) consent is given by the individual identified, his legal guardian, or his parent if he is a minor; if the patient is deceased, consent may be given by the executor or administrator of his estate; if there is no appointment of an executor or administrator, consent may be given by the deceased patient's spouse or, if none, by any adult person related to the deceased patient within the first degree of consanguinity;

(2) disclosure may be necessary to carry out the provisions of this Code;

(3) a court directs upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest, or

(4) the Board or the head of the hospital determines that disclosure will be in the best interest of the patient.

[See Compact Edition, Volume 4 for text of (b)]

[Amended by Acts 1979, 66th Leg., p. 24, ch. 14, § 1, eff. March 15, 1979.]

Section 2 of the 1979 amendatory act provided:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

CHAPTER FIVE. PRIVATE MENTAL HOSPITALS

Art. 5547–91. License Issuance

(a) After receipt of proper application for license and the required fees, the Department shall make such investigation as it deems desirable. If the Department finds that the premises are suitable and that the applicant is qualified to operate a mental hospital in accordance with the requirements and standards established by law and by the Department, the Department shall issue a license authorizing the designated licensee to operate a mental hospital on the premises described and for the bed capacity specified in the license. However, if operation of the mental hospital involves acquisition, construction, or modification of a facility, a change in bed capacity, provision of new services, or expansion of existing services for which a certificate of need or an exemption certificate is required under the Texas Health Planning and Development Act,[1] the Department shall not issue the license unless and until the certificate of need or the exemption certificate has been granted to the applicant under that Act.

(b) Subject to the applicable provisions of the Texas Health Planning and Development Act, the authorized bed capacity may be increased at any time upon the approval of the Department and may be reduced at any time by notifying the Department.

[See Compact Edition, Volume 4 for text of (c) and (d)]

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.02, eff. May 28, 1975.]

[1] Article 4418h.

Art. 5547–93. Denial, Suspension or Revocation of License

(a) After giving an applicant or licensee opportunity to demonstrate or achieve compliance and after notice and opportunity for hearing, the Department may deny, suspend, or revoke a license, if it finds substantial failure by the applicant or licensee to comply with the rules or regulations established by the Department or the provisions of this Code or with applicable provisions of the Texas Health Planning and Development Act.

[See Compact Edition, Volume 4 for text of (b) to (f)]

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.03, eff. May 28, 1975.]

II. MENTAL HEALTH AND RETARDATION ACT

ARTICLE 5. EARLY CHILDHOOD INTERVENTION PROGRAMS

5547–205. Early Childhood Intervention Programs.

ARTICLE 1. GENERAL PROVISIONS

Art. 5547–201. Mental Health and Mental Retardation; General Provisions

Purpose and Policy

Sec. 1.01. (a) It is the purpose of this Act to provide for the conservation and restoration of men-

tal health among the people of this state, and toward this end to provide for the effective administration and coordination of mental health services at the state and local levels, and to provide, coordinate, develop, and improve services for the mentally retarded persons of this state to the end that they will be afforded the opportunity to develop their respective mental capacities to the fullest practicable extent and to live as useful and productive lives as possible.

(b) The legislature declares that the public policy of this state is to encourage local agencies and private organizations to assume responsibility for the effective administration of mental health and mental retardation services, with the assistance, cooperation, and support of the Texas Department of Mental Health and Mental Retardation created by this Act.

(c) Recognizing that there exists a variety of alternatives for serving the mentally disabled, it is the purpose of this Act to provide for a continuum of services and it is the policy of this state that when appropriate and feasible, mentally ill and mentally retarded persons shall be afforded treatment in their own communities.

[See Compact Edition, Volume 4 for text of 1.02]

[Amended by Acts 1981, 67th Leg., p. 2348, ch. 578, § 1, eff. Sept. 1, 1981.]

ARTICLE 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

Art. 5547-202. Texas Department of Mental Health and Mental Retardation

Composition of Department

Sec. 2.01. The Texas Department of Mental Health and Mental Retardation shall consist of a Texas Board of Mental Health and Mental Retardation, a Commissioner of Mental Health and Mental Retardation, a Deputy Commissioner for Mental Health Services, a Deputy Commissioner for Mental Retardation Services, a staff under the direction of the Commissioner and the Deputy Commissioners, and the following facilities and institutions together with such additional facilities and institutions as may hereafter by law be made a part of the Department:

(1) the Central Office of the Department;

(2) the Austin State Hospital;

(3) the San Antonio State Hospital and the San Antonio State School;

(4) the Terrell State School;

(5) the Wichita Falls State Hospital;

(6) the Rusk State Hospital and Rusk State School and the Skyview Maximum Security Unit;

(7) the Big Spring State Hospital;

(8) the Kerrville State Hospital;

(9) the Vernon Center;

(10) the Austin State School;

(11) the Travis State School;

(12) the Mexia State School;

(13) the Abilene State School;

(14) the Lufkin State School;

(15) the Richmond State School;

(16) the Denton State School;

(17) the Corpus Christi State School;

(18) the Lubbock State School;

(19) the Brenham State School;

(20) the Fort Worth State School;

(21) the Texas Research Institute of Mental Sciences;

(22) the Beaumont State Center for Human Development;

(23) the Amarillo State Center for Human Development;

(24) the El Paso State Center for Human Development;

(25) the Rio Grande State Center for Mental Health and Mental Retardation;

(26) the San Angelo Center;

(27) the Leander Rehabilitation Center.

[See Compact Edition, Volume 4 for text of 2.01A]

Application of Sunset Act

Sec. 2.01B. The Texas Department of Mental Health and Mental Retardation is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the department is abolished, and this article expires effective September 1, 1985.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 2.03 and 2.04]

Meetings of Board

Sec. 2.05. (a) The Board shall hold at least four regular meetings per year in the state capital on dates fixed by rule of the Board. The Board shall make rules providing for the holding of special meetings.

[See Compact Edition, Volume 4 for text of 2.05(b) to 2.09]

Advisory Committees

Sec. 2.10. The Board shall appoint a medical advisory committee and any other advisory committees it deems necessary to assist in the effective administration of the mental health and mental retardation programs of the Department. The Department may pay the members of any such committees and the members of any advisory committees, the creation of which is approved by the Board, for travel costs incurred in connection with the exercise of their

duties for the Department at rates authorized to be paid to state officers and employees under the provisions of the General Appropriations Act.

[See Compact Edition, Volume 4 for text of 2.11]

Effective Administration

Sec. 2.12.

[See Compact Edition, Volume 4 for text of 2.12(a) and (b)]

(c) The Commissioner shall appoint the head of each facility or institution that is administered by the Department. The appointments are subject to the Board's approval.

(d) The person appointed as head of a facility or institution serves at the pleasure of the Commissioner.

Determination of Level of Care Required; Use in Planning; Reports to Legislature

Sec. 2.12A. (a) The commissioner shall, consistent with the purposes and policies of this Act, determine for persons exhibiting the various forms of mental disability the types of services for the mentally disabled that can be most economically and effectively delivered at the community level and those mental health services that can be most economically and effectively delivered by the facilities of the department. This determination shall include an assessment of the limits, if any, that should be placed on the duration of services to be provided an individual either at the community level or at the departmental facility level.

(b) The commissioner's findings shall serve to guide the department in its planning and administration of services for the mentally ill.

(c) The commissioner shall report the results of his determination to the legislature in conjunction with the department's biennial appropriations request.

[See Compact Edition, Volume 4 for text of 2.13 to 2.23]

Certificate of Need Requirement

Sec. 2.24. The acquisition, development, construction, modification, and expansion of facilities, provision of additional services, and expansion of existing services under Articles 2, 3, and 4 of this Act are subject to the applicable provisions of the Texas Health Planning and Development Act,[1] including requirements for a certificate of need or an exemption certificate.

Fees for Genetic Counseling Services

Sec. 2.25. The department is authorized to charge for genetic counseling services provided under the authority of this Act at a rate not to exceed the actual cost of providing such services. The proceeds from such charges shall be retained and utilized by the department for the continued provision of such services.

Sec. 2.26. [Blank]

Exchange of Client Records

Sec. 2.27. (a) For the purpose of confidentiality of client records, the facilities of the department and all community centers for mental health and mental retardation services created pursuant to Article 3 of the Texas Mental Health and Mental Retardation Act, as amended (Article 5547–203, Vernon's Texas Civil Statutes), will be considered as component parts of one service delivery system within which client records may be exchanged without the consent of the client.

(b) The department shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions and may provide for such safeguards and procedures as in the judgment of the department are necessary or proper to effectuate the purposes of this section.

[Amended by Acts 1975, 64th Leg., p. 832, ch. 323, § 5.01, eff. May 28, 1975; Acts 1977, 65th Leg., p. 340, ch. 166, § 1, eff. May 20, 1977; Acts 1977, 65th Leg., p. 1166, ch. 445, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.106, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 606, ch. 283, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 789, ch. 350, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1797, ch. 730, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 754, ch. 286, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2348, ch. 578, § 2, eff. Sept. 1, 1981.]

[1] Article 4418h.

ARTICLE 3. COMMUNITY CENTERS FOR MENTAL HEALTH AND MENTAL RETARDATION SERVICES

Art. 5547–203. Community Centers for Mental Health and Mental Retardation Services

Agencies Authorized to Establish and Operate Community Center; Contracts

Sec. 3.01.

[See Compact Edition, Volume 4 for text of 3.01(a) and (b)]

(c) A community center is an agency of the state and a unit of government as defined by Section 2, Texas Tort Claims Act (Article 6252–19, Vernon's Texas Civil Statutes).

Purpose and Policy

Sec. 3.01A. Community centers created pursuant to this Act are intended to be vital components in an continuum of services for the mentally ill and mentally retarded individuals of this state. It is the policy of this state that community centers strive to develop services for the mentally ill and mentally retarded that are effective alternatives to treatment in large residential facilities.

[See Compact Edition, Volume 4 for text of 3.02 to 3.03]

Meetings

Sec. 3.04. The boards of trustees shall make rules to govern the holding of regular and special

meetings. All meetings of the boards of trustees shall be open to the public to the extent required by and in accordance with the general law of this state requiring meetings of governmental bodies to be open to the public. A majority of the membership of the board of trustees shall constitute a quorum for the transaction of business. The board shall keep a record of its proceedings, and the record is open to inspection by the public.

[See Compact Edition, Volume 4 for text of 3.05 to 3.07]

Personnel

Sec. 3.08. The board or director may employ and train personnel for the administration of the various programs and services of a community center. The board shall provide appropriate rights, privileges and benefits to the employees of a community center consistent with those rights, privileges and benefits available to employees of the governing bodies which establish the center and is authorized to provide and may provide workmen's compensation benefits. The number of employees and their salaries shall be as prescribed by the board of trustees, as approved by the Commissioner.

[See Compact Edition, Volume 4 for text of 3.09 and 3.10]

Property, Buildings, Facilities

Sec. 3.11. A community center may acquire real property and personal property by purchase or lease and may construct buildings and facilities.

Services

Sec. 3.12. (a) The board of trustees may make rules, consistent with the purposes, policies, principles, and standards provided by this Act to regulate the administration of mental health or mental retardation services by a community center, and may make contracts with local agencies and with qualified persons and organizations to provide portions of these services. A community center may provide services to persons voluntarily seeking assistance and to persons legally committed to that community center. A board of trustees may, with the approval of the state mental health authority, contract with the governing bodies of other counties and cities to provide mental health and mental retardation services to residents of such cities and counties.

(b) Community centers shall provide screening services, consistent with rules, regulations, and standards of the department, for persons seeking voluntary admission to a state facility for the mentally ill as well as for those persons for whom proceedings for involuntary commitment to a state facility have been initiated. The commissioner may designate a facility other than a community center as a provider of screening services when local conditions indicate that these services could be more economically and effectively delivered by that facility or when the commissioner determines that local conditions may impose an undue burden on the community center.

(c) Community centers shall provide continuing mental health and physical care services, consistent with rules, regulations, and standards of the department, for persons referred to the center by a state facility and for whom the state facility superintendent has recommended a continuing care plan. The commissioner may designate a facility other than a community center as a provider of continuing care services when local conditions indicate that these services could be more economically and effectively delivered by that facility or when the commissioner determines that local conditions may impose an undue burden on the community center.

[See Compact Edition, Volume 4 for text of 3.13 and 3.14]

Cooperation of Department

Sec. 3.15. (a) The Department shall provide to local agencies, boards of trustees and directors assistance, advice and consultation in the planning, development and operation of community centers.

(b) The Department may transfer ownership of and possession of personal property which is under its control or jurisdiction and which is surplus to its needs to community centers, with or without reimbursement, to be used in providing mental health services or mental retardation services, or both. [Amended by Acts 1975, 64th Leg., p. 562, ch. 220, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 936, ch. 350, § 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 2028, ch. 797, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 78, ch. 39, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 751, ch. 283, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2349, ch. 578, §§ 3, 4, eff. Sept. 1, 1981.]

ARTICLE 4. STATE GRANTS–IN–AID

Art. 5547–204. State Grants-In-Aid

[See Compact Edition, Volume 4 for text of 4.01 and 4.02]

Eligibility for Grants-In-Aid

Sec. 4.03. (a) A community center is eligible to receive State grants-in-aid if it qualifies according to the rules and regulations of the Department. It is specifically provided, however, that the Department may require that such grants of State funds be matched by local support in such proportions and amounts as may be determined by the Department. For the purpose of calculating the local share of the operating costs of a community center, patient fee income, services and facilities contributed by local community centers may be counted as local support. To further the purposes of this Act, the Department may allocate, according to methods approved by the Board, funds through contracts between the Department and centers for the performance of specific services required by the Department. If the Department is unable to negotiate contracts with a center

or centers for the required services, the Department may use these funds to contract with other local agencies, private providers, state agencies, or facilities of the Department for the performance of the services if these providers comply with rules and standards of the Department. To facilitate the administration of such funds, the Department may make periodic allocations of such grants to community centers on the basis of operating budgets submitted to it by the community centers in such form as the Department may require, but shall, periodically during the fiscal period covered by such operating budgets, make such adjustments, upward or downward, as may be necessary equitably to apportion such operating costs between the State government and the community centers.

(b) The first priority for use of grants-in-aid to be expended for mental health services shall be for services directed to those individuals who are at significant risk of placement in a State facility. Individuals at significant risk of placement in a State facility shall include but not necessarily be limited to persons for whom emergency hospitalization warrants have been issued, persons for whom proceedings for temporary or indefinite commitment in a State facility have been initiated, and former State facility patients for whom the facility superintendent has recommended a continuing care plan. The Department shall develop standards to enforce this policy and may withhold grants-in-aid from any center found not to be in compliance with these standards.

[See Compact Edition, Volume 4 for text of 4.04]

[Amended by Acts 1981, 67th Leg., p. 2350, ch. 578, § 5, eff. Sept. 1, 1981.]

ARTICLE 5. EARLY CHILDHOOD INTERVENTION PROGRAMS

5547–205. Early Childhood Intervention Programs

Definition

Sec. 5.01. In this article, "developmentally delayed child" means a child who exhibits:

(1) a significant delay, beyond acceptable variations in normal development, in one or more of the following areas:

(A) cognitive;

(B) gross or fine motor;

(C) language or speech;

(D) social or emotional;

(E) self-help skills; or

(2) an organic defect or condition that is very likely to result in such a delay.

Eligibility

Sec. 5.02. A developmentally delayed child is eligible for services under this article if the child is under three years of age or until reaching the age of eligibility for entry into the comprehensive special education program for handicapped children under Section 16.104 of the Texas Education Code.

Grant Request

Sec. 5.03. A public or private entity may apply for funds to provide an intervention program for eligible developmentally delayed children by submitting a grant request to the department.

Approval Criteria

Sec. 5.04. The department shall allocate appropriated funds to local intervention programs on a competitive basis giving consideration to the following:

(1) the extent to which the program would meet identified needs;

(2) the cost of initiating a program, if applicable;

(3) the need for funds from the department if other funding sources are available;

(4) the proposed cost to the parents for the services; and

(5) the assurance of quality services.

Contract

Sec. 5.05. (a) After approval of a grant request, the department shall execute a contract with the service provider that requires the provider to agree to meet the following program standards:

(1) the program must be maintained within the guidelines established by the department;

(2) the provider must ensure that for each child served an individualized developmental plan is developed and is based on a comprehensive developmental evaluation performed by an interdisciplinary team with parent participation and periodic review and reevaluation;

(3) the provider must provide services to meet the unique needs of each child as indicated by the child's individualized developmental plan;

(4) the provider must demonstrate a capability to obtain or provide an array of services that must include:

(A) training, counseling, case management services, and home visits for the parents of each child served;

(B) individualized instruction or treatment in these areas of development: cognitive, gross and fine motor, language and speech, social and emotional, and self-help skills; and

(C) related services, including occupational therapy, physical therapy, speech and language therapy, adaptive equipment, and transportation;

(5) the provider must maintain a plan for in-service personnel training;

(6) the provider must cooperate with the monitoring and case management efforts of the Texas Department of Health; and

(7) the provider must cooperate with the periodic evaluation efforts of the department.

(b) The contract must specify the minimum and maximum number of eligible developmentally delayed children to be served. The program must serve at least the minimum number and may not be required to serve more than the maximum number specified. If the number of eligible children applying for admission to an approved program exceeds the maximum number specified, the service provider may apply for supplemental funding.

Fees

Sec. 5.06. The service provider may charge a fee for intervention services, based on the parent's ability to pay, to be used to offset the cost of providing or securing the service. A determination of the parent's ability to pay for services must include a consideration of the availability of financial assistance or other benefits for which the child may be eligible. If a fee is charged, a separate charge shall be made for each type of service.

Guidelines

Sec. 5.07. (a) The department shall develop specific program guidelines in the following areas:

(1) instructional or treatment options;

(2) frequency and duration of service;

(3) staff-child ratios;

(4) staff composition and qualifications; and

(5) other program aspects designed to ensure the provision of quality services.

(b) The department may modify the standards established by Section 5.05 of this article if the department considers the modifications necessary for a particular program.

Periodic Evaluation

Sec. 5.08. The department shall periodically evaluate an approved program to determine whether the service provider is meeting the conditions of the contract. If the department determines that a program is not meeting a requirement that was agreed on as a condition for funding, the department shall withhold further funding for the program.

Complaints

Sec. 5.09. The department shall develop a method of response to individual complaints regarding services provided by a program funded under this article.

[Added by Acts 1981, 67th Leg., p. 2335, ch. 572, Art. III, § 1, eff. Sept. 1, 1981.]

III. MENTALLY RETARDED PERSONS ACT

Art. 5547-300. Mentally Retarded Persons Act of 1977

SUBCHAPTER A. GENERAL PROVISIONS

Short Title

Sec. 1. This Act shall be known and may be cited as the Mentally Retarded Persons Act of 1977.

Purposes

Sec. 2. (a) It is the public policy of the state that mentally retarded persons should have the opportunity to develop to the fullest extent possible their potential for becoming productive members of society. Therefore, it is the purpose of this Act to provide and assure a continuum of quality services to meet the needs of all mentally retarded persons in this state. The responsibility placed upon the state shall not in any way replace or impede parental rights and responsibilities or terminate the activities of those persons, groups, and associations that advocate for and assist mentally retarded persons.

(b) The legislature recognizes that the preservation and promotion of home-living situations where feasible is desirable. When home-living situations are not possible and placement in a residential facility for mentally retarded persons is necessary, the legislature declares that those persons must be admitted in accordance with basic due process requirements, giving due consideration to parental desires where possible, to a facility which provides habilitative training for the person's condition, which fosters the personal development of the resident and enhances the person's ability to cope with the environment.

(c) Recognizing that persons have been denied rights solely on the basis of mental retardation, the legislature seeks to educate the general public to the fact that mentally retarded persons who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a court of law have the same rights and responsibilities enjoyed by all citizens of Texas. The legislature urges all citizens to assist mentally retarded persons in acquiring and maintaining their rights and in participating in community life as fully as possible.

SUBCHAPTER B. DEFINITIONS

Definitions

Sec. 3. As used in this Act:

(1) "Department" means the Texas Department of Mental Health and Mental Retardation.

(2) "Commissioner" means the Commissioner of Mental Health and Mental Retardation.

(3) "Director" means the director of a community center.

(4) "Superintendent" means the director of any residential care facility.

(5) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

(6)(a) "Adaptive behavior" means the effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

(b) "Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.

(7) "Mentally retarded person" means a person determined by a comprehensive diagnosis and evaluation to be of subaverage general intellectual functioning with deficits in adaptive behavior.

(8) "Mental retardation services" means programs and assistance for mentally retarded persons which may include, but shall not be limited to, diagnosis and evaluation, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling for mentally retarded persons, but shall not include those services or programs which have been explicitly delegated by law to other state agencies.

(9) "Service provider" means one who provides mental retardation services.

(10) "Community center" means an entity organized pursuant to Section 3.01 of the Texas Mental Health and Mental Retardation Act, as amended (Article 5547–201 to 5547–204, Vernon's Texas Civil Statutes), which provides mental retardation services.

(11) "Residential care facility" means any facility operated by the department or a community center that provides 24-hour services, including domiciliary services, directed toward enhancing the health, welfare, and development of persons with mental retardation.

(12) "Client" means a person receiving mental retardation services from the department or community center.

(13) "Resident" means a person living in and receiving services from a residential care facility of the department or a community center.

(14) "Group home" means a residential living arrangement for mentally retarded persons operated by the department or a community center in which not more than 15 persons voluntarily live and may share responsibilities for operation of the living unit with appropriate supervision. For the purpose of this Act, a group home is not a residential care facility.

(15) "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills which enable the person to cope more effectively with the demands of his person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes, but is not limited to, programs of formal, structured education and training.

(16) "Treatment" means the process by which a service provider strives to ameliorate a mentally retarded person's condition.

(17) "Training" means the process by which a mentally retarded person is habilitated and may include teaching life skills and work skills.

(18) "Care" means the life support and maintenance services or other aid provided to mentally retarded persons and includes, but is not limited to, dental, medical, nursing, and similar services.

(19) "Labor" means all activity by one person that enures to the economic benefit of another, regardless of any direct or incidental therapeutic value to the client.

(20) "Legally adequate consent" means consent given by a person when each of the following conditions has been met:

(A) legal capacity: The person giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law;

(B) comprehension of information: The person giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the client. Furthermore, in cases of unusual or hazardous treatment procedures, experimental research, organ transplantation, and nontherapeutic surgery, the person giving the consent has been informed of and comprehends the method to be used in the proposed procedure; and

(C) voluntariness: The consent has been given voluntarily and free from coercion and undue influence.

(21) "Minor" means a person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes.

(22) "Guardian" means the person who, under court order, is the guardian of the person of another or the guardian of the estate of another.

(23) "Least restrictive alternative" means an available program or facility which is the least confining for the client's condition, and service and treatment which is provided in the least intrusive manner reasonably and humanely appropriate to the individual's needs.

(24) "Comprehensive diagnosis and evaluation" means a study including a sequence of observations and examinations of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions, if any, by a diagnosis and evaluation team. The study shall include but not be restricted to a social and medical history, and medical, neurological, audiological, visual, educational, appropriate psychological, and sociological examinations, and an examination of the person's adaptive behavior level.

(25) "Diagnosis and evaluation team" means a group of persons with special training and experience in the diagnosis, management, and needs of mentally retarded persons, and shall be composed

only of individuals who are certified pursuant to standards promulgated by the department and are professionally qualified in the fields necessary to perform the comprehensive diagnosis and evaluation.

(26) "Person" means an individual, firm, partnership, joint-stock company, joint venture, association, corporation, or governmental entity.

SUBCHAPTER C. BASIC BILL OF RIGHTS

Purpose

Sec. 4. The purpose of this subchapter is to recognize and protect the individual dignity and worth of mentally retarded persons.

Rights Guaranteed

Sec. 5. Every mentally retarded person in this state shall have the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and the constitution and laws of the State of Texas. Clients shall enjoy the same rights as other citizens of the United States and Texas except when lawfully restricted. The rights of mentally retarded persons which are specifically enumerated in this Act are in addition to all other rights enjoyed by the mentally retarded, and such listing of rights is not exclusive or intended to limit in any way rights which are guaranteed to the mentally retarded under the laws and constitutions of the United States and the State of Texas.

Right to Protection from Exploitation and Abuse

Sec. 6. Every mentally retarded person shall have the right to protection from exploitation and abuse on the basis of mental retardation.

Right to Least Restrictive Living Environment

Sec. 7. Every mentally retarded person shall have the right to live in the least restrictive setting appropriate to his individual needs and abilities. This includes the person's right to live in a variety of living situations, such as the right to live alone, in a group home, with a family, and in a supervised, protective environment.

Right to Education

Sec. 8. Every mentally retarded person shall have the right to receive publicly supported educational services including, but not limited to, those services provided by the Texas Education Code. The services provided to every mentally retarded person shall be appropriate to his individual needs regardless of chronological age, degree of retardation, accompanying disabilities or handicaps, or admission or commitment to mental retardation services.

Right to Equal Opportunities in Employment

Sec. 9. No employer, employment agency, or labor organization shall deny a person equal opportunities in employment because of mental retardation except when:

(1) based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise; and

(2) the person's mental retardation significantly impairs his performance of the duties and tasks of the position for which he has made application.

Right to Equal Housing Opportunities

Sec. 10. No owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent, or lease any real property, or agency or employee of any of these shall refuse to sell, rent, or lease to any person or group of persons solely on the basis of mental retardation.

Right to Treatment and Habilitative Services

Sec. 11. Every mentally retarded person shall have the right to receive adequate treatment and habilitative services for mental retardation suited to the person's individual needs to maximize the person's capabilities and enhance the person's ability to cope with his environment. Such treatment and habilitative services shall be administered skillfully, safely, and humanely with full respect for the dignity and personal integrity of the person.

Right to Comprehensive Diagnosis and Evaluation

Sec. 12. (a) Any person thought to be mentally retarded shall have the right to receive promptly a comprehensive diagnosis and evaluation adapted to the cultural background, language, and ethnic origin of the person thought to be mentally retarded, to determine if the person is in need of mental retardation services. The diagnosis and evaluation team shall report its findings in writing and shall make written recommendations for needed services and placement based on those findings. The evaluation shall be performed at a facility approved by the department to conduct comprehensive diagnoses and evaluations nearest the home of the person being evaluated. If the person is indigent, the comprehensive diagnosis and evaluation shall be performed at the expense of the department at a facility designated by the department.

(b) A person who requests a comprehensive diagnosis and evaluation shall have the right to request and receive a prompt administrative hearing pursuant to Section 31 of Subchapter G of this Act for the purpose of contesting the findings of the diagnosis and evaluation team and to determine eligibility and need for mental retardation services.

(c) The person on whom the comprehensive diagnosis and evaluation is performed and any other person who requested the diagnosis and evaluation pursuant to Section 29 of Subchapter G of this Act shall have the right to an additional independent diagnosis and evaluation if such person questions the validity or results of the comprehensive diagnosis and evaluation. Any such independent diagnosis and evaluation will be performed at the expense of the person requesting it.

Additional Rights

Sec. 13. Mentally retarded persons shall also have the following rights: right to presumption of

competency, right to due process in guardianship proceedings, and right to fair compensation for labor.

SUBCHAPTER D. ADDITIONAL RIGHTS OF CLIENTS

Additional Rights

Sec. 14. In addition to the rights guaranteed in Subchapter C of this Act, clients shall have the rights enumerated in this subchapter.

Right to Least Restrictive Alternative

Sec. 15. Each client shall have the right to live in the least restrictive habilitation setting appropriate to the individual's needs and be treated and served in the least intrusive manner appropriate to the individual's needs.

Right to Individualized Habilitation Plan

Sec. 16. Each client shall have the right to a written individualized habilitation plan. Each plan shall be developed by appropriate specialists with the participation of the client and his parent, if a minor, or guardian of the person, and based on the relevant results of the comprehensive diagnosis and evaluation. Implementation of the plan shall begin as soon as possible, but no later than 30 days after the client's admission or commitment to mental retardation services. The content of an individualized habilitation plan shall be as required by the department.

Right to Periodic Review and Reevaluation

Sec. 17. (a) Every client shall have the right to review of the individualized habilitation plan to measure progress, to modify objectives and programs if necessary, and to provide guidance and remediation techniques. The review shall be made at least annually if the client has been placed in a residential care facility; the review shall be at least quarterly if the client has been admitted for services other than placement in a residential care facility.

(b) Every client shall have the right to a comprehensive rediagnosis and reevaluation periodically.

Right to be Informed and Participate in Planning

Sec. 18. Each client and parent of a minor or guardian of the person shall have the right to participate in planning with regard to the client's treatment and habilitation and to be informed in writing of progress at reasonable intervals. Whenever possible, the client or the parent of a minor or the guardian of the person shall be given the opportunity to decide among several appropriate alternative services available to the client from the service provider.

Right to Withdraw From Voluntary Mental Retardation Services

Sec. 19. A client, the parent if the client is a minor, or a guardian of the person shall have the right, subject to the exception of Section 36, Subchapter G of this Act, to withdraw the client from mental retardation services other than court commitment to a residential care facility.

Right to be Free from Mistreatment, Neglect, and Abuse

Sec. 20. Clients shall have the right to be free from mistreatment, neglect, and abuse by service providers.

Right to be Free from Unnecessary and Excessive Medication

Sec. 21. Each client shall have the right to be free from unnecessary and excessive medication. Medication shall not be used as punishment, for the convenience of the staff, as a substitute for a habilitation program, or in quantities that interfere with the client's habilitation program. Medication for each client shall be authorized only by the prescription of a physician and shall be closely supervised by a physician.

Right to Submit Grievances

Sec. 22. A client or any person acting on behalf of a mentally retarded person or group of mentally retarded persons shall have the right to submit to the appropriate public responsibility committee for investigation and appropriate action complaints or grievances against any person, group of persons, organization, or business regarding infringement of the rights of the mentally retarded person and delivery of mental retardation services.

Right to be Informed of Rights

Sec. 23. On admission for mental retardation services, each client and the parent of a minor or guardian of the person of each client shall be given written notice of the rights guaranteed by this Act in plain and simple language. In addition, each client shall be orally informed of these rights in plain and simple language. However, if a client is manifestly unable to comprehend these rights, notice to the parent of a minor or guardian of the person shall be sufficient.

SUBCHAPTER E. ADDITIONAL RIGHTS OF RESIDENTS

Right to Prompt and Adequate Medical and Dental Care and Treatment

Sec. 24. (a) Each resident shall have the right to prompt, adequate, and necessary medical and dental care and treatment for physical and mental ailments and for the prevention of any illness or disability. Subject to the limitations of his authority under this Act, the superintendent or director shall:

(1) provide such necessary care and treatment to all court-committed residents without further consent; provided, however, that consent shall be required for all surgical procedures.

(2) make available such necessary care and treatment to all voluntary residents.

(b) All medical and dental care and treatment shall be consistent with accepted standards of medical and dental practice in the community and shall be performed under appropriate supervision of licensed physicians or dentists.

(c) Nothing in this subchapter nor in this Act shall be construed to permit the department to perform unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery for experimental research.

Additional Rights

Sec. 25. Residents shall also have the following rights: right to a normalized residential environment, right to humane physical environment, right to communication and visits, and right to personal property.

SUBCHAPTER F. RULES AND REGULATIONS

Rules and Regulations

Sec. 26. The department shall promulgate rules and regulations to ensure the implementation of the rights guaranteed in Subchapters C, D, and E of this Act.

SUBCHAPTER G. ADMISSION AND COMMITMENT TO MENTAL RETARDATION SERVICES

Admission

Sec. 27. Persons shall be admitted for mental retardation services offered by the department or community centers under the provisions of this Act only by the procedures prescribed in this subchapter.

Comprehensive Diagnosis and Evaluation Required; Application to Developmentally Delayed Children

Sec. 28. (a) No person shall be eligible to receive mental retardation services, including but not limited to placement in a residential care facility, unless he shall first receive a comprehensive diagnosis and evaluation to determine the need and eligibility for mental retardation services, except as provided in Subsections (g) and (h) of Section 34 of this Act. The diagnosis and evaluation shall be performed at a diagnosis and evaluation center approved by the department.

(b) No person shall be voluntarily admitted for mental retardation services unless the comprehensive diagnosis and evaluation has been performed or updated within three months prior to the initial admission to services, except as provided in Subsections (g) and (h) of Section 34 of this Act.

(c) No person shall be determined to be in need of placement in a residential care facility by a court of law pursuant to Section 37 of this Act unless a comprehensive diagnosis and evaluation has been performed or updated within six months prior to the court hearing on the application for placement in a residential care facility. On receiving an application for placement in a residential care facility, the court shall order a comprehensive diagnosis and evaluation to be performed if a comprehensive diagnosis and evaluation has not been performed or updated within the previous six months.

(d) This section does not apply to an eligible developmentally delayed child served under Article 5, Texas Mental Health and Mental Retardation Act,[1] as amended.

[1] Article 5547-205.

Application for Diagnosis and Evaluation

Sec. 29. Any person believed to be mentally retarded or the parent of a minor or guardian of the person who is believed to be mentally retarded may make written application to the department on forms provided by the department for a comprehensive diagnosis and evaluation.

Report and Recommendations Required

Sec. 30. (a) Based on its comprehensive diagnosis and evaluation, the diagnosis and evaluation team shall prepare written findings and recommendations for needed services and appropriate placement.

(b) The report and recommendations shall include but not be limited to:

(1) summary of findings of the diagnosis and evaluation team;

(2) recommendations as to whether or not the individual needs mental retardation services; and

(3) recommendations of desirable or appropriate programs or placement consistent with the needs of the applicant.

(c) The report and recommendations shall be signed by each member of the diagnosis and evaluation team.

(d) If a court has ordered the comprehensive diagnosis and evaluation pursuant to Subsection (i) of Section 37 of this Act, the department shall promptly send a copy of the summary report and recommendations of the diagnosis and evaluation team to the court and to the person diagnosed and evaluated or the person's legal representative.

(e) If any person thought to be mentally retarded, parent of a minor, or guardian of the person requests the comprehensive diagnosis and evaluation pursuant to Section 29 of this Act, the person, parent of a minor, or guardian of the person shall be promptly notified of the findings of the diagnosis and evaluation team and its recommendations. The person, parent of a minor, and guardian of the person shall be informed of the right to an independent diagnosis and evaluation and the right to an administrative hearing for the purpose of contesting the findings or recommendations of the diagnosis and evaluation team if they are unsatisfactory.

Administrative Hearing

Sec. 31. (a) If the person, parent of a minor, or guardian of the person who requested the comprehensive diagnosis and evaluation wishes to contest the findings or recommendations of the diagnosis and evaluation team, he may request an administrative hearing by the agency conducting the diagnosis and evaluation. In addition to the requirements of

this section, the department shall promulgate rules and regulations to implement the provisions of this section.

(b) The hearing shall be held as promptly as possible within 30 days and in a convenient location and with reasonable notice.

(c) The hearing shall be public unless the client or contestant requests a closed hearing.

(d) The proposed client and the contestant shall have the right to be present and represented at the hearing by any person of their choosing, including legal counsel.

(e) The proposed client, contestant, and representative shall have reasonable access at a reasonable time prior to the hearing to any records concerning the proposed client on which the proposed action may be based.

(f) The proposed client, contestant, and representative shall have the right to present oral or written testimony and evidence, including the results of an independent diagnosis and evaluation, and shall have the right to examine witnesses.

(g) Any interested person may appear and give oral and written testimony.

(h) In all cases, the hearing officer shall promptly report to the parties in writing his decision and findings of fact and the basis for those findings.

(i) Any party to such hearing shall have the right to appeal without the necessity for filing a motion for rehearing with the hearing officer. The appeal shall be brought in the county court of Travis County or the county in which the proposed client resides. The appeal shall be by trial de novo.

(j) The decision of the hearing officer shall be final within 30 days after the date of the decision unless a party files an appeal within such time. The filing of an appeal suspends the decision of the hearing officer, and no party may take any action based on such decision.

Application for Services

Sec. 32. (a) If the diagnosis and evaluation team recommends services, the client or the parent of a minor or guardian of the person may apply for needed services according to the provisions of Sections 33 and 34 of this Act.

(b) If the diagnosis and evaluation team recommends long-term placement in a residential care facility, the client, if an adult, the parent of a minor, or guardian of the person, the department, the court, any community center, or the agency which conducted the diagnosis and evaluation may file an application pursuant to Section 37 of this Act for a judicial determination that the alleged mentally retarded person is in need of long-term placement in a residential care facility.

Application for Voluntary Mental Retardation Services

Sec. 33. If the comprehensive diagnosis and evaluation as required by Section 30 of this Act indicates that the person diagnosed and evaluated is in need of voluntary mental retardation services, that person may be admitted to services as soon as appropriate services are available, and upon application for the services. The departmental facility or the community center shall develop a plan for appropriate programs or placement in programs or facilities approved or operated by the department. These programs or placements shall be suited to the needs of the proposed client and shall be consistent with the rights guaranteed in previous subchapters of this Act. The proposed client, his parent, if he is a minor, and/or his guardian shall be encouraged and permitted to participate in the development of the planned programs or placements.

Application for Voluntary Residential Care Services

Sec. 34. (a) No person shall be admitted voluntarily to a residential care program except pursuant to the provisions of this section.

(b) When voluntary placement in a residential care facility is requested, preference shall be given to the facility located nearest to the residence of the proposed resident except when there are compelling reasons for placement elsewhere.

(c) Application for voluntary admission may be made by a proposed client, the parents of a minor child, or the guardian of the person.

(d) The application for voluntary admission shall be made according to rules and regulations of the department and shall contain a statement of the reasons that placement is requested.

(e) As used in this section, voluntary admissions shall be one or more of the following types:

(1) "Regular voluntary admission" for placement of a mentally retarded person, without a court proceeding, for treatment, training, and/or care.

(2) "Emergency admission" for placement of a mentally retarded person, without court proceedings, when there is an immediate and compelling need for short-term training, treatment, and/or care.

(3) "Respite care" for placement of a mentally retarded person, without court proceeding, to provide special assistance or relief to the mentally retarded person and/or his family for brief periods of time.

(f) Regular voluntary admissions shall be permitted only after a comprehensive diagnosis and evaluation, if:

(1) Space is available at the facility for which placement is requested.

(2) The superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident.

(g) Emergency admissions shall be permitted even though a comprehensive diagnosis and evaluation has not been performed if:

(1) there is persuasive evidence that the proposed resident is mentally retarded;

(2) space is available at the facility for which placement is requested;

(3) the superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident;

(4) there is an urgent need by the proposed resident for short-term placement and care which the facility provides;

(5) relief for the urgent need of the proposed resident can be afforded within a period of one year following admission; provided that a comprehensive diagnosis and evaluation is performed within 30 days following admission.

(h) Respite care shall be permitted even though a comprehensive diagnostic evaluation has not been performed if:

(1) there is persuasive evidence that the proposed resident is mentally retarded;

(2) space is available at the facility for which respite care is requested;

(3) the superintendent or director of the facility determines that the facility can and does provide services that meet the needs of the proposed resident;

(4) there is a need for the mentally retarded person and/or his family that urgently requires assistance or relief;

(5) that assistance or relief to the mentally retarded person and/or his family can be provided within a brief period of time, not to exceed 30 consecutive days following admission. If the relief sought by the mentally retarded person or his family has not been achieved in the 30-day period, one 30-day extension may be allowed if:

(A) The superintendent or director of the facility determines that the relief may be achieved in the additional time period, and

(B) The parties agreeing to the original placement consent to the extension. If the extension is not permitted, the resident shall be released immediately and application may be made for other services.

Voluntary Admission or Court Commitment of Minor Who Reaches Majority

Sec. 35. At the time a resident who was voluntarily admitted as a minor under Section 34 of this Act, and who continues to be in need of residential services, approaches the age of majority, the superintendent shall take action to insure that at majority one of the following actions is taken for admission or commitment of the resident:

(1) obtain legally adequate consent for admission from the resident or the guardian of the person, or

(2) file or cause to be filed an application for court commitment under Section 37 of this Act.

Withdrawal by Persons Voluntarily Admitted for Residential Care Services

Sec. 36. No person voluntarily admitted to a residential care facility may be detained more than 96 hours after he, his parents if he is a minor, or the guardian of his person has requested discharge in accordance with rules and regulations promulgated by the department, unless:

(a) The superintendent or director of the facility determines that the condition of the person or other circumstances are such that the person cannot be discharged without endangering the safety of himself or the general public; and

(b) The superintendent or director files or causes to be filed an application for judicial commitment. For purposes of this Act, the county in which the facility is located shall be deemed as the county of residence of the proposed resident; and

(c) Pending a final determination on the application, the court may, upon a finding of good cause, issue an order of protective custody, ordering the resident to remain in the facility where he was voluntarily admitted, or other suitable place designated by the court as provided in Subsection (k) of Section 37 of this Act.

Commitment to a Residential Care Facility

Sec. 37. (a) No person shall be committed to a residential care facility under the provisions of this Act except pursuant to the provisions of this section.

(b) No person shall be committed to a residential care facility unless:

(1) the person is mentally retarded;

(2) evidence is presented showing that because of retardation, the person represents a substantial risk of physical impairment or injury to himself or others, or he is unable to provide for and is not providing for his most basic physical needs;

(3) the person cannot be adequately and appropriately habilitated in an available, less restrictive setting;

(4) the residential care facility does provide habilitative services, care, training, and treatment appropriate to the individual's needs; and

(5) the committing court finds that the conditions of this subsection have been met.

(c) When placement in a residential care facility becomes necessary, preference shall be given to the facility located nearest to the residence of the proposed resident except when no vacancy is available in the nearest facility, or the proposed resident, parent of a minor, or guardian of the person requests otherwise, or there are other compelling reasons.

(d) The procedure prescribed in the following subsections shall be used for commitment to a residential care facility.

(e) The county court shall have original jurisdiction of all judicial proceedings for commitment of mentally retarded persons to residential care facilities.

(f) An alleged mentally retarded person, the parent of a minor, the guardian of the person, or any other interested person may file with the county clerk of the county of residence of the alleged mentally retarded person an application for a determination that the alleged mentally retarded person is in need of long-term placement in a residential care facility.

(g) The application shall be executed under oath and shall set forth:

(1) the name, birthdate, sex, and residence address of the proposed resident;

(2) the name and residence address of the proposed resident's parent or guardian;

(3) a short and plain statement of the facts to show that commitment to a residential care facility is necessary and appropriate; and

(4) a short and plain statement explaining the inappropriateness of admission to less restrictive services.

(h) A copy of the summary report and recommendations of the diagnosis and evaluation team, if completed, shall be included in the application.

(i) On the filing of the application, the court shall immediately set a date for a hearing to determine the appropriateness of the commitment of the proposed resident to a residential care facility. The court shall also order an immediate comprehensive diagnosis and evaluation of the proposed resident unless such a comprehensive diagnosis and evaluation has been completed or updated within six months prior to the date of the scheduled hearing.

(j) Copies of the application, notice of the time and place of the hearing, and if appropriate, the order for the comprehensive diagnosis and evaluation shall be served on the proposed resident or his representative, the parent of a minor, guardian of the person, and the department not less than 10 days before the hearing. The notice shall also specify in plain and simple language the right to an independent diagnosis and evaluation as provided in Subsection (e) of Section 30 of this Act, as well as the provisions of Subsections (*l*) and (m) of this section.

(k) If the county court in which an application has been filed in accordance with this section finds, pursuant to certificates filed with the court, that the proposed resident is believed to be mentally retarded and is likely to cause injury to himself or others if not immediately restrained, the judge may order any health or peace officer to take the proposed resident into protective custody and immediately transport him to a designated residential care facility when space is available or to a place deemed suitable by a county health officer, and detain him for a period not to exceed 20 days pending order of the court. No person may be detained in protective custody in a nonmedical facility used for the detention of persons charged with or convicted of a crime, except because of and during an extreme emergency and in no case for a period longer than 24 hours. The county health officer shall see that a person held in protective custody receives proper care and medical attention pending removal to a residential care facility. The head of a facility in which a person is held under this subsection shall discharge such person within 20 days if the court has not issued further orders; provided, however, if the head of such facility believes the person is dangerous to himself or others, he shall immediately so advise the court which issued the order of protective custody.

(*l*) If the proposed resident cannot afford counsel, the court shall appoint an attorney not less than 10 days before the hearing. An attorney appointed pursuant to this section shall be entitled to a reasonable fee to be paid from the general fund of the county in which the proceeding is brought. In all cases the proposed resident's attorney shall represent the rights and legal interests of the proposed resident regardless of who may initiate the proceeding or pay the attorney's fees.

(m) A full hearing on the application shall be held as soon as practicable after the application is filed in accordance with the following procedures:

(1) The hearing shall be open to the public unless the proposed resident or his representative requests that the hearing be closed and the court determines there is good cause therefor.

(2) Any party to the proceedings may demand a jury, or the court on its own motion may order a jury. The Texas Rules of Civil Procedure shall apply to the selection of the jury, the court's charge to the jury, and all other aspects of the proceedings and trial except when inconsistent with the provisions of this section.

(3) The proposed resident shall have the right to be present throughout the entire proceeding. If the court shall determine that the presence of the proposed resident would result in harm to the proposed resident, then the court may waive the requirement of this subsection in writing, clearly stating the basis for the determination.

(4) The proposed resident shall be represented by counsel and be provided the right and opportunity to confront and cross-examine all witnesses. The parent of a minor or guardian of the person may also be represented by counsel.

(5) The usual rules of evidence shall apply. The results of the current diagnosis and evaluation shall be presented in evidence.

(6) The party who filed the application shall prove beyond a reasonable doubt that long-term placement of the proposed resident in a residential care facility is appropriate.

(7) In all cases, the court shall promptly report in writing its decision and findings of fact.

(n) If the court determines that long-term placement in a residential care facility is inappropriate, the court shall enter a finding to that effect, dismiss the application, and, if appropriate, recommend application for admission to voluntary services pursuant to Sections 32, 33, and 34 of this Act.

(o) If the court determines that long-term placement in a residential care facility is appropriate, the court shall order commitment of the proposed resident for care, treatment, and training to a community center or the department when space is available in a residential care facility, and the court shall immediately forward a copy of the commitment order to the department or community center.

(p) Any party shall have the right to appeal the judgment of the court to the appropriate court of appeals, and such appeals, if any, shall be controlled by the Texas Rules of Civil Procedure. Appeals pursuant to this section shall be given a preference setting. The county court may grant a stay of the commitment pending appeal.

(q) In no case shall an order for commitment be considered an adjudication of mental incompetency.

(r) When a resident committed to a residential care facility pursuant to the provisions of this section is absent from the assigned facility without permission from the proper authority, the superintendent or director of the facility may immediately issue an order authorizing any peace officer to detain the resident. When a peace officer takes a resident into custody, he shall immediately notify the superintendent or director. When requested by the superintendent or director, the peace officer shall cause the resident to be returned promptly to the assigned facility.

SUBCHAPTER I. TRANSFER AND DISCHARGE OF CLIENTS

Transfer and Discharge

Sec. 38. Transfer and discharge of clients shall be made only in accordance with the rules and regulations of the department and provisions of this subchapter. This subchapter shall not apply to transfers for emergency medical, dental, or psychiatric care for a period of time not to exceed 30 consecutive days, nor shall it apply to a voluntary withdrawal of a client from mental retardation services. This subchapter shall not apply to a discharge by a superintendent or director on the grounds that a person is not mentally retarded based upon a comprehensive diagnosis and evaluation, in which case a client shall be discharged without further hearings; provided, however, that the administrative hearing to contest the comprehensive diagnosis and evaluation provided for in Section 31 shall be available.

By Service Provider

Sec. 39. When a service provider finds that placement of a client in a facility is no longer appropriate to the person's individual needs or that the client can be better treated and habilitated in another facility, the service provider shall transfer or discharge the client pursuant to this subchapter.

Request of Client, Parent, Guardian

Sec. 40. A client or the parent of a minor or guardian of the person may request a transfer or discharge, and the service provider shall determine the appropriateness of the requested transfer or discharge. If such request is denied, the administrative hearing referred to in Section 41 shall be available.

Right to Administrative Hearing

Sec. 41. (a) A client shall not be transferred to another facility or discharged from any mental retardation services under this subchapter unless provided with a prior opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

(b) No transfer of a client from one facility to another shall occur without prior approval and knowledge of the parents or guardian of the client.

Notice

Sec. 42. The client and the parent or guardian shall be given 30 days notice of the proposed transfer or discharge under this subchapter. The client and parent or guardian shall also be informed of the right to an administrative hearing for the purpose of contesting the proposed transfer or discharge.

Hearing to be Held

Sec. 43. (a) If the client, parent of a minor, or guardian of the person wishes to contest the proposed or denied transfer or discharge, an administrative hearing shall be provided in accordance with the requirements of this section.

(b) The hearing shall be held as promptly as possible within 30 days and in a convenient location and with reasonable notice.

(c) The client, parent of a minor, guardian of the person, and the superintendent shall have the right to be present and represented at the hearing.

(d) The client, parent of a minor, and guardian of the person shall have reasonable access at a reasonable time prior to the hearing to any records concerning the client on which the proposed action may be based.

(e) Evidence shall be presented, which shall include oral and written testimony.

(f) In all cases the hearing officer shall promptly report his decision to the parties in writing, including findings of fact and the basis for those findings.

(g) Any party to such hearing shall have the right to appeal without the necessity of filing a motion for rehearing with the hearing officer. The appeal shall

be brought in the county court of Travis County or the county in which the proposed client resides. The appeal shall be by trial de novo.

(h) The decision of the hearing officer shall be final within 30 days after the date of the decision, unless a party files an appeal within such time pursuant to Subsection (g). The filing of an appeal suspends the decision of the hearing officer, and no party may take any action based on such decision. If no appeal is filed from a final order that the request for transfer or discharge should be granted, the superintendent shall proceed with such transfer or discharge. If no appeal is filed from a final order that the request for transfer or discharge should be denied, the client shall remain in the same program or facility where he is presently receiving services.

Alternative, Follow-up Supportive Services

Sec. 44. The department shall provide appropriate alternative or follow-up supportive services consistent with available resources. Provision of alternative or follow-up supportive services shall be made by agreement between the department and the client, parent of a minor, or guardian of the person, and shall be consistent with the rights guaranteed in Subchapters C, D, and E of this Act. Placement in a residential care facility, under the provisions of this Act, other than by transfer from another residential care facility shall be made only pursuant to Sections 34 and 37 of this Act.

Leave, Furlough

Sec. 45. The superintendent or director of a residential care facility, shall have the authority to grant or deny a resident a leave of absence or furlough.

Transfer to Mental Hospitals

Sec. 46. (a) Voluntary Residents. No voluntary resident shall be transferred to a state mental hospital for other than the emergency care provided for in Section 38 of this Act without legally adequate consent to such transfer.

(b) The superintendent or director of a residential care facility shall have the authority according to the procedures of this subchapter to transfer a resident committed pursuant to Section 37 of this Act to a state mental hospital under the control and management of the department for mental health care when an examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, control, and rehabilitation in a state mental hospital would be in the best interest of the resident.

(c) For purposes of this Act, upon transfer of a court-committed resident to a state mental hospital, the director of the state mental hospital to which the resident was transferred shall immediately cause an evaluation of the resident's condition to be made. If at any time such an evaluation reveals that continued hospitalization is necessary for a period in excess of 30 days, the director shall promptly initiate appropriate court-ordered transfer proceedings in accordance with this section. In no event shall a resident transferred from a residential care facility to a state mental hospital remain in said hospital for more than 30 consecutive days unless such resident is transferred to the hospital under the provisions of this section.

(d) If a court-committed resident of a residential care facility requires hospitalization in excess of 30 consecutive days, the court transfer referred to in Subsection (c) above shall be accomplished in the following manner. The director of the state mental hospital shall request an order of transfer to the state mental hospital from the court which originally committed the resident to the residential care facility. In support of such request, the director of the state mental hospital shall forward Certificates of Medical Examination for Mental Illness as described in Article 5547–32 of the Texas Mental Health Code, as amended (Articles 5547–1 to 5547–204, Vernon's Texas Civil Statutes), completed by two physicians stating that the resident is mentally ill and requires observation and/or treatment in a mental hospital. Upon receipt of the director's request and the certificates of medical examination, the committing court shall set a date for a hearing on the proposed transfer. At least seven days prior to the date of the hearing, a copy of the transfer request and the notice of the hearing shall be personally served on the proposed patient. If the patient is a minor, notice shall also be served on his parents. If the patient has been declared to be incompetent under the Probate Code and a guardian for his person has been appointed, notice shall also be served on the guardian. A jury shall be had unless a waiver of trial by jury is made in writing under oath by the adult resident, his parent if a minor, or his guardian of the person. Notwithstanding the executed waiver, the jury shall determine the issues in the case if jury trial is demanded by the adult resident, his parent if a minor, his guardian of the person, or by his attorney at any time prior to determination of the hearing.

The county judge may hold a hearing on the petition at any suitable place within the county, but such hearing should be held in a physical setting not likely to have a harmful effect on the condition of the resident. The resident shall not be denied the right to be present at the hearing, although the court may dispense with the presence of the resident if it is determined by the court to be in the resident's best interest. The hearing shall be open unless the court finds it in the best interests of the resident that the hearing be closed and the court obtains the consent of the adult resident, his parent if a minor, his guardian of the person, and his attorney for the closing of the hearing. At least two physicians, at

least one of whom is a psychiatrist, who have examined the resident within the 15 days immediately preceding the hearing shall testify at the hearing. No person shall be transferred under this section to a mental hospital except upon the basis of competent medical or psychiatric testimony. The court or jury as the case may be shall determine:

(1) whether the resident is mentally ill,

(2) whether the resident requires a transfer to a state mental hospital for treatment for his own welfare and protection or the protection of others.

If the court or jury, as the case may be, finds that the patient is mentally ill and requires treatment in a state mental hospital for his own welfare and protection or the protection of others, the court shall issue an order approving the transfer of the resident to the state mental hospital.

(e) If the resident no longer requires treatment in a state mental hospital or a residential care facility, he shall be discharged. If he no longer requires treatment in a state mental hospital but requires treatment in a residential care facility, the superintendent or director of the residential care facility from which the resident is transferred shall be responsible for the immediate return of the resident to the residential care facility upon notification by the director of the mental hospital that hospitalization is no longer necessary or appropriate and that care in a residential care facility is required. If the resident has been transferred by a court to the state mental hospital under the provisions of this Act, the transfer to the residential care facility shall be made in accordance with the following provisions. The head of the state mental hospital shall forward a certificate evidencing that the resident is no longer in need of hospitalization in a state mental hospital but is still in need of care in a residential care facility due to a continuing diagnosis of mental retardation. The head of the state mental hospital shall request that the resident be transferred to a residential care facility. Such requested transfer shall be made only with the approval of the judge of the committing court by the entry of an order approving such transfer, in accordance with the provisions of Article 5547–75A of the Texas Mental Health Code.

Discharge from Residential Care Facility—Notice to Court

Sec. 47. On discharge of a resident committed pursuant to Section 37 of this Act, the department shall notify the committing court.

Habeas Corpus

Sec. 48. Nothing in this subchapter shall in any way alter or limit the right of a resident to a writ of habeas corpus.

Admission and Commitments Under Prior Law

Sec. 49. (a) Mentally retarded persons admitted or committed to facilities under the jurisdiction of the department under law previously in force may remain in the residential care facility unless and until such time as necessary and appropriate alternate placement is found or until such time as they can be admitted or committed to a facility under the provision of this Act if such readmission or commitment is necessary to meet the due process requirements of this Act.

(b) Except as hereinafter provided, a mentally retarded person voluntarily admitted to a residential care facility under laws previously in force shall be discharged within 96 hours of receipt by the superintendent or director of a written request from the person on whose application the mentally retarded person was admitted, or upon his own request. If, however, the superintendent or director deems the person's condition to be such that the person cannot be discharged with safety to himself or with safety to the general public, the superintendent or director may forthwith file or cause to be filed in the county in which the residential care facility is located an application for commitment under Section 37 of this Act. Pending a final determination of the application for commitment, the court may upon showing of good cause order the mentally retarded person placed in protective custody in the residential care facility as provided for in Subsection (k) of Section 37 of this Act.

(c) The state shall reimburse a county for not more than $50 of the cost of a hearing held by the county court of the county for the commitment of a resident of a facility under the jurisdiction of the department who was committed under prior law and for whom the due process requirements of this Act require another commitment proceeding.

(d) The commissioners court of a county entitled to reimbursement under this Act may file a claim for reimbursement with the comptroller of public accounts.

SUBCHAPTER J. PUBLIC RESPONSIBILITY COMMITTEE

Rules and Regulations

Sec. 50. Pursuant to the provisions of this subchapter, the department shall promulgate rules and regulations to establish a third-party mechanism to safeguard adequately the legal rights of clients.

Creation

Sec. 51. A Public Responsibility Committee, hereinafter referred to as the committee, shall be established at each community center and residential care facility of the department.

Membership

Sec. 52. Each committee shall have seven members and shall have representation by parents, guardians, consumer groups, persons, and organizations which advocate for mentally retarded persons and shall exclude employees of facilities of the department or community centers. Members must reside in the service region served by the facility.

Selection

Sec. 53. Members shall be selected in the following manner:

(a) For facilities of the department, members shall be selected by the executive committee of the Volunteer Services Council with consultation with the local parents' associations, if any.

(b) For community centers, members shall be selected by the local establishing agencies with consultation with the local parents' associations or interest groups, if any.

Meetings

Sec. 54. The committee shall meet not less than four times a year. A majority of members shall constitute a quorum.

Compensation

Sec. 55. Committee members shall serve without compensation other than reimbursement for actual expenses, including travel expenses necessarily incurred in the performance of their duties.

Powers and Duties of the Committee

Sec. 56. (a) The powers and duties of the committee shall be to:

(1) serve as a third-party mechanism for protecting and advocating for the health, safety, welfare, and legal and human rights of mentally retarded persons being served by the department or community center;

(2) receive and investigate complaints made to it by or on behalf of clients and make appropriate recommendations to the facility superintendent or director, to the deputy commissioner of the department with authority over the facility, to the commissioner of the department, and to the governing board as necessary;

(3) investigate and determine the denial of rights of any person receiving services;

(4) submit instances of abuse or denial of rights to the appropriate authorities and the advocacy system created under Section 203 of P.L. 94–103 [1] for appropriate action.

(b) When investigating complaints of abuse or denial of rights of clients, the committee shall have the authority with or without notice to inspect the facility which offers services to the mentally retarded person and records relating to the diagnosis, evaluation, or treatment of the mentally retarded person, as those records relate to the complaint of abuse or denial of rights.

(c) Investigations and findings of the committee shall be kept confidential unless the committee orders the information released when legally adequate consent is obtained for its release.

(d) The committee shall present an annual report of its work to the commissioner, the executive director of the community center, the appropriate governing board, and the advocacy system created under Section 203 of P.L. 94–103 for the appropriate action. The report shall include a description of all complaints processed. The names of all individuals shall be kept confidential.

[1] 42 U.S.C.A. § 6012.

SUBCHAPTER K. CONFIDENTIALITY OF RECORDS

Confidentiality of Records

Sec. 57. (a) Records of the identity, diagnosis, evaluation, or treatment of any person which are maintained in connection with the performance of any program or activity relating to mental retardation shall be confidential and disclosed only for the purposes and under the circumstances expressly authorized under Subsection (b) of this section.

(b) The content of any record referred to in Subsection (a) of this section may be disclosed in accordance with the prior written consent of the person with respect to whom such record is maintained, or parent if such person is a minor, or guardian if the person has been adjudicated incompetent to manage his personal affairs or executor or administrator if the person is deceased. If there is no appointment of an executor or administrator, such consent may be given by the deceased person's spouse or, if none, by any adult person related to the deceased person within the first degree of consanguinity. Disclosure is permitted only to such extent, under the circumstances, and for the purposes as may be allowed under the regulations prescribed pursuant to Subsection (h) of this section. The content of any record referred to in Subsection (a) of this section is to be made available upon the request of any person thought to be mentally retarded upon whose behalf the record was made unless the qualified professional responsible for supervising the client's habilitation states in a signed written statement that it would not be in the best interest of the person in question. However, the parent of a minor or guardian of the person shall have access to the contents of any record referred to in Subsection (a) of this section.

(c) Whether or not the person with respect to whom any given record referred to in Subsection (a) of this section is maintained gives his written consent, the content of such record may be disclosed as follows:

(1) to medical personnel to the extent necessary to meet a bona fide medical emergency;

(2) to qualified personnel for the purpose of management audits, financial audits, program evaluation, or research approved by the department, but such personnel may not identify, directly or indirectly, any individual receiving services in any report of such research, audit, or evaluation, or otherwise disclose identities in any manner;

(3) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assess-

ing good cause the court shall weigh the public interest and the need for disclosure against the injury to the person receiving services. On the granting of the order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure; and

(4) to personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of mentally retarded persons.

(d) Except as authorized by a court order granted under Subsection (c)(3) of this section, no record referred to in Subsection (a) of this section may be used to initiate or substantiate any criminal charges against a person receiving services or to conduct any investigation of a person receiving services.

(e) The prohibitions of this section continue to apply to records concerning any individual who has received services irrespective of when the person received services.

(f) The prohibitions of this section apply to any interchange of records between governmental agencies or persons, except for interchanges of information necessary for delivery of services to clients or for payment for mental retardation services as defined in this Act.

(g) A person who receives information deemed confidential by this section, other than the person thought to be mentally retarded on whose behalf the records are made, the parent of a minor, or guardian of the person shall not disclose the information except to the extent that disclosure is consistent with the authorized purpose for which the information was first obtained.

(h) The department shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions and may provide for such safeguards and procedures as in the judgment of the department are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(i) Nothing contained in this subchapter shall prevent a qualified professional from disclosing the current physical and mental condition of a mentally retarded person to his or her parent, guardian, relatives, or friends.

SUBCHAPTER L. RESPONSIBILITY AND COOPERATION

Responsibility

Sec. 58. (a) The responsibility of the department under this Act shall be to make all reasonable efforts consistent with available resources:

(1) to assure that all mentally retarded persons identified and needing mental retardation services in the state are given quality care, treatment, education, training, and rehabilitation appropriate to their individual needs for as long as mental retardation services are needed, but shall not include those services or programs which have been explicitly delegated by law to other governmental entities;

(2) to initiate, carry out, and evaluate procedures to guarantee to mentally retarded persons the rights enumerated in this Act;

(3) to carry out all provisions of this Act, including planning, initiating, coordinating, promoting, and evaluating all programs developed. The responsibilities placed on the department by this Act shall be in addition to all other responsibilities and duties given by law to the department; and

(4) to provide either directly or by cooperation, negotiation, or contract with other agencies and those persons and groups enumerated in Section 2.13, Texas Mental Health and Mental Retardation Act (Articles 5547–201 to 5547–204, Vernon's Texas Civil Statutes), a continuum of services to mentally retarded persons. These services shall include but not be limited to treatment and care, education and training including sheltered workshop programs, counseling and guidance, and development of residential and other facilities to enable mentally retarded persons to live and be habilitated in the community. These facilities shall include but not be limited to group homes, foster homes, halfway houses, and day-care facilities for mentally retarded persons to which the department has assigned mentally retarded persons. The department shall exercise periodic and continuing supervision over the quality of services.

(5) to provide either directly or by contract with other agencies a continuum of services to those mentally retarded children, juveniles, or adults committed into its custody by the juvenile courts and/or the criminal courts.

(b) The department is hereby delegated the authority to carry out its responsibilities set forth in this Act.

(c) The responsibilities enumerated in this section shall be in addition to any other responsibilities placed on the department by Articles 2 and 3 of the Texas Mental Health and Mental Retardation Act, as amended (Articles 5547–201 to 5547–204, Vernon's Texas Civil Statutes).

Cooperation

Sec. 59. Other agencies given legislative authority for providing all persons education, support, related services, rehabilitation, and other services shall cooperate with the department in carrying out its responsibilities under this Act. This does not require other departments and agencies to serve the department in activities inconsistent with their functions, with the authority of their offices, or with the laws of this state governing their activities.

SUBCHAPTER M. RULES AND REGULATIONS

Rules and Regulations

Sec. 60. The department shall promulgate written rules and regulations to ensure the implementation of the provisions of this Act.

SUBCHAPTER N. FEES, SUPPORT AND MAINTENANCE

Support and Maintenance of Residents

Sec. 61. (a) The parents of a mentally retarded person under 18 years of age who is a resident in a residential care facility operated by the department shall pay, if able to do so, the portions of the cost of support and maintenance of the mentally retarded person as may be applicable under the following formula:

If the amount shown as "Net Taxable Income" of the parents as reported on their latest current financial statement or on their latest Federal Income Tax return at the election of the parent or guardian is:	The Monthly payment per child shall not exceed:
Less than $ 4,000	$ 5
4,000–4,999	10
5,000–5,999	20
6,000–6,999	30
7,000–7,999	40
8,000–8,999	50
9,000–9,999	60
10,000–10,999	70
11,000–11,999	80
12,000–12,999	90
13,000–13,999	100
14,000–14,999	110
15,000–15,999	120
16,000–16,999	130
17,000–17,999	140
18,000–18,999	150
19,000–19,999	160
20,000–up	170

(b) Parents of a mentally retarded person who is 18 years of age or older shall not be required to pay for his support and maintenance as a resident in a residential care facility operated by the department, but the mentally retarded person and his estate shall be liable for his support and maintenance regardless of his age, except as provided in Subsection (g) of this section.

(c) The unpaid portion of charges for support and maintenance due before the effective date of this Act, under agreements made before the effective date of this Act, shall remain as obligations of parents under previous law, but such preexisting agreements for payment of support and maintenance shall be in force after the effective date of this Act only to the extent of parental responsibility set forth in the foregoing formula.

(d) Unpaid charges for support and maintenance accruing after the effective date of this Act due by parents for the support and maintenance of mentally retarded persons who are minors and residents in residential care facilities operated by the department shall be a claim in favor of the state for such support and maintenance, and shall constitute a lien against the parents' property and estate, but shall not constitute a lien against any other estate or property of the mentally retarded person.

(e) With respect to a mentally retarded person who is a resident in a residential care facility operated by the department, the cost of his support and maintenance may be determined under rules and regulations adopted by the department provided that total charges from all sources for support and maintenance shall not exceed the actual cost of such support and maintenance, and the costs determined under such rules and regulations shall constitute a claim by the state against the entire estate or any property of the mentally retarded person including but not limited to any share he may have by gift, descent, or devise in his parents' estates or any other person's estate, except as provided in Subsection (g) of this section.

(f) Nothing in this section shall alter or amend the liability and responsibility of any parent under orders of a court or otherwise liable for child support payments under the provisions of the Family Code.

(g) For the purposes of this subchapter no portion of the corpus or income of a trust or trusts, with an aggregate principle amount not to exceed $50,000, of which a mentally retarded person is a beneficiary shall be considered to be the property of such mentally retarded person or his estate, and no portion of the corpus or income of such trust shall be liable for the support and maintenance of such mentally retarded person regardless of his age.

Fees for Services

Sec. 62. The department shall charge reasonable fees to cover costs for services provided to nonindigent persons. It shall provide services free of charge to indigent persons.

SUBCHAPTER O. PENALTIES AND REMEDIES

Criminal Penalties

Sec. 63. (a) A person who intentionally or knowingly causes, conspires with, or assists another to cause the unlawful continued detention in, or unlawful admission or commitment of any individual to, a facility as specified in this Act with intention to do harm to that individual is guilty of a Class B misdemeanor.

(b) The district attorneys and county attorneys within their respective jurisdictions shall prosecute violations of this section.

Civil Penalties

Sec. 64. (a) A person who willfully and wrongfully violates the rights guaranteed in this Act of any mentally retarded person shall be liable to the person injured by the violation in an amount not less than $100 nor more than $5,000.

(b) A person who recklessly violates the rights guaranteed in this Act of any mentally retarded person shall be liable to the person injured by the violation in an amount not less than $100 nor more than $1,000.

(c) A person who willfully and wrongfully releases confidential information or records of a mentally retarded person shall be liable to the person injured by the unlawful disclosure for the greater of the following amounts:

(1) $1,000; or

(2) three times the amount of actual damages, if any.

(d) An action filed under this section may be brought by the person injured, by a parent if the person is a minor, by a guardian if such person has been adjudicated incompetent, or by a next friend in accordance with Rule 44 of the Texas Rules of Civil Procedure.

(e) An action filed under this section may be commenced in the district court of the county in which the defendant resides, or in a district court of Travis County.

(f) Nothing in this section shall be intended or construed as superseding or abrogating any remedies otherwise available by law.

Injunctive Relief

Sec. 65. (a) The attorney general and the district attorneys and county attorneys within their respective jurisdictions may bring an action in the name of the state against any person to enjoin violations of, and to enforce compliance with, the provisions of this Act and any rules of the department promulgated thereunder.

(b) In granting relief the court may issue a temporary restraining order, a temporary injunction, or a permanent injunction to restrain and prevent violations of, and to enforce compliance with, the provisions of this Act and any rules of the department promulgated thereunder.

(c) A person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than $5,000 per violation, not to exceed $20,000. In determining whether or not an injunction has been violated, the court shall take into consideration the maintenance of procedures reasonably adopted to ensure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in these cases, the attorney general or the district or county attorney, acting in the name of the state, may petition for recovery of civil penalties under this section.

(d) Any civil penalty recovered under this section shall be paid to the State of Texas for use in mental retardation services.

(e) An action filed under this section may be commenced in the district court of the county in which the defendant resides or in a district court of Travis County.

(f) Nothing in this section shall be intended or construed as superseding or abrogating any remedies otherwise available by law.

Civil Actions against Department Employees: Indemnity

Sec. 66. (a) The attorney general shall provide an attorney or attorneys for the defense of an employee of the department in any civil action commenced against him under this Act by reason of a claim of alleged negligence or other act of the person while employed by the department. The state shall save harmless and indemnify the person from financial loss arising out of any claim, demand, suit, or judgment by reason of the negligence or other act by the person, provided that at the time that the claim arose or damages were sustained, the person was acting in the discharge of his duties and within the scope of his authorized duties, and that the claim or cause of action or damages sustained did not result from the willful and wrongful act or reckless conduct of the person. The state, however, shall not be subject to the obligations imposed by this section unless the person, within 10 days of the time he is served with any summons, complaint, process, notice, demand, or pleading, delivers the original or a copy thereof to the department.

(b) On the delivery, the attorney general may assume control of the representation of the person. The person shall cooperate fully with the attorney general in the defense of said claim, demand, or suit.

(c) This section shall not in any way impair, limit, or modify the rights and obligations under any policy of insurance.

(d) The benefits of this section shall enure only to the persons named herein and shall not enlarge or diminish the rights of any other party.

Liability

Sec. 67. Notwithstanding any other provision of this Act, an officer or employee of the department or a community center, acting reasonably within the scope of his employment and in good faith, shall be free from all civil or criminal liability under this Act.

SUBCHAPTER P. MISCELLANEOUS PROVISIONS

Effective Date

Sec. 68. This Act shall take effect on January 1, 1978.

Repealer

Sec. 69. Chapter 119, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3871b, Vernon's Texas Civil Statutes), is repealed.

Saving Clause

Sec. 70. The repeal of any statute by this Act shall not affect or impair any act done, right existing or accrued, or conveyance made under the authority of the statute repealed; and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action concerning any such act, right, or conveyance. Proceedings begun before the effective date of this Act under prior provisions of the law relating to persons who would be deemed mentally retarded under this Act shall not be affected by provisions of this Act.

Severability Clause

Sec. 71. If any portion of this Act is declared invalid or unconstitutional, it is the intention of the legislature that the other portions shall remain in full force and effect, and to this end the provisions of this Act are declared to be severable.

[Acts 1977, 65th Leg., p. 772, ch. 294, §§ 1 to 71, eff. Jan. 1, 1978. Amended by Acts 1979, 66th Leg., p. 25, ch. 15, § 1, eff. Mar. 15, 1979; Acts 1979, 66th Leg., p. 669, ch. 296, § 1, eff. May 24, 1979; Acts 1979, 66th Leg., p. 791, ch. 352, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 791, ch. 291, § 67, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2337, ch. 572, § 2, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2634, ch. 707, § 4(13), (14), eff. Aug. 31, 1981.]

Section 2 of Acts 1979, 66th Leg., p. 25, ch. 15, provided:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Section 2 of Acts 1979, 66th Leg., p. 669, ch. 296, provided:

"The reimbursement provision in Section 49(c), Mentally Retarded Persons Act of 1977, as added by this Act, applies to any hearing held on or after January 1, 1978."

Acts 1981, 67th Leg., p. 820, ch. 291, § 149, provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

IV. MISCELLANEOUS PROVISIONS

Article

5561h. Confidentiality of Mental Health Information of Individual.
5561i. Laredo State Center for Human Development.

Art. 5561c. Alcoholism

[See Compact Edition, Volume 4 for text of 1 to 3]

Texas Commission on Alcoholism

Sec. 4.

[See Compact Edition, Volume 5 for text of 4(a) to (d)]

(e) The Texas Commission on Alcoholism is subject to the Texas Sunset Act; [1] and unless continued in existence as provided; Act the commission is abolished, and this Act expires effective September 1, 1985.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 5 to 8]

Admission and Certification of Alcoholics

Sec. 9.

[See Compact Edition, Volume 4 for text of 9(a) and (b)]

(c) Upon filing of a petition or application, the court shall set a day for the hearing, which hearing must be held not less than five (5) days and no more than fourteen (14) days from the filing of the petition. The alleged alcoholic shall be personally served with a copy of the petition or application and the order fixing the time of hearing of the same by the sheriff of the county in which he is found. The court may proceed to hear the cause at the stated time, with or without the presence of the alleged alcoholic and with or without an answer by him, provided such service is perfected at least three (3) days prior to the hearing and provided the alleged alcoholic is represented by an attorney if the right of legal counsel is not waived. If the alleged alcoholic is not represented by an attorney of his own choosing, the court shall appoint an attorney to represent him. The court shall inform relatives of the alleged alcoholic and other persons to appear at the hearing to give evidence in the cause. The judge may, in his discretion or upon request, require an alleged alcoholic to be examined by the county health officer, or by other physicians, as the court may direct, the results of which examination to be considered by the court at the hearing of the application for commitment. If in the county court in which a petition or application is filed, a Certificate of Medical Examination for Alcoholism is filed showing that the proposed patient has been examined within five (5) days of the filing of the Certificate and stating the opinion of the examining physician that the proposed patient is an alcoholic and because of his alcoholism is likely to cause injury to himself or others if not immediately restrained, the Judge may order any health or peace officer to take the proposed patient into protective custody and immediately transport him to a designated mental hospital or other suitable place and detain him pending order of the court; provided, however, that in no event shall the proposed patient be denied the hearing prescribed above to be held not less than five (5) days and no more than fourteen (14) days from the filing of the petition.

[See Compact Edition, Volume 4 for text of 9(d) to 11]

Commitment by Courts

Sec. 12. The judge of any court, including a municipal court, having jurisdiction of misdemeanor cases may, upon finding a person guilty of any violation of the law, which violation is a misdemeanor resulting from such person's chronic and habitual use of alcohol, remand such person over eighteen (18) years of age to the Commission, its authorized

representative, or a treatment facility approved by the Commission for alcoholic detoxification or treatment purposes, for care and treatment for a period not to exceed ninety (90) days, in lieu of the imposition of a sentence or fine, if and when special facilities are available for treatment of such cases, and with notice from the Commission that such facility will receive such person as a patient. No person may be so committed who in the opinion of the judge has exhibited definite criminal tendencies, or is feeble-minded or psychotic. Appeals from such orders of the court may be taken in the same manner as provided for appeals from any other judgment of such court.

[See Compact Edition, Volume 5 for text of 13 to 17]

Sec. 18. (a) In order to provide adequate financing for community-based programs, the State Treasurer is hereby required to transfer from the General Revenue Fund to the Texas Commission on Alcoholism a total of $4 million per fiscal year out of the revenues received from those taxes allocated in their entirety to the General Revenue Fund under the terms of Article 24.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, and the amount transferred is hereby appropriated to the Texas Commission on Alcoholism for the purposes of this section.

(b) The funds received by the Texas Commission on Alcoholism under Subsection (a) of this section shall be used to develop and maintain a coordinated system of community-based programs designed to prevent alcohol addiction or abuse and community-based programs designed to treat or rehabilitate the victims of alcohol addiction or abuse. These funds shall not be used to displace federal, state, local, and other funds that would otherwise be available for such purposes. None of the funds received by the Texas Commission on Alcoholism under Subsection (a) of this section shall be used for administrative expenses of the Texas Commission on Alcoholism or for any purpose other than community-based programs. Any unused balances shall be transferred biennially to the General Revenue Fund.

[See Compact Edition, Volume 4 for text of 19 and 20]

[Amended by Acts 1975, 64th Leg., p. 254, ch. 104, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1160, ch. 440, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.111, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2344, ch. 575, § 1, eff. Sept. 1, 1981.]

Art. 5561cc. Regulation of Health Care Facilities Treating Alcoholics

Definitions

Sec. 1. In this Act:

(1) "Commission" means the Texas Commission on Alcoholism.

(2) "Alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control with respect to the use of the beverage or while chronically and habitually under the influence of alcoholic beverages endangers public morals, health, safety, or welfare.

(3) "Alcoholism" means a condition of abnormal behavior or illness leading directly or indirectly to the chronic and habitual use of alcoholic beverages.

(4) "Person" includes any individual, partnership, corporation, association, or other public or private legal entity.

(5) "Health care facility" includes, regardless of ownership, a public or private hospital, institution, extended care facility, skilled nursing facility, intermediate care facility, home health agency, outpatient care facility, ambulatory health care facility, health center, alcoholism and drug treatment facility, health maintenance organization, and other specialized facilities where inpatient or outpatient health care services for observation, diagnosis, active treatment, or overnight care for patients with medical, mental or psychiatric, alcoholic, chronic, or rehabilitative conditions are provided requiring daily direct supervision by a physician or a practitioner of the healing arts, but does not include the office of those physicians or practitioners singly or in groups in the conduct of their profession.

Licensing a Facility

Sec. 2. A person who operates a health care facility that treats alcoholics may obtain a license issued under this Act.

License Application

Sec. 3. An applicant for a license to operate a health care facility to treat alcoholics must:

(1) file a written application on a form prescribed by the commission; and

(2) Cooperate with the inspection of the health care facility.

Issuing a License

Sec. 4. The commission shall issue a license to a person who has:

(1) complied with the license application requirements in Section 3 of this Act; and

(2) received approval of the facility after an on-site inspection.

Renewal of Unexpired License

Sec. 5. (a) A license issued under this Act expires one year from the date of issue.

(b) A renewal license shall be issued on receiving a completed application form prescribed by the commission prior to the expiration date of the license.

(c) The commission may require an inspection before renewing a license.

Inspections

Sec. 6. The commission or its authorized representative may enter upon the premises at reasonable times to make an inspection necessary to license or renew a license for a facility.

Rules, Regulations, and Standards

Sec. 7. (a) The commission shall prescribe forms necessary to perform its duties and adopt rules, regulations, and standards for the following:

(1) the construction of the facility, including plumbing, heating, lighting, ventilation, and other housing conditions which insure the health, safety, and comfort of residents;

(2) the sanitary conditions of the facility and the surrounding area, including water supply, sewage disposal, food handling, and general hygiene;

(3) the equipment needed for adequate care and treatment;

(4) the diet required by the needs of residents, based on good nutritional practice and on recommendations made by physicians attending the residents; and

(5) the qualifications of all staff and personnel, including management and nursing personnel, having responsibility for any part of the care given to residents.

(b) The commission may adopt additional regulations for facilities concerning the treatment and care of alcoholics.

(c) The rules, regulations, and standards authorized by this Act apply to licensed facilities and to facilities for which a licensed application has been made.

Denial or Revocation of License

Sec. 8. (a) The commission may deny, revoke, or refuse to renew a license if the applicant or holder of the license fails to comply with the provisions of this Act or with the rules, regulations, and standards of the commission adopted under this Act.

(b) A person who is denied a license or whose license is revoked or not renewed is entitled to a hearing on the question of the issuance of the license and is entitled to notice of the date, time, and place of the hearing not later than 21 days before the date of the hearing. A request for a hearing must be made during the 30-day period following the date on which the applicant or the holder of a license received notice that the license was denied or that it was to be revoked or refused renewal.

(c) Except as provided in Subsection (e) of this section, revocation of a license or an order refusing to renew a license does not take effect until the expiration of 30 days following the date on which the holder of the license received notice of the revocation or order of refusal to renew the license.

(d) If after a hearing the license is denied, revoked, or not renewed, the commission shall send to the applicant or holder of the license a copy of their findings and grounds for decision.

(e) The commission may revoke a license to be immediately effective in a situation where health or safety requires action. The commission must immediately notify the holder and provide an opportunity for a hearing within 14 days after the action takes effect.

(f) The Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) applies to all hearings authorized by this Act.

Injunctions

Sec. 9. (a) The commission may petition a district court to restrain a person who falsely represents a health care facility as licensed under this Act. A suit for injunctive relief must be brought in Travis County.

(b) On application for injunctive relief and a finding that a person is falsely representing a health care facility as licensed under this Act, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the commission, the attorney general shall institute and conduct the suit authorized in Subsection (a) of this section in the name of the State of Texas.

Charging of Fees and Disposition of Funds

Sec. 10. The commission may charge nonrefundable application and inspection fees for an initial license or a renewal license in such amounts as are necessary to cover the cost of the licensure program. All application and inspection fees collected by the commission under the provisions of this Act shall be placed in a special fund in the State Treasury to be known as the Alcoholism Treatment Licensure Fund, and the amounts in such fund may be appropriated only to the commission for the purpose of administering and enforcing this Act.

Personnel

Sec. 11. The commission shall carry out the licensing provided by this Act without employing additional personnel or requiring additional funds for the fiscal years ending August 31, 1978, and August 31, 1979.

[Acts 1977, 65th Leg., p. 1383, ch. 553, §§ 1, 3 to 11, eff. Sept. 1, 1977; § 2, eff. Sept. 1, 1978. Amended by Acts 1981, 67th Leg., 1st C.S. p. 83, ch. 9, § 2, eff. Nov. 10, 1981.]

Section 12 of the 1977 Act provided: "This Act takes effect September 1, 1977, except for Section 2, which takes effect September 1, 1978."

Art. 5561c–1. Narcotic Addicts; Commitment; Treatment

[See Compact Edition, Volume 4 for text of 1 to 8]

Sec. 9.

(d) The appeal from the county court shall be by trial de novo in the district court in the same manner

as cases appealed from the justice court to the county court. The substantial evidence rule shall not apply. Upon demand by the proposed patient, the trial shall be before a jury, otherwise the trial shall be before the court without a jury.

[See Compact Edition, Volume 4 for text of 10 to 17]

[Amended by Acts 1981, 67th Leg., p. 2634, ch. 707, § (11), eff. Aug. 31, 1981.]

Art. 5561f. Interstate Compact on Mental Health

[See Compact Edition, Volume 4 for text of 1 and 2]

Sec. 2a. The office of Interstate Compact on Mental Health Administrator for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1985.

[1] Article 5429k.

[See Compact Edition, Volume 4 for text of 3 to 6]

[Amended by Acts 1977, 65th Leg., p. 1847, ch. 735, § 2.107, eff. Aug. 29, 1977.]

Art. 5561h. Confidentiality of Mental Health Information of Individual

Definitions of this Act

Sec. 1. (a) "Professional" means any person authorized to practice medicine in any state or nation, or any person licensed or certified by the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, or reasonably believed by the patient/client so to be.

(b) "Patient/Client" means any person who consults, or is interviewed by, a professional for purposes of diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and other drug addiction.

Confidentiality of Information

Sec. 2. (a) Communication between a patient/client and a professional is confidential and shall not be disclosed except as provided in Section 4 of this Act.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient/client which are created or maintained by a professional are confidential and shall not be disclosed except as provided in Section 4 of this Act. Nothing in this section shall prohibit the disclosure of information necessary in the collection of fees for mental or emotional health services, as provided by Subsection (b)(5) of Section 4 of this Act.

(c) Any person who receives information from confidential communications or records as defined by Section 2, other than the persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's client's behalf, shall not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this Act continue to apply to confidential communications or records concerning any patient/client irrespective of when the patient/client received services of a professional.

Privilege of Confidentiality

Sec. 3. (a) The privilege of confidentiality may be claimed by the patient/client or by other persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf.

(b) The professional may claim the privilege of confidentiality but only on behalf of the patient/client. The authority to do so is presumed in the absence of evidence to the contrary.

Exceptions to the Privilege of Confidentiality

Sec. 4. (a) Exceptions to the privilege in court proceedings exist:

(1) when the proceedings are brought by the patient/client against a professional, including but not limited to malpractice proceedings, and in any criminal or license revocation proceedings in which the patient/client is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(2) when the patient/client waives his right in writing to the privilege of confidentiality of any information, or when other persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf submit a written waiver to the confidentiality privilege;

(3) when the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the patient/client; or

(4) when the judge finds that the patient/client after having been previously informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's/client's mental or emotional condition or disorder, providing that such communications shall not be privileged only with respect to issues involving the patient's/client's mental or emotional health. On granting of the order, the court, in determining the extent to which any disclosure of all or any part of any communication is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(b) Exceptions to the privilege of confidentiality, in other than court proceedings, allowing disclosure of confidential information by a professional, exist only to the following:

(1) to governmental agencies where such disclosures are required or authorized by law;

(2) to medical or law enforcement personnel where the professional determines that there is a probability of imminent physical injury by the patient/client to himself or to others, or where there is a probability of immediate mental or emotional injury to the patient/client;

(3) to qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, but such personnel may not identify, directly or indirectly, a patient/client in any report of such research, audit, or evaluation, or otherwise disclose identities in any manner;

(4) to any person bearing the written consent of the patient/client, or a parent if the patient/client is a minor, or a guardian if the patient/client has been adjudicated incompetent to manage his personal affairs, or to the patient's/client's personal representative if the patient/client is deceased;

(5) to individuals, corporations, or governmental agencies involved in the payment or collection of fees for mental or emotional health services performed by a professional as defined in Section 1 of this Act; or

(6) to other professionals and personnel under the direction of the professional who are participating in the diagnosis, evaluation, or treatment of the patient/client.

Legal Remedies

Sec. 5. A person aggrieved by a violation of this Act may petition the district court of the county in which the person resides, or in the case of a nonresident of the state, the district court of Travis County, for appropriate injunctive relief, and the petition takes precedence over all civil matters on the docket of the court except those matters to which equal precedence on the docket is granted by law. A person aggrieved by a violation of this Act may prove a cause of action for civil damages.

Severability Clause

Sec. 6. If any portion of this Act is declared invalid or unconstitutional, it is the intention of the legislature that the other portions shall remain in full force and effect, and to this end the provisions of this Act are declared to be severable.

[Acts 1979, 66th Leg., p. 512, ch. 239, §§ 1 to 6, eff. Aug. 27, 1979.]

Art. 5561i. Laredo State Center for Human Development

Sec. 1. There is hereby established the Laredo State Center for Human Development as a facility of the Texas Department of Mental Health and Mental Retardation for the purpose of providing mental retardation and mental health services to the people of this state. All powers, duties, functions and obligations of the Rio Grande State Center for Mental Health and Mental Retardation outreach facility located in Laredo, Webb County, Texas, together with all of its property, records, and personnel, are transferred to the Laredo State Center for Human Development. The State Center shall admit persons and shall provide for their care and maintenance under the same laws, rules, and regulations as govern the admission and care of mentally retarded and mentally ill persons provided for in the general laws of the State of Texas.

Sec. 2. Within the limits of legislative appropriations, the Texas Board of Mental Health and Mental Retardation may acquire land by purchase or gift in the Webb County, Texas, area, and may build suitable permanent buildings to provide mental retardation and mental health services. The board shall take title to any land acquired for the State Center in the name of the State of Texas for the use and benefit of the State Center; provided, however, that the Attorney General of Texas shall first approve title to the land. Plans and specifications for suitable permanent buildings may be prepared and contracts for the construction of such buildings may be awarded when the land and necessary funds are available, under procedures prescribed by the board, and the board shall have the power and authority to do and perform all things necessary for carrying out the purposes of this Act.

Sec. 3. Each section of this Act will take effect on the first day that money becomes available for its implementation pursuant to legislative appropriation.

Sec. 4. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1979, 66th Leg., p. 1141, ch. 547, §§ 1 to 4, eff. Aug. 27, 1979.]

TITLE 93

MARKETS AND WAREHOUSES

CHAPTER ONE. COMMISSIONER OF AGRICULTURE

Arts. 5562 to 5564. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Arts. 5566, 5567. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

CHAPTER TWO. WAREHOUSES AND WAREHOUSEMEN

Arts. 5568 to 5574. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981.

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Arts. 5577 to 5577b. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal, art. 5577b was amended by Acts 1977, 65th Leg., p. 177, ch. 87, §§ 1 to 6.

CHAPTER THREE. MARKETS AND WAREHOUSE CORPORATIONS

Arts. 5578 to 5603. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Art. 5608. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Agriculture Code.

Arts. 5610, 5611. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Acts 1981, 67th Leg., p. 1489, ch. 388, § 4(2)(A), also repealed Acts 1925, 39th Leg., p. 35, ch. 13 (see text following art. 5611 in Compact Edition, Volume 5).

CHAPTER FIVE. GINNERS AND COTTON

Art. 5666. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Agriculture Code.

Arts. 5675 to 5679h. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

CHAPTER SIX. PUBLIC WEIGHER

Art. 5680b. Repealed.

Arts. 5680, 5680a. Repealed by Acts 1981, 67th Leg., p. 346, ch. 135, § 13, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Art. 5680b. Repealed by Acts 1981, 67th Leg., p. 2594, ch. 693, § 15, eff. Sept. 1, 1981

See, now, Agriculture Code, § 13.251 et seq.

Acts 1981, 67th Leg., p. 346, ch. 135, §§ 11 and 12, provide:

"Sec. 11. Unless removed from office under Article 5970, Revised Civil Statutes of Texas, 1925, or unless the public weigher's certificate of authority is revoked for cause under Section 5 of this Act, a public weigher appointed or elected before the effective date of this Act is entitled to serve for the remainder of the term for which the public weigher was appointed or elected.

"Sec. 12. The secretary of state shall transfer the files and records concerning the appointment of public weighers to the commissioner of agriculture."

Art. 5681. Repealed by Acts 1981, 67th Leg., p. 346, ch. 135, § 13, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Prior to repeal, this article was amended by Acts 1967, 60th Leg., p. 1144, ch. 508, § 1.

See, now, Agriculture Code, § 13.252.

Arts. 5683 to 5704–A. Repealed by Acts 1981, 67th Leg., p. 346, ch. 135, § 13, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

See, now, Agriculture Code, § 13.251 et seq.

CHAPTER SEVEN. WEIGHTS AND MEASURES

Arts. 5705 to 5734. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal, art. 5728 was amended by Acts 1975, 64th Leg., p. 1866, ch. 586, § 1; Acts 1979, 66th Leg., p. 515, ch. 240, § 1.

Arts. 5736 to 5736–1. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

CHAPTER EIGHT. MARKETING ASSOCIATIONS

Arts. 5737 to 5764. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal art. 5744 was amended by Acts 1981, 67th Leg., p. 2285, ch. 557, § 1; Acts 1981, 67th Leg., p. 2605, ch. 693, § 24(b).

Section 24(b) of Acts 1981, 67th Leg., p. 2605, ch. 693, *provides:*

"Subsection (a) of this section [amending Agriculture Code, § 52.034(a)] takes effect only if House Bill 1436 [so in enrolled bill; probably should read 'House Bill 1346'], Acts of the 67th Legislature, Regular Session, 1981, takes effect [Chapter 557]. If that Act does take effect, it is repealed on the effective date of this Act."

Prior to repeal art. 5749 was amended by Acts 1975, 64th Leg., p. 374, ch. 165, § 1.

Prior to repeal, art. 5750 was amended by Acts 1979, 66th Leg., p. 1551, ch. 667, § 1.

Prior to repeal, art. 5764 was amended by Acts 1981, 67th Leg., p. 1775, ch. 389, § 20; Acts 1981, 67th Leg., p. 2786, ch. 752, § 17.

CHAPTER NINE. MARKETING AGREEMENTS

Art. 5764a. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Agriculture Code.

TITLE 94

MILITIA—SOLDIERS, SAILORS AND MARINES

CHAPTER THREE. NATIONAL GUARD

Art. 5781. Adjutant General

Department

Sec. 1.

[See Compact Edition, Volume 5 for text of 1(a) and 1(b)]

(c) The Adjutant General's Department is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the Department is abolished, and this Article expires effective September 1, 1993.

[See Compact Edition, Volume 5 for text of 2 and 3]

Powers

Sec. 4. The Adjutant General shall be in control of the military department of this state and subordinate only to the Governor in matters pertaining to said Department, or the military forces of this state; and he shall perform such duties as the Governor may from time to time entrust to him relative to the military commissions, the military forces, the military stores and supplies, or to other matters respecting military affairs of this state; and he shall conduct the business of the Department in such manner as the Governor shall direct. The Adjutant General shall establish reasonable and necessary fees for the administration of this article. He shall have the custody and charge of all books, records, papers, furniture, fixtures, and other property relating to his Department, and shall perform as near as practicable, such duties as pertain to the Chiefs of Staff of the Army and Air Force and the Secretaries of the military services, under the regulations and customs of the United States Armed Forces.

For and on behalf of the State of Texas, the Adjutant General is authorized to execute leases or subleases between the State of Texas, as lessee or sublessee, and the Texas National Guard Armory Board, as lessor or sublessor, for any building or buildings and the equipment therein and the site or sites therefor to be used for armory and other proper purposes, and to renew such leases or subleases from time to time; and the Adjutant General shall not lease or sublease any property for armory purposes in or about any municipality from any person other than the Texas National Guard Armory Board, so long as adequate facilities for such armory purposes in or about such municipality are available for renting from the Texas National Guard Armory Board.

[See Compact Edition, Volume 5 for text of 5 to 14]

Acceptance and Disposition of Funds

Sec. 15. (a) Except as otherwise provided by this section, funds paid to the department under this article, other than military unit funds authorized by a rule of the Adjutant General, shall be deposited in the state treasury to the credit of the general revenue fund.

(b) The department may accept a gift, grant, or donation of funds from a private source. The funds shall be deposited in the state treasury to the credit of the general revenue fund and may be used only for the purposes specified by the person making the gift, grant, or donation.

(c) The Adjutant General may accept funds from the federal government, either directly or through another agency, or agencies of the state or political subdivisions thereof as gifts, grants, and transfers to be used for the purposes set out in such gifts, grants, or transfers for any legal purposes of his department. These funds shall be deposited with the State Treasurer and are to be paid out by him on properly drawn warrants issued by the Comptroller of Public Accounts upon the request of the Adjutant General and approval of the Governor under regulations prescribed by the Comptroller. Any employee whose salary is paid from these funds shall receive not less than the federal hourly minimum wage as provided in Section 206, the Fair Labor Standards Act of 1938, as amended. The Adjutant General may make such regulations as he may deem necessary to control the receipt and disbursements of such funds. [Amended by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.055, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2302, ch. 563, §§ 1, 2, Sept. 1, 1981.]

Art. 5783. Service and Duties

[See Compact Edition, Volume 5 for text of 1 to 8]

Tax Exemptions

Sec. 9. (a) All officers and enlisted men of the State Military Forces of this state, who comply with their military duties as prescribed by this Chapter, shall be entitled to exemption from the payment of any road or street tax.

(b) The following affidavit, sworn to before a notary public or other person authorized to administer oaths in the State of Texas, shall be filed in the county tax assessor-collector's office to support exemption prescribed in the preceding subsection:

"I, _____, do hereby solemnly swear or affirm that I am a member in good standing of the State Military Forces of the State of Texas.

_____

Subscribed to and sworn to before me this _____ day of _____ 19____

SEAL

_____

Notary Public in and for _____ County, Texas"

[See Compact Edition, Volume 5 for text of 10 to 13]

[Amended by Acts 1981, 67th Leg., p. 3141, ch. 827, § 2, eff. Aug. 31, 1981.]

Art. 5787. Veterans County Service Office

[See Compact Edition, Volume 5 for text of 1]

Sec. 2. Repealed by Acts 1981, 67th Leg., p. 2825, ch. 762, § 2, eff. Sept. 1, 1981.

Veterans Affairs Commission

Sec. 3. (a) Declaration of purpose: It is hereby declared that the purpose of this Act is to give proper care and assistance to Texas veterans.

(b) Creation, membership: There is hereby created and established by this Act, a Veterans Affairs Commission of the State of Texas. The Commission shall be composed of six (6) members who shall be appointed by the Governor, with the advice, consent and confirmation of the Senate. Appointments to the Commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The members of the Commission shall be citizens and bona fide residents of the State of Texas, and at least four (4) members of the commission shall have been honorably discharged or honorably released from active military service of the United States. At all times at least one member of the Commission shall be a person who is classified as a disabled veteran by the Veterans Administration of the United States or the successor to that agency or by the branch of the Armed Forces of the United States in which he served, and whose disability is service-connected and compensable. No member of the Commission shall have a discharge from military service that is less than honorable. No two (2) members of the Commission shall reside in the same Senatorial District, and not more than one (1) shall be from a Senatorial District composed on one (1) county. A person who, because of his activities on behalf of a veterans association, is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the Commission or act as the general counsel to the Commission. Members shall be appointed for staggered terms of six (6) years. Each member shall serve until the appointment and qualification of his successor. Each member of the Commission is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Commission. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act.

(b–1) The Veterans Affairs Commission of the State of Texas is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1993. The Commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 3(c)]

(d) Organization, meeting, reports. The Commission may make such rules and regulations for its administration as it considers necessary. The Commission shall elect from among its members a chairman, a vice-chairman, and a secretary to serve for one (1) year, and annually thereafter shall elect such officers who shall serve until their successors are appointed and qualified. Four (4) members shall constitute a quorum and no action shall be taken by less than a majority of the Commission. The Commission shall hold regular meetings at least once in every three (3) months. The State Auditor shall audit the financial transactions of the Commission during each fiscal year. The Commission shall on or before December 1 of each year make in writing to the Governor and the presiding officer of each house of the Legislature a complete and detailed annual report accounting for all funds received and disbursed by the Commission during the preceding year.

[See Compact Edition, Volume 5 for text of 3(e) and 3(f)]

(g), (h) Repealed by Acts 1981, 67th Leg., p. 2825, ch. 762, § 2, eff. Sept. 1, 1981.

(i) Powers of Director. The Executive Director shall have power to administer oaths, certify under the seal of the Commission to official acts, take depositions within or without the State of Texas, as now provided by law, and compel the production of pertinent books, accounts, records and documents.

The Executive Director or his designee shall develop an intraagency career ladder program, one part on which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting. The Executive Director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the Executive Director must be based on the system established under this subsection.

(j) to (*l*) Repealed by Acts 1981, 67th Leg., p. 2825, ch. 762, § 2, eff. Sept. 1, 1981.

(m) It is a ground for removal from the Commission if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (b) of this section for appointment to the Commission;

(2) does not maintain during the service on the Commission the qualifications required by Subsection (b) of this section for appointment to the Commission;

(3) violates a prohibition relating to conflict of interest prescribed by Subsection (b) of this section; or

(4) fails to attend at least half of the regularly scheduled Commission meetings held in a calendar year, excluding meetings held while the person was not a member of the Commission.

(n) If a ground for removal of a member from the Commission exists, the Commission's actions during the existence of the ground for removal are not invalid for that reason.

(*o*) The Commission shall prepare information of consumer interest describing the functions of the Commission and the Commission's procedures by which consumer complaints are filed with and resolved by the Commission. The Commission shall make the information available to the general public and appropriate state agencies.

[Amended by Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.051, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2823, ch. 762, §§ 1, 2, eff. June 17, 1981.]

Sections 3 and 4 of Acts 1981, 67th Leg., p. 2825, ch. 762, provide:

"Sec. 3. (a) A person holding office as a member of the Veterans Affairs Commission on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The governor shall appoint a person to fill the new office on the commission. The initial term for this new office expires in 1985.

"Sec. 4. (a) This Act takes effect September 1, 1981.

"(b) The requirements under Subsection (i), Section 3, Article 5787, Revised Civil Statutes of Texas, 1925, as amended by this Act, that the executive director of the commission develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement of Subsection (i) of Section 3 that merit pay is to be based on that system shall be implemented before September 1, 1983."

Art. 5788. Texas Code of Military Justice

SUBCHAPTER I. GENERAL PROVISIONS

Definitions

Sec. 1. In this Code:

(1) "State Judge Advocate General" means the Judge Advocate General of the State Military Forces, commissioned therein, and responsible for supervising the administration of military justice in the state military forces, and performing such other legal duties as may be required by the Adjutant General.

(2) "State military forces" means the National Guard of this state, as defined in Section 101(3), (4) and (6) of Title 32, United States Code, and any other militia or military forces organized under the laws of the state.

(3) "Commanding Officer" includes commissioned officers and warrant officers, as applicable.

(4) "Officer" means commissioned or warrant officer.

(5) "Superior Commissioned Officer" means a commissioned officer superior in rank or command.

(6) "Officer candidate" means a cadet of the state officer candidate school.

(7) "Enlisted member" means a person in an enlisted grade.

(8) "Military" refers to any or all of the state military forces.

(9) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) "Military Judge" means an official of a court-martial detailed in accordance with Section 26 of this Code.

(11) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

(12) "Legal officer" means any commissioned officer of the state military forces designated to perform legal duties for a command.

(13) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(14) "Rank" means the order of precedence among members of the state military forces.

(15) "Active state duty" means all duty authorized under the Constitution and laws of the State of Texas and all training authorized under Title 32, United States Code.

(16) "Judge Advocate" means any commissioned officer who is certified by the State Judge Advocate General.

(17) "Military Court" means a court-martial, a court of inquiry, a military commission, or a provost court.

(18) "May" is used in a permissive sense.

(19) "Shall" is used in an imperative sense.

(20) "He," where used, means, and shall be interpreted to include, both the masculine and feminine gender.

(21) "Code" means this Act.

Persons Subject to This Code

Sec. 2. This Code applies to all members of the state military forces who are not in federal service.

Jurisdiction to Try Certain Personnel

Sec. 3. (a) Each person discharged from the state military forces who is later charged with having fraudulently obtained his discharge is, subject to Section 43 of this Code, subject to trial by court-martial on that charge and is, after apprehension, subject to this Code while in custody of the military for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this Code committed before the fraudulent discharge.

(b) No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this Code by virtue of a separation from any later period of service.

Sec. 4. Reserved.

Territorial Applicability of the Code

Sec. 5. (a) This Code applies in all places. It also applies to all persons otherwise subject to this Code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(b) Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state, with the same jurisdiction and power as to persons subject to this Code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

Judge Advocates and Legal Officers

Sec. 6. (a) The Adjutant General shall appoint an officer of the state military forces as State Judge Advocate General. To be eligible for appointment, an officer must be a member of the bar of a Federal Court and of the highest court of the State of Texas for at least 5 years.

(b) The Adjutant General shall appoint judge advocates and legal officers upon recommendation of the State Judge Advocate General. To be eligible for appointment, judge advocates or legal officers must be officers of the state military forces and members of the bar of a Federal Court and of the highest court of the State of Texas.

(c) The State Judge Advocate General or his assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(d) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocates or legal officers of any command are entitled to communicate directly with the staff judge advocates or legal officers of a superior or subordinate command, or with the State Judge Advocate General.

(e) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense in any case may later act as staff judge advocate or legal officer to any reviewing authority upon the same case.

SUBCHAPTER II. APPREHENSION AND RESTRAINT

Apprehension

Sec. 7. (a) Apprehension is the taking of a person into custody.

(b) Any person authorized by this Code, or by regulations issued under it, to apprehend persons subject to this Code, any marshal of a court-martial appointed pursuant to the provisions of this Code, and any peace officer having authority to apprehend offenders under the laws of the United States or of a state, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this Code and to apprehend persons subject to this Code who take part therein.

Apprehension of Deserters

Sec. 8. Any civil officer or peace officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia, may summarily apprehend a deserter from the state military forces and deliver him into the custody of the state military forces.

Imposition of Restraint

Sec. 9. (a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this Code or through any person authorized by this Code to apprehend persons. A commanding officer may authorize warrant officers or noncommissioned officers to order enlisted members of his company or subject to his authority into arrest or confinement.

(c) A commissioned officer or warrant officer may be ordered apprehended or into arrest or confine-

ment only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

(d) No person may be ordered apprehended or into arrest or confinement except for probable cause.

(e) This Section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

Restraint of Persons Charged With Offenses

Sec. 10. Any person subject to this Code charged with an offense under this Code shall be ordered into arrest or confinement, as circumstances may require; but when charged with only an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this Code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him. Persons confined other than in a guardhouse, whether before, during, or after trial by a military court, shall be confined in civil jails.

Reports and Receiving of Prisoners

Sec. 11. (a) No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail, designated under Section 10 of this Code, may refuse to receive or keep any prisoner committed to his charge, when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or of any other jail, designated under Section 10 of this Code, to whose charge a prisoner is committed shall, within 24 hours after that commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

Sec. 12. Reserved.

Punishment Prohibited Before Trial

Sec. 13. Subject to Section 57 of this Code, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

Delivery of Offenders to Civil Authorities

Sec. 14. (a) Under such regulations as may be prescribed under this Code a person subject to this Code who is on active state duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this Section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender, after having answered to the civil authorities for his offense, shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

SUBCHAPTER III. NON-JUDICIAL PUNISHMENT

Commanding Officer's Non-judicial Punishment

Sec. 15. (a) Under such regulations as the Governor may prescribe, limitations may be placed on the powers granted by this Section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this Section to an accused who demands trial by court-martial and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the state military forces under this Section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Governor, the Governor or an officer of general rank in command may delegate his powers under this Section to a principal assistant. If disciplinary punishment other than admonition or reprimand is to be imposed, the accused shall be afforded the opportunity to be represented by defense counsel having the qualifications prescribed under Section 27(b), if available. Otherwise, the accused shall be afforded the opportunity to be represented by any available commissioned officer of his choice. The accused may also employ civilian counsel of his own choosing at his own expense. In all proceedings, the accused is allowed 3 duty days, or longer on written justification, to reply to the notification of intent to impose punishment under this Section.

(b) Subject to subsection (a) of this Section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) upon officers of his command;

(A) restriction to certain specified limits with or without suspension from duty, for not more than 30 days;

(B) if imposed by the Governor, or an officer of general rank in command;

(i) arrest in quarters for not more than 30 days;

(ii) forfeiture of not more than one-half of 1 month's pay per month for 2 months or a fine of not more than $75;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 days;

(iv) detention of not more than one-half of one month's pay per month for 3 months;

(2) upon other personnel of his command;

(A) if imposed upon a person attached to or embarked in a vessel, confinement for not more than 3 days;

(B) correctional custody for not more than 7 days;

(C) forfeiture of not more than 7 days pay or a fine of not more than $10;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties including fatigue or other duties, for not more than 30 days, which need not be consecutive, and for not more than 2 hours per day, holidays included;

(F) restriction to certain specified limits, with or without suspension from duty for not more than 14 days;

(G) detention of not more than 14 days pay;

(H) if imposed by an officer of the grade of major or above;

(i) the punishment authorized under subsection (b)(2)(A) of this Section;

(ii) correctional custody for not more than 30 days;

(iii) forfeiture of not more than one-half of 1 month's pay per month for 2 months or a fine of not more than $75;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E–4 may not be reduced more than 2 pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 days which need not be consecutive and for not more than 2 hours per day, holidays included;

(vi) restriction to certain specified limits with or without suspension from duty, for not more than 60 days;

(vii) detention of not more than one-half of 1 months pay per month for 3 months. Detention of pay shall be for a stated period of not more than 1 year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No 2 or more of the punishments of arrest in quarters, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, fine or forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection "correctional custody" is the physical restraint of a person during duty or non-duty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by courts-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)–(G) of this Section as the Governor may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b) or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or fine or forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted; and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to fine or forfeiture or detention of pay.

When mitigating:

(1) arrest in quarters to restriction, or

(2) extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to fine, forfeiture or detention of pay, the amount of the fine, forfeiture or detention shall not be greater than the amount that could have been imposed initially under this Section by the officer who imposed the punishment mitigated.

(e) A person punished under this Section who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with re-

spect to the punishment imposed as may be exercised under subsection (d) of this Section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

(1) arrest in quarters for more than 7 days;

(2) correctional custody for more than 7 days;

(3) forfeiture of more than 7 days pay;

(4) reduction of 1 or more pay grades from the fourth or a higher pay grade;

(5) extra duties for more than 14 days;

(6) restriction of more than 14 days pay;

(7) detention of more than 14 days pay; the authority who is to act on the appeal shall refer the case to a judge advocate or legal officer of the state military forces for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this Section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this Section, but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this Section and may also prescribe that certain categories of those proceedings shall be in writing.

SUBCHAPTER IV. COURTS-MARTIAL

Courts-Martial Classified

Sec. 16. The three kinds of courts-martial in each of the state military forces are:

(1) general court-martial, consisting of:

(A) a military judge and not less than 5 members; or

(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed only of a military judge and the military judge approves;

(2) special court-martial, consisting of:

(A) not less than 3 members; or

(B) a military judge and not less than 3 members; or

(C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)(B) so requests; and

(3) Summary court-martial, consisting of 1 officer, who shall be a military judge or an attorney licensed to practice law in this state.

Jurisdiction of Courts-Martial in General

Sec. 17. Each force of the state military forces has court-martial jurisdiction over all persons subject to this Code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the Governor.

Jurisdiction of General Courts-Martial

Sec. 18. (a) Subject to Section 17 of this Code, general courts-martial have jurisdiction to try persons subject to this Code for any offense made punishable by this Code and may, under such limitations as the Governor may prescribe, adjudge any of the following punishments:

(1) A fine of not more than $200 or confinement for not more than 200 days;

(2) Forfeiture of pay and allowances;

(3) A reprimand;

(4) Dismissal or dishonorable discharge;

(5) Reduction of a noncommissioned officer to the ranks; or

(6) Any combination of these punishments.

(b) A dismissal or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under Section 27(b) of this Code was detailed to represent the accused, and a military judge was detailed to the trial.

Jurisdiction of Special Courts-Martial

Sec. 19. (a) Subject to Section 17 of this Code, special courts-martial have jurisdiction to try persons subject to this Code, except commissioned officers, for any offense for which they may be punished under this Code. A special court-martial has the same powers of punishment as a general court-martial, except that a fine or confinement imposed by a special court-martial may not be more than $100 fine or confinement of not more than 100 days for a single offense.

(b) A dismissal or dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under Section 27(b) of this title was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

Jurisdiction of Summary Courts-Martial

Sec. 20. (a) Subject to Section 17 of this Code, summary courts-martial have jurisdiction to try persons subject to this Code, except officers, for any offense made punishable by this Code.

(b) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial, as may be appropriate.

(c) A summary court-martial may sentence to a fine of not more than $25 or confinement for not more than 25 days for a single offense, to forfeiture of pay and allowances, and reduction of a noncommissioned officer to the ranks.

Sec. 20A. Reserved.

Jurisdiction of Courts-Martial not Exclusive

Sec. 21. The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.

SUBCHAPTER V. COMPOSITION OF COURTS-MARTIAL

Who May Convene General Courts-Martial

Sec. 22. In the militia or state military forces not in federal service general courts-martial may be convened by:

(a) the Governor of the State of Texas; or

(b) the Adjutant General or any other General Officer under such regulations as the Governor may promulgate.

Who May Convene Special Courts-Martial

Sec. 23. In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a division, brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court may be convened by superior competent authority if considered advisable by him.

Who May Convene Summary Courts-Martial

Sec. 24. (a) In the state military forces not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial.

Who May Serve on Courts-Martial

Sec. 25. (a) Any state commissioned officer in a duty status is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer in a state duty status is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member of the state military forces in a state duty status who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of the state military forces who may lawfully be brought before such courts for trial but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under Section 39(a) of this Code prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this Section, the word "unit" means any regularly organized body of the state military forces.

(d)(1) When it can be avoided, no person subject to this Code may be tried by a court-martial, any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the state military forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the state military forces is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

Military Judge of a Court-Martial

Sec. 26. (a) The authority convening a general court-martial shall, and, subject to regulations issued by the Governor, the authority convening a special or summary court-martial may detail a military judge thereto. A military judge shall preside over open sessions of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the state military forces who is a member of the bar of a Federal court and a member of the bar of the highest court of this state and who is certified to be qualified for duty as a military judge by the State Judge Advocate General of the state military forces.

(c) The military judge of a general court-martial shall be designated by the State Judge Advocate General, or his designee, for detail by the convening authority, and, unless the court-martial was convened by the Governor or the Adjutant General, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(f) A military judge detailed to preside over a court-martial hereunder shall not be subject to any report concerning the effectiveness, fitness, or efficiency of that military judge so detailed, which relates to his performance of duty as a military judge, by such convening authority, nor any member of his staff.

(g) All trial counsel, defense counsel, military judges, legal officers, summary court officers, and any other person certified by the State Judge Advocate General to perform legal functions under this Code, shall be used interchangeably, as needed, among all of the state military forces.

Detail of Trial Counsel and Defense Counsel

Sec. 27. (a) For each general, special, and summary court-martial the authority convening the court shall detail trial counsel and defense counsel and such assistants as he considers appropriate. No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel, or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial:

(1) Must be a graduate of an accredited law school and a member of the bar of a Federal court or of the highest court of a state; and

(2) Must be certified as competent to perform such duties by the State Judge Advocate General.

(c) In the case of a special or summary court-martial:

(1) The accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under Section 27(b) of this Code unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(2) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) If the trial counsel is a judge advocate, or a member of the bar of a Federal court or the highest court of a state, the defense counsel detailed by the convening authority must be one of the foregoing.

Detail or Employment of Reporters and Interpreters

Sec. 28. Under such regulations as the Governor may prescribe, the convening authority of a general or special court-martial, military commission, court of inquiry, or a military tribunal shall detail or employ qualified court reporters who shall record the proceedings of and testimony taken before that court, commission, or tribunal. Under like regulations the convening authority may detail or employ interpreters who shall interpret for the court, commission, or tribunal.

Absent and Additional Members

Sec. 29. (a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below 5 members the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than 5 members. The trial may proceed with the new members present after the recorded evidence previously introduced has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below 3 members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than 3 members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of Section 16(1)(B) or (2)(C) of this Code, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

SUBCHAPTER VI. PRE-TRIAL PROCEDURE

Charges and Specifications

Sec. 30. (a) Charges and specifications shall be signed by a person subject to this Code under oath before a commissioned officer of the state military force authorized to administer oaths and shall state:

(1) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) That they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

Compulsory Self-Incrimination Prohibited

Sec. 31. (a) No person subject to this Code may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this Code may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this Code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this Section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

Investigation

Sec. 32. (a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request, he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b) of this Section, no further investigation of that charge is necessary under this Section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this Section are binding on all persons administering this Code but failure to follow them does not constitute jurisdictional error.

Forwarding of Charges

Sec. 33. When a person is held for trial by general court-martial the commanding officer shall, within 8 days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

Advice of Staff Judge Advocate and Reference for Trial

Sec. 34. (a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate or legal officer for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this Code and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

Service of Charges

Sec. 35. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objections, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under Section 39(a) of this Code in a general court-martial case within a period of 5 days after the service of charges upon him, or in a special court-martial case within a period of 3 days after the service of charges upon him.

SUBCHAPTER VII. TRIAL PROCEDURE

Governor May Prescribe Rules

Sec. 36. The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the Governor by regulations, which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the State of Texas, but which may not be contrary to or inconsistent with this Code.

Unlawfully Influencing Action of Court

Sec. 37. (a) No authority convening a general, special or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this Code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of court-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces or in determining whether a member of the state military forces should be retained on duty, no person subject to this Code may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the state military forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

Duties of Trial Counsel and Defense Counsel

Sec. 38. (a) The trial counsel of a general or special court-martial shall prosecute in the name of the State of Texas, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused has the right to be represented in his defense before a general, special or summary court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel detailed under Section 27 of this Code. Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the military judge or by the president of a court-martial without a military judge.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings, a brief of such matters he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by Section 27 of this Code, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by Section 27 of this Code, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

Sessions

Sec. 39. (a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to Section 35 of this Code, call the court into session without the presence of the members for the purpose of:

(1) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) Hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) If permitted by regulations of the Governor, holding the arraignment and receiving the pleas of the accused; and

(4) Performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to Section 36 of this Code and which does not require the presence of the members of the court. These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge.

Continuances

Sec. 40. The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

Challenges

Sec. 41. (a) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than 1 person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and the trial counsel are entitled to 1 peremptory challenge, but the military judge may not be challenged except for cause.

Oaths

Sec. 42. Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The oath or affirmation shall be taken in the presence of the accused, and shall read as follows:

(a) Court members:

"You, _____, do swear (or affirm) that you will faithfully perform all the duties incumbent upon you as a member of this court; that you will faithfully and impartially try, according to the evidence, your conscience, and the laws and regulations provided for trials by courts-martial, the case of (the) (each) accused now before this court; and that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the customs of the service in like cases; that you will not divulge the findings and sentence in any case until they shall have been duly announced by the court; and that you will not disclose or discover the vote or opinion of any particular member of the court upon a challenge or upon the findings or sentence unless required to do so before a court of justice in due course of law. So help you God."

(b) Military judge:

"You, _____, do swear (or affirm) that you will faithfully and impartially perform, according to your conscience and the laws and regulations provided for trials by courts-martial, all the duties incumbent upon you as military judge of this court; that if any doubt should arise not explained by the laws and regulations, then according to the best of your understanding and the customs of the service in like cases; and that you will not divulge the findings or sentence in any case until they shall have been duly announced by the court. So help you God."

(c) Trial counsel and assistant trial counsel:

"You, _____ (and) _____, do swear (or affirm) that you will faithfully perform the duties of trial counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(d) Defense counsel and assistant defense counsel:

"You, _____ (and) _____, do swear (or affirm) that you will faithfully perform the duties of defense (and individual) counsel and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(e) Court of inquiry:

The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you without partiality, favor, affection, prejudice or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You do swear that you will according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

(f) Witnesses:

All persons who give evidence before a court-martial or court of inquiry shall be examined on

oath administered by the presiding officer in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

(g) Reporter or interpreter:

"You swear (or affirm) that you will faithfully perform the duties of reporter (or interpreter) to this court. So help you God."

Statute of Limitations

Sec. 43. (a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this Section, a person charged with desertion in time of peace or with the offenses punishable under Sections 115, 116 and 117 of this Code is not liable to be tried by court-martial if the offense was committed more than 3 years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this Section, a person charged with any offense is not liable to be tried by court-martial or punished under Section 15 of this Code if the offense was committed more than 2 years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command, or before the imposition of punishment under Section 15 of this Code.

(d) Periods in which the accused was absent from territory in which the state has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this Section.

Former Jeopardy

Sec. 44. (a) No person may be tried a second time in any military court of the State of Texas for the same offense.

(b) No proceedings in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this Section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this Section.

Pleas of the Accused

Sec. 45. (a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Governor, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to the announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

Opportunity to Obtain Witnesses and Other Evidence

Sec. 46. (a) The trial counsel, the defense counsel, accused, and the court-martial shall have equal opportunity to obtain witnesses and other evidence. Each shall have the right of compulsory process for obtaining witnesses.

(b) The presiding officer of a court-martial may:

(1) Issue a warrant for the arrest of any accused person who having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(2) Issue subpoenas duces tecum and other subpoenas;

(3) Enforce by attachment the attendance of witnesses and the production of books and papers; and

(4) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

(c) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers or peace officers as described by the laws of the state.

Refusal to Appear or Testify

Sec. 47. (a) Any person not subject to this Code who:

(1) Has been duly subpoenaed to appear as a witness or to produce books and records before a military court or before any military or civil officer or peace officer designated to take a deposition to be read in evidence before a court;

(2) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses under Section 145 of this Code. These fees are to be paid by the Adjutant General's Department as hereinafter provided; and

(3) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to

produce any evidence which that person may have been legally subpoenaed to produce; is guilty of an offense against the state and may be punished by fine not to exceed $1,000 or confinement not to exceed 60 days in jail, or by both fine and confinement, and such witness shall be prosecuted in the appropriate county court.

(b) The appropriate prosecuting official for the state in any county court having jurisdiction where the military proceeding was convened shall, upon submission of a complaint to him by the presiding officer of a military court, commission, court of inquiry, or board, file an information against and prosecute any person violating this Section.

Contempts

Sec. 48. A military court may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. Punishment may not exceed confinement for 30 days or a fine of $100, or both.

Depositions

Sec. 49. (a) At any time after charges have been signed, as provided in Section 30 of this Code, any party may take oral or written depositions unless the military judge, a court-martial without a military judge hearing the case, or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(d) Any duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or commission, or in any proceeding before a court of inquiry or military board, if it appears:

(1) That the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of 100 miles from the place of trial or hearing;

(2) That the witness by reason of death, age or sickness, bodily infirmity, imprisonment, military necessity, non-amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) That the present whereabouts of the witness is unknown.

Admissibility of Records of Courts of Inquiry

Sec. 50. (a) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

(d) In all courts of inquiry both enlisted men and officers shall have the right to counsel and the right to cross examination of all witnesses.

Voting and Rulings

Sec. 51. (a) Voting by members of a general or special court-martial on the findings, on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in Section 52 of this Code beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(1) That the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) That in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) That the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the state.

(d) Subsections (a), (b), and (c) of this Section do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

Number of Votes Required

Sec. 52. (a) No person may be convicted of an offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) All sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

Court to Announce Action

Sec. 53. A court-martial shall announce its findings and sentence to the parties as soon as determined.

Record of Trial

Sec. 54. (a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions that would impose such a duty on a member under this subsection. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by regulations of the Governor.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall contain the matter and shall be authenticated in the manner required by such regulations as the Governor may prescribe.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

SUBCHAPTER VIII. SENTENCES

Cruel and Unusual Punishments Prohibited

Sec. 55. Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this Code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

Maximum Limits

Sec. 56. The punishment which a court-martial may direct for an offense may not exceed the limits prescribed by this Code nor limits prescribed by the Governor of the State of Texas.

Effective Date of Sentences

Sec. 57. (a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the

officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(d) In the militia or state military forces not in federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the Governor.

(e) All other sentences of courts-martial are effective on the date ordered executed.

Execution of Confinement

Sec. 58. (a) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the state military forces or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of any political subdivision thereof.

(b) The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

(c) The keepers, officers, and wardens of city or county jails and other jails, penitentiaries, or prisons designated by the Governor, or by such person as he may authorize to act under Section 10 of this Code, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person.

SUBCHAPTER IX. REVIEW OF COURTS-MARTIAL

Error of Law; Lesser Included Offense

Sec. 59. (a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

Initial Action on the Record

Sec. 60. After trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

Same General Court-Martial Records

Sec. 61. The convening authority shall refer the record of each general court-martial to his judge advocate who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

Reconsideration and Revision

Sec. 62. (a) If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

(1) For reconsideration of a finding of not guilty, or a ruling which amounts to a finding of not guilty;

(2) For consideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some Section of this Code; or

(3) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

Rehearings

Sec. 63. (a) If the convening authority disapproves the finding and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

Approval by the Convening Authority

Sec. 64. In acting on the findings and sentence of a court-martial, the convening authority may

approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.

Disposition of Records After Review by Convening Authority

Sec. 65. (a) If the convening authority is the Governor, his action on the review of any record of trial is final.

(b) In all other cases not covered by subsection (a) of this Section, if the sentence of a special court-martial as approved by the convening authority includes a dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate judge advocate or legal officer of the state military forces concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the judge advocate or legal officer shall then be sent to the State Judge Advocate General for review.

(c) All other special and summary court-martial records shall be sent to the judge advocate or legal officer of the appropriate force of the state military forces and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations prescribed by the Governor.

(d) The State Judge Advocate General shall review the record of trial in each case sent to him for review as provided under subsection (b) of this Section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the State Judge Advocate General is limited to questions of jurisdiction.

(e) The State Judge Advocate General shall take final action in any case reviewable by him.

Review by State Judge Advocate General

Sec. 66. (a) In a case reviewable by the State Judge Advocate General under this Section, the State Judge Advocate General may act only with respect to the findings and sentence as approved by the convening authority. He may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, he may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the State Judge Advocate General sets aside the findings and sentence, he may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(b) In a case reviewable by the State Judge Advocate General under this or the preceding Section, he shall instruct the convening authority to act in accordance with his decision on the review. If he has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

Review by Texas Court of Military Appeals

Sec. 67. (a)(1) There is hereby established a Texas Court of Military Appeals, located for administrative purposes only in the Adjutant General's Department, State of Texas. The court shall consist of 5 judges appointed by the Adjutant General of Texas upon the advice and recommendation of the State Judge Advocate General for a term of 6 years. Initial appointments to this court will be: 1 judge for a 2-year term, 2 judges for a 4-year term, and 2 judges for a 6-year term. The term of office of all successor judges shall be for a 6-year period of time, but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The Adjutant General of Texas, upon the advice and recommendation of the State Judge Advocate General, shall appoint the chief judge of this court. A person is eligible for appointment to this court who:

(A) is a member of the bar of the highest court of this state;

(B) is a member of a Federal bar;

(C) is a graduate of an accredited school of law;

(D) is a commissioned officer of the state military forces, active or retired, or a retired commissioned officer in the reserves of the armed forces of the United States of America;

(E) has been engaged in the active practice of law for at least 5 years;

(F) has at least 5 years experience as a staff judge advocate, judge advocate, or legal officer with the state military forces. The requirements in (E) and (F) of this Section may be satisfied by equivalent experience or practice in the armed forces of the United States.

(2) The court may promulgate its own rules of procedure, provided, however, that a majority shall constitute a quorum and the concurrence of 3 judges shall be necessary to a decision of the court.

(3) Judges of the Texas Court of Military Appeals may be removed by the Adjutant General of Texas, upon notice and hearing for neglect of duty or malfeasance in office, or for mental or physical disability.

(4) If a judge of the Texas Court of Military Appeals is temporarily unable to perform his duties the Adjutant General upon the advice and recommendation of the State Judge Advocate General may designate a military judge, as defined in this Code, to fill the office for the period of disability.

(5) The judges of the Texas Court of Military Appeals, while actually sitting in review of a matter placed under their jurisdiction by this Code, and

while travelling to and from such session, shall be paid compensation equal to that compensation as prescribed for the Judges of the Texas Courts of Civil Appeals, as per the then current appropriation bill for the State of Texas, together with the actual cost of their meals and lodging and actual travel expense or the amount set by the then current appropriation bill if private transportation is utilized.

(b) The Texas Court of Military Appeals shall have appellate jurisdiction, upon petition of an accused, to hear and review the record in:

(1) All general and special court-martial cases; and

(2) All other cases where a judge of this court has made a determination that there may be a constitutional issue involved.

(c) The accused has 60 calendar days, from the time of receipt of actual notice of the final action on his case, under this Code to petition the Texas Court of Military Appeals for review. The court shall act upon such a petition within 60 calendar days of the receipt thereof. In the event the court fails or refuses to grant such petition for review the final action of the convening authority will be deemed to have been approved; notwithstanding any other provision of this Code, upon the court granting a hearing of an appeal, the court may grant a stay or defer service of the sentence of confinement or any other punishment under this Code until the court's final decision upon the case.

(d) In a case reviewable under subsection (b)(1) of this Section the Texas Court of Military Appeals may act only with respect to the findings and sentence as finally approved and ordered executed by the convening authority. In a case reviewable under subsection (b)(2) of this Section this court need take action only with respect to issues specified in the grant of review. This court shall take action only with respect to matters of law, and the action of this court is final.

(e) If the Texas Court of Military Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed. After the Texas Court of Military Appeals has acted on the case, the record shall be returned to the State Judge Advocate General who shall notify the convening authority of the court's decision. If further action is required the State Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

Sec. 68. Reserved.

Sec. 69. Reserved.

Appellate Counsel

Sec. 70. The trial counsel and defense counsel of a court-martial shall serve in the capacity of appellate counsel upon an appeal authorized under this Code. The accused has the additional right to be represented by civilian counsel at his own expense. Should the defense or trial counsel become unable to perform their duties because of illness or other disability, the convening authority will appoint a qualified trial or defense counsel to continue the proceedings.

Sec. 71. Reserved.

Vacation of Suspension

Sec. 72. (a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a dismissal or dishonorable discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by military counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the Governor in cases involving a general court-martial sentence and to the commanding officer of the force of the state military forces of which the probationer is a member in all other cases covered by subsection (a) of this Section. If the Governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

Petition for a New Trial

Sec. 73. At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the State Judge Advocate General for a new trial on ground of newly discovered evidence or fraud on the court-martial. If the accused's case is pending before the Texas Court of Military Appeals when this petition is filed, the appeal will not proceed until the State Judge Advocate General has made a decision on the request. If the petition is granted, the appeal will be dismissed. If the petition is denied, the Court of Military Appeals will continue its proceedings on the case.

Remission or Suspension

Sec. 74. (a) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

(b) The Governor may, for good cause, substitute an administrative form of discharge for a discharge

or dismissal executed in accordance with the sentence of a court-martial.

Restoration

Sec. 75. (a) Under such regulations as the Governor may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or hearing.

(b) If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the Governor alone to such commissioned grade and with such rank as in the opinion of the Governor that former officer would have attained had he not been dismissed. The reappointment of such former officer may be made if a position vacancy is available under applicable tables of organization. All the time between the dismissal and reappointment shall be considered as service for all purposes.

Finality of Proceedings, Findings, and Sentences

Sec. 76. The appellate review of records of trial provided by this Code, the proceedings, findings, and sentences of courts-martial as reviewed and approved, as required by this Code, and all dismissals and discharges carried into execution under sentences by courts-martial following review and approval as required by this Code, are final and conclusive. Orders publishing the proceedings of the courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in Section 73 of this Code.

SUBCHAPTER X. PUNITIVE ARTICLES

Persons to be Tried or Punished

Sec. 76A. No person may be tried or punished for any offense provided for in Sections 77–134 of this Code, unless it was committed while he was in a duty status or during a period of time in which he was under lawful orders to be in a duty status.

Principals

Sec. 77. Any person subject to this Code who:

(1) Commits an offense punishable by this Code, or aids, abets, counsels, commands or procures its commission; or

(2) Causes an act to be done which if directly performed by him would be punishable by this Code;

is a principal.

Accessory After the Fact

Sec. 78. Any person subject to this Code, who knowing that an offense punishable by this Code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

Conviction of Lesser Included Offense

Sec. 79. An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

Attempts

Sec. 80. (a) An act, done with specific intent to commit an offense under this Code, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this Code who attempts to commit any offense punishable by this Code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this Code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

Conspiracy

Sec. 81. Any person subject to this Code who conspires with any other person to commit an offense under this Code, shall if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

Solicitation

Sec. 82. (a) Any person subject to this Code who solicits or advises another or others to desert in violation of Section 85 of this Code or mutiny in violation of Section 94 of this Code, shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this Code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Section 99 of this Code or sedition in violation of Section 94 of this Code shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

Fraudulent Enlistment, Appointment, or Separation

Sec. 83. Any person who:

(1) Procures his own enlistment or appointment in the state military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

Unlawful Enlistment, Appointment, or Separation

Sec. 84. Any person subject to this Code who effects an enlistment or appointment in or a separation from the state military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

Desertion

Sec. 85. (a) Any member of the state military forces who:

(1) Without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) Quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he has not been regularly separated;

is guilty of desertion.

(b) Any commissioned officer of the state military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct.

Absence Without Leave

Sec. 86. Any person subject to this Code, who without authority:

(1) Fails to go to his appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

Missing Movement

Sec. 87. Any person subject to this Code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

Contempt Towards Governor

Sec. 88. Any person subject to this Code who uses contemptuous words against the Governor of Texas, shall be punished as a court-martial may direct.

Disrespect Toward Superior Commissioned Officer

Sec. 89. Any person subject to this Code who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

Assaulting or Wilfully Disobeying Superior Commissioned Officer

Sec. 90. Any person subject to this Code who:

(1) Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while in the execution of his office; or

(2) Wilfully disobeys a lawful command of his commissioned officer;

shall be punished as a court-martial may direct.

Insubordinate Conduct Toward Warrant Officer or Noncommissioned Officer

Sec. 91. Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of his office;

(2) Wilfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

Failure to Obey Order or Regulation

Sec. 92. Any person subject to this Code who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the state military forces which it is his duty to obey, fails to obey the order; or

(3) Is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

Cruelty and Maltreatment

Sec. 93. Any person subject to this Code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his order shall be punished as a court-martial may direct.

Mutiny or Sedition

Sec. 94. (a) Any person subject to this Code who:

(1) With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place,

is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny or sedition, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

Resistance, Breach of Arrest, and Escape

Sec. 95. Any person subject to this Code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct.

Releasing Prisoner Without Proper Authority

Sec. 96. Any person subject to this Code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

Unlawful Detention of Another

Sec. 97. Any person subject to this Code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

Noncompliance With Procedural Rules

Sec. 98. Any person subject to this Code who:

(1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this Code; or

(2) Knowingly and intentionally fails to enforce or comply with any provision of this Code regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

Misbehavior Before the Enemy

Sec. 99. Any person subject to this Code who before or in the presence of the enemy:

(1) Runs away;

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) Casts away his arms or ammunition;

(5) Is guilty of cowardly conduct;

(6) Quits his place of duty to plunder or pillage;

(7) Causes false alarms in the command, unit, or place under control of the armed forces of the United States or the state military forces of Texas, or any other state;

(8) Wilfully fails to do his utmost to encounter, engage, capture or destroy enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty to so encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief, and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to this state, or to any other state, when engaged in battle;

shall be punished as a court-martial may direct.

Subordinate Compelling Surrender

Sec. 100. Any person subject to this Code who compels or attempts to compel the commander of any of the state military forces of Texas, the United States, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

Improper Use of Countersign

Sec. 101. Any person subject to this Code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct.

Forcing a Safeguard

Sec. 102. Any person subject to this Code who forces a safeguard shall be punished as a court-martial may direct.

Captured or Abandoned Property

Sec. 103. (a) All persons subject to this Code shall secure all public property taken from the enemy for the service of the State of Texas or the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this Code who:

(1) Fails to carry out the duties prescribed in subsection (a);

(2) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) Engages in looting or pillaging;

shall be punished as a court-martial may direct.

Aiding the Enemy

Sec. 104. Any person subject to this Code who:

(1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall be punished as a court-martial may direct.

Misconduct of a Prisoner

Sec. 105. Any person subject to this Code who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

Sec. 106. Reserved.

False Official Statements

Sec. 107. Any person subject to this Code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

Military Property—Loss, Damage, Destruction, or Wrongful Disposition

Sec. 108. Any person subject to this Code who, without proper authority:

(1) Sells or otherwise disposes of;

(2) Wilfully or through neglect damages, destroys, or loses; or

(3) Wilfully or through neglect suffers to be damaged, destroyed, sold, or wrongfully disposed of any military property of the United States or of the State of Texas;

shall be punished as a court-martial may direct.

Property Other Than Military Property—Waste, Spoilage or Destruction

Sec. 109. Any person subject to this Code who, while in a duty status, wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any property other than military property of the United States or of this state shall be punished as a court-martial may direct.

Improper Hazarding of Vessel

Sec. 110. (a) Any person subject to this Code who wilfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

(b) Any person subject to this Code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the state military forces shall be punished as a court-martial may direct.

Driving While Intoxicated or Driving While Under the Influence of a Narcotic Drug

Sec. 111. Any person subject to this Code who operates any vehicle while under the influence of intoxicating liquor or a narcotic drug, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

Drunk on Duty—Sleeping on Post—Leaving Post Before Relief

Sec. 112. Any person subject to this Code who is found under influence of intoxicating liquor or narcotic drugs while on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct.

Sec. 113. Reserved.

Sec. 114. Reserved.

Malingering

Sec. 115. Any person subject to this Code who for the purpose of avoiding work, duty or service in the state military forces:

(1) Feigns illness, physical disablement, mental lapse, or derangement; or

(2) Intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

Riot or Breach of Peace

Sec. 116. Any person subject to this Code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

Provoking Speeches or Gestures

Sec. 117. Any person subject to this Code who uses provoking or reproachful words or gestures towards any other person subject to this Code shall be punished as a court-martial may direct.

Sec. 118. Reserved.

Sec. 119. Reserved.

Sec. 120. Reserved.

Larceny and Wrongful Appropriation

Sec. 121. (a) Any person subject to this Code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind;

(1) With intent permanently to deprive or defraud another person of the use and benefit of property, or to appropriate it to his own use or the use of any person other than the owner, steals that property is guilty of larceny; or

(2) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any other person other than the owner,

is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

Sec. 122. Reserved.

Forgery

Sec. 123. Any person subject to this Code who, with intent to defraud:

(1) Falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) Utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

Sec. 124. Reserved.

Sec. 125. Reserved.

Sec. 126. Reserved.

Extortion

Sec. 127. Any person subject to this Code who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

Assault

Sec. 128. Any person subject to this Code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

Sec. 129. Reserved.

Sec. 130. Reserved.

Perjury

Sec. 131. Any person subject to this Code who in a judicial proceeding or in a court of justice conducted under this Code wilfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

Frauds Against the Government

Sec. 132. Any person subject to this Code:

(1) Who, knowing it to be false or fraudulent:

(A) Makes any claim against the United States, the State of Texas, or any officer thereof; or

(B) Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the State of Texas, or any officer thereof;

(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the State of Texas, or any officer thereof:

(A) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements; or

(B) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) Who, having charge, possession, custody, or control of any money or other property of the United States or the State of Texas, furnished or intended for the armed forces of the United States or the state military forces, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the State of Texas, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements there contained and with intent to defraud the United States or the State of Texas;

shall, upon conviction, be punished as a court-martial may direct.

Conduct Unbecoming an Officer and a Gentleman

Sec. 133. Any commissioned officer or officer candidate who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

General Article

Sec. 134. Though not specifically mentioned in this Code, all disorders and neglects to the prejudice of good order and discipline in the state military forces and/or all conduct of a nature to bring discredit upon the state military forces, of which persons subject to this Code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of the court.

SUBCHAPTER XI. MISCELLANEOUS PROVISIONS

Courts of Inquiry

Sec. 135. (a) Courts of inquiry to investigate any matter may be convened by the Governor or by any other person designated by the Governor for that purpose, or any person authorized to convene a general court-martial by this Code, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of 3 or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this Code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this Code or employed in the division of military affairs, who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

Authority to Administer Oaths

Sec. 136. (a) The following persons on state active duty may administer oaths for the purpose of military administration including military justice, and they have the general powers of a notary public in the performance of all notarial acts to be executed by members of the state military forces, wherever they may be:

(1) The State Judge Advocate General, and all judge advocates;

(2) All law specialists and military judges;

(3) All summary courts-martial;

(4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

(5) All administrative officers, assistant administrative officers, and acting administrative officers;

(6) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers; and

(7) All other persons designated by regulations of the state military forces or by statute.

(b) The following persons on state active duty may administer oaths necessary in the performance of their duties:

(1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial;

(2) The president, counsel for the court, and recorder of any court of inquiry;

(3) All officers designated to take a deposition;

(4) All persons detailed to conduct an investigation;

(5) All recruiting officers; and

(6) All other persons designated by regulations of the state military forces or by statute.

(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.

Sections to be Explained

Sec. 137. Sections 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 76A–134, and 137–139 of this Code shall be carefully explained to every enlisted member at the time of his enlistment or transfer or induction into, or at the time of his order to duty in or with any of the state military forces or within 30 days thereafter. They shall also be explained annually to each unit of the state military forces. A complete text of this Code and of the regulations prescribed by the Governor thereunder shall be made available to any member of the state military forces, upon his request, for his personal examination.

Complaints of Wrongs

Sec. 138. (a) Any member of the state military forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the next highest commander who shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Adjutant General a true statement of that complaint with the proceedings had thereon.

(b) When an action or proceeding of any nature shall be commenced in any court, other than a military court, by any person against any member of the state military forces for any act done, or caused, ordered or directed to be done in the line of duty, as determined by a finding of fact made by a court of inquiry under Section 135 of this Code, while such member was on active state duty, all expenses of representation in such action or proceeding, including fees of witnesses, depositions, court costs, and all costs for transcripts of records or other documents that might be needed during trial or appeal shall be paid as provided in this Code. When any action or proceeding of any type is brought, as described in this subsection, the Adjutant General, upon the written request of the member involved, shall designate the State Judge Advocate General, a judge advocate or a legal officer of the state military forces to represent such member. Judge advocates or legal officers performing duty under this subsection will be called to state active duty by order of the Governor. If the military legal services, noted above, are not available, then the Adjutant General, after consultation with the State Judge Advocate General and member involved, shall contract with a competent private attorney to conduct such representation.

Redress of Injuries to Property

Sec. 139. (a) Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or that his property has been wrongfully taken by members of the state military forces, he may subject to such regulations as the Governor may prescribe, convene a board to investigate the complaint. The board shall consist of from 1 to 3 commissioned officers, and for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (c), on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured parties from the military funds of the units of the state military forces to which the offenders belonged.

(c) Any person subject to this Code who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in his behalf, and to cross-examine those appearing against him. The counsel mentioned herein will be military counsel, provided by the commanding officer instituting this inquiry. The accused may also employ civilian counsel of his own choosing at his own expense. He has the right of appeal to the next higher commander.

Immunity for Action of Military Courts

Sec. 139A. No accused may bring an action or proceeding against the convening authority or a member of a military court, board convened under this Code or military regulations, or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court, board convened under this Code, or military regulation.

Delegation of Authority By the Governor

Sec. 140. The Governor may delegate any authority vested in him under this Code, and may provide for the subdelegation of any such authority, except the power given him by Section 57(d) of this Code.

Execution of Process and Sentence

Sec. 141. (a) In the state military forces not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state.

(b) When the sentence of a court-martial, as approved and ordered executed, adjudges confinement, and the convening authority, has approved the same in whole or in part, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court-martial was held or where the offense was committed, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county for the period named in such sentence, as approved, or until he may be directed to release him by proper authority.

Process of Military Courts

Sec. 142. (a) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and

records, when it is sitting within the state and the witnesses, books and records sought are also so located.

(b) Process and mandates may be issued by summary courts-martial, provost courts, or the president of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this Code.

(c) All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this Code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith.

(d) The president of any court-martial, and any summary court officer, shall have authority to issue, under his hand, in the name of the State of Texas, directed to any sheriff or constable, whose duty it shall be to serve or execute the same in the same manner in which like process is served or executed when issued by a magistrate, all necessary process, subpoenas, attachments, warrants, or arrest and warrant of commitment.

Payment of Fines, Costs, and Disposition Thereof

Sec. 143. (a) All fines and forfeitures imposed by general court-martial, shall be paid to the officer ordering such court, and/or to the officer commanding for the time being and by said officer, within 5 days from the receipt thereof, paid to the Adjutant General, who shall disburse the same as he may see fit for military purposes.

(b) All fines and forfeitures imposed by a special or summary courts-martial shall be paid to the officer ordering the court, or the officer commanding for the time being, and by such officer, within 5 days from the receipt thereof, placed to the credit of the military unit fund of the unit of which the person fined was a member when the fine was imposed.

(c) When the sentence of a court-martial adjudges a fine against any person, and such fine has not been fully paid within 10 days after the confirmation thereof, the convening authority shall issue a warrant of commitment directed to the sheriff of the county in which the court-martial was held or where the offense was committed, directing him to take the body of the person so convicted and confine him in the county jail for 1 day for any fine not exceeding $1 and 1 additional day for every dollar above that sum.

Presumption of Jurisdiction

Sec. 144. The jurisdiction of the military courts and boards established by this Code shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding.

Witnesses Expenses

Sec. 145. (a) Persons in the employ of this state, but not belonging to the military forces thereof, when traveling upon summons as witnesses before military courts, are entitled to transportation from their place of residence to the place where the court is in session and return. If no transportation be furnished they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not to exceed $25 per day for each actually and unavoidably consumed in travel, or in attendance upon the court under the order or summons. No allowance will be made to them when attendance upon court does not require them to leave their place of residence.

(b) A person not in the employ of this state and not belonging to the active military forces thereof, who has been duly summoned to appear as a witness before a military court, will receive $50 per day for each day actually in attendance upon the court, and 12 cents a mile for going from his place of residence to the place of trial or hearing, and 12 cents a mile for returning. Civilian witnesses will be paid by the Adjutant General's Department.

(c) The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance without waiting for completion of return travel.

(d) No fees shall be allowed to a person as witness fees, unless such person has been subpoenaed, attached, or recognized as a witness in the case.

Arrest, Bonds, Laws Applicable

Sec. 146. (a) When charges against any person in the military service of this state are made or referred to a convening authority authorized to convene a court-martial for the trial of such person, and a convening authority, believing that such charges can be sustained, and has reason to believe that the person so charged will not appear for trial, or intends to flee from justice, a convening authority may issue a warrant of arrest to the sheriff or any constable of the county in which the person charged resides, or wherein he is supposed to be, commanding the sheriff or constable to take the body of the person so charged and confine him in jail until such time as his case may be finally disposed of; and the sheriff or constable, on the order of the convening authority, shall bring the person so charged before the court-martial for trial, or turn him over to whomever the order may direct; the convening authority issuing the warrant of arrest, shall indorse thereon the amount of bail to be required; and it shall be a violation of duty on the part of any sheriff or constable to permit a person so committed to remain out of jail, except that he may, when such

person desires it, permit him to give bail in the sum indorsed on the warrant, conditioned for his appearance, from time to time, before such court-martial as he may be ordered for trial, and until his case is finally disposed of, or until such time as he may surrender to the sheriff or constable as directed by the convening authority of the court-martial before which he may be ordered for trial.

(b) Upon the failure of any person, who has been admitted to bail conditioned for his appearance for trial before a court-martial, or upon failure of any person admitted to bail to appear as a witness in any case before a court-martial, as conditioned in the bail bond of any such person, the court-martial shall certify the fact of such failure to so appear to the convening authority, or to the officer commanding for the time being, as the case may be; and such officer shall cause a judge advocate, district or county attorney to file suit in Travis County therefor.

(c) The rules laid down in the Code of Criminal Procedure of this state relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent with this law are applicable to bail taken as provided in this Code.

(d) A warrant of arrest issued by a convening authority to order a court-martial, and all subpoenas and other process issued by courts-martial and courts of inquiry shall extend to every part of the state.

(e) When any lawful process, issued by the proper officer of any court-martial, comes to the hands of any sheriff or constable, he shall perform the usual duties of such officer and perform all acts and duties by this Code imposed or authorized to be performed by any sheriff or constable. Failure of any sheriff or constable to perform the duties required by this Code shall be a misdemeanor offense punishable by a fine of not more than $1,000 and by confinement of not less than 6 months and not more than 12 months in jail.

Expenses of Administration

Sec. 147. The Adjutant General shall have authority to pay all expenses incurred in the administration of state military justice, including the expenses of courts-martial and expenses incurred under Sections 67, 138, and 145 of this Code, from any funds appropriated to the Adjutant General's Department.

Short Title

Sec. 148. This Article may be cited as the "Texas Code of Military Justice."

[Amended by Acts 1975, 64th Leg., p. 687, ch. 287, § 1, eff. May 22, 1975.]

Art. 5789. Awards, Decorations and Medals

[See Compact Edition, Volume 5 for text of 1 to 6]

Rules and Regulations Pertaining to Awards, Decorations, Medals and Ribbons

Sec. 7. The Adjutant General is hereby authorized to promulgate rules and regulations pertaining to the following awards, decorations, medals and ribbons:

(a) Texas Faithful Service Medal. It shall be awarded to any member of the state military forces who has completed 5 years of honorable service therein, during which period he has shown fidelity to duty, efficient service and great loyalty to this state.

(b) Federal Service Medal. It shall be awarded to any person inducted into federal service from the state military forces, between June 15, 1940, and January 1, 1946; and after June 1, 1950; provided, that such federal service was for a period in excess of 9 months with the Armed Forces of the United States.

(c) Texas Medal of Merit. It may be presented to any member of the state military forces who distinguishes himself through outstanding service, or extraordinary achievement, in behalf of the state, or the United States.

(d) Texas Outstanding Service Medal. It may be presented to any member of the state military forces whose performance has been such as to merit recognition for service performed in a superior and clearly outstanding manner.

(e) Texas State Guard Service Medal. It shall be awarded to any member of the state military forces who has completed three consecutive years of honorable service in the Texas State Guard since September 1, 1970, during which period he has shown fidelity to duty, efficient service, and great loyalty to this state.

[See Compact Edition, Volume 5 for text of 8]

[Amended by Acts 1975, 64th Leg., p. 595, ch. 244, § 1, eff. May 20, 1975; Acts 1975, 64th Leg., p. 687, ch. 287, § 2, eff. May 22, 1975.]

CHAPTER THREE A. MISCELLANEOUS PROVISIONS

Art. 5890e. State of Emergency; Police Power; Use of Militia

[See Compact Edition, Volume 5 for text of 1 to 5]

Violations

Sec. 6. Any violations of the provisions of this Act or any orders, rules, or regulations promulgated hereunder shall be (a) punishable as a misdemeanor and shall subject the offender to a fine of not more

than Two Hundred Dollars ($200) or not more than sixty (60) days incarceration, or both, upon conviction thereof, or (b) subject such violators to the processes of temporary restraining orders, temporary and permanent injunctions, as to such alleged violations, under the Rules of Civil Procedure of the State of Texas and applicable law. Such prosecutions for misdemeanor and suits for injunction may be instituted by the Governor in any court of competent jurisdiction within the State.

[See Compact Edition, Volume 5 for text of 7 to 12]

[Amended by Acts 1981, 67th Leg., p. 343, ch. 134, § 8, eff. Aug. 31, 1981.]

CHAPTER FOUR A. TEXAS NAVY

Art. 5891.1. Texas Navy, Incorporated

[See Compact Edition, Volume 5 for text of 1 and 2]

Application of Sunset Act

Sec. 2a. The Texas Navy, Incorporated, is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the Texas Navy, Incorporated, is abolished, and this Act expires effective September 1, 1979.

[1] Article 5429k.

[See Compact Edition, Volume 5 for text of 3 to 5]

[Amended by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.004, eff. Aug. 29, 1977.]

TITLE 95

MINES AND MINING

3. INTERSTATE MINING COMPACT

Article
5920–1. Repealed.
5920–1a. Application of Sunset Act.
5920–2. Repealed.
5920–3. Repealed.
5920–4. Repealed.

4. SURFACE MINING

5920–10. Repealed.
5920–11. Surface Coal Mining and Reclamation Act.

3. INTERSTATE MINING COMPACT

Art. 5920–1. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

The repealed article, constituting the Interstate Mining Compact, was derived from Acts 1975, 64th Leg., p. 324, ch. 136, § 1.

Art. 5920–1a. Application of Sunset Act

The office of Interstate Mining Compact Commissioner for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.063, eff. Aug. 29, 1977.]

[1] Article 5429k.

Arts. 5920–2 to 5920–4. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

The repealed articles, establishing the Mining Council, were derived from Acts 1975, 64th Leg., p. 329, ch. 136, §§ 2 to 4.

4. SURFACE MINING

Art. 5920–10. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

The repealed article, the Surface Mining and Reclamation Act, was derived from Acts 1975, 64th Leg., p. 2110, ch. 690.

Without reference to repeal of this article, it was amended by Acts 1977, 65th Leg., p. 1320, ch. 524, §§ 1 to 8.

Sections 1 and 7 of the 1977 Act were subsequently repealed by identical provisions of Acts 1979, 66th Leg., p. 308, ch. 141, § 43, and Acts 1979, 66th Leg., p. 854, ch. 379, § 7, which Acts made conforming amendments to the Natural Resources Code.

Sections 2 to 6 and 8 of the 1977 Act were incorporated into the Natural Resources Code by Acts 1979, 66th Leg., p. 1989, ch. 784.

Art. 5920–11. Surface Coal Mining and Reclamation Act

Short Title

Sec. 1. This Act may be cited as the Texas Surface Coal Mining and Reclamation Act.

Findings and Declaration of Policy

Sec. 2. The legislature finds and declares that:

(1) The Congress of the United States has enacted the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the Department of the Interior over the regulation of surface coal mining and reclamation within the United States.

(2) Section 101 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), contains the finding by Congress that because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to that Act should rest with the states.

(3) Section 503 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within that state by obtaining approval of a state program of regulation which demonstrates that the state has the capability of carrying out the provisions and meeting the purposes of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977).

(4) Section 503 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state must have a state law that provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977).

(5) The State of Texas wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the

state pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977). It is therefore declared to be the purpose of this Act:

(A) to prevent the adverse effects to society and the environment resulting from unregulated surface coal mining operations as defined in this Act;

(B) to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface coal mining operations;

(C) to assure that surface coal mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources;

(D) to assure that reclamation of all land on which surface coal mining takes place is accomplished as contemporaneously as practicable with the surface coal mining, recognizing that the extraction of coal by responsible mining operations is an essential and beneficial economic activity;

(E) to assure that the coal supply essential to the state's energy requirements and to its economic and social well-being is provided, and to strike a balance between protection of the environment and agricultural productivity and the state's need for coal as an essential source of energy; and

(F) to promote the reclamation of mined areas left without adequate reclamation prior to the enactment of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and that continue, in their unreclaimed condition, to substantially degrade the quality of the environment, to prevent or damage the beneficial use of land or water resources, or to endanger the health or safety of the public.

Definitions

Sec. 3. In this Act:

(1) "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(2) "Applicant" means any person or other legal entity seeking a permit from the commission to conduct surface coal mining activities or underground mining activities pursuant to this Act.

(3) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated and water impoundments may be permitted if the commission determines that they are in compliance with Section 23(b)(8) of this Act.

(4) "Coal" means all forms of coal including lignite.

(5) "Coal exploration operation" means the substantial disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a coal deposit.

(6) "Commission" means the Railroad Commission of Texas.

(7) "Eligible land and water," particularly as it relates to Section 7 of this Act, means all land that was mined for coal or was affected by that mining, waste banks, coal processing, or other coal mining processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or federal law.

(8) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this Act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

(9) "Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any one location.

(10) "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal, and those minerals that occur naturally in liquid or gaseous form.

(11) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commission.

(12) "Permit area" means the area of land indicated on the approved map submitted by the operator with his or her application, which area of land shall be covered by the operator's bond as required by Section 25 of this Act and shall be readily identifiable by appropriate markers on the site.

(13) "Permittee" means a person holding a permit to conduct surface coal mining and reclama-

tion operations or underground mining activities pursuant to this Act.

(14) "Person" means an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.

(15) "Prime farmland" has the same meaning as that previously prescribed by the secretary on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, without regard to annual mean soil temperatures, surface layer composition, susceptibility to flooding, and erosion characteristics, and that historically has been used for intensive agricultural purposes, and as published in the Federal Register. Land will not be considered for purposes of this Act as having historically been used for the production of cultivated crops on the basis of use as woodland or rangeland, or where the only cultivation has been disking to establish or help maintain Bermuda Grass used as forage or where the only cultivation is disking to plant oats or rye for quick cover, not as a grain crop but to be used as forage. The slope of the land can be a factor in determining whether a given soil is outside the purview of prime farmland and the commission may thus make a negative determination based upon soil type and slope.

(16) "Surface coal mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of those operations after August 3, 1977.

(17) "Surface coal mining operations" means:

(A) activities conducted on the surface of any land in connection with a surface coal mine or subject to the requirements of Section 28 of this Act incident to an underground coal mine. These activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; provided, however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where the coal does not exceed 16-⅔ percentum of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to this Act; and

(B) the areas on which such activities occur or where such activities disturb the natural land surface, and such areas shall also include any adjacent land the use of which is incidental to any such activities, all land affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas on which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(18) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of this Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of his or her permit or this Act due to indifference, lack of diligence, or lack of reasonable care.

(19) "Secretary" means the Secretary of Agriculture of the United States.

Jurisdiction

Sec. 4. The commission has exclusive jurisdiction over all surface coal mining and reclamation operations in the State of Texas.

General Authority of Commission

Sec. 5. To accomplish the purposes of this Act, the commission shall have the authority:

(1) to adopt, amend, and enforce rules pertaining to surface coal mining and reclamation operations consistent with the general intent and purposes of this Act;

(2) to issue permits pursuant to the provisions of this Act;

(3) to conduct hearings pursuant to the provisions of this Act and the Administrative Procedure and Texas Register Act, as amended; [1]

(4) to issue orders requiring an operator to take actions that are necessary to comply with this Act and with rules adopted under this Act;

(5) to issue orders modifying previous orders;

(6) to issue a final order revoking the permit of an operator who has failed to comply with an order of the commission to take action required by this Act or rules adopted under this Act;

(7) to order the immediate cessation of an ongoing surface mining operation or part of an ongoing surface mining operation if the commission finds that the operation or part of the operation creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and to take other action or make changes in a permit that are reasonably necessary to avoid or alleviate these conditions;

(8) to hire employees, adopt standards for employment of these persons, and hire and authorize

the hiring of outside contractors to assist in carrying out the requirements of this Act;

(9) to enter on and inspect, in person or by its agents, a surface mining operation that is subject to the provisions of this Act to assure compliance with the terms of this Act;

(10) to conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise;

(11) to prepare and require permittees to prepare reports;

(12) to accept, receive, and administer grants, gifts, loans, or other funds made available from any source for the purposes of this Act;

(13) to take those steps necessary that the state may participate to the fullest extent practicable in the abandoned land program provided in Title IV of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977);

(14) to take those actions necessary to establish exclusive jurisdiction over surface coal mining and reclamation in Texas under the provisions of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), including, in the event the federal administrative agency disapproves Texas' program as submitted, making recommendations for remedial legislation to clarify, alter, or amend the program to meet the terms of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977);

(15) to enter into contracts with state boards and agencies that have pertinent expertise to obtain the professional and technical services necessary to carry out the provisions of this Act;

(16) to establish a process, in order to avoid duplication, for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations;

(17) to enter into cooperative agreements with the Secretary of the United States Department of the Interior for the regulation of surface coal mining operations on federal land in accordance with the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977); and

(18) to perform any other duties and acts required by and provided for in this Act.

[1] Article 6252–13a.

Rulemaking and Permitting

Sec. 6. (a) The commission shall promulgate rules pertaining to surface coal mining and reclamation operations that are required by this Act.

(b) The process of making and amending rules and issuing permits shall be pursuant to the Administrative Procedure and Texas Register Act, as amended.

(c) A rule or an amendment to a rule adopted or a permit issued by the commission may differ in its terms and provisions as to particular conditions, types of coal being extracted, particular areas of the state, or any other conditions that appear relevant and necessary so long as the action taken is consistent with attainment of the general intent and purposes of this Act.

Abandoned Mine Reclamation—Fund Participation

Sec. 7. The commission is authorized to take all action necessary to insure Texas' participation to the fullest extent practicable in the Abandoned Mines Reclamation Fund established by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and to function as the state's agency for such participation. Pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), the commission shall by rule establish priorities that meet the terms of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), for the expenditure of those funds, designate the land and water eligible for reclamation or abatement expenditures, submit reclamation plans, annual projects, and applications to the appropriate authorities pursuant to the terms of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and administer all money received for abandoned mine reclamation or related purposes.

Abandoned Mine Reclamation—Acquisition

Sec. 8. (a) If the commission makes a finding of fact that:

(1) land or water resources have been adversely affected by past coal mining practices; and

(2) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices should be taken; and

(3) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or

(4) the owners will not give permission for the state or any political subdivision to enter on the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

then, on giving notice by mail to the owners, if known, or if not known by posting notice on the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the commission is entitled to enter on the property adversely affected by the past coal mining practices and any other property necessary to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. The money expended for that work and the benefits accruing to those premises entered on shall be chargeable against the land

and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for damages by virtue of such entry; provided, this provision is not intended to create new rights of action or eliminate existing immunities.

(b) The commission is entitled to enter on any property for the purposes of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

(c) The state may acquire any land, where it is to the public interest, by purchase, donation, or condemnation, that is adversely affected by past coal mining practices if the commission determines that acquisition of the land is necessary to successful reclamation and that:

(1) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and

(2) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(3) acquisition of coal refuse disposal sites and all coal refuse on those sites will serve the purposes of this section or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(d) Title to all land acquired pursuant to this section shall be in the name of the state. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

(e) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the state may sell the land by public sale under a system of competitive bidding, at not less than fair market value and under such rules as are promulgated to insure that the land is put to proper use consistent with local plans, if any, as determined by the commission and where federal funds are involved in the acquisition of the land to be sold, the land may be sold only when authorized by the Secretary of the United States Department of the Interior. The commission, after appropriate public notice, shall hold a public hearing in the county or counties of the state in which land acquired pursuant to this section is located, if requested by any person. The hearings shall be held at a time that shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

Abandoned Mine Reclamation—Liens

Sec. 9. (a) Within six months after the completion of projects to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices on privately owned land, the commission shall itemize the money so expended and may file a statement of the money spent with the clerk of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention, of adverse effects of past mining practices if the money so expended will result in a significant increase in property value. The statement shall constitute a lien on the land second only to the lien of property taxes, not to exceed the amount determined by either of two appraisals to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. No lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation that necessitated the reclamation performed hereunder.

(b) Any affected landowner may petition the commission within 60 days of the filing of the lien for a hearing concerning the amount of the lien. That hearing and any appeal will be conducted under the Administrative Procedure and Texas Register Act, as amended.

Abandoned Mine Reclamation—Emergency Powers

Sec. 10. (a) The commission is authorized to spend money from the state abandoned mine reclamation fund for the emergency restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining practices on eligible land, if the commission makes a finding that:

(1) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices.

(b) The commission may enter on any land where an emergency exists and any other land necessary to have access to that land to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. This entry shall be construed as an exercise of the police power and shall not be construed as an act of condemnation of property nor of trespass. The money expended for this work and the benefits accruing to the premises entered on shall be charge-

able against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any damages by virtue of the entry; provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

Permits

Sec. 11. (a) No person shall conduct a surface coal mining operation in this state without having first received a permit for that operation from the commission, pursuant to either this Act or its predecessor, Chapter 131, Natural Resources Code.

(b) Not later than two months following approval by the federal government of the Texas program under the terms of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), regardless of litigation contesting that approval or implementation, all operators of surface coal mines, in expectation of operating those mines after the expiration of eight months from the approval, shall file an application for a permit with the commission. The application shall cover all land to be mined after the expiration of eight months from the approval of the program. The commission will process those applications and grant or deny a permit within eight months after the date of approval of the program, unless specifically enjoined by a court of competent jurisdiction.

(c) In the event of disapproval of the Texas program by the federal government and prior to promulgation of a federal program or a federal land program for Texas, existing surface coal mining operations may continue. Permits that lapse during the period may continue in full force and effect until promulgation of a federal program or a federal land program.

(d) All permits issued pursuant to Chapter 131, Natural Resources Code, shall remain in full force and effect and their provisions enforceable by the commission until such time as a permit is issued pursuant to the provisions of this Act.

Term

Sec. 12. (a) Permits issued shall be for a term not to exceed five years, except that if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment, or the opening of the operation, and if the application is full and complete for the specified longer term, the commission may grant a permit for that longer term. A successor in interest to a permittee who applies for a new permit within 30 days of succeeding to that interest and who is able to obtain the same bond coverage as the original permittee may continue the surface coal mining and reclamation plan of the original permittee until the successor's application is granted or denied.

(b) A permit shall terminate if the permittee has not commenced the surface coal mining operation covered by the permit within three years after commencement of the period for which the permit is issued. However, the commission may grant reasonable extensions of time on a showing that the extensions are necessary, by reason of litigation, precluding the commencement or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time the construction of the facility is initiated.

Renewal

Sec. 13. (a) Any permit issued pursuant to this Act shall carry with it the right of successive renewal on expiration with respect to areas within the boundaries of the existing permit. The permittee may apply for renewal and the renewal shall be issued, provided that on application for renewal the burden shall be on the opponents of renewal, subsequent to fulfillment of the public notice requirements of Section 20 of this Act, unless it is established and written findings by the commission are made that:

(1) the terms and conditions of the existing permit are not being satisfactorily met;

(2) the present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this Act;

(3) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(4) the operator has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the commission might require pursuant to Section 25 of this Act; or

(5) any additional revised or updated information required by the commission has not been provided.

(b) Prior to the renewal of any permit the commission shall provide notice to the appropriate public authorities.

(c) If an application for renewal of an existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the permit, the portion of the application that addresses new land areas shall be subject to the full standards applicable to a new application under this Act; however, if the surface coal mining operations authorized by the existing permit are not subject to the standards contained in Section 21(b)(5)(A) and (B) of this Act, then the portion of the application for renewal that addresses any new land areas previous-

ly identified in the reclamation plan submitted pursuant to Section 15 of this Act shall not be subject to those standards.

(d) Any permit renewal shall be for a term not to exceed the period of the original permit established by this Act. Application for permit renewal shall be made at least 120 days prior to the expiration of the existing permit.

Contents of Permit Application

Sec. 14. (a) The permit application shall be submitted in a manner satisfactory to the commission and shall contain:

(1) the names and addresses of the applicant, every owner of record of the property to be mined, the holders of record of any leasehold interest in the property, any purchaser of record of the property under a real estate contract, the operator if he is a person different from the applicant, and if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers, and resident agent;

(2) the names and addresses of the owners of record of the property adjoining the permit area;

(3) a statement of any current or previous surface coal mining permits held by the applicant including permit identification, and any pending application;

(4) information concerning ownership and management of the applicant or operator required by the commission in its rules;

(5) a statement of whether the applicant or any subsidiary, affiliate, or other person controlled by or under common control with the applicant has ever held a federal or state mining permit which in the five-year period prior to the date of submission of the application has been suspended or revoked or whether that person has had a mining bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;

(6) a copy of an advertisement to be published in a newspaper of general circulation in the locality of the proposed site at least once a week for four consecutive weeks, which advertisement shows the ownership and a description of the location and boundaries of the proposed site sufficiently so that the proposed operation is readily locatable, and a statement that the application is available for public inspection at the county courthouse of the county in which the property lies;

(7) a description of the type and method of coal mining operation that exists or is proposed, the engineering techniques proposed or used, and the equipment used or proposed to be used;

(8) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(9) an accurate map or plan, to an appropriate scale, filed by the applicant with the commission clearly showing the land to be affected as of the date of the application, the area of land within the permit area on which the applicant has the legal right to enter and commence surface mining operations, and those documents on which the applicant bases his legal right to enter and commence surface mining operations on the area affected, and whether that right is the subject of pending court litigation, provided, that nothing in this Act shall be construed as vesting in the commission the jurisdiction to adjudicate property title disputes;

(10) the name of the watershed and location of the surface streams or tributaries into which surface and pit drainage will be discharged;

(11) a determination of the probable hydrologic consequences of the mining and reclamation operation, if any, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions, and sufficient data for the mine site and surrounding areas so that an assessment can be made by the commission of the probable cumulative impacts of all anticipated mining in the area on the hydrology of the area and particularly on water availability; provided, however, that this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate state agency; provided further, that the permit shall not be approved until the information is available and is incorporated into the application;

(12) when requested by the commission, the published climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges;

(13) a statement of the result of test borings or core samplings from the permit area, including logs of the drill holes; the thickness of the coal seam found, and an analysis of the chemical properties of the coal; the sulfur content of any coal seam; a chemical analysis of any potentially acid or toxic forming sections of the overburden; and a chemical analysis of the stratum lying immediately underneath the coal to be mined; and the provisions of this paragraph may be waived by the commission with respect to any particular application by a written determination that the information is unnecessary;

(14) for land in the permit application that a reconnaissance inspection suggests may be prime farmland, a soil survey made or obtained according to standards established by the United States Secretary of Agriculture in order to confirm the exact location of that prime farmland, if any;

(15) a reclamation plan that meets the requirements of this Act;

(16) information pertaining to coal seams, test borings, core samplings, or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected; provided, that information which pertains only to the analysis of the chemical and physical properties of the coal, excepting information regarding such mineral or elemental content which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record;

(17) such other data and maps as the commission may require by rule.

(b) Information submitted to the commission concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, shall not be disclosed by any member, agent, or employee of the commission.

Reclamation Plan Requirements

Sec. 15. Each reclamation plan submitted as part of a permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by this Act can be accomplished, a statement of:

(1) identification of land subject to the surface coal mining operation over the estimated life of that operation and the size, sequence, and timing of any subareas for which it is anticipated that individual permits for surface coal mining will be sought;

(2) the condition of the land to be covered by the permit prior to any mining, including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses that preceded any mining;

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover, and if applicable, a soil survey prepared pursuant to Section 14(a)(14) of this Act; and

(C) the productivity of the land prior to mining, including appropriate classification as prime farmland, and if classified as prime farmland, the average yield of food, fiber, forage, or wood products from the land obtained under high levels of management;

(3) the use that is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of those uses to existing land uses, and the comments of state and local governments or agencies of state or local government which would have to approve or authorize the proposed use of the land following reclamation;

(4) a detailed description of how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve that use;

(5) the engineering techniques proposed to be used in mining and reclamation and a description of the major equipment, a plan for the control of surface water drainage and of water accumulation, a plan, where appropriate, for backfilling, soil stabilization and compacting, grading, and appropriate revegetation, a plan for soil reconstruction, replacement, and stabilization, pursuant to the performance standards in Section 23(b)(7) of this Act for food, forage, and forest land identified in that section, and an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with each of the requirements set out in Section 23 of this Act;

(6) the consideration that has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized;

(7) an estimated timetable for the accomplishment of each major step in the reclamation plan;

(8) the consideration that has been given to making the surface mining and reclamation operations consistent with surface owner plans and applicable land use plans and programs;

(9) the steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(10) the consideration that has been given to developing the reclamation plan in a manner consistent with local, physical, environmental, and climatological conditions;

(11) the results of test borings that the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the commission, including the location of subsurface water, and an analysis of those chemical properties of the coal and overburden that can be expected to have an adverse effect on the environment;

(12) all land, interests in land, or options on those interests held by the applicant or pending bids on interests in land by the applicant, which land is contiguous to the area to be covered by the permit;

(13) a detailed description of the measures to be taken during the mining and reclamation process to assure the protection of:

(A) the quality of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process;

(B) the rights of present users to such water; and

(C) the quantity of surface and ground water systems, both on- and off-site, from adverse effects of the mining and reclamation process or

to provide alternative sources of water where the protection of quantity cannot be assured;

(14) information submitted to the commission, pursuant to this section, concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, shall not be disclosed by any member, agent, or employee of the commission; provided, however, that information called for in other sections of this Act that must, by the terms of the other sections, be either on public file or available to persons with interests that may be affected, and information about the chemical and physical properties of the coal which relate to mineral or elemental contents that are potentially toxic in the environment, shall not be held to be confidential.

Blasting Plan

Sec. 16. Each applicant for a surface coal mining and reclamation permit shall submit to the commission as a part of its application a blasting plan which shall outline the procedures and standards by which the operator will meet the provisions of Section 23(b)(15).

Public Inspection of Application

Sec. 17. (a) Each applicant for a surface coal mining and reclamation permit shall file a copy of the application for public inspection with the county clerk of the county in which the mining is proposed to occur, except for that information in the application pertaining to the coal seam itself.

(b) Copies of any records, reports, inspection materials, or information obtained under this Act by the commission shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and state area of mining so that they are conveniently available to residents in the areas of mining.

Fee

Sec. 18. (a) Each application for a surface mining permit shall be accompanied by an initial application fee as determined by the commission in accordance with a published fee schedule. The initial application fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but shall not exceed $1,000.

(b) This fee shall be deposited in the state treasury and credited to a special account to the commission and may be spent for the administration and enforcement of this Act.

Small Mine Exemption

Sec. 19. If the commission finds that the probable total annual production at all locations of any surface coal mining operator will not exceed 100,000 tons, the determination of probable hydrologic consequences and statement of the results of test borings or core samplings called for in Section 14 of this Act shall, on the written request of the operator, be performed by a qualified public or private laboratory designated by the commission, and the cost of the preparation of the determination and statement shall be assumed by the commission.

Public Notice of Applications, Hearings, and Appeal

Sec. 20. (a) At the time of submission of any application for a surface coal mining and reclamation permit, or renewal of an existing permit, the applicant's advertisement of ownership, location, and boundaries of the land to be affected shall be placed in a local newspaper of general circulation in the locality of the proposed surface coal mining operation at least once a week for four consecutive weeks. The commission shall notify various local governmental bodies, planning agencies and sewage and water treatment authorities in the locality, of the operator's intention to conduct a surface mining operation indicating the application's number and the county courthouse in which a copy of the proposed surface coal mining and reclamation plan may be inspected. These local bodies, agencies, authorities, or companies may submit written comments within a period established by the commission on the mining applications with respect to the effect of the proposed operation on the environment that is within their area of responsibility. The comments shall immediately be transmitted to the applicant by the commission and shall be made available to the public at the same location as is the mining application.

(b) Any person having an interest that is or may be adversely affected and any federal, state, or local governmental agency or authority are entitled to file written objections to the proposed initial or revised application for a permit for surface coal mining and reclamation operation with the commission within 30 days after the last publication of the notice required by Subsection (a) of this section. Those objections shall immediately be transmitted to the applicant by the commission and shall be made available to the public.

(c) Within 45 days after the last publication of the notice provided in Subsection (a) of this section, the applicant or any person with an interest which is or may be adversely affected may request a hearing on the application. The hearing shall be held within 30 days after the request is received by the commission.

(d) The commission shall publish notice of the date, time, and location of the public hearing in a local newspaper of general circulation in the locality of the proposed surface coal mining operations at least once a week for three consecutive weeks before the scheduled hearing date.

(e) Within the time frame provided by the Administrative Procedure and Texas Register Act, as amended, if the public hearing provided by this section occurs, or within 45 days of the last publica-

tion of notice of application, if no public hearing is held, the commission shall notify the applicant and any objectors whether the application has been approved or denied.

(f) All provisions of the Administrative Procedure and Texas Register Act, as amended, apply to each permit application, and notice, other than that provided for by this section, of hearings and appeals are governed by that statute.

Permit Approval or Denial

Sec. 21. (a) On the basis of a complete application for a surface coal mining and reclamation permit or a revision or renewal of a permit, as required by this Act, the commission shall grant, require modification of, or deny the application for a permit and, within a reasonable time, as set by the commission, notify the applicant in writing. The applicant for a permit or revision of a permit shall have the burden of establishing that his or her application is in compliance with all the requirements of this Act. Within 10 days after the granting of a permit, the commission shall notify the county judge in the county in which the land to be affected is located that a permit has been issued and shall describe the location of the land.

(b) No application for a permit or revision of a permit shall be approved unless the commission finds, in writing, on the basis of the information set forth in the application or from information otherwise available that will be documented in the approval and made available to the applicant, that:

(1) the application is accurate and complete and that it complies with all the requirements of this Act;

(2) the applicant has demonstrated that reclamation as required by this Act can be accomplished under the reclamation plan contained in the application;

(3) an assessment of the probable cumulative impact of all anticipated surface coal mining in the area on the hydrologic balance has been made by the commission, and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(4) the area proposed to be mined is not included within an area designated unsuitable for surface coal mining pursuant to this Act nor is it within an area under study for this designation in an administrative proceeding commenced pursuant to this Act, unless in the area as to which an administrative proceeding has commenced, the applicant demonstrates that, prior to January 1, 1977, he or she has made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(5) the proposed surface coal mining operation, if located west of the 100th meridian west longitude, would:

(A) not interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped range land that is not significant to farming on the alluvial valley floors and land on which the commission finds that the farming that will be interrupted, discontinued, or precluded is of such small acreage as to have negligible impact on the farm's agricultural production; or

(B) not materially damage the quantity or quality of water in surface or underground water systems that supply these valley floors. This subsection shall not affect those surface coal mining operations that in the year preceding the enactment of this Act produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the commission to conduct surface coal mining operations within the alluvial valley floors;

(6) in cases where the ownership of the coal has been severed from the private surface estate, the applicant has submitted to the commission:

(A) the written consent of the surface owner to the extraction of coal by surface mining methods;

(B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(C) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law; provided, that nothing in this Act shall be construed to authorize the commission to adjudicate property rights disputes.

(c) The applicant shall file, with his or her application, a schedule listing any and all notices of violations of this Act and any law, rule, or regulation of the United States, or the State of Texas, or of any department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation within the state during the three-year period prior to the date of application, and shall include in the schedule, the final resolution of notice of violation. If the schedule or other information available to the commission indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this Act or other laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the commission, department, or agency that has jurisdiction over the violation or that the notice of violation is being contested by the applicant, and no permit shall be issued to any applicant after a finding by the commission, after opportunity

for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of wilful violations of this Act of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with this Act.

(d) In addition to finding the application in compliance with Subsection (b) of this section, if the area proposed to be mined contains prime farmland, the commission shall, after consultation with the secretary, and pursuant to regulations issued pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), by the Secretary of the U.S. Department of Interior with the concurrence of the secretary, grant a permit to mine on prime farmland, if the commission finds in writing that the operator has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management, and also finds that the applicant can meet the soil reconstruction standards of the Act. Except for compliance with Subsection (b) of this section, the requirements of this paragraph shall apply to all permits issued after August 3, 1977. Nothing in this subsection shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals of a permit, or to any existing surface mining operations for which a permit was issued prior to that date.

Revision and Transfer of Permits

Sec. 22. (a) During the term of a permit, the permittee may submit an application for a revision of the permit, together with a revised reclamation plan, to the commission. An application for a revision of a permit shall not be approved unless the commission finds that reclamation as required by this Act can be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within 90 days. The commission shall establish guidelines for determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; however, any revisions that propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements. Any extensions of the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(b) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this Act shall be made without the written approval of the commission.

(c) The commission shall, within a time limit prescribed by rule, review outstanding permits and may require reasonable revision or modification of the permit provisions during the terms of the permit. Any revision or modification shall be based on a written finding and subject to the provisions of notice and hearing contained in the Administrative Procedure and Texas Register Act, as amended.

Performance Standards

Sec. 23. (a) A permit issued under this Act to conduct surface coal mining operations shall require that the operations meet all applicable performance standards of this Act.

(b) Performance standards applicable to all surface coal mining and reclamation operations that are not exempt or excluded shall require the operator to:

(1) conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining can be minimized;

(2) restore the land affected to a condition capable of supporting the uses that it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicants' declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state or local law;

(3) except as provided in Subsection (c) of this section, with respect to all surface coal mining operations, backfill, compact, where advisable to insure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this Act; provided, however, that in surface coal mining that is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region; and provided further, that in

surface coal mining, where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that the overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this Act;

(4) stabilize and protect all surface areas, including spoil piles affected by the surface coal mining and reclamation operation, to effectively control erosion and attendant air and water pollution;

(5) remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation requirements, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner the other strata that are best able to support vegetation;

(6) restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) for all prime farmland to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction shall be established by the secretary, and the operator shall, as a minimum, be required to:

(A) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic materials;

(B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of those horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material, and the commission may authorize the permittee to:

(i) remove all soil and overburden in one step;

(ii) store all the soil and overburden in one stockpile; and

(iii) commence reclamation by replacing and grading the stockpile material, all without regard to soil horizons, on proper documentation supporting the use of this mining technique to obtain equivalent or higher yields as on surrounding nonmined soil of the same type;

(C) replace and regrade the root zone material described in Subsection (b)(7)(B) of this section with proper compaction and uniform depth over the regraded spoil material; and

(D) redistribute and grade in a uniform manner the surface soil horizon described in Subsection (b)(7)(A) of this section;

(8) create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

(A) the size of the impoundment is adequate for its intended purposes;

(B) the impoundment dam construction will be designed so as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the Watershed Protection and Flood Prevention Act, 16 U.S.C. 1006 (1954);

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;

(D) the level of water will be reasonably stable;

(E) final grading will provide adequate safety and access for proposed water users; and

(F) the water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(9) conduct any augering operation associated with surface mining in a manner to maximize recoverability of coal reserves remaining after the operation and reclamation are complete, and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the commission determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety; provided, that the commission may prohibit augering if necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources or to protect against adverse water quality impacts;

(10) minimize the disturbances to the prevailing hydrologic balance at the mine site in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by:

(A) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(i) preventing or removing water from contact with toxic-producing deposits;

(ii) treating drainage to reduce toxic content that adversely affects downstream water on being released to water courses; or

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering surface water and ground water;

(B)(i) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(ii) constructing any siltation structures pursuant to Subsection (b)(10)(B)(i) of this section prior to commencement of surface coal mining operations, these structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(C) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the commission;

(D) restoring recharge capacity of the mined area to approximate premining conditions;

(E) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(F) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(G) other actions as the commission may prescribe;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials, if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this Act;

(12) refrain from surface coal mining within 500 feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners; provided, that the commission shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the regulatory authorities concerned with surface mine regulation and the health and safety of underground miners, and the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public;

(13) design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to commission rule, all existing and new coal mine waste piles, consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(14) insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of surface water or ground water and that contingency plans are developed to prevent sustained combustion;

(15) insure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the commission, which shall include provisions to:

(A) provide adequate advance written notice to local governments and residents who might be affected by the use of the explosives, by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site and by providing daily notice to resident/occupiers in the areas prior to any blasting;

(B) maintain for a period of at least three years and make available for public inspection on request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(C) limit the type of explosives and detonating equipment, the size, the timing, and frequency of blasts based upon the physical conditions of the site so as to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area;

(D) require that all blasting operations be conducted by trained and competent persons as certified by the commission;

(E) provide that on the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area, the applicant or permittee shall conduct a preblasting survey of the structures and submit the survey to the commission and a copy to the resident or owner making the request, the area of the survey shall be decided by the commission;

(16) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations; provided, however, that if the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the coal resources, the commission may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) if the commission finds in writing that:

(i) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the coal resource and will avoid multiple disturbance of the surface;

(iii) the applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) the areas proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining operations;

(v) no substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this Act;

(vi) provisions for the offsite storage of spoil will comply with Subsection (b)(22) of this section;

(B) if the commission has promulgated specific regulations to govern the granting of the variances in accordance with the provisions of this subsection, and has imposed the additional requirements it deems necessary;

(C) if variances granted under the provisions of this subsection are to be reviewed by the commission not more than three years from the date of issuance of the permit; and

(D) if liability under the bond filed by the applicant with the commission pursuant to Section 25(b) of this Act is for the duration of the underground mining operations and until the requirements of Sections 23(b) and 26 of this Act have been fully complied with;

(17) insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property;

(18) refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to the channel as to seriously alter the normal flow of water;

(19) establish on the regraded areas, and all other land affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan;

(20) assume the responsibility for successful revegetation, as required by Subsection (b)(19) of this section, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with Subsection (b)(19) of this section, except in those areas or regions of the state where the annual average precipitation is 26 inches or less, then the operator's assumption of responsibility and liability will extend for a period of 10 full years after the last year of augmented seeding, fertilizing, irrigation, or other work; provided, that if the commission approves a long-term intensive agricultural postmining land use, the applicable 5- or 10-year period of responsibility for revegetation shall commence at the date of initial planting for the long-term intensive agricultural postmining land use; provided further, that if the

commission issues a written finding approving a long-term intensive, agricultural, postmining land use as part of the mining and reclamation plan, the commission may grant exception to the provisions of Subsection (b)(19) of this section;

(21) protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area;

(22) place all excess spoil material resulting from coal surface mining and reclamation activities in such a manner that:

(A) spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(C) appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(D) the disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

(E) if placed on a slope, the spoil is placed on the most moderate slope, among those on which, in the judgment of the commission, the spoil could be placed in compliance with all the requirements of this Act, and shall be placed, where possible, on or above a natural terrace, bench, or berm, if the placement provides additional stability and prevents mass movement;

(F) where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement is constructed;

(G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and

(I) all other provisions of this Act are met;

(23) meet other criteria necessary to achieve reclamation in accordance with the purposes of this Act, taking into consideration the physical, climatological, and other characteristics of the site;

(24) to the extent possible, using the best technology currently available, minimize disturbance and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable; and

(25) provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance the commission determines shall be retained in place as a barrier to slides and erosion.

(c)(1) The commission, by rule, shall include procedures pursuant to which it may permit surface mining operations for the purposes set forth in Subdivision (3) of this subsection.

(2) If an applicant meets the requirements of Subdivisions (3) and (4) of this subsection, a permit, without regard to the requirement to restore to approximate original contour set forth in Subsection (b)(3) or (d)(2) and (3) of this section, may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided in Subsection (c)(4)(A) of this section, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, residential, or public facility, including recreational facilities, use is proposed for the postmining use of affected land, the commission may grant a permit for a surface mining operation of the nature described in Subsection (c)(2) of this section where:

(A) after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed to constitute an equal or better economic or public use of the affected land, as compared with premining use;

(B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that the use will be:

(i) compatible with adjacent land uses;

(ii) obtainable according to data regarding expected need and market;

(iii) assured of investment in necessary public facilities;

(iv) supported by commitments from public agencies, where appropriate;

(v) practicable with respect to private financial capability for completion of the proposed use;

(vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(vii) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(C) the proposed use would be consistent with adjacent land uses and existing state and local land use plans and programs;

(D) the commission provides the county in which the land is located and any state or federal agency which the commission, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than 60 days to review and comment on the proposed use; and

(E) all other requirements of this Act are met.

(4) In granting any permit pursuant to this subsection, the commission shall require that:

(A) the toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

(B) the reclaimed area is stable;

(C) the resulting plateau or rolling contour drains inward from the outslopes except at specified points;

(D) no damage will be done to natural watercourses;

(E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use; provided, that all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of Subsection (b)(22) of this section;

(F) insure stability of the spoil retained on the mountaintop and meet the other requirements of this Act.

(5) The commission shall promulgate specific rules to govern the granting of permits in accord with the provisions of this subsection and may impose additional requirements it deems to be necessary.

(6) All permits granted under this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) The following performance standards shall be applicable to steep slope surface coal mining and shall be in addition to those general performance standards required by this section; provided, however, that the provisions of this subsection shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operations are to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with provisions of Subsection (c) of this section:

(1) the operator shall insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut; provided, that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of Subsection (b)(3) or (d)(2) of this section shall be permanently stored pursuant to Subsection (b)(22) of this section;

(2) complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation;

(3) the operator may not disturb land above the top of the highwall unless the commission finds that the disturbances will facilitate compliance with the environmental protection standards of this section; provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate the compliance;

(4) for the purposes of this subsection, the term "steep slope" is any slope above 20 degrees or such lesser slope as may be determined by the commission after consideration of soil, climate, or other characteristics of a region or state.

(e)(1) The commission, by rule, shall include procedures pursuant to which it may permit variances for the purposes set forth in Subdivision (3) of this subsection, provided that the watershed control of the area is improved; and further provided complete backfilling with spoil material shall be required to cover completely the highwall, which material will maintain stability following mining and reclamation.

(2) Where an applicant meets the requirements of Subdivisions (3) and (4) of this subsection, a variance from the requirement to restore to approximate original contour set forth in Subsection (d)(2) of this section may be granted for the surface mining of coal where the owner of the surface knowingly requests in writing, as a part of the permit application, that the variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities, in accord with the further provisions of Subdivisions (3) and (4) of this subsection; [1]

(3) After consultation with the appropriate land use planning agencies, if any, if the potential use of the affected land:

(A) is deemed to constitute an equal or better economic or public use;

(B) is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

(C) is approved by the appropriate state environmental agencies, the watershed of the affected land is deemed to be improved; [1]

(4) In granting a variance pursuant to this subsection, the commission shall require that only those amounts of spoil will be placed off the mine bench as is necessary to achieve the planned post-mining land use, insure stability of the spoil retained on the bench, meet all other requirements of this Act, and all spoil placement off the mine bench must comply with Subsection (b)(22) of this section.

(5) The commission shall promulgate specific rules to govern the granting of variances in accord with the provisions of this subsection, and may impose any additional requirements it deems to be necessary.

(6) All exceptions granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

[1] Punctuation so in enrolled bill.

Public Liability Insurance

Sec. 24. Each applicant for a permit shall submit to the commission, as part of each permit application, a certificate satisfactory to the commission that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operation for which the permit is sought, or evidence satisfactory to the commission that the applicant should be allowed to be self-insured. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of the surface coal mining and reclamation operations including the use of explosives, and entitled to compensation under state law. The policy shall be maintained in full force and effect during the terms of the permit or any renewal, including all reclamation operations.

Performance Bond

Sec. 25. (a) After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file with the commission, on a form prescribed and furnished by the commission, a bond for performance payable to the State of Texas and conditioned on faithful performance of all requirements of this Act and the permit. The bond shall cover that area of land within the permit area on which the applicant will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area the permittee shall provide an additional bond or bonds to cover those increments. The amount of the bond required for each bonded area shall reflect the probable difficulty of the reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the commission. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the commission in the event of forfeiture, and in no case shall the bond for the entire area under one permit be less than $10,000.

(b) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with applicant's responsibility for revegetation. The bond shall be executed by the applicant and a corporate surety licensed to do business in Texas except that the applicant may elect to deposit cash, negotiable bonds of the United States government or the state, or negotiable certificates of deposit of any bank organized or transacting business in the United States, as security for the performance of his or her obligations under the bond. The cash deposit or market value of the securities shall be equal to or greater than the amount of the bond required for the bonded area.

(c) The commission may accept the bond of the applicant without separate surety when the applicant demonstrates to the satisfaction of the commission the existence of a suitable and continuous operation sufficient for authorization to self-insure or bond such amount, or in lieu of the establishment of a bonding program as set forth in this section, the commission may approve an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section.

(d) The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the commission from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

Release of Bonds or Deposits

Sec. 26. (a) The permittee may file a request with the commission for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the commission, the permittee shall submit a copy of an advertisement placed at least once a week for four consecutive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's reclamation plan. In addition, as part of any bond release application, the applicant shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities in the locality, as

the commission may direct, notifying them of his intention to seek release from the bond.

(b) On receipt of the notification and request, the commission shall within 30 days conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance of future occurrence of the pollution, and the estimated cost of abating the pollution. The commission shall notify the permittee, in writing, of its decision to release or not to release all or part of the performance bond or deposit within 60 days from the filing of the request, if no public hearing is held, and if there has been a public hearing, within 30 days after the hearing.

(c) The commission may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion of the reclamation has been accomplished as required by this Act according to the following schedule:

(1) if the permittee completes the backfilling, regrading, and drainage control of a bonded area in accordance with the reclamation plan, the release of 60 percent of the bond or collateral for the applicable permit area;

(2) after revegetation has been established on the regraded mined lands in accordance with the reclamation plan; when determining the amount of bond to be released after successful revegetation has been established, the commission shall retain the amount of the bond for the revegetated area that is sufficient for a third party to establish revegetation and for the period specified for permittee responsibility in Section 23(b)(20) of this Act. No part of the bond or deposit shall be released under this paragraph so long as the land to which the release would be applicable is contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements by Section 23(b)(10) of this Act or until soil productivity for prime farmland has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 14(a)(14) of this Act; where a silt dam is to be retained as a permanent impoundment pursuant to Section 23(b)(8) of this Act, the portion of bond may be released under this subdivision so long as provisions for sound future maintenance have been made with the commission;

(3) when the permittee has successfully completed all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for permittee responsibility in Section 23(b)(20) of this Act; however, no bond shall be fully released until all reclamation requirements of this Act are fully met.

(d) If the commission disapproves the application for release of the bond or a portion of the bond, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the commission, it shall notify the county judge of any county in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to the operations, is entitled to file written objections to the proposed release from bond with the commission within 30 days after the last publication of the notice. If written objections are filed and a hearing requested, the commission shall inform all the interested parties of the time and place of the hearing and hold the hearing in the locality of the surface coal mining operation or at the state capital at the option of the objector, within 30 days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the commission in a newspaper of general circulation in the locality for two consecutive weeks and the public hearing and any appeal shall be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, as amended.

Coal Exploration Permits

Sec. 27. (a) Coal exploration operations that substantially disturb the natural land surface shall be conducted in accordance with rules issued by the commission. The rules shall include, at a minimum, the requirement that prior to conducting the exploration, a person must file with the commission notice of intent to explore and the notice shall include a description of the exploration area and the period of proposed exploration, and provisions for reclamation in accordance with the performance standards in Section 23 of this Act of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(b) Information submitted to the commission pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information that relates to the competitive rights of the person intending to explore the described area shall not be available for public examination.

(c) Any person who conducts any coal exploration operations that substantially disturb the natural land surface in violation of this section or the rules

issued pursuant to this section shall be subject to the provisions of Section 30 of this Act.

(d) No operator shall remove more than 250 tons of coal pursuant to an exploration permit without the specific written approval of the commission.

Surface Effects of Underground Mining

Sec. 28. The commission shall adopt rules applicable to the surface effects of underground mining that are consistent with the requirements of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and regulations adopted pursuant to that statute by the Secretary of Interior of the United States. The provisions of this Act, including but not limited to those provisions relating to a permit application, a reclamation plan, a performance bond, and administrative or judicial review, also apply to the regulation of the surface effects of underground mining operations as established in Section 516 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977).

Inspection and Monitoring

Sec. 29. (a) The commission shall require such monitoring and reporting, shall have made such inspections of any surface coal mining and reclamation operations, shall require the maintenance of such signs and markers, and shall take other actions as are necessary to administer, enforce, and evaluate the administration of this Act and to meet the state program requirements of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977), and for such purposes, the commission or authorized representative shall, without advance notice and on presentation of appropriate credentials, have a right of entry to any surface coal mining and reclamation operation or any premises in which any records required to be maintained are located, and may at reasonable times, without delay, have access to and copy any records and inspect any monitoring equipment and method of operation required under this Act or the rules issued pursuant to this Act.

(b) Each inspector, on detection of each violation of any requirement of this Act, shall forthwith inform the operator in writing, and shall report in writing the violation to the commission.

(c) For those surface coal mining and reclamation operations that remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the commission shall specify:

(1) monitoring sites to record the quantity and quality of surface drainage above and below the minesite as well as in the potential zone of influence;

(2) monitoring sites to record level, amount, and samples of ground water and aquifers potentially affected by the mining and also directly below the lowermost, deepest, coal seam to be mined;

(3) records of well logs and boreholes data to be maintained; and

(4) monitoring sites to record precipitation.

(d) The commission shall issue rules that provide for informing the operator of violations detected by an inspector and for making public all inspection and monitoring reports and other records and reports required to be kept pursuant to this Act and the rules issued pursuant to this Act.

(e) The inspections by the commission shall:

(1) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit;

(2) occur without prior notice to the permittee or his agents or employees except for necessary on-site meetings with the permittee; and

(3) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this Act.

(f) No employee of the commission performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates the provisions of this subsection shall, on conviction, be punished by a fine of not more than $2,500, or by imprisonment of not more than one year, or by both.

Penalties

Sec. 30. (a) Any permittee or person who violates any permit condition or any provision of this Act may be assessed a civil penalty by the commission. If the violation leads to the issuance of a cessation order, a civil penalty must be assessed. The penalty shall not exceed $5,000 for each violation. Each day a violation continues may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular surface coal mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the permittee or person was negligent, and the demonstrated good faith of the permittee or person charged in attempting to achieve rapid compliance after notification of the violation.

(b) A civil penalty shall be assessed only after the person charged with a violation described under Subsection (a) of this section has been given an opportunity for a pubic hearing. Where the public hearing has been held, the commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid. When appropriate the commission shall consolidate the hearings with other proceedings under Section 32 of this Act. Any hearing under this section shall be of record and shall be subject to the

Administrative Procedure and Texas Register Act, as amended. Where the person charged with the violation fails to avail himself or herself of the opportunity for a public hearing, a civil penalty shall be assessed by the commission after it has determined that a violation did occur, and the amount of the penalty which is warranted. The commission shall then issue an order requiring that the penalty be paid.

(c) On the issuance of a notice or order charging that a violation of the Act has occurred, the commission shall inform the permittee and any other person charged within 30 days of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the commission for placement in an escrow account. If through administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the amount of the penalty should be reduced, the commission shall, within 30 days, remit the appropriate amount to the person, with interest at the prevailing United States Department of the Treasury rate. Failure to forward the money to the commission within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) Civil penalties owed under this Act may be recovered in a civil action brought by the attorney general at the request of the commission.

(e) Any person who wilfully and knowingly violates a condition of a permit issued pursuant to this Act or fails or refuses to comply with any order issued under this Act, or any order incorporated in a final decision issued by the commission under this Act, except an order incorporated in a decision issued under Subsection (b) of this section, shall, on conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than one year, or by both.

(f) Any permittee or person who fails to correct a violation for which a citation has been issued under Section 32(a) of this Act within the period permitted for its correction, which period shall not end until the entry of a final order by the commission, in the case of any review proceedings initiated by the permittee in which the commission orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the permittee will suffer irreparable loss or damage from the application of those requirements, or until the entry of an order of the court, in the case of any review proceedings initiated by the permittee in which the court orders the suspension of an abatement requirement of the citation, shall be assessed a civil penalty of not less than $750 for each day during which the failure or violation continues.

(g) Whenever a corporate permittee or person violates a condition of a permit issued pursuant to a state program under Section 32 of this Act or fails or refuses to comply with any order issued under Section 32 of this Act, or any order incorporated in a final decision issued by the commission under this Act, except an order incorporated in a decision issued under Subsection (b) of this section, any director, officer, or agent of the corporation who wilfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed on a person under Subsections (a) and (e) of this section.

(h) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, or other document filed or required to be maintained pursuant to a state program or this Act or any order of decision issued by the commission under this Act, shall, on conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than one year, or by both.

Citizen Suits

Sec. 31. (a) Except as provided in Subsection (b) of this section, any person having an interest that is or may be adversely affected may commence a civil action on his or her own behalf to compel compliance with this Act against:

(1) the commission to the extent permitted by the Eleventh Amendment to the United States Constitution where there is alleged a failure of the commission to perform any act or duty under this Act that is not discretionary with the commission;

(2) any state governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the United States Constitution that is alleged to be in violation of the provisions of this Act or of any rule, regulation, order, or permit issued pursuant to this Act, or against any other person who is alleged to be in violation of any rule, regulation, order, or permit issued pursuant to this Act.

(b) No action may be commenced under Subsection (a)(1) of this section prior to 60 days after the plaintiff has given notice in writing of the action to the commission, in the manner as the commission shall by rule prescribe, except that the action may be brought immediately after the notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c) No action may be commenced under Subsection (a)(2) of this section:

(A) prior to 60 days after the plaintiff has given notice in writing of the violation to the commission and to any alleged violator; or

(B) if the state of Texas has commenced and is diligently prosecuting a civil action in a court

of the United States or this state to require compliance with the provisions of this Act, or any rule, regulation, order, or permit issued pursuant to this Act.

(d)(1) Any action respecting a violation of this Act or the regulations under this Act may be brought only in the judicial district in which the surface coal mining operation complained of is located.

(2) In the action under this section, the commission, if not a party, may intervene as a matter of right.

(e) The court, in issuing any final order in any action brought pursuant to Subsection (a) of this section, may award costs of litigation, including attorney and expert witness fees, to any party, whenever the court determines the award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Texas Rules of Civil Procedure.

(f) Nothing in this section shall restrict any right that any person or class of persons may have under any statute or common law to seek enforcement of any of the provisions of this Act and the regulations adopted under this Act, or to seek any other relief, including relief against the commission.

(g) Any person who is injured in his person or property through the violation by any permittee of any rule, regulation, order, or permit issued pursuant to this Act may bring an action for damages, including reasonable attorney and expert witness fees, only in the judicial district in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under workers' compensation laws of this state.

Enforcement

Sec. 32. (a) On the basis of any inspection, if the commission or its authorized representative or agent determines that a condition exists or practices exist or that a person or permittee is in violation of a requirement of this Act or a permit condition required by this Act and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, the commission or its authorized representative shall immediately order a cessation of surface coal mining operations or the portion thereof relevant to the condition, practice, or violation. The cessation order shall remain in effect until the commission or its authorized representative determines that the condition, practice, or violation has been abated, or until modified, vacated, or terminated by the commission or its authorized representative pursuant to Subsection (d) of this section. If the commission finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of those operations, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the commission shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him or her to take whatever steps the commission deems necessary to abate the imminent danger or the significant environmental harm.

(b) On the basis of an inspection, if the commission or its authorized representative or agent determines that a permittee is in violation of a requirement of this chapter or a permit condition required by this Act, but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause significant imminent environmental harm to land, air, or water resources, the commission or its authorized representative shall issue a notice to the permittee setting a reasonable time not to exceed 90 days for the abatement of the violation. If, on expiration of the period of time as originally set or subsequently extended, for good cause shown, and on written finding of the commission or its authorized representative, the commission or its authorized representative finds that the violation has not been abated, it shall order a cessation of surface mining operations or the portion relevant to the violation. The cessation order shall remain in effect until the commission determines that the violation has been abated or until modified, vacated, or terminated by the commission under Subsection (e) of this section.

(c)(1) A permittee issued notice or order by the commission pursuant to the provisions of Subsections (a) and (b) of this section or any person having an interest which is or may be adversely affected by the notice or order or by any modification, vacation, or termination of the notice or order, may apply to the commission for review of the notice or order within 30 days of receipt thereof or within 30 days of its modification, vacation, or termination. On receipt of the application, the commission shall have an investigation made as it deems appropriate. The investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of the notice or order. The filing of an application for review under this subsection shall not operate as a stay of any order or notice. The permittee and other interested persons shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any hearing shall be of record and shall be subject to the Administrative Procedure and Texas Register Act.

(2) On receiving the report of the investigation, the commission shall make findings of fact, and shall issue a written decision, incorporating in the

decision an order vacating, affirming, modifying, or terminating the notice or order or the modification, vacation, or termination of the notice or order complained of and incorporate its findings therein. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations issued pursuant to the provisions of Subsection (a) or (b) of this section, the commission shall issue the written decision within 30 days of the receipt of the application for review, unless temporary relief has been granted by the commission under Subdivision (3) of this subsection.

(3) Pending completion of the investigation and hearing required by this section, the applicant may file with the commission a written request that the commission grant temporary relief from any notice or order issued under this section, together with a detailed statement giving reasons for granting the relief. The commission shall issue an order or decision granting or denying the relief expeditiously; provided, that where the applicant requests relief from an order for cessation of coal mining and reclamation operations issued under Subdivision (1) or (2) of this subsection, the order or decision on the request shall be issued within five days of its receipt. The commission may grant the relief, under conditions it may prescribe, if:

(A) a hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

(B) the applicant shows that there is substantial likelihood that the findings of the commission will be favorable to him; and

(C) the relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(4) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked under this section, the commission shall hold a public hearing after giving written notice of the time, place, and date of the hearing. The hearing shall be of record and shall be subject to the Administrative Procedure and Texas Register Act. If the commission revokes the permit, the permittee shall immediately cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the commission, or the commission shall declare as forfeited the performance bonds for the operation.

(5) Whenever an order is issued under this section, or as a result of any administrative proceeding under this Act, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the commission to have been reasonably incurred by the person for or in connection with his participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review or the commission resulting from administrative proceedings, deems proper.

(d) On the basis of an inspection, if the commission has reason to believe that a pattern of violations of any requirements of this Act or any permit conditions required by this Act exists or has existed, and if the commission or its authorized representative also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this Act or any permit conditions, or that the violations are wilfully caused by the permittee, the commission shall issue an order to the permittee forthwith to show cause as to why the permit should not be suspended or revoked. The order shall set a time and place for a public hearing, if requested, to be held in accordance with the notice and procedural requirements of the Administrative Procedure and Texas Register Act, as amended. On failure of a permittee to show cause why the permit should not be suspended or revoked, the commission shall promptly suspend or revoke the permit.

(e) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the commission or its authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the commission or its authorized representative. Any notice or order issued pursuant to this section that requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless a public hearing is held at the site or within a reasonable proximity to the site so that any viewings of the site can be conducted during the course of the public hearing.

(f) The commission may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permittee:

(1) violates or fails or refuses to comply with an order or decision issued by the commission under this Act;

(2) interferes with, hinders, or delays the commission or its authorized representative in carrying out the provisions of this section;

(3) refuses to admit an authorized representative to the mine;

(4) refuses to permit inspection of the mine by an authorized representative;

(5) refuses to furnish information or a report requested by the commission under the commission's rules; or

(6) refuses to permit access to and copying of records the commission determines reasonably necessary to carry out this Act.

The action shall be brought in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

The court has jurisdiction to provide the relief that is appropriate, and relief granted by the court to enforce Subdivision (1) of this subsection shall continue in effect until the completion or final termination of all proceedings for review of the order under this section unless before that time the district court granting the relief sets the order aside or modifies it.

Areas Unsuitable for Surface Coal Mining

Sec. 33. (a) The commission shall develop a process for designating areas unsuitable for surface coal mining that includes:

(1) surface coal mining land review;

(2) developing a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations;

(3) developing, by rule, a method or methods for implementing land use planning decisions concerning surface coal mining operations; and

(4) developing, by rule, proper notice, provisions, and opportunities for public participation, including a public hearing, prior to making any designation or redesignation pursuant to this section.

(b) On petition pursuant to Subsection (c) of this section, the commission shall designate an area as unsuitable for all or certain types of surface coal mining operations if the commission determines that reclamation pursuant to the requirements of this Act is not technologically and economically feasible. On petition pursuant to Subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if those operations will:

(1) be incompatible with existing state or local land use plans or programs;

(2) affect fragile or historic land in which the operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems;

(3) affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, the land to include aquifers and aquifer recharge areas; or

(4) affect natural hazard land in which the operations could substantially endanger life and property, the land to include areas subject to frequent flooding and areas of unstable geology.

Determinations of the unsuitability of land for surface coal mining, as provided by this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state, and local levels. The requirements of this section shall not apply to land on which surface coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to this Act, or where substantial legal and financial commitments in the operation or proposed operation were in existence prior to January 4, 1977.

(c) Any person having an interest that is or may be adversely affected shall have the right to petition the commission to have an area designated as unsuitable for surface coal mining operations, prior to the filing of an application, or to have such a designation terminated. The petition shall contain allegations of facts with supporting evidence that would tend to establish the allegations. Within 10 months after receipt of the petition the commission shall hold a public hearing under the Administrative Procedure and Texas Register Act, as amended, in the locality of the affected area. After a person having an interest that is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations. In the event that all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, the hearing need not be held.

(d) Prior to designating any land areas as unsuitable for surface coal mining operations, the commission shall prepare a detailed statement on the potential coal resources of the area, the demand for coal resources, and the impact of the designation on the environment, the economy, and the supply of coal.

(e) After the enactment of this Act and subject to valid existing rights, no surface coal mining operations except those that existed on August 3, 1977, shall be permitted:

(1) that will adversely affect any publicly owned park or place included in the National Register of Historic Sites unless approved jointly by the commission and the federal, state, or local agency with jurisdiction over the park or the historic site;

(2) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way lines and except that the commission may permit these roads to be relocated or the area affected to lie within 100 feet of the public road, if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by the relocation will be protected; or

(3) within 300 feet of any occupied dwelling, unless waived by the owner of the dwelling, or within 300 feet of any public building, school,

church, community, or institutional building, public park, or within 100 feet of a cemetery.

Mining by Governmental Agencies; Mining on Government Land

Sec. 34. (a) The commission may enter into cooperative agreements with the federal government pursuant to the provisions of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 (1977).

(b) Any agency, unit, or instrumentality of federal, state, or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to the requirements of this Act shall comply with all provisions of this Act.

Exemptions

Sec. 35. The provisions of this Act shall not apply to any of the following activities:

(1) the extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her; provided that this does not exempt the noncommercial production or coal, when produced by in situ distillation or retorting, leaching, or other chemical or physical process or preparation;

(2) the extraction of coal for commercial purposes where the surface mining operation affects two acres or less;

(3) the extraction of coal as an incidental part of federal, state or local government-financed highway or other construction under rules established by the commission; and

(4) the extraction of coal incidental to the extraction of other minerals where the coal does not exceed 16-⅔ percentum of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to this Act.

Experimental Practices

Sec. 36. In order to encourage advances in mining and reclamation practices and to allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities, the commission may, with approval by the secretary, authorize departures in individual cases on an experimental basis from the environmental protection performance standards of this Act. These departures may be authorized if the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by this Act, the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices, and the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

Water Rights and Replacement

Sec. 37. (a) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his or her interest in water resources affected by a surface coal mining operation.

(b) The operator of a surface coal mining operation shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mine operation.

Certification of Blasters

Sec. 38. The commission shall promulgate rules requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations.

[Acts 1979, 66th Leg., p. 267, ch. 141, §§ 1 to 38, eff. May 9, 1979.]

TITLE 96

MINORS—REMOVAL OF DISABILITIES OF

Art. 5923b. Right, Privileges and Obligations of 18-year-olds

[See Compact Edition, Volume 5 for text of 1 and 2]

Sec. 3. [Emergency provision].

Sec. 4. To the extent that the Alcoholic Beverage Code conflicts with this Act, the code prevails. [Amended by Acts 1981, 67th Leg., p. 259, ch. 107, § 16, eff. Sept. 1, 1981.]

TITLE 96B

GIFTS TO MINORS

Art. 5923–101. Texas Uniform Gifts to Minors Act

Definitions

Sec. 1.

[See Compact Edition, Volume 5 for text of 1(a)]

(b) A "bank" is a state bank, a national bank, a state building and loan association, a federal savings and loan association, a federal credit union, or an insured credit union chartered and supervised under the laws of this State.

[See Compact Edition, Volume 5 for text of 1(c) and 1(d)]

(e) "The custodial property" includes:

(1) all securities, money, life or endowment insurance policies, annuity contracts, real property, and tangible personal property under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this Act;

(2) the income from the custodial property; and

(3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money, income, life or endowment insurance policies, annuity contracts, real property, and tangible personal property.

[See Compact Edition, Volume 5 for text of 1(f) to 1(h)]

(i) A "legal representative" of a person is the executor, independent executor, independent administrator, administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

[See Compact Edition, Volume 5 for text of 1(j) and 1(k)]

(*l*) A "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, collateral trust certificate, transferable share, voting trust certificate, investment contract, or any certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

[See Compact Edition, Volume 5 for text of 1(m)]

(n) A "trust company" is a bank or trust company authorized to exercise trust powers in this State.

[See Compact Edition, Volume 5 for text of 1(o)]

Manner of Making Gift

Sec. 2. (a) An adult person may, during his lifetime, by beneficiary designation with a company that has issued a life or endowment insurance or annuity contract, or by will, make a gift of a security or money, a life or endowment insurance policy or the proceeds of the policy, an annuity contract or the proceeds of the contract, real property, or tangible personal property to a person who is a minor on the date of the gift:

(1) if the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act";

(2) if the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

"GIFT UNDER THE TEXAS UNIFORM GIFTS TO MINORS ACT

I, (name of donor), hereby deliver to (name of custodian) as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act, the following security(ies): (insert an appropriate description of the security or securities delivered sufficient to identify it or them)

(signature of donor)

(name of custodian) hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the Texas Uniform Gifts to Minors Act.

Dated: _____

(signature of custodian)"

(3) if the subject of the gift is money, by paying or delivering it to a broker or a bank for credit to an account in the name of the donor, another adult person or a bank with trust powers, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act."

(4) if the subject of the gift is a life or endowment insurance policy or an annuity contract, such policy or contract shall be assigned to the custodian in his own name, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act." Such policy or contract shall be delivered to the person who has been designated as custodian thereof.

(5) if the subject of the gift is an interest in real estate, by executing and delivering in the appropriate manner a deed, assignment, or similar conveyance of the interest to the custodian in his own name, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act."

(6) if the subject of the gift is an interest in tangible personal property, by causing the ownership of the property to be transferred by any appropriate written document to the custodian in his own name, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act."

(7) if the gift is by will or transfer in trust, by giving the subject of the gift to an adult or a trust company, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act"; if the testator fails to designate the custodian or if the designated custodian dies or is unable or unwilling to serve, the personal representative or trustee shall designate the custodian from among those eligible to become successor custodian under this Act and shall make distribution by transferring the subject of the gift to the custodian in the form and manner provided in this subsection; the receipt of the custodian constitutes a sufficient release and discharge for the gift; if the gift is distributable by a personal representative by will, the personal representative may elect the procedures under this Act for making the gift.

(8) if the subject of the gift is the proceeds from a life or endowment insurance policy or annuity contract, by making the proceeds payable to the custodian in his own name followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act."

[See Compact Edition, Volume 5 for text of 2(b) and 2(c)]

(d) A legal representative of a decedent's estate who has received letters of office or a trustee of a trust on behalf of a minor who is an heir, legatee, or devisee of the decedent's estate or a beneficiary of the trust, without a court order, may pay or transfer to a custodian for the minor under this Act, or under a Uniform Gifts to Minors Act of another jurisdiction, in the form and manner prescribed by Subsection (a), (b), or (c) of this section or comparable provisions of the Uniform Gifts to Minors Act, any money, security, real property, life or endowment insurance policy, annuity contract, or tangible personal property that may be distributable to the minor if:

(1) the legal representative or trustee deems the distribution to be in the best interest of the minor; and

(2) the decedent, the settlor of the trust, or a court that has jurisdiction over the legal representative or trustee has not expressly directed otherwise in a will, trust agreement, order, or other governing instrument.

(e) A legal representative or trustee who intends to make a distribution under Subsection (d) of this section shall designate an adult member of the minor's family or a guardian of the minor as custodian. The custodianship is governed by this Act as though the legal representative or trustee were a donor. A receipt from the custodian is a sufficient release of the trustee or legal representative from responsibility for the distributed assets.

Effect of Gift

Sec. 3. (a) A gift made in a manner prescribed in this Act is irrevocable and conveys to the minor indefeasibly vested legal title to the security or money, life or endowment insurance policies, annuity contracts, real property, or tangible personal property given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this Act.

(b) By making a gift in a manner prescribed in this Act, the donor incorporates in his gift, trust, or will all the provisions of this Act and grants to the custodian, and to any issuer, transfer agent, bank, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this Act.

Duties and Powers of Custodian

Sec. 4.

[See Compact Edition, Volume 5 for text of 4(a) to 4(e)]

(f) The custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable, provided that a custodian may not acquire as custodial property any property other than securities, money, life or endowment insurance policies, annuity contracts, or real property; provided that a trust company in its capacity as custodian may acquire as custodial proper-

ty interests in one or more common trust funds established and maintained by the trust company pursuant to Section 1 of the Uniform Common Trust Fund Act, as amended (Article 7425b–48, Vernon's Texas Civil Statutes). He may vote in person or by general or limited proxy a security, policy or contract, which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer of a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. On dissolution or liquidation of an issuer of a security which is custodial property, the custodian may receive the minor's share of any property resulting from such dissolution or liquidation and retain and manage it as custodial property except that he cannot sell or exchange it for property not authorized to be acquired as custodial property. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian. With respect to any interest in real estate, he may perform the same acts that any unmarried adult may perform, including all powers granted to a trustee under Section 25, Texas Trust Act, as amended (Article 7425b–25, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 4(g) to 4(i)]

(j) If the subject of the gift is a life or endowment insurance policy or an annuity contract, the custodian shall have all the incidents of ownership in such policy or contract which he may hold as custodian, to the same extent as if he were the owner thereof, and the custodian may pay premiums on the policy or contract out of the custodial property. The custodian shall designate the minor's estate as beneficiary of a policy or contract on the life of the minor and himself in his capacity as custodian for the minor as beneficiary of a policy or contract on the life of a person other than the minor.

[See Compact Edition, Volume 5 for text of 5 and 6]

Resignation, Death or Removal of Custodian; Bond; Appointment of Successor Custodian

Sec. 7.

[See Compact Edition, Volume 5 for text of 7(a)]

(b) A successor custodian may be appointed by one of the following procedures:

(1) a custodian, other than the donor, may resign and designate his successor by executing an instrument of resignation designating the successor custodian before a subscribing witness other than the successor and delivering it to the minor and the successor custodian;

(2) in the absence of an effective designation of a successor custodian by the custodian, the donor may designate an adult member of the minor's family, a guardian of the minor, or a trust company as a successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor;

(3) in the absence of an effective designation of a successor custodian by either the custodian or the donor, the guardian of the minor shall become successor custodian; in the absence of a guardian, the minor, if he has attained the age of fourteen (14) years, may designate a successor custodian in the manner prescribed for the designation of a successor custodian;

(4) if the minor has not attained the age of fourteen (14) years, and in the absence of an effective designation of a successor custodian by the custodian, donor, or guardian, a parent of the minor may appoint a successor custodian;

(5) if the minor has not attained the age of fourteen (14) years and has no guardian or parent, and no effective designation of a successor custodian has been made by the custodian or the donor, then an adult member of the minor's family may petition the court for the designation of a successor custodian.

[See Compact Edition, Volume 5 for text of 7(c)]

(d) The designation of a successor custodian as provided in Subsection (b) of this section takes effect as to each item of the custodial property when the custodian resigns, dies, or becomes legally incapacitated and the custodian or his legal representative:

(1) causes each security in registered form, life or endowment insurance policy, annuity contract, or interest in real property to be registered in the name of or conveyed to the successor custodian, followed, in substance, by the words: "as custodian for (name of minor) under the Texas Uniform Gifts to Minors Act"; and

(2) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or any additional instruments required for the transfer to the successor custodian.

[See Compact Edition, Volume 5 for text of 7(e) to 10]

[Amended by Acts 1975, 64th Leg., p. 1858, ch. 582, §§ 1 to 5, eff. June 19, 1975; Acts 1977, 65th Leg., p. 627, ch. 232, §§ 1, 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2455, ch. 633, §§ 1 to 3, eff. Aug. 31, 1981.]

TITLE 97

NAME

CHAPTER ONE. ASSUMED NAME [REPEALED]

Arts. 5924 to 5927b. Repealed by Acts 1977, 65th Leg., p. 1101, ch. 403, § 2, eff. Aug. 29, 1977.

Disposition Table

Showing where the provisions of repealed arts. 5924 to 5927b can be found in Chapter 36 of the Business and Commerce Code, the Assumed Business or Professional Name Act.

Former Article	New Section
5924	36.10
5924.1	36.10
5924(a)	36.13
5925	36.12
5925a	36.12
5926	36.15
5927	—
5927a	—
5927b	36.26

TITLE 97A

NATIONAL GUARD ARMORY BOARD

Article
5931–1a. Application of Sunset Act.

Art. 5931–1. Composition

There is hereby created the Texas National Guard Armory Board to be composed of three members of the general public appointed by the governor with the advice and consent of the senate and of the two senior officers of the Texas Army National Guard and the senior officer of the Texas Air National Guard. The three members of the Texas National Guard, at the time of appointment, must be actively serving in the Texas Army National Guard or the Texas Air National Guard, and the three public members, at the time of appointment, must not be actively serving in the Texas Army National Guard or the Texas Air National Guard. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. The term of office for members of the Texas National Guard Armory Board shall be of six years' duration without regard to organizational structure of the National Guard. The retirement of a member who is an officer of the Texas National Guard from active service with the Texas Army National Guard or Texas Air National Guard shall constitute a vacancy to be filled in accordance with this Act. In the event of a vacancy, the person qualifying for the position shall complete the unexpired term of his predecessor. Each officer of the Texas Army National Guard or the Texas Air National Guard who may thereafter fill the position qualifying him for membership on the Texas National Guard Armory Board, as provided in this Act, shall be certified by the Governor of Texas to the Secretary of State, who shall notify the officer concerned within 10 days after the occurrence of the vacancy. Each officer of the Texas National Guard who is notified shall, within 15 days from the date of his receipt of notice of his eligibility to serve to fill a vacancy, qualify by taking and filing with the Secretary of State the constitutional oath of office.

The Board annually shall elect a chairman and treasurer from its membership.

In the event any member of the Board who is an officer of the Texas National Guard is unable to serve as a Board member because of his induction into federal service or the induction of his military unit into federal service, the Governor of Texas shall designate the next senior officer of the Texas National Guard as successor in function, who shall thereupon be and become a member of the Board only for the duration of such term of induction into federal service; thereafter the military successor in function of the Texas Nation Guard shall qualify as a member of the Board.

It is further provided that none of the members of this Board shall at the time hold any other office or position of honor, trust, or profit under the state or federal government, except as a member of the Texas National Guard.

Should any officer fail to qualify as a member of the Board under the provisions of the State Constitution or the provisions of this Act, the next senior officer in military rank to qualify shall be certified by the Governor of Texas to the Secretary of State as provided in this Act.

A person who is required to register as a lobbyist under Chapter 442, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes) may not serve as a member of the Board or act as general counsel to the Board.

It is a ground for removal from the Board if a member fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a Board member.

[Amended by Acts 1981, 67th Leg., p. 2204, ch. 512, § 1, eff. Sept. 1, 1981.]

Section 2 of the 1981 amendatory act provides:

"(a) A person holding office as a member of the Texas National Guard Armory Board on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"(b) The senior officer of Texas State Guard is the successor to the senior officer of the Texas Army National Guard whose term expires first.

"(c) The governor shall appoint three public members to the board. The governor shall designate one public member for a term expiring in 1983, one for a term expiring in 1985, and one for a term expiring in 1987."

Art. 5931–1a. Application of Sunset Act

The Texas National Guard Armory Board is subject to the Texas Sunset Act, as amended (Article 5429K, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the Board is abolished, and this Title expires effective September 1, 1993.

[Added by Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.054, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 2205, ch. 512, § 1, eff. Sept. 1, 1981.]

Art. 5931–3. Meetings; Per Diem

(a) The board act by resolution adopted at a meeting held in accordance with its bylaws. A simple majority of the members of the board constitutes a quorum for the transaction of business.

(b) The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(c) Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

[Amended by Acts 1981, 67th Leg., p. 2205, ch. 512, § 1, eff. Sept. 1, 1981.]

Art. 5931–5. Specific Powers

(a) The Board shall possess but is not limited to the following powers:

(1) to sue and be sued;

(2) to enter into contracts in connection with any matter within the objects, purposes or duties of the Board;

(3) to have and use a corporate seal;

(4) to appoint, employ and pay, and dismiss an executive secretary, and also such other officials, counsel, lawyers, agents, and employees as may be necessary to carry out the objects, purposes and duties of the Board, and to prescribe their duties and fix their compensation;

(5) to adopt, and from time to time to change or amend, all necessary rules and bylaws for the conduct of the business and affairs of the Board;

(6) to acquire, by gift or purchase, for use as building sites or for any other purposes deemed by said Board to be necessary in connection with or for the use of units of the Texas National Guard, property of any and every description, whether real, personal or mixed, including, but without limitation on the foregoing, leasehold estates in real property, and hold, maintain, sublease, convey, and exchange or sell as hereinafter provided, such property, in whole or in part, and/or pledge the rents, issues and profits thereof in whole or in part; also, to acquire, by gift or purchase, or by construction of the same, furniture and equipment suitable for Armory purposes and to hold, maintain, sublease, convey and exchange or sell as hereinafter provided, such furniture and equipment, in whole or in part;

(7) to construct buildings on any of its real property, whether held in fee simple or otherwise, and to furnish and equip the same and to hold, manage and maintain all of said property and to lease to the State of Texas, in the same manner as hereinafter provided with respect to other property, the buildings, and the sites thereon situated, which it may construct, and to lease and sublease, convey and exchange, or sell as hereinafter provided, in whole or in part, all of its property and/or pledge the rents, issues and profits of all of said property, wherever located, in whole or in part; provided, however, that before any building is constructed by said Board on the lands comprising any state camps, the site therefor, in maximum area 200,000 square feet, shall, promptly on said Board's request therefor to the Adjutant General of Texas, be selected and described by a board of officers appointed from time to time for the purpose by the said Adjutant General, and such description shall be certified to said Armory Board and a copy thereof shall be furnished to and preserved in the office of said Adjutant General; and provided further, that when so selected and described and constructed upon, such sites shall be and become the property of the said Armory Board, for all purposes contemplated by the Act of which this section is a part, as fully and absolutely as if the same had been acquired by a gift to or purchase by said Armory Board;

(8) from time to time, to borrow money, and to issue and sell bonds, debentures, and other evidences of indebtedness for the purpose of acquiring one or more building sites and buildings, and for the purpose of constructing, remodeling, repairing, and equipping one or more buildings, such bonds, debentures, or other evidences of indebtedness to be fully negotiable and to be secured as follows: by a pledge of, and payable solely from, the rents, issues, and profits of all of the property in the Board; of the property acquired or constructed by the Board, in whole or in part, with the proceeds of the borrowing transactions. Provided, however, that interest falling due within 24 months after the issuance and sale of any particular bonds, debentures, or other evidences of indebtedness, or any series thereof, may be paid out of the proceeds of the sale thereof. Any such bonds, debentures, or other evidences of indebtedness may be issued in series, and if so issued, all series thereof issued under or secured by the same trust indenture or trust agreement, shall rank equally, without preference or priority of one series over another, whether by reason of the date of issue or negotiation thereof or date of maturity thereof or for any other reason. All such bonds, debentures, or other evidences of indebtedness and interest thereon, shall be exempt from taxation (except inheritance taxes) by the State of Texas or by any municipal corporation, county or political subdivision, or taxing district of the State. All bonds, debentures, or other evidences of indebtedness authorized and issued under authority of this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and for all public funds of the State of Texas including, but not limited to, the permanent free

school fund, and for the sinking funds of cities, towns, villages, counties, school districts, or other political subdivisions or corporations of the State of Texas. Such bonds, debentures, or other evidences of indebtedness shall be eligible to secure the deposit of any and all public funds of the State of Texas, and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds, debentures, or other evidences of indebtedness shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto. Said bonds, debentures, or other evidences of indebtedness may be sold by the Board in any manner it may determine; provided that no bonds, debentures, or other evidences of indebtedness shall be sold unless and until same shall have been approved by the Attorney General of the State of Texas and registered with the Comptroller of Public Accounts. The Board shall have power from time to time to execute and deliver trust deeds and trust agreements whereunder any bank or trust company authorized by the laws of the State or of the United States of America to accept and execute trusts in the State, or any individual selected by the Board, may be named and act as trustee. The Board shall select the trustee on the basis of written competitive bids. Any such trust deed or trust agreement shall be signed in the name and on behalf of the Board by the chairman of the Board and countersigned by the treasurer thereof and the corporate seal of the Board shall be affixed thereto and such seal attested by the executive secretary of the Board; and any such trust deed or trust agreement may, if it name such bank or trust company to act as trustee, contain provisions for the deposit with the trustee thereunder and the disbursement by such trustee of the proceeds of the bonds, debentures, or other evidences of indebtedness issued thereunder or secured thereby, and/or the rents, issues, and profits of all property acquired or constructed out of such proceeds, and, whether or not such bank or trust company be named as trustee, may also contain such provisions for the protection and enforcement of the rights and remedies of the trustee and the holders of such bonds, debentures, or other evidences of indebtedness as the Board may approve, including provisions for the acceleration of the maturity of any such bonds, debentures, or other evidences of indebtedness upon default by the Board in the performance or observance of any of the covenants or provisions of such bonds, debentures, or other evidences of indebtedness or of the trust deed or trust agreement whereunder the same are issued or secured. Any such trust deed or trust agreement shall provide that all bonds, debentures, or other evidences of indebtedness issued at any time thereunder shall be equally secured thereby but any such trust deed or trust agreement may contain and impose upon the Board limitations and conditions governing the right of the Board to issue additional bonds, debentures, or other evidences of indebtedness. All such bonds, debentures, or other evidences of indebtedness shall be signed by the chairman of the Board, countersigned by the the treasurer thereof, and the corporate seal of the Board shall be thereto affixed, and such seal attested by the executive secretary of the Board, and in case any officer of the Board who shall have signed or attested any such bond, debenture, or other evidence of indebtedness shall cease to be such officer before such bond, debenture, or other evidence of indebtedness shall have been actually issued by the Board, such bond, debenture, or other evidence of indebtedness may nevertheless be validly issued by the Board. Such bonds, debentures, or other evidences of indebtedness may be issued in fully registered form without interest coupons, or in coupon form registerable as to principal only, or in bearer form with coupons attached. All of the coupons shall be authenticated by the facsimile signature of the treasurer of the Board; and

(9) to execute and deliver leases, or subleases in the case of buildings located upon leasehold estates acquired by the Board, demising and leasing to the State of Texas through the Adjutant General, who shall execute the same for said State, for such lawful term as may be determined by the Board, any building or buildings, and the equipment therein and the site or sites therefor, to be used for Armory and other purposes and to renew such leases or subleases from time to time; provided, however, that if at any time the State of Texas shall fail or refuse to pay the rental reserved in any such lease or sublease, or shall fail or refuse to lease or sublease any such building and site, or to renew any existing lease or sublease thereon at the rental provided to be paid, then the Board shall have the power to lease or sublease such building or equipment and the site therefor to any person or entity and upon such terms as the Board may determine. The law requiring notice and competitive bids shall not apply to leasing or subleasing of such property. The annual rental (which may be made payable in such installments as the Board shall determine) to be charged the State of Texas for the use of such property leased or subleased to it by the Board shall be sufficient to provide for the operation and maintenance of the property so leased or subleased, to pay the interest on the bonds, debentures, or other evidences of indebtedness, if any, issued for the purpose of acquiring, constructing, or equipping any such property, to provide for the retirement of such bonds, debentures, or other evidences of indebtedness, if any, and the payment of the expenses incident to the issuance thereof, as well as the necessary and proper expenses of the Board not otherwise provided for.

(b) The executive secretary or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.

(c) The executive secretary or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive secretary must be based on the system established under this subsection.

(10) [1] If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committee's statements.

[Amended by Acts 1981, 67th Leg., p. 2205, ch. 512, § 1, eff. Sept. 1, 1981.]

[1] Numbering so in enrolled bill.

Section 3 of the 1981 amendatory act provides:

"(a) This Act takes effect September 1, 1981.

"(b) The requirements under Section (b) and (c), Article 5931–5, Revised Civil Statutes of Texas, 1925, as added by this Act, that the executive secretary of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement under Section (c) of Article 5931–5 that merit pay is to be based on the performance evaluation system shall be implemented before September 1, 1983."

Art. 5931–8. Records

(a) The board shall cause to be kept accurate minutes of its meetings, and accurate records and books of account in conformity with approved methods of accounting, clearly reflecting the income and expenses of the board and all transactions in relation to its property. In the execution and administration of objects and purposes herein set forth, the board shall have the power to adopt means and methods reasonably calculated to accomplish such objects and purposes and this Act shall be construed liberally in order to effectuate such objects and purposes.

(b) The state auditor shall audit the financial transactions of the board during each fiscal biennium.

(c) On or before January 1 of each year, the board shall make in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the board during the preceding year.

[Amended by Acts 1981, 67th Leg., p. 2208, ch. 512, § 1, eff. Sept. 1, 1981.]

Art. 5931–12. Refunding Bonds

(a) The board is authorized to issue refunding bonds for the purpose of refunding any outstanding bonds or other evidences of indebtedness, and interest on same, authorized by this article or otherwise which the board lawfully may have issued.

(b) Within the discretion of the board, the refunding bonds may be issued in exchange or substitution for outstanding bonds or other evidences of indebtedness or may be sold and the proceeds used for the purpose of paying or redeeming outstanding bonds or other evidences of indebtedness. If such refunding bonds are sold they may be sold in an amount sufficient to provide for the payment of the principal of, the interest on, and premium, if any, of the bonds or other evidences of indebtedness being refunded and to provide an amount or amounts to be deposited into a reserve fund or funds as may be provided in the resolution or resolutions authorizing such refunding bonds and in an amount or amounts necessary to pay expenses incurred in the issuance, sale, and delivery of such refunding bonds.

(c) Until such time or times as the bond proceeds are needed for the purposes set forth in Subsection (b) of this section, such bond proceeds may be invested in direct obligations of the United States of America and the income therefrom may be used or pledged as provided in the resolution or resolutions authorizing the bonds.

(d) In addition to the refunding authority herein provided, the board shall be able to refund its outstanding bonds or other evidences of indebtedness in accordance with provisions of applicable general law.

[Amended by Acts 1979, 66th Leg., p. 1534, ch. 660, § 1, eff. June 13, 1979.]

Sections 2 and 3 of the 1979 amendatory act provided:

"Sec. 2. This Act shall be cumulative of all other law on the subject, but this Act shall be wholly sufficient authority within itself for the issuance of bonds and for the performance of the other acts and procedures authorized hereby, without reference to any other law or any restrictions or limitations contained therein, except as herein specifically provided; and when any bonds are being issued under this Act, then to the extent of any conflict or inconsistency between any provisions of this Act and any provision of any other law, the provisions of this Act shall prevail and control; provided, however, that the board shall have the right to use the provisions of any other laws, not in conflict with the provisions hereof, to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

"Sec. 3. In case any one or more of the sections, provisions, clauses, or words of this Act or the application thereof to any situation or circumstance shall for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other sections, provisions, clauses, or words of this Act or the application thereof to any other situation or circumstance, and it is intended that this Act shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, provision, clause, or word had not been included herein."

TITLE 99

NOTARIES PUBLIC

Article
5960a. Rubber Stamp for Seal.

Art. 5949. Notary Public

Appointment; Number and Terms; Jurisdiction

1. The Secretary of State of the State of Texas shall appoint a convenient number of Notaries Public in this state. Such appointments may be made at any time, and the term of each appointment shall end four years after the date of qualification of each individual Notary Public, unless sooner revoked by the Secretary of State. The jurisdiction of each Notary Public appointed after the effective date of this Act shall be coextensive with the boundaries of the state, irrespective of the county in which he is appointed.

Eligibility

2. To be eligible for appointment as a Notary Public, a person shall be a resident citizen of the United States and of this state and at least eighteen (18) years of age. Nothing herein shall invalidate any commission as Notary Public which has been issued and is outstanding at the time this Act becomes effective.

Procedure for Appointment; Contents; Duties of Secretary of State

3. (a) Any person desiring appointment as a Notary Public shall make application to the Secretary of State on forms prescribed by the Secretary of State, which includes his name as it will be used in acting as such Notary Public, his post-office address, his county of residence, his business address, the name of the county in which his business is located, his social security number, a statement that he has never been convicted of a crime involving moral turpitude, and shall satisfy the Secretary of State that he is at least eighteen (18) years of age and otherwise qualified by law for the appointment which is sought; provided that if the person is a qualified Notary Public before January 1, 1980, in another county, his commission in that county shall be surrendered to the Secretary of State at the time application for the appointment is made. The Secretary of State shall act upon all such names submitted at the earliest practicable time and notify each applicant whether the appointment has been made.

(b) Upon receiving notice from the Secretary of State of such appointment, the applicant shall, within twenty (20) days from the date of appointment, qualify as hereinafter provided. The appointment of any person failing to qualify within the time allowed shall be void, and if any such person desires thereafter to qualify, his name shall be resubmitted in the same manner as hereinabove provided.

Fees

4. At the time of such qualification the applicant shall forward to the Secretary of State a fee in the amount of Four ($4.00) Dollars for approving and filing the bond of such Notary Public, together with the fee allowed by law to the Secretary of State for issuing a commission to such Notary Public.

Issuance of Commission; Non-Attorney Notice; Literal Translation; Rejection of Application; Appeal

5. (a) Immediately after the qualification of any Notary Public, and the receipt of the fees due the Secretary of State, the Secretary of State shall cause a commission to be issued to such Notary Public, which commission shall be effective as of the date of qualification. Nothing herein shall prevent any qualified Notary Public from performing the duties of his office from and after his qualification and before the receipt of his commission.

(b) Every Notary Public who is not an attorney who advertises the services of a Notary Public in a language other than English, whether by radio, television, signs, pamphlets, stationery, or other written communication, shall post or otherwise include with the advertisement a notice that the person is not an attorney. The notice shall be in English and in the other language in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice shall include the fees that a Notary Public may charge and the following statement:

"I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE."

(c) Literal translation of the phrase "Notary Public" into Spanish is prohibited. In this subsection, "literal translation" of a word or phrase from one language to another means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language which is being translated.

(d) The failure to comply with Subsection (b) or (c) of this section constitutes a deceptive trade prac-

tice in addition to any other law of the State of Texas and is actionable under Chapter 17 of the Business & Commerce Code.

(e) The Secretary of State may, for good cause, reject any application, or revoke the commission of any Notary Public, but such action shall be taken subject to the right of notice, hearing and adjudication, and the right of appeal therefrom. Such appeal shall be made to the District Court of Travis County, Texas, but upon such appeal the Secretary of State shall have the burden of proof and such trial shall be conducted de novo.

(f) "Good cause" shall include final conviction for a crime involving moral turpitude, any false statement knowingly made in an application, the failure to comply with Subsection (b) or (c) of this section, and final conviction for the violation of any law concerning the regulation of the conduct of Notaries Public in this state, or any other state.

Reappointment; Change of Address; Vacation of Office

6. (a) Any qualified Notary Public whose term is expiring may make an application for appointment in the same manner as provided in Subsection (a) of Section 3 of this Article. The Secretary of State shall notify all Notaries Public whose terms are expiring at least ninety (90) days prior to expiration.

(b) Upon receiving notice of appointment made by the Secretary of State for another term of office, the applicant must qualify not later than the expiration date of the term for which he is serving, which qualifying shall become effective on the expiration date of his term and shall not be effective prior thereto. The appointment for another term of office of any person who fails to qualify on or before the expiration date of the term he is serving shall be void, and if the person later desires to qualify, his name must be resubmitted in the same manner as provided in Section 3 of this Article.

(c) Each Notary Public shall notify the Secretary of State of any change of his address within ten (10) days after the change.

(d) If a Notary Public removes his residence from this state, his office is automatically vacated. If a Notary Public who qualified before January 1, 1980, removes his residence or his principal place of business or employment to another county in this state, so that he maintains neither his residence nor his principal place of business or employment in the county in which he was appointed, his office is automatically vacated, and if he desires to continue to act as a Notary Public, he must surrender his commission to the Secretary of State and make application for appointment in the same manner as for an initial appointment.

Bond

7. Any person appointed a Notary Public shall, before entering upon his official duties, execute a bond in the sum of Two Thousand Five Hundred ($2,500.00) Dollars with a solvent surety company authorized to do business in this State, as surety, such bond to be approved by the Secretary of State, payable to the Governor, and conditioned for the faithful performance of the duties of his office; and shall also take and subscribe his name and social security number to the official oath of office which shall be endorsed on said bond with the certificate of the official administering the same. The State Board of Insurance may at its discretion approve rates for a four-year notary bond issued subsequent to the effective date of this Act equivalent to twice the rate set previously for two-year notary bonds. Said bond shall be deposited in the office of the Secretary of State and shall not be void on the first recovery, and may be sued on in the name of the party injured from time to time until the whole amount thereof has been recovered. Any such person shall be deemed to be qualified when he has taken the official oath of office, furnished the bond and paid the fees herein provided for, all within the time allowed therefor.

8. Repealed by Acts 1979, 66th Leg., p. 2216, ch. 840, § 5, eff. Jan. 1, 1980.

Public Records; Inspection

9. All matters pertaining to the appointment and qualification of Notaries Public shall be public records in the office of the Secretary of State after any such Notary Public has qualified, and shall be open to inspection of any interested person at such reasonable times and in such manner as will not interfere with the affairs of office of the custodian of such records; but the Secretary of State is not required to furnish lists of the names of persons appointed before their qualification or lists of unreasonable numbers of qualified Notaries Public.

[See Compact Edition, Volume 5 for text of 10]

[Amended by Acts 1975, 64th Leg., p. 1024, ch. 392, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 373, ch. 185, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 776, ch. 342, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 2213, ch. 840, §§ 1, 5, eff. Jan. 1, 1980.]

Section 2 of the 1977 amendatory act amended art. 5958; § 3 amended art. 5960; § 4 thereof provided:

"This Act shall become effective on August 29, 1977."

Sections 6 and 7 of Acts 1979, 66th Leg., p. 2216, ch. 840, provided:

"Sec. 6. Each person who was appointed a notary public before January 1, 1980, continues to serve the remainder of the term for which the person was appointed and may use the seal provided by law before that date.

"Sec. 7. This Act takes effect only if the constitutional amendment proposed by H.J.R. No. 108, 66th Legislature, Regular Session, 1979, is adopted. If the amendment is adopted, this Act takes effect January 1, 1980."

H.J.R. No. 108 was approved by the voters at an election held on November 6, 1979.

Art. 5954. Authority of Notary; Printing or Stamping of Name Under Signature

Notaries Public shall have the same authority to take acknowledgments or proofs of written instruments, protest instruments permitted by law to be protested, administer oaths, and take depositions, as is now or may hereafter be conferred by law upon County Clerks, and provided that all Notaries Public shall print or stamp their names and the expiration dates of their commissions under their signatures on all such written instruments, protest instruments,

oaths, or depositions; provided further that failure to so print or stamp their names and expiration dates of their commissions under their signatures shall not invalidate such acknowledgment.
[Amended by Acts 1975, 64th Leg., p. 1024, ch. 392, § 2, eff. June 19, 1975.]

Art. 5958. Office to Become Vacant

Whenever an ex officio notary public shall remove permanently from his precinct, his office shall thereupon be deemed vacant.
[Amended by Acts 1977, 65th Leg., p. 375, ch. 185, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2216, ch. 840, § 2, eff. Jan. 1, 1980.]
For provision as to effective date of 1979 amendment to this article, see note under art. 5949.

Art. 5960. Seal

Each notary public shall provide a seal of office, whereon shall be engraved in the center a star of five points, and the words, "Notary Public, State of Texas," around the margin and he shall authenticate all his official acts therewith. The use of a seal with the name of a county, when used by a qualified notary public, will not invalidate the acknowledgment.
[Amended by Acts 1977, 65th Leg., p. 376, ch. 185, § 3, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 2216, ch. 840, § 3, eff. Jan. 1, 1980.]
For provision as to effective date of 1979 amendment to this article, see note under art. 5949.

Art. 5960a. Rubber Stamp for Seal

A seal fashioned as a rubber stamp engraved with the star and the words provided by law may be used as the official seal of office of a notary public. A notary public shall use an indelible ink pad for transferring the impression of this type of seal on an instrument of writing to authenticate his or her official act.
[Added by Acts 1979, 66th Leg., p. 2216, ch. 840, § 4, eff. Jan. 1, 1980.]
For provision as to effective date of the 1979 Act adding this article, see note under art. 5949.

TITLE 100

OFFICERS—REMOVAL OF

Art. 5961. By Impeachment

The Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Commissioner of the General Land Office, Comptroller, Commissioner of Insurance, Banking Commissioner, Justices of the Supreme Court, Judges of the Court of Criminal Appeals, Justices of the Courts of Appeals, Judges of the district courts, Judges of the criminal district courts, and all other State officers and heads of State departments or institutions of any kind, and all members, regents, trustees, commissioners having control or management of any State institution of enterprise, shall be removed from office or position by impeachment in the manner provided in the Constitution and in this title, the remedy by impeachment as herein provided for being cumulative of all other remedies with respect to the impeachment or removal of public officers. [Amended by Acts 1981, 67th Leg., p. 792, ch. 291, § 68, eff. Sept. 1, 1981.]

Art. 5963. Trial by Senate

(a) All persons against whom articles of impeachment are preferred by the House of Representatives shall be tried by the Senate sitting as a court of impeachment in the manner provided by Article XV of the Constitution of Texas.

(b) If the Senate is in session, at a regular or called session of the Legislature when articles of impeachment are preferred by the House, it shall receive the articles when presented and, on a day and time to be set by the Senate, shall resolve into a court of impeachment to consider the articles. The Senate may continue in session as a court of impeachment beyond any date of expiration of the session for legislative purposes or may adjourn as a court of impeachment to a day and time set by the Senate.

(c) If the Senate is not in session at a regular or called session of the Legislature when articles of impeachment are preferred by the House, the House shall cause a certified copy of the articles of impeachment to be delivered, by personal messenger or registered or certified mail, to the Governor, the Lieutenant Governor, and each member of the Senate. A record of the deliveries and a copy thereof shall be delivered to the Lieutenant Governor and the President Pro Tempore of the Senate. Thereupon the Senate shall be convened for the purpose of considering such articles of impeachment in the following manner:

1. By proclamation of the Governor; or if the Governor fails to issue such proclamation within ten days after the day the articles of impeachment are preferred by the House, then

2. By proclamation of the Lieutenant Governor; or if the Lieutenant Governor fails to issue such proclamation within fifteen days from the day the articles of impeachment are preferred by the House, then

3. By proclamation of the President Pro Tempore of the Senate; or, if the President Pro Tempore of the Senate fails to issue such proclamation within twenty days from the day the articles of impeachment are preferred by the House, then

4. By proclamation in writing signed by a majority of the members of the Senate.

(d) The proclamation convening the Senate shall be in writing, shall state the purposes for which the Senate is to be convened and shall fix the date for the convening thereof, which may not be later than twenty days from the issuance of the proclamation. The proclamation shall be published in at least three daily newspapers of general circulation, and a copy of the proclamation shall be sent by registered or certified mail to each member of the Senate and the Lieutenant Governor. On the day set for the convening of the Senate, the Senate shall convene, shall receive the articles of impeachment when presented, and shall resolve into a court of impeachment for purposes of considering the articles of impeachment.

(e) Once the Senate resolves into a court of impeachment, it shall adopt rules of procedure and shall proceed to consider the articles of impeachment. It may from time to time recess or adjourn to a day and time to be set by the Senate. The Senate may designate the day and time of reconvening in relation to the occurrence of one or more events specified in the motion and may make the reconvening contingent on the occurrence of those events. At all times the Senate is scheduled to be in session as a court of impeachment it is the duty of each member of the Senate to be in attendance. The Senate may compel the attendance of any absent Senator. Two-thirds of the members of the Senate constitute a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members.

(f) The Senate shall have and exercise the power to send for persons, papers, records, books, and other documents, to compel the giving of testimony, to punish for contempt to the same extent as the

district courts, and to meet in closed sessions for purposes of deliberation, and all other powers necessary to carry out its duties under Article XV of the Texas Constitution. The Senate may employ such aid and assistance as it deems necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, process, and precepts of the Senate sitting as a court of impeachment and may empower its officers, committees, or agents to exercise such powers as the Senate may prescribe.

(g) When convened as a court of impeachment, the members of the Senate and the Lieutenant Governor shall receive the same mileage and per diem as is provided for members of the Legislature; the same with all expenses incident to the impeachment trial shall be paid from appropriations made for the contingent expenses of the Legislature or for the mileage and per diem of members. However, if the Senate is not in session as a court of impeachment for more than four consecutive days as a result of recess or adjournment, the members of the Senate and the Lieutenant Governor are not entitled to the per diem for those days.

[Amended by Acts 1977, 65th Leg., p. 84, ch. 41, § 1, eff. Aug. 29, 1977.]

Art. 5964. Removed by Address

The justices of the Supreme Court, judges of the Court of Criminal Appeals, justices of the Courts of Appeals, judges of the district courts and judges of the criminal district courts, the Commissioner of Agriculture, Commissioner of Insurance, and Banking Commissioner shall be removed from office by the Governor on the address of two-thirds of each house of the Legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, breach of trust, or other reasonable cause which shall not be sufficient ground for impeachment. The cause for such removal shall be stated at length in such address, and entered on the journals of each house. The officer so intended to be removed shall have notice of the cause assigned for his removal, and shall be admitted to a hearing in his own defense before any vote for such address shall be heard. The vote in all such cases shall be taken by yeas and nays and entered on the journals of each house respectively.

[Amended by Acts 1981, 67th Leg., p. 792, ch. 291, § 69, eff. Sept. 1, 1981.]

Art. 5966. Jurisdiction of Supreme Court

The Supreme Court shall have original jurisdiction to hear and determine the cases aforesaid when presented in writing, upon the oaths taken before some judge of a court of record, of not less than ten lawyers practicing in the courts held by such judge, and licensed to practice in the State of Texas. Such presentment shall be founded either upon the knowledge of the person making it, or upon the written oaths of credible witnesses as to facts. The Supreme Court may issue all needful process, and prescribe all needful rules to give effect to the preceding article. Such cases shall have precedence and be tried as soon as practicable.

[Amended by Acts 1981, 67th Leg., p. 792, ch. 291, § 70, eff. Sept. 1, 1981.]

Art. 5966a. State Commission on Judicial Conduct

"Commission", "Master", and "Judge"

Sec. 1. As used in this chapter, "commission" means the State Commission on Judicial Conduct provided for in Section 1–a of Article V of the Constitution, "master" means a special master appointed by the Supreme Court pursuant to said Section 1–a, and, unless the context otherwise requires, "judge" means a justice or judge who is the subject of an investigation or proceeding under said Section 1–a. All constitutional and statutory references to the State Judicial Qualifications Commission shall be construed to mean the State Commission on Judicial Conduct.

Application of Sunset Act

Sec. 1A. The State Judicial Qualifications Commission is subject to the Texas Sunset Act,[1] but it is not abolished under that Act. The commission shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1987 and of every 12th year after 1987 are reviewed.

[1] Article 5429k.

[See Compact Edition, Volume 5 for text of 2 and 3]

Cooperation With and Assistance and Information to Commission

Sec. 4. State and local public bodies and departments, officers and employees thereof, and officials and attaches of the courts of this state shall cooperate with and give reasonable assistance and information to the commission and any authorized representative thereof, or to a master, in connection with any investigations or proceedings within the jurisdiction of the commission, or a master, including contempt proceedings by a master.

[See Compact Edition, Volume 5 for text of 5 to 6A]

Willful or Persistent Conduct Inconsistent with Performance of Duties

Sec. 6B. A judge engages in willful or persistent conduct, which is clearly inconsistent with the proper performance of his said duties if he willfully, persistently, and without justifiable cause fails to execute the business of his court in a timely manner, considering the quantity and complexity of that business. This section shall not be construed as containing an exclusive definition of that which constitutes

a judge's willful or persistent conduct that is clearly inconsistent with the performance of his duties.

[See Compact Edition, Volume 5 for text of 7]

Petition for Order Compelling Person to Attend or Testify or Produce Writings or Things: Service of Order to Appear Before Court: Order to Appear Before Commission or Master: Contempt

Sec. 8. If any person other than the judge refuses to attend or testify or produce any writings or things required by any such subpoena, the commission or the master may petition any district court for an order, or the master may issue an order, compelling such person to attend and testify or produce the writings or things required by the subpoena before the commission or the master. The court or the master shall order such person to appear before it at a specified time and place and then and there show cause why he has not attended or testified or produced the writings or things as required. A copy of the order shall be served upon him. If it appears to the court or the master that the subpoena was regularly issued, the court or the master shall order such person to appear before the commission or the master at the time and place fixed in the order and testify or produce the required writings or things. Upon failure to obey the order, such person shall be dealt with as for contempt of court.

Depositions: Petition for Order Requiring Person to Appear and Testify Before Designated Officer: Subpoena

Sec. 9. In any pending investigation or formal proceeding, the commission or the master may order the deposition of a person residing within or without the State to be taken in such form and subject to such limitations as may be prescribed in the order. If the judge and counsel for the commission do not stipulate as to the manner of taking the deposition, either the judge or counsel may file in any district court a petition entitled "In the Matter of Proceeding of State Commission on Judicial Conduct No. ___ (state number)," and stating generally, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and, directions, if any, of the commission or master, asking that an order be made requiring such person to appear and testify before a designated officer. Upon the filing of the petition, the court may make an order requiring such person to appear and testify. A subpoena for such deposition shall be issued by the clerk and the deposition shall be taken and returned, in the manner prescribed by law for depositions in civil actions. If the deposition is that of a person residing or present within this state, the petition shall be filed in the district court of the county in which such person resides or is present, otherwise in the district court of any county in which the commission maintains an office. Upon the failure to obey such subpoena or any order issued in connection therewith, such a person shall be dealt with as for contempt of court.

Fees and Mileage of Witnesses

Sec. 10. Each witness, other than an officer or employee of the state or a political subdivision or an officer or employee of a court of this state, shall receive for his attendance the same mileage and per diem as is allowed witnesses before any grand jury in the state. The amounts shall be paid by the commission from funds appropriated for the use of the commission.

[See Compact Edition, Volume 5 for text of 11]

Compensation of Active or Retired Judge or Justice as Master

Sec. 12. Any active district judge or justice of the court of appeals appointed to act as master under said Section 1–a shall, in addition to and cumulative of all other compensation and expenses authorized by law, receive, while in the performance of his duties as master, a per diem of $25 for each day, or fraction thereof, spent in the performance of his duties as such master. Any retired judge or justice of a district court, a court of appeals, the Court of Criminal Appeals, or the Supreme Court appointed to act as such master shall receive while in the performance of his duties as such master a per diem of $25 for each day or fraction thereof spent in the performance of his duties as master and in addition an amount representing the difference between all of the retirement benefits of such judge or justice as a retired judge or justice and the salary and compensation received from the state by active judges or justices of the district courts, courts of appeals, the Court of Criminal Appeals, or the Supreme Court as the case might be. Such retirement allowances shall continue to be paid by and from the same source as in the instance of a retired judge who had not been assigned duties. Payments of the additional amounts provided for by this section shall be upon certificates of approval by the commission.

[See Compact Edition, Volume 5 for text of 13]

Immunity

Sec. 14. Any person other than the judge who refuses to testify, give testimony or produce documents or things in any proceeding or deposition in connection with any proceeding before the commission or a master upon the ground that his testifying, his testimony or the production of such document or thing may tend to incriminate him, may nevertheless be required to testify and to produce such document or thing, but when so required under the provisions of Section 8 hereof over his proper claim of privilege against self-incrimination or his right not to testify, such person shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testified or produced evidence, documentary or otherwise. A master has the same powers as a district judge in matters of contempt and granting immunity.

[See Compact Edition, Volume 5 for text of 15 and 16]

[Amended by Acts 1975, 64th Leg., p. 1380, ch. 529, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1118, ch. 416, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.132, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 792, ch. 291, § 71, eff. Sept. 1, 1981.]

Art. 5983. Appeal or Writ of Error

An appeal or writ of error to the Court of Appeals may be sued out by either party from the final judgment in these cases as in other civil cases. If the party has not been temporarily suspended from office, no other bond when an appeal is taken or writ of error sued out by him, shall be necessary than a bond for all the costs that have or may accrue in the district and Courts of Appeals.

[Amended by Acts 1981, 67th Leg., p. 793, ch. 291, § 72, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

Art. 5987. Precedence on Appeal

In these cases, an appeal may be taken or writ of error be made returnable to the Court of Appeals, and such cause shall have precedence of the ordinary business of the court and be decided with all convenient dispatch. When so decided, unless the judgment be for some cause set aside or suspended, the mandate of the court shall issue within five days after the judgment of the court is rendered.

[Amended by Acts 1981, 67th Leg., p. 793, ch. 291, § 73, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

Repealed by Acts 1981, 67th Leg., p. 346, ch. 135, § 13, eff. Sept. 1, 1981

See, now, Agriculture Code, § 13.253(c).

Art. 5996g. Exceptions

That nothing in this law shall apply to any appointment to the office of a notary public, or to the confirmation thereof; or to the appointment of a page, secretary, attendant or other employee by the Legislature for attendance on any member of the Legislature who, by reason of physical infirmities, is required to have a personal attendant; or to the confirmation of an appointee appointed to a first term on a date when no person related to the appointee within the prohibited degree was a member of or a candidate for the Legislature, or confirmation upon reappointment of the appointee to any subsequent consecutive term.

[Amended by Acts 1981, 67th Leg., p. 14, ch. 11, § 1, eff. March 11, 1981.]

Section 2 of the 1981 amendatory act provides:

"This Act applies to any confirmation that occurs on or after the effective date of this Act, regardless of the date of the appointment."

TITLE 101

OFFICIAL BONDS

Art. 6003b. State Employee Bonding Act

[See Compact Edition, Volume 5 for text of 1 and 2]

Sec. 3. For purposes of this Act the terms:

[See Compact Edition, Volume 5 for text of 3(a) to 3(e)]

(f) "Specific Excess Indemnity" means additional bond coverage over and above the coverage specified on a "Position Schedule Honesty Bond" an "Honesty Blanket Position Bond" or a "Faithful Performance Blanket Position Bond."

Bonding Agreements; Types of Bonds

Sec. 4.

[See Compact Edition, Volume 5 for text of 4(a)]

(b) Blanket Position Bond may be used when three (3) or more officers or employees in a particular agency are to be bonded. Specific excess indemnity may be carried, provided the total of the blanket bond coverage and the specific excess indemnity for any particular position does not exceed Ten Thousand Dollars ($10,000).

[See Compact Edition, Volume 5 for text of 5 to 7]

[Amended by Acts 1981, 67th Leg., p. 935, ch. 350, §§ 1, 2, eff. Aug. 31, 1981.]

TITLE 102

OIL AND GAS

GENERAL PROVISIONS

Repeal

This Title 102, with certain enumerated exceptions, was repealed by art. 1, § 2(a)(2) of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting the Natural Resources Code, effective September 1, 1977.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Arts. 6004 to 6006. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Arts. 6008 to 6008c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 6008 was amended by Acts 1977, 65th Leg., p. 1822, ch. 731, § 1.

Without reference to repeal of art. 6008–1, Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.062, added § 5a thereto to read:

"The office of Interstate Oil Compact Commissioner for Texas is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983."

Art. 6010. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Arts. 6012 to 6016. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Arts. 6018 to 6029a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, arts. 6018 and 6019 were amended by Acts 1977, 65th Leg., pp. 189, 191, ch. 95, §§ 1 and 2.

Prior to repeal, art. 6020a was amended by Acts 1975, 64th Leg., p. 2216, ch. 705, §§ 9 and 10.

Prior to repeal, arts. 6022 and 6023 were amended by Acts 1977, 65th Leg., pp. 191, 192, ch. 95, §§ 3 and 4.

Arts. 6030 to 6032. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 6032a. Collection and Report of Tax

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Arts. 6032b to 6032c–1. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 6032d. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(5), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Arts. 6032e to 6036a. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Art. 6036c. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Arts. 6038 to 6049g. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

NATURAL GAS

Art. 6050. Classification

Sec. 1. In this article, "person" means an individual, company, or private corporation, or their lessees,

trustees, and receivers. In Articles 6050–6066, Revised Civil Statutes of Texas, 1925, as amended, "gas utility," "public utility," or "utility" means a person owning, managing, operating, leasing or controlling within this State any pipe lines, plant, property, equipment, facility, franchise, license, or permit for either one or more of the following kinds of business:

(a) Transporting, conveying, distributing or delivering natural gas: (1) for public use or service for compensation; (2) for sale to municipalities or persons or companies, in those cases referred to in Subsection (c) hereof, engaged in distributing or selling natural gas to the public; (3) for sale or delivery of natural gas to any person operating under franchise or a contract with any municipality or other legal subdivision of this State; or, (4) for sale or delivery of natural gas to the public for domestic or other use.

(b) Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or is hereafter acquired by the exercise of the right of eminent domain.

(c) Producing or purchasing natural gas and transporting or causing the same to be transported by pipe lines to or near the limits of any municipality in which said gas is received and distributed or sold to the public by another public utility or by said municipality, in all cases where such business is in fact the only or practically exclusive agency of supply of natural gas to such utility or municipality, is hereby declared to be virtual monopoly and a business and calling affected with a public interest, and the said business and property employed therein within this State shall be subject to the provisions of this law and to the jurisdiction and regulation of the Commission as a gas utility.

(d) No person shall be deemed to be a "gas utility," "public utility," or "utility" solely because such person is an affiliate of such an entity.

(e) Every such gas utility is hereby declared to be affected with a public interest and subject to the jurisdiction, control and regulation of the Commission as provided herein.

Sec. 2. Provided, however, that the act or acts of transporting, delivering, selling or otherwise making available natural gas for fuel, either directly or indirectly, to the owners of irrigation wells or the sale, transportation or delivery of natural gas for any other direct use in agricultural activities shall not be construed within the terms of this law as constituting any person as a "gas utility," "public utility," or "utility" as hereinabove defined so as to make such person subject to the jurisdiction, control and regulation of the Commission as a gas utility.

Sec. 3. The natural gas made available under the provisions of this Act shall be used exclusively for pumping water for farm and other agricultural purposes in order for the person furnishing such natural gas to be exempt from the provisions of said Article 6050 of the Revised Civil Statutes of Texas of 1925. The provisions of this Act shall be considered only as cumulative of other laws and shall not have the effect of repealing or amending any substantive or statutory law except as herein specifically provided.

Sec. 4. (a) Except as provided by Section 1(b) of this article, the terms "gas utility," "public utility," and "utility" do not include a person who certifies to the Commission that the person transports natural or synthetic gas, whether for sale, for hire, or otherwise, solely from in or within the vicinity of the field or fields where produced:

(1) to a gas processing plant or treating facility, or from the outlet of such plant or treating facility to:

(A) a person at or within the vicinity of such plant or treating facility; or

(B) anyone described in (2) or (3);

(2) to another person for transportation or sale in interstate commerce; or

(3) to another person in or within the vicinity of the field or fields where produced for transportation or sale in intrastate commerce.

(b) A person who makes deliveries or sales for lease use, compressor fuel, processing plant fuel, or similar uses; deliveries or sales pursuant to lease or right-of-way agreements; or deliveries or sales in or within the vicinity of the field where produced or at a processing plant outlet does not become a "gas utility," "public utility," or "utility" by virtue of such transaction. However, the terms "gas utility," "public utility," and "utility" include a pipeline which transmits or distributes to other end users of gas, or which makes city-gate deliveries for local distribution, but does not include a person covered by Section 2 of this article.

[Amended by Acts 1979, 66th Leg., p. 473, ch. 216, § 1, eff. May 17, 1979; Acts 1981, 67th Leg., p. 2443, ch. 626, § 3, eff. Aug. 31, 1981.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6051. May Enjoin Gas Pipe Line

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6052. Utility Office

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6053. Regulation of Utilities

[See Compact Edition, Volume 5 for text of 1]

Submetering in Mobile Home Parks

Sec. 1a. Notwithstanding any law to the contrary, the commission shall promulgate rules, regulations, and standards under which any owner, operator, or manager of a mobile home park may purchase natural gas through a master meter for delivery from such master meter to mobile home units within the mobile home park through individual submeters at each mobile home unit. Such rules and regulations shall require (a) that the owner, operator, or manager of a mobile home park shall not deliver natural gas for sale or resale for profit and (b) that the mobile home park shall maintain adequate records in connection with such submetering and shall make the records available for inspection by the mobile home resident during reasonable business hours.

[See Compact Edition, Volume 5 for text of 2 to 19]

[Amended by Acts 1979, 66th Leg., p. 774, ch. 340, § 1, eff. June 6, 1979.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6053–1. Transportation of Gas and Gas Pipeline Facilities; Safety Standards

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6054. Orders, etc., Reviewed

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6055. To Refund Excess Charges

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6056. Operator's Reports

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6057. Discrimination

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6057a. Discrimination

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6057b. Penalty for Violation of Law

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6058. Appeal From City Control

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6059. Appeal From Orders

If any gas utility or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied utility or party may file a petition setting forth the particular cause of objection thereto in a court of competent jurisdiction in Travis County against the Commission as defendant. Said action shall be tried and determined as other civil causes in said court. Either party to said action may have the right of appeal; and said appeal shall be at once returnable to the appellate court, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending. If the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them.

[Amended by Acts 1981, 67th Leg., p. 2628, ch. 707, § 4(3), eff. Aug. 31, 1981.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6060. Utility Tax

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6061. Report to Governor

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6062. Penalties

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6063. Receiver

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6064. Duties of Pipe Line Expert

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6065. Employees of Commission

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6066. Expenditures

The salary and expenses of the expert and his assistant and the salaries, wages, fees, and expenses of every other person employed or appointed by the Commission under the provisions of this subdivision, and all other expenses, costs, and charges, including witness fees and mileage incurred by/or under authority of the Commission or a Commissioner in administering and enforcing the provisions of this subdivision or in exercising any power or authority hereunder, shall be paid out of the General Revenue Fund by the State Treasurer on warrants of the Comptroller on orders or vouchers approved by the Commission or Chairman thereof. The entire amount derived from the tax imposed by Article 6060, as amended, shall be deposited to the General Revenue Fund.

[Amended by Acts 1981, 67th Leg., p. 146, ch. 65, § 7, eff. Sept. 1, 1981.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Art. 6066a. Regulation of Transportation of Oil or Oil Products Thereof

[See Compact Edition, Volume 5 for text of 1 to 8]

Review of Rejection of Tender

Sec. 9. Whenever an application for a tender is rejected by an authorized agent of the Commission, it shall be the duty of such agent to return one copy of such application to the applicant endorsing thereon all the reasons for such rejection. Such applicant whose tender may be rejected shall have the right to appeal from any action of such agent by filing a petition in the District Court of Travis County, Texas, against the Commission, for a review of the ruling of such agent. The Court hearing such petition shall have the power to sustain, modify or overrule any action of such agent relative to a tender application and to issue such restraining orders or injunctions as the facts may warrant. It shall be the duty of the Clerk of the Court wherein such petition is filed to issue to the Commission a notice setting forth briefly the cause of action stated in such petition. But the Court shall not enter any order on any such petition until after a hearing thereon to be heard not less than five (5) days from the issuance of such notice. Any person whose application for tender is not acted on within twenty (20) days from the date of its filing shall have the right of appeal in the same manner above provided for appealing from a rejection of a tender application. Any person dissatisfied with the decision of the District Court may appeal to the Court of Appeals.

[See Compact Edition, Volume 5 for text of 10 to 13]

[Amended by Acts 1981, 67th Leg., p. 793, ch. 291, § 74, eff. Sept. 1, 1981.]

Saved from Repeal

This article was expressly saved from repeal by art. 1, § 2(b) of Acts 1977, 65th Leg., p. 2690, ch. 871, enacting the Natural Resources Code.

Section 149 of the 1981 amendatory act provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

Arts. 6066b to 6066d. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, art. 1, § 2(a)(2), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing these articles, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Prior to repeal, art. 6066d was amended by Acts 1977, 65th Leg., p. 1333, ch. 531, § 1.

Art. 6066e. Repealed by Acts 1979, 66th Leg., p. 2007, ch. 785, § 9, eff. June 13, 1979

The repealed article, derived from Acts 1977, 65th Leg., p. 971, ch. 366, related to underground natural gas storage and conservation.

See, now, Natural Resources Code, § 91.171 et seq.

Art. 6066f. Natural Gas Supplies for Agricultural Purposes

Except to the extent that natural gas supplies are required to maintain natural gas service to residential users or hospitals and similar uses vital to public health and safety, no person, firm, corporation, partnership, association, or cooperative which sells natural gas for irrigation and also sells and distributes natural gas within the limits of any municipality or delivers gas to the boundary of any municipality for resale in the municipality shall curtail the supply of natural gas for agricultural purposes, including but not limited to irrigation pumping and crop drying. [Acts 1977, 65th Leg., p. 2133, ch. 851, § 1, eff. Aug. 29, 1977.]

TITLE 103

PARKS

1. STATE PARKS BOARD

Article
6067d. Repealed.

Repeal

Enumerated articles of this Title 103 were repealed by § 2(a)(4) of Acts 1975, 64th Leg., p. 1804, ch. 545, enacting the Parks and Wildlife Code, effective September 1, 1975.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Parks and Wildlife Code.

Arts. 6067 to 6070b. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Prior to repeal, §§ 1 and 4 of art. 6067b were amended by Acts 1975, 64th Leg., p. 927, ch. 345, §§ 1 and 2.

Repealed art. 6067d, authorizing issuance of a State Parklands Passport to persons 65 years of age or over, was derived from Acts 1975, 64th Leg., p. 55, ch. 31.

Art. 6070c. Omitted

Acts 1931, 42nd Leg., p. 917, H.C.R. # 43, classified as art. 6070c, setting aside Goose Island for use as a State Park, has been omitted from West's Texas Statutes.

Arts. 6070d, 6070d–1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6070g, 6070h. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Prior to repeal, § 8 of art. 6070h was amended by Acts 1975, 64th Leg., p. 1129, ch. 428, § 1.

Art. 6071a to 6071c. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6077a–1 to 6077h–2. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6077j to 6077*l*. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6077m–1 to 6077n–1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Arts. 6077p to 6077u. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

5. COUNTY PARKS

Art. 6078. Repealed by Acts 1977, 65th Leg., p. 2034, ch. 812, § 1, eff. June 16, 1977

Art. 6079b. Repealed by Acts 1977, 65th Leg., p. 2034, ch. 812, § 1, eff. June 16, 1977

Art. 6079e. Counties of 5,000 or More

Applicability of Law

Sec. 1. The provisions of this Act shall apply to any county in this State having a population of five thousand (5,000) or more according to the last preceding Federal Census.

[See Compact Edition, Volume 5 for text of 2 to 20]

[Amended by Acts 1975, 64th Leg., p. 1883, ch. 596, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1070, ch. 500, § 1, eff. Aug. 27, 1979.]

7. RECREATIONAL AREAS, FACILITIES AND HISTORICAL SITES

Arts. 6081r to 6081s–1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing these articles, enacts the Parks and Wildlife Code.

Art. 6081t. Joint Establishment and Operation of Recreational Facilities

[See Compact Edition, Volume 5 for text of 1 and 2]

Sec. 2a. In connection with any facilities which may be provided, maintained, constructed, and operated pursuant to the provisions of this Act, the governmental units involved, operating within two or more adjacent counties, acting jointly and, if deemed by them advisable, under the supervision and management of any other duly established oper-

ating board or agency, may exercise such powers and functions and accomplish such purposes as are herein set forth or as are provided for in Articles 1269j–4.1 and 1180b of the Revised Civil Statutes of Texas including those with relation to the issuance of bonds. If acting jointly such governmental units may, by joint concurrent ordinances or resolutions, provide for the issuance of bonds and such other arrangements as deemed by them appropriate under their agreement.

[Amended by Acts 1975, 64th Leg., p. 1987, ch. 660, § 1, eff. June 19, 1975.]

TITLE 105

PARTNERSHIPS AND JOINT STOCK COMPANIES

CHAPTER ONE. PARTNERSHIPS

LIMITED PARTNERSHIPS

Art. 6132a. Uniform Limited Partnership Act

[See Compact Edition, Volume 5 for text of 1 and 2]

Persons Who May be General or Limited Partners

Sec. 2A. (a) In this section, "person" includes without limitation:

(1) A corporation;

(2) A general or limited partnership;

(3) A trustee or trust;

(4) An executor, administrator, or estate; and

(5) A natural person.

(b) Any person may be a general or limited partner unless the person lacks capacity apart from this Act.

[See Compact Edition, Volume 5 for text of 3 to 7]

Liability of Limited Partner

Sec. 8. (a) A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business, and then only to a person who transacts business with the partnership reasonably believing that the limited partner is a general partner.

(b) A limited partner does not take part in the control of the business by virtue of possessing or exercising a power to:

(1) Consult with and advise the general partners as to the conduct of the business.

(2) Act as a surety, guarantor, or endorser for obligations of the partnership or to provide collateral for its borrowing.

(3) Act as a contractor, agent, or employee of the partnership or of a general partner.

(4) Act as an officer, director, or shareholder of a corporate general partner.

(5) Approve, individually or by a majority of the limited partners (by number, financial interest, or as otherwise provided in the certificate), material matters that are stated in the certificate, such as:

(A) Dissolution and winding up of the partnership.

(B) Amendment of the partnership certificate or agreement.

(C) Sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the partnership other than in the ordinary course of business.

(D) Incurrence, renewal, or refinancing of a debt by the partnership other than in the ordinary course of business.

(c) The statement of the powers set forth in Subsection (b) of this section is not exclusive and does not indicate that any other power possessed or exercised by a limited partner is sufficient to cause the limited partner to be considered to take part in the control of the business within the meaning of Subsection (a) of this section.

(d) This section does not create rights of limited partners. Those rights may be created only by the certificate, partnership agreement, or other sections of this Act.

[See Compact Edition, Volume 5 for text of 9]

General Partners—Rights, Powers, Restrictions and Liabilities

Sec. 10.

[See Compact Edition, Volume 5 for text of 10(a)]

(b) This section does not prevent:

(1) The dissolution and winding up of the partnership:

(i) As provided in the certificate; or

(ii) Upon approval by any majority of the limited partners (by number, financial interest, or otherwise) as provided in the certificate;

(2) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all the assets of the partnership:

(i) In the ordinary course of the partnership business; or

(ii) If not in the ordinary course of the partnership business, upon approval by any majority of the limited partners (by number, financial interest, or otherwise) as provided in the certificate; or

(3) The amendment of the partnership agreement or certificate upon approval by any majority of the limited partners (by number, financial interest, or otherwise) as provided in the certificate.

[See Compact Edition, Volume 5 for text of 11 to 31]

Qualification of Foreign Limited Partnerships

Sec. 32. (a) Definition. "Foreign limited partnership" in this Act means a partnership formed under the limited partnership laws of any territory, possession, commonwealth, or state of the United States other than this state, having as members one or more general partners and one or more limited partners.

(b) Qualification. A foreign limited partnership may qualify to transact business in Texas by

(1) filing with the Secretary of State a copy of its certificate of limited partnership (or equivalent document) and all amendments thereto, with an original certification by the proper filing officer of the jurisdiction of its formation;

(2) filing with the Secretary of State a qualification statement containing:

(A) the name of the limited partnership, the jurisdiction of its formation, and the address of its principal place of business;

(B) the name and address of at least one of its general partners, who gives consent under Paragraph (C);

(C) a consent by the limited partnership and the named general partner(s) to be served with process in Texas through their registered agent in any proceeding for the enforcement of an obligation of the limited partnership;

(D) the address of the limited partnership's registered office in Texas;

(E) the name of the registered agent (either an individual or a corporation having as one of its purposes acting as a registered agent) for the limited partnership and for the named general partner(s) in Texas at such address; and

(F) the signature of the limited partnership and of the named general partner(s);

(3) paying a filing fee of one-half of one percent of the total contributions (including agreed additional contributions) of the limited partners stated in the copy of the certificate of limited partnership so filed, but not less than $100 nor more than $2500.

(c) Effect of Qualification. On qualifying under Section 32(b) of this Act, a foreign limited partnership shall enjoy the same rights and privileges, and shall be subject to the same duties, restrictions, and liabilities, as a limited partnership formed under this Act, but its internal affairs and the liabilities of its limited partners shall be governed by the laws of the jurisdiction of its formation.

(d) Amendments of Certificate. A qualified foreign limited partnership must amend its filings in Texas to reflect changes in its certificate of limited partnership (or equivalent document) by filing with the Secretary of State within a reasonable time after such changes have been effected a copy of the amendment with an original certification by the proper filing officer of the jurisdiction of its formation, and paying the following fees:

(1) for filing an amendment which does not provide for new, increased, or additional contributions, $100 and

(2) for filing an amendment which provides for new, increased, or additional contributions, one-half of one percent of the new, increased, or additional contributions, but not less than $100 nor more than $2500.

(e) Change of Registered Office or Agent or Named General Partner(s). (1) A qualified foreign limited partnership and the general partner(s) named in its qualification statement may change the registered office or the registered agent, or both, by filing with the Secretary of State a statement (signed by the partnership and the general partner(s) named in its qualification statement) designating the new office address or agent, and paying a fee of $10;

(2) A qualified foreign limited partnership may change the general partner(s) named in its qualification statement by filing with the Secretary of State a statement (signed by the partnership and by the general partner(s) who will thereafter be the named partner(s)) designating the named general partner(s) and containing his or their consent to be served with process in Texas through the limited partnership's registered agent in any proceeding for the enforcement of an obligation of the limited partnership, and paying a fee of $10.

(f) Termination of Qualification. A qualified foreign limited partnership may terminate its qualification by filing with the Secretary of State a statement that it terminates its qualification, and paying a fee of $25.

(g) Signatures on Filings. Except as otherwise provided, any statement filed under this Section 32 shall be signed by one of the general partners of the limited partnership or another person authorized to act on behalf of the limited partnership.

(h) Effect of Failure to File Amendments or Changes. Until changed by filing under Section 32(d), (e), or (f), a prior filing remains in effect.

(i) Forms. The Secretary of State shall have authority to promulgate and distribute forms for use under this Section 32.

(j) Service of Process. (1) The registered agent designated under Section 32(b) of this Act by a foreign limited partnership and a general partner(s) named in its qualification statement shall be an agent of the foreign limited partnership and such general partner(s) upon whom any process, notice, or demand required or permitted by law to be served upon the foreign limited partnership and/or such general partner(s) may be served.

(2) Nothing herein shall limit or affect the right to serve any process, notice, or demand under Chapter 43, Acts of the 56th Legislature, Regular Session, 1959 (Articles 2031b and 2033, Vernon's Texas Civil Statutes), or in any other manner now or hereafter permitted by law.

(k) No Inference from this Section. This section shall not give rise to an inference as to the law governing:

(1) a foreign limited partnership before the effective date of this section, or

(2) a foreign limited partnership after the effective date of this section, which does not qualify hereunder.

Powers of Attorney

Sec. 33. A certificate of limited partnership or any other document required or permitted by this Act may be signed and sworn to by a limited partner in person or through an attorney in fact, who may, but need not, be a member of the limited partnership. A general partner who is a corporation may act as an attorney in fact for purposes of this Act.

[Amended by Acts 1977, 65th Leg., p. 1107, ch. 408, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 1781, ch. 723, §§ 1 to 4, eff. Aug. 27, 1979.]

PARTNERSHIPS

Art. 6132b. Texas Uniform Partnership Act

[See Compact Edition, Volume 5 for text of 1 to 5]

PART II. NATURE OF A PARTNERSHIP

[See Compact Edition, Volume 5 for text of 6]

Persons Who May be Partners

Sec. 6–A.

(1) In this section, "person" includes without limitation:

(a) A corporation;

(b) A general or limited partnership;

(c) A trustee or trust;

(d) An executor, administrator, or estate; and

(e) A natural person.

(2) Any person may be a partner unless the person lacks capacity apart from this Act.

[See Compact Edition, Volume 5 for text of 7 to 46]

[Amended by Acts 1979, 66th Leg., p. 1782, ch. 723, § 5, eff. Aug. 27, 1979.]

TITLE 106

PATRIOTISM AND THE FLAG

Article
6143d. State Plays.
6145–2a. Battleship Texas Commission.
6145–11. Texas 1986 Sesquicentennial Commission.
6145–11a. Sesquicentennial Commemorative Medals.
6145–12. Inauguration of Governor and Lieutenant Governor.

Art. 6142a. Clarifying Description of Texas Flag

[See Compact Edition, Volume 5 for text of 1 to 5]

Rules Governing the Use of the Texas Flag

Sec. 6. When the Texas Flag is displayed out-of-doors, it should be on either a flagpole or a staff, and the staff should be at least two and one-half times as long as the Flag. The Flag is always attached at the spearhead end of the staff, and the heading must be made of material strong enough to protect the Colors.

The Texas Flag should not be displayed outdoors earlier than sunrise nor later than sunset. However, when a patriotic effect is desired, the Texas Flag may be displayed 24 hours a day if properly illuminated during the hours of darkness, or under the same circumstances as the Flag of the United States of America may be displayed.

The Texas Flag should not be displayed on days when the weather is inclement, unless a weather-proof flag is displayed.

The Texas Flag should be displayed on all State Memorial Days and on special occasions of historical significance.

Every school in Texas should fly the Texas Flag on all regular school days. This courtesy is due to the Lone Star Flag of Texas.

The Texas Flag should always be hoisted briskly, and furled slowly with appropriate ceremonies.

The Texas Flag should not be fastened in such a manner that it can be torn easily.

When the Texas Flag is flown from a flagpole or staff, the white stripe should always be at the top of the Flag, except in cases of distress, and the red stripe should be directly underneath the white.

The Texas Flag should be on the marching left when it is carried in a procession in which the Flag of the United States of America is unfurled.

The Texas Flag should be on the left of the Flag of the United States of America, and its staff should be behind the staff of the Flag of the United States of America when the two are displayed against a wall from crossed staffs.

When the Texas Flag is flown on a flagpole adjacent to the flagpole on which the Flag of the United States of America is flown, it should be unfurled after the Flag of the United States of America, and it should be displayed at the left of the Flag of the United States of America.

When the Texas Flag and the Flag of the United States of America are displayed at the same time, they should be flown on separate flagpoles of equal length, and the Flags should be approximately the same size. However, when it is necessary for the Texas Flag and the Flag of the United States of America to be flown from the same halyard, the Texas Flag must be beneath the Flag of the United States of America.

When the Texas Flag is flown from a window-sill, balcony, or front of a building, and flat against the wall, it should be on a staff, and the blue field should be at the observer's left.

When the Texas Flag and the Flag of the United States of America are displayed on a speaker's platform at the same time, the Texas Flag should be on the left side of the speaker, while the Flag of the United States of America is on the right side of the speaker.

The Texas Flag should never be used to cover a platform or speaker's desk, nor to drape over the front of a speaker's platform.

When the Texas Flag is displayed flat on the wall of a platform, it should be above the speaker, and the blue field must always be at the Flag's right.

When the Texas Flag is displayed on a motor car, the staff should be fastened firmly to the chassis of the car, or clamped firmly to the right fender, unless the Flag of the United States of America is flown on the right fender, in which case the Texas Flag should be so displayed on the left fender.

When the Texas Flag is displayed on a float in a parade, it should always be attached securely to a staff.

The Texas Flag should not be allowed to touch the ground or the floor, nor to trail in water.

The Texas Flag should not be draped over the hood, top, sides, or back of any vehicle, or of a railroad train, boat, or aircraft.

The Texas Flag should not be used as a covering for a ceiling.

The Texas Flag should not be used as any portion of a costume or athletic uniform.

The Texas Flag should not be embroidered upon cushions or handkerchiefs, nor printed on paper napkins or boxes.

The Texas Flag must not be treated disrespectfully by having printing or lettering of any kind placed upon it.

The Texas Flag should not be used in any form of advertising, and, under no circumstances, may advertisements of any kind be attached to the flagpole or staff.

It is disrespectful to the Texas Flag to use it for purposes of decoration, either as a covering for automobiles or floats in a parade, or for draping speakers' platforms or stands, or for any other similar purpose of decoration. For such purposes of decoration the colors of the Flag may be used in bunting or other cloth.

The Texas Flag should, whenever practicable, not be carried flat or horizontally, but always aloft and free, as it is carried in a parade.

The Texas Flag is flown at half-mast by first raising it to the top of the flagpole, and then slowly lowering it to a position one-half of the distance down the flagpole, and there leaving it during the time it is to be displayed. In taking the Flag down, it should first be raised to the top of the flagpole, and then slowly lowered with appropriate ceremony.

The Texas Flag should not be displayed, used, nor stored in such a manner that it can be easily soiled or otherwise damaged.

When the Texas Flag is in such condition of repair that it is no longer a suitable Emblem for displaying, it should be totally destroyed, preferably by burning, and that privately; or this should be done by some other method in keeping with the spirit of respect and reverence which all Texans owe the Emblem which represents the Lone Star State of Texas.
[Amended by Acts 1977, 65th Leg., p. 728, ch. 272, § 1, eff. Aug. 29, 1977.]

Art. 6143d. State Plays

Sec. 1. The legislature finds that:

(1) the historic battles of San Jacinto, Goliad, and the Alamo that led to the independence of Texas are portrayed faithfully and artistically at Galveston Island State Park in the play, *The Lone Star*;

(2) the lives of early settlers of the Panhandle of Texas are portrayed colorfully and creatively each year at the Palo Duro Canyon State Park in the play, *Texas*;

(3) the relationship between early settlers of East Texas, especially General Sam Houston and the Alabama-Coushatta Indians, is portrayed historically and excitingly at the Alabama-Coushatta Indian Reservation in the play, *Beyond the Sundown*; and

(4) the founding of Fort Griffin and the lives of the settlers of Shackelford County and Albany, Texas, during the 1870s and 1880s are depicted during the last two weeks in June annually in Shackelford County in the play, *Fandangle*.

Sec. 2. *The Lone Star* presented in Galveston Island State Park, *Texas* presented in the Palo Duro Canyon State Park, *Beyond the Sundown* presented at the Alabama-Coushatta Indian Reservation, and *Fandangle* presented in Shackelford County are designated official plays of the State of Texas.
[Acts 1979, 66th Leg., p. 711, ch. 310, §§ 1, 2, eff. Aug. 27, 1979.]

Art. 6144f. Texas Tourist Development Agency

Texas Tourist Development Board

Sec. 1.

[See Compact Edition, Volume 5 for text of 1(a) to (e)]

(f) The Texas Tourist Development Agency is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the agency is abolished, and this Act expires effective September 1, 1989.

[1] Article 5429k.

[See Compact Edition, Volume 5 for text of 2 to 4]

[Amended by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.165, eff. Aug. 29, 1977.]

Art. 6144g. Commission on the Arts and Humanities

Creation and Establishment of Commission; Membership

Sec. 1. The Texas Commission on the Arts is established. The Commission shall consist of eighteen (18) members representing all fields of the arts, to be appointed by the Governor with the advice and consent of the Senate from among private individuals who are widely known for their professional competence and experience in connection with the arts.

Application of Sunset Act

Sec. 1a. The Texas Commission on the Arts is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

[1] Article 5429k.

Name Change

Sec. 1b. (a) The name of the Texas Commission on the Arts and Humanities, formerly the Texas Fine Arts Commission, is changed to the Texas Commission on the Arts.

(b) A reference in a statute to the Texas Commission on the Arts and Humanities or the Texas Fine Arts Commission means the Texas Commission on the Arts.

[See Compact Edition, Volume 5 for text of 2]

Duties and Responsibilities

Sec. 3. The duties and responsibilities of the Commission shall be:

a. To foster the development of a receptive climate for the arts that will culturally enrich and benefit the citizens of Texas in their daily lives, to make Texas visits and vacations all the more appealing to the world and to attract to Texas residency additional outstanding creators in the fields of the arts through appropriate programs of publicity and education, and to direct other activities such as the sponsorship of lectures and exhibitions and central compilation and dissemination of information on the progress of the arts in Texas.

b. To act as an advisor to the State Board of Control, Texas Historical Commission, Texas State Library, Texas Tourist Development Agency, State Department of Highways and Public Transportation and other state agencies to provide a concentrated state effort in encouraging and developing an appreciation for the arts in Texas.

c. To act in an advisory capacity relative to the creation, acquisition, construction, erection or remodeling by the state of any work of art.

d. To act in an advisory capacity, when requested by the Governor, relative to the artistic character of buildings constructed, erected or remodeled by the state.

Powers

Sec. 4. The Commission shall have power:

a. To elect from its members a chairman and other such officers as may be desirable; provided that the first chairman of the Commission shall be named by the Governor and shall call the first meeting of the Commission and serve as such until his successor shall be elected by the Commission.

b. To hold such meetings, at such places within the State of Texas and at such times as the Commission may designate.

c. To conduct research, investigations, and inquiries as may be necessary so as to inform the Commission of the development of the arts in Texas.

d. To appoint committees from its membership and prescribe their duties.

e. To appoint consultants to the Commission.

f. To make rules and regulations for its government and that of its officers and committees; and to prescribe the duties of its officers, consultants, and employees.

g. To employ a director and other such clerical employees as it may deem necessary within the limits of funds made available for such purposes.

Donations; Appropriations; Audit of Funds

Sec. 5. The Commission may accept on behalf of Texas such donations of money, property, art objects and historical relics as in its discretion shall best further the orderly development of the artistic resources of Texas. Appropriations may be made by the Legislature to the Commission to carry out the purposes of this Act. All funds shall be subject to audit by the State Auditor.

[See Compact Edition, Volume 5 for text of 6 and 7]

Abolition of Board of Mansion Supervisors

Sec. 8. The Board of Mansion Supervisors is hereby abolished and all powers, duties and authority heretofore vested in the Board of Mansion Supervisors are hereby transferred to the Texas Commission on the Arts provided for herein. The terms of office of the present members of the Board of Mansion Supervisors are hereby terminated.

[Amended by Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.080, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 380, ch. 173, § 1, eff. May 15, 1979.]

Art. 6145. Texas Historical Commission

[See Compact Edition, Volume 5 for text of 1 and 1a]

Application of Sunset Act

Sec. 1b. The Texas Historical Commission is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

[1] Article 5429k.

[See Compact Edition, Volume 5 for text of 2 to 11]

State Historical Marker Program; Register; Review; Approval; Designation as Official State Markers; Damage

Sec. 12.

[See Compact Edition, Volume 5 for text of 12(1)]

(2) No person may damage the historical or architectural integrity of any structure which has been designated by the Commission as a Recorded Texas Historic Landmark, without first giving 60 days' notice to the Texas Historical Commission. After receipt of notice, the Commission may waive the waiting period or, if the Commission determines that a longer period will enhance chances for preservation, it may require an additional waiting period of not more than 30 days. Upon the expiration of the time limits imposed by this section, the person may proceed, but must proceed within 180 days of the expiration of the time the notice was given or the notice shall be deemed to have expired.

(3) Nothing in this Act shall give the Commission the authority to review or determine the placement or location of any object within or on a Recorded Texas Historic Landmark which placement or location results in no substantial structural damage or change.

[See Compact Edition, Volume 5 for text of 13 to 15]

Significant Structures; Matching Grants

Sec. 15A. The commission is authorized to provide matching grants to assist the preservation of structures significant in Texas or American history, architecture, archeology, or culture if the structures:

(1) are included on the National Register of Historic Places; or

(2) are designated as Recorded Texas Historic Landmarks; or

(3) are determined by the commission to qualify as eligible property under criteria for inclusion on the National Register of Historic Places or for designation as a Recorded Texas Historic Landmark; or

(4) are certified by the commission to other agencies of the State of Texas as worthy of preservation.

[See Compact Edition, Volume 5 for text of 16]

Grants to Museums Honoring Fire Fighters

Sec. 16A. The Commission may make grants of funds given or appropriated to it for that purpose to museums honoring fire fighters and their work. This authorization shall extend to August 31, 1983.

Small History Museums; Matching Grants

Sec. 16B. The commission may provide matching grants for the purpose of preserving collections of small history museums in the state if the collections are significant in Texas or American history, architecture, archeology, or culture.

[See Compact Edition, Volume 5 for text of 17 to 23]

Penalty for Violation of Act

Sec. 24. A person who violates this Act is subject to a civil penalty of not less than $50 nor more than $1,000 for each day of violation.

Filing Suit; Venue

Sec. 25. The attorney general or any resident of this state may file suit in the district court to restrain and enjoin any violation or threatened violation of this Act, to recover on behalf of the state a civil penalty provided in this Act, or for both injunctive relief and a civil penalty. Venue of a suit filed as provided in this section is in either Travis County or the county in which the activity sought to be restrained or penalized is alleged to have occurred, be occurring, or be about to occur.

Costs of Litigation

Sec. 26. In issuing a final order in an action brought as provided in Section 25 of this Act, the court may award costs of litigation, including reasonable attorney's and expert witness' fees.

[Amended by Acts 1975, 64th Leg., p. 1023, ch. 391, §§ 1, 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1759, ch. 707, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.083, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1044, ch. 474, § 1, eff. June 7, 1979; Acts 1981, 67th Leg., p. 162, ch. 72, § 1, eff. April 30, 1981.]

Art. 6145.1. County Historical Commission

(a) The Commissioners Court of each county may appoint a County Historical Commission to consist of at least seven residents of the county for the purpose of initiating and conducting such programs as may be suggested by the Commissioners Court and the Texas Historical Commission for the preservation of the historical heritage of the county. The members of the commission shall be appointed during the month of January of odd-numbered years and shall serve for a term of two years. Should the Commissioners Court fail to appoint a commission by April 1 of each odd-numbered year, the Texas Historical Commission may appoint such commission upon 30 days written notice to the Commissioners Court of its intention to do so.

(b) Each County Historical Commission shall meet at least once each year at its county seat and may meet as often as each commission may determine under rules and regulations adopted by it for its own regulation. Each commission shall make an annual report of its activities and recommendations simultaneously to its Commissioners Court and to the Texas Historical Commission before the end of each calendar year and may make as many other reports and recommendations as it sees fit.

(c) Each commission shall institute and carry out a continuing survey of the county to determine the existence of historical buildings and other historical sites, private collections of historical memorabilia, or other historical features within the county, and shall report the data collected to the Commissioners Court and the Texas Historical Commission.

(d) The Commissioners Court may pay the necessary expenses of the commission and may authorize a car allowance and pay the necessary traveling expenses of the chairman and members of the commission.

(e) The commission shall make recommendations to the Commissioners Court and the Texas Historical Commission concerning the acquisition of property, real or personal, which is of historical significance.

(f) The commission may operate and manage any museum which may be owned or leased by the county, and may acquire artifacts and other museum paraphernalia in the name of the museum or the commission, and may supervise any employees hired by the Commissioners Court to operate the museum.

(g) In addition to the powers already conferred on it by law, the Commissioners Court of each county of this state may appropriate funds from the general fund of the county for the purpose of:

(1) erecting historical markers, monuments, and medallions;

(2) purchasing objects and collections of objects of any kind which are historically significant to the county; and

(3) preparing, publishing, and disseminating, by sale or otherwise, a history of the county.

(h) Furthermore, in addition to the powers already conferred on it by law, the commissioners court of each county of this state may, upon recommendation of the county historical commission or other interested persons, enter into a contract or contracts with private persons or entities for the lease or management of any county-owned real estate or structure which shall have been designated by the Texas Historical Commission as a Recorded Texas Historic Landmark deemed worthy of preservation because of its history, culture, or architecture or a combination thereof. Any such contract or lease shall be drawn in consultation with the County Historical Commission and shall specify duties and obligations of the lessee, including but not limited to maintenance, repairs, provision for public access, restrictions on inappropriate commercial uses, and any other provision designed to further the preservation of historic, cultural, or architectural aspects of the landmark. Such contracts or leases may be handled in the same manner as contracts for professional services rendered to a county, such as those provided for architectural or engineering services if such contract is with a nonprofit organization chartered in Texas; provided, however, that any such contract or lease may be for a period of years at the discretion of the commissioners court.

[Amended by Acts 1975, 64th Leg., p. 114, ch. 52, § 1, eff. April 18, 1975; Acts 1981, 67th Leg., p. 910, ch. 326, § 1, eff. Aug. 31, 1981.]

Section 2 of the 1975 amendatory act provided:

"County historical survey committees in existence on the effective date of this amendatory Act become county historical commissions as if the members were appointed under Chapter 152, Acts of the 58th Legislature, 1963, as amended by this Act (Article 6145.1, Vernon's Texas Civil Statutes). If the terms of any members expire before January, 1977, the commissioners court shall appoint successors to serve until new appointments are made in January, 1977. Members may be appointed to succeed themselves."

Art. 6145–1. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

Art. 6145–2. Expired

This article expired on September 1, 1979, under the terms of § 2a, which was added by Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.006 (the Sunset Act). Prior to expiration, this article was amended by Acts 1977, 65th Leg., p. 810, ch. 302, §§ 1 to 5; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.006.

Art. 6145–2a. Battleship Texas Commission

Commission

Sec. 1. The Battleship Texas Commission is established.

Members

Sec. 2. (a) The commission is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) Members must have the following qualifications:

(1) two members must be representatives of the general public;

(2) one member must be a member of the Sons of the Republic of Texas;

(3) one member must be a member of the Daughters of the Republic of Texas;

(4) one member must be a member of the Texas State Historical Association;

(5) one member must be a member of the Navy League of the United States;

(6) one member must be a member of the Disabled American Veterans;

(7) one member must be a member of the American Legion; and

(8) one member must be a member of the Veterans of Foreign Wars of the United States.

(c) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the commission or serve as a member of the commission.

Terms

Sec. 3. Members of the commission hold office for staggered terms of six years with three members' terms expiring February 1 of each odd-numbered year.

Officers

Sec. 4. The governor shall designate a chairman and a vice-chairman of the commission from its members. A member holds the position of chairman or vice-chairman for a term of two years expiring February 1 of each odd-numbered year.

Meetings

Sec. 5. The commission shall meet on the first Thursday of each month. The commission may meet at other times at the call of the chairman.

Expenses

Sec. 6. A member of the commission may not receive compensation for service on the commission. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the commission.

Executive Director; Staff

Sec. 7. (a) The commission shall employ an executive director as the executive head of the commission.

(b) The executive director shall employ persons necessary for the commission to perform its functions.

(c) The commission may contract with independent contractors as the commission considers necessary for it to carry out its functions.

Operating Board

Sec. 8. (a) The commission shall appoint three of its members to serve as an operating board to the commission.

(b) The commission may delegate to the operating board authority to carry out, in the name of the commission, any function of the commission.

(c) The operating board shall act as a coordinating and liaison group between the commission and the Parks and Wildlife Department.

Functions

Sec. 9. The commission shall:

(1) provide a proper berth for the Battleship "Texas" adjacent to or on the San Jacinto Battleground;

(2) prepare the battleship for visits by the public;

(3) determine and charge a reasonable fee for admission of the public to the battleship;

(4) maintain and operate the battleship as a permanent exhibition in memory of the heroic participation of citizens of this state in World Wars I and II;

(5) allocate the funds appropriated to the commission to carry out its functions; and

(6) make concession contracts with the highest bidders for the sale of merchandise to visitors to the battleship.

Records

Sec. 10. The commission shall maintain books of account and records about all revenue received by the commission and about all expenses incurred by the commission in performing its functions.

Preference for Texas Materials

Sec. 11. Any materials used to maintain or operate the battleship shall be, as far as practicable, materials produced in this state.

Seal

Sec. 12. The commission shall adopt a seal bearing the words "State of Texas—Battleship Texas Commission" encircled by oak and olive branches.

Gifts and Grants

Sec. 13. The commission may accept gifts or grants from any source to be used to carry out the commission's functions. Money received as a gift or grant shall be deposited in the operating expense fund or the major repairs fund created under Section 14 of this Act and may be used only for the purposes for which those funds are created.

Disposition of Funds

Sec. 14. (a) Fees and concession revenues collected by the commission shall be deposited in the State Treasury to the credit of a special fund to be known as the Battleship Texas operating expense fund and may be used only for the general operating expenses of the commission. The fees and concession revenues shall be deposited in the State Treasury on the first business day following the day on which the collected fees and revenues total more than $100.

(b) At the end of each state fiscal year, the comptroller of public accounts shall determine if the amount of money in the operating expense fund exceeds the amount of money appropriated from the fund for the next fiscal year. The comptroller shall transfer the excess money to a special fund in the State Treasury to be known as the Battleship Texas major repairs fund. The money in the major repairs fund may be used only for major repairs to the battleship.

Prohibited Acts

Sec. 15. (a) A member of the commission may not charge, receive, or obtain any fee, commission, retainer, or brokerage from the funds appropriated to the commission.

(b) A member may not have any interest in any land, materials, concessions, or contracts sold to or made with the commission or the operating board.

(c) A member who knowingly or intentionally violates Subsection (a) or (b) of this section commits an offense. An offense under this subsection is a Class B misdemeanor.

Application of Sunset Act

Sec. 16. The commission is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the commission is abolished and this Act expires September 1, 1993.

Transfer of Battleship and Records

Sec. 17. The custody and control of the Battleship "Texas" and records relating to the battleship are transferred from the State Purchasing and General Services Commission to the Battleship Texas Commission.

[Acts 1981, 67th Leg., p. 527, ch. 216, §§ 1 to 17, eff. Sept. 1, 1981.]

Art. 6145–3. Expired

This article expired on September 1, 1979, under the terms of § 1a, which was added by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.003 (the Sunset Act).

Art. 6145–7. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Without reference to repeal of this article, Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.086, added § 1a thereto reading:

"The Texas Conservation Foundation is subject to the Texas Sunset Act [art. 5429k]; and unless continued as provided by that Act the foundation is abolished, and this Act expires effective September 1, 1985."

Art. 6145–9. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Without reference to repeal of this article, Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.079, added § 3a thereto reading:

"The Antiquities Committee is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1983."

Art. 6145–10. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Without reference to repeal of this article, Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.081, added § 1a thereto reading:

"The Texas Historical Resources Development Council is subject to the Texas Sunset Act [art. 5429k]; and unless continued in existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1983."

Art. 6145–11. Texas 1986 Sesquicentennial Commission

Text of article effective until September 1, 1987

Commission

Sec. 1. The Texas 1986 Sesquicentennial Commission is established.

Membership

Sec. 2. (a) The commission is composed of nine members appointed by the governor with the advice and consent of the senate, three members appointed by the speaker of the house of representatives, three members appointed by the lieutenant governor, and eleven ex officio members. Each member is a voting member. The duties performed by each state officer or employee appointed to the commission or serving ex officio are additional duties of the person's other office or employment.

(b) The members appointed by the governor must be representative of the general public to insure minority representation. The members appointed by the speaker must be, at the time of their appointments, members of the house of representatives. The members appointed by the lieutenant governor must be, at the time of their appointments, members of the senate. The ex officio members are the executive heads of the Texas Tourist Development Agency, Texas Historical Commission, Texas Commission on the Arts, Texas Film Commission, Texas State Library and Historical Commission, Texas State Historical Association, East Texas Historical Association, and Panhandle-Plains Historical Museum, the director of the division of the State Department of Highways and Public Transportation that disseminates travel information about the state, the director of the Institute of Texan Cultures, and the executive vice-president/general manager of the State Fair of Texas.

(c) A member appointed by the speaker or the lieutenant governor vacates his or her position on the commission if he or she ceases to be a member of the house from which he or she is appointed.

(d) A vacant position on the commission is filled for the unexpired portion of the term in the same manner by which the position was originally filled.

(e) An ex officio member may designate a representative to serve in the member's absence. A designated representative must be an officer or employee of the member's agency or organization. The designated representative has all the powers and duties of the ex officio member.

Terms

Sec. 3. (a) Appointed members hold office for staggered terms of six years with the terms of three of the governor's appointees, one of the speaker's appointees, and one of the lieutenant governor's appointees expiring on January 31 of each odd-numbered year.

(b) In making the initial appointments, the governor shall designate three appointees for terms expiring on January 31, 1981, three for terms expiring on January 31, 1983, and three for terms expiring on January 31, 1985. In making initial appointments, the speaker shall designate one appointee for a term expiring on January 31, 1981, one for a term expiring on January 31, 1983, and one for a term expiring on January 31, 1985. In making initial appointments, the lieutenant governor shall designate one appointee for a term expiring on January 31, 1981, one for a term expiring on January 31, 1983, and one for a term expiring on January 31, 1985.

Officers; Meetings; Quorum

Sec. 4. (a) The chairman of the commission is appointed by the governor from its members. The chairman serves in that capacity at the will of the governor. If the chairman is absent from a meeting or is disabled, the members of the commission present at the meeting shall elect a temporary chairman by majority vote.

(b) The commission shall meet at least quarterly each year. The commission may meet at other times at the call of the chairman or as provided by commission rule.

(c) Fourteen members of the commission constitute a quorum.

Expenses

Sec. 5. (a) A member is entitled to reimbursement for actual and necessary expenses incurred in performing his or her functions as a member of the commission. An ex officio member's designated representative is entitled to reimbursement in the same manner as the ex officio member for whom the representative serves.

(b) A member appointed by the speaker or the lieutenant governor is to be reimbursed from the appropriate fund of the member's house of the legislature. The executive vice-president/general manager of the State Fair of Texas, the executive heads of the Texas State Historical Association, East Texas Historical Association, and members appointed by the governor are to be reimbursed from the commission's funds. Other ex officio members are to be reimbursed from the funds of the state agency or institution from which the member serves.

Executive Director; Staff

Sec. 6. (a) The commission may employ an executive director who is the executive head of the commission and performs its administrative functions.

(b) The executive director may employ staff members necessary to administer the functions of the commission.

Duties

Sec. 7. The commission shall:

(1) encourage individuals, private organizations, and local governmental bodies to organize activities celebrating the state's sesquicentennial;

(2) help individuals, private organizations, and local governmental bodies that organize sesquicentennial activities to coordinate the activities;

(3) gather and disseminate information to the general public about sesquicentennial activities conducted in the state;

(4) develop standards for sesquicentennial activities organized by individuals, private organizations, and local governmental bodies and sanction activities that comply with the standards;

(5) invite national and international dignitaries to attend sesquicentennial activities conducted in the state;

(6) encourage persons living outside the state to attend sesquicentennial activities conducted in the state;

(7) develop a logo to be used by the commission and permit other persons to use the logo if the commission considers the use appropriate; and

(8) sanction products, such as a commemorative calendar or flag, commemorating the state's sesquicentennial.

Report

Sec. 8. Before September 1, 1987, the commission shall file a report with the governor and the legislature containing information about the effects of the sesquicentennial activities conducted in the state on the state's economy.

Donations; Grants

Sec. 9. The commission may accept, on behalf of the state, donations or grants from any source to be used by the commission to perform its functions.

Construction of State Museum

Sec. 9A. (a) The commission may begin the planning for a state museum of the finest quality to be known as the Texas Sesquicentennial Museum.

(b) The museum shall be located in the city of Austin on state-owned land. The museum shall be a general-purpose museum with special emphasis on preserving the history and heritage of Texas and displaying the fine arts.

(c) The Texas Sesquicentennial Museum Board shall complete the planning and shall design and construct the museum with the assistance of the State Purchasing and General Services Commission.

(d) The Texas Sesquicentennial Museum Board may accept donations of appropriate items of significance for permanent or temporary display in the museum.

Operation of State Museum

Sec. 9B. (a) The Texas Sesquicentennial Museum Board is established. The board consists of nine members appointed by the governor with the advice and consent of the senate.

(b) Members of the board hold office for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year.

(c) A majority of the board constitutes a quorum.

(d) The governor shall designate one of the members of the board to serve as chairperson for a term of two years expiring on January 31 of each odd-numbered year.

(e) The board shall meet at least once each calendar quarter and may meet at other times at the call of the chairperson or as provided by rules the board may adopt.

(f) A member of the board may not receive compensation for serving on the board, but is entitled to reimbursement of actual and necessary expenses, as provided by legislative appropriation, incurred in the performance of official duties.

(g) The board may employ an executive director who shall administer operation of the museum as directed by the board.

(h) The director may employ professional, clerical, and other personnel to assist the director in the performance of the director's duties as approved by the board.

(i) The board may contract with The University of Texas at Austin for the operation of the museum.

(j) Any institution of higher education may use the resources of the museum in the furtherance of the diffusion of knowledge under appropriate guidelines approved by the board.

Sesquicentennial Museum Fund

Sec. 9C. (a) The sesquicentennial museum fund is established in the state treasury.

(b) The sesquicentennial museum fund may be used only for the planning and design of the Texas Sesquicentennial Museum, except that beginning September 1, 1983, the sesquicentennial museum fund may also be used for the construction, equipping, and furnishing of the Texas Sesquicentennial Museum.

(c) On the completion of the sesquicentennial museum, the Texas Sesquicentennial Museum Board shall certify to the state treasurer that the museum is completed. On receiving the certification, the state treasurer shall invest any money remaining to the credit of the sesquicentennial museum fund as a permanent endowment for the operation of the museum. Only the interest earned on the fund may be used for the operation of the museum.

(d) On or before January 31, 1983, the board shall submit a report to the 68th Legislature that must include: (1) architectural plans for the museum's

construction; (2) a detailed estimate of the projected costs of the construction, equipping, and furnishing of the museum; and (3) an analysis of the impact of the museum's construction on other historical museums in the state.

Rules

Sec. 10. The commission may adopt rules necessary for it to perform its functions.

Abolition and Expiration

Sec. 11. The commission is abolished and this Act expires effective September 1, 1987.

[Acts 1979, 66th Leg., p. 154, ch. 84, §§ 1 to 11, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 2448, ch. 630, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2553, ch. 680, §§ 1 to 3, eff. June 16, 1981.]

Section 4 of Acts 1981, 67th Leg., p. 2450, ch. 630, provides:

"In making the initial appointments to the Texas Sesquicentennial Museum Board under this Act, the governor shall appoint three members for terms expiring on January 31, 1983, three members for terms expiring on January 31, 1985, and three members for terms expiring on January 31, 1987."

Art. 6145–11a. Sesquicentennial Commemorative Medals.

(a) The state treasurer may coin gold alloy medals commemorating the Texas Sesquicentennial in one, one-half, one-fourth, and one-tenth of an ounce weights.

(b) The state treasurer shall sell any commemorative medals coined under this Act to the public at prices that are calculated to recover at least the costs of making and selling the medals.

(c) Sales of commemorative medals under this Act are exempt from state and local sales tax.

(d) If the state treasurer determines to coin commemorative medals under this Act, the Texas 1986 Sesquicentennial Commission shall conduct a contest to determine the design of the medals.

(e) In no event shall the sale issuance price of coined commemorative medals under this Act be less than the cost of production plus the cost of the gold and the intrinsic value.

[Acts 1981, 67th Leg., p. 2267, ch. 548, § 1, eff. Sept. 1, 1981.]

Art. 6145–12. Inauguration of Governor and Lieutenant Governor

Appointment of Inaugural Committee

Sec. 1. (a) Not later than the 10th day after the date of each November general election for governor and lieutenant governor, the secretary of state shall issue a proclamation stating who in the secretary of state's opinion based on the best information then available are the governor-elect and lieutenant governor-elect. The secretary of state shall promptly cause certified copies of the proclamation to be delivered to the individuals named in the proclamation.

(b) As soon as possible after receiving notice of the proclamation, the individuals designated in the proclamation as governor-elect and lieutenant governor-elect shall each file with the secretary of state a signed instrument. The governor-elect shall designate in that instrument one individual to serve as chairman of the inaugural committee and one individual to serve as a cochairman of the committee. The lieutenant governor shall also designate one individual to serve as a cochairman of the committee. The governor- and lieutenant governor-elect may appoint such other members to the inaugural committee as they deem necessary. They shall make their additional appointments, if any, by written instrument filed with the secretary of state. An individual who holds a position of profit under this state or the United States is ineligible for appointment to the committee.

(c) If after issuing a proclamation under this section the secretary of state becomes aware of information that indicates that the previous designation of governor-elect or lieutenant governor-elect was incorrect, the secretary of state shall issue a corrected proclamation and cause certified copies of it to be delivered to the previous designee, the new designee, and each member of the inaugural committee appointed by the previous designee. Issuance of a corrected proclamation terminates the membership on the inaugural committee of appointees of the previous designee but does not affect any action taken by the committee before the proclamation was issued. As soon as possible after the new designee receives notice of his or her designation as governor- or lieutenant governor-elect, he or she shall make the appointments to which he or she is entitled under this section.

(d) A vacancy on the committee is filled by appointment by the original appointing authority according to the procedure applicable to original appointments.

(e) Designation of an individual as governor- or lieutenant governor-elect under this section has no legal effect except for purposes of this Act.

Organization, Powers, and Duties of Committee

Sec. 2. (a) As soon as possible after the members of the committee have been appointed, they shall convene at a time and place designated by the individual appointed chairman, take the constitutional oath of office, and hold an organizational meeting.

(b) The committee may hold subsequent meetings at times it determines or on the call of the chairman. The chairman presides at meetings. If the chairman is absent, one of the cochairmen presides.

(c) The committee may adopt rules to govern its proceedings.

(d) Members of the committee serve without compensation but may be reimbursed for actual and necessary expenses they incur in the performance of their duties as provided by legislative appropriation.

(e) The committee shall make such arrangements as are necessary for conducting ceremonies and events to observe the inauguration of the governor

and lieutenant governor. The committee may employ staff or engage the services of consultants to assist in its work.

(f) The committee may request the cooperation of agencies and officials of state and local government. The agencies and officials shall cooperate with the committee to the extent possible.

Inaugural Fund

Sec. 3. (a) The Inaugural Fund is created in the State Treasury. Money in the Inaugural Fund may be appropriated only for expenditures authorized by this Act.

(b) The State Treasurer shall credit to the Inaugural Fund a pro rata share of the interest received from the deposit of state funds as if the Inaugural Fund were a constitutional fund.

Inaugural Contributions

Sec. 4. (a) An individual, association, corporation, or other legal entity may contribute funds, services, or other things of value to defray the expenses of or otherwise provide for an inauguration. Such a contribution is not a political contribution for purposes of state law regulating political contributions or prohibiting such contributions by corporations or labor organizations.

(b) A contribution of funds to defray the expenses of an inauguration may be made to the inaugural committee or to the secretary of state. If the secretary of state receives a contribution while the inaugural committee is in existence, the secretary of state shall deliver the contribution to the committee. If the secretary of state receives a contribution at any other time, the secretary of state shall transmit the contribution to the State Treasurer, and the treasurer shall deposit the contribution in the State Treasury to the credit of the Inaugural Fund.

(c) When the secretary of state receives a contribution, the secretary of state shall execute duplicate copies of a receipt that shows the name and mailing address of the contributor, the amount of the contribution, the date of the contribution, and that the contribution was received to defray inaugural expenses. If the secretary of state issues a receipt, the secretary of state shall give one copy to the contributor and retain the other.

(d) The secretary of state shall keep all receipts on file in the office of the secretary of state for at least four years. The secretary of state shall maintain an index of those receipts that are on file, arranged alphabetically by contributor, showing the date of the contribution, name and mailing address of the contributor, and amount of each contribution. The index and receipts are public information.

Expenditures

Sec. 5. (a) Subject to any conditions attached to a particular appropriation, money appropriated from the Inaugural Fund may be expended for the following purposes:

(1) printing;

(2) the employment of staff;

(3) the lease of office space and payment of utility expenses;

(4) professional and consultant fees;

(5) postage, telephone, and telegraph expenses;

(6) payment of expenses incurred by committee members; and

(7) any other public purpose reasonably related to conducting inaugural ceremonies and related events, including expenses of raising funds.

(b) Contributions received by the committee and not deposited in the State Treasury may be expended for any purpose that the committee considers appropriate.

(c) Each voucher for an expenditure from the Inaugural Fund must be approved in writing by the chairman.

(d) The State Purchasing Act of 1957 (Article 664–3, Vernon's Texas Civil Statutes) does not apply to the inaugural committee.

Competitive Bidding

Sec. 6. The committee may not make a contract covered by the competitive bidding requirements of Article XVI, Section 21, of the Texas Constitution, unless before awarding the contract the committee obtains at least three bids. The committee shall award the contract to the lowest bidder who in the opinion of the committee is most responsible and is best able to fulfill the terms of the contract. The committee may reject all bids if none of them in the opinion of the committee is responsible and is able to fulfill the terms of the contract at a reasonable price.

Records of Expenditures

Sec. 7. The committee in addition to maintaining records required by law with regard to the expenditure of appropriated funds shall maintain a record of each expenditure of funds other than appropriated funds. The record must contain the following information about each expenditure:

(1) the name and address of the entity to whom the expenditure was paid;

(2) the amount of the expenditure;

(3) the date of the expenditure; and

(4) the purpose of the expenditure.

Final Report; Dissolution of Committee

Sec. 8. (a) As soon after the inauguration as the committee determines that it has completed its work and has satisfied its financial obligations but not later than June 30 of the year in which the inauguration is held, the committee shall file with the secretary of state a final report verified by a certified public accountant that shows:

(1) the total amount of contributions received by the committee, including contributions paid to

the secretary of state during the committee's existence and paid by the secretary of state to the committee;

(2) the total amount of expenditures made by the committee from nonappropriated funds; and

(3) the total amount of nonappropriated funds remaining in the committee's possession.

(b) On the date on which the committee files its final report with the secretary of state, the committee shall transmit to the State Treasurer all nonappropriated unexpended funds it possesses. The treasurer shall deposit the funds in the State Treasury to the credit of the Inaugural Fund.

(c) When the secretary of state determines that the committee has complied with Subsections (a) and (b) of this section, the secretary of state shall issue a proclamation to that effect. The committee is dissolved on the day after the date that the proclamation is issued.

(d) The final report of the committee is public information.

Claims Filed After Dissolution

Sec. 9. If after dissolution of the committee an individual or other entity files with the secretary of state a verified claim for an amount alleged to be due to the claimant under a contract made by the committee pursuant to this Act before its dissolution, the secretary of state shall submit a copy of the claim to the governor, lieutenant governor, and attorney general. If each of those officers files with the secretary of state a signed statement finding that the claim is valid, the secretary of state shall forward the original claim and the statements of those officers to the comptroller of public accounts. If funds for the payment of expenses of the type covered by the claim have been appropriated and are available and if there is no legal reason for refusing payment, the comptroller shall cause the claim to be paid. Appropriations for the payment of claims under this section must be from the Inaugural Fund.

Additional State Funding

Sec. 10. In addition to making appropriations from the Inaugural Fund as authorized by this Act, the legislature may appropriate other funds for any purpose for which money in the Inaugural Fund may be appropriated.

Previous Contributions

Sec. 11. If on the effective date of this Act an inaugural committee or other entity that was formed to solicit and expend funds for an inauguration held before the effective date of this Act has in its possession a portion of the funds it received for that purpose, it may contribute those funds to the secretary of state for deposit in the Inaugural Fund pursuant to this Act.

[Acts 1979, 66th Leg., p. 1702, ch. 702, §§ 1 to 11, eff. Aug. 27, 1979.]

TITLE 108

PENITENTIARIES

1. DEPARTMENT OF CORRECTIONS

Article
6166b–1. Application of Sunset Act.

2. REGULATIONS AND DISCIPLINE

6181–1. Inmate Classification and Good Conduct Time.
6184n. Temporary Furloughs for Inmate's Illness or Family Critical Illness or Funerals.
6203aa–1. Lease of Lands.
6203aaa. Control of Coal, Lignite, and Minerals Other than Oil and Gas.
6203c–2. Construction of Medical Facilities at University of Texas Medical Branch at Galveston.

1. DEPARTMENT OF CORRECTIONS

Art. 6166b–1. Application of Sunset Act

The Texas Board of Corrections is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.130, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 6166f. Removal or Suspension of Members

If any member of the Board shall be guilty of malfeasance, misfeasance or non-feasance in office, or shall become incapable or unfit to discharge his official duties or shall willfully fail, refuse or neglect the discharge of the duties of his office, such member may be removed from office in either of the following ways:

(1) By the Governor in the manner provided by law.

(2) By suit brought by the Attorney General in the name of the State on his own motion or at the direction of the Governor on the relation of the Governor, in the District Court of Travis County or in the District Court of the county of residence of such member. The Attorney General shall bring such suit when directed by the Governor to do so, provided the Governor accompanies such direction with charges and evidence showing that the member is subject to removal as provided herein. Upon the application of the Attorney General in the name of the State of Texas, the District Judge before whom such suit is pending may immediately suspend the member from office, and such order of suspension shall be effective until set aside by the Court on motion. If the judgment of the Court be one of removal from office, the member shall be forthwith suspended from office pending any appeal of the case. When the member is so suspended, the District Judge at the time of making such order of suspension, shall appoint for the duration of such suspension some other qualified person to perform the duties of the suspended member, and such appointee shall receive the same compensation as a member of the Board. The suit shall be a civil action, to be tried as other civil cases, with the right of appeal and review as in other cases. The Court shall have authority to issue all necessary writs to enforce its judgment or order of suspension and to protect its jurisdiction over each case. Such suit shall have precedence over all other cases in the appellate courts.

[Amended by Acts 1981, 67th Leg., p. 2629, ch. 707, § 4(6), eff. Aug. 31, 1981.]

Art. 6166j. Director's Authority

The Texas Department of Corrections shall employ a director, who shall possess qualifications and training which suit him to manage the affairs of a modern correctional institution, and it shall be his duty to carry out the policies of the Texas Department of Corrections. The Department shall manage and control the correctional system through the manager selected by it. In addition to his salary, the director shall be furnished with a dwelling house by the State and all necessary traveling expenses when traveling on business for the correctional system. The Department shall delegate to such manager authority to manage the affairs of the correctional system, subject to its control and supervision. The duty of the director shall extend to the employment and discharge, with the approval of the Department, of such persons as may be necessary for the efficient conduct of the correctional system. The director, with the consent of the Texas Department of Corrections, shall have power to prescribe reasonable rules and regulations governing the humane treatment, training, education, rehabilitation and discipline of prisoners, and to make provision for the separation and classification of prisoners according to sex, age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured. Neither the Department of Corrections nor the director may discriminate against a prisoner on the basis of sex, race, color, creed, or national origin.

[Amended by Acts 1975, 64th Leg., p. 2356, ch. 725, § 1, eff. Sept. 1, 1975.]

Art. 6166m-1. Funds for Discharged Convicts

From and after the effective date of this Act, the State Treasurer of the State of Texas, shall set aside funds not less than One Hundred Thousand Dollars ($100,000) in amount received by him from the Director of Corrections to be kept on deposit in a bank or banks in Huntsville, Texas, as determined by the Director and secured by bonds and/or other securities approved by the Attorney General of the State of Texas. The funds shall be used by the Texas Department of Corrections for the prompt payment in cash to all discharged, pardoned, or paroled convicts.

[Amended by Acts 1975, 64th Leg., p. 277, ch. 119, § 1, eff. Sept. 1, 1975.]

Art. 6166u. Repealed by Acts 1975, 64th Leg., p. 2356, ch. 725, § 3, eff. Sept. 1, 1975

Art. 6166v. Repealed by Acts 1977, 65th Leg., p. 933, ch. 347, § 6, eff. Aug. 29, 1977

See, now, art. 6181-1.

Art. 6166x-3. Work Furloughs

Employment of Prisoners Outside the State Prison System

Sec. 1. The Texas Department of Corrections is hereby authorized to grant work furlough privileges, under the "Work Furlough Plan," as hereinafter provided, which may include programs and procedures for inmates to contribute restitution or reparation to victims of the prisoner's crime, as established by the judgment of the court that sentenced the prisoner to his term of imprisonment, to any inmate of the state prison system serving a term of imprisonment, under such rules, regulations, and conditions as the department of corrections may prescribe.

Texas Work Furlough Program Advisory Board

Sec. 1A. (a) The Texas Work Furlough Program Advisory Board is hereby created. Its main office is in Huntsville, Texas, at the location of the office of the director of the Texas Department of Corrections.

(b) The board is composed of nine members appointed by the governor with the advice and consent of the senate. Except for the initial appointees, the members of the board hold office for terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate three for terms expiring January 31, 1979, three for terms expiring January 31, 1981, and three for terms expiring January 31, 1983. The governor shall make the appointments in such a manner that the term of one member representing a recognized labor union, as required by Subsection (d) of this section, expires every two years.

(c) To be qualified for appointment as a member of the board, a person must be a citizen of the United States and a resident of Texas.

(d) Not less than three members of the board shall be representatives of recognized labor unions. The balance of the board membership shall be broadly representative of the noncorrectional general public and should include representatives of such groups as, for example, employer groups, local bar associations, citizen organizations, educators, social work professionals, and various entities in the criminal justice system, such as law enforcement agencies and probation and parole departments.

(e) Members of the board qualify by taking the constitutional oath of office before an officer authorized to administer oaths in this state. When a board member presents his oath of office and the certificate of his appointment to the secretary of state, the secretary of state shall issue a commission to him. The commission from the secretary of state is evidence of authority to act as a member of the board.

(f) The board shall formally elect a chairman and a secretary-treasurer from its members. The board may adopt rules necessary for the orderly conduct of its business.

(g) Five members of the board shall constitute a quorum for the transaction of business and may act for the board. The board shall prepare and preserve minutes and other records of its proceedings and actions.

(h) Members of the board do not receive a salary for their services but each member is entitled to $25 for each day spent in attending meetings of the board, including time spent in travel to and from the meetings, not to exceed $500 a year. Members of the board are also entitled to be reimbursed for travel and other necessary expenses incurred while performing their official duties if the expenses are evidenced by voucher approved by the chairman or the secretary-treasurer of the board.

(i) It shall be the functions of the board to advise the department of corrections in its administration of the Work Furlough Program and to provide a forum for the hearing and resolution of grievances against the program. In the fulfillment of its grievance resolution functions, the board shall have immediate access to all records maintained by the department in its administration of the Work Furlough Program and may request further pertinent information from the department not found in those records.

(j) The board shall prepare an annual report to be filed not later than 60 days following the close of each fiscal year with the governor, the lieutenant governor, members of the legislature, and the legislative budget board showing the activities of the board, together with such recommendations regarding the Work Furlough Program as deemed advisable.

[See Compact Edition, Volume 3 for text of 2]

Quartering of Prisoners

Sec. 3. (a) The department of corrections shall, as the need becomes evident, designate and adapt

facilities in the State Prison System or in the area of such prisoner's employment, for quartering prisoners with work furlough privileges. No prisoner shall be granted work furlough privileges until suitable facilities for quartering such prisoner have been provided in the area where the prisoner has obtained employment or has an offer of employment.

(b)(1) The director of the department of corrections may recommend any prisoner who is statutorily eligible for parole, provided that the prisoner is either incarcerated for a nonviolent crime or at least 40 years old and incarcerated for an offense other than use of a deadly weapon or sex offense, to the Board of Pardons and Paroles for release on conditional work furlough parole to a halfway house under contract with the Board of Pardons and Paroles for conditional work furlough parolees when in the director's determination the prisoner has a high probability of successful completion of release to conditional work furlough parole.

(2) The Board of Pardons and Paroles, after receipt of the recommendation of release to conditional work furlough parole, shall consider all pertinent information regarding the prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and his physical and mental health before recommending his release to conditional work furlough parole. Upon the governor's approval, the prisoner shall be released to conditional work furlough parole.

(3) A prisoner released to conditional work furlough parole shall remain in legal custody of the department of corrections but shall be amenable to the orders of the Board of Pardons and Paroles. If a prisoner shall abscond while released to conditional work furlough parole, the prisoner shall be an escapee under the Penal Code.

(4) If a prisoner released to conditional work furlough parole violates any of the rules promulgated by the Board of Pardons and Paroles under this subsection, the conditional work furlough parole shall be subject to revocation procedures as provided in Article 42.12, Code of Criminal Procedure

(5) The Board of Pardons and Paroles shall promulgate the necessary rules including a conditional work furlough parole contract which shall include an agreement by the prisoner to pay for the costs of supervision, costs of being quartered in the halfway house, restitution to the victim or victims, and support of the prisoners' dependents, if any, to implement the provisions of this subsection.

Securing Employment

Sec. 4. The director of the department of corrections shall endeavor to secure employment for unemployed eligible prisoners under this Act, subject to the following:

(1) such employment must be at a wage at least as high as the prevailing wage for similar work in the area or community where the work is performed and in accordance with the prevailing working conditions in such area;

(2) such employment shall not result in the displacement of employed workers or be in occupations, skills, crafts, or trades in which there is a surplus of available and qualified workers in the locality, the existence of such surplus to be determined by the Texas Employment Commission;

(3) prisoners eligible for work furlough privileges shall not be employed as strikebreakers or in impairing any existing contracts;

(4) exploitation of eligible prisoners, in any form, is prohibited either as it might affect the community or the inmate or the department of corrections;

(5) in the event a work furlough employer desires to reduce its labor force, it must release its work furlough inmate employees prior to releasing any of its free employees;

(6) not more than 10 percent of a work furlough employer's labor force shall be composed of work furlough inmates unless prior special emergency approval for temporarily exceeding that percentage be secured from the Texas Work Furlough Program Advisory Board;

(7) in the event a work furlough employer provides its employees with paid vacation leave which, due to their incarceration, work furlough inmates are unable to enjoy, said employer must either hold accrued vacation time for the inmate to take after discharge from the department of corrections or, at the election of the inmate, the employer must pay the inmate regular wages for the accrued vacation time;

(8) in the event a National Labor Relations Board certification or decertification election is to be conducted at any premises of a work furlough employer, no prisoners employed by the employer under this Act shall be permitted to participate in the election.

[See Compact Edition, Volume 5 for text of 5]

Disbursement of Wages or Salaries

Sec. 6. Every prisoner gainfully employed under work furlough privileges is liable for the cost of his keep in the prison or quarters as may be fixed by the department of corrections. Such payments shall be deposited to the general operating expenses of the department of corrections. After deduction of such amounts the director of the department of corrections shall disburse the wages or salaries of employed prisoners for the following purposes and in the order stated:

(1) necessary travel expense to and from work and other incidental expenses of the prisoner;

(2) support of the prisoner's dependents, if any;

(3) restitution or reparation to the victim of the prisoner's crime for which he is serving a term of imprisonment, the total amount of such restitution or reparation as may be established by the court and entered in the judgment of the court that sentenced the prisoner to his term of imprisonment;

(4) the balance, if any, to the prisoner upon his discharge.

[See Compact Edition, Volume 5 for text of 7 and 8]

Rights of Prisoners

Sec. 9. Nothing in this Act is intended to restore, in whole or in part, the civil rights of any prisoner. However, prisoners compensated under this Act shall come within the provisions of the Workmen's Compensation Act, as amended, and shall be entitled to benefits thereunder on behalf of themselves as well as any other persons.

[See Compact Edition, Volume 5 for text of 10 and 11]

[Amended by Acts 1977, 65th Leg., p. 674, ch. 255, § 1, eff. May 25, 1977; Acts 1977, 65th Leg., p. 850, ch. 319, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 933, ch. 347, § 5, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2583, ch. 690, § 1, eff. Aug. 31, 1981.]

Art. 6166z1. Discharge

(a) When a convict is entitled to a discharge from the State penitentiary, or is released therefrom on parole, mandatory supervision, or conditional pardon, the Director of the Department of Corrections or his Executive Assistant shall prepare and deliver to him a written discharge or release, as the case may be, dated and signed by him with seal annexed, giving convict's name, the name of the offense or offenses for which he was convicted, the term of sentence imposed and the date thereof, the county in which he was sentenced, the amount of commutation received, if any, the trade he has learned, if any, his proficiency in same, and such description of the convict as may be practicable. He shall be furnished, if needed, suitable civilian clothes, and all money held to his credit by any official of the Texas Department of Corrections shall be delivered to him.

(b) The amount of money which a convict is entitled to receive from the State of Texas when he is discharged from the State penitentiary or released from the State penitentiary on parole, mandatory supervision, or conditional pardon shall be $200.

(c) To defray the expenses of transportation or other costs related to burial occasioned by the death of an inmate who dies while serving a sentence in the Texas Department of Corrections, the Director of the Department of Corrections may expend a sum not to exceed the amount that a convict is entitled to receive from the State when he is discharged or released from the penitentiary.

[Amended by Acts 1975, 64th Leg., p. 2401, ch. 735, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 933, ch. 347, § 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 103, ch. 63, § 1, eff. April 19, 1979.]

2. REGULATIONS AND DISCIPLINE

Art. 6181-1. Inmate Classification and Good Conduct Time

Sec. 1. For the purpose of this Article:

(1) "Department" means the Texas Department of Corrections.

(2) "Director" means the Director of the Texas Department of Corrections.

(3) "Inmate" means a person confined by order of a court in the Texas Department of Corrections, whether he is actually confined in the institution or is under the supervision or custody of the Board of Pardons and Paroles.

(4) "Term" means the maximum term of confinement in the Texas Department of Corrections stated in the sentence of the convicting court. When two or more sentences are to be served consecutively and not concurrently, the aggregate of the several terms shall be considered the term for purposes of this Article. When two or more sentences are to run concurrently, the term with the longest maximum confinement will be considered the term for the purposes of this Article.

Sec. 2. The department shall classify all inmates as soon as practicable upon their arrival at the department and shall reclassify inmates as circumstances may warrant. All inmates shall be classified according to their conduct, obedience, industry, and prior criminal history. The director shall maintain a record on each inmate showing all classifications and reclassifications with dates and reasons therefor.

Sec. 3. (a) Inmates shall accrue good conduct time based upon their classification as follows:

(1) 20 days for each 30 days actually served while the inmate is classified as a Class I inmate;

(2) 10 days for each 30 days actually served while the inmate is classified as a Class II inmate; and

(3) 10 additional days for each 30 days actually served if the inmate is a trusty.

(b) No good conduct time shall accrue during any period the inmate is classified as a Class III inmate or is on parole or under mandatory supervision.

Sec. 4. Good conduct time applies only to eligibility for parole or mandatory supervision as provided in Section 15, Article 42.12, Code of Criminal Procedure, 1965, as amended, and shall not otherwise affect the inmate's term. Good conduct time is a privilege and not a right. Consequently, if during the actual term of imprisonment in the department, an inmate commits an offense or violates a rule of the department, all or any part of his accrued good conduct time may be forfeited by the director. The director may, however, in his discretion, restore good conduct time forfeited under such circumstances subject to rules and policies to be promulgated by

the department. Upon revocation of parole or mandatory supervision, the inmate loses all good conduct time previously accrued, but upon return to the department may accrue new good conduct time for subsequent time served in the department.

Sec. 5. If the release of an inmate falls upon a Saturday, Sunday, or legal holiday, the inmate may, at the discretion of the director, be released on the preceding workday.

[Added by Acts 1977, 65th Leg., p. 932, ch. 347, § 3, eff. Aug. 29, 1977.]

Art. 6184d. Repealed by Acts 1977, 65th Leg., p. 1910, ch. 761, § 1, eff. Aug. 29, 1977

Art. 6184*l*. Repealed by Acts 1977, 65th Leg., p. 933, ch. 347, § 6, eff. Aug. 29, 1977

See, now, art. 6181-1.

Art. 6184m. Alcoholic Beverages, Controlled Substances or Dangerous Drugs; Furnishing to Prisoners; Punishment

[See Compact Edition, Volume 3 for text of 1]

Sec. 2. As used this Act, "alcoholic beverage" shall have the meaning defined in the Alcoholic Beverage Code, as heretofore or hereafter amended; "controlled substance" means any substance defined as a controlled substance by the Texas Controlled Substances Act; and "dangerous drug" means any substance defined as a dangerous drug by Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 3 and 4]

[Amended by Acts 1977, 65th Leg., p. 558, ch. 194, § 6, eff. Sept. 1, 1977.]

Art. 6184n. Temporary Furloughs for Inmate's Illness or Family Critical Illness or Funerals

Medical Furloughs

Sec. 1. The Texas Department of Corrections may grant a medical furlough to any inmate serving a term of imprisonment in the department for the purpose of obtaining medical treatment, diagnosis, or medical study, and under such security conditions as the department may deem necessary and proper.

Furloughs to Attend Funerals or Visit Critically Ill Relatives, or for Other Reasons

Sec. 2. (a) The Texas Department of Corrections may grant temporary furloughs of not more than five days to inmates who are considered acceptable security risks by the department to attend funerals, to visit critically ill relatives, or for any other reason that the department determines is appropriate.

(b) The department may extend a temporary furlough granted under this section for up to 10 days when the circumstances justify a longer furlough, but in no event may the department grant more than two such furloughs during a calendar year period without the authority of the Board of Pardons and Paroles and of the governor, as in the case of emergency reprieves.

Rules

Sec. 3. The department shall promulgate rules in the same manner as other rules for the governing and operation of the department are promulgated to govern the administration and conditions of temporary furloughs.

Notice to Board of Pardons and Paroles

Sec. 4. The department shall notify the Board of Pardons and Paroles of a furlough granted under this article and of an inmate's return to the department of corrections following a furlough.

Custody of Furloughed Inmate; Escape

Sec. 5. An inmate granted a furlough under this article or an emergency reprieve by the Board of Pardons and Paroles and the governor, whether under physical guard or otherwise, shall remain in the custody of the Texas Department of Corrections and be considered a prisoner of the department for all purposes. In the event an inmate of the department granted a furlough under this article or an emergency reprieve by the board and the governor does not return to the department at the time specified for his return, he shall be considered an escapee from the department and subject to punishment under Section 38.07, Penal Code.

Cost of Transportation of Furloughed Inmate

Sec. 6. The cost of transportation of an inmate while the inmate is on a temporary furlough may not be paid from state funds unless the inmate is under physical guard during the furlough.

[Added by Acts 1977, 65th Leg., p. 38, ch. 22, § 2, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1185, ch. 576, §§ 1, 2, eff. Sept. 1, 1979.]

Art. 6203aa. Permits for Geological Surveys

(a) The Board for Lease of Texas Prison Lands heretofore created, composed of the Commissioner of the General Land Office, the Attorney General and the Chairman of the Texas Board of Corrections, is hereby authorized to determine the consideration, terms, and conditions for granting permits for geological surveys or investigations on Prison Lands, which said Board has heretofore been authorized to lease for oil and gas. The Board shall establish a schedule of rates and set such consideration, terms, and conditions for the permits as said Board may deem to be in the best interest of the State of Texas, and which will encourage the development of said lands for oil and gas, and from time to time may make changes in the consideration, terms, or conditions that the Board determines are in the best interest of the state. The surveys shall be made in such way as to not unreasonably interfere with the operation of said Prison System.

(b) The Chairman of the Texas Board of Corrections may approve a request and grant a permit for a geological survey or investigation on Prison Lands that complies with the consideration, terms, and conditions fixed by the Board for Lease of Texas Prison Lands.

[Amended by Acts 1979, 66th Leg., p. 26, ch. 16, § 1, eff. Aug. 27, 1979.]

Art. 6203aa-1. Lease of Lands

Right to Lease

Sec. 1. The Texas Board of Corrections may lease state-owned land under its management and control at its fair market lease value for an initial period not to exceed 20 years and under such other terms and conditions as the board deems best for the interest of the Texas Department of Corrections. No member of the Texas Board of Corrections or person related to a member within the second degree by affinity or within the third degree by consanguinity may own an interest in the entity leasing the property.

Disposition of Proceeds

Sec. 2. The proceeds of a lease, less expenses, shall be deposited in the State Treasury to the credit of the Texas Department of Corrections special mineral fund and shall be used exclusively for the benefit of the Texas Department of Corrections as specified by legislative appropriation.

Notification to Taxing Units

Sec. 3. The Texas Board of Corrections shall notify the taxing units authorized to impose ad valorem taxes that property has been leased by sending a copy of the lease by first-class mail, return receipt requested, to each taxing unit in which the leased property is located. The lessee shall be liable for all ad valorem taxes imposed on the leased property.

[Acts 1979, 66th Leg., p. 23, ch. 13, §§ 1 to 3, eff. Aug. 27, 1979.]

Art. 6203aaa. Control of Coal, Lignite, and Minerals Other Than Oil and Gas

(a) In this article:

(1) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership, association, joint venture, or other legal entity.

(2) "Board" means the Board for Lease of Texas Prison Lands.

(3) "Department" means the Texas Department of Corrections.

(4) "Minerals" means coal, lignite, and other minerals other than oil and gas.

(5) "State prison land" means land owned and held by the state as Texas Department of Corrections land.

(b) The board has the sole and exclusive control of minerals on or in state prison land and may explore, sell, lease, develop, mine, produce, manage, use, and otherwise control the minerals on or in state prison land as the board considers in the best interest of the state.

(c) The board may lease, enter into agreements, or contract with any person to explore, develop, mine, produce, dispose of, or sell minerals on or in state prison land. Also, the board may enter into agreements or contracts with any person for the joint exploration and development, mining, or production of minerals in or on state prison land on terms and conditions that the board finds will benefit the state.

(d) If state prison land is leased by the board under this article, the land shall be leased in the manner provided by Chapter 13, General Laws, Acts of the 41st Legislature, 4th Called Session, 1930, as amended (Article 6203a, Vernon's Texas Civil Statutes).

(e) Each lease of state prison land shall include a provision granting the board authority to take its royalty in kind. The option to take royalty in kind may be exercised at the discretion of the board and at any time or from time to time on not less than 60-days' notice to the holder of the lease.

(f) The board may sell royalty taken in kind and minerals developed, mined, or produced by the board to any person or any other agency of the state or local government and may negotiate and execute sales contracts or other instruments or agreements necessary for disposition of royalty taken in kind and minerals produced, mined, or developed by it. Also, the board may retain royalty taken in kind and minerals developed, mined, or produced by it for use by the department.

(g) The board may enter into any other contracts and agreements necessary to carry out this article.

(h) The department may construct or acquire by purchase or lease generating plants and other facilities necessary to use its minerals for providing electric power to various units of the department. Generating plants and facilities constructed, purchased, or leased under this article shall be paid for solely from revenues and income obtained from activities under this article.

(i) The board shall adopt necessary rules to carry out this article.

(j) After paying expenses to carry out this article, the board shall deposit the remaining revenues and income obtained under this article in the Texas Department of Corrections mineral lease fund which shall be for the exclusive use of the Texas Department of Corrections, as specified by legislative appropriation.

(k) The board may request the assistance of the General Land Office and the Commissioner of the General Land Office in carrying out this article, and the General Land Office and the Commissioner of the General Land Office shall provide assistance to the board on request.

(*l*) This article does not authorize the board to sell state prison land.

[Added by Acts 1981, 67th Leg., p. 169, ch. 77, § 1, eff. April 30, 1981.]

Art. 6203c. Improvement of Department of Corrections

[See Compact Edition, Volume 5 for text of 1]

Powers of Board of Corrections

Sec. 2. To accomplish the purposes enumerated herein the Texas Prison Board [1] is authorized and directed as follows:

[See Compact Edition, Volume 5 for text of 2A to D]

E. The Department of Corrections is further directed to renovate, remodel and repair the present improvements on the Goree Farm, and to make such additions thereto as may be necessary to provide adequate housing facilities for all female inmates of the correctional system, and to supply industrial employment for such of the female inmates as may be used profitably in such employment. Adequate hospital facilities shall be provided on this farm for all female prisoners.

[See Compact Edition, Volume 5 for text of 2F to 9]

[Amended by Acts 1975, 64th Leg., p. 2356, ch. 725, § 2, eff. Sept. 1, 1975.]

[1] Changed to Texas Board of Corrections. See art. 6166a-1.

Art. 6203c-1. Contracts for Maintenance of Roads in and Adjacent to Prison Units or for Provision of Inmate Labor for Highway Improvement Projects

Sec. 1. The State Highway and Public Transportation Commission and the Texas Board of Corrections are hereby authorized to enter into and perform agreements or contracts for the maintenance of roads by the State Department of Highways and Public Transportation in and adjacent to the various prison units of the Texas Department of Corrections or for the provision of inmate labor for a state highway system improvement project.

[See Compact Edition, Volume 5 for text of 2 and 3]

[Amended by Acts 1981, 67th Leg., p. 2496, ch. 655, § 2, eff. Aug. 31, 1981.]

Art. 6203c-2. Construction of Medical Facilities at University of Texas Medical Branch at Galveston

Sec. 1. The Texas Board of Corrections is authorized to construct a medical facility and necessary related facilities on the campus of the University of Texas Medical Branch at Galveston, subject to the prior written approval of the site, plans, and specifications for such facility and an interagency operating agreement by the Texas Department of Corrections and the Board of Regents of The University of Texas System.

Sec. 2. So long as such medical facility is used for patients of the Texas Department of Corrections, the facility will be utilized as a teaching hospital limited to such patients who shall at all times be teaching patients. The Board of Regents of The University of Texas System shall maintain and operate such facility (except for security measures) and shall otherwise provide professional staff services necessary for the care of patients in such facility at the same level of care as provided for patients in other facilities of the University of Texas Medical Branch at Galveston from funds appropriated for those purposes. In the event the facility is no longer used for patients of the Texas Department of Corrections, such facility shall revert to the medical branch for its use and shall be operated under the exclusive management and control of the Board of Regents of The University of Texas System.

Sec. 3. The interagency operating agreement referred to in Section 1 of this Act shall provide for the Board of Regents of The University of Texas System to construct such facility on behalf of the Texas Department of Corrections with funds appropriated to the department for such purpose and in conformity with the rules of the Board of Regents of The University of Texas System relative to new construction.

[Acts 1977, 65th Leg., p. 1315, ch. 520, eff. Aug. 29, 1977.]

Art. 6203d. Right-of-Ways for Pubic Highways, Roads, Streets, Ditches, Irrigation Canals, Electric Lines, Pipe Lines and Electrical Substations

[See Compact Edition, Volume 5 for text of 1]

Sec. 1a. In addition to easements authorized under Section 1 of this article, with the consent of the governor and the attorney general the Texas Board of Corrections may grant permanent or temporary right-of-way easements to a public or private entity for electrical substations on state land dedicated to the use of the department of corrections. An easement under this section may not exceed 350 feet by 350 feet.

[See Compact Edition, Volume 5 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 183, ch. 84, § 1, eff. April 30, 1981.]

TITLE 109

PENSIONS

1. STATE AND COUNTY PENSIONS

Article

6228a.1. Benefits Payable to Appointive Officer and Employee Members of Employees Retirement System.
6228a.2. Benefits Payable to Appointive Officer and Employee Members of Employees Retirement System.
6228a–6. Administration of Social Security Programs by Employees Retirement System.
6228a–7. Dental Insurance Survey by Employees Retirement System Board.
6228b–1. Judicial Retirement System; Computation of Benefits for Certain Retirees and Survivors.
6228f–1. Commissioned Law Enforcement and Custodial Officer Supplemental Retirement Benefit Act.
6228j. Retirement, Disability and Death Benefit Systems for Appointive County Employees.
6228k. Fractional Service Retirement Benefits.
6228*l*. Audits, Reports, and Actuarial Studies of Certain Retirement Systems.
6228m. Pension Review Board.
6228n. Administration of Public Retirement Systems.

2. CITY PENSIONS

6243e.1. Firemen's Relief and Retirement Fund in Cities of 300,000 to 375,000.
6243e.2. Firemen's Relief and Retirement Fund in Cities of Not Less Than 1,200,000.
6243e.3. Volunteer Fire Fighters' Relief and Retirement Fund.
6243f–1. Involuntary Retirement of Fire Fighters in Cities of 350,000 to 400,000; Age; Disability.
6243k. Retirement, Disability and Death Benefit Systems for Appointive City or Town Employees.
6243*l*. Separate Retirement System for Police Department Employees in Cities of 250,000 or More.
Art. 6243m. Contributions and Benefits Certain Municipal Retirement Systems or Death Benefit Programs.

1. STATE AND COUNTY PENSIONS

Art. 6204. Repealed by Acts 1979, 66th Leg., p. 2113, ch. 817, § 14(b)(1), eff. Aug. 27, 1979

Art. 6228a. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(3), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 453, repealing this article, enacted Title 110B, Public Retirement Systems.

For disposition of the subject matter of the repealed article, see Disposition Table following Title 110B.

Prior to repeal, this article was amended by:

Acts 1975, 64th Leg., p. 10, ch. 8, § 1.
Acts 1975, 64th Leg., p. 551, ch. 218, §§ 1 to 14.
Acts 1977, 65th Leg., p. 745, ch. 279, §§ 1 to 3.
Acts 1977, 65th Leg., p. 967, ch. 364, §§ 1 to 3, 5.
Acts 1977, 65th Leg., p. 976, ch. 367, §§ 1 to 3.
Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.175.
Acts 1979, 66th Leg., p. 533, ch. 249, § 10.
Acts 1979, 66th Leg., p. 786, ch. 348, § 1.
Acts 1979, 66th Leg., p. 1106, ch. 522, § 1.
Acts 1979, 66th Leg., p. 1441, ch. 633, §§ 1, 2.
Acts 1979, 66th Leg., p. 1539, ch. 662, § 1.
Acts 1979, 66th Leg., p. 1835, ch. 747, § 1.
Acts 1981, 67th Leg., p. 153, ch. 68, § 1.
Acts 1981, 67th Leg., p. 3058, ch. 804, §§ 1, 2.

Acts 1981, 67th Leg., p. 153, ch. 68 was repealed by Acts 1981, 67th Leg., 1st C.S., p. 235, ch. 18, § 110(a)(6).

Acts 1981, 67th Leg., p. 3058, ch. 804, § 2, effective September 1, 1981, adds a subsec. K to § 4 of this article, which reads:

"K. A member who was a contributing member of the System on August 31, 1981, having at least 24 months of continuous State service on that date may, before September 1, 1982, claim service credit not otherwise creditable in the System for service performed before September 1, 1980, for a county child welfare board, if the member was subject during the period of service to personnel rules of, and direct supervision by, the Texas Department of Human Resources or its predecessor. A member may claim the service credit by depositing in the System in a lump sum contributions based on the member's monthly salary during the period of service with a county child welfare board and computed for the number of months for which credit is sought at the rate currently required of employee members of the System for new service, plus interest computed on the basis of the State fiscal year at the rate of ten per cent (10%) a year from the date the service was performed to the date of deposit, plus any membership fees required of members of the System during the period beginning on the date the service began and ending on the date of deposit. The salary contributions shall be placed in the member's individual account in the Employees Saving Fund, interest shall be deposited in the State Accumulation Fund, and membership fees shall be deposited in the Expense Fund. The System shall determine the amount to be deposited in each case and may not grant service credit under this subsection until the required amount has been paid in full. Service credit may not be established under this subsection if the service is currently credited in another public retirement system."

Acts 1981, 67th Leg., p. 3058, ch. 804, is repealed by Acts 1981, 67th Leg., 1st C.S., p. 236, § 110(c)(2), effective September 1, 1982.

Art. 6228a.1. Benefits Payable to Appointive Officer and Employee Members of Employees Retirement System

Monthly annuities for appointive officer and employee members of the Employees Retirement System of Texas who retired before September 1, 1976, or their survivors, and to the survivors of deceased appointive officer and employee members whose deaths occurred before September 1, 1976, are increased, beginning with the September 1, 1979, payments, by 12 percent. Monthly annuities for appointive officer and employee members of the Employees Retirement System of Texas who retired on or after September 1, 1976, but before September 1, 1978, or their survivors, and to the survivors of deceased appointive officer and employee members whose deaths occurred on or after September 1, 1976, but before September 1, 1978, are increased, beginning with the September 1, 1979, payments, by eight percent.

[Added by Acts 1979, 66th Leg., p. 2181, ch. 831, §§ 1, 2, eff. Aug. 27, 1979.]

Section 2 of the 1979 Act provided:

"There is authorized an appropriation in the General Appropriations Bill to the Employees Retirement System of Texas in the sum of $39,200,000 to fund the increases in annuities provided by Section 1 of this Act. The increases take effect only on the appropriation and payment of that sum. On the effective date of the General Appropriations Bill, the comptroller of public accounts shall transfer the appropriated sum to the Employees Retirement System of Texas for deposit in the benefit increase reserve fund of the system. Should an amount less than the amount required to fund the increases provided by this Act be appropriated, the General Appropriations Bill may specify rates of increases other than those provided by this Act. If the rates of increases are not specified in the General Appropriations Bill, the board of trustees shall adjust the rates of increases accordingly to rates which the actual amount appropriated will fund."

Art. 6228a.2. Benefits Payable to Appointive Officer and Employee Members of Employees Retirement System

(a) Monthly benefits that are based on service that was credited in the Employees Retirement System of Texas as appointive officer or employee class service, that are computed under Chapter 352, Acts of the 50th Legislature, 1947 (Article 6228a, Vernon's Texas Civil Statutes), as it now exists or previously existed, and that are payable to a retiree of the Employees Retirement System of Texas whose retirement became effective before September 1, 1979, to the survivor of a retiree of the Employees Retirement System of Texas whose retirement became effective before September 1, 1979, or to the survivor of a deceased member of the Employees Retirement System of Texas whose death occurred before September 1, 1979, are increased by 5.1 percent.

(b) The initial payment of the increase in benefits provided by this Act is for the calendar month in which this Act takes effect.

[Acts 1981, 67th Leg., p. 5, ch. 3, § 1, eff. Feb. 13, 1981.]

Section 2 of the 1981 Act provided:

"There is appropriated from the General Revenue Fund to the Employees Retirement System of Texas the sum of $17,580,000, which sum has been actuarially determined to be the amount necessary to fund the benefit increases provided by this Act. On the effective date of this Act, the state comptroller of public accounts shall transfer the appropriated sum for deposit in the benefit increase reserve fund of the Employees Retirement System of Texas."

Art. 6228a–1. Repealed by Acts 1979, 66th Leg., p. 2112, § 14(a)(1), eff. Aug. 27, 1979

Art. 6228a–2. Repealed by Acts 1979, 66th Leg., p. 577, ch. 267, § 2, eff. Sept. 1, 1980

Prior to repeal, this article was amended by Acts 1979, 66th Leg., p. 577, ch. 267, § 1.

Art. 6228a–3. Repealed by Acts 1979, 66th Leg., p. 2112, ch. 817, § 14(a)(2), eff. Aug. 27, 1979

Art. 6228a–5. Annuities or Investments for Certain Public Employees; Salary Reductions

Sec. 1. Local Boards of Education of the Public Schools of this State, the Governing Boards of the state-supported institutions of higher education, the Coordinating Board, Texas College and University System, the Central Education Agency, the Texas Department of Mental Health and Mental Retardation and the state schools, state hospitals, and other facilities and institutions under its jurisdiction, the Texas Department of Health and facilities and institutions under its jurisdiction, the Texas Youth Council and facilities and institutions under its jurisdiction, and the governing boards of Centers for Community Mental Health and Mental Retardation Services, county hospitals, city hospitals, city-county hospitals, hospital authorities, hospital districts, affiliated state agencies, and political subdivisions of each of them, may enter into agreements with their employees for the purchase of annuities or for contributions to any type of investment for their employees as authorized in Section 403(b) of the Internal Revenue Code of 1954, as it existed on January 1, 1981.[1]

Sec. 1A. The Comptroller of Public Accounts may reduce the salary of participants when authorized in writing and shall apply the amount of the reduction to the purchase of annuity contracts or to contributions to any type of investment authorized in Section 403(b) of the Internal Revenue Code of 1954, as it existed on January 1, 1981, the exclusive control of which will vest in the participants.

[Amended by Acts 1981, 67th Leg., p. 1862, ch. 441, § 1, eff. June 11, 1981.]

[1] 26 U.S.C.A. § 403(b).

Art. 6228a–6. Administration of Social Security Programs by Employees Retirement System

Sec. 1. [Amends arts. 695g, §§ 1(d), 2, 5; 695h, §§ 1(d), 2; Education Code, § 17.91.]

Transfer of Administration from Department of Public Welfare; Contracts and Agreements to Remain in Force and Effect; Succession to Rights, Powers, Duties, etc.

Sec. 2. The operation and administration of the programs providing federal social security coverage for: (1) employees of counties, municipalities, and other political subdivisions of the State of Texas (Chapter 500, Acts of the 52nd Legislature, 1951, as amended (Article 695g, Vernon's Texas Civil Statutes)); (2) state employees (Chapter 467, Acts of the 54th Legislature, 1955, as amended (Article 695h, Vernon's Texas Civil Statutes)); and (3) employees of County Board of School Trustees and County School Superintendents (Section 17.91, Texas Education Code) shall be and are hereby transferred effective September 1, 1975, from the State Department of Public Welfare to the Employees Retirement System of Texas. All contracts and agreements in existence on the effective date of the transfer between the State Department of Public Welfare and the United States government or any and all local political subdivisions of the State of Texas or any other governmental entity shall remain in full force and effect and, upon validation by the Employees Retirement System of Texas, shall become effective contracts or agreements between the Employees Retirement System of Texas and such United States government or any agency thereof or any political subdivisions or other governmental entity of the State of Texas.

The Employees Retirement System of Texas shall succeed to and be vested with all the rights, powers, duties, personnel, property records, trust funds, and appropriations now held by the State Department of Public Welfare for the operation and administration of the social security programs.

Employees: Transfer, Appointment, Duties, Qualifications and Compensation

Sec. 3. All personnel employed in the Social Security Division of the State Department of Public Welfare are transferred to the Employees Retire-

ment System of Texas. The system shall appoint all employees and shall prescribe their duties and qualifications for employment. The salaries and compensations of all employees shall be fixed by the Employees Retirement System of Texas commensurate with prevailing rates for similar state positions.

Transfer of Personal Property and Equipment

Sec. 4. All personal property and equipment purchased out of the Social Security Administration Account now in use by the Social Security Division of the State Department of Public Welfare for the operation and administration of the program are hereby transferred to the Employees Retirement System of Texas.

Transfer of Trust Funds

Sec. 5. All trust funds created for social security purposes and specifically those known as the Social Security Fund Account identified in the state comptroller's records as Fund No. 913 and the Social Security Administration Account identified in the state comptroller's records as Fund No. 929 are hereby transferred to the Employees Retirement System of Texas.

Negotiation For and Acquisition of Lands, Buildings and Facilities

Sec. 6. The Employees Retirement System of Texas is hereby authorized to negotiate for and to acquire from the United States government or any agency thereof or from any source whatever by gift, purchase, or leasehold for and on behalf of the State of Texas for use in the state service and in the operation and administration of the federal social security program as it now exists, or as it may hereafter be amended, any lands, buildings, and facilities within the State of Texas and any personal property and equipment wherever located and to take title thereto for and in the name of the State of Texas.

Use of Trust Funds

Sec. 7. Employees retirement system trust funds shall not be used in any manner or at any time for the administration of the social security trust funds or programs provided for herein.

Effective Date

Sec. 8. This Act shall become effective September 1, 1975.

Repeal of Conflicting Laws; Saving Provisions

Sec. 9. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict only. It is expressly provided, however, that Chapter 500, Acts of the 52nd Legislature, 1951, as amended (Article 695g, Vernon's Texas Civil Statutes), Chapter 467, Acts of the 54th Legislature, 1955, as amended (Article 695h, Vernon's Texas Civil Statutes), and Section 17.91, Texas Education Code, shall continue in full force and effect except wherein they conflict with this Act and, more particularly, those portions of those articles placing the operation and administration of the federal social security program under the State Department of Public Welfare, and wherever any power, duty, function, or responsibility is placed upon the executive director (commissioner) of public welfare, it shall be vested in the Employees Retirement System of Texas.

[Acts 1975, 64th Leg., p. 965, ch. 366, eff. Sept. 1, 1975.]

Art. 6228a–7. Dental Insurance Survey by Employees Retirement System Board

Text of article effective until February 1, 1983

Definition

Sec. 1. In this Act, "state employee" means an employee as defined by Section 3, Texas Employees Uniform Group Insurance Benefits Act, as amended (Article 3.50–2, Insurance Code).

Information About Dental Insurance

Sec. 2. The State Board of Trustees of the Employees Retirement System of Texas shall prepare information about the kinds and costs of dental insurance that could be made available to state employees.

Survey

Sec. 3. The board shall distribute at random to state employees a survey form that contains a summary of the information prepared by the board under Section 2 of this Act and that requests information from the employees about the kinds and costs of dental insurance that the employees desire.

Procedures

Sec. 4. The board shall prescribe the procedures for the distribution and return of the survey forms. The distribution shall be done in conformity with acceptable scientific random survey procedures.

Report

Sec. 5. The board shall compile and organize in a report the information gathered from the survey forms and other information that the board considers appropriate and shall present the report to the 68th Legislature.

Expenses

Sec. 6. The expenses of preparation and distribution of the survey and report, required by this Act shall be paid from amounts in the employees life, accident, and health insurance and benefits fund available for administrative expenses of the state group insurance program as provided by Section 16(b), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50–2, Insurance Code).

Expiration of Act

Sec. 7. This Act expires February 1, 1983.

[Acts 1981, 67th Leg., p. 919, ch. 335, eff. Aug. 31, 1981.]

Art. 6228b. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(4), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 453, repealing this article enacted Title 110B, Public Retirement Systems.

For disposition of the subject matter of the repealed article, see Disposition Table following Title 110B.

Prior to repeal, this article was amended by:

Acts 1975, 64th Leg., p. 1367, ch. 522, § 1.
Acts 1975, 64th Leg., p. 1825, ch. 561, § 1.
Acts 1977, 65th Leg., p. 330, ch. 160, § 1.
Acts 1977, 65th Leg., p. 1117, ch. 415, § 1.
Acts 1977, 65th Leg., p. 1967, ch. 785, § 1.
Acts 1979, 66th Leg., p. 148, ch. 80, § 1.
Acts 1981, 67th Leg., p. 794, ch. 291, § 75.

Acts 1981, 67th Leg., p. 794, ch. 291, § 75, was repealed by Acts 1981, 67th Leg., 1st C.S., p. 235, ch. 18, § 110(a)(7).

Art. 6228b–1. Judicial Retirement System; Computation of Benefits for Certain Retirees and Survivors

Sec. 1. Monthly benefits payable by the Judicial Retirement System of Texas to a retiree of that system whose retirement became effective before September 1, 1967, or to the survivor of a retiree of that system whose retirement became effective before September 1, 1967, are computed on the basis of 60 percent of the state salary, as adjusted from time to time, being paid a judge of a court of the same classification as the court on which the retiree last served before retirement.

Sec. 2. This Act takes effect September 1, 1981, and applies only to monthly benefits that become payable on or after that date. The amount of monthly benefits payable before September 1, 1981, is determined by Chapter 99, Acts of the 51st Legislature, Regular Session, 1949 (Article 6228b, Vernon's Texas Civil Statutes), as it existed on the date of retirement except as otherwise specifically provided by that Act.

[Acts 1981, 67th Leg., p. 316, ch. 125, eff. Sept. 1, 1981.]

Art. 6228c. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(5), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 453, repealing this article, enacted Title 110B, Public Retirement Systems.

For disposition of the subject matter of the repealed article, see Disposition Table following Title 110B.

Art. 6228c–1. Repealed by Acts 1979, 66th Leg., p. 2112, ch. 817, § 14(a)(3), eff. Aug. 27, 1979

Art. 6228f. Payments of Assistance by State to Survivors of Law Enforcement Officers, etc., Killed in Performance of Duties

Declaration of Policy

Sec. 1. It is hereby declared to be the public policy of this State, under its police power, to provide financial assistance to the surviving spouse and minor children of paid law enforcement officers, paid probation officers, paid parole officers, paid jailers, campus security personnel, members of organized police reserve or auxiliary units, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail, juvenile correctional employees of the Texas Youth Council, employees of the Rusk State Hospital for the Criminally Insane, paid firemen, members of organized volunteer fire departments and park and recreational patrolmen and security officers where such paid law enforcement officers, paid probation officers, paid parole officers, paid jailers, campus security personnel, members of organized police reserve or auxiliary units, custodial personnel, juvenile correctional employees of the Texas Youth Council, employees of the Rusk State Hospital for the Criminally Insane, paid firemen, members of organized volunteer fire departments, or park and recreational patrolmen and security officers suffer violent death in the course of the performance of their duties as paid law enforcement officers, paid probation officers, paid parole officers, paid jailers, campus security personnel, members of organized police reserve or auxiliary units, custodial personnel of the Texas Department of Corrections, employees of the Texas Youth Council and the Rusk State Hospital for the Criminally Insane, paid firemen and members of organized volunteer fire departments, capitol security commissioned officers, campus security personnel commissioned as peace officers by authority granted under Section 3, Chapter 80, Acts of the 60th Legislature, Regular Session, 1967 (Article 2919j, Vernon's Texas Civil Statutes), or park and recreational patrolmen and security officers.

Definitions

Sec. 2. (a) As used in this Act:

[See Compact Edition, Volume 5 for text of 2(a)(1)]

(2) "Paid law enforcement officer" means a peace officer as defined in Article 2.12, Texas Code of Criminal Procedure, 1965, and includes game wardens who are employees of the State of Texas paid on a full time basis for the enforcement of game laws and regulations, and campus security personnel commissioned as peace officers by authority granted under Section 51.203, Texas Education Code.

[See Compact Edition, Volume 5 for text of 2(a)(3) and 2(a)(4)]

(5) "Paid firemen" means a person who is employed by the State or its political or legal subdivisions and subject to certification by the Commission on Fire Protection Personnel Standards and Education or a person employed by the State of Texas or its political or legal subdivisions whose principal duties are aircraft crash and rescue fire fighting.

[See Compact Edition, Volume 5 for text of 2(a)(6) and 2(a)(7)]

(8) "Paid probation officer" means an officer appointed by a district judge or district judges with the qualifications and duties set out in Section 10, Article 42.12, Code of Criminal Procedure, 1965, as amended.

(9) "Paid parole officer" means an officer of the Division of Parole Supervision of the Board of Pardons and Paroles who has the qualifications and duties set out in Sections 26 through 29, Article 42.12, Code of Criminal Procedure, 1965, as amended.

(10) "Supervisory personnel in a county jail" means any person appointed by the sheriff as a jailer or guard of a county jail and who will perform any security, custody, or supervisory function over the admittance, confinement, or discharge of prisoners and who is certified by the Texas Commission on Law Enforcement Officer Standards and Education.

[See Compact Edition, Volume 5 for text of 2(b) and 2(c)]

Assistance Payable

Sec. 3. In any case in which a paid law enforcement officer, paid probation officer, paid parole officer, paid jailer, capitol security commissioned officers, campus security personnel, a member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, and/or member of an organized volunteer fire department and/or park and recreational patrolmen and security officers suffers violent death in the course of his duty as such paid law enforcement officer, paid probation officer, paid parole officer, paid jailer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, member of an organized volunteer fire department, or park and recreational patrolmen and security officers, the State of Texas shall pay to the surviving spouse of such paid law enforcement officer, paid probation officer, paid parole officer, paid jailer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, or member of an organized volunteer fire department, or park and recreational patrolmen and security officers the sum of $20,000 and in addition thereto, if such paid law enforcement officer, paid probation officer, paid parole officer, paid jailer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, or member of an organized volunteer fire department, or park and recreational patrolmen and security officers shall be survived by a minor child or minor children, the State of Texas shall pay to the duly appointed or qualified guardian or other legal representative of each minor child the following assistance:

If one minor child—$200 per month

If two minor children—$300 per month

Three or more minor children–$400 per month.

Provided, that when any child entitled to benefits under this Act ceases to be a minor child as that term is defined herein, his entitlement to benefits shall terminate and any benefits payable under this Act on behalf of his minor brothers and sisters, if any, shall be adjusted to conform with the foregoing schedule if necessary.

Administration

Sec. 4. This Act shall be administered by the State Board of Trustees of the Employees Retirement System of Texas, under rules and regulations adopted by said Board. Proof of death claimed to be violent death in the course of performance of duty of a paid law enforcement officer, paid probation officer, paid parole officer, paid jailer, campus security personnel, member of an organized police reserve or auxiliary unit, custodial personnel of the Texas Department of Corrections, supervisory personnel in a county jail, juvenile correctional employee of the Texas Youth Council, employee of the Rusk State Hospital for the Criminally Insane, paid fireman, member of an organized volunteer fire department or park and recreational patrolmen and security officer shall be furnished to said Board of Trustees in such form as it may require, together with such additional evidence and information as it may require.

[See Compact Edition, Volume 5 for text of 5 to 10]

[Amended by Acts 1975, 64th Leg., p. 480, ch. 204, § 2, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 810, ch. 215, § 1, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2070, ch. 461, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2227, ch. 526, §§ 1, 2, eff. Sept. 1, 1981.]

Acts 1973, 64th Leg., p. 810, ch. 315, which by § 1 amended sec. 3 of this article, provided in § 2:

"The increase in the lump-sum payment from $10,000 to $20,000 does not apply to the payment of assistance for any death that occurred prior to the effective date of this amendatory Act. The increase in monthly payments to minor children applies to children receiving payments on the effective date of this Act as well as to children entitled to benefits after this Act takes effect."

Section 3 of Acts 1981, 67th Leg., p. 2229, ch. 526, provides:

"This Act applies only to a death of a paid probation officer, parole officer, or jailer that occurs on or after the effective date of this Act."

Arts. 6228f–1, 6228g. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(6), (7), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 453, repealing these articles, enacted Title 110B, Public Retirement Systems.

For disposition of the subject matter of the repealed articles, see Disposition Table following Title 110B.

Former art. 6228f–1, relating to commissioned law enforcement and custodial officer supplemental retirement benefits, was derived from Acts 1979, 66th Leg., p. 528, ch. 249, §§ 1 to 9, 12, 13.

Prior to repeal, art. 6228g was amended by:
Acts 1975, 64th Leg., p. 586, ch. 239, § 1.
Acts 1975, 64th Leg., p. 1013, ch. 384, § 1.
Acts 1975, 64th Leg., p. 1921, ch. 623, § 1.
Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.176.
Acts 1977, 65th Leg., p. 1920, ch. 770, §§ 1 to 17.
Acts 1977, 65th Leg., p. 1942, ch. 771, §§ 1 to 6.
Acts 1979, 66th Leg., p. 1338, ch. 605, § 3.
Acts 1979, 66th Leg., p. 1458, ch. 640, §§ 1 to 8.
Acts 1979, 66th Leg., p. 1659, ch. 693, § 1.
Acts 1981, 67th Leg., p. 302, ch. 122, §§ 1 to 9.
Acts 1981, 67th Leg., p. 302, ch. 122, §§ 1 to 9, were repealed by Acts 1981, 67th Leg., 1st C.S., p. 235, ch. 18, § 110(a)(9).

Art. 6228i. Repealed by Acts 1977, 65th Leg., p. 1410, ch. 570, § 9, eff. Jan. 1, 1978

The repealed article, relating to proportionate service retirement, disability and death benefits, was derived from Acts 1973, 63rd Leg., p. 1587, ch. 573, as amended by Acts 1975, 64th Leg., p. 221, ch. 81, § 1.
See, now, art. 6228k.

Art. 6228j. Retirement, Disability and Death Benefit Systems for Appointive County Employees

(a) A county may create a retirement, disability, and death benefit system for its appointive officers and employees if a majority of the qualified voters of the county voting on the proposition approve the creation at an election called for that purpose and advertised in at least one newspaper of general circulation in the county once a week for four consecutive weeks before the election is held. Each member of a system shall contribute to the system an amount determined by the county, but not more than five percent of the member's annual compensation paid by the county. The county shall contribute for each member an equal amount.

(b) The assets of a county system, after a sufficient portion is set aside each year to pay benefits as they accrue, shall be invested in bonds issued or guaranteed by the United States, this state, or counties or cities of this state.

[Acts 1975, 64th Leg., p. 1127, ch. 426, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act was classified as art. 6243k; §§ 3 and 4 thereof provided:

"Sec. 3. Retirement, disability, and death benefit systems or programs created under the authority of Article III, Section 51-e, or Article XVI, Section 62, Subsection (b), of the Texas Constitution, or under the general powers of home-rule cities, remain in effect, subject to power granted by law to alter or abolish the systems.

"Sec. 4. This Act takes effect on adoption by the qualified voters of this state of S.J.R. No. 3, 64th Legislature, Regular Session [so adopted at election held on April 22, 1975]."

Arts. 6228k to 6228n. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(8) to (11), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 453, repealing these articles, enacted Title 110B, Public Retirement Systems.

For disposition of the subject matter of the repealed articles, see Disposition Table following Title 110B.

Former art. 6228k, relating to fractional service retirement benefits, who derived from Acts 1977, 65th Leg., p. 1407, ch. 570.

Former art. 6228*l*, relating to audits, reports, and actuarial studies of certain retirement systems, was derived from Acts 1977, 65th Leg., p. 1456, ch. 594; Acts 1979, 66th Leg., p. 2113, ch. 817, § 16.

Former art. 6228m, establishing the Pension Review Board, was derived from Acts 1979, 66th Leg., p. 1894, ch. 766; Acts 1981, 67th Leg., p. 3204, ch. 840, § 1. The 1981 Act was repealed by Acts 1981, 67th Leg., 1st C.S., p. 235, ch. 18, § 110(a)(3).

Former art. 6228n, relating to administration of public retirement systems, was derived from:

Acts 1979, 66th Leg., p. 2108, ch. 817.
Acts 1981, 67th Leg., p. 190, ch. 88, § 1.
Acts 1981, 67th Leg., p. 3205, ch. 841, § 1.

Acts 1981, 67th Leg., p. 190, ch. 88, was repealed by Acts 1981, 67th Leg., 1st C.S., p. 235, ch. 18, § 110(a)(11); and Acts 1981, 67th Leg., p. 3205, ch. 841, was repealed by Acts 1981, 67th Leg., 1st C.S., p. 235, ch. 18, § 110(a)(4).

Arts. 6228*o*, 6228p. Repealed by Acts 1981, 67th Leg., 1st C.S. p. 235, § 110(a)(5), (10), eff. Nov. 10, 1981

For disposition of the subject matter of the repealed articles, see Disposition Table following Title 110B, Public Retirement Systems.

Former art. 6228*o*, relating to registration of and reports from public retirement systems, was derived from Acts 1981, 67th Leg., p. 188, ch. 87.

Former art. 6228p, relating to annual reports to the state by public retirement systems, who derived from Acts 1981, 67th Leg., p. 2791, ch. 756.

2. CITY PENSIONS

Arts. 6229 to 6235. Repealed by Acts 1979, 66th Leg., p. 2113, ch. 817, § 14(b)(2) to (8), eff. Aug. 27, 1979

Art. 6235a-1. Repealed by Acts 1979, 66th Leg., p. 2112, ch. 817, § 14(a)(4), eff. Aug. 27, 1979

Arts. 6236 to 6243. Repealed by Acts 1979, 66th Leg., p. 2113, ch. 817, § 14(b)(9) to (16), eff. Aug. 27, 1979

Art. 6243a. Firemen's, Policemen's and Fire Alarm Operators' Pension System; Cities and Towns of 432,000 or More Having Fully or Partially Paid Departments

Board of Trustees

Sec. 1. In all incorporated cities and towns which operate a separate Firemen, Policemen and Fire Alarm Operators Pension System containing four hundred thirty-two thousand (432,000) or more inhabitants, according to the last preceding Federal Census, having a fully or partially paid Fire and Police Department, there shall be and there is hereby created a Board to consist of seven (7) members, as follows: three (3) Aldermen, Councilmen or Commissioners, each to serve on this Board for the term of office to which they were elected; and two (2) active firemen who shall be selected by the majority vote of the members of the Fire Department, which two (2) members shall be appointed by the governing body of the said city, one (1) for a term of two (2) years and the other for a term of four (4) years; and two (2) active policemen to be selected by the majority vote of the members of the Police Department, which two (2) members are also to be appointed by the governing body of the said city, one (1) for a term of two (2) years and the other for a term of four (4) years; all said members from the Fire and Police Department shall be elected by the contributors to the fund, as herein provided, and shall serve until their successors are elected and qualified, and their departmental successors shall be appointed to serve for a term of four (4) years. The said appointees and their successors shall constitute the Board of Trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund, to provide for the disbursement of same, and to designate the beneficiaries thereof. The Board shall be known as the Board of Firemen, Policemen and Fire Alarm Operators Pension Fund Trustees of _____, Texas. A

Board, as herein provided, shall be selected upon the enactment of this Act and shall hold its office until the next general election in such city for municipal officers, at which time a permanent Board shall be selected, as herein provided. The said Board shall organize by choosing one (1) member as Chairman, and by appointing a Secretary, which Board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this Act. It shall report annually to the governing body of such town or city, the condition of the said fund, and the receipts and disbursements on account of same, with a complete list of the beneficiaries of said fund, and the amounts paid them. The Board shall have the power and authority, by a majority vote, to reduce the percentages stipulated in any section or subsection of this Act which deals with disabilities or with awards granted to beneficiaries. The reduction shall be based upon the degrees of disability and circumstances surrounding the case. The Board shall have the complete authority and power to administer all of the provisions of this Act and any implied powers under this Act.

[See Compact Edition, Volume 5 for text of 1A and 1B]

Administrator of Fund; Professional Investment Management Services

Sec. 1C. (a) The Board of Trustees shall have the authority to appoint an administrator to keep records, make computations and perform various other related duties necessary for the operation of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund, but except for clerical assistance, he shall not have any duties relating to investment of the Reserve Retirement Fund, as provided in Section 15 hereof. Compensation for such an administrator shall be determined by the city and paid out of the general funds of the city.

(b) A person appointed administrator of the Fund shall not, by virtue of that appointment, become Secretary of the Board, but the Board may also appoint him as its Secretary, in which event he shall serve in that capacity with no additional compensation.

(c) If the Board appoints an administrator for the Fund, he shall perform in his office the functions of the City Secretary as they are specified in any other Sections hereof, and the City Secretary shall be relieved of such functions, except that the City Secretary shall continue to attest all certificates and documents issued under the seal of the city.

(d) In the administration of the Reserve Retirement Fund pursuant to Section 15, if the Board of Trustees determines that assistance provided by advisory service alone, as authorized under Section 1A above, will not enable the Board to make investments of such funds as efficiently and beneficially as could be done with the service of professional investment management, the Board may contract for such service with one or more organizations in such business, including a bank maintaining a trust department, any such investment manager to have the qualifications required by law and also the approval of the Board; provided the Board does not delegate its ultimate responsibility for investing the Reserve Retirement Fund. In any such contract, the Board, in the exercise of its discretion with respect to investments, shall specify policies and guidelines with which the investment manager must comply in respect to each investment arranged by such manager.

(e) The cost of any investment management services contracted for by the Board of Trustees may be paid in whole or in part by the city. If the city does not make provision for payment of such cost, either in whole or in part, then the amount required to make payment in full shall be paid from the Firemen, Policemen, and Fire Alarm Operators' Pension Fund.

[See Compact Edition, Volume 5 for text of 2 to 4]

Custody of Fund

Sec. 5. The Treasurer of said city or town shall be Ex-officio Treasurer of said Fund. All money for said Fund shall be paid over to and received by the Treasurer for the use of said Fund, and the duties thus imposed upon such Treasurer shall be additional duties for which he shall be liable under his oath and bond as such city or town Treasurer, but he shall receive no compensation therefor. The principal duties hereby imposed on the Treasurer are that he receive and promptly deposit income, including periodic contributions to the Fund, and make transfers of sums in conformity with the system adopted by the Board to make funds available for investment, paying annuities, making refunds, and other authorized payments.

Investment Custody Account Agreements

Sec. 5A. (a) If the Board contracts for investment management service, as authorized by Section 1C(d) above, it may, with respect to every such contract, also enter into an investment custody account agreement, designating a bank as custodian for all the assets allocated to the Reserve Retirement Fund for a particular investment manager.

(b) Under a custody account agreement, the Board shall require the designated bank to perform the duties and assume the responsibilities of custodian in relation to the investment contract to which the custody account agreement is established.

(c) The authority of the Board to make a custody account agreement is supplementary to its authority to make an investment management contract to which it relates. Allocation of assets to a custody account shall be coordinated by the Treasurer and the bank designated as custodian for such assets.

(d) The cost of any custody account agreement entered into by the Board of Trustees may be paid in whole or in part by the city. If the city does not

make provision for payment of such cost, either in whole or in part, then the amount required to make payment in full shall be paid from the Firemen, Policemen, and Fire Alarm Operators' Pension Fund.

[See Compact Edition, Volume 5 for text of 6 to 13]

Share of Cost to be Paid Out of Public Treasury

Sec. 14. The financial share of the cost of the pension system to be paid out of the public Treasury shall be as follows:

(a) Funds contributed by the city as its share of the amount required for the payment of benefits due members under the pension system and for no other purpose. Such contributions shall be annually appropriated by the City Council and periodically paid on the basis of a percentage of the total wages and salaries of the members of the Police and Fire Departments who are under the pension system. The amount of this percentage and any change in it can be determined only by the Legislature or by a majority vote of the voters of the city.

(b) Funds appropriated by the City Council to carry out various other provisions of the Act that authorize expenditures in connection with the administration of the Act.

(c) The percentage of contributions from the city shall be according to the following:

(1) effective October 1, 1979, twenty (20%) percent;

(2) effective October 1, 1980, twenty-one (21%) percent;

(3) effective October 1, 1981, twenty-two (22%) percent;

(4) effective October 1, 1982, twenty-three (23%) percent;

(5) effective October 1, 1983, twenty-four (24%) percent;

(6) effective October 1, 1984, twenty-five (25%) percent until amended by the Legislature or by a majority vote of the voters of the city provided that the percentage of contributions by the city shall not be less than twenty (20%) percent nor more than twenty-five (25%) percent. If an election is held and the proposal is approved by the members of the fund after October 1, 1979, the percentage of the increase in contributions for the members and the city shall not be effective until October 1 of the following year. The increase in the percentage of contributions shall then begin at the first step.

(d) The obligation of the city to contribute funds under this section shall be conditioned upon the approval by the majority of the members of the fund at an election to be held within two years of the enactment of this Act of an increase in the percentage of member contributions according to the following:

(1) effective October 1, 1979, ten (10%) percent;

(2) effective October 1, 1980, ten and one-half (10.5%) percent;

(3) effective October 1, 1981, eleven (11%) percent;

(4) effective October 1, 1982, eleven and one-half (11.5%) percent;

(5) effective October 1, 1983, twelve (12%) percent;

(6) effective October 1, 1984, twelve and one-half (12.5%) percent until amended by the Legislature or a majority of the members of the fund provided that the percentage of member contributions shall not be less than ten (10%) percent nor more than twelve and one-half (12.5%) percent. If the election to be held and the proposal to be approved by the members of the fund as provided in Subsection (d) of Section 14 of this Act shall be held subsequent to October 1, 1979, the increase in percentage of member contributions shall begin at the first step in accordance with the provisions of Subsection (d) of Section 14 of this Act effective the next October 1 after the election. If, at any time subsequent to the approval of the percentages of member contribution as set forth herein by a majority of the members of the fund, the members of the fund elect to revoke an increase in the percentage of member contributions as provided under this section, the city shall not be obligated to increase the percentage of its contributions as heretofore set forth in this section and the percentage of contributions by the city shall be at a rate not less than two times the percentage of the members' contributions.

Investment of Surplus

Sec. 15. (a) Whenever, in the opinion of said Board, there is on hand in said Pension Fund a surplus over and above a reasonably safe amount to take care of current demands upon said Fund, such surplus, or so much thereof as in the judgment of said Board is deemed proper, shall be put into a Reserve Fund for investment for the sole benefit of said Pension Fund.

(b) In making investments and supervising investments, members of the Board of Trustees shall exercise the judgment and care under the circumstances then prevailing, which men of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to probable income therefrom as well as the probable safety of their capital.

(c) The Board of Trustees has the ultimate responsibility for the investment of funds, which the Board may exercise directly by purchasing or selling securities or other investments, but it shall have the authority to exercise discretion in determining the procedure that it deems most efficient and beneficial

for the Reserve Retirement Fund in carrying out such responsibility. The Board may contract for professional advisory service pursuant to Section 1A(a) and also may contract for professional investment management service pursuant to Section 1C(d). Any contract that the Board may make with an investment manager shall set forth policies and guidelines of the Board with references to standard rating services and specific criteria for determining the quality of investments.

(d) The Board, in exercising its control, may at any time, and shall at frequent intervals, monitor the investments made by any investment manager, and shall enforce full compliance with the requirements of the Board.

(e) No investment manager other than a bank that has a contract with the Board to provide assistance in making investments shall be the custodian of any of the securities or other assets of the Reserve Retirement Fund. Pursuant to Section 5A(a), the Board may designate a bank to serve as custodian to perform the customary duty of safekeeping as well as duties incident to the execution of transactions. When the demands of the Pension Fund require, the Board shall withdraw from the custodian money for use in paying benefits to members of the Pension System and for such other uses as are authorized by this Act and approved by a majority of the Board.

(f) The regulations set forth in this Section for the investment of surplus funds shall apply to the original Pension System specifically established in this Act, as well as to any amended plan established pursuant to Section 11A hereof by Section 11B or related provision of law.

[See Compact Edition, Volume 5 for text of 16 and 17]

[Amended by Acts 1975, 64th Leg., p. 789, ch. 304, §§ 1 to 5, eff. May 27, 1975; Acts 1979, 66th Leg., p. 767, ch. 334, §§ 1, 2, eff. June 6, 1979.]

Section 6 of the 1975 amendatory act provided:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared to be severable."

Art. 6243b. Firemen and Policemen Pension Fund in Cities of 400,000 to 600,000

Board of Trustees

Sec. 1. (a) In all incorporated cities and towns containing more than four hundred thousand (400,000) inhabitants and less than six hundred thousand (600,000) inhabitants, according to the last preceding Federal Census, having a fully or partially paid fire department, the mayor, two (2) citizens of said city or town to be designated by the mayor, the chief of police, the chief of the fire department and their successors, three (3) policemen other than the chief or assistant chief, to be elected by members of the policemen's pension fund, three (3) firemen other than the chief or assistant chief, to be elected by members of the firemen's pension fund, composing eleven (11) members, seven (7) of which shall be a quorum, shall constitute a board of trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund, to provide for the disbursement of the same and to designate the beneficiaries thereof. The three policemen and the three firemen named above shall be elected to a term of four (4) years. The term for a citizen designated by the mayor is four (4) years. The board shall be known as the Board of Firemen, Policemen, and Fire Alarm Operators Pension Fund, Trustees of _____, Texas. Said board shall organize by choosing one member as Chairman and by appointing a secretary. Such board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of beneficiaries of said fund and the amounts paid them.

(b) Of the first two (2) citizens designated by the mayor to serve on the board of trustees after the effective date of this subsection, one shall serve a four-year term and the other a two-year term. Thereafter all terms shall be for four (4) years. Of the first six (6) firemen and policemen elected after the effective date of this subsection, three (3) of the firemen and policemen shall serve four-year terms and three (3) of the firemen and policemen shall serve two-year terms. The first four-year terms shall not be served by all three members elected from the firemen's fund nor by all three members elected from the policemen's fund. This determination shall be made by lot under the supervision of the board. Thereafter all elected terms shall be for four (4) years.

(c) The board of trustees shall provide by rule for election of its elected members by secret ballot.

Definitions

Sec. 1A. In this Act:

(1) "Board of Trustees" or "Board" means the Board of Trustees of the Firemen, Policemen and Fire Alarm Operators Pension Fund.

(2) "Member" means a duly appointed and enrolled policeman, fireman, or fire alarm operator of a city covered by this Act who is a contributing member of the pension fund.

(3) "Pension Fund" or "Fund" means the Firemen, Policemen and Fire Alarm Operators Pension Fund.

(4) "Salary" means base pay plus longevity pay received by a member from the city for personal services rendered as a policeman, fireman, or fire alarm operator excluding all other forms of compensation.

(5) "Wages" means salary, longevity, and overtime pay received by a member from the city for personal services rendered as a policeman, fire-

man, or fire alarm operator excluding all other compensation.

Participation in Fund; Wage Deductions

Sec. 2. Each member fireman, policeman and fire alarm operator in the employment of such city or town, must participate in said fund, except in times of national emergency those persons as are employed during that time shall not be required to participate in the fund, and said city or town shall be authorized to deduct a sum of not less than one per cent (1%) nor in excess of six per cent (6%) of his wages from each month to form a part of the fund known as the Firemen, Policemen and Fire Alarm Operators Pension Fund, except that the city or town shall deduct a sum less than one per cent (1%) or more than six per cent (6%) of the member's wages each month to form a part of the Firemen, Policemen and Fire Alarm Operators Pension Fund if the board of trustees of that fund increases or decreases the percentage of wages to be contributed to the fund under the provisions of Section 10A of this Act. The amount to be deducted from the wages of those named above who must participate in the fund is to be determined by the board of trustees as provided for in Section 1 of this Act within the minimum and maximum deductions herein provided or as otherwise provided under the provisions of Section 10A of this Act.

Payments to Fund

Sec. 3. There shall be deducted for such fund from the wages of each fireman, policeman and fire alarm operator a sum to be determined by the board of trustees under the provisions of Section 2 or 10A of this Act. Any donations made to such fund and rewards received by any member of either of said funds, and all funds received from any source for such fund shall be deposited in like manner to the credit of such fund.

[See Compact Edition, Volume 5 for text of 4 and 5]

Membership in Pension Fund; Eligibility

Sec. 6. (a) Any person who has been duly appointed and enrolled as a policeman, fireman, or fire alarm operator of any city covered by this Act shall automatically become a member of the pension fund of such city upon expiration of ninety (90) days from date such city comes within the provisions of this Act, provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than twenty-nine (29) years of age. In all instances where a person is already a member of and contributor to such pension fund, he shall retain and be entitled to all rights and privileges due him by virtue of having been such a member and contributor.

(b) Any person not a member of the pension fund when this Act becomes effective, who thereafter is duly appointed and enrolled as a fireman, policeman, or fire alarm operator of such city shall automatically become a member of the pension system as a condition of his employment provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than twenty-nine (29) years of age.

Retirement Pensions

Sec. 7. Whenever any member of said departments who shall have contributed a portion of his wages, as provided herein, shall have served twenty-five (25) years or more in either of said departments and shall have attained the age of fifty (50) years, he shall be entitled to be retired from said service upon application, and shall be entitled to be paid from said fund a monthly pension of one-half (½) of the salary received by him at the time of his retirement subject to change under the provisions of Section 10A of this Act.

Disability Pensions

Sec. 8. Whenever any member of the fire department, police department or fire alarm operators' department of any such city or town, and who is a contributor to said fund as provided, shall become so permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty, or shall for any cause, through no fault of his own, become so permanently disabled as to incapacitate him for the performance of duty, and shall make written application therefor approved by a majority of the board, he shall be retired from service and be entitled to receive from said fund one-half of the monthly salary received by him as a member of either of said departments, at the time he became so disabled, to be paid in regular monthly installments subject to change under the provisions of Section 10A of this Act.

Death Benefits, Widows, etc.

Sec. 9. In the case of the death before or after retirement of any member of the fire department, police department, or fire alarm operators' department of any city or town resulting from disease contracted or injury received while in the line of duty or from any other cause through no fault of his own and who at the time of his death or retirement was a contributor to said Fund, leaving a widow and no children, the widow shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly salary received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly salary received by such member immediately preceding his death; and, if at the time of the death of such contributor, under the circumstances and conditions hereinabove set forth, such contributor leaves a child or children under sixteen (16) years of age and the wife of such contributor is dead or divorced from such contributor, the child or children under sixteen (16) years of age shall be entitled to receive monthly from said Fund an amount not exceeding one-third

of such monthly salary received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly salary received by such member immediately preceding his death, said sum so paid to be equally divided among said children under sixteen (16) years of age, if more than one; and if at the time of the death of such contributor, under the conditions hereinabove set forth, such contributor leaves a widow and a child or children under sixteen (16) years of age, the widow shall be entitled to receive monthly from said Fund (for the joint benefit of herself and such child or children) an amount not exceeding one-half of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, one-half of such monthly salary received by such member immediately preceding his death, said payments to be made until such child or all of said children, if more than one, as the case may be, shall reach sixteen (16) years of age, and after said child or all of said children, as the case may be, have reached the age of sixteen (16) years, then the widow shall be entitled to receive monthly from said Fund (for her benefit) an amount not exceeding one-third of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, one-third of such monthly salary received by such member immediately preceding his death. In no case shall the amount paid to any one family exceed monthly the amount of one-half of the monthly salary earned by the deceased immediately prior to the time of his retirement, or, if not retired, prior to the time of his death. On the remarriage of any widow, such pension paid to her for her benefit shall cease and in the event that there are child or children under sixteen (16) years of age at the time of said remarriage, one-third of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, immediately preceding his death, shall be paid monthly to the widow for the sole benefit of the child or children under the age of sixteen (16) years; provided, however, that the Pension Board, if it finds that said payments to the widow are not being used for the benefit of said child or children, may order said monthly benefits paid to said child or children instead of to said widow who has remarried. Where there is more than one child of such contributor, the benefits herein provided for shall be equally divided among the children, and upon the marriage or death of any child receiving such pension, or upon any child receiving such pension reaching sixteen (16) years of age, such pension payment for the benefit of said child shall cease, and if there remains a child or children under sixteen (16) years of age, the share of the said child so married or dead or reaching sixteen (16) years of age, shall be paid for the benefit of the remaining child or children under sixteen (16) years of age. In the event that a contributor leaves a widow and child or children under sixteen (16) years of age who are not the children of said widow, the Pension Board may, in its discretion, either pay monthly to the widow for the benefit of herself and said child or children, an amount not exceeding one-half of the monthly salary received by such member immediately preceding his retirement, or immediately preceding his death, if not retired before death, as hereinabove provided, or said Board may order one-fourth of said monthly salary received by such member paid to the widow and one-fourth of said monthly salary paid to said child or children. No widow or child of any such member resulting from any marriage contracted subsequent to the date of retirement of said member shall be entitled to a pension under this law; provided, however, that the provisions of this Section shall not be construed so as to change any pension now being paid any pensioner under the provisions of Chapter 101, of the General and Special Laws of the Forty-third Legislature, First Called Session, and as amended by Chapter 346 of the General and Special Laws of the Regular Session of the Forty-fourth Legislature. The provisions of this section are subject to change under the provisions of Section 10A of this Act.

Death Benefits, Father, etc.

Sec. 10. If any member of the fire department, police department, or fire alarm operators' department dies from injuries received or disease contracted while in the line of duty, or from any cause through no fault of his own, who was a contributor to said fund and entitled to participate in said fund himself, leaves no wife or child, but who shall leave surviving him a dependent father, mother, brother, or sister, wholly dependent upon said person for support, such dependent father, mother, sister and brother shall be entitled to receive in the aggregate one-half of the salary earned by said deceased immediately prior to his death, to be equally divided between those who are wholly dependent on said deceased, so long as they are wholly dependent. The board shall have authority to determine the facts as to the dependency of said parties and each of them, as to how long the same exists, and may at any time upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper, and the findings of said board in regard to such matter and as to all pensions granted under this law shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustees shall have been set aside or revoked. The provisions of this section are subject to change under the provisions of Section 10A of this Act.

Modification of Benefits, Membership Qualifications, Eligibility Requirements and Contributions; Conditions

Sec. 10A. (a) Notwithstanding anything to the contrary in other parts of this Act, the Board of Trustees of the Firemen, Policemen, and Fire Alarm Operators Pension Fund may, by majority vote of the whole board, make from time to time one or more of the following changes, or modifications:

(1) modify or change prospectively or retroactively in any manner whatsoever any of the benefits provided by this Act, except that any retroactive change or modification shall only increase pensions or benefits;

(2) modify or change prospectively in any manner whatsoever any of the membership qualifications;

(3) modify or change prospectively or retroactively in any manner whatsoever any of the eligibility requirements for pensions or benefits;

(4) increase or decrease prospectively the percentage of wages less than the one per cent (1%) minimum or above the six per cent (6%) maximum provided in Section 2 of this Act to be contributed to the fund; or

(5) provide prospectively for refunds, in whole or in part, and with or without interest, of contributions made to the fund by employees who leave the city service before qualifying for a pension.

(b) None of the changes made under Subsection (a) of this section may be made unless all of the following conditions are sequentially complied with:

(1) the change must be approved by a qualified actuary selected by a four-fifths vote of the Board; the actuary, if an individual, must be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries; the findings upon which the properly selected and qualified actuary's approval are based are not subject to judicial review;

(2) the change must be approved by a majority of all persons then making contributions to the fund, voting by secret ballot at an election held after ten (10) days' notice given by posting at a prominent place in every fire station, every police station and substation, and in the city hall;

(3) whether the fund for the police and the fund for the firemen and fire alarm operators are operated as separate funds or as one fund, all changes shall be uniform for both departments and contributing members of both departments shall have the right to vote;

(4) the changes, except changes made under the provisions of Subdivision (1), Subsection (a), of this section, shall apply only to active member employees who are members of the departments at the time the change becomes effective and those who enter the departments thereafter; and

(5) the changes shall not deprive any person, without his written consent, of any right to receive a pension or benefits which have already become vested and matured.

[See Compact Edition, Volume 5 for text of 11 to 16]

Validation of Proceedings for Separation of Pension Funds

Sec. 17. All Acts and proceedings had and done by the governing body and Board of Trustees of the Pension Fund of any such city or town, subject to the above provisions, in creating, establishing, maintaining, and administering separate Pension Funds for Firemen, including Fire Alarm Operators and Policemen, are hereby legalized, approved, and validated, as well as the division by said governing body and Board of Trustees of any public funds voted by the voters of said city or town for the Firemen, Policemen, and Fire Alarm Operators' Pension Fund between said two (2) Funds, and said governing body and Board of Trustees shall continue the separate maintenance and administration of said Funds in the manner hereinabove provided. This section and Section 16 of this Act provide only for the separation of pension funds into policeman and fireman divisions and grant the governing body no power or authority granted to the Board of Trustees under any provision of this Act, and the Board of Trustees shall have exclusive charge of administration and maintenance of the fund.

[See Compact Edition, Volume 5 for text of 18]

[Amended by Acts 1975, 64th Leg., p. 1372, ch. 526, §§ 1, 2, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 590, ch. 237, § 122, eff. Sept. 1, 1981.]

Art. 6243e. Fireman's Relief and Retirement Fund

[See Compact Edition, Volume 5 for text of 1 to 3]

Sec. 3A. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Cities of Less Than 240,000; Composition and Duties of Board of Trustees

Sec. 3B. (a) This section applies to all cities having a population of less than two hundred forty thousand (240,000), according to the last preceding Federal Census in which there is a "full paid" fire department participating in a Firemen's Relief and Retirement Fund.

[See Compact Edition, Volume 5 for text of 3B(b) to 6A]

Secs. 6B, 6B–1. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Secs. 6C to 6C–2. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

[See Compact Edition, Volume 5 for text of 6D to 7A]

Secs. 7B, 7C. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Sec. 7D. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

[See Compact Edition, Volume 5 for text of 7E to 10]

Contributions and Membership; Cities of Less Than 240,000

Sec. 10A. (a) In all cities having fully paid firemen where Firemen's Relief and Retirement Funds now exist or shall be created under the provisions of this Act and having a population of less than two hundred forty thousand (240,000), inhabitants according to the preceding Federal Census, the city or the governing body of the city shall deduct an amount equal to no less than three per cent (3%) nor more than six per cent (6%) from the monthly salary or compensation of each participating member fireman.

[See Compact Edition, Volume 5 for text of 10A(b) to 10A(i)]

Pension Contribution Funds; Cities of Less Than 240,000

Sec. 10A–1. In all cities having fully paid firemen where Firemen's Relief and Retirement Funds now exist or shall be created under the provisions of this Act and having a population of less than two hundred forty thousand (240,000), according to the last preceding Federal Census, the pension contributions paid by a fireman shall not be refunded to him if the fireman is separated from the service of the fire department for any reason other than those qualifying said fireman for a pension, nor shall his beneficiary or estate receive any amount paid by him into the pension fund or any interest his contributions have accrued.

Provided further, however, a fireman who comes within the preceding paragraph may have his pension contributions refunded in a lump sum if the following provisions have been complied with:

1. A majority of the participating members have voted by secret ballot that pension contributions be refunded if a fireman leaves the service of the Fire Department prior to the time that he is entitled to retirement benefits.

2. The refund provisions if approved by a majority of the members shall apply only to those who leave the service of the Fire Department after the effective date of the election.

Cities of Less Than 240,000; Monthly Deductions From Salaries; Contributions and Appropriations; Membership; Service Credits

Sec. 10A–2. (a) In all cities having fully paid firemen where Firemen's Relief and Retirement Funds now exist or shall be created under the provisions of this Act and having a population of less than two hundred forty thousand (240,000), according to the last preceding Federal Census, the city or the governing body of the city shall deduct an amount equal to no less than three per cent (3%) nor more than nine per cent (9%) from the monthly salary or compensation of each participating member fireman; provided, however, that the total of the percentage contributed by such city to the Fund, plus the percentage, if any, contributed by such city under the Federal Social Security Act, shall not exceed:

(1) nine per cent (9%) of the monthly salary, or

(2) the total percentage contributed to the retirement of other full time employees of such city under the Texas Municipal Retirement System, or any other retirement system, whichever is greater.

[See Compact Edition, Volume 5 for text of 10A–2(b) to 10A–2(g)]

Cities of 240,000 or Less; Monthly Deductions From Salaries; Contributions and Appropriations; Membership; Service Credits

Sec. 10A–3. (a) This section applies to all cities which have a population of two hundred forty thousand (240,000) or less according to the last preceding federal census which adopt the provisions of this section by majority vote of the participating members of the fund and adopted by ordinance.

[See Compact Edition, Volume 5 for text of 10A–3(b) to 10C]

Sec. 10D. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

Sec. 10E. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 11 and 12]

Sec. 12A. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

Sec. 12B. Repealed by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975.

[See Compact Edition, Volume 5 for text of 13 to 18]

Sec. 18A. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 19]

Application of Sunset Act

Sec. 19A. The office of Firemen's Pension Commissioner is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this Act expires September 1, 1987.

[1] Article 5429k.

[See Compact Edition, Volume 5 for text of 20 to 23]

Investment of Surplus; Cities of Less Than 240,000

Sec. 23A. (a) This section applies to the Firemen's Relief and Retirement Fund in any city having a population of less than two hundred forty thousand (240,000), according to the last preceding Federal Census.

[See Compact Edition, Volume 5 for text of 23A(b) to 23A(e)]

Sec. 23A–1. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 23B]

Sec. 23C. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 23D and 23E]

Secs. 23F, 23G. Repealed by Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975.

[See Compact Edition, Volume 5 for text of 24 to 28]

[Amended by Acts 1975, 64th Leg., p. 412, ch. 183, § 23, eff. May 13, 1975; Acts 1975, 64th Leg., p. 1148, ch. 432, § 31, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.137, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2581, ch. 689, §§ 1 to 6, eff. Aug. 31, 1981.]

Art. 6243e.1. Firemen's Relief and Retirement Fund in Cities of 300,000 to 375,000

Definitions

Sec. 1. In this Act:

(1) "Board" or "board of trustees" means the board of firemen's relief and retirement fund trustees.

(2) "Fireman" means an active member of a regularly organized fire department of an incorporated city.

(3) "Fund" or "pension fund" means the firemen's relief and retirement fund.

Creation of Fund; Board of Firemen's Relief and Retirement Fund Trustees

Sec. 2. A firemen's relief and retirement fund is created in all incorporated cities having a population of not less than 300,000 nor more than 375,000, according to the last preceding federal census, and having a fully paid fire department. The mayor of the city, the city treasurer, or if no treasurer, then the city secretary, city clerk, or other person or officer as by law, charter provision, or ordinance, performs the duty of city treasurer, and three members of the regularly organized active fire department, to be selected by vote of the members of the fire department in the manner provided in this Act, shall be and are constituted the "Board of Firemen's Relief and Retirement Fund Trustees" to receive, handle and control, manage, and disburse the fund for the respective city or town. The board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate as provided by this Act. The board shall be known as the "Board of Firemen's Relief and Retirement Fund Trustees of _____, Texas." The mayor shall be the chairman and the city treasurer shall be the secretary-treasurer of the board of trustees respectively. The fire department of any city that comes within the provisions of this Act shall elect by ballot three of its members, one to serve for one year, one to serve for two years, and one to serve for three years, or until their successors may be elected as provided in this Act, as members of the board of trustees and shall immediately certify the election to the governing body of the city. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, the fire department shall elect by ballot and certify, one member of such board of trustees for a three-year term. The board of trustees shall elect annually from among their number a vice-chairman who shall act as chairman in the absence or disability of the mayor-chairman. The board of trustees shall hold regular monthly meetings at a time and place as it may by resolution designate and may hold special meetings on call of the chairman as he may deem necessary; shall keep accurate minutes of its meetings and records of its proceedings; shall keep separate from all other city funds all money for the use and benefit of the firemen's relief and retirement fund; shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by the city for the purpose; shall make disbursements from the fund only on regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of the board of trustees. The city treasurer, as the treasurer of the board of trustees, shall be the custodian of the firemen's relief and retirement fund for the city under penalty of his official bond and oath of office. No member of the board of trustees may receive compensation for service on the board of trustees. The board of firemen's relief and retirement fund trustees of each such city or town in this state shall annually and not later than the 31st day of January of each year after this Act takes effect, make and file with the city treasurer a detailed and itemized report of all receipts and disbursements with respect to the fund, together with a statement of their administration, and shall make and file other reports and statements or furnish further information as from time to time may be required or requested by the city treasurer.

The board of trustees shall have the power and authority to compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before notaries public, and its chairman shall have the power and authority to administer oaths to witnesses. A majority of all members shall constitute a quorum to transact business, and any order of the board of trustees shall be made by vote to be recorded in the minutes of its proceedings. If a vacancy occurs in the membership of the board of trustees by reason of the death, resignation, removal, or disability of an incumbent, the vacancy shall be filled in the manner provided in this Act for the selection of the member to be so succeeded.

Eligibility; Amount and Time of Payment of Benefits

Sec. 3. (a) Any person who has been duly appointed and enrolled and who has attained the age of 55 years or served actively for a period of 35 years, regardless of age, that service having been performed in any rank, as a fully paid fireman, in one or more regularly organized fire departments in any city in this state covered by the provisions of this Act may retire from that service or department and on retirement is entitled to receive from the firemen's relief and retirement fund of that city a monthly pension equal to the sum of three-fourths of one percent of his average monthly salary multiplied by his service, if any, prior to 1941, plus two percent of his average monthly salary multiplied by his service after 1940.

(b) The factor of two percent may be increased in increments of one-tenth of one percent, provided that:

(1) the increase is first approved by an actuary; and

(2) the increase applies only to active full-time firemen in the department at the time of the increase and those who enter the department after the increase is effective.

(c) The average salary means the monthly average of the fireman's salary for the highest three calendar years during his period of service, excluding overtime pay and any temporary pay in higher classification.

(d) Any person who continues to serve actively beyond the date he would normally retire shall continue to make contributions to the fund and accrue pension credits to the date of actual retirement.

(e) Benefits shall be payable on the first day of each month commencing with the month following the date as of which the member retired.

Cost of Living Adjustment

Sec. 4. Any fireman and beneficiaries of a fireman who retires or has retired or who received benefits under Section 3, 6, or 11 of this Act, shall be entitled to an annual cost of living adjustment of his pension allowance and their benefits based on the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjustment must first be approved by a majority of the members of the board of firemen's relief and retirement fund trustees of the city and an actuary. The adjusted pension allowance and adjusted benefits shall never be less than the amount granted the fireman or his beneficiaries on the date of his retirement or death without regard to changes in the consumer price index. The adjusted pension allowance or adjusted benefits may be increased by an amount to be determined by a majority of the board of firemen's relief and retirement fund trustees of the city and an actuary.

Eligibility After 10 Years of Service

Sec. 5. (a) Any fireman who has served in the fire department of the city for a period of at least 10 years and who has contributed to the firemen's relief and retirement fund of the city for a period of at least 10 years, shall be entitled to receive a pension allowance at the age of 55 years, provided that the following conditions are met:

(1) on termination of employment, the fireman shall leave his contributions in the fund, and shall not be required to make any further contributions to the fund;

(2) the pension allowance shall be based on the monthly average of the fireman's salary for the highest three calendar years during the fireman's service excluding overtime pay and any temporary pay in higher classifications; and

(3) the pension allowance shall be calculated by the formula, as set out in Section 3 of this Act, in effect at the time the fireman terminated his employment.

(b) In the event the fireman dies before the age of 55, or in the event the fireman dies after retirement under the provisions of this section, the fireman's surviving spouse shall receive 75 percent of the fireman's pension allowance provided for under this section.

(c) Any fireman qualifying for a pension allowance under Subsection (a) of this section may, on or after termination of his employment, elect to withdraw his contributions from the fund, thereby forfeiting any rights he may have had in the fund.

(d) The provisions of this section shall not become operable until a majority of the members of the board of firemen's relief and retirement fund trustees of the city and an actuary so approve.

Total and Permanent Disability

Sec. 6. (a) If a person, serving as an active fireman duly enrolled in a regularly active fire department becomes totally and permanently disabled, the board of trustees shall, on his request, or without his request if it shall deem proper and for the good of the department, retire the person from active service and order that he be paid from the firemen's relief and retirement fund of the city a monthly amount equal to his accrued unreduced pension as determined under Subsection (a), Section 3 of this Act. If a person becomes totally and permanently disabled while in or as a consequence of the performance of his duty, the amount to be paid shall not be less than $200 and if a person becomes disabled from any other cause, the amount to be paid shall not be less than $200.

(b) When the disability of a person who has been granted a pension under Subsection (a) of this section ceases, the pension shall be discontinued and the person shall be restored to active service at not less than the same salary he received at the time of his retirement for disability.

(c) The provisions of this section shall apply even though the fireman was disabled while gainfully employed by someone other than the respective fire department for which he was employed.

(d) No person may receive retirement benefits under this section for any period of time during which that person received his full salary or compensation including payment received while on sick leave.

Transferred Firemen

Sec. 7. (a) This section applies to all cities having an organized, fully paid fire department covered by a firemen's relief and retirement fund.

(b) A fireman who transfers from the fire department of one city to that of a city covered by this section and desires to participate in the fund of that city shall:

(1) be less than 30 years old;

(2) pass a physical examination taken at his expense and performed by a physician selected by the board;

(3) pay into the fund of that city an amount equal to the total contribution he would have made had he been employed by that city instead of the city from which he transferred, plus four percent interest.

(c) The city to which the fireman has transferred shall pay an amount equal to the amount it would have paid had the fireman been employed by that city instead of the city from which he transferred, plus four percent interest.

(d) No fireman may participate in the fund of the city to which he has transferred until he has complied with the provisions of this section.

Disability Retirement or Payment; Certificates of Disability; Election of Section Under Which Payments Made

Sec. 8. No person may be retired either for total or temporary disability, except as provided in this Act, nor receive any allowance from the fund, unless and until there shall have been filed with the board of trustees, certificates of his disability or eligibility signed and sworn to by the person or by the city physician, if there be one, or if none, then by any physician selected by the board of trustees. The board of trustees, in its discretion, may require other or additional evidence of disability before ordering retirement or payment.

If any fireman or one or more beneficiaries of a fireman shall be or become entitled to receive payments from a fund under the provisions of more than one section of this Act, the fireman or beneficiaries shall be entitled to and shall be required to elect one section under which such payments shall be computed and paid.

Required Contributions

Sec. 9. Each fireman who is a member of a fully paid fire department which has a firemen's relief and retirement fund and who was participating in the firemen's relief and retirement fund of his city on July 22, 1957, shall be required to make the contributions to the fund provided by this Act, and those firemen shall be entitled to participate in the benefits provided by this Act.

Contributions; Membership; Creditable Service; Investment of Surplus Funds

Sec. 10. (a) The city shall contribute and appropriate each month to the fund an amount equal to 11.85 percent of the monthly payroll, excluding overtime pay and any temporary pay in higher classification of the fire department of the city, and each full-time fireman shall pay into the pension fund 11.85 percent of his monthly salary, excluding overtime pay and any temporary pay in higher classification. The governing body of the city may authorize the city to make an additional contribution to its firemen's relief and retirement fund in whatever amount the governing body of the city may fix. The firemen, by a majority vote in favor of an increase in contributions above the 11.85 percent, shall increase each member's contribution above 11.85 percent in whatever amount the pension board recommends.

(b) Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section shall become and form a part of the firemen's relief and retirement fund of the city in which the contributing firemen serve.

(c) Any person who enters service as a fireman in any city that has a firemen's relief and retirement fund to which he is eligible for membership shall become a member of the fund as a condition of his appointment, and shall, by acceptance of the appointment, agree to make the contributions required by this Act of members of the fund and is eligible to participate in the benefits of membership in the fund as provided in this Act. However, no person is eligible to membership in the fund who has reached his 30th birthday at the time he enters service as a fireman, and any person who enters service as a fireman may be denied or excused from membership in the fund if the board of trustees of the fund determines that he is not of sound health. The applicant shall pay the cost of any physical examination required by the board of trustees for this purpose.

(d) Each person who is an active member of a firemen's relief and retirement fund previously organized and existing under the laws of this state at the effective date of this amendment shall continue as a member of the fund, and he shall retain and be allowed credit for all service to which he was entitled in the fund of which he was a member immediately prior to the effective date of this amendment.

(e) The severance benefit of a fireman who subsequently terminates his employment before he is eligible for retirement shall be an amount equal to the sum total of his monthly contributions made while a participating member of the firemen's relief and retirement fund. If the member's employment is terminated by death before retirement and he leaves no surviving beneficiary entitled to pension benefits, his estate shall receive his contributions without interest.

(f) These provisions apply to all active full-time members of the fire department and to those persons who shall become members of the fire department at any time in the future.

(g) When, in the opinion of the board of trustees, there is on hand in the firemen's relief and retirement fund of any city under this Act a surplus over and above a reasonable and safe amount to take care of the current demands on the fund, the surplus, or so much of it as in the judgment of the board is deemed safe, may be invested in federal, state, county, or municipal bonds, and in shares or share accounts of savings and loan associations, where the shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation, and in the securities in which the state Permanent School Fund of Texas or the Permanent University Fund of The University of Texas may be invested under present laws, and may also invest in notes and other evidence of debt secured by mortgages insured or guaranteed by the Federal Housing Administration under the provisions of the National Housing Act, and the interest or dividends shall be deposited into the fund and become a part of it.

(h) The mayor shall appoint an investment advisory committee consisting of not less than three nor more than five qualified persons to be selected from the personnel of the banks of the city. The appointees shall be experienced in the handling of securities and investment matters and shall serve for a two-year term. The purpose of this committee shall be to advise and make recommendations on investment procedure and policy, and to review the investments made by the board. From these reviews and observations, the committee shall make an annual report to the board of trustees of the city within 90 days after the end of each calender year.

Survivor's Benefits

Sec. 11. (a) If a fireman dies before retirement, the fireman's surviving spouse shall be entitled to receive a monthly pension, the amount of which shall be 75 percent of the member's accrued unreduced pension as determined under Section 3 of this Act. The monthly pension payable to the spouse of a member who dies while in or as a consequence of the performance of duty shall be not less than $100, and the monthly pension payable to the surviving spouse of a member who dies while not in the performance of duty shall be not less than $100.

(b) Each child of a deceased member under the age of 18 is entitled to receive as a monthly pension $50 if there is a surviving spouse entitled to a pension, or $100 if not. The benefits paid to the minor children are in addition to the minimums provided for the surviving spouse, or any accrued amount that the surviving spouse may be entitled to.

(c) On the death of a retired member, the surviving spouse, provided the spouse married the member prior to the member's retirement, is entitled to receive as a monthly pension, 75 percent of the pension being paid to the member. Each child of such deceased retired member under the age of 18 is entitled to receive as a monthly pension $50 if there is a surviving spouse entitled to a pension, or $100 if not.

(d) If a deceased member or retired member leaves no surviving spouse or children eligible to receive a benefit hereunder but is survived by a dependent parent, or parents, such dependent parent, or one of the surviving parents designated by the board of trustees, is entitled to receive as a monthly pension, the amount otherwise payable to the surviving spouse.

(e) If a deceased member leaves no surviving spouse, children, or dependent parent eligible to receive a benefit as provided in this section, the member's total contributions, less any amount previously paid to the member, shall be paid to the member's estate.

(f) Payments to a child shall be made whether or not a spouse survives and shall continue after the death of a surviving spouse, but shall cease on the earliest of such child's death, marriage, or attainment of age 18. Payment to a surviving spouse or parent shall cease upon the earlier of such person's death or marriage. After all payments cease, any excess of the member's total contributions at date of death over any disability and death benefits shall be paid to the member's estate.

(g) The provisions of this section shall apply even though the death was caused while the member was gainfully employed by someone other than the respective fire department for which he was employed.

(h) Benefits provided in this section shall be payable on the first day of each month commencing with the month following the one in which the member's death occurs.

(i) The board of trustees shall determine all questions of dependency, and their determination shall be final and conclusive on all parties. All unmarried, legitimate, and legally adopted children under age 18, in the absence of a determination to the contrary, are considered dependent.

(j) On a majority vote of the board of trustees, benefits to minor children may be increased to an amount not to exceed the maximum approved by an actuary.

(k) On a majority vote of the board of trustees, benefits to a surviving spouse may be increased to

an amount not to exceed the maximum approved by an actuary.

Exemption From Execution, Attachment, Garnishment, etc.; Transfers or Assignments Void

Sec. 12. No portion of a firemen's relief and retirement fund may, either before or after its order of disbursement by the board of trustees to a retired or disabled fireman or the surviving spouse, the guardian of any minor child or children, or the dependent parent of any deceased, retired, or disabled fireman, be ever held, seized, taken, subjected to, or detained, or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process, or proceedings whatsoever issued out of or by any court of this state for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment against such fireman or the fireman's surviving spouse, the guardian of the fireman's minor child or children, the fireman's dependent father or mother, nor shall said fund or any claim thereto be directly or indirectly assigned or transferred, and any attempt to transfer or assign the same shall be void. The fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose whatever.

Integration With Benefits Under Federal Social Security Act

Sec. 13. No firemen's relief and retirement fund for fully paid firemen may ever be integrated with benefits payable under the federal Social Security Act,[1] and benefits which might be available to a fireman under the federal Social Security Act may never be taken into account in a city where firemen are eligible to enroll for or receive retirement benefits under the Social Security Act when determining the amount of benefits which a fireman may receive from a firemen's relief and retirement fund for fully paid firemen.

[1] 42 U.S.C.A. § 301 et seq.

Medical Examinations for Disabled Firemen

Sec. 14. The board of trustees, in its discretion, at any time may cause any person retired for disability under the provisions of this Act to appear and undergo a medical examination by the city physician or any other physician appointed or selected by the board of trustees for that purpose, and the result of the examination and report by the physician shall be considered by the board of trustees in determining whether the relief in the case shall be continued, increased (if less than the maximum provided herein), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from the board of trustees to appear and be reexamined, unless excused by the board, fail to appear or refuse to submit to reexamination, the board of trustees is authorized, in its discretion, to reduce or entirely discontinue relief.

Conviction of Felony; Payments to Spouse; Children or Parents

Sec. 15. Whenever any person who shall have been granted an allowance provided in this Act shall have been convicted of a felony, then the board of trustees shall order the allowance so granted or allowed the person discontinued, and in lieu thereof, order paid to his or her spouse, or dependent child, children, or dependent parent, the amount provided to be paid the dependent or dependents in case of the death of the person so originally granted or entitled to allowance.

Creditable Service

Sec. 16. In computing the time or period for retirement for length of service as provided in this Act, any time served in the armed forces of the nation during war or national emergency shall be construed as continuous service. If a person is out of service less than five years for another reason, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five years, no previous service shall be counted, provided however, that if a fireman is out of service over five years through no fault of his own and subsequently returns to the department, this period of time shall not be counted against him insofar as his retirement time is concerned. He shall not be entitled to any disability benefits on account of any sickness or injury received before the statement was filed.

City Attorney; Representation of Board of Trustees

Sec. 17. The city attorney, without additional compensation, shall appear for and represent the board of trustees of that city in all cases of appeal by any claimant from the order or decision of the board of trustees.

Investment of Assets; Employment of Professional Counselors

Sec. 18. The board of trustees of a fully paid fire department may engage and employ professional investment counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city, the cost may be paid from the assets of the fund.

Employment of Actuaries

Sec. 19. The board of trustees of a firemen's relief and retirement fund coming under the provisions of this Act may employ an actuary no more than once every three years and pay his compensation out of the pension fund.

Civil Actions for Money Wrongfully Paid Out or Obtained

Sec. 20. The board of trustees of any city created and constituted under the provisions of this Act shall have the power and authority to recover by civil action from any offending party or from his bonds-

men, if any, any money paid out or obtained from said fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board of trustees for the use and benefit of the fund.

Audits; Employment of Certified Public Accountants

Sec. 21. The board of trustees of a fully paid fire department may engage and employ a certified public accountant or firm of certified public accountants to perform an audit of the firemen's relief and retirement fund at such times and intervals as it may deem necessary. The city may pay the entire cost of such audits; if not paid by the city, the cost may be paid from the assets of the fund.

Insufficient Funds; Prorated Reduction in Benefits

Sec. 22. If, for any reason, the fund or funds made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits, then all granted allowances, or disability benefits shall be proratably reduced for the time the deficiency exists.

[Acts 1975, 64th Leg., p. 412, ch. 183, eff. May 13, 1975. Amended by Acts 1979, 66th Leg., p. 525, ch. 248, §§ 1 to 5, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 298, ch. 120, §§ 1, 2, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 591, ch. 237, § 123, eff. Sept. 1, 1981.]

Section 3 of Acts 1981, 67th Leg., ch. 120, provides:

"This Act takes effect September 1, 1981, and applies to computations of service credit for persons whose retirements become effective on or after that date. A person who retires before September 1, 1981, is subject to Chapter 183, Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), as it existed on the date the retirement became effective, and that law is continued in effect for that purpose."

Acts 1981, 67th Leg., ch. 120, in the first sentence of § 2 changed the population limits from 250,000 and 320,000 to 300,000 and 375,000 and in § 16, in the first sentence, deleted "less than one year out of service or" following "in this Act," and inserted a period following "as continuous service" and, in the resulting second sentence, substituted "If a person is out of service" for ", but if out more than one year and" and inserted "for another reason".

Section 146(b) of Acts 1981, 67th Leg., ch. 237, provides:

"To the extent that a law enacted by the 67th Legislature, Regular Session, conflicts with this Act, the other law prevails, regardless of relative date of enactment or relative effective date."

Art. 6243e.2. Firemen's Relief and Retirement Fund in Cities of Not Less Than 1,200,000

Definitions

Sec. 1. In this Act:

(1) "Board" or "board of trustees" means the board of firemen's relief and retirement fund trustees.

(2) "Fireman" means an active member of a regularly organized fire department of an incorporated city.

(3) "Fund" or "pension fund" means the firemen's relief and retirement fund.

Fund Created; Membership

Sec. 2. (a) A firemen's relief and retirement fund is created in all incorporated cities having a population of not less than 1,200,000 according to the last preceding federal census, and having a fully paid fire department. The board of trustees shall consist of the following persons: the mayor or his duly appointed and authorized representative; the city treasurer, or if no city treasurer then the city secretary, city clerk, or other person or officer who by law, charter provisions, or ordinance performs the duty of city treasurer; five members of the regularly organized active fire department of the city to be selected by vote of the members of the fire department; and two resident citizens of the city to be selected as provided in this section. The board of firemen's relief and retirement fund trustees shall receive, handle and control, manage, and disburse the fund for the respective city. The board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or persons entitled to participate as provided by this Act. The board shall be known as the "Board of Firemen's Relief and Retirement Fund Trustees of _____, Texas." The board of trustees shall annually elect from among their number a chairman, a vice-chairman, and a secretary. The fire department of any city that comes within the provisions of this Act shall elect by ballot five of its members, two to serve for one year, two to serve for two years, and one to serve for three years, or until their successors may be elected as provided in this Act, as members of the board of trustees and shall immediately certify the election to the governing body of the city. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, the members shall elect by ballot and certify those members to the board of trustees for a three-year term. The board of trustees shall hold regular monthly meetings at a time and place as it may by resolution designate and may hold special meetings on call of the chairman as he may deem necessary, shall keep accurate minutes of its meetings and records of its proceedings, shall keep separate from all other city funds all money for the use and benefit of the firemen's relief and retirement fund, shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by the city for the purpose, and shall make disbursements from the fund only on regular voucher signed by the treasurer and countersigned by the chairman and at least one other member of the board of trustees. The city treasurer, as the treasurer of the board of trustees, shall be the custodian of the firemen's relief and retirement fund for the city under penalty of his official bond and oath of office. No member of the board of trustees may receive compensation for service on the board of trustees. The board of firemen's relief and retirement fund trustees of each city in this state shall annually and not later than the 31st day of January of each year after this Act takes effect make and file with the city treasurer a detailed and itemized report of all receipts and disbursements with respect to the fund, together with a statement of their administration, and shall make and file other reports and statements or furnish further information as

from time to time may be required or requested by the city treasurer.

(b) The board of trustees may compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before notaries public, and its chairman shall have the power and authority to administer oaths to witnesses. A majority of all members shall constitute a quorum to transact business, and any order of the board of trustees shall be made by vote to be recorded in the minutes of its proceedings. If a vacancy occurs in the membership of the board of trustees by reason of the death, resignation, removal, or disability of any incumbent, the vacancy shall be filled in the manner provided in this Act for the selection of the member to be so succeeded.

(c) Three of the members so elected shall be elected from the suppression division of said fire department. One member so elected from the suppression division shall have the rank of private or chauffeur, and the position on the board to which that member is elected shall be designated as Position I. One member so elected from the suppression division shall have the rank of captain, and the position on the board to which that member is elected shall be designated as Position II. One member so elected from the suppression division shall have the rank of battalion chief, district chief, deputy chief, or assistant chief, and the position on the board to which that member is elected shall be designated as Position III.

(d) One of the members so elected shall be elected from among those fire department members who devote full time to prevention and investigation of fire or who are permanently assigned in the record division or fire chief's office and who are not members of the suppression division, and the position on the board to which that member is elected shall be designated as Position IV.

(e) One of the members so elected shall be elected from the fire alarm operators division or the fire department repair division, and the position on the board to which that member is elected shall be designated as Position V.

(f) Two legally qualified taxpaying voters of the city, residents of the city for the preceding three years, are to be chosen by the elected members of the pension board, being neither employees nor officers of the city. One of these appointed members shall be appointed for a term of one year and one of these appointed members shall be appointed for a term of two years. Annually thereafter on the third Monday of January, the elected members of the pension board are to fill one of the appointed positions of the pension board for a period of two years. The appointed members of the pension board are to take the same oath of office required of elected members. A vacancy occurring by death, resignation, or removal of a member chosen by the elected members of the pension board shall be filled by the elected members of the board. A member who is selected to fill a vacancy shall hold office for the unexpired term of the appointed member who vacated his position. These two appointed positions of the pension board are to be filled by the elected members of the pension board on the third Monday in January following the effective date of this Act.

(g) Each member of the board of trustees shall, within 10 days after his election, take an oath of office that he will diligently and honestly administer the affairs of the firemen's relief and retirement fund and that he will not knowingly violate or willingly permit to be violated any provision of this Act.

(h) Members of a board of trustees of a firemen's relief and retirement fund coming under this Act shall continue to serve in their respective duties and terms.

(i) The secretary of the board of trustees shall, within seven days after each meeting of the board, forward true copies of the minutes of such meeting to each fire station and to each division of the fire department.

Appropriations

Sec. 3. This fund shall continue to receive annually any money appropriated by the legislature which the fund received in prior years.

Pension and Additional Pension Allowances; Service Retirement; Elections; Contributions; Certificate of Service; Limits; Annual Adjustments

Sec. 4. (a) Any person who has been duly appointed and enrolled and who has attained the age of 50 years, and who has served actively for a period of 20 years or more and has participated in a fund in a city which is within the provisions of this Act, shall be entitled to be retired from the service or department and shall be entitled to be paid from the firemen's relief and retirement fund of that city or town, a monthly pension equal to 50 percent of his average salary for the highest 36 months of his service. Any fireman shall be entitled to be paid in addition to the benefits provided for in this subsection an additional pension allowance of one percent of his average monthly salary for the highest 36 months during his participation for each year of service after the date on which such fireman shall be entitled to be retired.

(b) A fireman who has 20 years of service and participation in a fund under this section may, if he so elects, be retired from the department and receive a monthly pension allowance of 35 percent of his average monthly salary for the highest 36 months during his participation. If the fireman shall participate in the fund for a period in excess of 20 years he shall, in addition to the monthly pension allowance of 35 percent be paid an additional monthly pension allowance equal to three percent of his average monthly salary for each year of service in excess of 20 years until the fireman completes 25 years of

service thereby providing a monthly pension allowance equal to 50 percent of the fireman's average monthly salary for the highest 36 months during his participation. If the fireman remains in the active service for a period in excess of 25 years, he shall receive, in addition to the pension allowances provided for in Subsection (b) of this section, an additional monthly pension allowance equal to one percent of his average salary for each year of participation in excess of 25 years.

(c) The maximum pension allowance to be received by any fireman under this section or Section 6 or 7 of this Act shall not exceed 60 percent of the fireman's average monthly salary for the highest 36 months during his participation.

(d) Any eligible and qualified fireman who has completed 20 years of service or more and of participation in a fund in a city to which this section is applicable, before reaching the age of 50 years, may apply to the board of trustees for, and the board shall issue, a certificate showing the completion of service and showing and certifying that the fireman, when reaching the age of 50 years, is entitled to the retirement and other applicable benefits of this Act. When any fireman is issued a certificate he is, when reaching retirement age, entitled to all the applicable benefits of this Act, even though he is not engaged in active service as a fireman after the issuance of the certificate. However, the fireman shall continue to pay his pension contribution monthly or in advance until the fireman reaches retirement age. Any fireman who does not make his pension contribution monthly or in advance shall automatically forfeit any retirement or other benefits he or his beneficiaries may have been entitled to under this Act.

(e) All firemen entering a fire department coming within the provisions of this section after the effective date of this Act shall retire under the benefit provisions of Subsection (b) of this section unless the retirement is for disability.

(f) All firemen who retire under the provisions of this section or Section 6 or 7 of this Act shall have their retirement allowances adjusted annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers as determined by the United States Department of Labor. The adjusted pension allowance shall never be less than the amount granted the member on the date of his retirement without regard to changes in the consumer price index. The adjusted pension allowance shall never be more than the amount granted the member on the date of his retirement increased by three percent annually notwithstanding a greater increase in the consumer price index.

(g) All firemen who retire after March 1, 1982, under the provisions of this section or Section 6 or 7 of this Act upon reaching the age of 55 shall have their pensions adjusted annually upward or downward in accordance with the percentage change in the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension granted the member on the date of his retirement without regard to changes in the consumer price index. The adjusted pension shall never be more than the amount granted the member on the date of his retirement increased by three percent annually not compounded, notwithstanding a greater increase in the consumer price index. The adjustment provided by this subsection shall be the only postretirement adjustment paid to firemen retiring after March 1, 1982.

(h) All pensioners who retired prior to May 3, 1971, or their survivors shall have their pensions adjusted on a one-time basis in an amount equal to 20 percent of their pension payment. However, in no instance shall the increase be less than $15 a month. This postretirement adjustment shall be effective September 1, 1981.

Pension Allowance at Age of 50; Calculation

Sec. 5. Any fireman who has served in such fire department for a period of at least 10 years and for a period of less than 20 years shall be entitled to a pension allowance at age 50 years. The pension allowance shall be calculated as follows:

(a) The monthly pension allowance shall be equal to the sum of one and seven-tenths percent of his average monthly salary multiplied by the number of years of service of the fireman.

(b) The average monthly salary shall be for the highest 36 months of service of the fireman.

(c) In the event the fireman dies:

(1) before he has reached the age of 50 years, his widow or other beneficiaries shall be eligible for a pension allowance on the date the deceased fireman would have been 50 years of age.

(2) after he reached 50 years of age, his widow or other beneficiaries shall be eligible for a pension allowance. The pension allowances shall be granted by the provisions of this section.

Disability Retirement; Amount of Pension; Service Retirement Election

Sec. 6. (a) Whenever a fireman becomes physically or mentally disabled while in or as a consequence of the performance of his duty or becomes physically or mentally disabled from any cause whatsoever after he has participated in a fund for a period of 20 years or more, the board of trustees shall, on his request, or without a request, if they determine that the fireman is not capable of performing the usual and customary duties of his classification or position, retire the fireman on a monthly disability allowance of an amount equal to 50 percent of his average monthly salary for the highest 36 months during his service, or so much thereof as he may have served.

(b) If the fireman is eligible to be retired under the provisions of Section 4 of this Act, he may elect

to have his monthly pension allowance calculated under that section.

Death or Disability From Any Cause Other Than Performance of Duty; Monthly Pension Allowance to Fireman or Beneficiary; Computation; Service Retirement Election; Annual Adjustment

Sec. 7. (a) Whenever a fireman dies or becomes disabled from any cause other than a disability acquired in the performance of his duty as a fireman, a monthly pension allowance shall be paid to the fireman or his beneficiaries.

(b) The monthly pension allowance shall be computed as follows:

(1) If the fireman becomes disabled, he shall be paid a monthly pension allowance equal to 25 percent of the average monthly salary of the fireman, plus two and one-half percent of the average monthly salary for each full year of service and of participation in a fund except that the monthly pension allowance shall not exceed 50 percent of the average monthly salary. The average monthly salary shall be based on the monthly average of the fireman's salary for the highest 36 months during his service, or so much as he may have served preceding the date of the retirement.

(2) If the fireman was eligible to be retired under the provisions of Section 4 of this Act, he or his beneficiaries may elect to have their monthly pension allowance calculated under that section.

(3) If a fireman dies and leaves surviving him both a widow who married the fireman prior to his retirement, and a child or children of the fireman under the age of 18 years, the board of trustees shall order paid to the widow of the fireman a monthly pension allowance equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection, and in addition the board of trustees shall order paid to the widow or other person having the care and custody of the child or children under the age of 18 years a monthly pension allowance for the use and benefit of the child or children equal to the amount provided for the widow. If the fireman leaves no child under the age of 18 years surviving him or if at any time after the death of the fireman no child is entitled to allowance, then the monthly pension allowance to be paid the widow shall be equal to the full amount the fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection, except that the allowance to a widow, if no child is entitled to allowance, shall not exceed one-half of the maximum base salary for the position of pipeman at the time of the death of the fireman.

(4) If the fireman dies and if his widow dies after being entitled to her allowance, or in the event that there is no widow to receive an allowance, the amount of the monthly pension allowance to be paid, for use and benefit of the child or children under the age of 18 years, to the person having the care and custody of the child or children shall be computed as follows: an amount equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under the provisions of Subdivision (1) of this subsection shall be paid for each of the fireman's children under the age of 18 years, except that the total monthly pension allowance provided for children shall not exceed the amount to which the fireman would have been entitled under Subdivision (1) of this subsection, nor shall the allowance for the children exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the fireman.

(5) If the fireman dies and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal to one-half of the amount the fireman would have been entitled to receive, if disabled, under Subdivision (1) of this subsection shall be paid to each parent of the deceased fireman on proof to the board of trustees that the parent was dependent on the fireman immediately prior to the death of the fireman, except that the total monthly pension allowance provided for parents shall not exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the fireman.

(c) Allowance or benefits payable under the provisions of this section for any minor child shall cease when that child becomes 18 years of age or marries. If a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury, or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he is over the maximum age at the time of the death of his parent and the child is totally disabled as a result of a physical or mental illness, injury, or retardation, the child is entitled to receive as an allowance that to which he would have been entitled had he been under the maximum age at the time of the death of his parent.

(d) The provisions of this section are not applicable to a fireman or his beneficiaries if the fireman's death or disability results from suicide or attempted suicide before the fireman has completed two years of service with the fire department for which he was employed.

(e) The wife of a deceased fireman who had served actively for a period of 20 years or more in a regularly active fire department shall, insofar as the provisions of this section are concerned, be considered the fireman's widow as long as she is not married, notwithstanding that she may have married and divorced or married after the fireman died and she became a widow. A widow covered under this section shall be limited to the pension allowance of

the deceased member of this fund, to whom she was last married.

(f) The monthly pension of beneficiaries of a deceased fireman whose pension benefits were subject to the adjustment under the provisions of Section 4(f) or 4(g) of this Act shall be adjusted in the same manner.

Certificates of Disability

Sec. 8. (a) No person may be retired either for total or temporary disability, except as provided in this Act, nor receive any allowance from the fund, unless and until there has been filed with the board of trustees certificates of his disability or eligibility signed and sworn to by that person and his physician or by any physician selected by the board of trustees. The board of trustees, in its discretion, may require other or additional evidence of disability before ordering retirement or payment.

(b) Any fireman or beneficiary who is entitled to receive a pension allowance under any provision of this Act is entitled to receive the allowance from and after the date on which the fireman ceases to carry out his regular duties as a fireman, notwithstanding the fact that the fireman may remain on the payroll of his fire department or receive sick leave, vacation, or other pay after the termination of his regular duties as a fireman, except that in the event of a delay resulting from the requirements of Subsection (a) of this section, the fireman or beneficiary shall, when the allowance is approved by the board, be paid the full amount of the allowance which has accrued since the termination of the fireman's regular duties as a fireman.

(c) If any fireman or one or more beneficiaries of a fireman shall be or becomes entitled to receive payments from a fund under the provisions of more than one section of this Act, the fireman or beneficiaries shall be entitled to and shall be required to elect one section under which the payments shall be computed and paid.

Contributions of Members

Sec. 9. Each fireman who is a member of a fully paid fire department which has a firemen's relief and retirement fund, and who was participating in the firemen's relief and retirement fund of his city on July 22, 1957, shall be required to make the contributions to the fund provided by this Act, and each fireman shall be entitled to participate in the benefits provided by this Act.

Monthly Salary Deductions; Contributions and Appropriations; Membership; Service Credit; Termination

Sec. 10. (a) The governing body of the city shall deduct monthly a sum equal to nine percent from the salary or compensation of each fireman participating in the fund. From and after September 1, 1981, the city shall deduct from the salary or compensation of each fireman participating in the fund a sum equal to 7½ percent of such salary or compensation.

(b) From September 1, 1981, until January 1, 1983, the city shall pay into the fund an amount equal to 18 percent of the salary or compensation paid all members of the fund. Beginning January 1, 1983, the city shall make monthly contributions to the pension fund in an amount equal to the contribution rate certified by the board and multiplied by the salaries paid to members of the fund. The board shall certify the city's contribution rate for each year beginning in 1983, based on the results of actuarial valuations made at least every three years, with the first such actuarial valuation to be made as of January 1, 1982. The city's contribution rate shall be comprised of the normal cost plus the level percentage of salary payment required to amortize the unfunded actuarial liability over a period of 40 years from January 1, 1983, calculated on the basis of an acceptable actuarial reserve funding method approved by the board. However, such contributions by the city shall not be less than twice the amount paid into the fund by contributions of the members.

(c) Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section shall become and form a part of the firemen's relief and retirement fund of the city in which the contributing fireman serves.

(d) Each person who becomes a fireman in any city which has a firemen's relief and retirement fund in which he is eligible for membership, shall become a member of the fund as a condition of his appointment, and shall by acceptance of the position agree to make and shall make contributions required under this Act of members of the fund, and shall participate in the benefits of membership in the fund as provided in this Act, except that no person shall be eligible to membership in the fund who is more than 30 years of age at the time he first enters service as a fireman. Any person who enters service as a fireman may be denied or excused from membership in the fund if the board of trustees of the fund determines that the person is not of sound health. The applicant shall pay the cost of any physical examination required in that instance by the board of trustees.

(e) Each person who is an active member of the firemen's relief and retirement fund previously organized and existing under the laws of this state at the effective date of this Act shall continue as a member of the fund, and he shall retain and be allowed credit for all service to which he was entitled in the fund of which he was a member immediately prior to the effective date of this Act.

(f) If any member's employment by the city, as an employee of the fire department, is terminated for any reason other than those qualifying the employee for a pension, neither the employee nor his beneficiary or estate shall receive any amount paid by him into the pension fund or any interest his contributions may have accrued.

(g)(1) Upon action being taken by its governing body, a city may pick up members' contributions referred to in Subsection (a) of this section. It is the intention of this Act that, upon proper action by a city, members' contributions be considered picked up by the city under the provisions of Section 414(h)(2) of the Internal Revenue Code of 1954, as amended.[1] Members' salaries are affected by the provisions of this subsection only as they relate to the calculation of pension contributions and gross pay for federal tax purposes. The calculation of pension benefits, severance pay, and other benefits is not affected.

(2) By virtue of the provisions of Section 9 and Section 10(f) of this Act, members' contributions referred to in Subsection (a) of this section may represent a method of computation utilized by a city to assist in its budget calculation of the total cost of maintaining a fire department. Such method of computation may constitute a governmental pick-up plan under the provisions of Section 414(h)(2) of the Internal Revenue Code of 1954, as amended. It is the intention of this Act that members' contributions that were made from and after June 19, 1975, be considered city contributions under the provisions of such Section 414(h)(2). Nothing contained in the provisions of this subsection shall be construed to require a city to pay any additional amounts either into the fund or to a member of the fund with respect to the period from June 19, 1975, until September 1, 1981, or to issue any corrected income reporting forms to any individual member for any prior year.

[1] 26 U.S.C.A. § 414(h)(2).

Allowance to Beneficiaries of Deceased Members

Sec. 11. (a) If a member of a fire department who has been retired on allowances because of length of service or disability dies from any cause whatsoever, or if while in service any member dies from any cause growing out of or in consequence of the performance of his duty and the member is participating in a fund, or dies from any cause whatsoever after he has become entitled to an allowance or pension certificate, and if the fireman leaves surviving a widow, a child or children under the age of 18 years, or a dependent parent or parents, the board of trustees shall order paid a monthly pension allowance which shall be based on the amount which the fireman would have been entitled to receive had he continued to live and be retired on allowance at the date of his death. The allowance or allowances shall be paid as follows:

(1) If the member dies and leaves surviving him both a widow who married the member prior to his retirement and a child or children of the member under the age of 18 years, the board of trustees shall order paid to the widow of the member a monthly pension allowance equal to one-half of the amount the member would have been entitled to receive, and in addition the board of trustees shall order paid to the widow or other person having the care and custody of the child or children under the age of 18 years a monthly pension allowance, for the use and benefit of the child or children, equal to the amount provided for the widow. If the member leaves no child under the age of 18 years surviving him or if at any time after the death of the member no child is entitled to allowance, the monthly pension allowance to be paid the widow shall equal the full amount the member would have been entitled to receive, except that the allowance to a widow, if no child is entitled to allowance, shall not exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the member.

(2) If the member dies and if his widow dies after being entitled to her allowance, or in the event there is no widow to receive an allowance, the amount of the monthly pension allowance to be paid, for the use and benefit of the child or children under the age of 18 years, to the person having the care and custody of the child or children shall be computed as follows: an amount equal to one-half of the amount that member would have been entitled to receive shall be paid for each of the member's children under the age of 18 years, except that the total monthly pension allowance provided for children shall not exceed the amount which the member would have been entitled to receive, nor shall such allowance for the children exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the member.

(3) If the member dies and only if no widow or child is entitled to an allowance under the provisions of this section, a monthly pension allowance equal to one-half of the amount that member would have been entitled to receive shall be paid to each parent of the deceased member on proof of the board of trustees that the parent was dependent on the member immediately prior to the death of the member, except that the total monthly pension allowance provided for parents shall not exceed one-half of the maximum base salary provided for the position of pipeman at the time of the death of the member.

(b) Allowance or benefits payable under the provisions of this section for any minor child shall cease when the child becomes 18 years of age or marries, except that if a fireman who is covered by a provision of this Act dies and leaves a child who is totally disabled as a result of a physical or mental illness, injury, or retardation, that child is entitled to receive any pension allowance to which he is entitled under this Act and is further entitled to continue receiving the allowance so long as he or she remains totally disabled. If the child is not entitled to a pension allowance under this Act solely because he or she is over the maximum age at the time of the death of his or her parent and the child is totally disabled as a

result of a physical or mental illness, injury, or retardation, the child is entitled to receive as an allowance that to which he or she would have been entitled had he or she been under the maximum age at the time of the death of his parent.

(c) The wife of a deceased fireman who has been retired on disability allowances because of length of service or has been retired for disability after having served actively for a period of 20 years or more shall, insofar as the provisions of this section are concerned, be considered the fireman's widow as long as she is not married, notwithstanding that she may have married and divorced or married and became a widow after such fireman died. A widow covered under this section shall be limited to the pension allowance of the deceased member to whom she was last married.

Exemption of Benefits from Judicial Process

Sec. 12. No portion of the firemen's relief and retirement fund shall, either before or after its order of disbursement by the board of trustees to retired or disabled fireman or the widow, the guardian of any minor child or children, or the dependent parent of any deceased, retired, or disabled fireman, be ever held, seized, taken, subjected to, or detained, or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process or proceedings whatsoever issued out of, or by, any court for the payment or satisfaction in whole or in part of any debt, damage, claim, demand, or judgment against a fireman or his widow, the guardian of his minor child or children, or his dependent father or mother, nor shall the fund or any claim be directly or indirectly assigned or transferred, and any attempt to transfer or assign the same shall be void. The fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose.

Integration of Fund with Social Security Benefits

Sec. 13. No benefit or pension allowance shall ever be integrated with benefits payable under the federal Social Security Act, and benefits which might be available to a fireman under the federal Social Security Act may never be taken into account in a city where firemen are eligible to enroll for or receive retirement benefits under the Social Security Act when determining the amount of benefits which a fireman may receive under the provisions of this Act.

Certificate to Fireman Eligible For the Retirement or Disability Allowance; Continuance in Service

Sec. 14. Any fireman possessing the qualifications and being eligible for voluntary retirement who elects to continue in the service of the fire department may apply to the board of trustees for a certificate, and if found to possess the qualifications and be eligible for retirement as provided in this Act, the board of trustees shall issue to the fireman a certificate showing him to be entitled to retirement or disability allowance, and on his death the certificate is prima facie proof that his widow or dependents are entitled to their respective allowances without further proof except as to her or their relationship.

Medical Examination of Persons Retiring for Disability

Sec. 15. The board of trustees, in its discretion, at any time may cause any person retired for disability under the provisions of this Act to appear and undergo a medical examination by any physician appointed or selected by the board of trustees for the purpose, and the result of the examination and report by the physician shall be considered by the board of trustees in determining whether the relief in the case shall be continued, increased (if less than the maximum provided), decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice from the board of trustees to appear and be reexamined, unless excused by the board, fail to appear or refuse to submit to reexamination, the board of trustees may in its discretion reduce or entirely discontinue relief.

Recall for Duty in Emergency

Sec. 16. Any retired fireman may be recalled to duty in case of great conflagration and shall perform such duty as the chief of the fire department may direct, but shall have no claim against a city for payment for duty so performed.

Appeal to District Court

Sec. 17. Any person possessing the qualifications required for retirement for length of service or disability or having claim for temporary disability, or any of his beneficiaries, who deems himself aggrieved by the decision or order of the board of trustees, whether because of rejection or the amount allowed, may appeal from the decision or order of the board of a district court in the county where the board is located by giving written notice of the intention to appeal. The notice shall contain a statement of the intention to appeal, together with a brief statement of the grounds and reasons why the party feels aggrieved. The notice shall be served personally on the chairman or secretary or treasurer of the board within 20 days after the date of the order or decision. After service of the notice, the party appealing shall file with the district court a copy of the notice of intention to appeal, together with the affidavit of the party making service showing how, when, and on whom the notice was served. Within 30 days after service of the notice of intention to appeal upon the board, the secretary or treasurer of the board shall make up and file with the district court a transcript of all papers and proceedings in the case before the board and when the copy of the notice of intention to appeal and the transcript has been filed with the court, the appeal shall be deemed perfected and the court shall docket the appeal, assign the appeal a number, fix a date for hearing the appeal, and notify both the appellant and the board of the date fixed for the hearing. At any time before rendering its decision on the appeal,

the court may require further or additional proof or information, either documentary or under oath. On rendition of a decision on the appeal, the court shall give to each party to the appeal a copy of the decision and shall direct the board as to the disposition of the case. The final decision or order of the district court is appealable in the same manner as are civil cases generally.

Employment of Certified Public Accountants; Audit

Sec. 18. The board of trustees may engage and employ a certified public accountant or firm of certified public accountants to perform an audit of the firemen's relief and retirement fund at times and intervals as it may deem necessary. The city may pay the entire cost of the audits; if not paid by the city, the cost may be paid from the assets of the fund.

Computation of Length of Service

Sec. 19. In computing the time or period for retirement for length of service, any time served in the armed forces of the nation during war or national emergency shall be construed as continuous service. Except for the military service described above, credit for prior service shall be given only if a member returns to the classified service within five years from the date of termination.

City Attorney to Represent Board of Trustees in Appeals

Sec. 20. The city attorney, without additional compensation, shall appear for and represent the board of trustees of the fund in that city in all legal matters of litigation.

Investment of Surplus

Sec. 21. Whenever, in the opinion of the board of trustees, there exists a surplus of funds in an amount exceeding the current demands upon the fund, the board of trustees may invest such surplus funds in the manner provided by Chapter 817, Acts of the 66th Legislature, 1979 (Article 6228n, Vernon's Texas Civil Statutes).

Employment of Counseling Service

Sec. 22. The board of trustees may engage and employ professional investment counselors to advise and assist the board in the investment of the assets of the fund. The investment counseling service must be provided by a nationally known organization whose business functions include rendering continuous investment advisory service to public pension and retirement funds. The city may pay the entire cost of this counseling service; if not paid by the city the cost may be paid from the assets of the fund.

Employment of Actuary

Sec. 23. The board of trustees may employ an actuary no more than once every three years and pay his compensation out of the pension fund.

Action for Recovery of Benefits Wrongfully Obtained

Sec. 24. The board of trustees may recover by civil action from any offending party or from his bondsmen, if any, any money paid out or obtained from the fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board of trustees for the use and benefit of the fund.

Pro Rata Reduction of Benefits on Deficiency

Sec. 25. If for any reason the fund or funds made available for any purpose covered by this Act shall be insufficient to pay in full any allowance or disability benefits, all granted allowances or disability benefits shall be proratably reduced for such time as the deficiency exists.

Termination of Active Service; Allowances and Benefits

Sec. 26. After a fireman terminates his active service, the amounts of all allowances and benefits which the fireman or his beneficiaries may thereafter become entitled to receive from a firemen's relief and retirement fund shall be computed on the basis of the schedule of allowances and benefits in effect for the firemen's relief and retirement fund at the time of the termination of the fireman's active service.

Employment of Attorney

Sec. 27. The board of trustees of the firemen's relief and retirement fund may employ an attorney to render a legal opinion or to represent the trustees in any litigation involving matters coming under this Act.

Employment of Physician

Sec. 28. The board of trustees of the firemen's relief and retirement fund may employ a physician or physicians to examine firemen prior to their becoming a member of the fund or to examine a fireman applying for a disability pension allowance.

Increase of Monthly Allowance

Sec. 29. The monthly pension benefit or allowance provided by any section of this Act may be increased if:

(1) the increase is first approved by a qualified actuary selected by the board of trustees of the firemen's relief and retirement fund; the qualified actuary shall if an individual, be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries;

(2) a majority of the participating members of the pension fund vote for the increase by a secret ballot;

(3) increase applies only to active firemen in the department at the time of the change of the increase and those who enter the department thereafter; and

(4) the increase does not deprive a member, without his written consent, of a right to receive benefits which have already become fully vested and matured in a member.

Cities With Full Paid Fire Department; Transfer of Firemen

Sec. 30. (a) A fireman who transfers from the fire department of one city to that of a city covered by this Act and desires to participate in the fund of that city shall:

(1) be less than 35 years old;

(2) pass a physical examination taken at his expense and performed by a physician selected by the board; and

(3) pay into the fund of that city an amount equal to the total contribution he would have made had he been employed by that city instead of the city from which he transferred, plus six percent interest.

(b) The city to which the fireman has transferred shall pay an amount equal to the amount it would have paid had the fireman been employed by that city instead of the city from which he transferred, plus six percent interest.

(c) No fireman may participate in the fund of the city to which he has transferred until he has complied with the provisions of this Act.

Repealer

Sec. 31. Sections 3A, 6B, 6B–1, 7B, 7C, 10E, 12A, 18A, 23A–1, 23C, 23F, and 23G, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes), are repealed.

[Acts 1975, 64th Leg., p. 1135, ch. 432, eff. June 19, 1975. Amended by Acts 1981, 67th Leg., p. 3128, ch. 821, §§ 1 to 8, eff. Sept. 1, 1981.]

Art. 6243e.3. Volunteer Fire Fighters' Relief and Retirement Fund

Definitions

Sec. 1. In this Act:

(1) "Qualified service" means fire-fighting service rendered without monetary remuneration while a member in good standing of a fire-fighting unit that has no fewer than 10 active members, and a minimum of two drills each month, each drill two hours long, and each active member present at 40 percent of the drills and 25 percent of the fires, or fire-fighting service rendered without monetary remuneration while a member of a fire-fighting unit which includes paid fire fighters. Absence caused by military duty does not affect qualified service.

(2) "Retirement age" means age 55.

(3) "Dependent" means dependent as defined by the U. S. Internal Revenue Code, Subtitle A, Chapter 1B, Part V, Section 152, and any subsequent amendments.[1]

(4) "Solvent" means sufficient assets on hand to meet all current benefits due.

(5) "Qualified actuary" means a fellow of the Society of Actuaries or a member of the American Academy of Actuaries, or both, who has at least five years of experience with public retirement systems.

(6) "Actuarially sound pension system" means a system in which the amount of contributions is sufficient to cover the normal cost and 40-year amortization of the unfunded prior-service cost (such normal cost and prior-service cost to be determined by a qualified actuary and based on assumptions adopted by the state board of trustees and approved by the actuary in regard to future contribution levels, mortality, retirement age, turnover, and morbidity) where:

(A) the normal cost is the annual cost of the members' benefits assigned to the years after date of entry;

(B) the unfunded prior-service cost is equal to the prior-service cost reduced by the assets; and

(C) the prior-service cost determined as of the date of the actuarial valuation is equal to:

(i) the present value of future benefits on behalf of all individuals receiving benefits;

(ii) the present value of future benefits on behalf of all individuals who have terminated their service with vested benefits to commence at a future date; and

(iii) the present value of future benefits accrued to the date of valuation on behalf of all individuals in active service.

(7) "Fund" means the Fire Fighters' Relief and Retirement Fund created by this Act.

(8) "Pension system" means the system of contributions and benefits created by this Act.

(9) "Member fire fighter" means a fire fighter who participates in the pension system under this Act.

(10) "Member fire department" means a fire department that participates in the pension system under this Act.

(11) "Current pension plan" means a pension plan in which a fire department is participating when it elects to join the pension system created by this Act.

(12) "Commissioner" means the Firemen's Pension Commissioner authorized by Section 19, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes).

(13) "Governing body" means the governing body of any political subdivision of the state within which a rural fire prevention district created pursuant to the provisions of Chapter 57, Acts of the 55th Legislature, Regular Session, 1957 (Article 2351a–6, Vernon's Texas Civil Statutes), is situated or the governing body of any city or town within which a fire department subject to the provisions of this Act is situated.

[1] 26 U.S.C.A. § 152.

Fire Fighters' Relief and Retirement Fund

Sec. 2. (a) A Fire Fighters' Relief and Retirement Fund is created.

(b) Participation in the fund is optional. Any governing body may, not later than 60 days after the effective date of this Act and in accordance with the usual procedures prescribed for other official actions of the governing body, elect to exempt itself from the requirements of this Act. Any action to provide for an exemption from the requirements of this Act may be rescinded by the governing body at any time.

(c) Every governing body shall contribute for each fire fighter at least $12 for each month of qualified service beginning on the date the fire fighter enters the pension system. Contributions must be paid at least every six months. If the member fire department is situated in more than one political subdivision, the governing bodies of such political subdivisions shall contribute equally towards a total of at least $12 for each fire fighter for each month of qualified service.

(d) The state shall contribute the sum necessary to make the fund actuarially sound each year. The state's contribution may not exceed the amount of one-third of the total of all contributions by governing bodies in one year. If the state contributes one-third of the total contributions of the governing bodies in one year, the fund shall be presumed actuarially sound.

(e) The commissioner may receive contributions to the fund from any source.

(f) Any contribution made and any benefits provided pursuant to this Act shall not be considered compensation, and member fire fighters shall not be deemed to be in the paid service of any governing body.

Retirement Benefits

Sec. 3. (a) A member fire fighter shall receive a retirement annuity payable in monthly installments on reaching retirement age, subject to the vesting provisions in Section 6 of this Act.

(b) The monthly retirement annuity is equal to three times the governing body's average monthly contribution over the member fire fighter's term of qualified service under this Act.

(c) For each year of additional qualified service in excess of 15 years, a member fire fighter is entitled to receive an additional seven percent of his monthly pension compounded annually. A fire fighter may receive a proportional credit for days or months of qualified service that make up less than a year.

Disability Benefits

Sec. 4. (a) A member fire fighter must elect between retirement or disability benefits if eligible for both.

(b) A member fire fighter who is totally disabled and cannot perform duties as a member of the fire department shall receive a monthly disability allowance until he is able to return to his regular employment. The benefits authorized by this subsection are payable only if the fire fighter is unable to perform the duties of his regular employment.

(c) The standard monthly disability allowance is three times the governing body's monthly contribution at the date of the fire fighter's disability.

(d) A member fire fighter whose disability results from performing duties as a fire fighter is guaranteed a disability benefit of at least $250 a month.

Death Benefits

Sec. 5. (a) The beneficiary of a deceased member fire fighter shall receive a lump-sum benefit that is the greater of:

(1) the sum contributed to the fund on the decedent's behalf; or

(2) the sum which would have been contributed on the decedent's behalf from whatever source at the end of 15 years of qualified service.

(b) The beneficiary of a member whose death results from performing duties as a fire fighter is guaranteed a lump-sum benefit of at least $5,000.

(c) In addition to the lump-sum death benefit, the spouse and dependents shall receive in equal shares a survivor's benefit equal to two-thirds of the monthly retirement annuity the decedent would have been entitled to receive if the decedent had been able to retire under Section 3 of this Act on the date of the decedent's death. As long as both spouse and one or more dependents survive, an additional one-third of that monthly retirement annuity shall be paid to the dependents in equal shares.

(d) If a member fire fighter dies after retirement, the surviving spouse shall receive two-thirds of the monthly pension the decedent was receiving at the time of death.

(e) The spouse is eligible to receive benefits as long as the spouse is unmarried.

(f) Lump-sum death benefits are subject to the laws of descent and distribution if the decedent has not provided for testamentary disposition.

(g) When a fire fighter names more than one beneficiary for the lump-sum death benefit, the benefit shall be divided equally among the named beneficiaries unless the fire fighter designates a proportional division. If the fire fighter designates a proportional division, each beneficiary shall receive the proportion of the lump-sum benefit designated by the fire fighter.

Vesting of Benefits

Sec. 6. (a) No right to retirement benefits vests until five years of qualified service are completed.

(b) Vested retirement benefits are nonforfeitable.

(c) Full retirement benefits vest at the following rates:

(1) 25 percent after the first five years of qualified service;

(2) five percent a year for the next five years of qualified service; and

(3) 10 percent a year for the 11th through the 15th years of qualified service.

Member Claim and Appeal Procedure

Sec. 7. (a) Claims for benefits are filed with the local board of trustees.

(b) On receiving a claim for benefits, the local board of trustees shall hold a hearing to decide the claim. A written copy of the decision must be sent to the claimant and the commissioner.

(c) A claimant may appeal the decision of the local board by filing notice of the appeal with the local board and the commissioner within 20 days after receiving notice of the local board's decision.

(d) The local board shall file a transcript of the local board hearing with the commissioner within 30 days after receiving notice of appeal.

(e) The commissioner shall, within 30 days after receiving a notice of appeal, set a date for a hearing and notify the claimant and the local board.

(f) A written copy of the commissioner's decision must be sent to the claimant and the local board.

(g) A claimant may appeal the commissioner's decision to the state board of trustees. The appeal must be filed within 20 days after receiving notice of the commissioner's decision.

(h) The state board of trustees shall, within 30 days after receiving notice of appeal, set a date for a hearing and notify the claimant, the local board, and the commissioner.

(i) The claimant, the local board, and the commissioner may present any written or oral evidence necessary for deciding a claim.

(j) The local board, the state board, and the commissioner may administer oaths, receive evidence, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions in administering this Act.

(k) The attorney general shall represent the commissioner in all proceedings under this Act which require representation.

(*l*) The local board may be represented by the city attorney or, where appropriate, the county attorney or counsel it may choose to employ.

(m) The Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) applies to all hearings authorized by this Act.

Certification of Physical Fitness

Sec. 8. A fire fighter entering service in a member fire department after the effective date of this Act must be certified as physically fit by the local board of trustees prior to admission to the pension system.

Transfer of Accrued Benefits

Sec. 9. A member fire fighter who terminates service and later resumes service with the same fire department or transfers to another member department may transfer all accrued benefits to the new or resumed service.

Entering the Pension System; Required Election

Sec. 10. (a) An election must be held within the local fire department to merge its current pension plan with the pension system.

(b) The election must be held within 14 days after:

(1) a petition calling for an election and signed by 50 percent of the active fire fighters in the department is filed at the local department; and

(2) the disclosure required by Section 16 of this Act is made to the fire fighters in the local department.

(c) If the current pension plan of the fire department is not solvent, the election to enter the pension system in this Act must be decided by a majority of the votes cast by qualified fire fighters in the department.

(d) If the current pension plan of the fire department is solvent, the election to enter the pension system in this Act must be decided by at least 60 percent of all votes cast.

(e) In the election required in this section, a fire fighter's vote must be multiplied by the number of years of participation in the current pension plan.

Merger of the Current Pension Plan with the Pension System

Sec. 11. (a) When a fire department under a current pension plan elects to participate in the pension system in this Act, the current pension plan is merged with the pension system.

(b) The costs of the current pension plan shall be determined on an actuarially sound basis using the attained-age normal method and actuarial assumptions described in Subdivision 6 of Section 1 of this Act. The costs must be certified by a qualified actuary as of the effective date of merger or within three years preceding the date of merger.

(c) On the date of merger, all assets and liabilities of the current pension plan are transferred to the pension system and become an allocated part of the system. The assets may be merged with the pension system assets for investment purposes, but a separate account must be maintained for the funds allocated to each plan that has merged with the system.

(d) Following merger, a member's retirement benefits in the pension system are determined by either the future-service method or the buy-back method. The options are available only to fire fighters participating in the current pension plan.

(e)(1) In the future-service method, the qualified service required to earn retirement benefits in the pension system begins as of the date of merger. For

determining a person's retirement benefits in the pension system, a fire fighter may choose the formula for benefits used in the current pension plan or the formula for benefits as outlined in this Act. Any retirement benefits accrued prior to the date of merger will also be paid on retirement according to the formula for benefits under the current pension plan.

(2) In the buy-back method in determining the fire fighters' retirement benefits in the pension system, a fire fighter may choose the formula for benefits used in the current pension plan or the formula for benefits as outlined in this Act. The fire fighter who has less than 15 years of service remaining before retirement as of the date of merger may count time served under the current pension plan before the date of merger as qualified service. The time period necessary to make 15 years of service before retirement may be used.

(f) A fire fighter who terminates service prior to the date of merger of his fire department's current pension plan with the pension system is entitled to receive at retirement age the retirement benefits vested under the pension plan in effect during his service. The pension system pays his benefits.

(g) Any benefits being paid by the current pension plan at the date of merger will be paid by the pension system following merger.

(h) On merger of a current pension plan with the pension system, the sponsors of the current pension plan are obligated to make contributions to the pension system in this Act to fund the unfunded prior-service cost. The unfunded prior-service cost is determined as of the date of merger using the attained-age normal method and the actuarial assumptions in the definition of "actuarially sound pension system." The period of funding these contributions shall not exceed 40 years measured from the date of merger.

(i) An election for the local board of trustees must be held within 30 days of entering the pension system. The names of the elected trustees are filed with the commissioner.

Withdrawing from the Pension System

Sec. 12. (a) A current pension plan that merges with the pension system may withdraw from the pension system within five years after the date of merger on a majority vote of the fire fighters in the department voting in the same manner as provided in Section 10 of this Act.

(b) On withdrawal from the pension system, the allocated assets and liabilities as apportioned by an actuary retained by the pension system must be transferred to the plan chosen to replace the pension system.

(c) If a fire fighter terminates service before retirement, vested retirement benefits must be paid to the fire fighter at retirement age. There is no penalty for nonconsecutive years of service.

Benefits Received from Other Plans or Insurance

Sec. 13. The rights to benefits under this pension system are not defeated by benefits or payments received by other plans or insurance.

Investment and Management of the Fund

Sec. 14. (a) If the commissioner's annual report shows a surplus in the fund over the amount necessary to pay benefits due for a reasonable period of time not to exceed five years, the commissioner and trustees shall invest the surplus.

(b) The surplus may be invested in:

(1) bonds or other interest-bearing obligations and securities issued by governmental entities;

(2) shares or share accounts of savings and loan associations insured by the Federal Savings and Loan Insurance Corporation;

(3) shares and share accounts of banks insured by the Federal Deposit Insurance Corporation;

(4) first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act, as amended; [1]

(5) investments made by a life insurance company in order to effect a group annuity contract; or

(6) corporation bonds, preferred stocks, and common stocks.

(c) The state board of trustees shall employ a professional investment counselor, a legal reserve life insurance company licensed to do business in the State of Texas, or a bank with trust powers under the laws of the State of Texas. The investment counselor or bank employed by the board must be a nationally known organization whose business includes investment counseling for public pension and retirement funds. A life insurance company employed by the board must provide a group annuity contract that guarantees expenses and provides a formula for determining the amount of funds available for transfer at the end of a contract period. The contract may not include requirements that guaranteed life annuities be purchased.

(d) The cost of the investment counseling service may be paid from income earned by investments.

(e) No portion of the corpus or income of the fund may be used for purposes other than the benefit of member fire fighters and their beneficiaries.

[1] 12 U.S.C.A. § 1701 et seq.

Pension Plans Required to be Solvent

Sec. 15. (a) Every fire fighter in the state who serves without monetary remuneration must be a member of a solvent pension plan.

(b) After the effective date of this Act, an insolvent pension plan for fire fighters who serve without monetary remuneration must become actuarially sound within three years. An insolvent pension plan must demonstrate to the commissioner within six months after becoming insolvent that steps are being taken to become actuarially sound.

Disclosure of Pension Plan Information Required

Sec. 16. (a) The governing body shall disclose to each fire fighter who serves without monetary remuneration and who is eligible for participation in the pension system the information required by this section.

(b) The commissioner shall distribute to each fire department and each governing body the following information:

(1) all benefits that are available in the pension system in this Act;

(2) the contributions required by the pension system;

(3) the expected return on the investment of a member fire fighter;

(4) when benefits vest;

(5) the transferability of benefits;

(6) rights of withdrawing members;

(7) procedures for filing claims and appeals;

(8) tax consequences; and

(9) changes in the law.

(c) The local fire department shall disclose to each fire fighter in the department and to each new fire fighter on his commissioning the information in Subsection (b) of this section.

(d) After a petition for an election as required in Section 10 of this Act has been filed and before the election occurs, the directors of a current pension plan must disclose to its members the information required in Subsection (b) of this section about the current pension plan.

Penalties

Sec. 17. (a) A governing body which does not disclose the information required in Section 16 of this Act or which does not meet the requirements of a solvent pension fund as required in Section 15 of this Act is subject to a civil penalty of not less than $100 nor more than $1,000 for each violation, plus reasonable attorney's fees.

(b) The attorney general shall bring suit in a court of appropriate jurisdiction to collect the civil penalties authorized by this Act.

Commissioner

Sec. 18. The duties of the commissioner under this Act shall be performed by the Firemen's Pension Commissioner appointed under the provisions of Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes).

Commissioner's Duties

Sec. 19. (a) The commissioner may not administer any fire fighters' pension plan other than the pension system created by this Act and the system created by Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes).

(b) The commissioner may hear appeals from decisions of local boards in other pension plans.

(c) The commissioner and the state board of trustees shall assemble and disseminate the information necessary for the disclosure requirements concerning the pension system as outlined in Section 16 of this Act.

(d) The commissioner is responsible for recovering any fraudulently acquired benefits. If it appears that fraud has occurred, the commissioner shall notify the local board and the claimant and hold a hearing. If after the hearing the commissioner decides that benefits have been or are being fraudulently acquired, he shall seek action in a court of appropriate jurisdiction.

(e) The commissioner shall collect the revenues from the local boards of trustees for the fund.

(f) The commissioner may request and administer additional state funds in an emergency.

(g) The commissioner shall require annual reports from the local boards of trustees.

(h) The commissioner may at any reasonable time examine the records and accounts of local boards of trustees.

(i) The commissioner may recommend to the state board of trustees rules to implement this Act.

(j) The commissioner shall keep a copy of all rules promulgated under this Act on file in the commissioner's office. A copy of the rules shall be placed with each local board of trustees and shall be made available for public inspection at any reasonable time.

(k) The commissioner shall prepare the necessary forms for use by local boards of trustees.

(*l*) The commissioner shall prepare an annual report on the activity and status of the fund. The report shall go to the governor, the lieutenant governor, and the speaker of the house.

(m) The commissioner shall oversee the distribution of all benefits. The commissioner shall make benefit payments to claimants after receiving a copy of a local board of trustees' decision in favor of a claim and reviewing that decision.

(n) If the commissioner overrules a local board's decision, he shall immediately notify the local board and the claimant.

(*o*) The commissioner shall hear all appeals from local boards of trustees' decisions and issue written opinions in compliance with the procedures required by this Act.

(p) The commissioner shall keep a written transcript of all proceedings and hearings required by this Act.

State Board of Trustees

Sec. 20. (a) There is a state board of trustees composed of six members of the fund.

(b) The governor, with the advice and consent of two-thirds majority membership of the senate, shall appoint the trustees from a list of three to five nominees submitted by the State Firemen's and Fire Marshals' Association of Texas for each vacancy.

(c) The trustees shall serve six-year terms. The trustees appointed to serve on the first board of trustees shall draw by lot at the first board meeting to determine the length of term to be served. Two trustees shall serve a two-year term; two trustees shall serve a four-year term; and two trustees shall serve a six-year term. Thereafter each term shall be for six years.

(d) Five trustees constitute a quorum.

(e) A board decision or recommendation is made by a majority vote of trustees present. The vote must be recorded in the minutes of board meetings.

(f) The trustees shall serve without compensation. Trustees may be reimbursed for travel expenses to attend board meetings.

Duties of the State Board of Trustees

Sec. 21. (a) The board shall employ the certified public accountant, the actuary, and the investment advisors for the fund.

(b) The board shall establish rules and regulations necessary for the administration of the fund.

(c) The board shall hear appeals from the commissioner's decisions.

(d) The board may authorize a cost-of-living increase for any benefit provided in the pension system. If benefits are increased, the board may require an increase in the governing body's contributions to maintain the actuarial soundness of the fund.

(e) The board shall give notice and hold a hearing before authorizing a cost-of-living increase in benefits.

(f) Any cost-of-living increase in benefits is effective after approval by the legislature by concurrent resolution.

Local Board of Trustees

Sec. 22. (a) The local board of trustees is composed of the following:

(1) one representative selected by the governing body;

(2) five members of the local fire department chosen by a majority of fire fighters in qualified service; and

(3) two tax-paying voters who are chosen by the other members of the board.

(b) The local board shall elect a chairman from the members at the first meeting.

(c) Trustees serve two-year terms.

(d) On the first local board, the fire department representatives shall serve staggered terms. The fire department representatives shall draw by lot at the first board meeting to determine the length of term to be served. Three representatives shall serve two-year terms, and two representatives shall serve one-year terms. The first appointments of the tax-paying or citizen representatives shall be one appointed for a two-year term and one appointed for a one-year term. Thereafter, all appointments are for two-year terms.

(e) If a vacancy occurs on the board, it is filled for the remainder of the unexpired term by the procedure by which the position was originally filled.

(f) A majority of board members constitute a quorum.

(g) A board decision is made by majority vote of all members present. The vote must be recorded in the minutes of board meetings.

(h) No member of the local board may receive compensation for service as a trustee.

Duties of the Local Board of Trustees

Sec. 23. (a) The local board of trustees shall collect all governing body contributions at least semiannually and send the contributions to the commissioner.

(b) The local board shall hear and decide all claims for benefits according to the procedures in Section 7 of this Act.

(c) The board shall mail a copy of a decision on a claim to the parties involved and to the commissioner.

(d) The board shall keep complete records of all claims and proceedings.

(e) The local board shall require a fire fighter who is receiving temporary disability benefits to file a disability rating report from a physician every three months. The board may choose the physician. When the reports indicate a significant change of condition, the local board, after notice and a hearing, must enter an order to modify or terminate benefit payments. The order is sent to the commissioner. If the board terminates benefits, the fire fighter is presumed able to resume fire-fighting duties.

Certification of the Fund

Sec. 24. The commissioner and state board of trustees shall certify the actuarial and financial soundness of the fund every two years. The state board shall employ a qualified actuary and a certified public accountant to assist in the required certification.

Act Not to Repeal Statutory Authority

Sec. 25. This Act does not repeal the statutory authority for any existing or current pension plan. This Act is intended to provide a pension system and death and disability benefits for fire fighters who serve without monetary remuneration. The provisions of this Act are not to be interpreted to affect fully paid fire fighters or their pension systems in any way.

[Acts 1977, 65th Leg., p. 710, ch. 269, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 550, ch. 231, §§ 1 to 3, eff. Jan. 1, 1982.]

Section 4 of the 1981 amendatory act provides:
"This Act takes effect January 1, 1982, and applies to all benefits that become payable on or after that date."

Art. 6243f. Firemen and Policemen's Pension Fund in Cities of 500,000 to 800,000

Board of Trustees

Sec. 1. In all incorporated cities containing more than five hundred thousand (500,000) inhabitants and less than eight hundred thousand (800,000) inhabitants according to the last preceding federal census or any future federal census and having a fully paid fire and police department, there is created hereby (and continued if heretofore created) a Firemen and Policemen's Pension Fund; provided, however, that once such pension system becomes operative in any city, any right or privilege accruing to any such member thereunder shall be a vested right and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population (as herein prescribed) and said pension system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population. To govern said Firemen and Policemen's Pension Fund, there is hereby created a Board of Trustees to consist of seven (7) members, as follows: the mayor, two (2) aldermen, councilmen or commissioners, each to serve on this Board for the term of office to which they are elected, and to be elected to this Board by majority vote of the Board of Aldermen, Council or Board of Commissioners on which they serve; two (2) active firemen below the rank of fire chief, to be selected by the majority vote of the members of the fire department by secret ballot, one (1) for a term of two (2) years, and the other for a term of four (4) years, and two (2) active policemen below the grade of police chief, to be selected by the majority vote of the members of the police department, by secret ballot, one (1) for a term of two (2) years, and the other for a term of four (4) years. All members from the fire and police departments shall be elected by the contributors to the Fund, and shall serve until their successors are elected and qualified and their successors shall be elected for a term of four (4) years. These seven (7) trustees and their successors shall constitute the Board of Trustees of the Firemen and Policemen's Pension Fund, to provide for the disbursement of same, and to designate the beneficiaries thereof, and to have complete and independent control over said Pension Fund. Said Board shall be known as the Firemen and Policemen's Pension Fund Board of Trustees of _____, Texas.

Increase in Board Membership

Sec. 1A. Said board of trustees shall be increased in number from seven to nine by the addition of two retiree/beneficiary representatives, one each from the rolls of retirees, the widows, or the widowers of retirees of the fire department and police department, respectively. Such trustees shall have full voting and membership rights on said board. They shall each be elected by secret written ballot of the retirees, widows, or widowers of retirees of their respective departments, and the board, through its secretary, shall administer the required elections (with ballots to be mailed to out-of-town retirees and beneficiaries). Their terms of office shall each be four years, with one such trustee to be elected every two years.

The first election, however, shall be for both memberships and shall be conducted not later than 60 days after the effective date hereof. At such election the representative trustee for police department retirees and beneficiaries shall be elected for a term extending through May, 1983, and the representative trustee for fire department retirees and beneficiaries shall be elected for a term extending through May, 1981.

Only retirees and widows or widowers of members duly enrolled on the pension rolls shall be eligible for membership on the board.

[See Compact Edition, Volume 5 for text of 2]

Recall of Trustee

Sec. 3. The trustees elected to the board by the members of the fire and police departments may be recalled from such positions by a vote of the membership of their respective departments. Such recall election shall be held within 30 days after the board of trustees (the member in question not voting) certifies that a proper petition for a recall election on the trustee in question has been signed by at least 20 percent of the active members and contributors of the fund of such department. If a majority of the members of said department voting at such recall election shall vote to recall said trustee, his term of service shall end immediately upon the entry of an order by the board canvassing the results of such election and declaring the results thereof. The board shall, at the same time, call a special election to be held not less than 20 nor more than 30 days thereafter for the purpose of filling such vacancy for the unexpired term of said recalled trustee. The trustee recalled shall not be eligible to run in said special election but shall be eligible to run in all elections for trustee in said department thereafter. A recall petition must be filed with the board within 45 days after the first signature thereon has been obtained. Each signature shall be dated or be invalid.

Contributions to Fund, Deductions From Wages

Sec. 4. (a) There shall be deducted for such fund from the wages of each fireman and policeman in the employment of such city a percentage of the member's total salary excluding overtime pay, according to the following schedule:

(1) 8 percent for full pay periods before October 1, 1981;

(2) 8.5 percent for full pay periods after September 30, 1981, but before October 1, 1983;

(3) 9 percent for full pay periods after September 30, 1983, but before October 1, 1985;

(4) 9.5 percent for full pay periods after September 30, 1985, but before October 1, 1987;

(5) 10 percent for full pay periods after September 30, 1987, but before October 1, 1989; and

(6) 10.5 percent for full pay periods after September 30, 1989.

(b) Such city shall pay into said fund, and at the same time, an amount equal to double the sum total of all such deductions. Any donations made to said fund and all funds received from any source for such fund shall be deposited in like manner in such fund. The city's double matching amount referred to above shall be in lieu of all other payments heretofore required by law to be made by the city except as provided in Sections 26B(3) and 26C hereof.

(c) Department chiefs shall contribute on the basis of the salary of their permanent civil service rank plus their individual longevity pay and upon death or retirement their pensions shall be computed on the same basis.

[See Compact Edition, Volume 5 for text of 5 and 6]

Who May Share in Fund

Sec. 7.

[See Compact Edition, Volume 5 for text of 7(a) and 7(b)]

(c) Members of this Pension Fund who are called to active military service shall not be required to make the monthly payments into the fund provided for in this Act as long as they are thus engaged in active military service, nor shall they lose any seniority rights or retirement benefits provided for in the Act by virtue of such military service, provided that after their reinstatement to an active status in either the fire or police department they must file a written statement of intent with the secretary of the Pension Fund within 90 days of their return to such active status to pay into the Pension Fund an amount equal to what they would have paid in if they had remained on active status in the department during the period of their absence in military service and make such payment in full within an amount of time after their return equal to the time they were absent, in each case, or forever lose all credit toward a retirement pension for the length of time such member was engaged in active military service. No disability resulting from either injury or disease contracted after the effective date of this Act while engaged in military service shall ever entitle a member of the fund to a disability pension. When payments are made into the fund by a member pursuant to this section, the city shall double match such payment.

[See Compact Edition, Volume 5 for text of 7(d)]

Retirement Pension

Sec. 8. (a) Whenever any member of said departments shall have contributed a portion of his salary as provided by this Act, and shall have both contributed and served for a period of 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 or 30 years or more in either of said departments, the board shall, upon the application of any such member for retirement and a retirement pension, authorize a retirement pension to said applicant who retires after August 31, 1981, but before October 1, 1984, based on the average of the member's total salary excluding overtime pay for the highest five years of such member's pay at the rate of two percent thereof for each year served, with fractional years prorated based on full months served, as such contributing member but the highest pension paid shall not exceed 60 percent of such highest five years salary average as of the date of retirement. The board shall compute the retirement pension of a member who retires after September 30, 1984, but before October 1, 1987, on the basis of the average of the member's total salary excluding overtime pay for the highest four years of the member's pay at the rate of two percent for each year served, with fractional years prorated based on full months served, as a contributing member, but the pension may not exceed, as of the date of retirement, 60 percent of the average so determined. The board shall compute the retirement pension of a member who retires after September 30, 1987, in the same manner provided for computation of a pension for a member who retires on September 30, 1987, except that the average salary must be based on the highest three years of the member's pay excluding overtime pay. Provided, however, that any member of said departments qualifying for membership in the Pension Fund who is employed after the effective date of this Act must also have reached 50 years of age before being eligible for a retirement pension. No member shall ever receive any award from this fund for retirement until he has served at least 20 years in either or all of the departments and has also contributed the required amount of money for at least 20 years. In determining the number of years of service in a department, the member shall be given full credit for such time, or periods of time, said member was actively engaged in the military service, but only strictly in accordance with the provisions of Section 7(c) of this Act. Disciplinary suspensions of 15 days, or less, shall not be subtracted from a member's service time credit under this Act toward a retirement pension, provided that the member shall pay into the fund within 30 days after the termination date of each suspension a sum of money equal to the amount of money which would have been deducted from his salary during that period of suspension if it had not been for that suspension and upon such payment the city shall double match it.

(b) From and after January 1, 1959, whenever any member of said departments shall have served for a period of 30 years or more in either of said departments and shall have contributed a portion of his salary, as provided by this Act, for the same period of time, he shall be retired automatically from service upon attaining the age of 65 years and receive a pension based upon 60 percent of the average of his total salary excluding overtime pay for the same number of years as is currently provided for computations under Subsection (a) of this section, computed to the date of his retirement. Failure of such employee to comply with this provision shall deprive the member, and his widow and children and dependent parents, of any and all pensions and benefits herein provided.

(c) Provided, however, when a member in said departments attains the age of 65 years without having served for a period of 30 years in either of said departments and without having contributed a portion of his salary as provided by this Act for a period of 30 years, he may continue his service until his period of service and period of Pension Fund contributions shall cover 30 years.

[See Compact Edition, Volume 5 for text of 9]

Retirement When Disabled

Sec. 10. When any duly appointed and enrolled member of the fire department or police department of the city who is contributing to said fund, as herein provided, shall become so permanently disabled through injury or disease so as to incapacitate him from the performance of his duties, and shall make written application subject to medical examination for such injury or disease, he shall be retired from the service, if a member in good standing of said department at the time of retirement, and be entitled to receive from the said fund one-half of the average of his total salary excluding overtime pay based on the same number of years of the member's pay as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, or if he has served less than that number of years, a theoretical average based on all of his years of service extended back to a date the same number of years before the date of retirement under this Act as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, using (for the extended period) the actual base pay of a private as of that period of time, in each case, in making the computation. In no case shall a disability claim for incapacity from fire or police duties be received or considered, nor an award made hereunder until disability therefrom has first been proved to be continuous and wholly incapacitating for a period of not less than 30 days. The amount of one-half of the average total salary excluding overtime pay as set out above is the maximum amount of disability pension for total and permanent disability. Disability resulting from injury or disease incurred after the effective date of this Act while engaged in the active military service shall not entitle a member of this fund to a disability pension. However, total and permanent disability resulting from injury or disease incurred while a member is on suspension shall, if the suspended member makes up all deducted contributions lost by reason of the suspension within 30 days of the date that they would otherwise have been deducted from his pay, entitle a member of this fund to a disability pension, except in the case of an indefinite suspension. In the latter case action on an application for a disability pension shall await a final determination of any and all appeals. If the member is finally discharged, he shall not be entitled to a disability pension and his application shall be dismissed. If the member is restored to duty, or given a suspension for a specific period of time, his application shall be heard and acted on in the same manner as any other application. These provisions shall not affect the right conferred by Section 9 of this Act. The city shall double match all contributions made into the fund by the member pursuant to this section.

Death Benefits to Widows and Children

Sec. 11. (a) In case of the death before or after retirement of any member of the Fire and Police Pension Fund of such city, who at the time of his death or retirement was a contributor to the said fund, and a member in good standing of said fund, leaving a widow, child or children under the age of 17 years, or an unmarried child or unmarried children 17 years of age or over but under 19 years of age currently attending a public or private educational institution, the widow and such child or children shall be entitled to receive from the said fund an amount not to exceed one-half of the average total salary excluding overtime pay of the deceased member based on the same number of years of the member's pay as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, or a theoretical average based on all of his years of service extended back to a date the same number of years before the date of his death as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, using (for the extended period) the actual base pay of a private as of that period in time, in each case, in making the computation; one-half of the widow's amount in the aggregate shall go to the eligible children and one-half for the widow.

(b) No child resulting from any marriage subsequent to the date of the retirement of said member shall be entitled to a pension under this Act. In case there are no children, the widow shall receive an amount not to exceed one-half of the average total salary excluding overtime pay of the deceased member computed as provided above if he has served less than the number of years currently provided for computations of pensions under Subsection (a) of

Section 8 of this Act. In case there is no widow, the children shall receive one-fourth of the average total salary computed as provided above, except that if the board determines upon investigation that the eligible child or children is or are destitute then the board may increase the pension to an amount not exceeding two-fifths of that average total salary. The amount awarded hereunder to any child or children shall be paid by the board of trustees to the legal guardian of said child or children. In no instance shall the amount received by the widow, child or children exceed a pension allowance of one-half of the average total salary excluding overtime pay of the deceased member computed as provided above, and in the event of the death of a member who retired upon 20 years service and less than 25 years service in no instance shall the amount received by the widow and child or children or the widow alone, exceed a total of two-fifths of that average total salary computed as provided above. A child or children alone in such case shall receive only one-fifth of that average total salary as computed above.

(c) A child who is so mentally or physically retarded as to be incapable of its own support to any extent shall, if otherwise qualified, enjoy the rights of children under 17 years of age regardless of age. Provided, further, that any pension paid hereunder to any mentally or physically retarded child or children shall be reduced to the extent that any of same shall receive any state pension or aid, including medicaid, or any state-funded assistance, regardless of whether or not the funds were made available to the state by the federal government. Provided, however, that in no other instance under this Act shall any child be entitled to any benefit after becoming 19 years of age.

(d) On the remarriage of the widow, either statutory or common law, or the marriage of any child granted such pension, the pension shall cease; provided, however, that if such remarried widow again becomes unmarried she shall then be entitled on application to 75 percent of her original pension for as long as she remains unmarried, but if, on application, retroactive payments are due the unmarried widow, in no case may payments be for a period greater than two years during which time the applicant was unmarried and before the date of application.

(e) No widow shall ever be entitled to more than one pension from this fund. No widow whose status as such resulted from any marriage subsequent to the date of the retirement of said member shall be entitled to a pension under this Act. The pension rights of qualified widows, children, and dependent parents of deceased members or pensioners who retired or died before the effective date of the 1971 amendment hereto shall be computed on the basis of the base pay of a private in the department as of the date of such retirement or death. In the event of the death of a member who is under suspension at the time, including an indefinite suspension which has not yet become final, his widow and children shall enjoy the same rights as any other member hereunder.

(f) All widows, or other dependent beneficiaries under this Act, or guardians thereof, may be required by the board to file an affidavit annually as to their marital status, or that of their wards, or to give an affidavit to the board at other times when probable cause to suspect the possibility of remarriage exists. In the event of the failure or refusal of such widow or other beneficiary or guardian to file such affidavit, or in the event they should file an incomplete, incorrect, or false affidavit, the board may suspend pension payments to such widow, other beneficiary, or guardian indefinitely, and until there has been full compliance with the requests and orders of the board. This provision shall not be construed to be a limitation on or in derogation of any other powers, specific or implied, of the board as set out in Sections 2, 10, 13, and 14 of the Act, or elsewhere herein.

[See Compact Edition, Volume 5 for text of 12]

Death Benefits to Dependent Father and/or Mother; Investigations

Sec. 13. (a) If any member of the fire or police department dies before or after retirement, who was a contributor to said fund and a member in good standing thereof, and leaves no widow or child, but leaves surviving him a father and/or mother wholly dependent upon him for support, such dependent father and/or mother shall be entitled to receive one-third of the average total salary excluding overtime pay of the deceased member based on the same number of years of the member's pay as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, or a theoretical average based on all of his years of service extended back to a date the same number of years before the date of death under this Act as is currently provided for computations of pensions under Subsection (a) of Section 8 of this Act, using (for the extended period) the actual base pay of a private as of such period in time, in each case, in making such computation, to be equally divided between said father and mother, so long as they are wholly dependent. When there is only one dependent, either father or mother, the board shall grant the surviving dependent one-fourth of that average total salary as computed above.

(b) The board shall have the authority to make a thorough investigation, determine the facts as to the dependency of the said parties, and each of them, as to how long the same exists and may at any time, upon the request of any beneficiary or any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or

any of them as it may deem proper and the findings of any board in regard to any matters, as well as to all pensions granted under this Act, shall be final upon all parties seeking a pension until such award of the trustees shall have been set aside or revoked by a court of competent jurisdiction. The board shall have the power to make any such investigation into any pension application whatsoever or any pensioner's status on its own initiative.

(c) In the event of the death of a member who is under suspension at the time, including an indefinite suspension which has not yet become final, his dependent parents shall enjoy the same rights as any other member under this Act. If any member of the fire and police department in active service should die, leaving neither a widow, a child or children, under 17 years of age, a child under 19 years of age who is attending school, or a retarded child, or dependent father and mother, or one such, the estate of said deceased member of the fire or police department shall be entitled to a burial death benefit payment in the amount of $2,000 from said fund. This benefit shall never be paid if the member of the fund dying is survived by one or more beneficiaries as defined hereunder.

[See Compact Edition, Volume 5 for text of 14]

Medical Examination; Reduction in Pension for Outside Income; Employment Commensurate with Abilities

Sec. 15. (a) Said Board may cause any person receiving any disability pension under the provisions of this Act, to appear and undergo medical examination or medical examinations by any reputable physician or physicians selected by the Board, as a result of which the Board shall determine whether the relief in said case shall be continued, decreased, or restored to the original amount (if it had been decreased), or discontinued; provided, however, that such relief shall never be discontinued unless the person receiving any pension shall have first been accepted for reinstatement in his former position or status in the Fire Department or Police Department, as the case may be, by the Chief of the Department. The Board may change any percentage stipulated in this Act, commensurate with any change in the degree of disability; provided, however, that such percentage shall not, except in the case of discontinuance, be reduced to less than two percent (2%) of the base pay of a private per month for each year he shall have served and contributed a portion of his salary as provided by this Act, based on the current rate of pay at the time of the original granting of any pension, or on a minimum base pay of Two Hundred Dollars ($200.00) per month, whichever is greater, for all those pensioned prior to the effective date of the 1971 amendment hereto, nor be reduced to less than two percent (2%) of the total salary excluding overtime pay, for the average of the member's pay computed at the time of retirement under Subsection (a) of Section 8 of this Act (or the average of all years if service less than the number of years on which pensions were computed at that time) for each year of service in said departments prior to such amendment. If any person receiving benefits under any provision of this Act, after due notice, fails to appear and undergo any such examination or examinations as ordered by the Board, the Board may reduce or entirely discontinue such benefits.

(b) The board shall require each member of the fund retiring on a disability pension after the effective date of this Act to provide the board annually on or before May 1 of each year thereafter with a true and complete copy of his income tax return for the previous year. If such pensioner is or has been receiving income from other employment or employments (to include self-employment) during each such preceding year the board may reduce such pension by the amount of $1 per month for each $2 of income earned by such pensioner from such employment during each month thereof, provided that such pension shall in no event be decreased below an amount based on two percent of his average pay computed at the time of retirement under Subsection (a) of Section 8 of this Act for each year of service in the department (less overtime pay).

(c) No disability pension shall be originally granted or if granted continued, if the chief of the member's department is able and willing to provide such member employment within such department commensurate with his physical and mental capabilities. Such determination shall be solely within the discretion of the department chief, reasonably exercised.

Public Funds

Sec. 16. Funds are hereby authorized to be paid out of the General Fund or the Special Fund of any such incorporated city. Nothing herein is to be construed as denying any city any right which it may have at any time to raise or procure money for the benefit of said pension fund, which might be in addition to the method or methods herein provided.

Reserve Retirement Fund

Sec. 17. At the end of the fiscal year all money paid into the Fund that remains as a surplus over and above the orders for payment as issued by the Board, shall be paid into the Reserve Retirement Fund to accumulate interest for the benefit of the reserve funds needs. All such funds as may accumulate in this special retirement reserve shall be invested at regular intervals or at such times as the accumulations justify. The funds may be invested in the following manner:

1. A sum not to exceed ten per cent (10%) may be deposited with a Federal Credit Union restricted to employees of the city.

2. A sum not to exceed fifteen per cent (15%) may be invested in savings and loan associations which are insured by the Federal Savings & Loan

Insurance Corporation, but the amount invested in any one association shall not exceed the amount insured by such corporation under the law.

3. A sum not to exceed seventy per cent (70%) of the principal value of the Fund may be invested in shares of open end investment companies, closed end investment companies, common or preferred stocks in any solvent dividend-paying corporation at the time of purchase incorporated under the laws of the State, or any other state in the United States, which has not defaulted in the payment of any of its obligations for a period of five (5) years immediately preceding the date of investment, provided such funds may not be invested in the stock of any oil, manufacturing or mercantile corporation, organized under the laws of this State, or any other state of the United States, unless said corporation has at the time of investment a net worth of not less than Two Million, Five Hundred Thousand Dollars ($2,500,000).

Of this percentage a sum not to exceed fifty per cent (50%) thereof may be invested in shares of capital stock of national banks having been established at least ten (10) years and having a capitalization of at least Five Million Dollars ($5,000,000), and/or shares of capital stock of life insurance companies, and/or fire and casualty insurance companies having been established at least twenty-five (25) years and having a capitalization of at least Five Million Dollars ($5,000,000).

4. A sum not to exceed seventy-five per cent (75%) may be invested in first mortgage bonds or debentures of any solvent dividend-paying corporation which at the time of purchase was incorporated under the laws of this State or any other state in the United States and which has not defaulted in the payment of any debt within five (5) years next preceding such investment.

5. The entire Fund or any portion thereof, may be invested in United States Treasury Notes, United States Treasury Bonds, Bonds of the State of Texas, or bonds of any county or municipality of the State of Texas; or bonds or debentures, payment of which is guaranteed by an agency of the United States Government, such as Federal Intermediate Credit Bank Debentures; Federal Land Bank Bonds; Federal Home Loan Bank Notes; Banks for Cooperative Debentures; Federal National Mortgage Association Notes and any additional bonds which may be in the future issued, secured by an agency of the United States Government. The Board shall have the power to make these investments for the sole benefit of this Reserve Retirement Fund. The investment shall remain in the custody of the Treasurer in the same manner as provided for the custody of the Funds. The Board shall have the power and authority, by a majority vote of its members, to disburse the monies accumulated as the retirement needs arise.

6. A sum not to exceed six per cent (6%) of the total assets of the Fund may be invested in common or preferred stocks of solvent non-dividend-paying corporations, each of which has at the time of investment a net worth of at least Fifty Million Dollars ($50,000,000).

[See Compact Edition, Volume 5 for text of 18 to 26]

Cost of Living Increases or Decreases

Sec. 26A.

[See Compact Edition, Volume 5 for text of 26A(1)]

(2) The board shall annually, beginning in 1980, at or before its regular meeting in the month of March, review the Cost of Living Indexes of the United States Bureau of Labor Statistics for the preceding calendar year. If such index should report an increase or decrease during such calendar year in the cost of living as much as three percent as compared with the Cost of Living Index at the close of the previous year the board shall enter its order increasing or decreasing all pension payments by three percent, or more (depending on the amount of increase or decrease) but only by full percentage points closest to the exact amount of such increase or decrease; provided, however, that any increased pension payments shall only be at the rate of 75 percent of the applicable cost of living percentage for each such year for those pensioners (and the beneficiaries of such pensioners) who were pensioned on and after August 30, 1971, and none other. Such increase or decrease shall be effective retroactively as of the month of January next preceding such March (or earlier) board meeting and shall continue in effect for at least one full year thereafter, and until there has been an additional increase or decrease of at least three percent compared to such base figure and until the board enters a further order as provided herein. The cost of living increase paid to any pensioner or beneficiary of a member or pensioner during the first full year after the effective date of any such retirement or beneficiary pension shall be prorated. It is further provided that no pension shall ever be decreased below the amount at which it was originally granted, except pursuant to the provisions of Sections 11 and 15 of this Act. That part of any pension hereunder which is attributable to cost of living increases granted under this subsection at any time may be decreased in accordance with decreases in the cost of living, as provided above.

[See Compact Edition, Volume 5 for text of 26A(3) to 26B(3)]

Cost of Living Increases

Sec. 26C. (a) All pensions granted before September 1, 1971, in the Fund created by this Act, are

increased in the amount of Sixty Dollars ($60) per month beginning with the first whole calendar month after the effective date of this Act, subject to the continuing right of the Board to change any percentage of disability as provided in Section 15 of this Act.

(b) The increase granted in Subsection (a) of this section shall be subject to the cost of living increases or decreases provided for in Subsection (2), Section 26A of this Act in the same way and to the same extent as the rest of the pensions.

(c) The cost of paying the increases provided for in this section shall be paid by the city out of general funds of the city.

[See Compact Edition, Volume 5 for text of 27]

[Amended by Acts 1975, 64th Leg., p. 101, ch. 43, § 1, eff. April 10, 1975; Acts 1975, 64th Leg., p. 597, ch. 246, § 1, eff. May 20, 1975; Acts 1979, 66th Leg., p. 1420, ch. 628, §§ 1 to 12, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 592, ch. 237, § 124, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 673, ch. 264, §§ 1 to 7, eff. Sept. 1, 1981.]

Art. 6243f–1. Involuntary Retirement of Fire Fighters in Cities of 350,000 to 400,000; Age; Disability

Sec. 1. No member of a fire department in any city or town in this State having a population of not less than 350,000 nor more than 400,000, according to the last preceding federal census, shall be involuntarily retired prior to reaching the mandatory retirement age set for such cities' employees unless he is physically unable to perform his duties. In the event he is physically unable to perform his duties, he shall be allowed to use all of his accumulated sick leave, before retirement.

[See Compact Edition, Volume 5 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 593, ch. 237, § 125, eff. Sept. 1, 1981.]

Art. 6243g. Municipal Pension System in Cities of 1,200,000 or More

Creation of Pension System

Sec. 1. There is hereby created a Municipal Pension System in all cities in this state having a population of one million two hundred thousand (1,200,000) or more according to the last preceding or any future Federal Census.

Definitions

Sec. 2. The following words and phrases when used in this Act are defined as follows, to wit:

(a) "Pension System" means the retirement and disability plans for employees of cities coming within the provisions of this Act.

(b) "Member" means each city employee included in the Pension System provided for herein and becoming a member thereof.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under this Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by an "employee" as that term is defined herein.

(e) "Pension" means benefits payable to members out of the Pension Fund upon their becoming disabled or reaching retirement age as provided herein and becoming eligible for such payments.

(f) "Separation from Service" means cessation of work for the city, whether caused by death, discharge, resignation or any reason other than retirement.

(g) "Employee" means and includes any person whose name appears on a regular full time payroll of any such city and who is paid a regular salary for his services. Provided, that any elected official who becomes a member of the Pension System as permitted by this amended Act shall be considered to be and to have been an employee during the period of any service as an elected official.

(h) "Salary" means base pay, plus longevity pay, plus shift-differential pay, if any, paid to an employee and attributable to services rendered by the employee regardless of how actually paid.

(i) "Prior Service" means all services and work performed as an employee prior to September 1, 1943.

(j) "Previous Service" means all services and work as an employee, other than "prior service" as herein defined, which preceded a Group A member's current period of employment.

(k) "Credited Service" means all services and work performed by a person as an employee, including prior service. However, in the case of a Group A member, if performed after September 1, 1943, such services and work must have been accompanied by corresponding contributions to the Pension Fund by the employee or legally authorized repayments thereof must have been made. Provided further, service preceding an interruption in service of ten years or longer is not "credited service".

Persons Eligible Under This Act

Sec. 3. The following persons are eligible under this Act:

(a) Any person who is now a member of any such System under the terms of the original Act, as amended, and who does not make the election provided by Section 22 of this Act shall be a Group A member. The disability and benefit provisions of Sections 11 through 12 of this Act shall apply to Group A members.

(b) Any person who becomes an employee of such city for the first time after September 1, 1981, shall automatically become a Group B member of the Pension System as a condition of his

employment except as hereinafter enumerated. Except as expressly stated otherwise, the eligibility and benefit provisions of Sections 22 through 31, inclusive, shall apply to such Group B members.

(c) Elected officials in office on September 1, 1981, shall have the option of becoming members of the Pension System. Any member or former member of the Pension System who shall hereafter be elected to an office of said city shall have the right to reinstatement and shall receive credit for prior service and previous service as an employee on the same conditions as reemployed Group A members; except that no elected official who has retired or does retire from the Pension System on a service or disability retirement pension may receive pension payments while serving in an elective city office and such payments shall be suspended during the term of office. However, upon leaving office such payments shall be restored and credit given for the period served. Any elected official who is first elected after September 1, 1981, shall become a Group B member and receive credit for all previous service.

Persons Not Eligible Under This Act

Sec. 4. Employees of such city who may not become members of the Pension System shall include:

(a) All quasi-legislative, quasi-judicial and advisory boards and commissions;

(b) All part-time employees, as defined by such city, other than any elected officials whose service is made part-time by law or charter;

(c) All seasonal employees and all consultants and independent contractors;

(d) Employees covered by any other pension plan of such city to which the city contributes or persons drawing a pension from any such system, except to the extent that they are covered as a beneficiary.

Pension Board

Sec. 5. (a) There is hereby created a Pension Board of the Pension System, in which Board there is hereby vested the general administration, management and responsibility for the proper and effective operation of the Pension System. The Board shall be organized immediately after its members have qualified and taken the oath of office and shall serve without compensation.

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The Mayor of the City, or the Director of the Civil Service Commission as his representative.

(2) The Treasurer of the City or person performing the duties of Treasurer.

(3) Three (3) employees of the city having membership in the Pension System and elected by the members of such System. No city department shall have more than one (1) representative. The persons now serving as employee members of the Board shall continue in office until the expiration of their terms, in cities having established systems under the original Act, as amended. The term of office of succeeding members so elected shall likewise be two (2) years and each such member shall continue to serve until his successor is duly elected and qualified. Vacancies occurring by death, resignation or removal of such representative shall be filled by appointments made by any two (2) of the Board members elected by the members of the Pension System. Such appointees shall serve for the remainder of the unexpired term of the member they replace. The first election of employee members in cities hereafter coming under this Act shall be held in such city at such time and place as shall be fixed by the governing body of the city, and to be not more than seventy-five (75) days from the date such city comes under the terms of this Act.

(4) Two (2) legally qualified taxpayers of such city, who have been residents of the county in which such city is located for the preceding five (5) years, to be chosen by the governing body of the city, being neither employees nor officers of such city. The two (2) members so chosen by the governing body of the city shall serve for two (2) years and until their successors are duly elected and qualified. Vacancies occurring by death, resignation, or removal of such representative shall be filled by the governing body of the city. Public members now on the Boards of cities having established Systems shall continue in office until the expiration of their terms.

(c) Each member of the Pension Board within ten (10) days after his appointment and election shall take an oath of office that so far as it devolves upon him he will diligently and honestly administer the affairs of the Pension System and that he will not knowingly violate, or willingly permit to be violated, any of the provisions of this law.

(d) The Board shall elect from its membership annually a Chairman, Vice-Chairman and Secretary. Pursuant to the powers granted under the charter of such city, the Chief Administrative Officer of the city shall appoint one (1) or more employees whose positions and salaries shall be fixed by the governing body of the city and who, acting under direction of the Chief Administrative Officer of the city and City Treasurer, shall keep all of the records of and perform all of the clerical services for the Pension System. The salaries of such employees and all administrative expenses of the Pension System shall be paid by the city.

(e) Each member of the Board shall be entitled to one (1) vote in the Board. Four (4) concurring votes shall be necessary for a decision by the members at any meeting of the Board, and four (4) members shall constitute a quorum.

(f) A meeting of said Pension Board may be called at any time by the Chairman, Secretary, or by any four (4) members of such Pension Board.

(g) Notice shall be given to all members of such Pension Board unless waived in writing as to any proposed meeting by depositing of a written notice in the United States mail at least forty-eight (48) hours before such meeting, properly addressed to each such member. If a meeting is had, however, at which all of the members of the Board attend, no notice shall be necessary.

(h) No moneys shall be paid out of the Pension Fund except by warrant, check, or draft signed by the Treasurer and countersigned by the Secretary, upon an order by said Pension Board duly entered in the minutes. Facsimile signatures may be authorized by the Board. Provided, however, the Board may by contract with any bank which is a depository for such Pension Fund authorize the bank to make deductions from the Pension Fund's account with such bank in connection with the purchase by the Board of authorized investments.

(i) The Pension Board shall determine the prior service to be credited to each member of the Pension System. The Board shall rely upon the personnel records of such city in determining such prior service credit or upon affidavits if the personnel records are incomplete.

(j) The Pension Board shall determine each member's credited service on the basis of the personnel and financial records of the city and the records of the Pension Board. The Board may permit any Group A member to pay into the Pension Fund and thereby obtain credit for any service with the city for which credit would otherwise be allowable under this amended Act save only for the fact that no contributions were made by such member with respect to such service, or the fact that contributions, although made with respect thereto, were thereafter refunded to such member as a separation allowance and not subsequently repaid. The following provisions shall apply to such payments:

(1) For service during the period September 1, 1943, to May 29, 1967, the employee shall pay a sum computed at the rate of Twelve Dollars ($12) a month, and the city shall pay into the Pension Fund one and one-half (1½) times the amount so paid by the employee.

(2) For service during the period May 29, 1967, to January 5, 1970, the employee shall pay a sum computed at the rate of three percent (3%) of his salary with the minimum payment being Twelve Dollars ($12) a month, and the city shall pay into the Pension Fund one and one-half (1½) times the amount so paid by the employee.

(3) For service during the period January 5, 1970, to September 1, 1971, the employee shall pay a sum computed at the rate of three percent (3%) of his salary with the minimum payment being Twelve Dollars ($12) a month, and the city shall pay into the Pension Fund an amount equal to eleven and one-quarter percent (11¼%) of such salary for the same period of time.

(4) For service during the period September 1, 1971, to January 1, 1976, the employee shall pay a sum computed at the rate of four percent (4%) of his salary, and the city shall pay into the Pension Fund an amount equal to thirteen and one-half percent (13½%) of such salary for the same period of time.

(5) For service on and after January 1, 1976, the employee shall pay a sum computed at the rate of four percent (4%) of his salary, and the city shall pay into the Pension Fund an amount equal to eighteen percent (18%) of such salary for the same period of time.

(6) In addition to the amounts to be paid by the employee as specified above, the employee shall also pay interest on the same amounts at the rate of eight percent (8%) per annum from the time the contributions would have been deducted, if made, or the time contributions were refunded as a separation allowance, as the case may be, to the time of repayment of such contributions into the Pension Fund.

Treasurer of Pension Fund

Sec. 6. The City Treasurer of any such city, or the person discharging the duties of the City Treasurer, is hereby designated as the Treasurer of said Pension Fund for said city and his official bond to said city shall operate to cover his position of Treasurer of said Pension Fund and his sureties shall be liable in connection with the Treasurer's actions pertaining to such Fund as fully as they are liable under the terms of said bond for the other actions and conduct of said Treasurer. All moneys of every kind and character collected or to be collected for said Fund shall be paid over to said Treasurer and shall be administered and paid out only in accordance with the provisions of this Act.

Contributions by Members

Sec. 7. Each Group A member of the Pension System shall make periodic contributions during employment by the city in the amount of four percent (4%) of salary. Such contributions shall be deducted by the city from the salary of each such member and paid to the Treasurer of the Pension Fund for deposit therein.

Contributions by City

Sec. 8. (a) Until January 1, 1983, such city shall pay monthly into such Pension Fund, from its general fund or other available source, an amount equal to eighteen percent (18%) of the total of the monthly salaries paid to Group A and Group B members for the same period of time, less an amount equal to the total amount of the employer's part of the payments made by the city for such period of time with respect to such members, to the federal government under the provisions of the Social Security Act[1] and Feder-

al Insurance Contributions Act,[2] it being the intention hereof that the combined total of the payments made by such city, as an employer, with respect to such members, for social security and pension fund purposes shall at all times be eighteen percent (18%) of the total of all salaries paid to all such members.

(b) Beginning January 1, 1983, the city shall make periodic payments into the Pension Fund in an amount equal to the percentage contribution rate multiplied by the salaries paid to Group A and Group B members of the Fund. Such contribution rate expressed as a percentage shall be based on the results of actuarial valuations made at least every three (3) years, with the first such actuarial valuation to be made as of January 1, 1982. The city's contribution rate shall be comprised of the normal cost plus the level percentage of salary payment required to amortize the unfunded actuarial liability over a period of forty (40) years from January 1, 1983, calculated on the basis of an acceptable actuarial reserve funding method approved by the Pension Board.

[1] 42 U.S.C.A. § 301 et seq.
[2] 26 U.S.C.A. § 3101 et seq.

[See Compact Edition, Volume 5 for text of 9]

Investment of Surplus

Sec. 10. Whenever, in the opinion of the Board, there exists a surplus of funds in an amount exceeding the current demands upon the Fund, the Board shall invest such surplus funds in the manner provided for in Chapter 817, Acts of the 66th Legislature, 1979 (Article 6228n, Vernon's Texas Civil Statutes).

Retirement on Pension

Sec. 11. (a) Any Group A member of such Pension System who has attained fifty (50) years of age and completed twenty-five (25) or more years of credited service, and any Group A member of such Pension System who has attained fifty-five (55) years of age and completed twenty (20) or more years of credited service, and any Group A member of the Pension System who has attained sixty (60) years of age and completed ten (10) or more years of credited service shall be eligible for a pension.

(b) The amount of the monthly pension for each such Group A member shall equal two percent (2%) of the member's average monthly salary multiplied by the total number of years of credited service of such member. For purposes of this Subsection, such average monthly salary shall be computed by adding together the thirty-six (36) highest monthly salaries paid to a member during his period of credited service and dividing the sum by thirty-six (36). Provided, however, that no Group A member's pension shall be more than eighty percent (80%) of such average monthly salary; and no Group A member's pension shall be less than Eight Dollars ($8) a month for each year of credited service, or One Hundred Dollars ($100) a month total pension, whichever is the greater amount.

(c) A member shall continue to accrue service credits, provided that in the case of a Group A member the required contributions are made to the fund, regardless of his age.

(d) All Group A members who retire under this section or under Section 12 on or after January 1, 1976, shall have their pensions adjusted annually upward or downward in accordance with the percentage change in the Consumer Price Index for All Urban Consumers (CPI) for the preceding year as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension which the retired member or survivor would otherwise be entitled to receive without regard to changes in the CPI. The adjusted pension shall never be greater than the amount of the retired Group A member's basic pension plus increases of not to exceed two percent (2%) annually, not compounded, notwithstanding a greater increase in the CPI.

(e) All pensioners or the survivors of pensioners who retired prior to January 1, 1976, shall have their pensions adjusted on a one-time basis in an amount equivalent to one percent (1%) of their pension payment per year of retirement, subject to a minimum increase of Ten Dollars ($10) per month. This post-retirement adjustment shall be effective September 1, 1981.

Disability Pensions

Sec. 12. (a) Any Group A member who has completed ten (10) or more years of service and who becomes totally disabled for further duty shall, regardless of age, be retired for "ordinary disability" and shall receive a monthly pension computed in accordance with Section 11(b).

(b) If any Group A member who becomes totally disabled for further duty by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties at some definite place and at some definite time on or after the date of his becoming a Group A member, without serious and willful misconduct on his part, shall be retired for "accidental disability" and shall receive a monthly pension equal to twenty percent (20%) of his monthly salary on the date such injury was sustained or such hazard was undergone plus one percent (1%) of the above salary for each year of credited service; provided, that the total pension as so computed will not exceed forty percent (40%) of such monthly salary, or a monthly pension computed in accordance with Section 11(b), whichever is greater.

(c) By "totally disabled" is meant the sustaining of such disability as completely incapacitates a member from performing the usual and customary duties which he has been performing for such city or other full time duties that could be performed by such member. Before any disability pension is allowed, the Pension Board shall require such medical examination and such other evidence as it may see fit to establish such total disability, as above provided.

(d) Any Group A member receiving a disability pension in accordance with this section or any Group B member receiving a disability pension in accordance with Section 25 of this Act shall, each April 1, submit a sworn affidavit stating his earnings for the previous calendar year, if any, obtained from any gainful occupation. If the earnings together with the disability pension being received by any member exceed the monthly salary of such member at the time of his separation from service, the Pension Board shall have authority to reduce the amount of pension. Failure to submit an affidavit of earnings or submission of a materially false affidavit shall be cause for suspension of the pension upon proper action by the Pension Board.

No member shall receive a disability and service pension at the same time. However, in the event a member who is already eligible for retirement is granted a disability pension and, thereafter, although his disability ceases to exist, he does not return to work for the city, he shall be entitled to receive a service pension, calculated in accordance with Section 11 for Group A members and Section 24 for Group B members. Such service pension shall be based on actual service up to the time of disability.

When any member has been retired for disability, he shall be subject at all times to re-examination by the Pension Board and shall submit himself to such further examination as the Pension Board may require. If any such member shall refuse to submit himself to any such examination, the Pension Board may, within its discretion, order said payments stopped. If such a member who has been retired under the provisions of this Section should thereafter recover so that in the opinion of the Pension Board he is able to perform the usual and customary duties formerly handled by him for said city, and such member is reinstated or tendered reinstatement to the position he had at the time of his retirement, then the Pension Board shall order such pension payments stopped.

Monthly Allowance to Widows and Children

Sec. 13. If any Group A member of the Pension System, as herein defined, shall die from any cause whatsoever after having completed ten (10) years of service with the city, or if, while in the service of the city, any such member shall die from any cause growing out of or in consequence of the performance of his duty, or shall die after he has been retired on pension because of length of service or disability and shall leave a surviving widow or widower, or a child or children under the age of eighteen (18) years, or both such widow or widower and child or children, said Board shall order paid monthly allowances as follows:

(a) To the widow or widower, so long as she or he remains a single person and provided she or he shall have married such member prior to her or his retirement, a sum equal to one-half (½) of the retirement benefits that the deceased Group A member would have been entitled to had she or he been totally disabled at the time of her or his retirement or death, but the allowance payable to any such widow or widower shall not in any event be less than Fifty Dollars ($50) a month.

(b) To the guardian of each child the sum of Sixteen Dollars ($16) a month until such child reaches the age of eighteen (18) years.

(c) In the event the widow or widower dies after being entitled to her or his allowance as provided, or in the event there be no widow or widower to receive such allowance, the amount to be paid to the guardian of any child or children under the age of eighteen (18) years shall be increased to the sum of Thirty-Two Dollars ($32) a month for each such child; provided, however, that the total allowance to be paid all beneficiaries or dependents, as herein provided, shall not exceed the monthly pension that would have been paid the Group A member had he continued to live and retire on pension at the date of his death. Allowances or benefits payable to any minor child shall cease when such child becomes eighteen (18) years of age or marries, provided that when there are only children to collect a pension as beneficiaries, if at the time the last child reaches eighteen (18) years of age, the amount the employee contributed has not been paid out in pensions, the balance shall be refunded to the children. The term "guardian," as used herein, shall mean the surviving widow or widower with whom the child or children reside, or any guardian appointed by law, or the person standing in "loco parentis" to such dependent minor child responsible for his or her care and upbringing.

Refund of Contributions

Sec. 14. If any member's employment by the city is terminated for other than total and permanent disability arising as a result of or as a consequence of the performance of his duties prior to his having completed ten (10) years of service with the city, he shall not be paid any pension whatsoever, but he shall receive the amount paid by him into the Pension Fund by way of salary deduction without interest as provided in Section 16 of this Act. In the event of his death, if there are no widow or children to receive the allowance provided for in Section 13 above, his beneficiary, and if none, his estate, shall receive the said amount.

Computing Period of Service

Sec. 15. In the computation of the years of service of an employee who is a Group A member, the following rules shall apply:

(a) Interruptions of service of three (3) months or less shall be treated as continuous service, but such employee shall be required to pay into the Pension Fund any contributions withdrawn at the time of separation plus the amount of the employ-

ee contributions allocable to each such period of interruption.

(b) If there have been interruptions of service of more than three (3) months and less than ten (10) years, no credit shall be allowed for the period of an interruption but credit shall be allowed for previous service and prior service if (1) such employee shall have repaid to the Pension Fund within three (3) months after resumption of service all moneys theretofore withdrawn by him upon separation from service, plus interest thereon at the rate of eight percent (8%) per annum, or (2) if such employee shall at any time have made payments to the Pension Fund which, under then existing provisions of law, entitled him to credit for previous service.

(c) If such employee has been out of service for a period longer than ten (10) years, no credit for any service preceding the out-of-service period shall be allowed.

Termination of Employment; Death; Reemployment

Sec. 16. When any Group A member shall leave the employment of such city, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall thereupon cease to be a member of such Pension System, and shall have refunded to him all of the payments made by him into said Pension Fund by way of salary deductions, without interest, subject to the following provisos:

(a) If such member has completed twenty-five (25) or more years of service at the time of termination of employment but has not yet attained the age of fifty (50) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of fifty (50) years, be entitled to a pension on the basis of the schedule of benefits for retiring Group A members that was in effect at the time of his separation from the service.

(b) If such member has completed twenty (20) or more years of service at the time of termination of employment but has not yet attained the age of fifty-five (55) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of fifty-five (55) years, be entitled to a pension on the basis of the schedule of benefits for retiring Group A members that was in effect at the time of his separation from service.

(c) If such member has completed fifteen (15) or more years of service at the time of termination of employment but has not yet attained the age of sixty (60) years he may, by written notice to the Pension Board, make an irrevocable election to leave his contributions in the Pension Fund, in which event he shall, upon reaching the age of sixty (60) years, be entitled to a pension on the basis of the schedule of benefits for retiring Group A members that was in effect at the time of his separation from service.

(d) If, while still employed by the city, whether eligible for a pension or not, a Group A member dies, then, unless the provisions of Section 13 hereof are applicable, all of his rights in the Pension Fund shall be satisfied by the refund to his designated beneficiary, if any, or if none, to his estate, of all the payments theretofore made by him into the Pension Fund by way of employee's contributions, without interest.

(e) The provisions of Section 13 concerning payments to widows, widowers and children shall apply in the case of any former Group A member who has made the election permitted by Subsection (a), (b) or (c), above, and who dies before reaching the age at which he would be entitled to a pension. If there be no surviving widow, widower or children, then all of such member's rights in the Pension Fund shall be satisfied by the refund to his designated beneficiary, if any, or if none, to his estate, of all the payments theretofore made by him into the Pension Fund by way of employee's contributions, without interest.

(f) It is not the intention of this Amendatory Act to change the status of any former member of the Pension System whose services with the city were terminated under a previous Act. Refunds of contributions above provided for shall be paid such departing member, his beneficiary or estate in a lump sum, but if, in the opinion of the Pension Board, the funds on hand are too low to justify such lump sum payment, said payment shall be refunded on a monthly basis in such amounts as may be determined by the Pension Board.

(g) When a Group A member has left the service of such city, as aforesaid, and has therefore ceased to be a member of such Pension System, if such person shall thereafter be reemployed by the city on or after September 1, 1981, he shall thereupon become a Group B member. Previous service of such member with such city shall not be counted toward his retirement pension unless such member returns to the service of the city within ten (10) years from his separation therefrom.

(h) If any Group A member of the pension system, after having made the election permitted by Subsection (a), (b) or (c), above, at the time of separation from the service of the city, shall be reemployed by the city before September 1, 1981, and before becoming eligible to receive pension benefits, the following provisions shall apply to the computation of the pension due such member upon his subsequent retirement:

1. The portion of such member's pension attributable to his period of credited service accrued prior to his making the aforesaid election shall be calculated on the basis of the schedule

of benefits for retiring members that was in effect at the time said election was made. However, in the case of any such member who made the election permitted by Subsection (a), (b) or (c), above, prior to September 1, 1981, the portion of such member's pension attributable to service prior to the election shall be based on such member's average monthly salary at the time of such subsequent retirement, only if the member has completed five (5) years of continuous service from the date of reemployment.

2. The portion of such member's pension attributable to his period of credited service accrued after his reemployment by the city shall be calculated on the basis of the schedule of benefits for retiring members that is in effect at the time of such subsequent retirement.

Reduction of Benefits; Dissolution of System

Sec. 17. (a) In the event said Pension Fund becomes seriously depleted in the opinion of the Pension Board, said Pension Board may proportionately and temporarily reduce the benefits of all pensioners and beneficiaries, but such reductions shall thereafter be paid to such pensioners and beneficiaries, as and when said Fund is, in the opinion of the Pension Board, sufficiently reestablished to do so. Should the reserve and surplus in the Pension Fund become exhausted and, at such time, the outgo of the Pension Fund exceeds the income thereto, then, in such event, the governing body of the city shall have the right, by ordinance duly passed, to dissolve the Pension System and require liquidation thereof without any liability to the city whatsoever.

(b) Any member or survivor receiving a retirement pension may, at his option, receive any smaller retirement pension after properly requesting same in writing to the Pension Board.

(c) In the event any member dies within three (3) years from his retirement date and leaves no widow or minor children, his estate shall be entitled to payment in a lump sum of the excess, if any, of his accumulated contributions to the date of his retirement over the aggregate monthly benefit payments received by the member.

Legal Services

Sec. 18. The City Attorney of such city shall handle all legal matters for the Pension System which are referred to him by the Pension Board or city without additional compensation therefor. The Pension Board may, however, if it deems necessary, employ outside legal advice to the exclusion of, or to assist, the City Attorney, and pay reasonable compensation therefor out of said Pension Fund.

Actuary

Sec. 19. The Pension Board shall employ an actuary which cost shall be paid for by the city. The actuary shall prepare an actuarial valuation and report to the Pension Board at least every three (3) years.

Exemption from Execution, Attachment or Other Writ

Sec. 20. No portion of any such Pension Fund, either before or after its order of disbursement by said Pension Board, and no amounts due or to become due any beneficiary or pensioner, under this Act, shall ever be held, seized, taken, subjected to, detained, or levied upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, or any process or proceeding whatsoever, shall issue out of or by any court of this state for the payment or satisfaction in whole or in part out of said Pension Fund, of any debt, damage, claim, demand, or judgment against any such members, pensioners, dependents, or any person whomsoever, nor shall such Pension or any part thereof, or any claim thereto, be directly or indirectly assigned or transferred and any attempt to transfer or assign the same or any part thereof, or any claim thereto, shall be void. Said Fund shall be sacredly held, kept, and disbursed for the purposes provided by this Act and for no other purpose whatsoever, except that the pensioner, survivor, or dependent, at his discretion, may have deducted from his pension the monthly premium cost of the city's group hospitalization and life insurance plan.

Members in Military Service

Sec. 21. Members of the Pension System engaged in active military service shall not be required to make the monthly payments into the Pension Fund provided for in this Act, nor shall they lose credit for any previous years of service with the city as a result of such military service. Furthermore, the city shall not be required to make any monthly payments into the Pension Fund for such member while he is engaged in the military service. Any member who engages in active military service shall, if he returns to employment by the city within three (3) months after termination of such service, receive credit for his time in such service and shall immediately at the beginning of his first full pay period begin repaying to the Pension Fund the equivalent of all monthly contributions for the total number of months elapsed since he went into such service, such repayment to be completed within twenty-four (24) months of reemployment, and the city shall pay into the Fund one and one-half (1½) times such amount. Credit for military service shall be limited to twenty-four (24) months, unless such period is extended by the Pension Board.

Group B Membership, Service Requirements, and Benefit Provisions

Sec. 22. (a) Any employee initially hired or reemployed after September 1, 1981, shall become a Group B member. On or after September 1, 1981, any Group A member may irrevocably elect to become a Group B member effective January 1, 1982, by filing an election form with the Board. Such election must be made prior to December 1, 1981. A Group A member who makes such an election shall be refunded his or her accumulated contributions without interest and shall not be required to make

further contributions as a Group B member. Such refund shall be made by March 1, 1982. Upon the effective date of the election, all rights as a Group A member shall be extinguished; however, pensions and benefits shall be based on total credited service as a Group A and Group B member. Any former Group A member who was entitled to purchase service credit for previous employment under the provisions of this Act in effect prior to the date of this amendment and who becomes a Group B member may purchase such service credit at any time after September 1, 1981, by paying into the fund an amount equal to eight percent (8%) interest on any contributions previously withdrawn for the period from the date of withdrawal to the date of purchase.

(b) The Board shall prepare and print a brochure explaining the effects of the election provided for by the preceding subsection. Such brochure shall fully describe the benefit alternatives under both Group A and Group B coverage and shall be designed to provide sufficient information upon which an employee can base his or her decision to elect Group B coverage. The Board shall designate one or more individuals who shall serve as contact persons for any employee or group of employees who may require additional information.

The election of Group B coverage shall be on a form approved by the Board and shall be notarized upon its execution by the member. The election form shall specifically state that the employee has read and understood the information supplied by the Board and understands the consequences of her or his decision. Once made such election shall be irrevocable.

Eligibility for Pension

Sec. 23. (a) A Group B member shall become eligible to receive a normal pension after he has terminated employment, beginning with the month when he has ten (10) years of credited service and has attained age sixty-two (62).

(b) A Group B member shall become eligible to receive an early pension after he has terminated employment, beginning with the month when he has twenty (20) years of credited service and has attained age fifty-five (55).

(c) A Group B member who has ten (10) years of credited service and terminates employment shall have a vested right to a normal pension payable beginning with the month when he has attained age sixty-two (62).

Amount of Pension

Sec. 24. (a) The amount of the normal pension payable to a retired Group B member shall be one and one-quarter percent (1¼%) of average monthly salary multiplied by the number of years (not to exceed forty (40)), taken to the nearest twelfth (12th) of a year, in the period of credited service. Average monthly salary shall be the average of the thirty-six (36) highest monthly salaries during a member's period of credited service.

(b) The amount of the early pension payable to a retired Group B member shall be equal to the normal pension reduced by one-half of one percent (½%) for each month the member is less than age sixty-two (62) at retirement. The increase in employee and city contributions resulting from the adoption of this amended Act, as provided in Section 7 and Section 8 hereof, shall become effective at the beginning of the next regular pay period of such city occurring after the expiration of ten (10) days from the effective date of this Act.

Disability Eligibility

Sec. 25. (a) A Group B member who becomes disabled by reason of a personal injury sustained or a hazard undergone as a result of, or while in the performance of, his duties at some definite place and at some definite time on or after the date of his becoming a Group B member, without serious and willful misconduct on his part, shall be eligible to receive a service-connected disability pension.

(b) A Group B member who has ten (10) years of credited service and who becomes disabled, but is not eligible for a service-connected disability pension, shall be eligible to receive an ordinary disability pension.

Disability Pension Amount and Duration

Sec. 26. The disability pension shall equal the member's accrued normal pension, but in the case of a service-connected disability shall not be less than twenty percent (20%) of the member's salary at the time of disablement. The pension shall be paid for the first twenty-four (24) months following disablement while the member is unable to perform the duties of his position. The pension shall be continued beyond twenty-four (24) months while the member is unable to engage in any occupation for which he is reasonably suited by training or experience.

Disability Review

Sec. 27. The provisions of Section 12(d) of this Act shall apply to any Group B member receiving a disability pension.

Death Benefit

Sec. 28. (a) The surviving spouse and/or dependent child or children of a Group B member shall be eligible for a death benefit, if the member dies:

(1) from any cause while in service of the city and has ten (10) years of credited service; or

(2) from any cause while in service of the city in consequence of the performance of his duty.

(b) For the surviving spouse the amount of the death benefit shall equal one-half (½) of the pension the member would have received if the member had been disabled at the time of death, but not less than

Fifty Dollars ($50) per month. The benefit shall be paid while the surviving spouse remains a single person but shall not be paid if the surviving spouse married the member after the member's retirement.

(c) If there is a surviving spouse, each dependent child shall receive a death benefit equal to ten percent (10%) of the pension the member would have received if the member had been disabled at the time of death, to a maximum of twenty percent (20%) for all dependent children.

(d) If there is no surviving spouse, each dependent child shall receive a death benefit equal to twenty percent (20%) of the pension the member would have received if the member had been disabled at the time of death, to a maximum of forty percent (40%) for all dependent children.

Retirement Options

Sec. 29. (a) A Group B member may elect to have his normal or early pension paid under one of the options provided by Subsection (b) of this section. Such election must be made at least one (1) year prior to retirement.

(b) The option may be one of the following actuarially equivalent amounts:

OPTION 1: A reduced pension payable to the member, then upon the member's death, one-half (½) of such pension paid to the member's designated survivor, for life.

OPTION 2: A reduced pension payable to the member, then upon the member's death, such pension paid to the member's designated survivor, for life.

OPTION 3: A reduced pension payable to the member and if the member dies within ten (10) years, such pension paid to the member's designated survivor for the balance of the ten (10) year period.

Break in Service: Reemployment

Sec. 30. Any Group B member who terminates employment before completing ten (10) years of credited service shall have all service credit canceled at the time of termination. However, if such member is reemployed by the city within one (1) year of the date of termination, then all credit for previous service shall be restored. Further, any member who is reemployed by the city more than one (1) year but less than ten (10) years from the date of termination shall receive credit for one (1) year of prior service for each year of subsequent service; provided, however, that no employee may earn credit for more than ten (10) years of prior service.

Postretirement Adjustments

Sec. 31. All pensions shall be adjusted annually upward or downward in accordance with the percentage change in the Consumer Price Index for All Urban Consumers (CPI) for the preceding year as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension which the retired member or survivor would otherwise be entitled to receive without regard to changes in the CPI. The adjusted pension shall never be greater than the basic pension plus increases of not to exceed four percent (4%) annually, not compounded, notwithstanding a greater increase in the CPI.

Employees on Retirement When Act Enacted

Sec. 32. Subject to the provisions of Section 17, any former employee now on retirement by such city shall hereafter be paid at the same rate he is now receiving, and it is not the intention of this Act to change the status of any member now on pension by such city. Provided, however, that the minimum pension payable to retired employees shall be One Hundred Dollars ($100) a month, and as to those surviving spouses of former employees who receive pensions under Section 13 of this Act, the minimum pension shall be Fifty Dollars ($50) a month; it being further provided that this provision shall not apply retroactively to any pension payments previously made to any of such persons.

Cities with Pension Provisions in Their Charters

Sec. 33. The terms of this Act shall not apply to any city operating a municipal employees pension program under the terms and provisions of its charter.

Partial Invalidity

Sec. 34. If any provision, section, part, subsection, sentence, clause, phrase, or paragraph of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any.

[Amended by Acts 1975, 64th Leg., p. 93, ch. 41, §§ 1, 2, 4 to 9, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 93, ch. 41, § 3, eff. Jan. 1, 1976; Acts 1981, 67th Leg., p. 604, ch. 242, § 1, eff. Sept. 1, 1981.]

Acts 1975, 64th Leg., p. 93, ch. 41, which by §§ 1 to 9 amended §§ 1, 5(j), 8, 10, 11, 12(d), 13, 16 and 22 of this article, provided in § 10: "If any provision, section, part, subsection, paragraph, clause or phrase of this Act be declared invalid or unconstitutional, the same shall not affect any other portion or provision hereof, and all other provisions shall remain valid and unaffected by such invalid portion, if any."

Art. 6243g–1. Pension System in Cities Over 900,000

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. The following words and phrases when used in this Act are defined as follows, to-wit:

(a) "Pension System" means the retirement and disability plans for employees of any police department coming within the provisions of this Act and Article 6243g–3, Revised Civil Statutes of Texas, 1925.

(b) "Member" means any and all employees in the police department provided for and becoming members thereof.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under the Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by a person employed in the police department, but does not include a period in which a member was suspended from duty without pay, on leave of absence without pay, or on separation from service.

(e) "Pension" means payment for life to the police department member out of the Pension Fund provided herein and becoming eligible for such payments.

(f) "Separation from Service" means cessation of work for the City in the police department, whether caused by death, discharge or resignation, or transfer to any other department of the city.

(g) The use of the masculine gender includes the feminine gender.

(h) "Dependent Parent" means a natural or adoptive parent who receives at least fifty percent (50%) of his support from the member.

[See Compact Edition, Volume 5 for text of 3]

Pension Board

Sec. 4.

[See Compact Edition, Volume 5 for text of 4(a)]

(b) The Pension Board shall be composed of seven (7) members as follows:

(1) The administrative head of the City, or his authorized representative.

(2) Three (3) employees of the police department having membership in the Pension System and elected by the members of such police department and system.

(3) Two (2) legally qualified taxpaying voters of such city, residents thereof for the preceding three (3) years, to be chosen by the elected members of the Pension Board, being neither employees nor officers of such city.

(4) The City Treasurer of the city, or the person discharging the duties of the City Treasurer.

The terms of office of the elected members of the Pension Board shall be three (3) years, provided, however, that at the first election after the effective date of this Act, one such elected member shall be elected to a term of one year, one such elected member shall be elected to a term of two (2) years; and one such elected member shall be elected to a term of three (3) years. Thereafter, at an annual election called by the Chief of Police, and held during the month of December, one member shall be elected to a three-year term. Whenever a vacancy occurs among the three (3) elected members of the Pension Board, the remaining elected members shall appoint a Pension Fund member to serve the balance of the calendar year until the next regularly scheduled election of Board members. At that time, the membership of the police department shall elect a Pension Fund member to serve for the remainder of the term.

The term of office of appointed members of the Board shall be two (2) years, such appointments shall be made by the elected members of the Board and shall commence when the appointed members are qualified, in January after the effective day of this Act.

The term of office of the Board members statutorily provided for, shall be and continue so long as such member holds the position defined in this Act for automatic members of such Board.

[See Compact Edition, Volume 5 for text of 4(c) to 5]

Contributions by Members

Sec. 6.

[See Compact Edition, Volume 5 for text of 6(a)]

(b) The maximum contribution which may be made to the fund by a member shall be limited to a contribution based on the salary of the second highest classification within the salary schedule of the police department. It is the intent of this section to limit both the contribution and retirement benefits of any member to the salary level of the second highest rank of the police department personnel classification schedule, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement.

(c) On and after September 1, 1981, each member of the Pension Fund shall pay into the fund the sum of eight and three-fourths percent (8¾%) of the base salary provided for the classified position in the police department held by the member. Such payments shall be deducted by the city from the salary paid each member and paid to the treasurer of the Pension Fund.

Monthly Payment by City

Sec. 7. Until January 1, 1983, the city shall make payments into the Pension Fund after each payroll period in an amount equal to twenty percent (20%) of the base salaries paid to members of the Fund. Beginning January 1, 1983, the city shall make contributions to the Fund after each payroll period in an amount equal to the contribution rate certified by the Pension Board, multiplied by the base salaries paid to members of the Fund, except that before September 1, 1991, the city contribution rate for a payroll period may not be less than twenty percent (20%) of the base salaries paid to members of the Fund for that period. Such contribution rate, expressed as a percentage, shall be based on the results of actuarial valuations made at least every three (3) years, with the first such actuarial valuation to be

made as of January 1, 1982. The city's contribution rate shall be comprised of the normal cost plus the level percentage of salary payment required to amortize the actuarial liability over a period of forty (40) years from January 1, 1983, calculated on the basis of an acceptable actuarial reserve funding method approved by the Pension Board.

[See Compact Edition, Volume 5 for text of 8]

Investment of Surplus

Sec. 9. (a) Whenever, in the opinion of the Board, there exists a surplus of funds in an amount exceeding the current demands upon the Fund, the Board shall invest such surplus funds in the manner provided for by Chapter 817, Acts of the 66th Legislature, 1979 (Article 6228n, Vernon's Texas Civil Statutes), as in effect on September 1, 1981.

(b) The mayor may appoint an Investment Review Committee, consisting of three (3) qualified persons to be selected from the Trust Departments of the banks of the cities to which this law applies. Such persons shall be experienced in securities and investment matters. The Investment Review Committee shall be appointed for a two year term. Such Committee shall (a) review the investments of the Fund to determine their suitability and desirability for the Funds; (b) review the investment procedures and policies pursued by the Board in the administration of the Fund; and (c) submit an annual report of its findings and recommendations to the Pension Board of the Police Officer's Pension System and the Mayor of the city within ninety (90) days after the end of each calendar year.

(c) The Pension Board may employ professional investment advisors to manage the investment of the Pension Fund. These professional services may include investment counseling, evaluation of fund performance, investment research, and other comparable services.

(d) The selection of investment advisors may occur when, in the opinion of a majority of the Board members, the financial advice being received by the Board needs review. Selection of financial advisors must be made from firms that have made presentations to the Board. The Board shall advertise its intent to receive presentations from investment advisors in a newspaper of general circulation within the city not less than thirty (30) days before the date of the Board meeting at which the selection of an investment advisor will be considered. The Board may receive a written presentation instead of an appearance before the Board. Final selection of an investment advisor is determined by majority vote.

(e) A contract with an investment advisor may not be in effect for more than one (1) year and shall provide that the Board may withdraw from the contract at any time after giving notice thirty (30) days before termination. The contract may not contain a penalty for early termination. The costs of an investment advisory contract may be paid out of pension funds.

[See Compact Edition, Volume 5 for text of 10]

Retirement: Amount of Pension; Annual Adjustments

Sec. 11. (a) A person who becomes a member of the Pension System on or after the effective date of this amendatory Act and who has been in the service of the city police department for the period of twenty (20) years may retire at the age of fifty (50) years and shall be entitled to a retirement pension of an amount equal to thirty percent (30%) of the base salary provided for the classified position in the police department held by the member, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement. Except as provided in Subsection (a–1) of this section, no retirement pension may be paid to a member who has not attained the age of fifty (50) years. Subject to the limitations provided in Subsection (b) of this section, the computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired even though the increase or decrease occurs after retirement.

(a–1) A person who was a member of the pension system before the effective date of this amendatory Act, may retire regardless of age upon completion of twenty (20) years of service in the city police department and shall be entitled to a retirement pension of an amount equal to thirty percent (30%) of the base salary provided for the classified position in the police department held by the member, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement. Subject to the limitations provided in Subsection (b) of this section, the computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired even though the increase or decrease occurs after retirement.

(b) If a member of the Police Pension System is promoted or appointed to any classified position above the second highest in the police department personnel classification schedule, that member's contribution and retirement benefits will be computed on the base salary of the second highest classified position in the police department personnel classification schedule, provided that if the member has not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement. For the purposes of this Act, the position of the Chief of Police shall be considered the highest classified position in the personnel classification schedule in the police department.

(c) Any member of such Pension System who has been in the service of the city police department for a period of years in excess of twenty (20) years, and who retires from the service of the police department, shall, in addition to the thirty percent (30%) of his base salary be paid an additional sum equal to two percent (2%) of his base salary per month for each year of service in the police department in excess of twenty (20) years. For example, a member with twenty-five (25) years' service would be entitled to forty percent (40%); a member with thirty (30) years, fifty percent (50%); etc.

(d) It shall be compulsory for any member to retire from the service of the police department upon attaining the age of sixty-five (65) years. Failure of any member of the Pension System to comply with this provision shall deprive the member and his dependents of any of the benefits provided for herein. If at the time of retirement because of maximum age requirements, the member has completed less than twenty (20) years of service, his monthly retirement pension shall be prorated on the basis of one and one-half percent (1½%) of the base salary of the classified position of the member per month for each year of service completed. Subject to the limitations provided in Subsection (b) of this section, the computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired even though the increase or decrease occurs after retirement.

(e) Upon a member's completion of twenty (20) years of service in the police department and thereafter, when such member retires, whether such retirement be voluntary or involuntary, such monthly payment shall begin forthwith and continue for the remainder of the member's life. However, when such member has completed twenty (20) years' service in the police department and if the physicians of Pension Board agree that the member is physically fit to continue his active duties in the police department, they may so certify, and the member may continue in the service of the city police department until the member attains the age of sixty-five (65) years, at which time his retirement pension shall be computed as hereinbefore stated.

(f) No member shall be required to make any payments into the Pension Fund after the member has retired from the service of the police department.

(g) Notwithstanding any other provision of this Act, as amended, regarding increases in pensions based on any increase or decrease of the base salary or the average monthly base salary for the classified position or positions from which the member retired, the provisions of this subsection shall apply. Beginning on January 1, 1982, the pension payable to each retired member of the Pension System as of December 31, 1981, or the initial pension payable to each active member who retires under the provisions of this Act on or after January 1, 1982, which pension amounts are referred to in this subsection as the basic pension, shall be adjusted annually, effective April 1 of each year, upward in accordance with any percentage increase in the Consumer Price Index for All Urban Consumers for the preceding year, measured by the percentage change in the average indexes for the two (2) respective preceding calendar years, as determined by the United States Department of Labor. The adjusted pension shall never be less than the basic pension that such retired member would otherwise be entitled to receive without regard to changes in the Consumer Price Index and shall be based on the Consumer Price Index for All Urban Consumers as constructed on September 1, 1981, provided such index continues to be published. In the event that publication of the Consumer Price Index as constructed on September 1, 1981, is discontinued, then the current published Consumer Price Index shall be used for the purposes of this section. The adjusted pension shall never be greater than the amount of the retired member's basic pension plus annual increases of not more than two-thirds (⅔) of the percentage increase of the Consumer Price Index, compounded, notwithstanding a greater increase in the Consumer Price Index.

[See Compact Edition, Volume 5 for text of 12]

Rights of Survivors

Sec. 13. (a) If any member of the police department who has been retired on allowance because of length of service or disability thereafter dies from any cause whatsoever after he has become entitled to an allowance or pension, or if while in service any member dies from any cause growing out of or in consequence of the performance of his duty, and leaves surviving a spouse to whom the member was married prior to his retirement, a child or children under the age of eighteen (18) years or a dependent parent, the Board shall order paid a monthly allowance as follows:

(a) to the spouse, so long as he or she remains a widow or widower, a sum equal to the allowance which was granted to the member upon service or disability pension based on his length of service in the police department;

(b) to the guardian of each child, the sum of twenty-five ($25) Dollars a month until the child reaches the age of eighteen (18) years or marries;

(c) to the guardian of each child, only in case no spouse is entitled to an allowance, the sum the spouse would have received, to be divided equally among the unmarried children under eighteen (18) years;

(d) to the dependent parent, only in case no spouse or dependent child is entitled to an allowance, the sum the spouse would have received, to be paid to but one (1) parent and such parent to be determined by the Pension Board.

(b) If any member of the Pension System has not completed ten (10) years or more of service in the police department and is killed or dies from any cause growing out of or in consequence of any act which is clearly not in the actual performance of his official duty, his surviving spouse or dependent child or children shall be refunded any contributions which the member made to the Pension System.

[See Compact Edition, Volume 5 for text of 13(c) to 14]

Termination of Employment: Reemployment

Sec. 15. (a) When any member of the Pension System leaves the employment of the police department other than as provided for in Section 12 or Section 22, either voluntarily or involuntarily, before becoming eligible for a retirement or disability pension, he shall cease to be a member of the Pension System.

(b) Any member of the Pension System who has completed at least five (5) years but less than twenty (20) years of service and whose service with the police department ceases before becoming eligible for a retirement or disability pension is entitled to a refund of the total of the contributions which that member made to the Pension System. The refund does not include interest, and neither the city nor the member is entitled to a refund of the city's contributions made on the member's behalf.

(c) The Pension Board shall notify each member of the Pension System of the right to a refund as authorized by this section.

(d) A member must apply to the Pension Board for a refund before the last day of the ninth month after employment is terminated. The nine (9) month period is calculated by counting the month in which employment is terminated as the first month of the nine (9) month period. Failure to apply for the refund within the nine (9) month period constitutes a waiver of all rights to a refund.

(e) Heirs, executors, administrators, personal representatives, or assigns are not entitled to apply for and receive the refund authorized by this section except as provided by Section 13(b) of this Act.

(f) If such person is thereafter reemployed by the city police department, he shall thereupon be reinstated as a member of such Pension System provided he is in good physical and mental condition as evidenced by a written certificate executed under oath by a duly licensed and practicing physician or physicians in the city, satisfactory to the Pension Board. Prior service of such member with the city police department shall not be counted toward his retirement pension unless such member returns to the service within two (2) years from his separation therefrom and makes within six (6) months after his reemployment by the city in the police department written application to the Pension Board for reinstatement in the Pension System.

(g) A person who is reemployed by the city police department within twenty-four (24) months from the date the person's employment is terminated is required to pay the Pension Fund an amount equal to any contributions previously refunded to the member under Subsection (b) of this section. The person may execute a promissory obligation to pay the Pension Fund within two (2) years of the date of reemployment the full amount of the contributions previously refunded to the member. A member who dies or retires before a promissory obligation executed by the member and payable to the Pension Fund is fully paid is not eligible, nor are the member's beneficiaries eligible, for any benefits from the Pension Fund until the promissory obligation is paid in full.

[See Compact Edition, Volume 5 for 16 and 17]

Sec. 18. Repealed by Acts 1979, 66th Leg., p. 314, ch. 144, § 7, eff. Aug. 27, 1979.

[See Compact Edition, Volume 5 for text of 19 and 20]

Actuary

Sec. 21.[1] Such Pension Board may employ an actuary and pay his compensation therefor out of the Pension Fund no more than once every three (3) years.

[1] Acts 1979, 66th Leg., p. 314, ch. 144, § 6, as enrolled, read "20".

[See Compact Edition, Volume 5 for text of 22 and 23]

Nonforfeiture of Funds

Sec. 23A. In the event that the pension fund is terminated or contributions to the pension fund are discontinued completely, there shall be no reversion of funds to the employer. The funds shall be used exclusively for police pensions, and the employees' rights to the benefits, to the extent funded, shall be nonforfeitable.

Fund Not Subject to Execution, Attachment, Garnishment, etc.; Prohibition Against Transfer or Assignment; Deductions For Group Insurance Program Permitted

Sec. 23B. No portion of the Pension Fund, either before or after its order or disbursement by the Pension Board, and no amounts due or to become due any beneficiary or pensioner under this Act, shall be held, seized, taken, subject to, detained, or levied, upon or by virtue of any execution, attachment, garnishment, injunction, or other writ, and no order or decree, and no process or proceedings whatsoever, shall issue out of or by any court of this State for the payment or satisfaction, in whole or in part, out of the Pension Fund, of any debt, damage, claim, demand, or judgment against any members, pensioners, dependents, or any person whomsoever, nor shall such pension funds or any part thereof or any claim thereto, be directly or indirectly assigned or transferred. Any attempt to transfer or assign the same or any part thereto shall be void. The Pension Fund shall be sacredly held, kept, and disbursed for the purposes provided in this Act, and for

no other purpose whatsoever, except that the pensioner, survivor, or dependent, at his discretion, may have deducted from his pension the monthly premium cost of any group insurance program in which the pensioner may be entitled to participate.

Former Employees on Retirement When Act Enacted

Sec. 24.

[See Compact Edition, Volume 5 for text of 24(a)]

(b) Any person who retired prior to January 1, 1974, and who held a position above the third highest classification in the police department salary schedule shall be entitled to a retirement pension of an amount equal to thirty percent (30%) of the base salary provided for the classified position in the police department held by the member, but if the member had not held the same classified position for five (5) years prior to the date of retirement, the retirement pension shall be based on the average monthly base salary of the member for five (5) years preceding retirement. In addition, he shall be paid an additional sum equal to two percent (2%) of his base salary per month for each year of service in the police department in excess of twenty (20) years. The computation of retirement pension shall include any increase or decrease of the base salary or the average monthly base salary for the classified position or positions on which the member retired, even though the increase or decrease occurs after retirement.

(c) Repealed by Acts 1975, 64th Leg., p. 1882, ch. 594, § 6, eff. June 19, 1975.

[Amended by Acts 1975, 64th Leg., p. 1879, ch. 594, §§ 1 to 6, eff. June 19, 1975; Acts 1979, 66th Leg., p. 200, ch. 109, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 311, ch. 144, §§ 1 to 7, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 3118, ch. 819, §§ 1 to 6, eff. Sept. 1, 1981.]

Art. 6243g–3. Police Officers' Retirement Plan In Certain Cities

Definitions

Sec. 1. As used in this article:

(a) "Board" shall mean the pension board established by Section 4(a), Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g–1, Vernon's Texas Civil Statutes), and shall have the same powers enumerated therein.

(b) "Compensation" shall mean base salary as provided by the salary schedule ordinance.

(c) "Credited service" shall have for the purposes of this article the same definition as is given the term "service" in Section 2(d), Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g–1, Vernon's Texas Civil Statutes).

(d) "Dependent" shall mean a dependent child or dependent parent. A dependent child is a natural or adopted child who is unmarried and either:

(1) has not attained age 18; or

(2) has attained age 18 but not age 22 and is attending school on a full-time basis; or

(3) has attained age 18 and is permanently disabled as the result of a disability which began before he attained age 18. A dependent parent is the natural or adoptive parent of a member who was receiving at least one-half of his support from the member at the time of the member's death.

(e) "Employee" shall mean an individual who holds a classified position in the police department of the city, excluding a part-time, seasonal, or temporary employee.

(f) "Final compensation" shall mean the base salary paid to the member in his or her last month of service.

(g) "Fund" shall mean the fund established by Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g–1, Vernon's Texas Civil Statutes).

(h) "Inactive member" shall mean a member who:

(1) has completed 20 years of credited service, has not attained age 55, and has left the classified service;

(2) is not eligible to begin receiving a service or disability pension; and

(3) has neither applied for nor received a refund of his contributions.

(i) "Member" shall mean an employee who either is first hired or rehired on or after September 1, 1981, or who elects coverage under the provisions of Section 26 of this article.

(j) "Normal retirement date" shall mean the date at which a member is eligible for a service pension pursuant to Section 11 of this article. For a member who has received a disability benefit, the period of disability plus credited service, not to exceed 40 years, shall be used in determining normal retirement date.

(k) "Partial disability" shall mean a medically determined physical or mental impairment which renders the member unable to function as a police officer and which is reasonably expected to last at least 12 months.

(*l*) "Pension system" means the retirement and disability plans for employees covered under the provisions of this article or Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g–1, Vernon's Texas Civil Statutes).

(m) "Primary survivor" shall mean a person in the following order of priority:

(1) the surviving spouse; or

(2) if there is no eligible surviving spouse, a dependent child (or with the survivor's pension divided among them in equal shares, all such children, including any resulting from a pregnancy prior to the member's death); or

(3) if there is no eligible surviving spouse, or eligible dependent child, a dependent parent (or,

with the survivor's pension divided between them in equal shares, both such parents).

(n) "Retired member" shall mean a member who has terminated service, other than an inactive member, and who is eligible to receive a service or disability pension under this article.

(o) "Total disability" shall mean a medically determined physical or mental impairment which renders the member totally unable to work in any occupation for which he is reasonably suited by training or experience, which is reasonably expected to last at least 12 months.

Employment of Pensioners

Sec. 2. An individual shall not receive a pension under this article for any month during which he is an employee, as defined in Section 1 of this article.

Attachment and Assignment of Benefits

Sec. 3. The benefits provided by this article shall not be subject to garnishment or attachment and shall be payable only to the statutory beneficiaries and shall not be subject to assignment or transfer.

Secs. 4 to 10. [Reserved]

Eligibility for Service Pension

Sec. 11. (a) A member shall become eligible to receive a service pension, after he has terminated employment, beginning with the month when he has 20 years of credited service and has attained age 55.

(b) A member shall become eligible to receive an early retirement pension, after he has terminated employment, beginning with the month when he has 20 years of credited service and has attained age 50.

(c) For purposes of this section, credited service shall include any period during which a member is receiving a disability pension as provided by this subchapter.

Vesting Rights; Return to Service

Sec. 12. (a) A member who has 20 years of credited service shall have a vested right to a service pension, computed in accordance with the provisions of this article in effect when he ceased to be an employee, payable beginning with the first month after his attainment of age 55.

(b) If a member who has less than 20 years of credited service ceases to be an employee, his service credits to the date of termination shall be canceled unless (i) he again becomes an employee within two years after such cessation of employment; or (ii) he subsequently acquires five years of credited service; and provided that if he has withdrawn his contributions he repays them with interest at a rate determined by the board.

(c) For purposes of this section, credited service shall include any period during which a member is receiving a disability pension as provided by this subchapter.

Eligibility for Disability Pension

Sec. 13. (a) A member, not otherwise eligible for a service pension, who suffers a partial or total disability resulting from an individual and specific act the type of which would normally occur while employed as a police officer, shall be eligible for a duty-connected disability pension. If such act involves a traumatic event which directly causes an immediate cardiovascular condition which results in partial or total disability, the member shall be eligible for a partial or total duty-connected disability pension.

(b) A member, not otherwise eligible for a service pension, with 10 years of credited service who suffers a partial or total disability and who is not eligible for a duty-connected disability pension shall be eligible for an ordinary partial or total disability pension.

(c) The determination of disability and its cause shall be made by the board after receiving the recommendation of a physician or physicians of its choice.

Survivor Benefits

Sec. 14. The eligible surviving spouse or dependents of a member shall receive a survivor's pension:

(a) when the member dies while in service, from any cause growing out of or in consequence of the performance of his duty, or after retirement; or

(b) if the member dies while in service from any cause and has at least 10 years of credited service.

Payment of Service or Early Retirement Pensions

Sec. 15. Service or early retirement pensions shall be paid to a retired member for each month beginning with the month in which he become eligible to receive such pension and ending with the month in which he dies.

Payment of Disability Pension

Sec. 16. (a) Total disability pension payments shall be made to a member for each month beginning with the month in which he becomes eligible to receive such pension and ending with the month in which he ceases to be eligible or dies.

(b) Partial disability pension payments shall be made to a member for each month beginning with the month in which he becomes eligible to receive such pension and ending after two years or after the month in which he ceases to be eligible or dies, whichever occurs first.

(c) If a member who is initially determined to be totally disabled recovers, yet is still partially disabled, his total disability pension shall be reduced to a partial disability pension.

(d) If a member who is disabled recovers and is no longer totally or partially disabled, his disability pension shall be discontinued unless he has reached normal retirement date.

Amount of Service Pension

Sec. 17. The amount of the monthly service pension payable to a retired member shall be one-twelfth of two percent of his final compensation multiplied by the number of years (not to exceed 40) taken to the nearest one-twelfth of a year, in his period of credited service.

Amount of Early Retirement Pension

Sec. 18. The amount of the monthly early retirement pension payable to a retired member shall be a service pension reduced 0.42 percent for each month the member is under age 55 at retirement.

Amount of Duty-Connected Disability Pension

Sec. 19. (a) The duty-connected total disability pension shall be the greater of 50 percent of final compensation or the accrued service pension.

(b) The duty-connected partial disability pension shall be 35 percent of final compensation.

(c) Medical costs necessary to the determination of eligibility for duty-connected disability shall be paid by the fund.

Amount of Ordinary Disability Pension

Sec. 20. (a) The total disability pension shall be computed in the same manner as the service pension based on credited service accrued to the date of disability.

(b) The partial disability pension shall be 20 percent of final compensation.

Survivor's Pension

Sec. 21. (a) The monthly survivor's pension payable to a member's eligible primary survivor or, if there is no eligible surviving spouse at the time of the member's death, then to his eligible surviving dependents, shall be equal to 75 percent of the member's accrued or actual service or disability pension. If the primary survivor is the surviving spouse, such person must have been married to the deceased member prior to retirement.

(b) A survivor's pension shall begin with the month following the month in which the member or retired member dies. If payable to a surviving spouse who subsequently dies or marries, it shall become payable in the following month only to a surviving dependent child as defined in Section 1 of this article. If payable to a dependent child who dies or fails to meet the conditions of eligibility in Section 1 of this article, the pension shall then cease. If payable to a parent, it shall cease with the month in which the parent dies.

Death Benefit

Sec. 22. Upon the death of a member, inactive member, retired member, or individual receiving a survivor's pension, there shall be paid to the beneficiary or beneficiaries or, in the absence of a beneficiary, to the estate of the member, inactive member, retired member, or survivor, a lump sum equal to the excess, if any, of the accumulated member contributions, without interest, over the aggregate of all pension payments made.

Withdrawal Benefit

Sec. 23. (a) The accumulated contributions, without interest, of a member who is neither eligible for a service or disability pension, nor has a vested right to a service pension, shall be refunded upon his withdrawal from service. There shall be a rebuttable presumption that a former member who fails to apply for a withdrawal benefit within one year after the date of withdrawal has waived his right to such benefit.

(b) If a member has a vested right to a service pension and withdraws from service and is not immediately eligible for a service or disability benefit, he may request refund of his accumulated contributions without interest. Refund of such contributions shall extinguish all rights to benefits under this article.

Adjustment of Benefits

Sec. 24. A pension payable under this article may be adjusted annually on April 1, beginning in the year the member attains age 60, or in the case of disability and survivor's pensions, beginning in the year next following 12 months of payments, in accordance with changes in the Consumer Price Index for All Urban Consumers, but not below the original pension amount nor above the original pension amount increased by four percent annually, not compounded, notwithstanding a greater increase in the consumer price index.

Application of Benefits

Sec. 25. (a) A service pension, disability pension, survivor's pension, death benefit, or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the board. A monthly benefit shall not be payable for any month earlier than the second month preceding the date on which the application for such benefit is filed. If a retired member receives both pension benefits from the fund and a salary from the city that cover the same period of time, the retired member shall repay pension benefits received during the period to the fund. On request of the board, the city attorney shall file suit in a court of competent jurisdiction to recover pension benefits owed the fund under this subsection.

(b) The board may require any member, inactive member, retired member, or eligible survivor to furnish such information as may be required for the determination of benefits under this article. The board may withhold payment of any pension under this article whenever the determination of such pension is dependent upon such information and the member, inactive member, retired member, or eligible survivor does not cooperate in the furnishing or procuring thereof.

Election of Membership

Sec. 26. (a) A member, as defined in Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g–1, Vernon's Texas Civil Statutes), may elect to become a member, as defined in this article, by filing an election with the board no later than December 31, 1981.

(b) Commencing January 1, 1982, a member who has made the election described in Subsection (a) of this section or an employee who is rehired by the department shall be covered by the provisions of this article and all rights to a pension under Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g–1, Vernon's Texas Civil Statutes), shall be extinguished. Such member shall receive credited service for all prior service which was recognized under Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g–1, Vernon's Texas Civil Statutes). However, such credit may be reinstated only by payment of any contribution previously refunded with interest at the rate of eight percent per annum from the date of refund.

Dual Membership Prohibited

Sec. 27. An employee hired before the effective date of this Act shall be covered by the plan described in Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g–1, Vernon's Texas Civil Statutes), unless he elects to become a member pursuant to Section 26 of this article. An employee hired or rehired subsequent to the effective date of this Act shall be covered by the plan described in this article. No employee may be covered by the plan provisions of both Chapter 76, Acts of the 50th Legislature, 1947 (Article 6243g–1, Vernon's Texas Civil Statutes), and this article.

Member Contributions

Sec. 28. (a) The city shall deduct monthly from the salary or compensation of each member participating in the fund a sum equal to seven percent of such salary or compensation, such deduction to be paid by the city to the fund.

(b) For purposes of this article, the chief of police shall be considered to hold the highest classified position in the department. The maximum contribution which may be made to the fund by a member shall be limited to a contribution based on the compensation of the second highest classification within the salary schedule of the police department. The maximum benefit which may be paid from the fund to any person holding a position above that of the second highest classified position shall be based on the compensation paid the second highest classified position within the department.

Contribution by City

Sec. 29. Until January 1, 1983, the city shall pay into the fund after each payroll period an amount equal to 20 percent of the base salaries paid to members of the fund. Beginning January 1, 1983, the city shall make monthly contributions to the pension fund in an amount equal to the percentage contribution rate multiplied by the salaries paid to members, as defined by Section 1 of this article. Such contribution rate, expressed as a percentage, shall be based on the results of actuarial valuations made at least every three years, with the first such actuarial valuation to be made as of January 1, 1982. The city's contribution rate shall be comprised of the normal cost plus the level percentage of salary payment required to amortize the actuarial liability over a period of 40 years from January 1, 1983, calculated on the basis of an acceptable actuarial reserve funding method approved by the pension board.

Severability

Sec. 30. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

[Added by Acts 1981, 67th Leg., p. 3121, ch. 820, eff. Sept. 1, 1981.]

Art. 6243h. Repealed by Acts 1981, 67th Leg., p. 2063, ch. 453, § 3(12), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 453, repealing this article, enacted Title 110B, Public Retirement Systems.

For disposition of the subject matter of the repealed article, see Disposition Table following Title 110B.

Prior to repeal, this article was amended by:

Acts 1975, 64th Leg., p. 382, ch. 171, §§ 1 to 16.

Acts 1977, 65th Leg., p. 118, ch. 58, §§ 1 to 9.

Acts 1977, 65th Leg., p. 1857, ch. 735, § 2.177.

Acts 1979, 66th Leg., p. 442, ch. 202, §§ 1 to 4.

Acts 1981, 67th Leg., p. 508, ch. 214, §§ 1 to 21.

Acts 1981, 67th Leg., p. 508, ch. 214, was repealed by Acts 1981, 67th Leg., 1st C.S., p. 236, ch. 18, § 110(b).

Art. 6243h–1. Repealed by Acts 1979, 66th Leg., p. 2112, ch. 817, § 14(a)(5), eff. Aug. 27, 1979

Art. 6243j. Police Officers' Pension System in Cities of 50,000 to 400,000

Sec. 1. There is hereby created in this State a Police Officers' Pension System in all cities having a population of not less than fifty thousand (50,000) inhabitants, nor more than four hundred thousand (400,000) inhabitants, according to the last preceding or any future Federal Census; provided, however, that once such pension system becomes operative in any city, any right or privilege accruing to any member thereunder shall be a vested right and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population bracket as herein prescribed, and said pension system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population bracket.

Definitions

Sec. 2. The following words and phrases when used in this Act are defined as follows, to wit:

[See Compact Edition, Volume 5 for text of 2(a)]

(b) "Member" means any and all employees in the Police Department who are engaged in law enforcement duties except janitors, car washers, cooks, and secretaries. Member may include reserve, special, or part-time officers as provided in Subsections (d), (e), and (f), Section 3 of this Act.

[See Compact Edition, Volume 5 for text of 2(c) to (i)]

Membership

Sec. 3.

[See Compact Edition, Volume 5 for text of 3(a) and (b)]

(c) Part-time, seasonal, or other temporary employees shall not become, nor be eligible as, members of the Pension System except as provided in Subsections (d), (e), and (f).

(d) A city that has adopted the Pension System in this Act may make reserve, special, or part-time officers eligible as members of the Pension System by vote of the city's governing body, or the city's governing body may call an election to submit the question to the qualified voters of the city.

(e) If a special election is called, the election must be advertised by publication in at least one newspaper of general circulation in the city once each week for four consecutive weeks. The question shall be submitted to the qualified voters as follows:

"FOR: Including reserve, special, or part-time officers in the Police Pension System."

"AGAINST: Including reserve, special, or part-time officers in the Police Pension System."

(f) A city that adopts the Pension System in this Act may include reserve, special, or part-time officers in the Pension System by vote of the city's governing body, by calling a special election as provided in Subsection (e) of this Section, or by joining the question of whether or not to include those officers on the ballot which submits the proposed Police Pension System to the city's qualified voters as provided in Section 25 of this Act.

[See Compact Edition, Volume 5 for text of 4 to 24]

Election; Adoption Without Election

Sec. 25. The city is authorized to call an election to determine if the city desires to adopt this Act after a petition has been presented to the governing body of the city, signed by five per cent (5%) of the qualified voters of the city who voted in the last municipal election. Such election must be advertised by publication in at least one (1) newspaper of general circulation in said city once each week for four (4) consecutive weeks. The question shall be submitted to the qualified voters of the city at a special election to be held for such purpose at which all ballots shall have printed thereon:

"FOR: The proposed Police Pension System."

"AGAINST: The proposed Police Pension System."

No other issues shall be joined with the proposition submitted at this election on the same ballot except as provided in Subsection (f), Section 3 of this Act.

Nothing herein is to prevent the city governing body from adopting the proposed pension plan without an election.

[See Compact Edition, Volume 5 for text of 26]

[Amended by Acts 1977, 65th Leg., p. 1396, ch. 562, §§ 1 to 5, eff. Aug. 29, 1977.]

Art. 6243k. Retirement, Disability and Death Benefit Systems for Appointive City or Town Employees

An incorporated city or town may create a retirement, disability, and death benefit system for its appointive officers and employees if a majority of the qualified voters of the city or town voting on the proposition approve the creation at an election called for that purpose. Each member of the system shall contribute to the system an amount determined by the city or town, which may not exceed 10 percent of the member's annual compensation paid by the city or town, and the city or town shall contribute for each member an amount that at least equals but is not more than twice the amount of the member's contribution. A member of a municipal system is eligible for disability benefits if he is disabled in the course of his employment with the city or town. A member is eligible for retirement benefits if he is 65 years old or older, or he is 60 years old but less than 65 years old and has been employed by the city or town for 25 years or more.

[Acts 1975, 64th Leg., p. 1127, ch. 426, § 2, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2445, ch. 627, § 1, eff. June 15, 1981.]

Section 1 of the 1975 Act was classified as art. 6228j; §§ 3 and 4 thereof provided:

"Sec. 3. Retirement, disability, and death benefit systems or programs created under the authority of Article III, Section 51-e, or Article XVI, Section 62, Subsection (b), of the Texas Constitution, or under the general powers of home-rule cities, remain in effect, subject to power granted by law to alter or abolish the systems.

"Sec. 4. This Act takes effect on adoption by the qualified voters of this state of S.J.R.No.3, 64th Legislature, Regular Session [so adopted at election held on April 22, 1975]."

Art. 6243*l*. Separate Retirement System for Police Department Employees in Cities of 250,000 or More

Sec. 1. The governing body of any city with a population of 250,000 or more, according to the last preceding federal census, may establish by ordinance a separate retirement system for employees of the police department notwithstanding any charter provisions of the city to the contrary.

Sec. 2. This Act does not apply to a city governed by:

(1) Chapter 4, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 6243a, Vernon's Texas Civil Statutes);

(2) Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 6243b, Vernon's Texas Civil Statutes);

(3) Chapter 105, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6243f, Vernon's Texas Civil Statutes);

(4) Chapter 76, Acts of the 50th Legislature, 1947, as amended (Article 6243g–1, Vernon's Texas Civil Statutes); or

(5) Chapter 75, Acts of the 50th Legislature, 1947, as amended (Article 6243h, Vernon's Texas Civil Statutes).

[Acts 1979, 66th Leg., p. 537, ch. 253, §§ 1, 2, eff. May 24, 1979.]

Art. 6243m. Contributions and Benefits Certain Municipal Retirement Systems or Death Benefit Programs

Sec. 1. An incorporated city or town that institutes after August 31, 1981, by charter, ordinance, or statute a program of continuing service retirement, disability retirement, or death benefits for any of its officers or employees shall require participating officers and employees to contribute a percentage of their salaries to the program during each payroll period. The city or town also shall make contributions to the program during each payroll period. The ratio of municipal contributions to the aggregate contributions of officers and employees may not be less than one to one or more than two to one.

Sec. 2. For municipal retirement systems created after August 31, 1981, through charter, ordinance, or statute, benefits shall be ascertained by the system's actuary in relationship to contributions. The level of benefits shall never be in excess of the amount actuarially determined for the system to be financially sound. An actuary hired by a retirement system shall have at least five years of experience working with one or more public retirement systems and be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employees Retirement Security Act of 1974.

Sec. 3. This Act does not apply to a program for which the only funding agency is a life insurance company, a program providing only workers' compensation benefits, or a program administered by a city or town as a member of the Texas Municipal Retirement System.

[Acts 1981, 67th Leg., p. 2606, ch. 694, §§ 1 to 3, eff. Sept. 1, 1981.]

TITLE 109A

PLUMBING

Art. 6243–101. Plumbing License Law

Name

Sec. 1. This Act shall be known and may be cited as "The Plumbing License Law."

Definitions

Sec. 2. (a) The word or term "plumbing" as used in this Act means and shall include: (1) All piping, fixtures, appurtenances and appliances for supply or recirculation of water, gas, liquids, and drainage or elimination of sewage, including disposal systems or any combination thereof, for all personal or domestic purposes in and about buildings where a person or persons live, work, or assemble; all piping, fixtures, appurtenances and appliances outside a building connecting the building with the source of water, gas, or other liquid supply, or combinations thereof, on the premises, or the main in the street, alley or at the curb; all piping, fixtures, appurtenances, appliances, drain or waste pipes carrying waste water or sewage from or within a building to the sewer service lateral at the curb or in the street or alley or other disposal or septic terminal holding private or domestic sewage; (2) the installation, repair, service, and maintenance of all piping, fixtures, appurtenances and appliances in and about buildings where a person or persons live, work or assemble, for a supply of gas, water, liquids, or any combination thereof, or disposal of waste water or sewage.

(b) A "Master Plumber" within the meaning of this Act is a person skilled in the planning, superintending, and the practical installation, repair, and service of plumbing and is familiar with the codes, ordinances, or rules and regulations governing those matters, who alone, or through a person or persons under his supervision, performs plumbing work, and who has successfully fulfilled the examinations and requirements of the Board.

(c) A "Journeyman Plumber" within the meaning of this Act is any person other than a master plumber who supervises, engages in, or works at the actual installation, alteration, repair, service, and renovating of plumbing, and who has successfully fulfilled the examinations and requirements of the Board.

[See Compact Edition, Volume 5 for text of 2(d)]

(e) A "Plumbing Inspector" within the meaning of this Act is any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interests in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Board.

[See Compact Edition, Volume 5 for text of 2(f)]

(g) "Water treatment" is a business which is conducted under contract and requires ability, experience, and skill in the analysis of water to determine how to treat influent and effluent water to alter or purify the water or to add or remove a mineral, chemical, or bacterial content or substance. The term includes the installation and service of fixed or portable water treatment equipment or a treatment apparatus, in public or private water treatment systems. The term also includes the making of connections necessary to the installation of a water treatment system.

(h) "System" as used in this Act means interconnection between one or more public or private end users of water, gas, sewer, or disposal systems that could be a threat to public health if improperly connected.

Acts Permitted Without a License

Sec. 3. The following acts, work and conduct shall be expressly permitted without license:

(a) Plumbing work done by a property owner in a building owned or occupied by him as his homestead;

(b) Plumbing work done outside the municipal limits of any organized city, town or village in this state, or within any such city, town or village of less than five thousand (5,000) inhabitants, unless required by ordinance in such city, town or village of less than five thousand (5,000) inhabitants;

(c) Plumbing work done by anyone who is regularly employed as or acting as a maintenance man or maintenance engineer, incidental to and in connection with the business in which he is employed or engaged, and who does not engage in the occupation of a plumber for the general public; construction, installation and maintenance work done upon the premises or equipment of a railroad by an employee thereof who does not engage in the occupation of a plumber for the general public; and plumbing work done by persons engaged by any public service company in the laying, maintenance and operation of its service mains or lines to the point of measurement and the installation, alteration, adjustment, repair, removal and renovation of all types of appurtenances, equipment and appliances including doing all that is necessary to render the appliances useable or

serviceable; appliance installation and service work done by anyone who is an appliance dealer or is employed by an appliance dealer, and acting as an appliance installation man or appliance service man in connecting appliances to existing piping installations; water treatment installations, exchanges, services, or repairs. Provided, however, that all work and service herein named or referred to shall be subject to inspection and approval in accordance with the terms of all local valid city or municipal ordinances;

(d) Plumbing work done by a licensed irrigator or licensed installer when working and licensed under Chapter 197, Acts of the 66th Legislature, Regular Session, 1979 (Article 8751, Vernon's Texas Civil Statutes). A person holding a valid license from the Texas State Board of Plumbing Examiners shall not be required to be licensed by any other board or agency when installing or working on a lawn irrigation system;

(e) Plumbing work done by an LP Gas installer when working and licensed under Chapter 113, Natural Resources Code, as amended.

Certification Relating to Residential Water Treatment Facilities

Sec. 3A. The Commissioner of Health or his designee shall certify persons as being qualified for the installation, exchange, servicing, and repair of residential water treatment facilities as defined by Subsection (g) of Section 2 of this Act. The director or his designee shall set standards of qualifications to ensure the public health and to protect the public from unqualified persons engaging in activities relating to water treatment. Nothing in this section shall be construed to require that persons licensed pursuant to this Act are subject to certification under this section.

State Board of Plumbing Examiners

Sec. 4. (a) The Texas State Board of Plumbing Examiners shall consist of nine members, each of whom shall be a citizen of the United States and a resident of this state. Members of the Board and their successors shall be appointed by the Governor and confirmed by the Senate, and shall hold office for terms of six years, or until their successors are appointed and have qualified. Appointments to the Board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. One member of the Board shall have had at least ten years practical experience as a master plumber, one member shall have had at least five years practical experience as a journeyman plumber, one member shall be a plumbing contractor with five years experience, one member shall be a licensed sanitary engineer, two members shall be building contractors with five years contracting experience (one of whom shall be principally engaged in home building and one of whom shall be principally engaged in commercial building), and one member shall have had at least five years practical experience as a plumbing inspector. Two members must be representatives of the general public. A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the building construction industry;

(2) is employed by or participates in the management of an agency or business entity related to the building construction industry; or

(3) has, other than as a consumer, a financial interest in a business entity related to the building construction industry.

(b) A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the building construction industry. A member or employee of the Board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(c) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the Board;

(2) does not maintain during his service on the Board the qualifications required by Subsection (a) of this section for appointment to the Board;

(3) violates a prohibition prescribed by Subsection (b) of this section; or

(4) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a Board member.

(d) If a ground for removal of a member from the Board exists, the Board's actions during the existence of the ground for removal are not invalid for that reason.

Application of Sunset Act

Sec. 4a. The Texas State Board of Plumbing Examiners is subject to the Texas Sunset Act as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

Powers and Duties of the Board

Sec. 5. (a) The Board shall administer the provisions of this Act. The Board shall formally elect a chairman and a secretary from its members and may adopt such rules as it deems necessary for the orderly conduct and enforcement of its affairs. The Board is hereby authorized and empowered to employ, promote and discharge such assistants and employees as it may deem necessary to properly carry

out the intent and purpose of this Act, and to fix and pay their compensation and salaries and to provide for their duties and the terms of their employment. A majority of the Board shall constitute a quorum for the transaction of business. The Board shall have a seal which shall be judicially noticed. The Board shall keep records of all proceedings and actions by and before the Board. The Board is hereby authorized, empowered and directed to prescribe, amend and enforce all rules and regulations necessary to carry out this Act. The Board shall appoint an employee or employees thereof, with the power of removal, as a plumbing examiner or examiners, whose duties shall be to examine, as to their fitness and qualifications, all persons applying to the Board for licenses to engage in the business, trade or calling of a master plumber or a journeyman plumber or to serve as a plumbing inspector, and to promptly certify the result thereof to said State Board of Plumbing Examiners.

(b) The Board may not adopt rules restricting competitive bidding or advertising by licensees except to prohibit false, misleading, or deceptive practices by licensees. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by licensees a rule that:

(1) restricts a licensee's use of any medium for advertising;

(2) restricts a licensee's personal appearance or use of his voice in an advertisement;

(3) relates to the size or duration of an advertisement by a licensee; or

(4) restricts a licensee's advertisement under a trade name.

(c) If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that subsection, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committees' statements.

(d) The Board may recognize, prepare, or implement continuing education programs for licensees. Participation in the programs is voluntary.

(e) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Personnel Policies

Sec. 5A. (a) The chairman of the Board or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.

(b) The chairman of the Board or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this subsection.

Compensation of Board

Sec. 6. Members of the Board shall not receive any fixed salary for their services, but each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act. The members of the Board shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this state, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue commissions to them, which shall be evidence of their authority to act as such.

Expenses of Board

Sec. 7. All sums of money paid to the Board under this Act shall be deposited in the State Treasury to the credit of a special fund to be known as the plumbing examiners fund and may be used only for the administration of this Act. The Board shall report to the Governor of the State of Texas the receipts and disbursements under this Act for each fiscal year. At the end of the state fiscal year, any unused portion of the funds in the special fund, except funds appropriated to administer this Act, shall be deposited to the credit of the General Revenue Fund. The state auditor shall audit the financial transactions of the Board during each fiscal biennium.

Issuance of Licenses

Sec. 8. (a) The Board shall issue licenses to such persons as have by a uniform, reasonable examination shown themselves fit, competent and qualified to engage in the business, trade or calling of a master plumber or journeyman plumber, or plumbing inspector, as the case may be.

(b) Within 30 days after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination.

(c) If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

(d) The Board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

Investigation of Complaint; Action

Sec. 8A. (a) The Board may conduct any investigations regarding alleged violations of this Act by any licensed or unlicensed plumber.

(b) The Board shall maintain an information file about each complaint filed with the Board relating to a licensee.

(c) If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation.

(d) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.

(e) Each written contract for services in this state of a licensed plumber shall contain the name, mailing address, and telephone number of the Board.

Penalties

Sec. 9. (a) The Board shall revoke or suspend a license, probate a license suspension, or reprimand a licensee for any violations of this Act or rules of the Board. A violation of this Act shall include but not be limited to: obtaining a license through error or fraud; having wilfully, negligently or arbitrarily violated municipal rules or ordinances regulating sanitation, drainage and plumbing; knowingly making a substantial misrepresentation of services to be provided or which have been provided; or making any false promise with intent to influence, persuade, or induce an individual to contract for services. Any person whose license has been revoked may, after the expiration of one year from the date of such revocation, but not before, apply for a new license.

(b) A person who violates any provision of this Act or any rule, regulation, permit, or other order of the Board is subject to a civil penalty of not less than $50 or more than $1,000 for each act of violation and for each day of violation after notification to be recovered as provided by this Act.

(c) If the Board purposes to refuse a person's application for licensure or to suspend or revoke a person's license, the person is entitled to a hearing before the Board. Grounds for suspension or revocation of a license due to suspected incompetence or wilful violation by a licensee may be determined through retesting procedures.

(d) Proceedings for the refusal, suspension, or revocation of a license are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Continuation of Licenses

Sec. 10. All valid licenses issued by the Board on or before September 1, 1981, shall continue in effect for the length of their original issuance.

[See Compact Edition, Volume 5 for text of 11]

Licenses

Sec. 12. (a) Licenses issued by the Board shall be valid throughout the state, but shall not be assignable or transferable. The Board shall forward to the local Board of Health, if there be one, of each town, or to the other authority having control of the enforcement of regulations relative to plumbing in each town, the names and addresses of all persons in such town to whom such licenses have been granted. Licenses shall be issued for one year and may be renewed annually on or before February 1st upon payment of the required fee.

(b) In case of failure to renew a license on or before February 1st in any year, the person named therein may, upon payment of the said fee and a late renewal fee increased by such additional fees as would have been payable had such license been continuously renewed, receive a late renewal thereof, which shall expire on the ensuing 1st day of February; provided, however, that a license that has been expired for five years or more may not be renewed except by reexamination and compliance with the requirements and procedures for obtaining an original license.

Fees

Sec. 13. The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

Master Plumber	
Examination	$75
License	75
Renewal	75
Journeyman Plumber	
Examination	50
License	50
Renewal	50
Plumbing Inspector	
Examination	25
License	50
Renewal	50

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

Prohibition Against Practicing Without License

Sec. 14. No person, whether as a master plumber, journeyman plumber, or otherwise, shall engage in, work at, or conduct the business of plumbing in

this state or serve as a plumbing inspector as herein defined, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act. It shall be unlawful for any person, firm, or corporation to engage in or work at the business of installing plumbing and doing plumbing work except as specifically herein provided unless such installation of plumbing or plumbing work be under the supervision and control of a plumber licensed under this Act.

An offense under this Act is a Class C misdemeanor as defined by the Texas Penal Code.

In addition to any other action, proceeding, or remedy authorized by law, the Board may institute an action in its own name against any person to enjoin any violation of this Act or any rule of the Board. In order for the Board to sustain the action, it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation of this Act or a Board rule. Any party to the action may appeal the cause. The Board may not be required to give any appeal bond in any cause arising under this Act. The attorney general shall represent the Board in all actions and proceedings to enforce this Act.

[See Compact Edition, Volume 5 for text of 15 to 17]

[Amended by Acts 1975, 64th Leg., p. 1914, ch. 617, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1083, ch. 397, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1836, ch. 735, § 2.029, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 3000, ch. 788, § 1, eff. Sept. 1, 1981.]

Sections 2, 3, and 5 of the 1981 amendatory act provide:

"Sec. 2. (a) A person holding office as a member of the Texas State Board of Plumbing Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed. The successor to the member of the board who is a licensed architect is the member who must be a plumbing contractor.

"(b) The governor shall appoint to the board a public member for a term expiring in 1983 and a public member for a term expiring in 1985. The governor shall appoint to the board a person who has five years of practical experience as a plumbing inspector for a term expiring in 1987. The terms of office of these appointees begin on the day in 1981 on which the terms of other members of the board begin.

"Sec. 3. A rule adopted by the Texas State Board of Plumbing Examiners before September 1, 1981, that conflicts with The Plumbing License Law of 1947, as amended (Article 6243–101, Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule."

"Sec. 5. (a) This Act takes effect September 1, 1981.

"(b) The requirements under Section 5A, The Plumbing License Law (Article 6243–101, Vernon's Texas Civil Statutes), as added by this Act, that the chairman of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before Septem- performance evaluation system shall be implemented before September 1, 1983."

TITLE 110A

PUBLIC OFFICES, OFFICERS AND EMPLOYEES

Article

6252–5b. Deposit and Investment of Retainage to Secure Performance of Contract.
6252–8b. Lump Sum Payment for Accrued Vacation Time to Separated State Employee or Accumulated leave to Employees Retirement System Members.
6252–8c. Benefits and Restrictions of State Employees Working Outside State.
6252–9d. Standards of Conduct of State Officers and Employees.
6252–11b. Notices and Information of Certain State Job Opportunities.
6252–11c. Use of Private Consultants by State Agencies.
6252–11d. Texas Merit System Council.
6252–11e. Use of Volunteers by State Agencies Providing Human Services.
6252–12b. Automatic Data Processing Systems Division Name Change.
6252–13a. Administrative Procedure and Texas Register Act.
6252–13b. Administrative Code Act.
6252–13c. Eligibility of Persons with Criminal Backgrounds for Certain Occupations, Professions, and Licenses.
6252–13d. Suspension, Revocation, or Denial of License, to Persons with Criminal Backgrounds; Guidelines and Application of Law.
6252–18a. Interpreters for Deaf Persons in Proceedings Before Political Subdivisions.
6252–19b. Liability of Political Subdivision for Certain Acts or Omissions of Officers and Employees.
6252–20a. Repealed.
6252–20b. Hazardous Duty Pay for Certain Commissioned Law Enforcement Personnel.
6252–26. Payment by State of Actual Damages Adjudged in Actions Against Certain State Employees; Defense by Attorney General.
6252–26a. Medical Malpractice Coverage for University of Texas and Texas A&M University Systems.

Art. 6252–3b. Deferred Compensation Plans for Public Employees; Funding

Contracts Between Political Subdivisions and Public Employees; Insurance, Annuity, Mutual Fund, or other Investment Contracts

Sec. 1. The state or any county, city, town, or other political subdivision may, by contract, agree with any employee to defer, in whole or in part, any portion of that employee's compensation and may subsequently, with the consent of the employee, contract for, purchase, or otherwise procure a life insurance, annuity, mutual fund, or other investment contract for the purpose of funding a deferred compensation program for the employee, from any life underwriter duly licensed by this state who represents an insurance company licensed to contract business in this state, any state or national bank domiciled in this state whose deposits are insured by the Federal Deposit Insurance Corporation, any savings and loan association doing business in this state whose accounts are insured by the Federal Savings and Loan Insurance Corporation, or any credit union doing business in this state whose accounts are insured by the National Credit Union Administration or the Texas Share Guaranty Credit Union. The amounts which participating employees agree to defer are the only funds a seller of investment products may receive under this program.

[See Compact Edition, Volume 5 for text of 2 to 4]

Premium Payments

Sec. 5. Notwithstanding any other provision of law to the contrary, the state comptroller or the appropriate officer of the county, city, town, or other political subdivision designated to administer the deferred compensation program is hereby authorized to make payment of premiums for the purchase of life insurance or annuity contracts or payment for the purchase of mutual fund or other investment contracts under the deferred compensation program. Such payment shall not be construed to be a prohibited use of the general assets of the state, county, city, town, or other political subdivision.

[See Compact Edition, Volume 5 for text of 6]

Limit on Financial Liability of Political Subdivision

Sec. 7. The financial liability of the state, county, city, town, or other political subdivision under a deferred compensation program shall be limited in each instance to the value at the time of disbursement to the employee of the particular life insurance, annuity, mutual fund, or other investment contract purchased for the purpose of funding a deferred compensation program for any employee.

[See Compact Edition, Volume 5 for text of 8]

[Amended by Acts 1977, 65th Leg., p. 1961, ch. 781, § 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1543, ch. 665, § 1, eff. Aug. 27, 1979.]

Section 2 of the 1977 amendatory act provided for an effective date of September 1, 1977.

Art. 6252–4a. Military Service Employees; Restoration to Employment

Restoration to Employment Upon Discharge

Sec. 1. Any employee of the State of Texas or any political subdivision, state institution, county or municipality thereof, other than a temporary employee, an elected official, or one serving under an appointment which requires confirmation by the Senate, who leaves his position for the purpose of

entering the Armed Forces of the United States, or enters State service as a member of the Texas National Guard or Texas State Guard or as a member of any of the reserve components of the Armed Forces of the United States shall, if discharged, separated or released from such active military service under honorable conditions within five years from the date of enlistment or call to active service, be restored to employment in the same department, office, commission or board of the State of Texas or any political subdivision, state institution, county or municipality thereof, to the same position held at the time of induction, enlistment or order to active Federal or State military duty or service, or to a position of like seniority, status, and pay if still physically and mentally qualified to perform the duties of such position.

[See Compact Edition, Volume 5 for text of 2 to 6]

[Amended by Acts 1977, 65th Leg., p. 1444, ch. 588, § 1, eff. Aug. 29, 1977.]

Art. 6252–5a. Investment of Funds by Agencies and Boards

[See Compact Edition, Volume 5 for text of 1]

Sec. 2. When the securities mentioned specifically above or when such securities as are eligible under other laws or constitutional provisions are purchased from or through a member in good standing of the National Association of Securities Dealers, or from or through a national or state bank, the comptroller of public accounts and the state treasurer, or any disbursing officer of an agency authorized to invest its funds directly are authorized to pay for them upon receipt of an invoice from the seller of the securities showing that the securities have been purchased by the board or agency and that the amount to be paid therefor is just, due, and unpaid. Actual delivery of the securities to the state treasurer or to a bank or to an agency directly investing its funds as hereinafter permitted may be thereafter accomplished in accordance with normal and recognized practices within the securities and banking industries, including the book entry procedure of the Federal Reserve Bank.

Sec. 3. Any securities so purchased, at the direction of the state treasurer, or by an agency directly investing its funds, may be deposited with a bank or federal reserve bank or branch thereof designated by the state treasurer within or without the State of Texas, in trust, and such deposits shall be evidenced by trust receipts of the banks in which the securities are thus deposited.

[Amended by Acts 1979, 66th Leg., p. 310, ch. 143, §§ 1, 2, eff. Sept. 1, 1979.]

Art. 6252–5b. Deposit and Investment of Retainage to Secure Performance of Contract

Definitions

Sec. 1. As used in this Act the following terms shall have these meanings:

(A) "Governmental entity" shall mean this state, any department, board, or agency thereof; any county of this state, department, board, or agency thereof; any municipality of this state, department, board, or agency thereof; any school district in this state, common or independent, or subdivision thereof; or any other governmental or quasi-governmental authority whether specifically named herein or not, authorized under a statute, general or local, to enter into contractual agreements for the construction, alteration, or repair of any public building or the prosecution or completion of any public work.

(B) "Prime contractor" shall mean any person or persons, firm, or corporation entering into a contractual agreement with a governmental entity for the construction, alteration, or repair of any public building or the prosecution or completion of any public work.

(C) "Contract payment" means any payment by a governmental entity for the value of labor, material, machinery, fixtures, tools, power, water, fuel and lubricants used or consumed, ordered and delivered for use or consumption, or specially fabricated for use or consumption but not yet delivered, in the direct prosecution of a public works contract.

(D) "Retainage" shall mean the part of a contract payment withheld by a governmental entity to secure performance of the contract.

General Requirement

Sec. 2. In any contract providing for retainage of greater than five percent of periodic contract payments, the governmental entity shall deposit the retainage in an interest-bearing account, and interest earned on such retainage funds shall be paid to the prime contractor upon completion of the contract.

Exceptions

Sec. 3. The provisions of this Act shall not apply to:

(A) a contract executed before the effective date of this Act;

(B) a contract where the total contract price estimate at the time of execution of the contract is less than $400,000;

(C) contracts made by the State Department of Highways and Public Transportation pursuant to the terms of Chapter 186, General Laws, Acts of the 39th Legislature, Regular Session, 1925, as amended (Article 6674a et seq., Vernon's Texas Civil Statutes); or

(D) until June 1, 1983, contracts made by a political subdivision funded in whole or in part with water development bonds pursuant to Section 49–c, as amended, and Section 49–d, as amended, of Article III of the Texas Constitution, or water quality enhancement bonds pursuant to Section 49–d–1, as amended, of Article III of the Texas Constitution, or bonds pursuant to Chapter 54 of the Texas Water Code.

Severability

Sec. 4. If any provision of this Act or the application thereof to any body or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are hereby declared severable.

[Acts 1981, 67th Leg., p. 3191, ch. 836, eff. Aug. 31, 1981.]

Arts. 6252–6, 6252–6a. Repealed by Acts 1979, 66th Leg., p. 1960, ch. 773, § 99.05, eff. Sept. 1, 1979

Prior to repeal, art. 6252–6 was amended by Acts 1977, 65th Leg., p. 1885, ch. 751, § 1. See, now, art. 601b, §§ 8.01 to 8.08 and 8.10.

Prior to repeal, art. 6252–6a was amended by Acts 1977, 65th Leg., p. 1889, ch. 751, § 2. See, now, art. 601b, § 8.09.

Art. 6252–6b. Texas Surplus Property Agency

[See Compact Edition, Volume 5 for text of 1]

Application of Sunset Act

Sec. 1a. The Texas Surplus Property Agency is subject to the Texas Sunset Act [1]; and unless continued in existence as provided by that Act the agency is abolished, and this Act expires effective September 1, 1987.

[1] Article 5429k.

[See Compact Edition, Volume 5 for text of 2 to 5]

[Amended by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.145, eff. Aug. 29, 1977.]

Art. 6252–8b. Lump Sum Payment for Accrued Vacation Time to Separated State Employee or Accumulated Leave to Employees Retirement System Members

Sec. 1. A state employee who resigns, is dismissed, or separated from state employment shall be entitled to be paid in a lump sum for all vacation time duly accrued at the time of separation from state employment; provided the employee has had continuous employment with the state for six months.

Sec. 1A. A contributing member of the Employees Retirement System of Texas who retires is entitled to be paid in a lump sum, from funds of the agency or department from which the member retires, for any accumulated leave accrued at the time of retirement. The amount paid shall be computed in the same manner as if the member had taken leave at the rate of compensation being paid the member at the time of retirement and is payable on the date of retirement.

[Acts 1975, 64th Leg., p. 766, ch. 298, § 1, eff. May 27, 1975. Amended by Acts 1981, 67th Leg., p. 2063, ch. 453, § 2, eff. Sept. 1, 1981.]

Art. 6252–8c. Benefits and Restrictions of State Employees Working Outside State

An employee of the state who is required to work outside the state is entitled to the same benefits and subject to the same restrictions provided by law for other state employees, including the benefits of vacation and leave and the employment policies and restrictions provided by the General Appropriations Act.

[Acts 1981, 67th Leg., p. 83, ch. 44, § 1, eff. April 15, 1981.]

Art. 6252–9b. Standards of Conduct of State Officers and Employees

[See Compact Edition, Volume 5 for text of 1]

Definitions

Sec. 2. In this Act:

[See Compact Edition, Volume 5 for text of 2(1) to 2(4)]

(5)(A) "Appointed officer of a major state agency" means any of the following:

(i) a member of the Public Utility Commission of Texas;

(ii) a member of the Texas Industrial Commission;

(iii) a member of the Texas Aeronautics Commission;

(iv) a member of the Texas Air Control Board;

(v) a member of the Texas Alcoholic Beverage Commission;

(vi) a member of the Finance Commission of Texas;

(vii) a member of the State Building Commission;

(viii) a member of the State Board of Control;

(ix) a member of the Texas Board of Corrections;

(x) a member of the Board of Trustees of the Employees Retirement System of Texas;

(xi) a member of the State Highway Commission;

(xii) a member of the Industrial Accident Board;

(xiii) a member of the State Board of Insurance;

(xiv) a member of the Board of Pardons and Paroles;

(xv) a member of the Parks and Wildlife Commission;

(xvi) a member of the Public Safety Commission;

(xvii) the Secretary of State;

(xviii) a member of the State Securities Board;

(xix) a member of the Texas Vending Commission;

(xx) a member of the Texas Water Development Board;

(xxi) a member of the Texas Water Quality Board;

(xxii) a member of the Texas Water Rights Commission;

(xxiii) a member of the Coordinating Board, Texas College and University System;

(xxiv) a member of the Texas Employment Commission;

(xxv) a member of the State Banking Board;

(xxvi) a member of the board of trustees of the Teachers Retirement System of Texas;

(xxvii) a member of the Credit Union Commission; or

(xxviii) a member of the School Land Board.

[See Compact Edition, Volume 5 for text of 2(5)(B) to 2(14)]

Financial Statement to be Filed

Sec. 3.

[See Compact Edition, Volume 5 for text of 3(a) to 3(c)]

(d) Within 30 days after the first Monday in February, every person who is a candidate for an office as an elected officer shall file the financial statement. The secretary of state shall grant an extension for good cause shown of not more than 15 days, provided a request for the extension is received prior to the filing deadline for the financial statement. When the deadline under which a candidate files falls after the first Monday in February, such candidate shall file the statement within 30 days after that deadline, except that when the deadline falls within 35 days of the election in which the candidate is running, the candidate shall file the statement by the fifth day before that election. A person who is a candidate in a special election for an office as an elected officer shall file the financial statement five days prior to the special election. No extensions shall be granted to candidates filing in a primary or general election under a deadline which falls after the first Monday in February or to candidates involved in a special election.

[See Compact Edition, Volume 3 for text of 3(e) to 8]

Public Access to Statements

Sec. 9. (a) Financial statements and affidavits filed under this Act are public records. The secretary of state shall maintain the statements and affidavits in separate alphabetical files and in a manner that is accessible to the public during regular office hours. During the one-year period following the filing of a financial statement or affidavit, each time a person, other than the secretary of state or an employee of the office of the secretary of state who is acting on official business, requests to see the financial statement or affidavit, the secretary of state shall place in the file a statement of the person's name, address, whom the person represents, and the date of the request. The secretary of state shall retain that statement in the file for one year after the date the requested financial statement or affidavit is filed.

[See Compact Edition, Volume 5 for text of 9(b) to 15]

[Amended by Acts 1975, 64th Leg., p. 2351, ch. 721, § 86, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1006, ch. 372, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1064, ch. 494, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2072, ch. 463, § 1, eff. Aug. 31, 1981.]

Art. 6252-9c. Registration and Reporting Requirements of Persons Engaged in Activities Designed to Influence Legislation

[See Compact Edition, Volume 4 for text of 1]

Definitions

Sec. 2. As used in this Act:

(1) "Person" means an individual, corporation, association, firm, partnership, committee, club, or other organization, or a group of persons who are voluntarily acting in concert.

(2) "Legislation" means a bill, resolution, amendment, nomination, or other matter pending in either house of the legislature; any other matter which is or may be the subject of action by either house, or any committee thereof, including the introduction, consideration, passage, defeat, approval, or veto of the matter; or any matter pending in or which may be the subject of action by a constitutional convention.

(3) "Legislative branch" means a member, member-elect, candidate for, or officer of the legislature or a legislative committee, or an employee of the legislature.

(4) "Executive branch" means an officer, officer-elect, candidate for, or employee of any state agency, department, or office in the executive branch of government.

(5) "Communicates directly with," "communicated directly with," "communicating directly with," "directly communicating with," and "direct communication" mean contact in person or by telephone, telegraph, or letter.

(6) "Compensation" means money, service, facility, or thing of value or financial benefit which is received or to be received in return for or in connection with services rendered or to be rendered.

(7) "Expenditure" means a payment, distribution, loan, advance, reimbursement, deposit, or gift of money or any thing of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

(8) "Secretary" means the Secretary of State of the State of Texas.

(9) "Registrant" means a person required by Section 3 of this Act to register.

Persons Required to Register

Sec. 3. The following persons must register with the secretary as provided in Section 5 of this Act:

(a) a person who makes a total expenditure in excess of $200 in a calendar quarter, not including his own travel, food, or lodging expenses, or his own membership dues, for communicating directly with one or more members of the legislative or executive branch to influence legislation; and

(b) a person who receives compensation or reimbursement in excess of $200 in a calendar quarter from another to communicate directly with a member of the legislative or executive branch to influence legislation. This subsection requires the registration of a person, other than a member of the judicial, legislative, or executive branch, who, as a part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation on behalf of the person by whom he is compensated or reimbursed, whether or not any compensation in addition to the salary for that regular employment is received for the communication.

Exceptions

Sec. 4. The following persons are not required to register under the provisions of this Act:

(1) persons who own, publish, or are employed by a newspaper or other regularly published periodical, or a radio station, television station, wire service, or other bona fide news medium which in the ordinary course of business disseminates news, letters to the editors, editorial or other comment, or paid advertisements which directly or indirectly oppose or promote legislation, if such persons engage in no further or other activities and represent no other persons in connection with influencing legislation;

(2) persons whose only direct communication with a member of the legislative or executive branch to influence legislation is an appearance before or testimony to one or more members of the legislative or executive branch in a hearing conducted by or on behalf of either the legislative or executive branch if such persons receive no special or extra compensation for their appearance other than actual expenses in attending the hearing;

(3) persons who encourage or solicit others to communicate directly with members of the legislative or executive branch to influence legislation; and

(4) persons whose only activity to influence legislation is compensating or reimbursing an individual registrant to act in their behalf to communicate directly with a member of the legislative or executive branch to influence legislation.

Registration

Sec. 5. (a) Every person required to register under this Act shall file a registration form with the secretary within five days after the first direct communication with a member of the legislative or executive branch requiring such person's registration.

(b) The registration shall be written, verified, and shall contain the following information:

(1) the registrant's full name and address;

(2) the registrant's normal business and business address;

(3) the full name and address of each person who paid a membership fee, dues or other assessment in excess of $500 during the preceding calendar or fiscal year to the registrant or to the person by whom the registrant is reimbursed, retained, or employed regardless of whether it was paid solely to influence legislation;

(4) the full name and address of each person:

(A) by whom the registrant is reimbursed, retained, or employed to communicate directly with a member of the legislative or executive branch to influence legislation; and

(B) on whose behalf the registrant has communicated directly with a member of the legislative or executive branch to influence legislation; and

(5) a specific description of, or, if pending, the number assigned to the legislation about which the registrant has communicated directly with a member of the legislative or executive branch to influence legislation, including, if known, the bill numbers and, if known, whether the registrant supports or opposes each bill listed.

(c) If a registrant's activities are done on behalf of the members of a group other than a corporation, the registration form shall include a statement of the number of members of the group and a full description of the methods by which the registrant develops and makes decisions about positions on policy.

Supplemental Registration and Activities Report

Sec. 6. (a) Every person registered under Section 5 of this Act shall file with the secretary a report concerning the activities set out in Subsection (b) of this section. The report must be filed:

(1) between the 1st and 10th day of each month subsequent to a month in which the legislature is in session covering the activities during the previous month; and

(2) between the 1st and 10th day of each month immediately subsequent to the last month in a calendar quarter when the legislature is not in session covering the activities during the previous quarter.

(b) The report shall be written, verified, and contain the following information:

(1) the total expenditures made by the registrant for directly communicating with a member of the legislative or executive branch to influence legislation, including expenditures made by others on behalf of the registrant for those direct communications if the expenditures were made with his express or implied consent or were ratified by him. The expenditures for directly communicating with a member of the legislative or executive branch to influence legislation shall be stated in the following categories:

(A) postage;

(B) telegraph;

(C) publication, printing, and reproduction;

(D) entertainment, including any transportation, dining, lodging, or admission expenses incurred in connection with such entertainment; and

(E) gifts or loans, other than contributions as defined by Article 14.01 of the Texas Election Code;

(2) a list of legislation, including, if pending, the number assigned to the legislation, about which the registrant, any person retained or employed by the registrant to appear on his behalf, or any other person appearing on his behalf, communicated directly with a member of the legislative or executive branch, including, if known, a statement of the registrant's position on such legislation.

(c) Each person who made expenditures on behalf of a registrant that are required to be reported by Subsection (b) of this section or who has other information required to be reported by the registrant under this Act shall provide a full, verified account of his expenditures to the registrant at least seven days before the registrant's report is due to be filed.

Termination Notice

Sec. 7. (a) A person who ceases to engage in activities requiring him to register under this Act shall file a written, verified statement with the secretary acknowledging the termination of activities. The notice is effective immediately.

(b) A person who files a notice of termination under this section must file the reports required under Section 6 of this Act for any reporting period during which he was registered under this Act.

[See Compact Edition, Volume 4 for text of 8]

Penalty

Sec. 9. (a) A person, as defined in this Act, who violates any provision of this Act other than Section 11 commits a Class A misdemeanor. A person, as defined in this Act, who violates Section 11 of this Act commits a felony of the third degree. Nothing in this Act relieves a person of criminal responsibility under the laws of this state relating to perjury.

(b) A person who receives compensation or reimbursement or makes an expenditure for engaging in direct communication to influence legislation and who fails to file any registration form or activities report which such person is required to file by this Act, in addition, shall pay to the state an amount equal to three times the compensation, reimbursement, or expenditure.

[See Compact Edition, Volume 5 for text of 10 to 12]

Enforcement

Sec. 13. (a) The provisions of this Act may be enforced by the secretary of state, attorney general, or any county or district attorney.

(b) A district court in Travis County may issue an injunction to enforce the provisions of this Act on application by any citizen of this state.

(c) The secretary of state shall determine whether all persons registered under this Act have filed all required forms, statements, and reports. Whenever the secretary of state determines that a person has failed to file any form, statement, or report as required by this Act, if he deems it appropriate, the secretary of state shall send a written statement of this finding to the person involved. Notice to the person involved must be sent by certified mail. If the person fails to file such form, statement, or report as required by this Act before the 21st day after the date the notice was sent, the secretary of state shall file a sworn complaint of the violation with the appropriate prosecuting attorney.

(d) A person may file with the appropriate prosecuting attorney a written sworn statement alleging a violation of this Act.

[See Compact Edition, Volume 4 for text of 14 to 17]

[Amended by Acts 1975, 64th Leg., p. 1811, ch. 550, §§ 1, 2, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2376, ch. 589, §§ 1, 2, eff. Aug. 31, 1981.]

Section 3 of the 1981 amendatory act provides:

"An offense committed under the law amended by this Act is covered by the law as it existed on the date the offense occurred, and the former law is continued in effect for the prosecution of such an offense."

Art. 6252–9d. Standards of Conduct of State Officers and Employees

Text of article effective until August 31, 1983

Committee

Sec. 1. The Public Servant Standards of Conduct Advisory Committee is created.

Membership

Sec. 2. The committee is composed of the following members:

(1) four persons, including at least two senators, appointed by the lieutenant governor;

(2) four persons, including at least two members of the house of representatives, appointed by the speaker of the house;

(3) the chief justice of the supreme court;

(4) the presiding judge of the court of criminal appeals;

(5) the district attorney of Travis County;

(6) the chief executive officer of an association of public employees, appointed by the speaker of the house;

(7) a member of the governor's staff, appointed by the governor; and

(8) two citizen members, appointed by the governor.

Terms

Sec. 3. Members of the committee hold office until the committee is abolished under this Act.

Officers; Meetings; Quorum

Sec. 4. (a) The speaker shall designate one of his appointees to the committee to serve as chairman and the lieutenant governor shall designate one of his appointees to the committee to serve as vice-chairman.

(b) The committee shall meet at the call of the chairman or as provided by rule of the committee.

(c) A majority of the members of the committee constitutes a quorum.

Expenses

Sec. 5. (a) A member of the committee may not receive compensation for performing functions as a member of the committee. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the committee.

(b) A member of the committee who is a public officer or employee shall be reimbursed for his expenses from funds of his office or agency. Other members shall be reimbursed from funds of the committee.

Additional Functions of Other Public Office

Sec. 6. The functions performed by a member of the committee who holds public office are additional functions of the public office.

Vacancy

Sec. 7. (a) A vacancy on the committee shall be filled for the unexpired part of the term in the same manner as the original appointment.

(b) An ex officio member of the committee vacates a position on the committee if the member ceases to hold the public office by which the member was eligible for appointment.

(c) A legislative member appointed to the committee by the lieutenant governor or speaker does not vacate his position on the committee if he is not reelected to the legislature.

Staff

Sec. 8. The committee may employ persons necessary to administer its functions.

Functions

Sec. 9. (a) The committee shall:

(1) study the application of state laws relating to the conduct of public servants, including relevant provisions of Title 8, Penal Code;

(2) adopt and publish interpretive guidelines to aid public servants in the day-to-day application of these laws; and

(3) report to the legislature any recommendations the committee may have concerning the revision of these laws necessary to make their application more clear and reasonable.

(b) The legislature shall consider the committee's recommendations.

Rules

Sec. 10. The committee may adopt rules necessary for it to administer its functions.

Budget

Sec. 11. The committee shall prepare a budget and submit it to the lieutenant governor and speaker of the house. The lieutenant governor and speaker must approve the budget in writing for the budget to take effect. The budget may be amended in the same manner. Expenses incurred by the committee must be authorized by the budget. Expenses shall be paid in equal shares from expense funds of the senate and house of representatives under procedures prescribed by the lieutenant governor and speaker of the house.

Abolition and Expiration

Sec. 12. The committee is abolished and this Act expires August 31, 1983. The records and other property in the custody of the committee on the day of abolition are transferred to the State Purchasing and General Services Commission.

[Acts 1981, 67th Leg., p. 370, ch. 151, §§ 1 to 12, eff. Sept. 1, 1981.]

Art. 6252-11. Position Classification Act of 1961

[See Compact Edition, Volume 5 for text of 1]

Conformance With Plan; Minimum Salary; Exceptions and Deferments From Plan

Sec. 2. All regular, full-time salaried employments within the departments and agencies of the State specified in the articles of the General Appropriations Act that appropriate money to executive and administrative and health, welfare, and rehabili-

tation departments and agencies, all regular, full-time salaried employments within the departments and agencies of the State specified in the article of the General Appropriations Act that appropriates money to health, welfare, and rehabilitation agencies; the Central Education Agency, Deaf and Blind Schools in the article of the General Appropriations Act that appropriates money to agencies of public education, and all such State employments in positions other than for Judges, District Attorneys, and Assistant District Attorneys specified in the article of the General Appropriations Act that appropriates money to the judiciary, shall conform with the Position Classification Plan hereinafter described and with the salary rates and provisions of the applicable Appropriations Act commencing with the effective date of this Act, with the exceptions and deferments hereafter provided in this Section.

All regular, full-time salaried employments in executive or administrative agencies of the State, regardless of whether their funds are kept inside or outside the State Treasury, shall also conform with the Position Classification Plan hereinafter described and with the salary rates and provisions of the General Appropriations Act with the exceptions hereinafter provided in this Section.

Specifically excepted from the Position Classification Plan hereinafter described are constitutionally named and elective officers and officials; officers appointed by the Governor; the chief executive head of any State agency covered by the first two paragraphs of this Section; teachers in public schools and special schools of the State, and in the State colleges, universities, and other agencies of higher education; research personnel in State colleges, universities, and other agencies of higher education; medical doctors; professional services compensated on a fee basis; hourly employees, part-time, and temporary employees; and such other positions in the State Government as have heretofore been or as may hereafter be excluded from such Position Classification Plan by executive order of the Governor or by direction of the Legislature.

Deferred from the provisions of such Position Classification Plan until such time as it is deemed practical by order of the Governor or by direction of the Legislature to study and make application of such Plan, are all nonacademic employments in the State colleges, universities, and other agencies of higher education.

[See Compact Edition, Volume 5 for text of 3 to 6]

[Amended by Acts 1981, 67th Leg., p. 1005, ch. 383, § 1, eff. Aug. 31, 1981.]

Art. 6252-11b. Notices and Information of Certain State Job Opportunities

Definitions

Sec. 1. In this Act:

(1) "State agency" means:

(A) any department, commission, board, office, or other agency that:

(i) is in the executive branch of state government;

(ii) has authority that is not limited to a geographical portion of the state; and

(iii) was created by the constitution or a statute of this state; or

(B) a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

(2) "Commission" means the Texas Employment Commission.

(3) "Equal employment office" means the Equal Employment Opportunity Office within the governor's office.

Submission of Job Information

Sec. 2. (a) When a job vacancy occurs or is filled in Travis County within a state agency, the agency shall complete and submit to the commission and to the equal employment office as soon as possible the appropriate information form prescribed by the commission regarding the job vacancy or placement.

(b) As soon as possible at the beginning of each month, a state agency which requires a person to comply with the Merit System Council's employment procedures before employing the person shall complete and submit to the commission and to the equal employment office the appropriate information form prescribed by the commission regarding the job vacancies in Travis County subject to the Merit System Council's employment procedures which were filled by the agency during the previous month.

Job Information Forms

Sec. 3. The commission shall prescribe forms for information from state agencies necessary for the commission to serve as a central processing agency for state agency job opportunities in Travis County in accordance with this Act.

Use of Job Information

Sec. 4. (a) The commission shall publicly list, in accordance with its procedures, for at least 10 working days, notices of job vacancies submitted to the commission by a state agency under Section 2(a) of this Act unless notified by the agency that the vacancy has been filled.

(b) The commission shall publicly post, in accordance with its procedures, for a month, the information submitted to the commission by a state agency under Section 2(b) of this Act. When a person expresses to the commission an interest in a job vacancy posted in accordance with this subsection for which the commission considers him qualified, the commission shall inform the person of appropriate Merit System Council employment procedures.

(c) When a person expresses to the commission an interest in a job vacancy listed in accordance with Subsection (a) of this section for which the commis-

sion considers him qualified and which may be filled only after the person has complied with the Merit System Council's employment procedures, the commission shall inform the person of those procedures.

Other Informational Efforts

Sec. 5. State agencies are encouraged to continue other current efforts to inform various outside applicant recruitment sources of job vacancies.

[Acts 1977, 65th Leg., p. 159, ch. 80, eff. April 25, 1977.]

Art. 6252–11c. Use of Private Consultants by State Agencies

Definitions

Sec. 1. In this Act:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. The term includes routine work provided to an agency under an independent contract that is necessary to the functioning of the agency's programs. The term includes only services for which payment is made from funds:

(A) that are appropriated by the legislature;

(B) that are generated by statutory functions of the agency; or

(C) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(2) "Private consultant" means an entity that performs consulting services.

(3) "State agency" means any state department, commission, board, office, institution, facility, or other agency, including a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

Exemption

Sec. 2. This Act does not apply to employment of registered professional engineers or registered architects for architectural or engineering studies or for the design or construction of state facilities, private legal counsel, investment counselors, actuaries, or physicians, dentists, or other medical or dental services providers, and it is not intended to discourage their use.

Use and Selection of Private Consultant

Sec. 3. (a) A state agency may use a private consultant only if:

(1) there is a substantial need for the consulting services; and

(2) the state agency cannot adequately perform the consulting services with its own personnel or through contract with another state agency.

(b) In selecting a private consultant, a state agency shall:

(1) base its choice on demonstrated competence, knowledge, and qualifications, and on the reasonableness of the proposed fee for the services; and

(2) when other considerations are equal, give a preference to a private consultant whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

Notice of Intent to Employ Consultant

Sec. 4. At least 30 days before contracting to use a private consultant whose total anticipated fee exceeds $10,000, a state agency shall notify the Legislative Budget Board and the Governor's Budget and Planning Office of the agency's intent to use a private consultant and shall supply the Legislative Budget Board and the Governor's Budget and Planning Office with information demonstrating that the agency has complied with the policies of Section 3 of this Act.

Information Relating to Consultant Studies

Sec. 5. (a) After a state agency contracts to use a private consultant, the state agency shall, upon request, supply the Legislative Budget Board and the Governor's Budget and Planning Office with copies of all documents, films, recordings, or reports of intangible results of the consultant service that are developed by the private consultant.

(b) Copies of all documents, films, recordings, or reports of intangible results shall be filed with the Texas State Library and shall be retained by the library at least five years after receipt.

(c) As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the Governor's Budget and Planning Office, a state agency shall supply the Legislative Budget Board and the Governor's Budget and Planning Office with reports on what action was taken in response to the recommendations of any private consultant employed by the state agency.

Publication in Texas Register

Sec. 6. (a) If it is reasonably foreseeable that a proposed use of a private consultant may involve a contract with a value in excess of $10,000, a state agency or a regional council of government created under Chapter 570, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1011m, Vernon's Texas Civil Statutes), that proposes the use of a private consultant shall file, at least 40 days before contracting with a private consultant, the following information with the Secretary of State for publication in the Texas Register:

(1) a notice of invitation for offers of consulting services;

(2) the person who should be contacted by a private consultant who wants to make an offer;

(3) the closing date for receipt of offers of consulting services; and

(4) the procedure by which the agency or council of government will award the contract for consulting services.

(b) A state agency or regional council of government that complies with Subsection (a) of this section shall file within 10 days after contracting with the private consultant the following information with the Secretary of State for publication in the Texas Register:

(1) a description of the study that the private consultant is to conduct;

(2) the name and business address of the private consultant;

(3) the total value and the beginning and ending dates of the contract; and

(4) the due dates of documents, films, recordings, or reports of intangible results that the private consultant is to present to the agency or council of government.

(c) The Texas State Library shall compile a list of documents, films, recordings, and reports of intangible results submitted to it under Section 5(b) of this Act and shall file the list in each quarter of the calendar year with the Secretary of State for publication in the Texas Register.

(d) If the consulting service desired by a state agency is a continuation of a service previously performed by a private consultant, the agency shall state this in the invitation for offers filed with the Secretary of State under Subsection (a) of this section. If the state agency intends to award the contract for the consulting services to the private consultant that previously performed the services unless a better offer is submitted, it shall state this in the invitation for offers.

Conflicts of Interest

Sec. 6A. An officer or employee of a state agency who has a financial interest in a firm or corporation that is a private consultant and that submits an offer to provide consulting services to the agency or who is related within the second degree by consanguinity or affinity to a person having the financial interest shall report the financial interest to the executive head of the state agency not later than the 10th day after the day on which the private consultant submits the consulting services offer.

Restriction on Former Employees of a State Agency

Sec. 6B. A person who offers to perform a consulting service for a state agency and who has been employed by the agency or by another state agency at any time during the two years preceding the making of the offer shall disclose in the offer the nature of the previous employment with the agency or the other state agency, the date of termination of the employment, and the annual rate of compensation for the employment at the time of its termination. A state agency that accepts the offer shall include in the information filed under Subsection (b) of Section 6 of this Act a statement about the previous employment and the nature of the employment.

Contract Void

Sec. 6C. (a) If a state agency contracts to use a private consultant without complying with the requirements of Section 6 of this Act or if a person contracts to perform a consulting service for a state agency without complying with the requirements of Section 6B of this Act, the contract is void.

(b) If a contract is void under this section, the comptroller or a state agency may not make any payments under the contract from any state or federal funds held in or outside the State Treasury.

Legislative Intent

Sec. 6D. (a) It is the intent of the legislature that this Act be interpreted in a manner that assures the greatest fair competition in the selection by state agencies and regional councils of government of private consultants under contracts covered by this Act and that assures that all potential providers of consulting services are afforded notice of the need for and opportunity to provide the services.

(b) This Act is not intended to discourage the use by state agencies or regional councils of government of private consultants if their use may reasonably be expected to result in a more efficient and less costly operation or project. This Act is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in this Act have been followed.

[Acts 1977, 65th Leg., p. 1185, ch. 454, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1957, ch. 773, §§ 98.01 to 98.04, eff. Sept. 1, 1979.]

Art. 6252-11d. Texas Merit System Council

Definitions

Sec. 1. In this Act:

(1) "Council" means the Texas Merit System Council.

(2) "State agency" means any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of this state.

Council

Sec. 2. (a) The Texas Merit System Council is created. The council is composed of six members appointed by the governor with the advice and consent of the senate.

(b) Members of the council hold office for staggered terms of six years, with two members' terms expiring February 1 of each odd-numbered year.

(c) A vacancy on the council shall be filled by appointment for the unexpired term in the same manner as a regular appointment.

(d) A council member must be a resident of this state. A member may not be employed by an agency served by the council during his term as a council member and may not have been an employee of any such agency within one year preceding appointment to the council.

(e) The Texas Merit System Council is subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the council is abolished and this Act expires September 1, 1993.

Expenses

Sec. 3. A member of the council is entitled to a per diem as set by legislative appropriation for attending meetings and to reimbursement for actual and necessary expenses incurred in performing official duties of the council.

Officers; Meetings; Quorum

Sec. 4. (a) The governor shall appoint a chairman and vice-chairman from among the members of the council.

(b) The council shall meet at times and places as specified by call of the chairman or the governor but shall meet at least six times each year.

(c) The council shall submit an annual report to the governor.

(d) A majority of the council membership constitutes a quorum for the transaction of business.

Executive Director; Staff

Sec. 5. (a) The council shall employ an executive director who serves at the pleasure of the council. The executive director shall manage the affairs of the council subject to the authority of the council.

(b) The executive director may employ staff necessary to perform the functions of the council.

Duties of Council

Sec. 6. (a) The council shall develop procedures and policies to assure the recruitment, selection, and advancement of highly competent personnel in state agencies using its services.

(b) Procedures and policies developed by the council shall meet federal requirements for a merit system of personnel administration applicable to state and local agencies administering federal programs.

(c) The council shall establish procedures under which applicants for positions and employees of state agencies using the council services may obtain hearings before impartial hearing officers with respect to adverse personnel actions taken against them.

(d) The council may contract with any other state agency for the performance of the council's duties, including areas such as recruitment and test administration.

(e) The council shall adopt rules it considers necessary for the administration of this Act, prescribe personnel policies for the council, and perform any other functions prescribed by law.

(f) The council may compel the attendance of witnesses at any of its proceedings through the issuance of subpoenas to be served by any sheriff or constable in this state.

Use of Council Services

Sec. 7. A state agency that is required by federal laws or regulations to have a merit system of personnel administration shall use the services of the council.

Interagency Advisory Committee

Sec. 8. (a) An interagency advisory committee is created to advise the council and review its rules and policies.

(b) The committee is composed of one representative from each agency using the services of the council.

(c) The council shall adopt rules governing the appointment and operation of the committee.

Funding

Sec. 9. (a) The budget of the council is subject to the appropriations process.

(b) The total budget of the council is limited to the aggregate amount of funds received through interagency contracts for services rendered and federal receipts but may not exceed the amount appropriated to the council.

Equal Employment Opportunity

Sec. 10. In the performance of its duties, the council shall comply with state and federal laws and regulations and federal court decisions that assure equal employment opportunity.

Transfer of Control

Sec. 11. The Merit System Council of the Texas Employment Commission is abolished. The services, responsibilities, and contractual obligations existing between the Merit System Council of the Texas Employment Commission and the Texas Employment Commission are terminated on the effective date of this Act. The nonpolicymaking personnel, records, funds, and other property in the custody or control of the Merit System Council of the Texas Employment Commission are transferred to the Texas Merit System Council. The positions transferred by this Act shall be reevaluated for continuance by the council within four months after the effective date of this Act. A report of the council's personnel evaluation shall be submitted to the Legislative Budget Board and the Governor's Office of Budget and Planning.

[Acts 1981, 67th Leg., p. 902, ch. 322, §§ 1 to 11, eff. Sept. 1, 1981.]

Section 12 of the 1981 Act provides:

"In making the initial council appointments, the governor shall designate two members for terms expiring February 1, 1983, two members for terms expiring February 1, 1985, and two members for terms expiring February 1, 1987."

Art. 6252–11e. Use of Volunteers by State Agencies Providing Human Services

Definition

Sec. 1. In this Act "human services" means those services that provide basic mental and physical needs for the people.

Agency Use of Volunteers

Sec. 2. Each state agency that provides human services shall use, whenever feasible, volunteers to assist in the provision of quality human services.

Development of Program

Sec. 3. (a) Each state agency shall develop a volunteer program.

(b) In developing the program the agency shall consider the fact that volunteers are a resource for which advance planning and preparation are required for effective use.

(c) Volunteers as well as paid staff shall be included, if practicable, in planning the implementation of a volunteer program.

(d) The use of volunteers shall be considered in determining merit pay increases as well as in performance evaluations.

(e) The use of funds requested for volunteer programs shall be reviewed by the Legislative Budget Board during the preparation of budget recommendations.

Program Requirements and Guidelines

Sec. 4. (a) A volunteer program must include:

(1) an effective training program for paid staff and prospective volunteers;

(2) the use of paid staff positions to plan and implement the volunteer program;

(3) an evaluation mechanism to assess:

(A) the performance of the volunteers;

(B) the cooperation of paid staff with the volunteers; and

(C) the overall volunteer program; and

(4) follow-up studies to ensure the effectiveness of the program.

(b) A volunteer program may:

(1) establish a program to reimburse volunteers for actual and necessary expenses incurred in the performance of volunteer services;

(2) establish an insurance program to protect volunteers in the performance of volunteer services; and

(3) cooperate with private organizations that provide services similar to those provided by the agency.

[Acts 1981, 67th Leg., p. 2237, ch. 533, §§ 1 to 4, eff. Sept. 1, 1981.]

Art. 6252–12a. Automatic Data Processing Systems

Purpose of Act

Sec. 1. The purpose of this Act is to provide for the annual review and evaluation of the use in Texas state government of automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated. The Systems Division may not be involved in the acquisition of automated information systems, the computers on which they are automated, or a related service, but shall regularly review and evaluate existing operations in each state governmental body to determine compliance with the acquisition methods prescribed by law, to recommend ways to eliminate duplication in the collection, storage, and processing of information, and to increase the accessibility and usefulness of the information.

Automatic Data Processing Systems Division; Establishment; Director and Analysts

Sec. 2. There shall be established in the office of the State Auditor an Automated Information Systems and Computers Division (hereafter referred to as the Systems Division) in this Act. For the operation of this Division the Auditor shall employ a Systems Director within limits of legislative appropriations and subject to the prior approval of the Legislative Audit Committee. The Auditor shall also employ highly qualified systems analysts, and such other personnel as he may deem necessary for the Systems Division's successful operation.

Duties of Division

Sec. 3. The Systems Division shall have and maintain comprehensive current information relating to automated information systems, the computers on which they are automated, and services related to the automation of information systems or the computers on which they are automated. Consistent with established automated information system guidelines of the Automated Information Systems Advisory Council, the Division regularly shall review and evaluate the performance of each state governmental body in the use of automated information systems, the computers on which they are automated, and related services, to determine:

(1) the extent of compliance by the state governmental body with the methods prescribed by law for the acquisition of automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated;

(2) actions that may be taken by the state governmental body to attain the most efficient and economical operations in the governmental body's system of information collecting, processing, and storing;

(3) actions that may be taken by the governmental body to end unnecessary duplication, by and between state governmental bodies, of staff and automated information systems and the computers on which they are automated that are used for information collection, processing, and storage.

Cooperation With Systems Division

Sec. 4. It shall be the duty of each state governmental body to cooperate fully with the Systems Division to provide full and accurate information of the use of automated information systems, the computers on which they are automated, and the staff who perform functions relating to the systems or computers, and to make available all other information the Division may deem necessary for complete and accurate evaluation of the use of the systems and computers by the state governmental body.

Annual Current Status Report; Recommendations

Sec. 5. The Systems Division of the Auditor's office shall submit annually, before January 1, to the Legislative Budget Board, the Governor's Budget Division, and the Automated Information Systems Advisory Council copies of the audit report described in Section 3 of this Act for those state governmental bodies reviewed and evaluated during the preceding year. With the report of the even-numbered years the Division shall also file with the Legislative Budget Board, Governor's Budget Division, and Automated Information Systems Advisory Council specific recommendations for the further accomplishing of purposes of this Act.

Central Clearinghouse for Computer Software

Sec. 5A. (a) The Systems Division shall maintain a central clearinghouse for automated information system software developed or acquired by state governmental bodies.

(b) Each state governmental body shall file an inventory record with the Systems Division of the automated information systems software developed or acquired by the governmental body. The Systems Division shall distribute to other state governmental bodies information about the automated information systems software covered by the inventory record.

[See Compact Edition, Volume 5 for text of 6 and 7]

[Amended by Acts 1977, 65th Leg., p. 951, ch. 359, § 1, eff. June 10, 1977; Acts 1981, 67th Leg., p. 2705, ch. 737, § 17, eff. Sept. 1, 1981.]

Art. 6252-12b. Automatic Data Processing Systems Division Name Change

The name of the Automatic Data Processing Systems Division is changed to the Automated Information Systems and Computers Division. A reference in a law to the Automatic Data Processing Division means the Automated Information Systems and Computers Division.

[Acts 1981, 67th Leg., p. 2706, ch. 737, § 18, eff. Sept. 1, 1981.]

Art. 6252-13. Repealed by Acts 1975, 64th Leg., p. 136, ch. 61, § 22, eff. Jan. 1, 1976

See, now, art. 6252-13a.

Art. 6252-13a. Administrative Procedure and Texas Register Act

Purpose

Sec. 1. It is declared the public policy of this state to afford minimum standards of uniform practice and procedure for state agencies, to provide for public participation in the rulemaking process, to provide adequate and proper public notice of proposed agency rules and agency actions through publication of a state register, and to restate the law of judicial review of agency action.

Short Title

Sec. 2. This Act shall be known and may be cited as the Administrative Procedure and Texas Register Act.

Definitions

Sec. 3. As used in this Act:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education, that makes rules or determines contested cases.

(2) "Contested case" means a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration, or similar form of permission required by law.

(4) "Licensing" includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) "Party" means each person or agency named or admitted as a party.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) "Rule" means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures.

(8) "Register" means the Texas Register established by this Act.

Public Information; Adoption of Rules; Availability of Rules and Orders; Evidentiary Value of Texas Register

Sec. 4. (a) In addition to other rulemaking requirements imposed by law, each agency shall:

(1) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available;

(2) index and make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions; and

(3) index and make available for public inspection all final orders, decisions, and opinions.

(b) No agency rule, order, or decision made or issued on or after the effective date of this Act is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been indexed and made available for public inspection as required by this Act. This provision is not applicable in favor of any person or party who has actual knowledge of the rule, order, or decision.

(c) The contents of the Texas Register are to be judicially noticed and constitute prima facie evidence of the text of the documents and of the fact that they are in effect on and after the date of the notation. Without prejudice to any other mode of citation, the contents of the Texas Register may be cited by volume and page number.

Procedure for Adoption of Rules

Sec. 5. (a) Prior to the adoption of any rule, an agency shall give at least 30 days' notice of its intended action. Notice of the proposed rule shall be filed with the secretary of state and published by the secretary of state in the Texas Register. The notice must include:

(1) a brief explanation of the proposed rule;

(2) the text of the proposed rule, except any portion omitted as provided in Section 6(c) of this Act, prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(3) a statement of the statutory or other authority under which the rule is proposed to be promulgated, including a concise explanation of the particular statutory or other provisions under which the rule is proposed, and a certification that the proposed rule has been reviewed by legal counsel and found to be within the agency's authority to adopt;

(4) a fiscal note showing the name and title of the officer or employee responsible for preparing or approving it and stating for each year for the first five years that the rule will be in effect:

(A) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule;

(B) estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

(C) estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(D) if applicable, that enforcing or administering the rule will have no foreseeable implications in any of the preceding respects;

(5) a public benefit-cost note showing the name and title of the officer or employee responsible for preparing or approving it and stating for each year for the first five years that the rule will be in effect:

(A) the public benefits to be expected as a result of adoption of the proposed rule; and

(B) the probable economic cost to persons who are required to comply with the rule;

(6) a request for comments on the proposed rule from any interested person; and

(7) any other statement required by law.

(b) Each notice of a proposed rule becomes effective as notice when published in the register. The notice shall be mailed to all persons who have made timely written requests of the agency for advance notice of its rulemaking proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted. Except as provided by this subsection, a proposed rule is automatically withdrawn six months after the date of publication of notice of the proposed rule in the Texas Register if the agency has failed within that time to adopt, adopt as amended, or withdraw the proposed rule.

(c) Prior to the adoption of any rule, an agency shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for public hearing must be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members. The agency shall consider fully all written and oral submissions concerning the proposed rule. On adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption.

(c–1) The agency order finally adopting a rule must include:

(1) a reasoned justification of the rule, including a summary of comments received from parties interested in the rule and showing the names of any interested group or association offering comment on the rule and whether they were for or against its adoption, and also including a restatement of the rule's factual bases and the reasons why the agency disagrees with party submissions and proposals;

(2) a concise restatement of the particular statutory provisions under which the rule is adopted and of how the agency interprets these provisions as authorizing or requiring the rule; and

(3) a certification that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

(d) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or on any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The rule may be effective for a period of not longer than 120 days renewable once for a period not exceeding 60 days, but the adoption of an identical rule under Subsections (a) and (c) of this section is not precluded. An emergency rule adopted under the provisions of this subsection, and the agency's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the Texas Register.

(e) No rule hereafter adopted is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two years after the effective date of the rule.

(f) An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons concerning contemplated rulemaking. Each agency also is authorized to appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of these committees are advisory only.

(g) Each house of the legislature shall adopt rules establishing a process under which the presiding officer of each house shall refer each proposed agency rule to the appropriate standing committee for review prior to adoption of the rule. When an agency files notice of a proposed rule with the secretary of state pursuant to Subsection (a) of this section, it shall also deliver a copy of the notice to the lieutenant governor and the speaker. On the vote of a majority of its members, a standing committee may transmit to the agency a statement supporting or opposing adoption of a proposed rule.

Creation of Texas Register

Sec. 6. (a) The secretary of state shall compile, index, and publish a publication to be known as the Texas Register, which shall contain:

(1) notices of proposed rules issued after the effective date of this Act and filed in the office of the secretary of state as provided in Section 5 of this Act;

(2) the text of rules adopted after the effective date of this Act and filed in the office of the secretary of state;

(3) notices of open meetings issued after the effective date of this Act and filed in the office of the secretary of state as provided by law;

(4) executive orders issued by the governor after the effective date of this Act;

(5) summaries of requests made after the effective date of this Act for opinions of the attorney general, which shall be prepared by the attorney general and forwarded to the secretary of state;

(6) summaries of opinions of the attorney general issued after the effective date of this Act, which shall be prepared by the attorney general and forwarded to the secretary of state; and

(7) other information of general interest to the public of Texas, which may include, but is not limited to, federal legislation or regulations affecting the state or state agencies and state agency organizational and personnel changes.

(b) The secretary of state shall publish the register at regular intervals, but not less than 100 times each calendar year.

(c) The secretary of state may omit from the register any information the publication of which he deems cumbersome, expensive, or otherwise inexpedient, if the information is made available in printed or processed form by the adopting agency on application for it, and if the register contains a notice stating the general subject matter of the information and the manner in which a copy of it may be obtained.

(d) One copy of each issue of the register shall be made available free on request to each board, commission, and department having statewide jurisdiction, to the governor, to the lieutenant governor, to the attorney general, to each member of the legislature, to each county clerk in the state, and to the supreme court, court of criminal appeals, and each court of civil appeals.

(e) The secretary of state shall make copies of the register available to other persons on payment of reasonable fees to be fixed by the secretary of state.

Filing of Existing Documents

Sec. 7. Before March 1, 1976, each agency shall file in the office of the secretary of state two certified copies of each rule existing on the effective date of this Act. Existing rules become effective immediately on filing with the secretary of state.

Filing Procedures

Sec. 8. (a) Each agency shall file a document for publication in the Texas Register by delivering to the office of the secretary of state during normal working hours two certified copies of the document to be filed. On receipt of a document required by this Act to be filed in the office of the secretary of state and published in the register, the secretary of state shall note the day and hour of filing on the certified copies. One certified copy of each filed document must be maintained in original form or on microfilm in a permanent register in the office of

the secretary of state and, on filing, shall be made available immediately for public inspection during regular business hours.

(b) If there is a conflict, the official text of a rule is the text on file with the secretary of state, and not the text published in the register or on file with the issuing agency.

(c) The secretary of state may promulgate rules to insure the effective administration of this Act. The rules may include, but are not limited to, rules prescribing paper size and the format of documents required to be filed by this Act. The secretary of state may refuse to accept for filing and publication any document that does not substantially conform to the promulgated rules.

(d) The secretary of state may maintain on microfilm the files of agency rules and any other information required by this Act to be published in the register and, after microfilming, destroy the original copies of all information submitted for publication.

Tables of Contents; Certification; Liaison

Sec. 9. (a) Each issue of the register must contain a table of contents.

(b) A cumulative index to all information required by this Act to be published during the previous year shall be published at least once each year.

(c) Each document submitted to the secretary of state for filing or publication as provided in this Act must be certified by an official of the submitting agency authorized to certify documents of that agency.

(d) Each agency shall designate at least one individual to act as a liaison through whom all required documents may be submitted to the secretary of state for filing and publication.

Effect of Filing

Sec. 10. (a) Each rule hereafter adopted becomes effective 20 days after the filing of two certified copies in the office of the secretary of state, except that:

(1) if a later date is required by statute or specified in the rule, the later date is the effective date; and

(2) subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately on filing with the secretary of state, or on a stated date less than 20 days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare; and

(3) if a federal statute or regulation requires that an agency implement a rule by a certain date, the rule is effective on the prescribed date.

(b) An agency finding, as described in Subsection (a)(2) of this section, and a brief statement of the reasons for it, shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

(c) A rule adopted as provided in Subsection (a)(3) of this section shall be filed in the office of the secretary of state and published in the register.

Petition for Adoption of Rules

Sec. 11. Any interested person may petition an agency requesting the adoption of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with Section 5 of this Act.

Declaratory Judgment on Validity or Applicability of Rules

Sec. 12. The validity or applicability of any rule, including an emergency rule adopted under Section 5(d) of this Act, may be determined in an action for declaratory judgment in a district court of Travis County, and not elsewhere, if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The agency must be made a party to the action. A declaratory judgment may be rendered whether the plaintiff has requested the agency to pass on the validity or applicability of the rule in question. However, no proceeding brought under this section may be used to delay or stay a hearing after notice of hearing has been given if a suspension, revocation, or cancellation of a license by an agency is at issue before the agency.

Contested Cases; Notice; Hearings; Records

Sec. 13. (a) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice of not less than 10 days.

(b) The notice must include:

(1) a statement of time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the matters asserted.

(c) If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

(d) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

(e) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(f) The record in a contested case includes:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings of them;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the officer presiding at the hearing; and

(7) all staff memoranda or data submitted to or considered by the hearing officer or members of the agency who are involved in making the decision.

(g) Proceedings, or any part of them, must be transcribed on written request of any party. The agency may pay the cost of the transcript or assess the cost to one or more parties. This Act does not limit an agency to a stenographic record of proceedings.

(h) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

Interpreters for Deaf Parties and Witnesses

Sec. 13A. (a) If a party or subpoenaed witness in a contested case is deaf, the agency shall provide an interpreter whose qualifications are approved by the State Commission for the Deaf to interpret the proceedings for that person.

(b) In this section, "deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

Rules of Evidence, Official Notice

Sec. 14. (a) In contested cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) In connection with any contested case held under the provisions of this Act, an agency may swear witnesses and take their testimony under oath.

(c) On its own motion or on the written request of any party to a contested case pending before it, on a showing of good cause, and on deposit of sums that will reasonably insure payment of the amounts estimated to accrue under Subsections (*l*)(1) and (2) of this section, an agency shall issue a subpoena addressed to the sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

(d) On its own motion or on the written request of any party to a contested case pending before it, on a showing of good cause, and on deposit of sums that will reasonably insure payment of the amounts estimated to accrue under Subsections (*l*)(1) and (2) of this section, an agency shall issue a commission, addressed to the several officers authorized by statute to take depositions, to require that the deposition of a witness be taken, which commission shall authorize the issuance of any subpoenas necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects as may be necessary and proper for the purposes of the proceeding. The deposition of a member of an agency board may not be taken after a date has been set for hearing.

(e) The place of taking the depositions shall be in the county of the witness' residence, or where the witness is employed or regularly transacts business in person. The commission shall authorize and require the officer or officers to whom it is addressed, or either of them, to examine the witness before him on the date and at the place named in the commission and to take answers under oath to questions which may be propounded to the witness by the parties to the proceeding, the agency, or the attorneys for the parties or the agency. The commission shall require the witness to remain in attendance from day to day until the deposition is begun and completed.

(f) The witness shall be carefully examined, the testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under the officer's personal supervision, or by the deponent in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent.

(g) The officer taking the oral deposition may not sustain objections to any of the testimony taken, or exclude any of it, and any of the parties or attorneys engaged in taking testimony have their objections reserved for the action of the agency before which the matter is pending. The administrator or other officer conducting the hearing is not confined to objections made at the taking of the testimony.

(h) When the testimony is fully transcribed, the deposition shall be submitted to the witness for

examination and read to or by the witness, unless the examination and reading are waived by the witness and by the parties in writing. However, if the witness is a party to the contested case pending before the agency with an attorney of record, the deposition officer shall notify the attorney of record in writing by registered mail or certified mail that the deposition is ready for examination and reading at the office of the deposition officer, and if the witness does not appear and examine, read, and sign the deposition within 20 days after the mailing of the notice, the deposition shall be returned as provided in this Act for unsigned depositions. In any event, the witness must sign the deposition at least three days prior to the hearing, or it shall be returned as provided in this Act for unsigned depositions. Any changes in form or substance which the witness desires to make shall be entered on the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties present at the taking of the deposition by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver, illness, or absence of the witness or the fact of the refusal to sign, together with the reason, if any, given for failure to sign. The deposition may then be used as fully as though signed.

(i) A deposition may be returned to the agency before which the contested case is pending either by mail, or by a party interested in taking the deposition, or by any other person. If returned by mail, the agency shall endorse on the deposition that it was received from the post office and shall cause the agency employee so receiving the deposition to sign it. If not sent by mail, the person delivering it to the agency shall make affidavit before the agency that he received it from the hands of the officer before whom it was taken, that it has not been out of his possession since, and that it has undergone no alteration.

(j) A deposition, after being filed with the agency, may be opened by any employee of the agency at the request of either party or his counsel. The employee shall endorse on the deposition on what day and at whose request it was opened, signing the deposition, and it shall remain on file with the agency for the inspection of any party.

(k) Regardless of whether cross interrogatories have been propounded, any party is entitled to use the deposition in the contested case pending before the agency.

(*l*) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding under the authority of this section is entitled to receive:

(1) mileage of 10 cents a mile, or a greater amount as prescribed by agency rule, for going to, and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the person's place of residence; and

(2) a fee of $10 a day, or a greater amount as prescribed by agency rule, for each day or part of a day the person is necessarily present as a witness or deponent.

(m) Mileage and fees to which a witness is entitled under this section shall be paid by the party or agency at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the agency.

(n) In the case of failure of a person to comply with a subpoena or commission issued under the authority of this Act, the agency issuing the subpoena or commission, acting through the attorney general, or the party requesting the subpoena or commission, may bring suit to enforce the subpoena or commission in a district court in Travis County. The court, if it determines that good cause exists for the issuance of the subpoena or commission, shall order compliance with the requirements of the subpoena or commission. Failure to obey the order of the court may be punished by the court as contempt.

(*o*) In contested cases, documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original.

(p) In contested cases, a party may conduct cross-examinations required for a full and true disclosure of the facts.

(q) In connection with any hearing held under the provisions of this Act, official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they must be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the agency and its staff may be utilized in evaluating the evidence.

(r) In contested cases, all parties are entitled to the assistance of their counsel before administrative agencies. This right may be expressly waived.

Discovery, Entry on Property; Use of Reports and Statements

Sec. 14a. (a) Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to such limitations of the kind provided in Rule 186b of the Rules of Civil Procedure as the agency may impose, the agency in which an action is pending may order any party:

(1) to produce and permit the inspection and copying or photographing by or on behalf of the moving party any of the following which are in his possession, custody, or control: any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain, or are reasonably calculated to lead to the discovery of, evidence material to any matter involved in the action; and

(2) to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon which may be material to any matter involved in the action.

(b) The order shall speeify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe such terms and conditions as are just.

(c) The identity and location of any potential party or witness may be obtained from any communication or other paper in the possession, custody, or control of a party, and any party may be required to produce and permit the inspection and copying of the reports, including factual observations and opinions, of an expert who will be called as a witness. Provided, that the rights herein granted shall not extend to other written statements of witnesses or other written communications passing between agents or representatives or the employees of any party to the suit or to other communications between any party and his agents, representatives, or other employees, where made subsequent to the occurrence or transaction upon which the suit is based, and made in connection with the prosecution, investigation, or defense of such claim or the circumstances out of which same has arisen.

(d) Any person, whether or not a party, shall be entitled to obtain, upon request, a copy of any statement he has previously made concerning the action or its subject matter and which is in the possession, custody, or control of any party. If the request is refused, the person may move for an agency order under this section. For the purpose of this paragraph, a statement previously made is (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

Examination of Record by Agency

Sec. 15. If in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs to the officials who are to render the decision. If any party files exceptions or presents briefs, an opportunity must be afforded to all other parties to file replies to the exceptions or briefs. The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision, prepared by the person who conducted the hearing or by one who has read the record. The proposal for decision may be amended pursuant to exceptions, replies, or briefs submitted by the parties without again being served on the parties. The parties by written stipulation may waive compliance with this section.

Decisions and Orders

Sec. 16. (a) A final decision or order adverse to a party in a contested case must be in writing or stated in the record.

(b) A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his attorney of record.

(c) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing, and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If an agency board includes a member who (1) receives no salary for his work as a board member and who (2) resides outside Travis County, the board may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or other suitable means of communication. If an agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(d) The final decision or order must be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by other than a majority of the officials of an agency, the agency may prescribe a longer period of time within which the final order or decision of the agency shall be issued. The extension, if so prescribed, shall be announced at the conclusion of the hearing.

(e) Except as provided in Subsection (c) of this section, a motion for rehearing is a prerequisite to

an appeal. A motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the agency within 25 days after the date of rendition of the final decision or order, and agency action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If agency action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The agency may by written order extend the period of time for filing the motions and replies and taking agency action, except that an extension may not extend the period for agency action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order.

(f) The parties may by agreement with the approval of the agency provide for a modification of the times provided in this section.

Ex Parte Consultations

Sec. 17. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. An agency member may communicate ex parte with other members of the agency, and pursuant to the authority provided in Subsection (q) of Section 14, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with employees of the agency who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the agency and its staff in evaluating the evidence.

Licenses

Sec. 18. (a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is effective unless, prior to the institution of agency proceedings, the agency gave notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given an opportunity to show compliance with all requirements of law for the retention of the license.

Judicial Review of Contested Cases

Sec. 19. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Act. This section is cumulative of other means of redress provided by statute.

(b) Proceedings for review are instituted by filing a petition within 30 days after the decision complained of is final and appealable. Unless otherwise provided by statute:

(1) the petition is filed in a District Court of Travis County, Texas;

(2) a copy of the petition must be served on the agency and all parties of record in the proceedings before the agency; and

(3) the filing of the petition vacates an agency decision for which trial de novo is the manner of review authorized by law, but does not affect the enforcement of an agency decision for which another manner of review is authorized.

(c) If the manner of review authorized by law for the decision complained of is by trial de novo, the reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior agency action or the nature of that action (except to the limited extent necessary to show compliance with statutory provisions which vest jurisdiction in the court). Any party to a trial de novo review may have, on demand, a jury determination of all issues of fact on which such a determination could be had in other civil suits in this state.

(d) If the manner of review authorized by law for the decision complained of is other than by trial de novo:

(1) after service of the petition on the agency, and within the time permitted for filing an answer (or such additional time as may be allowed by the court), the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record;

(2) any party may apply to the court for leave to present additional evidence and the court, if it

is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the agency, may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file such evidence and any modifications, new findings, or decisions with the reviewing court;

(3) the review is conducted by the court sitting without a jury and is confined to the record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency but which are not reflected in the record.

(e) The scope of judicial review of agency decisions is as provided by the law under which review is sought. Where the law authorizes appeal by trial de novo, the courts shall try the case in the manner applicable to other civil suits in this state and as though there had been no intervening agency action or decision. Where the law authorizes review under the substantial evidence rule, or where the law does not define the scope of judicial review, the court may not substitute its judgment for that of the agency as to the weight of the evidence on questions committed to agency discretion but may affirm the decision of the agency in whole or in part and shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the statutory authority of the agency;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Enforcement of Orders, Decisions, and Rules

Sec. 19A. If it appears to an agency that a person is engaging in or is about to engage in a violation of a final order or decision or a rule of the agency or is failing or refusing to comply with a final order or decision or a rule of the agency, the attorney general, on the request of the agency and in addition to any other remedy provided by law, may bring an action in a district court that is authorized by law to exercise judicial review of the final order or decision or the rule to enjoin or restrain the continuation or commencement of the violation or to compel compliance with the final order or decision or the rule.

Appeals

Sec. 20. Appeals from any final judgment of the district court may be taken by any party in the manner provided for in civil actions generally, but no appeal bond may be required of an agency.

Exceptions

Sec. 21. (a) This Act does not apply to suspensions of driver's licenses as authorized in Article IV, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

(b) Sections 12 through 20 of this Act do not apply to the granting, payment, denial, or withdrawal of financial or medical assistance or benefits under service programs of the State Department of Public Welfare.

(c) Sections 12 through 20 of this Act do not apply to the Texas Department of Mental Health and Mental Retardation in the allocation of grants-in-aid by the department to mental health and mental retardation services provided by community centers.

(d) This Act does not apply to matters related solely to the internal personnel rules and practices of an agency.

(e) Sections 12 through 20 of this Act do not apply to action by the Commissioner of Banking or the State Banking Board with respect to the issuance of a state bank charter for a bank to assume the assets and liabilities of a state bank the commissioner deems to be in an unsafe condition as defined in Section 1, Article 1a, Chapter VIII, Texas Banking Code of 1943.[1]

(f) Sections 12 through 20 of this Act do not apply to the Texas Board of Pardons and Paroles in the conducting of hearings or interviews relating to the grant, rescission, or revocation of parole or other form of administrative release.

(g) Sections 12 through 20 do not apply to hearings by the Texas Employment Commission to determine whether or not a claimant is entitled to unemployment compensation nor shall the remainder of this Act have applicability to other than matters of unemployment insurance maintained by the Texas Employment Commission. In regard to the applicability of Sections 1 through 11, regarding unemployment insurance matters, the agency is precluded from complying with Subdivision (3) of Subsection (a) and Subsection (b) of Section 4 as related to orders and decisions.

[1] Article 342-801a, § 1.

Repeal of Conflicting Laws

Sec. 22. Chapter 274, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 6252–13, Vernon's Texas Civil Statutes), and all other laws and parts of laws in conflict with this Act are repealed. This Act does not repeal any existing statutory provisions conferring investigatory authority on any agency, including any provision which grants an agency the power, in connection with

investigatory authority, to take depositions, administer oaths or affirmations, examine witnesses, receive evidence, conduct hearings, or issue subpoenas or summons.

Effective Date

Sec. 23. This Act takes effect on January 1, 1976.

[Acts 1975, 64th Leg., p. 136, ch. 61, eff. Jan. 1, 1976. Amended by Acts 1977, 65th Leg., p. 103, ch. 48, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 136, ch. 65, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 855, ch. 321, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1959, ch. 780, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2193, ch. 866, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 399, ch. 186, § 6, eff. May 15, 1979; Acts 1979, 66th Leg., p. 1105, ch. 521, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 168, ch. 76, §§ 1, 2, eff. April 30, 1981; Acts 1981, 67th Leg., p. 3094, ch. 816, §§ 1, 2, eff. Sept. 1, 1981.]

Sections 3 and 4 of Acts 1981, 67th Leg., p. 3095, ch. 816, provide:

"Sec. 3. The attorney general has authority under Section 19A, Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), as added by this Act, to bring an action to enjoin or restrain a person's conduct only if an element of the conduct occurs on or after the effective date of this Act. The attorney general has authority under that section to bring an action to compel a person to perform certain conduct only if an element of the person's failure or refusal to perform the conduct occurs on or after the effective date of this Act.

"Sec. 4. Sections 5(a) and (b), Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), as amended by this Act, apply to proposed rules submitted for publication in the Texas Register on or after the effective date of this Act."

Art. 6252–13b. Administrative Code Act

Short Title

Sec. 1. This Act shall be known and may be cited as the Texas Administrative Code Act.

Definitions

Sec. 2. As used in this Act:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education, that makes rules or determines contested cases.

(2) "Code" means the Texas Administrative Code established by this Act.

(3) "Rule" means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures.

Compilation; Exclusions

Sec. 3. (a) The secretary of state shall compile, index, and cause to be published a Texas Administrative Code. Periodic supplementation of the code shall be made as often as necessary, but not less than once each year. The code shall contain all rules adopted by each agency pursuant to the Administrative Procedure and Texas Register Act,[1] but shall not contain emergency rules adopted pursuant to Section 10(a)(2) of that Act. The code shall also contain appropriate annotations to judicial decisions and opinions of the Attorney General of the State of Texas.

(b) The secretary of state may omit from the code all rules which are general in form but of such local or limited application as to make their inclusion therein impracticable, undesirable, or unnecessary. The secretary of state may also omit from the code any information the publication of which he deems cumbersome, expensive, or otherwise inexpedient, if the information is made available in printed or processed form by the adopting agency on application for it, and if the code contains a notice stating the general subject matter of the information and the manner in which a copy of it may be obtained. Any such exclusions from publication in the code shall not affect the validity or effectiveness of any rules omitted.

[1] Article 6252–13a.

Evidentiary Value

Sec. 4. The codified rules of the agencies published in the Texas Administrative Code, as approved by the secretary of state and as amended by documents subsequently filed with the office of the secretary of state, are to be judicially noticed and constitute prima facie evidence of the text of the documents and of the fact that they are in effect on and after the date of the notation.

Rules

Sec. 5. The secretary of state may promulgate rules to ensure the effective administration of this Act. The rules may include, but are not limited to, rules establishing titles of the code and a system of classification of the subject matter of the code.

Confidentiality of Data Base

Sec. 5A. The data base, which is the machine-readable form of the material prepared for and used in the publication of the Texas Administrative Code, including indexes, annotations, tables of contents, tables of authority, cross-references, compiled rules, and other unique material, is confidential and is exempted from disclosure under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes).

[Acts 1977, 65th Leg., p. 1703, ch. 678, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p.169, ch. 76, § 3, eff. April 30, 1981.]

Art. 6252–13c. Eligibility of Persons with Criminal Backgrounds for Certain Occupations, Professions, and Licenses

Sec. 1. The definitions contained in the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) shall apply to this Act.

Sec. 2. This Act shall not apply to the Supreme Court of Texas or to persons licensed or seeking to be licensed under its authority on behalf of the judicial department of government or to any person who seeks to become or is a peace officer as defined in Article 2.12, Code of Criminal Procedure, 1965.

Sec. 3. All agencies of this state and its political subdivisions with the duty and responsibility of licensing and regulating members of particular trades, occupations, businesses, vocations, or professions shall have the authority to obtain from the Texas Department of Public Safety or from a local law enforcement agency the record of any conviction of any person applying for or holding a license from the requesting agency.

Sec. 4. (a) A licensing authority may suspend or revoke an existing valid license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

(b) In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(c) In addition to the factors that may be considered under Subsection (b) of this section, the licensing authority, in determining the present fitness of a person who has been convicted of a crime, shall consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;

(6) other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person; and

(7) it shall be the responsibility of the applicant to the extent possible to secure and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act; the applicant shall also furnish proof in such form as may be required by the licensing authority that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(d) Proceedings held before a state licensing authority to establish factors contained in this section are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(e) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license shall be revoked.

[Added by Acts 1981, 67th Leg., p. 694, ch. 267, § 1, eff. Sept. 1, 1981.]

Art. 6252–13d. Suspension, Revocation, or Denial of License to Persons with Criminal Backgrounds; Guidelines and Application of Law

Sec. 1. [Adds art. 6252–13c]

Sec. 2. If a licensing authority suspends or revokes a valid license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of a crime and the relationship of the crime to the license, the licensing authority shall notify the person in writing:

(1) of the reasons for the suspension, revocation, denial, or disqualification;

(2) of the review procedure provided by Section 3 of this Act; and

(3) of the earliest date that the person may appeal.

Sec. 3. (a) A person whose license has been suspended or revoked or who has been denied a license or the opportunity to be examined for a license by a licensing authority, who has exhausted administrative appeals, may file an action in a district court of the county in which the licensing authority is located for review of the evidence presented to the licensing authority and its decision.

(b) The person must begin the judicial review by filing a petition with the court within 30 days after the licensing authority's decision is final and appealable.

Sec. 4. (a) Each licensing authority, shall issue within six months after the effective date of this Act guidelines relating to the actual practice of the authority in carrying out Section 1 of this Act. Amendments to the guidelines, if any, shall be issued annually. These guidelines shall state the reasons particular crimes are considered to relate to particular licenses and any other criteria that affect the decisions of the authority.

(b) The guidelines required by Subsection (a) of this section and issued by state licensing authorities shall be filed with the office of the secretary of state for publication in the Texas Register. Local and county licensing authorities shall post their guidelines at the county courthouse or publish them in a newspaper of countywide circulation.

Sec. 5. This Act shall not supply to those persons licensed by the Texas State Board of Medical Examiners, State Board of Pharmacy, State Board of Dental Examiners, or The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes), and who have been convicted of a felony under the Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes) or the Texas Dangerous Drug Act (Article 4476–14, Vernon's Texas Civil Statutes).

[Acts 1981, 67th Leg., p. 695, ch. 267, §§ 2 to 5, eff. Sept. 1, 1981.]

Art. 6252–16. Discrimination Against Persons Because of Race, Religion, Color, Sex or National Origin

[See Compact Edition, Volume 5 for text of 1 and 2]

Officers or Employees of Political Subdivisions; Discriminatory Employment Practices; Hearing Procedure

Sec. 2a. (a) A political subdivision of this state may establish a formal procedure by ordinance or other action of the governing body for processing a charge of a discriminatory act or practice prohibited by Section 1(a)(1) or (2) of this Act, against an officer or employee of the political subdivision. The political subdivision which adopts this formal procedure shall have authority to promulgate rules and regulations to effectuate the purpose of this Act.

(b) The procedure must include the following:

(1) Provision for an impartial hearing within a reasonable time after the receipt of a written charge;

(2) Appointment of an impartial hearing officer or board to investigate and determine the validity of the charge;

(3) Delegation of authority to the impartial hearing officer or board to take appropriate corrective action if a violation has occurred, including, but not limited to, reinstatement, hiring, or promotion of the aggrieved individual, with or without back pay, or any other equitable relief necessary to correct and rectify the violation; and

(4) Designation of an officer as the deferral officer to receive notice of alleged unlawful employment practices from the Equal Employment Opportunity Commission as provided for in Public Law 88–352, Title VII, Section 706(c); 78 Stat. 241 (42 U.S.C. 2000e–5).

(c) If a political subdivision establishes a formal procedure in compliance with this section, the deferral officer designated in the procedure shall become the appropriate local official for purposes of receiving the notice as set out in Section 4 of this Act.

[See Compact Edition, Volume 5 for text of 3 and 4]

[Amended by Acts 1975, 64th Leg., p. 366, ch. 157, § 1, eff. Sept. 1, 1975.]

Art. 6252–17. Prohibition on Governmental Bodies From Holding Meetings Which are Closed to the Public

[See Compact Edition, Volume 5 for text of 1 and 2]

Mandamus or Injunction to Prevent Closed Meetings

Sec. 3. Any interested person, including bona fide members of the news media, may commence an action either by mandamus or injunction for the purpose of stopping or preventing violations or threatened violations of this Act by members of a governing body.

Notice of Meetings

Sec. 3A. (a) Written notice of the date, hour, place, and subject of each meeting held by a governmental body shall be given before the meeting as prescribed by this section, and any action taken by a governmental body at a meeting on a subject which was not stated on the agenda in the notice posted for such meeting is voidable. The requirement for notice prescribed by this section does not apply to matters about which specific factual information or a recitation of existing policy is furnished in response to an inquiry made at such meeting, whether such inquiry is made by a member of the general public or by a member of the governmental body. Any deliberation, discussion, or decision with respect to the subject about which inquiry was made shall be limited to a proposal to place such subject on the agenda for a subsequent meeting of such governmental body for which notice has been provided in compliance with this Act.

[See Compact Edition, Volume 5 for text of 3A(b) to 3A(d)]

(e) A school district shall have a notice posted on a bulletin board located at a place convenient to the public in its central administrative office and shall give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the school district in providing special notice.

[See Compact Edition, Volume 5 for text of 3A(f) and 3A(g)]

(h) Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours preceding the scheduled time of the meeting, except that notice of a meeting of a state board, commission, department, or officer having statewide jurisdiction, other than the Industrial Accident Board or the governing board of an institution of higher education, must be posted by the Secretary of State for at least seven days preceding the day of the meeting. In case of emergency or urgent public necessity, which shall be expressed in the notice, it shall be sufficient if the notice is posted two hours before the meeting is convened. Provided further, that where a meeting has been called with notice thereof posted in accordance with this subsection, additional subjects may be added to the agenda for such meeting by posting a supplemental notice, in which the emergency or urgent public necessity requiring consideration of such additional subjects is expressed. In the event of an emergency meeting, or in the event any subject is added to the agenda in a supplemental notice posted for a meeting other than an emergency meeting, it shall be sufficient if the notice or supplemental notice is posted two hours before the meeting is convened, and the presiding officer or the member calling such emergency meeting or posting supplemental notice to the agenda for any other meeting shall, if request therefor containing all pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

[See Compact Edition, Volume 5 for text of 4 and 5]

[Amended by Acts 1975, 64th Leg., p. 968, ch. 367, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1674, ch. 659, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1015, ch. 449, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2231, ch. 529, § 1, eff. Sept. 1, 1981.]

Section 2 of the 1981 amendatory act provides:

"This Act applies to a meeting held on or after September 4, 1981. Notice of a meeting held on September 1, 2, or 3, 1981, is covered by the law amended by this Act as that law existed on August 31, 1981."

Art. 6252–17a. Access by Public to Information in Custody of Government Agencies and Bodies

[See Compact Edition, Volume 5 for text of 1 and 2]

Public Information

Sec. 3.

Text of subsec. (a) effective until January 1, 1986

(a) All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act;

(3) information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection;

(4) information which, if released, would give advantage to competitors or bidders;

(5) information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor;

(6) drafts and working papers involved in the preparation of proposed legislation;

(7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas[1] are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

(8) records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(9) private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy;

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency;

(12) information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act;[2]

(13) geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency;

(14) student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, or that student's parent, legal guardian, or spouse;

(15) birth and death records maintained by the Bureau of Vital Statistics in the State of Texas;[3]

(16) the audit working papers of the State Auditor;

(17) the home addresses and home telephone numbers of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code; and

(18) information contained on or derived from triplicate prescription forms filed with the Department of Public Safety pursuant to Section 3.09 of the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes).

Text of subsec. (a) effective January 1, 1986

(a) All information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public during normal business hours of any governmental body, with the following exceptions only:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision;

(2) information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act;

(3) information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection;

(4) information which, if released, would give advantage to competitors or bidders;

(5) information pertaining to the location of real or personal property for public purposes prior to public announcement of the project, and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts therefor;

(6) drafts and working papers involved in the preparation of proposed legislation;

(7) matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas [1] are prohibited from disclosure, or which by order of a court are prohibited from disclosure;

(8) records of law enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(9) private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy;

(10) trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision;

(11) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than one in litigation with the agency;

(12) information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act; [2]

(13) geological and geophysical information and data including maps concerning wells, except information filed in connection with an application or proceeding before any agency;

(14) student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, or that student's parent, legal guardian, or spouse;

(15) birth and death records maintained by the Bureau of Vital Statistics in the State of Texas; [3]

(16) the audit working papers of the State Auditor; and

(17) the home addresses and home telephone numbers of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code.

[1] See Title 14, Appendix, foll. art. 320a–1.
[2] See art. 581–4, subsec. A.
[3] See art. 4477, rule 34a et seq.

[See Compact Edition, Volume 5 for text of 3(b) to 9]

Distribution of Confidential Information Prohibited

Sec. 10. (a) Information deemed confidential under the terms of this Act shall not be distributed.

(b) A custodian of public records, or his agent, commits an offense if, with criminal negligence, he or his agent fails or refuses to give access to, or to permit or provide copying of, public records to any person upon request as provided in this Act.

(c) It is an affirmative defense to prosecution under Subsection (b) of this section that the custodian of public records reasonably believed that the public records sought were not required to be made available to the public and that he:

(1) acted in reasonable reliance upon a court order or a written interpretation of this Act contained in an opinion of a court of record or of the attorney general issued under Section 7 of this Act;

(2) requested a decision from the attorney general in accordance with Section 7 of this Act, and that such decision is pending; or

(3) within three working days of the receipt of a decision by the attorney general that the information is public, filed a cause of action seeking relief from compliance with such decision of the attorney general, and that such cause is pending.

(d) It is an affirmative defense to prosecution under Subsection (b) of this section that the defendant is the agent of a custodian of public records and that the agent reasonably relied on the written instruction of the custodian of public records not to disclose the public records requested.

(e) Any person who violates Section 10(a) or 10(b) of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail not to exceed six (6) months or fined in an amount not to exceed $1,000, or by both such fine and confinement. A violation under this section constitutes official misconduct.

[See Compact Edition, Volume 5 for text of 11 to 13]

Interpretation of this Act

Sec. 14.

[See Compact Edition, Volume 5 for text of 14(a) to (d)]

(e) Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93–380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

[See Compact Edition, Volume 5 for text of 15]

[Amended by Acts 1975, 64th Leg., p. 809, ch. 314, § 1, eff. May 27, 1975; Acts 1979, 66th Leg., p. 807, ch. 366, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 906, ch. 414, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2317, ch. 570, § 6, eff. Jan. 1, 1982.]

Section 2 of the 1975 amendatory act, the emergency clause, provided, in part:

"The regulations promulgated by the Secretary of Health, Education and Welfare pursuant to the authority of the Family Educational Rights and Privacy Act of 1974 require, as a condition for federal funding, that educational institutions certify compliance with the provisions of such Act. Without the amendment contained in this bill the educational institutions of the State of Texas cannot make the required certification and will be unable to qualify for federal funds * * *."

Section 9 of the 1981 amendatory act provides:

"Unless reenacted on or before December 31, 1985, the amendments to the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), and to Subsection (a) of Section 3, Chapter 424, Acts of the 63rd Legislature, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes), made by this Act shall become null, void, and of no further force or effect as of 12:01 a.m. on January 1, 1986."

Art. 6252–18a. Interpreters for Deaf Persons in Proceeding Before Political Subdivisions

(a) In any proceeding before a governing body of a political subdivision in which the legal rights, duties, or privileges of a party are to be determined by the governing body following an adjudicative hearing, the governing body shall supply a party who is deaf with an interpreter having qualifications approved by the State Commission for the Deaf.

(b) In this section:

(1) "Deaf person" means a person who has a hearing impairment, regardless of whether the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(2) "Political subdivision" means a county, city, town, village, school district, special purpose district, or other subdivision of state government that has jurisdiction that is limited to a geographical portion of the state.

[Acts 1979, 66th Leg., p. 399, ch. 186, § 8, eff. May 15, 1979.]

Art. 6252–19a. Insurance; Operation of Motor Vehicles, Aircraft, Motorboats or Watercraft; Foster Grandparent Program; State Departments and Agencies; Allowance to Employees

Sec. 1. The State Departments or Agencies who own and operate motor vehicles, aircraft and motorboats or watercraft of all types and sizes shall have the authority to insure their officers and employees from liability arising out of the use, operation and maintenance of such automobiles, trucks, tractors, power equipment, aircraft and motorboats or watercraft used or which may be used in the operation of such Department or Agency. Such insurance shall be provided by the purchase of a policy or policies for that purpose from some liability insurance company or companies authorized to transact business in the State of Texas. All liability insurance so purchased shall be provided on a policy form or forms approved by the State Board of Insurance as to form and by the Attorney General as to liability. The

State Departments and Agencies who receive federal grant funds for a foster grandparent program shall also have the authority to expend those funds to insure the person and property of those foster grandparents as required by the grant.

[See Compact Edition, Volume 5 for text of 2 to 5]

[Amended by Acts 1981, 67th Leg., p. 750, ch. 282, § 1, eff. Aug. 31, 1981.]

Art. 6252–19b. Liability of Political Subdivisions for Certain Acts or Omissions of Officers and Employees

Definition

Sec. 1. In this Act "employee" includes an elected official and any other officer or employee, a former officer or employee or their estates, of a county, city, town, special purpose district, or any other political subdivision of this state.

Persons and Conduct Covered: Limits on Liability

Sec. 2. (a) A county, city, town, special purpose district, or any other political subdivision of the state may pay actual damages, court costs, and attorney's fees adjudged against its employee, if damages are based on an act or omission by the employee in the course and scope of his or her employment for such political subdivision and if the damages arise out of a cause of action for negligence, except a wilful or wrongful act or omission or an act or omission constituting gross negligence or for official misconduct.

(b) This Act shall not be construed to waive, repeal, or modify any defense, immunity, or jurisdictional bar available to the political subdivision or its employees, nor shall this Act be construed to waive, repeal, or modify any provision of the Texas Tort Claims Act, as amended (Article 6252–19, Vernon's Texas Civil Statutes). The county or political subdivision is not liable under this Act to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute. Liability of the political subdivision under this Act is limited to $100,000 to a single person and $300,000 for a single occurrence, in the case of personal injury or death, and to $10,000 for a single occurrence of injury of or damage to property.

Defense of Actions

Sec. 3. (a) The political subdivision may provide counsel to represent a defendant in a cause of action covered by this Act. The counsel provided may be the county attorney when the defendant is a county employee or if he is an employee of any other political subdivision an attorney regularly employed by such political subdivision unless there is a potential conflict of interest between the defendant and the county or other political subdivision, in which case the county or other political subdivision may hire private counsel to defend the suit.

(b) Counsel for the county or political subdivision may settle or compromise the portion of a lawsuit that may result in liability of the county or political subdivision under this Act.

(c) In a case defended under this Act, neither the defendant nor the political subdivision may be required to advance security for cost or give bond on appeal or on review by writ of error.

Sec. 4. [Amends § 1 of art. 2372h–7]

Construction Not to Modify Insurance Policies; Rules and Rates

Sec. 5. Section 2 of this Act shall not be construed to modify or change any policy of insurance providing coverage to an officer or employee of a political subdivision. The State Board of Insurance shall promulgate rules and set rates to implement Section 4 of this Act.

[Acts 1979, 66th Leg., p. 1830, ch. 744, §§ 1 to 3, 5, eff. June 13, 1979.]

Art. 6252–20a. Repealed by Acts 1979, 66th Leg., p. 456, ch. 211, § 2, eff. Sept. 1, 1979

The repealed article, relating to longevity pay for certain commissioned law-enforcement personnel, was derived from Acts 1975, 64th Leg., p. 1274, ch. 477.

See, now, art. 6813d.

Art. 6252–20b. Hazardous Duty Pay for Certain Commissioned Law Enforcement Personnel

All commissioned law enforcement personnel of the Department of Public Safety, all commissioned law enforcement personnel of the State Purchasing and General Services Commission, all commissioned security officers of the State Treasury, all commissioned law enforcement personnel of the Texas Alcoholic Beverage Commission, all law enforcement officers commissioned by the Texas Parks and Wildlife Commission, all commissioned peace officers of state institutions of higher education, and all law enforcement personnel commissioned by the Texas Department of Corrections are entitled to hazardous duty pay of $6 a month in fiscal year 1982 and $7 a month commencing in fiscal year 1983 and thereafter for each year of service in the respective agency, up to and including 30 years in service. This hazardous duty pay shall be in lieu of existing hazardous duty or longevity pay.

[Acts 1979, 66th Leg., p. 456, ch. 211, § 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2213, ch. 516, § 1, eff. Sept. 1, 1981.]

Art. 6252–26. State's Liability for and Defense of Claims Based on Certain Conduct of State Officers and Employees

Persons and Conduct Covered; Limits on Liability

Sec. 1. (a) The State of Texas is liable for and shall pay actual damages, court costs, and attorney fees adjudged against officers or employees of any agency, institution, or department of the state; against a former officer or employee of an agency, institution, or department of the state who was an

officer or employee when the act or omission on which the damages are based occurred; against a physician licensed in this state who is or was performing services under a contract with the Disability Determination Division of the Texas Rehabilitation Commission or the Texas Department of Mental Health and Mental Retardation when the act or omission on which the damages are based occurred; or against the estate of such a person where the damages are based on an act or omission by the person in the course and scope of his office, contractual performance, or employment for the institution, department, or agency and:

(1) the damages arise out of a cause of action for negligence, except a willful or wrongful act or an act of gross negligence; or

(2) the damages arise out of a cause of action for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States, except when the court in its judgment or the jury in its verdict finds that the officer, contractor, or employee acted in bad faith.

(b) This Act shall not be construed as a waiver of any defense, immunity, or jurisdictional bar available to the state or its officers, contractors, or employees. The state is not liable under this Act to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute. State liability under this Act is limited to $100,000 to a single person and $300,000 for a single occurrence, in the case of personal injury or death or the deprivation of a right, privilege, or immunity, and to $10,000 for a single occurrence of injury of or damage to property.

Application of Act

Sec. 2. This Act applies to judgments in all cases filed on or after the effective date of this Act and to all judgments in cases pending or on appeal on the effective date of the Act.

Defense of Actions; Conflict of Interest; Security for Cost or Bond

Sec. 3. (a) The attorney general shall defend a present or former officer, contractor, or employee or his estate in a cause of action covered by this Act. The state is not liable for the defense of an action or for the damages, court costs, or attorney fees unless either the attorney general has been served in the case and the state has been given an opportunity to defend the suit, or the officer, contractor, or employee, former officer, contractor, or employee, or estate against whom the action is brought has delivered to the attorney general all process served on him or it not later than 10 days after the service. The attorney general may settle or compromise the portion of a lawsuit that may result in liability of the state under this Act. It is not a conflict of interest for the attorney general to defend a person or estate under this Act and also to prosecute a legal action against that person or estate as may be required or authorized by law if different assistant attorneys general are assigned the responsibility for each action.

(b) In a case defended by the attorney general under this Act, neither the officer, contractor, employee, former officer, contractor, or employee, estate, or attorney general may be required to advance security for cost or give bond on appeal or on review by writ of error.

Funds for Defense or Prosecution

Sec. 4. No funds other than those appropriated by the legislature from the General Revenue Fund to the attorney general may be used to conduct the defense or prosecution of any action that the attorney general is required to defend or prosecute under the provisions of this Act. The term "conduct of the defense of any action" as used in this section includes, but is not limited to, any steps in the investigation, preparation for trial, and participation in actual trial, including depositions or other discovery, and the preparation of any exhibits or other evidence.

Officer Defined

Sec. 5. A member of the commission, board, or other governing body of an agency, institution, or department is an officer of the agency, institution, or department for purposes of this Act.

[Acts 1975, 64th Leg., p. 799, ch. 309, eff. May 27, 1975. Amended by Acts 1977, 65th Leg., p. 730, ch. 273, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2274, ch. 553, § 1, eff. Sept. 1, 1981.]

Section 2 of the 1981 amendatory act provides:

"The law as amended by this Act applies to a judgment awarding damages for a cause of action that arises from an act or omission that occurs on or after the effective date of this Act."

Art. 6252-26a. Medical Malpractice Coverage for University of Texas and Texas A&M University Systems, Texas Tech University School of Medicine, and Texas College of Osteopathic Medicine

Purpose

Sec. 1. It is the purpose of this Act to promote the health and general welfare of the people of the State of Texas by authorizing the board of regents of The University of Texas System, the board of regents of The Texas A&M University System, the board of regents of Texas Tech University School of Medicine, and the board of regents of North Texas State University to provide, as additional compensation and to ensure a proper learning environment, medical malpractice coverage for its medical staff and students as defined in this Act by purchasing insurance or establishing as self-insurance a Medical Professional Liability Fund from which medical malpractice claims and the costs of defending and administering those claims may be satisfied, and such purposes are hereby declared to be in the public interest.

Definitions

Sec. 2. In this Act:

(1) "Medical staff or students" means medical doctors, doctors of osteopathy, dentists, and podiatrists appointed to the faculty by The University of Texas System, the Texas A&M University System, the Texas Tech University Medical School, or the Texas College of Osteopathic Medicine, either full time or who, although appointed less than full time (including volunteers), either devote their total professional service to such appointment or provide services to patients by assignment from the department chairman; and interns, residents, fellows and medical or dental students, and students of osteopathy participating in a patient-care program in The University of Texas System, The Texas A&M University System, the Texas Tech University School of Medicine, or the Texas College of Osteopathic Medicine.

(2) "Medical malpractice claim" means a cause of action for treatment, lack of treatment, or other claimed departure from accepted standards of care which proximately results in injury to or death of the patient, whether the patient's claim or cause of action or the executor's claim or cause of action under Article 5525, Revised Civil Statutes of Texas, 1925, as amended, sounds in tort or contract.

(3) "Board" means the board of regents of The University of Texas System, the board of regents of The Texas A&M University System, the board of regents of Texas Tech University, or the board of regents of North Texas State University.

(4) "Fund" means the Medical Professional Liability Fund as established in Section 3 of this Act.

Medical Professional Liability Fund

Sec. 3. (a) Each board is authorized to establish a separate self-insurance fund to pay any damages, adjudged in a court of competent jurisdiction, or a settlement of any medical malpractice claim against a member of the medical staff or students arising from the exercise of his appointment, duties, or training with The University of Texas System, The Texas A&M University System, the Texas Tech University School of Medicine, or the Texas College of Osteopathic Medicine.

(b) The boards are authorized to pay from the funds all expenses incurred in the investigation, settlement, defense, or payment of claims described above on behalf of the medical staff or students.

(c) On the establishment of each fund, transfers to the fund shall be made in an amount and at such intervals as determined by the board. Each board is authorized to receive and accept any gifts or donations specified for the purposes of this Act and to deposit such gifts or donations into the fund. Each board may invest money deposited in the fund, and any income received shall be retained in the fund. Such money shall be deposited in any of the approved depository banks of The University of Texas System, The Texas A&M University System, the Texas Tech University School of Medicine, or the Texas College of Osteopathic Medicine. All expenditures from the funds shall be paid pursuant to approval by the boards.

Rules

Sec. 4. Each board is authorized to adopt such rules for the establishment and administration of the fund and the negotiation, settlement, and payment of claims as may be necessary in the furtherance of this Act. Each board is authorized to establish by rule reasonable limits on the amount of claims to be paid from the fund or to be provided in purchased insurance.

Purchase of Insurance

Sec. 5. Each board is authorized to purchase medical malpractice insurance from an insurance company authorized to do business in the State of Texas as it deems necessary to carry out the purpose of this Act.

Legal Counsel

Sec. 6. Each board is authorized to employ private legal counsel to represent the medical staff and students covered by this Act pursuant to the rules of the board.

Limitation on Appropriated Funds

Sec. 7. No funds appropriated by the legislature to either system, to the Texas Tech University School of Medicine or to the Texas College of Osteopathic Medicine from the General Revenue Fund may be used to establish or maintain the fund, to purchase insurance, or to employ private legal counsel.

Exemption from Insurance Code; Report

Sec. 8. The establishment and administration of each fund under the authority of this Act and the rules of the boards shall not constitute the business of insurance as defined and regulated in the Insurance Code, as amended; provided, however, the boards of regents shall annually report to the State Board of Insurance information appropriate for carrying out the functions of the State Board of Insurance.

[Acts 1977, 65th Leg., p. 23, ch. 9, eff. March 10, 1977. Amended by Acts 1979, 66th Leg., p. 115, ch. 73, §§ 1 to 3, eff. Apr. 26, 1979; Acts 1979, 66th Leg., p. 545, ch. 259, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 889, ch. 315, §§ 1, 2, eff. Aug. 31, 1981.]

TITLE 110B

PUBLIC RETIREMENT SYSTEMS

TITLE 110B. PUBLIC RETIREMENT SYSTEMS

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SUBTITLE A. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Section

1.001. Purpose of Title.
1.002. Construction of Title.

Enactment

Title 110B of the Revised Civil Statutes, Public Retirement Systems, was enacted by § 1 of Acts 1981, 67th Leg., p. 1876, ch. 453, effective September 1, 1981. Section 2 thereof amended Vernon's Ann.Civ.St. art. 6252—8b; § 3 repealed enumerated statutes relating to pensions and retirement; and §§ 4 and 5 provided:

"Sec. 4. This Act is intended as a recodification only, and no substantive change in the law is intended by this Act.

"Sec. 5. This Act does not affect:

"(1) any right or option authorized by law previously enacted and relating to the establishment, retention, or termination of membership or credit for service in a public retirement system;

"(2) any benefit accrued or recomputation of benefits authorized or made by law previously enacted; or

"(3) any future payments of benefits accrued or payments recomputed as provided by Subdivision (2) of this section."

Acts 1981, 67th Leg., 1st C.S., p. 195, ch. 18, revised provision of Title 110B to conform to laws enacted by the 67th Legislature, Regular Session, and to make formal corrections, generally effective November 10, 1981.

Tables

Disposition and Derivation Tables are provided following Title 110B, providing a means of tracing repealed subject matter into the Title and, on the other hand, of searching out the source of the new Title sections.

§ 1.001. Purpose of Title

(a) This title is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, 1963 (Article 5429b—1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change. It is contemplated that this title will be included in the future in a government code.

(b) Consistent with the objectives of the statutory revision program, the purpose of this title is to make the general and permanent public retirement system law more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 1.002. Construction of Title

The Code Construction Act (Article 5429b—2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this title, except as otherwise expressly provided by this title.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

SUBTITLE B. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RETIREMENT SYSTEMS

CHAPTER 11. STATE PENSION REVIEW BOARD

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SUBCHAPTER A. GENERAL PROVISIONS

§ 11.001. Definitions

In this chapter:

(1) "Board" means the State Pension Review Board.

(2) "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, and includes the optional retirement program governed by Chapter 36 of this title, but does not include a program, other than the optional retirement program, for which benefits are administered by a life insurance company, a program providing only workers' compensation benefits, or a program administered by the federal government.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 11.002 to 11.100 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 11.101. Pension Review Board

The State Pension Review Board is an agency of the state.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.102. Composition of Board

The board is composed of nine members.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.103. Members Appointed by Governor

(a) The governor shall appoint, with the advice and consent of the senate, seven members to the board.

(b) The governor shall appoint to the board:

(1) three persons who have experience in the fields of securities investment, pension administration, or pension law but who are not members or retirees of a public retirement system;

(2) one person who has experience in the field of actuarial science;

(3) one person who has experience in the field of governmental finance;

(4) one person who is a contributing member of a public retirement system; and

(5) one person who is receiving retirement benefits from a public retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.104. Members Appointed by Others

(a) The lieutenant governor shall appoint to the board one member of the senate.

(b) The speaker of the house of representatives shall appoint to the board one member of the house.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.105. When Qualifications Are Required

The qualifications provided by this subchapter for members of the board are required only at the time of appointment to the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.106. Terms of Office

Members of the board hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.107. Application of Sunset Act

The board is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless the board is continued in existence as provided by that Act, the board is abolished and this chapter expires effective September 1, 1991.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.108. Compensation; Expenses

A member of the board serves without compensation but is entitled to reimbursement by the state for actual and necessary expenses incurred in performing the functions of the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.109. Meetings

The board shall meet at least three times each year and may meet at other times at the call of the presiding officer or as provided by board rule.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.110. Presiding Officers

The board shall select its presiding officers.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.111. Executive Director; Employees

(a) The board shall employ an executive director to be the executive head of the board and perform its administrative duties.

(b) The executive director may employ staff members necessary for administering the functions of the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.112. Finances and Equipment

(a) The executive director may set staff salaries, within the limits of appropriated funds and subject to the approval of the board.

(b) The board may request and use staff assistance, equipment, and office space from the Employees Retirement System of Texas.

(c) The legislature may appropriate funds from the general revenue fund to the board for the payment of staff salaries and operating expenses of the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 11.113 to 11.200 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

§ 11.201. Rulemaking

The board shall adopt rules for the conduct of its business.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.202. General Duties

The board shall:

(1) conduct a continuing review of public retirement systems, compiling and comparing information about benefits, creditable service, financing, and administration of systems;

(2) conduct intensive studies of potential or existing problems that threaten the actuarial soundness of or inhibit an equitable distribution of benefits in one or more public retirement systems;

(3) provide information and technical assistance on pension planning to public retirement systems on request; and

(4) recommend policies, practices, and legislation to public retirement systems and appropriate governmental entities.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.203. Report to Legislature and Governor

The board shall present to the legislature and the governor, in November of each even-numbered year, a public report explaining the work and findings of the board during the preceding two-year period and including drafts or recommendations of any legisla-

tion relating to public retirement systems that the board finds advisable.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.204. Inspection of Records

In performing its functions, the board may inspect the books, records, or accounts of a public retirement system during business hours of the system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 11.205. Subpoena

(a) The board, if reasonably necessary in the course of performing a board function, may subpoena witnesses or books, records, or other documents. The presiding officer of the board shall issue, in the name of the board, only such subpoenas as a majority of the board may direct.

(b) A peace officer shall serve a subpoena issued by the board. If the person to whom a subpoena is directed fails to comply, the board may bring suit to enforce the subpoena in a district court of the county in which the witness resides or in the county in which the books, records, or other documents are located. If the district court determines that good cause exists for issuance of the subpoena, the court shall order compliance. The district court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to obey the order of the district court is punishable as contempt.

(c) The attorney general shall represent the board in a suit to enforce a subpoena.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 12. ADMINISTRATIVE REQUIREMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Section
12.001. Definitions.
12.002. Exemptions.
12.003. Writ of Mandamus.

SUBCHAPTER B. STUDIES AND REPORTS

12.101. Actuarial Valuation.
12.102. Audit.
12.103. Annual Report.
12.104. Report to State Pension Review Board.
12.105. Registration.
12.106. Information to Member or Annuitant.

SUBCHAPTER C. ADMINISTRATION OF ASSETS

12.201. Assets in Trust.
12.202. Investment of Surplus.
12.203. Fiduciary Responsibility.
12.204. Investment Manager.
12.205. Investment Custody Account.
12.206. Evaluation of Investment Services.
12.207. Custody and Use of Funds.

SUBCHAPTER D. ACTUARIAL ANALYSIS OF LEGISLATION

Section
12.301. When Actuarial Analysis Required.
12.302. Action by State Pension Review Board.
12.303. Contents of Actuarial Analysis.
12.304. Cost of Actuarial Analysis.

SUBCHAPTER A. GENERAL PROVISIONS

§ 12.001. Definitions

In this chapter:

(1) "Governing body of a public retirement system" means the board of trustees, pension board, or other public retirement system governing body that has the fiduciary responsibility for assets of the system and has the duties of overseeing the investment and expenditure of funds of the system and the administration of benefits of the system.

(2) "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, other than a program providing only workers' compensation benefits, a program administered by the federal government, or:

(A) in Sections 12.104 and 12.105 of this chapter, a program for which benefits are administered by a life insurance company; and

(B) in the rest of this chapter, a program for which the only funding agency is a life insurance company.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 195, ch. 18, § 1, eff. Nov. 10, 1981.]

§ 12.002. Exemptions

(a) Except as provided by Subsection (b) of this section, the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, and the Texas Municipal Retirement System are exempt from Sections 12.101, 12.102, 12.103(a), 12.103(b), 12.202, 12.203, 12.204, 12.205, 12.206, and 12.207 of this chapter. The Judicial Retirement System of Texas is exempt from all of Subchapters B and C of this chapter except Section 12.105. The optional retirement program governed by Chapter 36 of this title is exempt from all of Subchapters B and C of this chapter except Section 12.106.

(b) If an exempt retirement system or program is required by law to make an actuarial valuation of the assets of the system or program and publish actuarial information about the system or program, the actuary making the valuation and the governing body publishing the information must include the information required by Section 12.101(b) of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, § 2, eff. Nov. 10, 1981.]

§ 12.003. Writ of Mandamus

(a) Except as provided by Subsection (b) of this section, if the governing body of a public retirement system fails or refuses to comply with a requirement of this chapter that applies to it, a person residing in the political subdivision in which the members of the governing body are officers may file a motion, petition, or other appropriate pleading in a district court having jurisdiction in a county in which the political subdivision is located in whole or in part, for a writ of mandamus to compel the governing body to comply with the applicable requirement.

(b) If the governing body of the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, or the Texas County and District Retirement System fails or refuses to comply with a requirement of this chapter that applies to it, any resident of the state may file a pleading in a district court in Travis County to compel the governing body to comply with the applicable requirement.

(c) If the prevailing party in an action under this section is other than the governing body of a public retirement system, the court may award reasonable attorney's fees and costs of suit.

(d) The State Pension Review Board may file an appropriate pleading, in the manner provided by this section for filing by an individual, for the purpose of enforcing a requirement of Subchapter B or C of this chapter, other than a requirement of Section 12.101(a), 12.101(d), 12.102, 12.103(a), or 12.104.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, § 3, eff. Nov. 10, 1981.]

[Sections 12.004 to 12.100 reserved for expansion]

SUBCHAPTER B. STUDIES AND REPORTS

§ 12.101. Actuarial Valuation

(a) The governing body of a public retirement system shall employ an actuary, as a full-time or part-time employee or as a consultant, to make a valuation at least once every three years of the assets and liabilities of the system on the basis of assumptions and methods that are reasonable in the aggregate, considering the experience of the program and reasonable expectations, and that, in combination, offer the actuary's best estimate of anticipated experience under the program.

(b) On the basis of the valuation, the actuary shall make recommendations to the governing body of the public retirement system to ensure the actuarial soundness of the system. In making recommendations, the actuary shall define each actuarial term and enumerate and explain each actuarial assumption used in making the valuation. This information must be included either in the actuarial study or in a separate report made available as a public record.

(c) The governing body of a public retirement system shall file with the State Pension Review Board a copy of each actuarial study and each separate report made as required by law.

(d) An actuary employed under this section must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employee Retirement Income Security Act of 1974.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, § 4, eff. Nov. 10, 1981.]

§ 12.102. Audit

The governing body of a public retirement system shall have the accounts of the system audited at least annually by a certified public accountant.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 12.103. Annual Report

(a) The governing body of a public retirement system shall publish an annual report showing the financial condition of the system as of the last day of the 12-month period covered in the report. The report must include statements showing:

(1) receipts and disbursements during the 12-month period;

(2) changes in various accounts within the system during the period;

(3) the investments of the system as of the last day of the period; and

(4) the actuarial condition of the system based on the most recent actuarial valuation of the system.

(b) In a statement of actuarial condition required by this section, a governing body must include the information required by Section 12.101(b) of this subtitle.

(c) The governing body of a public retirement system shall file with the State Pension Review Board a copy of each annual report it makes as required by law.

(d) A public retirement system shall maintain for public review in its main office and at such other locations as the retirement system considers appropriate copies of the most recent annual report published by the system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, §§ 5, 6, eff. Nov. 10, 1981.]

§ 12.104. Report to State Pension Review Board

(a) Each public retirement system annually shall submit a report to the State Pension Review Board.

(b) A report required by this section must contain summaries of:

(1) the benefits available to, or on behalf of, a person who retires under the system or dies while a member or retiree of the system;

(2) the current financial status of the system, including the most recent audited financial data for the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, and the Texas County and District Retirement System; and

(3) the actuarial condition of the system based on the most recent actuarial study of the system.

(c) A public retirement system shall submit the report required by this section before the 180th day after the last day of the fiscal year under which that system operates.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 196, ch. 18, § 7, eff. Nov. 10, 1981.]

§ 12.105. Registration

(a) Each public retirement system shall register with the State Pension Review Board and the Legislative Budget Board. A public retirement system created after August 31, 1981, shall register before the 91st day after the date of creation, and a public retirement system in existence on August 31, 1981, shall register before January 1, 1982.

(b) A registration form submitted to each board must include:

(1) the name of the public retirement system;

(2) the names and occupations of the chairman and other members of its governing body; and

(3) a citation of the law under which the system was created.

(c) A public retirement system shall notify each board of changes in information required under Subsection (b) of this section before the 31st day after the day the change occurs.

(d) Each public retirement system shall submit, between January 1 and January 31 and between July 1 and July 31 of each year, a semiannual report to the State Pension Review Board containing the number of members and retirees of that system according to the most recent information available to the system. The first report is due not later than January 31, 1982.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 197, ch. 18, § 7, eff. Nov. 10, 1981.]

§ 12.106. Information to Member or Annuitant

(a) When a person becomes a member of a public retirement system, the system shall provide the person:

(1) a summary of the benefits from the retirement system available to or on behalf of a person who retires or dies while a member or retiree of the system; and

(2) a summary of procedures for claiming or choosing the benefits available from the retirement system.

(b) A public retirement system shall distribute to each active member and retiree a summary of any significant change that is made in statutes or ordinances governing the retirement system and that affects contributions, benefits, or eligibility. A distribution must be made before the 271st day after the day the change is adopted.

(c) A public retirement system annually shall provide to each active member a statement of the amount of the member's accumulated contributions and to each annuitant a statement of the amount of payments made to the annuitant by the system during the preceding 12 months.

(d) A public retirement system shall provide to each active member and annuitant a summary of the financial condition of the retirement system, if the actuary of the system determines, based on a computation of advanced funding of actuarial costs, that the financing arrangement of the system is inadequate. The actuarial determination must be disclosed to members and annuitants at the time annual statements are next provided under Subsection (c) of this section after the determination is made. An actuary who makes a determination under this subsection must have at least five years of experience working with one or more public retirement systems and be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employees Retirement Income Security Act of 1974.

(e) A member not currently contributing to a particular public retirement system is entitled on written request to receive from that system a copy of any document required by this section to be furnished to a member who is actively contributing.

(f) The governing body of a public retirement system composed of participating subdivisions or municipalities may provide one copy of any document it prepares under this section to each affected participating subdivision or municipality. Each participating subdivision or municipality shall distribute the information contained in the document to its employee members and annuitants, as applicable.

(g) Information required by this section may be contained, at the discretion of the public retirement system providing the information, in one or more separate documents. The information must be stated to the greatest extent practicable in terms understandable to a typical member of the public retirement system.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 197, ch. 18, § 7, eff. Nov. 10, 1981.]

[Sections 12.107 to 12.200 reserved for expansion]

SUBCHAPTER C. ADMINISTRATION OF ASSETS

§ 12.201. Assets in Trust

The governing body of a public retirement system shall hold or cause to be held in trust the assets appropriated or dedicated to the system, for the benefit of the members and retirees of the system and their beneficiaries.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 12.202. Investment of Surplus

(a) The governing body of a public retirement system is responsible for the management and administration of the funds of the system.

(b) When, in the opinion of the governing body, a surplus of funds exists in accounts of a public retirement system over the amount needed to make payments as they become due within the next year, the governing body shall deposit all or as much of the surplus as the governing body considers prudent in a reserve fund for investment.

(c) The governing body shall determine the procedure it finds most efficient and beneficial for the management of the reserve fund of the system. The governing body may directly manage the investments of the system or may choose and contract for professional investment management services.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 12.203. Fiduciary Responsibility

(a) In making and supervising investments of the reserve fund of a public retirement system, an investment manager or the governing body shall discharge its duties solely in the interest of the participants and beneficiaries:

(1) for the exclusive purposes of:

(A) providing benefits to participants and their beneficiaries; and

(B) defraying reasonable expenses of administering the system;

(2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;

(3) by diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) in accordance with the documents and instruments governing the system to the extent that the documents and instruments are consistent with this subchapter.

(b) In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the governing body must act prudently and in the interest of the participants and beneficiaries of the public retirement system.

(c) A trustee is not liable for the acts or omissions of an investment manager appointed under Section 12.204 of this subtitle, nor is a trustee obligated to invest or otherwise manage any asset of the system subject to management by the investment manager.

(d) An investment manager appointed under Section 12.204 of this subtitle shall acknowledge in writing the manager's fiduciary responsibilities to the fund the manager is appointed to serve.

(e) The investment standards provided by Subsection (a) of this section and the policies, requirements, and restrictions adopted under Section 12.204(c) of this subtitle are the only standards, policies, or requirements for, or restrictions on, the investment of funds of a public retirement system by an investment manager or by a governing body during a 90-day interim between professional investment management services. Any other standard, policy, requirement, or restriction provided by law is suspended and not applicable during a time, and for 90 days after a time, in which an investment manager is responsible for investment of a reserve fund. If an investment manager has not begun managing investments of a reserve fund before the 91st day after the date of termination of the services of a previous investment manager, the standards, policies, requirements, and restrictions otherwise provided by law are applicable until the date professional investment management services are resumed.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 198, ch. 18, §§ 8, 9, eff. Nov. 10, 1981.]

§ 12.204. Investment Manager

(a) The governing body of a public retirement system may appoint investment managers for the system by contracting for professional investment management services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.

(b) To be eligible for appointment under this section, an investment manager must be:

(1) registered under the federal Investment Advisors Act of 1940;

(2) a bank as defined by that Act; or

(3) an insurance company qualified to perform investment services under the laws of more than one state.

(c) In a contract made under this section, the governing body shall specify any policies, requirements, or restrictions, including criteria for determining the quality of investments and for the use of standard rating services, that the governing body adopts for investments of the system.

(d) A political subdivision of which members of the public retirement system are officers or employees may pay all or part of the cost of professional investment management services under a contract under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 199, ch. 18, § 10, eff. Nov. 10, 1981.]

§ 12.205. Investment Custody Account

(a) If the governing body of a public retirement system contracts for professional investment man-

agement services, it also shall enter into an investment custody account agreement designating a state or national bank as custodian for all assets allocated to or generated under the contract.

(b) Under a custody account agreement, the governing body of a public retirement system shall require the designated bank to perform the duties and assume the responsibilities for funds under the contract for which the agreement is established that are performed and assumed, in the absence of a contract, by the custodian of system funds.

(c) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of bank services under a custody account agreement under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 12.206. Evaluation of Investment Services

(a) The governing body of a public retirement system may at any time and shall at frequent intervals monitor the investments made by any investment manager for the system. The governing body may contract for professional evaluation services to fulfill this requirement.

(b) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of professional evaluation services under a contract under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 12.207. Custody and Use of Funds

(a) An investment manager other than a bank having a contract with a public retirement system under Section 12.204 of this subtitle may not be a custodian of any assets of the reserve fund of the system.

(b) When demands of the public retirement system require, the governing body shall withdraw from a custodian of system funds money for use in paying benefits to members and other beneficiaries of the system and for other uses authorized by this subchapter and approved by the governing body.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 12.208 to 12.300 reserved for expansion]

SUBCHAPTER D. ACTUARIAL ANALYSIS OF LEGISLATION

§ 12.301. When Actuarial Analysis Required

(a) Except as provided by Subsection (f) of this section, a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a public retirement system or that proposes to change a fund liability of a public retirement system is required to have attached to it an actuarial analysis as provided by this subchapter.

(b) An actuarial analysis required by this section must be prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employees Retirement Income Security Act of 1974.

(c) A required actuarial analysis must be attached to the bill or resolution:

(1) at the time it is filed for introduction in either house of the legislature and before a committee hearing on the bill or resolution is held; and

(2) at the time it is reported from a legislative committee of either house for consideration by the full membership of a house of the legislature.

(d) An actuarial analysis must remain with the bill or resolution to which it is attached throughout the legislative process, including the process of submission to the governor.

(e) A bill or resolution for which an actuarial analysis is required is exempt from the requirement of a fiscal note as provided by Chapter 284, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5429c—1, Vernon's Texas Civil Statutes).

(f) An actuarial analysis not required for a bill or resolution that proposes to have an economic effect on a public retirement system only by providing new or increased administrative duties.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 12.302. Action by State Pension Review Board

(a) When a bill or resolution for which an actuarial analysis is required is filed for introduction in either house of the legislature, the office in which the proposed legislation is filed shall send a copy of the bill or resolution, accompanied by an actuarial analysis as required by Section 12.301(c)(1) of this subtitle, to the State Pension Review Board.

(b) The State Pension Review Board may have a second actuary either review the actuarial analysis accompanying the bill or resolution or prepare a separate actuarial analysis.

(c) An actuary who reviews or prepares an analysis for the State Pension Review Board must have at least five years of experience as an actuary working with one or more public retirement systems and must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employees Retirement Income Security Act of 1974.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 12.303. Contents of Actuarial Analysis

(a) An actuarial analysis must show the economic effect of the bill or resolution on the public retire-

ment system affected, including a projection of the annual cost to the system of implementing the legislation for at least 10 years. If the bill or resolution applies to more than one public retirement system, the cost estimates in the analysis may be limited to each affected state-financed public retirement system and each affected public retirement system in a city having a population of 200,000 or more.

(b) An actuarial analysis must include a statement of the actuarial assumptions and methods of computation used in the analysis and a statement of whether or not the bill or resolution, if enacted, will make the affected public retirement system actuarially unsound or, in the case of a system already actuarially unsound, more unsound.

(c) The projection of the effect of the bill or resolution on the actuarial soundness of the system must be based on a computation of advanced funding of actuarial costs.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 12.304. Cost of Actuarial Analysis

The state may not pay the cost of a required actuarial analysis that is prepared for a public retirement system not financed by the state, except that a sponsor of the bill or resolution for which the analysis is prepared may pay the cost of preparation out of funds available for the sponsor's personal or office expenses.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 13. PROPORTIONATE RETIREMENT PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

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13.001. Definitions.
13.002. Purpose of Chapter.
13.003. Construction of Chapter.

SUBCHAPTER B. PARTICIPATION AND MEMBERSHIP

13.101. Participation by Retirement Systems.
13.102. Retirement System Membership.

SUBCHAPTER C. CREDITABLE SERVICE

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SUBCHAPTER E. ADMINISTRATION

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SUBCHAPTER A. GENERAL PROVISIONS

§ 13.001. Definitions

In this chapter:

(1) "Combined service credit" means the total of a person's service credit in only those statewide retirement systems for which the total satisfies the length-of-service requirements for service retirement at the person's attained age, and does not include:

(A) any service credit in a retirement system for which the total of a person's service credit does not satisfy the length-of-service requirements for service retirement at the person's attained age; or

(B) service credit earned with or allowed by a subdivision or municipality not participating in the program provided by this chapter.

(2) "Service credit" means service that is in a person's account in a statewide retirement system and that may be used to meet length-of-service requirements for service retirement in that system.

(3) "Statewide retirement system" means the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Judicial Retirement System of Texas, the Texas County and District Retirement System, or the Texas Municipal Retirement System.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 13.002. Purpose of Chapter

The purpose of this chapter is to implement the authority granted the legislature by Article XVI, Section 67, of the Texas Constitution to provide a program of proportionate benefits to qualified members of more than one statewide retirement system. It is contrary to the purpose of this chapter for a person or class of persons to receive, because of service in more than one statewide retirement system, proportionately greater benefits from a particular system than a person who has rendered faithful career service under that one system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 13.003. Construction of Chapter

The provisions of this chapter are exceptions to the other laws governing statewide retirement systems and prevail over those laws to the extent of explicit conflict, but this chapter must be construed strictly as against those laws.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 13.004 to 13.100 reserved for expansion]

SUBCHAPTER B. PARTICIPATION AND MEMBERSHIP

§ 13.101. Participation by Retirement Systems

(a) Except as provided by Subsection (b) of this section, each statewide retirement system is required to participate in the program of proportionate retirement benefits provided by this chapter.

(b) A subdivision participating in the Texas County and District Retirement System or a municipality participating in the Texas Municipal Retirement System is not required to participate in the proportionate retirement program if the subdivision or municipality elected not to participate under the authority of former law and has not revoked the election under Subsection (c) of this section.

(c) A subdivision or municipality that elected not to participate in the proportionate retirement program may revoke the election and elect to participate. An election to participate may be made by vote of the governing body of the subdivision or municipality in the manner required for official actions of the governing body. The governing body shall send notice of an election to participate to the board of trustees of the retirement system in which the subdivision or municipality participates.

(d) The effective date of participation in the proportionate retirement program by a subdivision or municipality electing to participate under Subsection (c) of this section is the first day of the month after the month in which the appropriate board of trustees receives notice of an election.

(e) Participation in the proportionate retirement program includes all persons who are members of a statewide retirement system and, in the case of members of the Texas County and District Retirement System or the Texas Municipal Retirement System, who are also employees or former employees of a subdivision or municipality participating in the proportionate retirement program.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 13.102. Retirement System Membership

(a) Membership in a statewide retirement system does not terminate because of absence from service covered by that system during a period for which the member earns service credit in another statewide retirement system for service performed for an employer other than a subdivision or municipality not participating in the program provided by this chapter.

(b) A person may continue membership in a statewide retirement system while absent from service with all statewide retirement systems if the person would be eligible, under the laws governing that system, to continue membership if the person's combined service credit had been earned in that system.

(c) In this section, a person's absence from service begins on the day after the last day of service covered by any statewide retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 13.103 to 13.200 reserved for expansion]

SUBCHAPTER C. CREDITABLE SERVICE

§ 13.201. Retirement Eligibility Based on Combined Service Credit

(a) A person who has membership in two or more statewide retirement systems is subject to the laws governing each of those systems for determination of the person's eligibility for service retirement benefits from each system, except that, for the purpose of determining whether a person meets the length-of-service requirements for service retirement of a system, the person's combined service credit must be considered as if it were all credited in each system.

(b) A person's combined service credit is usable only in determining eligibility for service retirement benefits and may not be used in determining:

(1) eligibility for disability retirement benefits, death benefits, or any type of benefit other than service retirement benefits; nor

(2) the amount of any type of benefit.

(c) A person receiving service retirement or lifetime disability retirement benefits from one or more statewide retirement systems may use the program provided by this chapter to qualify for subsequent service retirement under another statewide retirement system in which the person has service credit, if the person was not eligible to retire under the latter system at the time of previous service retirement, or qualification for lifetime disability retirement benefits, from a statewide retirement system, or if the person's previous retirement was not based on combined service credit.

(d) Service credit earned with or allowed by more than one statewide retirement system for the same period of time may be counted only once in determining the amount of a person's combined service credit.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 13.202. Service in Certain Retirement Systems

The board of trustees of the Employees Retirement System of Texas by rule may:

(1) consider the classes of service in the Employees Retirement System of Texas as if they were, for purposes of this chapter, classes in separate statewide retirement systems; or

(2) permit a person who is retiring exclusively from retirement systems administered by the board to use the shortest length-of-service requirement provided for retirement in any class in which the person has service credit.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 13.203 to 13.300 reserved for expansion]

SUBCHAPTER D. BENEFITS

§ 13.301. Computation of Benefits Generally

The amount of a benefit payable by a statewide retirement system is determined according to and in the manner prescribed by laws governing that system and is based solely on a person's service credit in that system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 13.302. Computation of Certain Benefits

(a) If payable to or on behalf of a person who has used combined service credit to qualify for benefits from at least one statewide retirement system, each of the following types of benefits must be computed as provided by Subsection (b) of this section:

(1) a base retirement annuity that does not vary in amount directly with the amount of a person's service credit;

(2) a fixed lump-sum death benefit payable on the death of a retiree;

(3) any death benefit payable on the death of a retiree who received service retirement benefits; and

(4) a survivor benefit payable to a beneficiary of a deceased retiree of the Teacher Retirement System of Texas.

(b) The amount of a benefit payable under Subsection (a) of this section by a statewide retirement system is a percentage, but not more than 100 percent, of the benefit that would be or would have been payable if the person retired or had retired on the basis of only the service that is credited in that system. The percentage applied is equal to the amount of service credit in that system, divided by the amount of service credit that would be or would have been required for the benefit if the person retired or had retired on the basis of only the service that is credited in that system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 13.303 to 13.400 reserved for expansion]

SUBCHAPTER E. ADMINISTRATION

§ 13.401. Administration of Program

(a) The board of trustees of each statewide retirement system may adopt rules it finds necessary to implement the proportionate retirement program provided by this chapter.

(b) Each statewide retirement system, under this chapter and other laws governing the particular system, is responsible for determining:

(1) the eligibility of its members for benefits, including whether sufficient combined service credit exists to qualify members for proportionate retirement benefits from that system; and

(2) the amount and duration of proportionate retirement benefits payable by that system.

(c) Each statewide retirement system shall cooperate with the other statewide retirement systems in the implementation of the proportionate retirement program.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 13.402. Records

Records of members and beneficiaries of a statewide retirement system that are in the custody of the system are considered to be personnel records and confidential information under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252—17a, Vernon's Texas Civil Statutes), except that the records or information in the records may be transferred between statewide retirement systems to the extent necessary to administer the proportionate retirement program provided by this chapter.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 13.403. Employees Retirement System Report

Before December 16 of each even-numbered year, the Employees Retirement System of Texas shall report to the governor and the Legislative Budget Board the current and long-range fiscal and actuarial effects of the proportionate retirement program on that system and shall include in its biennial budget estimates a reasonable amount for reimbursement of expenses incurred by the system in performing duties required of the system under this chapter.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

SUBTITLE C. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 21. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Section
21.001. Definitions.
21.002. Purpose of Subtitle.
21.003. Retirement System.
21.004. Powers and Privileges.
21.005. Exemption From Execution.

SUBCHAPTER B. PENAL PROVISIONS

21.101. Conversion of Funds; Fraud.
21.102. Penalties.

SUBCHAPTER A. GENERAL PROVISIONS

§ 21.001. Definitions

In this subtitle:

(1) "Accumulated contributions" means the total of amounts in a member's individual account in the employees saving fund, including:

(A) amounts deducted from the compensation of the member;

(B) other member deposits required to be placed in the member's individual account; and

(C) interest credited to amounts in the member's individual account.

(2) "Actuarially reduced annuity" means an annuity payable on retirement or death occurring before a normal retirement age, the amount of which is determined by computing, using the amount of the member's service credit, the standard service retirement annuity payable at a normal retirement age and reducing it, under tables adopted by the board, by the factor applicable because of the attained age of the member.

(3) "Annuity" means an amount of money payable in monthly installments for a guaranteed period or for life, as determined by this subtitle.

(4) "Appointed officer or employee" means a person who holds a position that requires adherence to laws and rules of the state applicable to its employees, and who is paid a salary from state funds.

(5) "Board of trustees" means the persons appointed or elected under Subchapter A of Chapter 25 of this subtitle to administer the retirement system.

(6) "Combined retirement annuity" means the amount payable on retirement for service credited as a member of the employee class of membership plus any supplemental amount payable from the law enforcement and custodial officer supplemental retirement fund.

(7) "Compensation" means the base salary of a person plus longevity and hazardous duty pay and includes nonmonetary compensation, the value of which is determined by the retirement system, but excludes overtime pay.

(8) "Custodial officer" means a member of the retirement system who is employed by the Texas Department of Corrections and certified by that department as having normal duties with the department that require the person to supervise and have direct contact with inmates of that institution.

(9) "Law enforcement officer" means a member of the retirement system who has been commissioned as a law enforcement officer by the Department of Public Safety, the Texas Alcoholic Beverage Commission, the State Purchasing and General Services Commission, Capitol Area Security Force, or the Parks and Wildlife Department and who is recognized as a commissioned law enforcement officer by the Commission on Law Enforcement Officer Standards and Education.

(10) "Membership service" means service in a position included in a class of membership, including service performed in the position before holders of the position were eligible or required to be members of the retirement system.

(11) "Normal retirement age" means an age at which a member is entitled to receive a service retirement annuity without reduction because of age.

(12) "Occupational death or disability" means death or disability from an injury or disease that directly results from a specific act or occurrence determinable by a definite time and place, and directly results from an inherent risk or hazard peculiar to a duty that arises from and in the course of state employment.

(13) "Position" means an office held by an elected or appointed officer or a job or other regular employment held by an employee, which office, job, or employment is included in a class of membership.

(14) "Retiree" means a person who, except as provided by Section 22.203 or 24.209 of this subtitle, receives an annuity based on service that was credited to the person in a class of membership.

(15) "Retirement system" means the Employees Retirement System of Texas.

(16) "Service credit" means the amount of membership and military service ascribed to a person's account in the retirement system for which all required contributions have been made to, and are being held by, the retirement system.

(17) "Temporary employee" means a person who has a position only until another person can be hired, only for the duration of a project scheduled to end less than six months after the date of hiring, only until a specific date less than six months after the date of hiring, or only until a volume of work is completed that is estimated to be completed in less than six months after the date of hiring.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 21.002. Purpose of Subtitle

The purpose of this subtitle is to establish a program of benefits for members, retirees, and other beneficiaries of the retirement system and to establish rules for the management and operation of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 21.003. Retirement System

The retirement system is a public entity. The Employees Retirement System of Texas is the name by which all its business shall be transacted, all its funds invested, and all its cash, securities, and other property held.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 21.004. Powers and Privileges

The retirement system has the powers, privileges, and immunities of a corporation, as well as the

powers, privileges, and immunities conferred by this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 21.005. Exemption From Execution

All retirement annuity payments, optional benefit payments, member contributions, money in the various retirement system funds, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and local taxation, levies, sales, and any other process, and are unassignable except as provided by Section 23.103 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 21.006 to 21.100 reserved for expansion]

SUBCHAPTER B. PENAL PROVISIONS

§ 21.101. Conversion of Funds; Fraud

(a) A person commits an offense if the person knowingly or intentionally confiscates, misappropriates, or converts funds representing deductions from a member's salary either before or after the funds are received by the retirement system.

(b) A person commits an offense if the person knowingly or intentionally makes a false statement or falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the retirement system.

(c) A member commits an offense if the member knowingly receives as a salary money that should have been deducted as provided by this subtitle from the member's salary.

(d) A person commits an offense if the person knowingly or intentionally violates an applicable requirement of this subtitle other than one described by Subsection (a), (b), or (c) of this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 21.102. Penalties

(a) An offense under Section 21.101(a) or 21.101(b) of this subtitle is a felony punishable by imprisonment in the Texas Department of Corrections for not less than one nor more than five years.

(b) An offense under Section 21.101(c) of this subtitle is a misdemeanor punishable by a fine of not less than $100 nor more than $5,000.

(c) An offense under Section 21.101(d) of this subtitle is a misdemeanor punishable by a fine of not less than $100 nor more than $1,000.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 22. MEMBERSHIP

SUBCHAPTER A. MEMBERSHIP

Section
22.001. Membership Classes.
22.002. Membership in Elected Class.
22.003. Membership in Employee Class.
22.004. Temporary Employees Over 65.
22.005. Termination of Membership.

SUBCHAPTER B. WITHDRAWAL OF CONTRIBUTIONS

22.101. Criteria for Withdrawal.
22.102. Procedure for Withdrawal.
22.103. Effect of Withdrawal.
22.104. Deposits Refundable.

SUBCHAPTER C. RESUMPTION OF STATE SERVICE BY A RETIREE

22.201. Eligibility for Retirement System Membership.
22.202. Benefits Not Affected.
22.203. Benefits Affected.
22.204. Notice.

SUBCHAPTER A. MEMBERSHIP

§ 22.001. Membership Classes

The two classes of membership in the retirement system are the elected class and the employee class.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 22.002. Membership in Elected Class

(a) Membership in the elected class of the retirement system is limited to:

(1) persons who hold state offices that are normally filled by statewide election and that are not included in the coverage of the Judicial Retirement System of Texas;

(2) members of the legislature; and

(3) district and criminal district attorneys, to the extent that they receive salaries from the state general revenue fund.

(b) Membership in the elected class is optional.

(c) An eligible person becomes a member of the elected class by filing a notice of intention to become a member with the board of trustees on a form prescribed by the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 22.003. Membership in Employee Class

(a) Except as provided by Subsection (b) of this section, membership in the employee class of the retirement system includes all employees and appointed officers of every department, commission, board, agency, or institution of the state except:

(1) independent contractors and their employees performing work for the state;

(2) persons disqualified from membership under Section 22.201 of this subtitle; and

(3) persons disqualified from membership under Section 22.004 of this subtitle.

(b) An office or employment that is included in the coverage of the Teacher Retirement System of Texas or the Judicial Retirement System of Texas is not a position with a department, commission, board, agency, or institution of the state for purposes of this subtitle.

(c) Membership in the employee class is mandatory for eligible persons.

(d) Membership in the employee class begins on the first day a person is employed or holds office.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 22.004. Temporary Employees Over 65

(a) A person who is at least 65 years old, who is not a member of the retirement system, and who is hired as a temporary employee may not become a member of the retirement system during the first six months of employment.

(b) A person described by Subsection (a) of this section becomes a member of the retirement system on the first day of the seventh calendar month in which the person is employed.

(c) Contributions based on service as a temporary employee who is at least 65 years old may not be paid to the retirement system until the employee is a member of the system and elects to establish credit as provided by Section 23.202 of this subtitle.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 22.005. Termination of Membership

(a) A person terminates membership in the retirement system by:

(1) death;

(2) retirement based on service credited in all classes of membership in which the person has service credit; or

(3) withdrawal of all of the person's accumulated contributions.

(b) A person terminates membership in one class of membership by:

(1) retirement based on service credited in the class; or

(2) withdrawal of the person's accumulated contributions for service credited in the class.

(c) A person may terminate membership in one class and retain membership in the other.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 22.006 to 22.100 reserved for expansion]

SUBCHAPTER B. WITHDRAWAL OF CONTRIBUTIONS

§ 22.101. Criteria for Withdrawal

(a) A member of the retirement system may withdraw all of the member's accumulated contributions for service credited in the employee class of membership if:

(1) the member does not hold a position included in that class;

(2) the member does not assume or resume, during the calendar month following the month in which the member terminates employment, a position included in that class; and

(3) the member's application for withdrawal is filed before the member assumes or resumes a position included in that class.

(b) A member of the retirement system currently contributing in the elected class of membership may at any time stop contributing and withdraw his or her contributions made for service credited in that class.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 22.102. Procedure for Withdrawal

A member initiates a withdrawal of contributions by filing an application for a refund with the retirement system or the agency or department with which the member holds or most recently held a position.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 22.103. Effect of Withdrawal

A withdrawal of contributions cancels a member's service credit and terminates his or her membership in, and all rights to benefits from, each class from which the withdrawal is made.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 22.104. Deposits Refundable

(a) Deposits representing interest or membership fees that are required of a member to establish service credit under Section 23.202, 23.302, 23.402, or 23.502 of this subtitle are not refundable.

(b) Deposits representing accumulated contributions are refundable to the member on application for a refund made as provided by Section 22.102 of this subtitle.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 22.105 to 22.200 reserved for expansion]

SUBCHAPTER C. RESUMPTION OF STATE SERVICE BY A RETIREE

§ 22.201. Eligibility for Retirement System Membership

(a) A retiree may not rejoin the retirement system as a member of the class from which the person retired.

(b) A retiree who takes a position not included in a membership class from which the retiree receives retirement benefit payments:

(1) is required to become or remain a member if the position is included in the employee class; or

(2) may elect to become or remain a member if the position is included in the elected class.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 22.202. Benefits Not Affected

(a) The payment of benefits to a retiree is not affected by:

(1) the retiree's taking a position included in a class of membership other than a class from which the person retired; or

(2) the retiree's serving the state as an independent contractor.

(b) The payment of benefits to a retiree for service credited in the employee class of membership is not affected by the retiree's taking, for six months or less within any fiscal year, a position included in the employee class.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 22.203. Benefits Affected

(a) The retirement system shall suspend annuity payments to a retiree for service that was credited to the retiree in the employee class if the retiree holds a position included in the employee class for more than six months in any one fiscal year:

(1) until the retiree no longer holds a position included in the employee class; or

(2) until the next fiscal year, whichever comes first.

(b) In determining the number of months a retiree has held a position included in the employee class, the retirement system shall consider as a full month any part of a month for which the retiree receives compensation for service in the position.

(c) Time during which retirement benefit payments are suspended as provided by this section does not reduce the number of months payments are to be made under an optional benefit plan providing for a specific amount of benefits for a guaranteed number of months after retirement.

(d) If a retiree takes the oath for a position included in the elected class of membership, the retirement system shall suspend annuity payments to the person for service that was credited in that class, until the person no longer holds that position.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 199, ch. 18, § 11, eff. Nov. 10, 1981.]

§ 22.204. Notice

(a) Before a retiree begins work in a position included in the employee class of membership, the retiree and the head of the department, commission, board, agency, or institution at which the retiree will resume state service each shall notify the retirement system in writing of the retiree's name, the taking of a position, and the projected dates of service.

(b) Before a retiree from the elected class of membership takes the oath of office for a position included in that class, the retiree shall notify the retirement system in writing of the taking of a position and the projected dates of service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 23. CREDITABLE SERVICE

SUBCHAPTER A. GENERAL PROVISIONS

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23.001. Types of Creditable Service.
23.002. Service Creditable in a Year.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO ESTABLISHMENT OF SERVICE

23.101. Determination of Required Deposits.
23.102. Service Credit Previously Canceled.
23.103. Loan to Establish Service.

SUBCHAPTER C. ESTABLISHMENT OF MEMBERSHIP SERVICE

23.201. Current Service.
23.202. Membership Service Not Previously Established.

SUBCHAPTER D. ESTABLISHMENT OF MILITARY SERVICE

23.301. Creditable Military Service.
23.302. Military Service Not Previously Established.
23.303. Service Credited to Membership Class.
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SUBCHAPTER E. PROVISIONS APPLICABLE TO ELECTED CLASS

23.401. Service Creditable in Elected Class.
23.402. Credit for Year in Which Eligible for Office.
23.403. Eligibility for Service Credit Previously Canceled.
23.404. Contributions for Service Not Previously Established.

SUBCHAPTER F. PROVISIONS APPLICABLE TO EMPLOYEE CLASS

23.501. Service Creditable in Employee Class.
23.502. Administrative Board Service.
23.503. Credit Transferable From Elected to Employee Class.
23.504. Eligibility for Service Credit Previously Canceled.
23.505. Contributions for Service Not Previously Established.

SUBCHAPTER A. GENERAL PROVISIONS

§ 23.001. Types of Creditable Service

The types of service creditable in the retirement system are membership service and military service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.002. Service Creditable in a Year

The board of trustees by rule shall determine how much service in any year is equivalent to one year of creditable service, but in no case may all of a person's service in one year be creditable as more than one year of service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 23.003 to 23.100 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO ESTABLISHMENT OF SERVICE

§ 23.101. Determination of Required Deposits

The retirement system shall determine in each case the amount of money to be deposited by a member claiming credit for membership or military service previously canceled or not previously established. The system may not provide benefits based on the claimed service until the determined amount has been fully paid.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.102. Service Credit Previously Canceled

(a) A member who has withdrawn contributions and canceled service credit in a class of membership may, if eligible as provided by Section 23.403 or 23.504 of this subtitle, reestablish the canceled service credit in the retirement system.

(b) A member may reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from a membership class, plus all membership fees due, plus interest computed on the basis of the state fiscal year at an annual rate of five percent from the date of withdrawal to the date of redeposit.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.103. Loan to Establish Service

(a) A member who is retiring, who previously waived membership in the retirement system, and who held a position included in the employee class of membership for at least 60 of the 120 months immediately preceding September 1, 1977, may assign retirement benefits to secure a loan for the sole purpose of establishing service credit in the system.

(b) At the time a member establishes credit under this section, the retirement system shall grant the member service credit for any membership service performed before September 1, 1947, that is not already credited.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 23.104 to 23.200 reserved for expansion]

SUBCHAPTER C. ESTABLISHMENT OF MEMBERSHIP SERVICE

§ 23.201. Current Service

Service is credited in the applicable membership class for each month in which a member holds a position and for which the required contributions are made by the member and the state.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.202. Membership Service Not Previously Established

(a) Except as provided by Subsection (b) of this section, any member may establish service credit in the retirement system for membership service not previously established.

(b) Membership service not previously credited because of a waiting period required before September 1, 1958, may be established only by a contributing member.

(c) Except as provided by Subsection (d) of this section, a member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 23.404 or 23.505 of this subtitle, plus all membership fees due, plus interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date the service was performed to the date of deposit.

(d) A member claiming credit for service not previously creditable because of a waiting period required before September 1, 1958, is exempt from the payment of interest on the required contribution if the member establishes the credit before the first anniversary of the person's becoming a member of the retirement system.

(e) The state shall contribute for service established under this section an amount in the same ratio to the member's contribution for the service as the state's contribution bears to the contribution for current service required of a member of the employee class at the time the service is established under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 23.203 to 23.300 reserved for expansion]

SUBCHAPTER D. ESTABLISHMENT OF MILITARY SERVICE

§ 23.301. Creditable Military Service

(a) Military service creditable in the retirement system is active federal duty as a member of the armed forces of the United States during a time, or within 12 months after a time, that the United States is or was engaged in:

(1) organized conflict, whether a state of war or a police action involving conflict with foreign forces; or

(2) a crisis in this country.

(b) The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of organized conflict or crisis.

(c) A member may not establish more than 60 months of service credit in the retirement system for military service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.302. Military Service Not Previously Established

(a) An eligible member may establish service credit in the retirement system for military service performed that is creditable as provided by Section 23.301 of this subtitle.

(b) A member eligible to establish military service credit is one who:

(1) does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent; and

(2) has been released from military duty under conditions not dishonorable.

(c) A member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 23.404 or 23.505 of this subtitle, plus, if the member does not establish the credit before the first anniversary of the date of first eligibility, interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date of first eligibility to the date of deposit.

(d) The state shall contribute for service established under this section an amount in the same ratio to the member's contribution for the service as the state's contribution bears to the contribution for current service required of a member of the employee class at the time the service is established under this section. The state's contribution shall be paid from the fund from which the member received compensation for the first full month of membership service after the date of release from active duty.

(e) The board of trustees may require members applying for credit under this section to submit any information the board finds necessary to enable it to determine eligibility for or amount of service or amounts of required contributions.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.303. Service Credited to Membership Class

(a) Except as provided by Subsection (b) of this section or Section 23.304(d) of this subtitle, military service is creditable in a class of membership that includes a position held by the member who performed the service after the date of release from active military duty.

(b) Military service performed by a person who was a contributing member immediately before the date the member began military duty may be credited, at the option of the member, in the class of membership that includes the position held by the member immediately before the date the member began the military duty.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.304. Use of Military Service Credit

(a) The retirement system shall use military service credit in computing occupational disability retirement benefits and death benefits and in determining eligibility to select an optional death benefit plan.

(b) The retirement system shall use military service credit established before January 1, 1978, in computing service retirement or nonoccupational disability retirement benefits only if the member has, without military service credit, at least 10 years of service credit in the employee class or at least 6 years of service credit in the elected class.

(c) The retirement system shall use military service credit established on or after January 1, 1978, in computing service retirement or nonoccupational disability retirement benefits only if the member who has the military service credit has enough service credit, exclusive of the military service credit, to be eligible for service retirement benefits at age 60.

(d) The board of trustees by rule may permit a person who retires with at least 10 years of service credit, excluding military service credit, to receive service retirement benefits as an elected officer for the percentage of the person's military service credit, but not more than 100 percent, that is derived by dividing the number of months served as an elected officer by 96 months.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 23.305 to 23.400 reserved for expansion]

SUBCHAPTER E. PROVISIONS APPLICABLE TO ELECTED CLASS

§ 23.401. Service Creditable in Elected Class

Service creditable in the elected class of membership is:

(1) membership service in an office included in that class; and

(2) military service established as provided by Subchapter D of this chapter.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.402. Credit for Year in Which Eligible for Office

(a) A member may establish service credit in the elected class for any calendar year during any part of which:

(1) the member held an office included in that class; or

(2) the member was eligible to take the oath for an office included in that class.

(b) A member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 23.404 of this subtitle, plus all membership fees due, plus interest computed at an annual rate of

10 percent from the fiscal year in which the service was performed to the date of deposit.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.403. Eligibility for Service Credit Previously Canceled

A member may, under Section 23.102(b) of this subtitle, reestablish service credit previously canceled if the member, after cancellation of the credit, takes an oath of office for a position included in the elected class.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.404. Contributions for Service Not Previously Established

For each month of membership or military service not previously credited in the retirement system, a member claiming credit in the elected class shall pay a contribution in an amount equal to the greater of:

(1) eight percent of the monthly salary paid to members of the legislature at the time the credit is established; or

(2) six percent of the monthly state salary paid to a person who holds, at the time the credit is established, the office for which credit is sought.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 23.405 to 23.500 reserved for expansion]

SUBCHAPTER F. PROVISIONS APPLICABLE TO EMPLOYEE CLASS

§ 23.501. Service Creditable in Employee Class

Service creditable in the employee class of membership is:

(1) membership service in a position included in that class;

(2) military service established as provided by Subchapter D of this chapter;

(3) service creditable in or transferred from the elected class as provided by Section 23.503 of this subtitle; and

(4) administrative board service established as provided by Section 23.502 of this subtitle.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.502. Administrative Board Service

(a) A member who established during December, 1977, service credit for administrative board service performed during that month, may:

(1) remain a contributing member of the retirement system accruing service credit in the employee class for continuous service on an eligible board; and

(2) establish service credit for previous service on an eligible board.

(b) Contributions for administrative board service are computed on the basis of the highest salary paid during the time for which credit is sought to an officer or employee of the agency, commission, or department on whose board the member serves.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.503. Credit Transferable From Elected to Employee Class

A member may establish in, or have transferred to, the employee class all service credited in the elected class, if the contributions made to establish the service in the elected class equal or exceed contributions required of a member of the employee class for the same amount of service during the same time and at the same rate of compensation. The member before retirement may transfer the service credit back to the elected class.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 199, ch. 18, § 12, eff. Nov. 10, 1981.]

§ 23.504. Eligibility for Service Credit Previously Canceled

A member may reestablish service credit previously canceled if the member, after cancellation of the credit, holds a position for 24 months that is included in the employee class.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 23.505. Contributions for Service Not Previously Established

(a) A member claiming credit in the employee class for membership service not previously established shall, for each month of the service, pay a contribution in an amount equal to the greater of:

(1) six percent of the member's monthly state compensation for the service during the time for which credit is sought; or

(2) $18.

(b) A member claiming credit in the employee class for military service not previously established shall, for each month of the service, pay a contribution in an amount equal to the greater of:

(1) six percent of the member's monthly state compensation for the first full month of membership service that is after the member's date of release from active military duty; or

(2) $18.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 24. BENEFITS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 24.001. Types of Benefits

The types of benefits payable by the retirement system are:

(1) service retirement benefits;

(2) occupational disability retirement benefits;

(3) nonoccupational disability retirement benefits; and

(4) death benefits.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.002. Benefits From Both Membership Classes

(a) If a member has service credit in both classes of membership, is eligible to retire from one class, and does not hold a position included in the other class, the member may retire from both classes and receive benefits based on all service credited in the retirement system.

(b) If a member is retiring and uses service credited in a class of membership to meet a length-of-service requirement for retirement, the member must retire from that class.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.003. Effective Date of Retirement

(a) The effective date of a member's service retirement is the date the member designates at the time the member applies for retirement as provided by Section 24.101 of this subtitle, but the date must be the last day of the calendar month.

(b) If a person elects to receive a standard service retirement annuity and dies during the first calendar month that begins after the effective date of the person's retirement, the person is considered to have been a contributing member at the time of death.

(c) The retirement system may allow an applicant for retirement time after the effective date of the person's retirement to make a selection of a retirement annuity. If the applicant dies within the time allowed without having given the retirement system notice of a selection, the person is considered to have been a contributing member at the time of death.

(d) The effective date of a member's disability retirement is the date designated on the application for retirement filed by or for the member as provided by Section 24.201 of this subtitle, but the date must be the last day of a calendar month.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.004. When Benefits Are Payable

An annuity provided by this chapter accrues for the period beginning on the first day of the month that begins after the month in which a person dies or retires, as applicable, and ending, except as otherwise provided by this chapter, on the day the person who receives the annuity dies.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 24.005 to 24.100 reserved for expansion]

SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

§ 24.101. Application for Service Retirement Benefits

(a) A member may apply for a service retirement annuity by filing an application for retirement with the board of trustees.

(b) An application for a service retirement annuity may not be made:

(1) after the date the member wishes to retire; or

(2) more than 90 days before the date the member wishes to retire.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.102. Eligibility of Elected Member for Service Retirement

(a) Except as provided by rule adopted under Section 23.304(d) of this subtitle or Section 13.202(2) of Subtitle B of this title, a member who has service credit in the elected class of membership is eligible to retire and receive a service retirement annuity if the member:

(1) is at least 60 years old and has 8 years of service credit in that class; or

(2) is at least 55 years old and has 12 years of service credit in that class.

(b) A member who has service credit in the elected class is eligible to retire and receive a service retirement annuity actuarially reduced from the standard service retirement annuity available under Subsection (a)(2) of this section, if the member is at least 50 years old and has 12 years of service credit in that class.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.103. Service Retirement Benefits for Elected Class Service

(a) Except as provided by Subsection (b) of this section, the standard service retirement annuity for service credited in the elected class of membership is an amount equal to the number of years of service credit in that class, times two percent of the state salary, as adjusted from time to time, being paid a district judge.

(b) The standard service retirement annuity for service credited in the elected class may not exceed at any time 60 percent of the state salary being paid a district judge.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.104. Eligibility of Employee Member for Service Retirement

(a) Except as provided by rule adopted under Section 23.304(d) of this subtitle or Section 13.202(2) of Subtitle B of this title, a member who has service credit in the employee class of membership is eligible to retire and receive a service retirement annuity, if the member:

(1) is at least 60 years old and has 10 years of service credit in that class; or

(2) is at least 55 years old and has 30 years of service credit in that class.

(b) A member who has service credit in the employee class is eligible to retire and receive a service retirement annuity actuarially reduced from the standard service retirement annuity available under Subsection (a)(1) of this section, if the member is at least 55 years old and has 25 years of service credit in that class.

(c) A member who has service credit in the employee class is eligible to retire and receive a service retirement annuity actuarially reduced from the standard service retirement annuity available under Subsection (a)(2) of this section, if the member is at least 50 years old and has 30 years of service credit in that class.

(d) A member who is at least 55 years old and who has at least 10 years of service credit as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, the Texas Alcoholic Beverage Commission, the State Purchasing and General Services Commission, Capitol Area Security Force, or the Parks and Wildlife Department, or as a custodial officer, is eligible to retire and receive a service retirement annuity.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.105. Service Retirement Benefits for Employee Class Service

(a) Except as provided by Subsection (b) of this section, the standard service retirement annuity for service credited in the employee class of membership is an amount computed on the basis of the member's average monthly compensation for service in that class for the 36 highest months of compensation during the last 60 months of service, times 1.5 percent for each of the first 10 years of service credit in the class, plus 2 percent for each subsequent year of service credit in that class.

(b) The standard service retirement annuity for service credited in the employee class may not be less than $75 a month nor more than 80 percent of the average monthly compensation computed under Subsection (a) of this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.106. Service Retirement Benefits for Certain Legislative Employees

(a) A member who has at least 30 years of service credit in the retirement system and who meets an applicable age requirement in Section 24.104 of this subtitle is eligible to retire and receive a service retirement annuity computed as provided by this section, if the member has at least eight years of service credit in one or more of the following legislative positions and held one of the positions before January 1, 1978:

(1) house administrative officer;
(2) house chief clerk;
(3) house journal clerk;
(4) house enrolling and engrossing clerk;
(5) house calendar clerk;
(6) house sergeant at arms;
(7) secretary of the senate;
(8) senate calendar clerk;
(9) senate journal clerk;
(10) senate enrolling and engrossing clerk; or
(11) senate sergeant at arms.

(b) Except as provided by Subsection (c) of this section, the standard service retirement annuity payable under this section is an amount computed on the basis of the member's average monthly compensation for the 36 highest months of compensation during the last 60 months of service, times 2 percent for each year of service credit in the retirement system.

(c) The standard service retirement annuity under this section may not exceed 80 percent of the average monthly compensation computed under Subsection (b) of this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.107. Service Retirement Benefits for Certain Peace Officers

(a) A member who has at least 20 years of service credit as a law enforcement or custodial officer is eligible to retire regardless of age and receive a service retirement annuity as provided by this section.

(b) The standard combined service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer is an amount computed on the basis of the member's average monthly compensation for that service for the 36 highest months of compensation during the last 60 months of service, times a percentage derived from the following table:

Years of Law Enforcement or Custodial Officer Service Credit	Percentage of Average Monthly Compensation
at least 20 but less than 21	50 percent
at least 21 but less than 22	52 percent
at least 22 but less than 23	54 percent
at least 23 but less than 24	56 percent
at least 24 but less than 25	58 percent
at least 25 but less than 26	60 percent
at least 26 but less than 27	62 percent
at least 27 but less than 28	64 percent
at least 28 but less than 29	66 percent
at least 29 but less than 30	68 percent
at least 30 but less than 31	70 percent
at least 31 but less than 32	71 percent
at least 32 but less than 33	72 percent
at least 33 but less than 34	73 percent
at least 34 but less than 35	74 percent
at least 35 but less than 36	75 percent
at least 36 but less than 37	76 percent
at least 37 but less than 38	77 percent
at least 38 but less than 39	78 percent
at least 39 but less than 40	79 percent
40 or more	80 percent

(c) The portion of the standard combined service retirement annuity that is payable from the law enforcement and custodial officer supplemental retirement fund is based on retirement at the age of 55 or older. A law enforcement or custodial officer who retires before attaining the age of 55 is entitled to that portion actuarially reduced from the annuity available at the age of 55 to the earlier retirement age.

(d) A member who retires under this section retires simultaneously from the employee class of membership, although the person must meet the applicable age requirements of Section 24.104 of this subtitle before becoming entitled to receive a service retirement annuity under Section 24.105 of this subtitle. Optional retirement annuities provided by Section 24.108 of this subtitle are available to a member eligible to receive a service retirement annuity under this section, but the same optional plan and designee must be selected for the portion of the annuity payable under this section and the portion payable under Section 24.105 of this subtitle.

(e) The portion of a combined service retirement annuity payable under this section from money in the law enforcement and custodial officer supplemental retirement fund is the amount remaining after deduction of any amount payable for service as a law enforcement or custodial officer under Section 24.105 of this subtitle from the total derived under Subsections (b) and (c) of this section.

(f) The standard combined service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer may not exceed 80 percent of the higher of the average compensation computed under Section 24.105 of this subtitle or the average compensation computed under Subsection (b) of this section.

(g) For purposes of this section, service as a law enforcement or custodial officer is creditable as provided by rule of the board of trustees or on a month-to-month basis, whichever is greater.

(h) If Section 25.405 of this subtitle is held to be invalid by a court of competent jurisdiction and the decision becomes final, an annuity may not be paid under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 199, ch. 18, §§ 13, 14, eff. Nov. 10, 1981.]

§ 24.108. Optional Service Retirement Benefits

(a) Instead of the standard service retirement annuity payable under Section 24.103, 24.105, or 24.106 of this subtitle, the standard combined service retirement annuity payable under Section 24.107 of this subtitle, or an annuity actuarially reduced because of age under one of those sections, a retiring member may elect to receive an optional service retirement annuity under this section.

(b) A person who selects an optional lifetime retirement annuity must designate before the selection becomes effective one person to receive the annuity on the death of the person making the selection. A person who selects an optional retirement annuity payable for a guaranteed period any designate, before or after retirement, one or more persons to receive the annuity on the death of the person making the selection.

(c) An eligible person may select any optional retirement annuity approved by the board of trustees, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable in the same amount throughout the life of the person designated by the retiree before retirement;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of the person designated by the retiree before retirement;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to one or more designees or, if one does not exist, to the retiree's estate; or

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to one or more designees or, if one does not exist, to the retiree's estate.

(d) The computation of an optional annuity must be made without regard to the sex of the annuitant or designee involved.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 24.109 to 24.200 reserved for expansion]

SUBCHAPTER C. DISABILITY RETIREMENT BENEFITS

§ 24.201. Application for Disability Retirement Benefits

(a) A member may apply for a disability retirement annuity by:

(1) filing an application for retirement with the board of trustees; or

(2) having an application filed with the board by the member's spouse, employer, or legal representative.

(b) An application for a disability retirement annuity may not be made more than 90 days before the date the disability retirement is to become effective.

(c) An applicant must submit to medical examination and provide other pertinent information as required by the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.202. Eligibility for Disability Retirement

(a) A member is eligible to retire for a nonoccupational disability if the member is less than 60 years old and has at least:

(1) 8 years of membership service credit in the elected class of membership;

(2) 6 years of membership service credit in the elected class plus 2 years of military service credit established before January 1, 1978; or

(3) 10 years of membership service credit in the employee class of membership.

(b) A member who has service credit in either membership class is eligible to retire for an occupational disability regardless of age or amount of service credit.

(c) A member otherwise eligible may not receive a disability retirement annuity unless the member is the subject of a certification issued as provided by Section 24.203 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.203. Certification of Disability

As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information regarding the member's application. If the medical board finds that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the members should be retired, the medical board shall issue a certification of disability and submit it to the executive director.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.204. Information About Occupational Disability

(a) A member who applies for retirement for an occupational disability shall furnish the retirement system all information and other data requested by the retirement system and relating to the disability.

(b) The retirement system may require information and other data relating to an occupational disability retirement application to be furnished by any officer or employee of the agency with which the applicant holds a position.

(c) If a person who is requested to submit information or other data under this section withholds the requested material, the retirement system may elect to treat the application as one for nonoccupational disability retirement benefits.

(d) After receiving information and other data the retirement system considers necessary, the executive director shall determine, subject to review by the board of trustees, whether or not the disability is occupational.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.205. Disability Retirement Benefits for Elected Class Service

(a) Except as provided by Subsection (b) of this section, a disability retirement annuity for service credited in the elected class of membership is an amount computed in the same manner as the standard service retirement annuity, not reduced because of age, for service credited in the elected class.

(b) An occupational disability retirement annuity for service, credited in the elected class is computed on the basis of the amount of the member's service credit or eight years, whichever is greater.

(c) A person who retires under this section may not select an optional retirement plan instead of the standard retirement annuity.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.206. Disability Retirement Benefits for Employee Class Service

(a) Except as provided by Subsection (b) of this section and Section 24.207 of this subtitle, a disability retirement annuity for service credited in the employee class of membership is an amount computed at the rate of 1.7 percent for each year of service credit in that class, times:

(1) the member's monthly compensation at the time of the disabling injury or disease, if the disability is occupational; or

(2) the member's average monthly compensation for service in the employee class for the 60 highest months of compensation during the last 120 months of service, if the disability is nonoccupational.

(b) A disability retirement annuity under this section may not be more than 70 percent of the applicable rate of compensation nor less than 35 percent of the applicable rate or $110 a month, whichever is greater.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.207. Disability Retirement Benefits for Certain Peace Officers

(a) An annuity payable because of an occupational disability that directly results from a risk or hazard to which law enforcement or custodial officers are exposed because of the nature of law enforcement or custodial duties is payable under the same terms and conditions that apply to other occupational disability retirement annuities under this subtitle, except that the source and amount of the annuity are as provided by this section.

(b) Except as provided by Subsection (c) of this section, an occupational disability retirement annuity under this section is an amount, but not more than 80 percent, computed on the basis of the officer's monthly compensation at the time of the disabling injury or disease, times a percentage derived by application of the table provided by Section 24.107(b) of this subtitle.

(c) A disability retirement annuity under this section is not reducible because of age and may not be less than 50 percent of the officer's monthly compensation regardless of the amount of service credited to the officer in the employee class.

(d) The portion of the annuity under this section payable from the law enforcement and custodial officer supplemental retirement fund is the amount remaining after deduction of any amount payable under Section 24.206 of this subtitle except the portion of an amount that exceeds the minimum payments provided by Section 24.206(b) of this subtitle and that is made for service other than as a law enforcement or custodial officer.

(e) If Section 25.405 of this subtitle is held to be invalid by a court of competent jurisdiction and the decision becomes final, an annuity may not be paid under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 200, ch. 18, § 15, eff. Nov. 10, 1981.]

§ 24.208. Medical Examination of Disability Retiree

(a) Once each year during the first five years after a member retires for disability, and once in each three-year period after that, the retirement system may require a disability retiree who is less than 60 years old to undergo a medical examination.

(b) An examination under this section may be held at the retiree's residence or at any place mutually agreed to by the retirement system and the retiree. The retirement system may designate a physician to perform the examination.

(c) If a disability retiree refuses to submit to a medical examination as provided by this section, the executive director shall discontinue the retiree's annuity payments until the retiree submits to an examination. If a retiree has not submitted to an examination as provided by this section before the first anniversary of the date of first refusal, the executive director shall revoke all rights of the retiree to an annuity.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.209. Modification of Disability Retirement Annuity

(a) If the medical board finds that a disability retiree is no longer mentally or physically incapacitated for the performance of duty or is able to engage in employment, it shall certify its findings and submit them to the executive director.

(b) If the executive director concurs in a certification under this section or finds that the retiree is engaged in employment, the director shall adjust the monthly payments to the retiree who is the subject of the certification or finding to an amount by which the retiree's average monthly compensation during the last year of service as a member exceeds the retiree's present monthly earning capacity, including

the amount of the retiree's monthly annuity paid by the retirement system, as determined by the director. If the retiree's present earning capacity exceeds the average salary during the last year of membership service, the executive director shall reduce the amount of annuity payments to the retiree to the amount of the retiree's average monthly compensation during the last year of membership service.

(c) If the executive director finds, from time to time, a change in the retiree's earning capacity, the director shall adjust the retiree's annuity payments in the same manner that the original adjustment was made.

(d) The amount of an annuity adjusted under this section may not be more than the total of the amount of the annuity determined at the time of retirement plus increases provided by law after the date of retirement.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.210. Restoration of Disability Retiree to Active Service

(a) If a retiree who is less than 60 years old and who is receiving a disability retirement annuity returns to state service or if the retiree is found to be no longer incapacitated for the further performance of duty, the person must again become a member of the retirement system or, if the person holds a position included in the elected class of membership, may elect to become a member. If a person becomes a member under this section, the board of trustees shall terminate the person's annuity payments.

(b) A person who becomes a member under this section is entitled to service credit for all service previously established and not canceled by a withdrawal of contributions.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.211. Refund at Annuity Discontinuance

(a) Except as provided by Subsection (b) of this section, if a disability retirement annuity is discontinued under Section 24.208 of this subtitle, the retiree is entitled to a lump-sum payment from the retirement annuity reserve fund in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of payments payable before the date the annuity was discontinued.

(b) The benefit provided by this section is not payable to a retiree who, after discontinuance of a disability retirement annuity, returns to state service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 24.212 to 24.300 reserved for expansion]

SUBCHAPTER D. DEATH BENEFIT ANNUITIES

§ 24.301. Selection of Death Benefit Plan by Member

(a) A contributing member who has at least 10 years of service credit in the elected class of membership, or a noncontributing member who has at least 12 years of service credit in the elected class, may select a death benefit plan for the payment, if the member dies while eligible to select a plan, of a death benefit annuity to a person designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Sections 24.108(c)(1) and 24.108(c)(4) of this subtitle, payable as if the member had retired at the time of death.

(b) A member who has a total of at least 20 years of service credit in retirement systems administered by the board of trustees may select a death benefit plan for the payment, if the member dies while eligible to select a plan, of a death benefit annuity to a person designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Section 24.108(c) of this subtitle and, if the member has service credit in another retirement system administered by the board, any optional death benefit plan provided under that system.

(c) If a member of a retirement system administered by the board of trustees selects death benefit plans under more than one board-administered retirement system, each plan selected may take effect. The plan selected most recently governs payments based on service in a system other than the one in which the plan was selected if the amount of service credit in that other system, by itself, would be insufficient to permit selection of a death benefit plan. If a member selects a death benefit plan under only one retirement system administered by the board of trustees, the plan applies to service credit in other board-administered retirement systems.

(d) The computation of a death benefit annuity selected under this section must include the ages of the member and the member's designated beneficiary at the time of the member's death.

(e) A member may select a death benefit plan by filing an application for a plan with the retirement system on a form prescribed by the retirement system. After selection, a death benefit plan takes effect at death unless the member amends the plan, selects a retirement annuity at the time of retirement, has chosen a plan that cannot take effect, or becomes ineligible to select a plan.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.302. Selection of Death Benefit Plan by Survivor of Member

(a) If a member eligible to select a death benefit plan under Section 24.301 of this subtitle dies with-

out having made a selection, or if a selection cannot be made effective, the member's surviving spouse may select a plan in the same manner as if the member had made the selection. If there is no surviving spouse, the personal representative of the decedent's estate may make the selection for the benefit of the decedent's heirs or devisees.

(b) If a person dies who, at the time of death, was a contributing member of a retirement program administered by the board of trustees and was eligible, having met the requirements of service credit and attained age, for a service retirement annuity based on service in one or more board-administered programs, but was not eligible to select a death benefit plan, the person's surviving spouse may select a plan in the same manner that the decedent could have made the selection if the decedent had retired on the last day of the month in which he or she died. If there is no surviving spouse, the guardian of the decedent's surviving minor children may select a plan. If the decedent is not survived by a spouse or minor children, an annuity may not be paid under this subsection.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.303. Effect of Disability Retirement on Death Benefit Plan

(a) At the time of death of a person who was receiving a disability retirement annuity, a death benefit annuity selected by the retiree while a member takes effect.

(b) If the retiree had not selected a death benefit plan before retirement or if the plan cannot be made effective, a death benefit annuity may not be paid.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.304. Annuity for Survivor of Elected Member

(a) Except as provided by Subsections (b) and (c) of this section, if a member who has at least eight years of service credit in the elected class of membership dies, a death benefit annuity is payable in an amount computed at the rate of one-half of the standard service retirement annuity to which the member would have been entitled at the member's age at the time of death or at the age of 60, whichever is later.

(b) The annuity provided by this section is payable only to the member's surviving spouse. If the member is not survived by a spouse, a benefit may not be paid under this section.

(c) An annuity may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section 24.301 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 24.305 to 24.400 reserved for expansion]

SUBCHAPTER E. MEMBER DEATH BENEFITS

§ 24.401. Member Death Benefits Generally

(a) Except as provided by Subsection (d) of this section, if a member dies under a circumstance described in Subsection (c) of this section, a lump-sum death benefit is payable from the state accumulation fund in an amount computed at the rate of five percent of the amount in the member's individual account in the employees saving fund at the time of death, times the number of full years of service credit the member had at the time of death.

(b) The benefit provided by this section is payable to a person designated by the member in a signed document filed with the retirement system. If a member does not designate a beneficiary or if the beneficiary does not survive the member, the benefit is payable to the member's estate.

(c) A benefit is payable under this section only if the member at the time of death was:

(1) actively employed by the state;

(2) receiving workers' compensation benefits for an injury sustained while employed by the state; or

(3) on authorized sick leave.

(d) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section 24.301 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.402. Member Occupational Death Benefits

(a) Except as provided by Subsection (b) of this section, if a member dies and the executive director determines that the death was an occupational death, a lump-sum death benefit is payable from the state accumulation fund in an amount equal to one year's salary, computed on the basis of the member's rate of compensation at the time of death.

(b) The benefit provided by this section is payable only to the member's surviving spouse or, if there is no surviving spouse, to the guardian of the member's surviving dependent minor children. If the member is not survived by a spouse or dependent minor children, a benefit may not be paid under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.403. Return of Contributions

(a) Except as provided by Subsection (c) of this section, if a member dies before retirement, the amount in the member's individual account in the employees saving fund at the time of death is payable as a lump-sum death benefit.

(b) The benefit provided by this section is payable to a person designated by the member in a signed document filed with the retirement system. If a member does not designate a beneficiary or if the

beneficiary does not survive the member, the benefit is payable to the member's estate.

(c) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section 24.301 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 24.404 to 24.500 reserved for expansion]

SUBCHAPTER F. RETIREE DEATH BENEFITS

§ 24.501. Retiree Death Benefits Generally

(a) A lump-sum death benefit in the amount of $5,000 is payable if the board of trustees receives proof satisfactory to it of the death, on or after September 1, 1975, of a person retired under a retirement system administered by the board.

(b) The benefit provided by this section is payable to a person designated by the retiree in a signed and witnessed document filed with the retirement system. If a retiree does not designate a beneficiary or if the beneficiary does not survive the retiree, the benefit is payable to the retiree's estate.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.502. Disability Retiree Death Benefits

(a) Except as provided by Subsection (b) of this section, if a person who receives a disability retirement annuity dies, a lump-sum death benefit is payable in the manner provided by Section 24.401 of this subtitle, except that the amount is computed at the rate of five percent of the amount in the retiree's individual account in the employees saving fund at the time of disability retirement, times the number of full years of service credit the retiree had at the time of retirement.

(b) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section 24.301 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.503. Occupational Disability Retiree Death Benefits

(a) Except as provided by Subsection (b) of this section, if a person who receives an occupational disability retirement annuity dies and the executive director determines that the death was an occupational death, a lump-sum death benefit is payable from the state accumulation fund in an amount equal to one year's salary, computed on the basis of the retiree's rate of compensation at the time of disability retirement.

(b) The benefit provided by this section is payable only to the retiree's surviving spouse or, if there is no surviving spouse, to the guardian of the retiree's surviving dependent minor children. If the retiree is not survived by a spouse or dependent minor children, a benefit may not be paid under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 24.504. Return of Excess Contributions

(a) Except as provided by Subsection (c) of this section, if a person who receives a disability retirement annuity dies, a lump-sum death benefit is payable from the retirement annuity reserve fund in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of annuity payments payable before the retiree's death.

(b) The benefit provided by this section is payable to a person designated by the retiree in a signed and witnessed document filed with the retirement system. If a retiree does not designate a beneficiary or if the beneficiary does not survive the retiree, the benefit is payable to the retiree's estate.

(c) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section 24.301 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

SUBCHAPTER G. INCREASES IN BENEFITS

§ 24.601. Annuity Increase After Death or Retirement

(a) Except as provided by Subsections (b) and (e) of this section, on the first day of each fiscal year, the retirement system shall increase the amounts of annuities that are:

(1) computed as provided by Section 24.105 of this subtitle or a predecessor to that section, Section 24.206 of this subtitle or a predecessor to that section, or if the standard annuity is derived from Section 24.105 or a predecessor, as provided by Section 24.108 of this subtitle or a predecessor to that section;

(2) based on service that was credited in the retirement system as employee class service; and

(3) payable to a retiree of the retirement system, to the survivor of a retiree of the retirement system, or to the survivor of a deceased member of the retirement system.

(b) The retirement system may not increase under this section the amount of an annuity unless the retirement or death on which the annuity is based occurred before the first day of the preceding fiscal year.

(c) The legislature may appropriate money from the general revenue fund to pay the costs of increasing the amounts of annuities under this section. On the first day of each fiscal year, the state comptroller of public accounts shall transfer to the retire-

ment system any money appropriated for the fiscal year for the purpose of this section.

(d) If the amount of money appropriated for a fiscal year is insufficient to finance the rate of increase in annuities specified in the act making the appropriation or if the act fails to specify a rate of increase, the board of trustees shall set the rate as the rate that the amount of money appropriated will finance for the duration of the annuities payable to those persons entitled to receive an increase in annuities under this section.

(e) If an appropriation is not made for a fiscal year for the purpose of this section, the retirement system may not increase under this section the amount of annuities for that year.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 201, ch. 18, § 16, eff. Nov. 10, 1981.]

CHAPTER 25. ADMINISTRATION

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SUBCHAPTER A. BOARD OF TRUSTEES

§ 25.001. Composition of Board of Trustees

The board of trustees is composed of six members.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.002. Appointed Trustees

(a) Three members of the board of trustees are appointed with the advice and consent of the senate, one each by:

(1) the governor;

(2) the chief justice of the Supreme Court of Texas; and

(3) the speaker of the house of representatives.

(b) Appointed trustees hold office for staggered terms of six years, with the term of one trustee expiring on August 31 of each even-numbered year.

(c) Before the 11th day after the day on which an appointment is made, the person appointed to the board shall subscribe to the constitutional oath and the oath of office provided by Section 25.004 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.003. Elected Trustees

(a) Three members of the board of trustees are nominated and elected by members of the retirement system under rules adopted by the board.

(b) To be eligible to serve as an elected member of the board, a person must be a member of the retirement system and must hold a position that:

(1) is included in the employee class of membership; and

(2) is not with an agency or department with which another trustee holds a position.

(c) Elected trustees hold office for staggered terms of six years, with the term of one trustee expiring on August 31 of each odd-numbered year.

(d) The board shall hold elections for the members to nominate and elect a trustee before August 1 of each odd-numbered year. The board shall make ballots available to members of the retirement system and all votes must be cast on those ballots.

(e) A person elected to the board of trustees must subscribe to the constitutional oath and the oath of office provided by Section 25.004 of this subtitle before beginning his or her term.

(f) The board shall fill vacancies of elected positions on the board for the unexpired terms.

(g) A person elected to the board as provided by this section is required to serve on the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.004. Oath of Office

(a) Before taking office as a member of the board of trustees, a person shall subscribe to the following oath of office:

I do solemnly swear that I will, to the best of my ability, discharge the duties of a trustee of the employees retirement system, that I will diligently and honestly administer the affairs of the board of trustees of the retirement system, and that I will not knowingly violate or willingly permit to be violated any of the laws applicable to the retirement system.

(b) A person may subscribe to the oath of office before any officer qualified to administer oaths in the state and shall file the subscribed oath in the office of the secretary of state.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.005. Application of Sunset Act

The board of trustees is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes), but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished effective September 1, 1989, and every 12th year after that date are reviewed.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.006. Compensation; Expenses

(a) Trustees who are contributing members of the retirement system serve without compensation but are entitled to reimbursement for all necessary expenses that they incur in the performance of official board duties.

(b) Subject to the approval of the board of trustees, trustees who are not contributing members of the retirement system may receive:

(1) compensation; and

(2) all necessary expenses that they incur in the performance of official board duties.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.007. Voting

(a) Each trustee is entitled to one vote.

(b) At any meeting of the board, a majority of the members present is necessary for a decision by the trustees.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 25.008 to 25.100 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

§ 25.101. General Administration

The board of trustees is responsible for the general administration and operation of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.102. Rulemaking

Subject to the limitations of this subtitle, the board of trustees may adopt rules for:

(1) eligibility of membership;

(2) the administration of the funds of the retirement system;

(3) the program of supplemental benefits for law enforcement and custodial officers; and

(4) the transaction of any other business of the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.103. Administering System Assets

(a) The board of trustees shall administer all assets of the retirement system. The board is the trustee of the system's assets.

(b) The board of trustees may acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any security, evidence of debt, or other investment in which the retirement system's assets may be invested.

(c) The board of trustees may authorize the executive director to acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any security, evidence of debt, or other investment in which assets of the law enforcement and custodial officer supplemental retirement fund may be invested.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.104. Designation of Authority to Sign Vouchers

The board of trustees shall file with the comptroller of public accounts a duly attested copy of a board resolution that designates the authorized representatives, as provided by this chapter, who have authority to sign vouchers for payment from the funds administered by the board of trustees.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.105. Adopting Tables

The board of trustees shall adopt mortality, service, and other tables the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality, service, and compensation experience of the system's members and beneficiaries.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.106. Interest Rate for Benefit Increase Reserve Fund

After consulting with the actuary, the board of trustees shall set a rate of interest that represents a reasonable recognition of earnings from investment of assets in the benefit increase reserve fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.107. Records of Board of Trustees

The board shall keep a record of all of its proceedings. Records of the board are open to public inspection.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.108. Report

Annually, the retirement system shall publish a report containing the following information:

(1) the retirement system's fiscal transactions of the preceding fiscal year;

(2) the amount of the system's accumulated cash and securities; and

(3) the balance sheet showing the financial condition of the system for the preceding fiscal year.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.109. Correction of Errors

If an error in the records of the retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the retirement system shall correct the error and so far as practicable shall adjust future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 201, ch. 18, § 17, eff. Nov. 10, 1981.]

[Sections 25.110 to 25.200 reserved for expansion]

SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

§ 25.201. Chairman

The board of trustees shall elect a chairman. The chairman must be a member of the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.202. Executive Director

(a) The board of trustees, by a majority vote of all members, shall appoint a person other than a member of the board to serve at the board's will as executive director.

(b) The executive director is not a member of the board of trustees.

(c) To be eligible to serve as the executive director, a person must:

(1) have been a citizen of the state for the three years immediately preceding his or her appointment; and

(2) have executive ability and experience to carry out the duties of the office.

(d) The executive director shall recommend to the board of trustees actuarial and other services required to transact the business of the retirement system.

(e) Annually, the executive director shall prepare an itemized budget showing the amount required to pay the retirement system's expenses for the following fiscal year and shall submit the budget to the board of trustees for review and adoption.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.203. Legal Adviser

The attorney general of the state is the legal adviser of the board of trustees. The attorney general shall represent the board in all litigation.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.204. Medical Board

(a) The board of trustees shall designate a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in the state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

(1) review all medical examinations required by this subtitle;

(2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and

(3) report in writing to the executive director its conclusions and recommendations on all matters referred to it.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.205. Other Physicians

The board of trustees may employ physicians in addition to the medical board to report on special cases.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.206. Actuary

(a) The board of trustees shall designate an actuary.

(b) The actuary must be thoroughly qualified to be the technical adviser of the board of trustees on matters concerning operation of the funds of the retirement system.

(c) At least once every five years the actuary, under the direction of the board of trustees, shall:

(1) make an actuarial investigation of the mortality, service, and compensation experience of the members and beneficiaries of the retirement system; and

(2) make a valuation of the assets and liabilities of the retirement system's funds.

(d) On the basis of tables adopted by the board of trustees under Section 25.105 of this subtitle, the actuary shall make a valuation of the assets and liabilities of the retirement system's funds annually.

(e) The actuary shall perform such other duties as are required by the board of trustees.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.207. State Treasurer

(a) The state treasurer is the custodian of the securities, bonds, and funds of the retirement system.

(b) The state treasurer shall pay money from the funds of the retirement system on warrants drawn by the comptroller supported only on vouchers signed by the executive director and the chairman of the board of trustees or their authorized representatives.

(c) The state treasurer annually shall furnish to the board of trustees a sworn statement of the amount of the retirement system's assets in the treasurer's custody.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.208. Compensation of Employees; Payment of Expenses

(a) The board of trustees shall compensate all persons whom it employs and shall pay all expenses necessary to operate the retirement system at rates and in amounts approved by the board. Those rates and amounts may not exceed those paid for the same or similar service for the state.

(b) Except as provided by Subsection (c) of this section, the board of trustees shall pay compensation and expenses required by Subsection (a) of this section from the expense fund.

(c) The board of trustees shall make payments from the law enforcement and custodial officer supplemental retirement fund for services rendered by the actuary for that fund and approved by the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.209. Surety Bonds

(a) The state treasurer shall give a surety bond in the amount of $50,000.

(b) The executive director shall give a surety bond in the amount of $25,000.

(c) The board of trustees may require any trustee or employee of the board, other than the executive director, to give a surety bond in an amount determined by the board. The bond is conditioned on the bonded person's faithful execution of the duties of his or her office.

(d) All surety bonds must be:

(1) made with a commercially sound and solvent surety company that is authorized to do business in the state;

(2) made payable to the board of trustees; and

(3) approved by the board of trustees and the attorney general of the state.

(e) The board of trustees shall pay from the expense fund all expenses for the execution of a bond under this section, including premiums.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.210. Interest in Investment Profits Prohibited

Except for an interest in retirement funds as a member of the retirement system, a trustee or employee of the board of trustees may not have a direct or indirect interest in the gains or profits of any investment made by the board and may not receive any pay or emolument for services other than his or her designated compensation and authorized expenses.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 25.211 to 25.300 reserved for expansion]

SUBCHAPTER D. MANAGEMENT OF ASSETS

§ 25.301. Investment of Assets

(a) The board of trustees shall:

(1) invest the assets of the retirement system, other than assets of the law enforcement and custodial officer supplemental retirement fund, as a single fund without distinction as to their source; and

(2) hold securities purchased with the assets described by Subsection (a)(1) of this section collectively for the proportionate benefit of all funds, other than the law enforcement and custodial officer supplemental retirement fund, and accounts of the system.

(b) Except for assets of the law enforcement and custodial officer supplemental retirement fund, the board of trustees may invest and reinvest any of the retirement system's assets in the following:

(1) bonds, notes, or other evidences of indebtedness, whether general or specific obligations, whose principal and interest are guaranteed by the United States, an agency of the United States, the state, or any political subdivision of the state;

(2) home office facilities, including land, equipment, and office building, used in administering the retirement system;

(3) corporate bonds, corporate notes, and other evidences of indebtedness of a corporation if the corporation was created or exists under the laws of a state or the United States; and

(4) common and preferred stocks of companies incorporated within the United States that have paid cash dividends for 10 consecutive years immediately before the date of purchase and, unless the stocks are bank or insurance stocks, that are listed on an exchange registered with the Securities and Exchange Commission or its successor.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.302. Investment of Law Enforcement and Custodial Officer Supplemental Retirement Fund Assets

The executive director, as authorized by the board of trustees, may invest and reinvest the amount of money in the law enforcement and custodial officer supplemental retirement fund that exceeds the amount necessary for current operations in the following securities:

(1) interest-bearing bonds of the United States or any authority or agency of the United States;

(2) any security on which the United States or any authority or agency of the United States guarantees the payment of principal and interest;

(3) corporate bonds or debentures of a company that is incorporated in the United States and is rated "A" or better by a nationally recognized bond rating service approved by the board of trustees; and

(4) short-term securities approved by the board of trustees.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.303. Restrictions on Investments

(a) The board of trustees may not invest in the stock of one corporation more than one percent of the book value of the total assets of the retirement system, excluding the assets of the law enforcement and custodial officer supplemental retirement fund.

(b) The retirement system may not own more than five percent of the voting stock of one corporation.

(c) At any particular time, 25 percent or more of the book value of the assets of the retirement system, excluding the assets of the law enforcement and custodial officer supplemental retirement fund, must be invested in government securities described by Section 25.301(b)(1) of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.304. Duty of Care

In making investments for the retirement system, the board of trustees or the executive director shall exercise the judgment and care, under the circumstances prevailing at the time of the investment, that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in speculation but when making a permanent disposition of their funds, considering the probable income from the disposition and the probable safety of their capital.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.305. Cash on Hand

(a) The board of trustees shall keep a sufficient amount of cash on hand to make payments as they become due each year under the retirement system.

(b) The amount of cash on hand may not exceed 10 percent of the total amount in the funds of the retirement system on deposit with the state treasurer, excluding the assets of the law enforcement and custodial officer supplemental retirement fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.306. Crediting System Assets

All assets of the retirement system shall be credited, according to the purpose for which they are held, to one of the following funds:

(1) employees saving fund;

(2) state accumulation fund;

(3) retirement annuity reserve fund;

(4) interest fund;

(5) expense fund;

(6) benefit increase reserve fund; or

(7) law enforcement and custodial officer supplemental retirement fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.307. Employees Saving Fund

(a) The retirement system shall deposit in a member's individual account in the employees saving fund the following amounts:

(1) the amount of contributions to the retirement system that is deducted from the member's compensation;

(2) the portion of a deposit required to reinstate service credit previously canceled that represents only the amount withdrawn;

(3) the portion of a deposit required to establish service credit not previously established that represents only the required contribution; and

(4) the portion of a deposit required to establish military service credit that represents only the member's contribution for that credit.

(b) Interest on money in an individual account in the fund is earned monthly and is computed at the

rate of five percent a year on the mean balance of the member's account for the fiscal year.

(c) Unless an account is closed before the last day of the fiscal year, interest is computed for the fiscal year and is credited to the member's account as of the last day of the fiscal year.

(d) If an account is closed before the last day of the fiscal year, interest is computed for the following period:

(1) if the account is closed because of death, from the first day of the fiscal year through the last day of the month that preceded the month in which the member's death occurred;

(2) if the account is closed by withdrawal of contributions, from the first day of the fiscal year through the last day of the month that precedes the month in which the withdrawal request is validated by the retirement system; or

(3) if the account is closed because of retirement, from the first day of the fiscal year through the effective date of retirement.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.308. State Accumulation Fund

(a) The retirement system shall deposit in the state accumulation fund all contributions for retirement made by the state to the retirement system and transfer to the fund the amounts required by Section 25.314 or 25.502 of this subtitle.

(b) The retirement system also shall deposit in the state accumulation fund the interest portion of the following deposits made by members:

(1) deposits required to reinstate service previously canceled;

(2) deposits required to establish service credit not previously established; and

(3) deposits required to establish military service credit.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.309. Retirement Annuity Reserve Fund

(a) The retirement system shall transfer to the retirement annuity reserve fund money as required by Sections 25.314, 25.315, and 25.316 of this subtitle.

(b) The retirement system shall use the money in the fund to pay annuities as provided by this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.310. Interest Fund

Except as provided by Section 25.313 of this subtitle, the retirement system shall deposit in the interest fund all income, interest, and dividends from deposits and investments of assets of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.311. Expense Fund

(a) The retirement system shall deposit in the expense fund membership fees, money required to be transferred to the fund under Section 25.314 of this subtitle, and any appropriations made by the legislature to the fund.

(b) The retirement system shall pay from the expense fund administration and maintenance expenses of the retirement system except those expenses the payment of which is provided for by Section 25.208(c) or 25.313(b) of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.312. Benefit Increase Reserve Fund

The retirement system shall transfer to the benefit increase reserve fund money required to be deposited in the fund under Section 25.314 of this subtitle and money appropriated to pay increases in preexisting annuities if the increases:

(1) are payments for service credited in the employee class; and

(2) were authorized by the legislature after April 30, 1977.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.313. Law Enforcement and Custodial Officer Supplemental Retirement Fund

(a) The retirement system shall deposit in the law enforcement and custodial officer supplemental retirement fund payments made as provided by Section 25.405 of this subtitle, any appropriations made by the legislature to the fund, and proceeds from investment of the fund.

(b) The retirement system may use money from the fund only to pay supplemental retirement benefits to law enforcement and custodial officers as provided by this subtitle and to pay for the administration of the fund.

(c) Money appropriated to pay benefits from the fund as provided by this subtitle may not be diverted or used to pay any other benefits.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.314. Transfer of Assets From Interest Fund

(a) The board of trustees shall transfer from the interest fund to the employees saving fund amounts of interest computed under Section 25.307 of this subtitle at the following times:

(1) as required during the fiscal year for a member's account in the retirement system that is closed before the last day of the fiscal year; and

(2) as of the last day of the fiscal year for a member's account that is not closed before the last day of the fiscal year.

(b) As required during the year, the board of trustees shall transfer from the interest fund to the expense fund amounts it determines necessary for

the payment of the retirement system's expenses that exceed the amount of money available for those expenses.

(c) As of the last day of each fiscal year, the board of trustees shall transfer from the interest fund to the retirement annuity reserve fund an amount equal to five percent of the mean amount in the retirement annuity reserve fund for that fiscal year.

(d) As of the last day of each fiscal year, the board of trustees shall transfer from the interest fund to the benefit increase fund an amount computed at the rate set by the board under Section 25.106 of this subtitle.

(e) After making the transfers required by this section, the board of trustees, as of the last day of each fiscal year, shall transfer the amount remaining in the interest fund to the state accumulation fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.315. Transfer of Assets on Retirement and Restoration to Active Service

(a) When a member retires, the retirement system shall transfer:

(1) from the employees saving fund to the retirement annuity reserve fund, an amount equal to the member's accumulated contributions; and

(2) from the state accumulation fund to the retirement annuity reserve fund, an amount equal to the difference between the total reserve at present worth reserve value of the member's retirement annuity and the amount credited to the member's individual account as of the day of retirement.

(b) If a person who receives disability benefits has those benefits terminated under Section 24.210 of this subtitle, the retirement system shall transfer the balance of the person's retirement reserve from the retirement annuity reserve fund to the employees saving fund and to the state accumulation fund in proportion to the original amount transferred to the retirement annuity reserve fund from those funds.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.316. Transfer of Assets to Pay Benefit Increases

Each month on certification by the retirement system, the comptroller of public accounts shall transfer from the benefit increase reserve fund to the retirement annuity reserve fund the amount required to pay increases in preexisting annuities authorized by the legislature after April 30, 1977, for service credited in the employee class.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 25.317 to 25.400 reserved for expansion]

SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS

§ 25.401. Collection of Membership Fees

(a) Each member annually shall pay a membership fee of $2. A contributing member shall pay the fee with the member's first contribution to the retirement system in each fiscal year in the manner provided by Section 25.402 of this subtitle for payment of the member's contribution to the retirement system.

(b) If the membership fee is not paid with the member's first contribution of the year to the retirement system, the board of trustees may deduct the amount of the fee from that contribution or from any benefit to which the member becomes entitled.

(c) If the legislature appropriates, on behalf of each contributing member for any fiscal year, a membership fee to be deposited in the expense fund in an amount equal to or greater than the membership fee required by Subsection (a) of this section, the members are not required to pay the membership fee for that year.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.402. Collection of Member Contributions

(a) Each payroll period, each department or agency of the state shall cause to be deducted from each member's compensation a contribution of:

(1) six percent of the compensation if the member is not a member of the legislature; or

(2) eight percent of the compensation if the member is a member of the legislature.

(b) To facilitate the making of deductions, the board of trustees may modify a member's required deductions by an amount that does not exceed one-tenth of one percent of the annual compensation on which the deduction is made.

(c) Each department or agency head shall certify to the board of trustees and to the disbursing officer of the department or agency on each payroll, or in another manner prescribed by the board, the amounts to be deducted from each member's compensation.

(d) The disbursing officer of each department or agency on authority from the department or agency head shall:

(1) make deductions from each member's compensation for contributions to the retirement system;

(2) transmit monthly, or at the time designated by the board of trustees, a certified copy of the payroll or report to the retirement system; and

(3) pay the amount deducted to the retirement system for deposit in the employees saving fund.

(e) The retirement system shall record all receipts of member contributions and shall deliver the receipts to the state treasurer. The state treasurer

shall credit the receipts to the employees saving fund.

(f) The deductions required by this section shall be made even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(g) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payment period.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.403. Collection of State Contributions

(a) During each fiscal year, the state shall contribute to the retirement system:

(1) an amount equal to eight percent of the total compensation of all members of the retirement system for that year;

(2) money to pay lump-sum death benefits for retirees under Section 24.501 of this subtitle;

(3) money necessary for the administration and payment of benefits from the law enforcement and custodial officer supplemental retirement fund; and

(4) money for service credit not previously established, as provided by Section 23.202(e) or 23.302(d) of this subtitle.

(b) Before November 2 of each even-numbered year, the retirement system shall certify to the legislative budget board and to the budget division of the governor's office for review:

(1) an estimate of the amount necessary to pay the state's contribution under Subsections (a)(1), (a)(2), and (a)(4) of this section for the following biennium;

(2) the estimated amount, based on actuarial valuations, of appropriated funds required in addition to other available money to finance all benefits provided from the law enforcement and custodial officer supplemental retirement fund for the following biennium;

(3) the estimated amount, based on actuarial valuations, of appropriated funds required for the following biennium to fully finance, within a period of not more than 36 years after September 1, 1979, liabilities of the law enforcement and custodial officer supplemental retirement fund accrued because of service performed before September 1, 1979; and

(4) as a separate item, an estimate of the amount required to administer the law enforcement and custodial officer supplemental retirement fund for the following biennium.

(c) The amounts certified under Subsection (b) of this section shall be included in the budget of the state that the governor submits to the legislature.

(d) Before September 1 of each year, the retirement system shall certify to the state comptroller of public accounts and to the state treasurer:

(1) an estimate of the amount necessary to pay the state's contribution under Subsection (a)(1) of this section for the following fiscal year;

(2) an estimate of the amount necessary to pay membership fees for the following fiscal year, if the legislature has appropriated money for that purpose; and

(3) an estimate of the amount required to pay lump-sum death benefits for retirees under Section 24.501 of this subtitle for the following fiscal year.

(e) All money allocated and appropriated by the state to the retirement system for benefits provided by the retirement system, except money for the payment of lump-sum death benefits and for the payment of benefits from the law enforcement and custodial officer supplemental retirement fund, shall be paid, based on the annual estimate of the retirement system, in monthly installments to the state accumulation fund. The money required for state contributions and membership fees shall be from respective funds appropriated to pay the compensation of the member for whose benefit the contribution or fee is paid. If the total of the estimated required payments is not equal to the total of the actual payments required for a fiscal year, the retirement system shall certify to the state comptroller of public accounts and the state treasurer at the end of that year the amount required for necessary adjustments, and the state treasurer shall make the required adjustments.

(f) On certification by the retirement system, the comptroller of public accounts shall transfer from the general revenue fund to the state accumulation fund of the retirement system the amount then required for the payment of lump-sum death benefits for retirees under Section 24.501 of this subtitle.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.404. Use of Federal Money

If federal regulations prohibit an agency's use of money provided under the Comprehensive Employment and Training Act of 1973, Public Law 93–203, as state contributions, an agency shall use other money available to it to make state contributions to the retirement system for affected employees.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.405. Contributions to Law Enforcement and Custodial Officer Supplemental Retirement Fund

The Department of Public Safety shall transfer monthly to the law enforcement and custodial officer supplemental retirement fund 75 cents of the motor vehicle inspection fee for each vehicle inspect-

ed as required under Section 141(c) of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 25.406 to 25.500 reserved for expansion]

SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

§ 25.501. Statement of Amount in Individual Accounts

The retirement system shall furnish to a member, on written request, a statement of the amount credited to the member's individual account. The board is not required to furnish more than one statement to each member in a fiscal year.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.502. Review of Active Accounts; Notice of Inactive Accounts; Forfeiture

(a) After the last day of each fiscal year, the retirement system shall review the active account of every member who, according to its records, has passed his or her 58th birthday and did not contribute to the system during the last fiscal year.

(b) The retirement system shall send to each member described in Subsection (a) of this section, by certified mail, a statement of the member's account and legal rights with respect to it. The statement shall include a notice of any possible retirement annuity that may become payable.

(c) If the retirement system does not receive a written response from the member or, if the member is dead, from a designated beneficiary or other lawful claimant, before the 61st day after the day on which the statement required by Subsection (b) of this section was mailed, the account is inactive. As soon as practicable after an account becomes inactive, the retirement system shall cause to be published in a newspaper of general circulation in the state a notice that contains the following information:

(1) the name of the member;

(2) the member's last known mailing address; and

(3) a statement that money is being held for the member.

(d) If a written response to the notice required by Subsection (c) of this section from the member or a lawful claimant is not received by the retirement system, the system shall cause the notice to be published in a newspaper of general circulation in the state on the fifth anniversary of the initial publication.

(e) If a legal claim to the money held in an account is not made before the second anniversary of the second publication of the notice required by this section, the money in the member's account is forfeited to the state and is transferred to the state accumulation fund. The board shall record all forfeitures in its minutes.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.503. Members' Records

Records of members and beneficiaries under retirement plans administered by the retirement system that are in the custody of the system are considered to be personnel records and are required to be treated as confidential information under Section 3(a)(1), Chapter 424, Acts of the 63rd Legislature, 1973, as amended (Article 6252–17a, Vernon's Texas Civil Statutes).

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.504. Reproduction and Preservation of Records

(a) The retirement system may photograph, microphotograph, or film any record in its possession.

(b) If a record is reproduced under Subsection (a) of this section, the retirement system may destroy or dispose of the original record if the system first:

(1) places the reproduction in a conveniently accessible file; and

(2) provides for the preservation, examination, and use of the reproduction.

(c) A photograph, microphotograph, or film of a record reproduced under Subsection (a) of this section is equivalent to the original record for all purposes, including introduction as evidence in all courts and administrative agency proceedings. A duly certified or authenticated copy of such a photograph, microphotograph, or film is admissible as evidence equally with the original photograph, microphotograph, or film.

(d) The executive director or an authorized representative may certify the authenticity of a photograph, microphotograph, or film of a record reproduced under this section and shall charge a fee for the certified photograph, microphotograph, or film as provided by law.

(e) Certified records shall be furnished to any person who is authorized by law to receive them.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.505. Certification of Names of Law Enforcement and Custodial Officers

As of the last day of each fiscal year, the Department of Public Safety, the Texas Alcoholic Beverage Commission, the Parks and Wildlife Department, the State Purchasing and General Services Commission, and the Texas Department of Corrections shall certify to the retirement system the names of employees and the amount of service each employee performed as a law enforcement officer or custodial officer during that fiscal year.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 25.506. Budget and Actuarial Information

The retirement system shall keep, in convenient form, data necessary for actuarial valuation of the funds of the retirement system and for checking the system's expenses.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

SUBTITLE D. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Section
31.001. Definitions.
31.002. Purpose of Subtitle.
31.003. Retirement System.
31.004. Powers and Privileges.
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SUBCHAPTER B. PENAL PROVISIONS

31.101. Conversion of Funds; Fraud.
31.102. Penalties.
31.103. Cancellation of Teacher Certificate.

SUBCHAPTER A. GENERAL PROVISIONS

§ 31.001. Definitions

In this subtitle:

(1) "Accumulated contributions" means the total of amounts in a member's individual account in the member savings account, including:

(A) amounts deducted from the compensation of the member;

(B) other member deposits required to be placed in the member's individual account; and

(C) interest credited to amounts in the member's individual account.

(2) "Actuarial equivalent" of a benefit means a benefit of equal monetary value when computed on the basis of annuity or mortality tables and on an interest or discount rate that is adopted by the board of trustees for the purpose from time to time and that is in force on the effective date of the benefit.

(3) "Actuarially reduced" means reduced to the actuarial equivalent.

(4) "Annual compensation" means:

(A) for school years beginning with the 1981–82 school year, salary and wages that are paid to a member for service during a school year, but excluding expense payments, allowances, fringe benefits, payments for unused vacation or sick leave, other amounts excluded by rules adopted under Section 35.110 of this subtitle, and any compensation that is not a regular payment of monetary compensation made pursuant to an employment agreement; and

(B) for school years before the 1981–82 school year, all compensation that was or should have been reported for a school year under laws and rules that governed the retirement system at the time, but excluding compensation greater than $25,000 for a school year beginning after August 31, 1969, but before September 1, 1979, and compensation greater than $8,400 for a school year beginning before September 1, 1969.

(5) "Board of trustees" means the board appointed under this subtitle to administer the retirement system.

(6) "Employee" means a person who is employed, as determined by the retirement system, with a regular salary on a full-time basis by the governing board of any school district created under the laws of this state, any county school board, the board of trustees, the State Board of Education, the Central Education Agency, the board of regents of any college or university, or any other legally constituted board or agency of any public school.

(7) "Employer" means the state or any of its designated agents or agencies responsible for public education, including those boards and agencies listed in Subdivision (6) of this section.

(8) "Faculty member" means a person, including a professional librarian, who is employed by an institution of higher education on a full-time basis as a member of the faculty or staff and whose duties include teaching, research, administration, or the performance of professional services, but does not mean a person employed in a position in the institution's classified personnel system or a person employed in a similar type of position if the institution does not have a classified personnel system.

(9) "Governing board" means the body responsible for policy direction of an institution of higher education.

(10) "Institution of higher education" has the meaning provided for that term in Section 61.003, Texas Education Code.

(11) "Membership service" means service during a time that a person is both an employee and a member of the retirement system.

(12) "Public school" means an educational institution or organization in this state that is entitled by law to be supported in whole or in part by state, county, school district, or other municipal corporation funds.

(13) "Retirement" means the withdrawal from service with a retirement benefit granted under this subtitle.

(14) "Retirement system" means the Teacher Retirement System of Texas.

(15) "School year" means:

(A) a 12-month period beginning approximately September 1 and ending approximately August 31 of the next calendar year; or

(B) for a member whose contract begins after June 30 and continues after August 31 of the same calendar year, a period not to include more than 12 months beginning on the date the contract begins.

(16) "Service" means the time a person is an employee.

(17) "Service credit" means the amount of prior, membership, military, or equivalent membership service credited to a person's account in the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 202, ch. 18, § 18, eff. Nov. 10, 1981.]

§ 31.002. Purpose of Subtitle

The purpose of this subtitle is to establish a program of benefits for members, retirees, and other beneficiaries of the retirement system and to establish rules for membership in and the management and operation of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 31.003. Retirement System

The retirement system is an agency of the state. Except as provided by Section 35.3013 of this subtitle, the Teacher Retirement System of Texas is the name by which all business of the retirement system shall be transacted, all its funds invested, and all its cash, securities, and other property held.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 202, ch. 18, § 19, eff. Nov. 10, 1981.]

§ 31.004. Powers and Privileges

The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 31.005. Exemption From Execution

All retirement allowances, annuities, refunded contributions, optional benefits, money in the various retirement system accounts, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and municipal taxation, sale, levy, and any other process, and are unassignable.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 31.006 to 31.100 reserved for expansion]

SUBCHAPTER B. PENAL PROVISIONS

§ 31.101. Conversion of Funds; Fraud

(a) A person commits an offense if the person knowingly or intentionally confiscates, misappropriates, or converts funds that represent deductions from a member's salary or that belong to the retirement system.

(b) A person commits an offense if the person knowingly or intentionally makes or permits the making of a false record for or statement to the retirement system in an attempt to defraud the retirement system.

(c) A member commits an offense if the member intentionally receives as a salary money that should have been deducted as provided by this subtitle from the member's salary.

(d) A person commits an offense if the person knowingly or intentionally violates a requirement of this subtitle other than ones described by Subsection (a), (b), or (c) of this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 31.102. Penalties

(a) An offense under Section 31.101(a) or 31.101(b) of this subtitle is a felony punishable by imprisonment in the Texas Department of Corrections for not less than one nor more than five years.

(b) An offense under Section 31.101(c) of this subtitle is a misdemeanor punishable by a fine of not less than $100 nor more than $500.

(c) An offense under Section 31.101(d) of this subtitle is a misdemeanor punishable by a fine of not less than $100 nor more than $1,000.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 31.103. Cancellation of Teacher Certificate

(a) After receiving notice from the board of trustees of an offense under Section 31.101 of this subtitle and after a hearing, the state commissioner of education may cancel the teacher certificate of a person if the commissioner determines that the person committed the offense.

(b) A person whose teacher certificate is canceled under this section may appeal the commissioner's decision to the State Board of Education.

(c) A criminal prosecution of an offender under Section 31.101 of this subtitle is not a prerequisite to action by the commissioner under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 32. MEMBERSHIP

SUBCHAPTER A. MEMBERSHIP

Section

32.001. Membership Requirement.
32.002. Exceptions to Membership Requirement.
32.003. Termination of Membership.
32.004. Effect of Termination.
32.005. Withdrawal of Contributions.
32.006. Resumption of Membership After Termination.

SUBCHAPTER B. RESUMPTION OF STATE SERVICE BY RETIREE

Section
32.101. Benefits Not Affected.
32.102. Benefits Affected.

SUBCHAPTER A. MEMBERSHIP

§ 32.001. Membership Requirement

(a) Membership in the retirement system includes:

(1) all persons who were members of the retirement system on the day before the effective date of this subtitle; and

(2) all employees of the public school system.

(b) Membership in the retirement system is a condition of employment for employees of the public school system unless an employee is excluded from membership under Section 32.002 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 32.002. Exceptions to Membership Requirement

(a) An employee of the public school system is not permitted to be a member of the retirement system if the employee:

(1) executed and filed a waiver of membership prior to the effective date of this subtitle;

(2) was or is at least 60 years old when first employed;

(3) is eligible and elects to participate in the optional retirement program under Chapter 36 of this subtitle; or

(4) is solely employed by a public institution of higher education that as a condition of employment requires the employee to be enrolled as a student in the institution.

(b) An employee under Subsection (a)(1) of this section may become a member of the retirement system at the beginning of a school year, but the employee will not be entitled to credit for waived service unless payment for the waived service is made under Section 33.202 of this subtitle.

(c) An employee under Subsection (a)(2) of this section may elect to become a member of the retirement system, effective as of the date of employment, if the employee notifies the employer and the board of trustees of the election before the 91st day after the effective date of employment.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 32.003. Termination of Membership

(a) A person terminates membership in the retirement system by:

(1) death;

(2) retirement;

(3) withdrawal of all of the person's contributions while the person is absent from service; or

(4) absence from service for more than five consecutive years within a six-year period.

(b) If a person, regardless of age, has 10 or more years of service credit, absence from service does not terminate membership in the retirement system unless all of the person's contributions are withdrawn.

(c) A person is not absent from service if the person:

(1) is performing military service creditable in the retirement system; or

(2) is on leave of absence from employment in a public school.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 32.004. Effect of Termination

If a person terminates membership in the retirement system under Section 32.003(a)(3) or 32.003(a)(4) of this subtitle, the retirement system shall cancel all of the person's service credit in the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 32.005. Withdrawal of Contributions

(a) A person who is absent from service except by death or retirement may withdraw all of the accumulated contributions credited to the person in the member savings account.

(b) An application to withdraw contributions under this section must be in writing and on a form prescribed by the board of trustees.

(c) A person is not entitled to withdraw contributions who has applied for employment, or has received a promise of employment, in a position covered by the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 32.006. Resumption of Membership After Termination

A person whose membership in the retirement system has been terminated and who resumes membership must enter the retirement system on the same terms as a person entering service for the first time and is not entitled to credit for previous or other terminated service unless it is reinstated under Section 33.501 or 33.502 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 32.007 to 32.100 reserved for expansion]

SUBCHAPTER B. RESUMPTION OF STATE SERVICE BY RETIREE

§ 32.101. Benefits Not Affected

(a) The payment of benefits to a retiree is not affected by the retiree's taking a position:

(1) as a substitute for an employee who is absent from duty if the employment is on a day-to-day basis and does not exceed 120 school days in a school year;

(2) as a substitute in a vacant position until the position can be filled or for 45 days, whichever is less; or

(3) on a one-half time or less basis.

(b) The retirement system shall include the time a retiree has been employed under Subsection (a)(2) of this section in computing the time a retiree has been employed under Subsection (a)(1) of this section.

(c) Working as a substitute for any portion of a day counts as working a full day.

(d) Employment described by Subsection (a) of this section does not entitle a retiree to additional service credit, and the retiree so employed is not required to make further contributions to the system.

(e) The board of trustees shall adopt rules governing the employment of a substitute and defining "one-half time basis."

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 32.102. Benefits Affected

(a) The retirement system shall suspend service or disability retirement benefit payments, as applicable, to a retiree for any month that the retiree holds a position in the public school system other than a position allowed under Section 32.101 of this subtitle.

(b) If a person is employed as a substitute under Section 32.101(a) of this subtitle for a longer period than is permitted under that section and then continues in the same position, the person is considered to have been a regular employee since the first day of the employment and must forfeit retirement benefits for all months of employment in that position.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 202, ch. 18, § 20, eff. Nov. 10, 1981.]

CHAPTER 33. CREDITABLE SERVICE

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33.002. Service Creditable in a Year.
33.003. Benefits Based on Service Credit.

SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE

33.101. Creditable Prior Service.
33.102. Statement of Prior Service.
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SUBCHAPTER C. ESTABLISHMENT OF MEMBERSHIP SERVICE

33.201. Current Membership Service.
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SUBCHAPTER D. ESTABLISHMENT OF MILITARY SERVICE

33.301. Creditable Military Service.
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33.401. Out-of-State Service.
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SUBCHAPTER F. REINSTATEMENT OF SERVICE CREDIT

33.501. Credit Canceled by Membership Termination.
33.502. Credit of Retiree.

SUBCHAPTER A. GENERAL PROVISIONS

§ 33.001. Types of Creditable Service

The types of service creditable in the retirement system are:

(1) prior service;

(2) membership service;

(3) military service; and

(4) equivalent membership service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 33.002. Service Creditable in a Year

The board of trustees by rule shall determine how much service in any year is equivalent to one year of service credit, but in no case may all of a person's service in one school year be creditable as more than one year of service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 33.003. Benefits Based on Service Credit

Except as otherwise provided under the optional retirement program, years of service on which the amount of a benefit is based consist of the number of years of service credit to which a member is entitled.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 33.004 to 33.100 reserved for expansion]

SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE

§ 33.101. Creditable Prior Service

Prior service creditable in the retirement system is:

(1) service as an employee performed before:

(A) September 1, 1937, for a person who became a member of the retirement system or was eligible to become a member before September 1, 1949; or

(B) September 1, 1949, for a person who first became eligible to be a member of the retirement system after August 31, 1949; and

(2) military service performed during World War I or before the first anniversary of the date that war ended.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 33.102. Statement of Prior Service

(a) At the time a person becomes a member of the retirement system for the first time, the person shall file with the retirement system a detailed statement of all prior service claimed.

(b) If a member fails to file a statement as provided by Subsection (a) of this section, has at least five years of membership service credit, and has no unpaid waived, withdrawn, or delinquent service, the member is entitled to and may file a statement claiming prior service.

(c) The board of trustees may adopt rules for the filing of statements of prior service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 33.103. Prior Service Credit

(a) As soon as practicable after a member files a statement of prior service as provided by Section 33.102 of this subtitle, the board of trustees shall:

(1) verify the service claimed;

(2) make necessary adjustments in the application;

(3) grant one year of prior service credit for each year of prior service approved; and

(4) notify the member of the amount of prior service credit granted.

(b) The board of trustees may adopt rules for the granting of prior service credit.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 33.104 to 33.200 reserved for expansion]

SUBCHAPTER C. ESTABLISHMENT OF MEMBERSHIP SERVICE

§ 33.201. Current Membership Service

(a) Membership service is credited in the retirement system for each year in which a member is an employee and for which the member renders sufficient service for credit under Section 33.002 of this subtitle and makes and maintains with the retirement system the deposits required by this subtitle or prior law.

(b) The board of trustees may adopt rules for the granting of membership service credit.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 202, ch. 18, § 21, eff. Nov. 10, 1981.]

§ 33.202. Membership Service Previously Waived

(a) An employee who has previously executed and filed a waiver of membership in the retirement system and who, after the waiver, becomes a member may establish membership service credit for service as an employee that would have been creditable as membership service when performed except for the waiver.

(b) A member may establish credit under this section by depositing with the retirement system for each year of service claimed an amount equal to:

(1) the contributions and membership fees that the person would have paid had the person been a member of the retirement system during that year; plus

(2) interest computed at an annual rate of five percent of the amount of each payment that would have been due had the person been a member, from the hypothetical payment due date to the date of deposit.

(c) The retirement system shall determine in each case the amount of money to be deposited by a member claiming credit under this section. The system may not provide benefits based on the claimed service until the determined amount has been fully paid.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 33.203 to 33.300 reserved for expansion]

SUBCHAPTER D. ESTABLISHMENT OF MILITARY SERVICE

§ 33.301. Creditable Military Service

(a) Except as provided by Section 33.101(2) of this subtitle, military service creditable in the retirement system is active federal duty in the armed forces of the United States, other than as a student at a service academy, that was performed:

(1) as a direct result of being inducted or of first enlisting for duty on a date when the federal government was actively inducting persons into the armed forces under federal draft laws;

(2) as a reservist or member of the national guard who was ordered to duty under the authority of federal law; or

(3) during a time when the federal government was actively inducting persons into the armed forces under federal draft laws.

(b) A member may not establish more than five years of service credit in the retirement system under this subchapter for military service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 33.302. Military Service Credit

(a) An eligible member may establish service credit in the retirement system for military service performed that is creditable as provided by Section 33.301 of this subtitle.

(b) A member eligible to establish military service credit is one who has at least 10 years of service credit in the retirement system for actual service in public schools.

(c) A member may establish credit under this section by depositing with the retirement system for each year of military service claimed a contribution in an amount equal to:

(1) the member's contributions to the retirement system during the most recent full year of membership service that preceded the military service, if the military service was performed while the person was a member of the retirement system; or

(2) the member's contributions to the retirement system during the first full year of membership service, if the military service was performed before the person became a member of the retirement system.

Text of subsec. (d) effective until September 1, 1982

(d) In addition to the contribution required by Subsection (c) of this section, a member claiming credit for military service must pay a fee of five percent a year of the required contribution from the date of first eligibility to the date of deposit.

Text of subsec. (d) effective September 1, 1982

(d) In addition to the contribution required by Subsection (c) of this section, a member claiming credit for military service must pay a fee of eight percent compounded annually of the required contribution from the date of first eligibility to the date of deposit.

(e) After a member makes the deposits required by this section, the retirement system shall grant the member one year of military service credit for each year of military service approved.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 203, ch. 18, § 22, eff. Sept. 1, 1982.]

§ 33.303. Military Leave Credit

A member who performs military service creditable in the retirement system but who does not establish credit for the service by making the deposits required by Section 33.302 of this subtitle is entitled to credit of a year for each year of military service performed. The credit is usable only in determining eligibility for, but not the amount of, benefits under Section 34.406 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 33.304 to 33.400 reserved for expansion]

SUBCHAPTER E. ESTABLISHMENT OF EQUIVALENT MEMBERSHIP SERVICE

§ 33.401. Out-of-State Service

(a) Except as provided by Subsection (b) of this section, an eligible member may establish equivalent membership service credit for employment with a public school system maintained wholly or partly by another state or territory of the United States or by the United States for children of its citizens.

(b) A member may not establish credit under this section for service performed for a public school while a member of the armed forces, for which service the member was compensated by the United States.

(c) A member eligible to establish credit under this section is one who has at least 10 years of service credit in the retirement system for actual service in public schools.

(d) A member may establish credit under this section by depositing with the retirement system for each year of service claimed a contribution computed at the rate of:

(1) 12 percent of the member's annual compensation during the first year of service as a member of the retirement system that is both after the service for which credit is sought and after September 1, 1956; or

(2) 12 percent of the member's annual compensation during the most recent year of service as a member that is after the service for which credit is sought, if the member has performed no service in Texas since September 1, 1956.

Text of subsecs. (e) and (f) effective until September 1, 1982

(e) In addition to the contribution required by Subsection (d) of this section, a member claiming credit under this section must pay a fee of five percent a year of the required contribution from the date of first eligibility to the date of deposit. A deposit for at least one year of credit, including the fee, must be made with an initial application for credit, and all payments for service claimed under this section must be made before retirement.

(f) The amount of service credit a member may establish under this section may not exceed:

(1) the amount of service credit the member has in the retirement system; or

(2) 10 years.

Text of subsecs. (e) and (f) effective September 1, 1982

(e) In addition to the contribution required by Subsection (d) of this section, a member claiming credit under this section must pay a fee of eight percent compounded annually of the required contribution from the date of first eligibility to the date of deposit. A deposit for at least one year of credit, including the fee, must be made with an initial application for credit, and all payments for service claimed under this section must be made before retirement.

(f) The amount of service credit a member may establish under this section may not exceed 10 years.

(g) After a member makes the deposits required by this section, the retirement system shall grant the member one year of equivalent membership service credit for each year of service approved. The retirement system may not use service credit granted under this section in computing a member's annual average compensation.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 203, ch. 18, § 23, eff. Sept. 1, 1982.]

§ 33.402. Developmental Leave

(a) An eligible member may establish equivalent membership service credit for developmental leave that is creditable in the retirement system.

(b) Developmental leave creditable in the retirement system is absence from membership service for a school year that is approved by the member's employer for study, research, travel, or another purpose designed, as determined by the employer, to improve the member's professional competence.

(c) A member eligible to establish credit under this section is one who:

(1) has at least five years of service credit in the retirement system; and

(2) is an employee of a public school at the time the credit is sought.

(d) On or before the date a member takes developmental leave, the member shall file with the retirement system a notice of intent to take developmental leave, and the member's employer shall file with the retirement system a certification that the leave meets the requirements of Subsection (b) of this section.

(e) A member may establish credit under this section by depositing with the retirement system for each year of developmental leave claimed an amount equal to the sum of:

(1) the rate of member contributions required during the member's most recent year of service that preceded the developmental leave, times the member's annual rate of compensation during that year; plus

(2) the amount that the state would have contributed had the member performed membership service during the year of leave at the member's annual rate of compensation during the most recent year of service that preceded the leave; plus

(3) any membership fees in effect during the year of leave.

(f) A member may not establish more than two years of equivalent membership service credit under this section.

(g) A member may not establish credit under this section after the end of the first creditable school year that begins after the developmental leave. The retirement system may not use credit established under this section in computing service retirement benefits until the member has at least 10 years of service credit for actual service in public schools.

(h) If credit established under this section is not used in determining benefits, all deposits made under this section are refundable to the member or, if applicable, the member's beneficiary.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 33.403. University Component Service

(a) A member may establish equivalent membership service credit for employment with the following entities that was performed before the entities became components of The University of Texas System:

(1) the Callier Center for Communication Disorders, now a part of The University of Texas at Dallas; or

(2) the Houston Speech and Hearing Center, now a part of The University of Texas Health Science Center at Houston.

(b) A member may establish credit under this section by depositing with the retirement system for each year of service claimed an amount equal to the sum of:

(1) 12 percent of the rate of the member's annual compensation during the first full 12 months of service as a member that is after the date the service for which credit is sought was performed; plus

(2) a fee of five percent a year of the amount determined under Subdivision (1) of this subsection from the date the service for which credit is sought was performed to the date of deposit; plus

(3) any membership fees that would have been paid had the service for which credit is sought been performed as a member of the retirement system.

(c) The retirement system shall use credit established under this section in determining eligibility for all benefits payable by the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, Sept. 1, 1981.]

[Sections 33.404 to 33.500 reserved for expansion]

SUBCHAPTER F. REINSTATEMENT OF SERVICE CREDIT

§ 33.501. Credit Canceled by Membership Termination

(a) An eligible person who has terminated membership in the retirement system by withdrawal of contributions or absence from service may reinstate in the system the service credit canceled by the termination.

(b) A person eligible to reinstate service credit under this section is one who resumes membership in the retirement system and subsequently performs membership service for the shorter of the following periods:

(1) two consecutive years; or

(2) a continuous period equal in duration to the period from the date of termination to the date of resumption of membership.

Text of subsec. (c) effective until September 1, 1982

(c) A member may reinstate credit under this section by depositing with the retirement system:

(1) the amount withdrawn or refunded; plus

(2) membership fees for the period that membership was terminated; plus

(3) a reinstatement fee computed at an annual rate of five percent of the amount withdrawn or refunded from the date of withdrawal or refund to the date of redeposit.

Text of subsec. (c) effective September 1, 1982

(c) A member may reinstate credit under this section by depositing with the retirement system:

(1) the amount withdrawn or refunded; plus

(2) membership fees for the period that membership was terminated; plus

(3) a reinstatement fee of six percent compounded annually of the amount withdrawn or refunded from the date of withdrawal or refund to the date of redeposit.

(d) The retirement system shall determine in each case the amount of money to be deposited by a member reinstating service credit under this section. The system may not provide benefits based on the service until the determined amount has been fully paid.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 203, ch. 18, § 24, eff. Sept. 1, 1982.]

§ 33.502. Credit of Retiree

(a) An eligible person who has terminated membership in the retirement system by service retirement may:

(1) resume membership in the system;

(2) reestablish service credit in effect immediately before the date of retirement; and

(3) establish credit for service performed since the date of retirement that would have been creditable had the person been a member of the retirement system.

Text of subsecs. (b) and (c) effective until September 1, 1982

(b) A person eligible to resume membership and reestablish and establish credit under this section is one who for five consecutive years after the date of retirement performs service that would be creditable if the person were a member of the retirement system.

(c) A person may resume membership and claim credit under this section by depositing with the retirement system:

(1) an amount equal to service retirement benefits received; plus

(2) a reinstatement fee computed at an annual rate of five percent of the amount determined under Subdivision (1) of this subsection from the date of the person's return to service to the date of redeposit; plus

(3) an amount equal to the total contributions that would have been deducted from the person's annual compensation each year after the return to service had the person been a member of the retirement system; plus

(4) a reinstatement fee computed at an annual rate of five percent of the amount determined under Subdivision (3) of this subsection from the end of each year of service after the return to service to the date of deposit; plus

(5) membership fees for the years after the return to service.

Text of subsecs. (b) and (c) effective September 1, 1982

(b) A person eligible to resume membership and reestablish and establish credit under this section is one who for two consecutive years after the date of retirement performs service that would be creditable if the person were a member of the retirement system.

(c) A person may resume membership and claim credit under this section by depositing with the retirement system:

(1) an amount equal to service retirement benefits received; plus

(2) a reinstatement fee of six percent compounded annually of the amount determined under Subdivision (1) of this subsection from the date of the person's return to service to the date of redeposit; plus

(3) an amount equal to the total contributions that would have been deducted from the person's annual compensation each year after the return to service had the person been a member of the retirement system; plus

(4) a reinstatement fee of six percent compounded annually of the amount determined under Subdivision (3) of this subsection from the end of each year of service after the return to service to the date of deposit; plus

(5) membership fees for the years after the return to service.

(d) The retirement system shall determine in each case the amount of money to deposited by a person claiming credit under this section. On payment in full of the amount required by this section, the person becomes a member of the retirement system, and the system shall grant the member credit for each year of service performed before or after the member's initial retirement.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 203, ch. 18, § 25, eff. Sept. 1, 1982.]

CHAPTER 34. BENEFITS

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SUBCHAPTER F. RETIREE DEATH BENEFITS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 34.001. Types of Benefits

The types of benefits payable by the retirement system are:

(1) service retirement benefits;

(2) disability retirement benefits; and

(3) death benefits.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.002. Effective Date of Retirement

(a) The effective date of a member's service retirement is the last day of the later of the following months:

(1) the month in which the member applies for retirement as provided by Section 34.201 of this subtitle; or

(2) the month in which the member satisfies age and service requirements for service retirement as provided by Section 34.202 of this subtitle.

(b) The effective date of a member's disability retirement is the last day of the later of the following months:

(1) the month in which the member applies for retirement as provided by Section 34.301 of this subtitle; or

(2) the month in which the member's employment in a position included in the coverage of the retirement system ends.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.003. When Benefits are Payable

Except as otherwise provided by this chapter, an annuity provided by this chapter is not payable for the month in which the person who receives the annuity dies.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.004. Waiver of Benefits

(a) A person may, on a form prescribed by and filed with the retirement system, waive all or a portion of any benefits from the retirement system to which the person is entitled. A person may revoke a waiver of benefits in the same manner as the original waiver was made.

(b) A revocable waiver may be revoked only as to benefits payable after the date the revocation is filed. If a waiver is made irrevocable and is filed with the retirement system before the first benefit payment is made to the person executing the waiver, Section 34.103 of this subtitle applies to determine alternative beneficiaries.

(c) The retirement system shall transfer to the state contribution account from the appropriate benefit reserve accounts amounts not used to pay benefits because of a waiver executed under this section.

(d) The board of trustees may provide rules for administration of waivers under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.005. Revocation of Retirement

(a) A person who has retired under the retirement system may revoke that retirement by filing with the system a written revocation in a form prescribed by the system. For a revocation to be effective, the retirement system must receive the written revocation before the 46th day after the original date of retirement, and the person must return to the system an amount equal to the amount of benefits received under the original retirement.

(b) A person who revokes a retirement under this section is restored to membership in the retirement system as if that person had never retired.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 204, ch. 18, § 26, eff. Nov. 10, 1981.]

[Sections 34.006 to 34.100 reserved for expansion]

SUBCHAPTER B. BENEFICIARIES

§ 34.101. Designation of Beneficiary

(a) Except as provided by Subsection (c) of this section, any member of annuitant may, on a form prescribed by and filed with the retirement system, designate one or more beneficiaries to receive benefits payable by the retirement system on the death of the member or annuitant.

(b) Except as provided by Subsection (c) of this section, a member or annuitant may change or revoke a designation of beneficiary in the same manner as the original designation was made.

(c) Only one person may be designated as beneficiary of an optional treatment annuity under Section 34.204(c)(1) or Section 34.204(c)(2) of this subtitle, and a designation of beneficiary under either of those options may not be made, changed, or revoked after the date of the member's retirement.

(d) Unless a contrary intention is clearly indicated by a written designation of beneficiary and except as otherwise provided by law, the most recent designation of beneficiary by a member or annuitant applies to all benefits payable on the death of the member or annuitant.

(e) The retirement system by rule may provide for the designation of alternate beneficiaries.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.102. Trust as Beneficiary

(a) Except as provided by Subsection (b) of this section, a member or annuitant may designate a trust as beneficiary for the payment of benefits from the retirement system. If a trust is designated beneficiary, the beneficiary of the trust is considered the designated beneficiary for the purposes of determining eligibility for and the amount and duration of benefits. The trustee is entitled to exercise any rights to elect benefit options and name subsequent beneficiaries.

(b) A trust having more than one beneficiary may not receive benefits to which multiple designated beneficiaries are not entitled under this chapter.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.103. Absence of Beneficiary

(a) Benefits payable on the death of a member or annuitant, except an optional retirement annuity under Section 34.204(c)(1) or 34.204(c)(2) of this subtitle, are payable, and rights to elect survivor benefits, if applicable, are available, to one of the classes of persons described in Subsection (b) of this section, if:

(1) the member or annuitant fails to designate a beneficiary before death;

(2) a designated beneficiary does not survive the member or annuitant; or

(3) a designated beneficiary, under Section 34.004 of this subtitle, waives claims to benefits payable on the death of the member or annuitant.

(b) The following classes of persons, in descending order of precedence, are eligible to receive benefits in a situation described in Subsection (a) of this section:

(1) any surviving joint designated beneficiaries;

(2) any alternate beneficiaries;

(3) the surviving spouse of the decedent;

(4) any children of the decedent or their descendants by representation;

(5) the parents of the decedent;

(6) the executor or administrator of the decedent's estate; or

(7) the persons entitled by law to distribution of the decedent's estate.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.104. Failure of Beneficiary to Claim Benefits

(a) If, before the first anniversary of the death of a member or annuitant, the retirement system does not receive a claim for payment of benefits from a designated beneficiary or a person entitled to benefits under Section 34.103 of this subtitle, the retirement system may pay benefits, except an optional retirement annuity under Section 34.204(c)(1) or Section 34.204(c)(2) of this subtitle, under the order of precedence in Section 34.103(b) of this subtitle, as if the person failing to claim benefits had predeceased the decedent.

(b) Payment under Subsection (a) of this section bars recovery by any other person of the benefits distributed.

(c) If, before the fourth anniversary of the death of a member or annuitant, payment of benefits based on the death has not been made and no claim for benefits is pending with the retirement system, the accumulated contributions of the deceased member or the balance of the reserve for the deceased annuitant is forfeited to the benefit of the retirement system. The retirement system shall transfer funds forfeited under this subsection to the state contribution account.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.105. Beneficiary Causing Death of Member or Annuitant

(a) A benefit payable on the death of a member or annuitant may not be paid to a person convicted of causing that death but instead is payable to a person who would be entitled to the benefit had the convicted person predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to pay benefits under this section unless it receives actual notice of the conviction of a beneficiary. However, the retirement system may delay payment of a benefit payable on the death of a member or annuitant pending the results of a criminal investigation and of legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of causing the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court of, causing the death of a member or annuitant, regardless of whether sentence is imposed or probated; and

(2) has no appeal of the conviction pending and the time provided for appeal has expired.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 34.106 to 34.200 reserved for expansion]

SUBCHAPTER C. SERVICE RETIREMENT BENEFITS

§ 34.201. Application for Service Retirement Benefits

(a) A member may apply for a service retirement annuity by filing a written application for retirement with the board of trustees.

(b) At any time before the effective date of retirement, a member may, by filing written notice with the board of trustees, revoke the member's application for retirement or make, revoke, or change a selection of an optional service retirement annuity available as provided by Section 34.204 of this subtitle.

(c) Except as specifically provided in this subtitle, a retiree may not revoke a retirement nor make, revoke, or change a selection of an optional service retirement annuity.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.202. Eligibility for Service Retirement

(a) A member is eligible to retire and receive a standard service retirement annuity if the member:

(1) is at least 65 years old and has at least 10 years of service credit in the retirement system; or

(2) is at least 60 years old and has at least 20 years of service credit in the retirement system.

(b) If a member is at least 55 years old and has at least 10 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under Subsection (a)(1) of this section, to a percentage derived from the following table:

	Age at Date of Retirement										
Years of Service	55	56	57	58	59	60	61	62	63	64	65
at least 10 but less than 20	47%	51%	55%	59%	63%	67%	73%	80%	87%	93%	100%

(c) If a member is at least 55 years old and has at least 20 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under Subsection (a)(2) of this section, to a percentage derived from the following table:

Years of Service	Age at Date of Retirement					
	55	56	57	58	59	60
at least 20 but less than 25	70%	76%	82%	88%	94%	100%
at least 25 but less than 30	75%	80%	82%	88%	94%	100%
at least 30 but less than 31	80%	82%	84%	88%	94%	100%
at least 31 but less than 32	82%	84%	86%	88%	94%	100%
at least 32 but less than 33	84%	86%	88%	90%	94%	100%
at least 33 but less than 34	86%	88%	90%	92%	94%	100%
at least 34 but less than 35	88%	90%	92%	94%	96%	100%
at least 35 but less than 36	90%	92%	94%	96%	98%	100%
at least 36 but less than 37	92%	94%	96%	98%	100%	100%
at least 37 but less than 38	94%	96%	98%	100%	100%	100%
at least 38 but less than 39	96%	98%	100%	100%	100%	100%
at least 39 but less than 40	98%	100%	100%	100%	100%	100%
40 or more	100%	100%	100%	100%	100%	100%

(d) If a member has at least 30 years of service credit in the retirement system, the member is eligible to retire regardless of age and receive a reduced service retirement annuity consisting of a percentage of the standard service retirement annuity available under Subsection (a)(2) of this section, derived from the table in Subsection (c) of this section. The board of trustees shall extend the table in Subsection (c) of this section to ages earlier than 55 years by decreasing the percentages by two percent for each year of age under 55 years.

(e) The board of trustees may adopt tables for reduction of benefits for early retirement by each month of age, but the range of percentages in the tables within a year must be limited to the range provided between two years of age by this section.

(f) Except as provided by Section 33.403(c) of this subtitle or the proportionate retirement program in Subtitle B of this title, a member is not eligible to receive service retirement benefits from the retirement system unless the member has at least 10 years of service credit in the retirement system for actual service in public schools.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.203. Standard Service Retirement Benefits

Text of subsecs. (a) to (c) effective until September 1, 1982

(a) Except as provided by Subsections (c) and (d) of this section, the standard service retirement annu-

ity is an amount computed on the basis of the member's average annual compensation for the five years of service, whether or not consecutive, in which the member received the highest annual compensation, times two percent for each year of service credit in the retirement system.

(b) In the case of a person who retired before August 27, 1979, ceilings in the definition of "annual compensation" apply to the computation of average annual compensation under Subsection (a) of this section. In the case of a person who retires on or after that date, those ceilings do not apply and the computation shall be based on actual compensation paid or payable for services as an employee.

(c) Except as provided by Subsection (d) of this section, for benefits payable because of the death or retirement of a member that occurred before May 31, 1977, the standard service retirement annuity is computed in accordance with applicable prior law.

Text of subsecs. (a) to (c) effective September 1, 1982

(a) Except as provided by Subsections (c) and (d) of this section, the standard service retirement annuity is an amount computed on the basis of the member's average annual compensation for the three years of service, whether or not consecutive, in which the member received the highest annual compensation, times two percent for each year of service credit in the retirement system.

(b) In the case of a person who retired before August 27, 1979, ceilings in the definition of "annual compensation" apply to the computation of average annual compensation under Subsection (a) of this section. In the case of a person who retires on or after that date, those ceilings do not apply and the computation shall be based on actual compensation paid or payable for services as an employee to the extent that the computation includes compensation for school years before the 1981–82 school year.

(c) Except as provided by Subsection (d) of this section, for benefits payable because of the death or retirement of a member that occurred before September 1, 1982, the standard service retirement annuity is computed in accordance with applicable prior law.

(d) In no case may the standard service retirement annuity be less than $6.50 a month for each year of service credit or, for a member who is at least 65 years old at the time of retirement, less than the greater of $6.50 a month for each year of service credit or $75 a month. The minimum benefits provided by this section are subject to reduction in the same manner as other benefits because of early retirement or selection of an optional retirement annuity.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 204, ch. 18, § 27, eff. Sept. 1, 1982.]

§ 34.204. Optional Service Retirement Benefits

(a) Instead of the standard service retirement annuity payable under Section 34.203 of this subtitle or an annuity reduced because of age under Section 34.202 of this subtitle, a retiring member may elect to receive an optional service retirement annuity, reduced for early retirement if applicable, under this section.

(b) An optional service retirement annuity is an annuity payable throughout the life of the retiree and is actuarially reduced from the annuity otherwise payable under this subtitle to its actuarial equivalent under the option selected under Subsection (c) of this section.

(c) An eligible member may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable to and throughout the life of the person nominated by the retiree's written designation filed prior to retirement;

(2) after the retiree's death, one-half of the reduced annuity is payable to and throughout the life of the person nominated by the retiree's written designation filed prior to retirement;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the designated beneficiary; or

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the designated beneficiary.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.205. Deductions From Service Retirement Annuity

(a) A person who receives a service retirement annuity under Section 34.202, 34.203, or 34.204 of this subtitle may, on a form satisfactory to and filed with the retirement system, authorize the retirement system to deduct from the person's monthly annuity payment the amount required as a monthly premium for:

(1) hospital insurance benefits provided to uninsured individuals not otherwise eligible for medical insurance for the aged, as provided by Part A of Title XVIII of the federal Social Security Act, 42 U.S.C. Section 1395c et seq.; and

(2) supplementary medical insurance benefits for the aged, as provided by Part B of Title XVIII of the federal Social Security Act, 42 U.S.C. Section 1395j et seq.

(b) After making deductions authorized under Subsection (a) of this section, the retirement system shall pay the required premiums to the treasury of the United States, subject to applicable laws relating to the time and manner of payment.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 34.206 to 34.300 reserved for expansion]

SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS

§ 34.301. Application for Disability Retirement Benefits

(a) A member may apply for a disability retirement annuity by:

(1) filing a written application for retirement with the board of trustees; or

(2) having an application filed with the board by the member's legal representative.

(b) In addition to an application for retirement, a member shall file with the board of trustees the results of a medical examination of the member.

(c) The board of trustees by rule may require the submission to it of additional information about a disability. The retirement system shall prescribe forms for the information required by this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.302. Eligibility for Disability Retirement

A member is eligible to retire and receive a disability retirement annuity if the member:

(1) is certified by the medical board as disabled as provided by Section 34.303(b) of this subtitle; and

(2) does not satisfy the age and service requirements under Section 34.202(a) of this subtitle for a service retirement annuity without reduction.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.303. Certification of Disability

(a) After a member applies for disability retirement, the medical board may require the member to submit additional information about the disability.

(b) If the medical board finds that the member is mentally or physically disabled from the further performance of duty and that the disability is probably permanent, the medical board shall certify disability, and the member shall be retired.

(c) The medical board may rule on an application for disability retirement at a regular or special meeting or by mail, telephone, telegraph, or other suitable means of communication.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.304. Disability Retirement Benefits

(a) If a member has a total of less than 10 years of service credit in the retirement system on the date of disability retirement, the retirement system shall pay the person a disability retirement annuity of $50 a month for the shortest of the following periods:

(1) the duration of the disability;

(2) the number of months of creditable service the person has at retirement; or

(3) the duration of the person's life.

(b) If a member has a total of at least 10 years of service credit in the retirement system on the date of disability retirement but is not eligible for service retirement without reduction of benefits, the retirement system shall pay the person for the duration of the disability a disability retirement annuity in an amount equal to the greater of:

(1) a standard service retirement annuity computed on the basis of the amount of the person's service credit on the date of retirement; or

(2) $6.50 a month for each year of service credit on the date of retirement.

(c) If a person receives a disability retirement annuity under Subsection (b) of this section and the retirement begins after or continues until the person becomes 60 years old, the disability is conclusively presumed continuous for the rest of the person's life.

(d) Before the 31st day after the date on which the medical board certifies a member's disability, the member may reinstate withdrawn contributions and make deposits for service previously waived, military service, and equivalent membership service and receive service credit as provided by this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.305. Medical Examination of Disability Retiree

(a) Once each year during the first five years after a member retires for disability, and once in each three-year period after that, the board of trustees may require a disability retiree who is less than 60 years old to undergo a medical examination by one or more physicians the board designates.

(b) If a disability retiree refuses to submit to a medical examination as provided by this section, the board of trustees shall discontinue the retiree's annuity payments until the retiree submits to an examination.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.306. Report of Earnings of Disability Retiree

(a) A disability retiree who is less than 60 years old annually shall submit a report of earnings to the retirement system. The retirement system shall examine each report and may require at any time that a disability retiree undergo a medical examination by one or more physicians the retirement system designates, if the retiree has reported earnings that the board of trustees considers excessive.

(b) The board of trustees may adopt rules establishing limits on the annual earnings of disability retirees and such other rules as are necessary to administer this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 204, ch. 18, § 28, eff. Nov. 10, 1981.]

§ 34.307. Restoration of Disability Retiree to Membership

(a) If the medical board finds that a disability retiree who is less than 60 years old is no longer mentally or physically incapacitated for the performance of duty, it shall certify its findings and submit them to the board of trustees.

(b) If a disability retiree who is less than 60 years old is restored to active service or refuses for more than one year to submit to a required medical examination, or if the board of trustees concurs in a certification issued under Subsection (a) of this section, the board shall discontinue the retiree's annuity payments and the retiree must again become a member of the retirement system.

(c) When a person becomes a member under this section, an amount equal to the sum in the person's individual account in the member savings account at the time of retirement, minus the amount of annuity payments made since retirement, shall be transferred from the retired reserve account to the person's individual account in the member savings account. The member is entitled to service credit for all service credit used to compute the member's disability retirement annuity at the time of retirement.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 34.308 to 34.400 reserved for expansion]

SUBCHAPTER E. MEMBER DEATH BENEFITS

§ 34.401. Availability of Annuity

(a) A death benefit annuity under this chapter is payable only if the decedent had, at the time of death, at least the minimum amount of service credit in the retirement system necessary for a service retirement annuity at an attained age.

(b) Multiple beneficiaries are not eligible to receive a death benefit annuity under Section 34.402(a)(4) of this subtitle or an equivalent annuity under Section 34.403 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.402. Benefits on Death of Active Member

(a) Except as provided by Section 34.401 of this subtitle, the designated beneficiary of a member who dies during a school year in which the member has performed service is eligible to receive at the beneficiary's election the greatest of the following amounts:

(1) an amount equal to the member's annual compensation for the school year immediately preceding the school year in which the member dies, or $25,000, whichever is less;

(2) an amount equal to the member's rate of annual compensation for the school year in which the member dies, or $25,000, whichever is less;

(3) 60 monthly payments of a standard service retirement annuity, computed as provided by Section 34.203(a) of this subtitle;

(4) an optional retirement annuity for the designated beneficiary's life in an amount computed as provided by Section 34.204(c)(1) of this subtitle as if the member had retired on the last day of the month immediately preceding the month in which the member dies; or

(5) an amount equal to the amount of accumulated contributions in the member's individual account in the member savings account.

(b) The board of trustees by rule may prescribe the manner of payment of benefits under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.403. Benefits on Death of Inactive Member

Except as provided by Section 34.401 of this subtitle, the designated beneficiary of a member who dies while absent from service is eligible to receive:

(1) the same benefits payable under Section 34.402 or 34.404 of this subtitle if the member's absence from service was:

(A) because of sickness, accident, or other cause the board of trustees determines involuntary;

(B) in furtherance of the objectives or welfare of the public school system; or

(C) during a time when the member was eligible to retire or would become eligible without further service before the fifth anniversary of the member's last day of service as a member; or

(2) an amount equal to the accumulated contributions in the member's individual account in the member savings account, if the member's absence from service does not satisfy a requirement of Subdivision (1) of this subsection.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.404. Survivor Benefits

(a) The designated beneficiary of a member who dies may, if entitled to a death benefit other than the accumulated contributions of the member, elect to receive, instead of a benefit payable under Section 34.402 or 34.403 of this subtitle, a lump-sum payment of $1,500 plus an applicable benefit described in this section.

(b) If the designated beneficiary is the spouse or a dependent parent of the decedent, the beneficiary may elect to receive for life a monthly benefit of $100, beginning immediately or on the date the beneficiary becomes 65 years old, whichever is later.

(c) If the designated beneficiary is the spouse of the decedent and has one or more children less than 18 years old or has custody of one or more children

of the decedent who are less than 18 years old, the designated beneficiary may elect to receive:

(1) a monthly benefit of $200 payable until the youngest child becomes 18 years old; and

(2) when the youngest child has attained the age of 18, a monthly benefit for life of $100, beginning on the date the beneficiary becomes 65 years old.

(d) If the designated beneficiary or beneficiaries are the decedent's dependent children who are less than 18 years old, their guardian may elect to receive for them:

(1) a monthly benefit of $200, payable as long as two or more children are less than 18 years old; and

(2) a monthly benefit of $100, payable as long as only one child is less than 18 years old.

(e) If the designated beneficiary is the spouse or a dependent parent of the decedent, benefits under Subsection (d) of this section are payable, if a dependent child less than 18 years old exists, on the death of the beneficiary.

(f) A person who qualifies to receive survivor benefits from more than one deceased member as a spouse or a spouse with a dependent child is entitled to be paid only benefits based on the death of one of the decedents.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.405. Tables for Determination of Death Benefit Annuity

For the purpose of computing a death benefit annuity under Section 34.402(a)(4) or 34.403 of this subtitle, the board of trustees shall extend the tables:

(1) in Section 34.202(b) of this subtitle to ages earlier than 55 years by actuarially reducing the benefit available at the age of 55 years to the actuarial equivalent at the attained age of the beneficiary; and

(2) in Section 34.202(c) of this subtitle to ages earlier than the earliest retirement age by actuarially reducing the benefit available at the earliest retirement age to the actuarial equivalent at the attained age of the beneficiary.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.406. Benefits for Survivors of Certain Members

(a) Except as provided by Subsection (c) of this section, an eligible surviving spouse who is the designated beneficiary of a person who died before April 8, 1957, and who had at the time of death a total of at least 25 years of service credit and military leave credit in the retirement system, is eligible to receive an applicable survivor benefit available under Section 34.404 of this subtitle.

(b) A surviving spouse eligible under this section to receive a benefit is one who has not received from the retirement system a benefit based on the member's death, other than a return of the member's accumulated contributions.

(c) A surviving spouse who qualifies under this section for a survivor benefit is not eligible to receive a lump-sum benefit under Section 34.404(a) of this subtitle.

(d) A benefit under this section is payable beginning on the last day of the month in which an eligible person applies for the benefit on a form prescribed by and filed with the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 34.407 to 34.500 reserved for expansion]

SUBCHAPTER F. RETIREE DEATH BENEFITS

§ 34.501. Survivor Benefits

(a) The designated beneficiary of a retiree who dies while receiving a retirement benefit is eligible to receive a lump-sum survivor benefit under Section 34.404(a) of this subtitle and any other applicable benefit available under that section.

(b) An eligible person may receive benefits under both this section and Section 34.204 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.502. Benefits on Death of Disability Retiree

The designated beneficiary of a disability retiree who dies while receiving a retirement benefit may elect to receive, instead of survivor benefits provided by Section 34.501 of this subtitle, a benefit available under Section 34.402 of this subtitle, computed as if the decedent had been in service at the time of death.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.503. Return of Excess Contributions

(a) If a retiree dies while receiving a standard or reduced service retirement annuity as provided by Section 34.202 of this subtitle or an optional service retirement annuity as provided by Section 34.204(c)(1) or 34.204(c)(2) of this subtitle and, in the case of a retiree receiving an optional service retirement annuity, if the retiree's designated beneficiary of the annuity has predeceased the retiree, the retirement system shall pay a lump-sum death benefit in an amount, if any, by which the amount of the deceased retiree's accumulated contributions at the time of retirement exceeds the amount of annuity payments made before the retiree's death.

(b) A benefit under Subsection (a) of this section is payable to any existing designated beneficiary or, if none exists, in the manner provided by Section 34.103 of this subtitle.

(c) If a retiree's designated beneficiary dies while receiving an optional annuity under Section 34.204(c)(1) or 34.204(c)(2) of this subtitle, the retirement system shall pay a lump-sum death benefit in an amount, if any, by which the amount of the retiree's accumulated contributions at the time of retirement exceeds the amount of annuity payments made to the retiree and the designated beneficiary before the beneficiary's death.

(d) A benefit under Subsection (c) of this section is payable to the persons entitled to distribution of the deceased beneficiary's estate.

(e) An eligible person may receive benefits under both this section and Section 34.501 of this subtitle.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 34.504. Benefits for Survivors of Certain Retirees

(a) Except as provided by Subsection (b) of this section, a surviving spouse who is the designated beneficiary of a retiree who did not perform a year of service after November 23, 1956, that was credited in the retirement system and who died before August 23, 1963, while receiving a retirement benefit, is eligible to receive an applicable survivor benefit available under Section 34.404 of this subtitle.

(b) A surviving spouse who qualifies under this section for a survivor benefit is not eligible to receive a lump-sum benefit under Section 34.404(a) of this subtitle.

(c) A benefit under this section is payable beginning on the last day of the month in which an eligible person applies for the benefit on a form prescribed by and filed with the retirement system.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

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SUBCHAPTER A. BOARD OF TRUSTEES

§ 35.001. Composition of Board of Trustees

The board of trustees is composed of nine members.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.002. Trustees Appointed by Governor

(a) The governor shall appoint, with the advice and consent of the senate and as provided by this section, seven members of the board of trustees.

(b) The governor shall appoint three members of the board to hold office for staggered terms, with the term of one trustee expiring on August 31 of each odd-numbered year.

(c) The governor shall appoint two members of the board from a slate of three members of the retirement system who are currently employed by a public school district and who have been nominated in accordance with Subsection (f) of this section by

the members of the retirement system whose most recent credited service was performed for a public school district. The two members hold office for staggered terms.

(d) The governor shall appoint one member of the board from a slate of three former members of the retirement system who have retired and are receiving benefits from the retirement system and who have been nominated in accordance with Subsections (f) and (g) of this section by the persons who have retired and are receiving benefits from the retirement system.

(e) The governor shall appoint one member from a slate of three members of the retirement system who are currently employed by an institution of higher education and who have been nominated in accordance with Subsection (f) of this section by the members of the retirement system whose most recent credited service was performed for an institution of higher education.

(f) Persons considered for nomination under Subsection (c), (d), or (e) of this section must have been nominated by written ballot at an election conducted under rules adopted by the board of trustees.

(g) To provide for the nomination of persons for appointment under Subsection (d) of this section, the board shall send to each retiree of the retirement system:

(1) notice of the deadline for filing as a candidate for nomination;

(2) information on procedures to follow in filing as a candidate; and

(3) a written ballot.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.003. Trustees Appointed by Board of Education

The State Board of Education shall appoint two members of the board of trustees subject to confirmation by two-thirds of the senate.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.004. Terms of Office; Filling Vacancies

(a) Members of the board of trustees hold office for terms of six years.

(b) A vacancy in the office of a trustee shall be filled for the unexpired term in the same manner that the office was previously filled.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.005. Oath of Office

Before taking office as a trustee, a person shall take the constitutional oath prescribed for officers of the state.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.006. Application of Sunset Act

The board of trustees is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes), but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished effective September 1, 1989, and every 12th year after that date are reviewed.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.007. Compensation; Expenses

Trustees serve without compensation but are entitled to reimbursement from the expense account of the retirement system for all necessary expenses that they incur in the performance of official board duties.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.008. Voting

(a) Each trustee is entitled to one vote.

(b) At any meeting of the board, a majority of the trustees is a quorum for the transaction of business.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 35.009 to 35.100 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

§ 35.101. General Administration

The board of trustees is responsible for the general administration and operation of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.102. Rulemaking

Subject to the limitations of this subtitle, the board of trustees may adopt rules for:

(1) eligibility for membership;

(2) the administration of the funds of the retirement system; and

(3) the transaction of business of the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.103. Administering System Assets

(a) The board of trustees is the trustee of all assets of the retirement system.

(b) The board may invest and reinvest the retirement system's assets as authorized by Article XVI, Section 67, of the Texas Constitution.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.104. Designation of Authority to Sign Vouchers

(a) The board of trustees shall file with the comptroller of public accounts an attested copy of a board resolution that designates the persons authorized to sign vouchers for payment from accounts of the retirement system.

(b) A filed copy of the resolution required by Subsection (a) of this section evidences the comptroller's authority to issue warrants for payment from funds of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.105. Adopting Rates and Tables

The board of trustees shall adopt rates and mortality, service, and other tables the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality, service, and compensation experience of the system's members and beneficiaries.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.106. Interest Rate for Benefit Increase Reserve Account

After reviewing the recommendation of the actuary, the board of trustees shall approve a rate of interest that represents a reasonable anticipation of earnings from the investments of assets in the benefit increase reserve account.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.107. Records of Board of Trustees

(a) The board of trustees shall keep, in convenient form, data necessary for:

(1) actuarial valuation of the accounts of the retirement system; and

(2) checking the system's expenses.

(b) The board shall keep a record of all of its proceedings.

(c) Except as otherwise provided by this title, records of the board are open to public inspection.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.108. Report

Annually, the board of trustees shall publish a report containing the following information:

(1) the retirement system's fiscal transactions for the preceding school year;

(2) the amount of the system's accumulated cash and securities; and

(3) the most recent balance sheet showing an actuarial valuation of the assets and liabilities of the system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.109. Correction of Errors

If an error in the records of the retirement system results in a person's receiving more or less money than the person is entitled to receive under this subtitle, the board of trustees shall correct the error and so far as practicable shall adjust future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.110. Determination of Annual Compensation

The board of trustees shall adopt rules to exclude from annual compensation that part of salary and wages in the final years of a member's employment that reasonably can be attributed to a conversion of fringe benefits, maintenance, and other payments not includable in annual compensation to salary and wages in anticipation of retirement. The rules may include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 205, ch. 18, § 29, eff. Nov. 10, 1981.]

[Sections 35.111 to 35.200 reserved for expansion]

SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

§ 35.201. Chairman

The board of trustees shall elect a chairman. The chairman must be a member of the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.202. Executive Secretary

(a) The board of trustees, by a majority vote of all members, shall appoint an executive secretary.

(b) The executive secretary may not be a member of the board of trustees.

(c) To be eligible to serve as the executive secretary, a person must have been a citizen of this state for the three years immediately preceding the appointment.

(d) The executive secretary shall recommend to the board actuarial and other services necessary to administer the retirement system.

(e) Annually, the executive secretary shall prepare an itemized expense budget for the following fiscal year and shall submit the budget to the board for review and adoption.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.203. Legal Adviser

The attorney general of the state is the legal adviser of the board of trustees. The attorney general shall represent the board in all litigation.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.204. Medical Board

(a) The board of trustees shall appoint a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in this state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

(1) review all medical examinations required by this subtitle;

(2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and

(3) report in writing to the board of trustees its conclusions and recommendations on all matters referred to it.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.205. Other Physicians

The board of trustees may employ physicians in addition to the medical board to report on special cases.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.206. Actuary

(a) The board of trustees shall designate an actuary as its technical adviser.

(b) At least once every five years the actuary, on authorization of the board of trustees, shall:

(1) investigate the mortality, service, and compensation experience of the members and beneficiaries of the retirement system;

(2) on the basis of the investigation made under Subdivision (1) of this subsection, recommend to the board of trustees tables and rates that are required; and

(3) on the basis of tables and rates adopted by the board of trustees under Section 35.105 of this subtitle, evaluate the assets and liabilities of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.207. State Treasurer

(a) Except as provided by Section 35.3011 or 35.3012 of this subtitle, the state treasurer is the custodian of all securities and cash of the retirement system, including securities held in the name of a nominee of the retirement system.

(b) The state treasurer shall pay money from the accounts of the retirement system on warrants drawn by the comptroller of public accounts and authorized by vouchers signed by the executive secretary or other persons designated by the board of trustees.

(c) The state treasurer annually shall furnish to the board of trustees a sworn statement of the amount of the retirement system's assets in the treasurer's custody.

(d) The state treasurer is not responsible, under either civil or criminal law, for any action or losses with respect to assets of the retirement system while the assets are in the custody of a commercial bank as provided by Section 35.3011 or 35.3012 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 205, ch. 18, § 30, eff. Nov. 10, 1981.]

§ 35.208. Compensation of Employees; Payment of Expenses

The board of trustees shall approve the rate of compensation of all persons it employs and the amounts necessary for other expenses for operation of the retirement system. The rates and amounts may not exceed those paid for similar services for the state.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.209. Surety Bonds

(a) The state treasurer shall give a surety bond in the amount of $50,000.

(b) The executive secretary shall give a surety bond in the amount of $25,000.

(c) The board of trustees may require any trustee or employee of the board, other than the executive secretary, to give a surety bond in an amount determined by the board.

(d) All surety bonds must be:

(1) made with a solvent surety company that is authorized to do business in the state;

(2) made payable to the board of trustees;

(3) approved by the board of trustees and the attorney general; and

(4) conditioned on the bonded person's faithful performance of all of the person's duties.

(e) The board of trustees shall pay from the expense account all expenses for the execution of a bond under this section, including premiums.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.210. Interest in Investment Profits Prohibited

Except for an interest in the retirement assets as a member of the retirement system, a trustee or employee of the board of trustees may not have a direct or indirect interest in the gains from investments made with the system's assets and may not receive any compensation for service other than designated salary and authorized expenses.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 35.211 to 35.300 reserved for expansion]

SUBCHAPTER D. MANAGEMENT OF ASSETS

§ 35.301. Investment of Assets

The board of trustees shall invest assets of the retirement system without distinction as to their source. All securities are held collectively for the proportionate benefit of all accounts of the system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.3011. Investment by Bank in Short-term Securities

The retirement system may contract with one or more commercial banks to serve as custodians of the system's cash or securities pending completion of an investment settlement and may authorize a bank acting as custodian to invest the cash so held in such short-term securities as the board of trustees determines.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 205, ch. 18, § 31, eff. Nov. 10, 1981.]

§ 35.3012. Loan of Securities by Bank

(a) The retirement system may contract with one or more commercial banks to serve as custodians of the system's securities and to lend the securities under rules adopted by the board of trustees and as required by this section.

(b) To be eligible to lend securities under this section, a bank must:

(1) be experienced in the operation of a fully secured securities loan program;

(2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities entrusted to it as a custodian;

(3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from the bank's service as custodian of the system's securities and its operation of a securities loan program for the system's securities;

(4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the bank collateral in the form of cash or United States government securities, in an amount equal to not less than 100 percent of the market value, from time to time, of the loaned securities; and

(5) speedily collect and remit to the state treasurer on the day of collection by the fastest available means any dividends or interest collectible by it on securities held by it as custodian, together with identification of the source of the dividends or interest.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 205, ch. 18, § 31, eff. Nov. 10, 1981.]

§ 35.3013. Nominee to Hold Securities

(a) The retirement system may select a nominee to hold securities of the system in the name of the nominee, without mention of ownership by the retirement system in the stock certificate, bond certificate, stock registration book, or other evidence of title to the securities. If a nominee is selected under this section, the records and all relevant reports or accounts of the retirement system must show the ownership by the system of the securities held by the nominee and the facts regarding the system's holdings.

(b) A nominee selected under this section shall file with the retirement system a signed statement showing the system's ownership of the securities. A nominee also shall endorse any stock certificate in blank, execute an appropriate stock power in blank and attach it to the stock certificate, or execute a conveyance or assignment of the title to the securities, and promptly deposit it with the appropriate custodian.

(c) A nominee may not possess the securities and may have access to them only under the immediate supervision of the custodian of the securities.

(d) A nominee may be a partnership composed of either retirement system employees or members of the board of trustees, or both. The retirement system may contract with a partnership under this subsection without complying with statutory requirements for awarding contracts for services by state agencies, but the retirement system shall submit any proposed contract under this subsection to the attorney general for review in advance of execution to protect the total interests of the state and the retirement system. A partner who is also a retirement system employee or board member may accept no compensation or profits from the partnership and holds any profits of the partnership in trust for the retirement system. The retirement system may indemnify its employees or board members acting in their capacities as individual partners of the nominee and may purchase performance bonds for them. The retirement system also may pay expenses and provide facilities, services, supplies, and materials necessary to the functioning of the partnership as its nominee. Any expense reimbursements must be at the same rate that the partner incurring the expense would have received as an employee or board member. Amounts may not be expended for office facilities for the partnership separate from those of the retirement system.

(e) The records of a nominee shall be maintained by the retirement system and are subject to audit by the state auditor.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 205, ch. 18, § 31, eff. Nov. 10, 1981.]

§ 35.302. Available Cash

The board of trustees may keep on deposit with the state treasurer available cash not exceeding 10 percent of the total assets of the retirement system, to pay annuity and other disbursements.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.303. Crediting System Assets

The assets of the retirement system shall be credited, according to the purpose for which they are held, to one of the following accounts:

(1) member savings account;

(2) state contribution account;

(3) retired reserve account;

(4) benefit increase reserve account;

(5) interest account; or

(6) expense account.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.304. Member Savings Account

(a) The retirement system shall deposit in a member's individual account in the member savings account:

(1) the amount of contributions to the retirement system that is deducted from the member's compensation;

(2) the portion of a deposit made on or after resumption of membership that represents the amount of retirement benefits received;

(3) the portion of a deposit to reinstate service credit previously canceled that represents the amount withdrawn or refunded;

(4) the portion of a deposit to establish membership service credit previously waived that is required by Section 33.202(b)(1) of this subtitle;

(5) the portion of a deposit to establish membership service credit for service performed after retirement that is required by Section 33.502(c)(3) or 33.502(c)(5) of this subtitle;

(6) the portion of a deposit to establish military service credit required by Section 33.302(c) of this subtitle;

(7) the portion of a deposit to establish equivalent membership service credit required by Section 33.401(d), 33.402(e)(1), 33.402(e)(2), 33.403(b)(1), or 33.403(b)(2) of this subtitle; and

(8) interest earned on money in the account as provided by Subsections (b) and (c) of this section and Section 35.310(b)(1) of this subtitle.

(b) Interest on a member's contribution is computed at the rate of five percent a year on the average balance in the account during the preceding fiscal year. The retirement system shall credit interest on August 31 of each year.

(c) Accumulated contributions in an individual's account on the date that the individual's membership in the retirement system is terminated do not earn interest after that date.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.305. State Contribution Account

The retirement system shall deposit in the state contribution account:

(1) all state contributions to the retirement system required by Section 35.404 of this subtitle;

(2) amounts from the interest account as provided by Section 35.310(b)(5) of this subtitle;

(3) retirement annuities waived or forfeited in accordance with Section 32.102(b) or 34.004 of this subtitle;

(4) fees collected under Section 35.403(h) of this subtitle;

(5) fees and interest for reinstatement of service credit or establishment of membership service credit as provided by Section 33.202, 33.501, or 33.502 of this subtitle;

(6) the portion of a deposit required by Section 33.302 of this subtitle to establish military service credit that represents a fee; and

(7) the portion of a deposit required by Section 33.401(e) of this subtitle to establish out-of-state service credit that represents a fee.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 207, ch. 18, § 32, eff. Nov. 10, 1981.]

§ 35.306. Retired Reserve Account

(a) The retirement system shall transfer to the retired reserve account:

(1) from the member savings account, an amount equal to the accumulated contributions in a member's individual account when the member retires or when the retirement system approves the payment of any benefit authorized under this subtitle on the member's retirement or death;

(2) from the state contribution account, an amount certified by the actuary as necessary to provide for the payment of the benefit as it becomes due; and

(3) from the interest account, the amount required by Section 35.310(b)(2) of this subtitle.

(b) The retirement system shall use money in the retired reserve account to pay all retirement annuities and all death or survivor benefits except those paid under Section 35.307(b) of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.307. Benefit Increase Reserve Account

(a) The retirement system shall deposit in the benefit increase reserve account:

(1) money appropriated to pay postretirement benefit increases, or other adjustments of initial benefit payments, authorized by the legislature after January 30, 1975; and

(2) interest as required by Section 35.310(b)(4) of this subtitle.

(b) The retirement system shall pay from the account postretirement benefit increases, and other adjustments of initial benefit payments, authorized by the legislature after January 30, 1975.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.308. Interest Account

In the interest account the retirement system shall:

(1) deposit all income, interest, and dividends from deposits and investments of assets of the retirement system; and

(2) accumulate net capital gains and losses from the sale, call, maturity, or conversion of securities.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.309. Expense Account

(a) The retirement system shall deposit in the expense account:

(1) all membership fees required by this subtitle; and

(2) money required to be deposited in the account by Sections 35.310(b)(3) and 35.310(c) of this subtitle.

(b) The retirement system shall pay from the account all expenses of administration and maintenance of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 207, ch. 18, § 33, eff. Nov. 10, 1981.]

§ 35.310. Transfers From Interest Account

(a) Annually, the retirement system shall transfer from the interest account to the state contribution account amounts accumulated under Section 35.308(2) of this subtitle.

(b) On August 31 of each year, the retirement system shall make the following transfers from the interest account:

(1) to the member savings account, an amount computed using the rate prescribed by Section 35.304(b) of this subtitle;

(2) to the retired reserve account, an amount equal to 4¾ percent of the average balance of the retired reserve account for that fiscal year or, if the transfer is authorized by resolution of the board, an amount computed at a greater rate if the actuary recommends the greater rate to adequately fund the retired reserve account;

(3) to the expense account, an amount designated by the board of trustees in accordance with Subsection (c) of this section;

(4) to the benefit increase reserve account, an amount representing interest on the average annual balance of the benefit increase reserve account at a rate set by the board of trustees in accordance with Section 35.106 of this subtitle; and

(5) to the state contribution account, the amount remaining in the interest account after the other transfers required by this section are made.

(c) The board of trustees, by resolution recorded in its minutes, shall transfer from the interest account to the expense account an amount necessary to cover the expenses of the retirement system for the fiscal year, including the expense of servicing mortgages insured by the Federal Housing Administration under the National Housing Act (12 U.S.C.A. Sec. 1701 et seq.).

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.311. Use of State Contributions

The retirement system shall use all assets contributed by the state to pay benefits authorized by this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 35.312 to 35.400 reserved for expansion]

SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS

§ 35.401. Collection of Membership Fees

(a) Each member of the retirement system, with the first contribution to the member savings account in each fiscal year, shall pay a membership fee of $5 to the board of trustees. The member shall pay the fee in the same manner as provided by Section 35.403 of this subtitle for the payment of the member's contributions to the member savings account.

(b) If a member does not currently hold a position included in the class of positions eligible for retirement system membership, the member shall pay the membership fee to the retirement system.

(c) If the membership fee is not paid, the board may deduct an amount equal to the fee from the member's first contribution of the year to the member savings account or from the member's accumulated contributions in that account before a refund is made.

(d) The retirement system shall deposit all membership fees in the expense account.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.402. Rate of Member Contributions

The rate of contributions for each member of the retirement system is:

(1) five percent of the member's annual compensation or $180, whichever is less, for service rendered after August 31, 1937, and before September 1, 1957;

(2) six percent of the first $8,400 of the member's annual compensation for service rendered after August 31, 1957, and before September 1, 1969;

(3) six percent of the member's annual compensation for service rendered after August 31, 1969, and before the first day of the 1977–78 school year; and

(4) 6.65 percent of the member's annual compensation for service rendered after the last day of the period described by Subdivision (3) of this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.403. Collection of Member's Contributions

(a) Each payroll period, each employer shall deduct from the compensation of each member employed by the employer an amount equal to 6.65 percent of the member's compensation for that period.

(b) Each employer or the employer's designated disbursing officer, at a time and in a form prescribed by the retirement system, shall send to the executive secretary all deductions and a certification of earnings of each member employed by the employer.

(c) The executive secretary shall deposit with the state treasurer all deductions received by the executive secretary.

(d) After the deductions are deposited with the state treasurer, the money shall be used as provided by this subtitle.

(e) The county superintendent or ex officio county superintendent, in accordance with this section, shall collect contributions of members employed in common school or other school districts under the superintendent's jurisdiction.

(f) Employers shall make the deductions required by this section even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(g) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payment period.

(h) If deductions were previously required but not paid, the member shall pay the amount of those deductions plus a fee computed at a rate of five percent a year on the unpaid amount from the end of the school year in which the deductions first became due or the end of the 1974–75 school year, whichever is later, to the date of payment. The board of trustees shall:

(1) prescribe terms for payments under this subsection;

(2) credit the member for prior service to which the member is entitled under this subtitle; and

(3) deposit the fee required by this subsection in the state contribution account.

(i) Contributions required by Section 35.402 of this subtitle shall be deducted from the funds regularly appropriated by the state for the current maintenance of any educational institution supported in whole or part by the state and not otherwise covered by this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.404. Collection of State Contributions

(a) During each fiscal year, the state shall contribute to the retirement system an amount equal to 8½ percent of the aggregate annual compensation of all members of the retirement system during that fiscal year.

(b) Before November 2 of each even-numbered year, the board of trustees shall certify to the comptroller of public accounts for review and adoption an estimate of the amount necessary to pay the state's contributions to the retirement system for the following biennium.

(c) The amount certified under Subsection (b) of this section shall be included in the state budget that the governor submits to the legislature.

(d) Before September 1 of each year the board of trustees shall certify to the comptroller of public accounts and to the state treasurer the estimated amount of contributions to be received from the members of the retirement system during the following fiscal year.

(e) All money appropriated by the state to the retirement system shall be paid to the state contribution account in equal monthly installments as provided by Article 4364a, Revised Civil Statutes of Texas, 1925.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 207, ch. 18, § 34, eff. Nov. 10, 1981.]

§ 35.405. Collection of Contributions From Federal or Private Sources; Offense; Penalty

(a) If an employer applies for money provided by the United States, an agency of the United States, or a privately sponsored source, and if any of the money will pay part or all of an employee's salary, the employer shall apply for any legally available money to pay state contributions required by Section 35.404 or 36.201 of this subtitle.

(b) When an employer receives money for state contributions from an application made in accordance with Subsection (a) of this section, the employer shall immediately send the money to the retirement system for deposit in the general revenue fund of the state treasury.

(c) Monthly, employers shall report to the retirement system in a form prescribed by the system:

(1) the name of each employee paid in whole or part from a grant;

(2) the source of the grant;

(3) the amount of the employee's salary paid from the grant;

(4) the amount of the money provided by the grant for state contributions for the employee; and

(5) any other information the retirement system determines is necessary to enforce this section.

(d) The retirement system may:

(1) require from employers reports of applications for money;

(2) require evidence that the applications include requests for funds available to pay state contributions to the retirement system for employees paid from the grant; and

(3) examine the records of any employer to determine compliance with this section and rules promulgated under it.

(e) A person commits an offense if the person is an administrator of an employer and knowingly fails to comply with this section.

(f) An offense under Subsection (e) of this section is a Class C misdemeanor.

(g) An employer who fails to comply with this section may not, after the failure, apply for or spend any money from a federal or private grant. The retirement system shall report alleged noncompliance to the attorney general, the state treasurer, the Legislative Budget Board, the comptroller of public accounts, and the governor. The attorney general shall bring a writ of mandamus against the employer to compel compliance with this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 35.406 to 35.500 reserved for expansion]

SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

§ 35.501. Statement of Amount in Individual Accounts

The board of trustees shall furnish, on written request, to a member of the retirement system a statement of the amount credited to the member's individual account. The board is not required to furnish more than one statement a calendar year.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.502. Payment of Contributions to a Member Absent From Service

(a) If a demand for the accumulated contributions of a member with fewer than 10 years of service has not been made in accordance with Section 32.005 of this subtitle before the seventh anniversary of the member's last day of service, the retirement system shall return to the member or to the member's heirs all accumulated contributions of the member.

(b) If the member or the member's heirs cannot be found, the member's accumulated contributions are forfeited to the retirement system. The retirement system shall credit the amount forfeited to the retired reserve account.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.503. Reproduction and Preservation of Records

(a) The retirement system may photograph, microphotograph, or film all records pertaining to a member's individual file, accounting records, district report records, and investment records.

(b) If a record is reproduced under Subsection (a) of this section, the retirement system may destroy or dispose of the original record if the system first:

(1) places the reproduction in conveniently accessible files; and

(2) provides for the preservation, examination, and use of the reproduction.

(c) A photograph, microphotograph, or film of a record reproduced under Subsection (a) of this section is equivalent to the original record for all purposes, including introduction as evidence in all courts and administrative agency proceedings. A duly certified or authenticated copy of such a photograph, microphotograph, or film is admissible as evidence equally with the original photograph, microphotograph, or film.

(d) The executive secretary or an authorized representative may certify the authenticity of a photograph, microphotograph, or film of a record reproduced under this section and shall charge a fee for the certified photograph, microphotograph, or film as provided by law.

(e) Certified records shall be furnished to any person who is authorized by law to receive them.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 35.504. Employer Certification to Board

(a) An employer annually shall certify to the board of trustees the beginning date of the contract of each member whose contract year begins after June 30 and continues after August 31 of the same calendar year.

(b) The board of trustees by rule may prescribe the form of and procedures for filing certifications required by this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 36. OPTIONAL RETIREMENT PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Section
36.001. Purpose of Chapter.
36.002. Optional Retirement Program.
36.003. Application.
36.004. Administration.
36.005. Exemption From Taxes.

SUBCHAPTER B. PARTICIPATION

36.101. Eligibility to Participate.
36.102. Option to Participate.
36.103. Effect of Transfers and Changes in Employment Status.
36.104. Withdrawal of Contributions to the Retirement System.
36.105. Termination of Participation.
36.106. Eligibility for Resumption of Membership.

SUBCHAPTER C. CONTRIBUTIONS AND BENEFITS

Section
36.201. Contributions.
36.202. Collection and Disbursement of Contributions.
36.203. Salary Reduction Agreement.
36.204. Benefits.

SUBCHAPTER A. GENERAL PROVISIONS

§ 36.001. Purpose of Chapter

The purpose of this chapter is to establish a complete retirement program for faculty members employed in state-supported institutions of higher education as an incentive that will attract high quality faculties and thereby improve the level of education at state-supported colleges and universities.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 36.002. Optional Retirement Program

(a) The optional retirement program established as provided by this subtitle shall provide for contributions to any type of investment authorized in Section 403(b) of the federal Internal Revenue Code of 1954, 42 U.S. Code, as it existed on January 1, 1981, and for the purchase of fixed or variable retirement annuities that meet the requirements of that section and Section 401(g) of the federal Internal Revenue Code of 1954, 42 U.S. Code, as amended.

(b) Participation in the optional retirement program is an alternative to active membership in the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 207, ch. 18, § 35, eff. Nov. 10, 1981.]

§ 36.003. Application

In this chapter, the term "institution of higher education" includes the Coordinating Board, Texas College and University System, the Texas State Technical Institute, and the institutions defined in Section 31.001(10) of this subtitle, but excludes the Rodent and Predatory Animal Control Service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 36.004. Administration

(a) A governing board may provide for contributions to any type of investment authorized in Section 403(b) of the federal Internal Revenue Code of 1954, 42 U.S. Code, as it existed on January 1, 1981, and may arrange the purchase of annuity contracts from any insurance or annuity company that is qualified to do business in this state.

(b) If a governing board has more than one component institution, agency, or unit under its jurisdiction, the governing board may provide a separate optional retirement program for each component or may place two or more components under a single program.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, § 36, eff. Nov. 10, 1981.]

§ 36.005. Exemption From Taxes

If qualified to do business in this state, a life insurance or annuity company is exempt from the payment of franchise or premium taxes on annuity or group insurance policies issued under a benefit program authorized and at least partly paid for by the governing board of an institution of higher education.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 36.006 to 36.100 reserved for expansion]

SUBCHAPTER B. PARTICIPATION

§ 36.101. Eligibility to Participate

(a) The governing board of each institution of higher education shall provide an opportunity to participate in the optional retirement program to all faculty members in the component institutions governed by the board.

(b) Eligibility to participate in the optional retirement program is subject to rules adopted by the governing board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 36.102. Option to Participate

(a) A member of the retirement system who is eligible to participate in the optional retirement program may elect to continue as a member of the retirement system or to participate in the optional retirement program.

(b) A person eligible to participate in the optional retirement program on the date the program becomes available at the person's place of employment must elect to participate in the program no later than August 1 of the calendar year after the year in which the program becomes available.

(c) A person who becomes eligible to participate in the optional retirement program after the date the program becomes available at the person's place of employment must elect to participate before the 91st day after becoming eligible.

(d) An eligible person who does not elect to participate in the optional retirement program is considered to have chosen to continue membership in the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 36.103. Effect of Transfers and Changes in Employment Status

(a) An institution of higher education shall accept the transfer of a participant's optional retirement program from another institution of higher education.

(b) If, after participating in the optional retirement program for at least one year, a person becomes employed in an institution of higher education

in a position normally covered by the retirement system, the person shall continue participation in the optional retirement program if the person has had no intervening employment in the public schools other than in an institution of higher education.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 36.104. Withdrawal of Contributions to the Retirement System

(a) A person who is a participant in the optional retirement program may withdraw accumulated contributions from the retirement system.

(b) An application to withdraw contributions under this section must be in writing and on a form prescribed by the board of trustees.

(c) Before the first anniversary of the date an application is received, the retirement system shall pay a withdrawing member the member's accumulated contributions.

(d) A person who withdraws contributions under this section relinquishes all accrued rights in the retirement system.

(e) Nothing in Section 36.105 of this subtitle precludes the election by a participant to withdraw accumulated contributions under this section.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 36.105. Termination of Participation

(a) A person terminates participation in the optional retirement program, without losing any accrued benefits, by:

(1) death;

(2) retirement; or

(3) termination of employment in all institutions of higher education.

(b) A change of company providing optional retirement program benefits or a participant's transfer between institutions of higher education is not a termination of employment.

(c) The benefits of an annuity purchased under the optional retirement program are available only if the participant terminates participation in the program as provided by Subsection (a) of this section.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, § 37, eff. Nov. 10, 1981.]

§ 36.106. Eligibility for Resumption of Membership

A participant in the optional retirement program is not eligible for membership in the retirement system unless the person:

(1) terminates employment covered by the optional retirement program; and

(2) becomes employed in the public school system in a position that is not eligible for participation in the optional retirement program.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 36.107 to 36.200 reserved for expansion]

SUBCHAPTER C. CONTRIBUTIONS AND BENEFITS

§ 36.201. Contributions

Each fiscal year the state and a participant in the optional retirement program shall pay to the program the same amounts as each would have been required to contribute to the retirement system had the person remained a member. These payments shall be credited to the benefit of the participant.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 36.202. Collection and Disbursement of Contributions

(a) The contributions of participants in the optional retirement program shall be deducted in the manner provided for deduction of member contributions to the retirement system or reduced under an agreement made under Section 36.203 of this subtitle.

(b) The comptroller of public accounts shall pay the state's contributions to the optional retirement program to the appropriate institutions of higher education.

(c) The disbursing officer of an institution of higher education shall pay the contributions collected under this section to the company providing the optional retirement program for that institution.

(d) An institution of higher education shall certify to the comptroller, in the manner provided for estimate of state contributions to the retirement system, estimates of funds required for the payments by the state under this section.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 36.203. Salary Reduction Agreement

(a) A participant in the optional retirement program and the employing institution of higher education, acting through its governing board, may execute an agreement under which the salary of the participant is reduced by the amount of the contribution required under Section 36.201 of this subtitle and under which the employer contributes an amount equal to the reduction for any type of investment authorized in Section 403(b) of the federal Internal Revenue Code of 1954, 42 U.S. Code, as it existed on January 1, 1981, or toward the purchase of an annuity under the program.

(b) Only one agreement under this section may be executed in a calendar year.

(c) Unless the parties agree that an agreement under this section is irrevocable during its term, the agreement may be terminated as to amounts not yet earned.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, § 38, eff. Nov. 10, 1981.]

§ 36.204. Benefits

Benefits in the optional retirement program vest in a participant after one year of participation in one or more optional retirement plans operating in one or more institutions of higher education.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

SUBTITLE E. JUDICIAL RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Section
41.001. Definitions.
41.002. Purpose of Subtitle.
41.003. Retirement System.
41.004. Exemption From Execution.

SUBCHAPTER A. GENERAL PROVISIONS

§ 41.001. Definitions

In this subtitle:

(1) "Annuity" means an amount of money payable in monthly installments for life or for another period as provided by this subtitle.

(2) "Board of trustees" means the entity given responsibility under Section 45.001 of this subtitle for the administration of the retirement system.

(3) "Judicial officer" means a person who presides over a court or a commission to a court named in Section 42.001 of this subtitle.

(4) "Retiree" means a person who receives an annuity based on service that was credited to the person.

(5) "Retirement system" means the Judicial Retirement System of Texas.

(6) "Service credit" means the amount of membership, military, and equivalent membership service ascribed by the retirement system to a person and for which the person has made required contributions.

(7) "Supreme court" means the Supreme Court of Texas.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 41.002. Purpose of Subtitle

The purpose of this subtitle is to establish a program of benefits for members, retirees, and other beneficiaries of the retirement system and to establish rules for the management and operation of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 41.003. Retirement System

The retirement system is an entity of the state. The Judicial Retirement System of Texas is the name by which all its business shall be transacted and all its property held.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 41.004. Exemption From Execution

All annuity and other benefit payments from the retirement system, contribution refunds, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and local taxation, levy, sale, and any other process, and are unassignable.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 42. MEMBERSHIP

SUBCHAPTER A. MEMBERSHIP

Section
42.001. Eligibility for Membership.
42.002. Membership Fee.
42.003. Termination of Membership.
42.004. Withdrawal of Contributions.

SUBCHAPTER B. RESUMPTION OF JUDICIAL SERVICE BY RETIREE

42.101. Election to be Judicial Officer.
42.102. Assignment as Judicial Officer.
42.103. Ineligibility for Membership.
42.104. Retirement Allowance.

SUBCHAPTER A. MEMBERSHIP

§ 42.001. Eligibility for Membership

(a) Membership in the retirement system is limited to judges, justices, and commissioners of:

(1) the supreme court;

(2) the court of criminal appeals;

(3) courts of appeals;

(4) district courts; and

(5) commissions to a court specified in this subsection.

(b) Membership in the retirement system is mandatory for eligible persons.

(c) Membership in the retirement system begins on the first day a person holds a judicial office specified in Subsection (a) of this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 42.002. Membership Fee

Each member of the retirement system annually shall pay the system a membership fee of $2.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 42.003. Termination of Membership

A person terminates membership in the retirement system by:

(1) death;

(2) retirement based on service credited in the retirement system; or

(3) withdrawal of the person's contributions to the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 42.004. Withdrawal of Contributions

(a) If a member resigns a judicial office or otherwise ceases to be a judicial officer, the member may withdraw all of his or her contributions to the retirement system.

(b) A withdrawal of contributions cancels the person's service credit in the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 42.005 to 42.100 reserved for expansion]

SUBCHAPTER B. RESUMPTION OF JUDICIAL SERVICE BY RETIREE

§ 42.101. Election to be Judicial Officer

(a) A retiree may elect to be a judicial officer.

(b) An election under this section must be made within 90 days after the date of the person's retirement in a document addressed to the chief justice of the supreme court.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 42.102. Assignment as Judicial Officer

(a) A retiree who makes an election under Section 42.101 of this subtitle is, with the retiree's consent to each assignment, subject to assignment:

(1) by the chief justice of the supreme court to sit on any court of the state of the same or lesser dignity as that on which the person sat before retirement;

(2) by the presiding judge of the court of criminal appeals to sit as a commissioner of that court; and

(3) by the presiding judge of an administrative judicial district to sit on a court in that administrative district or, on request of the presiding judge of another administrative judicial district, on a court in that other administrative district, if in either circumstance the court is of the same or lesser dignity as that on which the person sat before retirement.

(b) Assignment of a retiree to sit on a district court is subject to the requirements for judicial assignments contained in Chapter 156, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 200a, Vernon's Texas Civil Statutes).

(c) While serving under assignment as provided by this section, a retiree has all powers of a judge of the court to which the retiree has been assigned.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 42.103. Ineligibility for Membership

A retiree who makes an election under Section 42.101 of this subtitle may not rejoin the retirement system or receive credit in the retirement system for service performed under assignment as provided by Section 42.102 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 42.104. Retirement Allowance

(a) While serving under assignment as provided by Section 42.102 of this subtitle, a retiree is entitled to be paid, instead of the annuity otherwise payable under this subtitle, a retirement allowance equal to the salary of the judge of the court to which the retiree has been assigned.

(b) A retirement allowance payable under this section may not be considered for any purpose as a salary or remuneration for the assignment or service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 43. CREDITABLE SERVICE

SUBCHAPTER A. GENERAL PROVISIONS

Section
43.001. Types of Creditable Service

SUBCHAPTER B. ESTABLISHMENT OF SERVICE

43.101. Current Service.
43.102. Service Credit Previously Canceled.
43.103. Military Service.
43.104. Service on Domestic Relations or Special Juvenile Court.

SUBCHAPTER A. GENERAL PROVISIONS

§ 43.001. Types of Creditable Service

The types of service creditable in the retirement system are:

(1) membership service;

(2) military service; and

(3) equivalent membership service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 43.002 to 43.100 reserved for expansion]

SUBCHAPTER B. ESTABLISHMENT OF SERVICE

§ 43.101. Current Service

Membership service is credited in the retirement system for each month in which a member holds a judicial office and for which the member makes the required contribution.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 43.102. Service Credit Previously Canceled

If a person who has withdrawn contributions to the retirement system and canceled service credit under Section 42.004 of this subtitle subsequently rejoins the retirement system, the member may not become eligible for retirement benefits from the retirement system unless the person redeposits with the system the amount withdrawn. Payment under this section reestablishes the service credit canceled by the refund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 43.103. Military Service

(a) An eligible member may establish service credit in the retirement system for military service performed that is creditable in the retirement system.

(b) A member eligible to establish military service credit is one who:

(1) currently contributes to the retirement system;

(2) has at least 8 years of service credit in the retirement system; and

(3) does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent.

(c) Military service creditable in the retirement system is active duty federal military service performed during a time that the United States is or was engaged in armed conflict. The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of armed conflict.

(d) A member may not establish more than 48 months of service credit in the retirement system for military service.

(e) A member may establish credit under this section by depositing with the retirement system a contribution computed for each month of military service claimed at the rate of six percent of the member's current monthly state salary.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 43.104. Service on Domestic Relations or Special Juvenile Court

(a) An eligible member may establish equivalent membership service credit in the retirement system for service performed as judge of a domestic relations or special juvenile court.

(b) A member eligible to establish credit under this section is one who serves or served as judge:

(1) of a domestic relations or special juvenile court on the date that the court is or was abolished by the Family District Court Act, as amended (Article 1926a, Vernon's Texas Civil Statutes); or

(2) of a district or appellate court on the date that a domestic relations or special juvenile court is or was abolished by the Family District Court Act, as amended (Article 1926a, Vernon's Texas Civil Statutes), but formerly served as judge of a court abolished by that Act.

(c) A member may establish credit under this section by depositing with the retirement system a contribution in an amount, except as provided by Subsection (f) of this section, computed at the rate of six percent of the state salary of a district judge for the member's full tenure on the abolished court, plus interest computed at the rate of interest credited to a person's account in the Texas County and District Retirement System for the period of the service or, for service performed before January 1, 1968, at the rate of six percent a calendar year.

(d) A member who establishes credit under this section forfeits all rights to benefits based on the claimed service in the Texas County and District Retirement System, except rights to benefits based on the amount paid by the county for the service that exceeds the amount of state salary that would have been paid for the service.

(e) The Texas County and District Retirement System shall transfer to the retirement system the amount credited to the member's account, whether contributed by the member or the member's employer, plus accumulated interest, except any amount representing contributions or interest on salary that exceeds the state salary that would have been paid for the service.

(f) The retirement system shall credit the amount transferred by the Texas County and District Retirement System against the member's required payment under this section. If the total of the amount transferred and the amount paid by the member exceeds the amount required by this section, the retirement system shall leave the excess in the general revenue fund.

(g) The amount of contributions credited in the retirement system to a member who establishes credit under this section is the amount that the member would have contributed as a district judge at the time the service was performed.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 44. BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

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44.001. Types of Benefits.
44.002. Application for Retirement.
44.003. Certification by Chief Justice.
44.004. Ineligibility for Benefits.
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SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

44.101. Eligibility for Service Retirement Annuity.
44.102. Service Retirement Annuity.
44.103. Optional Service Retirement Annuity.

SUBCHAPTER C. DISABILITY RETIREMENT BENEFITS

Section
44.201. Eligibility for Disability Retirement Annuity.
44.202. Information About Physical Incapacity.
44.203. Disability Retirement Annuity.

SUBCHAPTER D. DEATH BENEFITS

44.301. Selection of Death Benefit Plan by Member.
44.302. Selection of Death Benefit Plan by Survivor of Member.
44.303. Return of Contributions.
44.304. Return of Excess Contributions.

SUBCHAPTER A. GENERAL PROVISIONS

§ 44.001. Types of Benefits

The types of benefits payable by the retirement system are:

(1) service retirement benefits;

(2) disability retirement benefits; and

(3) death benefits.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.002. Application for Retirement

A member may apply for service or disability retirement by filing an application for retirement with the board of trustees before the date the member wishes to retire.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.003. Certification by Chief Justice

An annuity may not be paid under this subtitle until the chief justice of the supreme court certifies to the comptroller of public accounts and to the board of trustees that the applicant for the annuity is entitled to it.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.004. Ineligibility for Benefits

An annuity that is based on service of a member who is removed from judicial office by impeachment, or otherwise for official misconduct, may not be paid under this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.005. Ineligibility to Practice Law

A retiree receiving an annuity from the retirement system may not appear and plead as an attorney in any court in this state.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 44.006 to 44.100 reserved for expansion]

SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

§ 44.101. Eligibility for Service Retirement Annuity

(a) A member is eligible to retire and receive a base service retirement annuity if the member:

(1) is at least 65 years old, currently holds a judicial office, and has at least 10 years of service credited in the retirement system, the most recently performed of which was for a continuous period of at least one year;

(2) is at least 65 years old and has at least 12 years of service, continuous or otherwise, credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(3) has at least 20 years of service credited in the retirement system, the most recently performed of which was for a continuous period of at least 10 years, regardless of whether the member currently holds a judicial office.

(b) A member who meets service requirements provided by Subsection (a)(1) or (a)(2) of this section is eligible to retire and receive a service retirement annuity actuarially reduced as provided by Section 44.102(d) of this subtitle from the standard service retirement annuity, if the member is at least 60 years old.

(c) A member's resignation from a judicial office before applying for an annuity does not make the member ineligible for the annuity unless the member applies for an annuity under Subsection (a)(1) of this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.102. Service Retirement Annuity

(a) The base service retirement annuity is an amount equal to 50 percent of the state salary, as adjusted from time to time, being paid a judge of a court of the same classification as the court on which the retiree last served before retirement.

(b) Except as provided by Subsection (c) of this section, the retirement system shall increase by 10 percent of the amount of the applicable state salary under Subsection (a) or (d) of this section, the annuity of a member who retires:

(1) before becoming 71 years old; or

(2) at any age immediately after becoming eligible to retire under Section 44.101 of this subtitle.

(c) A member who has been out of judicial office for more than one year, as of the effective date of the person's retirement, is not eligible to receive the increased annuity provided by Subsection (b) of this section.

(d) The service retirement annuity of a person qualifying for retirement under Section 44.101(b) of this subtitle is an amount computed as a percentage of the state salary, as adjusted from time to time, being paid a judge of a court of the same classifica-

tion as the court on which the retiree last served before retirement, according to the following schedule:

age at retirement	percentage of state salary
at least 60 but less than 61	40 percent
at least 61 but less than 62	41.7 percent
at least 62 but less than 63	43.6 percent
at least 63 but less than 64	45.6 percent
at least 64 but less than 65	47.7 percent

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, § 39, eff. Nov. 10, 1981.]

§ 44.103. Optional Service Retirement Annuity

(a) Instead of a service retirement annuity payable under Section 44.102 of this subtitle, a retiring member may elect to receive an optional service retirement annuity, payable throughout the life of the retiree and actuarially reduced, under tables adopted by the board of trustees, from the annuity otherwise payable to its actuarial equivalent.

(b) Optional service retirement annuities available to a retiring member are those available to retiring members of the Employees Retirement System of Texas under Section 24.108(c) of Subtitle C of this title.

(c) A person may apply for an optional service retirement annuity by filing an application for the annuity with the retirement system before the 31st day after the date of the person's retirement.

(d) The computation of an optional service retirement annuity must include the ages of the retiring member and the member's designated beneficiary at the time of the member's retirement.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 44.104 to 44.200 reserved for expansion]

SUBCHAPTER C. DISABILITY RETIREMENT BENEFITS

§ 44.201. Eligibility for Disability Retirement Annuity

(a) A member is eligible, regardless of age, to retire from regular active service for disability and receive a disability retirement annuity if the member has at least seven years of service credit in the retirement system.

(b) A member otherwise eligible may not receive a disability retirement annuity unless the chief justice of the supreme court certifies that the member is mentally or physically incapacitated for the further performance of regular judicial duties.

(c) A disability retirement annuity may be denied on the ground that a claimed physical incapacity is caused by or results from an intemperate use of alcohol or narcotic drugs.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.202. Information About Physical Incapacity

(a) A member who applies for retirement because of physical incapacity shall file with the supreme court written reports by two physicians licensed to practice medicine in this state, fully reporting the claimed physical incapacity.

(b) The chief justice of the supreme court may appoint a physician licensed in this state to make any additional medical investigation the court finds necessary.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.203. Disability Retirement Annuity

(a) Except as provided by Subsection (b) or (c) of this section, a disability retirement annuity is an amount computed as provided by Section 44.102 of this subtitle.

(b) The amount of a disability retirement annuity is not reducible because of the age of the retiring member but may be increased as provided by Section 44.102(b) of this subtitle, if applicable.

(c) Instead of a disability retirement annuity computed as provided by Section 44.102 of this subtitle, a retiring member may elect to receive an optional disability retirement annuity payable as provided by Section 44.103 of this subtitle.

(d) A disability retirement annuity is payable for the duration of the retiree's disability. If a retiree who has selected an optional disability retirement annuity dies while receiving the annuity, the annuity is payable throughout the life of the retiree's designated beneficiary or for a guaranteed period after the date of retirement, depending on the option selected.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 44.204 to 44.300 reserved for expansion]

SUBCHAPTER D. DEATH BENEFITS

§ 44.301. Selection of Death Benefit Plan by Member

(a) A contributing member who has at least 10 years of service credit in the retirement system, or a noncontributing member who has at least 12 years of service credit, may select a death benefit plan for the payment, if the member dies before retirement, of a death benefit annuity to one or more persons designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Sections 24.108(c)(1) and 24.108(c)(4) of Subtitle C of this title.

(b) A member who meets the requirements of Section 24.301(b) of Subtitle C of this title may select a death benefit plan under that subsection. Section 24.301(c) of Subtitle C of this title applies to a death benefit plan selected by a member in applicable circumstances.

(c) The computation of a death benefit annuity must include the ages of the member and of the member's designated beneficiary at the time of the member's death.

(d) A member may select a death benefit plan by filing an application for a plan with the board of trustees on a form prescribed by the board. After selection, a death benefit plan may take effect at death unless the member amends the plan, selects a retirement annuity at the time of the member's retirement, or becomes ineligible to select a plan.

(e) A death benefit annuity is payable beginning on the day after the date the member dies.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.302. Selection of Death Benefit Plan by Survivor of Member

(a) If a member eligible to select a death benefit plan under Section 44.301(a) of this subtitle dies without having made a selection, the member's surviving spouse may select a plan in the same manner as if the member had made the selection. If there is no surviving spouse, the personal representative of the decedent's estate may make the selection.

(b) If a person dies who meets the description in Section 24.302(b) of Subtitle C of this title, the person's surviving spouse or the guardian of surviving minor children may select a death benefit plan under that subsection.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.303. Return of Contributions

(a) Except as provided by Subsection (c) of this section, if a member dies before retirement, the amount of the member's contributions to the retirement system is payable as a lump-sum death benefit.

(b) The benefit provided by this section is payable to a person designated by the member in a signed document filed with the board of trustees. If a member does not designate a beneficiary, the benefit is payable to the member's estate.

(c) A death benefit may not be paid under this section if a death benefit annuity has been selected as provided by Section 44.301 or 44.302 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 44.304. Return of Excess Contributions

(a) Except as provided by Subsection (c) of this section, if a person dies after retirement, a lump-sum death benefit is payable in an amount, if any, by which the retiree's contributions to the retirement system on the date of retirement exceed the amount of annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the retiree's designated beneficiary. If a retiree dies without having designated a beneficiary, the benefit is payable to the person entitled to distribution of the decedent's estate, if that person or the personal representative of the decedent's estate claims the benefit before the second anniversary of the decedent's death.

(c) A death benefit may not be paid under this section if an optional retirement annuity has been selected as provided by Section 44.103 or 44.203 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 45. ADMINISTRATION

SUBCHAPTER A. POWERS AND DUTIES

Section
45.001. General Administration.
45.002. Rulemaking.
45.003. Deposit of Certain Funds.

SUBCHAPTER B. CONTRIBUTIONS

45.101. Member Contributions.
45.102. State Contributions.

SUBCHAPTER A. POWERS AND DUTIES

§ 45.001. General Administration

The board of trustees of the Employees Retirement System of Texas is responsible for the general administration and operation of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 45.002. Rulemaking

Subject to the limitations of this subtitle, the board of trustees may adopt rules and provide for forms as it finds necessary for the administration of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 45.003. Deposit of Certain Funds

(a) The retirement system shall deposit membership fees paid as required by Section 42.002 of this subtitle in the expense fund of the Employees Retirement System of Texas, to compensate for the costs of administering this retirement system.

(b) The retirement system shall deposit in the general revenue fund all other amounts paid to the system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 45.004 to 45.100 reserved for expansion]

SUBCHAPTER B. CONTRIBUTIONS

§ 45.101. Member Contributions

(a) Each month the comptroller of public accounts shall deduct from the state compensation of each member a contribution computed at the rate required of a member of the employee class of the Employees Retirement System of Texas.

(b) Contributions deducted as provided by this section are deposited in the general revenue fund, where they are subject to appropriation as are other amounts in the fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 45.102. State Contributions

The legislature is obligated to appropriate the amount of money necessary to administer this subtitle for each fiscal year.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

SUBTITLE F. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 51. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Section
51.001. Definitions.
51.002. Purpose of Subtitle.
51.003. Retirement System.
51.004. Powers and Privileges.
51.005. Action for Accounting.
51.006. Exemption From Execution.

SUBCHAPTER B. PENAL PROVISIONS

51.101. Offenses; Penalty.

SUBCHAPTER A. GENERAL PROVISIONS

§ 51.001. Definitions

In this subtitle:

(1) "Actuarial equivalent" means a benefit that, at the time it is entered upon, has the same present value as the benefit it replaces, based on interest and on a mortality table recommended by the actuary and adopted by the board of trustees.

(2) "Annual compensation" means the compensation that is paid to an employee of a participating subdivision by the subdivision that does not exceed the rate of compensation fixed by the subdivision governing body as the maximum compensation for a year on which contributions by the employee to the retirement system may be based.

(3) "Annuity" means an amount of money payable in equal monthly installments at the end of each month for a period determined under this subtitle.

(4) "Board of trustees" means the persons appointed under this subtitle to administer the retirement system.

(5) "Compensation" means the payments made to an employee of a participating subdivision by the subdivision for service, including nonmonetary compensation, the value of which is determined by the governing body of the subdivision.

(6) "Employee" means a person who is certified by a subdivision as being employed in, or elected or appointed to, a position or office in the subdivision that normally requires services from the person for not less than 900 hours a year and for which the person is compensated by the subdivision.

(7) "Governing body" means the commissioners court of a county or, in any other subdivision, the body that is authorized to raise and expend revenue.

(8) "Initial deposit rate" means the percentage of the annual compensation of an employee of a participating subdivision that is required by the subdivision on the effective date of subdivision participation in the retirement system as the rate for employee contributions to the retirement system.

(9) "Local pension system" means a public retirement benefit program of less than statewide scope.

(10) "Retirement" means the withdrawal from service with a retirement benefit granted under this subtitle.

(11) "Retirement system" means the Texas County and District Retirement System.

(12) "Service" means the time a person is an employee.

(13) "Credited service" means the number of months of prior and current service ascribed to a member in the retirement system or included in a prior service certificate in effect for the member.

(14) "Subdivision" means a county, a political unit that consists of all of the geographical area of one county or of all or part of more than one county, a political unit of a county that has taxing authority, the Texas Association of Counties, the Texas County and District Retirement System, or a city and county that jointly operate a city-county hospital under Chapter 383, Acts of the 48th Legislature, Regular Session, 1943 (Article 4494i, Vernon's Texas Civil Statutes), but does not include an incorporated city or town, a school district, or a junior college district.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 51.002. Purpose of Subtitle

The purpose of this subtitle is to establish a program of benefits for members, retirees, and their beneficiaries and to establish rules for the management and operation of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 51.003. Retirement System

The Texas County and District Retirement System is continued in existence and is the name by which the business of the retirement system shall be transacted, all its funds invested, and all its cash and other property held.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 51.004. Powers and Privileges

The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 51.005. Action for Accounting

(a) The retirement system or the board of trustees may initiate, or cause to be initiated on its behalf, an action against a participating subdivision, a board of the subdivision, or individual officers of the subdivision, to compel an accounting of sums due to the retirement system or to require the withholding and accounting of sums due from members.

(b) The venue of an action brought under this section is in either Travis County or a county in which the subdivision is situated.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 51.006. Exemption From Execution

All retirement annuity payments, other benefit payments, and a member's accumulated contributions are unassignable and are exempt from execution, garnishment, attachment, and state and local taxation.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 51.007 to 51.100 reserved for expansion]

SUBCHAPTER B. PENAL PROVISIONS

§ 51.101. Offenses; Penalty

(a) A person commits an offense if the person knowingly makes a false statement in a report or application to the retirement system in an attempt to defraud the retirement system.

(b) A person commits an offense if the person knowingly makes a false certificate of an official report to the retirement system.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than $100 nor more than $1,000, by confinement in jail for not less than 30 days nor more than one year, or both.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 52. MEMBERSHIP

SUBCHAPTER A. SUBDIVISION PARTICIPATION

Section

52.001. Subdivision Participation.
52.002. Rules for Participating Subdivisions.
52.003. Additional Membership Classes.
52.0031. Supplemental Death Benefits Fund.
52.004. Termination of Subdivision Participation.
52.005. Merger.

SUBCHAPTER B. MEMBERSHIP

52.101. General Membership Requirement.
52.102. Election to Become Member.
52.103. Credit for Person Who Elects to Become Member.
52.104. County Hospital Employees.
52.105. Status as an Employee.
52.106. Multiple Retirement System Membership.
52.107. Exception to General Membership Requirement.
52.108. Withdrawal of Contributions.
52.109. Termination of Membership.
52.110. Resumption of Service by a Retiree.

SUBCHAPTER C. OPTIONAL MEMBERSHIP COVERAGE

52.201. Optional Membership Class.
52.202. Waiver of Membership.
52.203. Subsequent Election to Become Member.

SUBCHAPTER A. SUBDIVISION PARTICIPATION

§ 52.001. Subdivision Participation

(a) A subdivision, in the manner required for official actions of the subdivision, may elect to join the retirement system and be subject to the provisions of this subtitle.

(b) The governing body of a subdivision shall notify the board of trustees of an election under this section before the 11th day after the date of election.

(c) Subject to the approval of the board of trustees, an electing subdivision under this section may begin participation in the retirement system on the first day of any month designated by the subdivision's governing body.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 52.002. Rules for Participating Subdivisions

The board of trustees may adopt rules concerning:

(1) notices, information, and reports the board of trustees requires from a subdivision that elects to participate in the retirement system; and

(2) the time that a subdivision that elects to participate in the retirement system may begin participation.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 52.003. Additional Membership Classes

If a class of employees becomes eligible for membership in the retirement system as a result of amendment of this subtitle after a subdivision has elected to participate, the subdivision may include that class as members of the retirement system on

the same terms as are applicable to employees eligible for optional coverage under Subchapter C of this chapter.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 52.0031. Supplemental Death Benefits Fund

(a) If a subdivision is participating in the retirement system on a full-salary basis, the subdivision may elect to participate in the supplemental death benefits fund.

(b) A subdivision that elects to participate in the fund may elect coverage providing postretirement death benefits in addition to coverage providing in-service death benefits.

(c) Before a subdivision that has fewer than 10 employees who are members of the retirement system is permitted to participate in the fund, the board of trustees may require the subdivision to provide evidence that is satisfactory to the board that the members are in good health.

(d) A subdivision that elects to participate in the fund after the operative date of the fund may begin participation on the first day of any month after the month in which the subdivision gives notice of its election to the board of trustees.

(e) If a subdivision has previously discontinued participation in the fund, the board of trustees in its discretion may restrict the right of subdivision to participate again.
[Added by Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, § 40, eff. Nov. 10, 1981.]

§ 52.004. Termination of Subdivision Participation

(a) A subdivision may not terminate participation in the retirement system if it has employees who are members, but it may elect to discontinue participation in the retirement system of nonmembers whose employment or reemployment begins after the date of an election to discontinue.

(b) If before November 1 of any year a subdivision gives written notice of its intention to the retirement system, the subdivision may terminate coverage under, and discontinue participation in, the supplemental death benefits fund. A termination under this subsection is effective on January 1 of the year following the year in which notice is given.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 41, eff. Nov. 10, 1981.]

§ 52.005. Merger

A local pension system established for employees of a subdivision may merge into the retirement system on conditions prescribed by the board of trustees.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 52.006 to 52.100 reserved for expansion]

SUBCHAPTER B. MEMBERSHIP

§ 52.101. General Membership Requirement

(a) Except as otherwise provided by this subchapter, a person who is not a member becomes a member of the retirement system if:

(1) on the date the subdivision's participation in the retirement system becomes effective, the person is a subdivision employee; or

(2) after the date the subdivision's participation in the retirement system becomes effective, the person becomes a subdivision employee and is less than 60 years old.

(b) A person to whom Subsection (a)(1) of this section applies becomes a member of the retirement system on the date the subdivision's participation becomes effective, and a person to whom Subsection (a)(2) of this section applies becomes a member of the retirement system on the first day of the first full month of the person's employment.

(c) Repealed by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 42, eff. Nov. 10, 1981.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 42, eff. Nov. 10, 1981.]

§ 52.102. Election to Become Member

An employee of a participating subdivision who was not required to become a member of the retirement system at the time of employment may elect to become a member by filing a written application for membership with the person's employer and with the director. Membership begins on the first day of the calendar month that begins after the date the application is filed.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 43, eff. Nov. 10, 1981.]

§ 52.103. Credit for Person Who Elects to Become Member

A person who becomes a member of the retirement system under Section 52.102 of this subtitle may not receive credit for service performed before membership except as provided by Section 53.102(a)(2) of this subtitle.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 43, eff. Nov. 10, 1981.]

§ 52.104. County Hospital Employees

(a) If a county elects to participate in the retirement system, the commissioners court of the county may elect to deny membership to the employees of a county hospital governed by Chapter 5, Title 71, Revised Civil Statutes of Texas, 1925.

(b) After making an election under this section, the commissioners court may at any time reverse its decision and require that county hospital employees become members on a date fixed by order of the commissioners court.

(c) If the commissioners court reverses an election under this section and requires the employees of a county hospital to become members of the retirement system, for the purposes of this subtitle the employees of the county hospital comprise a separate subdivision from other county employees.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 52.105. Status as an Employee

For the purposes of this subtitle, a person has the standing of an employee in a participating subdivision if the person:

(1) is employed in a position that normally requires services from the person for not less than 900 hours a year by a judicial district probation department that has executed a contract with the participating subdivision under Article 42.12, Code of Criminal Procedure, 1965; or

(2) is eligible for optional membership in the retirement system under Subchapter C of this chapter.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 52.106. Multiple Retirement System Membership

(a) Except as provided in this section, a person is not an employee eligible for membership and is not eligible to receive credit in this retirement system for service performed that makes a person eligible for membership or is creditable in another pension fund or retirement system that is at least partly supported at public expense.

(b) A person may simultaneously be a member of, and receive credit for service performed during the same period in the retirement system, the federal program providing old age and survivors insurance, and the Judicial Retirement System of Texas.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 52.107. Exception to General Membership Requirement

(a) If on the date a subdivision's participation in the retirement system becomes effective a person has a basis of employment with the subdivision that would be violated by a membership requirement of this subchapter, the person may elect not to become a member of the retirement system.

(b) If a person qualified to make an election under this section has been notified that the subdivision will begin participation in the retirement system, the person is considered to have elected membership in the retirement system unless before the date the subdivision's participation becomes effective the person files with the governing body of the subdivision written notice of an election not to become a member.

(c), (d) Repealed by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 44, eff. Nov. 10, 1981.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 44, eff. Nov. 10, 1981.]

§ 52.108. Withdrawal of Contributions

A person who is not an employee of any participating subdivision and who has not retired may, after application, withdraw all of the accumulated contributions credited to the person's individual account in the employees saving fund, and the retirement system shall close the account.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 52.109. Termination of Membership

(a) A person terminates membership in the retirement system by:

(1) death;

(2) retirement;

(3) withdrawal of all of the person's contributions while absent from service; or

(4) absence from service for five consecutive years or more either before accumulating enough credited service to enable the person to retire without additional service or before accumulating four or more years of credited service with one or more subdivisions that have adopted a program allowing retirement without additional service after accumulation of 12 years of credited service.

(b) A member of the retirement system is not absent from service and continues to accumulate membership credited service if at any time during a declared or undeclared war involving the United States, during a conflict between the armed forces of the United States and the armed forces of a foreign country, or before the first anniversary of the last day of the war or conflict, the person:

(1) performs active duty service in the armed forces of the United States or their auxiliaries;

(2) performs active duty service in the armed forces reserve of the United States or their auxiliaries;

(3) performs service in the American Red Cross; or

(4) is conscripted and performs war-related service.

(c) On any termination of membership in the retirement system, a person forfeits all credited service established in the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 52.110. Resumption of Service by Retiree

A person who has retired under this subtitle because of service may not rejoin the retirement system or resume or continue service with a participating subdivision.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 52.111 to 52.200 reserved for expansion]

SUBCHAPTER C. OPTIONAL MEMBERSHIP COVERAGE

§ 52.201. Optional Membership Class

(a) The commissioners court of a county that participates in the retirement system and that uses county funds to pay supplemental compensation to those persons who regularly perform the duties of an elected or appointed state or district office, who also receive compensation from the state, may by order make those persons eligible, to the extent of the compensation paid by the county, for membership in the retirement system.

(b) Unless membership is waived, a person who is made eligible for membership in the retirement system under Subsection (a) of this section becomes a member on the date specified in the order of the commissioners court.

(c) If, after the effective date of an order under Subsection (a) of this section, a person who is less than 60 years old is employed for the first time by the county in a position described by Subsection (a) of this section, the person becomes a member of the retirement system on the date the person's employment begins.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 52.202. Waiver of Membership

(a) A person who is eligible under Section 52.201(a) of this subtitle to become a member of the retirement system on the effective date of the commissioners court order may elect to waive membership.

(b) The board of trustees may prescribe the form of a membership waiver under this section, which must be in writing and filed with the director within 30 days after the date specified in an order under Section 52.201(a) of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 52.203. Subsequent Election to Become Member

(a) A person who has filed a waiver under Section 52.202 of this subtitle may thereafter become a member of the retirement system, if the person meets the requirements for membership that are applicable to new employees of the subdivision at the time that the person applies for membership that was previously waived. Application for membership under this section must be on a form prescribed by the board of trustees.

(b) The effective date of membership applied for under this section is the first day of the first month after the month in which the application is filed, and no credit in the retirement system may be given for any type of service prior to that effective date.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 53. CREDITABLE SERVICE

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SUBCHAPTER A. GENERAL PROVISIONS

§ 53.001. Types of Creditable Service

The types of service creditable as credited service in the retirement system are prior service and current service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.002. Benefit Eligibility Based on Credited Service

A member's eligibility to receive a benefit is based on credited service at the time of retirement.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.003. Credited Service Previously Forfeited

(a) An eligible member who has withdrawn contributions from the retirement system may reestablish the forfeited credit in the system of the service on which the credit was based was performed for a participating subdivision the governing body of which by order authorizes reestablishment of the credit by eligible employee members of the subdivision.

(b) A member eligible to reestablish credit under this section is one who:

(1) was a member on the effective date of an order made under Subsection (a) of this section; and

(2) has, since resuming membership, at least 24 consecutive months of service as an employee of the subdivision for which the order was made.

(c) A member eligible under this section may reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from the system, plus a withdrawal charge computed at an annual rate of five percent from the date of withdrawal to the date of redeposit.

(d) A governing body may not make an order under Subsection (a) of this section unless the actuary first determines that reestablishment of forfeited credit service would not impair the ability of the subdivision:

(1) to meet all present and prospective liabilities of the subdivision's account in the subdivision accumulation fund; and

(2) to provide for payment of all basic and supplemental annuities derived from credits granted by the subdivision.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 53.004 to 53.100 reserved for expansion]

SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE GENERALLY

§ 53.101. Creditable Prior Service

Prior service creditable in the retirement system is service performed as an employee of a participating subdivision before the date the subdivision's participation in the retirement system became effective.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.102. Eligibility for Prior Service

(a) A member is eligible to receive credit in the retirement system for prior service if the member:

(1) became a member as an employee of a subdivision on the effective date of the subdivision's participation in the retirement system; or

(2) became a member as an employee of a subdivision before the fifth anniversary of the effective date of its participation and continues as an employee of the subdivision for at least five consecutive years after reemployment.

(b) The board of trustees may adopt rules concerning eligibility for prior service under Subsection (a) of this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.103. Statement of Prior Service

A member claiming credit for prior service shall file a detailed statement of the service with the treasurer or other disbursing officer of the subdivision for which the service was performed.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.104. Certification of Service and Average Compensation

(a) As soon as practicable after a member files a statement of prior service under Section 53.103 of this subtitle, the subdivision employing the officer receiving the statement shall verify the prior service claimed and certify to the board of trustees the amount of service approved and the member's average prior service compensation.

(b) Except as provided by Subsection (c) of this section, the average prior service compensation of a member is computed as the average monthly compensation for service performed for the subdivision:

(1) for the 36 months immediately preceding the effective date of the subdivision's participation in the retirement system; or

(2) if the member did not perform service in each of the 36 months immediately preceding participation, for the number of months of service within the 36-month period.

(c) In a computation of average prior service compensation for service performed for a subdivision whose retirement system participation began before January 1, 1978, monthly compensation is excluded to the extent that it exceeds the lower of the following rates of compensation:

(1) the annual compensation for member contributions as determined by the subdivision governing body at the time of its election to participate in the retirement system; or

(2) annual compensation of $12,000.

(d) The board of trustees may adopt rules concerning verification and certification of service and compensation under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.105. Determination of Allocated Prior Service Credit

(a) After receiving a certification of prior service and average prior service compensation under Section 53.104 of this subtitle, the board of trustees shall determine the member's maximum and allocated prior service credits.

(b) The maximum prior service credit is an amount equal to the accumulation at interest of a series of equal monthly amounts for the number of months of approved prior service. Each monthly amount equals twice the subdivision's initial deposit rate, times the member's average prior service compensation. Interest is allowed at the end of each 12-month period on an accumulated amount at the beginning of each period and is credited only for each whole 12-month period. The rate of interest allowed on a maximum prior service credit granted by a subdivision having an effective date of participation in the retirement system after December 31, 1981, is three percent a year.

(c) The allocated prior service credit is the percentage of the maximum prior service credit granted by the subdivision to all members who performed prior service for the subdivision. The total allocated prior service credits for members claiming prior service with the subdivision may not exceed an amount for which the prospective subdivision contributions to the retirement system will be adequate to amortize, before the 25th anniversary of the effective date of subdivision participation in the retirement system:

(1) all obligations charged to its account in the subdivision accumulation fund; and

(2) all basic and supplemental annuities derived from credits granted by the subdivision.

(d) Interest is earned for each whole year on an allocated prior service credit from the effective date of membership to the effective date of retirement at the applicable rate for the period as provided by Section 55.313 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 209, ch. 18, § 45, eff. Nov. 10, 1981.]

§ 53.106. Prior Service Certificate

(a) After determining a member's allocated prior service credit under Section 53.105 of this subtitle, the board of trustees shall issue to the member a prior service certificate stating:

(1) the number of months of prior service credited;

(2) the average prior service compensation; and

(3) the allocated prior service credit.

(b) As long as a person remains a member, the person's prior service certificate is, for purposes of retirement, conclusive evidence of the information it contains, except that a member or participating subdivision may, before the first anniversary of its issuance or modification, request the board of trustees to modify the certificate.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.107. Void Prior Service Certificate

(a) When a person terminates membership in the retirement system, any prior service certificate issued to the person becomes void.

(b) A person who has terminated membership and subsequently resumes membership in the retirement system is not entitled to credit for prior service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 53.108 to 53.200 reserved for expansion]

SUBCHAPTER C. OPTIONAL PRIOR SERVICE

§ 53.201. Service for Certain Public Facilities

(a) The governing body of a participating subdivision by order may authorize the establishment of prior service credit in the retirement system for service performed in a public hospital, utility, or other public facility during a time the facility was operated by a unit of government other than the subdivision and before:

(1) the effective date of the subdivision's participation in the retirement system, if the facility was acquired by the subdivision before that date; or

(2) the date of acquisition of the facility, if the facility was acquired after the effective date of the subdivision's participation in the retirement system.

(b) A member eligible to establish credit under this section after an order under Subsection (a) of this section is one who was employed by a public facility:

(1) on the effective date of subdivision participation, for service under Subsection (a)(1) of this section; or

(2) on the date of acquisition of the facility, for service under Subsection (a)(2) of this section.

(c) Credit under this section is computed and limited in the same manner as is prior service credit of employees of other departments of the participating subdivision for equivalent periods of service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.202. Prior Military Service

(a) The governing body of a participating subdivision may authorize the establishment of credit for prior service in the retirement system by eligible members who have performed military service creditable as provided by this section.

(b) Military service creditable under this section is active federal duty as a member of the armed forces of the United States during a time that the United States is or was engaged in organized conflict with foreign forces, whether a state of war or a police action. A member may not establish more than 36 months of credited service under this section for military service.

(c) A member eligible to establish credit under this section is one who:

(1) was an employee of the subdivision immediately before beginning military service;

(2) began military service without intervening employment; and

(3) returned to employment with the subdivision before the 181st day after the date of the member's discharge or release from active military duty.

(d) The governing body of a subdivision may not authorize the establishment of credited service under this section except on the terms provided by Section 54.201 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 53.203 to 53.300 reserved for expansion]

SUBCHAPTER D. PRIOR SERVICE OF OPTIONAL MEMBERSHIP CLASS

§ 53.301. Member From County With Local Pension System

(a) A person who becomes a member of the retirement system under Section 52.201 of this subtitle as an employee of a subdivision that operated a local pension system before merging it into the retirement system may establish prior service credit in the retirement system for service performed for the subdivision before the effective date of merger.

(b) A member claiming credit under this section shall establish current service credit under Section 53.402 of this subtitle and shall deposit with the retirement system, before the 91st day after the effective date of an order made under Section 52.201(a) of this subtitle, for the total number of months claimed under this section, an amount equal to the amount of total deposits that a member of the local pension system earning the same compensation during the same period was required to make to the local system.

(c) If a member makes a deposit under Subsection (b) of this section, the subdivision shall deposit with the retirement system, within the period required under this section for member deposits, an amount equal to the amount deposited under Subsection (b), and the retirement system shall grant the member prior service credit under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.302. Member From County Without Local Pension System

(a) A person who becomes a member of the retirement system under Section 52.201 of this subtitle as an employee of a county that did not operate a local pension system before the effective date of the county's participation in the retirement system may establish prior service credit in the retirement system for service performed for the county before the effective date of county participation.

(b) A member may establish credit under this section by establishing current service credit under Section 53.402 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.303. Member Not Entitled to Prior Service Credit

A person who becomes a member of the retirement system under Section 52.203 of this subtitle is not entitled to credited service in the retirement system for service performed before the date the person's membership begins.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.304. Certification of Service and Average Compensation; Determination of Allocated Local Service Credit

(a) A member claiming credit for prior service under this subchapter shall file a statement of prior service in the manner required by Section 53.103 of this subtitle.

(b) After a member described in Section 53.301(a) of this subtitle files a statement of prior service, the subdivision employing the officer receiving the statement shall certify to the board of trustees the amount of prior service approved and the average local compensation, determined in the manner provided for computing the average local compensation for employees of the subdivision who became members on the effective date of merger of the local pension system into the retirement system. After the board of trustees receives a certification under this subsection, it shall determine the maximum and allocated local service credits for the member in the manner and using the percentages provided for employees of the subdivision who became members on the effective date of merger.

(c) After a member described in Section 53.302 of this subtitle files a statement of prior service, the subdivision employing the officer receiving the statement shall certify to the board of trustees the amount of prior service approved and the average monthly compensation paid by the subdivision, determined in the manner provided for computing the average prior service compensation for employees of the subdivision who became members on the effective date of subdivision participation in the retirement system. After the board of trustees receives a certification under this subsection, it shall determine the maximum and allocated prior service credits for the member in the manner and using the percentages provided for computing the maximum and allocated prior service credits for employees of the subdivision who became members on the effective date of subdivision participation.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 53.305 to 53.400 reserved for expansion]

SUBCHAPTER E. ESTABLISHMENT OF CURRENT SERVICE

§ 53.401. Current Service Generally

Service that is performed while a member as an employee of a participating subdivision is credited in

the retirement system for each month for which the required contributions are made by the member and the employing subdivision.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.402. Current Service for Member of Optional Class

(a) A person who becomes a member of the retirement system under Section 52.201 of this subtitle may establish current service credit in the retirement system for service performed for the subdivision for the period beginning on the effective date of the subdivision's participation in the retirement system and ending on the day before the date of an order made under Section 52.201(a) of this subtitle.

(b) A member claiming credit under this section shall deposit with the retirement system, before the 91st day after the effective date of an order made under Section 52.201(a) of this subtitle, for the total number of months of service claimed under this section, an amount equal to the amount of deposits that a member earning the same compensation from the subdivision during the same period was required to make to the retirement system.

(c) If the subdivision deposits with the retirement system, within the period required under this section for member deposits, an amount equal to the amount deposited under Subsection (b) of this section, the retirement system shall grant the member current service credit under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.403. Determination of Current Service Credit and Matching Credit

(a) As soon as practicable after the end of each calendar year, the board of trustees shall determine a member's current service credit and multiple matching credit.

(b) The current service credit of a member is an amount equal to a percentage of the accumulated contributions made by the member to the retirement system during a calendar year. The percentage is determined by the governing body of the employing subdivision at the time of its election to participate in the retirement system, except that the percentage for a subdivision that begins participation after December 31, 1977, is 100 percent.

(c) The multiple matching credit of a member is an amount equal to a percentage of the accumulated contributions made by the member to the retirement system during a calendar year. The percentage is 0 percent until a greater percentage is adopted as provided by Section 53.703 of this subtitle or, for a subdivision whose participation in the retirement system began after October 31, 1980, unless a greater percentage is adopted by its governing body before the first anniversary of the subdivision's effective date of retirement system participation, after the actuary has determined and certified that the greater percentage would not impair the ability of the subdivision to amortize, before the 25th anniversary of the participation date, all obligations that are charges against its account in the subdivision accumulation fund. A multiple matching credit includes any portion of a current service credit in effect on January 1, 1978, that exceeds the member's current service credit determined under Subsection (b) of this section.

(d) Interest is earned for each whole calendar year on a current service credit or multiple matching credit from the end of each calendar year to the effective date of the member's retirement at the rate credited annually to a member's individual account in the employees saving fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 210, ch. 18, § 46, eff. Nov. 10, 1981.]

[Sections 53.404 to 53.500 reserved for expansion]

SUBCHAPTER F. CURRENT SERVICE FOR LEGISLATIVE SERVICE

§ 53.501. Legislative Service

(a) A member may establish credit for current service in the retirement system for service performed as a member of the legislature, if the member deposits with the system a contribution in an amount computed for each month of service claimed at the contribution rate currently required of an employee of the subdivision that employs the member, multiplied by $400. On the member's making a deposit, the employing subdivision shall deposit with the retirement system a contribution in an amount equal to the amount deposited by the member.

(b) A member claiming credit for previous legislative service shall file a detailed statement of the service with the treasurer or other disbursing officer of the subdivision by which the member is currently employed. As soon as practicable after the filing of a statement, the employing subdivision shall verify the service claimed and certify to the board of trustees the amount of service approved.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 53.502 to 53.600 reserved for expansion]

SUBCHAPTER G. OPTIONAL CURRENT SERVICE

§ 53.601. Current Service for Military Duty

(a) The governing body of a participating subdivision may, on the terms provided by Section 54.201 of this subtitle, authorize the establishment of credit for current service in the retirement system for military service creditable as provided by this section.

(b) Military service creditable in the retirement system under this section is service as a member of the armed forces of the United States during a time,

or before the first anniversary of the last day of a time, that the United States is or was engaged in:

(1) organized conflict with foreign forces, whether a state of war or a police action; or

(2) a crisis in this country.

(c) The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of organized conflict or crisis.

(d) A member eligible to establish credit under this section is one who:

(1) does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent;

(2) has been released from military duty under conditions not dishonorable;

(3) became a member of the retirement system after release from military duty; and

(4) has performed as an employee at least 10 years of service that is credited in the retirement system.

(e) An eligible member may establish credit under this section by filing with the retirement system an application for the credit before the first anniversary of the effective date of an order made under Subsection (a) of this section or of the date of first eligibility, whichever is later. An application must be accompanied by a contribution in an amount computed as the number of months of service claimed under this section, times the lesser of:

(1) the member's average monthly contribution for the first 12 months as an employee after becoming a member of the retirement system; or

(2) $15.

(f) If a member makes a deposit under Subsection (e) of this section, the subdivision shall deposit with the retirement system a contribution in an amount equal to the amount deposited under Subsection (e).

(g) The maximum amount of current credited service that may be established under this section is:

(1) 3 years, if the member has performed as an employee at least 10 but less than 15 years of service that is credited in the retirement system; or

(2) 5 years, if the member has performed as an employee at least 15 years of service, that is credited in the system.

(h) Credit may not be established under this section for service that is simultaneously credited by another retirement system or program established or governed by state law.

[Formerly § 53.602, added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Renumbered § 53.601 by Acts 1981, 67th Leg., 1st C.S., p. 210, ch. 18, § 47, eff. Nov. 10, 1981.]

Former § 53.601, enacted by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, relating to current service for certain elected officers, was repealed and former § 53.602 was redesignated as § 53.601 by Acts 1981, 67th Leg., 1st C.S., p. 210, ch. 18, § 47, effective Nov. 10, 1981.

§ 53.602. Renumbered as § 53.601 by Acts 1981, 67th Leg., 1st C.S., p. 210, ch. 18, § 47, eff. Nov. 10, 1981

[Sections 53.603 to 53.700 reserved for expansion]

SUBCHAPTER H. OPTIONAL INCREASES IN SERVICE CREDITS

§ 53.701. Increase in Prior Service Credits

The governing body of a participating subdivision may, on the terms provided by Section 54.201 of this subtitle, increase the percentage of maximum prior service credits used in determining the allocated prior service credits previously granted and in effect concerning prior service with the subdivision.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.702. Recomputation of Service Credits

(a) The governing body of a participating subdivision having active members and annuitants whose current or maximum prior service credits have been computed on a basis other than total compensation may by order elect to have the credits recomputed as the sum of:

(1) an amount determined as provided by Section 53.105 of this subtitle, using average compensation as determined under Section 53.104 of this subtitle, except that compensation exceeding the limits provided by Section 53.104(c) may not be excluded in the computation; plus either

(2) an amount determined as two times the excess of (i) over (ii), discounted at interest from the date one year prior to the date of election to the subdivision's participation date, where (i) is the amount of accumulated contributions the member would have had one year prior to the date of election if in each calendar year since membership began the member had contributed on the basis of the contribution rate applicable at that time and the member's total compensation at that time, and (ii) is the member's actual accumulated contributions one year prior to the date of election; or

(3) an amount determined as two times the excess of (i) over (ii), discounted at interest from the date of retirement to the subdivision's participation date, where (i) is the amount of accumulated contributions the annuitant would have had on the date of retirement if in each calendar year of membership the annuitant had contributed on the basis of the contribution rate applicable at that time and the annuitant's total compensation at that time, and (ii) is the annuitant's actual accumulated contributions on the date of retirement.

(b) The subdivision governing body shall determine the effective date of an election under this section, which may be the first day of any calendar year.

(c) An election must require member contributions to be based, beginning on the effective date of

the election, on the basis of total compensation as prescribed by this section. An election must apply to all members and annuitants.

(d) A subdivision governing body may not make an election under this section unless the actuary first determines that the recomputation would not impair the ability of the subdivision to pay all obligations charged against its account in the subdivision accumulation fund, before the 25th anniversary of the December 31 valuation date determined under Section 54.201 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 53.703. Increase in Multiple Matching Credits

(a) The governing body of a participating subdivision may, on the terms provided by Section 54.201 of this subtitle, increase the percentage used in determining multiple matching credits under Section 53.503(c) of this subtitle.

(b) A percentage increase in multiple matching credits must be in a multiple of 10 percent of the amount of member contributions and must be applied to all members and annuitants who have performed or subsequently perform current service that is credited with the subdivision in the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 54. BENEFITS

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54.505. Beneficiary of Supplemental Death Benefit.

SUBCHAPTER A. GENERAL PROVISIONS

§ 54.001. Types of Benefits

The types of benefits payable by the retirement system are:

(1) service retirement benefits;

(2) disability retirement benefits; and

(3) death benefits.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.002. Composition of Retirement Annuity

(a) Each retirement annuity payable under this subtitle consists of a basic annuity and a supplemental annuity.

(b) A basic annuity is an amount payable from the current service annuity reserve fund and is actuarially determined from the sum of a member's:

(1) accumulated contributions; and

(2) current service credit, accumulated at interest as provided by Section 53.403(d) of this subtitle.

(c) A supplemental annuity is an amount payable from the subdivision accumulation fund, subject to reduction under Section 55.307(c) of this subtitle, and equal to the sum of:

(1) a member's allocated prior service credit, accumulated at interest as provided by Section 53.105(d) of this subtitle;

(2) a member's multiple matching credit, accumulated at interest as provided by Section 53.403(d) of this subtitle; and

(3) any increase in the annuity granted by a participating subdivision after December 31, 1978.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.003. Effective Date of Retirement

(a) Except as provided by Section 54.004 of this subtitle and Subsection (b) of this section, the effective date of a member's service retirement is the date the member designates at the time the member

applies for retirement under Section 54.101 of this subtitle, but the date must be the last day of a calendar month and may not precede the date the member terminates employment with all participating subdivisions.

(b) If a member who has at least 30 years of credited service in the retirement system dies after selecting an optional retirement annuity but before retirement, the member is considered to have retired on the last day of the month before the month in which death occurred or on the day before the first anniversary of the effective date of the person's membership, whichever is later.

(c) Except as provided by Subsection (b) of this section, the effective date of a member's disability retirement is the date designated on the application for retirement filed by or for the member as provided by Section 54.301 of this subtitle, but the date may not precede the date the member terminates employment with all participating subdivisions.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.004. Mandatory Retirement

(a) Except as provided by Subsections (b) and (c) of this section, a member is required to retire and terminate employment with all participating subdivisions on the later of:

(1) the last day of the calendar year in which the member becomes 70 years old; or

(2) the last day of the calendar year in which the member accumulates 12 years of credited service in the retirement system.

(b) A member is not required to retire before the first anniversary of the effective date of the person's membership.

(c) In an exceptional case for substantial cause, a retirement otherwise required by this section may be deferred for a period of not more than one year at a time by mutual consent of the member and the employing subdivision.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.005. When Annuity is Payable

An annuity under this subtitle is payable for a period beginning on the last day of the first month following the month in which retirement occurs and ending, except as otherwise provided by this subtitle, on the last day of the month immediately preceding the month in which death occurs.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 54.006 to 54.100 reserved for expansion]

SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

§ 54.101. Application for Service Retirement Annuity

A member may apply for a service retirement annuity by filing an application for retirement with the board of trustees not less than 30 nor more than 90 days before the date the member wishes to retire.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.102. Eligibility for Service Retirement Annuity

(a) A member is eligible, beginning on the first anniversary of the effective date of the person's membership, to retire and receive a service retirement annuity, if the member:

(1) is at least 60 years old and has at least 12 years of credited service in the retirement system; or

(2) has at least 30 years of credited service in the retirement system.

(b) A member may terminate employment with all participating subdivisions and, beginning on the first anniversary of the effective date of the person's membership, remain eligible to retire and receive a service retirement annuity at any time after the member attains the age of 60, if the member has at least 20 years of credited service in the retirement system.

(c) A member whose most recent service was performed for a subdivision having an effective date of participation in the retirement system after August 31, 1979, may terminate employment with all participating subdivisions and remain eligible to retire and receive a service retirement annuity at any time after the member attains the age of 60, if the member has at least 12 years of credited service performed for one or more subdivisions that are either subject to this subsection or have adopted a like provision under Section 54.202 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.103. Standard Service Retirement Annuity

(a) The standard service retirement annuity payable under this subtitle is discounted for the possibility of payment of a benefit under Section 54.402 of this subtitle and is the actuarial equivalent of the sum of a member's:

(1) accumulated contributions;

(2) current service credit, accumulated at interest as provided by Section 53.403(d) of this subtitle;

(3) allocated prior service credit, accumulated at interest as provided by Section 53.105(d) of this subtitle; and

(4) multiple matching credit, accumulated at interest as provided by Section 53.403(d) of this subtitle.

(b) A standard service retirement annuity is payable throughout the life of a retiree.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 210, ch. 18, § 48, eff. Nov. 10, 1981.]

§ 54.104. Optional Service Retirement Annuity

(a) Instead of the standard service retirement annuity payable under Section 54.103 of this subtitle, a retiring member may elect to receive an optional service retirement annuity under this section.

(b) An optional service retirement annuity is payable throughout the life of the retiree and is actuarially reduced from the standard service retirement annuity to its actuarial equivalent under the option selected under Subsection (c) of this section.

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(d) To select an optional service retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(e) A retiree who dies before the 31st day after the effective date of service retirement and who did not select an optional service retirement annuity before death is considered to have selected an optional annuity under Subsection (c)(4) of this section. Alternatively, the decedent's beneficiary may elect to receive a refund of the decedent's accumulated contributions under Section 54.401 of this subtitle, in which case the decedent will be considered to have been a contributing member at the time of death.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.105. Selection of Optional Service Retirement Annuity

(a) A member who has at least 30 years of credited service in the retirement system may, before the effective date of the member's retirement, file with the board of trustees, on a form prescribed by the board, a selection of an optional service retirement annuity available under Section 54.104 of this subtitle and a designation of beneficiary.

(b) A member may change a selection of an optional annuity or a designation of beneficiary at any time before the member's retirement or death in the same manner that the original selection and designation were made.

(c) If a member eligible under this section to select an optional service retirement annuity dies before retirement without having made a selection, the member's surviving spouse may select an optional annuity in the same manner as if the member had made the selection. If there is no surviving spouse, the executor or administrator of the member's estate may elect:

(1) for an estate beneficiary to receive the optional annuity under Section 54.104(c)(4) of this subtitle, in which case the member will be considered to have retired on the last day of the month before the month in which death occurred; or

(2) for the estate to receive a refund of the member's accumulated contributions under Section 54.401 of this subtitle, in which case the member will be considered to have been a contributing member at the time of death.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.106. Selection of Optional Service Retirement Annuity by Certain Members

(a) An eligible member who is an employee of a subdivision having an effective date of participation in the retirement system after August 31, 1979, may select an optional service retirement annuity in the manner and under the conditions provided by Section 54.105 of this subtitle.

(b) A member eligible under this section to select an optional service retirement annuity is one who:

(1) is at least 60 years old and has at least 12 years of credited service in the retirement system performed for one or more subdivisions whose employees may select an optional annuity after meeting the same age and service requirements provided in this subdivision; or

(2) has at least 20 years of credited service in the retirement system performed for one or more subdivisions whose employees may select an optional annuity after meeting the same service requirement provided in this subdivision.

(c) If a member eligible under this section dies before retirement without having made a selection, the member's surviving spouse or the executor or administrator of the member's estate may make the selection provided by Section 54.105(c) of this subtitle under the terms of that subsection.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 54.107 to 54.200 reserved for expansion]

SUBCHAPTER C. OPTIONAL RETIREMENT BENEFITS

§ 54.201. Conditions for Optional Benefits

(a) The governing body of a participating subdivision by order or resolution may, on the terms provided by this section:

(1) authorize the establishment of credited service under Section 53.202 or 53.601 of this subtitle;

(2) recompute service credits under Section 53.701 or 53.703 of this subtitle;

(3) extend participation in benefits under Section 54.202, 54.203, or 54.204 of this subtitle; or

(4) recompute annuities under Section 54.205 or 54.206 of this subtitle.

(b) A governing body may not adopt an order or resolution as provided by Subsection (a) of this section before an actuarial valuation under Section 55.206 of this subtitle is made that has a December 31 valuation date that coincides with, or is after, the completion of three years after the later of the following dates:

(1) the effective date of subdivision participation in the retirement system; or

(2) the effective date of the most recent order or resolution adopted under this section.

(c) An increase in annuity payments payable from the current service annuity reserve fund or the subdivision accumulation fund, or attributable to recomputation of allocated prior service credits, current service credits, or multiple matching credits that were originally determined previously may not provide greater benefits for completed service than would be provided through current service credits and multiple matching credits for service that is performed in the future.

(d) An order or resolution may not be adopted as provided by Subsection (a) of this section unless the actuary determines and certifies that:

(1) implementation of the order or resolution would not impair the ability of the subdivision to fund, before the 25th anniversary of the valuation date described in Subsection (b) of this section, all obligations charged against the subdivision's account in the subdivision accumulation fund; and

(2) all retirement obligations of the subdivision existing before the proposed effective date of an order or resolution under this section would be amortized on or before the 20th anniversary of the valuation date described in Subsection (b) of this section.

(e) An order or resolution under this section may not take effect until the order or resolution is approved by the board of trustees as meeting the requirements of this section. After approval by the board, an order or resolution may take effect only:

(1) after the first anniversary of the valuation date described in Subsection (b) of this section; and

(2) on January 1 of a year.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 210, ch. 18, § 49, eff. Nov. 10, 1981.]

§ 54.202. Optional Service Retirement Eligibility

(a) The governing body of a participating subdivision may authorize an employee of the subdivision who is a member of the retirement system to terminate employment with the subdivision and remain eligible to retire and receive a service retirement annuity at any time after the member attains the age of 60, if the member has at least 12 years of credited service performed for one or more subdivisions that either have authorized the eligibility under this section or are subject to Section 54.102(c) of this subtitle.

(b) The governing body of a subdivision may not authorize eligibility for service retirement under this section except on the terms provided by Section 54.201 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.203. Optional Selection of Optional Annuity by Certain Members

(a) The governing body of a participating subdivision may authorize an employee of the subdivision who is a member of the retirement system to select an optional service retirement annuity in the manner and under the conditions provided by Section 54.105 of this subtitle, if the member has at least 20 years of credited service in the system performed for one or more subdivisions whose employees may select an optional annuity after meeting the same service requirement provided in this subsection.

(b) If a member authorized under this section to select an optional service retirement annuity dies before retirement without having made a selection, the member's surviving spouse or the executor or administrator of the member's estate may make the selection provided by Section 54.105(c) of this subtitle under the terms of that subsection.

(c) The governing body of a subdivision may not authorize selection of an optional annuity under this section except on the terms provided by Section 54.201 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.204. Optional Selection of Optional Annuity by Certain Other Members

(a) The governing body of a participating subdivision may authorize an employee of the subdivision who is a member of the retirement system to select an optional service retirement annuity in the manner and under the conditions provided by Section 54.105, if the member is at least 60 years old and has at least 12 years of credited service in the system performed for one or more subdivisions whose employees may select an optional annuity after meeting the same age and service requirements provided in this subsection.

(b) If a member authorized under this section to select an optional service retirement annuity dies

before retirement without having made a selection, the member's surviving spouse or the executor or administrator of the member's estate may make the selection provided by Section 54.105(c) of this subtitle under the terms of that subsection.

(c) The governing body of a subdivision may not authorize selection of an optional annuity under this section except on the terms provided by Section 54.201 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.205. Optional Increase in Annuities From Current Service Annuity Reserve Fund

(a) The governing body of a participating subdivision may increase that part of each annuity payment that is attributable to credit granted by the subdivision and that is payable from the current service annuity reserve fund.

(b) The governing body of a subdivision may not increase annuity payments under this section except on the terms provided by Section 54.201 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.206. Optional Increase in Annuities From Subdivision Accumulation Fund

(a) The governing body of a participating subdivision may increase that part of each annuity payment that is attributable to credit granted by the subdivision and that is payable from the subdivision accumulation fund.

(b) The governing body of a subdivision may not increase annuity payments under this section except on the terms provided by Section 54.201 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 54.207 to 54.300 reserved for expansion]

SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS

§ 54.301. Application for Disability Retirement Annuity

(a) A member may apply for a disability retirement annuity by:

(1) filing an application for retirement with the board of trustees; or

(2) having an application filed with the board by the member's employer or legal representative.

(b) An application for a disability retirement annuity may not be made less than 30 nor more than 90 days before the date the member wishes to retire.

(c) An applicant must submit to medical examination as required by the medical board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.302. Eligibility for Disability Retirement Annuity

(a) Except as provided by Subsection (c) of this section, a member who has less than 12 years of credited service in the retirement system is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 54.303(b)(1) of this subtitle.

(b) Except as provided by Subsection (c) of this section, a member who has at least 12 years of credited service in the retirement system but is not eligible for a service retirement annuity is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 54.303(b)(2) of this subtitle.

(c) A member is not eligible to retire for disability before the first anniversary of the effective date of the person's membership.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.303. Certification of Disability

(a) As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information concerning the member's application.

(b) The medical board shall issue a certification of disability and submit it to the board of trustees, if the medical board finds:

(1) in the case of a member who has less than 12 years of credited service in the retirement system, that:

(A) the member is mentally or physically incapacitated for the further performance of duty;

(B) the incapacity is the direct result of injuries sustained during membership by external and violent means as a direct and proximate result of the performance of duty;

(C) the incapacity is likely to be permanent; and

(D) the member should be retired; or

(2) in the case of a member who has at least 12 years of credited service in the retirement system but is not eligible for a service retirement annuity, that:

(A) the member is mentally or physically incapacitated for the further performance of duty;

(B) the incapacity is likely to be permanent; and

(C) the member should be retired.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.304. Standard Disability Retirement Annuity

(a) The standard disability retirement annuity is discounted for the possibility of payment of a benefit under Section 54.403 of this subtitle and is the actuarial equivalent of the sum of a member's:

(1) accumulated contributions;

(2) current service credit, accumulated at interest as provided by Section 53.403(d) of this subtitle;

(3) allocated prior service credit, accumulated at interest as provided by Section 53.105(d) of this subtitle; and

(4) multiple matching credit, accumulated at interest as provided by Section 53.403(d) of this subtitle.

(b) A standard disability retirement annuity is payable throughout the life of a retiree.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 211, ch. 18, § 50, eff. Nov. 10, 1981.]

§ 54.3041. Optional Disability Retirement Annuity

(a) Instead of the standard disability retirement annuity payable under Section 54.304 of this subtitle, a retiring member may elect to receive an optional disability retirement annuity under this section.

(b) An optional disability retirement annuity is payable throughout the life of the retiree and is actuarially reduced from the standard disability retirement annuity to its actuarial equivalent under the option selected under Subsection (c) of this section.

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(d) To select an optional disability retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(e) A retiree who dies before the 31st day after the effective date of disability retirement and who did not select an optional disability retirement annuity before death is considered to have selected an optional annuity under Subsection (c)(4) of this section. Alternatively, the decedent's beneficiary may elect to receive a refund of the decedent's accumulated contributions under Section 54.401 of this subtitle, in which case the decedent will be considered to have been a contributing member at the time of death.

(f) If a person's disability retirement annuity is discontinued under Section 54.306 or 54.307 of this subtitle, the person's selection of any optional annuity under this section becomes void.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 211, ch. 18, § 51, eff. Nov. 10, 1981.]

§ 54.305. Medical Examination of Disability Retiree

(a) Once each year during the first five years after a person retires for disability, and once in each three-year period after that, the board of trustees may require a disability retiree who is less than 60 years old to undergo a medical examination.

(b) An examination under this section may be held at the retiree's residence or at any place mutually agreed to by the board and the retiree. The board shall designate a physician to perform the examination.

(c) If a disability retiree refuses to submit to a medical examination as provided by this section, the board of trustees shall suspend the retiree's annuity payments until the retiree submits to an examination. If a retiree has not submitted to an examination as provided by this section before the first anniversary of the date of first refusal, the board shall revoke all rights of the retiree to an annuity.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.306. Certification of End of Disability

(a) If the medical board finds that a disability retiree is no longer mentally or physically incapacitated for the performance of duty or is engaged in or able to engage in gainful occupation, it shall certify its findings and submit them to the board of trustees.

(b) If the board of trustees concurs in a certification under this section, it shall discontinue annuity payments to the retiree.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.307. Return of Disability Retiree to Active Service

(a) If a retiree who is less than 60 years old and who is receiving a disability retirement annuity resumes employment with a participating subdivision, the person automatically resumes membership in the retirement system, and the board of trustees shall terminate the person's annuity payments.

(b) If a person resumes membership under this section, the retirement system shall restore to effect any prior service certificate used in determining the

amount of the person's annuity at the time of disability retirement. If the person subsequently retires, the retirement system shall allow the person credit for all current service for which required contributions have been made and not withdrawn.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.308. Refund at Annuity Discontinuance

(a) Except as provided by Subsection (b) of this section, if a disability retirement annuity is discontinued under Section 54.306 of this subtitle or the right to an annuity revoked under Section 54.305(c) of this subtitle, the retiree is entitled to a lump-sum payment in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of basic and supplemental annuity payments made before the date the annuity was discontinued or the right to an annuity revoked.

(b) The benefit provided by this section is not payable to a retiree who resumes employment with a participating subdivision.

(c) The benefit provided by this section is payable from the current service annuity reserve fund and the subdivision accumulation fund in the ratio that the parts of the disability retirement annuity that were payable from the funds bear to the entire benefit as determined on the effective date of retirement.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 54.309 to 54.400 reserved for expansion]

SUBCHAPTER E. DEATH BENEFITS

§ 54.401. Return of Contributions

(a) Except as provided by Subsection (c) of this section, if a member dies before retirement, a lump-sum death benefit is payable from the employees saving fund in the amount of:

(1) the accumulated contributions in the member's individual account in the fund; plus

(2) interest computed from the beginning of the year in which death occurs through the end of the month before the month in which death occurs at the rate allowed on member contributions during the preceding year.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) A benefit is not payable under this section if an annuity based on the decedent's service is payable under this subtitle.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.402. Excess Contributions of Service Retiree

(a) If a person who receives a standard service retirement annuity dies, a lump-sum death benefit is payable in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of service retirement exceeds the amount of annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) The benefit provided by this section is payable from the current service annuity reserve fund and the subdivision accumulation fund in the ratio that the parts of the service retirement annuity that were payable from the funds bear to the entire benefit as determined on the effective date of retirement.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 54.403. Excess Contributions of Disability Retiree

(a) If a person who receives a standard disability retirement annuity dies, a lump-sum death benefit is payable in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the sum of annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) The benefit provided by this section is payable from the current service annuity reserve fund and the subdivision accumulation fund in the ratio that the parts of the disability retirement annuity that were payable from the funds bear to the entire benefit as determined on the effective date of retirement.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 212, ch. 18, § 52, eff. Nov. 10, 1981.]

SUBCHAPTER F. OPTIONAL DEATH BENEFITS

§ 54.501. Coverage in Supplemental Death Benefit Program

(a) An employee of a participating subdivision is included within the coverage of the supplemental death benefit program on the first day of the first month in which:

(1) the employing subdivision is participating in the supplemental death benefits fund for coverage of all members it employs;

(2) the employee is a member of the retirement system; and

(3) the employee is required to make a contribution to the retirement system.

(b) Once established, coverage of a person in the supplemental death benefit program continues until the last day of a month in which a requirement of Subsection (a) of this section is not met.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 212, ch. 18, § 53, eff. Nov. 10, 1981.]

§ 54.502. Extended Supplemental Death Benefit Coverage

(a) A member included in the coverage of the supplemental death benefit program who fails to earn compensation in a month for service to a subdivision participating in the supplemental death benefits fund is eligible to receive extended coverage in the program on complying with the terms of this section.

(b) A member may apply to the retirement system for extended program coverage and submit evidence of eligibility for extended coverage.

(c) The board of trustees shall grant extended coverage in the supplemental death benefit program to an applicant, if the board finds:

(1) that as a result of illness or injury, the member is unable to engage in gainful occupation; and

(2) that the member made a required contribution to the retirement system as an employee of a subdivision participating in the supplemental death benefits fund for the month immediately preceding the first full month in which the member was unable to engage in gainful occupation.

(d) Once established, extended coverage of a person in the supplemental death benefit program continues until the last day of the month in which:

(1) the member returns to work as an employee of a participating subdivision;

(2) the board of trustees finds that the member is able to engage in gainful occupation;

(3) the person's membership in the retirement system is terminated; or

(4) the member retires under this subtitle.

(e) The board of trustees by rule may require a member to submit to it annual proof of continued inability to engage in gainful occupation. The board may require a member to undergo a medical examination by a physician designated by the board. Failure of a member to undergo a medical examination as required by this subsection is a ground for the board's finding that the member has become able to engage in gainful occupation.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 212, ch. 18, § 53, eff. Nov. 10, 1981.]

§ 54.503. Member Supplemental Death Benefit

(a) If a person included in the coverage or extended coverage of the supplemental death benefit program dies, a lump-sum supplemental death benefit is payable from the supplemental death benefits fund in an amount equal to the current annual salary of the member at the time of death.

(b) Except as provided by Subsection (c) of this section, the current annual salary of a member is computed as the amount paid to the member for service on which contributions were made to the retirement system during the 12 months immediately preceding the month of death. If a member did not receive compensation for service in each of the 12 months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the amount paid to the member on which contributions were made to the system during the period of employment within the 12-month period. If a member did not receive compensation for service in any of the 12 months immediately preceding the month of death, or if the member was employed by a subdivision that was not participating on a full-salary basis for 12 calendar months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the rate of compensation payable to the member during the month of death.

(c) The current annual salary of a member included in the extended coverage of the supplemental death benefit program is computed in the manner provided by Subsection (b) of this section but as if the member had died during the first month of extended coverage.

(d) If a member, because of a change in employment, makes contributions to the retirement system during the same month as an employee of more than one subdivision participating in the supplemental death benefits fund, a death benefit is payable only on the basis of the member's most recent employment. If a member, because of simultaneous employment by more than one subdivision, makes contributions to the retirement system during the same month as an employee of more than one subdivision participating in the supplemental death benefits fund, a death benefit is payable on the basis of the member's employment by each subdivision participating in the fund.

(e) The board of trustees by rule may require such proof of compensation and periods of employment as it finds necessary.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 212, ch. 18, § 53, eff. Nov. 10, 1981.]

§ 54.504. Retiree Supplemental Death Benefit

If a retiree dies whose most recent employment as a member of the retirement system was with a subdivision that has elected to provide, and continues to provide, postretirement supplemental death benefits, a lump-sum supplemental death benefit is payable from the fund in the amount of $2,500. If a retiree dies who was employed at the time of retirement by more than one subdivision that has elected to provide, and continues to provide, postretirement supplemental death benefits, the financing of the lump-sum benefit shall be prorated among the employing subdivisions participating in the fund.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 212, ch. 18, § 53, eff. Nov. 10, 1981.]

§ 54.505. Beneficiary of Supplemental Death Benefit

(a) Unless a member has directed otherwise on a form prescribed by the board of trustees and filed with the retirement system:

(1) a supplemental death benefit under Section 54.503 of this subtitle is payable to the person entitled to receive the decedent's accumulated contributions, unless the decedent was eligible under Section 54.105 of this subtitle to select an optional service retirement annuity, in which case the benefit is payable to the beneficiary designated by the decedent or, if no designation was made, to the person entitled under that section to receive an optional annuity; and

(2) a supplemental death benefit under Section 54.504 of this subtitle is payable to a person entitled to receive any remaining payments of the decedent's annuity.

(b) If a person entitled under this section to receive a supplemental death benefit does not survive the member or retiree covered by the supplemental death benefit program, the benefit is payable to the estate of the covered member or retiree.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 212, ch. 18, § 53, eff. Nov. 10, 1981.]

CHAPTER 55. ADMINISTRATION

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SUBCHAPTER A. BOARD OF TRUSTEES

§ 55.001. Composition of Board of Trustees

The board of trustees is composed of nine members.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.002. Appointment

The governor shall appoint the members of the board of trustees with the advice and consent of the senate.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.003. Eligibility

(a) To be eligible to serve as a trustee a person must be:

(1) a member of the retirement system; and

(2) an employee of a participating subdivision.

(b) If a person serving as a trustee ceases to be an employee of a participating subdivision or fails to attend four consecutive regular meetings of the board of trustees, the person may not act as a trustee and shall vacate the office of trustee.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 214, ch. 18, § 54, eff. Nov. 10, 1981.]

§ 55.004. Term of Office

Trustees hold office for staggered terms of six years, with the terms of three trustees expiring December 31 of each odd-numbered year.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.005. Oath of Office

Before taking office as a trustee, a person shall take the constitutional oath prescribed for officers of the state.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.006. Application of Sunset Act

The board of trustees is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes), but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished effective September 1, 1989, and every 12th year after that date are reviewed.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.007. Meetings

(a) The board of trustees shall hold regular meetings in March, June, September, and December of each year and special meetings when called by the director.

(b) Before the fifth day preceding the day of a special meeting, the director shall give written notice of the meeting to each trustee unless notice is waived.

(c) All meetings of the board must be open to the public.

(d) The board shall hold its meetings in the office of the board or in a place specified by the notice of the meeting.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.008. Compensation; Expenses

Each trustee serves without compensation but is entitled to:

(1) reimbursement for reasonable traveling expenses incurred in attending board meetings or authorized committee and association meetings or incurred in the performance of other official board duties; and

(2) payment of an amount equal to any compensation withheld by the trustee's employing subdivision because of the trustee's attendance at board meetings.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.009. Voting

(a) Each trustee is entitled to one vote.

(b) At any meeting of the board, five or more concurring votes are necessary for a decision or action by the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 55.010 to 55.100 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

§ 55.101. Administration

(a) The retirement system is a trust.

(b) The board of trustees is responsible for the administration of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.102. Rulemaking

The board of trustees shall adopt rules and perform reasonable activities necessary or desirable for efficient administration of the system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.103. Administering System Assets

(a) The board of trustees may sell, assign, exchange, or trade and transfer any security in which the retirement system's assets are invested. The board may use or reinvest the proceeds as the board determines that the system's needs require.

(b) In handling the funds of the retirement system, the board of trustees has all powers and duties granted to the State Depository Board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.104. Accepting Gift, Grant, or Bequest

The board of trustees shall accept a gift, grant, or bequest of money or securities:

(1) for the purpose designated by the grantor if the purpose provides an endowment or retirement benefits to some or all participating employees or annuitants of the retirement system; or

(2) otherwise, for deposit in the endowment fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.105. Indebtedness; Payment

(a) The board of trustees may:

(1) incur indebtedness;

(2) on the credit of the retirement system, borrow money to pay expenses incident to the system's operation;

(3) renew, extend, or refund its indebtedness; or

(4) issue and sell negotiable promissory notes or negotiable bonds of the system.

(b) A note or bond issued under this section must mature before the 20th anniversary of the issuance of the note or bond. The rate of interest on the note or bond may not exceed six percent a year.

(c) The board shall charge a note or bond issued under this section against the system's expense fund and shall pay the note or bond from that fund. The total indebtedness against the expense fund may not exceed $100,000 at any time.

(d) A note or bond issued under this section must expressly state that the note or bond is not an obligation of this state.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.106. Grants and Payment of Benefits

The board of trustees, in accordance with this subtitle, shall consider all applications for annuities and benefits and shall decide whether to grant the annuities and benefits. The board may suspend one or more payments in accordance with this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.107. Audit

Annually, or more often, the board of trustees shall have the accounts of the retirement system audited by a certified public accountant.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.108. Designation of Authority to Sign Vouchers

The board of trustees by resolution shall designate one or more representatives who have authority to sign vouchers for payments from the assets of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.109. Depositories

The board of trustees shall designate financial institutions to qualify and serve the retirement system as depositories in accordance with Article 2525 et seq., Revised Civil Statutes of Texas, 1925, as amended.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.110. Adopting Rates and Tables

(a) The board of trustees shall adopt rates and tables that the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality and service experience of the system's members and annuitants.

(b) Based on recommendations of the actuary, the board of trustees shall adopt rates and tables necessary to determine the supplemental death benefits contribution rates for each subdivision participating in the supplemental death benefits fund. The initial rates and tables become effective on the date that the fund and coverage become operative.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 214, ch. 18, § 55, eff. Nov. 10, 1981.]

§ 55.111. Certification of Current Interest Rate

(a) The board of trustees shall certify the current interest rate as computed in accordance with Section 55.313(c) of this subtitle and approved in writing by the actuary.

(b) The board shall notify each participating subdivision of the current interest rate.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.112. Records of Board of Trustees

(a) The board of trustees shall keep, in convenient form, data necessary for required computations and valuations by the actuary.

(b) The board shall keep a permanent record of all of its proceedings.

(c) Records of the board are open to the public.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.113. Office

(a) The board of trustees shall maintain the offices of the retirement system in Austin and may contract for and construct a building to house those offices.

(b) The board shall keep the books and records of the retirement system in those offices.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 215, ch. 18, § 56, eff. Nov. 10, 1981.]

§ 55.114. Obtaining Information

(a) The board of trustees shall obtain from a member or a participating subdivision information necessary for the proper operation of the retirement system.

(b) The board may require reports from the participating subdivisions for the efficient handling of members' deposits. The treasurer or other payroll disbursing officer of each participating subdivision shall:

(1) prepare the reports in the form specified by the board; and

(2) file the reports at the time specified by the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 55.115 to 55.200 reserved for expansion]

SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

§ 55.201. Officers

(a) The board of trustees annually shall elect from members of the board:

(1) a chairman; and

(2) a vice-chairman.

(b) The board may appoint the director or a member of the board as secretary.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.202. Director

(a) The board of trustees shall appoint a director.

(b) The director shall:

(1) manage and administer the retirement system under the supervision and direction of the board; and

(2) invest the assets of the system.

(c) The board of trustees may delegate to the director powers and duties in addition to those stated by Subsection (b) of this section.

(d) The director annually shall:

(1) prepare an itemized budget showing the amount required to pay the retirement system's expenses for the following fiscal year; and

(2) submit the report to the board for review, amendment, and adoption.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.203. Legal Adviser

(a) The board of trustees shall appoint an attorney.

(b) The attorney shall act as the legal adviser to the board and shall represent the system in all litigation.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.204. Medical Board

(a) The board of trustees shall designate a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in the state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

(1) review all medical examinations required by this subtitle;

(2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and

(3) report in writing to the board of trustees its conclusions and recommendations on all matters referred to it.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.205. Other Physicians

The board of trustees may employ physicians in addition to the medical board to report on special cases.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.206. Actuary

(a) The board of trustees shall appoint an actuary.

(b) The actuary shall perform duties in connection with advising the board concerning operation of the system's funds.

(c) At least once every five years the actuary shall:

(1) make a general investigation of the mortality and service experience of the members and annuitants of the system; and

(2) on the basis of the results of the investigation, recommend for adoption by the board required tables and rates.

(d) On the basis of tables and rates adopted by the board, the actuary shall:

(1) compute the current interest rate in accordance with Section 55.313 of this subtitle;

(2) certify the amount of each annuity and benefit granted by the board; and

(3) make an annual valuation of the assets and liabilities of the funds of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.207. Other Employees

The board of trustees shall employ actuarial, clerical, legal, medical, and other assistants required for the efficient administration of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.208. Compensation of Employees

The board of trustees shall determine the amount of compensation that employees of the retirement system receive.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.209. Surety Bond

(a) The board of trustees shall require a surety bond for the director and may require a surety bond for other employees of the retirement system. The board shall determine the amount of a bond that is required.

(b) A bond must be conditioned on a person's faithful performance of the duties of the person's office.

(c) The board shall secure a required bond and shall pay for the bond from the system's assets.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 55.210 to 55.300 reserved for expansion]

SUBCHAPTER D. MANAGEMENT OF ASSETS

§ 55.301. Investment of Assets

The board of trustees shall invest and reinvest the assets of the retirement system without distinction as to their source in:

(1) interest-bearing bonds or other evidences of indebtedness of this state, a county, school district, city, or other municipal corporation of this state, the United States, or an authority or an agency of the United States;

(2) securities for which the United States or any authority or agency of the United States guarantees the payment of principal and interest;

(3) interest-bearing bonds, notes, or other evidences of indebtedness that are issued by a company:

(A) incorporated in the United States and that are rated "A" or better by one or more nationally recognized rating agencies approved by the board; or

(B) in whose stock the retirement system may invest as provided by Subdivision (4) of this subsection; or

(4) common or preferred stocks of a company incorporated in the United States that has paid cash dividends on its common stock for 10 consecutive years immediately before the date of purchase and, unless the stocks are bank or insurance stocks, that is listed on an exchange registered with the Securities and Exchange Commission or its successor.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.302. Restrictions on Investments

(a) The board of trustees may not invest more than 20 percent of the retirement system's total assets in preferred and common stocks of corporations.

(b) The board may not invest more than one percent of the total assets of the system in the stock of one corporation.

(c) The system may not own more than five percent of the voting stock of one corporation.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.303. Duty of Care

In making investments for the retirement system, the board of trustees shall exercise the judgment and care, under the circumstances, that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, considering the probable income from the securities and probable safety of their capital.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.304. Cash on Hand

The board of trustees shall determine the amount of cash on hand required to pay benefits and the expenses of the retirement system.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.305. Crediting System Assets

(a) The retirement system shall immediately deposit all money received by the system with a depository designated under Section 55.109 of this subtitle.

(b) When the securities of the retirement system are received, the system shall deposit the securities in trust with a depository designated under Section 55.109 of this subtitle. The depository shall provide adequate safe deposit facilities for the preservation of the securities.

(c) All assets of the retirement system shall be credited according to the purpose for which they are held to one of the following funds:

(1) employees saving fund;

(2) subdivision accumulation fund;

(3) current service annuity reserve fund;

(4) interest fund;

(5) endowment fund;

(6) expense fund; or

(7) supplemental death benefits fund.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 215, ch. 18, § 57, eff. Nov. 10, 1981.]

§ 55.306. Employees Saving Fund

(a) The retirement system shall deposit in a member's individual account in the employees saving fund:

(1) the amount of contributions to the retirement system deducted from the member's compensation;

(2) interest allowed on money in the account in accordance with this subtitle;

(3) an amount deposited by a member in accordance with Section 55.405 of this subtitle to establish credited service during a time of war;

(4) the portion of a deposit required by Section 53.003 of this subtitle to reinstate credited service previously terminated that represents the amount withdrawn;

(5) the amount deposited in accordance with Section 53.301(b) or 53.402(b) of this subtitle to establish credit for prior or current service for a person who became a member in accordance with Subtitle C of Chapter 52 of this subtitle;

(6) the amount deposited by a member in accordance with Section 53.601(e) of this subtitle to establish current service credit for military service;

(7) the amount deposited by a member in accordance with Section 53.501 of this subtitle to establish credit for legislative service; and

(8) the amount deposited by a person to become a member in accordance with Section 52.103 of this subtitle.

(b) On December 31 of each year, the retirement system shall credit to each member's individual account interest as allowed by this subtitle on the amount of accumulated deposits credited to the member's account on January 1 of that year.

(c) The retirement system may not pay interest on money in a person's individual account:

(1) for a part of a year; or

(2) after the person's membership has been terminated in accordance with Section 52.109 of this subtitle because of absence from service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 215, ch. 18, § 58, eff. Nov. 10, 1981.]

§ 55.307. Subdivision Accumulation Fund

(a) The retirement system shall deposit in the account of a participating subdivision in the subdivision accumulation fund:

(1) all benefit contributions made by the subdivision to the system;

(2) interest allowed on money in the fund as provided by this subtitle;

(3) amounts deposited by the subdivision in accordance with Section 55.405 of this subtitle to establish credited service during a time of war;

(4) the withdrawal charge for reinstatement of credited service as provided by Section 53.003 of this subtitle;

(5) the amount of matching contributions made by a subdivision in accordance with Section 53.301(c) or 53.402(c) of this subtitle to establish credit for prior or current service for a person who became a member in accordance with Subchapter C of Chapter 52 of this subtitle;

(6) the amount of matching contributions made by a subdivision in accordance with Section 53.601(f) of this subtitle to establish current service credit for military service;

(7) the amount of matching contributions made by a subdivision in accordance with Section 53.501 to establish credit for legislative service; and

(8) the amount deposited by a subdivision for a person to become a member in accordance with Section 52.103 of this subtitle.

(b) Subject to Subsection (c) of this section, the retirement system shall pay from the subdivision accumulation fund all payments under prior service annuities granted before January 1, 1978, and currently in force and all payments under supplemental annuities from credits granted by a participating subdivision. The retirement system shall charge payments from the fund to the participating subdivision's account.

(c) The board of trustees may proportionately reduce all payments under prior service annuities and supplemental annuities at any time and for a period necessary to prevent payments under those annuities for a year from exceeding the amount available in the participating subdivision's account.

(d) If credited service previously forfeited is reinstated in accordance with Section 53.003 of this subtitle, the retirement system shall charge the subdivision's account in the subdivision accumulation fund with the necessary reserves to fund the credits restored to the member.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 216, ch. 18, § 59, eff. Nov. 10, 1981.]

§ 55.308. Current Service Annuity Reserve Fund

(a) The retirement system shall deposit and hold in the current service annuity reserve fund all reserves for:

(1) current service annuities in force that were granted before January 1, 1978; and

(2) all basic annuities granted on or after January 1, 1978.

(b) The retirement system shall pay from the current service annuity reserve fund annuities described by Subsection (a) of this section and all benefits in lieu of those annuities as provided by this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.309. Interest Fund

(a) The retirement system shall deposit in the interest fund all income, interest, and dividends from deposits and investments authorized by this subtitle.

(b) On December 31 of each year, the system shall transfer money from the interest fund in accordance with Section 55.314 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.310. Endowment Fund

(a) The retirement system shall deposit and hold in the endowment fund gifts, awards, funds, and assets delivered to the retirement system:

(1) that are not specifically required by the system's other funds; or

(2) that are designated by the grantor as perpetual endowments for the system.

(b) The endowment fund consists of:

(1) the general reserves account;

(2) the distributive benefits account;

(3) the perpetual endowment account; and

(4) other special accounts that the board of trustees by resolution establishes.

(c) The system shall credit to the general reserves account and to the distributive benefits account interest in accordance with Section 55.314 of this subtitle.

(d) The board of trustees shall transfer money from the general reserves account to the expense fund in accordance with Section 55.311(b) of this subtitle.

(e) If the board of trustees determines that the amount credited to the distributive benefit account on December 31 of any year is sufficient to do so, the board by resolution may:

(1) authorize the distribution and payment of all or part of the money credited to the account to persons who were annuitants on that day in the ratio of the rate of the monthly benefit of each annuitant to the total of all annuity payments made by the system for the final month of the year; or

(2) authorize the distribution of all or part of the amount credited to the account to:

(A) each member's individual account in the employees saving fund as supplemental interest in the ratio of the amount of current interest paid on the individual's account to the current interest paid to all individual accounts for the year; and

(B) each participating subdivision's account in the subdivision accumulation fund as supplemental interest in the ratio of the current interest allowed on the account of the subdivision to the total current interest paid to all subdivisions' accounts for the year.

(f) The retirement system shall deposit and hold in the perpetual endowment account funds, gifts, and awards that the grantors designate as perpetual endowment for the retirement system and money forfeited to the retirement system as provided by Section 55.603[1] of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[1]So in enrolled bill; possibly should read "Section 55.503".

§ 55.311. Expense Fund

(a) The board of trustees shall deposit in the expense fund:

(1) membership fees paid in accordance with Section 55.401 of this subtitle; and

(2) subdivision contributions for expenses of the retirement system paid in accordance with Section 55.404 of this subtitle.

(b) The board of trustees by resolution recorded in its minutes shall transfer from the general reserves account of the endowment fund to the expense fund the amount that exceeds the amount needed to provide adequate reserves against insufficient earnings on investments and against special and contingency requirements of other funds of the system and that is needed to pay the system's estimates expenses for the fiscal year.

(c) The retirement system shall pay from the expense fund:

(1) administrative and maintenance expenses of the system; and

(2) notes and bonds issued in accordance with Section 55.105 of this subtitle.

(d) If the amount of the system's estimated expenses exceeds the amount in the general reserves account available for administrative expenses, the board of trustees, by a resolution recorded in its minutes, shall require an amount equal to the difference from participating subdivisions and members. The board shall collect the required amount and deposit the amount collected in the expense fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.3111. Supplemental Death Benefits Fund

(a) The retirement system shall deposit in the supplemental death benefits fund contributions paid by subdivisions to the retirement system to provide supplemental death benefits in accordance with Section 55.406 of this subtitle. The retirement system may not establish separate accounts in the fund for subdivisions participating in the fund but shall credit contributions to a single account.

(b) The retirement system shall pay supplemental death benefits only from money in the supplemental death benefits fund, and the benefits are not an obligation of other funds of the system.

(c) The supplemental death benefits fund may become operative only after a sufficient number of subdivisions elect to participate in the fund so that 4,000 members or more are covered by the fund.

(d) The board of trustees shall determine the operative date of the fund.

(e) The effective participation date of a subdivision is:

(1) the operative date of the fund if the subdivision elected to participate in the fund on or before the fund's operative date; or

(2) the first day of any calendar month after the month in which the subdivision notifies the board of its election to enter the fund.

(f) The board of trustees shall notify each subdivision of its effective participation date.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 216, ch. 18, § 60, eff. Nov. 10, 1981.]

§ 55.312. Disbursements

(a) Disbursements from the assets of the retirement system may be made only on vouchers signed by the person designated for that purpose in accordance with Section 55.108 of this subtitle.

(b) A person designated to sign vouchers may draw checks or warrants only on proper authorization from the board of trustees, recorded in the official minutes of the meetings of the board.

(c) When a voucher is properly signed, a depository with which assets of the system are deposited shall accept and pay the voucher. The depository is released from liability for payment made on the voucher.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.313. Interest Rates

(a) Unless this subtitle expressly states that interest is computed using the current interest rate or another specified rate of interest, interest is computed using the rate of:

(1) three percent a year compounded annually for periods before January 1, 1977;

(2) four percent a year compounded annually for periods after December 31, 1976, but before January 1, 1982; and

(3) four and one-half percent a year compounded annually for periods after December 31, 1981.

(b) Subsection (a) of this section does not change the amount of an annuity on which a monthly benefit payment was made before January 1, 1982, and does not require recomputation of that amount.

(c) The current interest rate is the lesser of:

(1) the interest rate prescribed by Subsection (a) of this section; or

(2) the interest rate computed by:

(A) adding the mean amount in the current annuity reserve fund during the year and an amount equal to the amount in the subdivision accumulation fund on January 1 of the year;

(B) computing, in accordance with Subsection (a) of this section, the amount of interest on the sum obtained under Paragraph (A) of this subdivision;

(C) subtracting the amount computed under Paragraph (B) of this subdivision from an amount equal to the amount in the interest fund on December 31 of the year, before transfers of interest to other funds are made;

(D) adding an amount equal to the amount in the endowment fund on January 1 of the year and an amount equal to the sum of the accumulated deposits in the employees saving fund on January 1 of the year of all persons who are members on December 31 of the year, before any transfers for retirements effective December 31 are made; and

(E) dividing the amount computed under Paragraph (C) of this subdivision by the amount computed under Paragraph (D) of this subdivision and expressing the result to the nearest one-tenth of one percent.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 217, ch. 18, § 61, eff. Nov. 10, 1981.]

§ 55.314. Transfer of Assets From Interest Fund

(a) On December 31 of each year, the board of trustees shall transfer from the interest fund the following amounts:

(1) to the current service annuity reserve fund, interest on the mean amount in the current service annuity reserve fund during that year;

(2) to the subdivision accumulation fund, interest on the amount in the subdivision accumulation fund on January 1 of that year;

(3) to the general reserves account of the endowment fund, current interest on the amount in the endowment fund on January 1 of that year;

(4) to the employees saving fund, current interest on the sum of the accumulated deposits in the employees saving fund credited on January 1 of that year to all persons who are members on December 31 of that year before any transfers for retirement effective December 31 of that year are made; and

(5) to the supplemental death benefits fund, interest on the mean amount in the supplemental death benefits fund during that year.

(b) The board of trustees shall transfer to the general reserves account of the endowment fund the portion of the amount remaining in the interest fund after the transfers required by Subsection (a) of this section are made that the board of trustees determines is necessary:

(1) to provide adequate reserves against insufficient future earnings on investments to allow interest on the system's funds;

(2) to provide adequate reserves against special and contingency requirements of other funds of the system; and

(3) to provide the amount required for the administrative expenses of the system for the following year.

(c) After the requirements of the general reserves account of the endowment fund have been satisfied, the board of trustees shall transfer any amount remaining in the interest fund to the distributive benefits account of the endowment fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 217, ch. 18, § 62, eff. Nov. 10, 1981.]

§ 55.315. Transfer of Assets on Retirement or Restoration to Active Duty

(a) When a member retires, the retirement system shall transfer:

(1) from the employees saving fund to the current service annuity reserve fund, the member's accumulated deposits; and

(2) from the subdivision accumulation fund to the current service annuity reserve fund, an amount equal to the member's accumulated current service credit.

(b) If the retiring member's accumulated deposits are the result of service for more than one participating subdivision, the retirement system shall reduce the amount credited to the account of each subdivision by the amount chargeable to the subdivision for the member.

(c) If a person who receives disability benefits and who is less than 60 years old returns to active service, the board of trustees shall transfer the balance of the person's retirement reserve from the current service annuity reserve fund to the employees saving fund and to the subdivision accumulation fund in proportion to the original amount transferred to the current service annuity reserve fund from those funds.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 217, ch. 18, § 63, eff. Nov. 10, 1981.]

§ 55.316. Payment to Formerly Participating Subdivision

(a) If a participating subdivision has no employees who are members of the retirement system and has no present or potential liabilities resulting from the participation of former employees, the subdivision's participation in the system stops and the system shall repay to the subdivision on application any amount in the subdivision accumulation fund that is credited to the subdivision.

(b) If a participating subdivision does not exist as a separate entity because it has merged or consolidated with a city or other agency that is not eligible to participate in the retirement system and if under the applicable law or merger agreement the successor is entitled to the assets of the subdivision, the retirement system, on application, shall pay to the successor the amount in the subdivision accumulation fund that is credited to the subdivision.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.317. Consolidation of County's Accounts in Subdivision Accumulation Fund

(a) If a county that has provided for participation of county hospital employees separately from other county employees stops operating a county hospital, the commissioners court of the county, by order, may direct the retirement system to consolidate the separate accounts of the county in the subdivision accumulation fund.

(b) The retirement system shall consolidate the accounts and after consolidation shall charge each obligation of the county arising under this subtitle because of service performed by employees of the county against the consolidated account.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 55.318 to 55.400 reserved for expansion]

SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS

§ 55.401. Collection of Membership Fees

(a) Each member, with the member's contribution to the retirement system, shall pay an additional amount as a membership fee.

(b) The board of trustees shall set the rate of the membership fee not to exceed 50 cents a month and shall certify the amount to each participating subdivision.

(c) The board of trustees shall deposit the membership fees in the expense fund and shall use the fees for expenses of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.402. Member Contributions

(a) Each participating subdivision, by order or resolution of its governing body, shall designate the rate of member contributions for its employees. The subdivision may elect a rate of four, five, six, or seven percent of the current service compensation of its employees.

(b) The governing body of a participating subdivision may increase the rate of its member contributions after the first anniversary of the effective date of the existing rate.

(c) The governing body of a participating subdivision may reduce the rate of its member contributions only after the fifth anniversary of the effective date of the existing rate and only if the board of trustees determines that:

(1) according to computations of the actuary approved by the board of trustees, the reduction would not impair the ability of the subdivision to fund, before the 25th anniversary of its effective date of participation, all obligations arising from allocated prior service credits granted by the subdivision; and

(2) the reduction would not impair the ability of the subdivision to fund, before the 25th anniversary of the date of the valuation that is the basis for the subdivision's latest increase in benefits or coverage, any increased benefits or additional coverage, including obligations arising from allocated prior service credits granted by the subdivision, that is adopted by the subdivision in accordance with Section 54.201 of this subtitle.

(d) A reduction in a deposit rate may become effective only on an anniversary of the participation date of the subdivision. The subdivision shall give written notice of a reduction in the deposit rate to the board of trustees not later than the 90th day before the effective date of the reduction.

(e) The governing body of a subdivision that has an effective date of participation before January 1, 1978, by order or resolution certified to the board of trustees, may exclude from the computation of an employee's contribution the amount of the employ-

ee's compensation that exceeds $3,600 a year or a greater multiple of $1,200 a year. A participating subdivision's governing body, by order or resolution certified to the board of trustees, may increase the amount of compensation on which contributions are paid.

(f) A participating subdivision may not require a member to pay a monthly contribution that exceeds an amount computed on the basis of one-twelfth of the annual compensation to be considered for payment of contributions as specified by the order or resolution described by Subsection (e) of this section.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.403. Collection of Member Contributions

(a) Each payroll period after the effective date of a subdivision's participation, the subdivision shall cause the contribution for that period to be deducted from the compensation of each member that it employs.

(b) In determining the amount of a member's compensation for a payroll period, the board of trustees may use the rate of annual compensation payable to a member on the first day of the payroll period as the rate for the entire period and may omit deductions from compensation for less than a full payroll period if the employee was not a member on the first day of the period.

(c) To facilitate the making of deductions, the board of trustees may modify a member's required deductions by an amount that does not exceed 25 cents.

(d) A participating subdivision shall certify to the board of trustees on each payroll, or in another manner prescribed by the board, the amount to be deducted from the compensation of each member that it employs.

(e) The treasurer or disbursing officer of each participating subdivision shall:

(1) make deductions from each member's compensation for contributions to the retirement system;

(2) transmit monthly, or at the time designated by the board of trustees, the payroll and other pertinent information prescribed by the board; and

(3) pay the deductions to the board of trustees at the board's home office.

(f) After the deductions for member contributions are paid, the board of trustees shall:

(1) record all receipts; and

(2) deposit the receipts to the credit of the employees saving fund.

(g) The treasurer or disbursing officer of a participating subdivision shall make the deductions required by this section even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(h) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payroll period.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.404. Collection of Subdivision Contributions

(a) Before the 16th day of each month, each participating subdivision shall pay or cause to be paid to the retirement system at the system's office:

(1) an amount equal to the total amount of contributions to the retirement system paid by all employees of the subdivision for the preceding month; and

(2) a contribution for expenses of the retirement system equal to the total amount of membership fees paid by the employees of the subdivision for the preceding month.

(b) Unless otherwise provided for and paid by a subdivision, a subdivision shall pay its contributions to the retirement system from:

(1) the fund from which compensation is paid to members; or

(2) the general fund of the subdivision.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.405. War Period Contributions

(a) A member to whom this section applies may pay to the retirement system, during each 12 months of the period described by Subsection (b) of this section, an amount that does not exceed the amount of the member's contribution to the system during the most recent 12-month period in which the member was employed by a participating subdivision.

(b) This section applies to a member who, as a result of conscription or volunteering, is serving in the United States armed forces, armed forces reserve, an auxiliary of the armed forces or reserves, or the American Red Cross or who as a result of government conscription is in war work, during a declared or undeclared war involving the United States, during a conflict between the armed forces of the United States and the armed forces of a foreign country, or before the first anniversary of the last day of the war or conflict.

(c) The board of trustees shall treat the amounts paid to the system under this section in the same manner as funds deposited by the member while an employee of a participating subdivision.

(d) The participating subdivision that most recently employed a member paying contributions under this section shall pay an amount equal to the amount paid by the member under this section.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.406. Supplemental Death Benefits Program

(a) In addition to other contributions to the retirement system required by this subtitle, each subdivision participating in the supplemental death benefits fund monthly shall pay to the fund an amount equal to the rate of contribution computed in accordance with this section, multiplied by the total compensation for the month of the members employed by the subdivision.

(b) A limitation on subdivision contribution rates provided by this subtitle does not apply to the rate of the contribution to the supplemental death benefits fund.

(c) As soon as practical after the supplemental death benefits program is established and at the time of each investigation of members' mortality and service experience required by Section 55.110 of this subtitle, the actuary shall investigate the mortality experience of the members and eligible annuitants participating in the supplemental death benefits program. On the basis of the result of that investigation, the actuary shall recommend to the board of trustees rates and tables necessary to determine supplemental death benefits contribution rates. The rates and tables may provide for the anticipated mortality experience of the persons covered under the supplemental death benefits fund and for a contingency reserve.

(d) Before a subdivision's participation date in the supplemental death benefits fund and before January 1 of each subsequent year, the actuary shall compute, on the basis of rates and tables adopted by the board of trustees, the supplemental death benefits contribution rate of a subdivision participating in the supplemental death benefits contribution fund. The rate must be expressed as a percentage of the compensation of members employed by the subdivision. When the rate is approved by the board of trustees, the rate is effective for the calendar year for which it was approved.

(e) If the balance in the supplemental death benefits fund is insufficient to pay the supplemental death benefits due, the board of trustees may direct that, to the extent available, an amount equal to the amount of the deficiency be transferred from the general reserves account of the endowment fund to the supplemental death benefits fund. The board may adjust future contributions to the supplemental death benefits fund to repay to the general reserves account the transferred amount.

(f) If the total number of members covered by the supplemental death benefits fund becomes fewer than 4,000, the board of trustees may order that the fund be discontinued and all coverage terminated. The termination date must be December 31 of a year designated by the board and may not be before the expiration of six months after the date on which the order of termination was adopted.

(g) To protect against adverse claim experience, the board of trustees may secure reinsurance from one or more stock insurance companies doing business in this state if the board determines that reinsurance is necessary. The retirement system shall pay the premiums for reinsurance from the supplemental death benefits fund.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 217, ch. 18, § 64, eff. Nov. 10, 1981.]

[Sections 55.407 to 55.500 reserved for expansion]

SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

§ 55.501. Statement of Amount in Account

(a) As soon as possible after the end of each calendar year, the board of trustees shall send to the governing body of each subdivision and to each requesting member an annual statement that contains:

(1) a balance sheet showing the financial and actuarial condition of the retirement system at the end of the calendar year;

(2) a statement showing the receipts and disbursements made during the calendar year;

(3) a statement showing changes in the asset, liability, reserve, and surplus accounts during the calendar year; and

(4) additional statistics necessary for proper interpretation of the condition of the retirement system.

(b) The board of trustees shall furnish to a member, on written request, a statement of the amount credited to the member's individual account. During a calendar year, the board is not required to furnish to a member more than one statement requested under this subsection.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.502. Interest in Assets

A particular person or subdivision has no right in a specific security or in an item of cash other than an undivided interest in the assets of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 55.503. Forfeiture of Contributions

(a) If an application for the accumulated contributions of a member under Section 52.108 of this subtitle has not been made before the seventh anniversary of the member's last day of service, the retirement system shall return to the contributor or the contributor's estate all of the person's accumulated contributions.

(b) If the contributor or the administrator of the contributor's estate cannot be found, the person's accumulated contributions are forfeited to the retirement system. The retirement system shall credit the amount forfeited to the perpetual endowment account of the endowment fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

SUBTITLE G. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 61. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Section
61.001. Definitions.
61.002. Purpose of Subtitle.
61.003. Retirement System.
61.004. Powers and Privileges.
61.005. Action for Accounting.
61.006. Exemption From Execution.

SUBCHAPTER B. PENAL PROVISIONS

61.101. Offenses; Penalty.

SUBCHAPTER A. GENERAL PROVISIONS

§ 61.001. Definitions

In this subtitle:

(1) "Accumulated contributions" means the sum of all contributions made by a member and credited to the member's individual account in the employees saving fund, plus interest allowed on the account as provided by this subtitle.

(2) "Actuarial equivalent" means a benefit that, at the time it is entered upon, has the same present value as the benefit it replaces, based on interest and on a mortality table recommended by the actuary and adopted by the board of trustees.

(3) "Annuity" means an amount of money payable in equal monthly installments at the end of each month for a period determined under this subtitle.

(4) "Annuity reserve" means the present value, computed on the basis of annuity or mortality tables adopted by the board of trustees, with interest, of all payments to be made under an annuity.

(5) "Board of trustees" means the persons appointed under this subtitle to administer the retirement system.

(6) "Compensation" means the sum of payments made to an employee for performance of personal services, as certified on a written payroll of an employing department, that does not exceed any rate of compensation fixed by a governing body as the maximum salary on which member contributions to the retirement system may be based.

(7) "Department" means a recognized division performing a governmental or proprietary function of a municipality.

(8) "Employee" means a person who receives compensation from and is certified by a municipality as being regularly engaged in the performance of duties of:

(A) an appointive office or position that normally requires services from the person for not less than 1,000 hours a year; or

(B) an elective office that normally requires services from the person for not less than 1,000 hours a year, in a municipality that began participating in the retirement system after December 31, 1981, or that has adopted a membership requirement under Section 62.107 of this subtitle.

(9) "Municipality" means any incorporated city or town in this state.

(10) "Rate of compensation" means the rate at which payments to an employee are computed, as certified by the employing municipality, converted into compensation for any period on the assumption that 2,400 hours, 300 days, 52 weeks, 12 months, and 1 year are equivalents.

(11) "Retirement" means withdrawal from service with a retirement benefit granted under this subtitle.

(12) "Retirement system" means the Texas Municipal Retirement System.

(13) "Service" means the time a person is an employee.

(14) "Credited service" means the number of months of prior and current service ascribed to a member in the retirement system or included in a prior service certificate in effect for the member.

(15) "Amortization period" means, as to a particular municipality, the time ending with the latest of:

(A) the expiration of 25 years from the effective date of the municipality's participation in the retirement system, from the effective date of the most recent annuity increases allowed by the municipality under Section 64.203 of this subtitle, or from the effective date of the most recent updated service credits allowed by the municipality under Section 63.401 of this subtitle; or

(B) the expiration of 20 years from the date the municipality allowed any special prior service credits or antecedent service credits.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 218, ch. 18, §§ 65, 66, eff. Jan. 1, 1982.]

§ 61.002. Purpose of Subtitle

The purpose of this subtitle is to establish a program of benefits for members, retirees, and their beneficiaries and to establish rules for the management and operation of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 61.003. Retirement System

The Texas Municipal Retirement System is continued in existence and is the name by which the business of the retirement system shall be transacted, all its funds invested, and all its cash and other property held.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 61.004. Powers and Privileges

The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 61.005. Action for Accounting

(a) The retirement system or the board of trustees may initiate, or cause to be initiated on its behalf, an action against a participating municipality, a board of the municipality, or individual officers of the municipality, to compel an accounting of sums due to the retirement system or to require the withholding and accounting of sums due from members.

(b) The venue of an action brought under this section is in either Travis County or a county in which the municipality is situated.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 61.006. Exemption From Execution

All retirement annuity payments, other benefit payments, and a member's accumulated contributions are unassignable and are exempt from execution, garnishment, attachment, and state and local taxation.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 61.007 to 61.100 reserved for expansion]

SUBCHAPTER B. PENAL PROVISIONS

§ 61.101. Offenses; Penalty

(a) A person commits an offense if the person knowingly makes a false statement in a report or application to the retirement system in an attempt to defraud the retirement system.

(b) A person commits an offense if the person knowingly makes a false certificate of an official report to the retirement system.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than $100 nor more than $1,000, confinement in jail for not less than 30 days nor more than one year, or both.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

CHAPTER 62. MEMBERSHIP

SUBCHAPTER A. MUNICIPAL PARTICIPATION

Section
62.001. Election to Participate.
62.002. Referendum on Participation.
62.003. Supplemental Disability Benefits Fund.
62.004. Supplemental Death Benefits Fund.
62.005. Status as a Municipality.
62.006. Termination of Participation.

SUBCHAPTER B. MEMBERSHIP

Section
62.101. General Membership Requirement.
62.102. Exception to General Membership Requirement.
62.103. Withdrawal of Contributions.
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62.105. Optional Membership Requirement.
62.106. Ineligibility for Membership; Multiple Retirement System Membership.
62.107. Optional Membership Requirement for Elected Officers.
62.108. Resumption of Service by Retiree.

SUBCHAPTER A. MUNICIPAL PARTICIPATION

§ 62.001. Election to Participate

(a) By vote of its governing body in the manner required for other official actions, a municipality may elect to have one or more of its departments participate in the retirement system and be subject to the provisions of this subtitle.

(b) The governing body of a municipality shall notify the board of trustees of an election under this section and shall identify the participating departments before the 11th day after the date of election.

(c) A department begins participation in the retirement system on the first day of the second month after the month the board of trustees receives notice of an election to participate.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 62.002. Referendum on Participation

(a) If qualified voters representing at least 10 percent of the total votes cast at the most recent regular municipal election petition the governing body of a municipality for an election on the issue of participation in the retirement system by the municipality or specified departments of the municipality, the governing body shall make arrangements for an election to be held before the 61st day after the day the petition is filed.

(b) If a majority of the votes cast in an election under this section favor municipal or departmental participation in the retirement system, the governing body of the municipality immediately shall elect to participate.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 62.003. Supplemental Disability Benefits Fund

(a) A municipality that is participating in the retirement system may elect for all of its participating departments to participate in the supplemental disability benefits fund.

(b) An election under this section may be made in the manner provided by Section 62.001 or 62.002 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 62.004. Supplemental Death Benefits Fund

(a) If a municipality has one or more departments participating in the retirement system on a full-salary basis, the municipality may elect to participate in the supplemental death benefits fund.

(b) A municipality that elects to participate in the fund may elect coverage providing postretirement death benefits in addition to coverage providing in-service death benefits.

(c) Before a municipality that has fewer than 10 employees who are members of the retirement system is permitted to participate in the fund, the board of trustees may require the municipality to provide evidence that is satisfactory to the board that the members are in good health.

(d) A municipality that elects to participate in the fund after the operative date of the fund may begin participation on the first day of any month after the month in which the municipality gives notice of its election to the board of trustees.

(e) If a municipality has previously discontinued participation in the fund, the board of trustees in its discretion may restrict the right of the municipality to participate again.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 219, ch. 18, § 67, eff. Jan. 1, 1982.]

§ 62.005. Status as a Municipality

(a) For the purposes of this subtitle, the Texas Municipal Retirement System and, as limited by Subsection (b) of this section, the Texas Municipal League, have the standing of municipalities.

(b) The Texas Municipal League has the standing conferred by this section except as to a person who is employed by the league for the first time and who is engaged in lobbying activities.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 219, ch. 18, § 68, eff. Jan. 1, 1982.]

§ 62.006. Termination of Participation

(a) Except as provided in this section, a municipality may not terminate participation in the retirement system or in the supplemental disability benefits fund if the municipality has employees who are members of the system or who participate in the fund, but the municipality may elect to discontinue the participation in the system or the fund of persons employed or reemployed after the date of an election to discontinue.

(b) If before November 1 of any year a municipality gives written notice of its intention to the retirement system, the municipality may terminate coverage under, and discontinue participation in, the supplemental death benefits fund. A termination under this subsection is effective on January 1 of the year following the year in which notice is given.

(c) If a municipality participating in the retirement system has no employees who are members of the system and has no present or potential liabilities as a result of the participation of former employees, the municipality, on receiving a refund under Section 65.319 of this subtitle, ceases participation in the system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 62.007 to 62.100 reserved for expansion]

SUBCHAPTER B. MEMBERSHIP

§ 62.101. General Membership Requirement

(a) Except as otherwise provided by this subchapter, a person who is not a member becomes a member of the retirement system if:

(1) on the date a municipal department's participation in the retirement system becomes effective, the person is an employee of the department;

(2) after the date a municipal department's participation becomes effective, the person becomes an employee of the department and is less than 55 years old;

(3) the person is an employee of a participating department that has an effective date of participation in the retirement system after August 26, 1979, and the person is less than 60 years old; or

(4) the person was an employee before, but not on, the date a municipal department's participation in the system became effective, the person's previous service to the municipality is equal to or greater than the difference between the person's age and 55, and the person is reemployed by the municipality.

(b) Any person to whom Subsection (a)(1) of this section applies becomes a member of the retirement system on the date the department's participation becomes effective, and any person to whom Subsection (a)(2) or (a)(4) of this section applies becomes a member of the retirement system on the date the person is employed or reemployed. A person to whom Subsection (a)(3) of this section applies becomes a member of the retirement system on the date the department's participation becomes effective or the date the person is employed, whichever is later.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 62.102. Exception to General Membership Requirement

(a) If on the effective date of participation of the employing department, a person had with a municipality an employment contract that is violated by the membership requirement of Section 62.101(a)(1) of this subtitle, the person is not required, but may elect, to become a member of the retirement system.

(b) If a person who is qualified to make an election under this section has been notified that the municipality has elected to participate in the retire-

ment system, or if the person makes contributions to the retirement system, the person is considered to have elected membership in the retirement system unless before the date the municipality's participation becomes effective the person files with the board of trustees written notice of an election not to become a member.

(c) A person who elects under this section not to become a member may never become a member of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 62.103. Withdrawal of Contributions

A living person who is not an employee of a participating department and who has not retired may, after application, withdraw all of the accumulated contributions credited to the person's individual account in the employees saving fund, and the retirement system shall close the account.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 62.104. Termination of Membership

(a) Except as otherwise provided by this section, a person terminates membership in the retirement system by:

(1) death;

(2) retirement;

(3) withdrawal of all of the person's contributions while the person is absent from service; or

(4) absence from service for more than 60 consecutive months.

(b) A member of the retirement system is not absent from service and continues to accumulate credited service if at any time during a state of war involving the United States, during a conflict between the armed forces of the United States and the armed forces of a foreign country, or before the first anniversary of the last day of the war or conflict, the person:

(1) performs active duty service in the armed forces of the United States or their auxiliaries;

(2) performs active duty service in the armed forces reserve of the United States or their auxiliaries;

(3) performs service in the American Red Cross; or

(4) is conscripted and performs war-related service.

(c) If a member of the retirement system is an employee of a participating department of a municipality that, as provided by this subtitle, allows a person to terminate employment and remain eligible for retirement after accumulating a specified amount of credited service, and if the person meets the requirement, the person may terminate employment and is not subject to loss of membership because of absence from service.

(d) Termination of membership in the retirement system terminates membership in the supplemental disability benefits fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 62.105. Optional Membership Requirement

(a) The governing body of a municipality that has an effective date of participation in the retirement system after December 31, 1975, or that previously has authorized updated service credits, by ordinance may require that each employee of each participating department of the municipality become a member of the retirement system if the employee is less than 60 years old or was less than 60 years old at the time of employment but did not become a member at that time because the person exceeded the maximum age for membership.

(b) A governing body may not adopt an ordinance under this section unless the ordinance includes the provisions specified in Section 64.202 of this subtitle and the actuary makes the determination required by Section 64.202(d) of this subtitle.

(c) The governing body shall specify the effective date of an ordinance under this section, which may be the first day of any month after the month in which the actuary makes the determination required by Section 64.202(d) of this subtitle. The effective date of membership for a person who becomes a member under this section is the effective date of the ordinance or the date the person is employed by a participating department of the municipality that adopted the ordinance, whichever is later.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 219, ch. 18, § 69, eff. Jan. 1, 1982.]

§ 62.106. Ineligibility for Membership; Multiple Retirement System Membership

(a) Except as provided by this section:

(1) a person who is elected to public office is not an employee eligible for membership in the retirement system; and

(2) a person is not an employee eligible for membership and is not eligible to receive credited service in this retirement system for service performed that makes a person eligible for membership or is creditable in another pension fund or retirement system that is at least partly supported at public expense.

(b) A person may simultaneously receive credit or benefits for service performed during the same period in the retirement system and the federal program providing old age and survivors insurance.

(c) If a volunteer firefighter or an elected officer is employed by a participating municipality in another capacity that satisfies the definition of "employee" under this subtitle, the person may be a member of, and receive service credit in, the retirement system for service performed in the other capacity.

(d) If a person is elected to an office of a municipality that began participating in the retirement system after December 31, 1981, the person is required to become a member of the retirement system as of the date the person takes office or the effective date of participation, whichever is later. If a person is elected to an office of a municipality that has adopted an ordinance under Section 62.107 of this subtitle, the person is required to become a member of the retirement system as of the date the person takes office or the effective date of the ordinance, whichever is later.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 219, ch. 18, § 70, eff. Jan. 1, 1982.]

§ 62.107. Optional Membership Requirement for Elected Officers

(a) The governing body of a municipality that began participation in the retirement system before January 1, 1982, by ordinance may provide that persons who hold and are regularly engaged in the performance of duties of an elective office that normally requires actual performance of services in a participating department of the municipality for not less than 1,000 hours a year are employees required to become members of the retirement system.

(b) An ordinance under this section takes effect on the first day of any calendar month after adoption that is designated by the governing body adopting the ordinance.

(c) A person required to become a member under an ordinance adopted under this section becomes a member on the effective date of the ordinance or the date the person takes office, whichever is later, unless the date the person takes office is after the effective date of the ordinance and the person is then ineligible for membership under applicable age restrictions of this subtitle.

(d) A person who becomes a member as provided by this section is entitled to prior service credit as provided by Section 63.302 of this subtitle.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 220, ch. 18, § 71, eff. Jan. 1, 1982.]

Former § 62.107, added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981, relating to resumption of service by retirees, was renumbered § 62.108 by Acts 1981, 67th Leg., 1st C.S., p. 220, ch. 18, § 71, eff. Jan. 1, 1982.

§ 62.108. Resumption of Service by Retiree

A person who has retired under this subtitle because of service may not rejoin the retirement system or resume or continue service with a participating municipality.

[Formerly § 62.107, added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Renumbered § 62.108 by Acts 1981, 67th Leg., 1st C.S., p. 220, ch. 18, § 71, eff. Jan. 1, 1982.]

CHAPTER 63. CREDITABLE SERVICE

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SUBCHAPTER A. GENERAL PROVISIONS

§ 63.001. Types of Creditable Service

The types of service creditable as credited service in the retirement system are prior service and current service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 63.002. Benefit Eligibility Based on Credited Service

A member's eligibility to receive a benefit is based on credited service at the time of retirement.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 63.003. Credited Service Previously Canceled

(a) An eligible member who has withdrawn contributions and canceled credited service in the retirement system may reestablish the canceled credit in the system if the governing body of the municipality that currently employs the member by ordinance authorizes reestablishment of the credit by eligible employee members.

(b) A member eligible to reestablish credit under this section is one who has, since resuming membership, at least 24 consecutive months of credited service as an employee of the municipality for which the ordinance was adopted.

(c) A member may reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from the system, plus a withdrawal charge computed at an annual rate of five percent from the date of withdrawal to the date of redeposit.

(d) Credit reestablished under this section is treated as if all service on which the credit is based were performed for the municipality authorizing the reestablishment.

(e) A governing body may not adopt an ordinance under Subsection (a) of this section unless the actuary first determines that all obligations charged against the municipality's account in the municipality accumulation fund, including the obligations proposed in the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 220, ch. 18, § 72, eff. Jan. 1, 1982.]

[Sections 63.004 to 63.100 reserved for expansion]

SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE

§ 63.101. Creditable Prior Service

Prior service creditable in the retirement system is:

(1) service performed as an employee of a participating department of a municipality before the date the department's participation in the retirement system became effective;

(2) for a person who becomes a member of the retirement system under Section 62.105 of this subtitle, service performed as an employee of a participating department during a time the person was ineligible for membership because of age; or

(3) for a person entitled to prior service credit under Section 63.102(a)(3) of this subtitle, service for which current service credit has not been granted that was performed as an employee of a participating department during a time the person was ineligible to participate because of age.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 220, ch. 18, § 73, eff. Jan. 1, 1982.]

§ 63.102. Eligibility for Prior Service

(a) A member is eligible to receive credit in the retirement system for prior service if the member:

(1) became a member as an employee of a department of a municipality on the effective date of the department's participation in the retirement system;

(2) became a member as an employee of a department of a municipality before the fifth anniversary of the effective date of the department's participation and continued as an employee of a participating department of the municipality for at least five consecutive years after reemployment;

(3) was less than 55 years old on the later of January 1, 1979, or the date of employment, and became a member on August 27, 1979, by being an employee of a participating department of a municipality that adopts the provisions of Sections 62.105 and 64.202 of this subtitle; or

(4) became a member under Section 62.105 of this subtitle.

(b) The board of trustees may adopt rules concerning eligibility for prior service under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 221, ch. 18, § 74, eff. Jan. 1, 1982.]

§ 63.103. Statement of Prior Service

A member may claim credit for prior service by filing a detailed statement of the service with the city clerk or city secretary of the municipality for which the service was performed.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 63.104. Certification of Service and Average Compensation

(a) As soon as practicable after a member files a statement of prior service under Section 63.103 of this subtitle, the municipality that employs the person who receives the statement shall verify the prior service claimed and certify to the board of trustees the amount of service approved and the member's average prior service compensation.

(b) The average prior service compensation of a member is computed as the average monthly compensation for service performed for a participating department of the municipality:

(1) for the 36 months immediately preceding the effective date of the department's participation in the retirement system; or

(2) if the member did not perform service in each of the 36 months immediately preceding participation, for the number of months of service within the 36-month period.

(c) The board of trustees may adopt rules concerning verification and certification of service and compensation under this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 63.105. Determination of Prior Service Credit

(a) After receiving a certification of prior service and average prior service compensation under Section 63.104 of this subtitle, the board of trustees shall determine the member's prior service credit.

(b) For an employee of a municipality having an effective date of participation in the retirement system before January 1, 1976, the prior service credit

is an amount equal to the accumulation at interest of a series of equal monthly amounts for the number of months of approved prior service. Each monthly amount equals 10 percent of the member's average prior service compensation, or $300 a month, whichever is less. Interest is allowed at the end of each 12-month period on an accumulated amount at the beginning of each period and is credited only for each whole 12-month period.

(c) For an employee of a municipality having an effective date of participation in the retirement system after December 31, 1975, the prior service credit is an amount computed as a percentage determined as provided by Subsection (d) of this section, times a base credit equal to the accumulation at three percent interest of a series of monthly amounts for the number of months of approved prior service, times the sum of:

(1) the rate of contributions required of employees of the municipality for current service; plus

(2) the rate described in Subdivision (1) of this subsection times the municipal current service matching ratio.

(d) The governing body of a municipality having an effective date of retirement system participation after December 31, 1975, shall determine in the ordinance providing for participation the percentage to be applied against the base credit in computing a prior service credit under Subsection (c) of this section. The percentage adopted may be any multiple of 10 percent that does not exceed 100 percent of the base credit. A governing body may not adopt a percentage under this subsection until the actuary first determines, and the board of trustees concurs in the determination, that the municipality is able to fund, before the 25th anniversary of the effective date of its participation in the retirement system, all prior service obligations that the municipality proposes to assume under this section.

(e) The prior service credit of a person who becomes a member of the retirement system under Section 62.105 of this subtitle or who is entitled to prior service credit under Section 63.102(a)(3) of this subtitle is computed on the percentage of the base prior service credit that was most recently used by the person's employing municipality in computing prior or updated service credits for current employees.

(f) Interest on a prior service credit is earned for each whole year beginning on the effective date of membership and ending on the effective date of retirement.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 221, ch. 18, § 75, eff. Jan. 1, 1982.]

§ 63.106. Prior Service Certificate

(a) After determining a member's prior service credit under Section 63.105 of this subtitle, the board of trustees shall issue to the member a prior service certificate stating:

(1) the number of months of prior service credited;

(2) the average prior service compensation; and

(3) the prior service credit.

(b) As long as a person remains a member, the person's prior service certificate is, for purposes of retirement, conclusive evidence of the information it contains, except that a member or participating municipality, before the first anniversary of its issuance or modification, may request the board of trustees to modify the certificate.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 63.107. Void Prior Service Certificate

(a) When a person's membership in the retirement system is terminated, any prior service certificate issued to the person becomes void.

(b) A person whose membership has terminated and who subsequently resumes membership in the retirement system is not entitled to credit for prior service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 63.108 to 63.200 reserved for expansion]

SUBCHAPTER C. ESTABLISHMENT OF CURRENT SERVICE

§ 63.201. Creditable Current Service

Service performed as an employee member of a participating department of a municipality is credited in the retirement system for each month for which the required contributions are made by the member.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 63.202 to 63.300 reserved for expansion]

SUBCHAPTER D. OPTIONAL SERVICE

§ 63.301. Service for Certain Public Facilities

(a) The governing body of a participating municipality by ordinance may authorize the granting of prior service credit in the retirement system for service performed in a public hospital, utility, or other public facility currently operated by the municipality, during a time the facility was operated by a unit of government other than the municipality and before:

(1) the effective date of the municipality's participation in the retirement system, if the facility was acquired by the municipality before that date; or

(2) the date of acquisition of the facility, if the facility was acquired after the effective date of the municipality's participation in the retirement system.

(b) A member eligible to receive credit under this section after an ordinance is adopted under Subsection (a) of this section is one who was employed by the municipality at a public facility:

(1) on the effective date of the municipality's participation, for service under Subsection (a)(1) of this section; or

(2) on the date of acquisition of the facility, for service under Subsection (a)(2) of this section.

(c) All credit authorized by a municipality under this section is treated as if it were performed for the municipality.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 63.302. Service for Elected Officers

An elected officer who becomes a member of the retirement system on the effective date of an ordinance adopted under Section 62.107 of this subtitle is entitled to prior service credit computed as provided by Section 63.105 of this subtitle, except that if the employing municipality has granted updated service credits, the percentage to be used in computing a prior service credit under this section is the percentage of the base updated service credit that was most recently used by the municipality in computing updated service credits.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 221, ch. 18, § 76, eff. Jan. 1, 1982.]

[Sections 63.303 to 63.400 reserved for expansion]

SUBCHAPTER E. OPTIONAL INCREASES IN SERVICE CREDITS

§ 63.401. Ordinance Authorizing Updated Service Credits

(a) Except as provided by Subsection (b) of this section, the governing body of a participating municipality by ordinance may authorize the crediting in the retirement system of updated service credits for service performed for the municipality by members. An updated service credit authorized under this section replaces any updated service credit, prior service credit, special prior service credit, or antecedent service credit previously authorized for part of the same service.

(b) A municipality may not authorize updated service credits for members who had less than 36 months of credited service on the date prescribed by Section 63.402(e) of this subtitle.

(c) In adopting an ordinance under this section, a governing body shall specify the percentage of base updated service credits to be used in computing updated service credits for employees of the municipality and shall specify the date the updated service credits will take effect. The percentage adopted may be any multiple of 10 percent that does not exceed 100 percent of a base updated service credit. The effective date must be January 1 of a year specified by the governing body.

(d) An ordinance under this section also must require, beginning on the effective date of the updated service credits, that a member's monthly contributions for current service be based on the member's total monthly compensation from the municipality, if the requirement is not already in effect for employees of the municipality.

(e) A governing body that adopts an ordinance under this section shall send it to the retirement system, and the system must receive it before the effective date of the updated service credits authorized in the ordinance.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 221, ch. 18, § 77, eff. Jan. 1, 1982.]

§ 63.402. Determination of Updated Service Credits

(a) If a governing body sends the retirement system an ordinance adopted under Section 63.401 of this subtitle, the retirement system shall determine for each affected member the average updated service compensation, base updated service credit, and updated service credit.

(b) The average updated service compensation of a member is computed as the monthly average compensation for:

(1) the 36 months immediately preceding the date prescribed by Subsection (e) of this section;

(2) if the member did not perform service in each of the 36 months described in Subdivision (1) of this subsection, for the number of months of service within the 36-month period; or

(3) if the member did not perform any service within the 36-month period, for the number of months of service within the 36-month period ending with the last month of the calendar year in which the member's most recent service was performed.

(c) The base updated service credit of a member is an amount computed as the number 1.03, times the difference by which the amount computed under Subdivision (1) of this subsection exceeds the amount computed under Subdivision (2), where:

(1) "(1)" is an amount equal to the accumulation at three percent interest of a series of monthly amounts for the number of months of credited service on the date prescribed by Subsection (e) of this section, each amount of which equals the member's average updated service compensation, times the sum of:

(A) the rate of contributions required of the member for current service; plus

(B) the member's contribution rate, times the municipal current service ratio in effect on the effective date of the ordinance adopted under Section 63.401 of this subtitle; and where

(2) "(2)" is an amount equal to the sum of:

(A) the amount credited to the member's individual account in the employees saving fund on

the date prescribed by Subsection (e) of this section, subject to a 1 to 1 matching ratio, times 2; plus

(B) the amount credited to the member's individual account, subject to a 1.5 to 1 matching ratio, times 2.5; plus

(C) the amount credited to the member's individual account, subject to a 2 to 1 matching ratio times 3.

(d) The updated service credit of a member is an amount equal to the greatest of the following:

(1) the percentage determined under Section 63.401(c) of this subtitle, times the member's base updated service credit; or

(2) any updated service credit previously authorized by the municipality and in effect for the member, accumulated at interest as provided by Subsection (f) of this section from the date it took effect to the date prescribed by Subsection (e) of this section; or

(3) the sum of any prior service credit, special prior service credit, and antecedent service credit previously authorized by the municipality and in effect for the member, accumulated at interest as provided by Subsection (f) of this section from the dates the credits took effect to the date prescribed by Subsection (e) of this section.

(e) The date used in computing updated service compensation and updated service credits under this section is January 1 of the year immediately preceding the January 1 on which the updated service credits will take effect.

(f) Interest on an updated service credit is earned for each whole calendar year beginning on the date the updated service credit takes effect and ending on the effective date of retirement.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 63.403. Approval of Ordinance

(a) An ordinance adopted under Section 63.401 of this subtitle may not take effect unless the board of trustees approves the ordinance as meeting the requirements of this section. The board may not approve an ordinance unless the actuary first determines, and the board concurs in the determination, that all obligations charged against the municipality's account in the municipality accumulation fund, including obligations proposed in the ordinance, can be funded by the municipality within its maximum total contribution rate before the 25th anniversary of the date the updated service credits take effect.

(b) The board of trustees may adopt rules it finds necessary to insure that the retirement system receives in a timely manner from a municipality the certified information the actuary requires to make the necessary determinations before the date the updated service credits take effect.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 222, ch. 18, § 78, eff. Jan. 1, 1982.]

[Sections 64.006 to 64.100 reserved for expansion]

SUBCHAPTER F. OPTIONAL MILITARY SERVICE

§ 63.501. Creditable Military Service

(a) The governing body of a participating municipality by ordinance may authorize eligible members in its employment to establish credit in the retirement system for active military service performed as a member of the armed forces or armed forces reserves of the United States or of an auxiliary of the armed forces or armed forces reserves, during a period in which the United States is or was involved in a state of conflict with foreign forces.

(b) A member eligible to establish credit for military service creditable as provided by this section is one:

(1) who is an employee of a municipality that has adopted an ordinance under this section;

(2) who has at least 10 years of credited service in the retirement system;

(3) who has been an employee of one or more participating municipalities for at least 10 years;

(4) whose military service was terminated by release from active duty or discharge, on terms not dishonorable;

(5) who does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active military duty or its equivalent; and

(6) who does not have and does not receive credit for the service in any other public retirement system or program established under laws of this state.

(c) A member may not establish more than 60 months of credit in the retirement system for military service.

(d) The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as periods of organized conflict.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 222, ch. 18, § 79, eff. Jan. 1, 1982.]

§ 63.502. Establishment of Military Service Credit

(a) A member may establish credit for military service under this subchapter by depositing with the retirement system an amount equal to $15 for each month for which credit is sought.

(b) A member must make the deposit required by this section before the first anniversary of the effective date of the ordinance adopted under Section 63.501 of this subtitle or before the first anniversary of the date the member becomes eligible to establish the credit, whichever is later.

(c) The employing municipality shall contribute for service, established under this section an amount equal to the amount required of the member, times the municipality's current service matching percentage in effect on the date the member applies for credit under this section.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 222, ch. 18, § 79, eff. Jan. 1, 1982.]

§ 63.503. Use of Military Service Credit

(a) The retirement system shall use military service credit established under this subchapter in determining satisfaction of length-of-service requirements for benefits.

(b) When a person who has military service credit retires, the retirement system shall transfer to the current service annuity reserve fund the amounts paid by the person and the employing municipality under Section 63.502 of this subtitle. The retirement system shall use the amounts to make annuity payments to the person computed in the same manner as is the person's current service annuity, but the credit and the amounts may not be used in other computations, including computations of updated service credits, antecedent service credits, prior service credits, or special prior service credits.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 222, ch. 18, § 79, eff. Jan. 1, 1982.]

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SUBCHAPTER A. GENERAL PROVISIONS

§ 64.001. Types of Benefits

The types of benefits payable by the retirement system are:

(1) service retirement benefits;

(2) disability retirement benefits; and

(3) death benefits.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.002. Composition of Retirement Annuity

(a) Each retirement annuity payable under this subtitle consists of a prior service annuity and a current service annuity.

(b) A prior service annuity is actuarially determined from any updated service credit or any prior service, special prior service, or antecedent service credit in effect for a member on the date of retirement, plus accumulated interest.

(c) A current service annuity is actuarially determined on the date of a member's retirement from the sum of:

(1) the amount credited to the member's individual account in the employees saving fund; and

(2) the amount from the municipality accumulation fund equal to the amount in the member's individual account or a greater amount authorized by a participating municipality under Section 65.501 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 223, ch. 18, § 80, eff. Jan. 1, 1982.]

§ 64.003. Effective Date of Retirement

(a) The effective date of a member's service retirement is the date the member designates at the time the member applies for retirement under Section 64.101 of this subtitle, but the date must be the last day of a calendar month and may not precede the date the member terminates employment with all participating municipalities.

(b) If a member dies before retirement and has a valid optional retirement annuity selection on file with the retirement system, the member is considered to have retired on the last day of the month immediately preceding the month in which death occurred.

(c) The effective date of a member's disability retirement is the date designated on the application for retirement filed by or for the member as provided by Section 64.301 of this subtitle, but the date may not precede the date the member terminates employment with all participating municipalities.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.004. When Annuity is Payable

An annuity under this subtitle is payable for a period beginning on the last day of the first month following the month in which retirement occurs and ending, except as otherwise provided by this subtitle, on the last day of the month immediately preceding the month in which death occurs.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.005. Reduction of Annuity Payments on Request

(a) An annuitant by written request may authorize the retirement system to reduce the annuitant's monthly payment to an amount specified in the request. In writing, the annuitant may subsequently request the retirement system to increase the annuitant's monthly payment to any specified amount that does not exceed the amount originally payable.

(b) If the retirement system receives a request under Subsection (a) of this section, the director may cause the monthly annuity payment of the requesting annuitant to be reduced or increased as specified in the request.

(c) Any amounts by which an annuity is reduced under this section are forfeited to the retirement system and are not recoverable by any person.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 64.006 to 64.100 reserved for expansion]

SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

§ 64.101. Application for Service Retirement

A member may apply for service retirement by filing a retirement application with the board of trustees not less than 30 days nor, if the member has not previously selected an optional service retirement annuity under Section 64.105 of this subtitle, more than 90 days before the date the member wishes to retire.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.102. Eligibility for Service Retirement Annuity

(a) A member is eligible, beginning on the first anniversary of the effective date of the person's membership, to retire and receive a service retirement annuity, if the member:

(1) is at least 60 years old and has at least 15 years of credited service in the retirement system; or

(2) has at least 28 years of credited service in the retirement system.

(b) A member is eligible, beginning on the first anniversary of the effective date of the person's membership, to retire and receive a service retirement annuity, if the member is at least 50 years old and has at least 25 years of credited service in the retirement system performed for one or more municipalities that:

(1) have effective dates of participation in the retirement system after May 28, 1969; or

(2) have adopted a like provision under Section 64.201 or 64.202 of this subtitle.

(c) A member is eligible, beginning on the first anniversary of the effective date of the person's membership, to retire and receive a service retirement annuity, if the member is at least 60 years old and has at least 10 years of credited service in the retirement system performed for one or more municipalities that either have an effective date of participation in the retirement system after August 26, 1979, or have adopted a like provision under Section 64.202 of this subtitle.

(d) A member employed by a municipality having an effective date of participation in the retirement system after May 28, 1969, may terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age provided by law for service retirement of employees of the municipality, if the member has at least 20 years of credited service performed for one or more municipalities that are either subject to this subsection or have adopted a like provision under Section 64.201(c) of this subtitle.

(e) A member employed by a municipality having an effective date of participation in the retirement system after August 26, 1979, may terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age and service requirement, if the member has at least 10 years of credited service performed for one or more municipalities that are either subject to this subsection or have adopted a like provision under Section 64.202 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 223, ch. 18, § 81, eff. Jan. 1, 1982.]

§ 64.103. Standard Service Retirement Annuity

(a) The standard service retirement annuity payable under this subtitle is the sum of a member's prior service annuity and current service annuity.

(b) A standard service retirement annuity is payable throughout the life of a retiree. If a retiree dies before 60 monthly payments of a standard service retirement annuity have been made, the remainder of the 60 monthly payments are payable to the retiree's designated beneficiary.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.104. Optional Service Retirement Annuity

(a) Instead of the standard service retirement annuity payable under Section 64.103 of this subtitle, a retiring member may elect to receive an optional service retirement annuity under this section.

(b) An optional service retirement annuity is payable throughout the life of the retiree and is actuarially adjusted from the standard service retirement annuity to its actuarial equivalent under the option selected under Subsection (c) of this section.

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate;

(4) if the retiree dies before 180 monthly annuity payments have been made, the remainder of the 180 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

(5) the annuity is payable only during the retiree's lifetime.

(d) An option under Subsection (c) of this section applies to both prior and current service annuities, except that prior service annuities are subject to reduction under Section 65.308(f) of this subtitle.

(e) To select an optional service retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.105. Selection of Optional Service Retirement Annuity

(a) A member who is eligible for service retirement may, while continuing to perform service for a participating municipality, file with the board of trustees, on a form prescribed by the board, a selection of an optional service retirement annuity available under Section 64.104 of this subtitle and a designation of beneficiary. An annuity selected as provided by this section is payable on the member's retirement or on the member's death before retirement.

(b) A member may change a selection of an optional annuity or a designation of beneficiary at any time before the member's retirement or death in the same manner that the original selection and designation were made.

(c) If a member eligible under this section to select an optional service retirement annuity dies before retirement without having made a selection, the member's surviving spouse may select an optional annuity in the same manner as if the member had made the selection. If there is no surviving spouse, the executor or administrator of the member's estate may elect:

(1) for an estate beneficiary to receive the optional annuity under Section 64.104(c)(4) of this subtitle, in which case the member will be considered to have retired on the last day of the month immediately preceding the month in which death occurred; or

(2) for the estate to receive a refund of the member's accumulated contributions under Section 64.501 of this subtitle, in which case the member will be considered to have been a contributing member at the time of death.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 64.106 to 64.200 reserved for expansion]

SUBCHAPTER C. OPTIONAL SERVICE RETIREMENT BENEFITS

§ 64.201. Optional Service Retirement Eligibility

(a) The governing body of a municipality having an effective date of participation in the retirement system before May 29, 1969, by ordinance may authorize eligibility for a service retirement annuity as provided by this section.

(b) The governing body may authorize a member who is an employee of the municipality to be eligible for service retirement who is at least 50 years old and has at least 25 years of credited service performed for one or more municipalities that either have authorized eligibility under this section or are subject to Section 64.102(d) of this subtitle, or to terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age provided by law for service retirement of employees of the municipality, if the member has at least 20 years of credited service performed for one or more municipalities that either have authorized eligibility under this section or are subject to Section 64.102(d) of this subtitle.

(c) A governing body may not adopt an ordinance under this section unless the actuary first determines that all obligations charged against the municipality's account in the municipality accumulation fund, including the obligations proposed in the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

(d) A participating municipality that adopted the provisions that were included in this section before January 1, 1982, shall be considered to have adopted the provisions as they existed on that date, unless the governing body of the municipality, before April 1, 1982, elects not to adopt the amended provisions and notifies the director of the election. This subsection expires April 1, 1982.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 224, ch. 18, § 82, eff. Jan. 1, 1982.]

§ 64.202. Additional Optional Service Retirement Eligibility

(a) The governing body of a municipality that has an effective date of participation in the retirement system after December 31, 1975, or that has previously authorized updated service credits, by ordinance may authorize eligibility for a service retirement annuity as provided by this section for a member who is or was an employee of any participating department of the municipality.

(b) The governing body may authorize a member, beginning on the first anniversary of the effective date of the person's membership, to retire and receive a service retirement annuity, if the member:

(1) is at least 50 years old and has at least 25 years of credited service performed for one or more municipalities that have authorized eligibility under this subdivision; or

(2) is at least 60 years old and has at least 10 years of credited service performed for one or more municipalities that either have authorized eligibility under this subdivision or have a participation date in the retirement system after August 26, 1979.

(c) The governing body may authorize a member who is or was an employee of the municipality to terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age and service requirement, if the member has at least 10 years of credited service performed for one or more municipalities that either have authorized eligibility under this subsection or are subject to Section 64.102(e) of this subtitle.

(d) An ordinance adopted under this section must also include the provisions specified in Section 62.105 of this subtitle. A governing body may not adopt an ordinance under this section unless the actuary first determines, on the basis of mortality and other tables adopted by the board of trustees, that all obligations of the municipality to the municipality accumulation fund, including obligations proposed under the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

(e) The governing body shall specify the effective date of an ordinance under this section, which may be the first day of any month after the month in which the actuary makes the determination required by Subsection (d) of this section.

Text of subsec. (f) effective until April 1, 1982

(f) A participating municipality that adopted the provisions that were included in this section before January 1, 1982, shall be considered to have adopted the provisions as they existed on that date, unless the governing body of the municipality, before April 1, 1982, elects not to adopt the amended provisions and notifies the director of the election. This subsection expires April 1, 1982.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 224, ch. 18, §§ 83, 84, eff. Jan. 1, 1982.]

§ 64.203. Optional Increase in Retirement Annuities

(a) The governing body of a participating municipality by ordinance, from time to time but not more frequently than once in each 12-month period, may authorize and provide for increased annuities to be paid to retirees and beneficiaries of deceased retirees of the municipality. An annuity increased under this section replaces any annuity or increased annuity previously granted to the same person.

(b) The amount of annuity increase under this section is computed as the sum of the prior and current service annuities on the effective date of retirement of the person on whose service the annuities are based, multiplied by:

(1) the percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor, from December of the year immediately preceding the effective date of the person's retirement to the December that is 13 months before the effective date of the ordinance providing the increase; and

(2) a fraction, specified by the governing body in the ordinance, that is not less than 10 percent nor more than 70 percent and is a multiple of 5 percent.

(c) Except as provided by Subsection (g) of this section, the effective date of an ordinance under this section is January 1 of the year that begins after the year in which the governing body adopts and notifies the retirement system of the ordinance.

(d) An increase in an annuity that was reduced because of an option selection is reducible in the same proportion and in the same manner that the original annuity was reduced.

(e) If a computation under Subsection (b) of this section does not result in an increase in the amount of an annuity, the amount of the annuity may not be changed under this section.

(f) The amount by which an increase under this section exceeds all previously granted increases to an annuitant is payable as a prior service annuity, is an obligation of the municipality's account in the municipality accumulation fund, and is subject to reduction under Section 65.308(f) of this subtitle.

(g) An ordinance under this section may not take effect until it is approved by the board of trustees as meeting the requirements of this section. The board may not approve an ordinance unless the actuary first determines that all obligations charged against the municipality's account in the municipality accumulation fund, including the obligations proposed in the ordinance, can be funded by the municipality within its maximum contribution rate before the 25th anniversary of the effective date of the increases.

(h) A governing body may not authorize and provide for annuity increases under this section unless it simultaneously provides for updated service credits under Subchapter E of Chapter 63 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 225, ch. 18, § 85, eff. Jan. 1, 1982.]

[Sections 64.204 to 64.300 reserved for expansion]

SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS

§ 64.301. Application for Disability Retirement Annuity

(a) A member may apply for a disability retirement annuity by:

(1) filing an application for retirement with the board of trustees; or

(2) having an application filed with the board by the member's employer or legal representative.

(b) An application for a disability retirement annuity may not be made less than 30 nor more than 90 days before the date the member wishes to retire.

(c) An applicant must submit to medical examination as required by the medical board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.302. Eligibility for Disability Retirement Annuity

(a) Except as provided by Subsection (c) of this section, a member who has less than 10 years of credited service in the retirement system is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 64.303(b)(1) of this subtitle.

(b) Except as provided by Subsection (c) of this section, a member who has at least 10 years of credited service in the retirement system but is not eligible for a service retirement annuity is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 64.303(b)(2) of this subtitle.

(c) A member is not eligible to retire for disability before the first anniversary of the effective date of the person's membership.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.303. Certification of Disability

(a) As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information concerning the member's application.

(b) The medical board shall issue a certification of disability and send it to the board of trustees if the medical board finds:

(1) in the case of a member who has less than 10 years of credited service in the retirement system, that:

(A) the member is mentally or physically incapacitated for the further performance of duty;

(B) the incapacity is the direct result of injuries sustained during membership by external and violent means as a direct and proximate result of the performance of duty;

(C) the incapacity is likely to be permanent; and

(D) the member should be retired; or

(2) in the case of a member who has at least 10 years of credited service in the retirement system but is not eligible for a service retirement annuity, that:

(A) the member is mentally or physically incapacitated for the further performance of duty;

(B) the incapacity is likely to be permanent; and

(C) the member should be retired.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.304. Standard Disability Retirement Annuity

(a) The standard disability retirement annuity payable under this subtitle is the sum of a member's prior service annuity and current service annuity.

(b) A prior service annuity is subject to reduction as provided by Section 65.308(f) of this subtitle.

(c) A standard disability retirement annuity is payable throughout the life of a retiree. When a retiree who receives an annuity under this section dies, an additional benefit may be payable under Section 64.502 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 226, ch. 18, § 86, eff. Jan. 1, 1982.]

§ 64.3041. Optional Disability Retirement Annuity

(a) Instead of the standard disability retirement annuity payable under Section 64.304 of this subtitle, a member retiring for disability may elect to receive an optional disability retirement annuity under this section.

(b) An optional disability retirement annuity is payable throughout the life of the retiree and is actuarially adjusted from the standard disability retirement annuity to its actuarial equivalent under

the option selected under Subsection (c) of this section.

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

(4) if the retiree dies before 180 monthly annuity payments have been made, the remainder of the 180 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(d) An option under Subsection (c) of this section applies to both prior and current service annuities, except that prior service annuities are subject to reduction under Section 65.308(f) of this subtitle.

(e) To select an optional disability retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(f) If a disability retirement annuity is discontinued under Section 64.307 of this subtitle, any selection of an option that applies to the annuity becomes void.

[Added by Acts 1981, 67th Leg., 1st C.S., p. 226, ch. 18, § 87, eff. Jan. 1, 1982.]

§ 64.305. Medical Examination of Disability Retiree

(a) Once each year during the first five years after a person retires for disability, and once in each three-year period after that, the board of trustees may require a disability retiree who is less than 60 years old to undergo a medical examination.

(b) An examination under this section may be held at the retiree's residence or at any place mutually agreed to by the board and the retiree. The board shall designate a physician to perform the examination.

(c) If a disability retiree refuses to submit to a medical examination as provided by this section, the board of trustees shall suspend the retiree's annuity payments until the retiree submits to an examination. If a retiree has not submitted to an examination as provided by this section before the first anniversary of the date of first refusal, the board shall revoke all rights of the retiree to an annuity.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.306. Certification of End of Disability

(a) If the medical board finds that a disability retiree is no longer mentally or physically incapacitated for the performance of duty or is able to engage in gainful occupation, it shall certify its findings and submit them to the board of trustees.

(b) If the board of trustees concurs in a certification under this section, it shall discontinue annuity payments to the retiree.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 227, ch. 18, § 88, eff. Jan. 1, 1982.]

§ 64.307. Return of Disability Retiree to Active Service or Employment

(a) If a retiree who is less than 60 years old and who is receiving a disability retirement annuity resumes employment with a participating municipality or otherwise becomes gainfully employed, the person automatically resumes membership in the retirement system, and the board of trustees shall terminate the person's annuity payments.

(b) If a person resumes membership under this section, the retirement system shall restore to effect any prior service credit, special prior service credit, antecedent service credit, or updated service credit used in determining the amount of the person's annuity at the time of disability retirement. If the person subsequently retires, the retirement system shall allow the person credit for all current service for which required contributions have been made and not withdrawn.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 227, ch. 18, § 89, eff. Jan. 1, 1982.]

§ 64.308. Refund at Annuity Discontinuance

(a) Except as provided by Subsection (b) of this section, if a disability retirement annuity is discontinued under Section 64.306 of this subtitle or the right to an annuity revoked under Section 64.305(c) of this subtitle, the retiree is entitled to a lump-sum payment in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of current service annuity payments made before the date the annuity was discontinued or the right to an annuity revoked.

(b) The benefit provided by this section is not payable to a retiree who resumes employment with a participating subdivision or otherwise becomes gainfully employed.

(c) The benefit provided by this section is payable from the current service annuity reserve fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 227, ch. 18, § 90, eff. Jan. 1, 1982.]

[Sections 64.309 to 64.400 reserved for expansion]

SUBCHAPTER E. OPTIONAL DISABILITY RETIREMENT BENEFITS

§ 64.401. Eligibility for Supplemental Disability Retirement Annuity

A member as an employee of a municipal department included, as provided by Section 62.003 of this subtitle, in the coverage of the supplemental disability benefits fund is eligible to retire and receive a supplemental disability retirement annuity if the member:

(1) is eligible to receive a disability retirement annuity under Section 64.302 of this subtitle; and

(2) is the subject of a certification and finding under Section 64.402 of this subtitle, as well as a certification under the applicable finding provided by Section 64.303 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.402. Certification and Finding of Disability

(a) The medical board shall issue and send to the board of trustees a certification of disability for a member included in the coverage of the supplemental disability benefits fund if, after a medical examination of the member, the medical board finds that the member is mentally or physically incapacitated and is unable to engage in gainful occupation.

(b) A member is entitled to a supplemental disability retirement annuity if the board of trustees, after receiving a certification of disability for the member under this section, finds that the member's incapacity:

(1) is the direct result of injuries sustained after the effective date of coverage of the member in the supplemental disability benefits fund as a direct and proximate result of the performance of the duties of the member's employment; and

(2) is likely to be permanent.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.403. Supplemental Disability Retirement Annuity

(a) A supplemental disability retirement annuity payable under this subtitle is an amount that, when added to a member's standard disability retirement annuity or, if the member is eligible for service retirement, to the member's standard service retirement annuity, equals one-half of the member's average monthly compensation for service as an employee of a participating department of a municipality:

(1) for the 60 months immediately preceding the month in which the injury occurred; or

(2) if the member did not perform service in each of the 60 months immediately preceding the month in which the injury occurred, for the number of months of service within the 60-month period.

(b) In a computation of average monthly compensation under this section, compensation is excluded that exceeds the maximum amount on which the member was required to make contributions to the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.404. Conditions for Benefits

(a) Supplemental disability benefits payable from the supplemental disability benefits fund cease on the death of the disability retiree and are, except as provided by this subchapter, subject to the same terms of issuance as are standard disability retirement benefits. The suspension or discontinuance of a disability retirement annuity automatically suspends or discontinues, as applicable, a supplemental disability retirement annuity based on the same service.

(b) The board of trustees may reduce proportionally all supplemental disability benefits payable from the supplemental benefits fund at any time and for a period that the board finds necessary to prevent payments from the fund in a year from exceeding available assets in the fund in that year.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 227, ch. 18, § 91, eff. Jan. 1, 1982.]

[Sections 64.405 to 64.500 reserved for expansion]

SUBCHAPTER F. DEATH BENEFITS

§ 64.501. Return of Contributions

(a) Except as provided by Subsection (c) of this section, if a member dies before retirement, a lump-sum death benefit is payable from the employees saving fund in the amount of:

(1) the amount credited to the member's individual account in the fund; plus

(2) interest computed from the beginning of the year in which death occurs through the end of the month immediately preceding the month in which death occurs at the rate allowed on member contributions during the preceding year.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) A benefit is not payable under this section if an annuity based on the decedent's service is payable under this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.502. Excess Contributions of Disability Retiree

(a) If a person dies who receives a standard disability retirement annuity, a lump-sum death benefit is payable in an amount, if any, by which the amount in the retiree's individual account in the

employees saving fund at the time of disability retirement exceeds the amount of current service annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) The benefit provided by this section is payable from the current service annuity reserve fund.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 228, ch. 18, § 92, eff. Jan. 1, 1982.]

[Sections 64.503 to 64.600 reserved for expansion]

SUBCHAPTER G. OPTIONAL DEATH BENEFITS

§ 64.601. Coverage in Supplemental Death Benefit Program

(a) An employee of a participating municipality is included within the coverage of the supplemental death benefit program on the first day of the first month in which:

(1) the employing municipality is participating in the supplemental death benefits fund for coverage of all members it employs;

(2) the employee is a member of the retirement system; and

(3) the employee is required to make a contribution to the retirement system.

(b) Once established, coverage of a person in the supplemental death benefit program continues until the last day of a month in which a requirement of Subsection (a) of this section is not met.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 64.602. Extended Supplemental Death Benefit Coverage

(a) A member included in the coverage of the supplemental death benefit program who fails to earn compensation in a month for service to a municipality participating in the supplemental death benefits fund is eligible to receive extended coverage in the program on complying with this section.

(b) A member may apply to the retirement system for extended program coverage and submit evidence of eligibility for extended coverage.

(c) The board of trustees shall grant extended coverage in the supplemental death benefit program to an applicant, if the board finds:

(1) that as a result of illness or injury, the member is unable to engage in gainful occupation; and

(2) that the member made a required contribution to the retirement system as an employee of a municipality participating in the supplemental death benefits fund for the month immediately preceding the first full month in which the member was unable to engage in gainful occupation.

(d) Once established, extended coverage of a person in the supplemental death benefit program continues until the last day of the month in which:

(1) the member returns to work as an employee of a participating municipality;

(2) the board of trustees finds that the member is able to engage in gainful occupation;

(3) the person's membership in the retirement system is terminated; or

(4) the member retires under this subtitle.

(e) The board of trustees by rule may require a member to submit to it annual proof of continued inability to engage in gainful occupation. The board may require a member to undergo a medical examination by a physician designated by the board. Failure of a member to undergo a medical examination as required by this subsection is a ground for the board's finding that the member has become able to engage in gainful occupation.
[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 228, ch. 18, § 93, eff. Jan. 1, 1982.]

§ 64.603. Member Supplemental Death Benefit

(a) If a person included in the coverage or extended coverage of the supplemental death benefit program dies, a lump-sum supplemental death benefit is payable from the supplemental death benefits fund in an amount equal to the current annual salary of the member at the time of death.

(b) Except as provided by Subsection (c) of this section, the current annual salary of a member is computed as the amount paid to the member for service on which contributions were made to the retirement system during the 12 months immediately preceding the month of death. If a member did not receive compensation for service in each of the 12 months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the amount paid to the member on which contributions were made to the system during the period of employment within the 12-month period. If a member did not receive compensation for service in any of the 12 months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the rate of compensation payable to the member during the month of death.

(c) The current annual salary of a member included in the extended coverage of the supplemental death benefit program is computed in the manner provided by Subsection (b) of this section but as if the member had died during the first month of extended coverage.

(d) If a member makes contributions to the retirement system during the same month as an employee of more than one municipality participating in the supplemental death benefits fund, a death benefit is payable only on the basis of the member's most recent employment.

(e) The board of trustees by rule may require such proof of compensation and periods of employment as it finds necessary.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 228, ch. 18, § 94, eff. Jan. 1, 1982.]

§ 64.604. Retiree Supplemental Death Benefit

If a retiree dies whose most recent employment as a member of the retirement system was with a municipality that has elected to provide, and continues to provide, postretirement supplemental death benefits, a lump-sum supplemental death benefit is payable from the fund in the amount of $2,500.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 229, ch. 18, § 95, eff. Jan. 1, 1982.]

§ 64.605. Beneficiary of Supplemental Death Benefit

(a) Unless a member has directed otherwise on a form prescribed by the board of trustees and filed with the retirement system:

(1) a supplemental death benefit under Section 64.603 of this subtitle is payable to the person entitled to receive the decedent's accumulated contributions; and

(2) a supplemental death benefit under Section 64.604 of this subtitle is payable to a person entitled to receive any remaining payments of the decedent's annuity.

(b) If a person entitled under this section to receive a supplemental death benefit does not survive the member or retiree covered by the supplemental death benefit program, the benefit is payable to the estate of the covered member or retiree.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

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SUBCHAPTER A. BOARD OF TRUSTEES

§ 65.001. Composition of Board of Trustees

The board of trustees is composed of six trustees.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.002. Appointment

The governor, with the advice and consent of the senate, shall appoint three executive trustees and three employee trustees.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.003. Eligibility

(a) To be eligible to serve as an executive trustee a person must be a chief executive officer, chief finance officer, or other officer, executive, or department head of a participating municipality.

(b) To be eligible to serve as an employee trustee a person must be an employee of a participating municipality.

(c) Two or more trustees serving concurrently may not be employed by or serve the same municipality.

(d) A trustee is immediately disqualified from serving as a trustee if the trustee ceases to satisfy the requirements of this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.004. Term of Office

(a) The trustees hold office for staggered terms of six years, with the terms of two trustees expiring December 31 of each even-numbered year.

(b) The governor shall fill a vacancy in the office of a trustee for the unexpired term by appointing a successor from a participating municipality.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.005. Oath of Office

Before taking office as a trustee, a person shall present to the board of trustees a certified copy of an oath of office subscribed before the clerk of the municipality that the person serves.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.006. Application of Sunset Act

The board of trustees is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes) but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished effective September 1, 1989, and every 12th year after that date are reviewed.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.007. Meetings

(a) The board of trustees shall hold regular meetings in March, June, September, and December of each year and special meetings when called by the director.

(b) Before the fifth day preceding the day of a meeting, the director shall give written notice of a special meeting to each trustee unless notice is waived.

(c) All meetings of the board must be open to the public.

(d) The board shall hold its meetings in the office of the board or in a place specified by the notice of the meeting.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.008. Compensation; Expenses

Each trustee serves without compensation but is entitled to:

(1) reimbursement for reasonable traveling expenses incurred in attending board meetings; and

(2) payment of an amount equal to any compensation withheld by the trustee's employing municipality because of the trustee's attendance at board meetings.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.009. Voting

(a) Each trustee is entitled to one vote.

(b) At any meeting of the board, four or more concurring votes are necessary for a decision or action by the board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 65.010 to 65.100 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

§ 65.101. Administration

(a) The retirement system is a trust.

(b) The board of trustees is responsible for the administration of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.102. Rulemaking

(a) The board of trustees shall adopt rules and perform reasonable activities it finds necessary or desirable for efficient administration of the system.

(b) The board may adopt and enforce rules concerning:

(1) the time that a municipality electing to participate in the system begins its participation; or

(2) notice, information, and reports required of municipalities electing to participate in the system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.103. Administering System Assets

(a) The board of trustees may sell, assign, exchange, or trade and transfer any security in which

the retirement system's assets are invested. The board may use or reinvest the proceeds as the board determines that the system's needs require.

(b) In handling the funds of the retirement system, the board of trustees has all powers and duties granted to the State Depository Board.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.104. Accepting Gift, Grant, or Bequest

The board of trustees shall accept a gift, grant, or bequest of money or securities:

(1) for the purpose designated by the grantor if the purpose provides an endowment or retirement benefits to some or all participating employees or annuitants of the retirement system; or

(2) if no purpose is designated, for deposit in the endowment fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.105. Indebtedness; Payment

(a) The board of trustees may:

(1) incur indebtedness;

(2) on the credit of the retirement system, borrow money to pay expenses incident to the system's operation;

(3) renew, extend, or refund its indebtedness; or

(4) issue and sell negotiable promissory notes or negotiable bonds of the retirement system.

(b) A note or bond issued under this section must mature before the 20th anniversary of the issuance of the note or bond. The rate of interest on the note or bond may not exceed six percent a year.

(c) The board shall charge a note or bond issued under this section against the system's expense fund and shall pay the note or bond from that fund. The total indebtedness against the expense fund may not exceed $75,000 at any time.

(d) A note or bond issued under this section must expressly state that the note or bond is not an obligation of this state.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.106. Grants and Payment of Benefits

The board of trustees, in accordance with this subtitle, shall consider all applications for annuities and benefits and shall decide whether to grant the annuities and benefits. The board may suspend one or more payments in accordance with this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.107. Audit

Annually, or more often, the board of trustees shall have the accounts of the retirement system audited by a certified public accountant.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.108. Designation of Authority to Sign Vouchers

The board of trustees by resolution shall designate one or more representatives who have authority to sign vouchers for payments from the assets of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.109. Depositories

The board of trustees shall designate financial institutions to qualify and serve the retirement system as depositories in accordance with Article 2525, et seq., Revised Civil Statutes of Texas, 1925, as amended.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.110. Adopting Rates and Tables

(a) The board of trustees shall adopt rates and tables that the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality and service experience of the system's members and annuitants.

(b) Based on recommendations of the actuary, the board of trustees shall adopt rates and tables necessary to determine the supplemental death benefits contribution rates for each municipality participating in the supplemental death benefits fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 229, ch. 18, § 96, eff. Jan. 1, 1982.]

§ 65.111. Certification of Rates

(a) The board of trustees shall certify all current service contribution rates, all prior service contribution rates, and the current interest rate computed in accordance with Section 65.316(c) of this subtitle and approved in writing by the actuary.

(b) The board shall notify each participating municipality of the rates certified in accordance with this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.112. Records of Board of Trustees

(a) The board of trustees shall keep, in convenient form, data necessary for required computations and valuations by the actuary.

(b) The board shall keep a permanent record of all of its proceedings.

(c) Records of the board are open to the public.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.113. Office

(a) The board of trustees shall establish an office in Austin or in one of the participating municipalities.

(b) The board shall keep the books and records of the retirement system in that office.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.114. Obtaining Information

The board of trustees shall obtain from members or participating municipalities information necessary for the proper operation of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 65.115 to 65.200 reserved for expansion]

SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

§ 65.201. Director

(a) The board of trustees shall appoint a director.

(b) The director shall:

(1) manage and administer the retirement system under the supervision and direction of the board; and

(2) invest the assets of the system.

(c) The board of trustees may delegate to the director powers and duties in addition to those stated by Subsection (b) of this section.

(d) The director annually shall:

(1) prepare an itemized budget showing the amount required to pay the retirement system's expenses for the following fiscal year; and

(2) submit the report to the board for review, amendment, and adoption.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.202. Legal Adviser

(a) The board of trustees shall appoint an attorney.

(b) The attorney shall act as the legal adviser to the board and shall represent the system in all litigation.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.203. Medical Board

(a) The board of trustees shall designate a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in the state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

(1) review all medical examinations required by this subtitle;

(2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and

(3) report in writing to the board of trustees its conclusions and recommendations on all matters referred to it.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.204. Other Physicians

The board of trustees may employ physicians in addition to the medical board to report on special cases.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.205. Actuary

(a) The board of trustees shall appoint an actuary.

(b) The actuary shall perform duties in connection with advising the board concerning operation of the retirement system's funds.

(c) At least once every five years the actuary shall:

(1) make a general investigation of the mortality and service experience of the members and annuitants of the retirement system; and

(2) on the basis of the results of the investigation, recommend for adoption by the board tables and rates that are required.

(d) On the basis of rates and tables adopted by the board, the actuary shall:

(1) annually compute the normal contribution rate for each participating municipality;

(2) annually compute the prior service contribution rate for each participating municipality;

(3) compute the current interest rate in accordance with Section 65.316(c) of this subtitle;

(4) compute the supplemental death benefits rate and the supplemental disability benefits rate for each participating municipality;

(5) certify the amount of each annuity and benefit granted by the board; and

(6) make an annual valuation of the assets and liabilities of the funds of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.206. Other Employees

The board of trustees shall employ actuarial, clerical, legal, medical, and other assistants required for the efficient administration of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.207. Compensation of Employees

The board of trustees shall determine the amount of compensation that employees of the retirement system receive.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.208. Surety Bond

(a) The board of trustees shall require a surety bond for the director. The board shall determine the amount of a bond that is required.

(b) A bond must be conditioned on the director's faithful performance of the duties of the director's office.

(c) The board shall secure a required bond and shall pay for the bond from the retirement system's assets.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 65.209 to 65.300 reserved for expansion]

SUBCHAPTER D. MANAGEMENT OF ASSETS

§ 65.301. Investment of Assets

The board of trustees shall invest and reinvest the assets of the retirement system without distinction as to their source in:

(1) interest-bearing bonds or other evidences of indebtedness of this state, a county, school district, city, or other municipal corporation of this state, the United States, or an authority or agency of the United States;

(2) securities on which the United States or any authority or agency of the United States guarantees the payment of principal and interest;

(3) corporate bonds or debentures that are issued by a company:

(A) incorporated in the United States and that are rate "A" or better by one or more nationally recognized rating agencies approved by the board; or

(B) in whose stock the retirement system may invest as provided by Subdivision (4) of this subsection; or

(4) common or preferred stocks of a company incorporated in the United States that has paid cash dividends on its stock for 10 consecutive years immediately before the date of purchase and, unless the stocks are bank or insurance stocks, that is listed on an exchange registered with the Securities and Exchange Commission or its successor.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.302. Restrictions on Investments

(a) The board may not invest more than two percent of the total assets of the retirement system in the stocks, bonds, or debentures of one corporation.

(b) The system may not own more than five percent of the voting stock of one corporation.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.303. Duty of Care

In making investments for the retirement system, the board of trustees shall exercise the judgment and care, under the circumstances, that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, considering the probable income from the securities and probable safety of their capital.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.304. Cash on Hand

The board of trustees shall determine the amount of cash on hand required to pay benefits and the expenses of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.305. Crediting System Assets

(a) The retirement system shall immediately deposit all money received by the system with a depository designated under Section 65.109 of this subtitle.

(b) When securities of the retirement system are received, the system shall deposit the securities in trust with a depository designated under Section 65.109 of this subtitle. The depository shall provide adequate safe deposit facilities for the preservation of the securities.

(c) All assets of the retirement system shall be credited, according to the purpose for which they are held, to one of the following funds:

(1) employees saving fund;
(2) municipality accumulation fund;
(3) current service annuity reserve fund;
(4) interest fund;
(5) endowment fund;
(6) expense fund;
(7) supplemental disability benefits fund; or
(8) supplemental death benefits fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 229, ch. 18, § 97, eff. Jan. 1, 1982.]

§ 65.306. Employees Saving Fund

(a) The retirement system shall deposit in a member's individual account in the employees saving fund:

(1) the amount of contributions to the retirement system deducted from the member's compensation;

(2) interest allowed on money in the account in accordance with this subtitle;

(3) an amount deposited by the member in accordance with Section 65.410 of this subtitle to establish credited service during a time of war;

(4) the portion of a deposit required by Section 63.003 of this subtitle to reinstate credited service previously canceled that represents the amount withdrawn; and

(5) an amount deposited by the member in accordance with Section 63.502 of this subtitle to establish credited service for military service.

(b) On December 31 of each year the retirement system shall credit to each member's individual account interest as allowed by this subtitle on the amount of accumulated contributions credited to the member's account on January 1 of that year.

(c) The retirement system may not pay interest on money in a person's individual account:

(1) for a part of a year; or

(2) after the person's membership has been terminated in accordance with Section 62.104 of this subtitle because of absence from service.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 229, ch. 18, § 98, eff. Jan. 1, 1982.]

§ 65.307. Municipality Accumulation Fund: Current Service

(a) The retirement system shall deposit in the account of a participating municipality in the municipality accumulation fund:

(1) all current service contributions made by the municipality to the retirement system;

(2) interest allowed as provided by this subtitle on money in the fund;

(3) amounts deposited by the municipality in accordance with Section 65.410 of this subtitle to establish credited service during a time of war;

(4) the withdrawal charge for reinstatement of credited service as provided by Section 63.003 of this subtitle; and

(5) amounts deposited by the municipality in accordance with Section 63.502 of this subtitle to establish credited service for military service.

(b) The retirement system shall pay from the account of a participating municipality in the municipality accumulation fund:

(1) money to the current service annuity reserve fund in accordance with Section 65.318 of this subtitle; and

(2) refunds to certain municipalities in accordance with Section 65.319 of this subtitle.

(c) If credited service previously canceled is reinstated in accordance with Section 63.003 of this subtitle, the retirement system shall charge the municipality's account in the municipality accumulation fund with the necessary reserves to fund the credits based on current service that are restored to the member.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 230, ch. 18, § 99, eff. Jan. 1, 1982.]

§ 65.308. Municipality Accumulation Fund: Prior Service

(a) In addition to amounts deposited as provided by Section 65.307 of this subtitle, the retirement system shall deposit in the account of a participating municipality in the municipality accumulation fund all prior service contributions made by the municipality to the retirement system.

(b) In addition to amounts paid as provided by Section 65.307 of this subtitle, the retirement system shall pay from the account of a participating municipality in the municipality accumulation fund:

(1) all payments under annuities arising from prior service credits, special prior service credits, antecedent service credits, or updated service credits authorized by a participating municipality; and

(2) optional increased payments authorized by a participating municipality under Section 64.203 of this subtitle.

(c) The retirement system shall charge municipal liabilities from updated service credits against the account of the municipality that authorized the credits.

(d) If credited service previously canceled is reinstated in accordance with Section 63.003 of this subtitle, the retirement system shall charge the municipality's account in the municipality accumulation fund with the necessary reserves to fund credits based on prior service that are restored to the member.

(e) The retirement system shall charge reserves required to fund optional benefit increases authorized under Section 64.203 of this subtitle against the account of the municipality allowing the increases.

(f) The board of trustees may proportionately reduce all payments under annuities payable under this section, at any time and for a period necessary, to prevent those payments for a year from exceeding the amount available in the participating municipality's account.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 230, ch. 18, § 99, eff. Jan. 1, 1982.]

§ 65.309. Current Service Annuity Reserve Fund

(a) The retirement system shall deposit and hold in the current service annuity reserve fund all reserves for current service annuities and all benefits in lieu of current service annuities.

(b) The retirement system shall pay from the current service annuity reserve fund annuities and benefits described by Subsection (a) of this section.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.310. Interest Fund

(a) The retirement system shall deposit in the interest fund all income, interest, and dividends from deposits and investments authorized by this chapter. The system shall credit the amount of an adjustment made in accordance with Section 65.320 of this subtitle to the interest fund.

(b) On December 31 of each year, the retirement system shall transfer money from the interest fund in accordance with Section 65.317 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.311. Endowment Fund

(a) The retirement system shall deposit in the endowment fund gifts, awards, funds, and assets delivered to the retirement system that are not specifically required by the system's other funds.

(b) The endowment fund consists of:

(1) the interest reserve account;

(2) the general reserves account;

(3) the distributive benefits account;

(4) the perpetual endowment account; and

(5) other special accounts that the board of trustees by resolution establishes.

(c) The retirement system shall credit to the interest reserve account, general reserves account, and distributive benefits account interest in accordance with Section 65.317 of this subtitle.

(d) The board of trustees shall transfer money from the interest reserve account to the expense fund in accordance with Section 65.312 of this subtitle.

(e) If the board of trustees determines that the amount credited to the distributive benefits account on December 31 of any year is sufficient to do so, the board by resolution may:

(1) authorize the distribution and payment of all or part of the money credited to the account to persons who were annuitants on that day in the ratio of the rate of the monthly benefit of each annuitant to the total of all annuity payments made by the system for the final month of the year; or

(2) authorize the distribution of all or part of the amount credited to the account to:

(A) each member's individual account in the employees saving fund as supplemental interest in the ratio of the amount of current interest paid on the individual's account to the current interest paid to all individual accounts for the year; and

(B) each participating municipality's account in the municipality accumulation fund as supplemental interest in the ratio of the current interest allowed on the account of the municipality to the total current interest paid to all municipalities' accounts for the year.

(f) The retirement system shall deposit and hold in the perpetual endowment account:

(1) funds, gifts, and awards that the grantors designate as perpetual endowments for the retirement system; and

(2) money forfeited to the retirement system as provided by Section 65.603 of this subtitle.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 231, ch. 18, § 100, eff. Jan. 1, 1982.]

§ 65.312. Expense Fund

(a) The board of trustees shall deposit in the expense fund municipality contributions for expenses of the retirement system paid in accordance with Section 65.404 of this subtitle.

(b) The board of trustees by resolution recorded in its minutes shall transfer from the interest reserve account of the endowment fund to the expense fund the amount that exceeds the amount needed to provide adequate reserves against insufficient earnings on investments and against special and contingency requirements of other funds of the system and that is needed to pay the system's estimated expenses for the fiscal year.

(c) The retirement system shall pay from the expense fund:

(1) administrative and maintenance expenses of the system; and

(2) notes and bonds issued in accordance with Section 65.105 of this subtitle.

(d) If the amount of the system's estimated expenses exceeds the amount in the interest reserve account of the endowment fund available for administrative expenses, the board of trustees, by a resolution recorded in its minutes, shall assess an amount equal to the difference against each participating municipality in proportion to the number of its members in the retirement system. The board shall collect the assessments and deposit the amount collected in the expense fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.313. Supplemental Disability Benefits Fund

(a) The retirement system shall deposit in the supplemental disability benefits fund contributions to provide supplemental disability benefits in accordance with Section 65.408 of this subtitle. The retirement system may not establish separate accounts in the fund for municipalities participating in the fund but shall credit contributions to a single account.

(b) The retirement system shall pay supplemental disability benefits only from money in the supplemental disability benefits fund, and the benefits are not an obligation of other funds of the system.

(c) The board of trustees shall determine the operative date of the fund.

(d) The effective participation date of a municipality is:

(1) the operative date of the fund if the municipality elected to participate in the fund on or before the fund's operative date; or

(2) the first day of the second calendar month after the month in which the municipality notifies the board of its election to enter the fund.

(e) The board of trustees shall notify each municipality of its effective participation date.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 231, ch. 18, § 101, eff. Jan. 1, 1982.]

§ 65.314. Supplemental Death Benefits Fund

(a) The retirement system shall deposit in the supplemental death benefits fund contributions paid by municipalities to the retirement system to provide supplemental death benefits in accordance with Section 65.409 of this subtitle. The retirement system may not establish separate accounts in the fund for municipalities participating in the fund but shall credit contributions to a single account.

(b) The retirement system shall pay supplemental death benefits only from money in the supplemental death benefits fund, and the benefits are not an obligation of other funds of the system.

(c) The supplemental death benefits fund may become operative only after a sufficient number of municipalities elect to participate in the fund so that 4,000 members or more are covered by the fund.

(d) The board of trustees shall determine the operative date of the fund.

(e) The effective participation date of a municipality is:

(1) the operative date of the fund if the municipality elected to participate in the fund on or before the fund's operative date; or

(2) the first day of any calendar month after the month in which the municipality notifies the board of its election to enter the fund.

(f) The board of trustees shall notify each municipality of its effective participation date.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 231, ch. 18, § 102, eff. Jan. 1, 1982.]

§ 65.315. Disbursements

(a) Disbursements from the assets of the retirement system may be made only on vouchers signed by the person designated for that purpose in accordance with Section 65.108 of this subtitle.

(b) A person designated to sign vouchers may draw checks or warrants only on proper authorization from the board of trustees recorded in the official minutes of the board.

(c) When a voucher is properly signed, a depository with which assets of the system are deposited shall accept and pay the voucher. The depository is released from liability for payment made on the voucher.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.316. Interest Rates

(a) Unless this subtitle expressly states that interest is computed using the current interest rate or another specified rate of interest, interest is computed using the rate of:

(1) 2½ percent a year compounded annually for periods before January 1, 1970;

(2) 3 percent a year compounded annually for periods after December 31, 1969, and before January 1, 1977;

(3) 4 percent a year compounded annually for periods after December 31, 1976, and before January 1, 1982; and

(4) 5 percent a year compounded annually for periods after December 31, 1981.

(b) The current interest rate is the lesser of:

(1) the interest rate prescribed by Subsection (a) of this section; or

(2) the interest rate computed by:

(A) adding to the amount in the municipality accumulation fund on January 1 of the year for which the computation is made the sum of the accumulated contributions in the employees saving fund on January 1 of the year of all persons who are members on December 31 of the year, before any transfers for retirements effective December 31 of the year are made, and the amount in the endowment fund, after transfer of money to the expense fund, on January 1 of the year; and

(B) dividing the amount in the interest fund on December 31 of that year after the transfer of interest to the current service annuity reserve fund, municipality accumulation fund, supplemental disability benefits fund, and supplemental death benefits fund, by the amount computed under Paragraph (A) of this subdivision.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 232, ch. 18, § 103, eff. Jan. 1, 1982.]

§ 65.317. Transfer of Assets From Interest Fund

(a) On December 31 of each year, the board of trustees shall transfer from the interest fund the following amounts:

(1) to the current service annuity reserve fund, interest on the mean amount in the current service annuity reserve fund during that year;

(2) to the supplemental disability benefits fund, interest on the mean amount in the supplemental disability benefits fund during that year;

(3) to the supplemental death benefits fund, interest on the mean amount in the supplemental death benefits fund during that year;

(4) to the municipality accumulation fund, current interest on the amount in the municipality accumulation fund on January 1 of that year;

(5) to the interest reserve account of the endowment fund, current interest on the amount in the endowment fund on January 1 of that year; and

(6) to the employees saving fund, current interest on the sum of the accumulated contributions in the employees saving fund credited on January 1 of that year to all persons who are members on December 31 of that year before any transfers for retirement effective December 31 of that year are made.

(b) The board of trustees shall transfer to the interest reserve account of the endowment fund the portion of the amount remaining in the interest fund after the transfers required by Subsection (a) of this section are made that the board determines is necessary:

(1) to provide adequate reserves against insufficient future earnings on investments to allow interest on the retirement system's funds;

(2) to provide adequate reserves against special and contingency requirements of other funds of the system; and

(3) to provide the amount required for the administration expenses of the system for the following year.

(c) After the requirements of the interest reserve account of the endowment fund have been satisfied, the board of trustees may transfer any of the amount remaining in the interest fund to the general reserves account of the endowment fund to maintain adequate reserves against special requirements of other funds of the retirement system.

(d) After the requirements of the interest reserve account and the general reserves account of the endowment fund have been satisfied, the board of trustees shall transfer any amount remaining in the interest fund to the distributive benefits account of the endowment fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 232, ch. 18, § 104, eff. Jan. 1, 1982.]

§ 65.318. Transfer of Assets on Member's Retirement or Restoration to Active Duty

(a) When a member retires, the retirement system shall transfer:

(1) from the employees saving fund to the current service annuity reserve fund, the member's accumulated contributions; and

(2) from the municipality accumulation fund account of the municipality employing the retiring member to the current service annuity reserve fund, an amount equal to the amount of the member's accumulated contributions in the employees saving fund or a greater amount that a participating municipality has agreed to provide as reserves for an additional current service annuity for the member.

(b) If the retiring member's accumulated contributions are the result of service for more than one participating municipality, the retirement system shall transfer from the account of each municipality the amount chargeable to that municipality for the member.

(c) If a retiree resumes employment under Section 64.307 of this subtitle, the board of trustees shall transfer the balance of the person's retirement reserve from the current service annuity reserve fund to the employees saving fund and to the municipality accumulation fund in proportion to the original amount transferred to the current service annuity reserve fund from those funds.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 233, ch. 18, § 105, eff. Jan. 1, 1982.]

§ 65.319. Payment to Formerly Participating Municipality

If a participating municipality has no employees who are members of the retirement system and has no present or potential liabilities resulting from the participation of former employees, the municipality's participation in the system stops and the system shall repay to the municipality on application any amount in the municipality accumulation fund that is credited to the municipality.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 233, ch. 18, § 105, eff. Jan. 1, 1982.]

§ 65.320. Adjusting Stocks' Book Value

If the board of trustees determines that on December 31 of a year the aggregate market value of common stocks held by the retirement system plus the amount credited to the interest reserve account of the endowment fund exceeds the sum of 120 percent of the book value of the stocks plus 2 percent of the book value of all other invested assets of the system, the board may direct that all or a part of the excess may be capitalized and applied to adjust the book value of the stock upward in accordance with rules adopted by the board. The board shall treat the amount of the adjustment as investment income and shall credit the amount to the interest fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 65.321 to 65.400 reserved for expansion]

SUBCHAPTER E. COLLECTION OF CONTRIBUTIONS

§ 65.401. Member Contributions

(a) Each municipality that has one or more departments participating in the retirement system by ordinance shall designate the rate of member contributions for employees of a participating department. The municipality shall elect a rate of three, five, or seven percent of the employees' compensation. Different departments of a municipality may have different rates of member contributions.

(b) A participating municipality by ordinance may increase the rate of member contributions.

(c) A participating municipality may reduce the rate of member contributions if:

(1) at an election by secret ballot conducted under rules adopted by the board of trustees, the proposal to reduce the rate is passed by an affirmative vote of two-thirds of all members employed by the municipality; and

(2) the municipality by ordinance provides for the reduction.

(d) A reduction in a member contribution rate may become effective only on the first day of a calendar month. The effective date of the reduction must be after the 90th day after the day on which the election required by Subsection (c) of this section is held or the day on which the ordinance required by Subsection (c) of this section is adopted, whichever is later. The municipality shall give written notice of a reduction in the deposit rate to the director before the 60th day preceding the effective date of the reduction.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.402. Collection of Member Contributions

(a) Each payroll period each participating municipality shall cause the contribution for the period to be deducted from the compensation of each member that it employs.

(b) In determining the amount of a member's compensation for a payroll period, the board of trustees may use the rate of annual compensation payable to a member on the first day of the payroll period as the rate for the entire period and may omit deductions from compensation for less than a full payroll period if the employee was not a member on the first day of the period.

(c) The board of trustees may modify a member's required deduction by an amount that does not exceed one-tenth of one percent of the annual compensation on which the deduction is made.

(d) A participating municipality shall certify to the board of trustees on each payroll, or in another manner prescribed by the board, the amount to be deducted from the compensation of each member that it employs.

(e) The treasurer or disbursing officer of each participating municipality shall:

(1) make deductions from each member's compensation for contributions to the retirement system;

(2) transmit monthly, or at the time designated by the board of trustees, a certified copy of the payroll; and

(3) pay the deductions in cash to the board of trustees at the board's home office.

(f) To facilitate the collection of member contributions, the city clerk or city secretary of each participating municipality, before January 31 of each year, shall file with the director a certified list that states the name and monthly and annual salaries of each employee of the municipality who is a member of the retirement system. Any addition to or deletion from the list must be certified.

(g) After the deductions for member contributions are paid, the board of trustees shall:

(1) record all receipts; and

(2) deposit the receipts to the credit of the employees saving fund.

(h) The treasurer or disbursing officer of a participating municipality shall make the deductions required by this section even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(i) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payroll period.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.403. Collection of Municipality Contributions

(a) Before the 16th day of each month, each participating municipality shall pay or cause to be paid to the retirement system at the system's office expense contributions in accordance with Section 65.404 of this subtitle, current service contributions in accordance with Section 65.405 of this subtitle, and prior service contributions in accordance with Section 65.406 of this subtitle.

(b) Unless otherwise provided for and paid by a municipality, a municipality shall pay its contributions to the retirement system from:

(1) the fund from which earnings are paid to members; or

(2) the general fund of the municipality.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.404. Municipality Expense Contribution

(a) Each participating municipality shall pay to the retirement system an expense contribution prescribed in accordance with this section.

(b) The board of trustees, before January 1 of each year, shall set the rate of the contribution necessary to provide an amount required to pay the difference between:

(1) the estimated administrative expenses for the following year; and

(2) the anticipated revenue, from sources other than municipality contributions, to be used for the expenses of the year as adjusted for a surplus or deficiency existing on January 1 of that year.

(c) The rate set by the board of trustees under Subsection (b) of this section may not exceed 50 cents a month for each member.

(d) The board of trustees shall certify the rate set under Subsection (b) of this section to each participating municipality before January 1 of the year for which the rate is set.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.405. Municipality Normal Contribution

Each participating municipality shall pay to the municipality accumulation fund, as its normal contribution, an amount equal to a percentage of the compensation of members employed by the municipality for that month. The rate of contribution is the normal contribution rate determined annually by the actuary and approved by the board of trustees.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 233, ch. 18, § 106, eff. Jan. 1, 1982.]

§ 65.406. Municipality Prior Service Contribution

(a) Each participating municipality shall pay to the municipality accumulation fund, as its prior service contribution, an amount equal to a percentage of the compensation of members employed by the municipality for that month.

(b) The rate of contribution is the rate determined annually by the actuary and approved by the board of trustees as being the rate required to fund all obligations charged against the municipality's account in the municipality accumulation fund within the municipality's amortization period without resulting in a probable future depletion of that account.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 233, ch. 18, § 106, eff. Jan. 1, 1982.]

§ 65.407. Limitation on Municipality Contribution Rates

(a) The combined rates of a municipality's normal contributions and prior service contributions may not exceed:

(1) 9½ percent of the total compensation paid by the municipality to the employees of its participating departments if the rate of member contributions of the employees of its participating departments is 7 percent of their compensation;

(2) 7½ percent of the total compensation paid by the municipality to the employees of its participating departments if the rate of member contributions of the employees of its participating departments is 5 percent of their compensation; or

(3) 5½ percent of the total compensation paid by the municipality to the employees of its participating departments if the rate of member contributions of the employees of its participating departments is 3 percent of their compensation.

(b) The actuary annually shall determine the municipality normal contribution rate and the prior service contribution rate from the most recent data available at the time of the determination. Before January 1 of each year, the board of trustees shall certify the rates to each participating municipality. If a participating municipality has different rates of contribution for employees of different departments, the actuary shall determine the maximum rate for the municipality using the average rate of contribution prescribed for contributions of employees of its participating departments. To compute the average rate the actuary shall consider the number of employees in each participating department of the municipality.

(c) A reduction in the member contribution rate for employees of a participating municipality does not reduce the maximum rate of contribution of the municipality.

(d) If the dates of participation of each department of a municipality are not the same, the governing body of the municipality may request that, to determine the municipality normal contribution rate and prior service contribution rate and to determine the period during which the municipality must fund the obligations charged against its account in the municipality accumulation fund, all of its departments have a single composite participation date. The actuary shall determine the composite participation date by computing an average weighted according to the number of members entering the retirement system on the actual dates of participation of the departments involved.

(e) If the combined rates of a municipality's normal contributions and prior service contributions exceed the rate prescribed by Subsection (a) of this section, the rate for prior service contributions shall be reduced to the rate that equals the difference between the maximum rate prescribed by Subsection (a) of this section and the normal contribution rate for the municipality.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 234, ch. 18, § 107, eff. Jan. 1, 1982.]

§ 65.408. Municipality Supplemental Disability Benefits Fund Contribution

(a) Beginning from the effective participation date of the municipality, each municipality participating in the supplemental disability benefits fund shall pay to that fund an amount equal to a percentage of the compensation of members employed by the municipality.

(b) The board of trustees on the recommendation of the actuary shall determine the rate of contribution necessary to accumulate the reserves needed to pay the benefits from the supplemental disability benefits fund. The rate of contribution may not exceed one-half of one percent of the compensation of the municipality's employees covered by the fund.

(c) The limitation of Section 65.407(e) of this subtitle does not affect the rate of contribution to the supplemental disability benefits fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.409. Municipality Supplemental Death Benefits Contribution

(a) In addition to other contributions to the retirement system required by this subtitle, each municipality participating in the supplemental death bene-

fits fund monthly shall pay to the supplemental death benefits fund an amount equal to the rate of contribution computed in accordance with Section 65.502 of this subtitle, multiplied by the total compensation for the month of the members employed by the municipality.

(b) The limitation of Section 65.407(e) of this subtitle does not apply to the rate of the contribution to the supplemental death benefits fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.410. War Period Contributions

(a) During a period that the United States is at war and until the first anniversary of the last day of the war, a member who as a result of conscription or volunteering is serving in the United States armed forces, armed forces reserve, an auxiliary of the armed forces or reserves, or the American Red Cross or who as a result of conscription by the government is in war work may pay, each year, to the retirement system an amount that does not exceed the amount of the member's contribution to the system during the last year that the member was employed by a participating municipality.

(b) The board of trustees shall treat the amounts paid to the system under this section in the same manner as funds deposited by the member while an employee of a participating municipality.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

[Sections 65.411 to 65.500 reserved for expansion]

SUBCHAPTER F. OPTIONAL PROGRAMS

§ 65.501. Increased Current Service Annuities

(a) A participating municipality may elect to provide for an increased current service annuity reserve on the retirement of each of its employees who are members.

(b) The governing body of a municipality electing to provide for increased reserves by ordinance shall provide that for each month of current service rendered by a participating employee of the municipality after the date of its election the municipality will provide a contribution as provided by Subsection (c) of this section equal to 150 or 200 percent of the member's accumulated contribution to the retirement system for that month.

(c) On the retirement of a member covered by an increased current service annuity reserve, the retirement system shall transfer to the current service annuity reserve fund:

(1) accumulated contributions credited to the member's account in the employees saving fund; and

(2) the amount from the municipality's account in the municipality accumulation fund that the municipality has adopted under Subsection (b) of this section.

(d) If the retiring member's accumulated contributions are the result of service for more than one participating municipality, the retirement system shall transfer from the account of each municipality the amount chargeable to that municipality for the member.

(e) A participating municipality electing to provide an increased current service annuity reserve and electing a contribution rate of 150 percent for a year is liable for total contributions at a rate that does not exceed a rate equal to the maximum rate prescribed for the municipality by Section 65.407 of this subtitle plus two percent a year. A municipality electing a rate of 200 percent a year is liable for contributions at a rate that does not exceed a rate equal to the maximum rate prescribed for the municipality by Section 65.407 of this subtitle plus four percent a year.

(f) Except as provided by Subsection (g) of this section, an increased rate of contribution authorized under this section may become effective only on January 1 of a calendar year.

(g) A municipality that begins participation in the retirement system after December 31, 1975, may elect to provide for an increased current service annuity reserve beginning on its effective date of participation. That election remains in effect until the municipality elects to pay contributions at another rate.

(h) A municipality electing to provide for an increased current service annuity reserve may reduce its rate of contribution to 150 percent of the member contributions or to a rate equal to the member contributions. The reduction becomes effective on January 1 of the calendar year following the date on which the municipality's governing body adopts an ordinance reducing the rate of contribution.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 235, ch. 18, § 108, eff. Jan. 1, 1982.]

§ 65.502. Supplemental Death Benefits Program

(a) As soon as practical after the supplemental death benefits program is established and at the time of each investigation of members' mortality and service experience required by Section 65.110 of this subtitle, the actuary shall investigate the mortality experience of the members and eligible annuitants participating in the supplemental death benefits program. On the basis of the result of that investigation, the actuary shall recommend to the board of trustees rates and tables necessary to determine supplemental death benefits contribution rates. The rates and tables may provide for the anticipated mortality experience of the persons covered under the supplemental death benefits fund and for a contingency reserve.

(b) Before a municipality's participation date in the supplemental death benefits fund and before January 1 of each subsequent year, the actuary shall compute, on the basis of rates and tables adopted by

the board of trustees, the supplemental death benefits contribution rate of a municipality participating in the supplemental death benefits contribution fund. The rate must be expressed as a percentage of the compensation of members employed by the municipality. When the rate is approved by the board of trustees, the rate is effective for the calendar year for which it was approved.

(c) If the balance in the supplemental death benefits fund is insufficient to pay the supplemental death benefits due, the board of trustees may direct that, to the extent available, an amount equal to the amount of the deficiency be transferred from the general reserves account of the endowment fund to the supplemental death benefits fund. The board may adjust future contributions to the supplemental death benefits fund to repay to the general reserves account the transferred amount.

(d) If the total number of members covered by the supplemental death benefits fund becomes fewer than 4,000, the board of trustees may order that the fund be discontinued and all coverage terminated. The termination date must be December 31 of a year designated by the board and may not be before the expiration of six months after the date on which the order of termination was adopted.

(e) To protect against adverse claim experience, the board of trustees may secure reinsurance from one or more stock insurance companies doing business in this state if the board determines that reinsurance is necessary. The retirement system shall pay the premiums for reinsurance from the supplemental death benefits fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 235, ch. 18, § 109, eff. Jan. 1, 1982.]

[Sections 65.503 to 65.600 reserved for expansion]

SUBCHAPTER G. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

§ 65.601. Statement of Amount in Account

(a) As soon as possible after the end of each calendar year, the board of trustees shall send to the governing body of each municipality and to each requesting member an annual statement that contains:

(1) a balance sheet showing the financial and actuarial condition of the retirement system on December 31 of that year;

(2) a statement showing the receipts and disbursements made during the calendar year;

(3) a statement showing changes in the asset, liability, reserve, and surplus accounts during the calendar year; and

(4) additional statistics necessary for proper interpretation of the condition of the retirement system.

(b) The board of trustees shall furnish to a member, on written request, a statement of the amount credited to the member's individual account. During a calendar year, the board is not required to furnish to a member more than one statement requested under this subsection.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.602. Interest in Assets

A particular person, group of persons, municipality, or other entity has no right in a specific security, item of cash, or other property of the retirement system other than an undivided interest in the assets of the retirement system.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.603. Forfeiture of Contributions

(a) If an application under Section 62.103 of this subtitle for the accumulated contributions of a person who has ceased to be employed by a participating department for a reason other than death or retirement has not been made before the seventh anniversary of the person's last day of service, the retirement system shall return to the person or the person's estate all accumulated contributions of the person.

(b) If the person or the administrator of the person's estate cannot be found, the person's accumulated contributions are forfeited to the retirement system. The retirement system shall credit the amount forfeited to the perpetual endowment account of the endowment fund.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.604. Merger

A pension system for municipal employees may merge into the retirement system under terms adopted by the board of trustees and the trustees of the other system after the other system has approved the merger by a majority vote.

[Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

§ 65.605. Participation of Members of Fire Department

(a) If the employees of the fire department of a municipality, with the consent of the municipality, elect to become members of the retirement system, the funds of the municipality's firemen's relief and retirement fund, if any, and future payments to the fund may be transferred to the board of trustees on the voluntary application of the municipality.

(b) A participating municipality shall pay to the board of trustees money that could have been paid annually to the firemen's relief and retirement fund

if the fire department were not covered by the retirement system or another pension system or if the municipality had taken the proper steps to secure the money. The retirement system shall credit amounts paid under this subsection for the benefit of fire fighters as the board of trustees directs. [Added by Acts 1981, 67th Leg., p. 1876, ch. 453, § 1, eff. Sept. 1, 1981.]

DISPOSITION TABLE

Showing where provisions of former articles of the Civil Statutes and former sections of the Education Code are covered in Title 110B, Public Retirement Systems, of the Revised Civil Statutes.

Civ.St. Article	Title 110B Section
1926a, § 1.08	43.104
6228a, § 1	21.001
§ 2, subsec. A	—
subsec. B	21.003
subsec. C	21.002
subsec. D	21.004
§ 3	22.001 et seq.
§ 4	23.001 et seq.
§§ 5 to 5—4	24.001 et seq.
§ 6, subsec. A, subd. 1	25.001 to 25.003
subd. 1a	25.005
subd. 2	25.003
subd. 3	25.006
subd. 4	25.004
subd. 5	25.007
subd. 6	25.102
subd. 7	25.201 25.202
subd. 8	25.506
subd. 9	25.107 25.108
subsec. B	25.203
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TITLE 112

RAILROADS

CHAPTER EIGHT. RESTRICTIONS, DUTIES AND LIABILITIES

Article
6419a. Engineer's Operator Permits.

Art. 6419a. Engineer's Operator Permits

Issuance of Permit

Sec. 1. A railroad company shall issue to each person that it employs to operate or permits to operate a railroad locomotive in this state an engineer's operator permit. A permit must include the engineer's name, address, physical description, and date of birth.

Operation of Locomotive

Sec. 2. A person operating a railroad locomotive in this state shall have in his or her immediate possession a permit issued under this Act.

Proof of Identification

Sec. 3. A person who operates a railroad locomotive and who is required by a peace officer to show proof of identification in connection with the person's operation of a locomotive shall display the person's permit issued under this Act and may not be required to display an operator's commercial operator's or chauffeur's driver's license issued under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

Records Relating to Accidents or Violations

Sec. 4. If a person operating a railroad locomotive is involved in an accident with another train or a motor vehicle or is arrested for violation of a law relating to the person's operation of a locomotive, the number or other identifying information about the person's operator's, commercial operator's, or chauffeur's driver's license may not be included in any report of the accident or violation, and the person's involvement in the accident or violation may not be recorded in the person's individual driving record maintained by the Department of Public Safety.

[Acts 1981, 67th Leg., p. 551, ch. 232, eff. Aug. 31, 1981.]

CHAPTER ELEVEN. RAILROAD COMMISSION OF TEXAS

Article
6445a. Application of Sunset Act.
6519c. Disposition of Taxes and Fees.

Art. 6445a. Application of Sunset Act

The Railroad Commission of Texas is subject to the Texas Sunset Act [1]; and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1983.

[Added by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.060, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 6519b. Repealed by Acts 1981, 67th Leg., p. 147, ch. 65, § 10, eff. Sept. 1, 1981

Section 9 of the 1981 repealing act provides:

"(a) This Act takes effect September 1, 1981.

"(b) On the effective date of this Act, all money credited to the railroad commission operating fund in transferred to the General Revenue Fund.

"(c) Any appropriation for the fiscal years ending on August 31, 1982, and on August 31, 1983, from the railroad commission operating fund is an appropriation from the General Revenue Fund."

Art. 6519c. Disposition of Taxes and Fees

(a) Except as provided by Subsection (c), Section 17, Chapter 314, Acts of the 41st Legislature, Regular Session, 1929, as amended (Article 911b, Vernon's Texas Civil Statutes), and by Section 131.231, Natural Resources Code, all taxes, license fees, permit fees, examination fees, and truck registration fees collected or received by the Railroad Commission of Texas shall be deposited to the credit of the General Revenue Fund.

(b) The comptroller of public accounts may establish accounts as are necessary to account for the sources and uses of dedicated funds deposited to the General Revenue Fund under this section.

(c) The legislature may appropriate funds from the General Revenue Fund to the Railroad Commission of Texas for the operation of the commission and for carrying out the duties of the commission as required or permitted by law.

[Acts 1981, 67th Leg., p. 146, ch. 65, § 8, eff. Sept. 1, 1981.]

CHAPTER THIRTEEN. MISCELLANEOUS RAILROADS

Article
6550(a). Repealed.
6550c. Rural Rail Transportation Districts.

Art. 6550(a). Repealed by Acts 1977, 65th Leg., p. 1149, ch. 435, § 1, eff. Aug. 29, 1977

The repealed article, relating to the Texas State Railroad and the Board of Managers thereof, was derived from Acts 1953, 53rd Leg., p. 79, ch. 58, as amended by Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.005.

Sections 2 to 6 of the 1977 repealing act provided:

"Sec. 2. The legislature hereby grants, sells, and conveys and by this Act does grant, sell, and convey to the city of Palestine all of the interest of the State of Texas in the right-of-way and trackage of the Texas State Railroad

from Mile Post 0.0 at Palestine, extending eastwardly to Mile Post 3.69, in consideration of the benefit to the public welfare and the agreement of the city of Palestine to develop the property for industrial purposes, with the income from the property to be paid to the Parks and Wildlife Department for the benefit of the Palestine terminal of the Texas State Railroad Park.

"Sec. 3. On or before June 1 of each year, the city of Palestine shall furnish a report to the comptroller of public accounts showing the financial condition of the property for the preceding calendar year and shall transmit all income after expenses to the State Treasury to be deposited in a special fund for use by the Parks and Wildlife Department for the benefit of the Palestine terminal of the Texas State Railroad Park.

"Sec. 4. If the city of Palestine shall fail or cease to develop for industrial purposes the property conveyed by this Act, with the income after expenses paid to the Parks and Wildlife Department as provided in Section 3 of this Act, all right, title, and interest granted and conveyed by this Act shall, without further action by any of the parties, revert to the State of Texas, unless such reversion is waived by the legislature during the biennium following the happening of the conditions of reversion.

"Sec. 5. It is the duty of the present Board of Managers of the Texas State Railroad to transfer and deliver possession of the Texas State Railroad right-of-way and trackage from Mile Post 0.0 at Palestine, extending eastwardly to Mile Post 3.69, to the governing body of the city of Palestine on the effective date of this Act, together with all equipment, supplies, books, records, documents, and property of any kind belonging to the railroad.

"Sec. 6. A copy of this Act, duly certified by the Secretary of State, may be filed of record by the county clerk in the deed records of Anderson County."

Art. 6550c. Rural Rail Transportation Districts

Findings

Sec. 1. The legislature finds that:

(1) the state contains many rural areas that are heavily dependent on agriculture for economic survival;

(2) transportation of agricultural and industrial products is essential to the continued economic vitality of rural areas;

(3) the rail transportation systems in some rural areas are threatened by railroad bankruptcies and abandonment proceedings that would cause the cessation of rail services to the areas; and

(4) it is in the interest of all citizens of the state that existing rail systems be maintained for the most efficient and economical movement of essential agricultural products from the areas of production to the local, national, and export markets.

Definitions

Sec. 2. In this Act:

(1) "Board" means the board of directors of a rural rail transportation system.

(2) "District" means a rural rail transportation district created under this Act.

(3) 'System" means all real and personal property held or used for rail transportation purposes, including land, easements, rights-of-way, other interests in land, franchises, stations, platforms, terminals, garages, shops, control houses, other buildings and structures, rolling stock, tracks, signals, other equipment, supplies, and other facilities necessary or convenient for the use of or access to rail transportation.

Creation of District

Sec. 3. (a) The commissioners courts of two or more eligible counties that, taken together, constitute a contiguous geographic area may by order create a rural rail transportation district consisting of the territory of the counties whose commissioners courts adopt the order.

(b) After approval by the board of directors of a district, the commissioners court of an eligible county by order may include the territory of that county in the district.

(c) A county eligible to form or join a district is one in which is located a rail line that is in the process of being or has been abandoned through a bankruptcy court or Interstate Commerce Commission proceeding, or any line carrying 3 million gross tons per mile per year or less.

Board of Directors; Employees

Sec. 4. (a) Each commissioners court that participates in the creation of or joins a district shall appoint one person to be a member of the board of directors of the district. Provided however, that if the district shall be composed of three counties or less, then each commissioners court shall appoint two directors to the board of directors. The board is responsible for the management, operation, and control of the district.

(b) To be eligible for appointment to the board, a person must be a resident of the district. A board member serves for a term of two years. A vacancy on the board shall be filled for the remainder of the term by the commissioners court that appointed the member who vacated the position. A board member may be removed from office for neglect of duty or malfeasance in office by the commissioners court that appointed the member, after at least 10 days' written notice to the member and a hearing before the commissioners court. At a hearing on the question of removal of a board member, the board member is entitled to be heard in person or through counsel.

(c) Members of the board shall select their presiding officers. The board shall hold at least one regular meeting each month for the purpose of transacting business of the district. The presiding officer may call special meetings of the board. A majority of the members is a quorum.

(d) The board shall adopt rules for its proceedings and may employ and compensate persons to carry out the powers and duties of the district.

(e) A board member or employee of a district may not be pecuniarily interested, directly or indirectly, in any contract or agreement to which the district is a party.

Powers of District

Sec. 5. (a) A rural rail transportation district is a public body exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes of this Act, including the powers granted in this section.

(b) A district has perpetual succession.

(c) A district may sue and be sued in all courts of competent jurisdiction, may institute and prosecute suits without giving security for costs, and may appeal from a judgment without giving supersedeas or cost bond.

(d) A district may acquire by grant, purchase, gift, devise, lease, or otherwise and may hold, use, sell, lease, or dispose of real and personal property, licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of any of its powers under this Act.

(e) A district may acquire, construct, own, operate, and maintain a system within its boundaries, both inside and outside the limits of incorporated cities, towns, and villages, and has the right to use the streets, alleys, roads, highways, and other public ways and to relocate, raise, lower, reroute, regulate, change the grade of, and alter the construction of any street, alley, highway, or road; any railroad track, bridge, or other facility or property; any gas transmission or distribution pipes, pipelines, mains, or other facility or property; any water, sanitary sewer, or storm sewer pipes, pipelines, or other facility or property; any electric lines, telegraph or telephone facility or property; any cable television lines, cables, conduits, or other facility or property; and pipelines and facilities, conduits and facilities, or other property whether publicly or privately owned, in the construction, reconstruction, repair, maintenance, or operation of the system. A district shall pay the cost of any change made under this subsection and is liable for any damage to property occurring because of the change.

(f) A district has the right of eminent domain to acquire lands in fee simple and any interest less than fee simple in, on, under, or above lands, including, without limitation, easements, rights-of-way, rights of use of airspace or subsurface space. The right may not be exercised in a manner that would unduly interfere with interstate commerce or unduly impair the neighborhood character of property surrounding or adjacent to the property sought to be condemned. Eminent domain proceedings brought by a district are governed by Title 52, Revised Civil Statutes of Texas, 1925,[1] except as it is inconsistent with this Act. Proceedings for the exercise of the power of eminent domain are commenced by the adoption by the board of a resolution declaring the public necessity for the acquisition by the district of the property or interest described in the resolution, and that the acquisition is necessary and proper for the construction, extension, improvement, or development of the system and is in the public interest. The resolution of the district is conclusive evidence of the public necessity of the proposed acquisition and that the real or personal property or interest in property is necessary for public use.

(g) A district may enter into agreements with any other public utility, private utility, communication system, common carrier, or transportation system for the joint use of its facilities, installations or properties within the district and establish through routes, joint fares, and, subject to approval of any tariff-regulating body having jurisdiction, divisions of tariffs.

(h) A district shall establish and maintain rents or other compensation for the use of the facilities of the system acquired, constructed, operated, regulated, or maintained by the district that are reasonable and nondiscriminatory and, together with grants received by the district, are sufficient to produce revenues adequate:

(1) to pay all expenses necessary to the operation and maintenance of the properties and facilities of the district;

(2) to pay the interest on and principal of all bonds issued by the district under this Act payable in whole or in part from the revenues, as they become due and payable; and

(3) to fulfill the terms of any agreements made with the holders of bonds or with any person in their behalf.

(i) A district may make contracts, leases, and agreements with, and accept grants and loans from the United States of America, its departments and agencies, the state, its agencies, and political subdivisions, and public or private corporations and persons, and may generally perform all acts necessary for the full exercise of the powers vested in it. A district may acquire rolling stock or other property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement. Any revenue bond indenture may provide limitations on the exercise of the powers granted by this section, and the limitations apply so long as any of the revenue bonds issued pursuant to the indenture are outstanding and unpaid.

(j) A district may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties not needed for or, in the case of leases, not inconsistent with the efficient operation and maintenance of the system. It may sell, lease, or otherwise dispose of, at any time, any surplus materials or personal or real property not needed for its requirements or for the purpose of carrying out its power under this Act.

(k) A district by resolution may adopt rules and regulations governing the use, operation, and maintenance of the system and shall determine all routings and change them whenever the board considers it advisable.

(*l*) A district may lease the system or any part to, or contract for the use or operation of the system or any part by, any operator. A district shall encourage to the maximum extent practicable the participation of private enterprise in the operation of the system.

(m) A district may contract with any county or other political subdivision of the state for the district to provide rail transportation services to any area outside the boundaries of the district on such terms and conditions as may be agreed to by the parties.

[1] Article 3264 et seq.

Bonds and Notes

Sec. 6. (a) A district may issue revenue bonds and notes from time to time and in such amounts as its board considers necessary or appropriate for the acquisition, purchase, construction, reconstruction, repair, equipping, improvement, or extension of its system. All bonds and notes are fully negotiable and may be made redeemable before maturity, at the option of the issuing district, at such price or prices and under such terms and conditions as may be fixed by the issuing district in the resolution authorizing the bonds or notes, and may be sold at public or private sale, as determined by the board.

(b) Before delivery, all bonds and notes authorized to be issued, except notes issued to an agency of the federal or state government, and the records relating to their issuance shall be submitted to the attorney general for examination. If the attorney general finds that they have been issued in accordance with the constitution and this Act, and that they will be binding obligations of the district issuing them, the attorney general shall approve them, and they shall be registered by the state comptroller of public accounts. After approval, registration, and sale and delivery of the bonds to the purchaser, they are incontestable.

(c) In order to secure the payment of the bonds or notes, the district may encumber and pledge all or any part of the revenues of its system, may mortgage and encumber all or any part of the properties of the system, and everything pertaining to them acquired or to be acquired, and may prescribe the terms and provisions of the bonds and notes in any manner not inconsistent with this Act. If not prohibited by the resolution or indenture relating to outstanding bonds or notes, any district may encumber separately any item or items of real estate or personalty.

(d) All bonds and notes are legal and authorized investments for banks, trust companies, savings and loan associations, and insurance companies. The bonds and notes are eligible to secure the deposit of public funds of the state, cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the state. The bonds and notes are lawful and sufficient security for the deposits to the extent of the bonds' principal amount or market value, whichever is less, when accompanied by all unmatured coupons appurtenant to them.

(e) Bonds payable solely from revenues may be issued by resolution of the board.

Competitive Bids

Sec. 7. A contract in the amount of more than $10,000 for the construction of improvements or the purchase of material, machinery, equipment, supplies, or any other property except real property may only be let on competitive bids after notice published, at least 15 days before the date set for receiving bids, in a newspaper of general circulation in the district. A board may adopt rules governing the taking of bids and the awarding of contracts. This section does not apply to personal or professional services or the acquisition of existing rail transportation systems.

Exemptions From Taxes

Sec. 8. The property, revenues, and income of a district and the interest on bonds and notes issued by a district are exempt from all taxes levied by the state or a political subdivision of the state.

Effect on Other Law

Sec. 9. The powers and duties provided by this Act are in addition to the powers and duties provided by other law for counties regarding rail transportation.

[Acts 1981, 67th Leg., p. 2434, ch. 623, eff. June 15, 1981.]

TITLE 113A

REAL ESTATE DEALERS

Article
6573b. Residential Service Company Act.

Art. 6573a. The Real Estate License Act

Short Title; License Required; Responsibility for Acts and Conduct; Compensation and Commissions

Sec. 1. (a) This Act shall be known and may be cited as "The Real Estate License Act."

(b) It is unlawful for a person to act in the capacity of, engage in the business of, or advertise or hold himself out as engaging in or conducting the business of a real estate broker or a real estate salesman within this state without first obtaining a real estate license from the Texas Real Estate Commission. It is unlawful for a person licensed as a real estate salesman to act or attempt to act as a real estate agent unless he is, at such time, associated with a licensed Texas real estate broker and acting for the licensed real estate broker.

(c) Each real estate broker licensed pursuant to this Act is responsible to the commission, members of the public, and his clients for all acts and conduct performed under this Act by himself or by a real estate salesman associated with or acting for the broker.

(d) No real estate salesman shall accept compensation for real estate sales and transactions from any person other than the broker under whom he is at the time licensed.

(e) No real estate salesman shall pay a commission to any person except through the broker under whom he is at the time licensed.

Definitions

Sec. 2. As used in this Act:

(1) "Real estate" means a leasehold, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere.

(2) "Real estate broker" means a person who, for another person and for a fee, commission, or other valuable consideration, or with the intention or in the expectation or on the promise of receiving or collecting a fee, commission, or other valuable consideration from another person:

(A) sells, exchanges, purchases, rents, or leases real estate;

(B) offers to sell, exchange, purchase, rent, or lease real estate;

(C) negotiates or attempts to negotiate the listing, sale, exchange, purchase, rental, or leasing of real estate;

(D) lists or offers or attempts or agrees to list real estate for sale, rental, lease, exchange, or trade;

(E) appraises or offers or attempts or agrees to appraise real estate;

(F) auctions, or offers or attempts or agrees to auction, real estate;

(G) buys or sells or offers to buy or sell, or otherwise deals in options on real estate;

(H) aids, attempts, or offers to aid in locating or obtaining for purchase, rent, or lease any real estate;

(I) procures or assists in the procuring of prospects for the purpose of effecting the sale, exchange, lease, or rental of real estate; or

(J) procures or assists in the procuring of properties for the purpose of effecting the sale, exchange, lease, or rental of real estate.

(3) "Broker" also includes a person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a salary, fee, commission, or any other valuable consideration, to sell the real estate or any part thereof, in lots or parcels or other disposition thereof. It also includes a person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby he undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning the real estate to brokers, or both.

(4) "Real estate salesman" means a person associated with a Texas licensed real estate broker for the purposes of performing acts or transactions comprehended by the definition of "real estate broker" as defined in this Act.

(5) "Person" means an individual, a partnership, or a corporation, foreign or domestic.

(6) "Commission" means the Texas Real Estate Commission.

(7) If the sense requires it, words in the present tense include the future tense; in the masculine gender, include the feminine or neuter gender; in the singular number, include the plural number; in the plural number, include the singular number; the word "and" may be read "or"; and the word "or" may be read "and."

Exemptions

Sec. 3. The provisions of this Act shall not apply to any of the following persons and transactions, and each and all of the following persons and transactions are hereby exempted from the provisions of this Act, to wit:

(a) an attorney at law licensed in this state or in any other state;

(b) an attorney in fact under a duly executed power of attorney authorizing the consummation of a real estate transaction;

(c) a public official in the conduct of his official duties;

(d) a person acting officially as a receiver, trustee, administrator, executor, or guardian;

(e) a person acting under a court order or under the authority of a will or a written trust instrument;

(f) a salesperson employed by an owner in the sale of structures and land on which said structures are situated, provided such structures are erected by the owner in the due course of his business;

(g) an on-site manager of an apartment complex;

(h) transactions involving the sale, lease, or transfer of any mineral or mining interest in real property;

(i) an owner or his employees in renting or leasing his own real estate whether improved or unimproved;

(j) transactions involving the sale, lease, or transfer of cemetery lots.

Acts Constituting Broker or Salesman

Sec. 4. A person who, directly or indirectly for another, with the intention or on the promise of receiving any valuable consideration, offers, attempts, or agrees to perform, or performs, a single act defined in Subdivisions 2 and 3, Section 2 of this Act, whether as a part of a transaction, or as an entire transaction, is deemed to be acting as a real estate broker or salesman within the meaning of this Act. The commission of a single such act by a person required to be licensed under this Act and not so licensed shall constitute a violation of this Act.

Real Estate Commission; Disposition of Fees; Research Center; Application of Sunset Act

Sec. 5. (a) The administration of the provisions of this Act is vested in a commission, to be known as the "Texas Real Estate Commission," consisting of nine members to be appointed by the governor with the advice and consent of two-thirds of the senate present. The commissioners hold office for staggered terms of six years with the terms of three members expiring every two years. Each member holds office until his successor is appointed and has qualified. Within 15 days after his appointment, each member shall qualify by taking the constitutional oath of office and furnishing a bond payable to the Governor of Texas in the penal sum of $10,000, conditional on the faithful performance of his duties as prescribed by law. A vacancy for any cause shall be filled by the governor for the unexpired term. Notwithstanding any other provisions in this subsection, the six members of the commission in office on September 1, 1979, shall continue in office until the 5th day of October of the years in which their respective terms expire, or until their successors are appointed and have qualified. The terms of office of the appointees who fill the offices of incumbent members whose terms expire October 5, 1979, 1981, and 1983, expire on January 31, 1985, 1987, and 1989, respectively. Each succeeding term of office expires on January 31 of odd-numbered years. For the three public members initially appointed under this Act, the governor shall designate one member for a term expiring January 31, 1981, one member for a term expiring January 31, 1983, and one member for a term expiring January 31, 1985. At a regular meeting in February of each year, the commission shall elect from its own membership a chairman, vice-chairman, and secretary. Each member of the commission shall be present for at least one-half of the regularly scheduled meetings held each year by the commission. The failure of a member to meet this requirement automatically removes the member from the commission and creates a vacancy on the commission. A quorum of the commission consists of five members.

(b) All members, officers, employees, and agents of the commission are subject to the code of ethics and standards of conduct imposed by Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252–9b, Vernon's Texas Civil Statutes).

(c) Appointments to the commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. Each member of the commission shall be a citizen of Texas and a qualified voter. Six members shall have been engaged in the real estate brokerage business as licensed real estate brokers as their major occupations for at least five years next preceding their appointments. Three members must be representatives of the general public who are not licensed under this Act and who do not have, other than as consumers, a financial interest in the practice of a real estate broker or real estate salesman. It is grounds for removal from the commission if:

(1) a broker-member of the commission ceases to be a licensed real estate broker;

(2) a public member of the commission or a person related to the member within the second degree by consanguinity or within the second degree by affinity acquires a real estate license or a financial interest in the practice of real estate; or

(3) a member of the commission or a person related to the member within the second degree by consanguinity or within the second degree by

affinity becomes an employee or paid consultant of a real estate trade association or an officer of a statewide real estate trade association elected by the entire voting membership of the statewide association.

(d) Each member of the commission shall receive as compensation for each day actually spent on his official duties the sum of $50 and his actual and necessary expenses incurred in the performance of his official duties.

(e) The commission shall have the authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for its licensees in keeping with the purposes and intent of this Act or to insure compliance with the provisions of this Act. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the commission receives the committees' statements. In addition to any other action, proceeding, or remedy authorized by law, the commission shall have the right to institute an action in its own name to enjoin any violation of any provision of this Act or any rule or regulation of the commission and in order for the commission to sustain such action it shall not be necessary to allege or prove, either than an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The commission shall not be required to give any appeal bond in any action or proceeding to enforce the provisions of this Act.

(f) The commission is empowered to select and name an administrator, who shall also act as executive secretary, and to select and employ such other subordinate officers and employees as are necessary to administer this Act. The salaries of the administrator and the officers and employees shall be fixed by the commission not to exceed such amounts as are fixed by the applicable general appropriations bill. The commission may designate a subordinate officer as assistant administrator who shall be authorized to act for the administrator in his absence. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the commission or serve as a member of the commission.

(g) Repealed by Acts 1981, 67th Leg., p. 158, ch. 71, § 1, eff. April 23, 1981.

(h) The commission shall adopt a seal of a design which it shall prescribe. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of the commission, shall be received in evidence in all courts with like effect as the original.

(i) Except as provided in Subsection (j) of this section, all money derived from fees, assessments, or charges under this Act, shall be paid by the commission into the State Treasury for safekeeping, and shall be placed by the State Treasurer in a separate fund to be available for the use of the commission in the administration of this Act on requisition by the commission. A necessary amount of the money so paid into the State Treasury is hereby specifically appropriated to the commission for the purpose of paying the salaries and expenses necessary and proper for the administration of this Act, including equipment and maintenance of supplies for the offices or quarters occupied by the commission, and necessary travel expenses for the commission or persons authorized to act for it when performing duties under this Act. At the end of the state fiscal year, any unused portion of the funds in the special account, except such funds as may be appropriated to administer this Act pending receipt of additional revenues available for that purpose, shall be paid into the General Revenue Fund. The comptroller shall, on requisition of the commission, draw warrants from time to time on the State Treasurer for the amount specified in the requisition, not exceeding, however, the amount in the fund at the time of making a requisition. However, all money expended in the administration of this Act shall be specified and determined by itemized appropriation in the general departmental appropriation bill for the Texas Real Estate Commission, and not otherwise.

(j) Fifteen dollars received by the commission from fees received from real estate brokers and $7.50 received by the commission from fees received from real estate salesmen for licensure status shall be transmitted annually to Texas A & M University for deposit in a separate banking account. The money in the separate account shall be expended for the support and maintenance of the Texas Real Estate Research Center and for carrying out the purposes, objectives, and duties of the center. However, all money expended from the separate account shall be as determined by legislative appropriation.

(k) The Texas Real Estate Commission is subject to the Texas Sunset Act [1]; and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1991.

(*l*) The commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

[1] Article 5429k.

Licenses; Qualification

Sec. 6. (a) A person desiring to act as a real estate broker in this state shall file an application for a license with the commission on a form prescribed by the commission. A broker desiring to engage a person to participate in real estate brokerage activity shall join the person in filing an application for a salesman license on a form prescribed by the commission.

(b) To be eligible for a license, an individual must be a citizen of the United States or a lawfully admitted alien, be at least 18 years of age, and be a legal resident of Texas for at least 60 days immediately preceding the filing of an application, and must satisfy the commission as to his honesty, trustworthiness, integrity, and competency. However, the competency of the individual, for the purpose of qualifying for the granting of licensure privileges, shall be judged solely on the basis of the examination referred to in Section 7 of this Act.

(c) To be eligible for a license, a corporation must designate one of its officers to act for it. The designated person must be a citizen of the United States or a lawfully admitted alien, be at least 18 years of age, and be a resident of Texas for at least 60 days immediately preceding the filing of an application, and must be qualified to be licensed individually as a real estate broker. However, the competency of the person shall be judged solely on the basis of the examination referred to in Section 7 of this Act.

Moral Character Checks

Sec. 6A. (a) If, at any time before a person applies for a license under this Act, the person requests the commission to determine whether his moral character complies with the commission's moral character requirements for licensing under this Act and the person pays a $10 fee for the moral character determination, the commission shall make its determination of the person's moral character.

(b) Not later than the 30th day after the day on which the commission makes its determination, the commission shall give the person notice of the determination.

(c) If the person later applies for a license under this Act, the commission may conduct a supplemental moral character check of the person. The supplemental check may cover only the time since the day on which the person requested the original moral character determination.

Examinations, Educational Requirements; Evidence of Qualification

Sec. 7. (a) Competency as referred to in Section 6 of this Act shall be established by an examination prepared by or contracted for by the commission. The examination shall be given at such times and at such places within the state as the commission shall prescribe. The examination shall be of scope sufficient in the judgment of the commission to determine that a person is competent to act as a real estate broker or salesman in a manner to protect the interest of the public. The examination for a salesman license shall be less exacting and less stringent than the examination for a broker license. The commission shall furnish each applicant with study material and references on which his examination shall be based. When an applicant for real estate licensure fails a qualifying examination, he may apply for reexamination by filing a request therefor together with the proper fee. The examination requirement shall be satisfied within one year from the date the application for a license is filed. Courses of study required for licensure shall include but not be limited to the following which shall be considered core real estate courses for all purposes of this Act:

(1) Principles of Real Estate (or equivalent) shall include but not be limited to an overview of licensing as a real estate broker and salesman, ethics of practice, titles to and conveyancing of real estate, legal descriptions, law of agency, deeds, encumbrances and liens, distinctions between personal and real property, contracts, appraisal, finance and regulations, closing procedures, and real estate mathematics.

(2) Real Estate Appraisal (or equivalent) shall include but not be limited to the central purposes and functions of an appraisal, social and economic determinant of value, appraisal case studies, cost, market data and income approaches to value estimates, final correlations, and reporting.

(3) Real Estate Law (or equivalent) shall include but not be limited to legal concepts of real estate, land description, real property rights and estates in land, contracts, conveyances, encumbrances, foreclosures, recording procedures, and evidence of titles.

(4) Real Estate Finance (or equivalent) shall include but not be limited to monetary systems, primary and secondary money markets, sources of mortgage loans, federal government programs, loan applications, processes and procedures, closing costs, alternative financial instruments, equal credit opportunity acts, community reinvestment act, and state housing agency.

(5) Real Estate Marketing (or equivalent) shall include but not be limited to real estate professionalism and ethics, characteristics of successful salesmen, time management, psychology of marketing, listing procedures, advertising, negotiating and closing, financing, and the Deceptive Trade Practices-Consumer Protection Act, as amended, Section 17.01 et seq., Business & Commerce Code.[1]

(6) Real Estate Mathematics (or equivalent) shall include but not be limited to basic arithmetic skills and review of mathematical logic, percentages, interest, time-valued money, depreciation, amortization, proration, and estimation of closing statements.

(7) Real Estate Brokerage (or equivalent) shall include but not be limited to law of agency, planning and organization, operational policies and procedures, recruiting, selection and training of personnel, records and control, and real estate firm analysis and expansion criteria.

(8) Property Management (or equivalent) shall include but not be limited to role of property manager, landlord policies, operational guidelines, leases, lease negotiations, tenant relations, maintenance, reports, habitability laws, and the Fair Housing Act.

(9) Real Estate Investments (or equivalent) shall include but not be limited to real estate investment characteristics, techniques of investment analysis, time-valued money, discounted and nondiscounted investment criteria, leverage, tax shelters depreciation, and applications to property tax.

(b) The commission shall waive the examination of an applicant for broker licensure who has, within one year previous to the filing of his application, been licensed in this state as a broker, and shall waive the examination of an applicant for salesman licensure who has, within one year previous to the filing of his application, been licensed in this state as either a broker or salesman.

(c) From and after the effective date of this Act, each applicant for broker licensure shall furnish the commission satisfactory evidence that he has had not less than two years active experience in this state as a licensed real estate salesman practitioner during the 36-month period immediately preceding the filing of the application; and, in addition, shall furnish the commission satisfactory evidence of having completed successfully 36 semester hours of core real estate courses or related courses accepted by the commission. On January 1, 1983, the number of required semester hours shall be increased to 48. On or after January 1, 1985, the required semester hours shall be increased to 60. These qualifications for broker licensure shall not be required of an applicant who, at the time of making the application, is duly licensed as a real estate broker by any other state in the United States if that state's requirements for licensure are comparable to those of Texas.

(d) From and after the effective date of this Act, as a prerequisite for applying for salesman licensure each applicant shall furnish the commission satisfactory evidence of having completed 12 semester hours of postsecondary education, six semester hours of which must be completed in core real estate courses, of which a minimum of two semester hours must be completed in Principles of Real Estate as described in Subdivision (1) of Subsection (a) of Section 7. The remaining six semester hours shall be completed in core real estate courses or related courses. As a condition for the second annual certification of salesman licensure privileges, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 14 semester hours, eight semester hours of which must be completed in core real estate courses. As a condition for the third annual certification of salesman licensure privileges, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 16 semester hours, 10 semester hours of which must be completed in core real estate courses. As a condition for the fourth annual certification of salesman licensure privileges, the applicant shall furnish the commission satisfactory evidence of having completed a minimum of 18 semester hours, 12 semester hours of which must be completed in core real estate courses.

(e) Repealed by Acts 1981, 67th Leg., p. 160, ch. 71, § 3, eff. April 23, 1981.

(f) Insofar as is necessary for the administration of this Act, the commission is authorized to inspect and accredit educational programs or courses of study in real estate and to establish standards of accreditation for such programs conducted in the State of Texas, other than accredited colleges and universities. Schools, other than accredited colleges and universities, which are authorized to offer real estate educational courses pursuant to provisions of this section shall be required to maintain a corporate surety bond in the sum of $10,000 payable to the commission, for the benefit of a party who may suffer damages resulting from failure of a commission approved school or course to fulfill obligations attendant to the approval.

(g) A person who is licensed as a salesman on the effective date of this Act is not subject to the educational requirements or prerequisites of this Act as a condition for holding salesman licensure privileges. A person who is licensed as a broker on the effective date of this Act is not subject to the educational requirements or prerequisites of this Act as a condition for holding broker licensure privileges. A person who is licensed as a real estate salesman on the effective date of this Act may submit an application for broker licensure during the 24-month period immediately following such date if he furnishes evidence satisfactory to the commission that he meets the prerequirements for applying for broker licensure in force and effect on the day prior to the effective date of this Act.

(h) Notwithstanding any other provision of this Act, from and after the effective date of this Act each applicant for broker licensure shall furnish the commission with satisfactory evidence:

(1) that he has satisfied the requirements of Subsection (c) of this section; or

(2) that prior to July 1, 1981, he has applied for broker licensure and has satisfied the requirements for broker licensure effective on or after January 1, 1985, as provided by Subsection (c) of this section; or

(3) that he is a licensed real estate broker in another state, that he has had not less than two years' active experience in the other state as a licensed real estate salesman or broker during the

36-month period immediately preceding the filing of the application, and that he has satisfied the educational requirements for broker licensure as provided by Subsection (c) of this section; or

(4) that he has, within one year previous to the filing of his application, been licensed in this state as a broker.

(i) Notwithstanding any other provision of this Act, the commission shall waive the requirements of Subsection (d) of Section 7 of this Act for an applicant for salesman licensure who has, within one year previous to the filing of his application, been licensed in this state as a broker or salesman. However, with respect to an applicant for salesman licensure who was licensed as a salesman within one year previous to the filing of the application but whose original licensure privileges were issued under the provisions that second and third annual certification of the licensure privileges would be conditioned upon furnishing satisfactory evidence of successful completion of additional education, the commission shall require the applicant to furnish satisfactory evidence of successful completion of any additional education that would have been required if the licensure privileges had been maintained without interruption during the previous year.

(j) Not later than the 30th day after the day on which a person completes an examination administered by the commission, the commission shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the commission shall send to the person not later than the 30th day after the day on which the request is received by the commission an analysis of the person's performance on the examination.

(k) All applicants for licensure must complete at least three classroom hours of coursework on federal, state, and local laws governing housing discrimination, housing credit discrimination, and community reinvestment or at least three semester hours of coursework on constitutional law.

[1] See Business and Commerce Code, § 17.41 et seq.

Real Estate Recovery Fund

Sec. 8. Part 1. (a) The commission shall establish a real estate recovery fund which shall be set apart and maintained by the commission as provided in this section. The fund shall be used in the manner provided in this section for reimbursing aggrieved persons who suffer monetary damages by reason of certain acts committed by a duly licensed real estate broker or salesman, or by an unlicensed employee or agent of a broker or salesman, provided the broker or salesman was licensed by the State of Texas at the time the act was committed, provided the act was performed in the scope of activity which constitutes a broker or salesman as defined by this Act, and provided recovery is ordered by a court of competent jurisdiction against the broker or salesman. The use of the fund as provided in Part 1 of this section is limited to an act that is either:

(1) a violation of Section 15(3) and (4) of this Act, or

(2) conduct which constitutes fraud, misrepresentation, deceit, false pretenses, or trickery.

(b) On the effective date of this Act, the commission shall collect from each real estate broker and salesman licensed by this state a fee of $10 which shall be deposited in the real estate recovery fund. The commission shall suspend a license issued under the provisions of this Act for failure to pay this fee. After the effective date of this Act, when a person makes application for an original license pursuant to this Act he shall pay, in addition to his original license application fee, a fee of $10 which shall be deposited in the real estate recovery fund. If the commission does not issue the license, this fee shall be returned to the applicant.

Part 2. If on December 31 of any year the balance remaining in the real estate recovery fund is less than $300,000, each real estate broker and each real estate salesman, on recertification of his license during the following calendar year, shall pay, in addition to his license recertification fee, a fee of $10, which shall be deposited in the real estate recovery fund, or a pro rata share of the amount necessary to bring the fund to $1 million, whichever is less.

Part 3. (a) No action for a judgment which subsequently results in an order for collection from the real estate recovery fund shall be started later than two years from the accrual of the cause of action. When an aggrieved person commences action for a judgment which may result in collection from the real estate recovery fund, the real estate broker or real estate salesman shall notify the commission in writing to this effect at the time of the commencement of the action.

(b) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a real estate broker, or real estate salesman, on the grounds described in Part 1(a) of this section that occurred on or after the effective date of this Act, the aggrieved person may, after final judgment has been entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court in which the judgment was entered and, on 20 days' written notice to the commission, may apply to the court for an order directing payment out of the real estate recovery fund of the amount unpaid on the judgment, subject to the limitations stated in Part 8 of this section.

(c) The court shall proceed on the application forthwith. On the hearing on the application, the aggrieved person is required to show that:

(1) the judgment is based on facts allowing recovery under Part 1(a) of this section;

(2) he is not a spouse of the debtor, or the personal representative of the spouse;

(3) he has obtained a judgment as set out in Part 3(b) of this section, stating the amount of the judgment and the amount owing on the judgment at the date of the application;

(4) the judgment debtor lacks sufficient attachable assets to satisfy the judgment; and

(5) the amount that may be realized from the sale of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount that may be realized.

(d) The court shall make an order directed to the commission requiring payment from the real estate recovery fund of whatever sum it finds to be payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied, on the hearing, of the truth of all matters required to be shown by the aggrieved person by Part 3(c) of this section and that the aggrieved person has satisfied all of the requirements of Parts 3(b) and (c) of this section.

(e) If the commission pays from the real estate recovery fund any amount toward satisfaction of a judgment against a licensed real estate broker or real estate salesman, the license of the broker or salesman shall be automatically revoked on the issuance of a court order authorizing payment from the real estate recovery fund. No broker or salesman is eligible to receive a new license until he has repaid in full, plus interest at the current legal rate, the amount paid from the real estate recovery fund on his account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this Act.

Part 4. The sums received by the real estate commission for deposit in the real estate recovery fund shall be held by the commission in trust for carrying out the purposes of the real estate recovery fund. These funds may be invested and reinvested in the same manner as funds of the Texas State Employees Retirement System, and the interest from these investments shall be deposited to the credit of the real estate recovery fund, provided, however, that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to this section.

Part 5. When the real estate commission receives notice of entry of a final judgment and a hearing is scheduled under Part 3(d) of this section, the commission may notify the Attorney General of Texas of its desire to enter an appearance, file a response, appear at the court hearing, defend the action, or take whatever other action it deems appropriate on behalf of, and in the name of, the defendant, and take recourse through any appropriate method of review on behalf of, and in the name of, the defendant. In taking such action the real estate commission and attorney general shall act only to protect the fund from spurious or unjust claims.

Part 6. When, on the order of the court, the commission has paid from the real estate recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor to the extent of the amount paid. The judgment creditor shall assign all his right, title, and interest in the judgment up to the amount paid by the commission which amount shall have priority for repayment in the event of any subsequent recovery on the judgment. Any amount and interest recovered by the commission on the judgment shall be deposited to the fund.

Part 7. The failure of an aggrieved person to comply with the provisions of this section relating to the real estate recovery fund shall constitute a waiver of any rights under this section.

Part 8. (a) Notwithstanding any other provision, payments from the real estate recovery fund are subject to the conditions and limitations in Subsections (b) through (d) of this part.

(b) Payments may be made only pursuant to an order of a court of competent jurisdiction, as provided in Part 3, and in the manner prescribed by this section.

(c) Payments for claims, including attorneys' fees, interest, and court costs, arising out of the same transaction shall be limited in the aggregate to $20,000 regardless of the number of claimants.

(d) Payments for claims based on judgments against any one licensed real estate broker or salesman may not exceed in the aggregate $50,000, until the fund has been reimbursed by the licensee for all amounts paid.

Part 9. Nothing contained in this section shall limit the authority of the commission to take disciplinary action against a licensee for a violation of this Act or the rules and regulations of the commission; nor shall the repayment in full of all obligations to the real estate recovery fund by a licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to this Act.

Part 10. Any person receiving payment out of the real estate recovery fund pursuant to Section 8 of this Act shall be entitled to receive reasonable attorney fees as determined by the court, subject to the limitations stated in Part 8 of this section.

Issuance of License; Certification Fees; Expiration Dates

Sec. 9. (a) When an applicant has satisfactorily met all requirements and conditions of this Act, a license shall be issued which may remain in force and effect so long as the holder of the license remains in compliance with the obligations of this Act, which include payment of the annual certification fee as provided in Section 11 of this Act. Annual certification fees shall be paid in September, October, and November of each calendar year. Each salesman license issued shall be delivered or mailed to the broker with whom the salesman is associated and shall be kept under his custody and control.

(b) An applicant is not permitted to engage in the real estate business either as a broker or salesman until a license evidencing his authority to engage in the real estate business has been received.

(c) The commission by rule may adopt a system under which licenses expire on various dates during the year. Dates for payment of the annual certification fee shall be adjusted accordingly. For the year in which the certification date is changed, annual certification fees payable shall be prorated on a monthly basis so each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On certification of the license on the new certification date, the total annual certification fee is payable.

(d) Any other provision of this Act notwithstanding, the commission may issue licenses valid for a period not to exceed 24 months and may charge and collect certification fees for such period; provided, however, that such certification fees shall not, calculated on an annual basis, exceed the amounts established in Section 11 of this Act, and further provided that the educational conditions for annual certification established in Subsection (d) of Section 7 of this Act shall not be waived by the commission.

Refusal to Issue License; Review

Sec. 10. If the commission declines or fails to license an applicant, it shall immediately give written notice of the refusal to the applicant. Before the applicant may appeal to a district court as provided in Section 18 of this Act, he must file within 10 days after the receipt of the notice an appeal from the ruling, requesting a time and place for a hearing before the commission. The commission shall set a time and place for the hearing within 30 days from the receipt of the appeal, giving 10 days' notice of the hearing to the applicant. The time of the hearing may be continued from time to time with the consent of the applicant. Following the hearing, the commission shall enter an order which is, in its opinion, appropriate in the matter concerned.

If an applicant fails to request a hearing as provided in this section, the commission's ruling shall become final and not subject to review by the courts.

Fees

Sec. 11. The commission shall charge and collect the following fees:

(1) a fee not to exceed $40 for the filing of an original application for real estate broker licensure;

(2) a fee not to exceed $40 for annual certification of real estate broker licensure status;

(3) a fee not to exceed $20 for the filing of an original application for salesman licensure;

(4) a fee not to exceed $20 for annual certification of real estate salesman licensure status;

(5) a fee not to exceed $10 for taking a license examination;

(6) a fee not to exceed $10 for filing a request for a license for each additional office or place of business;

(7) a fee not to exceed $10 for filing a request for a license for a change of place of business or change of sponsoring broker;

(8) a fee not to exceed $10 for filing a request to replace a license lost or destroyed;

(9) a fee not to exceed $400 for filing an application for approval of a real estate course pursuant to the provisions of Subsection (f) of Section 7 of this Act; and

(10) a fee not to exceed $200 per annum for and in each year of operation of a real estate course, established pursuant to the provisions of Subsection (f) of Section 7 of this Act.

Maintenance and Location of Offices; Display of License

Sec. 12. (a) Each resident broker shall maintain a fixed office within this state. The address of the office shall be designated on the broker's license. Within 10 days after a move from a previously designated address, the broker shall submit applications for new licenses for himself and each salesman associated with him, designating the new location of his office, together with the required fee, or fees, whereupon the commission shall issue a license, or licenses, reflecting the new location, provided the new location complies with the terms of this section.

(b) If a broker maintains more than one place of business within this state, he shall apply for, pay the required fee for, and obtain an additional license to be known as a branch office license for each additional office he maintains.

(c) The license or licenses of the broker shall at all times be prominently displayed in the licensee's place or places of business.

(d) Each broker shall also prominently display in his place or in one of his places of business the license of each real estate salesman associated with him.

Inactive Licenses

Sec. 13. (a) When the association of a salesman with his sponsoring broker is terminated, the broker shall immediately return the salesman license to the commission. The salesman license then becomes inactive.

(b) The salesman license may be activated if, within the calendar year, a request, accompanied by the required fee, is filed with the commission by a licensed broker advising that he assumes sponsorship of the salesman.

Unlawful Employment or Compensation; Nonresident License

Sec. 14. (a) It is unlawful for a licensed broker to employ or compensate directly or indirectly a person for performing an act enumerated in the

definition of real estate broker in Section 2 of this Act if the person is not a licensed broker or licensed salesman in this state or an attorney at law licensed in this state or in any other state. However, a licensed broker may pay a commission to a licensed broker of another state if the foreign broker does not conduct in this state any of the negotiations for which the fee, compensation, or commission is paid.

(b) A resident broker of another state who furnishes the evidence required in Subsection (h) of Section 7 of this Act may apply for a license as a broker in this state. A nonresident licensee need not maintain a place of business in this state. The commission may in its discretion refuse to issue a broker license to an applicant who is not a resident of this state for the same reasons that it may refuse to license a resident of this state.

(c) Each nonresident applicant shall file an irrevocable consent that legal actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise, or in which the plaintiff may reside, by service of process or pleading authorized by the laws of this state, or by serving the administrator or assistant administrator of the commission. The consent shall stipulate that the service of process or pleading shall be valid and binding in all courts as if personal service had been made on the nonresident broker in this state. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal. A service of process or pleading served on the commission shall be by duplicate copies, one of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address which the commission has for the nonresident broker against whom the process or pleading is directed. No default in an action may be taken except on certification by the commission that a copy of the process or pleading was mailed to the defendant as provided in this section, and no default judgment may be taken in an action or proceeding until 20 days after the day of mailing of the process or pleading to the defendant.

Notwithstanding any other provision of this subsection, a nonresident of this state who resides in a city whose boundaries are contiguous at any point to the boundaries of a city of this state, and who has been an actual bona fide resident of that city for at least 60 days immediately preceding the filing of his application, is eligible to be licensed as a real estate broker or salesman under this Act in the same manner as a resident of this state. If he is licensed in this manner, he shall at all times maintain a place of business either in the city in which he resides or in the city in this state which is contiguous to the city in which he resides, and he may not maintain a place of business at another location in this state unless he also complies with the requirements of Section 14(b) of this Act. The place of business must satisfy the requirements of Subsection (a) of Section 12 of this Act, but the place of business shall be deemed a definite place of business in this state within the meaning of Subsection (a) of Section 12.

Investigations; Suspension or Revocation of License; Civil or Criminal Liability

Sec. 15. The commission may, on its own motion, and shall, on the verified complaint in writing of any person, provided the complaint, or the complaint together with evidence, documentary or otherwise, presented in connection with the complaint, provides reasonable cause, investigate the actions and records of a real estate broker or real estate salesman. The commission may suspend or revoke a license issued under the provisions of this Act at any time when it has been determined that:

(1)(A) the licensee has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following such conviction, suspending the imposition of sentence; or

(B) a final money judgment has been rendered against the licensee resulting from contractual obligations of the licensee incurred in the pursuit of his business, and such judgment remains unsatisfied for a period of more than six months after becoming final; or

(2) the licensee has procured, or attempted to procure, a real estate license, for himself or a salesman, by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for a real estate license; or

(3) the licensee, when selling, trading, or renting real property in his own name, engaged in misrepresentation or dishonest or fraudulent action; or

(4) the licensee, while performing an act constituting a broker or salesman, as defined by this Act, has been guilty of:

(A) making a material misrepresentation, or failing to disclose to a potential purchaser any latent structural defect or any other defect known to the broker or salesman. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent purchaser in making a decision to purchase; or

(B) making a false promise of a character likely to influence, persuade, or induce any person to enter into a contract or agreement when the licensee could not or did not intend to keep such promise; or

(C) pursuing a continued and flagrant course of misrepresentation or making of false promises through agents, salesmen, advertising, or otherwise; or

(D) failing to make clear, to all parties to a transaction, which party he is acting for, or receiving compensation from more than one party except with the full knowledge and consent of all parties; or

(E) failing within a reasonable time properly to account for or remit money coming into his possession which belongs to others, or commingling money belonging to others with his own funds; or

(F) paying a commission or fees to or dividing a commission or fees with anyone not licensed as a real estate broker or salesman in this state or in any other state, or not an attorney at law licensed in this state or any other state, for compensation for services as a real estate agent; or

(G) failing to specify in a listing contract a definite termination date which is not subject to prior notice; or

(H) accepting, receiving, or charging an undisclosed commission, rebate, or direct profit on expenditures made for a principal; or

(I) soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery or deceptive practice; or

(J) acting in the dual capacity of broker and undisclosed principal in a transaction; or

(K) guaranteeing, authorizing, or permitting a person to guarantee that future profits will result from a resale of real property; or

(L) placing a sign on real property offering it for sale, lease, or rent without the written consent of the owner or his authorized agent; or

(M) inducing or attempting to induce a party to a contract of sale or lease to break the contract for the purpose of substituting in lieu thereof a new contract; or

(N) negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property with an owner or lessor, knowing that the owner or lessor had a written outstanding contract, granting exclusive agency in connection with the property to another real estate broker; or

(O) offering real property for sale or for lease without the knowledge and consent of the owner or his authorized agent, or on terms other than those authorized by the owner or his authorized agent; or

(P) publishing, or causing to be published, an advertisement including, but not limited to, advertising by newspaper, radio, television, or display which is misleading, or which is likely to deceive the public, or which in any manner tends to create a misleading impression, or which fails to identify the person causing the advertisement to be published as a licensed real estate broker or agent; or

(Q) having knowingly withheld from or inserted in a statement of account or invoice, a statement that made it inaccurate in a material particular; or

(R) publishing or circulating an unjustified or unwarranted threat of legal proceedings, or other action; or

(S) establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a real estate licensee, or aiding or abetting or conspiring with a person to circumvent the requirements of this Act; or

(T) failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document; or

(U) failing to advise a purchaser in writing before the closing of a transaction that the purchaser should either have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or be furnished with or obtain a policy of title insurance; or

(V) conduct which constitutes dishonest dealings, bad faith, or untrustworthiness; or

(W) acting negligently or incompetently in performing an act for which a person is required to hold a real estate license; or

(X) disregarding or violating a provision of this Act; or

(Y) failing within a reasonable time to deposit money received as escrow agent in a real estate transaction, either in trust with a title company authorized to do business in this state, or in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state; or

(Z) disbursing money deposited in a custodial, trust, or escrow account, as provided in Subsection (Y) before the transaction concerned has been consummated or finally otherwise terminated; or

(AA) failing or refusing on demand to produce a document, book, or record in his possession concerning a real estate transaction conducted by him for inspection by the Real Estate Commission or its authorized personnel or representative; or

(BB) failing within a reasonable time to provide information requested by the commission as a result of a formal or informal complaint to the commission which would indicate a violation of this Act; or

(CC) failing without just cause to surrender to the rightful owner, on demand, a document or instrument coming into his possession; or

(DD) discriminating against an owner, potential purchaser, lessor, or potential lessee on the

basis of race, color, religion, sex, national origin, or ancestry. Prohibited discrimination shall include but not be limited to directing prospective home buyers or lessees interested in equivalent properties to different areas according to the race, color, religion, sex, national origin, or ancestry of the potential owner or lessee.

The provisions of this section do not relieve a person from civil liability or from criminal prosecution under this Act or under the laws of this state.

Issuance of License After Revocation Prohibited for One Year

Sec. 15A. If the commission revokes a person's license issued under this Act, the commission may not issue another license to the person for one year after the revocation.

Legislative Intent; Investigations; Probation of License Revocation, Cancellation, or Suspension

Sec. 15B. It is the intent of the legislature that the commission only is vested with the authority and responsibility for the administration, implementation, and enforcement of this Act. Duties, functions, and responsibilities of the commission's administrative assistants, agents, investigators, and all other employees shall be those assigned and determined by the commission. Notwithstanding any other provision of the Act, there shall be no undercover or covert investigations conducted by authority of this Act unless expressly authorized by the commission after due consideration of the circumstances and determination by the commission that such measures are necessary to carry out the purposes of this Act. No investigations of licensees or any other actions against licensees shall be initiated on the basis of anonymous complaints whether in writing or otherwise but shall be initiated only upon the commission's own motion or a verified written complaint. Upon the adoption of such motion by the commission or upon receipt of such complaint, the licensee shall be notified promptly and in writing unless the commission itself, after due consideration, determines otherwise. Provided, however, that the commission shall have the right and may, upon majority vote, rule that an order revoking, cancelling, or suspending a license be probated upon reasonable terms and conditions determined by the commission.

Unauthorized Practice of Law

Sec. 16. A license granted under the provisions of this Act shall be suspended or revoked by the commission on proof that the licensee, not being licensed and authorized to practice law in this state, for a consideration, reward, pecuniary benefit, present or anticipated, direct or indirect, or in connection with or as a part of his employment, agency, or fiduciary relationship as a licensee, drew a deed, note, deed of trust, will, or other written instrument that may transfer or anywise affect the title to or an interest in land, or advised or counseled a person as to the validity or legal sufficiency of an instrument or as to the validity of title to real estate.

Hearings

Sec. 17. (a) Before a license is suspended or revoked, the licensee is entitled to a public hearing. The commission shall prescribe the time and place of the hearing. However, the hearing shall be held, if the licensee so desires, within the county where the licensee has his principal place of business, or if the licensee is a nonresident, the hearing may be called for and held in any county within this state. The notice calling the hearing shall recite the allegations against the licensee and the notice may be served personally or by mailing it by certified mail to the licensee's last known business address, as reflected by the commission's records, at least 10 days prior to the date set for the hearing. In the hearing, all witnesses shall be duly sworn and stenographic notes of the proceedings shall be taken and filed as a part of the records in the case. A party to the proceeding desiring it shall be furnished with a copy of the stenographic notes on the payment to the commission of a fee of $1.50 per page plus applicable sales tax and postage. After a hearing, the commission shall enter an order based on its findings of fact adduced from the evidence presented.

(b) The commission may issue subpoenas for the attendance of witnesses and the production of records or documents. The process issued by the commission may extend to all parts of the state, and the process may be served by any person designated by the commission. The person serving the process shall receive compensation to be allowed by the commission, not to exceed the fee prescribed by law for similar services. A witness subpoenaed who appears in a proceeding before the commission shall receive the same fees and mileage allowances as allowed by law, and the fees and allowances shall be taxed as part of the cost of the proceedings.

(c) If, in a proceeding before the commission, a witness fails or refuses to attend on subpoena issued by the commission, or refuses to testify, or refuses to produce a record or document, the production of which is called for by the subpoena, the attendance of the witness and the giving of his testimony and the production of the documents and records shall be enforced by a court of competent jurisdiction of this state in the same manner as the attendance, testimony of witnesses, and production of records are enforced in civil cases in the courts of this state.

(d) If a hearing relating to the denial, suspension, or revocation of a license under this Act is conducted by the administrator or assistant administrator, the applicant for the license or the licensee who is adversely affected by the decision of the administrator or assistant administrator is entitled to request a rehearing by the commission itself on making a timely motion for the rehearing.

Judicial Review

Sec. 18. (a) A person aggrieved by a ruling, order, or decision of the commission has the right to appeal to a district court in the county where the

hearing was held within 30 days from the service of notice of the action of the commission.

(b) The appeal having been properly filed, the court may request of the commission, and the commission on receiving the request shall within 30 days prepare and transmit to the court, a certified copy of its entire record in the matter in which the appeal has been taken. The appeal shall be tried in accordance with Texas Rules of Civil Procedure.

(c) In the event an appeal is taken by a licensee or applicant, the appeal does not act as a supersedeas unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.

(d) If an aggrieved person fails to perfect an appeal as provided in this section, the commission's ruling becomes final.

Contents of Listing Contract Forms

Sec. 18A. (a) Any listing contract form adopted by the commission relating to the contractual obligations between a seller of real estate and a real estate broker or salesman acting as an agent for the seller shall include a section that informs the parties to the contract that real estate commissions are negotiable.

(b) When appropriate to the form, it shall include a section explaining the availability of Texas coastal natural hazards information important to coastal residents.

Information Given to Complainants and Subjects of Complaints

Sec. 18B. (a) If a person files a complaint with the commission relating to a real estate broker or salesman, the commission shall furnish to the person an explanation of the remedies that are available to the person under this Act and information about appropriate state or local agencies or officials with which the person may file a complaint. The commission shall furnish the same explanation and information to the person against whom the complaint is filed.

(b) The commission shall keep an information file about each complaint filed with the commission.

(c) If a written complaint is filed with the commission relating to a real estate broker or salesman, the commission, at least as frequently as quarterly and until the complaint is finally resolved, shall inform the complainant and the person against whom the complaint is filed of the status of the complaint.

Registration of Real Estate Inspectors; Civil or Criminal Liability

Sec. 18C. (a) Any person or persons who hold themselves out to the public as being trained and qualified to inspect improvements to real property, including structural items and/or equipment and systems, and who accept employment for the purpose of performing such an inspection for a buyer or seller of real property pursuant to the provisions of any earnest money contract form adopted by the commission shall:

(1) register his or her current name, type of legal entity, mailing address, place of business or businesses, and business telephone number or numbers with the commission;

(2) furnish to the commission a bond executed by said person, as principal, and a surety company authorized to do business in this state, as surety, in the principal sum of $25,000, payable to the commission for the purpose of reimbursing aggrieved persons who suffer monetary damages by reason of conduct by the inspector which constitutes fraud, misrepresentation, deceit, false pretenses, or trickery; and

(3) pay the following fees to the commission:

(i) a fee not to exceed $100 for the filing of an original registration;

(ii) a fee not to exceed $100 for annual certification of registration status; and

(iii) a fee not to exceed $10 for a change of registration information.

(b) The bond required by Subdivision (2) of Subsection (a) hereof shall be open to successive claims up to the amount of face value of the bond, and the surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.

(c) No person required to register pursuant to the provisions of this section shall pay to any person who is acting as the agent, representative, attorney, or employee of the owner or prospective owner of real property any consideration, either directly or indirectly, as an inducement or compensation for the issuance, purchase, or acquisition of the inspection of improvements to real property.

(d) The commission shall assign a registration number to each person registered in accordance with this section, and said registration number shall be published in connection with the business use of such registrant's name in soliciting or performing inspections of improvements to real property. Only persons registered in accordance with the section shall be entitled to use the designation "Registered Real Estate Inspector."

(e) It is the intent of the legislature that the provisions of this section shall not apply to any electrician, plumber, carpenter, any person engaging in the business of structural pest control in compliance with the Texas Structural Pest Control Act, as amended (Article 135b–6, Vernon's Texas Civil Statutes), or any other person who repairs, maintains, or inspects improvements to real property and who does not hold himself or herself out to the public via personal solicitation or public advertising as being in the business of inspecting such improvements pursuant to the provisions of any earnest money contract form adopted by the commission.

(f) The provisions of this section shall not be construed so as to prevent any person from performing any and all acts which said person is authorized to perform pursuant to a license issued by the State of Texas or any governmental subdivision thereof.

(g) Any person or persons who wilfully violate this section is guilty of a Class B misdemeanor.

(h) It shall be a deceptive trade practice actionable under Subchapter E, Chapter 17, Business & Commerce Code, as amended,[1] and a violation of this section for any person required to register pursuant to the provisions of this section to perform an inspection pursuant to a written contract which does not contain the following statement in at least 10-point bold type above or adjacent to the signature of the purchaser of the inspection, to wit:

"NOTICE: YOU THE BUYER HAVE OTHER RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT WHICH ARE IN ADDITION TO ANY REMEDY WHICH MAY BE AVAILABLE UNDER THIS CONTRACT.
FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY, OR THE ATTORNEY OF YOUR CHOICE."

(i) Any violation of this section is a deceptive trade practice and is actionable by any person for $1,000 as a civil penalty or actual damages sustained, whichever is greater. Any plaintiff who shows a violation of this section shall recover court costs and attorney's fees that are reasonable in relation to the amount of work expended. Such violation is also actionable by any consumer as a deceptive trade practice pursuant to Subchapter E, Chapter 17, Business & Commerce Code, as amended.

[1] Business and Commerce Code, § 17.41 et seq.

Penalties; Injunctions

Sec. 19. (a) A person acting as a real estate broker or real estate salesman without first obtaining a license is guilty of a misdemeanor and on conviction shall be punishable by a fine of not less than $100 nor more than $500, or by imprisonment in the county jail for a term not to exceed one year, or both; and if a corporation, shall be punishable by a fine of not less than $1,000 nor more than $2,000. A person, on conviction of a second or subsequent offense, shall be punishable by a fine of not less than $500 nor more than $1,000, or by imprisonment for a term not to exceed two years, or both; and if a corporation, shall be punishable by a fine of not less than $2,000 nor more than $5,000.

(b) In case a person received money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of Subsection (a) of this section, he shall, in addition, be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by an aggrieved person.

(c) When in the judgment of the commission a person has engaged, or is about to engage, in an act or practice which constitutes or will constitute a violation of a provision of this Act, the county attorney or district attorney in the county in which the violation has occurred or is about to occur, or in the county of the defendant's residence, or the attorney general may maintain an action in the name of the State of Texas in the district court of such county to abate and temporarily and permanently enjoin the acts and practices and to enforce compliance with this Act. The plaintiff in an action under this subsection is not required to give a bond, and court costs may not be adjudged against the plaintiff.

Actions for Compensation or Commission; Abstracts or Title Insurance

Sec. 20. (a) A person may not bring or maintain an action for the collection of compensation for the performance in this state of an act set forth in Section 2 of this Act without alleging and proving that the person performing the brokerage services was a duly licensed real estate broker or salesman at the time the alleged services were commenced, or was a duly licensed attorney at law in this state or in any other state.

(b) An action may not be brought in a court in this state for the recovery of a commission for the sale or purchase of real estate unless the promise or agreement on which the action is brought, or some memorandum thereof, is in writing and signed by the party to be charged or signed by a person lawfully authorized by him to sign it.

(c) When an offer to purchase real estate in this state is signed, the real estate broker or salesman shall advise the purchaser or purchasers, in writing, that the purchaser or purchasers should have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or that the purchaser or purchasers should be furnished with or obtain a policy of title insurance. Failure to advise the purchaser as provided in this subsection precludes the payment of or recovery of any commission agreed to be paid on the sale.

[Amended by Acts 1975, 64th Leg., p. 533, ch. 216, § 1, eff. May 19, 1975; Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.009, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 871, ch. 396, § 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1203, ch. 585, §§ 1 to 13, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 158, ch. 71, §§ 1 to 6, eff. Aug. 23, 1981; Acts 1981, 67th Leg., p. 300, ch. 121, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3253, ch. 856, § 5, eff. June 18, 1981.]

Sections 7 and 8 of Acts 1981, 67th Leg., p. 161, ch. 71, provide:

"Sec. 7. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed.

"Sec. 8. If any article, section, subsection, sentence, clause, or phrase of this Act is for any purpose or reason held to be unconstitutional, such invalid portion shall not affect the validity of the remaining portions of this Act. The legislature hereby declares that it would have passed the valid portions of the Act irrespective of the fact that any one or more portions thereof be declared unconstitutional."

Sections 2 and 3 of Acts 1981, 67th Leg., p. 302, ch. 121, provide:

"Sec. 2. All laws and parts of laws in conflict with this Act are repealed.

"Sec. 3. If any word, phrase, clause, paragraph, sentence, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, or provision."

Sections 6 and 7 of Acts 1981, 67th Leg., p. 3253, ch. 856, provide:
"Sec. 6. All laws and parts of laws in conflict with this Act are repealed.
"Sec. 7. If any word, phrase, clause, paragraph, sentence, part, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, or provision."

Art. 6573b. Residential Service Company Act

Text as added by Acts 1979, 66th Leg., p. 1812, ch. 739, § 1

Short Title

Sec. 1. This Act constitutes and shall be known as the Residential Service Company Act.

Statutory Construction in Relationship to Other Laws

Sec. 2. (a) Except as otherwise provided in this Act, provisions of the insurance laws of this state shall not be applicable to any service company granted a license under this Act. This provision shall not apply to an insurance company licensed and regulated pursuant to the insurance laws of this state.

(b) Nothing in this Act shall apply to "home warranty insurance" as defined in Section 2, Article 5.53–A of the Insurance Code.

(c) The provisions of this Act shall not be applicable to any person who sells, offers for sale or issues any service or maintenance contract or agreement which provides for the maintenance, repair, service, replacement, operation, or performance of any product or part thereof manufactured or sold by such seller, offeror, or issuer, and no such person, its employees or agents shall be required to be licensed or regulated under this Act.

(d) Notwithstanding any other exemptions or provisions contained in this Act, this Act may not be construed to exempt any other warranties or service contracts other than residential service contracts defined herein from the provisions of the Insurance Code.

Delegation of Authority

Sec. 3. When in this Act a power, right, or duty is conferred on the Texas Real Estate Commission, the commission may direct such power, right, or duty to be exercised by the administrator or the assistant administrator of the commission.

Definitions

Sec. 4. (a) "Residential service contract" means any contract or agreement whereby, for a fee, a person undertakes, for a specified period of time, to maintain, repair, or replace all or any part of the structural components, the appliances, or the electrical, plumbing, heating, cooling, or air-conditioning systems of residential property; provided, however, the term does not mean nor include any service or maintenance contract or agreement sold, offered for sale, or issued by any manufacturer or merchant in which such contract or agreement the manufacturer or merchant undertakes, for a fee and for a specified period of time, to service, maintain, repair, or replace any product or part thereof, including but not limited to the structural components, the appliances, or the electrical, plumbing, heating, cooling, or air-conditioning systems of residential property, manufactured or sold by such manufacturer or merchant, or installed by such merchant in any building or residence.

(b) "Service company" means any person who issues and performs, or arranges to perform, services pursuant to a residential service contract.

(c) "Licensed service company" means a service company which is licensed by the Texas Real Estate Commission as provided herein.

(d) "Person" means any individual, partnership, corporation, association, or other organization.

(e) "Commission" means the Texas Real Estate Commission.

(f) "Holder" or "contract holder" means any person entitled to receive services from a service company pursuant to a residential service contract.

Powers of the Commission

Sec. 5. The commission shall administer this Act and, to that end, may adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of this Act.

License Required

Sec. 6. (a) No person shall issue, or undertake or arrange to perform services pursuant to residential service contracts unless such person is a licensed service company or its authorized representative.

(b) No person shall sell, offer to sell, arrange or solicit the sale of, or receive applications for, residential service contracts, unless (a) such person is an employee of a licensed service company or is duly licensed as a real estate salesman, real estate broker, mobile home dealer, or insurance agent in this state, and (b) such residential service contracts are issued by a licensed service company.

(c) Notwithstanding any law of this state to the contrary, any person may apply to the commission for and obtain a license to offer residential service contracts in compliance with this Act. A foreign corporation may qualify under this Act, subject to its registration to do business in this state as a foreign corporation under the Texas Business Corporation Act and compliance with all provisions of this Act and other applicable Texas statutes.

(d) Within 90 days of the effective date of this Act, every service company doing business in this state shall submit an application for a license. The commission shall either approve or deny the application within six months. The applicant may continue to operate until its application is denied. In the event that an application is denied, the applicant shall henceforth be treated as a service company whose license has been revoked.

Application for License

Sec. 7. (a) Each application for a license shall be on a form prescribed by rule of the commission and shall be verified by the applicant, an officer, or other authorized representative of the applicant, and shall set forth or be accompanied by the following:

(1) a copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents and all amendments thereto;

(2) a copy of the bylaws, rules, and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) a list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing body or committee, the principal officer in the case of a corporation, and the partners or members in the case of a partnership or association;

(4) a copy of the residential service contract made or to be made between the applicant and any other person;

(5) a statement generally describing the residential service contract, its coverage or plan;

(6) a financial statement prepared by an independent certified public accountant within six months prior to submission of application showing the applicant's assets, liabilities, and sources of financial support. The commission may direct that additional or more recent financial information is required for proper administration of this Act;

(7) a description of the proposed method of marketing the contracts and a statement as to the sources of working capital, as well as any other sources of funding;

(8) a power of attorney duly executed by such applicant, if not domiciled in this state, appointing the administrator of the commission and his successors in office, or a duly authorized deputy, as the true and lawful attorney of such applicant in and for the state upon whom all lawful processes in any legal action or proceedings against the applicant or its agents on a cause of action arising in this state may be served;

(9) a license application fee not to exceed $3,500 as determined by the commission; and

(10) such other information as the commission may require to make the determinations required by this Act.

(b) A service company shall file notice with the commission prior to any modification of the operations or documents described in Subsection (a) of this section.

(c) As soon as reasonably possible after the application has been submitted, the commission shall in writing approve or disapprove same. An application shall be considered approved unless disapproved within 30 days; provided that the commission may by official order postpone the action for such further time, not exceeding 30 days, as may be considered necessary for proper consideration.

Issuance of License

Sec. 8. (a) Upon receipt of an application in approved form as provided in Section 7, the commission shall determine whether the applicant, with respect to the services to be provided, has demonstrated the potential ability to assure that such services will be provided in a timely and responsible manner.

(b) The commission shall, after notice and hearing, issue or deny a license to any person filing an application pursuant to Section 7 of this Act within 75 days of the receipt of same.

(c) Issuance of the license shall be granted if the commission determines:

(1) that the applicant has demonstrated the potential ability to assure that the services will be provided in a timely and responsible manner;

(2) that the person responsible for the conduct of the affairs of the applicant is competent, trustworthy, and possesses a good reputation;

(3) that the applicant may reasonably be expected to meet its obligations pursuant to its residential service contract. In making this determination, the commission shall consider:

(i) the financial soundness of the applicant;

(ii) any agreement between applicant and any other party which provides for the provision of the services required in the residential service contract; and

(iii) any other matters which the commission deems relevant; and

(4) that the applicant has complied with or will comply with each of the provisions of this Act.

(d) If the commission determines that a license shall not be granted, the commission shall notify the applicant that it is deficient, and shall specify in writing in what respects it is deficient.

(e) A license shall continue in force as long as the person to whom it is issued meets the requirements of this Act or until suspended or revoked by the commission or terminated at the request of the licensee.

Protection Against Insolvency

Sec. 9. (a) A residential service company shall maintain a funded reserve for its liability to furnish repairs and replacement services under its issued and outstanding contracts. Such reserve shall be calculated according to sound actuarial principles. Such reserve shall not be required to be greater than 40 percent of annualized contract fees received in this

state, less any amounts theretofore paid on account of such liability.

(b) For purposes of this article, such reserve shall not include contract fees on home service contracts to the extent that provision is made for reinsurance in an admitted insurer and/or a surplus line insurer and/or a surplus line bonding company or residential service company of the outstanding risk on such contracts; provided however that the issuer of such reinsurance has submitted to the commission for its approval evidence, by certified audit and other pertinent information it may require, of its ability to cover its contractual obligations.

(c) Each service company shall furnish a surety bond in the amount of $100,000 as a guarantee that the obligation of the service company to the persons contracting for its services shall be performed.

Annual Report

Sec. 10. (a) Each service company shall annually, on or before the 1st day of April, file a report, verified by at least two principal officers, with the commission covering the preceding calendar year.

(b) Such report shall be on forms prescribed by the commission and shall include:

(1) a financial statement of the service company, including its balance sheet and receipts and disbursements for the preceding year, certified by an independent public accountant;

(2) any material changes in the information submitted pursuant to Section 7;

(3) the number of residential service contracts entered into during the year, the number of holders of contracts as of the end of the year, and the number of contracts terminating during the year; and

(4) such other information relating to the performance and solvency of the service company as is necessary to enable the commission to carry out its duties under this Act and such information shall be, to the extent legally permissible, confidential in nature and solely for the use of the commission.

Prohibited Practices

Sec. 11. (a) No service company may cause or permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive.

(b) No service company, unless licensed as an insurer, may use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation, or any other service company doing business in this state.

(c) Only those persons who comply with the provisions of this Act and are issued a license by the commission as provided herein may use the phrase "residential service company" in the course of operation.

(d) No provisions of this Act shall be construed to exempt a residential service company from liability for the actions of its agents or representatives relevant to the conduct of that company's business as provided by the common law or statutory law of this state.

(e) No seller or his agent shall make purchase of a residential service contract a condition of sale, and seller or his agent shall furnish buyer a statement that shall clearly and conspicuously state that purchase is optional and buyer may purchase similar coverage through other residential service companies or insurance companies authorized to transact business in Texas.

(f) No residential service company or its agent shall without the written consent of the homeowner, lessor, or renter knowingly charge a homeowner, lessor, or renter for duplication of coverage or duties required by state or federal law, including coverage under Section 14 of the Texas Mobile Home Standards Act (Article 5221f, Vernon's Texas Civil Statutes), a warranty expressly issued by a manufacturer or seller of a product, or any implied warranty enforceable against lessor, seller, or manufacturer of a product.

Rebates or Commissions

Sec. 12. No service company shall pay to any person which is acting as the agent, representative, attorney, or employee of the owner or prospective owner of residential property with respect to which a residential service contract is issued or is to be issued, any commission or any other consideration, either directly or indirectly, as an inducement or compensation for the issuance, purchase, or acquisition of a residential service contract, provided, however, that a service company may make reasonable payment for the sale, advertising, inspection, or processing of residential service contracts.

Examinations

Sec. 13. (a) The commission may make an examination of the affairs of any service company as it is deemed necessary.

(b) Every service company shall make its books and records relating to its operation available for such examinations and in every way facilitate the examinations.

(c) For the purpose of examinations, the commission may administer oaths to and examine the officers and agents of the service company.

Hazardous Financial Condition

Sec. 14. (a) Whenever the financial condition of a service company indicates a condition such that the continued operation of the service company might be

hazardous to its service contract holders, creditors, or the general public, then the commission may, after notice of hearing, order the service company to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by reinsurance, and/or by obtaining an appropriate bond from an admitted carrier or a surplus line carrier;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods;

(4) to suspend or limit the writing of new business for a period of time; or

(5) to increase the service company's net worth by contribution.

(b) The commission is authorized, by rules and regulations, to fix uniform standards and criteria for early warning that the continued operation of any service company might be hazardous to its service contract holders, creditors, or the general public, and to fix standards for evaluating the financial condition of any service company which standards shall be consistent with the purposes expressed in Subsection (a) of this section.

Evidence of Coverage and Charges

Sec. 15. (a)(1) Every service contract holder residing in this state is entitled to evidence of coverage under a service contract. The service company shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of evidence of coverage or amendment thereto, has been filed with the commission not less than 30 days in advance of its issuance or use.

(3) An evidence of coverage shall contain:

(A) no provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading, or deceptive; and

(B) a clear and complete statement, if a contract, or a reasonably complete facsimile, if a certificate, of:

(i) the services or benefits to which the holder is entitled;

(ii) any limitation on the services, kinds of services, or benefits to be provided, including any deductible or co-payment feature;

(iii) where and in what manner information is available as to how services may be obtained;

(iv) the period during which the coverage will remain in effect;

(v) the service company's agreement that services will be performed upon telephonic request therefor to the service company, without any requirement that claim forms or applications be filed prior to the rendition of service;

(vi) the service company's agreement that the services contracted for will be initiated under normal circumstances by the service company within 48 hours after request is made therefor by the holder of the contract; and

(vii) the service fee, if any, to be charged for a service call.

(b) No schedule of charges for holder coverage for services or amendments thereto may be used in conjunction with any service contract until a copy of such schedule or amendments thereto has been filed with the commission not less than 60 days in advance of its implementation. The commission shall determine that such schedule of charges bears a reasonable relationship to the amount, term, and conditions of the contract within 60 days of filing, and may reject any schedule which does not bear such reasonable relationship.

(c) The commission shall approve any evidence of coverage if the requirements of this section are met. If the commission disapproves such filing, it shall notify the filer. In the notice, the commission shall specify in detail the reason for the disapproval. A hearing shall be granted within 30 days after a request in writing by the person filing. If the commission does not approve any evidence of coverage within 30 days after the filing thereof, it shall be deemed approved.

(d) The commission may require the submission of relevant information it deems necessary in determining whether to approve or disapprove any evidence of coverage.

Nonwaiver of Remedies

Sec. 16. (a) A contract holder does not waive under a residential service contract any remedy that the holder may have under any other law against any other person.

(b) It shall be a deceptive trade practice actionable under Chapter 17, Subchapter E, Business & Commerce Code, as amended,[1] and a violation of this Act for any person to sell, or offer to sell, a residential service contract which does not contain the following statement in at least 10-point bold type above or adjacent to the signature of the purchaser, to wit:

NOTICE: YOU THE BUYER HAVE OTHER RIGHTS AND REMEDIES UNDER THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT WHICH ARE IN ADDITION TO ANY REMEDY WHICH MAY BE AVAILABLE UNDER THIS CONTRACT.

FOR MORE INFORMATION CONCERNING YOUR RIGHTS, CONTACT THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE, YOUR LOCAL DISTRICT OR COUNTY ATTORNEY OR THE ATTORNEY OF YOUR CHOICE.

[1] Business and Commerce Code, § 17.41 et seq.

Cancellation

Sec. 17. Any residential service contract shall be noncancellable by the service company during the initial term for which it was issued, except for:

(1) nonpayment of any service contract fees or charges due from the holder under the terms of the residential service contract;

(2) fraud or misrepresentation by the holder of facts material to the issuance of such contract; or

(3) contracts providing coverage prior to the time that an interest in the residential property to which it attaches is sold, upon the contingency that such sale does not occur.

Suspension or Revocation of License

Sec. 18. (a) The commission may suspend or revoke any license issued to a service company under this Act if the commission finds any of the following conditions exist:

(1) the service company is operating in contravention of its basic organization documents or in a manner which is contrary to that described in and reasonably inferred from any information submitted under Section 7 of this Act, unless amendments to such submissions have been filed with and approved by the commission;

(2) the service company issues evidence of coverage or uses a schedule of charges which does not comply with the requirements of Section 15 of this Act;

(3) the service company is no longer financially responsible and may be reasonably expected to be unable to meet its obligations to service contract holders;

(4) the service company has failed to comply with the provisions of Section 9 of this Act;

(5) the service company, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

(6) the continued operation of the service company would be hazardous to its contract holders;

(7) the service company has otherwise failed to comply substantially with this Act, and any rule or regulation thereunder.

(b) When the license of a service company is revoked, such service company shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commission may, by written order, permit such further operation of the service company as it may find to be in the best interests of the service contract holders, to the end that the holders will be afforded the greatest practical opportunity to obtain the services contracted for.

Receivership

Sec. 19. When, in the opinion of the commission, the continued operation of a service company would be hazardous either to the service contract holders or to the people of the state, the commission may request a district court in Travis County, Texas, to appoint a receiver. Upon adequate notice and hearing, if the court determines that a receiver should be appointed in order to protect the rights of the service contract holders or the public, the court shall issue an order appointing a receiver. Said order must clearly state whether the receiver will have general power to manage and operate the service company's business or have power to manage only the service company's finances.

Appeals

Sec. 20. Any person adversely affected by any rule, ruling, or decision of the commission may file a petition setting forth the particular objection to such rule, ruling, or decision, or either or all of them, in a district court of Travis County, Texas, and not elsewhere, against the Texas Real Estate Commission as a defendant. Said appeal shall be filed within 20 days after the commission has entered an order. The decision of the commission shall not be enjoined or stayed except on application to such district court after notice to the Texas Real Estate Commission. The proceedings on appeal shall be under the substantial evidence rule. Either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall at once be returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The commission shall not be required to give any appeal bond in any cause arising hereunder.

Penalty

Sec. 21. A person or persons who wilfully violate this Act or the rules promulgated pursuant to this Act or who knowingly makes a false statement with respect to a report or a statement required by this Act is guilty of a Class B misdemeanor. Any service company doing business in violation of this Act shall forfeit $100 for every day it continues to write new business while in violation of this Act.

Injunctions

Sec. 22. When it appears to the commission that a service company is violating or has violated this Act or any rule or regulation issued pursuant to this Act, the commission may bring suit in a district court of Travis County, Texas, to enjoin the violation and for such other relief as the court may deem appropriate.

Civil Penalty

Sec. 23. Any violation of this Act is a deceptive trade practice and is actionable by any person for $1,000 as a civil penalty, or actual damages sustained, whichever is greater. Any plaintiff who

shows a violation of this Act shall recover court costs and attorney's fees that are reasonable in relation to the amount of work expended. Such violation is also actionable by any consumer as a deceptive trade practice pursuant to Chapter 17, Subchapter E, Business & Commerce Code, as amended.

Fees

Sec. 24. Every person subject to this chapter shall pay the commission the following fees:

(a) for filing a copy of its original application for license or amendment thereto not to exceed $3,500;

(b) for filing each annual report pursuant to Section 10 of this Act, not to exceed $3,500;

(c) the expense of any examinations conducted pursuant to this Act; and

(d) for every other filing required by this Act, not to exceed $500.

Disposition of Funds

Sec. 24A. Funds collected by the commission under this Act shall be deposited in the State Treasury to the credit of a special fund to be known as the residential service company fund. The fund may be used only to administer this Act.

Exemptions

Sec. 25. The provisions of this Act shall not apply to any of the following persons and transactions, and each and all of the following persons and transactions are hereby exempted from the provisions of this Act, to wit:

(a) performance guarantees given by either the builder of a home or the manufacturer or seller of an appliance or other system or component;

(b) any residential service contract executed on or before the effective date of this Act;

(c) any service contract, guarantee, or warranty intending to guarantee or warrant the repairs or service of a home appliance, system, or component, provided such service contract, guarantee, or warranty is issued by a person who has sold, serviced, repaired, or provided replacement of such appliance, system, or component at the time of, or prior to the issuance of such contract, guarantee, or warranty; and provided further that the person issuing the service contract, guarantee, or warranty does not engage in the business of a service company;

(d) any person engaging in the business of structural pest control in compliance with the Texas Structural Pest Control Act, as amended (Article 135b–6, Vernon's Texas Civil Statutes, 1925);

(e) any service or maintenance contract or agreement, or warranty, which provides for, warrants, or guarantees, the maintenance, repair, service, replacement, or operation or performance, of any product or part thereof, including but not limited to a structural component, the appliances, or the electrical, plumbing, heating, cooling or air-conditioning systems in or of a building or residence, provided such service or maintenance contract or agreement, or warranty is sold, offered for sale, or issued by the manufacturer or merchant who manufactured or sold such product or part thereof.

[Acts 1979, 66th Leg., p. 1812, ch. 739, § 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 74, ch. 34, § 3, eff. April 15, 1981; Acts 1981, 67th Leg., p. 2628, ch. 707, § 4(4), eff. Aug. 31, 1981.]

For text as enacted by Acts 1963, 58th Leg., p. 850, ch. 325, § 6, see art. 6573b, Compact Edition, Volume 5

Sections 2 and 3 of the 1979 Act provided:

"Sec. 2. If any section, subsection, paragraph, sentence, clause, phrase, or word in this Act, or application thereof to any person or circumstance for any reason is held invalid, such holdings shall not affect the validity of the remaining portions of this Act, and the legislature hereby declares it would have passed such remaining portions of this Act despite such invalidity of any part thereof.

"Sec. 3. All laws or parts of laws in conflict or inconsistent herewith are hereby repealed to the extent of such conflict or inconsistency only."

TITLE 114

RECORDS

1. RECORDS

Article

6574c. Microfilming and Retention of Public Records by Incorporated Cities.

1. RECORDS

Art. 6574b. Photographic Duplication of Public Records; Disposition of Original Records

Repeal

Acts 1975, 64th Leg., p. 367, ch. 158, classified as art. 6574c, relating to microfilming and retention of public records by incorporated cities, provided in section 4 that this article is repealed, to the extent of any conflict, including but not limited to art. 6574c.

Art. 6574c. Microfilming and Retention of Public Records by Incorporated Cities

Ordinance for Microfilm Process

Sec. 1. Any incorporated city in this state may adopt an ordinance providing for a microphotograph or microfilm process which accurately and permanently copies, reproduces, or originates public records on film, if the ordinance contains:

(a) a provision specifying the types of records for recording on microfilm;

(b) a provision requiring indices to microfilm records;

(c) a provision requiring microfilm to meet requirements of the United States of America Standards Institute for archival quality, density, resolution, and definition, except that microfilm intended only for short-term use, as determined by the governing body;

(d) a provision requiring a person or persons to check and certify that each microfilm record is a true and correct duplication of the original public record; and

(e) a provision which guarantees the public free access to information in microphotographs or microfilms to which they are entitled under law.

Microfilm Records as Original Record; Certified Copy

Sec. 2. A microfilm record of an incorporated city is an original record and will be accepted by any court or administrative agency of this state, if the microfilm record is made in compliance with an ordinance authorized by this Act. When issued and certified by a record keeper of an incorporated city, a copy on paper or film of the microfilm record will be accepted as a certified copy of an original record by any court or administrative agency of this state.

Destruction of Original Records; Notice; Transfer to State Library

Sec. 3. Original public records which are microfilmed in compliance with an ordinance authorized by this Act may be destroyed as directed by the governing body with the advice and consent of the city attorney or attorney officially performing the duties of city attorney, unless otherwise required by federal law or state law other than this article. Any original public record, the subject matter of which is in litigation, may not be destroyed until such litigation is final. Original public records which are not microfilmed in compliance with an ordinance authorized by this Act or are determined worthless by the governing body of an incorporated city may be destroyed as directed by the governing body. Notice of proposed destruction or disposition of original public records shall first be given to the State Librarian or State Archivist, and if such records are, in his opinion, needed for the State Library, the records shall be transferred thereto.

Repealer

Sec. 4. Chapter 58, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6574b, Vernon's Texas Civil Statutes), is repealed, to the extent of any conflict, including but not limited to this Act.

Severability

Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

[Acts 1975, 64th Leg., p. 367, ch. 158, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 315, ch. 145, §§ 1, 2, eff. Aug. 27, 1979.]

TITLE 115

REGISTRATION

CHAPTER TWO. ACKNOWLEDGMENTS AND PROOF FOR RECORD

Article
6607a. Short Forms for Acknowledgment.

Art. 6607a. Short Forms for Acknowledgment

Sec. 1. The forms of acknowledgment set forth in Section 3 of this article may be used as alternatives to other authorized forms. They shall be known as and may be referred to as "statutory forms of acknowledgment." They may be altered as circumstances require, and the authorization of these forms does not prevent the use of other forms. A person's marital status or other status may be shown after the person's name.

Sec. 2. In the forms of acknowledgment provided by this article, the words "was acknowledged" mean:

(1) in the case of the acknowledgment of a natural person, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the acknowledged instrument for the purposes and consideration expressed in the instrument;

(2) in the case of the acknowledgment of a person as principal by an attorney-in-fact for the principal, that the attorney-in-fact personally appeared before the officer taking the acknowledgment and that the attorney-in-fact acknowledged executing the acknowledged instrument as the act of the principal for the purposes and consideration expressed in the instrument;

(3) in the case of the acknowledgment of a partnership by a partner or partners acting for the partnership, that the partner or partners personally appeared before the officer taking the acknowledgment and acknowledged executing the acknowledged instrument as the act of the partnership for the purposes and consideration expressed in the instrument;

(4) in the case of the acknowledgment of a corporation by an officer or agent acting for the corporation, that the acknowledging officer or agent personally appeared before the officer taking the acknowledgment and that the officer or agent acknowledged executing the acknowledged instrument in the capacity stated as the act of the corporation for the purposes and consideration expressed in the instrument; and

(5) in the case of a person acknowledging as a public officer, trustee, executor, administrator, guardian, or other representative, that the public officer, trustee, executor, administrator, guardian, or other representative personally appeared before the officer taking the acknowledgment and acknowledged executing the acknowledged instrument by proper authority and in the capacity stated and for the purposes and consideration expressed in the instrument.

Sec. 3. Short forms of acknowledgment include:

(1) For a natural person acting in his or her own right:

State of Texas

County of _____

This instrument was acknowledged before me on (date) by (name or names of person or persons acknowledging).

(Signature of officer)

(Title of officer)

My commission expires: _____.

(2) For a natural person as principal acting by attorney-in-fact:

State of Texas

County of _____

This instrument was acknowledged before me on (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

(Signature of officer)

(Title of officer)

My commission expires: _____.

(3) For a partnership acting by one or more partners:

State of Texas

County of _____

This instrument was acknowledged before me on (date) by (name of acknowledging partner or partners), partner(s) on behalf of (name of partnership), a partnership.

(Signature of officer)

(Title of officer)

My commission expires: _____.

(4) For a corporation:

State of Texas

County of _____

This instrument was acknowledged before me on (date) by (name of officer), (title of officer) of (name of corporation acknowledging) a (state of incorporation) corporation, on behalf of said corporation.

(Signature of officer)

(Title of officer)

My commission expires: _____.

(5) For a public officer, trustee, executor, administrator, guardian, or other representative:

State of Texas

County of _____

This instrument was acknowledged before me on (date) by (name of representative) as (title of representative) of (name of entity or person represented).

(Signature of officer)

(Title of officer)

My commission expires: _____.

Sec. 4. To avoid the unnecessary use of words in acknowledgments whether the statutory form or another form is used, the rules and definitions in this article shall apply to all instruments executed or delivered on or after the effective date of this article.

[Added by Acts 1981, 67th Leg., p. 922, ch. 338, § 1, eff. Aug. 31, 1981.]

CHAPTER THREE. EFFECT OF RECORDING

Article
6626d. Canceling Subdivisions.

Art. 6626. What May Be Recorded

(a) The following instruments of writing which shall have been acknowledged or proved according to law, are authorized to be recorded, viz.: all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods and chattels, or moveable property of any description; provided, however, that in cases of subdivision or re-subdivision of real property no map or plat of any such subdivision or re-subdivision shall be filed or recorded unless and until the same has been authorized by the Commissioners Court of the county in which the real estate is situated by order duly entered in the minutes of said Court, except in cases of the partition or other subdivision through a court of record; provided that where the real estate is situated within the corporate limits or within five miles of the corporate limits of any incorporated city or town, the governing body thereof or the city planning commission, as the case may be, as provided in Article 974a, Vernon's Texas Civil Statutes, shall perform the duties hereinabove imposed upon the Commissioners Court. Nothing in this Article shall require the acknowledgement of the party or parties to, nor prohibit the recording of, financing statements or security agreements filed as financing statements or continuation statements filed for record pursuant to the Business & Commerce Code.

(b) A deed or other conveyance conveying an interest in real property, if executed after December 31, 1981, shall contain a mailing address of each grantee appearing on the document or in a separate instrument signed by a grantor or grantee and attached to the document. Failure to include an address of each grantee in the document or attached instrument does not affect the validity of the conveyance between the parties to the document. Any such deed or other conveyance which fails to include a mailing address of each grantee appearing in the document or attached instrument may only be filed for record with the county clerk of the county in which the real property is situated after payment of a penalty filing fee equal to the greater of (1) twice the statutory filing fee for the filing of such documents with the county clerk, or (2) the sum of $25. Upon acceptance by the county clerk of a deed or other conveyance for recordation and the payment of the filing fee as determined by the county clerk, it shall be conclusively presumed that such deed or other conveyance meets all filing fee requirements of this Subsection (b) of this Article 6626, prerequisite to the lawful filing of a deed or other conveyance.

[Amended by Acts 1975, 64th Leg., p. 940, ch. 353, § 13, eff. June 19, 1975; Acts 1981, 67th Leg., p. 498, ch. 206, § 1, eff. Jan. 1, 1982.]

Art. 6626a. Subdivision Plats; Recording; Counties of Less Than 190,000 Population; Powers of Commissioners Court

[See Compact Edition, Volume 5 for text of 1 and 2]

Sec. 3. The Commissioners Courts of any such counties may, by an order duly adopted and entered upon the minutes of the Court, after a notice published in a newspaper of general circulation in the county, be specifically authorized to make the following requirements:

(a) To provide for right of way on main artery streets or roads within such subdivision of a width of not less than fifty (50) feet nor more than one hundred (100) feet.

(b) To provide for right of way on all other streets or roads in such subdivision of not less than forty (40) feet nor more than fifty (50) feet.

(c) To provide that the street cut on main arteries within the right of way be not less than thirty (30) feet nor more than forty-five (45) feet.

(d) To provide for the street cut on all other streets or roads within such subdivision within the right of way to be not less than twenty-five (25) feet nor more than thirty-five (35) feet.

(e) To promulgate reasonable specifications to be followed in the construction of any such roads or streets within such subdivision, considering the amount and kind of travel over said streets.

(f) To promulgate reasonable specifications to provide adequate drainage in accordance with standard engineering practices for all roads or streets in said subdivision or addition.

(g) To require the owner or owners of any such tract of land, which may be so subdivided, to give a good and sufficient bond for the proper construction of such roads or streets affected, with such sureties as may be approved by the Court; and in the event a surety bond by a corporate surety is required, such bond shall be executed by a surety company authorized to do business in the State of Texas. Such bond shall be made payable to the County Judge or his successors in office, of the county wherein such subdivision lies, and conditioned that the owner or owners of any such tract of land to be subdivided will construct any roads or streets within such subdivision in accordance with the specifications promulgated by the Commissioners Court of such county. The bond shall be in such an amount as may be determined by the Commissioners Court not to exceed the estimated cost of constructing such roads or streets.

[See Compact Edition, Volume 5 for text of 4]

[Amended by Acts 1979, 66th Leg., p. 809, ch. 367, § 1, eff. Aug. 27, 1979.]

Art. 6626d. Canceling Subdivisions

Any person, firm, association or corporation owning lands in this State, which lands have been subdivided into lots and blocks or small subdivisions, may make application to the commissioners court of the county wherein any such lands are located for permission to cancel all or any portion of such subdivision or subdivisions, so as to throw the said lands back into acreage tracts as it existed before such subdivisions were made. When such application is made by the owner or owners of such land, and it is shown that a cancellation of such subdivisions, or portion thereof, will not interfere with the established rights of any purchaser owning any portion of such subdivisions, or if it be shown that said person or persons agreed to such cancellation, said commissioners court shall enter an order, which order canceling said subdivision shall be spread upon the minutes of such court, authorizing such owner or owners of such lands to cancel the same by written instrument describing such subdivisions, or portions thereof, so cancelled as designated by said court. When such cancellation is filed and recorded in the deed records of such county, the tax assessor of such county shall assess such property as though it had never been subdivided. When such application is so filed, said court shall cause notice to be given of such application by publishing such application in some newspaper, published in the English language, in such county for at least three weeks prior to action thereon by said court, and action shall be taken on such petition or petitions at a regular term of said court. Such notice, in addition to said publication, shall command any person interested in such lands to appear at the time specified in such notice to protest if desired against such action. If such lands are delinquent for taxes for any preceding year, or years, and such application is granted as hereinbefore provided, the owner or owners of said land shall be permitted to pay such delinquent taxes upon an acreage basis, the same as if said lands had not been subdivided, and for the purpose of assessing lands for such preceding years the county assessor of taxes shall back assess such lands upon an acreage basis. This law shall not apply to any lands or lots included in an an incorporated city or town.

[Acts 1925, S.B. 84. Transferred from Art. 7227 by Acts 1981, 67th Leg., 1st C.S., p. 176, ch. 13, § 160, eff. Aug. 14, 1981.]

Art. 6627. When Sales, etc., to be Void Unless Registered

All bargains, sales and other conveyances whatever, of any land, tenements and hereditaments, whether they may be made for passing any estate of freehold of inheritance or for a term of years; and deeds of settlement upon marriage, whether land, money or other personal thing; and all deeds of trust and mortgages shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they shall be acknowledged or proved and filed with the clerk, to be recorded as required by law; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof or without valuable consideration, shall be valid and binding; provided, however, that the rights, duties, obligations, and priorities of debtors, secured parties and their heirs, successors, and assigns, and the rights and priorities of creditors and subsequent purchasers with respect to the goods or other collateral described in the financing statements or security agreements filed as financing statements or continuation statements filed for record pursuant to the Business & Commerce Code, shall be governed by that code.

[Amended by Acts 1975, 64th Leg., p. 940, ch. 353, § 14, eff. June 19, 1975.]

Art. 6630. Deeds, etc., Recorded

All deeds, conveyances, mortgages, deeds of trust, bonds for title, financing statements, security agreements filed as financing statements, continuation statements, covenants, defeasances, or other instruments of writing relating to real estate, which are authorized to be recorded, shall be recorded in the county where such real estate, or a part thereof, is situated; provided, that where such instruments

grant security interests by a utility, as such term is defined in Section 35.01 of the Business & Commerce Code, they shall be filed in the place and manner described in Section 35.02 of the Business & Commerce Code.

All such instruments, when relating to real estate situated in an unorganized county, shall be recorded in the county to which such unorganized county is attached for judicial purposes, in a well bound book, or books, to be kept for that purpose, separately from the records of the county to which it is attached and from other unorganized counties; and the clerk or other officer having the custody of such books, when such unorganized county shall be organized, or has been detached therefrom and attached to another county for judicial purposes, shall deliver such book or books, without charge, to the proper officer of such newly organized county, or of the county to which it is attached for judicial purposes when demanded by him; and, where such records have been heretofore kept in separate books, they shall also be delivered in like manner as above, and in each case the same shall become archives of the county to which it is so delivered. When such records have not heretofore been kept separately, upon the organization or attachment of such unorganized county to another organized county, a certified transcript from the records of such instruments so recorded shall be obtained by such new clerk or officer; and when so made the same shall in like manner become archives of such newly organized county, or county to which such unorganized county may be attached, as the case may be.

[Amended by Acts 1975, 64th Leg., p. 940, ch. 353, § 15, eff. June 19, 1975.]

TITLE 116

ROADS, BRIDGES, AND FERRIES

CHAPTER ONE. STATE HIGHWAYS

1. STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

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6663b. Mass Transportation.
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1. STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

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1. STATE DEPARTMENT OF HIGHWAYS AND PUBLIC TRANSPORTATION

Change of Names

The names of the State Highway Department and the State Highway Commission were changed to the State Department of Highways and Public Transportation and the State Highway and Public Transportation Commission, respectively, by Acts 1975, 64th Leg., p. 2063, ch. 678, § 3, amending art. 6663.

Art. 6663. Department

(a) The name of the State Highway Department is changed to the State Department of Highways and Public Transportation. The name of the State Highway Commission is changed to the State Highway and Public Transportation Commission. The name of the State Highway Engineer is changed to the State Engineer-Director for Highways and Public Transportation. Any reference in law to the State Highway Department or Texas Highway Department shall be construed as meaning the State Department of Highways and Public Transportation. A reference in law to the State Highway Commission shall be construed as meaning the State Highway and Public Transportation Commission. A reference in law to the State Highway Engineer shall be construed as meaning the State Engineer-Director for Highways and Public Transportation.

(b) The administrative control of the State Department of Highways and Public Transportation, hereinafter called the Department, shall be vested in the State Highway and Public Transportation Commission, hereinafter called the Commission, and the State Engineer-Director for Highways and Public Transportation. Said Department shall have its office at Austin where all its records shall be kept.

(c) The State Department of Highways and Public Transportation is subject to the Texas Sunset Act [1]; and unless continued in existence as provided by that Act the department is abolished effective September 1, 1987.

[Amended by Acts 1975, 64th Leg., p. 2063, ch. 678, § 3, eff. June 20, 1975; Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.147, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 6663a. Photographic or Microphotographic Records; Authority of Highway Department and Public Safety Department to Make; Destruction of Original Records

Sec. 1. The State Department of Highways and Public Transportation is hereby authorized to photograph, microphotograph, or film all records of any kind or character pertaining to departmental operations; and the Texas Department of Public Safety is hereby authorized to photograph, microphotograph, or film all records in connection with the issuance of operators' licenses, chauffeurs' licenses, and commercial operators' licenses and all records of the various divisions of the Texas Department of Public Safety, with the exception that no original fingerprint card or any evidence submitted in connection with a criminal case or any confession or statement made by the defendant in a criminal case shall be photographed or filmed for the purpose of disposing of the original records, and that whenever the State Department of Highways and Public Transportation or the Texas Department of Public Safety shall have photographed, microphotographed or filmed such records and whenever such photographs or microphotographs or films shall be placed in conveniently accessible files and provisions made for preserving, examining and using the same, the State Department of Highways and Public Transportation or the Texas Department of Public Safety may cause the original records from which the photographs, micro-

photographs or films have been made to be disposed of or destroyed; provided, however, that all deeds conveying land or interests in land to the State of Texas for highway purposes shall be retained and deposited in the offices of the State Department of Highways and Public Transportation at Austin, Texas. This authorization includes the creation of original records in micrographic form on media such as computer output microfilm.

[See Compact Edition, Volume 5 for text of 2]

Sec. 2a. The State Engineer-Director of the State Department of Highways and Public Transportation, and the Director of the Texas Department of Public Safety, or their duly authorized representatives are hereby authorized to certify to the authenticity of any photograph or microphotograph herein authorized and shall make such charges therefor as may be authorized by law. Such certified records shall be furnished to any person who is entitled to receive the same under the law.

[See Compact Edition, Volume 5 for text of 3]

[Amended by Acts 1979, 66th Leg., p. 1828, ch. 742, §§ 1, 2, eff. Aug. 27, 1979.]

Section 3 of the 1979 amendatory act provided:

"All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only."

Art. 6663b. Mass Transportation

Sec. 1. (a) The State Department of Highways and Public Transportation:

(1) may purchase, construct, lease, and contract for public transportation systems in the state;

(2) shall encourage, foster, and assist in the development of public and mass transportation, both intracity and intercity, in this state;

(3) shall encourage the establishment of rapid transit and other transportation media;

(4) shall develop and maintain a comprehensive master plan for public and mass transportation development in this state;

(5) shall assist any political subdivision of the state in procuring aid offered by the federal government for the purpose of establishing or maintaining public and mass transportation systems;

(6) shall conduct hearings and make investigations it considers necessary to determine the location, type of construction, and cost to the state or its political subdivisions of public mass transportation systems owned, operated, or directly financed in whole or in part by the state;

(7) may enter into any contracts necessary to exercise any functions under this Act;

(8) may apply for and receive gifts and grants from governmental and private sources to be used in carrying out its function under this Act;

(9) may represent the state in public and mass transportation matters before federal and state agencies;

(10) may recommend necessary legislation to advance the interests of the state in public and mass transportation;

(11) may not issue certification of convenience and necessity;

(12) may utilize the expertise of recognized authorities and consultants in the private sector, both for the planning and design of public and mass transportation systems.

(b) In the exercise of the power of eminent domain under the provisions of this Act which relate to public and mass transportation, the department shall be prohibited from any action which would unduly interfere with interstate commerce or which would establish any right to operate any vehicle on railroad tracks used to transport freight or other property.

Sec. 2. On the effective date of this Act, all programs, contracts, assets, and personnel of the Texas Mass Transportation Commission are transferred to the State Department of Highways and Public Transportation. The comptroller of public accounts and the State Board of Control shall assist in the orderly implementation of this transfer.

[Acts 1975, 64th Leg., p. 2062, ch. 678, §§ 1, 2, eff. June 20, 1975.]

Sections 3 and 4 of the 1975 Act amended arts. 6663 and 6669; § 5 thereof repealed art. 4413(34) creating the Mass Transportation Commission.

Art. 6663c. Administration and Funding of Mass Transportation

Findings and Purpose

Sec. 1. (a) The legislature finds that:

(1) transportation is the lifeblood of an urbanized society, and the health and welfare of that society depend on the provision of efficient, economical, and convenient transportation within and between urban areas;

(2) public transportation is an essential component of the state's transportation system;

(3) energy consumption and economic growth are vitally influenced by the availability of public transportation;

(4) providing public transportation has become so financially burdensome that private industry can no longer provide service in many areas in the state and that the continuation of this essential service on a private or proprietary basis is threatened; and

(5) providing public transportation is a public, governmental responsibility and a matter of direct concern to state government and to all the citizens of the state.

(b) The purposes of this Act are to provide:

(1) improved public transportation for the state through local governments acting as agents and instrumentalities of the state;

(2) state assistance to local governments and their instrumentalities in financing public trans-

portation systems to be operated by local governments as determined by local needs; and

(3) coordinated direction by a single state agency of both highway development and public transportation improvement.

Definitions

Sec. 2. In this Act:

(1) "Capital improvement" means the acquisition, construction, reconstruction, or improvement of facilities, equipment, or land for use by operation, lease, or otherwise in public transportation service in urbanized areas, and all expenses incidental to the acquisition, construction, reconstruction, or improvement including designing, engineering, supervising, inspecting, surveying, mapping, relocation assistance, acquisition of rights-of-way, and replacement of housing sites.

(2) "Commission" means the State Highway and Public Transportation Commission.

(3) "Department" means the State Department of Highways and Public Transportation.

(4) "Federally funded project" means a public transportation project proposed for funding under this Act which is being funded in part under the provisions of the Urban Mass Transportation Act of 1964, as amended,[1] the Federal-Aid Highway Act of 1973, as amended,[2] or other federal program for funding public transportation.

(5) "Local share requirement" means the amount of funds which are required and are eligible to match federally funded projects for the improvement of public transportation in this state.

(6) "Public transportation" means transportation by bus, rail, watercraft, or other means which provides general or specialized service to the public on a regular or continuing basis.

(7) "Urbanized area" means an area so designated by the United States Bureau of the Census or by general state law.

(8) "Ridesharing activities" means transportation provided by rubber-tired vehicles that carry no fewer than 10 nor more than 15 passengers and that are operated on a nonprofit basis.

Formula Program

Sec. 3. (a) The commission shall administer the formula program and allocate 60 percent of the funds in the public transportation fund to that program.

(b) Only an urbanized area with a population in excess of 200,000 according to the last preceding federal census is eligible for participation in the formula program. A municipality, regional authority, or other local governmental entity designated as a recipient of federal funds by the governor with the concurrence of the Secretary of the United States Department of Transportation is a designated recipient of funds under the formula program.

(c) The funds allocated to the formula program shall be apportioned annually on the basis of a formula under which the designated recipients of an eligible urbanized area are entitled to receive an amount equal to the sum of:

(1) one-half of the total amount apportioned to the formula program for the year multiplied by the ratio by which the population of the eligible urbanized area bears to the total population of all eligible urbanized areas that are eligible for the formula program; and

(2) one-half of the total amount apportioned to the formula program for the year multiplied by the ratio by which the number of inhabitants per square mile of the eligible urbanized area bears to the combined number of inhabitants per square mile of all eligible urbanized areas.

(d) Designated recipients may only use formula program funds to provide 65 percent of the local share requirement of federally funded projects for capital improvements.

(e) Within 30 days after an application for funds under the formula program is received, if there are unallocated formula funds for the applicant, the commission shall certify to the federal government that the state share of the local share requirement is available. The application must contain a certification by the designated recipient that:

(1) funds are available to provide 35 percent of the local share requirement of federally assisted programs; and

(2) the proposed public transportation project is consistent with ongoing, continuing, cooperative, and comprehensive regional transportation planning being carried out in accordance with the provisions of the Urban Mass Transportation Act of 1964, as amended, and the Federal-Aid Highway Act of 1973, as amended.

(f) If the commission has previously certified that the state share is available for a project, the commission shall direct that payment of the state share be made to the designated recipient within 30 days after federal approval of a proposed transportation project proposal.

(g) Funds allocated by the department for use in the formula program which are unencumbered and unexpended one year after the close of the fiscal year for which the funds were originally allocated shall be transferred at that time by the commission for use in the discretionary program.

Discretionary Program

Sec. 4. (a) The commission shall allocate 40 percent of the funds annually credited to the public transportation fund to the discretionary program, which shall be administered by the commission.

(b) Except as provided in Subsections (e) and (f) of this section, only rural and urban areas of the state other than urbanized areas eligible for partici-

pation in the formula program are eligible for participation in the discretionary program. Any local government having the power to operate or maintain a public transportation system may be a designated recipient of funds from the discretionary program.

(c) Designated recipients under the discretionary program may use discretionary program funds only to provide 65 percent of the local share requirement of federally funded projects for capital improvements, except that if a designated recipient certifies that federal funds are unavailable for a proposed project and the commission finds that the project is vitally important to the development of public transportation in this state, the commission may supply 50 percent of the total cost of that public transportation project to the designated recipient.

(d) In considering any project under this section, the commission shall take into consideration the need for fast, safe, efficient, and economical public transportation.

(e) Designated recipients in urbanized areas eligible for participation in the formula program and any local government having the power to operate or maintain a public transportation system within an urbanized area are also eligible to apply for and receive funds allocated by the commission for use in the discretionary program which are unexpended and unencumbered 180 days after the close of the fiscal year for which the funds were originally allocated and all unexpended and unencumbered funds transferred from the formula program to the discretionary program. The commission shall make grants out of the discretionary fund to designated recipients under the provisions of this section.

(f) Designated recipients in urbanized areas eligible for participation in the formula program and any local government having the power to operate or maintain a public transportation system within an urbanized area may apply for and receive funds from the discretionary program for capital expenditures to carry out ridesharing activities. If the commission approves an application to fund ridesharing activities, the commission shall provide 80 percent of the cost of the capital expenditures. An applicant for funding for ridesharing activities must certify that:

(1) funds are available to provide the remaining 20 percent of the cost of the expenditures;

(2) equipment furnished by the applicant in connection with ridesharing activities will be used primarily for commuting purposes; and

(3) ridesharing activities will be operated on a nonprofit basis and without publicly funded operating subsidies.

Public Transportation Fund

Sec. 5. The Public Transportation Fund is established as a special fund in the State Treasury. The Public Transportation Fund may only be used by the State Department of Highways and Public Transportation in carrying out the responsibilities and duties of the commission and the department for public transportation purposes as established under this state law. Grants of money to the state from public and private sources for public transportation shall be deposited in the Public Transportation Fund. On the effective date of this Act, the comptroller of public accounts shall transfer the sum of $1,000,000 from the General Revenue Fund to the Public Transportation Fund. There is hereby appropriated from the Public Transportation Fund the sum of $1,000,000 for use by the department for the period from the effective date of this Act through August 31, 1975, and thereafter. On September 1, 1975, and on September 1, 1976, the comptroller of public accounts shall transfer the sum of $15,000,000 each year from the General Revenue Fund to the Public Transportation Fund. There is hereby appropriated from the Public Transportation Fund the sum of $15,000,000 for each year of the biennium beginning September 1, 1975, for use by the department for public transportation in the state.

[Acts 1975, 64th Leg., p. 2064, ch. 679, eff. June 20, 1975. Amended by Acts 1979, 66th Leg., p. 1034, ch. 464, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2457, ch. 634, §§ 1 to 3, eff. Aug. 31, 1981.]

[1] 49 U.S.C.A. § 1601 et seq.
[2] 23 U.S.C.A. § 101 et seq.

Art. 6669. Engineer-Director

The Commission shall elect a State Engineer-Director for Highways and Public Transportation who shall be a Registered Professional Engineer in the State of Texas experienced and skilled in highway construction and maintenance and in public and mass transportation planning or development. He shall hold his position until removed by the Commission. He shall first execute a bond payable to the state in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his duties. He shall act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to it detailed reports of the progress of public road construction, public and mass transportation development, and statement of expenditures. He shall be allowed all actual traveling and other expenses therefor, under the direction of the Department, while absent from Austin in the performance of duty under the direction of the Commission.

[Amended by Acts 1975, 64th Leg., p. 2063, ch. 678, § 4, eff. June 20, 1975; Acts 1979, 66th Leg., p. 795, ch. 356, § 1, eff. Aug. 27, 1979.]

Art. 6673–1. Farm-to-Market Roads

(a) The farm-to-market road fund is established for financing the construction of farm-to-market roads by the State Department of Highways and Public Transportation.

(b) The State Department of Highways and Public Transportation shall use the money transferred to the farm-to-market road fund under Article 4364a, Revised Civil Statutes of Texas, 1925, and other funds made available to the department for such purposes so that not less than $23 million each year is used for the construction of additional miles of newly designed farm-to-market roads, meaning roads in rural areas, including feeder roads, secondary roads, school bus routes, rural mail routes, milk routes, and others, which roads and routes are not a part of the designated state highway system or the designated primary federal aid highway system.

(c) The farm-to-market road fund shall be used for a system of roads selected by the State Department of Highways and Public Transportation after consultation with the commissioners courts of the counties of the state relative to the most needed unimproved rural roads in the counties. The selections shall be made in a manner to insure equitable and judicious distribution of funds and work among the several counties of the state.

(d) The general characteristics of the roads to be selected are as follows:

(1) the roads shall not be potential additions to the federal aid primary highway system;

(2) the roads shall serve rural areas primarily and shall connect farms, ranches, rural homes, and sources of natural resources such as oil, mines, timber, etc., and water loading points, schools, churches, and points of public congregation, including community developments and villages;

(3) the roads shall be capable of assisting in the creation of economic values in the areas served;

(4) the roads shall preferably serve as public school bus routes, or rural free delivery postal routes, or both; and

(5) the roads shall be capable of early integration with the previously improved Texas road system, and at least one end should connect with a road already or soon to be improved on the state system of roads.

[Added by Acts 1981, 67th Leg., p. 2253, ch. 540, § 12, eff. Sept. 1, 1981.]

Acts 1981, 67th Leg., p. 1768, ch. 389, § 3, eff. Jan. 1, 1982, also adding an art. 6673–1, was repealed by Acts 1981, 67th Leg., p. 2779, ch. 752, § 9(i)(2), eff. Jan. 1, 1982.

Art. 6673a. Sale or Exchange and Conveyance of Abandoned Routes; Correction Deeds; Tax Exemption

[See Compact Edition, Volume 5 for text of 1]

Disposition of Proceeds; Land Never Used for Purpose for Which Acquired

Sec. 1A. If any real property owned by the state and sold under Section 1 of this article was acquired by a city or county with a part of the cost reimbursed to the city or county by the state, and it is determined by the State Highway and Public Transportation Commission that the real property was never used for the purpose for which it was acquired, the State Department of Highways and Public Transportation may pay to the city or county a percentage of the proceeds received from the sale, such percentage being equal to the percentage of the value or cost not reimbursed to the city or county at the time of the initial acquisition.

[See Compact Edition, Volume 5 for text of 2 to 6]

[Amended by Acts 1981, 67th Leg., p. 901, ch. 321, § 1, eff. June 8, 1981.]

Art. 6673a–1. Lease of Right-of-Way for Development of Oil and Gas

The State Highway and Public Transportation Commission may not lease:

(1) land owned by the state that was acquired to construct or maintain a highway, road, street, or alley; or

(2) land owned by the state under the jurisdiction or control of the commission.

[Added by Acts 1981, 67th Leg., p. 2573, ch. 686, § 2, eff. Aug. 31, 1981.]

Section 3 of the 1981 Act provides:

"This Act does not affect leases in existence on the effective date of this Act."

Art. 6673a–2. Lease of Right-of-Way for Development of Minerals Other Than Oil and Gas

Notwithstanding any provision of this chapter, the State Highway and Public Transportation Commission may lease for development of minerals other than oil and gas:

(1) land owned by the state that was acquired to construct or maintain a highway, road, street, or alley; or

(2) land owned by the state under the jurisdiction or control of the commission.

[Added by Acts 1981, 67th Leg., p. 2573, ch. 686, § 2, eff. Aug. 31, 1981.]

Section 3 of the 1981 Act provides:

"This Act does not affect leases in existence on the effective date of this Act."

Art. 6673e–1. Acquisition of Rights of Way in Cooperation with Local Officials; Payments to Counties and Cities

In the acquisition of all rights of way authorized and requested by the Texas Highway Department,[1] in cooperation with local officials, for all highways designated by the State Highway Commission [2] as United States or State Highways, the Texas Highway Department is authorized and directed to pay to the counties and cities not less than ninety percent (90%) of the value as determined by the Texas Highway Department of such requested right of way or the net cost thereof, whichever is the lesser amount; provided, that if condemnation is necessary, the participation by the Texas Highway Department shall be based on the final judgment, conditioned that such Department has been notified

in writing prior to the filing of such suit and prompt notice is also given as to all action taken therein. Such Department shall have the right to become a party at any time for all purposes, including the right of appeal at any stage of the proceedings.

The various counties and cities are hereby authorized and directed to acquire such right of way for such highways as are requested and authorized by the Texas Highway Department, as provided by existing laws, and in the event condemnation is necessary, the procedure shall be the same as that set out in Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, and amendments thereto.

Upon delivery to the Texas Highway Department of acceptable instruments conveying to the State the requested right of way, the Texas Highway Department shall prepare and transmit to the Comptroller of Public Accounts vouchers covering the reimbursement to such county or city for the Department's share of the cost of providing such right of way, and the Comptroller of Public Accounts is hereby authorized and directed to issue warrants on the appropriate account covering the State's obligations as evidenced by such vouchers.

The Texas Highway Department is authorized and directed to acquire by purchase, gift or condemnation all right of way necessary for the National System of Interstate and Defense Highways.

[Amended by Acts 1977, 65th Leg., p. 1474, ch. 598, § 1, eff. Sept. 1, 1977.]

[1] Name changed to State Department of Highways and Public Transportation; see art. 6663.

[2] Name changed to State Highway and Public Transportation Commission; see art. 6663.

Section 2 of the 1977 amendatory act provided for an effective date of September 1, 1977.

Art. 6673f. Mowing, Baling, Shredding, or Hoeing Rights-of-Way

Sec. 1. A district engineer of the State Department of Highways and Public Transportation may grant permission to a person, at his request, to mow, bale, shred, or hoe the right-of-way of any designated portion of a highway that is in the state highway system and is within the district supervised by the engineer.

Sec. 2. If a person requesting permission to mow, bale, shred, or hoe a highway right-of-way is not an owner of land adjacent to the right-of-way that is the subject of the request, the district engineer, before granting permission, must provide a person owning land adjacent to the right-of-way the option of mowing, baling, shredding, or hoeing the right-of-way. A district engineer may deny any request authorized by this Act.

Sec. 3. A person granted permission to mow, bale, shred, or hoe a highway right-of-way under this Act may not receive compensation for the mowing, baling, shredding, or hoeing but is entitled to use or dispose of the hay or other materials produced by the mowing, baling, shredding, or hoeing.

Sec. 4. The state, the State Department of Highways and Public Transportation, and the district engineer are not liable for any personal injuries, property damage, or death resulting from the performance of services or agreements as provided in this Act.

[Acts 1977, 65th Leg., p. 1519, ch. 613, §§ 1 to 4, eff. Aug. 29, 1977.]

1A. CONSTRUCTION AND MAINTENANCE

Art. 6674c. Inmate Labor for Highway System Improvement Projects

The commission may contract with the Texas Board of Corrections for the provision of inmate labor for a state highway system improvement project. Contracts made pursuant to this article must be made in conformity with The Interagency Cooperation Act, as amended (Article 4413(32), Vernon's Texas Civil Statutes.)

[Amended by Acts 1981, 67th Leg., p. 2496, ch. 655, § 1, eff. Aug. 31, 1981.]

Art. 6674e. Appropriations from Highway Fund

All moneys now or hereafter deposited in the State Treasury to credit of the "State Highway Fund", including all Federal aid moneys deposited to the credit of said fund under the terms of the Federal Highway Act [1] and all county aid moneys deposited to the credit of said fund under the terms of this Act shall be subject to appropriation for the specific purpose of the improvement of said system of State Highways by the State Department of Highways and Public Transportation. However, direct appropriations in an amount not to exceed $30 million each fiscal year shall be made from the State Highway Fund to the Department of Public Safety for policing the State Highway System and for the administration of laws prescribed by the Legislature pertaining to the supervision of traffic and safety on public roads. There shall be subtracted from the $30 million maximum which may be appropriated to the Department of Public Safety the amount of appropriations for each fiscal year from the State Highway Fund to the State Employee's Retirement System to provide for the state's share of retirement contributions, social security taxes, and state paid health insurance for employees and officers of the Department of Public Safety.

[Amended by Acts 1977, 65th Leg., p. 112, ch. 55, § 1, eff. April 12, 1977.]

[1] See 23 U.S.C.A. § 101 et seq.

Art. 6674f. Highway Cost Index Committee; Transfers to State Highway Fund

(a) The Highway Cost Index Committee consists of the governor or, in the governor's absence, the secretary of state; the lieutenant governor; and the comptroller of public accounts.

(b) On or before November 1 of each even-numbered year, the Highway Cost Index Committee

shall certify to the comptroller the estimated amount of transfers to the state highway fund that are required by this article and Article 4364a, Revised Civil Statutes of Texas, 1925, as amended, for the following fiscal biennium.

(c) On or before August 1 of each year, the Highway Cost Index Committee shall certify to the comptroller the estimated amount of transfers to the state highway fund that are required by this article and Article 4364a, Revised Civil Statutes of Texas, 1925, as amended, for the following fiscal year.

(d) On or before November 1 of each year, the Highway Cost Index Committee shall determine and certify to the comptroller:

(1) the amount of dedicated revenue earned for the state highway fund for the preceding fiscal year;

(2) the highway cost index for the preceding fiscal year;

(3) the difference, if any, between the amounts transferred under this article and Article 4364a, Revised Civil Statutes of Texas, 1925, as amended, during the preceding fiscal year (exclusive of any adjustments made under this subsection during the preceding fiscal year) and the amounts that would have been transferred during the preceding fiscal year if the actual amount of dedicated revenue and the actual highway cost index for that year had been used to determine the amounts transferred; and

(4) the amount by which the transfers for the current fiscal year are to be adjusted to compensate for the amount of the difference determined under Subdivision (3) of this subsection.

(e) The amounts transferred to the state highway fund under this article and Article 4364a shall be estimated and determined under the following formula:

Amount = (cost index X $750 million) – dedicated revenue.

(f) In the formula:

(1) "Amount" means the total yearly amount to be transferred from the general revenue fund to the state highway fund.

(2) "Cost index" means the factor determined under Subsection (g) of this section.

(3) "Dedicated revenue" means the revenue credited to the state highway fund under the following:

(A) Chapters 9 and 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended;[1]

(B) Article 6686, Revised Civil Statutes of Texas, 1925, as amended;

(C) Sections 1 through 16, Chapter 88, General Laws Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a–1 et seq., Vernon's Texas Civil Statutes);

(D) Chapter 18, General Laws, Acts of the 41st Legislature, 5th Called Session, 1930, as amended (Article 6675a–6e, Vernon's Texas Civil Statutes);

(E) Section 2, Chapter 178, General Laws, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 6675a–13½, Vernon's Texas Civil Statutes);

(F) Chapter 298, Acts of the 56th Legislature, Regular Session, 1959 (Article 6675a–5b, Vernon's Texas Civil Statutes);

(G) Chapter 456, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 6675a–6b, Vernon's Texas Civil Statutes);

(H) Chapter 517, Acts of the 58th Legislature, 1963, as amended (Article 6675a–6c, Vernon's Texas Civil Statutes);

(I) Chapter 707, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 6675a–6d, Vernon's Texas Civil Statutes); and

(J) Chapter 338, Acts of the 64th Legislature, 1975, as amended (Article 6675a–5e.1, Vernon's Texas Civil Statutes).

(g) The State Department of Highways and Public Transportation shall compute the highway cost index for each fiscal year according to procedures approved by the Highway Cost Index Committee. The index for a fiscal year is determined upon the weighted combined costs of highway operations, maintenance, and construction for the fiscal year compared to those costs for the base fiscal year beginning on September 1, 1978. The highway cost index for the base fiscal year is 1.00.

(h) This article does not authorize the transfer of funds from the state highway fund to the general revenue fund or any other fund.

[Amended by Acts 1981, 67th Leg., p. 2254, ch. 540, § 14, eff. Sept. 1, 1981.]

[1] Repealed; see, now, Tax Code, §§ 153.001 et seq. and 151.001 et seq.

Art. 6674h. Competitive Bids

All contracts proposed to be made by the State Department of Highways and Public Transportation for the improvement of any highway constituting a part of the State Highway System or for materials to be used in the construction or maintenance thereof shall be submitted to competitive bids. Notice of the time when and place where such contracts will be let and bids opened shall be published in some newspaper published in the county where the improvement is to be done once a week for at least two weeks prior to the time set for the letting said contract and in two other newspapers that the department may designate. Provided, however, that on contracts involving less than One Hundred Thousand ($100,000.00) Dollars such advertising may be limited to two successive issues of any newspaper published in the county in which the work is to be done, and if there is no newspaper in the county in which the work is to be done then said advertising

shall be for publication in some newspaper in some county nearest the county seat of the county in which the work is to be done. Provided further, that any person, firm or corporation may make application to have the name of said applicant placed upon a mailing list to receive notices of lettings of any contracts provided for herein; and notices of said lettings shall be mailed by the State Highway and Public Transportation Commission to all persons, firms or corporations on said mailing list. The Commission shall have the right to require all applicants to deposit with the commission a sum of not exceeding Twenty-five ($25.00) Dollars per year to cover costs of mailing notices.

[Amended by Acts 1979, 66th Leg., p. 608, ch. 285, § 1, eff. Aug. 27, 1979.]

Art. 6674i. Opening and Rejecting Bids

The State Department of Highways and Public Transportation shall have the right to reject any and all such bids. All such bids shall be sealed, and filed with the State Engineer-Director for Highways and Public Transportation at Austin, Texas, and shall be opened at a public hearing of the State Highway and Public Transportation Commission. All bidders may attend and all bids shall be opened in their presence. Copies of all such bids shall be filed with the county in which the work is to be performed. Provided however, on contracts involving less than One Hundred Thousand ($100,000.00) Dollars bids may in the discretion of the Commission be received at a public hearing by the District Engineer at the District Headquarters. All bids so received by the District Engineer shall be tabulated and forwarded to the Commission, and the Commission shall have the right to accept or reject same, and if accepted, award the contract to the lowest bidder. It shall be the duty of the Commission to prescribe rules and regulations on all bidders on bids received by District Engineers, but the rules and regulations required by the Commission for bids received at Austin by said Commission shall not apply to bidders submitting bids to District Engineers.

[Amended by Acts 1979, 66th Leg., p. 608, ch. 285, § 1, eff. Aug. 27, 1979.]

Art. 6674m. Partial Payments

Said contracts may provide for partial payments to an amount not exceeding ninety-five per cent (95%) of the value of the work done. Five per cent (5%) of the contract price shall be retained until the entire work has been completed and accepted. Provided, that at the request of the contractor and with the approval of the State Highway Department and the State Treasurer the five per cent (5%) retained amount may be deposited under the terms of a trust agreement with a state or national bank domiciled in Texas as selected by the contractor. Said bank, acting as escrow agent and by instructions from the contractor, may reinvest the retained amount in certificates of deposit issued by state or national banks domiciled in Texas, bank time deposits, or other similar investments prescribed by the trust agreement. Interest earned on said funds shall be paid to the contractor unless otherwise specified under the terms of said trust agreement. The escrow agent shall be responsible for all investments and funds as a result of the deposits of the retained amounts until released from such responsibility as instructed by the provisions of said trust agreement. The State Highway Department shall provide a trust agreement that will protect the interests of the State of Texas. All expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest thereon shall be paid solely by the contractor. No such expense or charge shall apply to either the contract or the State of Texas.

[Amended by Acts 1975, 64th Leg., p. 404, ch. 180, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:

"If any provision of this Act or the application thereof to any body or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 6674q-7. County and Road District Highway Fund; Distribution; Board of County and District Road Indebtedness Continued; Powers and Duties; Lateral Road Account

[See Compact Edition, Volume, 5 for text of (a) and (b)]

Application of Sunset Act

(b–1) The Board of County and District Road Indebtedness is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1979.

[1] Article 5429k.

[See Compact Edition, Volume 1 for text of (c) to (r)]

[Amended by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.021, eff. Aug. 29, 1977.]

Art. 6674q-7b. Distribution and Use of County and Road District Highway Fund

Distribution of Funds

Sec. 1. The State Treasurer shall distribute to the counties on or before October 15 of each year the money appropriated from the county and road district highway fund for that fiscal year.

Formula

Sec. 2. The allocation of the money among the counties is determined as follows:

(1) one-fifth of the money appropriated is allocated on the basis of area, determined by the ratio of the area of the county to the area of the state;

(2) two-fifths of the money appropriated is allocated on the basis of rural population according to the most recent federal census, determined by the ratio of the rural population of the county to the rural population of the state; and

(3) two-fifths of the money appropriated is allocated on the basis of lateral road mileage, determined by the ratio of the mileage of lateral roads in the county to the mileage of lateral roads in the state as of January 1 of the year of the allocation as shown by the records of the State-Federal Highway Planning Survey and the State Department of Highways and Public Transportation.

Survey of Lateral Road Mileage

Sec. 3. On its own motion or at the request of a county, the State Highway and Public Transportation Commission may have a survey made of the county's lateral road mileage. If a survey is made its results shall be substituted for the corresponding government figures. The governmental entity requesting the study shall pay for it.

Use of Funds

Sec. 4. A county may use the money it receives from the county and road district highway fund only for the following purposes:

(1) purchasing right-of-way for lateral roads, farm-to-market roads, or state highways;

(2) constructing and maintaining lateral roads, including the hiring of labor and purchasing of materials, supplies, and equipment; and

(3) paying the principal, interest, and sinking fund requirements maturing during the fiscal year on bonds, warrants, or other legal obligations incurred to finance the activities described in Subdivisions (1) and (2) of this section.

Annual Report by County Judge

Sec. 5. On or before October 1 of each year the county judge of each county shall file with the State Treasurer a sworn report including:

(1) an account of how the money allocated to the county under this Act during the preceding year was spent;

(2) a description, including the location, of any new roads constructed in whole or in part with these funds; and

(3) other information pertinent to the administration of this Act that the State Treasurer requests.

Other Information

Sec. 6. A county officer or employee shall provide to the State Treasurer on request any information necessary to determine the legality of the use of funds allocated under this Act.

Bids for Construction

Sec. 7. A county may require that bids for construction funded in whole or in part by money received under this Act be submitted to the State Highway and Public Transportation Commission in the manner provided for bids for construction of state highways.

Technical Assistance

Sec. 8. On request by a county the State Highway and Public Transportation Commission shall provide technical and engineering assistance in making surveys, preparing plans and specifications, preparing project proposals, and supervising construction. The cost of this assistance shall be paid by the county.

[Acts 1981, 67th Leg., p. 11, ch. 10, §§ 1 to 8, eff. March 11, 1981.]

Art. 6674s. Workmen's Compensation Insurance for Highway Department Employees

[See Compact Edition, Volume 5 for text of 1 to 6]

Adoption of General Workers' Compensation Laws

Sec. 7. (a) The following laws as amended or as they may hereafter be amended are adopted except to the extent that they are inconsistent with this Act:

(1) Article 8306, except Sections 5 and 28, and Articles 8307, 8307b, and 8309, Revised Civil Statutes of Texas, 1925, as amended;

(2) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8306a, Vernon's Texas Civil Statutes);

(3) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);

(4) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8307a, Vernon's Texas Civil Statutes);

(5) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes);

(6) Chapter 358, Acts of the 64th Legislature, 1975 (Article 8307d, Vernon's Texas Civil Statutes); and

(7) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8309a, Vernon's Texas Civil Statutes).

(b) Provided that whenever in the above adopted laws the words "association," "subscriber," or "employer" or their equivalents appear, they shall be construed to and shall mean "the department."

[See Compact Edition, Volume 5 for text of 8 to 20]

[Amended by Acts 1981, 67th Leg., p. 938, ch. 352, § 4, eff. Aug. 31, 1981.]

Art. 6674v. Turnpike Projects

[See Compact Edition, Volume 5 for text of 1 and 2]

Texas Turnpike Authority

Sec. 3. There is hereby created an authority to be known as the "Texas Turnpike Authority," hereinafter sometimes referred to as the "Authority."

By and in its name the Authority may sue and be sued, and plead and be impleaded. The Authority is hereby constituted an agency of the State of Texas, and the exercise by the Authority of the powers conferred by this Act in the construction, operation, and maintenance of turnpike projects shall be deemed and held to be an essential governmental function of the State.

The Board of Directors of the Authority (hereinafter in this Act sometimes called the "Board") shall be composed of directors, who shall occupy, respectively, places on the Board to be designated as Places 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12. The Directors who will occupy Places 2, 3, 5, 6, 8, 9, 10, 11, and 12 shall be appointed by the Governor, by and with the advice and consent of the Senate. Appointed Directors shall serve staggered terms of six (6) years with the terms of one-third of the members expiring on February 15 of each odd-numbered year. Each Director appointed to fill Places 2, 3, 5, 6, 8, 9, 10, 11, and 12 shall have been a resident of the State and of the County from which he shall have been appointed for a period of at least one (1) year prior to his appointment.

Appointments to the Authority shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

The members of the Texas State Highway Commission [1] at the time this Act becomes effective are hereby made Directors of said Authority, and if for any reason said Texas State Highway Commission at such time because of vacancies is composed of less than three (3) members, then the person or persons appointed to fill such vacancies are hereby made Directors of said Authority. The Highway Commissioners and their successors in office shall respectively and successively occupy Places 1, 4, and 7 on such Board. Each member of the Texas State Highway Commission shall serve ex officio as a member of the Board of Directors of such Authority. All Directors shall serve until their successors have been duly appointed and qualified, and vacancies in unexpired terms shall be promptly filled by the Governor.

All members of the Board of Directors shall be eligible for reappointment. All directors shall have equal status and all Directors shall have a vote. Each member of the Board before entering upon his duties shall take an oath as provided by Section 1 of Article XVI of the Constitution of the State of Texas.

The Board shall elect one of the Directors as chairman and another as vice chairman, and shall elect a secretary and treasurer who need not be a member of the Board. Seven members of the Board shall constitute a quorum and the vote of a majority shall be necessary for any action taken by the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Board.

Before the issuance of any turnpike revenue bonds under the provisions of this Act, each Director shall execute a surety bond in the penal sum of Twenty-five Thousand Dollars ($25,000) and the secretary and treasurer shall execute a surety bond in the penal sum of Fifty Thousand Dollars ($50,000), each surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the State of Texas as surety and to be approved by the Governor and filed in the office of the Secretary of State. The expense of such bonds shall be paid by the Authority.

Each appointed Director may be removed by the Governor for misfeasance, malfeasance or willful neglect of duty, but only after reasonable notice and public hearing unless the notice and public hearing are in writing expressly waived. Failure of an appointed member to attend at least one-half of the regularly scheduled meetings held each year automatically removes such member and creates a vacancy on the Board.

The members of the Authority shall not be entitled to any additional compensation for their services, but each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties. All expenses incurred in carrying out the provisions of this Act shall be payable solely from funds provided under the authority of this Act and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the authority of this Act.

The Legislature imposes on any Director, who may be a member of the State Highway Commission the extra duties required hereunder.

[1] Name changed to State Highway and Public Transportation Commission; see art. 6663.

Application of Sunset Act

Sec. 3a. The Texas Turnpike Authority is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the authority is abolished, and this Act expires effective September 1, 1991.

[1] Article 5429k.

[See Compact Edition, Volume 5 for text of 4 to 12a]

Texas Turnpike Authority Feasibility Study Fund

Sec. 12b. Any funds of the Dallas-Fort Worth Turnpike remaining on December 31, 1977, or on such earlier date as the tolls may be lifted in the authority's discretion, after provision for transition expenses, debts, and obligations pursuant to Section 17a of this Act shall be deposited by the authority in a fund which shall be entitled "Texas Turnpike Authority Feasibility Study Fund." No more than One Million Dollars shall be so deposited on such date. The amount deposited shall be reduced by the cost of feasibility studies, if any, requested by the authority and approved by the State Highway and

Public Transportation Commission between April 4, 1977, and the date of such deposit. Such fund shall be a revolving fund held in trust by a banking institution chosen by the authority separate and apart from the funds of any project. No funds from any other existing, presently constructed project shall be added to this fund. Such fund shall be used for the purpose of paying the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of any turnpike project; the study of which thereafter shall be authorized by the Texas Turnpike Authority, subject to the prior approval of the State Highway and Public Transportation Commission. The funds expended from this fund on behalf of any such new project shall be regarded as a part of the cost of such new project, and said fund shall be reimbursed out of the proceeds of turnpike revenue bonds issued for the construction of any such additional project. After this Act is signed by the governor, all money reimbursable from the sale of bonds of projects whose studies and other expenses have been advanced from funds of the Dallas-Fort Worth Turnpike shall be reimbursed to this fund for use as a part hereof. For the same purposes the authority may borrow money and issue promissory notes or other interest-bearing evidences of indebtedness payable out of this fund, pledging or hypothecating thereto any sums therein or to be placed therein.

In addition to the above, any municipality or group of municipalities, any county or group of counties, or any combination of municipalities and counties, or any private group or combination of individuals within the state may pay all or part of the expenses of studying the cost and feasibility and any other expenses relating to the preparation and issuance of turnpike revenue bonds for the construction of a turnpike project. The funds expended on behalf of any new project shall be regarded as part of the cost of such new project and, with the consent of the Texas Turnpike Authority, shall be reimbursable to the party paying the expenses out of the proceeds of turnpike revenue bonds issued for the construction of such new project.

[See Compact Edition, Volume 5 for text of 13 to 16]

Public Hearings

Sec. 16a. (a) Before the authority finally approves an engineering design for a project, the authority or a designated representative of the authority shall hold at least one public hearing in the general locality in which the project is to be located. Persons interested in the project shall be given an opportunity at the public hearing to testify about the project and to inspect the plans and designs prepared for the project.

(b) Not less than 15 days nor more than 21 days before the public hearing, the authority shall furnish a written notice of the public hearing to the governing body of each county, city, or town in which any part of the project is to be located and shall publish the notice in the general locality in which the project is to be located in a manner likely to inform the general public of the public hearing.

(c) At least seven days before the public hearing, the authority shall file with the governing bodies the plans and designs prepared for the project.

[See Compact Edition, Volume 5 for text of 17]

Toll Free Status of Dallas-Fort Worth Turnpike; Transition Plan

Sec. 17a. This section shall apply only to the Dallas-Fort Worth Turnpike, constructed pursuant to this Act and presently existing in Dallas and Tarrant Counties, and to no other project now or hereafter existing and shall supersede any provisions of this Act in conflict herewith. The Dallas-Fort Worth Turnpike shall become toll free, at 12:00 p. m. on December 31, 1977, or on such earlier date as the tolls may be lifted in the authority's discretion. The authority shall, with the approval of the State Highway and Public Transportation Commission, effectuate a plan for an orderly transition of the Dallas-Fort Worth Turnpike to the State Department of Highways and Public Transportation on the date when tolls are lifted. In no event shall the transition plan operate to extend the cutoff time for the collection of tolls set out above. The transition plan shall provide a reasonable time within which said plan shall be consummated and shall include retention by the authority of toll collection and accounting equipment, toll booths and other equipment, furnishings, and supplies usable by the authority in the operation of other projects, the provision of funds for unemployment compensation and other payments required by state law in the termination of employment of state employees, the payment of debts and other contractual obligations of the authority payable from funds of the Dallas-Fort Worth Turnpike, including but not limited to the payment to the City of Fort Worth and Tarrant County of their proportionate interests in the balance remaining in the Special Trust Fund created to hold money paid by said city and county for free use of the Dallas-Fort Worth Turnpike from Oakland Boulevard to the Fort Worth terminus and such other requisites to the transition as may be appropriate. Money for the payment of such transition expenses, debts, and obligations shall be set aside and retained by the authority for such purposes in a trust fund with a banking institution chosen by the authority to be used for such purposes and the payment of expenses appurtenant thereto.

[See Compact Edition, Volume 5 for text of 18 to 20]

Miscellaneous

Sec. 21. Each Turnpike Project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority.

Each such project shall also be policed and operated by such force of police, toll-takers and other operating employees as the Authority may in its discretion employ. Within its discretion the Authority may make arrangements with the Department of Public Safety for the services of police officers of that Agency.

All private property damaged or destroyed in carrying out the powers granted by this Act shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this Act.

All counties, cities, villages and other political subdivisions and all public agencies and commissions of the State of Texas, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request, upon such terms and conditions as the proper authorities of such counties, cities, villages, other political subdivisions or public agencies and commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or appropriate to the effectuation of the authorized purposes of the Authority, including highways and other real property already devoted to public use.

An action by the Authority may be evidenced in any legal manner, including a resolution adopted by its Board of Directors.

If the Authority employs a general counsel, the counsel shall be prohibited from lobbying for the Authority, and no member of the Authority shall engage in activities requiring registration as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c Vernon's Texas Civil Statutes).

Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority, shall be punished by a fine of not more than One Thousand Dollars ($1,000).

Any person who uses any turnpike project and fails or refuses to pay the toll provided therefor, shall be punished by a fine of not more than One Hundred Dollars ($100) and in addition thereto the Authority shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof, until the amount of such toll and all charges in connection therewith shall have been paid.

The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operation of the Turnpike Project.

Travel Expenses

Sec. 21a. (a) Employees of the authority are entitled to a per diem and transportation allowance for travel on official business. The rates of reimbursement are as provided in the travel provisions of the General Appropriations Act.

(b) The secretary, treasurer, the project manager of a project, and the executive head of the authority are entitled to reimbursement for actual and necessary expenses incurred for travel on official business, except that reimbursement for transportation expenses is at the rates provided in the travel provisions of the General Appropriations Act.

Reports

Sec. 21b. (a) The authority shall file with the governor, the Legislative Reference Library, and the Legislative Budget Board certified copies of the minutes of the authority's meetings. The authority similarly shall file copies of any corrections or changes of the minutes. The authority shall file the copies as soon as possible after the minutes, changes, or corrections are approved by the authority.

(b) On or before March 1 of each year, the authority shall file with the governor's budget and planning office, or its successor, and the Legislative Budget Board an itemized budget covering the current calendar year.

(c) On or before March 31 of each year, the authority shall file with the governor, the legislature, and the Legislative Budget Board a report about the authority's activities during the preceding calendar year. The report shall include information about each project, including a complete operating and financial statement covering each project, and shall include an itemized statement about the professional or consulting fees paid by the authority, including the name of each individual or business entity who received the fees and a description of the purposes for which the fees were paid.

Consultants

Sec. 21c. The authority is subject to Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252–11c, Vernon's Texas Civil Statutes), relating to the use of consultants.

[See Compact Edition, Volume 5 for 22 and 23]

Secs. 24 to 26. [Omitted].

Project Pooling Within the Same County

Sec. 27. Notwithstanding any conflicting provisions in this Act and superseding the same where in conflict with this section, the authority is hereby authorized and empowered, but only as to projects located wholly within the same county and subject to all the provisions of this section:

(a) To determine after a public hearing, subject to prior approval by the State Highway and Public Transportation Commission and a resolution approving the same duly passed by the county commissioners court of the county where the projects are located, that any two or more projects now or hereafter constructed or determined to be constructed by the authority in the same county shall be pooled and designated as a "pooled project." Any existing project or projects may be pooled in whole or in part with any new project or projects or parts thereof. Upon designation such "pooled project" shall become a "project" or "turnpike project" as defined in Section 4(c) of this Act and as used in other sections of this Act. No project may be pooled more than once. Consistent with the trust indenture regarding securing bonds of that project, the resolution of the county commissioners court shall set a date certain when each of the projects being authorized to be pooled shall become toll free.

(b) Subject to the terms of this Act and subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, the authority is authorized to provide by resolution from time to time for the issuance of turnpike revenue bonds of the authority for the purpose of paying all or any part of the cost of any pooled project or the cost of any part of such pooled project and to pledge revenues of such pooled project or any part thereof.

(c) Subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, the authority is authorized to issue by resolution turnpike revenue refunding bonds of the authority for the purpose of refunding any bonds then outstanding, issued on account of any pooled project or any part of any pooled project issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds and, if deemed advisable by the authority, for the additional purpose of constructing improvements, extensions, and enlargements to the pooled project or to any part of any pooled project in connection with which or in connection with any part of which bonds to be refunded shall have been issued. Revenues of all or any part of such pooled project may be pledged to the payment of such refunding and improvement bonds. Such improvements, extensions, or enlargements are not restricted to and need not be constructed on any particular part of a pooled project in connection with which bonds to be refunded may have been issued but may be constructed in whole or in part on other parts of the pooled project not covered by the bonds to be refunded. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the authority in respect of the same shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the authority, the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

Whether bonds be refunded or not, the authority may, subject to the terms of any trust agreement securing the payment of any turnpike revenue bonds, issue from time to time by resolution, bonds, of parity or otherwise, for the purpose of paying the cost of all or any part of any pooled project or for the purpose of constructing improvements, extensions, or enlargements to all or any part of any pooled project and to pledge revenues of all or any part of such pooled project to the payment thereof. [Amended by Acts 1977, 65th Leg., p. 195, ch. 97, §§ 1 to 3, eff. May 3, 1977; Acts 1977, 65th Leg., p. 1832, ch. 735, § 2.001, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1193, ch. 581, §§ 1 to 4, eff. Sept. 1, 1979.]

Arts. 6674v–1, 6674v–2. Repealed by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2(1), eff. Jan. 1, 1982

Section 4 of the 1981 repealing act provides:

"This Act takes effect January 1, 1982, and applies only to offenses committed on or after that date. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed and the prior law is continued in effect for that purpose. An offense is committed before the effective date of this Act if any element of the offense occurs before that date."

Prior to repeal, art. 6674v–1 was amended by Acts 1975, 64th Leg., p. 1106, ch. 417, §§ 1 to 4.

See, now, art. 4477–9a, §§ 2.04, 4.01 et seq.

1B. MODERNIZATION OF HIGHWAY FACILITIES; CONTROLLED ACCESS HIGHWAYS

Art. 6674w–3. Acquisition of Property

In addition to other powers conferred by law, the following are added, to wit:

1. Powers of Purchase and Condemnation for Highway Purposes. (a) Any land in fee simple or any lesser estate or interest therein; any property rights of any kind or character including, but not limited to, rights of ingress and egress and reservation rights in land which restrict or prohibit the adding of new, or addition to or modification of existing improvements on such land, or subdividing the same; and any timber, earth, stone, gravel, or other material which the State Highway and Public Transportation Commission may in its judgment determine to be necessary or convenient to any State Highway to be constructed, reconstructed, maintained, widened, straightened or lengthened including, but not limited to, any land, property rights or materials deemed by the Commission necessary or convenient for the purpose of protecting any State Highway; draining any State Highway; diverting streams or rivers or any other watercourse from the right of way of any State Highway; storing materials and equipment used in the construction and maintenance of State Highways; constructing and operating warehouses and other buildings and facilities used in con-

nection with the construction, maintenance, and operation of State Highways; laying out, construction, and maintenance of roadside parks; laying out, construction, and maintenance of vehicular parking lots that will contribute to maximum utilization of State Highways with the least possible congestion; and any other purpose related to the laying out, construction, improvement, maintenance, beautification, preservation and operation of State Highways, may be purchased by the State Highway and Public Transportation Commission in the name of the State of Texas, on such terms and conditions and in such manner as the Commission may deem proper.

(b) Any land or any estate or interest therein; any property rights of any kind or character including, but not limited to, rights of ingress and egress, and reservation rights in land which restrict or prohibit for any period of time not to exceed seven (7) years the adding of new, or addition to or modification of existing improvements on such land, or subdividing or resubdividing same; and any timber, earth, stone, gravel, or other material which the State Highway and Public Transportation Commission may in its judgment determine to be necessary or convenient to any State Highway to be constructed, reconstructed, maintained, widened, straightened or lengthened including, but not limited to, any land, property rights or materials deemed by the Commission necessary or convenient for the purpose of protecting any State Highway; draining any State Highway; diverting streams or rivers or any other watercourse from the right of way of any State Highway; laying out, construction, and maintenance of roadside parks; laying out, construction, and maintenance of vehicular parking lots that will contribute to maximum utilization of State Highways with the least possible congestion; and any other purpose related to the laying out, construction, improvement, maintenance, and operation of State Highways, may be acquired by the exercise of the power of Eminent Domain by the State Department of Highways and Public Transportation in the name of the State of Texas in the manner hereinafter provided.

The purchase or power of Eminent Domain being hereby authorized is granted regardless of the location of any such land, property rights, or materials to be acquired, whether within or without the confines of any incorporated city, town or village, whether same are incorporated under general or special laws, including Home Rule Cities.

In the prosecution of any condemnation suit brought by the State Highway and Public Transportation Commission in the name of the State of Texas for the acquisition of property pursuant to the powers granted in this Act, the Attorney General, at the request of the Commission, or, at the Attorney General's direction, the applicable County or District Attorney or Criminal District Attorney, shall bring and prosecute the suit in the name of the State of Texas and the venue of any such suit shall be in the county in which the property or a part thereof is situated.

In the exercise of the powers of Eminent Domain herein conferred, the State Department of Highways and Public Transportation shall be subject to the laws and procedures prescribed by Title 52, Articles 3264 to 3271, inclusive, Revised Civil Statutes of Texas, 1925, as said Articles or said Title have been or may be from time to time amended, and shall be entitled to condemn the fee or such lesser estate or interest as it may specify in any statement or petition in any condemnation proceeding filed by it pursuant to such powers; provided however, that any statement or petition in condemnation brought by the Department pursuant hereto shall exclude from the estate sought to be condemned all the oil, gas and sulphur which can be removed from beneath the land condemned without any right whatever remaining to the owners of such oil, gas and sulphur of ingress or egress to or from the surface of the land condemned for the purpose of exploring, developing, drilling or mining of the same; and further provided, that none of the powers granted herein shall be a grant to the State Highway and Public Transportation Commission for the purpose of condemning property which is used and dedicated for cemetery purposes pursuant to Articles 912a–10 et seq., Vernon's Revised Civil Statutes of Texas.

2. State and Other Public Lands. The governing body of every county, city, town, village, political subdivision or public agency is hereby authorized without any form of advertisement to make conveyance of title or rights and easements, owned by any such body, to any property needed by the State Highway and Public Transportation Commission to effect its purposes in connection with the construction or operation of the State Highway System.

Whether purchased or condemned by the Commission, the lands, property rights and materials which are purchased or condemned may also include those belonging to the public, whether under the jurisdiction of the State or any department or agency thereof, county, city, town, village, including Home Rule Cities, or other entity or subdivision thereof.

The State of Texas hereby consents to the use of all lands owned by it, including lands lying underwater, which are deemed by the Commission to be necessary for the construction or operation of any State Highway; provided, however, that nothing herein shall be construed as depriving the School Land Board of authority to execute leases in the manner authorized by law for the development of oil, gas and other minerals on State-owned lands adjoining any such State Highway, or in tidewater limits, and to this end such leases may provide for directional drilling from such

adjoining land and tidewater area. The Commission shall advise, and make arrangements with, the State Department or agency having jurisdiction over such lands to accomplish such necessary purposes. Any such State Department or agency is hereby directed to cooperate with the State Department of Highways and Public Transportation in this connection, and as to any such department or agency not expressly authorized to act through some designated representatives, express authority is hereby granted to such department or agency to do whatever acts are necessary hereunder by and through the Chairman of its Board, Department Head, or Executive Director, whether appointed or elected, whichever may be appropriate.

If the land, property rights, or material to be acquired by the State Department of Highways and Public Transportation are of such a nature that its acquisition under the provisions of this Act will deprive any such department or agency of the State of a thing of value to such department or agency in the exercise of its lawful functions, then adequate compensation therefor shall be made, based upon vouchers drawn for this purpose payable to the furnishing department or agency. Payments received by the furnishing department or agency shall be credited to that department's or agency's current appropriation items or accounts from which the expenditures of that character were originally made, or if no such items or accounts from which the expenditures of that character were originally made, or if no such item or account exists, then to an account of such department or agency determined to be appropriate thereto by the Comptroller of Public Accounts.

In the event, but only in the event, the State Department of Highways and Public Transportation and such other department or agency are unable to agree upon adequate compensation, then the State Board of Control shall determine the fair, equitable and realistic compensation to be paid.

[Amended by Acts 1979, 66th Leg., p. 105, ch. 66, § 1, eff. Aug. 27, 1979.]

2. REGULATION OF VEHICLES

Art. 6675a-1. Definitions of Terms

The following words and terms, as used herein, have the meaning respectively ascribed to them in this Section, as follows:

[See Compact Edition, Volume 5 for text of (a) to (q)]

(r) "Implements of husbandry" shall mean farm implements, machinery and tools as used in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals and not designed or adapted for the sole purpose of transporting the materials or chemicals, but shall not include any passenger car or truck.

[See Compact Edition, Volume 5 for text of (s) and (t)]

[Amended by Acts 1977, 65th Leg., p. 252, ch. 119, § 1, eff. May 4, 1977.]

Art. 6675a-2. Registration

[See Compact Edition, Volume 5 for text of (a) and (b)]

(c) Owners of farm trailers and farm semitrailers with a gross weight exceeding four thousand (4,000) pounds but not exceeding twenty thousand (20,000) pounds and used solely to transport their own seasonally harvested agricultural products and livestock from the place of production to the place of process, market or storage thereof, or farm supplies from the place of loading to the farm, and owners of machinery used solely for the purpose of drilling water wells or construction machinery (not designed for the transportation of persons or property on the public highways), may operate or move such vehicles temporarily upon the highways without the payment of the regular registration fees as prescribed by law, provided the owners of such farm trailers and semitrailers and machinery secure for a fee of five dollars ($5) for each year or portion thereof a distinguishing license plate from the State Highway Department through the County Tax Collector upon forms prescribed and furnished by the department. Such vehicles shall be exempt from the inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of (c-1) to (h)]

[Amended by Acts 1979, 66th Leg., p. 520, ch. 243, § 1, eff. May 17, 1979.]

Art. 6675a-3. Application for Registration

[See Compact Edition, Volume 5 for text of (a) and (b)]

(c) Owners of motor vehicles, trailers and semitrailers which are the property of and used exclusively in the service of the United States Government, the State of Texas, or any county, city or school district thereof, shall apply annually to the Department as provided in Section 3-aa of this Act [1] to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper authority that such vehicles are the property of and used exclusively in the service of the United States Government, the State of Texas, or a county, city or school district thereof, as the case may be. Owners of vehicles designed and used exclusively for fire fighting shall apply to the Department as provided in Section 3-aa of this Act to register all such vehicles, but shall not be required to pay the registration fees herein prescribed, provided that affidavit is made at the time of registration by a person who has the proper

authority that such vehicles are used exclusively for fire fighting; and provided further, that such person shall supply the Department with a reasonable description of the vehicle and the fire fighting equipment mounted thereon. A vehicle owned by a volunteer fire department and used exclusively in the conduct of business of the department shall be registered without the payment of an annual registration fee, if the application for registration is accompanied by an affidavit, stating that the vehicle is owned by, and used exclusively in the conduct of business of, the department and signed by a person with authority to act for the department, and if the application is approved as provided in Section 3–aa of this Act. An owner of a land vehicle used exclusively in county marine law enforcement activities, which may include rescue operations, shall apply to the Department as provided in Section 3–aa of this Act to register the vehicle but is exempt from paying a registration fee. The owner shall include with the application for registration an affidavit that is signed by a person with authority to act for a county sheriff's department and that states that the vehicle is used exclusively in marine law enforcement activities under the direction of the department. An exempted vehicle may be privately owned and operated by a volunteer if it is used only for marine law enforcement activities.

[See Compact Edition, Volume 5 for text of (d) to (f)]

[Amended by Acts 1977, 65th Leg., p. 1416, ch. 574, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1049, ch. 479, § 1, eff. Aug. 27, 1979.]

[1] Article 6675a-3aa.

Art. 6675a-3e. Operation of Motor Vehicles without License Number Plates

[See Compact Edition, Volume 5 for text of 1 to 4]

Violation a Misdemeanor; Dealers; Purchase of Plates in February and March or Month Preceding Expiration Date

Sec. 5. Any person who operates a passenger car or a commercial motor vehicle upon the public highways of this State at any time without having displayed thereon, and attached thereto, two (2) license number plates, one (1) plate at the front and one (1) at the rear, which have been duly and lawfully assigned for said vehicle for the current registration period or have been validated by the attachment of a symbol, tab, or other device for the current registration period, shall be guilty of a misdemeanor; this shall not apply to dealers operating vehicles under present provisions of the law, and provided, however, license number plates may be purchased during the months of February and March and beginning February first, or if this date falls on Sunday they may be purchased February second, for registration and when purchased may be used from and after date of purchase preceding and during the registration period for which they are issued upon the motor vehicle for which they are issued. Beginning April 1, 1978, license plates may be purchased during the month preceding the date on which the registration expires.

Road-tractors, Motorcycles, Trailers, etc.

Sec. 6. Any person who operates a road-tractor, motorcycle, trailer or semi-trailer upon the public highways of this State at any time without having attached thereto and displayed on the rear thereof, a license number plate duly and lawfully assigned therefor for the current period or validated by the attachment of a symbol, tab, or other device showing that the vehicle is currently registered, shall be guilty of a misdemeanor.

Nothing herein contained shall be construed as changing or repealing any law with reference to any requirement to pay or not to pay a license or registration fee or the amount thereof not expressly enumerated in Sections 1, 2 and 3 hereof.[1]

[1] Articles 6675a-3, 6675a-4, 6675a-3d.

Operation with Old License Plates

Sec. 7. Any person operating any motor vehicle, trailer or semi-trailer upon the highways of this State with a license plate or plates for any preceding period which have not been validated by the attachment of a symbol, tab, or other device for the current registration period, shall be deemed guilty of a misdemeanor.

[See Compact Edition, Volume 5 for text of 8]

[Amended by Acts 1975, 64th Leg., p. 1919, ch. 621, § 3, eff. Jan. 1, 1978.]

Art. 6675a-4. Registration Dates

(a) By January 1, 1978, the Department shall establish a year-round system for registering vehicles. The system shall be designed so as to distribute the work load as uniformly as practicable within the various offices of the county tax assessor-collectors, as well as the Department, on a year-round basis. In implementing a year-round registration system, the Department may establish separate and distinct registration years for any vehicles or classifications of vehicles. Each registration year so designated shall begin on the first day of a calendar month and expire on the last day of the last calendar month in a registration period. Registration periods may be designated to include less than twelve (12) consecutive calendar months and registration fees shall be computed at a rate of one-twelfth of the appropriate annual registration fee per month in each registration period. The Department shall not establish a registration year of more than twelve (12) months except that registration fees for designated periods of more than twelve (12) months may be paid at the option of the owner. Each application for registration filed more than one month subsequent to the expiration date of the previous year's registration shall be accompanied by an affidavit that the vehicle has not been operated upon the streets or highways of this state at any time subsequent to the expira-

tion of the previous year's registration. The Department may promulgate reasonable rules and regulations to carry out the orderly implementation and administration of the year-round registration system.

(b) Notwithstanding the provisions of Subsection (a) of this section or any other section of this Act, the registration or license of any vehicle shall not be issued for or reduced to a fee less than $5.00, regardless of the month of the registration period in which application is filed.

[Amended by Acts 1975, 64th Leg., p. 1919, ch. 621, § 1, eff. Jan. 1, 1978.]

Art. 6675a-5. Fees: Motorcycles, Passenger Cars, Buses

Text of article effective July 1, 1982

(a) The annual license fee for registration of a motorcycle is Five Dollars.

(b) The annual license fee for registration of a passenger car and a street or suburban bus shall be based upon the weight of a vehicle as follows:

Weight in Pounds	Fee
1–3,500	$15.50
3,501–4,500	25.50
4,501–6,000	33.50
6,001 and over	60¢ cwt.

The weight of any passenger car or of any street or suburban bus, for purpose of registration, shall be the weight generally accepted as its correct shipping weight plus on hundred (100) pounds.

[Amended by Acts 1981, 67th Leg., p. 474, ch. 203, § 2, eff. July 1, 1982.]

For text of article effective until July 1, 1982, see Compact Edition, Volume 5

Art. 6675a-5e. Disabled Veterans and Their Transporters; Special License Plates; Fee Exemptions; Regulations

(a) A veteran of the armed forces of the United States who, as a result of military service, has suffered at least a 60% service-connected disability or has a 40% service-connected disability due to the amputation of a lower extremity, and who receives compensation from the federal government because of such disability, is entitled to register, for his own personal use, one passenger car or light commercial vehicle having a manufacturer's rated carrying capacity of one (1) ton or less, without payment of the prescribed annual registration fee.

[See Compact Edition, Volume 5 for text of (b) and (c)]

(d) Application for the specially designed license plates provided for in this Section shall be made on forms prescribed and furnished by the Department and must be submitted to the Department by October 1st preceding the registration year for which requested. The registration year for these license plates is from April 1st through March 31st of the following year. Each application shall be accompanied by a fee of three dollars ($3.00) and such evidence as the Department may require as proof of the applicant's eligibility to receive the registration fee exemption. The exemption continues until the license plates are cancelled under Subsection (f) of this Section.

(e) A vehicle on which these specially designed plates are displayed is exempt from the payment of parking fees, including those collected through parking meters, charged by any governmental authority other than a branch of the federal government:

(1) when being operated by or for the transportation of the person who registered the vehicle under Subsection (a) of this section; or

(2) when being operated by or for the transportation of a disabled veteran, as defined in Subsection (b) of this section, and when registered under that subsection.

[See Compact Edition, Volume 5 for text of (f) to (i)]

[Amended by Acts 1979, 66th Leg., p. 102, ch. 62, §§ 1, 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 920, ch. 336, § 1, eff. Aug. 31, 1981.]

Art. 6675a-5e.1. Disabled Persons; Special License Devices; Fee; Parking Privileges

Provision for License Plate Devices

Sec. 1. (a) The State Department of Highways and Public Transportation shall provide for the issuance of specially designed symbols, tabs, or other devices to be attached to the license plates of motor vehicles regularly operated by or for the transportation of permanently disabled persons. Such devices shall be of a design prescribed by the department and shall have the word "Disabled" printed thereon. They shall be issued in addition to regular license plates in years in which license plates are issued or as the legal registration insignia in years in which license plates are not issued.

(b) In addition, the department shall provide identification cards for issuance to temporarily disabled persons. These cards shall be of a design prescribed by the department. Cards issued to temporarily disabled persons become invalid after a definite time to be determined by the department.

"Permanently Disabled" Defined; Application

Sec. 2. (a) A person is disabled who has mobility problems that substantially impair the person's ability to ambulate, or who is legally blind. In this Act, "legally blind" means having not more than 20/200 of visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) Owners of motor vehicles regularly operated by or for the transportation of such persons may make application to the department through the county tax collector of the county in which they reside for the special symbol, tab, or other device on a form prescribed and furnished by the department. The first such application must be accompanied by acceptable medical proof that the operator or regularly transported passenger is currently and permanently disabled.

(c) A temporarily disabled person may apply for an identification card to the department through the county tax collector of the county in which the person resides on a form prescribed and furnished by the department. The application of each temporarily disabled person must be accompanied by medical proof acceptable to the department that the applicant is currently disabled.

Submission of Application; Fee

Sec. 3. An application for a symbol, tab, or other device shall be submitted to the county tax collector of the vehicle owner's resident county and shall be accompanied by the annual registration fee prescribed by law for the particular vehicle being registered plus $1. Applications for temporarily disabled person identification cards shall be submitted to the county tax collector of the disabled person's county and shall be accompanied by $5. The county tax collector shall forward the fees to the department for deposit in the State Highway Fund to defray the cost of providing the specially designed symbols, tabs, or other devices and identification cards.

Limit on Devices

Sec. 4. The special devices shall be issued only for passenger vehicles and light commercial vehicles having a manufacturer's rated carrying capacity of one ton or less operated by or for the transportation of permanently disable persons for noncommercial use.

Furnishing of Devices

Sec. 5. (a) The department shall furnish the special devices and identification cards to the appropriate county tax assessor-collector.

(b) The department shall design for posting at each parking space or area designated specifically for the temporarily or permanently disabled a nonmovable sign that:

(1) has a notice of the penalty for a violation of Section 10 of this Act;

(2) is permanently mounted on a pole at least five feet in height; and

(3) has a profile view of a wheelchair with an occupant in white on a blue background.

(c) The department shall provide at cost a design and stencil for use by political subdivisions or persons who own or control property used for parking to designate parking spaces as provided by Section 6A of this Act.

(d) The department shall set a minimum width requirement for the parking spaces specifically designate for the disabled.

Parking Privileges

Sec. 6. (a) Any vehicle upon which such special devices are displayed or in which a temporarily disabled person identification card is placed in the lower left-hand side of the front windshield, when being operated by or for the transportation of a disabled person, shall be allowed to park for unlimited periods in any parking space or parking area designated specifically for the physically handicapped.

(b) The owner of a vehicle on which the special devices are displayed or in which a temporarily disabled person identification card is placed in the lower left-hand side of the front windshield is exempt from the payment of fees or penalties imposed by a governmental authority for parking at a meter or in a space with a limitation on the length of time for parking, unless the vehicle was not parked at the time by or for the transportation of a disabled person. This exemption does not apply to fees or penalties imposed by a branch of the United States government. This section does not permit parking a vehicle at a place or time that parking is prohibited.

Designation of Parking Spaces by Political Subdivision or Private Property Owner; Enforcement

Sec. 6A. (a) A political subdivision or a person who owns or controls property used for parking may designate one or more parking spaces or a parking area for the exclusive use of vehicles transporting temporarily or permanently disabled persons. The political subdivision or person designates the space by posting in a conspicuous place a sign that conforms with the design and posting requirements of Section 5 of this Act. A political subdivision or private property owner may not designate a parking space or area specifically for the temporarily or permanently disabled unless a sign that conforms with the design and posting requirements is posted. A political subdivision may not require a private property owner or a person who controls property used for parking to designate a parking space or area for the exclusive use of vehicles transporting temporarily or permanently disabled persons.

(b) A peace officer may file charges against a person who commits an offense under this Act at a parking space or a parking area designated specifically for the temporarily or permanently disabled by a political subdivision or a private property owner as provided by Subsection (a) of this section.

Sign Posted at Access or Curb Ramp

Sec. 6B. A political subdivision shall post a sign that conforms with the design and posting requirements of Section 5 of this Act at each access or curb ramp designed for the use of temporarily or permanently disabled persons on a public street under the jurisdiction of the political subdivision.

Voluntary Designation; Signs and Width

Sec. 6C. A political subdivision or private property owner who voluntarily designates a parking space or area specifically for the disabled must post a sign that conforms to the department's design, and the space or spaces provided must conform to the width requirement set by the department.

Disposition of Devices Upon Disposal of Vehicle

Sec. 7. Except as provided by Section 9(d) of this Act, if the owner of a vehicle bearing such special devices disposes of the vehicle during the registration year, he shall turn the devices in to the county tax assessor-collector. If the owner registers another vehicle under this Act at the time he returns the devices, the assessor-collector shall issue replacement devices for the fee prescribed by law.

Registration Year

Sec. 8. Devices with the "Disabled" designation provided for by this Act shall be issued for the registration year beginning April 1, 1976, and thereafter.

Registration under Other Act

Sec. 9. (a) A person who is eligible to register a motor vehicle under both this Act and Section 5e, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a–5e, Vernon's Texas Civil Statutes), may register a vehicle under either or both Acts.

(b) If a person has registered a motor vehicle under Section 5e, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a–5e, Vernon's Texas Civil Statutes), and then applies for registration of the vehicle under this Act, the county tax collector, after the person pays the application fee of $1 required by Section 3 of this Act, shall issue the special devices but may not issue a set of license plates. The person shall attach the devices to the plates issued under Section 5e.

(c) If a person has registered a motor vehicle under this Act and then applies for registration of the vehicle under Section 5e, the person shall return to the Department the license plates and devices issued under this Act. After the person pays the registration fee required by Section 5e, the Department shall issue license plates as provided by that section and also shall issue without charge a set of devices provided for by this Act.

(d) If the owner of a vehicle registered under both this Act and Section 5e disposes of the vehicle during the registration year provided by either Act, the person shall return to the Department the license plates and devices. At that time the person may register another vehicle under both Acts and, after paying the replacement fee required by this Act and the issuance fee required by Section 5e, receive from the Department another set of license plates and devices.

Penalty

Sec. 10. (a) A person commits an offense if the person is neither temporarily or permanently disabled nor transporting a temporarily or permanently disabled person and parks a vehicle with such special device or displaying a temporarily disabled person identification card in any parking space or parking area designated specifically for the disabled.

(b) A person commits an offense if the person parks a vehicle neither displaying the special device nor displaying a temporarily disabled person identification card in a parking space or parking area designated specifically for the disabled.

(c) A person commits an offense if the person parks a vehicle so that the vehicle blocks an access or curb ramp or any other architectural improvement designed to aid the disabled.

(d) An offense under this section is punishable by a fine of not less than $50 nor more than $200. [Acts 1975, 64th Leg., p. 906, ch. 338, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1415, ch. 573, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 375, ch. 170, §§ 1, 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 232, ch. 101, §§ 1, 2, eff. Aug. 1, 1981; Acts 1981, 67th Leg., p. 3038, ch. 793, §§ 1, 2, eff. Sept. 1, 1981.]

Section 3 of Acts 1981, 67th Leg., p. 234, ch. 101, provides:

"This Act takes effect September 1, 1981, and applies to offenses committed on or after that date. An offense committed before the effective date of this Act is subject to disposition under Chapter 338, Acts of the 64th Legislature, 1975 (Article 6675a–5e.1, Vernon's Texas Civil Statutes), as it existed on the date the offense was committed, and that law is continued in effect for that purpose."

Art. 6675a–5e.2. Congressional Medal of Honor Recipients; Registration, Special License Plates, and Parking Privileges

Text as added by Acts 1979, 66th Leg., p. 323, ch. 150, § 1

(a) A recipient of the Congressional Medal of Honor is entitled to register under this section, for the person's own use, one passenger car or light commercial vehicle having a manufacturer's rated carrying capacity of one ton or less, without payment of any annual registration fee or service charge.

(b) The department shall design and provide for the issuance of special license plates for recipients of the Congressional Medal of Honor. The license plate number will be assigned by the department.

(c) A person may apply to the department at any time for registration under this section on a form prescribed by the department. The department shall require an applicant to submit proof of eligibility to register under this section. Registration under this section is valid for one year.

(d) If license plates issued under this section are lost, stolen, or mutilated, the owner of the vehicle for which the plates were issued may obtain replacement plates from the department without charge. If the owner of a vehicle registered under this section disposes of the vehicle during the registra-

tion year, the person shall return the special license plates to the department. At that time the person may register another passenger car or light commercial motor vehicle under this section without charge.

(e) A person who has registered a vehicle and received license plates under this section may renew the registration of the vehicle without charge through application to the county tax collector in the county of the person's residence for an annual registration sticker.

(f) A person operating a vehicle bearing license plates issued under this section has the same parking privileges as a person operating a vehicle bearing plates issued under Section 5e of this Act [1] for disabled veterans.

[Added by Acts 1979, 66th Leg., p. 323, ch. 150, § 1, eff. Aug. 27, 1979.]

[1] Article 6675-5e.

For text as added by Acts 1979, 66th Leg., p. 1040, ch. 470, § 1, see art. 6675-5e.2, post

Art. 6675a-5e.2. Former Prisoners of War; Registration and Special License Plates

Text as added by Acts 1979, 66th Leg., p. 1040, ch. 470, § 1

(a) Any person, other than a person discharged from the armed forces under conditions less than honorable, who was captured and incarcerated by an enemy of the United States during a period of conflict with the United States, is entitled to register under this Section, for the person's own use, one (1) passenger car or light commercial vehicle having a manufacturer's rated carrying capacity of one (1) ton or less, without payment of any annual registration fee or service charge.

(b) The Department shall design and provide for the issuance of special license plates for persons entitled to register under this Section. The license plates shall be designed to indicate that the recipient is a former prisoner of war.

(c) A person may apply to the Department at any time for registration under this Section on a form prescribed by the Department. The Department shall require an applicant to submit proof of eligibility to register under this Section. Registration under this Section is valid for one (1) year.

(d) If license plates issued under this Section are lost, stolen, or mutilated, the owner of the vehicle for which the plates were issued may obtain replacement plates from the Department without charge. If the owner of a vehicle registered under this Section disposes of the vehicle during the registration year, the person shall return the special license plates to the Department. At that time the person may register another passenger car or light commercial motor vehicle under this Section without charge.

(e) A person who has registered a vehicle and received license plates under this Section may renew the registration of the vehicle without charge through application to the County Tax Collector in the county of the person's residence for an annual registration sticker.

[Added by Acts 1979, 66th Leg., p. 1040, ch. 470, § 1, eff. Aug. 27, 1979.]

For text as added by Acts 1979, 66th Leg., p. 323, ch. 150, § 1, see art. 6675-5e.2, ante.

Art. 6675a-5f. Refund of Overcharges on Registration Fees

If the owner of a motor vehicle that is required to be registered pays an annual registration fee in excess of the statutory amount, he shall be entitled to a refund of the overcharge from the county tax collector who collected the excessive fee. The refund shall be paid from the fund in which the county's share of registration fees is deposited. A refund of the overcharge shall be made on presentation of satisfactory evidence of the overcharge to the county tax collector who collected the excessive fee. The owner of a motor vehicle who pays an excessive registration fee shall make his claim for a refund of the overcharge within five (5) years of the date that the excessive registration fee was paid.

[Added by Acts 1975, 64th Leg., p. 369, ch. 160, § 1, eff. Sept. 1, 1975.]

Art. 6675a-5h. Voluntary Firefighters; Registration and Special License Plates

(a) The Department shall design and provide for the issuance of special license plates for volunteer firefighters who have been certified by the Texas Volunteer Firefighters and Fire Marshals Certification Board.

(b) A person who is a certified member of a volunteer fire department is entitled to register under this section, for the volunteer's personal use, one passenger car or light commercial vehicle having a manufacturer's rated carrying capacity of one ton or less. The person shall pay the annual registration fee for the vehicle plus $4. The County Tax Collector shall forward the additional $4 fee to the Department for deposit in the State Highway Fund to defray the cost of providing the specially designed license plates.

(c) A person may apply at any time for registration under this section through the County Tax Collector in the county of the person's residence. The Department shall prescribe the form of the application. The Department shall require an applicant to submit proof of eligibility to register under this section that is satisfactory to the Department. Registration under this section is valid for one year.

(d) If license plates issued under this section are lost, stolen, or mutilated, the owner of the vehicle for which the plates were issued may obtain replacement plates from the Department. The owner shall pay a fee of $4 in addition to the fee required for replacement plates. If the owner of a vehicle registered under this section disposes of the vehicle during the registration year, the person shall return the special license plates to the Department. At that

time the person may register another passenger car or light commercial motor vehicle under this section.
[Added by Acts 1981, 67th Leg., p. 2216, ch. 518, § 1, eff. Sept. 1, 1981.]

Art. 6675a–6d. Temporary Permits for Commercial Motor Vehicles

[See Compact Edition, Volume 5 for text of 1]

Sec. 2. A temporary permit valid for seventy-two (72) hours shall be issued to each such vehicle for the fee of Ten Dollars ($10), and such temporary permit shall be valid for any period of time not to exceed seventy-two (72) hours from the effective day and time as shown on the receipt issued as evidence of such registration. Such vehicles, with the exception of vehicles currently registered in another State of the United States or a Province of Canada; and with the exception of mobile drilling and servicing equipment used in the production of gas and crude petroleum, oil, including, but not limited to, mobile cranes and hoisting equipment, mobile lift equipment, forklifts, and tugs, shall be subject to Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways.[1]

[See Compact Edition, Volume 5 for text of 3 to 6]

[Amended by Acts 1981, 67th Leg., p. 391, ch. 157, § 1, eff. Sept. 1, 1981.]

[1] Article 6701d, §§ 140 and 141.
Section 2 of the 1981 amendatory act provides:
"This Act takes effect September 1, 1981, and applies to registration under a temporary permit issued on or after the effective date of this Act. Registrations under temporary permits issued before that date are covered by the law as it existed at the time of registration, and that law is continued in effect for that purpose."

Art. 6675a–8c. Diesel Motors, Certain Vehicles Propelled by; Fee; License Receipts to Show Type of Motor

It is expressly provided that the license fees for all motor vehicles, other than a passenger car and other than a truck that has a manufacturer's rated carrying capacity of two (2) tons or less, using or being propelled by diesel motors or engines shall be the fees provided in other sections of this Act, plus an additional eleven percent (11%); provided, however, that such additional percentage shall not apply to the fee for the combined gross weight of vehicles registered in combination. When motor vehicles other than a passenger car or a truck described by this section are propelled by diesel fuel, such fact shall be indicated on the license receipts issued for such vehicles by the county tax collectors.
[Amended by Acts 1979, 66th Leg., p. 709, ch. 308, § 1, eff. Sept. 1, 1979.]

Art. 6675a–10. Apportionment of Funds

Text of article effective July 1, 1982

(a) On Monday of each week each County Tax Collector shall deposit in the County Depository of his County to the credit of the County Road and Bridge Fund an amount equal to one hundred per cent (100%) of net collections made hereunder during the preceding week until the amount so deposited for the current calendar year shall have reached a total sum of Fifty Thousand Dollars ($50,000) plus Three Hundred and Fifty Dollars ($350) for each mile of county road, not to exceed five hundred (500) miles, maintained by the County according to the latest data available from the State Department of Highways and Public Transportation.

(b) After depositing the amount provided by Subsection (a) of this section, the County Tax Collector shall deposit to the credit of the Fund on Monday of each week fifty per cent (50%) of the collections made during the preceding week until the additional amount deposited equals the sum of One Hundred Twenty-five Thousand Dollars ($125,000).

(c) After depositing the amounts provided by Subsections (a) and (b) of this section, he shall make no further deposits to the credit of said Fund during that calendar year. All collections made during any week under the provisions of this Act in excess of the amounts required to be deposited to the credit of the Road and Bridge Fund of his County shall be remitted by each County Tax Collector on each Monday of the succeeding week to the State Department of Highways and Public Transportation together with carbon copies of each license receipt issued hereunder during the preceding week. He shall also on Monday of each week remit to the Department, as now provided by law, all transfer fees and chauffeurs' license fees collected by him during the preceding week, together with carbon copies of all receipts issued for said fees during the week.

(d) The County Tax Collector may defer remittance to the Department of fees collected under this Act if the fees are deposited in a daily interest savings account in the County Depository. The County Tax Collector shall remit to the Department fees so deposited no later than the thirty-fourth (34th) day after the due dates set forth in Subsections (b) and (c) of this section.

(e) He shall also accompany all remittances to the Department with a complete report of such collections made and disposition made thereof, the form and contents of said report to be prescribed by the Department. None of the moneys so placed to the credit of the Road and Bridge Fund of a county shall be used to pay the salary or compensation of any County Judge or County Commissioner, but all said moneys shall be used for the construction and maintenance of lateral roads in such county under the supervision of the County Engineer, if there be one, and if there is no such engineer, then the County Commissioners Court shall have authority to command the services of the District Engineer or Resident Engineer of the Department for the purposes of supervising the construction and surveying the lateral roads in their respective counties. All funds allocated to the counties by the provisions of this Act may be used by the counties in the payment of

obligations, if any, issued and incurred in the construction or the improvement of all roads, including State Highways of such counties and districts therein; or the improvement of the roads comprising the county road system; or for the purpose of constructing new roads, or in aid thereof. Roads to be constructed under contract by counties utilizing funds provided under this Act should be accomplished to the maximum extent possible by contracts awarded on the basis of competitive bids.

(f) The County owns all interest earned on fees deposited in a daily interest savings account under Subsection (d) of this section. The County Treasurer shall credit the interest earned on fees so deposited to the County General Fund.

[Amended by Acts 1981, 67th Leg., p. 473, ch. 203, § 1, eff. July 1, 1982.]

For text of article effective until July 1, 1982, see Compact Edition, Volume 5

Art. 6675a-11. Fees and Expenses of Tax Collector; Mailing Procedures

Text of article effective July 1, 1982

As compensation for services under the provisions of this and other laws relating to the registration of vehicles, each County Tax Assessor-Collector shall receive a uniform fee of One Dollar and Fifty Cents ($1.50) for each of the receipts issued each year pursuant to those laws. Said compensation shall be deducted weekly by each County Tax Assessor-Collector from the gross collection made pursuant to this Act and other laws relating to registration of vehicles. Out of the compensation allowed the County Tax Assessors-Collectors, it is hereby expressly provided and required that they shall pay the entire expense of issuing all license receipts and license plates issued pursuant to this Act. It is further provided that the County Tax Assessors-Collectors may collect an additional service charge of One Dollar ($1.00) from each applicant desiring to register or reregister by mail. This service charge shall be used to cover the cost of handling and postage to mail the registration receipt and insignia to the applicant. The Department of Highways and Public Transportation may issue and promulgate procedures to cover the timely application for and issuance of registration receipts and insignia by mail.

[Amended by Acts 1981, 67th Leg., p. 475, ch. 203, § 3, eff. July 1, 1982.]

For text of article effective until July 1, 1982, see Compact Edition, Volume 5

Art. 6675a-12a. Duplicate License Receipt

The owner of a vehicle, the license receipt for which has been lost or destroyed, may obtain a duplicate thereof from the State Department of Highways and Public Transportation or the County Collector who issued the original receipt by paying a fee of One Dollar ($1.00) for said duplicate. The fees derived from the issuance of duplicate license receipts are to be retained by the office issuing same as a fee of office.

[Amended by Acts 1977, 65th Leg., p. 2082, ch. 832, § 1, eff. Aug. 29, 1977.]

Art. 6675a-13. Plate or Plates or Other Devices for Attachment to Vehicles

(a) The Department shall issue to applicants for a motor vehicle registration, on payment of the required fee, a plate or plates, symbols, tabs, or other devices which when attached to a vehicle as prescribed by the Department are the legal registration insignia for the period issued.

[See Compact Edition, Volume 5 for text of (b) to (g)]

[Amended by Acts 1975, 64th Leg., p. 1919, ch. 621, § 2, eff. Jan. 1, 1975.]

Art. 6675a-13½. Designs and Specifications or Reflectorized Plates, Symbols and Tabs

(a) The State Highway Department shall prepare the designs and specifications for the single plate or plates of metal or other material, symbols, tabs, or other devices selected by the State Highway Commission to be used as the legal registration insignia with the requirement, however, that all license plates shall be made with a reflective material so as to be a reflectorized safety license plate. The reflectorized material shall be of such a nature as to provide effective and dependable brightness in the promotion of highway safety during the service period of the license plate issued. The State Highway Department shall design the license plates to include a design at least one-half inch wide that represents in silhouette the shape of the State of Texas and that appears, in lieu of a star, between letters and numerals.

(a-1) [Expired]

[See Compact Edition, Volume 5 for text of (b) and (c)]

[Amended by Acts 1975, 64th Leg., p. 444, ch. 188, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1371, ch. 525, § 1, eff. Sept. 1, 1975.]

Section 2 of Acts 1975, 64th Leg., ch. 188, provided:

"The design change required by this Act applies to license plates manufactured after this Act takes effect."

Art. 6675a-13a. Replacement Number Plates

The owner of a registered motor vehicle may obtain from the Department through the County Tax Collector replacement number plates for such vehicle by filing with said collector an affidavit showing that said number plate or plates have been lost, stolen or mutilated, and by paying a fee of five dollars for each set of plates issued. The County Tax Assessor-Collector shall retain as commission one-half (½) of this fee collected for replacement number plates and the other one-half (½) of such fee shall be reported to and remitted to the State De-

partment of Highways and Public Transportation on Monday of each week as other registration fees are now required to be reported and remitted. In case one or more plates are left in possession of such owner same shall be returned to the Tax Collector when making this affidavit. Said affidavit shall state that such plate or plates have been lost, stolen or mutilated and will not be used on any vehicle owned or operated by the person making this affidavit. No Tax Collector shall issue replacement plates without requiring compliance with the provisions of this Section.

[Amended by Acts 1979, 66th Leg., p. 91, ch. 55, § 1, eff. April 19, 1979.]

Art. 6675a–16. Agreements With Other States, Provinces, Territories or Possessions Regarding Exemptions; Rules and Regulations; Disposition of Fees; Violations

(a) In addition to and regardless of the provisions of this Act, or any other Act relating to the operation of motor vehicles over the public highways of this State, the State Department of Highways and Public Transportation acting by and through the State Engineer-Director is hereby authorized to enter into agreements with duly authorized officials of other jurisdictions, including any State of the United States, the District of Columbia, a State or Province of a foreign country, or a territory or possession of either the United States or of a foreign country to provide for the registration of vehicles by Texas residents and non-residents on an allocation or mileage apportionment basis (such as is provided in the International Registration Plan) or to grant exemptions from payment of registration fees by non-residents provided such grants are reciprocal to Texas residents.

(b) The Department is further authorized and empowered to promulgate and to enforce such rules and regulations as may be necessary to carry out the provisions of the International Registration Plan or any other agreement entered into under the authority herein set forth.

(c) All fees collected for other jurisdictions under the provisions of the International Registration Plan or other agreements entered into under the provisions of this Act shall be distributed to the appropriate jurisdiction at the direction of the Department to carry out the provisions of such agreement. There is hereby created a special fund account in the State Treasury, to be known as the Proportional Registration Distributive Fund, and all such fees collected shall be deposited and disbursed through such account.

(d) This section shall be cumulative of all other laws on this subject, but in the event of a conflict between the provisions of this section and any other Act on this subject, the provisions of this section shall prevail.

(e) Any person owning or operating a vehicle not registered in this State, in violation of the terms of any agreement made under this section, or in the absence of any agreement, in violation of the applicable registration laws of this State, shall be guilty of a misdemeanor and upon conviction shall be fined any sum not exceeding Two Hundred ($200.00) Dollars.

[Amended by Acts 1981, 67th Leg., p. 2491, ch. 651, § 1, eff. Aug. 31, 1981.]

Art. 6686. Dealer's and Manufacturer's License Plates and Tags

(a) Dealer's and Manufacturer's License Plates for Unregistered Motor Vehicles, Motorcycles, House Trailers, Trailers, and Semitrailers.

(1) Dealer's License. Any dealer in motor vehicles, motorcycles, house trailers, trailers, or semitrailers doing business in this State may, instead of registering each vehicle he operates or permits to be operated for any reason upon the streets or public highways, apply for and secure a general distinguishing number and master dealer's license plate which may be attached to any such vehicle he owns and operates or permits to be operated unregistered. Each dealer holding a current distinguishing number and master dealer's license plate may apply for and be issued additional or supplemental metal dealer's plates, as hereinafter provided, which may be attached to any vehicle which he owns and operates or permits to be operated unregistered in the same manner as a vehicle operated on the master dealer's license plate. A dealer within the meaning of this Act means any person, firm, or corporation regularly and actively engaged in the business of buying, selling, or exchanging motor vehicles, motorcycles, house trailers, trailers, or semitrailers at an established and permanent place of business; provided, however, that at each such place of business a sign in letters at least six (6) inches in height must be conspicuously displayed showing the name of the dealership under which such dealer is doing business, and that each such place of business must have a furnished office and, except for dealers who are licensed by the Texas Motor Vehicle Commission pursuant to the Texas Motor Vehicle Commission Code [1] and dealers who sell vehicles to or exchange vehicles with no person other than another dealer licensed under this Act, sufficient space to display five (5) vehicles of the type customarily bought, sold, or exchanged by such dealer.

[See Compact Edition, Volume 5 for text of (a)(2)]

(3) Buyer's Temporary Cardboard Tags. Each dealer holding a current distinguishing number may issue temporary cardboard tags, which may be used by a buyer to operate an unregistered vehicle he purchased from said dealer for a period of twenty (20) days from the date of purchase; provided, however, that a dealer may issue only

one (1) buyer's tag to a purchaser for each unregistered vehicle said dealer sells. The specifications, color, and form of such buyer's cardboard tag shall be prescribed by the Department; provided, however, that each dealer shall be responsible for the safekeeping and distribution of all cardboard tags obtained by him; and furthermore, each dealer is responsible for showing in ink on each buyer's cardboard tag he issues the actual date of sale of each unregistered vehicle together with other information asked for thereon.

(4) Dealer's Temporary Cardboard Tags. Each dealer holding a current distinguishing number may issue temporary cardboard tags, which may only be used by such dealer or his employees for the following purposes:

(a) to demonstrate or cause to be demonstrated his unregistered vehicles to prospective buyers only for the purpose of sale; provided, however, that no provision of this Act shall be construed to prohibit a dealer from permitting a prospective buyer to operate such vehicles in the course of demonstration.

(b) to convey or cause to be conveyed his unregistered vehicles from the dealer's place of business in one part of the State to his place of business in another part of the State, or from his place of business to a place to be repaired, reconditioned, or serviced, or from the point in this State where such vehicles are unloaded to his place of business, including the moving of such vehicles from the State line to his place of business, or to convey such vehicles from one dealer's place of business to another dealer's place of business or from the point of purchase of such vehicles by the dealer to the dealer's place of business, or for the purpose of road testing, and such vehicles displaying such tags while being so conveyed shall be exempt from the mechanical inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways.[2]

Such tags shall not be used to operate vehicles for the personal use of a dealer or his employees. Whenever a dealer sells an unregistered vehicle to a retail purchaser, it shall be such dealer's responsibility to display the Buyer's Temporary Cardboard Tag thereon pursuant to Subsection (3) of this Act. The specifications, form, and color of such dealer's cardboard tags shall be prescribed by the Department.

(5) Cancellation of License. It shall be the duty of the Department to cancel the dealer's or manufacturer's license issued to a person, firm or corporation when such license was obtained by submitting false or misleading information; and the Department is hereby authorized to cancel dealer's licenses whenever a person, firm, or corporation fails, upon demand, to furnish within thirty (30) days to the Department satisfactory and reasonable evidence of being regularly and actively engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, house trailers, trailers, or semitrailers at either wholesale or retail; and, it is also provided that the Department may cancel dealer's or manufacturer's licenses issued under this Act for the violation of any provisions of this Act or for the misuse or for allowing the misuse of any cardboard tag authorized under this Act; and, furthermore, the Department is hereby authorized to cancel such licenses whenever a dealer refuses to show on such tags the date of sale or any other reasonable information required to be shown thereon by the Department; provided, however, that nothing in this Act shall be construed to prohibit new entries into the business of buying, selling, exchanging, or manufacturing such vehicles; and provided further that any dealer or manufacturer whose license was cancelled under the terms of this Act shall, within ten (10) days, surrender to a representative of the Department any and all license plates, cardboard tags, license stickers, and receipts issued pursuant to this Act. If any dealer or manufacturer shall fail to surrender to the Department the license plates, the cardboard tags, license stickers, and receipts as provided herein, the Department shall forthwith direct any peace officer to secure possession thereof and to return same to the Department. Whenever a dealer's or manufacturer's license is cancelled under the provisions of this Act, all benefits and privileges afforded to Texas licensed dealers or manufacturers under the Certificate of Title Act (Article 6687–1, Vernon's Texas Civil Statutes), are automatically cancelled, also.

(6) Limited Use of Dealer's Plates and Tags. The use of dealer's license or dealer's temporary cardboard tags is prohibited on service or work vehicles or on commercial vehicles carrying a load; provided, however, that a boat trailer carrying a boat will not be considered to be a commercial vehicle carrying a load, and a dealer complying with the provisions of this Act may affix to the rear of a boat trailer he owns or to the rear of a boat trailer he sells such dealer's distinguishing number or cardboard tags pursuant to the provisions of Subsections (1), (3) and (4) of this section; and, further provided, that the term "commercial vehicle carrying a load" shall not be construed to prohibit the operation or conveyance of unregistered vehicles by licensed dealers (or buyers therefrom) utilizing the full mount method, the saddle mount method, the tow bar method, or any combination thereof, pursuant to Subsections (3) and (4) of this section.

(7) Fees and Forms. Each applicant for a dealer's or manufacturer's general distinguishing number and master dealer's license plate shall pay to the Department an annual fee of One Hundred Dollars ($100) for the number and master dealer's plate and Ten Dollars ($10) for each additional or

supplemental metal dealer's plate desired, and all such fees shall be deposited in the State Highway Fund. Applications for a dealer's or manufacturer's license plate, and for renewals thereof, shall be made in writing on forms prescribed and furnished by the Department, and such applications shall require any pertinent information, including sufficient information for the Department to determine that the applicant is actively and regularly engaged in the sale of motor vehicles, motorcycles, house trailers, trailers, or semitrailers as a dealer, to insure proper enforcement and administration; and, furthermore, each such application shall contain a statement to the effect that the applying dealer agrees to permit the Department to examine during working hours the ownership papers for each vehicle, registered or unregistered, in the possession of said dealer or under his control. All facts stated in an application shall be sworn to before an officer authorized to administer oaths and no dealer's or manufacturer's distinguishing number shall be issued until this Act is complied with. All such applications for dealer's or manufacturer's licenses, accompanied by the prescribed fee, should be made to the Department by January 15 of each year and the license plates for those applications meeting the provisions of this Act will be mailed to the applicants during the succeeding months of February and March. Each dealer's and manufacturer's license shall expire at the expiration of the "Motor Vehicle Registration Year."

[See Compact Edition, Volume 5 for text of (a)(8) to (f)]

[Amended by Acts 1975, 64th Leg., p. 57, ch. 33, § 1, eff. April 3, 1975.]

[1] Article 4413(36).
[2] Article 6701d, §§ 140, 141.

Art. 6687b. Driver's, Chauffeur's, and Commercial Operator's Licenses; Accident Reports

[See Compact Edition, Volume 5 for text of 1]

ARTICLE II–ISSUANCE OF LICENSES, EXPIRATION, AND RENEWAL

[See Compact Edition, Volume 5 for text of 2 to 4]

Special Restrictions on Drivers of School Buses and Public or Common Carrier Motor Vehicles; Temporary Taxicab Permits in Home-rule Cities Over 800,000

Sec. 5.

[See Compact Edition, Volume 5 for text of 5(a)]

(b) No person who is under the age of twenty-one (21) years shall drive any motor vehicle except a taxicab while in use as a public or common carrier of persons, nor until he has been licensed as a chauffeur. No person who is under the age of nineteen (19) years shall drive a taxicab while in use as a public or common carrier of persons, nor until he has been licensed as a chauffeur. However, the governing body of a home-rule city having a population of more than 800,000, according to the last preceding federal census, may authorize by ordinance the issuance of temporary taxicab permits to persons who are qualified by age to drive a taxicab and who hold a valid Texas operator's license. A temporary taxicab permit must be issued for a definite period of time not to exceed 10 days and may not be issued to the same individual more than once every 90 days. The holder of a valid temporary taxicab permit may operate a taxicab while it is in use as a public or common carrier of persons. Temporary taxicab permits may be issued only in connection with special events in the city being attended by out-of-city visitors resulting in demand for transportation beyond the capabilities of established transportation facilities and may not be issued for the purpose of providing transportation in lieu of transportation services suspended or lapsed as the result of a dispute between employees and their employer. Proof of liability insurance coverage in an amount equal to that required by locally franchised taxicab companies shall be required before a temporary taxicab permit may be issued.

[See Compact Edition, Volume 5 for text of 5A and 5B]

Application for License

Sec. 6.

[See Compact Edition, Volume 5 for text of 6(a)]

(b) Every said original application shall state the applicant's full name, place and date of birth, such information to be verified by presentation of a certified copy of the applicant's birth certificate or other documentary evidence deemed satisfactory by the Department. Such application shall also include the thumbprints, or if for any reason thumbprints cannot be taken, the index fingerprints of the applicant, and shall state the sex and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as an operator, commercial operator, or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal, and whether the applicant, if less than twenty-five (25) years of age, has completed a driver education course approved by the Department, and such other information as the Department may require to determine the applicant's identity, competency and eligibility. Information about the medical history of an applicant supplied to the Department or a Medical Advisory Board is for the confidential use of the Department or the Board and may not be divulged to any person or used as evidence in a legal proceeding except a proceeding under Section 22 or Section 31 of this Act.

[See Compact Edition, Volume 5 for text of 7 to 11A]

Anatomical Gifts; Execution on Reverse Side of Driver's License

Sec. 11B. (a) A gift of any needed parts of the body may be made by executing a statement of gift printed on the reverse side of the donor's operator's, commercial operator's, or chauffeur's license. A signed and witnessed statement of gift thereon shall be deemed to comply with the Texas Anatomical Gift Act (Article 4590–2, Vernon's Texas Civil Statutes). The gift is invalid on expiration, cancellation, revocation, or suspension of the operator's, commercial operator's, or chauffeur's license. To be valid, the statement must be executed each time the operator's, commercial operator's, or chauffeur's license is replaced, reinstated, or renewed.

(b) The Department shall print a statement certifying the willingness to make an anatomical gift on the reverse side of each operator's, commercial operator's, and chauffeur's license.

Allergy Designation on Reverse Side of License

Sec. 11C. The Department shall print a statement on the reverse side of each operator's, commercial operator's, and chauffeur's license as follows:

Allergic Reaction to Drugs: _____.

Restricted Licenses

Sec. 12.

[See Compact Edition, Volume 5 for text of 12(a) to (d)]

(e)(1) The Department may issue a special restricted operator's license to any person between the ages of fifteen (15) and eighteen (18) years to operate only a motorcycle, motor scooter or motorized bicycle, with less than one hundred twenty-five (125) cc piston displacement; provided such person has completed and passed a motorcycle operator training course approved by the Department. This motorcycle operator training course will be made available. This motorcycle operator training course will be an exception to the driver training course, regarding the age limit, as applied in Section 7(a), Article 6687b, Vernon's Texas Civil Statutes. Upon reaching the age of sixteen and having completed the above course, the 125cc restriction shall be removed without completing any further motorcycle courses. This special restricted license shall be issued on application to the Department in accordance with Section 7 of Article 6687b, Vernon's Texas Civil Statutes; shall be subject to the requirements of Section 10 of Article 6687b, Vernon's Texas Civil Statutes, and to other provisions of this Act in the same manner as operator's licenses; and shall be in the form prescribed by the Department. A motor-assisted bicycle operator's license is required for operators of motor-assisted bicycles. A person must be at least fifteen (15) years old to be issued a motor-assisted bicycle operator's license. The Department shall examine applicants for that type of license by administering to them a written examination concerning traffic laws applicable to the operation of motor-assisted bicycles. No test involving the operation of the vehicle is required. The fee for the license is Seven Dollars ($7). All applicable provisions of this Act governing restricted operator's licenses for the operation of motorcycles only also apply to motor-assisted bicycle operator's licenses, including provisions relating to the application, issuance, duration, suspension, and cancellation of those licenses.

[See Compact Edition, Volume 5 for text of 12(e)(2) to 13]

Duplicate Licenses and Certificates

Sec. 14. In the event that an operator's license, commercial operator's license, chauffeur's license, identification certificate, or handicap or health condition certificate issued under the provisions of this Act is lost, destroyed, or there is a change in pertinent information, the person to whom the same was issued may obtain a duplicate or correction thereof upon furnishing proof satisfactory to the Department that such permit, license, or certificate was lost or destroyed or upon the supplying of the required information which has changed, together with proof acceptable to the Department supporting such change, and upon the payment of a fee of One Dollar ($1).

[See Compact Edition, Volume 5 for text of 14A]

Person Identification Certificates: Handicap or Health Condition; Fee

Sec. 14B. (a) The department may issue to persons who have a physical handicap or health condition that may cause unconsciousness, incoherence, or inability to communicate a specially notated personal identification certificate that indicates the particular handicap or health condition by word, symbol, or code.

(b) Original applications and applications for renewal of identification certificates shall require information and be submitted on a form promulgated by the department.

(c) The department shall levy and collect a fee of $5 for preparation and issuance of the certificate.

(d) Fees collected for these certificates shall be deposited in the Operator's and Chauffeur's License Fund and are hereby appropriated to defray the cost incurred in issuing these certificates. Any collections in excess of cost shall be deposited in the State Treasury in the General Revenue Fund.

Disposition of Fees

Sec. 15. (a) All fees and charges required by this Act and collected by an officer or agent of the Department shall be remitted without deduction to the Department in Austin, Texas.

(b) All monies received for operators, commercial operators and chauffeurs license fees shall be deposited in the State Treasury in a fund to be known as the Operator's and Chauffeur's License Fund.

(c) Fees and charges deposited in the Operator's and Chauffeur's License Fund under the provisions of this Act may, upon appropriation by the Legislature, be used by the Texas Department of Public Safety for the payment of salaries, purchase of equipment and supplies, maintenance, and any and all other necessary expenses incident to the operation of the Department of Public Safety in carrying out the duties as are by law required of such Department. Any remaining balance in the Operator's and Chauffeur's License Fund on September 1st of each and every year shall remain in such Fund and shall be available for appropriation by the Legislature for the maintenance and support of the Texas Department of Public Safety as set forth hereinabove.

[See Compact Edition, Volume 5 for text of 15A to 19]

Notice of Change of Address or Name

Sec. 20. Whenever any person after applying for or receiving an operator's license, commercial operator's license, chauffeur's license, identification certificate, or handicap or health condition certificate shall move from the address named in such application or in the license or certificate issued to him or when the name of the licensee is changed by marriage or otherwise, such person shall within thirty (30) days thereafter notify the Department in writing of his old and new addresses or of such former and new names, of the number of any license or certificate then held by him, and such person shall apply for a duplicate license or certificate as set out in Section 14.

Records to be Kept by the Department

Sec. 21.

[See Compact Edition, Volume 5 for text of 21(a)]

(b) Except as specifically provided by this subsection, the Department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this State and in connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the Department upon any application for the renewal of a driver's license and at other suitable times. The individual record of a licensee who is employed as a peace officer or a fire fighter shall not include information relating to a traffic accident if the accident occurred during an emergency while the peace officer or fire fighter was driving a law enforcement vehicle or fire department vehicle in pursuit of his or her duties as a peace officer or fire fighter. Before licensing or renewing any license, the Department shall examine the applicant's record for information concerning conviction of traffic violations and involvement in traffic accidents. The Department shall not issue or renew a license when, in its opinion, the applicant's record indicates that issuance or renewal of his license would be inimical to the public safety.

[See Compact Edition, Volume 5 for text of 21(c) to 21(e)]

(f) The Department is authorized to provide information pertaining to an individual's date of birth, current license status, most recent address, completion of an approved driver education course, the fact of (but not the reason for) completion of a driving safety course, and a listing of reported traffic law violations, and motor vehicle accidents, by date and location, as listed on the records of the Department upon written request and the payment of a Three Dollar ($3.00) fee by a person showing a legitimate need for such information, provided, however, that if requests for such information be prepared in quantities of one hundred (100) or more from a single person at any one time and upon data processing request forms acceptable to the Department, such information may be provided upon payment of a One Dollar ($1.00) fee for each individual request.

[See Compact Edition, Volume 5 for text of 21(g) to 21A]

ARTICLE IV–CANCELLATION, SUSPENSION, AND REVOCATION OF LICENSES

Authority of Department to Suspend or Revoke a License

Sec. 22. (a) When under Section 10 of this Act the Director believes the licensee to be incapable of safely operating a motor vehicle, the Director may notify said licensee of such fact and summons him to appear for hearing as provided hereinafter. Such hearing shall be had not less than ten (10) days after notification to the licensee or operator under any of the provisions of this section, and upon charges in writing, a copy of which shall be given to said operator or licensee not less than ten (10) days before said hearing, except as otherwise provided by this subsection. For the purpose of hearing such cases, jurisdiction is vested in the mayor of the city, or judge of the police court, or a Justice of the Peace in the county where the operator or licensee resides. Such officer may receive a fee for hearing such cases if such a fee is approved and set by the County Commissioners Court which has jurisdiction over the residence of the operator or licensee and such fee shall not exceed Five Dollars ($5.00) per case and shall be paid from the General Revenue Fund of the County. Any fees, not to exceed Five Dollars ($5.00) per case, which the County Commissioners Court may determine to be owed to such officer for past hearings, or any fees, not to exceed Five Dollars ($5.00) per case, previously paid such officer for hearing said cases, is hereby authorized. Such court may administer oaths and may issue subpoenas for

the attendance of witnesses and the production of relative books and papers. It shall be the duty of the court to set the matter for hearing upon ten (10) days' written notice to the Department. Upon such hearing, the issues to be determined are whether the license shall be suspended or whether the license shall be revoked, and, in the event of a suspension, the length of time of the suspension, which shall not exceed one (1) year. The officer who presides at such hearing shall report the finding to the Department which shall have authority to suspend the license for the length of time reported; provided, however, that in the event of such affirmative finding, the licensee may appeal to the county court of the county wherein the hearing was held, said appeal to be tried de novo. Notice by registered mail to the address shown on the license of the licensee shall constitute service for the purpose of this section. If the hearing is to determine whether a licensee is an habitual violator of the traffic law, and if the registered letter is returned to the Department because the Department has not been notified of the licensee's correct address or because the licensee has refused to accept the registered letter, the Director may give the licensee notice of a pending hearing by publishing notice in a newspaper of general circulation in the County of the licensee's residence, as listed in Department records, at least thirty (30) days before the hearing. The Director shall specify in the notice the place, time, and date of the hearing and shall state in the notice that the Department is entitled to suspend for a period of not more than one (1) year the license of a licensee who is found to be an habitual violator of the traffic law.

(b) The authority to suspend the license of any operator, commercial operator, or chauffeur as authorized in this Section is granted the Department upon determining after proper hearing as hereinbefore set out that the licensee:

1. Has committed an offense for which automatic suspension of license is made upon conviction;

2. Has been responsible as a driver for any accident resulting in death;

3. Is an habitual reckless or negligent driver of a motor vehicle;

4. Is an habitual violator of the traffic law.

The term "habitual violator" as used herein, shall mean any person with four (4) or more convictions arising out of different transactions in a consecutive period of twelve (12) months, or seven (7) or more convictions arising out of different transactions within a period of twenty-four (24) months, such convictions being for moving violations of the traffic laws of this state or its political subdivisions.

5. Is incapable to drive a motor vehicle;

6. Has permitted an unlawful or fraudulent use of such license;

7. Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

8. Has failed or refused to submit a report of any accident in which he was involved as provided in Section 39 of this Act;

9. Has been responsible as a driver for any accident resulting in serious personal injury or serious property damage;

10. Is the holder of a provisional license under Section 11A of this Act and has been convicted of two (2) or more moving violations committed within a period of twelve (12) months;

11. Has not complied with the terms of a citation issued by a jurisdiction that is a member of the Nonresident Violator Compact of 1977 [1] for a violation to which the compact applies.

[1] Article 6701d-23.

[See Compact Edition, Volume 5 for text of 22(c) to 23]

Occupational License to Meet Essential Need; Hearing; Restrictions; Financial Responsibility; Violations

Sec. 23A. (a) Any person whose license has been suspended for causes other than physical or mental disability or impairment may file with the judge of the county court or district court having jurisdiction within the county of his residence, or with the judge of the county court or district court having jurisdiction within the county where an offense occurred for which his license was suspended, a verified petition setting forth in detail an essential need for operating a motor vehicle in the performance of his occupation or trade. The hearing on the petition may be ex parte in nature. The judge hearing the petition shall enter an order either finding that no essential need exists for the operation of a motor vehicle in the performance of the occupation or trade of the petitioner or enter an order finding an essential need for operating a motor vehicle in the performance of the occupation or trade of the petitioner. In the event the judge enters the order finding an essential need as set out herein, he shall also, as part of such finding, determine the actual need of the petitioner in operating a motor vehicle in his occupation or trade and shall restrict the use of the motor vehicle to the petitioner's actual occupation or trade and the right to drive to and from the place of employment of the petitioner, and shall require the petitioner to give proof of a valid policy of automobile liability insurance in accordance with the provisions of the Texas Safety Responsibility Law, Article 6701h, Vernon's Annotated Texas Statutes. Such restrictions shall be definite as to hours of the day, days of the week, type of occupation and areas or routes of travel to be permitted, except that the petitioner shall not be allowed to operate a motor vehicle more than ten (10) hours in any twenty-four (24) consecutive hours. On a proper showing of necessity, however, the court may waive the 10-hour restriction. Unless further extended at the discretion of the

court, orders entered by such court shall extend for a period of twelve (12) months or less from the date of the original suspension. A certified copy of the petition and the court order setting out the judge's finding and the restrictions shall be forwarded to the Department.

[See Compact Edition, Volume 5 for text of 23A(b) and 23A(c)]

Sec. 24.

[See Compact Edition, Volume 5 for text of 24(a) to 24(c)]

(d) If a person is convicted of the offense of driving a motor vehicle under the influence of intoxicating liquor, the person's license shall not be automatically suspended if the court places the person on probation and either requires as a condition of probation that the person attend an educational program designed to rehabilitate persons who have driven while intoxicated as provided by Article 42.13, Code of Criminal Procedure, 1965, or waives that requirement, or the jury recommends, under Section 3a, Article 42.13, Code of Criminal Procedure, 1965, as amended, probation and no suspension of the person's license. The probation officer shall report to the court whether or not the person has completed the program. If the person fails to complete the program, the person's license shall be automatically suspended as provided by Subdivision (2) of Subsection (a) of this section.

[See Compact Edition, Volume 5 for text of 24A]

Court to Report Convictions; Restricted Licenses for Convicted Persons

Sec. 25. (a) Whenever any person is convicted of any offense for which this Act makes automatic the suspension of the operator's, commercial operator's, or chauffeur's license of such person, the court in which such conviction is had shall require the surrender to it of all operators', commercial operators', and chauffeurs' licenses then held by the person so convicted and the clerk of said court shall thereupon forward the same together with a record of such conviction. The court may enter an order restricting the operation of a motor vehicle to the person's occupation or to participation in an alcoholic or drug treatment, rehabilitation, or educational program, provided the person gives proof of a valid policy of automobile liability insurance in accordance with the provisions of the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes). The order shall state restrictions as to hours of the day, days of the week, type of occupation or program, and areas or routes of travel to be permitted, except that the person convicted may not be allowed to operate a motor vehicle more than ten (10) hours in any consecutive twenty-four (24) hours, providing, on proper showing of necessity, the court may waive the ten (10) hour restriction. The order shall be effective for a period to be determined by the judge and may be extended at the discretion of the judge, provided that if the order is granted for longer than a twelve (12) month period, the person convicted must give proof to the Department of Public Safety of a valid policy of automobile liability insurance in accordance with the provisions of the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes). But in no event may the order remain in effect beyond the period for which the convicted person's license has been suspended. A certified copy of the order shall be given to the person convicted and shall be forwarded to the Department together with the person's licenses and the record of his conviction. Upon receipt of the order, the Department shall issue a license showing upon its face the restrictions and expiration date set out in the order. The person convicted may use the order of the court as a restricted license for a period of fourteen (14) days following the date of the order. Any person who violates the restrictions of the order of the court or on the license issued under this section is guilty of a misdemeanor and upon conviction shall be punished in the same manner as one convicted of driving a motor vehicle while license is suspended, and the license and order shall be automatically cancelled.

[See Compact Edition, Volume 5 for text of 25(b) and 25(c)]

Authority of Department to Cancel License or Certificate

Sec. 25A. The Department is hereby authorized to cancel any driver's license, identification certificate, or handicap or health condition certificate upon determining that the licensee or holder of the certificate was not entitled to the issuance thereof hereunder or that said licensee or holder of the certificate failed to give the required or correct information in his application.

[See Compact Edition, Volume 5 for text of 26 to 29]

Cancellation of License for Medical Reasons

Sec. 30. It shall be unlawful for any person to act as an operator, commercial operator, or chauffeur who is addicted to the use of alcohol or narcotic drugs, or who has been adjudged mentally incompetent and has not been restored to competency by judicial decree or released from a hospital for the mentally incompetent upon a certificate of the superintendent that such person is competent. Any finding by any court of competent jurisdiction that any person holding an operator's license, commercial operator's license, or chauffeur's license is mentally incompetent or addicted to the use of alcohol or narcotics shall carry with it a revocation of such operator's, commercial operator's, or chauffeur's license. It shall be the duty of the clerk of any court in which such findings are made, to certify same to the Department within ten (10) days.

[See Compact Edition, Volume 5 for text of 30A and 31]

Violation of License or Certificate Provision

Sec. 32. (a) In this section:

(1) "Driver's license" means a license or a permit issued by the Department that authorizes the operation of a motor vehicle.

(2) "Certificate" means a personal identification certificate, handicap certificate, or health condition certificate issued by the Department.

(b) Except as provided in Subsection (c) of this section, it is unlawful for any person to commit any of the following acts:

1. To display or cause or permit to be displayed or to have in possession any driver's license or certificate knowing the same to be fictitious or to have been cancelled, revoked, suspended, or altered;

2. To lend or knowingly permit the use of, by one not entitled thereto, any driver's license or certificate issued to the person so lending or permitting the use thereof;

3. To display or to represent as one's own, any driver's license or certificate not issued to the person so displaying same;

4. To fail or refuse to surrender to the Department on demand any driver's license or certificate which has been suspended, cancelled, or revoked as provided by law;

5. To apply for or have in one's possession more than one currently valid driver's license or more than one currently valid certificate; or

6. To use a false or fictitious name or give a false or fictitious address in any application for a driver's license or a certificate or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in any such application.

(c) After written approval by the Director, the Department may issue to a law enforcement officer an alias driver's license to be used in supervised activities involving criminal investigations. Possession or use for the purposes described in this subsection of a driver's license issued as provided in this subsection by the officer to whom the license was issued is not a violation of this section, unless the Department has suspended, cancelled, or revoked the license. Application for a license for the purposes described in this subsection is not a violation of this section.

Sec. 33. Repealed by Acts 1981, 67th Leg., p. 992, ch. 373, § 5, eff. Sept. 1, 1981.

[See Compact Edition, Volume 5 for text of 34 to 36]

Employing Unlicensed Chauffeur or Commercial Operator

Sec. 37. Before employing a person as a chauffeur or commercial operator of a motor vehicle, an employer shall request from the Department of Public Safety a list of convictions for traffic violations contained in their files on the potential employee and a verification that the potential employee has a valid license. No person shall employ as a chauffeur or commercial operator of a motor vehicle any person not then licensed as provided in this Act.

[See Compact Edition, Volume 5 for text of 38 to 46]

[Amended by Acts 1975, 64th Leg., p. 219, ch. 80, § 1, eff. April 30, 1975; Acts 1975, 64th Leg., p. 267, ch. 113, § 1, eff. April 30, 1975; Acts 1975, 64th Leg., p. 378, ch. 167, § 1, eff. Jan. 1, 1975; Acts 1975, 64th Leg., p. 905, ch. 337, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 32, ch. 15, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 157, ch. 78, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1400, ch. 564, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1521, ch. 615, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1526, ch. 619, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1893, ch. 754, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 57, ch. 35, § 1, eff. April 11, 1979; Acts 1979, 66th Leg., p. 907, ch. 415, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1048, ch. 478, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1110, ch. 526, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1360, ch. 610, § 2, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1394, ch. 620, § 1, eff. Jan. 1, 1981; Acts 1979, 66th Leg., p. 2023, ch. 794, § 1, eff. June 13, 1979; Acts 1981, 67th Leg., p. 359, ch. 142, § 3, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 991, ch. 373, §§ 1 to 5, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2324, ch. 571, § 3, eff. Sept. 1, 1981.]

Section 4 of Acts 1981, 67th Leg., p. 359, ch. 142, provides:

"This Act takes effect January 1, 1982, and applies only to probation and license suspension for offense committed on or after that date. Probation under Article 42.13, Code of Criminal Procedure, 1965, as amended, and license suspension under Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), for an offense committed before the effective date of this Act are governed by the law as it existed when the offense occurred, and that law is continued in effect for that purpose. For the purpose of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Section 6 of Acts 1981, 67th Leg., p. 992, ch. 373, provides:

"This Act takes effect September 1, 1981, and applies to notification for address and name changes that occur on or after that date and to offenses committed under Sections 25A and 32 Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), on or after that date. Offenses committed under those sections before the effective date of this Act are subject to prosecution under those sections as they existed when the offense occurred, and that law is continued in effect for that purpose. For purposes of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Section 2 of Acts 1979, 66th Leg., p. 58, ch. 35, provided:

"The legislature intends, in enacting this legislation that epilepsy be treated as are other disabilities and diseases under the authority of Subdivision 8, Section 4, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), in determining eligibility for an operator's, commercial operator's, or chauffeur's license, and as other disabilities and diseases are treated under the authority of Section 22 of that Act, as amended, in determining grounds for suspension or revocation of a license."

Art. 6687–1. Certificate of Title Act

[See Compact Edition, Volume 5 for text of 1 and 1a]

"Motor Vehicle" Defined

Sec. 2. The term "motor vehicle" means every kind of motor driven or propelled vehicle now or

hereafter required to be registered or licensed under the laws of this state, including trailers, house trailers, and semitrailers, and shall also include motorcycles, whether required to be registered or not, except motorcycles designed and used exclusively on golf courses. "Motor vehicle" does not include a motor-assisted bicycle as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes).[1]

[1] See art. 6701d, § 21(m).

[See Compact Edition, Volume 5 for text of 2a to 2c]

"Motorcycle" Defined

Sec. 2d. The term "motorcycle" means every motor vehicle designed to propel itself on not more than three wheels in contact with the ground.

"Motor Vehicle" and "House Trailer" not to Include "Manufactured Housing"

Sec. 2e. The terms "motor vehicle" and "house trailer" do not include "manufactured housing" as defined in the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 3 to 29]

Vehicles Brought into State; Sale of Vehicles; Liens or Encumbrances

Sec. 30. (a) Before any motor vehicle which was last registered and titled, or registered in some other state or country may be registered and titled in Texas, the applicant shall furnish to the designated agent a certificate as required under Section 142A, Uniform Act Regulating Traffic on Highways, as added (Article 6701d, Vernon's Texas Civil Statutes). No designated agent shall accept any application for registration and a certificate of title until the provisions of this Section have been complied with.

[See Compact Edition, Volume 5 for text of 30(b) to 34]

Transfer by Operation of Law; New Certificate

Sec. 35. When the ownership of a motor vehicle registered or licensed within this State is transferred by operation of law, as upon inheritance, devise or bequest, bankruptcy, receivership, judicial sale, or any other involuntary divestiture of ownership, the Department shall issue a new certificate of title upon being provided with a certified copy of the order appointing a temporary administrator or of the probate proceedings, or letters testamentary or of administration, if any (if no administration is necessary, then upon affidavit showing such fact and all of the heirs at law and specification by the heirs as to in whose name the certificate shall issue), or order, or bill of sale from the officer making the judicial sale. If the security interest or other lien is foreclosed in accordance with law by nonjudicial means, the affidavit of the secured party or other mortgagee of the fact of the nonjudicial foreclosure in accordance with law is sufficient to authorize the Department to issue a new certificate of title in the name of the purchaser at the foreclosure sale. If the foreclosure is of a constitutional or statutory lien, the affidavit of the mortgagee of the fact of the creation of the lien and of the divestiture of title by reason thereof in accordance with law and proof of notice as required by Article 5504a, Revised Civil Statutes of Texas, 1925, are sufficient to authorize the Department to issue a new certificate of title in the name of the purchaser. If an agreement providing for right of survivorship is signed by the husband and wife, upon the death of either spouse the Department shall issue a new certificate of title to the surviving spouse upon being provided with a copy of the death certificate of the deceased spouse.

[See Compact Edition, Volume 5 for text of 36 to 56]

Fees; Collection and Disposition

Text of section effective until July 1, 1982

Sec. 57. Each applicant for a Certificate of Title or reissuance thereof shall pay to the designated agent (County Tax Assessor-Collector) the sum of Three Dollars ($3), of which the first One Dollar and Fifty Cents ($1.50) shall be accounted for by the County Tax Assessor-Collector and disposed of in the method hereinafter provided; and the remaining One Dollar and Fifty Cents ($1.50) shall be forwarded to the State Department of Highways and Public Transportation for deposit in the State Highway Fund, together with the application for a Certificate of Title, within twenty-four hours after the same has been received by the County Tax Assessor-Collector, from which fees the Department shall be entitled and shall use sufficient money to pay all expenses necessary to efficiently administer and perform the duties set forth herein.

The County Tax Assessor-Collector shall turn One Dollar and Fifty Cents ($1.50) from each fee over to the County Treasurer for deposit in the Officers' Salary Fund.

Fees; Collection and Disposition

Text of section effective July 1, 1982

Sec. 57. (a) Each applicant for a Certificate of Title or reissuance thereof shall pay to the designated agent (County Tax Assessor-Collector) the sum of Three Dollars ($3), of which the first One Dollar and Fifty Cents ($1.50) shall be accounted for by the County Tax Assessor-Collector and disposed of in the method hereinafter provided; and the remaining One Dollar and Fifty Cents ($1.50) shall be forwarded to the State Department of Highways and Public Transportation for deposit in the State Highway Fund, together with the application for a Certificate of Title, within twenty-four hours after the same has been received by the County Tax Assessor-Collector, from which fees the Department shall be entitled and shall use sufficient money to pay all

expenses necessary to efficiently administer and perform the duties set forth herein.

(b) The County Tax Assessor-Collector, may defer remittance to the Department of fees collected under Subsection (a) of this section if the fees are deposited in a daily interest savings account in the County Depository. The County Tax Assessor-Collector shall remit to the Department fees so deposited no later than the thirty-fourth (34th) day after the due date set forth in Subsection (a) of this section. The County owns all interest earned on fees deposited in a daily interest savings account under this subsection. The County Treasurer shall credit the interest earned on fees so deposited to the County General Fund.

(c) The County Tax Assessor-Collector, shall turn One Dollar and Fifty Cents ($1.50) from each fee over to the County Treasurer for deposit in the Officers' Salary Fund.

[See Compact Edition, Volume 5 for text of 57a to 65]

[Amended by Acts 1975, 64th Leg., p. 1370, ch. 524, §§ 1, 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2083, ch. 833, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 716, ch. 312, § 1, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1060, ch. 490, § 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 475, ch. 203, § 4, eff. July 1, 1982; Acts 1981, 67th Leg., p. 3084, ch. 815, § 1, eff. March 1, 1982.]

Art. 6687–2. Automobile Salvage Dealers

(a) In this article:

(1) "Automobile salvage dealer" means an individual, corporation, association, partnership, organization, or other entity engaged in the business of obtaining abandoned, wrecked, or junked motor vehicles or motor vehicle parts for scrap disposal, resale, repairing, rebuilding, demolition, or other form of salvage.

(2) "Major component part" means the front end assembly or tail section of an automobile, the cab of a truck (light or heavy), the bed of a one ton or lighter truck, or a vehicle part that contains or should contain a federal safety sticker, motor number, serial number, manufacturer's permanent vehicle identification number, or a derivative of a vehicle identification number.

(3) "Front-end assembly" means the hood, right and left front fender, grill, bumper, radiator, and radiator support, if two or more such parts are assembled together as one unit.

(4) "Tail section" means the roof, floor pan, right and left rear quarter panel, deck lid, and rear bumper, if two or more of such parts are assembled together as one unit.

(5) "Federal safety sticker" means a sticker, label, or tag required by 15 U.S.C. Section 1403 or rules adopted under that section.

(b) An automobile salvage dealer shall not receive a motor vehicle described in Subsection (a) of this article, unless the dealer first obtains a certificate of authority, sales receipt, or transfer document under Sections 5 and 11, respectively, Texas Abandoned Motor Vehicle Act (Article 6687–9, Vernon's Texas Civil Statutes), or a Certificate of Title showing that there are no liens on the vehicle or that all recorded liens have been released. On receipt of a vehicle, an automobile salvage dealer shall immediately remove any unexpired license plates from the motor vehicle and place them in a secure, locked place. An inventory list of such plates showing the license number, the make, the motor number, and the vehicle identification number of the motor vehicle from which such plates were removed shall be maintained on forms to be furnished by the State Department of Highways and Public Transportation. Upon demand the Certificate of Title or authority, the sales receipt, or transfer document, the license plates, and inventory lists shall be surrendered to the State Department of Highways and Public Transportation for cancellation. It is further provided that all Certificates of Title covering such motor vehicles shall be surrendered to the State Department of Highways and Public Transportation for cancellation. It shall thereafter be the duty of the State Department of Highways and Public Transportation to furnish a signed receipt for the surrendered license plates and Certificates of Title.

(c) An automobile salvage dealer shall keep an accurate and legible inventory of each major component part purchased by or delivered to him, as follows:

(1) date of purchase or delivery;

(2) name, age, address, sex, and driver's license number of the seller;

(3) the license number of the motor vehicle used to deliver the major component part;

(4) a complete description of the item purchased;

(5) the vehicle identification number of the motor vehicle from which a major component part was removed.

(d) In lieu of the requirements contained in Subsection (c) of this article, an automobile salvage dealer may record the name of the dismantler and the Texas Certificate of Inventory number.

(e) An automobile salvage dealer shall keep all records required to be kept by this article for one year after the date of sale or disposal of the item, and he shall allow an inspection of the records by a peace officer at any reasonable time. A peace officer may inspect the inventory on the premises of the automobile salvage dealer at any reasonable time in order to verify, check, or audit the records. An automobile salvage dealer shall allow and shall not interfere with a full and complete inspection by a peace officer of the inventory, premises, and records of the dealer.

(f) A peace officer may seize, hold, and dispose of according to the Code of Criminal Procedure a motor

vehicle or part thereof which has been stolen or which has been altered so as to remove, change, mutilate, or obliterate a permanent vehicle identification number, derivative number, motor number, serial number, or federal safety sticker.

(g) A person who fails to comply with any provision of this article or violates a provision of this article commits a Class A misdemeanor.

[Amended by Acts 1977, 65th Leg., p. 1142, ch. 432, § 1, eff. June 15, 1977; Acts 1979, 66th Leg., p. 1508, ch. 651, §§ 1 to 3 eff. June 13, 1979; Acts 1981, 67th Leg., p. 3079, ch. 811, § 5, eff. Aug. 31, 1981.]

Art. 6687–6. Secondhand Vehicle Transfers

The current year registration license receipt and the properly assigned Certificate of Title or other evidence of title required to be delivered to the transferee of a used or secondhand vehicle under the terms of Article 6687–5, Revised Civil Statutes of Texas, 1925, as amended, shall be filed by the transferee within twenty (20) working days of the date of transfer with the County Tax Assessor-Collector of the county in which the transferee resides as an application for transfer of title as required under the Certificate of Title Act, as amended (Article 6687–1, Vernon's Texas Civil Statutes), and as an application for transfer of license and in addition to the fees required under the Certificate of Title Act, as amended (Article 6687–1, Vernon's Texas Civil Statutes), for the transfer of title there shall be paid a transfer fee of fifty cents (50¢) for the transfer of registration; provided that if said transferee does not file said applications within twenty (20) working days a penalty or fee of Five Dollars ($5) shall be paid upon the filing of such application and such penalty shall be collected for each vehicle upon application filed by the transferee. The Tax Assessor-Collector and his bondsmen shall be liable for the penalty herein provided in the event such penalty is not collected. For his services under this Act the County Tax Assessor-Collector shall retain as commission one-half (½) of fees collected for transfer of registration and one-half (½) of any penalties collected for delinquent filing of applications and the other one-half (½) such fees and penalties shall be reported to and remitted to the State Department of Highways and Public Transportation on Monday of each week as other registration fees are now required to be reported and remitted. Upon receipt of an application for transfer of Certificate of Title and registration the application for transfer of title shall be handled by the Tax Assessor-Collector as provided under the Certificate of Title Act, as amended (Article 6687–1, Vernon's Texas Civil Statutes), and in addition the Department shall issue or cause to be issued a transfer of registration receipt on the application for transfer of registration. The Department may promulgate such reasonable rules and regulations and prescribe such forms as it shall deem necessary to carry out the orderly operation of this Act. It is expressly provided that upon the transfer of any vehicle from one person to another in the State of Texas, all papers or documents relating to or supporting transfer of registration and/or Certificate of Title shall be executed in full and dated as of the date of such transfer, and any person who shall transfer a vehicle and execute such papers or documents as provided for herein wholly or partly in blank leaving out any information that is required to be furnished, shall be guilty of a misdemeanor and shall be fined in any sum not less than Fifty Dollars ($50) and not exceeding Two Hundred Dollars ($200). It is further provided that any transferee who accepts transfer papers as herein provided executed wholly or partly in blank or any person who alters, changes, or mutilates such transfer papers, or whoever violates any provision of this Section for which no specific penalty is provided shall be guilty of a misdemeanor and shall be fined in any sum not less than Fifty Dollars ($50) nor exceeding Two Hundred Dollars ($200). In this Article, the term "working day" means any day except Saturday, Sunday, or a holiday on which county offices are closed.

[Amended by Acts 1979, 66th Leg., p. 720, ch. 316, § 1, eff. June 6, 1979.]

Section 2 of the 1979 amendatory act provided:

"The time limit for filing a transfer of title and registration for a used or secondhand vehicle transferred before the effective date of this Act is covered by the law in effect when the transfer occurred. The former law is continued in effect for the enforcement of that time limit and the prosecution of violations."

Art. 6687–9. Abandoned Motor Vehicle Act

Notification of Owner and Lien Holders

Sec. 4. (a) A police department which takes into custody an abandoned motor vehicle shall notify within 10 days thereof, by registered or certified mail, return receipt requested, the last known registered owner of the motor vehicle and all lien holders of record pursuant to the Certificate of Title Act, as amended (Article 6687–1, Vernon's Texas Civil Statutes), that the vehicle has been taken into custody. The notice shall describe the year, make, model, and vehicle identification number of the abandoned motor vehicle, set forth the location of the facility where the motor vehicle is being held, inform the owner and any lien holders of their right to reclaim the motor vehicle within 20 days after the date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody, or garagekeepers charges if notice is pursuant to the provisions of Section 6 of this Article dealing with garagekeepers and abandoned vehicles. Further, the said notice shall state that the failure of the owner or lien holders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lien holders of all right, title, and interest in the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction.

(b) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner; or if it is impossible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one publica-

tion in one newspaper of general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this Article. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time requirements prescribed for notice by registered or certified mail and shall have the same contents required for a notice by registered or certified mail.

(c) The consequences and effect of failure to reclaim an abandoned motor vehicle shall be as set forth in a valid notice given pursuant to this section.

(d) Notwithstanding any other provision of this Act, a police department or its agent which takes into custody an abandoned vehicle as defined by Subdivision (2), Section 2 of this Act, is entitled to reasonable storage fees for a maximum of 10 days only until notification is mailed to the last known registered owner and all lien holders of record as provided by Subsection (a) of this section. After such notice is mailed, storage fees may continue until the vehicle is removed and all accrued charges are paid.

Garagekeepers and Abandoned Motor Vehicles

Sec. 6. (a) Any motor vehicle left for more than 10 days in a storage facility operated for commercial purposes after notice by registered or certified mail, return receipt requested, to the owner and all lien holders of record under the Certificate of Title Act, as amended (Article 6687–1, Vernon's Texas Civil Statutes), to pick up the vehicle (if such notice is returned by the post office unclaimed, notice by one publication in one newspaper of general circulation in the area where the vehicle was left in such storage facility shall constitute notification), or for more than 10 days after the period when, pursuant to contract, the vehicle was to remain on the premises of such storage facility, and any motor vehicle left for more than 10 days in such storage facility by someone other than the registered owner or left by a person authorized to have possession of the motor vehicle under a contract of use, service, storage, or repair, shall be deemed an abandoned vehicle, and shall be reported by the garagekeeper to the police department.

(b) If a garagekeeper or storage facility acquires possession of a motor vehicle for a purpose other than repair, the garagekeeper or storage facility is entitled to towing, preservation, and notification charges and to reasonable storage fees, in addition to storage fees earned pursuant to contract, for a maximum of 10 days only until notification is mailed to the last known registered owner and all lien holders of record as provided by Subsection (a) of this section. After such notice is mailed, storage fees may continue until the vehicle is removed and all accrued charges are paid. Any garagekeeper who fails to report the possession of such a vehicle to the police department within 10 days after it becomes abandoned within the meaning of this section shall no longer have any claim for storage of the vehicle.

(c) The police department, upon receipt of a report from a garagekeeper of the possession of a vehicle deemed abandoned under the provisions of this section shall follow the notification procedures set forth in Section 4 of this Article, except that custody of the vehicle shall remain with the garagekeeper until after the notification requirements have been complied with. A fee of $2 shall accompany the report of the garagekeeper to the police department. The $2 fee shall be retained by the police department receiving the report and used to defray the cost of notification or other cost incurred in the disposition of abandoned motor vehicles, and where the Texas Department of Public Safety is the "police department" this fee shall be deposited in the state treasury and shall be used to defray the cost of administering this Act. All abandoned vehicles left in storage facilities which are not reclaimed after such notice in accordance with procedures set forth in Section 4 of this Article shall be taken into custody by the police department and sold in accordance with the procedure set forth in Section 5 of this Article. The proceeds of a sale under the provisions of this Section shall first be applied to the garagekeeper's charges for servicing, storage and repair; provided, however, that as compensation for the expense incurred by the police department in placing the vehicle in custody and the expense of auction the police department shall retain an amount of two percent of the gross proceeds of the sale of each vehicle auctioned, but in case such percent of the gross proceeds shall be less than $10, the department shall retain the sum of $10 to defray expenses of custody and auction. Further, it is provided that when the Texas Department of Public Safety conducts the auction, the aforementioned compensation shall be deposited in the State Treasury and shall be used to defray the expense incurred. Any surplus proceeds remaining from such auction shall be distributed in accordance with Section 5 of this Article. Except for the termination or limitation of claim for storage for failure to report an abandoned motor vehicle, nothing in this section shall be construed to impair any lien of a garagekeeper under the laws of this State.

Duties of Demolishers

Sec. 8. (a) Any demolisher who purchases or otherwise acquires a motor vehicle for purposes of wrecking, dismantling, or demolition shall obtain a valid certificate of title, sales receipt, or transfer document under Sections 5 and 11, respectively, of this Act or certificate of authority from the person delivering the vehicle for demolition, but is not required to obtain a certificate of title for such motor vehicle in his own name. The demolisher shall, upon demand of the State Department of Highways and Public Transportation, surrender for cancellation the certificate of title or authority. The State Department of Highways and Public Trans-

portation shall issue such forms, rules, and regulations governing the surrender of auction sales receipts and certificates of title as are appropriate. The Certificate of Title Act, as amended (Article 6687–1, Vernon's Texas Civil Statutes), shall govern the cancellation of title of the motor vehicle.

City or County Procedures for Abating Nuisance

Sec. 10. Any city, town, or county within this State may adopt procedures for the abatement and removal of junked vehicles or parts thereof, as public nuisances, from private property, public property or public rights-of-way; provided, however, that any such procedures shall contain:

(a) A provision requiring not less than a ten (10) day notice, stating the nature of the public nuisance on private property and that it must be removed and abated within ten (10) days and further that a request for a hearing must be made before expiration of said ten (10) day period, such notice to be mailed, by certified or registered mail with a 5-day return requested, to the last known registered owner of the motor vehicle and all lien holders of record and to the owner or the occupant of the private premises whereupon such public nuisance exists. If any notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

(b) A provision requiring not less than a ten (10) day notice, stating the nature of the public nuisance on public property or on a public right-of-way and that it must be removed and abated within ten (10) days and further that a request for a hearing must be made before expiration of said ten (10) day period, such notice to be mailed, by certified or registered mail with a 5-day return requested, to the last known registered owner of the motor vehicle and all lien holders of record and to the owner or the occupant of the public premises or to the owner or the occupant of the premises adjacent to the public right-of-way whereupon such public nuisance exists. If any notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

(c) A provision that after a vehicle has been removed it shall not be reconstructed or made operable.

(d) A provision requiring a public hearing prior to the removal of the vehicle or part thereof as a public nuisance, to be held before the governing body of the city, town, or county or any other board, commission, or official of the city, town, or county as designated by the governing body, when such a hearing is requested by the owner or occupant of the public or private premises or by the owner or occupant of the premises adjacent to the public right-of-way on which said vehicle is located, within ten (10) days after service of notice to abate the nuisance. Any resolution or order requiring the removal of a vehicle or part thereof shall include a description of the vehicle, and the correct identification number and license number of the vehicle, if available at the site.

(e) A provision requiring notice to be given to the State Department of Highways and Public Transportation within five days after the date of removal identifying the vehicle or part thereof. Said Department shall forthwith cancel the certificate of title to such vehicle pursuant to the Certificate of Title Act, as amended (Article 6687–1, Vernon's Texas Civil Statutes).

(f) A provision that such procedure shall not apply to (1) a vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, (2) a vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard or (3) unlicensed, operable or inoperable antique and special interest vehicles stored by a collector on his property, provided that the vehicles and the outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

(g) A provision for administration of the procedures by regularly salaried, full-time employees of the city, town, or county except that the removal of vehicles or parts thereof from property may be by any other duly authorized person.

(h) A provision for the filing of a complaint in an appropriate court for the violation of maintaining a public nuisance, if the nuisance is not removed and abated, and a hearing is not requested, within the ten (10) day period provided in Subsections (a) and (b). If a person is found guilty of maintaining a public nuisance as defined in Section 9 of this Act, the person shall be punished by a fine not to exceed two hundred dollars ($200) and the court shall order removal and abatement of the nuisance.

[Amended by Acts 1977, 65th Leg., p. 1127, ch. 422, § 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 3075, ch. 811, §§ 1 to 4, eff. Aug. 31, 1981.]

Repeal

This article was repealed by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2(1), eff. Jan. 1, 1982, without reference to the amendment of §§ 4, 6, 8(a), and 10 of this article by Acts 1981, 67th Leg., p. 3075, ch. 811, §§ 1 to 4, eff. Aug. 31, 1981.

See, now, art. 4477–9a, § 5.01 et seq.

Prior to repeal, § 2 of this article was amended by Acts 1977, 65th Leg., p. 1127, ch. 422, § 1; Acts 1979, 66th Leg., p. 1054, ch. 485, § 1.

Art. 6701a. Permits for Heavy Trucks on Highways

Sec. 1. When any person, firm or corporation shall desire to operate over a state highway superheavy or over-size equipment for the transportation of cylindrically shaped bales of hay or such commodities as cannot be reasonably dismantled, where the gross weight or size exceeds the limits allowed by law to be transported over a state highway the State Highway Department may, upon application, issue a permit for the operation of said equipment with said commodities, when said State Highway Department is of the opinion that the same may be operated without material damage to the highway. Provided, however, that all cities and towns having a state highway within their limits shall designate to the State Highway Department the route within the city or town to be used by said equipment operating over the state highway. When so designated, the route shall be shown on all maps routing said equipment with said commodities by the State Highway Department. In the event a route is not so designated by a city or town, the State Highway Department shall determine the route on State Highways for the equipment with said commodities within cities or towns. No fee, permit or license shall be required by any city or town for movement of said superheavy or over-size equipment on the route of a state highway designated by the State Highway Department, or on said special route designated by a city or town.

[See Compact Edition, Volume 5 for text of 1–a to 4]

[Amended by Acts 1981, 67th Leg., p. 1838, ch. 426, § 2, eff. Aug. 31, 1981.]

Art. 6701a–2. Portable Buildings; Movement of Overlength and Overwidth on Highways; Permits; Fees

A. When any person, firm, or corporation shall desire to move over a state highway one or more portable building units which in combination with the towing vehicle are in excess of the legal length or width provided by law, the State Department of Highways and Public Transportation may, upon application, issue a permit for the movement of said equipment; provided, however, that the combined length of such portable building unit or units and the towing vehicle shall not exceed 80 feet. Provided further that all cities and towns having a state highway within their limits shall designate to the State Department of Highways and Public Transportation the route within the city or town to be used by said equipment moving over the state highways. When so designated, the route shall be shown on said maps routing said equipment by the state highway department. In the event a route is not so designated by a city or town, the state highway department shall determine the route on the state highway for equipment within such cities or towns. No fee or license shall be required by any city or town for movement of said portable building units on the route of a state highway designated by the state highway department or on said special route designated by a city or town.

B. The application for a permit as provided for in this article shall be in writing and contain the following:

(1) the make and model of the portable building unit or units, the overall length and width, the make and model of the towing vehicle, the length and width of the towing vehicle, and the overall length and width of the combined portable building unit or units and towing vehicle;

(2) the highway or highways over which the same is to be moved, indicating the point of origin and destination;

(3) the date and signature of the applicant.

C. The special permits shall be issued by the highway department through the agent or agents in each county designated for that purpose as set out in Section 1–a, Article 6701a of this title.

D. There shall also accompany the application for permit a fee of $5, which fee shall be deposited by the highway department in the State Treasury to the credit of the State Highway Fund. Said fee shall be paid by cashier's or certified check or postal or express money order.

E. Permits issued by the state highway department as provided for under this article shall be substantially in the following form:

(1) Permits shall contain the name of the applicant and shall be dated and signed by the State Engineer-Director for Highways and Public Transportation, a division engineer, or a designated agent.

(2) Permits shall state the make and model of the portable building unit or units to be transported over the highways, the make and model of the towing vehicle, and the combined overall length and width of the portable building unit or units and towing vehicle.

(3) Permits shall state the highway or highways over which the same is to be moved.

F. Said special permits shall be good for a period of 10 days and valid only for a single continuous movement.

G. Movements authorized by said special permits shall be made during daylight hours only.

[Added by Acts 1981, 67th Leg., p. 666, ch. 258, § 1, eff. Aug. 31, 1981.]

Art. 6701c–1. Commercial Vehicles or Truck-Tractors; Operation by Other Than Owner

[See Compact Edition, Volume 5 for text of 1]

Filing Copy of Lease, Memorandum or Agreement; Letter of Acknowledgment; Copies Carried in Cab; Display; Exceptions

Sec. 2. No commercial motor vehicle nor any truck-tractor shall be operated over any public high-

way of this state by any person other than the registered owner thereof, or his agent, servant or employee under the supervision, direction, and control of such registered owner unless such other person under whose supervision, direction and control said motor vehicle or truck-tractor is operated shall have caused to be filed with the Department an executed copy of the lease, memorandum or agreement under which such commercial motor vehicle or truck-tractor is being operated.

Immediately upon receipt thereof, the Department shall deliver or mail forthwith to the lessee of such motor vehicle or truck-tractor, a letter of acknowledgment thereof, with the official stamp or seal of the Department affixed to such letter.

Such letter of acknowledgment shall contain:

1. The names of the lessor and lessee and their addresses;

2. The term of the lease;

3. The make, and motor or serial number of the vehicle covered by such lease; and

4. Such other data as the Department may determine.

For the purposes of this Act, a lease, memorandum or agreement shall not be considered as filed with the Department unless and until the lessee of such motor vehicle or truck-tractor shall have mailed by certified mail a duly executed copy of said lease, memorandum or agreement in the United States Mail properly addressed to the Department, and at the time of said mailing obtaining from the Post Office a receipt for certified mail properly postmarked by the Post Office Clerk showing the date and place of mailing.

The lessee of said motor vehicle or truck-tractor shall have in the cab thereof during the first fifteen (15) days of operation under said lease, memorandum or agreement a true copy of said lease, memorandum or agreement, together with the letter of transmittal of such lease to the Department, as well as said receipt for certified mail, which shall be effective for a period not to exceed fifteen (15) days from the date issued. Following the expiration of said fifteen (15) day period the lessee of said motor vehicle or truck-tractor shall have in the cab thereof at all times while such motor vehicle or truck-tractor is being operated on the roads or highways of this state, a true copy of the original letter of acknowledgment, as provided herein, with the official stamp or seal of the Department affixed thereto. Such letter of acknowledgment, or an effective receipt for certified mail, must be displayed to any officer authorized to enforce this law, upon request of such officer.

The operation of any such leased motor vehicle or truck-tractor over the public highways or roads of this state without having in the cab thereof such letter of acknowledgment from the Department with its official stamp or seal affixed thereto, or an effective receipt for certified mail, as well as the letter of transmittal and copy of said lease, memorandum or agreement, as provided for herein, shall be unlawful.

Wherever the word "Department" is used herein it means "Department of Public Safety of the State of Texas."

Provided, however, that this Act shall not apply to any vehicle lawfully registered as a farm vehicle under the provisions of Acts of the 41st Legislature, 2nd Called Session, 1929, Chapter 88, page 172, Section 6a, as amended by subsequent session of the Legislature and as codified as Article 6675a–6a, Revised Civil Statutes of Texas. And provided further, that this Act shall not apply to motor vehicles, commercial motor vehicles, and truck-tractors used exclusively to transport sand, gravel, dirt, caliche, shell, cement, ready-mix concrete, asphalt rock, and aggregate; nor shall this Act apply to such vehicles as are used exclusively in the transportation of sand, gravel, dirt, caliche, shell, cement, ready-mix concrete, asphalt rock, aggregate, and other similar road-building substances ordinarily transported in bulk when such substances are being transported to or from the job site of any construction project being performed for or on behalf of the Federal Government, the State of Texas or any political subdivision thereof, or to or from the construction site of any national defense project, airport and roadways leading thereto, or to or from the construction site of any road, highway, and expressway; nor shall the requirements of this Act apply to any motor vehicle or truck-tractor which is used exclusively in the transportation of liquefied petroleum gases when such vehicle is being operated in accordance with the provisions of Chapter 363, page 612, Acts 52nd Legislature, 1951, and the provisions of Article 6053, Revised Civil Statutes of Texas, 1925, as amended, and the rules and regulations adopted by the Railroad Commission of Texas governing the handling and odorization of liquefied petroleum gases and specifications for the design, construction and installation of equipment used in the transportation, storage, dispensing, and consumption of liquefied petroleum gases. And provided further, that this Act shall not apply to commercial motor vehicles and truck-tractors leased or rented:

(a) without drivers from an individual, person, co-partnership, association or corporation whose principal business is the bona fide leasing or renting of motor vehicle equipment without drivers for compensation to the general public;

(b) and who maintain an established place of business and whose lease or rental contracts require the motor vehicle equipment to return to the established place of business;

(c) and who have dated and filed within ten (10) days of January 1st, April 1st, July 1st, and October 1st of each year, with the Department of Public Safety, a complete list giving a full descrip-

tion of all such commercial motor vehicles and truck-tractors owned by such individual, person, co-partnership, association or corporation, as of the date of the report, and available for lease or rent without drivers for compensation. The first complete list filed herein must be accompanied by a fee of One ($1.00) Dollar for each vehicle listed therein, together with a photostat or certified copy of the registration or title papers on every such motor vehicle; however, no such fee need be filed in subsequent quarterly filings unless such subsequent list contains additional equipment, in which event a fee of One ($1.00) Dollar, together with photostat or certified copy of the registration or title papers on such additional equipment shall be filed. Provided, however, that the provisions of this Act shall not apply to motor vehicles, commercial motor vehicles, and truck-tractors used exclusively to transport household goods, used office furniture and equipment.

If for any reason any one or more of the foregoing exceptions contained in this Act is unconstitutional or invalid, it is hereby declared to be the intention of the Legislature to enact, and it does here now enact and pass, this Act without any such exception, one or more, and if any such exception, one or more, be invalid, then such exception alone shall fail and be held for naught, and the remainder of the Act shall be and remain unimpaired, and it is so enacted.

Subsequent Lease, Memorandum or Agreement Covering Same Vehicle

Sec. 3. When any such lease, memorandum, or agreement, as required by Section 2 of this Act, shall have been filed with the Department covering the operation of any commercial motor vehicle or truck-tractor, no further such lease, memorandum, or agreement covering the operation of the same commercial motor vehicle or truck-tractor may be accepted by the Department for filing, except a lease between regulated carriers subject to the jurisdiction of the Railroad Commission of Texas or the Interstate Commerce Commission under which lawful dual registration of equipment has been specifically approved, until the existing lease, memorandum, or agreement shall have expired in accordance with its own terms or there shall have been filed with the Department a full release thereof. However, if no definite expiration date is included in the document, it is deemed to expire five (5) years after its effective date or five (5) years after the date filed, whichever is later.

Contents of Lease, Memorandum or Agreement; Information Confidential

Sec. 4. Such lease, memorandum, or agreement as required by Section 2 of this Act shall contain or provide, but shall not be limited to, the name and address of the registered owner of such commercial motor vehicle or truck-tractor, the name and address of the person other than the owner under whose supervision, direction, and control the vehicle will be operated, the actual consideration, the term, the commodity or commodities to be transported under such lease, memorandum, or agreement and a full description of the commercial motor vehicle or vehicles or truck-tractors covered thereby, and except as to leases between regulated carriers subject to the jurisdiction of the Railroad Commission of Texas or the Interstate Commerce Commission, that the operation of such vehicle shall be under the full and complete control and supervision of the person other than the registered owner, that the person other than the registered owner shall provide for each vehicle during the term of such lease, memorandum or agreement proof of financial responsibility as defined in the Texas Motor Vehicle Safety-Responsibility Act, as amended (Article 6701h, Vernon's Texas Civil Statutes), and shall state that such commercial motor vehicle or vehicles or truck-tractors are not the subject of any other such lease, memorandum, or agreement which shall have been filed with the Department of Public Safety in accordance with Section 2 of this Act and which is still in effect, unless the lease, memorandum, or agreement is otherwise required by law.

All information contained in any lease, memorandum, or agreement filed with the Department as required by Section 2 of this Act shall, with the exception of the name and address of the registered owner, the name and address of the person other than the owner, under whose supervision, direction and control the same is being operated, and a full description of the commercial motor vehicle or truck-tractor covered thereby, shall be for the confidential use of the Department; except, however, that the Department of Public Safety may make such information available to the law enforcement officers of the Interstate Commerce Commission, and may further use such information in any judicial proceeding brought in the name of the State of Texas.

[See Compact Edition, Volume 5 for text of 5 to 9]

[Amended by Acts 1977, 65th Leg., p. 143, ch. 69, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 392, ch. 158, § 1, eff. Sept. 1, 1981.]

Section 2 of the 1981 amendatory act provides:

"This Act takes effect September 1, 1981, and applies only to leases filed on or after that date. Leases filed under Section 2, Chapter 209, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701c-1, Vernon's Texas Civil Statutes), before the effective date of this Act are covered by that Act as it existed when the filing occurred, and that law is continued in effect for that purpose."

Art. 6701c-3. Protective Headgear for Motorcycle Operators and Passengers

[See Compact Edition, Volume 5 for text of 1]

Necessity of Protective Headgear for Persons under Age 18

Sec. 2. No person under 18 years of age may operate a motorcycle on a public street or highway of this state unless he wears protective headgear which has been approved by the Department of Public Safety, nor may any person carry a passenger under 18 years of age on a motorcycle on a public

street or highway of this state unless the passenger wears protective headgear which has been approved by the Department of Public Safety, nor may any person under 18 years of age ride as a passenger on a motorcycle on a public street or highway of this state unless he wears protective headgear which has been approved by the Department of Public Safety.

[See Compact Edition, Volume 5 for text of 3 to 7]

[Amended by Acts 1977, 65th Leg., p. 332, ch. 162, § 1, eff. Aug. 29, 1977.]

CHAPTER ONE A. TRAFFIC REGULATIONS

Article

6701d–11a. Registration and Width Requirements of Vehicles Transporting Fertilizer.
6701d–12a. Weight and Size of Vehicles Transporting Milk.
6701g–1. Removal of Unauthorized Vehicles Parked in Fire Lanes.
6701g–2. Removal of Unauthorized Vehicles from Parking Facilities or Public Highways.

Art. 6701d. Uniform Act Regulating Traffic on Highways

ARTICLE I—WORDS AND PHRASES DEFINED

[See Compact Edition, Volume 5 for text of 1]

SUBDIVISION I—VEHICLES AND EQUIPMENT DEFINED

Vehicles

Sec. 2.

[See Compact Edition, Volume 5 for text of 2(a) to 2(c)]

(d) "Authorized Emergency Vehicle" means vehicles of the fire department (fire patrol), police vehicles, public and private ambulances for which permits have been issued by the State Board of Health, emergency vehicles of municipal departments or public service corporations as are designated or authorized by the governing body of an incorporated city, private vehicles operated by volunteer firemen or certified Emergency Medical Services volunteers while answering a fire alarm or responding to a medical emergency, and vehicles operated by blood banks or tissue banks, accredited or approved under the laws of this state or the United States, while making emergency deliveries of blood, drugs or medicines, or organs.

[See Compact Edition, Volume 5 for text of 2(e) to 8]

SUBDIVISION II—GOVERNMENTAL AGENCIES, PERSONS, OWNERS, ETC., DEFINED

Director, Department, State, Urban District, Metropolitan Area

Sec. 9.

[See Compact Edition, Volume 5 for text of 9(a) to 9(d)]

(e) "Metropolitan area" means an area which contains at least one city with a population of one hundred thousand (100,000) or more, according to the latest federal census, and includes the adjacent incorporated cities and unincorporated urban districts.

[See Compact Edition, Volume 5 for text of 10 to 12] .

SUBDIVISION III—HIGHWAYS, RESTRICTED DISTRICTS, ZONES, ETC., DEFINED

Highways, Roads, Streets, Sidewalks, Freeways and Ramps

Sec. 13.

[See Compact Edition, Volume 5 for text of 13(a) to 13(h)]

(i) "Freeway" means a divided, controlled access highway for through traffic.

(j) "Freeway main lane" means a traffic lane to which access is controlled, permitting uninterrupted flow of through traffic.

(k) "Ramp" means an interconnecting roadway of a traffic interchange, or any connection between highways at different levels or between parallel highways, on which vehicles may enter or leave a designated roadway.

(*l*) "Shoulder" means the portion of a highway that is:

(1) contiguous to the roadway;

(2) designed or ordinarily used for parking;

(3) set off from the roadway by different design, construction, or marking; and

(4) not intended for normal vehicular travel.

(m) "Improved shoulder" means a paved shoulder.

[See Compact Edition, Volume 5 for text of 14 to 17]

Public Beach

Sec. 17A. "Public beach" shall mean any beach bordering on the Gulf of Mexico which extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom.

[See Compact Edition, Volume 5 for text of 18 to 20]

SUBDIVISION IV—MISCELLANEOUS DEFINITIONS

[See Compact Edition, Volume 5 for text of 20A to 20H]

Normally and Safely Driven

Sec. 20*I*. "Normally and safely driven" means the vehicle does not require towing and can be operated under its own power in its customary manner, without further damage or hazard to the vehicle, other traffic, or the roadway.

[See Compact Edition, Volume 5 for text of 21 to 23]

Sec. 24.

[See Compact Edition, Volume 5 for text of 24(a) to 24(c)]

(d) The exemptions herein granted to an authorized emergency vehicle shall apply only when such vehicle is making use of audible and visual signals meeting the requirements of Section 124 of this Act, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle. The driver of an authorized emergency vehicle that is used for law enforcement purposes may operate without using the emergency warning devices required by this subsection only when the driver is responding to an emergency call or when he or she is in pursuit of a suspected violator of the law and he or she has probable cause to believe that:

(1) knowledge of his or her presence will cause the suspect to destroy or lose evidence of a suspected felony;

(2) knowledge of his or her presence will cause the suspect to cease a suspected continuing felony before the driver has acquired sufficient evidence to establish grounds for arrest;

(3) knowledge of his or her presence will cause the suspect to evade apprehension or identification of the suspect or his or her vehicle; or

(4) traffic conditions on a multilaned roadway are such that movements of motorists in response to the emergency warning devices may increase the potential for a collision or may unreasonably extend the duration of the pursuit.

(d–1) The driver of an authorized emergency vehicle that is used for law enforcement purposes may not operate without using the emergency warning devices as provided above unless he or she has first notified a designated office of his or her intention to operate without such devices. The designated office to which such notification is made shall keep an accurate record of the exact time notification is received.

[See Compact Edition, Volume 5 for text of 25 to 28]

Speed Limit Applicability on Private Roads

Sec. 28A. (a) The owners of a majority of the parcels of real property abutting a private road that is outside the limits of an incorporated city or town and that runs through or in any part of a subdivision for which a plat has been filed in the deed records of a county and which has four hundred (400) or more residents may submit to the State Highway and Public Transportation Commission a petition for the purpose of having the speed restrictions of this Act extended to the portion of the road that is within the subdivision.

(b) After receiving a petition and verifying the property ownership of the signers of the petition, if the commission finds that it would be in the interests of the residents of the area and the public generally, the commission shall issue an order making the speed restrictions of this Act applicable to the portion of the private road that is the subject of the petition.

(c) If the commission rejects a petition submitted under this section, the commission shall hold a public hearing in the county in which the portion of the private road that is the subject of the petition is located, on the question of the advisability of including the private road within the scope of the speed restrictions of this Act. The commission shall cause notice of the public hearing to be published at least ten (10) days before the date of the hearing in a newspaper of general circulation in the county in which the hearing is scheduled.

(d) At the hearing, if the commission finds that it would be in the interests of the residents of the area and the public generally, the commission shall issue an order making the speed restrictions of this Act applicable to the portion of the private road that is the subject of the petition.

(e) If the commission issues an order extending the speed restrictions of this Act to a private road, the private road becomes a public highway for purposes of setting and enforcing speed restrictions under this Act. After issuance of an order under this section, the commission shall cause signs stating speed limits to be posted on property abutting the private road, with the consent of the owners of the property on which the signs are placed.

[See Compact Edition, Volume 5 for text of 29 to 39]

Accident Involving Damage to Vehicle

Sec. 39. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible without obstructing traffic more than is necessary but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 40. However, when an accident occurs on a main lane, ramp, shoulder, median, or adjacent area of a freeway in a metropolitan area and each vehicle involved can be normally and safely driven, each driver shall move his vehicle as soon as possible off the freeway main lanes, ramps, shoulders, medians, and adjacent areas to a designated accident investigation site, if available, a location on the frontage road, the nearest suitable cross street, or other suitable location to complete the requirements of Section 40, so as to minimize interference with the freeway traffic. Any person failing to stop or to comply with said requirements under such circumstances shall be guilty of a misdemeanor.

Duty to Give Information and Render Aid

Sec. 40. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and the name of his motor vehicle liability insurer, and shall upon request and if available exhibit his operator's, commercial operator's, or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle colliding with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

[See Compact Edition, Volume 5 for text of 41 and 42]

Immediate Reports of Accidents

Sec. 43. The driver of a vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle to the extent that it cannot be normally and safely driven shall immediately by the quickest means of communication give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the Texas Highway Patrol.

Investigation of Accidents

Sec. 43A. A peace officer notified of a motor vehicle accident resulting in injury to or death of any person or damage to the property of any one person to an apparent extent of Two Hundred and Fifty Dollars ($250) or more may investigate the accident and file any justifiable charges relating thereto without regard to whether the accident occurred on a public street or highway or other public property, on a road owned and controlled by any water control and improvement district, whether or not a fee is charged for the use of the road, or on private property commonly used by the public such as supermarket or shopping center parking lots, parking areas provided by business establishments for the convenience of their customers, clients, or patrons, parking lots owned and operated by the State or any other parking area owned and operated for the convenience of, and commonly used by, the public. It is specifically provided, however, that this Section shall not apply to accidents occurring on privately owned residential parking areas or on privately owned parking lots where a fee is charged for the privilege of parking or storing a motor vehicle.

Written Reports of Accident

Sec. 44. (a) The driver of a vehicle involved in an accident resulting in injury to or death of any person, or damage to the property of any one person, including himself, to an apparent extent of at least Two Hundred Fifty Dollars ($250), shall within ten (10) days after such accident forward a written report of such accident to the Department. Any person who shall fail to make such a report shall be guilty of a misdemeanor and upon conviction shall be punished as provided in Section 143. The venue for the prosecution of such offense shall be in the county where the accident occurred.

[See Compact Edition, Volume 5 for text of 44(b) and (c)]

Accident Report Forms

Sec. 45. (a) The department shall prepare and upon request supply to police departments, coroners, sheriffs, garages, and other suitable agencies or individuals, forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by person involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicle involved. Also, the forms for the written reports shall include a means for designating and identifying peace officers and fire fighters who during an emergency are involved in accidents while driving law enforcement vehicles or fire department vehicles in pursuit of their duties. The forms shall also contain a statement by the peace officers and fire fighters describing the nature of the emergency.

[See Compact Edition, Volume 5 for text of 45(b) to 49]

Persons Under the Influence of Drugs

Sec. 50. (a) A person may not intentionally or knowingly operate a motor vehicle in a public place intended for the use of motor vehicles if the person is under the influence of a controlled substance or drug to a degree that renders the person incapable of safely operating a motor vehicle.

(b) A person who operates a motor vehicle in violation of Subsection (a) of this section commits an offense. The fact that any person charged with a violation of this section is or has been entitled to use the controlled substance or drug under the laws of this State is not a defense against any charge of violating this section.

(c) In this section:

(1) "Controlled substance" has the meaning assigned by Section 1.02(5), Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes).

(2) "Drug" has the meaning assigned by Section 1.02(14), Texas Controlled Substances Act (Article 4476–15, Vernon's Texas Civil Statutes).

(3) "Public place" has the meaning assigned by Section 1.07(29), Penal Code.

(d) An offense under this section is a Class A misdemeanor, unless the actor has been convicted previously under this section, in which case it is a felony of the third degree.

Sec. 50A. Repealed by Acts 1975, 64th Leg., p. 918, ch. 342, § 16, eff. Sept. 1, 1975.

[See Compact Edition, Volume 5 for text of 51 to 54]

Operation of Vehicle on Improved Shoulder

Sec. 54A. (a) A driver may operate a vehicle on an improved shoulder to the right of the main traveled portion of the roadway as long as necessary and when the operation may be done in safety only under the following circumstances:

(1) to stop, stand, or park;

(2) to accelerate prior to entering the main traveled lane of traffic;

(3) to decelerate prior to making a right turn;

(4) to overtake and pass another vehicle that is slowing or stopped on the main traveled portion of the highway disabled or preparing to make a left turn;

(5) to allow other vehicles to pass that are traveling at a greater speed;

(6) when permitted or required by an official traffic control device; or

(7) at any time to avoid a collision.

(b) A driver may operate a vehicle on the improved shoulder to the left of the main traveled portion of a divided or controlled-access highway when the operation may be done in safety only under the following conditions:

(1) to slow or stop when the vehicle is disabled and traffic or other circumstances prohibit the safe movement of the vehicle to the shoulder to the right of the main traveled portion of the roadway;

(2) when permitted or required by an official traffic control device; or

(3) to avoid a collision.

(c) The provisions of this section limiting the operation of vehicles upon improved shoulders shall not apply to:

(1) authorized emergency vehicles responding to calls;

(2) police patrols; or

(3) vehicles and equipment actually engaged in work upon a highway but shall apply to such persons and vehicles when traveling to or from such work.

When Overtaking on the Right is Permitted

[See Compact Edition, Volume 5 for text of 55(a)]

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the main traveled portion of the roadway except as provided in Section 54A.

[See Compact Edition, Volume 5 for text of 56 to 70]

ARTICLE VIII—RIGHT-OF-WAY

Vehicles Approaching or Entering Intersection

Sec. 71.

[See Compact Edition, Volume 5 for text of 71(a) to 71(c)]

(d) Except as provided in Subsection (d–1) of this section, the driver of a vehicle approaching the intersection of a different street or roadway, not otherwise regulated herein, or controlled by traffic control signs or signals, shall stop, yield and grant the privilege of immediate use of such intersection to any other vehicle which has entered the intersection from such driver's right or is approaching such intersection from such driver's right in such proximity thereto as to constitute a hazard and after so stopping may only proceed thereafter when such driver may safely enter such intersection without interference or collision with traffic using such different street or roadway.

(d–1) The driver of a vehicle approaching the intersection of a street or roadway from a street or roadway which terminates at the intersection, not otherwise regulated in this section or controlled by traffic control signs or signals, shall stop, yield, and grant the privilege of immediate use of the intersection to another vehicle which has entered the intersection from the other street or roadway or is approaching the intersection on the other street or roadway in such proximity as to constitute a hazard and after stopping may only proceed when the driver may safely enter the intersection without interference or collision with the traffic using the other street or roadway.

(e) A driver obligated to stop and yield the right-of-way in accord with Sections (a), (b), (c), (d), and (d–1) of Section 71, who is involved in a collision or interference with other traffic at such intersection is presumed not to have yielded the right-of-way as required by this Act.

[See Compact Edition, Volume 5 for text of 72 and 73]

Vehicle Entering or Leaving Controlled Access Highway

Sec. 73A. The driver of a vehicle proceeding on an access or feeder road of a controlled access highway shall yield the right-of-way to a vehicle entering or about to enter the road from the highway or leaving or about to leave the road to enter the highway.

[See Compact Edition, Volume 5 for text of 74 to 92]

ARTICLE XII—STOPPING, STANDING, AND PARKING

Stopping, Standing, or Parking Outside of Business or Residence Districts

Sec. 93. (a) A person may not stop, park, or leave standing any vehicle, whether attended or unattended, upon the main-traveled part of a highway outside of a business or residence district unless:

(1) it is not practicable to stop, park, or so leave such vehicle off such part of said highway;

(2) an unobstructed width of the highway opposite a standing vehicle is left for the free passage of other vehicle; and

(3) a clear view of such stopped vehicle is available from a distance of two hundred (200) feet in each direction upon such highway.

[See Compact Edition, Volume 5 for text of 93(b) to 101]

Sec. 102. Repealed by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2(1), eff. Jan. 1, 1982

[See Compact Edition, Volume 5 for text of 103 and 104]

Regulation Relative to School Buses

Sec. 105.

[See Compact Edition, Volume 5 for text of 105(a) to 105(c)]

(d) A person may not operate a motor vehicle bearing the words "school bus" unless the vehicle is used primarily to transport persons to or from school or in connection with school activities. In this subsection, "school" means a privately or publicly supported elementary or secondary school, day care center, preschool, or institution of higher education, and includes a church when the church is engaged in providing formal education.

[See Compact Edition, Volume 5 for text of 106 to 139F]

ARTICLE XV–INSPECTION OF VEHICLES

Compulsory Inspection

Sec. 140. (a) Every motor vehicle, trailer, semitrailer, pole trailer, or mobile home, registered in this state and operated on the highways of this state, shall have the tires, brake system (including power brake unit), lighting equipment, horns and warning devices, mirrors, windshield wipers, front seat belts in vehicles where seat belt anchorages were part of the manufacturer's original equipment on the vehicle, steering system (including power steering), wheel assembly, safety guards or flaps if required by Section 139A of this Act, tax decal if required by Section 141(d) of this Act, exhaust system, and exhaust emission system inspected at state-appointed inspection stations or by State Inspectors as hereinafter provided. Provisions relating to the inspection of trailers, semitrailers, pole trailers, or mobile homes shall not apply when the registered or gross weight of such vehicles and the load carried thereon is four thousand five hundred (4,500) pounds or less. Only the mechanism and equipment designated in this section may be inspected, and the owner shall not be required to have any other equipment or part of his motor vehicle inspected as a prerequisite for the issuance of an inspection certificate.

(b) If such inspection discloses the necessity for adjustments, corrections, or repairs, the vehicle shall be adjusted, corrected, or repaired before a certificate is issued as hereinafter provided. The owner may have such adjustments, corrections, or repairs made by such qualified person or persons as he may choose, subject to reinspection as hereinafter provided.

If an inspection discloses the necessity for adjustments, corrections, or repairs, such vehicle shall be reinspected once within fifteen (15) days, not including day of issuance, free of charge at the same inspection station after the adjustments, corrections, or repairs have been made. Any such vehicle under the terms of this Act, if involved in an accident subsequent to the required inspection, which accident affects the safe operation of any item of inspection, shall return to an inspection station after adequate repairs are made. The subsequent inspection shall be as if the vehicle had not been inspected before. The inspection fee shall be charged for reinspection.

(c) Official inspection stations appointed and supervised by the State of Texas shall make all inspections pursuant to the provisions of this Section, except as provided in subdivision (d) hereof. The Department shall cause one (1) inspection to be made in the year commencing with the effective date of this Act, and annually thereafter. If the motor vehicle, trailer, semi-trailer, pole trailer or mobile home, registered in this State, is damaged to the apparent extent that it would require repair before passing state inspection, the investigating officer shall remove the inspection certificate from the vehicle windshield and shall give the operator of the vehicle a dated receipt. Within thirty (30) days of the date indicated on the receipt, the vehicle shall be reinspected. The periods of inspection shall be fixed by the Department, provided, however, that at no time, except as provided in Section 142A of this Act, shall a certificate of inspection or a receipt for a certificate of inspection be required or demanded as a condition precedent to securing a license plate for any motor vehicle, regardless of any period or periods of inspection as may be fixed by the Department. The Department shall have power to make rules and regulations, not inconsistent with law, with respect to the periods of inspection.

[See Compact Edition, Volume 5 for text of 140(d)]

(e) After the fifth (5th) day following the expiration of the period designated for the inspection, no person shall operate on the highways of this State any motor vehicle registered in this State unless a valid certificate of inspection is displayed thereon as required by this Section. Any peace officer who shall exhibit his badge or other signs of authority may stop any vehicle not displaying this inspection certificate on the windshield and require the owner or operator to produce an official inspection certificate for the Vehicle being operated. It is a defense to a prosecution under this section that a valid inspection certificate for the vehicle is in effect at the time of the arrest.

(f) All mopeds and no peds shall be subject to annual inspection in the same manner as are motorcycles and the fee for inspection shall be as provided in Section 141 of this Act and shall be used for the purposes prescribed by law. The only items of equipment required to be inspected are the brakes, headlamps, rear lamps, and reflectors, which are required to comply with the standards prescribed in Section 184 of this Act. The Department shall promulgate rules and regulations relating to the inspection of mopeds and no peds and the issuance and display of inspection certificates with respect to those vehicles.

(g) Any person operating a vehicle on the highways of this State, other than a vehicle licensed in another State and being temporarily and legally operated under a valid reciprocity agreement, in violation of the provisions of this Act or without displaying a valid inspection certificate or having equipment which does not comply with the provisions of Article XIV of this Act is guilty of a misdemeanor and on conviction shall be punished as provided in Section 143 of this Act.

(h) The provisions of this Act shall not apply to the vehicles referred to in Subsection (a) of this Section when moving under or bearing current "Factory-Delivery License Plates" or current "In-transit License Plates." Nor shall the provisions of this Act apply to farm machinery, road-building equipment, farm trailers, paper dealer in-transit tag, machinery license, disaster license, parade license, prorate tabs, one-trip permits, antique license, temporary 24-hour permits, permit license, and all other vehicles required to have a slow-moving-vehicle emblem under Section 139(b) of this Act.

(i) Deleted by Acts 1981, 67th Leg., p. 896, ch. 320, § 1, eff. Jan. 1, 1982.

State Appointed Inspection Stations

Sec. 141. (a) The Department may establish state-appointed inspection stations to carry out the provisions of this Section. Such stations may be located anywhere in the state, and should any be established or appointed, there shall be at least one (1) for each county. The Department is authorized to furnish instructions to, and to supervise official inspection stations and mechanics for inspection of motor vehicles, trailers, semi-trailers, pole trailers, and mobile homes for the proper and safe performance of the required items of inspection. The certification of persons to inspect vehicles shall be in accordance with the rules and regulations promulgated by the Department. Every person desiring to operate as an official inspection station shall file an application for a certificate of appointment with the Department.

The application shall be made upon a form prescribed and furnished by the Department, and shall set forth the name of the applicant, the name under which the applicant transacts or intends to transact business, the location of his place of business within the state, and such other information as the Department may require. If the applicant has or intends to have more than one place of business within the state, a separate application shall be made for each place of business.

If the applicant is an association, the application shall set forth the names and the addresses of the persons constituting the association, and if a corporation, the names and addresses of the principal officers thereof, and any other information prescribed by the Department for purposes of identification. The application shall be signed and verified by oath or affirmation by the owner, if a natural person; in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached written evidence of his authority.

Only such locations which fulfill the Department's requirements and whose owners or proprietors comply with the Department regulations shall qualify and be appointed and issued a certificate. Upon approval of an application, the Department shall issue to the owner a certificate of appointment as an official inspection station for the place of business within the state set forth in the application.

Certificates of appointment shall not be assignable, and shall be valid for the owners in whose names issued and for the transaction of business at the place designated therein, and shall at all times be conspicuously displayed at the place for which issued.

The application for certificate as an inspector will be made upon a form prescribed and furnished by the Department and shall set forth the name of the applicant, residence address, place of employment address, driver license number, and such other information as the Department may require. An applicant for appointment as an inspector shall submit with his first application a certificate fee of Ten Dollars ($10). An individual's first appointment as an inspector is effective until August 31 of the even-numbered year following the date of appointment. Thereafter, appointments as inspectors shall

be made for two-year periods, and the certificate fee for each two-year period shall be Ten Dollars ($10).

Upon being advised that an application will be approved, an applicant for an appointment as an inspection station shall pay a fee of Thirty Dollars ($30) which shall constitute the certificate fee until August 31 of the odd-numbered year following the date of appointment. Thereafter, appointments of stations shall be made for two-year periods and the certificate fee for each such period shall be Thirty Dollars ($30). All certificate fees shall be placed in a fund in the State Treasury to be known as the Motor Vehicle Inspection Fund and shall be used by the Department in the administration of this Act.

(b) Any owner of an official inspection station who by himself, agent, servant, or employee, violates any provision of Section 140, 141, 142, or 142A of this Act, or requires the repair of any mechanism or equipment other than that set forth in the uniform standards of safety items to be inspected as established, shall upon conviction, be punished by a fine not exceeding Two Hundred Dollars ($200).

(c) The fee for compulsory inspection to be made under this Section shall be Five Dollars ($5.00). One Dollar and Seventy-Five Cents ($1.75) of each fee shall be paid to the Department and shall be placed in the Motor Vehicle Inspection Fund for the purpose of paying the expense of the administration of this law and the payment of supplemental retirement benefits as provided by law. The Department may require each official inspection station to make an advance payment of One Dollar and Seventy-Five Cents ($1.75) for each inspection certificate furnished to it, and the money so received shall be placed in the Motor Vehicle Inspection Fund, and no further payment to the Department shall be required upon issuance of the certificate. If such advance payment has been made, the Department shall refund to the inspection station the amount of One Dollar and Seventy-Five Cents ($1.75) for each unissued certificate which the inspection station returns to the Department in accordance with rules and regulations promulgated by the Department.

(d) No certificate of inspection shall be issued by any inspector or inspection station until the vehicle has been inspected and found to be in proper and safe condition and to comply with the uniform standards of safety, inspection rules and regulations, and laws of this state. No person shall make, issue, or knowingly use an imitation or counterfeit of an official inspection certificate. No certificate of inspection may be issued by any inspector or inspection station for a motor vehicle equipped with a carburetion device permitting the use of liquefied gas alone or interchangeably with other fuels, unless a currently valid liquefied gas tax decal issued by the comptroller of public accounts is affixed to the lower right-hand corner of the front windshield of the vehicle on the passenger side.

No person shall display or cause or permit to be displayed any inspection certificate knowing the same to be fictitious or issued for another vehicle or issued without the required inspection having been made. No person may transfer an inspection certificate from one windshield or location to another windshield or location.

No person shall perform an inspection or issue an inspection certificate without such person first having been certified to do so by the Department.

No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, pole trailer, mobile home, or combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required in this Act and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person or property.

(e) The Department may appoint as official inspection stations, for the limited purpose of inspecting vehicles owned by political subdivisions and agencies of the state, vehicle maintenance facilities owned and operated by the political subdivisions or agencies. The political subdivisions and agencies may not be required to pay the compulsory inspection fee but shall pay to the Department an advance payment such as provided for in Subsection (c) of this section for each inspection certificate issued to it. The funds received by the Department shall be placed in the Motor Vehicle Inspection Fund and used for the purposes prescribed by law. Inspection stations appointed under this subsection must satisfy all requirements set forth in Sections 140, 141, 142, and 142A of this Act except the provisions relating to the fee contained in Subsection (a) of this section. No officer, employee, or inspector of any political subdivision or agency shall place or cause to be placed any inspection certificate received from the Department under the provisions of this subsection on any vehicle other than a vehicle owned by the political subdivision or agency.

(f) The Director may deny an application for a license or revoke or suspend an outstanding certificate of any inspection station or the certificate of any person to inspect vehicles, in addition to action taken under Subsection (g) of this section, for any of the following reasons:

(1) issuing a certificate without required adjustments, corrections, or repairs having been made when an inspection disclosed the necessity for those adjustments, corrections, or repairs;

(2) refusing to allow the owner of the vehicle to have required corrections or adjustments made by any qualified person he may choose;

(3) issuing an inspection certificate without having made an inspection of the vehicle;

(4) knowingly or wilfully issuing an inspection certificate for a vehicle without the required items of inspection or with items which were not at the

time of issuance in good condition and in conformity with the laws of this state or in compliance with rules of the Commission;

(5) failure to charge the required fee for inspection;

(6) charging more than the required inspection fee;

(7) issuing an inspection certificate without being certified to do so by the Department;

(8) proof of unfitness of applicant or licensee under standards set out in this Act or in Commission rules;

(9) material misrepresentation in any application or any other information filed under this Act or Commission rules;

(10) wilful failure to comply with this Act or any rule promulgated by the Commission under the provisions of this Act;

(11) failure to maintain the qualifications for a license; or

(12) any act or omission by the licensee, his agent, servant, employee, or person acting in a representative capacity for the licensee which act or omission would be cause to deny, revoke, or suspend a license to an individual licensee.

When there is cause to deny an application for a certificate of any inspection station or the certificate of any person to inspect vehicles or revoke or suspend the outstanding certificate, the Director shall, in less than thirty (30) days before refusal, suspension, or revocation action is taken, notify the person, in writing, in person, or by certified mail at the last address supplied to the Department by the person, of the impending refusal, suspension, or revocation, the reasons for taking that action, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the Director. If, within twenty (20) days after the personal notice of the notice is sent or notice has been deposited in the United States mail, the person has not made a written request to the Director for this administrative hearing, the Director, without a hearing, may suspend or revoke or refuse to issue any certificate. On receipt by the Director of a written request of the person within the twenty-day (20-day) period, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than ten (10) days after written notification, including a copy of the charges, is given the person by personal service or by certified mail sent to the last address supplied to the Department by the applicant or certificate holder. The administrative hearing in these cases shall be before the Director or his designee. The Director or his designee shall conduct the administrative hearing and may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, or documents. On the basis of the evidence submitted at the hearing, the Director acting for himself or upon the recommendation of his designee may refuse the application or suspend or revoke the certificate.

Any person dissatisfied with the action of the Director, without filing a motion for rehearing, may appeal the action of the Director by filing a petition within thirty (30) days after the action is taken in a district court in the county where the person resides or in a district court of Travis County, and the court is vested with jurisdiction, and it shall be the duty of the court to set the matter for hearing upon ten (10) days written notice to the Director and the attorney representing the Director. The court in which the petition of appeal is filed shall determine whether any action of the Director shall be suspended pending hearing and enter its order accordingly, which shall be operative when served upon the Director, and the Director shall provide the attorney representing the Director with a copy of the petition and order. The Director shall be represented in these appeals by the district or county attorney of the county, or the attorney general, or any of their assistants.

(g) No person who performs an inspection at a state-appointed inspection station may fraudulently represent to an applicant that a mechanism or item of equipment required to be inspected must be repaired, adjusted, or replaced before the vehicle will pass inspection when that is not the case. The Department may cancel or suspend the certificate of appointment of any state-appointed inspection station or the certificate of the person performing the inspection if it finds, after notice and hearing, that a violation of this Section occurred at the inspection station.

Safety Standards, Inspection Certificates and Verification Forms

Sec. 142. (a) The Public Safety Commission shall establish uniform standards of safety whenever applicable with respect to items to be inspected as provided by Section 140 of this Act and shall list those items to be inspected in conformity with these standards established as provided by law. The list of items to be inspected and uniform standards of safety shall be posted in every official inspection station. Every vehicle inspected shall conform in all respects to the uniform standards of safety and the list of items to be inspected established pursuant to this Section.

(b) The Department shall furnish serially numbered certificates of inspection and verification forms to inspection stations. It shall be the responsibility of each owner and certified inspector, upon being licensed, to provide for the safekeeping of certificates of inspection and verification forms, safeguarding them against theft, loss or damage, controlling their sequence of issuance, and insuring that they are issued in accordance with the Department rules and regulations. Each inspection certificate and verification form, when issued, shall bear

such information as required by the Department for the type of vehicle that was inspected. The inspection certificate shall be invalid after the end of the twelfth month in which the vehicle was last inspected, approved, and the certificate of inspection issued. A certificate of inspection and approval for any vehicle shall be attached to or produced for such vehicles as the Department shall require. The Department shall require that certificates for motorcycles be attached to the rear of the vehicle near the license plate. A record and report as prescribed by the Department shall be made of every inspection and every certificate so issued. No unused certificates of inspection representing a prior inspection period shall be issued after the beginning of the next ensuing period.

(c) The Department may adopt rules necessary for the administration and enforcement of Article XV of this Act.

Inspection Before Certificate of Title Registration

Sec. 142A. Inspection before certificate of title registration. (a) Before a vehicle may be registered and titled under Subsection (a), Section 30, Certificate of Title Act, as amended (Article 6687–1, Vernon's Texas Civil Statutes), the owner must have the vehicle inspected as required under Section 140 of this Act and in addition must have the state-appointed inspection station record the permanent identification number and such other information as the Department may require on a verification form prescribed and furnished by the Department.

(b) An inspection station may not issue a verification form required under Subsection (a) of this section unless the vehicle satisfies the inspection requirements under Article XV of this Act.

(c) The fee for issuance of an inspection certificate and advance payment to the Department for certificates issued under this section shall be as provided under Subsection (c), Section 141 of this Act and shall be placed in the Motor Vehicle Inspection Fund and used for the purposes prescribed by law. The inspection station shall charge in addition to the fee for compulsory inspection as provided by Subsection (c), Section 141 of this Act a fee of One Dollar ($1) for each verification form issued as required by this section.

ARTICLE XVI–PENALTIES AND DISPOSITION OF FINES AND FORFEITURES

[See Compact Edition, Volume 5 for text of 143]

Dismissal of Certain Misdemeanor Charges Upon Completing Driving Safety Course

Sec. 143A. (a) When a person is charged with a misdemeanor offense under this Act, other than a violation of Section 50 or 51, committed while operating a motor vehicle, the court:

(1) in its discretion may defer proceedings and allow the person 90 days to present evidence that, subsequent to the alleged act, the person has successfully completed a defensive driver's course approved by the Texas Department of Public Safety or other driving safety course approved by the court; or

(2) shall defer proceedings and allow the person 90 days to present written evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course approved by the court, if:

(A) the person presents to the court an oral request or written motion to take a course;

(B) the person has a valid Texas driver's license or permit; and

(C) the person's driving record as maintained by the Texas Department of Public Safety does not indicate successful completion of a driving safety course under this subdivision within the two years immediately preceding the date of the alleged offense.

(b) When the person complies with the provisions of Subsection (a) of this section and the evidence presented is accepted by the court, the court shall dismiss the charge.

When a charge is dismissed under this section, the charge may not be part of the person's driving record or used for any purpose, but the court shall report the fact that a person has successfully completed a driving safety course and the date of completion to the Texas Department of Public Safety for inclusion in the person's driving record. The court shall note in its report whether the course was taken under the procedure provided by Subdivision (2) of Subsection (a) of this section for the purpose of providing information necessary to determine eligibility to take a subsequent course under that subdivision.

Disposition of Fines and Forfeitures

Sec. 144. (a) Fines collected for violation of any highway law as set forth in this Act shall be used by the municipality or the counties in which the same are assessed and to which the same are payable in the construction and maintenance of roads, bridges, and culverts therein, and for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles and to help defray the expense of county traffic officers.

(b) When a person is convicted in a municipal court of the offense of operating a vehicle on an interstate highway, as that term is defined in Subsection 144(c), at a speed greater than is reasonable and prudent under the circumstances, the municipal court shall remit to the state treasurer any portion of the fine assessed and collected which exceeds two dollars ($2) times the number of miles per hour by which the offender exceeded the posted speed limit as such excess speed is determined by a speed-measuring device as defined in Subsection 144(d). The number of miles per hour by which an offender exceeds the posted speed limit is determined by

subtracting the posted prima facie speed limit from the number of miles per hour the offender is alleged to have driven at the time of the offense according to the summons or promise to appear. The state treasurer shall deposit funds received under this Section in the General Revenue Fund.

(c) Definition: "Interstate highway" as used herein is a portion of the national system of interstate and defense highways located within this state which now or hereafter may be designated officially by the Texas Highway Commission and approved pursuant to Title 23, United States Code.[1]

(d) Definition: "Speed-measuring device" as used herein is any "Doppler shift speed meter" or other "radar" device whether operating under a pulse principle or a continuous-wave principle, photo-traffic camera, or any other electronic device used to detect and measure speed.

(e) The provisions of Subsection 144(b), shall not be applicable to municipal courts of any municipality having a population of 5,000 or more inhabitants according to the last preceding federal census.

[1] 23 U.S.C.A. § 101 et seq.

[See Compact Edition, Volume 5 for text of 145 to 147]

Notice to Appear in Court; Promise to Appear

Sec. 148. (a) Whenever a person is arrested for any violation of this Act punishable as a misdemeanor, and such person is not immediately taken before a magistrate as hereinbefore required, the arresting officer shall prepare in duplicate written notice to appear in court containing the name and address of such person, the license number of his vehicle, if any, the offense charged, and the time and place when and where such person shall appear in court. Provided, however, that the offense of speeding shall be the only offense making mandatory the issuance of a written notice to appear in court, and only then if the arrested person gives his written promise to appear in court, by signing in duplicate the written notice prepared by the arresting officer; and provided further, that it shall not be mandatory for an officer to give a written notice to appear in court to any person arrested for the offense of speeding when such person is operating a vehicle licensed in a state or country other that the State of Texas or who is a resident of a state or country other than the State of Texas, except as provided by the Nonresident Violator Compact of 1977.[1]

[1] Article 6701d-23.

[See Compact Edition, Volume 5 for text of 148(b) to 165]

ARTICLE XIX–SPEED RESTRICTIONS [1963 ENACTMENT]

Maximum Speeds of Vehicles

Sec. 166.

[See Compact Edition, Volume 5 for text of (a) to (c)]

(d) A person may not operate a motor vehicle on a beach at a speed greater than 25 miles per hour during the daytime or greater than 20 miles per hour during the nighttime.

Authority of State Highway Commission to Alter Maximum Speed Limits

Sec. 167.

[See Compact Edition, Volume 5 for text of 167(a) to (c)]

(d) The State Highway and Public Transportation Commission shall hold upon request a public hearing at least once each calendar year to consider maximum prima facie speed limits on highways in the State Highway System that are near public or private institutions of elementary or secondary education.

[See Compact Edition, Volume 5 for text of 168]

Authority of County Commissioners Court and Governing Bodies of Incorporated Cities, Towns and Villages to Alter Maximum Prima Facie Speed Limits

Sec. 169.

[See Compact Edition, Volume 5 for text of 169(a) and (b)]

(c) An incorporated city, town, or village with respect to any highway, street, or part of a highway or street, including those marked as a route of a highway of the State Highway System, within its corporate limits, shall have the same authority to alter maximum prima facie speed limits upon the basis of an engineering and traffic investigation as that delegated to the State Highway Commission with respect to any officially designated or marked highway, road, or street of the State Highway System, when the highway, street, or part of a highway or street, including those marked as a route of a highway of the State Highway System, is under repair, construction, or maintenance, which limits, when appropriate signs giving notice of the limits are erected, shall be effective at that highway, street, or part of a highway or street, including those marked as a route of a highway of the State Highway System at all times or during hours of daylight or darkness, or at other times as may be determined; provided that under no circumstances may any governing body have the authority to modify or alter the basic rule established in Subsection (a) of Section 166, nor to establish a speed limit higher than sixty (60) miles per hour, and that any order of the State Highway Commission declaring a speed limit upon any part of a designated or marked route of the State Highway System made pursuant to Section 167 or Section 169B shall supersede any conflicting designated speed established under the provisions of this section.

Text of subsec. (d) added by Acts 1977, 65th Leg., p. 916, ch. 344, § 2

(d) The governing body of an incorporated city, town, or village in which a public or private institution of elementary or secondary education is located shall hold upon request a public hearing at least once

each calendar year to consider maximum prima facie speed limits on streets and highways, including highways in the State Highway System, near the institution. If a county road outside the State Highway System is located within 500 feet of a public or private institution of elementary or secondary education that is not within the limits of an incorporated city, town, or village, the county commissioners court shall hold upon request a public hearing at least once each calendar year to consider the maximum prima facie speed limit on the road near the institution. A municipal governing body or commissioners court may hold upon request one public hearing for all public and private institutions of elementary or secondary education within its jurisdiction.

Text of subsec. (d) added by Acts 1977, 65th Leg., p. 2120, ch. 846, § 1

(d) The commanding officer of a United States military reservation, with respect to any highway, street, or part of a highway or street, including one marked as a route of a highway of the State Highway System, within the limits of the military reservation, has the same authority by order to alter maximum prima facie speed limits on the basis of an engineering and traffic investigation as that delegated to the State Highway and Public Transportation Commission with respect to any officially designated or marked highway, road, or street of the State Highway System. However, a commanding officer may not modify or alter the basic rule established in Subsection (a) of Section 166 of this Act, as amended, nor may he establish a speed limit higher than sixty (60) miles an hour. An order of the State Highway and Public Transportation Commission declaring a speed limit on any part of a designated or marked route of the State Highway System made pursuant to Section 167 or Section 169B of this Act, as amended, supersedes any conflicting order of a commanding officer.

(e) The chairman of the State Highway and Public Transportation Commission and the chairman of the State Board of Education shall provide assistance and information relevant to consideration of speed limits to commissioners courts, municipal governing bodies, and other interested persons.

Special Speed Limitations

Sec. 169A.

[See Compact Edition, Volume 5 for text of 169A(a) to (d)]

(e) No person may operate on a public highway at a speed greater than thirty (30) miles per hour any self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals and not designed or adapted for the sole purpose of transporting the materials or chemicals, unless the machinery is registered under Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a–1 et seq., Vernon's Texas Civil Statutes).

Temporary Speed Limits

Sec. 169B.

[See Compact Edition, Volume 5 for text of 169B(a) to (i)]

(j) This section expires when the national maximum speed limit of 55 miles per hour as provided in Section 154, Chapter 1, Title 23, United States Code,[1] is repealed.

[1] 23 U.S.C.A. § 154.

[See Compact Edition, Volume 5 for text of 170 and 171]

Exceptions to Speed Law

Sec. 172. The provisions of this Article regulating speeds of vehicles shall not apply to authorized emergency vehicles responding to calls, nor to police patrols, nor to physicians and/or ambulances responding to emergency calls, provided that incorporated cities and towns may by ordinance regulate the speed of ambulances, emergency medical services vehicles, and authorized emergency vehicles operated by blood banks or tissue banks.

[See Compact Edition, Volume 5 for text of 173 to 177]

ARTICLE XXI–OPERATION OF BICYCLES AND PLAY VEHICLES

[See Compact Edition, Volume 5 for text of 178]

Traffic Laws Apply to Persons Riding Bicycles; Competitive Racing

Sec. 179. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this Act, except as to special regulations in this Article and except as to those provisions of this Act which by their nature can have no application.

However, organized, competitive bicycle races may be held on public roads, provided that the sponsoring organization shall have obtained the approval of the appropriate local law enforcement agencies. The sponsoring organization and the local law enforcement agency may establish by agreement special regulations regarding the movement of bicycles during such races, or in training for races, including, but not limited to, permission to ride abreast and other regulations to facilitate the safe conduct of such races or training for races. "Bicycle" as used herein means a nonmotorized vehicle propelled by human power.

[See Compact Edition, Volume 5 for text of 180 and 181]

Riding on Roadways and Bicycle Paths

Sec. 182.

[See Compact Edition, Volume 5 for text of (a) and (b)]

(c) Repealed by Acts 1979, 66th Leg., p. 868, ch. 393, § 1, eff. June 6, 1979.

[See Compact Edition, Volume 5 for text of 183 to 188]

[Amended by Acts 1975, 64th Leg., p. 52, ch. 28, § 1, eff. March 27, 1975; Acts 1975, 64th Leg., p. 485, ch. 208, § 2, eff. Jan. 1, 1976; Acts 1975, 64th Leg., p. 651, ch. 271, §§ 1 to 3, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1091, ch. 411, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1291, ch. 483, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2106, ch. 686, § 1, eff. June 20, 1975; Acts 1975, 64th Leg., p. 2406, ch. 738, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 253, ch. 119, § 2, eff. May 4, 1977; Acts 1977, 65th Leg., p. 267, ch. 128, §§ 1, 2, eff. May 11, 1977; Acts 1977, 65th Leg., p. 916, ch. 344, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2011, ch. 804, §§ 1 to 3, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 2029, ch. 810, §§ 1 to 8, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2088, ch. 836, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2120, ch. 846, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 533, ch. 249, § 11, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 662, ch. 291, § 2, eff. Jan. 1, 1980; Acts 1979, 66th Leg., p. 716, ch. 312, § 2, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1048, ch. 478, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1156, ch. 559, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1359, ch. 610, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1608, ch. 682, §§ 1, 2, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1798, ch. 731, § 1, eff. June 13, 1979; Acts 1979, 66th Leg., p. 1964, ch. 776, § 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 896, ch. 320, §§ 1 to 4, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 918, ch. 334, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 997, ch. 377, §§ 1 to 5, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2325, ch. 571, § 4, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 3074, ch. 810, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3134, ch. 824, § 1, eff. Aug. 31, 1981.]

Section 2 of Acts 1979, 66th Leg., p. 1156, ch. 559, provided:

"The Department of Highways and Public Transportation shall erect appropriate signs near the entrances and exits of controlled access highways to advise motorists of the requirements of this Act."

Section 2 of Acts 1979, 66th Leg., p. 1964, ch. 776, provided:

"This Act takes effect September 1, 1979, and applies only to offenses committed on or after that date. Offenses committed under Section 50, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), before the effective date of this Act are subject to prosecution under that section as it existed when the offense occurred, and that law is continued in effect for that purpose. For the purpose of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Section 6 of Acts 1981, 67th Leg., p. 999, ch. 377, provides:

"This Act takes effect September 1, 1981, and applies to offenses committed on or after that date. Offenses committed before the effective date of this Act are subject to prosecution under the law as it existed when the offense occurred, and that law is continued in effect for that purpose. For the purposes of this Act, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Section 4 of Acts 1981, 67th Leg., p. 2725, ch. 741, provides:

"Sec. 4. This Act takes effect January 1, 1982, and applies only to offenses committed on or after that date. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed and the prior law is continued in effect for that purpose. An offense is committed before the effective date of this Act if any element of the offense occurs before that date."

Art. 6701d–4. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4), eff. Sept. 1, 1975

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

Art. 6701d–8. Repealed by Acts 1981, 67th Leg., p. 956, ch. 361, § 1, eff. Aug. 31, 1981

Art. 6701d–11. Regulating Operating of Vehicles on Highways

[See Compact Edition, Volume 5 for text of 1 and 2]

Width, Length and Height

Sec. 3. (a) No vehicle shall exceed a total outside width, including any load thereon, of ninety-six (96) inches, except that the width of a farm tractor shall not exceed nine (9) feet, excepting further that the limitations as to size of vehicle stated in this Section shall not apply to implements of husbandry, machinery used solely for the purpose of drilling water wells regardless of whether it is a unit in itself or is a unit mounted on a conventional vehicle or chassis, and highway building and maintenance machinery temporarily propelled or moved upon the public highways, excepting further, that the limitations as to size of vehicles stated in this Section shall not apply to vehicles on which implements of husbandry are being carried or moved provided such vehicles are being moved by the owner thereof or his agent or employee for the purpose of carrying on agricultural operations, and provided further that such implements are being moved or carried a distance of not more than fifty (50) miles, and excepting further, that the width of a motor bus or trolley bus operated exclusively within the limits of an incorporated city or town in this State and suburbs contiguous thereto and the county in which said incorporated city is located shall not exceed one hundred and two (102) inches. However, a vehicle used to carry cylindrically shaped bales of hay may exceed ninety-six (96) inches in width but its width may not exceed one hundred and twenty (120) inches except when operated on the National System of Interstate and Defense Highways where its width may not exceed the maximum width authorized by 23 U.S.C. 127.

No vehicle, other than vehicles herein exempted from these provisions, which has a total outside width, including any load thereon, in excess of the applicable width herein stated shall be permitted to operate on the public highways except under a special permit issued for such movement as prescribed in Section 2 of this Act or in Chapter 41, General Laws of the Forty-first Legislature, Second Called Session, 1929, as amended (Article 6701a of Vernon's Texas Civil Statutes) or except as authorized in some other Statute permitting or regulating such movement.

[See Compact Edition, Volume 5 for text of 3(b) to 3a]

Vehicles Transporting Seed Cotton Modules

Sec. 3B. (a) Except as provided by Subsection (d) of this section, a single motor vehicle used exclusively to transport seed cotton modules may exceed the limitation on width provided for a single vehicle by Subsection (a) of Section 3 of this Act but may not exceed a width of one hundred and eight (108) inches.

(b) Except as provided by Subsection (d) of this section, a single motor vehicle used exclusively to transport seed cotton modules may exceed the limitation on length provided for a single vehicle by Subsection (c) of Section 3 of this Act but may not exceed a length of forty-eight (48) feet.

(c) Except as provided by Subsection (d) of this section, a vehicle or combination of vehicles used exclusively to transport seed cotton modules may exceed the limitations on weight provided by Section 5 of this Act, but the load on any one axle may not exceed twenty thousand (20,000) pounds, the tandem axle load may not exceed thirty-eight thousand (38,000) pounds without van-type cover; thirty-nine thousand, four hundred (39,400) pounds with van-type cover, and the overall gross weight of the vehicle or vehicles may not exceed fifty-nine thousand, four hundred (59,400) pounds.

(d) A vehicle may not be operated on the national system of interstate and defense highways if it exceeds the maximum size or weight authorized by 23 U.S.C. Section 127.

(e) The owner of a vehicle covered by this section having a tandem axle weight greater than thirty-four thousand (34,000) pounds is liable to and shall compensate the state, county, or city for all damages to a highway, street, road, or bridge caused by the weight of the tandem axle load.

[See Compact Edition, Volume 5 for text of 4]

Weight of Load

Sec. 5. Except as otherwise provided by law, no commercial motor vehicle, truck-tractor, trailer or semitrailer, nor combination of such vehicles, shall be operated over, on, or upon the public highways outside the limits of an incorporated city or town, having a weight in excess of one or more of the following limitations:

(1) No such vehicle nor combination of vehicles shall have a greater weight than twenty thousand (20,000) pounds carried on any one axle, including all enforcement tolerances; or with a tandem axle weight in excess of thirty-four thousand (34,000) pounds, including all enforcement tolerances; or with an overall gross weight on a group of two or more consecutive axles produced by application of the following formula:

$$W=500\left(\frac{LN}{N-1}+12N+36\right)$$

where W = overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L = distance in feet between the extreme of any group of two or more consecutive axles, and N = number of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six (36) feet or more; provided, that such overall gross weight may not exceed eighty thousand (80,000) pounds, including all enforcement tolerances.

(2) No such vehicle nor combination of vehicles shall have a greater weight than six hundred (600) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using high-pressure tires, and a greater weight than six hundred and fifty (650) pounds per inch width of tire upon any wheel concentrated upon the surface of the highway and using low-pressure tires, and no wheel shall carry a load in excess of eight thousand (8,000) pounds on high-pressure tires and ten thousand (10,000) pounds on low-pressure tires, nor any axle a load in excess of sixteen thousand (16,000) pounds on high-pressure tires, and twenty thousand (20,000) pounds on low-pressure tires.

(3) Nothing in this section shall be construed as permitting size or weight limits on the national system of interstate and defense highways in this state in excess of those permitted under 23 U.S.C. Section 127. If the federal government prescribes or adopts vehicle size or weight limits greater than those now prescribed by 23 U.S.C. Section 127 for the national system of interstate and defense highways, the increased limits shall become effective on the national system of interstate and defense highways in this state.

(4) Nothing in this section shall be construed to deny the operation of any vehicle or combination of vehicles that could be lawfully operated upon the highways and roads of this state on December 16, 1974.

(5) In this section, an axle load is defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle. Tandem axle group is defined as two (2) or more axles spaced forty (40) inches or more apart from center to center having at least one (1) common point of weight suspension.

Exceeding Weight Limits to Cross Width of Highway

Sec. 5⅓. A person may operate a vehicle that exceeds the overall gross weight limits as provided by Section 5 of this Act to cross the width of a highway with the vehicle from private property to other private property if:

(1) the overall gross weight of the vehicle does not exceed 110,000 pounds;

(2) the person is operating the vehicle to transport grain, sand, other commodities, and products;

(3) an agreement authorized by law was executed under which a private party has contracted with the State Department of Highways and Public Transportation to indemnify the department for the cost of the maintenance and repair for

damage caused by the vehicles crossing that portion of the highway; and

(4) the private party has executed an adequate surety bond to compensate for the cost of maintenance and repairs, approved by the State Treasurer and the attorney general, with a corporate surety authorized to do business in this state, conditioned on the private party fulfilling the obligations of the agreement.

Weighing Loaded Vehicles by Inspectors

Sec. 6. Subd. 1. Any License and Weight inspector of the Department of Public Safety, any highway patrolman or any sheriff or his duly authorized deputy, having reason to believe that the gross weight or axle load of a loaded motor vehicle is unlawful, is authorized to weigh the same by means of portable or stationary scales furnished or approved by the Department of Public Safety, or cause the same to be weighed by any public weigher, and to require that such vehicle be driven to the nearest available scales for the purpose of weighing. In the event the gross weight of such vehicle be found to exceed the maximum gross weight authorized by law, plus a tolerance allowance of five per cent (5%) of the gross weight authorized by law, such license and weight inspector, highway patrolman, sheriff or his duly authorized deputy, shall demand and require the operator or owner of such motor vehicle to unload such portion of the load as may be necessary to decrease the gross weight of such vehicle to the maximum authorized by law plus such tolerance allowance, except as otherwise provided.[1] Such operator or owner shall forthwith unload such vehicle to the extent necessary to reduce the gross weight thereof to such lawful maximum and such vehicle may not be operated further over the public highways or roads of the State of Texas until the gross weight of such vehicle has been reduced to a weight not in excess of the maximum limit plus such tolerance allowance. In the event the axle load of any such vehicle be found to exceed the maximum authorized by law, plus a tolerance allowance of five per cent (5%) of the axle load authorized by law, such officer shall demand and require the operator or owner thereof to rearrange his cargo, if possible, to bring such vehicle and load within the maximum axle load authorized by law, and if this cannot be done by rearrangement of said cargo, then such portion of the load as may be necessary to decrease the axle load to the maximum authorized by law plus such tolerance allowance shall be unloaded before such vehicle may be operated further over the public highways or roads of the State of Texas. Provided, however, that if such load consists of livestock, then such operator shall be permitted to proceed to destination without being unloaded provided destination be within the State of Texas.

It is further provided that in the event the gross weight of the vehicle exceeds the registered gross weight, the License and Weight Inspector, State Highway Patrolman or Sheriff or his duly authorized Deputy shall require the operator or owner thereof to apply to the nearest available County Tax Assessor-Collector for additional registration in an amount that will cause his gross registration to be equal to the gross weight of the vehicle, provided such total registration shall not exceed gross weight allowed for such vehicle, before such operator or owner may proceed. Provided, however, that if such load consists of livestock or perishable merchandise then such operator or owner shall be permitted to proceed with his vehicle to the nearest practical point in the direction of his destination where his load may be protected from damage or destruction in the event he is required to secure additional registration before being allowed to proceed. It shall be conclusively presumed and deemed prima facie evidence that where an operator or owner is apprehended and found to be carrying a greater gross load than that for which he is licensed or registered, he has been carrying similar loads from the date of purchase of his current license plates and will therefore be required to pay for the additional registration from the date of purchase of such license. Provided further that when an operator or owner is required to purchase additional registration in a county other than the county in which the owner resides, the Tax Assessor-Collector of such county shall remit the fees collected for such additional registration to the State Highway Department to be deposited in the State Highway Fund. It shall be the duty of the State Highway Department, and the necessary funds are hereby appropriated, to remit the counties' portion of such fees collected to the county of the residence of the owner; and it is provided further that the provisions of this Section will in no way conflict with Article 6675a, Section 2, of the Revised Civil Statutes.

It is further provided that all forms and accounting procedure necessary to carry out the provisions of this Section shall be prescribed by the State Highway Department.

[See Compact Edition, Volume 5 for text of 6, 2 to 5]

Subd. 6. Notwithstanding Subdivision 1 of Section 6 of this Act, the operator or the owner of a motor vehicle loaded with timber or pulp wood or agricultural products in their natural state being transported from the place of production to the place of market or first processing, or the operator or owner of a vehicle crossing a highway as provided by Section 5⅓ of this Act, is not required to unload any portion of his load.

[1] See subd. 6 of this section.

[See Compact Edition, Volume 5 for text of 7 to 16a-3]

[Amended by Acts 1975, 64th Leg., p. 34, ch. 18, § 1, eff. March 18, 1975; Acts 1977, 65th Leg., p. 43, ch. 28, § 1, eff. March 24, 1977; Acts 1977, 65th Leg., p. 807, ch. 300, §§ 1, 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 169, ch. 93, § 1, eff. May 2, 1979; Acts 1979, 66th Leg., p. 520, ch. 243, § 2, eff. May 17, 1979; Acts 1981, 67th Leg., p. 364, ch. 147, §§ 1, 2, eff. May 14, 1981; Acts 1981, 67th Leg., p. 1838, ch. 426, § 1, eff. Aug. 31, 1981.]

Section 2 of the 1975 amendatory act provided:

"This amendatory Act does not affect Section 5½ or 6, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701d-11, Vernon's Texas Civil Statutes); Section 1, Chapter 293, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701d-12, Vernon's Texas Civil Statutes); or any state law authorizing the issuance of special permits for weights in excess of those provided by this amendatory Act."

Art. 6701d-11a. Registration and Width Requirement of Vehicles Transporting Fertilizer

Sec. 1. In this Act, "fertilizer" includes agricultural limestone.

Sec. 2. The annual license fee for the registration of motor vehicles designed or modified exclusively to transport fertilizer to the field and spread it, and used only for that purpose, is $50.

Sec. 3. The width requirements in Subsection (a), Section 3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6701d-11, Vernon's Texas Civil Statutes), do not apply to a vehicle registered under Section 2 of this Act which has a width of 136 inches or less at its widest point.

[Acts 1977, 65th Leg., p. 373, ch. 184, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 6701d-12. Weight of Vehicles Transporting Ready-Mixed Concrete

Sec. 1. Vehicles used exclusively to transport ready-mixed concrete, which is hereby defined as a perishable product, may be operated upon the public highways of this state with a tandem axle load not to exceed 44,000 pounds, a single axle load not to exceed 20,000 pounds and a gross load not to exceed 64,000 pounds, provided that where the vehicle is to be operated with a tandem axle load in excess of 34,000 pounds, the owner of such vehicle shall first file with the State Department of Highways and Public Transportation a surety bond in the principal sum as fixed by the department, which sum shall not be set at a greater amount than $15,000 for each vehicle; said bond to be conditioned that the owner of such vehicle will pay to the State of Texas, within the limit of such bond, all damages done to the highways by reason of the operation of such vehicle with a tandem axle load in excess of 34,000 pounds; such bond shall be subject to the approval of the State Department of Highways and Public Transportation.

Sec. 2. When any county, city, or town determines public highways under their jurisdiction are found insufficient to carry the maximum gross vehicle axle loads authorized in Section 1 of this Act, the governing body of such county, city, or town is hereby authorized to prescribe, by order or ordinance, reasonable rules and regulations governing the operation of vehicles to transport ready-mixed concrete over public highways maintained by such county, city, or town. Such rules and regulations may include, but need not be limited to, weight limitations on vehicles with a tandem axle load which exceeds 36,000 pounds, a single axle load which exceeds 12,000 pounds, and a gross load which exceeds 48,000 pounds.

Sec. 3. The governing body of any county, city, or town may require the owner of any ready-mixed concrete vehicle to file a surety bond in a sum not to exceed $15,000, and conditioned that the owner of such vehicle will pay to such county, city, or town all damages done to the highways by reason of the operation of such vehicle with a tandem axle load in excess of 34,000 pounds.

Sec. 4. This Act does not authorize the operation on the national system of interstate and defense highways in this state of vehicles of a size or weight greater than authorized in Title 23, United States Code, Section 127, as amended. If the United States government authorizes the operation on the national system of interstate and defense highways of vehicles of a size or weight greater than those authorized on January 1, 1977, the new limits automatically shall be in effect on the national system of interstate and defense highways in this state.

[Amended by Acts 1977, 65th Leg., p. 944, ch. 354, § 1, eff. Aug. 29, 1977.]

Acts 1975, 64th Leg., p. 34, ch. 18, which by § 1 amended § 5 of art. 6701d-11, in § 2 provided, in part: "This amendatory Act does not affect * * Section 1, Chapter 293, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6701d-12, Vernon's Texas Civil Statutes); or any state law authorizing the issuance of special permits for weights in excess of those provided by this amendatory Act."

Art. 6701d-12a. Weight and Size of Vehicles Transporting Milk

Sec. 1. A vehicle used exclusively to transport milk may be operated on the public highways of this state if the distance between the front wheel of the forward tandem axle and the rear wheel of the rear tandem axle, measured longitudinally, is at least 28 feet, and the maximum load carried on any group of axles does not exceed 68,000 pounds.

Sec. 2. Nothing in this Act shall be construed as permitting size or weight limits on the national system of interstate and defense highways in this state in excess of those permitted under Title 23, U.S.C., Section 127, as amended. If the federal government prescribes or adopts vehicle size or weight limits greater than those now prescribed by Title 23, U.S.C., Section 127, as amended, for the national system of interstate and defense highways, the increased limits shall become effective on the national system of interstate and defense highways in this state.

[Acts 1977, 65th Leg., p. 1496, ch. 608, eff. Aug. 29, 1977.]

Art. 6701d-19. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(2)(B), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article enacts the Agriculture Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Agriculture Code.

6701d-21. Repealed by Acts 1979, 66th Leg., p. 1609, ch. 682, § 5, eff. Sept. 1, 1979

Section 6 of the 1979 repealing act provided:
"An offense committed under the law repealed by this Act is covered by that law as it existed on the date of the offense, and the repealed law is continued in effect for the prosecution of the offense."

Art. 6701d-22. Speed of Vehicles in Parks of Counties Bordering Gulf of Mexico

[See Compact Edition, Volume 5 for text of 1]

Sec. 2. Repealed by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2(1), eff. Jan. 1, 1982

[See Compact Edition, Volume 5 for text of 3 and 4]

[Amended by Acts 1981, 67th Leg., p. 2725, ch. 741, § 2, eff. Jan. 1, 1982.]

Section 4 of the 1981 amendatory act provides:
"This Act takes effect January 1, 1982, and applies only to offenses committed on or after that date. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed and the prior law is continued in effect for that purpose. An offense is committed before the effective date of this Act if any element of the offense occurs before that date."

Art. 6701d-23. Nonresident Violator Compact of 1977

Sec. 1. The Nonresident Violator Compact of 1977 is adopted by this state and entered into with all other jurisdictions adopting the compact in form substantially as follows:

"NONRESIDENT VIOLATOR COMPACT OF 1977

"Art. I. FINDINGS, DECLARATION OF POLICY, AND PURPOSE

"(a) The party jurisdictions find that:

"(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction:

"(i) Must post collateral or bond to secure appearance for trial at a later date; or

"(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

"(iii) Is taken directly to court for his trial to be held.

"(2) In some instances, the motorist's driver's license may be deposited as collateral to be returned after he has complied with the terms of the citation.

"(3) The purpose of the practices described in paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

"(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

"(5) The practice described in paragraph (1) above causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

"(6) The deposit of a driver's license as a bail bond, as described in paragraph (2) above, is viewed with disfavor.

"(7) The practices described herein consume an undue amount of law enforcement time.

"(b) It is the policy of the party jurisdictions to:

"(1) Seek compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

"(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

"(3) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

"(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

"(c) The purpose of this compact is to:

"(1) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in paragraph (b) above in a uniform and orderly manner.

"(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

"Art. II. DEFINITIONS

"(a) In the Nonresident Violator Compact, the following words have the meaning indicated, unless the context requires otherwise.

"(b)(1) 'Citation' means any summons, ticket, or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

"(2) 'Collateral' means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

"(3) 'Court' means a court of law or traffic tribunal.

"(4) 'Driver's license' means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

"(5) 'Home jurisdiction' means the jurisdiction that issued the driver's license of the traffic violator.

"(6) 'Issuing jurisdiction' means the jurisdiction in which the traffic citation was issued to the motorist.

"(7) 'Jurisdiction' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"(8) 'Motorist' means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

"(9) 'Personal recognizance' means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

"(10) 'Police officer' means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

"(11) 'Terms of the citation' means those options expressly stated upon the citation.

"Art. III. PROCEDURE FOR ISSUING JURISDICTION

"(a) When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in paragraph (b) of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's personal recognizance that he or she will comply with the terms of the citation.

"(b) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of the citation.

"(c) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and shall contain information as specified in the Compact Manual as minimum requirements for effective processing by the home jurisdiction.

"(d) Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist the information in a form and content as contained in the Compact Manual.

"(e) The licensing authority of the issuing jurisdiction may not suspend the privilege of a motorist for whom a report has been transmitted.

"(f) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

"(g) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

"Art. IV. PROCEDURE FOR HOME JURISDICTION

"(a) Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

"(b) The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the Compact Manual.

"Art. V. APPLICABILITY OF OTHER LAWS

"Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to licenses to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party jurisdiction and a nonparty jurisdiction.

"Art. VI. COMPACT ADMINISTRATOR PROCEDURES

"(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a Board of Compact Administrators is established. The board shall be composed of one representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will serve and be subject to removal in accordance with the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

"(b) Each member of the Board of Compact Administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

"(c) The board shall elect annually, from its membership, a chairman and a vice chairman.

"(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

"(e) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any jurisdiction, the United States, or any other governmental agency, and may receive, utilize, and dispose of the same.

"(f) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, person, firm, or corporation, or any private nonprofit organization or institution.

"(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the Compact Manual.

"Art. VII. ENTRY INTO COMPACT AND WITHDRAWAL

"(a) This compact shall become effective when it has been adopted by at least two jurisdictions.

"(b)(1) Entry into the compact shall be made by a Resolution of Ratification executed by the authorized officials of the applying jurisdiction and submitted to the chairman of the board.

"(2) The resolution shall be in a form and content as provided in the Compact Manual and shall include statements that in substance are as follows:

"(i) A citation of the authority by which the jurisdiction is empowered to become a party to this compact.

"(ii) Agreement to comply with the terms and provisions of the compact.

"(iii) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

"(3) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than 60 days after notice has been given by the chairman of the Board of Compact Administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

"(c) A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until 90 days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

"Art. VIII. EXCEPTIONS

"The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.

"Art. IX. AMENDMENTS TO THE COMPACT

"(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the Board of Compact Administrators and may be initiated by one or more party jurisdictions.

"(b) Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective 30 days after the date of the last endorsement.

"(c) Failure of a party jurisdiction to respond to the compact chairman within 120 days after receipt of the proposed amendment shall constitute endorsement.

"Art. X. CONSTRUCTION AND SEVERABILITY

"This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government, agency, person, or circumstance, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

"Art. XI. TITLE

"This compact shall be known as the Nonresident Violator Compact of 1977."

Sec. 2. (a) The office of nonresident violator compact administrator is created. The governor shall appoint the compact administrator, with the advice and consent of the senate, to a two-year term that expires on February 1 of each odd-numbered year. The compact administrator is entitled to compensation and reimbursement for expenses as provided by legislative appropriation. The compact administrator shall perform the duties specified by the Nonresident Violator Compact of 1977.

(b) The Department of Public Safety shall report, as provided by Article III(c) of the Nonresident Violator Compact of 1977, the failure of a motorist to comply with the terms of a traffic citation. The department shall establish procedures for the reports.

(c) For the purposes of the compact, the "licensing authority" means the Department of Public Safety. [Acts 1981, 67th Leg., p. 2320, ch. 571, § 1, eff. Jan. 1, 1982; § 2, eff. Sept. 1, 1981.]

Sections 5 to 7 of the 1981 Act provide:

"Sec. 5. The initial term of the compact administrator expires February 1, 1983.

"Sec. 6. The Department of Public Safety shall promptly execute a resolution of ratification as provided by Article VII of the Nonresident Violator Compact of 1977.

"Sec. 7. This Act takes effect September 1, 1981, except that Section 1 takes effect January 1, 1982. This Act applies to citations issued on or after January 1, 1982, by jurisdictions that are members of the Nonresident Violator Compact of 1977."

Art. 6701e. Repealed by Acts 1979, 66th Leg., p. 2429, ch. 842, art. 1, § 2(1), eff. Sept. 1, 1979

Acts 1979, 66th Leg., ch. 842, repealing this article, enacts the Human Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Human Resources Code.

Art. 6701g-1. Removal of Unauthorized Vehicles Parked in Fire Lanes

Sec. 1. The owner of premises at or upon which a governmental body requires the designation and maintenance of a fire lane, or the agent of the owner, may have any motor vehicle that is parked in the fire lane, except an authorized emergency vehicle, removed and stored at the expense of the owner or operator of the vehicle, if the fire lane is required by a governmental body having authority to require fire lanes and is conspicuously designated as a fire lane in compliance with requirements of the governmental body.

Sec. 2. The owner of the premises, or his agent, who has a vehicle removed and stored as provided in Section 1 of this Act is not liable for damages incurred by the owner or operator of the vehicle as a result of removal or storage if the vehicle is removed by a vehicle wrecker service insured against liability for property damage incurred in towing vehicles and is stored by a storage company insured against liability for property damage incurred in the storage of vehicles.

[Acts 1977, 65th Leg., p. 1243, ch. 480, §§ 1, 2, eff. Aug. 29, 1977.]

Art. 6701g-2. Removal of Unauthorized Vehicles from Parking Facilities or Public Highways

Definitions

Sec. 1. In this Act:

(a) "Parking facility" means any public or private property used, in whole or in part, for restricted and/or paid parking of vehicles. "Parking facility" includes but is not limited to commercial parking lots, parking garages, and parking areas serving or adjacent to businesses, churches, schools, homes, and apartment complexes. "Parking facility" also includes a restricted portion or portions of an otherwise unrestricted parking facility.

(b) "Parking facility owner" means any operator or owner (including any lessee, employee, or agent thereof) of a parking facility.

(c) "Public highway" means any public street, alley, road, right-of-way, or other public way.

(d) "Towing company" means any individual, corporation, partnership, or association engaged in the business of towing vehicles on a public highway for compensation or with the expectation of compensation for the towing, storage, or repair of vehicles. The term "towing company" includes the owner, operator, employee, or agent of a towing company, but does not include cities, counties, or other political subdivisions of the state.

(e) "Vehicle" means every kind of device in, upon, or by which any person or property is or may be transported or drawn on a public highway, except devices moved by human power or used exclusively on stationary rails or tracks.

(f) "Unauthorized vehicle" means any vehicle parked, stored, or situated in or on a parking facility without the consent of the parking facility owner.

Removal by Parking Facility Owner

Sec. 2. (a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause such vehicle to be removed and stored at the expense of the owner or operator of the vehicle, if any of the following occurs:

(i) a sign or signs, specifying those persons who may park in the parking facility and prohibiting all others, are placed so that they are readable day or night from all entrances to the parking facility (but signs need not be illuminated);

(ii) the owner or operator of the unauthorized vehicle has actually received notice from the parking facility owner that the vehicle will be towed away if it is not removed; or

(iii) the unauthorized vehicle is obstructing an entrance, exit, fire lane, or aisle of the parking facility.

(b) Otherwise, a parking facility owner may not have an unauthorized vehicle removed except under the direction of a peace officer or the owner or operator of such vehicle.

(c) A parking facility owner who causes the removal of an unauthorized vehicle in compliance with the provisions of this section shall not be liable for damages arising out of the removal or storage of such vehicle, if the same is removed by an insured towing company.

Removal by Towing Company

Sec. 3. (a) A towing company may, without the consent of the owner or operator of an unauthorized vehicle, remove and store such vehicle at the expense of the owner or operator of the vehicle, if any of the following occurs:

(i) a sign or signs, specifying those persons who may park in the parking facility and prohibiting all others, are placed so that they are readable day or night from all entrances to the parking facility (but signs need not be illuminated);

(ii) the towing company has received written verification from the parking facility owner that the owner or operator of the unauthorized vehicle has been actually notified by the parking facility owner that the vehicle will be towed away if it is not removed; or

(iii) the unauthorized vehicle is obstructing an entrance, exit, fire lane, or aisle of the parking facility.

(b) Otherwise, a towing company may not remove an unauthorized vehicle except under the direction of a peace officer or the owner or operator of such vehicle.

Removal from Public Highway by Towing Company

Sec. 4. A towing company may not remove a vehicle from a public highway except under the direction of a peace officer or the owner or operator of such vehicle.

Pecuniary Interest in Towing Company by Parking Facility Owner

Sec. 5. A parking facility owner may not accept anything of value, directly or indirectly, from a towing company in connection with the removal of a vehicle from a parking facility. A parking facility owner may not have a pecuniary interest, directly or indirectly, in a towing company which removes unauthorized vehicles for compensation from a parking facility in which the parking facility owner has an interest.

Pecuniary Interest in Parking Facility by Towing Company

Sec. 6. A towing company may not give anything of value, directly or indirectly, to a parking facility owner in connection with the removal of a vehicle from a parking facility. A towing company may not have a pecuniary interest, directly or indirectly, in a parking facility from which the towing company removes unauthorized vehicles for compensation.

Violation of Act; Damages; Attorney's Fees

Sec. 7. (a) Any towing company or parking facility owner who violates this Act shall be liable to the owner or operator of the vehicle for damages arising out of the removal or storage of such vehicle and/or any towing or storage fees assessed in connection with the removal or storage of such vehicle. Negligence on the part of the parking facility owner or towing company need not be proven in order to recover under this Act.

(b) In any suit brought under this Act, the prevailing party shall recover reasonable attorney's fees from the nonprevailing party.

Penalty; Injunction

Sec. 8. Any violation of this Act is a Class B misdemeanor. Any violation of the provisions of this Act may be enjoined pursuant to the provisions of the Deceptive Trade Practices-Consumer Protection Act.[1]

[1] Business and Commerce Code, § 17.41 et seq.

[Acts 1977, 65th Leg., p. 2085, ch. 835, §§ 1 to 8, eff. Aug. 29, 1977.]

Art. 6701h. Safety Responsibility Law

ARTICLE I--WORDS AND PHRASES DEFINED

[See Compact Edition, Volume 5 for text of 1]

Necessity of Automobile Liability Insurance Exempted Vehicles

Sec. 1A. (a) On and after January 1, 1982, no motor vehicle may be operated in this State unless a policy of automobile liability insurance in at least the minimum amounts to provide evidence of financial responsibility under this Act is in effect to insure against potential losses which may arise out of the operation of that vehicle.

(b) The following vehicles are exempt from the requirement of Subsection (a) of this section:

(1) vehicles exempt by Section 33 of this Act;

(2) vehicles for which a bond or a certificate of deposit of money or securities in the minimum amount of Twenty-five Thousand Dollars ($25,000) is on file with the Department;

(3) vehicles that are self-insured under Section 34 of this Act;

(4) vehicles that are both registered to and operated by persons who are not residents of this State, except for those vehicles that are primarily operated in this State; and

(5) implements of husbandry.

(c) An out-of-state vehicle or driver exempt from the compulsory insurance requirement by Subsection (b) of this section may be proceeded against under this Act after involvement in an accident in this State in which death, personal injury, or damage to the property of any person other than himself or herself is sustained.

Furnishing Evidence of Financial Responsibility

Sec. 1B. On and after January 1, 1982, every owner and/or operator in the State of Texas shall be required, as a condition of driving, to furnish, upon request, information concerning evidence of financial responsibility to a law enforcement officer of the State of Texas or any subdivision thereof, or agent of the Department, or to another person involved in an accident.

Failure to Maintain Financial Responsibility

Sec. 1C. Failure to maintain financial responsibility as defined in Section 1(10) of this Act is a Class C misdemeanor, punishable by a fine of not less than Seventy-five Dollars ($75). Subsequent offenses shall be Class B misdemeanors, punishable by a fine of not less than Two Hundred Dollars ($200).

Rebuttable Presumption of Failure to Maintain Financial Responsibility

Sec. 1D. Failure to give information as required in Section 1B, or the giving of information which is false, will raise a rebuttable presumption of failure to maintain financial responsibility.

Response of Insurance Company When No Policy in Effect

Sec. 1E. When notified of an accident by the Department in which an owner or operator has reported evidence of financial responsibility with an insurance company, the insurance company so notified shall be required to respond to the Department only if there is not a policy of liability insurance in effect, as reported.

Suspension of Driver's License and Motor Vehicle Registration

Sec. 1F. A conviction of failure to maintain financial responsibility shall also carry a suspension of driver's license and motor vehicle registration unless the defendant establishes and maintains proof of financial responsibility for five years from the date of conviction.

Operator's and Chauffeur's License Fund

Sec. 1G. Fees collected under the provisions of this Act shall be deposited in the Operator's and Chauffeur's License Fund and are hereby appropriated to the Department of Public Safety for the purpose of defraying the expenses necessary for administration of the Act, including but not limited to the employment of necessary clerical, administrative, and enforcement personnel and for defraying the necessary expenses incident to travel, equipment rental, postage, printing of necessary forms, and purchase of all necessary furniture, fixtures, and equipment.

ARTICLE II—ADMINISTRATION OF ACT

Administration of Act; Appeal to Court; Stay Order; Proof of Financial Responsibility; Maintaining Proof With Department

Sec. 2.

[See Compact Edition, Volume 5 for text of 2(a)]

(b) Any order or act of the Department, under the provisions of this Act, may be subject to review within thirty (30) days after notice thereof, or thereafter for good cause shown, by appeal to the County Court at Law at the instance of any party in interest and in the county wherein the person aggrieved by such order or act resides, or if there be no County Court at Law therein, then in the County Court of said county, or if there be no County Court having jurisdiction, then such jurisdiction shall be in the District Court of said county, and such Court is hereby vested with jurisdiction, and such appeal shall be by trial de novo. The Court shall determine whether the filing of the appeal shall operate as a stay of any such order or decision of the Department, with the exception that no stay order shall be granted staying an order of suspension by the Department of Public Safety that is based on a final judgment rendered against any person in this State by a court of competent jurisdiction growing out of the use of a motor vehicle in this State when said judgment is a subsisting final judgment and unsatisfied; further, an appeal shall not operate as a stay of any such other orders or decisions of the Department of Public Safety where the aggrieved party was involved in an accident involving a motor vehicle which he was operating if he was charged with a violation of any of the laws of the State of Texas, or any of its political subdivisions, and said complaint or indictment is pending at the time the appeal from an order or decision of the Department of Public Safety is filed, unless the aggrieved party shall file proof of financial responsibility with the Department of Public Safety as a condition precedent to the obtaining of said stay and maintain said proof of financial responsibility until dismissal of said complaint or indictment or for such period of time as provided for in Section 2(d) of this Act. If the aggrieved party shall at the time of said appeal in lieu of proof of financial responsibility file with the court and the Department of Public Safety an affidavit setting forth specific facts which would entitle the aggrieved party to an acquittal of the complaint or indictment filed against the aggrieved party, he shall be entitled to a temporary stay of the order of the Department of Public Safety without the necessity of filing proof of financial responsibility. Upon the filing of such affidavit, the cause shall be set upon the court's docket in said Court where said complaint or indictment is pending and if the same is not tried within forty-five (45) days from the date of filing of such complaint or indictment, shall thereafter be subject to transfer to such county or District Court of an adjoining county upon the filing of a motion thereof by the aggrieved party. If within ninety (90) days from the date of the original suspension or order by the Department of Public Safety, the Department has not received a certified copy of a judgment of the court acquitting the aggrieved party, the Department of Public Safety shall again order the driver's license and the registrations of all motor vehicles registered in the aggrieved party's name suspended and from this said order of the Department of Public Safety, no appeal shall operate as a stay unless the aggrieved party files with the Department of Public Safety, as an absolute condition precedent to the obtaining of a stay, proof of financial responsibility and maintain said proof of financial responsibility until said complaint or indictment has been dismissed or if the aggrieved party has pled guilty or been convicted for the period of time provided for in Section 2(d) of this Act. Upon the disposition of said complaint or indictment either by a plea of guilty or final conviction, the aggrieved party who shall have pled guilty or been finally convicted and has previously filed proof of financial responsibility as a condition precedent to obtaining a stay from an order of suspension of the Department of Public Safety, must maintain said proof of financial responsibility with the Department of Public Safety for that period of time provided for in Section 2(d) of this Act. If no stay order has been previously applied for prior to a plea of guilty or final conviction, the aggrieved party can obtain a stay from any order or decision of the Department of Public Safety if said party will file with the Department of Public Safety as a condition prece-

dent to the obtaining of a stay of said order or decision proof of financial responsibility and maintain said proof of financial responsibility as provided for in Section 2(d) of this Act. Where the aggrieved party has been found not guilty to the complaint or indictment filed against him, or said complaint or indictment has been dismissed, filing of proof of financial responsibility shall not be a condition precedent to the granting of a stay from any order or decision of the Department of Public Safety, and prior filing of proof of financial responsibility with the Department of Public Safety as a condition precedent to obtaining a stay from an order or decision of the Department of Public Safety, may be withdrawn. The above provision restricting the granting of a stay order in appeals where the aggrieved party has been charged with the violation of any of the laws of the State of Texas or of any of the political subdivisions shall also limit any court in this State in any original action brought against the Department of Public Safety to enjoin or order the enforcement of any order of the Department of Public Safety issued under this Act.

[See Compact Edition, Volume 5 for text of 3]

ARTICLE III—SECURITY FOLLOWING ACCIDENT

[See Compact Edition, Volume 5 for text of 4 and 4A]

Security; Determination of Amount; Suspension of License and Registrations; Notice; Exceptions

Sec. 5. (a) If twenty (20) days after the receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury or death, or damage to the property of any one person of at least Two Hundred Fifty Dollars ($250), the Department does not have on file evidence satisfactory to it that the person who would otherwise be required to file security under Subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, and the Department finds that there is a reasonable probability of a judgment being rendered against the person as a result of the accident, the Department shall determine the amount of security which shall be sufficient in its judgment, and in no event less than Two Hundred Fifty Dollars ($250) to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b) The Department shall, subject to the provisions of Subsection (c) of this section, suspend the license and all registrations of each operator and owner of a motor vehicle in any manner involved in such accident, if there is found to be a reasonable probability of a judgment being rendered against that person as a result of the accident, and if such operator or owner is a nonresident the privilege of operating a motor vehicle within this State, and the privilege of the use within this State of any motor vehicle owned by him unless such operator, owner or operator and owner shall deposit security in the sum so determined by the Department or by a person presiding at a hearing and in no event less than Two Hundred Fifty Dollars ($250), and unless such operator and owner shall give proof of financial responsibility.

Before suspension of a license, registration, or privilege, the Department must find that there is a reasonable probability of a judgment being rendered against the person as a result of the accident and the amount of security that must be deposited. For this purpose it may consider the report of the investigating officer, the accident reports of all parties involved, and any affidavits of persons having knowledge of the facts. Notice of the determination by the Department shall be served personally on the person or mailed by certified mail, return receipt requested, to the affected person's last known address, as shown by the records of the Department. The notice shall specify that the license to operate a motor vehicle and the registration, or nonresident's operating privilege, will be suspended unless the person, within twenty (20) days after personal service or the mailing of the notice, establishes that the provisions of this section are not applicable to him and that he has previously furnished such information to the Department or that there is no reasonable probability of a judgment being rendered against him as a result of the accident. The notice shall recite that the person to whom it is addressed is entitled to a hearing as provided in this Act if a written request for a hearing is delivered or mailed to the Department within twenty (20) days after personal service or the mailing of the notice. The person's license to operate the vehicle and his registration or nonresident's operating privilege may not be suspended pending the outcome of the hearing and any appeal.

If a hearing is requested, the Department shall summon the person requesting the hearing to appear for the hearing as provided in this subsection. The hearing shall be held not less than ten (10) days after notice is given to the person requesting the hearing and written charges shall be made and a copy given to the person requesting the hearing at the time he is given the hearing notice. Jurisdiction for the hearing is vested in the judge of a police court, or a justice of the peace in the county and precinct in which the person requesting the hearing resides. The hearing officer may receive a fee for hearing these cases if the fee is approved by the commissioners court of the county of jurisdiction, but the fee may not be more than Five Dollars ($5) a case and shall be paid from the general revenue fund of the county. The hearing officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relative books and

papers. It shall be the duty of the court to set the matter for hearing upon ten (10) days written notice to the Department. Such proceeding shall have precedence over all other matters of a different nature, and shall be tried before the judge within fifteen (15) days from the filing thereof, and neither party shall be entitled to a jury. At the hearing, the issues to be determined are whether there is a reasonable probability of a judgment being rendered against the person requesting the hearing as a result of the accident and, if so, the amount of security that will be sufficient to satisfy any judgment or judgments for damages resulting from the accident, but in no event less than Two Hundred Fifty Dollars ($250), that may be recovered from the person requesting the hearing. The officer who presides at the hearing shall report the findings in the case to the Department. Notice as required by this paragraph shall be served personally on the person or mailed by certified mail, return receipt requested, to the person's last known address, as shown by the records of the Department.

If, after a hearing, the determination is that there is a reasonable probability of a judgment being rendered against the person as a result of the accident, the person may appeal the findings to the county court of the county in which the hearing was held and the appeal shall be de novo.

If a written request for a hearing is not delivered or mailed to the Department within twenty (20) days after personal service or the mailing of notice and the person has not established within that time that the provisions of this section do not apply to him or if within twenty (20) days after a hearing and exhaustion of the appeal procedure, if an appeal is made in which the decision is against the person requesting the hearing, security and proof of financial responsibility are not deposited with the Department, the Department shall suspend the person's license to operate a motor vehicle, the vehicle registration, or nonresident's operating privilege until the person complies with the provisions of this Act.

Notice of such suspension shall be sent by the Department to such operator and owner not less than ten (10) days prior to the effective date of such suspension and shall state the amount required as security and the necessity for proof of financial responsibility. Where erroneous information is given the Department with respect to the matters set forth in subdivisions 2, 3, and 4 of Subsection (c) of this Section, it shall take appropriate action as hereinbefore provided, within sixty (60) days after receipt by it or correct information with respect to said matters.

The determination by the Department or by a person presiding at a hearing of the question of whether there is a reasonable probability of a judgment being rendered against a person as a result of an accident may not be introduced in evidence in any civil suit for damages arising from the accident.

(c) This section shall not apply under the conditions stated in Section 6 nor:

1. To a motor vehicle operator or owner against whom the Department or a person presiding at a hearing finds there is not a reasonable probability of a judgment being rendered as a result of the accident;

2. To such operator or owner if such owner had in effect at the time of such accident a motor vehicle liability policy with respect to the motor vehicle involved in such accident;

3. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;

4. To any person employed by the government of the United States, when such person is acting within the scope or office of his employment;

5. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Department, covered by any other form of liability insurance policy or bond; nor

6. To any person qualifying as a self-insurer under Section 34 of this Act, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this section or under Section 7 unless issued by an insurance company or surety company authorized to write motor vehicle liability insurance in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Department to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; providing, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than Ten Thousand Dollars ($10,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than Twenty Thousand Dollars ($20,000) because of bodily injury to or death of two (2) or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than Five Thousand Dollars ($5,000) because of injury to or destruction of property of others in any one accident. The policy or bond may exclude coverage of the first Two Hundred Fifty Dollars ($250) of liability for bodily injury to or death of any one person in any one accident, and, subject to that exclusion for one

person, may exclude coverage for the first Five Hundred Dollars ($500) of liability for the bodily injury to or death of two (2) or more persons in any one accident and may exclude coverage for the first Two Hundred Fifty Dollars ($250) of liability for the injury to or destruction of property of others in any one accident.

7. Wherever the word "bond" appears in this section or this Act, it shall mean a bond filed with and approved by the Department of Public Safety.

[See Compact Edition, Volume 5 for text of 6 to 43]

[Amended by Acts 1975, 64th Leg., p. 931, ch. 347, § 1, eff. June 19, 1975; Acts 1981, 67th Leg., p. 2630, ch. 707, § 4(8), eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3053, ch. 800, § 1, eff. Aug. 31, 1981.]

Art. 6701i. Brake Fluids; Marketing Regulated; Penalties

Definitions

Sec. 1. In this Act:

(1) "Brake fluid" means the liquid medium through which force is transmitted in the hydraulic brake system of any motor vehicle operated upon the highways of this state.

(2) "Package" means the immediate container in which the brake fluid is packed for sale but does not include a carton or wrapping containing several packages, nor a tank car or truck.

(3) "Packer" means a person who fills with brake fluid a package that is subsequently distributed for sale in this state.

(4) "Person" means an individual, corporation, or association.

(5) "Sell" means to convey, give, barter, trade, exchange, keep for sale, offer for sale, expose for sale, advertise for sale, deliver for or after sale, or distribute.

(6) "Labeling" means written, printed, or graphic representations in any form printed on or affixed to a package.

(7) "Department" means the Department of Public Safety.

Purpose

Sec. 1A. The legislature of the State of Texas, mindful of the importance of braking systems in motor vehicles, determines that it is necessary in the interest of the safety of the motoring public to establish brake fluid standards and provide for the proper enforcement of the standards. It is the purpose of this Act to insure to the motoring public at the time of purchase of brake fluid that the fluid meets the necessary minimum standards established under this Act.

Prohibition

Sec. 2. (a) A person who knowingly, intentionally, or recklessly manufactures, packs, sells, or adds to the hydraulic brake system of a motor vehicle in this state, any brake fluid (1) which is misbranded, (2) which is not currently registered under this Act, or (3) which is adulterated, commits an offense.

(b) An offense under this section is a Class B misdemeanor.

Misbranding and Adulteration

Sec. 3. (a) A brake fluid is misbranded:

(1) if its labeling is false or misleading in any particular; or

(2) if the package in which it is packed for sale does not bear a label or imprint containing in clear and legible type:

(A) the name and address of the manufacturer, packer, or seller;

(B) the words "brake fluid" and a designation of the contents as described by rule of the department; and

(C) an accurate statement of the net contents in terms of liquid measure.

(b) A brake fluid is adulterated:

(1) if the formula for or proportions of its contents have been changed since it was most recently registered; or

(2) if its quality or characteristics do not meet the standards and specifications for brake fluid established by the department.

Rules

Sec. 4. The Department of Public Safety shall from time to time adopt rules relating to the enforcement of this Act and establishing as minimum standards and specifications for brake fluids and packages for brake fluid the standards adopted from time to time by the United States Department of Transportation.

Registration

Sec. 5. (a) Any manufacturer, packer, or distributor, or their agents or representatives, desiring to market any brake fluid in the State of Texas that is not currently registered under this Act shall first furnish to the department such sample of the fluid as it may require for testing purposes and present in writing to the department an application for registration of the brake fluid for marketing in Texas.

(b) An application must be accompanied by a report of an independent testing laboratory approved by the department. The report must contain an analysis of the contents of the brake fluid submitted to the laboratory, showing that the quality of the laboratory sample meets the standards and specifications for brake fluid established by departmental rule. The applicant shall sign a sworn statement attached to the report, certifying that the formula for and proportions of the contents of the sample of brake fluid submitted to the independent testing laboratory are the same as the formula and proportions of the sample submitted to the department and

the formula and proportions of the brake fluid being manufactured or packaged for sale.

(c) The department shall cause such tests to be made as may be necessary to determine whether or not a sample of brake fluid conforms to the standards and specifications adopted under this Act and may submit any sample to the University of Texas for official testing for the department.

(d) After the department has caused such tests to be made of a sample of brake fluid submitted for registration as the department finds necessary, the department, if the sample meets the standards and specifications adopted under this Act, shall issue the applicant a certificate of registration authorizing manufacture, packing, and sale in the state of the brake fluid for which the sample is a representative during the time specified on the certificate.

(e) After such testing as the department finds necessary, if the department finds that a sample of brake fluid does not meet the standards and specifications established by rule, the department shall deny registration of the brake fluid and notify the applicant by registered or certified mail of its decision. The notice shall specify the reasons for denying registration.

(f) Within 30 days after receipt of a notice of a denial of registration, an applicant may request the department to hold a hearing on the department's decision.

(g) After providing notice and an opportunity for a hearing, the department may revoke registration and cancel a certificate of registration for brake fluid if the department finds that:

(1) any portion of the brake fluid is misbranded or adulterated; or

(2) the registrant has failed since registration to comply with a requirement of this Act or a rule issued under the authority of this Act.

(h) An appeal from a decision of the department after a hearing under Subsection (f) or (g) of this section is by trial de novo.

Enforcement

Sec. 6. (a) If brake fluid is manufactured, packed, or sold in violation of Section 2 of this Act, the department may issue and enforce a written or printed stop-sale order prohibiting the further manufacture, packing, or sale of brake fluid of the same brand name on the premises where the violation occurred. The department shall terminate a stop-sale order after remedy of the violation or after voluntary destruction or other disposal, under the supervision of the department, of the fluid that is the subject of the violation. The owner or custodian of brake fluid to which a stop-sale order applies may appeal the stop-sale order to a district court in the county in which the brake fluid is located. Appeal is by trial de novo.

(b) The department may apply to a magistrate in a county in which brake fluid manufactured, packed, or sold in violation of Section 2 of this Act is located for a search warrant to inspect the premises where the violation occurred or is occurring and to seize misbranded, unregistered, or adulterated brake fluid. Brake fluid seized under warrant issued under this subsection is subject to disposition in the manner provided for disposition of brake fluid seized as provided by Subsection (d) of this section.

(c) The department may institute an action in a district court in the county in which a violation of Section 2 of this Act has occurred or is occurring, to enjoin further violations of this Act. A bond may not be required for issuance of an injunction under this subsection.

(d) Any misbranded, unregistered, or adulterated brake fluid sold within this state may be proceeded against in any county or district court in any county of the state where it may be found, by the county or district attorney for the county, and seized for confiscation by process of libel for condemnation. If, following seizure, the article is condemned it shall, after entry of decree, be disposed of by destruction or sale as the court may direct, and the proceeds, if such article is sold, less legal costs, shall be paid to the State Treasury. The article shall not be sold contrary to the provisions of this Act and upon payment of costs and execution and delivery of a good and sufficient bond, to be approved by the court, conditioned that the article shall not be disposed of unlawfully, the court may direct that the article be delivered to the owner thereof for relabeling or reprocessing as the case may be.

(e) The department may enter, during reasonable hours, any premises where brake fluid is manufactured, packed, or sold, for the purpose of enforcing this Act. The department may inspect, sample, analyze, and test any brake fluid found on the premises. Before the department requests entrance to premises where brake fluid is manufactured, packed, or sold or if the department is refused entrance to the premises, the department may request a magistrate in the county in which the premises are located to issue a search warrant to inspect the area. The magistrate shall issue the warrant without prior notice to the owner or custodian of the premises if the department shows specific evidence of a violation of a requirement of this Act or a rule adopted under the authority of this Act or shows that the department has complied with reasonable administrative standards for conducting inspections under this Act. The department shall adopt rules prescribing reasonable administrative standards for conducting inspections under this Act.

(f) The methods of enforcement provided by this section are cumulative, and the use of one method does not preclude the use of any other method provided by this section.

(g) The department shall cooperate with the National Highway Traffic Safety Administration of the

United States Department of Transportation in enforcing this Act and the provisions of the National Traffic and Motor Vehicle Traffic Safety Act, 15 U.S.C. Section 1391 et seq., relating to motor vehicle safety standards.

[Amended by Acts 1979, 66th Leg., p. 2013, ch. 790, §§ 1, 2, eff. Sept. 1, 1979.]

Sections 3 and 4 of the 1979 amendatory act provided:

"Sec. 3. In enacting this legislation, the legislature intends that if the registration provisions of this Act are held invalid by a court of competent jurisdiction, the provisions of this Act relating to the enforcement of brake fluid standards established by the United States Department of Transportation shall be given effect if at all possible.

"Sec. 4. This Act takes effect on September 1, 1979. Chapter 224, Acts of the 55th Legislature, Regular Session, 1957 (Article 6701i, Vernon's Texas Civil Statutes), is continued in effect as it existed on August 31, 1979, for the prosecution of offenses committed before the effective date of this Act."

Art. 6701k. Vehicle Equipment Safety Commission

[See Compact Edition, Volume 5 for text of 1]

Application of Sunset Act

Sec. 1a. The office of Vehicle Equipment Safety Compact Commissioner for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1979.

[See Compact Edition, Volume 5 for text of 2 and 3]

[Amended by Acts 1977, 65th Leg., p. 1833, ch. 735, § 2.011, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 6701*l*-1. Intoxicated Driver; Penalty

Any person who drives or operates an automobile or any other motor vehicle upon any public road or highway in this State, on a beach as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall be guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail for not less than three (3) days nor more than two (2) years, and by a fine of not less than Fifty ($50.00) Dollars nor more than Five Hundred ($500.00) Dollars. Provided, however, that the presiding judge in such cases at his discretion may commute said jail sentence to a probation period of not less than six (6) months.

[Amended by Acts 1979, 66th Leg., p. 1609, ch. 682, § 3, eff. Sept. 1, 1979.]

Art. 6701*l*-2. Subsequent Offense of Driving While Intoxicated

Any person who has been convicted of a misdemeanor or felony offense of driving or operating an automobile or other motor vehicle upon any public road or highway in this state, on a beach as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or upon any street or alley within an incorporated city, town or village, while intoxicated or under the influence of intoxicating liquor, and who shall thereafter drive or operate an automobile or other motor vehicle upon any public road or highway in this state, on a beach as defined in the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall for each and every subsequent such violation be guilty of a felony; and upon conviction shall be punished:

(1) by a fine of not less than One Hundred ($100.00) Dollars nor more than Five Thousand ($5,000.00) Dollars;

(2) by confinement in the county jail not less than ten (10) days nor more than two (2) years or in the state penitentiary not to exceed five (5) years; or

(3) by both such fine and imprisonment.

[Amended by Acts 1979, 66th Leg., p. 1609, ch. 682, § 4, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 78, ch. 40, § 1, eff. Sept. 1, 1981.]

Section 2 of the 1981 amendatory act provides:

"(a) The change in the punishment for a subsequent offense of driving while intoxicated made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Art. 6701*l*-4. Driving by Certain Minors While Intoxicated; Traffic Violations

Sec. 1. Any minor who has passed his or her 14th birthday but has not reached his or her 17th birthday, and who drives or operates an automobile or any other motor vehicle on any public road or highway in this state or upon any street or alley within the limits of any city, town or village, or upon any beach as defined in Chapter 430, Acts of the 51st Legislature, Regular Session, 1949 (Article 6701d-21, Vernon's Texas Civil Statutes), in such way as to violate any traffic law of this state, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Hundred Dollars ($100.00). As used in this section, the term "any traffic law of this state" shall include the following statutes, as heretofore or hereafter amended:

Chapter 42, General Laws, Acts of the 41st Legislature, Second Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes); Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes); and Chapter 430, Acts of the 51st Legislature, Regular Session, 1949 (Article 6701d-21, Vernon's Texas Civil Statutes).

[Amended by Acts 1979, 66th Leg., p. 1022, ch. 454, § 1, eff. Aug. 27, 1979.]

Art. 6701m-1. Inscription on State Vehicle

There shall be printed upon each side of every automobile, truck or other motor vehicle owned by

the State of Texas the word "Texas," followed in letters of not less than two (2) inches high by the title of the department, bureau, board, commission or official having the custody of such car, and such inscription shall be in a color sufficiently different from the body of the car so that the lettering shall be plainly legible at a distance of not less than one hundred (100) feet, and the official having control thereof shall have such wording placed thereon as prescribed herein, and whoever drives any automobile, truck or other motor vehicle belonging to the State upon the streets of any town or city or upon a highway without such inscription printed thereon shall be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00). Provided, however, State-owned vehicles under control and custody of the State Board of Pharmacy, Texas Department of Mental Health and Mental Retardation, the Department of Public Safety, the Department of Corrections, the Texas Parks and Wildlife Department, Agencies and Branches of Government for whom appropriations are made under the article of the General Appropriations Act that appropriates money to the legislature, and the Texas Youth Council may be exempt from the requirements of this Act by rule and regulation of the governing bodies of these State agencies. Such rules and regulations shall specify the primary use to which vehicles exempt from the requirements of this Act are devoted, the purpose to be served by not printing on them the inscriptions required by this Act and such rules and regulations shall not be effective until filed with the Secretary of State. Whoever drives a vehicle exempted from the requirements of this Act as authorized by this provision shall not be subject to the penalties prescribed in this Act.

[Amended by Acts 1981, 67th Leg., p. 1006, ch. 383, § 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 1814, ch. 403, § 1, eff. Aug. 31, 1981.]

Art. 6701½. Mobile Homes; Movement of Overlength and Overwidth on Highways; Permits; Fees

[See Compact Edition, Volume 5 for text of A to G]

H. The term "mobile home" as used in this Article means "manufactured housing" as that term is defined by the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes).

[Amended by Acts 1981, 67th Leg., p. 3084, ch. 815, § 2, eff. Aug. 31, 1981.]

CHAPTER TWO. ESTABLISHMENT OF COUNTY ROADS

Art. 6704. Classes of Roads

The Commissioners Court shall classify all public roads in their counties as follows:

1. First class roads shall be clear of all obstructions, and not less than forty (40) feet nor more than one hundred (100) feet wide; all stumps over six (6) inches in diameter shall be cut down to six (6) inches of the surface and rounded off, and all stumps six (6) inches in diameter and under, cut smooth with the ground, and all causeways made at least sixteen (16) feet wide. No first or second class road shall be reduced to a lower class.

2. Second class roads shall conform to the requirements of first class roads except that they shall be not less than forty (40) feet wide.

3. Third class roads shall not be less than twenty (20) feet wide and the causeway not less than twelve (12) feet wide; otherwise they shall conform to the requirements of first class roads.

4. Any county in this State containing a population of less than sixty thousand (60,000) inhabitants, according to the last preceding federal census, may by a majority vote of the Commissioners Court thereof authorize the construction of cattle guards across any or all of the first class, second class, or third class roads in said county, and such cattle guards shall not be classed or considered as obstructions on said roads.

The Commissioners Court of any county coming under the provisions of this Act shall provide proper plans and specifications of a standard cattle guard to be used on the roads of said county, said plans and specifications to be plainly written, supplemented by such drawings as may be necessary and shall be available to the inspection of the citizenship of such county. After said Commissioners Court provides said proper plans and specifications of a standard cattle guard to be used on the roads of said county any person constructing any cattle guard that is not in accordance with said approved plans and specifications prepared by said Commissioners Court shall be deemed guilty of obstructing said roads of said county, and the person responsible for such improper construction of said cattle guards shall be deemed guilty of a misdemeanor, and shall be fined not less than Five Dollars ($5) nor more than One Hundred Dollars ($100).

The Commissioners Court of any county coming under the provisions of this Act is hereby authorized and empowered to construct cattle guards on the first class, second class, and third class roads of said county and pay for same out of the Road and Bridge Funds of said county when in their judgment they believe the construction of such cattle guards to be to the best interest of the citizens of said county.

[Amended by Acts 1981, 67th Leg., p. 593, ch. 237, § 126, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2396, ch. 603, § 1, eff. Aug. 31, 1981.]

CHAPTER THREE. MAINTENANCE OF ROADS

4. OPTIONAL ROAD LAW

Art. 6762. Ex Officio Commissioners

Sec. 1. In all counties of this state the members of the Commissioners Court shall be ex officio road

commissioners of their respective precincts; and under the direction of the Commissioners Court shall have charge of the teams, tools and machinery belonging to the county and placed in their hands by said court. They shall superintend the laying out of new roads, the making or changing of roads and the building of bridges under rules adopted by said court. Each commissioner shall first execute a bond of Three Thousand Dollars ($3,000.00) payable to and to be approved by the County Judge for the use and benefit of the road and bridge fund, conditioned that he will perform all duties required of him by law, or by the Commissioners Court, and that he will account for all money or other property belonging to the county that may come into his possession.

Sec. 2. Chapter 178, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 6716–1, Vernon's Texas Civil Statutes), and Articles 6737 through 6761, Revised Civil Statutes of Texas, 1925, do not apply in a county in which the Commissioners Court acting under Article 6769 has adopted this article and Articles 6763, 6764, and 6766.

[Amended by Acts 1981, 67th Leg., p. 2584, ch. 691, § 1, eff. June 16, 1981.]

Art. 6763. Powers

The commissioners court shall adopt such system for working, laying out, draining and repairing the public roads as it deems best, and from time to time said court may change its plan or system of working. Said court may purchase such teams, tools and machinery as may be necessary for the working of public roads; and construct, grade, or otherwise improve any road or bridge by contract in the manner provided in the preceding subdivision of this chapter. Subject to authorization by the commissioners court, each ex officio road commissioner may employ persons for positions in the commissioner's precinct paid from the county road and bridge funds. Each ex officio road commissioner may discharge any county employee working in the commissioner's precinct if the employee is paid from county road and bridge funds. Each ex officio road commissioner also has the powers of a supervisor of public roads as provided by Article 6713, Revised Civil Statutes of Texas, 1925.

[Amended by Acts 1981, 67th Leg., p. 2585, ch. 691, § 2, eff. June 16, 1981.]

Art. 6770. Repealed by Acts 1981, 67th Leg., p. 2585, ch. 691, § 3, eff. June 16, 1981

CHAPTER FIVE. BRIDGES AND FERRIES

Art. 6795b–1. Causeways, Bridges, Tunnels, Turnpikes, or Highways Authorized in Gulf Coast Counties of 50,000 or More

Construction and Operation Authorized; Cost and Expenses

Sec. 1. Any county in the State of Texas which borders on the Gulf of Mexico or any bay or inlet opening thereinto and which has a population of fifty thousand (50,000) or more, according to the last Federal Census preceding the authorization of bonds hereunder, acting through its Commissioners Court, is hereby authorized and empowered to construct, acquire, improve, operate and maintain a causeway, bridge, tunnel, turnpike, highway, or any combination of such facilities, including all necessary overpasses, underpasses, interchanges, entrance plazas, toll houses, service stations, approaches, fixtures, accessories, equipment, and administration, storage, and other necessary buildings, together with all property rights, easements, and interests acquired in connection therewith (all of which are hereinafter referred to as "the project") from one (1) point in said county to another, or from one (1) point in said county to a point in another county (regardless of the population of such other county), and to issue its tax bonds, revenue bonds, or combination tax and revenue bonds, to pay the cost of such construction, acquisition, or improvement. Among other things, the cost of the project may include the following: the cost of construction; the cost of all property, real, personal, and mixed, and all appurtenances, easements, contracts, franchises, pavements, and properties of every nature, used or useful in connection with the construction, acquisition, improvement, operation, and maintenance of the project; the payment of the cost of condemning any such property, including both the payment of the award and the payment of the court costs and attorneys fees; the payment of all legal, fiscal, and engineering expenses incurred in connection with the acquisition and construction of the project and the making of preliminary surveys and investigations and the authorization and issuance of the bonds; and the payment of interest on the bonds and operating expenses on the project prior to and during the period occupied by the construction of the project and for one (1) year thereafter. If the Commissioners Court shall consider it desirable to acquire, through purchase or lease, existing ferry properties for the purpose of operating such properties during the period of construction, over the route to be traversed by the project, such properties may be so acquired and the cost thereof paid from the proceeds of the bonds. Any preliminary expenses paid from county funds shall be repaid to such funds from the proceeds of the bonds when available, and all engineering and fiscal contracts and agreements for such projects heretofore entered into are hereby validated and confirmed. Where any causeway, bridge, tunnel, turnpike, highway, or combination thereof constructed or acquired and financed hereunder extends from a point in the county issuing the bonds to a point in another county, it may be so constructed or acquired only after there shall have been adopted by the Commissioners Court of the county not issuing the bonds, a resolution approving and consenting to such construction or acquisition, and the Commissioners Court of any such county is hereby authorized to adopt such resolution. So long as and to the extent

that the project, or part thereof, has not been designated as part of the State Highway System and is not considered a Turnpike Project, as defined in Chapter 410, Acts of the Fifty-Third Legislature, 1953, as amended,[1] that part of the project (which has not been so designated and is not so considered) in each county shall be considered a part of the county road system of such county, and all laws relating to the maintenance and operation of county roads are hereby made applicable to any project constructed or acquired hereunder in so far as they do not conflict with the provisions hereof; and each county into which the project extends may acquire necessary lands or right of ways or other property by purchase, condemnation or otherwise, under the General Laws of Texas, and the county issuing the bonds shall have such powers with respect to necessary lands or right of ways or other property in each county into which the project extends; provided that provision for the payment of the purchase price, award, or other costs may be upon such terms as may be agreed upon by the Commissioners Courts of the county issuing the bonds and the other county, and the proceeds of the bonds issued hereunder may be used for such purposes; and provided, further, that no election shall be necessary to authorize the issuance of any bonds issued hereunder payable solely from revenues, but in case no election is held, notice of intention to issue such bonds shall be given as provided in Sections 2 and 3 of the Bond and Warrant Law of 1931, as amended,[2] and the authority to issue such bonds shall be subject to the right of referendum provided in Section 4 of said Law. Bonds authorized to be issued under this law shall be sold in such manner, either at public or private sale, and for such price as the Commissioners Court of the county issuing the bonds may determine to be for the best interests of the county.

[1] Article 6674v.
[2] Article 2368a.

Bonds; Charge Only on Revenues of Project; Approval and Registration; Alternative Methods

Sec. 2. No bonds authorized pursuant to Subsection (a) of this section shall ever be a debt of the county issuing them, but shall be solely a charge upon the revenues of the project and shall never be reckoned in determining the powers of the county to issue any bonds, payable in whole or in part from taxes, for any purpose authorized by law. Each such bond payable solely from the revenues of a project shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." All bonds issued hereunder may be presented to the Attorney General for his approval in the same manner and with like effect as is provided for the approval of tax bonds issued by counties. In such case the bonds shall be registered by the State Comptroller as in the case of other county bonds. But notwithstanding any limitations in this Act or in the law which it amends, any county proceeding hereunder after this amendatory Act becomes effective may issue bonds for such purpose secured by any one of the following methods:

(a) Solely by the pledge of revenues as prescribed hereinabove in this Section and elsewhere in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, as amended; [1] or

(b) A pledge of and payable from either an ad valorem tax levied under Article 8, Section 9 of the Constitution, or an unlimited ad valorem tax authorized under Article 3, Section 52 of the Constitution and laws enacted pursuant thereto; or

(c) A designated part of the bonds to be secured solely by a pledge of revenues as provided under sub-section (a) and a designated part of the bonds to be secured by pledges of such ad valorem tax as provided under sub-section (b) of this Section; or

(d) A combination of the methods prescribed under sub-sections (a) and (b) wherein all of the bonds are to be supported and secured by such ad valorem tax with the duty imposed on the County to collect tolls for use of the facilities so long as any of the bonds are outstanding so that in the manner to be prescribed in the bond resolution or the trust indenture the amount of the tax to be collected from time to time may be reduced or abated to the extent that the revenues from the operation of the facilities are sufficient to meet the requirements for operation and maintenance and to provide funds for the bonds as prescribed in the indenture.

But no such bonds wholly or partially supported by an ad valorem tax shall be issued unless and until they shall have been authorized at an election at which the question of their issuance shall have been submitted.

[1] This article.

Pooled Projects

Sec. 2a. Any two or more projects constructed by a county proceeding hereunder may, upon the adoption of a resolution approving the same, duly passed by the Commissioners Court, be pooled and designated as a "pooled project." Any existing project or projects may be pooled in whole or in part with any new project or projects thereof. After being so designated, such "pooled project" shall become a "project" as used in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, 1947, as amended. No project may be pooled more than once. Consistent with the resolution or order providing for the issuance of the bonds or the trust indenture securing the same, the resolution of the Commissioners Court shall set a date certain when each of the projects being authorized to be pooled shall be available for the free use of the public. Subject to the terms of any such bond resolution or trust indenture, any county proceeding hereunder is authorized to issue from time to time bonds of the county as hereinbefore authorized, including bonds which are payable either in whole or in part from the revenues of a pooled project, for the purpose of

(i) paying all or any part of the cost of such pooled project or the cost of any part of such pooled project, (ii) paying the costs of constructing improvements, extensions, or enlargements to all or any part of any pooled project, or (iii) refunding any bonds then outstanding issued on account of any pooled project or any part of any pooled project, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Commissioners Court, paying the costs of constructing improvements, extensions, and enlargements to the pooled project or to any part of any pooled project in connection with which or in connection with any part of which bonds to be refunded shall have been issued. Revenues of all or any part of such pooled project may be pledged to the payment of such bonds. Improvements, extensions, or enlargements to be paid from refunding bonds issued hereunder are not restricted to and need not be constructed on any particular part of a pooled project in connection with which bonds to be refunded may have been issued but may be constructed in whole or in part on other parts of the pooled project not covered by the bonds to be refunded. Within the discretion of the issuing county, refunding bonds issued hereunder may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds. Any county having previously designated a "pooled project" may from time to time, subject to the terms of any bond resolution or trust indenture, add to, delete from, or otherwise amend the extent or component parts of any pooled project, which pooled project as so amended shall be and become a project as used in Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, Regular Session, 1947, as amended.

[See Compact Edition, Volume 5 for text of 3]

Contract or Agreement for Project Construction, Acquisition, etc.; Project Feasibility Studies and Surveys

Sec. 3a. Notwithstanding anything contained herein to the contrary, any county proceeding hereunder may contract or agree with any other county, city, village, town, special district, or any other legally constituted political subdivision or agency of the State of Texas, or any combination of these, to construct, acquire, improve, operate, and maintain a project. Any such contract or agreement may provide for joint ownership of the project or for title to the project to be in any one of the contracting parties. In addition, any contracting county proceeding hereunder may issue its bonds, as authorized herein, for the purpose of paying all or any part of the cost of a project which said county is obligated to pay under any such contract or agreement. Any contract or agreement entered into under this section may contain any terms and extend for any period of time to which the parties can agree, and may provide that it will continue in effect until bonds specified in it and refunding bonds issued in lieu of those bonds are paid. If any such contract or agreement so provides, payments made thereunder shall be operating and maintenance expenses of the project, and the revenues derived from operation of such project may be pledged to such payment.

If on the effective date of this amendment any agency of the State of Texas has expended funds in the amount of $75,000 or more for the purpose of conducting studies and surveys or making other investigations for the purpose of determining the feasibility and practicability of constructing a toll project, a county proceeding hereunder may not, without the consent of such state agency, assume sole responsibility for the construction, acquisition, improvement, operation, and maintenance of the project and thereby exclusively preempt the state agency from constructing such project; provided, however, that the foregoing restriction set forth in this sentence shall not apply to any county proceeding hereunder if such county has given the state agency written notice by certified mail of its intention to proceed with construction, acquisition, improvement, operation, and maintenance of the project and the state agency has failed or refused for any reason within six months from the date of such notice to issue its bonds in the amount required to pay the cost of the project.

Bonds; Tolls; Trust Indenture

Sec. 4. The bonds issued hereunder may be authorized by resolution at one time or from time to time. If such bonds are payable in whole or in part from the revenues to be derived from the operation of the project, it shall be the mandatory duty of the county, which duty may be executed by an operating board appointed pursuant to Section 5b hereof, to impose such tolls and charges for use of the project as will be fully sufficient, when taken with any other funds or revenues available for such purposes, to pay the maintenance and operating expenses which are charged against the revenues of the project, to pay the principal of and premium, if any, and interest on the bonds when due, to establish such reserve therefor as may be provided, and to establish an adequate fund for depreciation and replacement. As to such bonds which are payable either in whole or in part from the revenues to be derived from the operation of a project, the operating and maintenance expenses of the project which shall be charged against the revenues of the project shall include only such items as are set forth and defined in the proceedings authorizing the issuance of such bonds. The Commissioners Court shall have full discretion in fixing the details of the bonds authorized to be issued hereunder and in determining the manner of sale thereof, provided that the bonds, whether term, serial, or combination thereof, shall mature not more than forty (40) years from their date. The bonds may contain such mandatory or optional redemption provisions and may mature in such manner and at such prices as may be deter-

mined by the Commissioners Court prior to the issuance of the bonds. All bonds issued hereunder shall and are hereby declared to have all of the qualifications and incidents of negotiable instruments under the Negotiable Instruments Law of Texas. Provision may be made for registration of such bonds as to principal or interest or both. The proceeds of the bonds shall be used solely to pay the cost of the project as above defined, and shall be disbursed under such restrictions as may be provided in the bond resolution or trust indenture hereinafter mentioned, and there shall be and is hereby created and granted a lien upon such moneys until so applied in favor of the holders of the bonds or any trustee provided for in respect of such bonds. Unless otherwise provided in such resolution or indenture, if the proceeds of the bonds prove insufficient to pay the cost of the project, additional bonds may be issued to the amount of the deficit and shall be deemed to be of the same issue and entitled to payment from the same fund without preference or priority of the bonds first issued. Any surplus remaining from bond proceeds after the cost of the project has been paid in full shall be used in paying interest on and retiring bonds unless otherwise provided in the bond resolution or trust indenture. Prior to the issuance of definitive bonds, interim bonds, with or without coupons, exchangeable for definitive bonds may be issued. Such bonds may be authorized and issued without any proceedings or the happening of any conditions or things or the publication of any proceedings or notices other than those specifically specified and required by this Act, and may be authorized and issued without regard to the requirements, restrictions, or procedural provisions contained in any other law. The resolution authorizing the bonds may provide that such bonds shall contain a recital that they are issued pursuant to this Act and such recital shall be conclusive evidence of their validity and the regularity of their issuance.

If so provided by the Commissioners Court, the bonds may be secured by a trust indenture by and between the county and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State of Texas. Such trust indenture may pledge or assign tolls and revenues but shall not convey or mortgage the project itself or any part thereof. Either the resolution providing for the issuance of the bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the county in relation to the acquisition of properties and the construction, maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company in this State to act as depository of the proceeds of the bonds or revenues derived from the operation of the project and to furnish such indemnity bonds or to pledge such securities as may be required by the county. Such bond resolution or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. In addition to the foregoing, such bond resolution or trust indenture may contain such other provisions as the Commissioners Court may deem reasonable and proper for the security of the bondholders including, but without limitation, covenants prescribing all happenings or occurrences which constitute events of default and the terms and conditions upon which any or all of the bonds shall become or may be declared to be due before maturity and as to the rights, liabilities, powers and duties arising upon the breach by the county of any of its duties or obligations.

[See Compact Edition, Volume 5 for text of 5 and 5a]

Operating Board

Sec. 5b. Any county proceeding hereunder, upon a determination by the Commissioners Court thereof that a project could be developed, constructed, operated, and managed better and more efficiently by an operating board, may provide for the appointment of such an operating board. An operating board so appointed shall have and may exercise, subject to such limitations and restrictions as may be prescribed by the Commissioners Court, the same power and authority, including the power of eminent domain, as may be exercised by the Commissioners Court in regard to the development, construction, operation, and management of a project; provided, however, that an operating board appointed hereunder shall not have the power to tax or to borrow money. Without limiting the generality of the foregoing, such an operating board shall have the power and authority, subject to the restrictions and limitations prescribed by the Commissioners Court, to design the project, to acquire necessary lands or rights-of-way or other property for the project by purchase, condemnation, or otherwise, to establish and revise from time to time the rates and tolls charged for use of said project, to establish and prescribe the methods, systems, procedures, and policies for the operation, maintenance, and use of the project, and to employ consultants, attorneys, engineers, financial advisors, agents, and other employees or contractors in connection with the development, construction, operation, and management of the project.

[See Compact Edition, Volume 5 for text of 6 to 8]

Bonds for Payment of Outstanding Toll Bridge Revenue Bonds

Sec. 8a. When any county has heretofore issued or may hereafter issue bonds under authority of Chapter 304, Acts of the Regular Session of the Fiftieth Legislature, 1947, as amended payable from the revenues derived from tolls collected for the use of a project and which bonds are also payable from

an unlimited tax authorized under Article III, Section 52, of the Constitution, and laws enacted pursuant thereto, such county acting through its Commissioners Court may, after being duly authorized in the manner provided by Article III, Section 52, of the Constitution, and laws enacted pursuant thereto, authorize, issue, and sell its bonds and use the proceeds therefrom in an amount sufficient to call, redeem, and pay off its outstanding tax and revenue bonds pursuant to the terms of said bonds, and thereby remove the pledge of the revenues from such facility and the covenants in connection with said bonds and the operation of said project, and make such project available for the free use of the public.

[See Compact Edition, Volume 5 for text of 9]

[Amended by Acts 1977, 65th Leg., p. 2160, ch. 861, §§ 1 to 7, eff. Aug. 29, 1977.]

Section 8 of the 1977 amendatory act provided:

"If any word, phrase, clause, sentence, or part of this Act shall be held by any court of competent jurisdiction to be invalid or unconstitutional, it shall not affect any other word, phrase, clause, sentence, or part of this Act, and such remaining portions shall remain in full force and effect."

Art. 6795c. Toll Bridges in Counties Bordering River Between Texas and Mexico

[See Compact Edition, Volume 5 for text of 1 and 2]

Tolls, Fees and Charges; Power of County to Collect; Purpose of Tolls

Sec. 3. Any such county thus acquiring any such toll bridge or bridges or constructing a new toll bridge shall have power, through its Commissioners Court as expressed by appropriate resolution or order thereof, to fix and to enforce and collect tolls, fees and charges for the use thereof, and for the passage or transportation of persons or property, passengers, vehicles, freight and commodities, over and across such toll bridge or bridges. Such tolls, fees and charges shall be fixed from time to time by the Commissioners Court of such county and collected under its direction in accordance with the provisions and requirements of any permits or franchises granted or extended by any governmental authority in respect of or applicable thereto; and, subject to the provisions and requirements of such permits or franchises, such tolls, fees and charges shall be just and reasonable and non-discriminatory, as determined by the Commissioners Court of such county, and, subject to the provisions and requirements of any such permits and franchises, shall be sufficient to at least produce revenues adequate:

(a) To pay all expenses necessary for the maintenance and operation of such toll bridge or bridges, and to comply with the requirements and make all payments necessary under the provisions of any such permits and franchises therefor;

(b) To pay the interest on and the principal of all bonds and/or warrants issued under this Act, when and as the same shall become due and payable;

(c) To pay all sinking fund and/or reserve fund payments agreed to be made in respect of any such bonds and/or warrants, and, payable out of such revenues, when and as the same shall become due and payable; and

(d) To fulfill the terms of any agreements made with the holders of such bonds and/or warrants and/or with any person in their behalf;

(e) To recover a reasonable rate of return on invested capital;

(f) Out of the revenues which may be received in excess of those required for the purposes specified in (a), (b), (c), (d), and (e) above, the Commissioners Court of any such county may in its discretion use such excess revenues for any or all of the following:

(1) to establish a reasonable depreciation and emergency fund;

(2) to retire by purchase and cancellation or redemption any outstanding bonds or outstanding warrants issued under the authority of this Act and amendments thereto;

(3) to provide needed budgetary support to local government for legitimate public purposes and for the general welfare;

(4) to apply the same to accomplish the purposes of this Act and amendments thereto;

(g) It is the intention of this Act that the tolls, fees and charges herein provided for shall be those necessary to fulfill all obligations imposed by this Act and amendments thereto, and shall be sufficient to produce revenues to comply with the above subparagraphs (a), (b), (c), (d), (e), and (f). Nothing herein shall be construed as depriving the State of Texas or the United States of America, or other appropriate agencies having jurisdiction, of its power to regulate and control tolls and charges to be collected for such purposes, provided that the State of Texas does hereby pledge to and agree with the purchasers and successive holders of the bonds and/or warrants issued hereunder that the State will not limit or alter the power hereby vested in any such county and the Commissioners Court thereof to establish and collect such tolls and charges as will produce revenues sufficient to pay the items specified in subparagraphs (a), (b), (c), (d), (e), and (f) of this Section 3 of this Act, or exercise its powers in any way which may impair the rights or remedies of the holders of the bonds and/or warrants, or of any person acting in their behalf until the bonds and/or warrants, together with interest thereon and with interest on unpaid installments of interest and all costs and expenses in connection with any acts or proceedings by or on behalf of the bondholders and/or warrant holders and all other obligations of any such county is connection with such bonds and/or warrants are fully met and discharged.

(h) This section shall apply to international toll bridges now in existence and owned by a county

or that may be acquired or controlled by a county in the future.

Operating Board

Sec. 3a. Any such county acquiring any such toll bridge or bridges, upon a determination by the Commissioners Court thereof that the same could be better and more efficiently operated by an operating board, may provide by either the resolution or order providing for the issuance of bonds or the trust indenture securing same that such toll bridge or bridges will be operated by an operating board to be appointed as provided in such resolution, order, or trust indenture and with such powers, except the power of eminent domain and the power to borrow money, as may be granted by such resolution, order, or trust indenture.

[See Compact Edition, Volume 5 for text of 4 to 22]

[Amended by Acts 1975, 64th Leg., p. 1922, ch. 624, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 367, ch. 180, § 2, eff. Aug. 29, 1977.]

CHAPTER SIX. PARTICULAR COUNTIES, LAW RELATING TO

Article
6812f. Road Improvements and Assessments by Galveston County Commissioners Court.
6812g. Road Improvements and Assessments by Live Oak County Commissioners Court.
6812h. Private roads; Acquisition of Public Interest in Counties of 50,000 or less.

Art. 6812b–1. Counties of 128,400 to 130,000; County Engineer; Duties

County Engineer

Sec. 1. The commissioners court of any county having a population of not less than 128,400 nor more than 130,000, according to the last preceding federal census, may appoint a county engineer, but the selection shall be controlled by considerations of skill and ability for the task. The engineer may be selected at any regular meeting of the commissioners court, or at any special meeting called for that purpose. The engineer selected shall be a Registered Professional Engineer in the State of Texas. The engineer shall hold his office for a period of two years, his term of office expiring concurrently with the terms of other county officers, and he may be removed at the pleasure of the commissioners court. The engineer shall receive a salary to be fixed by the commissioners court not to exceed the amount of the salary paid to the highest county official, to be paid out of the Road and Bridge Fund. The engineer, before entering upon the discharge of his duties, shall take the oath of office prescribed by law, and shall execute a bond in the sum of $15,000 with a good and sufficient surety or sureties thereon, payable to the county judge of the county and successors in office in trust, for the use and the benefit of the Road and Bridge Fund, of the county to be approved by the court, conditioned that such engineer will faithfully and efficiently discharge and perform all of the duties required of him by law and by the orders of said commissioners court and shall faithfully and honestly and in due time account for all of the money, property and materials placed in his custody.

[See Compact Edition, Volume 5 for text of 2 to 15]

[Amended by Acts 1981, 67th Leg., p. 593, ch. 237, § 127, eff. Sept. 1, 1981.]

Arts. 6812d, 6812e. Repealed by Acts 1981, 67th Leg., p. 599, ch. 237, § 145, eff. Sept. 1, 1981

Art. 6812f. Road Improvements and Assessments by Galveston County Commissioners Court

Improvements Authorized

Sec. 1. The Commissioners Court of Galveston County may cause to be improved any county road in the county, whether by filling, grading, raising, paving, or repairing in a permanent manner, or by constructing, reconstructing, repairing, or realigning curbs, gutters, and sidewalks, or by constructing drains and culverts.

Constitutional Basis

Sec. 2. This Act is a local law relating to the maintenance of public roads authorized by Article VIII, Section 9, of the Texas Constitution.

Assessments Against Property Owners; Liens

Sec. 3. (a) The commissioners court by order may assess all or any part of the cost of constructing, reconstructing, repairing, or realigning curbs, gutters, and sidewalks, and not more than nine-tenths of the cost of any other improvements authorized by this Act, against property abutting on the portion of the county road to be improved, and against the owners of that property. The commissioners court may provide the time, terms, and conditions of payment and default of the assessments, and may prescribe the rate of interest on them, which may not exceed eight percent a year.

(b) Any assessment against abutting property is a first and prior lien on the property from the date improvements are ordered, and is a personal liability and charge against the owner or owners of the property, whether named or not. Nothing in this Act empowers the commissioners court to fix a lien against any interest in property that is exempt at the time the improvements are ordered, but the owner or owners of the property are personally liable for any assessment in connection with the property.

Front Foot Rule

Sec. 4. The part of the cost of improvements on each portion of the county road ordered improved which is assessed against abutting property and owners of the property shall be apportioned among the parcels of abutting property and the owners thereof in accordance with the front foot plan or rule, except that if the application of this rule would, in the judgment of the commissioners court, in particular cases, result in injustice or inequity, the commissioners court may apportion and assess the costs against abutting property owners in a manner that the commissioners court determines is just and equitable, so as to produce a substantial equality of benefits received and burdens imposed. Provided, however, it is expressly found and determined that railroad rights-of-way will not benefit from such improvements and may not be assessed therefor.

Certificates

Sec. 5. (a) The commissioners court may order the issuance of assignable certificates in evidence of assessments levied, declaring the lien on the property and the liability of the true owner or owners of the property, and may fix the terms and conditions of the certificates. Any certificate that recites substantially that the proceedings referred to in it have occurred in compliance with law and that all prerequisites to the fixing of the assessment lien against the property described in the certificate and the personal liability of the owner or owners of the property have been performed, is prima facie evidence of all matters recited in the certificate, and no further proof of the matters is required.

(b) In any suit on an assessment or reassessment in evidence of which a certificate may be issued in accordance with the provisions of this Act, it is sufficient to allege the substance of the recitals in the certificate and that the recitals are in fact true. Further allegations as to the proceedings relating to the assessment or reassessment are not necessary.

(c) The assessments are collectable with interest, expense of collections, and reasonable attorney's fee, if any are incurred, and are a first and prior lien on the property assessed, superior to all other liens and claims except county, school district, and city ad valorem taxes, and are a personal liability and charge against owners of the property assessed.

Joint Assessments

Sec. 6. Assessments against several parcels of property may be made in one assessment when owned by the same person, firm, corporation, or estate, and property owned jointly may be assessed jointly.

Estimate

Sec. 7. No assessment is valid unless the commissioners court makes or causes to be made an estimate of the cost of the improvement or improvements to be constructed, and the estimate is included in any published or mailed notice of the public hearing required by this Act.

Public Hearing and Notice

Sec. 8. (a) No assessment may be made against any abutting property or its owners until after notice and opportunity for hearing has been provided in accordance with this Act, and no assessment may be made against any abutting property or owners of it in excess of the special benefits to the property and owners resulting from the enhanced value of the property by means of the improvement, as may be determined at the hearing.

(b) Notice shall be by advertisement inserted at least three times in a newspaper of general circulation in the county, the first publication to be made at least 21 days before the date of the hearing. Additional written notice of the hearing shall be given by depositing in the United States mail, at least 14 days before the date of the hearing, postage prepaid, in an envelope addressed to the owners of the respective properties abutting the county road to be improved, as the names of the owners are shown on the then current rendered or unrendered tax rolls of the county, at the addresses listed there. To be sufficient and binding on any person owning or claiming the abutting property, or any interest in it, the mailed notice must describe in general terms the nature of the improvements for which assessments are to be levied, the county road or portion of it to be improved, the estimated cost per front foot proposed to be assessed against the property and the owner or owners of the property, the estimated total cost of the improvement or improvements, and the time and place of the hearing. The notice to be mailed may be a copy of the public notice, which must contain all of the information required for a mailed notice to be sufficient and binding. If the owner is listed on the county tax rolls as "unknown," no notice is required to be mailed. If the owner is shown on the county tax roll as an estate, the mailed notice may be addressed to the estate.

(c) The commissioners court shall hold the hearing. Any person owning abutting property or any interest in it may be heard at the hearing on any matter relating to the improvement or assessment, including the amount of the proposed assessment or assessments, the lien and liability created by it, the special benefits to the abutting property and owners of the property by the improvements for which assessments are to be levied, and the accuracy, sufficiency, regularity, and validity of the proceedings and contract in connection with the improvements and proposed assessments.

(d) The commissioners court may correct any errors, inaccuracies, irregularities, and invalidities, and may supply any deficiencies, and may determine the amount of assessments and all other matters necessary, and may levy the assessments before, during, or after the construction of the improvements, except no part of any assessment may be made to mature prior to acceptance by the county of the improvements for which the assessment is levied.

Appeal

Sec. 9. Any person owning or claiming any interest in any property assessed under the provisions of this Act, who desires to contest any assessment because of the amount of it or any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract with reference to it, or with reference to the improvements, or because of any matter or thing not in the discretion of the commissioners court, may appeal to a district court in the county within 15 days after the time the assessment is levied. Any person who fails to institute suit within this time shall be held to have waived every matter that might have been heard at the hearing before the commissioners court, and shall be barred and estopped from contesting or questioning the assessment or any matter relating to it, and the only defense to any assessment in a suit to enforce it is that the notice of hearing was not mailed or delivered as required by this Act, was not published, or did not contain the information required by this Act, or that the assessments exceeded the amount of the estimate. No words or acts of any officer or employee of the county, or any member of the commissioners court, shall in any way affect the force and effect of the provisions of this Act.

Changes in Proceedings

Sec. 10. The commissioners court may provide for any changes in plans, methods, or contracts for improvements, but any change substantially affecting the nature or quality of any improvements may be made only after it is determined by a four-fifths vote of the commissioners court that it is not practical to proceed with the improvement as previously provided, and following any such vote, the commissioners court may make the substantial change only after first obtaining the consent of the person, firm, or corporation with which the commissioners court has contracted for construction of the improvements, and after obtaining a new estimate for the cost of the improvements and holding a new hearing, together with the issuance of proper notice as required by this Act. The commissioners court may at any time abandon any improvement with the consent of the person, firm, or corporation constructing the improvements, and shall by order cancel any assessments levied for abandoned improvements.

Correction

Sec. 11. If any assessment is for any reason held or determined to be invalid or unenforceable, the commissioners court may supply any deficiency in proceedings and correct any mistake or irregularity relating to the assessment, and may at any time make and levy reassessments after notice and hearing as nearly as possible in the manner provided by this Act for the original improvements. Recitals in certificates issued in evidence of reassessments shall have the same force as provided for recitals relating to original assessments.

[Acts 1975, 64th Leg., p. 1396, ch. 540, eff. June 19, 1975.]

Art. 6812g. Road Improvements and Assessments by Live Oak County Commissioners Court

Application

Sec. 1. This Act applies only to Live Oak County.

Assessments for Road Improvements

Sec. 2. The commissioners court may provide for financing all or part of the cost of improving any portion of the county road system that is located in a recorded subdivision and outside the limits of an incorporated city or town by levying special assessments against real property abutting the portion of the road that is improved and against the owners of the property.

Plan of Proposed Improvement

Sec. 3. The commissioners court shall prepare a plan of each proposed improvement to be financed by special assessments. The plan must specify the nature of the proposed improvement, the location of the improvement, an estimate of the total cost of the improvement, a statement of the total amount of the costs to be financed by special assessments, and an estimate of the cost per front foot to be assessed against property abutting the improvement. If the estimate of costs to be assessed per front foot is not uniform, each variation must be specified in the plan.

Notice of Hearing

Sec. 4. (a) After preparing a plan of a proposed improvement as required by this Act, the commissioners court by order shall set a time, date, and place for public hearing on the proposed improvement.

(b) In addition to notice otherwise required by law, the commissioners court shall publish notice of the hearing in a newspaper of general circulation in the area where the proposed improvement is located. The notice must be published once each week for at least three consecutive weeks. The first publication must appear no later than the 21st day before the date of the hearing.

(c) The commissioners court must also give written notice of the hearing to the owner of each parcel of property subject to assessment under the plan of the proposed improvement. For purposes of this section the owner of a parcel of property is the owner as shown on the current county tax roll. An owner is not entitled to notice under this subsection of the owner's name or address is not listed on the current county tax roll. Notice under this subsection must be delivered personally or sent by the United States mail. The notice must be delivered or deposited in the mail not later than the 14th day before the date of the hearing.

(d) Notice under Subsection (b) or (c) of this section must contain the following information:

(1) a general description of the proposed improvement which is to be financed by special assessments;

(2) an estimate of the proposed assessment per front foot of abutting property;

(3) an estimate of the total cost of the proposed improvement to be made on each portion of road;

(4) the location of the proposed improvement; and

(5) the date, time, and place of the hearing on the proposed improvement.

(e) If the estimate under Subsection (d)(2) of this section is not uniform, then the notice under Subsections (b) and (c) of this section must specify each variation and identify the property which is affected.

Conduct of Hearing

Sec. 5. The commissioners court shall hold a public hearing at which any owner of an interest in property abutting a proposed improvement is entitled to contest the amount of the assessment as well as the accuracy, sufficiency, and validity of the proceedings and the determinations of the commissioners court related to the proposed improvement and assessment. After correcting any deficiencies or errors in its proceedings or determinations, the commissioners court by order may levy assessments against property abutting the proposed improvement.

Determination of Assessments

Sec. 6. (a) The commissioners court shall apportion the cost of the improvements assessed against abutting property and property owners on a front footage basis, which may vary among the properties assessed. In order to produce a substantial equality of burdens imposed in relation to benefits received, the commissioners court shall determine assessments in a just and equitable manner, keeping in mind the enhanced value to be gained by the abutting property and property owners. The commissioners court may not levy an assessment in excess of the special benefit in enhanced value to the property or property owner.

(b) If several parcels of property are owned by the same person or entity, the commissioners court may make one assessment covering them all. If property is owned jointly, the commissioners court may assess the owners jointly.

(c) The commissioners court may determine the time, terms, conditions of payment and default, and rate of interest, which may not exceed 10 percent a year, of the assessments levied.

Enforcement of Assessments

Sec. 7. (a) The county has a lien against property assessed under this Act from the date the assessment is levied. This lien has the same priority as a lien for county ad valorem taxes.

(b) The owner of an interest in property against which the commissioners court has levied an assessment for improvements is personally liable for the amount assessed. Liability for an assessment levied against property having more than one owner is joint and several. The county may not assert a lien against property which on the date the assessment is ordered is exempt by law from execution on a judgment for debt. A property owner may, however, waive an exemption to which he is entitled and voluntarily grant an assessment lien against his property in the same manner provided by law for granting a mechanic's lien for improvements to a homestead.

(c) The lien against assessed property and the personal liability of the owner of the property may be enforced by suit in the district court. Interest and the expenses of collection, including attorneys' fees, may also be recovered, and are included in the assessment lien. It is a defense to a suit brought to enforce the levy of an assessment that the notice of hearing was not delivered or published in the form or manner required, or that the amount of the assessment exceeded the estimate given in the notice.

(d) No part of an assessment matures before the commissioners court accepts the improvements for which the assessment is levied.

Certificates of Assessment

Sec. 8. (a) The commissioners court may issue assignable certificates in the name of the county which evidence the assessments levied and which declare the existence of a lien against the assessed property and the personal liability of the property owner. The commissioners court may determine the terms and conditions of the certificates.

(b) If a certificate recites that the proceedings ordering the improvements referred to in the certificate were conducted in compliance with the law, and that all prerequisites to fixing the assessment lien against the property described in the certificate and the personal liability of the property owner have been met, the certificate is prima facie evidence of its recitals.

Correction of Assessments

Sec. 9. (a) If an assessment is held to be invalid or unenforceable, the commissioners court may correct any error related to the assessment, and make and levy a reassessment after notice and hearing in the manner provided for an original assessment.

(b) The commissioners court may issue a reassessment certificate which reflects each modification of the original assessment. A reassessment certificate has the same attributes and effect from the date a reassessment is ordered as an original certificate.

Any one owning or claiming an interest in property against which there has been a reassessment has the same right of appeal, from the date the reassessment is ordered, as provided with regard to an original assessment. The provisions of this Act regarding waiver of appeal and limitation of defenses also apply to reassessments.

Appeal

Sec. 10. The owner of an interest in property against which an assessment for improvements has been levied may contest the amount of the assessment, or the accuracy or validity of the proceedings or determinations related to the assessment or the improvements, by filing a suit for that purpose in the district court not later that the 15th day after the date on which the assessment is ordered. The 15-day time limit begins on the day after the date on which the property owner receives actual notice of the results of the hearing if the property owner shows by a preponderance of the evidence that notice of hearing was not mailed or delivered to the owner or published in the form or manner required by this Act. A complaint based on a determination or proceeding of the commissioners court related to an order for improvements or an assessment is waived if not filed within the time prescribed.
[Acts 1981, 67th Leg., p. 2404, ch. 609, eff. June 15, 1981.]

Art. 6812h. Private Roads; Acquisition of Public Interest in Counties of 50,000 or Less

Definition

Sec. 1. In this Act, "dedication" means the explicit, written communication to the commissioners court of the county in which the land is located of a voluntary grant of the use of a private road for public purposes.

Public Interest

Sec. 2. (a) A county may not establish, acquire, or receive any public interest in a private road except under the following circumstances: (1) purchase; (2) condemnation; (3) dedication; or (4) adverse possession.

(b) Once a public interest has been established in accordance with Subsection (a) of this section, the interest must be recorded in the records of the commissioners court of the county in which the road is located.

Contest

Sec. 3. Any person asserting any right, title, or interest in a private road in which a public interest has been asserted in accordance with Section 2 of this Act may file suit in a district court in the county in which the road is located within two years after the notation in the records of the commissioners court of the public interest in the road.

Verbal Dedication

Sec. 4. For the purposes of this Act, neither verbal dedication nor intent to dedicate by overt act is sufficient to establish a public interest in a private road.

Public Use; Maintenance

Sec. 5. For the purposes of this Act, neither the use of a private road by the public with the permission of the owner nor the maintenance with public funds of a private road in which no public interest has been recorded as provided by Section 2 of this Act is sufficient to establish adverse possession.

Effect on Counties With Population Greater Than 50,000

Sec. 6. This Act shall have no effect on counties with population greater than 50,000 according to the last preceding federal census.
[Acts 1981, 67th Leg., p. 2412, ch. 613, eff. Aug. 31, 1981.]

TITLE 117

SALARIES

Article
6813c. Travel Expense Reimbursements and Group Insurance Premiums for State Officers and Employees.
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Art. 6813b. Salaries of State Officers and Employees for Biennium; Exceptions

Sec. 1. From and after the effective date of this Act, all salaries of all State officers and State employees, including the salaries paid any individual out of the General Revenue Fund, shall be in such sums or amounts as may be provided for by the Legislature in the biennial Appropriations Act. It is specifically declared to be one of the intents hereof that the Legislature shall also fix the amount of supplemental salaries hereafter, out of court fees and receipts, to be paid to the clerks and other employees of the Courts of Appeals, the Supreme Court and the Court of Criminal Appeals. It is further provided that in instances where the biennial Appropriations Act does not specify or regulate the salaries or compensation of a State official or employee, the law specifying or regulating the salary or compensation of such official or employee is not suspended by this Act.

Sec. 2. All laws and parts of laws fixing the salaries of all State officers and employees, saving only the exception specified in Section 1 of this Act and the Position Classification Act of 1961 (Chapter 123, Acts 1961, Fifty-seventh Legislature, Regular Session),[1] are hereby specifically suspended insofar as they are in conflict with this Act. It is specifically declared to be one of the intents hereof that any and all laws authorizing payment of supplemental salaries from court receipts and fees to clerks and other employees of the Courts of Appeals, the Supreme Court, and the Court of Criminal Appeals, are suspended insofar as they are in conflict with this Act.

Sec. 3. (a) Effective September 1, 1983, and notwithstanding any other provision of this Act, the associate justices of the Courts of Appeals of the State of Texas shall each be paid by the State an annual salary that is 10 percent less than the salary provided in the General Appropriations Acts for a justice of the Supreme Court of Texas. The chief justice of each Court of Appeals shall be paid by the State an annual salary that is 10 percent less than the salary provided in the General Appropriations Act for the Chief Justice of the Supreme Court. The combined salary of each of the associate justices of the Courts of Appeals from all State and county sources must be at least $1,000 less than the salary provided for a justice of the Supreme Court, and in the case of the chief justices of the Courts of Appeals, the differential shall be $500 less than the salary provided for a justice of the Supreme Court.

(b) For the purpose of salary payments by the State, the Comptroller of Public Accounts shall determine from sworn statements filed by the justices of the Courts of Appeals that the required salary differential set out in Subsection (a) of this section is maintained. In the event the salary, with its county supplement, is in excess of the differential provided by Subsection (a), the comptroller shall reduce the State's portion of that salary by the amount of the excess.

[Amended by Acts 1981, 67th Leg., p. 794, ch. 291, § 76, eff. Sept. 1, 1981.]

[1] Article 6252–11.

Art. 6813c. Travel Expense Reimbursements and Group Insurance Premiums for State Officers and Employees

Travel expense reimbursements and the state's participation in group insurance premiums for all state officers and employees shall be in such sums or amounts as may be provided for by the legislature in the General Appropriations Act.

[Amended by Acts 1977, 65th Leg., p. 846, ch. 317, § 1, eff. May 30, 1977.]

Art. 6813d. Longevity Pay for State Employees

Except as provided by Chapter 477, Acts of the 64th Legislature, Regular Session, 1975 (Article 6252–20a, Vernon's Texas Civil Statutes),[1] each state employee covered by the Position Classification Act of 1961, each line item or exempt state employee, each regular full-time hourly employee of the state, and each regular full-time nonacademic employee of

a state institution of higher education is entitled to longevity pay of a maximum of $4 per month for each year of service as an employee of the state up to and including 25 years of service. Such longevity pay is to commence at the end of the fifth year and to be increased at the end of each five years thereafter.

[Acts 1979, 66th Leg., p. 1770, ch. 718, § 1, eff. Sept. 1, 1979.]

[1] Repealed.

Art. 6813e. Deductions From Compensation of State Officers and Employees

Definition

Sec. 1. In this Act, "state governmental body" means:

(1) a board, commission, department, office, or other agency that is in the executive branch of state government and that was created by the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Texas Education Code, as amended;

(2) the legislature or a legislative agency; or

(3) the Supreme Court, the Court of Criminal Appeals, a court of civil appeals, or the State Bar of Texas or another state judicial agency.

Prohibition of Salary Deductions

Sec. 2. A state governmental body may not make a deduction from the compensation paid to an officer or employee whose compensation is paid in full or in part from state funds unless the deduction is authorized by law.

[Acts 1981, 67th Leg., p. 21, ch. 16, eff. Aug. 31, 1981.]

Art. 6813f. Per Diem for State Board or Commission Members

Definition

Sec. 1. In this Act, "state board or commission" means a board, commission, committee, council, or other similar agency in the state government that is composed of two or more members.

Amount of Per Diem

Sec. 2. If a member of a state board or commission is entitled by law to per diem relating to the member's service on the board or commission, the amount of per diem is the amount prescribed by the General Appropriations Act.

Suspension of Laws

Sec. 3. Each law prescribing the amount of per diem relating to membership on a state board or commission is suspended to the extent of a conflict with this Act. If the General Appropriations Act does not prescribe the amount of per diem to which a member of a state board or commission is entitled by law, the law prescribing the amount of per diem is not suspended by this Act. If a law imposes a limit on the number of days for which a member of a state board or commission is entitled to claim per diem, the limit is not suspended by this Act.

[Acts 1981, 67th Leg., p. 1840, ch. 428, § 1, eff. Aug. 31, 1981.]

Arts. 6819, 6819–1. Repealed by Acts 1981, 67th Leg., p. 795, ch. 291, §§ 77, 78, eff. Sept. 1, 1981

Salaries of justices of Courts of Appeals, see, now, art. 6813b, § 3(a).

Art. 6819a–1. Repealed by Acts 1981, 67th Leg., p. 795, ch. 291, § 79, eff. Sept. 1, 1981

Art. 6819a–12. Salary of District Judge in 106th Judicial District

In the 106th Judicial District, the district judge may receive annually, payable in monthly installments, a salary to be fixed by the Commissioners Court of each county, to be paid by said county out of the general fund thereof, as compensation for all administrative services rendered by said judge, in addition to all salaries paid to said judge by the State of Texas out of state revenues. The salary herein authorized to be paid shall be a reasonable sum for performing such duties, not to exceed the sum of $8,000 per annum.

[Amended by Acts 1979, 66th Leg., p. 1668, ch. 696, § 1, eff. Aug. 27, 1979.]

Art. 6819a–12a. Salary of District Court Judge in 109th Judicial District

In the 109th Judicial District, the District Judge may receive annually, payable in monthly installments, a salary to be fixed by the Commissioners Court of each county, to be paid by said county out of the General Fund thereof, as compensation for all judicial and administrative services now rendered by said Judge, and any additional judicial or administrative services hereafter to be assigned to said Judge, in addition to all salaries paid or hereafter to be paid to said Judge by the State of Texas, out of state revenues; provided, however, that the salary herein authorized to be paid by any County Commissioners Court to any Judge shall not exceed the sum of $5,000 per annum.

[Amended by Acts 1979, 66th Leg., p. 794, ch. 355, § 1, eff. June 6, 1979.]

Art. 6819a–14. Additional Compensation of District Court Judge of 70th Judicial District

Sec. 1. In addition to the compensation provided by law and paid by the State, the Commissioners Court of Ector County is authorized to pay each of the judges of the 70th, 161st, and 244th Judicial Districts for services rendered to Ector County and for performing administrative duties, a reasonable sum not to exceed Ten Thousand Dollars ($10,000) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid to each of the judges of the district courts having jurisdiction in Ector County.

[Amended by Acts 1979, 66th Leg., p. 201, ch. 110, § 1, eff. Aug. 27, 1979.]

Art. 6819a–15. Additional Compensation of District Court Judges in El Paso County

Sec. 1. For all services rendered to the county and for performing administrative services, the judges of the district courts having jurisdiction in El Paso County shall receive, in addition to the salary paid to them by the state and in lieu of all the compensation now paid or authorized to be paid by the county to the district judges, the sum of $9,000 per annum, subject to the provisions of Section 2 of this Act, to be paid in equal monthly installments out of the general fund or officers salary fund of the county. The commissioners court shall make proper budget provisions for the payment thereof. A district judge of the state who may be assigned to sit for the judge of a district court in El Paso County under the provisions of Chapter 156, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 200a, Vernon's Texas Civil Statutes), may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount not to exceed the difference between the pay of the visiting judge from all sources and the pay received from all sources by district judges in El Paso County, such amount to be paid by the county on approval of the presiding judge of the administrative judicial district.

Sec. 2. The combined yearly salary rate from state and county sources of the judges of the district courts in El Paso County may not exceed an amount which is $1,000 less than the combined yearly salary rate from state and county sources received by the judges of the court of civil appeals in whose district El Paso County is located.

Sec. 3. The provisions of this Act do not affect the salary and compensation authorized to be paid to the County Judge of El Paso County as a member of the El Paso County Juvenile Board and do not affect the existence or the functions of the juvenile board.

Sec. 4. This Act is cumulative of existing laws and any laws in conflict are repealed to the extent of conflict only.

[Amended by Acts 1975, 64th Leg., p. 346, ch. 147, § 1, eff. May 8, 1975; Acts 1979, 66th Leg., p. 1419, ch. 627, § 1, eff. Aug. 27, 1979.]

Arts. 6819a–16, 6819a–17. Repealed by Acts 1975, 64th Leg., p. 346, ch. 147, § 2, eff. May 8, 1975

See, now, art. 6819a–15.

Art. 6819a–18. Repealed by Acts 1981, 67th Leg., p. 795, ch. 291, § 80, eff. Sept. 1, 1981

Salaries of justices of Courts of Appeals, see, now, art. 6813b, § 3(a).

Art. 6819a–18a. Additional Compensation for Justices of Courts of Appeals

Sec. 1. In addition to the compensation provided by law and paid by the State of Texas, the Commissioners Courts in the counties of each of the fourteen Supreme Judicial Districts of Texas are hereby each authorized to pay to each of the Justices of the Courts of Appeals residing within said Supreme Judicial Districts for all judicial and administrative services performed by them a sum not to exceed Fifteen Thousand Dollars ($15,000) per annum, to be paid in twelve equal monthly installments; provided, however, that the total of all sums so authorized to be paid to the individual Justices of the Courts of Appeals shall not exceed the total additional compensation authorized to be paid to any District Judge residing within such affected Supreme Judicial District.

Sec. 2. The compensation provided for in Section 1 shall be in addition to the compensation provided by law and paid by the State of Texas to the various Justices of the Courts of Appeals.

[Amended by Acts 1981, 67th Leg., p. 795, ch. 291, § 81, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 1832, ch. 420, § 1, eff. Aug. 31, 1981.]

Art. 6819a–19b. Judges of District Courts in Counties of 1,600,000 or More

In any county in this State having a population of 1,600,000 or more, according to the last preceding Federal Census, and having twenty-five or more district courts of general jurisdiction, the judges of the several district courts of such counties shall receive, in addition to the salary paid by the State to them, and to other district judges of this State, a sum not less than $12,000 nor more than $25,000 annually, to be paid in equal monthly installments out of the General Fund or Officers' Salary Fund of such counties, such salary to be as compensation for all judicial and administrative services performed by them. The Commissioners Court shall make proper budget provision for the payment thereof. Any district judge of the State who may be assigned to sit for the judge of any district court in such counties under the provisions of Article 200–A, Vernon's Texas Civil Statutes, as amended, may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount not to exceed the difference between the pay of such visiting judge from all sources and that pay received from all sources by district judges in the counties affected by the provisions of this Act, such amount to be paid by the county upon approval of the presiding judge of the administrative district in which said court is located.

[Amended by Acts 1981, 67th Leg., p. 594, ch. 237, § 128, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 1831, ch. 419, § 1, eff. Aug. 31, 1981.]

Section 146(b) of Acts 1981, 67th Leg., p. 600, ch. 237, provides: "To the extent that a law enacted by the 67th Legislature, Regular Session, conflicts with this Act, the other law prevails, regardless of relative date of enactment or relative effective date."

Art. 6819a–20. Additional Compensation of District Court Judge of 16th Judicial District

Sec. 1. In addition to the compensation provided by law and paid by the State, the Commissioners

Court of Denton County is hereby authorized to pay the District Judge of the 16th Judicial District for services rendered to Denton County and for administrative duties, a reasonable sum not less than Two Thousand Four Hundred Dollars ($2,400) per annum; and in addition to the compensation provided by law and paid by the State, the Commissioners Court of Cooke County is hereby authorized to pay the said District Judge of the 16th Judicial District for services rendered to Cooke County and for administrative duties, a reasonable sum not less than One Thousand Two Hundred Dollars ($1,200) per annum.

Sec. 2. The compensation provided for in Section 1 shall be in addition to all other compensation paid or authorized to be paid the District Judge of the 16th Judicial District.

[Amended by Acts 1979, 66th Leg., p. 1061, ch. 491, § 1, eff. Aug. 27, 1979.]

Art. 6819a–25a. Additional Compensation of Judges of District and Criminal District Courts in Counties of 1,200,000 to 2,000,000

In any county in this State having a population of 1,200,000 or more and not more than 2,000,000 according to the last preceding Federal Census, the Judges of the several District and Criminal District Courts of such counties shall receive, in addition to the salary paid by the State to them, and to other District Judges of this State, the sum of Twelve Thousand Dollars ($12,000) annually, to be paid in equal monthly installments out of the general fund or Officers' Salary Fund of such counties. The Commissioners Court shall make proper budget provisions for the payment thereof. Any District Judge of the State who may be assigned to sit for the Judge of any District Court in such counties under the provisions of Chapter 156, Acts of the 40th Legislature, Regular Session, 1927, as amended (Article 200a, Vernon's Texas Civil Statutes), may, while so serving, receive in addition to his necessary expenses, additional compensation from county funds in an amount not to exceed the difference between the pay of such visiting Judge from all sources by District Judges in the counties affected by the provisions of this Act, such amount to be paid by the county upon approval of the presiding Judge of the Administrative District in which said Court is located.

[Amended by Acts 1981, 67th Leg., p. 594, ch. 237, § 129, eff. Sept. 1, 1981.]

Art. 6819a–28. Additional Compensation of District Court Judges of 10th, 56th, 122nd and 212th Judicial Districts

In addition to the compensation paid by the State of Texas to District Judges, the Commissioners Court of Galveston County may pay to the District Judges of the 10th Judicial District, the 56th Judicial District, the 122nd Judicial District, and the 212th Judicial District, respectively, for services rendered to Galveston County for performing administrative duties, a sum of not less than Ten Thousand Dollars ($10,000) nor more than Fifteen Thousand Dollars ($15,000) annually to each of the Judges of said District Courts. This amount shall be paid in equal monthly installments out of the General Fund or Officers Salary Fund of Galveston County. The Commissioners Court of Galveston County may make proper budget provisions for the payment of the sums authorized in this Act.

[Amended by Acts 1975, 64th Leg., p. 256, ch. 105, § 1, eff. Sept. 1, 1975.]

Art. 6819a–31. Additional Compensation of District Court Judges of 121st and 286th Judicial Districts

In addition to compensation provided by law and paid by the State, each of the Commissioners Courts in the 121st and 286th Judicial Districts may pay the judge of the District Court having jurisdiction in its county, for services rendered in performing administrative duties in the district, a sum to be set by the Commissioners Court in each county and to be paid in equal monthly installments.

[Amended by Acts 1977, 65th Leg., p. 1438, ch. 583, § 1, eff. June 15, 1977; Acts 1981, 67th Leg., p. 2068, ch. 458, § 1, eff. June 11, 1981.]

Art. 6819a–33. Additional Compensation of District Court Judges of 128th, 163rd and 260th Judicial Districts

In addition to the compensation provided by law and paid by the state, the Commissioners Court of Orange County is hereby authorized to pay each of the judges of the 128th, 163rd, and 260th Judicial Districts, for services rendered to the county and for performing administrative duties, a reasonable sum to be set by the commissioners court. Such sum shall be in addition to all other compensation paid or authorized to be paid to each of the judges of the district courts having jurisdiction in Orange County.

[Amended by Acts 1981, 67th Leg., p. 394, ch. 159, § 1, eff. Aug. 31, 1981.]

Art. 6819a–35. Additional Compensation of District Court Judges of 85th and 13th Judicial Districts

Sec. 1. In addition to the compensation provided by law and paid by the state, the Commissioners Court of Brazos County shall pay the district judge of the 85th Judicial District not less than Four Thousand Dollars ($4,000) per annum for performing administrative duties in Brazos County.

[See Compact Edition, Volume 5 for text of 2]

[Amended by Acts 1979, 66th Leg., p. 69, ch. 43, § 1, eff. April 11, 1979.]

Art. 6819a–39. Additional Compensation for District Court Judges of 58th, 60th, 136th, 172nd Judicial Districts and Criminal District Court of Jefferson County

Sec. 1. In addition to the compensation paid by the State of Texas to the District Judges, the Commissioners Court of Jefferson County may pay District Judges of the 58th Judicial District, the 60th Judicial District, the 136th Judicial District, the 172nd Judicial District, and the Criminal District Court of Jefferson County, respectively, for services rendered to Jefferson County and for performing administrative duties, an annual sum of not more than Fifteen Thousand Dollars ($15,000) to each of said Judges, to be paid in equal monthly installments out of the General Fund or Officers Salary Fund of Jefferson County. Such compensation shall be for all judicial and administrative services now rendered by such Judges, and any additional judicial and administrative services hereafter to be assigned to them, and in addition to all salaries paid or hereafter to be paid to them by the State of Texas out of state revenues.

Sec. 2. Repealed by Acts 1977, 65th Leg., p. 2152, ch. 859, § 3.04(b)(14), eff. Sept. 1, 1977.

[See Compact Edition, Volume 5 for text of 3]

[Amended by Acts 1975, 64th Leg., p. 1395, ch. 539, § 1, eff. Sept. 1, 1975.]

Art. 6819a–42. Additional Compensation for Judges of the 49th and 111th Judicial Districts

Sec. 1. In addition to the compensation now paid or authorized to be paid by law, the Judge of the 49th Judicial District of Texas and the Judge of the 111th Judicial District of Texas shall each be paid by the Commissioners Court of Webb County, Texas, a sum to be set by the commissioners court in an amount not less than $2,000 per annum, payable in monthly installments out of the general fund, officers' salary fund, jury fund, or any fund available for that purpose, for additional judicial and administrative services, and especially additional services rendered to Webb County in the trial of all criminal and civil cases ordinarily tried by a county court at law.

[See Compact Edition, Volume 5 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 550, ch. 230, § 2, eff. May 28, 1981.]

Art. 6819a–44a. Additional Compensation for Judges of the 23rd and 130th Judicial Districts

Sec. 1. In addition to the compensation paid by the state, each of the judges of the 23rd Judicial District and the 130th Judicial District may receive from the counties, as compensation for the judicial and administrative services performed by them, a salary in an amount to make the combined yearly salary rate of the district judge from state and county sources $1,000 less than the combined yearly salary rate from state and county sources received by the associate justices of the First Supreme Judicial District.

Sec. 2. Each salary provided in this Act may be paid by the counties composing the judicial district in accordance with the proportion that the population of each county bears to the total population of the judicial district, as shown by the last preceding federal census, and may be paid in equal monthly installments out of the general fund or any other fund available for that purpose, as determined by the commissioners court of each county.

[Acts 1977, 65th Leg., p. 1639, ch. 643, eff. June 15, 1977.]

Art. 6819a–45. Additional Compensation for Judges of the 103rd, 107th, 138th and 197th Judicial Districts

Sec. 1. The Commissioners Court of Cameron County may supplement the compensation of the judges of the 103rd, 107th, 138th, and 197th Judicial Districts in an amount not to exceed $8,000 a year.

Sec. 2. The compensation provided for in Section 1 of this Act shall be in addition to all other compensation now paid or authorized to be paid the district judges of the 103rd, 107th, 138th, and 197th Judicial Districts by the state or the county.

[Acts 1975, 64th Leg., p. 114, ch. 51, eff. April 18, 1975.]

Art. 6819a–46. Additional Compensation for Judges of the 24th and 135th Judicial Districts

Sec. 1. For services rendered to the counties and for performing administrative services, the District Judges of the 24th Judicial District and the 135th Judicial District may receive from each of the counties in the respective judicial districts, in addition to the salary paid to them by the state and any other compensation authorized to be paid to them by the counties, a reasonable sum to be set by the commissioners court, subject to the provisions of Section 2 of this Act, to be paid in equal monthly installments out of the general fund or officers salary fund of the respective counties. The commissioners courts shall make proper budget provisions for the payment thereof.

Sec. 2. The combined yearly salary from state and county sources of the District Judges of the 24th Judicial District and the 135th Judicial District may not exceed an amount which is $1,000 less than the combined yearly salary rate from state and county sources received by the judges of the court of civil appeals in whose district the aforementioned judicial districts are located.

[Acts 1977, 65th Leg., p. 312, ch. 146, eff. Aug. 29, 1977.]

Art. 6819a–47. Additional Compensation for Judges of the 51st and 119th Judicial Districts

Sec. 1. In addition to the compensation provided by law and paid by the state, the commissioners court of each county in either the 51st Judicial District or the 119th Judicial District may pay each district judge having jurisdiction in the county, for services rendered to the county and for performing administrative duties, an annual salary not to exceed that county's proportionate share of $8,000, determined by the proportion that its population bears to the total population of the judicial district as shown by the last preceding federal census.

Sec. 2. The compensation provided for in Section 1 of this Act shall be in addition to all other compensation paid or authorized to be paid the district judges in each county in either the 51st or the 119th Judicial District.

[Acts 1977, 65th Leg., p. 1819, ch. 728, eff. June 15, 1977.]

Art. 6819a–48. Additional Compensation of District Court Judges in Montgomery County

Sec. 1. In addition to the compensation provided by law and paid by the State of Texas, and any other compensation authorized to be paid by any county, the Commissioners Court of Montgomery County may pay to the judges of the district courts having jurisdiction in Montgomery County, for services rendered to Montgomery County and for performing administrative duties, a sum to be set by the commissioners court, subject to the provisions of Section 2 of this Act, and to be paid in equal monthly installments out of the general fund or officers salary fund of the county. The commissioners court shall make proper budget provisions for the payment of the compensation authorized by this Act.

Sec. 2. The combined yearly salary from state and county sources of the judges of the district courts having jurisdiction in Montgomery County may not exceed an amount which is $1,000 less than the combined yearly salary rate from state and county sources received by the associate justices of the court of civil appeals in whose district the district courts of Montgomery County are located.

[Acts 1979, 66th Leg., p. 1026, ch. 458, eff. June 7, 1979.]

Art. 6819a–49. Additional Compensation of District Court Judges in Fort Bend County

Sec. 1. In addition to the compensation provided by law and paid by the state and any other compensation authorized to be paid by the county, the Commissioners Court of Fort Bend County may pay to the judges of the district courts having jurisdiction in Fort Bend County, for services rendered to the county and for performing administrative duties, a sum to be set by the commissioners court, subject to the provisions of Section 2 of this Act, and to be paid in equal monthly installments from funds of the county.

Sec. 2. The combined yearly salary from state and county sources of the judges of the district courts having jurisdiction in Fort Bend County may not exceed an amount that is $1,000 less than the combined yearly salary rate from state and county sources received by the associate justices of the courts of appeals of the supreme judicial districts in which Fort Bend County is located.

[Acts 1981, 67th Leg., p. 1816, ch. 406, eff. Aug. 31, 1981.]

Art. 6819a–50. Additional Compensation for Judge of 229th Judicial District

Sec. 1. In addition to the compensation provided by law and paid by the state, the commissioners court of each county in the 229th Judicial District may pay the judge of the 229th District Court, for judicial, administrative, and all other services, an annual salary not to exceed that county's proportionate share of $5,000, determined by the proportion that its population bears to the total population of the judicial district as shown by the last preceding federal census.

Sec. 2. Notwithstanding any other provision of the law, the compensation provided for in Section 1 of this Act shall be the total compensation paid the judge of the 229th District Court by the counties in the district, but shall be in addition to all compensation paid by the state to the judge of the 229th District Court.

[Acts 1981, 67th Leg., p. 1836, ch. 424, eff. June 11, 1981.]

Art. 6819b. Salaries of Court Officers

The salaries of the District Attorneys of the State of Texas, the State's Attorney before the Court of Criminal Appeals, the clerks of the Supreme Court, Court of Criminal Appeals and Courts of Appeals and the salaries of the other officers and employees of the Supreme Court of the State of Texas, the Court of Criminal Appeals and the Courts of Appeals, shall be as determined by the Legislature in its various appropriation Acts for the support of the Judiciary of this State.

[Amended by Acts 1981, 67th Leg., p. 795, ch. 291, § 82, eff. Sept. 1, 1981.]

Art. 6823a. Travel Regulations Act of 1959

[See Compact Edition, Volume 5 for text of 1]

Application of Act

Sec. 2. The provisions of this Act shall apply to all officers, heads of state agencies, state employees, and prospective state employees incurring expenses when requested to visit a state agency, department, or institution of higher education for the purpose of being interviewed and evaluated for employment. Heads of state agencies shall mean elected state officials, excluding members of the Legislature who shall receive travel reimbursement as provided by

the Constitution, appointed state officials, appointed state officials whose appointment is subject to Senate confirmation, directors of legislative interim committees or boards, heads of state hospitals and special schools, and heads of state institutions of higher education.

Basis of Reimbursement or Advance; Per Diem and Transportation Allowance: Rate and Computation; Revolving Petty Cash Fund

Sec. 3.a A reimbursement or advance from funds appropriated by the Legislature for traveling and other necessary expenses incurred by the various officials, heads of state agencies, and employees of the state in the active discharge of their duties shall be on the basis of either a per diem or actual expenses as specifically fixed and appropriated by the Legislature in General Appropriation Acts. A per diem allowance shall mean a flat daily rate payment in lieu of actual expenses incurred for meals and lodging and as such shall be legally construed as additional compensation for official travel purposes only.

[See Compact Edition, Volume 5 for text of 3b]

c. All agencies, boards, commissions, departments, and institutions are authorized to establish a revolving petty cash fund out of funds in the State Treasury or local funds in accordance with Section 6, Subsection g of this Article. The sole purpose of the petty cash fund shall be to advance projected travel expense. This fund shall be reimbursed by warrants drawn and approved by the Comptroller of Public Accounts out of funds in the State Treasury or checks drawn against funds held outside the treasury.

[See Compact Edition, Volume 5 for text of 4]

Advanced Approval of Governor; Travel Outside United States

Sec. 5. Any travel connected with official business of the state for which reimbursement for travel expenses incurred is claimed or for which an advance for travel expenses to be incurred is sought, with the exception of travel to, in, and from the several states, United States possessions, Mexico, and Canada, must have the advance written approval of the Governor. Blanket authority by the Governor may be given to the International Trade Development Division personnel of the Texas Industrial Commission and to the Department of Public Safety to law enforcement personnel.

Rules and Regulations; Standard Expense Account Forms; Reimbursement or Advance Payment for Travel by Private Conveyance; Overpayment

Sec. 6.

[See Compact Edition, Volume 5 for text of 6a]

b. Standard expense account forms shall be used by all state agencies in preparing the expense accounts for traveling state employees. Such forms shall contain information stating

(1) the point of origin and the town, place or point of destination of each trip and the reimbursable mileage travelled, or projected, between each point, town, or place. This provision shall also apply to intra-city mileage;

(2) the actual period of time the employee is away, or plans to be away, from his designated headquarters entitling him to travel expenses; and

(3) a brief statement which clearly shows the purpose of the trip and the character of official business performed or to be performed.

c. In determining transportation reimbursement or advance payment for travel by private conveyance, the Comptroller shall determine the mileage by shortest highway distance between point of origin and the destination via intermediate points at which official state business is conducted and other necessary mileage at points where official state business is conducted. In determining the amounts of reimbursement or advance payment for transportation by personal car within the State, the Comptroller shall compute all distances according to the shortest route between points. In determining the amount of reimbursement or advance payment for transportation by personal car within this state, the Comptroller shall adopt a mileage guide including a chart of distances showing the shortest route between points, and which shall include all Farm-to-Market roads and shall be reissued annually.

[See Compact Edition, Volume 5 for text of 6d]

e. When two, three, or four officials or employees of the same state agency with the same itinerary on the same dates are required to travel on the same official state business for which travel reimbursement for mileage in a personal car is claimed, or for which an advance payment is sought, a payment will be claimed and allowed for only one of the employees except as provided hereafter. To the extent of mileage claimed, the Comptroller shall consider such travel claims as multiple claims and may pay only one such claim. If more than four employees attend such meeting or conference in more than one car, full mileage shall be allowed for one car for each four employees and for any fraction in excess of a multiple of four employees. If, in any instance, it is not feasible for these officials or employees to travel in the same car, then prior official approval from the head of the state department or agency shall be obtained and shall be considered as authorization and the basis for reimbursement, or advance payment, for travel for each person authorized to use his personal car in such travel.

[See Compact Edition, Volume 5 for text of 6f]

g. The Comptroller shall, by promulgation of appropriate rules and regulations, establish a procedure by which a state officer or employee may receive in advance the projected travel expense to be incurred in a particular exercise of official duties. The Comptroller shall require a final accounting

after the actual travel expense has been determined to provide for reimbursement and adjustment, as necessary, to equalize the allowance and the actual expense incurred.

Double Travel Expense Payments; Compensation by Non-state Agency

Sec. 7. Double travel expense payments to state officials or employees are prohibited. When an employee engages in travel for which he is to be compensated by a non-state agency, he shall not receive any reimbursement, and may not seek an advance payment, for such travel from authorized amounts in the General Appropriation Acts.

Local Transportation Allowance; Limits

Sec. 8. An employee whose duties customarily require travel within his designated headquarters may be authorized a local transportation allowance for this travel. Such allowance, however, may not exceed the transportation allowance for use of a privately owned automobile as set by the Legislature in the General Appropriations Acts, except that an employee with a physical handicap which precludes his personal operation of a privately owned automobile may, without regard to the standard otherwise set in the General Appropriations Acts, be authorized a reasonable transportation allowance not to exceed the amount to which such handicapped employee would be entitled for similar travel occurring outside of his designated headquarters.

[See Compact Edition, Volume 5 for text of 9]

Public Conveyances; Courtesy Cards

Sec. 10. The provisions of this Act shall not preclude reimbursement of claims, or requests for advance payments, by officials or employees for use of public conveyances. Transportation is authorized by courtesy cards for air, rail and bus lines.

[See Compact Edition, Volume 5 for text of 11]

[Amended by Acts 1975, 64th Leg., p. 1090, ch. 410, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1387, ch. 535, §§ 1 to 5, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1289, ch. 507, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1316, ch. 521, § 1, eff. Aug. 29, 1977.]

Art. 6826. How Paid

Sec. 1. Except as provided by Section 2 of this article, annual salaries provided for in this title shall be paid monthly on warrants drawn by the Comptroller on the Treasurer.

Sec. 2. An employee of the Texas Department of Mental Health and Mental Retardation, State Department of Highways and Public Transportation, Texas Department of Human Resources, or Texas Employment Commission or of any other state agency designated by the Comptroller is entitled to be paid his employment compensation twice a month if:

(1) the employee holds a classified position under the state's position classification plan;

(2) the position is classified below salary group 12 under the classification salary schedule prescribed by the General Appropriations Act;

(3) the employee's agency meets the requirements established by the Comptroller relating to the payment of compensation twice a month; and

(4) at least 30 percent of the eligible employees of the agency participate in the program to pay compensation twice a month.

[Amended by Acts 1981, 67th Leg., p. 2394, ch. 601, § 1, eff. Sept. 1, 1981.]

TITLE 119

SEQUESTRATION

Art. 6840. Grounds for Issuance and Dissolution

Sec. 1. (a) Judges of the district and county courts and justices of the peace shall, at the commencement or during the progress of any civil suit, before final judgment, have power to issue writs of sequestration, returnable to their respective courts, in the cases and upon the grounds provided for in Subsections (b) through (e) of this section.

(b) When a person sues for the title or possession of any personal property or fixtures of any type or kind or sues for the foreclosure or enforcement of a mortgage or lien or security interest upon personal property or fixtures of any type or kind, a writ of sequestration may be issued if a reasonable conclusion may be drawn that there is immediate danger that the defendant or party in possession thereof will conceal, dispose of, ill-treat, waste, or destroy such property, or remove the same out of the limits of the county during the pendency of the suit.

(c) When a person sues for the title or possession of real property or sues for the foreclosure or enforcement of a mortgage or of a lien on real property, a writ of sequestration may be issued if a reasonable conclusion may be drawn that there is immediate danger that the defendant or party in possession thereof will make use of his possession to injure or ill-treat such property or waste or convert to his own use the timber, rents, fruits, or revenue thereof.

(d) A writ of sequestration may be issued when any person sues for the title or possession of any property from which he has been ejected by force or violence.

(e) A writ of sequestration may be issued when any person sues to try the title to any real property, or to remove cloud upon the title to such real property, or to foreclose a lien upon any such real property, or for a partition of real property, and makes oath that the defendant or either of them, in the event there be more than one defendant, is a nonresident of this state.

Sec. 2. The application for the issuance of the writ shall be made under oath and shall set forth specific facts stating the nature of the plaintiff's claim, the amount in controversy, if any, and the facts justifying the issuance.

Sec. 3. (a) When a writ of sequestration has been issued as provided in this article and the rules of civil procedure, the defendant may seek a dissolution of the writ by written motion filed with the court.

(b) A hearing on the motion to dissolve the writ shall be held and the issue determined not later than 10 days after the motion to dissolve is filed, unless the parties agree to an extension of time. At the hearing, the writ shall be dissolved unless the party who secured the issuance of the writ proves the specific facts alleged and the grounds relied upon for its issuance.

(c) If the writ is dissolved, the action shall proceed as if no writ had been issued except that an action for damages for wrongfully securing the issuance of the writ must be brought as a compulsory counterclaim. In addition to all other elements of damages, the party moving to dissolve the writ may recover his reasonable attorney's fees incurred in the dissolution of the writ.

(d) If the writ is dissolved and the personal property sought to be subjected to the writ is consumer goods, as that term is defined in the Texas Business and Commerce Code, the defendant or the party in possession shall be entitled to damages which shall be reasonable attorney's fees and the greatest of One Hundred Dollars ($100.00), the finance charge contracted for, or actual damages. No damages may be awarded for the failure of the plaintiff to prove by a preponderance of the evidence the specific facts alleged and such failure is a result of a bona fide error. For a bona fide error to be available as a defense, the plaintiff must prove the use of reasonable procedures to avoid such error.

(e) A motion to dissolve the writ is cumulative of the right of replevy, and the filing of the motion to dissolve shall stay any further proceedings under the writ until a hearing is had, and the issue is determined.

Sec. 4. Requisites of Writ of Sequestration. There shall be prominently displayed on the face of the writ, in 10-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:

"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A 'REPLEVY' BOND.

"YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."

[Amended by Acts 1975, 64th Leg., p. 1246, ch. 470, § 1, eff. Sept. 1, 1975.]

TITLE 120

SHERIFFS AND CONSTABLES

1. SHERIFFS

Art. 6869.1. Reserve Deputy Sheriffs and Constables

Sec. 1.

[See Compact Edition, Volume 5 for text of 1(a) to 1(c)]

(d) The Commissioners Court may compensate reserve deputy sheriffs as provided by law for the compensation of deputy sheriffs and may compensate reserve deputy constables as provided by law for the compensation of deputy constables. The Commissioners Court may reimburse reserve deputy sheriffs and reserve deputy constables for reasonable and necessary expenses incurred in the performance of their official duties.

[See Compact Edition, Volume 5 for text of 1(e) and 1(f)]

(g) The sheriff of any county bordering the Gulf of Mexico may organize a portion of the reserve deputy sheriffs within such county for special service as marine reserve deputy sheriffs and lifeguards for beach and water safety purposes and related functions as may be determined by the sheriff.

Reserve deputies organized for marine and lifeguard beach and water safety purposes shall be subject to all provisions of the laws of this state relating to reserve deputy sheriffs except that they shall not be authorized in the performance of their duties to carry firearms.

(h) Any organization authorized hereunder for marine safety and lifeguard purposes in a county bordering the Gulf of Mexico may include both paid and unpaid deputy sheriffs and reserve deputy sheriffs, and such organization may accept contributions and gifts from foundations, individuals, corporations, and other governmental entities including appropriations which may be made by the State of Texas on a direct or matching fund basis to assist such county in the performance of water safety programs in the interest of the health, safety, and welfare of persons using the coastal waters of this state.

[See Compact Edition, Volume 5 for text of 2]

[Amended by Acts 1981, 67th Leg., p. 77, ch. 38, § 1, eff. April 15, 1981; Acts 1981, 67th Leg., p. 122, ch. 59, § 1, eff. Aug. 31, 1981.]

Art. 6877–3. Duty Hours of Peace Officers in Counties of 160,000 to 170,000

(a) No sheriff, deputy, constable, or other peace officer of any county, or of any city, town, or village located within a county, such county having a population of not less than 160,000 nor more than 170,000 according to the last preceding federal census, shall be required to be on duty more than 48 hours a week.

[See Compact Edition, Volume 5 for text of (b) and (c)]

[Amended by Acts 1981, 67th Leg., p. 595, ch. 237, § 130, eff. Sept. 1, 1981.]

2. CONSTABLES

Art. 6878. Election

Sec. 1. The qualified voters of each justice precinct at each general election shall elect a constable for such precinct for a term of four years.

Sec. 2. A person who has served as constable of a precinct for 10 or more consecutive years preceding a change in boundaries of the precinct is not ineligible for reelection in the precinct because of residence outside the precinct as long as the constable's residence is within the boundaries of the precinct as they existed before they were changed.

[Amended by Acts 1981, 67th Leg., p. 1830, ch. 418, § 2, eff. Aug. 31, 1981.]

Art. 6879. Repealed by Acts 1977, 65th Leg., p. 1266, ch. 488, § 2, eff. Aug. 29, 1977

See, now, art. 6879a.

Art. 6879a. Appointment of Deputies

Sec. 1. The duly elected Constable in each Justice Precinct may appoint Deputies in accordance with the provisions of Section 2 of this Act, and each and every instance said Deputy Constables shall qualify as required of Deputy Sheriffs.

[See Compact Edition, Volume 5 for text of 2 and 3]

[Amended by Acts 1977, 65th Leg., p. 1266, ch. 488, § 1, eff. Aug. 29, 1977.]

TITLE 120A

STATE AND NATIONAL DEFENSE

CIVIL DEFENSE

Article
6889–6. Repealed.
6889–7. Disaster Act of 1975.

COMMUNISM

Art. 6889–3A. Suppression of Communist Party and Related Organizations

[See Compact Edition, Volume 5 for text of 1 to 7]

Enforcement

Sec. 8. The District Courts of this State and the judges thereof shall have full power, authority, and jurisdiction, upon the application of the State of Texas, acting through the District Attorney, Criminal District Attorney, or County Attorney, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this Act; no injunction or other writ shall be granted, used or relied upon under the provisions of this Act in any labor dispute or disputes. Such proceedings shall be instituted, prosecuted, tried, and heard as other civil proceedings of like nature in such courts, provided that no such proceedings shall be instituted unless and until the Director of the Texas State Department of Public Safety or his assistant in charge has been notified by telephone, telegraph, or in person of the intention to institute such proceeding, and an affidavit of such notice filed with the application for such injunction proceedings shall be sufficient for the filing of the same.

Nothing in this Act shall be construed to alter in any way the powers now held by the courts of this State or of this nation under the laws of this State in labor disputes.

[See Compact Edition, Volume 5 for text of 9 and 9a]

[Amended by Acts 1981, 67th Leg., p. 2633, ch. 707, § 4(10), eff. Aug. 31, 1981.]

CIVIL DEFENSE

Art. 6889–5. Interstate Civil Defense and Disaster Compact

[See Compact Edition, Volume 5 for text of 1]

Sec. 1a. The office of Interstate Civil Defense and Disaster Compact Administrator for Texas is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1987.

[See Compact Edition, Volume 5 for text of 2]

[Amended by Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.139, eff. Aug. 29, 1977.]

[1] Article 5429k.

Art. 6889–6. Repealed by Acts 1975, 64th Leg., p. 731, ch. 289, § 19, eff. May 22, 1975

See, now, art. 6889–7.

Art. 6889–7. Disaster Act of 1975

Short Title

Sec. 1. This Act may be cited as the Texas Disaster Act of 1975.

Purposes

Sec. 2. The purposes of this Act are to:

(1) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary action;

(2) prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;

(3) provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;

(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide an emergency management system embodying all aspects of predisaster preparedness and postdisaster response;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for and regu-

lation of public and private facilities and land use; and

(9) provide the authority and mechanism to respond to an energy emergency.

Limitations

Sec. 3. Nothing in this Act may be construed to:

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this Act or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs, but any communications facility or organization, including radio and television stations, wire services, and newspapers, may be required to transmit or print public service messages furnishing information or instructions in connection with a disaster or potential disaster;

(3) affect the jurisdiction or responsibilities of police forces, fire fighting forces, units of the armed forces of the United States, or of any of their personnel when on active duty, but state, local, and interjurisdictional emergency management plans shall place reliance on the forces available for performance of functions related to disasters; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution or laws of this state independent of or in conjunction with any provisions of this Act.

Definitions

Sec. 4. In this Act

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, other public calamity requiring emergency action, or energy emergency.

(2) "Political subdivision" means a county or incorporated city.

(3) "Organized volunteer groups" means organizations such as the American National Red Cross, the Salvation Army, Civil Air Patrol, Radio Amateur Civil Emergency Services, and other similar organizations recognized by federal or state statute, regulation, or memorandum.

(4) "Temporary housing" means temporary housing as defined in the Federal Disaster Relief Act of 1974 (PL 93-288, 88 Stat. 143).[1]

(5) "Interjurisdictional agency" means a disaster agency maintained by and serving more than one political subdivision.

(6) "Energy emergency" means a temporary statewide, regional, or local shortage of petroleum or liquid fuels energy supplies that makes emergency measures necessary to reduce demand or allocate supply.

[1] 42 U.S.C.A. §§ 5121 et seq., 5174.

The Governor and Emergency Management

Sec. 5. (a) The governor is responsible for meeting the dangers to the state and people presented by disasters and disruptions to the state and people caused by energy emergencies.

(b) Under this Act, the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.

(c) The governor may establish by executive order an Emergency Management Council to advise and assist him in all matters relating to disaster preparedness, emergency services, energy emergencies and disaster recovery. The Emergency Management Council is composed of the heads of state agencies, boards, and commissions and representatives of organized volunteer groups.

(d) A state of disaster may be declared by executive order or proclamation of the governor if he finds a disaster has occurred or that the occurrence or the threat of disaster is imminent. The state of disaster continues until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster by executive order, but no state of disaster may continue for longer than 30 days unless renewed by the governor. The legislature by law may terminate a state of disaster at any time. On termination by the legislature, the governor shall issue an executive order ending the state of disaster. All executive orders or proclamations issued under this subsection shall indicate the nature of the disaster, the area threatened, and the conditions which have brought it about or which make possible termination of the state of disaster. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant on the disaster prevent or impede, promptly filed with the Division of Emergency Management, the secretary of state, and the county clerk or city secretary in the area or areas to which it applies.

(e) An executive order or proclamation setting forth a state of disaster activates the disaster recovery and rehabilitation aspects of the state emergency management plan applicable to the area in question and is authority for the deployment and use of any forces to which the plan applies and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this Act or any other provision of law relating to disasters. The

preparedness and response aspects of the plan shall be activated as provided in the plan.

(f) During the continuance of any state of disaster and the pursuant recovery period, the governor is commander-in-chief of state agencies, boards, and commissions having emergency responsibilities. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or plans, but nothing in this Act restricts his authority to do so by orders issued at the time of the disaster.

(g) In addition to any other powers conferred on the governor by law, he may:

(1) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules, or regulations of any state agency if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the disaster;

(2) utilize all available resources of the state government and of each political subdivision of the state which are reasonably necessary to cope with the disaster;

(3) temporarily reassign resources, personnel, or functions of state executive departments and agencies or their units for the purpose of performing or facilitating emergency services;

(4) subject to any applicable requirements for compensation under Section 12 of this Act, commandeer or utilize any private property if he finds this necessary to cope with the disaster;

(5) recommend the evacuation of all or part of the population from any stricken or threatened area in the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(6) prescribe routes, modes of transportation, and destinations in connection with evacuation;

(7) control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;

(8) suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles;

(9) enter into purchase, lease, or other arrangements with an agency of the United States for temporary housing units to be occupied by disaster victims and to make units available to any political subdivision of the state;

(10) assist any political subdivision which is the locus of temporary housing for disaster victims to acquire sites necessary for temporary housing and to do all things required to prepare the site to receive and utilize temporary housing units by advancing or lending funds available to the governor from any appropriation made by the legislature or from any other source; "passing through" funds made available by any agency, public or private; or becoming a copartner with the political subdivision for the execution and performance of any temporary housing for disaster victims project;

(11) under such regulations as he shall prescribe, temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, transportation within or across the state, or other requirement of law or regulation within this state when by proclamation he deems the suspension or modification essential to provide temporary housing for disaster victims;

(12) on his determination that a local government of the state has or will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government on behalf of the local government for a loan, receive and disburse the proceeds of any approved loan to any applicant local government, determine the amount needed by any applicant local government to restore or resume its governmental functions, certify that to the federal government provided that no application amount may exceed 25 percent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs, and recommend to the federal government, based on his review, the cancellation of all or any part of repayment when in the first three full fiscal-year periods following the major disaster the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character;

(13) through the use of state departments or agencies or the use of any of the state's instrumentalities, clear or remove from publicly or privately owned land or water, debris and wreckage that may threaten public health or safety or public or private property in any state of disaster declared by the governor or major disaster as declared by the President of the United States;

(14) accept funds from the federal government and utilize the funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water;

(15) on his determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot be otherwise adequately met from other means of assistance, accept a grant by the federal government to fund financial assistance, subject to terms and conditions as may be imposed on the grant, and enter into an agreement with the federal government or any officer or agency of the United States pledging the state to participate in funding not more than 25 percent of the financial assistance authorized in this subsection;

(16) make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance, which shall not exceed an aggregate amount in excess of that established by federal statute to an individual or family in any single major disaster declared by the President of the United States; and

(17) make rules and regulations as are necessary for carrying out the purposes of this Act, including standards of eligibility for persons applying for benefits, procedures for applying and administration, methods of investigation, filing, and approving applications, and formation of local or statewide boards to pass on applications and procedures for appeals.

(h) The governor may designate in the state emergency management plan the Department of Human Resources or other state agency to carry out the functions of providing financial aid to individuals or families qualified for disaster relief. The designated agency may employ temporary personnel for these functions to be paid from funds appropriated to the agency, federal funds, or the Disaster Contingency Fund. The merit system does not apply to the temporary positions. The governor may allocate funds appropriated under this Act to implement the purposes of this Act.

(i) Nothing in this Act may be construed to limit the governor's authority to apply for, administer, or expend any grant, gift, or payment in aid of disaster prevention, preparedness, response, or recovery.

(j) No debris or wreckage from public or private property may be removed until the affected local government, corporation, organization, or individual presents an unconditional authorization for removal to the governor. No debris or wreckage may be removed from private property until the state is indemnified against any claim arising from removal. Whenever the governor provides for clearance of debris or wreckage under the provisions of this Act, state employees or other individuals acting by authority of the governor may enter on private land or water to perform tasks necessary to the removal or clearance operation. Except in cases of willful misconduct, gross negligence, or bad faith, a state employee or agent performing his duties while complying with orders of the governor issued under the provisions of this Act shall not be liable for the death of or injury to persons or damage to property.

(k) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for disaster victims and to enter into whatever arrangements (including purchase of temporary housing units and payment of transportation charges) which are necessary to prepare or equip the sites to utilize the housing units.

State Division of Emergency Management

Sec. 6. (a) A Division of Emergency Management is established in the office of the governor. The division shall have a director and a state coordinator. The director shall be appointed by and serve at the pleasure of the governor. The coordinator shall be appointed by the director. The division shall have other coordinating and planning officers and other professional, technical, secretarial, and clerical employees necessary for the performance of its functions.

(b) The division shall prepare and maintain a comprehensive state emergency management plan and keep it current. The plan may include:

(1) provisions for prevention and minimization of injury and damage caused by disaster;

(2) provisions for prompt and effective response to disaster;

(3) provisions for emergency relief;

(4) provisions for energy emergencies;

(5) identification of areas particularly vulnerable to disasters;

(6) recommendations for zoning, building, and other land-use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(7) provisions for assistance to local officials in designing local emergency management plans;

(8) authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from flood, conflagration, or other disaster;

(9) preparation and distribution to the appropriate state and local officials of state catalogs of federal, state, and private assistance programs;

(10) organization of manpower and channels of assistance;

(11) coordination of federal, state, and local disaster activities;

(12) coordination of the state emergency management plan with the emergency management plans of the federal government;

(13) coordination of federal and state energy emergency plans; and

(14) other necessary matters relating to disasters.

(c) The division shall take an integral part in the development and revision of local and interjurisdictional emergency management plans prepared under Section 8 of this Act. To this end it shall employ or otherwise secure the services of professional and technical personnel capable of providing expert assistance to political subdivisions and disaster agencies. These personnel shall consult with subdivisions and agencies on a regularly scheduled basis and shall

make field reviews of the areas, circumstances, and conditions to which particular local and interjurisdictional emergency management plans are intended to apply and may suggest revisions.

(d) In preparing and revising the state emergency management plan, the division shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and interjurisdictional agencies, the division shall encourage them also to seek advice from these sources.

(e) The state emergency management plan or any part of it may be incorporated in regulations of the division or executive orders which have the force and effect of law.

(f) The division shall:

(1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in event of a disaster;

(2) procure and pre-position supplies, medicines, materials, and equipment;

(3) promulgate standards and requirements for local and interjurisdictional emergency management plans;

(4) periodically review local and interjurisdictional emergency management plans;

(5) provide for mobile support units;

(6) establish and operate training programs and programs of public information or assist political subdivisions and disaster agencies to establish and operate the programs;

(7) make surveys of public and private industries, resources, and facilities in the state which are necessary to carry out the purposes of this Act;

(8) plan and make arrangements for the availability and use of any private facilities, services, and property and provide for payment for use under terms and conditions agreed on if the facilities are used and payment is necessary;

(9) establish a register of persons with types of training and skills important in disaster prevention, preparedness, response, and recovery;

(10) establish a register of mobile and construction equipment and temporary housing available for use in a disaster;

(11) prepare, for issuance by the governor, executive orders and regulations necessary or appropriate in coping with disasters;

(12) cooperate with the federal government and any public or private agency or entity in achieving any purpose of this Act and in implementing programs for disaster prevention, preparation, response, and recovery; and

(13) do other things necessary, incidental, or appropriate for the implementation of this Act.

(g) The division may employ temporary personnel to be paid from funds appropriated to the division, federal funds, or the Disaster Contingency Fund. The merit system does not apply to the temporary positions.

(h) The division may provide assistance to private aviators, including partial reimbursement for funds expended, to meet the actual costs of aircraft operation in performing search, rescue, or disaster-related functions requested by the governor or the governor's designee. The reimbursements shall be limited to the actual cost of aircraft operation not reimbursable from other sources.

Financing

Sec. 7. (a) It is the intent of the legislature and declared to be the policy of the state that funds to meet disasters always be available.

(b) The Disaster Emergency Funding Board, which is composed of the governor, the lieutenant governor, the chairman of the State Board of Insurance, the commissioner of the Department of Human Resources, and the director of the division, is established.

(c) A disaster contingency fund is established which shall receive money appropriated by the legislature.

(d) It is the legislative intent that the first recourse shall be to funds regularly appropriated to state and local agencies. If the governor finds that the demands placed on these funds in coping with a particular disaster are unreasonably great, he may with the concurrence of the Disaster Emergency Funding Board make funds available from the Disaster Contingency Fund.

(e) Whenever the federal government or any other public or private agency or individual offers to the state or through the state to any political subdivision of the state, services, equipment, supplies, materials, or funds as gifts, grants, or loans for purposes of emergency services or disaster recovery, the governor, if required by the donor, and the political subdivision through the presiding officer of its governing body may accept the offer in behalf of the state or its political subdivision. Where any gift, grant, or loan is accepted by the state, the governor or on his designation the Emergency Management Council or the state coordinator may dispense the gift, grant, or loan directly to accomplish the purpose for which it was made or allocate and transfer to any political subdivision of this state, services, equipment, supplies, materials, or funds in the amount he or his designated agent may determine. The funds received by the state shall be placed in a special fund or funds and shall be disbursed by warrants issued by the comptroller of public accounts an order of the governor or his designated agent, who may be named by him either in a written agreement accepting the funds or in a written authorization filed with the secretary of state. Where the funds are to be used for the purchase of equipment, supplies, or commodities of any kind, it is not

necessary that bids be obtained or that the purchases be approved by any other agency. On receipt of an order for disbursement, the comptroller shall issue a warrant without delay. Political subdivisions are authorized to accept and utilize all services, equipment, supplies, materials, and funds to the full extent authorized by the agreement under which they are received by the state or by the political subdivision.

Local and Interjurisdictional Disaster Agencies and Services

Sec. 8. (a) Each political subdivision within this state is within the jurisdiction of and served by the division and by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

(b) Each county shall maintain an emergency management program or participate in a local or interjurisdictional emergency management program which, except as otherwise provided under this Act, has jurisdiction over and serves the entire county or interjurisdictional area.

(c) The governor shall determine which municipal corporations need emergency management programs of their own and shall recommend that they be established and maintained. He shall make his determinations on the basis of the municipality's disaster vulnerability and capability or response related to population size and concentration. The emergency management program of a county must be coordinated with the emergency management programs of municipalities situated within its borders but shall not apply in a municipality having its own emergency management program.

(d) The governor may recommend that a political subdivision establish and maintain a program and form an interjurisdictional agency jointly with one or more other political subdivisions if he finds that the establishment and maintenance of a joint program or participation in it is made necessary by circumstances or conditions that make it unusually difficult to provide disaster prevention, preparedness, response, or recovery services under other provisions of this Act.

(e) Each city which does not have a program and has not made arrangements to secure or participate in the services of an existing program shall designate a liaison officer to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response, and recovery. Each county shall provide an office and a liaison officer to coordinate with state and federal emergency management personnel concerning disaster preparedness, response, or recovery services under other provisions of this Act.

(f) The presiding officer of the governing body of each political subdivision shall notify the division of the manner in which the political subdivision is providing or securing an emergency management program, identify the person who heads the agency responsible for the program, and furnish additional pertinent information that the division requires.

(g) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional emergency management plan for its area providing for disaster preparedness, response, recovery, and rehabilitation. The plan shall provide for:

(1) wage, price, and rent controls and other economic stabilization methods in the event of disaster; and

(2) curfews, blockades, and limitations on utility usage in an area affected by a disaster, rules governing ingress and egress to the affected area, and other security measures.

(h) The local or interjurisdictional disaster agency shall prepare in written form and distribute to all appropriate officials a clear and complete statement of the disaster responsibilities of all local agencies and officials and of the disaster channels of assistance.

(i) A political subdivision may make appropriations for emergency management services as provided by law for making appropriations for ordinary expenses of the political subdivisions and may enter into agreements for the purpose of organizing emergency management service divisions, provide for a mutual method of financing the organization of units on a basis satisfactory to the political subdivisions, and render aid to other subdivisions under mutual aid agreements provided that the functioning of said units shall be coordinated by the Emergency Management Council. For the payment of the cost of any equipment, construction, acquisition, or any improvements for carrying out the provisions of this Act, counties and incorporated cities and towns may issue time warrants. These time warrants shall be issued in accordance with the provisions of the Bond and Warrant Law of 1931. As amended (Article 2368a, Vernon's Texas Civil Statutes). Time warrants shall not be issued for financing permanent construction or improvements for emergency management purposes except on the right of a referendum vote as provided in Section 4 of that law.

Qualifications for Rendering Aid

Sec. 9. If any person holds a license, certificate, or other permit issued by any state or political subdivision of any state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving the skill in this state to meet an emergency or disaster, and this state shall give due consideration to the license, certificate, or other permit.

Declaration of Local Disasters

Sec. 10. (a) A local state of disaster may be declared by the presiding officer of the governing body of a political subdivision. It may not be continued or renewed for a period in excess of seven days except by or with the consent of the governing body

of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the city secretary or county clerk as applicable.

(b) The effect of a declaration of a local state of disaster is to activate the recovery and rehabilitation aspects of any and all applicable local or interjurisdictional emergency management plans and to authorize the furnishing of aid and assistance under the declaration. The preparedness and response aspects of the plans shall be activated as provided in the plans.

Disaster Prevention

Sec. 11. (a) In addition to disaster prevention measures as included in the state, local, and interjurisdictional emergency management plans, the governor shall consider on a continuing basis steps that could be taken to mitigate the harmful consequences of disasters. At his direction and pursuant to any other authority and competence they have, state agencies including but not limited to those charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning, and construction standards shall make studies of disaster-prevention-related matters. The governor from time to time shall make recommendations to the legislature, local governments, and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.

(b) The Department of Water Resources and other state agencies in conjunction with the division shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies undertaken under this subsection shall concentrate on means of reducing or avoiding the dangers caused by this occurrence or its consequences.

(c) If the division believes on the basis of the studies or other competent evidence that an area is susceptible to a disaster of catastrophic proportions without adequate warning, that existing building standards and land-use controls in that area are inadequate and could add substantially to the magnitude of the disaster, and that changes in zoning regulations, other land-use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the governor. If the governor on review of the recommendations finds after public hearing that the changes are essential, he shall make appropriate recommendations to the agencies or local governments with jurisdiction over the area and subject matter. If no action or insufficient action pursuant to his recommendations is taken within the time specified by the governor, he shall so inform the legislature and request legislative action appropriate to mitigate the impact of disaster.

(d) The governor, at the same time that he makes his recommendations pursuant to Subsection (c) of this section, may suspend the standard or control which he finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control shall remain in effect until rejected by concurrent resolution of both houses of the legislature or amended by the governor. During the time it is in effect, the standard or control contained in the governor's regulation shall be administered and given effect by all relevant regulatory agencies of the state and local governments to which it applies. The governor's action is subject to judicial review but is not subject to temporary stay pending litigation.

Compensation

Sec. 12. (a) Each person in this state shall conduct himself and keep and manage his affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to manage emergencies. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster. This Act neither increases nor decreases these obligations but recognizes their existence under the constitution and statutes of this state and the common law. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this Act are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his services or property without compensation.

(b) No personal services may be compensated by the state or any subdivision or agency of the state except pursuant to statute or ordinance.

(c) Compensation for property shall be made only if the property was commandeered or otherwise used in coping with a disaster and its use or destruction was ordered by the governor or a member of the disaster forces of this state.

(d) Any person claiming compensation for the use, damage, loss, or destruction of property under this Act shall file a claim for compensation with the division in the form and manner the division provides.

(e) Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the division, the amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state.

(f) Nothing in this section applies to or authorizes compensation for the destruction or damaging of standing timber or other property in order to pro-

vide a firebreak or to the release of water or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood, or contravention of Article I, Section 17, of the Texas Constitution, or statutes pertaining to that section.

Communications

Sec. 13. The division shall ascertain in cooperation with other state agencies what means exist for rapid and efficient communication in times of disaster. The division shall consider the desirability of supplementing these communication resources or of integrating them into a comprehensive state or state-federal telecommunication or other communication system or network. In studying the character and feasibility of any system or its several parts, the division shall evaluate the possibility of their multipurpose use for general state and local governmental purposes. The division shall make recommendations to the governor as appropriate.

Mutual Aid

Sec. 14. (a) Political subdivisions not participating in interjurisdictional arrangements pursuant to this Act nevertheless shall be encouraged and assisted by the division to conclude suitable arrangements for furnishing mutual aid in coping with disasters. The arrangements shall include provision of aid by persons and units in public employ.

(b) In reviewing local emergency management plans, the division shall consider whether they obtain adequate provisions for the rendering and receipt of mutual aid.

(c) In reviewing local and interjurisdictional emergency management plans, the division may require mutual aid agreements between political subdivisions if it determines that the political subdivisions have available equipment, supplies, and forces necessary to provide mutual aid on a regional basis and that the political subdivisions have not already made adequate provision for mutual aid.

Weather Modification

Sec. 15. The division shall keep continuously apprised of weather conditions which present danger of precipitation or other climatic activities severe enough to constitute a disaster. If the division determines that precipitation that may result from weather modification operations, either by itself or in conjunction with other precipitation or climatic conditions or activity, would create or contribute to the severity of a disaster, it shall request in the name of the governor that the officer or agency empowered to issue permits for weather modification operations suspend the issuance of the permits. On the governor's request, no permits may be issued until the division informs the officer or agency that the danger has passed.

Insurance Coverage

Sec. 16. Property damage insurance covering state facilities may be purchased by agencies of the state when necessary to qualify for federal disaster assistance funds. If sufficient funds are not available for the required insurance, then the agency may petition the Disaster Emergency Funding Board to purchase the insurance in the agency's behalf. The board may expend money from the Disaster Contingency Fund to purchase the required insurance.

Penalty for Violation of Emergency Management Plan

Sec. 17. A state, local, or interjurisdictional emergency management plan may provide that failure to comply with the plan or with a rule, order, or ordinance adopted pursuant to the plan is an offense. The plan may not prescribe as punishment for the offense a fine that exceeds $1,000 or confinement in jail for a term that exceeds 180 days.

Severability

Sec. 18. If any provision of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the Act, and to this end the provisions of this Act are held to be severable. All plans, regulations, and executive orders and proclamations not in conflict herewith are continued in full force and effect.

Repealer

Sec. 19. The Texas Disaster Act of 1973 (Article 6889–6, Vernon's Texas Civil Statutes) is repealed.

[Acts 1975, 64th Leg., p. 731, ch. 289, eff. May 22, 1975. Amended by Acts 1977, 65th Leg., p. 1164, ch. 443, § 1, eff. June 15, 1977; Acts 1981, 67th Leg., p. 332, ch. 134, §§ 1 to 7, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3318, ch. 869, §§ 1 to 4, eff. Aug. 31, 1981.]

TITLE 121

STOCK LAWS

CHAPTER THREE. SLAUGHTER AND SHIPMENT

Article
6910b. Repealed.

Arts. 6890 to 6899–1. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Arts. 6903 to 6910b. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal, art. 6908e was amended by Acts 1977, 65th Leg., p. 1649, ch. 646, § 1.

Repealed art. 6910b, relating to payment for livestock purchased for slaughter, was derived from Acts 1975, 64th Leg., p. 660, ch. 276.

CHAPTER FOUR. ESTRAYS

Article
6927a. Repealed.

Arts. 6911 to 6927. Repealed by Acts 1975, 64th Leg., p. 1933, ch. 630, § 12, eff. June 19, 1975

See, now, Agriculture Code, § 142.001 et seq.

Art. 6927a. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Agriculture Code.

The repealed article, the Estray Act, was derived from Acts 1975, 64th Leg., p. 1930, ch. 630.

CHAPTER FIVE. STOCK LAW AND LIMITED RANGE

Arts. 6928 to 6953. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

CHAPTER SIX. STOCK RUNNING AT LARGE

Arts. 6954 to 6971a. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal, arts. 6965 and 6967 were amended by Acts 1981, 67th Leg., p. 595, ch. 237, §§ 131, 132, respectively.

CHAPTER SEVEN. PROTECTION OF STOCK RAISERS

Arts. 6972 to 7008a. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

CHAPTER EIGHT. ANIMAL HEALTH COMMISSION

Article
7009c. Repealed.
7014f–1a. Repealed.
7014h–1. Repealed.

Art. 7009. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Agriculture Code.

Art. 7009a. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), (2)(h), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing this article, enacts the Agriculture Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Agriculture Code.

Arts. 7009b, 7009c. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Former art. 7009c, subjecting the Texas Animal Health Commission to the Sunset Act, was added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.120.

Art. 7014a. Dogs; Vaccination or Treatment for Rabies

No law of this State shall prevent any person from vaccinating, inoculating, or treating his own dogs or for any person employed as County Demonstration Agent from vaccinating, inoculating or treating any dogs with any serum or virus that will prevent rabies, and any law in conflict with this Act is hereby repealed.

[Amended by Acts 1981, 67th Leg., p. 1487, ch. 388, § 2, eff. Sept. 1, 1981.]

This article was also repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4, effective Sept. 1, 1981.

Section 1 of the 1981 amendatory act enacts the Agriculture Code.

Arts. 7014b to 7014h-1. Repealed by Acts 1981, 67th Leg., p. 1487, ch. 388, § 4(1), eff. Sept. 1, 1981

Acts 1981, 67th Leg., ch. 388, repealing these articles, enacts the Agriculture Code.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Agriculture Code.

Prior to repeal, art. 7014f-1 was amended by:

Acts 1979, 66th Leg., p. 1854, ch. 752, § 9.

Acts 1981, 67th Leg., p. 484, ch. 204, § 2.

Acts 1981, 67th Leg., p. 2605, ch. 693, § 25.

Former art. 7014f-1a, relating to compensation to owners of cattle exposed to bovine brucellosis, was derived from Acts 1975, 64th Leg., p. 1886, ch. 598.

Prior to repeal, art. 7014g-1, was amended by Acts 1977, 65th Leg., p. 1664, ch. 658, §§ 1 to 17.

Former art. 7014h-1, relating to pullorum disease and fowl typhoid control, was derived from Acts 1977, 65th Leg., p. 364, ch. 179.

TITLE 123

TIMBER

Repeal

This Title 123 was repealed by art. I, § 2(a)(3), of Acts 1977, 65th Leg., p. 2689, ch. 871, enacting the Natural Resources Code, effective September 1, 1977.

For disposition of the subject matter of the repealed articles, see Disposition Table following the Natural Resources Code.

Arts. 7360 to 7363b. Repealed by Acts 1977, 65th Leg., p. 2689, ch. 871, § 2, eff. Sept. 1, 1977

Former arts. 7361a, 7362a, 7363.1, and 7363b, derived from Acts 1879, p. 81, were transferred from Vernon's Ann.P.C. (1925) arts. 1385 to 1388, respectively, by authority of § 5 of Acts 1973, 63rd Leg., p. 995, ch. 399.

TITLE 125A

TRUSTS AND TRUSTEES

PENSION TRUSTS

Article
7425a–3. Authority of Fiduciaries and Custodians Regarding Certain Securities.
7425d–1. Death Benefits Under Employees' Trusts.

IN GENERAL

Art. 7425a–3. Authority of Fiduciaries and Custodians Regarding Certain Securities

Sec. 1. In this Act:

(1) "Fiduciary" has the meaning given it in Section 1, Chapter 1002, Acts of the 62nd Legislature, Regular Session, 1971 (Article 7425a–2, Vernon's Texas Civil Statutes), and includes a state or national bank acting in a fiduciary capacity.

(2) "Clearing corporation" has the meaning given it in Section 8.102, Business and Commerce Code, as amended.

Sec. 2. In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed, or other instrument appointing a fiduciary, any fiduciary holding securities in its fiduciary capacity, and any bank, trust company, or private banker holding securities as a custodian for a fiduciary or as a managing agent or custodian, is authorized if a member of the Federal Reserve System to deposit, or arrange for the deposit if not a member of the Federal Reserve System, with the Federal Reserve Bank of Dallas, of any securities the principal and interest of which the United States or any department, agency, or instrumentality of the United States has agreed to pay or has guaranteed payment. A bank, trust company, or private banker so depositing securities with the Federal Reserve Bank of Dallas shall be subject to such rules with respect to making and maintenance of the deposit as, in the case of state chartered or private banking institutions, the Finance Commission of Texas, and, in the case of national banking associations, the Comptroller of the Currency, may from time to time issue. The records of the fiduciary, bank, trust company, or private banker shall at all times show the ownership of securities held in such an account. The Federal Reserve Bank of Dallas may apply book entry procedures to the securities in such an account, whereby the ownership of and other interests in the securities may be transferred by entries on the books of the Federal Reserve Bank of Dallas without physical delivery of the securities. A bank, trust company, or private banker acting as custodian for a fiduciary, on demand by the fiduciary, shall certify in writing to the fiduciary the securities so deposited by the bank, trust company, or private banker with the Federal Reserve Bank. Any fiduciary or any bank, trust company, or private banker acting as fiduciary, custodian, custodian for a fiduciary, or managing agent, on demand by any party to its accounting or on demand by the attorney for the party, shall certify in writing to the party the securities so deposited by the bank, trust company, or private banker with the Federal Reserve Bank.

Sec. 3. (a) In the absence of contrary or limiting provisions in the court order or decree appointing a fiduciary, or in a subsequent order or decree, or in the will, deed, or other instrument appointing a fiduciary, any fiduciary holding securities in its fiduciary capacity, and any bank, trust company, or private banker holding securities as custodian, custodian for a fiduciary, or managing agent is authorized to deposit or arrange for the deposit, either in this state or elsewhere, of such securities in a clearing corporation, irrespective of whether the clearing corporation is domiciled, located, has any office or place of business, or is licensed or authorized to do business in this state. When the securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited in the clearing corporation by any person, regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the bank, trust company, or private banker acting as a custodian for a fiduciary, managing agent, or custodian shall at all times show the name of the party for whose account the securities are so deposited. Ownership of, and other interests in, the securities may be transferred by entries on the books of the clearing corporation without physical delivery of certificates representing the securities. A bank, trust company, or private banker so depositing securities pursuant to this Act shall be subject to such rules as, in the case of state chartered or private banking institutions, the Finance Commission of Texas, and, in the case of national banking associations, the Comptroller of the Currency, may from time to time issue. A bank, trust company, or private banker acting as custodian for a fiduciary, on demand by the fiduciary, shall

certify in writing to the fiduciary the securities so deposited by the bank, trust company, or private banker in the clearing corporation for the account of the fiduciary. Any fiduciary or any bank, trust company, or private banker acting as fiduciary, custodian for a fiduciary, custodian, or managing agent, on demand by any party to its accounting or on demand by the attorney for the party, shall certify in writing to the party the securities deposited by the fiduciary, bank, trust company, or private banker with the clearing corporation.

(b) As between the fiduciary and the beneficial owner of securities deposited by the fiduciary in a clearing corporation, the fiduciary is liable for any loss occasioned by the acts or omissions of the clearing corporation, but nothing is this Act affects the liabilities as between the fiduciary and the clearing corporation.

Sec. 4. (a) This Act applies to any fiduciary holding securities in its fiduciary capacity and to any bank, trust company, or private banker holding securities as fiduciary, custodian for a fiduciary, custodian, or managing agent, acting on the effective date of this Act or thereafter, regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not the fiduciary, custodian for a fiduciary, managing agent, or custodian owns capital stock of the clearing corporation.

(b) This Act does not apply to securities held by any fiduciary, bank, trust company, or private banker on behalf of any domestic insurance company, unless the prior express approval of the State Board of Insurance is obtained. The State Board of Insurance may grant that approval generally to all domestic insurance companies or specifically to individual domestic insurance companies on a case-by-case basis.

[Acts 1977, 65th Leg., p. 852, ch. 320, §§ 1 to 4, eff. May 30, 1977.]

TEXAS TRUST ACT

Art. 7425b–19. Contracts of Trustee

Whenever a trustee shall make a contract which is within his powers as trustee, or a predecessor trustee shall have made such a contract, and a cause of action arises thereon:

A. The party in whose favor the cause of action has accrued may sue the trustee in his representative capacity, and any judgment rendered in such action in favor of the plaintiff shall be collectible by execution out of the trust property. In such an action the plaintiff need not prove that the trustee could have secured reimbursement from the trust fund if he had paid the plaintiff's claim.

B. No judgment shall be rendered in favor of the plaintiff in such action unless he proves that within thirty (30) days after the beginning of such action, or within such other time as the court may fix, and more than thirty (30) days prior to obtaining the judgment, he notified each of the beneficiaries known to the trustee who then had a present or contingent interest, or in the case of a charitable trust the Attorney General of Texas and any corporation which is a beneficiary or agency in the performance of such charitable trust, of the existence and nature of the action. Such notice shall be given by mailing copies thereof by registered mail addressed to the parties to be notified at their last known addresses. The trustee shall furnish the plaintiff a list of the beneficiaries or persons having an interest in the trust estate, and their addresses, if their whereabouts are known to the trustee, within ten (10) days after written demand therefor, and notification of the persons on such list shall constitute compliance with the duty placed on the plaintiff by this section.

Any beneficiary, or in the case of charitable trusts the Attorney General of Texas, and any corporation which is a beneficiary or agency in the performance of such charitable trust, may intervene in such action and contest the right of the plaintiff to recover. If any beneficiary is a minor or has been adjudged incompetent, the court shall appoint a guardian ad litem, whose duty it shall be to defend such action.

C. The plaintiff may also hold the trustee who made the contract personally liable on such contract, if the contract does not exclude such personal liability. The addition of the word "trustee" or the words "as trustee" after the signature of a trustee to a contract shall be deemed prima facie evidence of an intent to exclude the trustee from personal liability.

D. Notwithstanding anything to the contrary in this Act, if a decedent was a partner in a general partnership and the articles of partnership provide that, on the death of a partner, his or her trustee shall be entitled to the place of a deceased partner in the firm, a trustee so contracting to come into the partnership shall, to the extent allowed by law, be liable to third persons only to the extent of the deceased partner's capital in the partnership and his or her trust funds held by the trustee. Likewise, any other trustee contracting to enter into a general partnership in its capacity as trustee shall, to the extent allowed by law, have its liability limited to the trust assets contributed to the partnership and the other assets of that trust under the control and management of the contracting trustee. This subdivision does not exonerate a trustee from liability for his or her negligence.

[Amended by Acts 1979, 66th Leg., p. 71, ch. 46, § 2, eff. April 11, 1979.]

Art. 7425b-25. Powers, Duties, and Responsibilities of Trustees

In the absence of contrary or limiting provisions in the instrument creating the trust, or a subsequent order or decree of a court of competent jurisdiction, the trustee of an express trust is authorized.

A. To exchange, re-exchange, sub-divide, develop, improve, dedicate to public use, make or vacate public plats, adjust boundaries, and/or partition real property, and to adjust differences in valuation by giving or receiving money or money's worth. Easements may be dedicated to public use without consideration if deemed by the trustee to be for the best interest of the trust.

B. To grant options and to sell real or personal property at public auction or at private sale for cash, or upon credit secured by lien upon the property sold or upon such property or a part thereof and/or other property.

C. To grant or take leases of real property for any term of years, and of all rights and privileges above or below the surface of real property for any term or terms, including exploration for and removal of oil, gas, and other minerals, with or without options of purchase, and with or without covenants as to erection of buildings, or as to renewals thereof, through the term of the lease or renewals thereof, or of such options extending beyond the term of the trust.

D. To raze existing walls or buildings and/or erect new party walls or buildings alone or jointly with the owners of any adjacent property. To make ordinary repairs and in addition thereto such extraordinary alterations, changes, and additions in buildings or other structures which are necessary to make the property productive or more productive. To effect and keep in force, fire, rent, title, liability, casualty, or other insurance of any nature, in any form and in any amount.

E. To compromise, contest, arbitrate, or settle any and all claims of or against the trust estate or the trustee as such. To abandon property deemed by the trustee burdensome or valueless.

F. To pay calls, assessments, and any other sums chargeable or accruing against, or on account of shares of stock or other securities in the hands of the trustee where such payment may be legally enforceable against the trustee or any property of the trust, or where the trustee deems payment expedient and for the best interests of the trust. To sell or exercise stock subscription or conversion rights, participate in the foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements and voting trusts; to assent to corporate sales, leases, and encumbrances, and in general, except as limited by the particular will, indenture, trust agreement, or other trust instrument, have and exercise all powers of an absolute owner in respect of such securities. In the exercise of the foregoing powers the trustee shall be authorized, where he deems such course expedient, to deposit stocks, bonds, or other securities with any protective or other committee formed by or at the instance of persons holding similar securities, under such terms and conditions respecting the deposit thereof as the trustee may approve. Any stock or other securities obtained by conversion, reorganization, consolidation, merger, liquidation, or the exercise of subscription rights shall be free, unless the trust instrument provides otherwise, from any restrictions on sale or otherwise contained in the trust instrument relative to the securities originally held.

G. Generally to execute and deliver any deed or other instrument and to do all things in relation to such trust necessary, desirable, or advisable for carrying out any of the above powers or those considered incident to the purposes of such trust. In addition to the other rights, powers, and authority granted to and conferred upon the trustee of an express trust by this, The Texas Trust Act, the trustee may sell, exchange, transfer, assign, convey, mortgage, or otherwise encumber, lease, contract for the joint exploration and development of the trust property, with other properties, and otherwise contract with reference to oil, gas, or other minerals or natural resources, and mineral rights and mineral royalties, which may be or become a part of the trust estate, upon such terms and conditions, and for such royalties, rents, benefits, and consideration as the trustee may deem to be to the best interest of the trust estate.

H. (1) Employ attorneys, accountants, agents, and brokers reasonably necessary in the administration of the trust estate.

(2) Permit real estate held in trust to be occupied by a surviving spouse or minor child of the trustor and, where reasonably necessary for the maintenance of the surviving wife or minor child, to invest trust funds in real property to be used for a home by any such beneficiary, and, in the trustee's discretion, to pay funeral expenses of any beneficiary actually receiving benefits from the trust estate at the time of his or her death.

I. The following rules of administration shall be applicable to all express trusts but such rules shall not be exclusive of those otherwise imposed by law, unless the latter be contrary to these rules:

1. Where a trustee is authorized to sell or dispose of land, such authority shall include the right to sell or dispose of a part thereof, whether the division is horizontal, vertical, or made in any other way, or of undivided interests therein.

2. Where a trustee is authorized by the trust instrument creating the trust or by law to pay, expend, or otherwise apply capital money subject to the trust for any purpose or in any manner, he shall have and shall be deemed always to have had the power to raise the

money so required by selling, converting, calling in, or mortgaging or otherwise encumbering all or any part of the trust property for the time being in possession.

3. A trustee shall have a lien, and may reimburse himself with interest, for, or pay or discharge out of the trust property, either principal or income or both, all advances made for the convenience, benefit or protection of the trust or its property, and all expenses, losses, and liabilities, not resulting from the negligence of the trustee, incurred in or about the execution or protection of the trust or because of his holding or ownership of any property subject thereto.

4. When the happening of any event, including marriage, divorce, attainment of a certain age, performance of educational requirements, death, or any other event, determines or affects the distribution of income or principal of trust estates, the trustees shall not be liable for mistakes of fact made prior to the actual knowledge or written notice of such fact.

J. The powers, duties, and responsibilities stated in this Act shall not be deemed to exclude other implied powers, duties, or responsibilities not inconsistent herewith.

K. Pay all taxes and assessments levied or assessed against the trust estate or the trustee by governmental taxing or assessing agencies.

L. Unless the instrument creating the trust provides to the contrary, the trustee of any trust created after the effective date of this amendment shall be required to give bond payable to all persons interested in the trust as their interest may appear, conditioned for the faithful performance of the duties as trustee, to be in such amount and with such surety or sureties as the District Court shall, by order entered in a proceeding brought for such purpose, direct and approve. If the proceeding be brought by the person named as trustee, citation in respect thereof shall not be necessary, but the proceeding may be upon ex parte verified petition showing the nature and probable value of the trust estate, and the District Court may, in term time or vacation, hear the application and enter such order in respect thereof as the court shall deem proper. If the proceeding be brought by some other person interested in the estate, citation shall issue, as required by law, to the trustee, unless such citation be expressly waived in writing. Any bond made pursuant to the provisions of this Subsection L shall be subject to increase, decrease, or the substitution or addition of another surety or other sureties upon order of the District Court in an action brought by any person interested in the trust estate, as in Section 24 [1] hereof provided. Any bond made pursuant to the terms of this Subsection shall be deposited with the Clerk of the District Court in which the order shall have been entered, and suit may be maintained on a certified copy thereof, provided that any recovery thereon shall, upon appropriate proof by the surety or sureties, reduce their liability on such bond pro tanto. Failure to comply with the provisions of this paragraph shall not render void or voidable, or otherwise affect, any act or transaction of the trustee with any third person.

Provided, however, that this Subsection shall not apply to corporate trustees which are authorized by law to act as trustee of any trust affected by this Act.

[1] Article 7425b-24.

M. In the event that any property which is or may become a part of the assets of a trust is situated in a state or states other than the State of Texas, or in a foreign country, the Texas trustee is empowered to name an individual or corporate trustee qualified to act in any such state or foreign country in connection with the property situated therein as ancillary trustee of such property and require such security as may be designated by the Texas trustee. The ancillary trustee so appointed shall have all rights, powers, discretions, responsibilities and duties as are delegated to it by the Texas trustee, within the limits of the authority possessed by the Texas trustee, but shall exercise and discharge same subject to such limitations or directions of the Texas trustee as shall be specified in the instrument evidencing the appointment. The ancillary trustee shall be answerable to the Texas trustee for all monies, assets or other property entrusted to it or received by it in connection with the administration of the trust. The Texas trustee may remove such ancillary trustee and may or may not appoint a successor at any time or from time to time as to any or all of the assets. Provided, however, that if the ancillary trustee is to be appointed in any jurisdiction that requires any kind of procedure or judicial order for the appointment of such an ancillary trustee or to authorize it to act, the Texas trustee and the ancillary trustee must conform to all such requirements.

N. Whenever an instrument containing a trust reserves unto the trustor, or vests in an advisory or investment committee, or in any other person or persons (including a co-trustee), to the exclusion of the trustee or to the exclusion of one or more of several trustees, authority to direct the making or retention of investments, or of any investment, or the performance of any other act in the management and administration of the trust, the excluded trustee or co-trustee shall not be liable as trustee or co-trustee for any loss resulting from the making or retention of any investment pursuant to such authorized direction, or from the doing of any act in the management and administration of the trust in accordance with such authorized direction. This Subsection shall not be applicable if the terms of the trust instrument contain contrary provisions with respect to the liability of the excluded trustee or co-trustee.

[Amended by Acts 1979, 66th Leg., p. 74, ch. 48, § 1, eff. April 11, 1979.]

UNIFORM COMMON TRUST FUND ACT

Art. 7425b-48. Uniform Common Trust Fund Act

Sec. 1. Establishment of common trust funds. (a) Any bank or trust company qualified to act as fiduciary in this State may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, including itself as custodian under the Uniform Gifts to Minors Act, as amended (Article 5923–101, Vernon's Texas Civil Statutes), or to itself and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciaries to such investment. Any bank or trust company which is a member of an affiliated group, as defined in Section 1504 of the Internal Revenue Code of 1954, as amended (26 U.S.C. Section 1504), with a bank or trust company maintaining common trust funds may participate in one or more of those funds as though they were maintained by the participating bank or trust company.

(b) A common trust fund includes a fund qualified for exemption from federal income taxation as a common trust fund and maintained exclusively for eligible fiduciary accounts and also includes a fund consisting solely of assets of retirement, pension, profit sharing, stock-bonus, and other employees' trusts that are exempt from federal income taxation.

[See Compact Edition, Volume 5 for text of 2 to 6]

[Amended by Acts 1977, 65th Leg., p. 627, ch. 232, § 3, eff. Aug. 29, 1977.]

PENSION TRUSTS

Art. 7425d-1. Death Benefits Under Employees' Trusts

Definitions

Sec. 1. When used in this Act, unless the context otherwise requires:

(a) "Death benefits" means benefits of any kind, including, but not limited to, proceeds of life-insurance policies of which a trustee of an employees' trust is beneficiary and other payments, in cash or property, pursuant to an employees' trust (or contract purchased by such a trust) or pursuant to a retirement-annuity contract, payable on account of an employee's death to or for the benefit of his beneficiary.

(b) "Employees' trust" means a trust forming a part of a stock-bonus, pension, or profit-sharing plan described in Section 401 of the Internal Revenue Code of 1954,[1] and pension trusts described in Article 7425d, Title 125A, Vernon's Texas Civil Statutes.

(c) "Retirement-Annuity Contract" means an annuity contract described in Section 403 of the Internal Revenue Code of 1954.[2]

(d) "Employee" means any person who is covered by the plan of which an employees' trust is made a part, any person whose interest in such trust has not been distributed in full, and any person covered by a plan of which a retirement-annuity contract is a part.

(e) "Internal Revenue Code of 1954" means such code and all references in this Act to specific sections of such code include corresponding provisions of any subsequent federal tax laws.

(f) The definitions of "trust" and "trustee" contained in the Texas Trust Act [3] shall apply to such terms as used in this Act, provided that "trust" shall include any trust, regardless of when created.

[1] 26 U.S.C.A. (I.R.C.1954) § 401.
[2] 26 U.S.C.A. (I.R.C.1954) § 403.
[3] See arts. 7425b-2; 7425b-4, § C.

Payments to Trustee Under Declaration of Trust or Written Instrument

Sec. 2. Death benefits may be made payable to a trustee of a trust, the terms of which are evidenced by a written instrument or declaration of trust in existence on the date of the death of the employee, if such trustee is designated as beneficiary in accordance with the terms of the plan of which the employees' trust is a part or in accordance with the terms of the retirement-annuity contract. Such death benefits shall be held, administered, and disposed of by such trustee in accordance with the terms of the trust as they appear in writing on the date of the death of the employee. The validity of the trust agreement or declaration of trust shall not be affected even though the trust has no corpus other than the right of the trustee to receive such death benefits as beneficiary, even though the employee has reserved the right to designate another beneficiary of the death benefits, and even though such trust agreement or declaration of trust is subject to amendment, modification, revocation, or termination.

Payments to Trustee Under Will

Sec. 3. Death benefits may be made payable to a trustee named, or to be named, as trustee of a trust created by a will of the employee, if such trustee is designated as beneficiary in accordance with the terms of the plan of which the employees' trust is a part or in accordance with the terms of the retirement-annuity contract, whether or not such will has been executed at the time of such designation. Upon probate of such will the death benefits shall be payable to such trustee to be held, administered, and disposed of in accordance with the terms of the trust created by such will as they exist on the date of death of the employee. Death benefits may be made payable to a trustee named as trustee of a

trust created by a will of any person other than the employee if such will has been probated at the death of the employee and the death benefits shall be payable to such trustee to be held, administered, and disposed of in accordance with the terms of the trust created by such will.

Payment Where No Trustee Makes Claim

Sec. 4. In the event no trustee makes claim to the death benefits within a period of one year after the date of death of the employee or if satisfactory evidence is furnished to a trustee or other fiduciary of the employees' trust or other obligor within such one-year period that there is or will be no trustee to receive the death benefits, payment of such death benefits shall be made as required or permitted by such employee's beneficiary designation, the plan of which the employees' trust is a part, or the retirement-annuity contract, and failing such other designation or provision in such plan or contract, such death benefits shall be paid to the personal representative of the deceased employee as a part of such deceased employee's estate.

Exemption from Taxes and Debts

Sec. 5. Unless the trust agreement, declaration of trust, or will provides otherwise, death benefits payable to a trustee as provided in Sections 2, 3, and 4 of this Act (i) shall not be deemed part of the deceased employee's estate, (ii) shall not be subject to any obligation to pay debts of the deceased employee or his estate or other charges enforceable against such estate, and (iii) shall not be subject to any obligation to pay any taxes enforceable against the deceased employee's estate to any greater extent than if such death benefits were payable, free of trust, to beneficiaries other than the executor or administrator of the estate of the deceased employee.

Commingling of Assets

Sec. 6. Death benefits paid to a trustee in accordance with Sections 2, 3, or 4 of this Act may be commingled with any other assets accepted by such trustee either before or after receipt of such death benefits, and held in trust.

Application of This Act

Sec. 7. Nothing in this Act shall affect the validity of any beneficiary designation heretofore made by an employee, in accordance with the terms of the plan of which the employees' trust is a part or in accordance with the terms of the retirement-annuity contract, naming a trustee of a trust under a trust agreement, declaration of trust, or under a will as beneficiary of death benefits.

Declaratory of Common Law; Liberal Construction

Sec. 8. This Act shall, insofar as possible, be deemed declaratory of the common law of the State of Texas and shall be liberally construed so as to effectuate the intent that death benefits received by a trustee of a trust under a trust agreement, declaration of trust, or will are not subject to the obligations of the employee or of his estate unless such trust expressly provides otherwise. Neither a reference in any will to any death benefits nor the naming of the trustee of a trust created by a will shall cause such death benefits to be included in the property administered as a part of the testator's estate or require inclusion of such death benefits in any inventory filed with the county court.

[Acts 1975, 64th Leg., p. 60, ch. 34, eff. April 3, 1975.]

CHARITABLE TRUSTS

Art. 7425e. Amendment of Charitable Trusts

[See Compact Edition, Volume 5 for text of 1]

Election to Avoid Amendment by Law

Sec. 2. (a) The trustee of any trust described in Section 1 of this Act (with the consent of the trustor, if then living and competent to give consent) may, without judicial proceedings, amend such trust to expressly exclude the application of Section 1 of this Act by executing a written amendment to the trust and filing a duplicate original of such amendment with the Attorney General of Texas, and upon filing of such amendment, Section 1 of this Act shall not apply to such trust.

(b) The powers given under Subdivision (2), Paragraph H, Section 25, Texas Trust Act,[1] shall not apply to a charitable remainder unitrust, annuity trust, or pooled income fund, whether presently in existence or hereafter created, that is intended to qualify for a federal tax deduction under Section 664 of the Internal Revenue Code of 1954[2] or any successor section thereto.

[See Compact Edition, Volume 5 for text of 3 to 5]

[Amended by Acts 1979, 66th Leg., p. 77, ch. 48, § 2, eff. April 11, 1979.]

[1] Article 7425b-25, par. H, subd. (2).
[2] 26 U.S.C.A. § 664.

TITLE 127

VETERINARY MEDICINE AND SURGERY

Article
7465c. Responsibility of Veterinarian Toward Animals in His Care.

Art. 7465a. Veterinary Licensing Act

[See Compact Edition, Volume 5 for text of 1 and 2]

Exceptions to Application of Law

Sec. 3. The provisions of this Act shall not apply nor shall the following be construed as the practice of veterinary medicine:

(1) Treatment or caring for animals in any manner personally by the owner thereof, or by any employee of the owner thereof.

(2) Performance of the operation of male castration on domestic animals, or docking or ear-marking of domestic animals.

(3) Performance of the operation of dehorning cattle, or the spaying of large animals, or operation in aid of the birth process in large animals.

(4) Drenching and spraying of domestic animals for internal or external parasites, or vaccination for black-leg, shipping fever, or sore mouth.

(5) Recommendation by a retail distributor of a medicine, remedy or insecticide which is adequately labeled and has been duly registered with the Texas State Department of Health as required by the Texas Livestock Remedy Act when the retail distributor is advised by the customer of the type of ailment which he wishes to treat.

(6) Treatment and caring for poultry and rabbits.

(7) Branding animals in any manner.

(8) Acts performed by persons who are full-time students of an accredited college of veterinary medicine and who are on a college extern or preceptor program if the acts are performed under direct supervision of a licensee employing the person.

[See Compact Edition, Volume 5 for text of 4]

State Board of Veterinary Medical Examiners

Sec. 5. (a) The Board consists of nine members appointed by the Governor with the advice and consent of the Senate for six-year terms.

(b) Appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. Seven members must be licensed veterinarians and two members must be members of the general public.

(c) To be eligible for appointment to the Board as a licensed veterinarian member, a person must:

(1) have resided in the state and practiced veterinary medicine for the six years next preceding his appointment;

(2) be of good repute; and

(3) not be a member of the faculty of any veterinary medical college or of the veterinary medical department of any college or have a financial interest in a veterinary medical college.

(d) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; or

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.

(e) A person appointed to the Board qualifies for office by taking the constitutional oath of office. After taking the oath, he shall file a signed copy of it with the Secretary of State.

(f) The Governor shall fill by appointment vacancies on the Board resulting from death or resignation of a member. The person appointed to fill a vacancy serves for the unexpired portion of the vacated term.

(g) At its first meeting each year the Board shall elect from its number a president and any other officers it considers necessary or convenient. Six members of the Board constitute a quorum for the transaction of Board business.

(h) Each Board member is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act.

(i) The State Board of Veterinary Medical Examiners is subject to the Texas Sunset Act, as amended

(Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1993.

(j) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(k) A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the veterinary medical industry.

(*l*) A member or employee of the Board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.

(m) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not serve as a member of the Board or act as the general counsel to the Board.

(n) It is a ground for removal from the Board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (c) or (d) of this section for appointment to the Board;

(2) does not maintain during his service on the Board the qualifications required by Subsection (c) or (d) of this section for appointment to the Board;

(3) violates a prohibition established by Subsection (k),(*l*), or (m) of this section; or

(4) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a member of the Board.

(*o*) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

Executive Secretary and Other Personnel; Intraagency Career Ladder Program; Annual Performance Evaluations System

Sec. 6. (a) The Board may employ an executive secretary and such other persons as it deems advisable to carry out the purposes of this Act, and shall require the executive secretary, charged with the safekeeping of the moneys and proper disbursement of the veterinary fund provided for in this Act, to file with the Board a surety bond in an amount not less than Five Thousand Dollars ($5,000), conditioned on the faithful performance of the duties of his office.

(b) The executive secretary or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of all nonentry level positions for at least 10 days before any public posting.

(c) The executive secretary or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive secretary must be based on the system established under this subsection.

Rules and Regulations; Record-Keeping System

Sec. 7. (a) The Board may make, alter or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

(b) The Board may require its licensees to maintain a record-keeping system for certain controlled substances prescribed by the Board that includes the quantities and date of purchase, quantities and date dispensed, quantities and date administered, balance on hand, the name and address of the client and patient receiving the drugs, and the reason for dispensing or administering the drugs to such patient. The records are subject to review by law enforcement agencies and by representatives of the Board. A failure to keep such records shall be grounds for revoking, cancelling, suspending, or probating the license of any practitioner of veterinary medicine.

Rules of Professional Conduct

Sec. 8. (a) The Board may from time to time adopt, alter, or amend rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine.

(b) The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false, misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of his voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

(c) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the Board/commission statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board/commission receives the committees' statements.

[See Compact Edition, Volume 5 for text of 9]

Qualification for License

Sec. 10. (a) Any person not previously licensed in this State is qualified to be licensed, provided:

(1) he has attained the age of majority;

(2) he is a graduate of a reputable school or college of veterinary medicine as approved by the Board;

(3) he successfully completes the examination conducted by the Board; and

(4) the Board does not refuse issuance of the license as provided in Section 14 (Refusing Examination, License or Renewal).

(b) The Board may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this State.

[See Compact Edition, Volume 5 for text of 11]

Meetings and Examinations

Sec. 12. (a) The Board shall hold regular meetings at least twice each year for the holding of examinations as provided in this Act, at such times and places as it deems convenient for applicants for examinations. Notice of meetings for holding examinations shall be given by publication in such newspapers or periodicals as the Board may select, and the Board shall examine all qualified applications for examinations as follows:

(1) Examinations shall be on subjects and operations pertaining to veterinary medicine including veterinary anatomy, veterinary pathology, chemistry, veterinary obstetrics, sanitary science, veterinary practice, veterinary jurisprudence, veterinary physiology and bacteriology and such other subjects as are regularly taught in reputable schools of veterinary medicine.

(2) Examinations may be given orally, in writing, or a practical demonstration of the applicant's skill, or any combination of these as the Board may determine.

(3) Applicants shall demonstrate such standard of proficiency as the Board may determine is essential for a qualified veterinarian.

(b) Within 30 days after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the date the Board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.

Expiration and Renewal of Licenses; Continuing Education Programs

Sec. 13. (a) Licenses shall expire March 1st of each calendar year, and any licensee may renew his license on or before March 1st by making written application to the Board setting forth such facts as the Board may require, and by paying the required fee.

(b) A person may renew an unexpired license by paying to the Board before the expiration date of the license the required renewal fee. If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half (½) of the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license. If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(c) The requirements governing the payment of the annual renewal fee and the penalty for late renewal shall not apply to licensees who are on active duty with the Armed Forces of the United States of America and who do not engage in private or civilian practice; provided further, licensees who are full-time members of the faculty of a reputable veterinary college or school in the State of Texas where such faculty members perform their services for the sole benefit of such school or college and who do not engage in private or civilian practice shall pay one-half (½) of the annual renewal fee fixed by the Board pursuant to law.

(d) The Board may recognize, prepare, or implement continuing education programs for veterinarians. Participation in the programs is voluntary.

Revocation or Suspension of License; Refusal to Examine Applicant or Issue or Renew License; Grounds

Sec. 14. Except as provided by this section with respect to conviction of a felony under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), the Board shall revoke or suspend a license, place a person whose license has been suspended on probation, or reprimand a licensee, or may refuse to examine an applicant or to issue a license or a renewal of a license, after notice and hearing as provided in Section 15 of this Act, or as provided by the rules of the Board, if it finds that an applicant or licensee:

(a) Has presented to the Board dishonest or fraudulent evidence of qualification; has been guilty of illegal fraud or deception in the process of examination, or for the purpose of securing a license; or

(b) Is chronically or habitually intoxicated or is addicted to drugs; or

(c) Has engaged in dishonest or illegal practices in or connected with the practice of veterinary medicine; or

(d) Has been convicted of a felony under the laws of this or any other state of the United States or of the United States; or

(e) Has engaged in practices or conduct in connection with the practice of veterinary medicine which are violative of the standards of professional conduct as duly promulgated by the Board in accordance with law; or

(f) Has permitted or allowed another to use his license, or certificate to practice veterinary medicine in this state, for the purpose of treating, or offering to treat, sick, injured or afflicted animals.

On conviction of a person licensed by the Board of a felony under the Texas Controlled Substances Act, as amended (Article 4476–15, Vernon's Texas Civil Statutes), or Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476–14, Vernon's Texas Civil Statutes), the Board shall, after an administrative hearing conducted in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), in which the fact of conviction is determined, suspend the person's license. On the person's final conviction, the Board shall revoke the person's license. The Board may not reinstate or reissue a license to a person whose license is suspended or revoked under this section except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

Procedure for Refusal, Suspension or Revocation of License

Sec. 15. If the Board proposes to refuse a person's application for a license, to suspend or revoke a person's license, or to place on probation or reprimand a licensee, the person is entitled to a hearing before the Board. The proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Appeals

Sec. 16. An appeal of an action of the Board is governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes). Judicial review of an action of the Board shall be conducted under the substantial evidence rule.

[See Compact Edition, Volume 5 for text of 17 and 18]

Information of Consumer Interest

Sec. 18A. The Board shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies. Each written contract for services in this state of a licensed veterinarian shall contain the name, mailing address, and telephone number of the Board.

Complaints

Sec. 18B. (a) The Board shall maintain an information file about each complaint filed with the Board relating to a licensee.

(b) If a written complaint is filed with the Board relating to a licensee, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Fees

Sec. 19. The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

1.	Examination fee	$200
2.	Reciprocal license fee	200
3.	Annual license renewal fee	85
4.	Duplicate license fee	60

The board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

Veterinary Fund; Audit; Annual Report

Sec. 20. (a) All fees collected by the Board under this Act shall be placed in the State Treasury every thirty (30) days, as collected, to the credit of a special fund to be known as the "Veterinary Fund," and all expenditures from this fund shall be on order of the Board, on warrants issued by the State Comptroller for the purposes and in the amounts fixed by the Legislature in appropriation bills. On August 31st of each year, all money in excess of One Hundred Thousand Dollars ($100,000) remaining in said "Veterinary Fund" shall revert to the General Revenue Fund of the State Treasury.

(b) The State Auditor shall audit the financial transactions of the Board at least once in each fiscal biennium.

(c) On or before January 1 of each year, the Board shall make in writing to the Governor and the Presiding Officer of each House of the Legislature a complete and detailed annual report accounting for all funds received and disbursed by the board during the preceding year.

[See Compact Edition, Volume 5 for text of 21]

[Amended by Acts 1977, 65th Leg., p. 1699, ch. 675, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1839, ch. 735, § 2.048, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 108, ch. 52, § 7, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2816, ch. 761, §§ 1, 2, eff. Sept. 1, 1981.]

Sections 3 to 5 of Acts 1981, 67th Leg., p. 2822, ch. 761, provide:

"Sec. 3. A rule adopted by the State Board of Veterinary Medical Examiners before September 1, 1981, that conflicts with The Veterinary Licensing Act, as amended (Article 7465a, Vernon's Texas Civil Statutes), as amended by this Act, is void. Within 90 days after September 1, 1981, the board shall repeal the rule.

"Sec. 4. A person holding office as a member of the State Board of Veterinary Medical Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

"Sec. 5. (a) This Act takes effect September 1, 1981.

"(b) The requirements under Subsections (b) and (c), Section 6, The Veterinary Licensing Act (Article 7465a, Vernon's Texas Civil Statutes), as added by this Act, that the executive secretary of the board develop an intraagency career ladder program and a system of annual performance evaluations shall be implemented before September 1, 1982. The requirement of Subsection (c) of Section 6 that merit pay be based on this system shall be implemented before September 1, 1983."

Art. 7465c. Responsibility of Veterinarian Toward Animals in His Care

Sec. 1. (a) Unless otherwise provided by contract between a veterinarian and his client, a veterinarian may dispose of any animal abandoned in his care if he gives notice of his intention to do so by certified mail sent to the last known address of the client. The veterinarian must allow the client 12 days from the mailing of the certified mail in which to retrieve the animal.

(b) Contact of the veterinarian by the client by mail, telephone, or personal communication does not extend the obligation of the veterinarian to treat, board, or care for an animal unless both the client and the veterinarian agree. If no agreement is made to extend the care for the animal, the animal is considered abandoned after 12 days from the date the veterinarian notifies the client that the animal must be removed from the veterinarian's care.

(c) The giving of notice by a veterinarian as prescribed in Subsection (a) of this section does not relieve the client of his liability for payment for treatment, board, or care furnished.

Sec. 2. A veterinarian who, on his own initiative or at the request of a person other than the owner, renders emergency treatment to an ill or injured animal is not liable to the owner for damages to the animal except in cases of gross negligence. If the veterinarian performs euthanasia on the animal, it is presumed that it was a humane act necessary to relieve pain and suffering.

[Acts 1977, 65th Leg., p. 1700, ch. 676, §§ 1, 2, eff. Aug. 29, 1977.]

TITLE 130

WORKERS' COMPENSATION AND CRIME VICTIMS COMPENSATION

PART 1

Article
8306b. "Workmen's Compensation" Changed to "Worker's Compensation".

PART 2

8307d. Nonsuit in Appeals from Industrial Accident Board Award.

PART 4

8309g–1. Texas Tech University Employees.
8309i. Payment of Judgments Against State or Department, Division, or Political Subdivision Thereof.

PART 5

8309–1. Crime Victims Compensation Act.

PART 1

Art. 8306. Damages and Compensation for Personal Injuries

[See Compact Edition, Volume 5 for text of 1 and 2]

Nonresidents; Employment of Labor; Service of Process on Chairman of Industrial Accident Board

Sec. 2a. The acceptance by a nonresident of this State of the rights, privileges and benefits extended by law to such persons of employing labor within the State of Texas shall be deemed equivalent to an appointment by such nonresident of the Chairman of the Industrial Accident Board of this State, or his successor in office, to be his true and lawful attorney and agent upon whom may be served all lawful process in any civil action or proceeding now pending or hereafter instituted against said nonresident growing out of any accident resulting in the injury or death of any employee of said nonresident, occurring in the course of employment of the employee in this State, or occurring in the course of employment of the employee in a foreign jurisdiction when the employee is a Texas resident recruited in this State, when the action or proceeding is brought by the employee, his heirs or legal representative. Service of process under this Section shall be in the same manner and method as that prescribed in Chapter 125, Acts of the Forty-first Legislature, Regular Session, 1929, as last amended by Chapter 502, Acts of the Fifty-sixth Legislature, Regular Session, 1959 (compiled as Article 2039a of Vernon's Texas Civil Statutes), which relates to citation of nonresident motor vehicle operators by serving the Chairman of the State Highway Commission.

[See Compact Edition, Volume 5 for text of 3 to 6]

Medical Services

Sec. 7. The employee shall have the sole right to select or choose the persons or facilities to furnish medical aid, chiropractic services, hospital services, and nursing and the association shall be obligated for same or, alternatively, at the employee's option, the association shall furnish such medical aid, hospital services, nursing, chiropractic services, and medicines as may reasonably be required at the time of the injury and at any time thereafter to cure and relieve from the effects naturally resulting from the injury. Such treatment shall include treatments necessary to physical rehabilitation, including proper fitting and training in the use of prosthetic appliances, for such period as the nature of the injury may require or as necessary to reasonably restore the employee to his normal level of physical capacity or as necessary to give reasonable relief from pain, but shall not include any other phase of vocational rehabilitation. The obligation of the association to be responsible for hospital services as herein provided shall not be held to include any obligation on the part of the association to pay for medical, nursing or surgical services not ordinarily provided by hospitals as a part of their services.

Upon receipt thereof, the Board shall promptly analyze each notice of injury incurred by an injured employee covered under this law. If the Board concludes that vocational rehabilitation is indicated in any such case, it immediately shall take the necessary steps to inform the injured employee of the services and facilities available to him under the Texas Rehabilitation Commission and the Board immediately shall notify said Commission of such case. In each such case recommendation of services and facilities shall be made after consultation by the Board with the physician or chiropractor furnishing medical aid or chiropractic services as required by this Section, who shall retain general supervision of treatment of the injured employee and, should the employee request it, the Board shall consult with a physician or chiropractor specially trained in such treatment. The Board shall co-operate with said Texas Rehabilitation Commission with reference to the work of said Commission in providing said services and facilities to injured employees covered under the provisions of this law.

Provided that any physician or chiropractor rendering medical or chiropractic care to any injured worker shall render an initial report as soon as practical identifying the injured worker and stating the nature and extent of the injury and thereafter shall render subsequent reports reasonably necessary to keep the status of the claimant's condition known.

Hospitals shall, upon request of either the injured worker, his attorney, or the association, furnish records pertaining to treatment or hospitalization for which compensation is being sought. All reports and records requested hereunder shall be made to the association and the injured worker or his attorney. The failure of the physician or chiropractor to make such reports or of the hospital to furnish requested records shall relieve the association and the injured worker from any obligation to pay for the services rendered by the physician, chiropractor, or hospital. All charges for the furnishing of reports and records hereunder shall be subject to regulation by the Board in accordance with Section 7b hereof, provided however, such charges shall in no event be less than the fair and reasonable charge for the furnishing of said reports and records.

In the event that the association shall contend before the Board that charges for medical aid, hospital services, chiropractic services, nursing services, or medicines are not fair and reasonable, the Board's award shall make an express finding of the amounts which are fair and reasonable charges for the aid or services rendered or the medicines provided. If the amount found is less than those charges submitted by the provider of the aid, services, or medicines, then said provider shall be entitled to appeal the Board's determination as if it were a party to the action. In any subsequent appeal from the award of the Board, if the person or facility providing medical aid, hospital services, chiropractic services, nursing services, or medicines recovers an amount equal to or in excess of the charges submitted to the Board, such person or facility shall be entitled to recover from the association an additional amount equal to 12 percent of the amount unpaid and reasonable attorney's fees. If the amount so recovered is less than the charges submitted to the Board, the association shall be entitled to recover its reasonable attorney's fees from the person or facility providing the medical aid, hospital services, chiropractic services, nursing services, or medicines.

[See Compact Edition, Volume 5 for text of 7a to 7d]

Artificial Appliances

Sec. 7–e. (a) In all cases where liability for compensation exists for an injury sustained by an employee in the course of his employment where artificial appliances of any kind would materially and beneficially improve the future usefulness and occupational opportunities of such injured employee, the association shall furnish such employee with the artificial appliance or appliances needed by him for such occupational opportunities and shall continue to furnish the needed artificial appliance or appliances until a satisfactory fit is obtained in the judgment of the attending physician or physicians. The association shall also be liable for replacing or repairing any artificial appliances so furnished, when needed as determined by the physician or physicians, unless the need for such repair or replacement is due to lack of proper care by the employee. The cost of such artificial appliances so furnished to any such employee shall be in keeping with the salary or wages received by such employee.

(b) In the event the association shall fail or refuse to furnish or provide such artificial appliances, such employee shall make application to the Board for such artificial appliances. On receipt of such application the Board shall order a medical examination of the employee and obtain such other evidence as in their opinion they may deem necessary, after which the Board shall determine whether or not the artificial appliances would materially and beneficially improve the future usefulness and occupational opportunities of the injured employee and in the event they find that such improvement would exist, then the Board shall order the association to furnish the artificial appliances.

[See Compact Edition, Volume 5 for text of 8]

Persons to Whom Death Benefits Payable; Exemptions; Distributions; Payments

Sec. 8a. The compensation provided for in the foregoing section of this law shall be for the sole and exclusive benefit of the surviving husband who has not, for good cause and for a period of three years prior thereto, abandoned his wife at the time of the injury, and of the wife who has not, at the time of the injury without good cause and for a period of three years prior thereto, abandoned her husband, and of the minor children, parents and stepmother, without regard to the question of dependency, dependent grandparents, dependent children, dependent grandchildren and dependent brothers and sisters of the deceased employee; and the amount recovered thereunder shall not be liable for the debts of the deceased nor the debts of the beneficiary or beneficiaries and shall be distributed among the beneficiaries as may be entitled to the same as hereinbefore provided, according to the laws of descent and distribution of this State; provided, the right in such beneficiary or beneficiaries to recover compensation for death be determined by the facts that exist at the date of the death of the deceased and that said right be a complete, absolute and vested one. Any parent who, during a substantial period of the minority of the deceased worker, shall have abandoned the worker shall be deemed to have waived any entitlement to benefits, and such parent's benefits shall be paid as if the parent had predeceased the deceased worker. The burden of proof shall be upon any beneficiary seeking to disqualify the parent on the grounds of abandonment

or failure to support. Such compensation shall not pass to the estate of the deceased to be administered upon, but shall be paid directly to said beneficiaries when the same are capable of taking, under the laws of this State, or to their guardian in case of lunacy, infancy or other disqualifying cause; except payments may be made directly to the person having custody of the person of such beneficiary, who shall be entitled to receive and receipt for such payments unless or until the association is notified that a guardian has been appointed, in which event payment shall thereafter be made to such guardian. The compensation provided for in this law shall be paid weekly to the beneficiaries herein specified, subject to the provisions of this law.

[See Compact Edition, Volume 5 for text of 8b]

Funeral Expenses

Sec. 9. If the deceased employee leaves no legal beneficiaries, the association shall pay all expenses incident to his last sickness as a result of the injury, and in addition a funeral benefit not to exceed One Thousand, Two Hundred and Fifty Dollars ($1,250).

If the deceased employee leaves a legal beneficiary or beneficiaries, and is buried at the expense of the beneficiary or beneficiaries, or is buried at the expense of his employer or any other person, the expense of such burial, not to exceed One Thousand, Two Hundred and Fifty Dollars ($1,250), shall be payable without discount for present payment to the person or persons at whose expense the burial occurred, subject to the approval of the Board; and such burial expense, regardless of to whom it is paid, shall be in addition to the compensation due the beneficiary or beneficiaries of such deceased employee.

Total Incapacity

Sec. 10. (a) While the incapacity for work resulting from the injury is total, the association shall pay the injured employee a weekly compensation equal to sixty-six and two-thirds per cent (66⅔%) of his average weekly wages, but not more than the maximum weekly benefit nor less than the minimum weekly benefit set forth in Section 29 of this article.

(b) If the injury is one of the six (6) enumerated in Section 11a of this article as constituting conclusive total and permanent incapacity, the association shall pay the compensation for the life of the employee, but in no other case of total and permanent incapacity shall the period covered by such compensation be greater than four hundred and one (401) weeks from the date of injury. For the purpose of this section only, the total and permanent loss of use of a member shall be considered to be the total and permanent loss of the member.

(c) No attorney's fee may be allowed in a case involving lifetime benefits under Subsection (b) of this section if the association admits liability while the case is pending before the Board and makes payments. If liability is not admitted before the Board, an attorney representing the claimant is entitled to a reasonable attorney's fee not to exceed twenty-five per cent (25%) of the compensation recovered. The association shall deduct attorney's fees allowed by the Board or court in equal periodic payments not to exceed twenty-five per cent (25%) of the compensation payment. If compensation is being paid in periodic payments, any attorney's fee allowed by the Board or court shall be paid in periodic payments.

(d) The lifetime benefits to the employee payable under this section may not be paid in a lump sum except in a case of bona fide disputes as to liability of the association. Any settlement of a disputed case shall be approved by the Board or court only upon an express finding that a bona fide dispute exists as to such liability.

[See Compact Edition, Volume 5 for text of 11 to 12b]

Subsequent Injury; Second Injury Fund

Sec. 12c. If an employee who has suffered a previous injury shall suffer a subsequent injury which results in a condition of incapacity to which both injuries or their effects have contributed, the association shall be liable because of such injury only for the compensation to which the subsequent injury would have entitled the injured employee had there been no previous injury; provided that there shall be created a fund known as the "Second Injury Fund," hereinafter described, from which an employee who has suffered a subsequent injury shall be compensated for the combined incapacities resulting from both injuries. Provided further, however, that notice of injury to the employer and filing of a claim with the Industrial Accident Board as required by law shall also be deemed and considered notice to and filing of a claim against the "Second Injury Fund".

Permanent and Total Incapacity Through Loss of or Loss of Use of, Another Member or Organ

Sec. 12c–1. If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently and totally incapacitated through the loss or loss of use of another member or organ, the association shall be liable only for the compensation payable for such second injury; provided, however, that in addition to such compensation and after the combination of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for the total permanent incapacity out of the special fund known as "Second Injury Fund," hereinafter defined.

Second Injury Fund; How Created; Presumptions

Sec. 12c–2. The special fund known as the "Second Injury Fund" shall be created in the following manner:

(a) In every case of the death of an employee under this act where there is no person entitled to compensation surviving said employee, the association shall pay to the Industrial Accident Board the full death benefits, but not to exceed 360 weeks of compensation, as provided in Section 8, of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, to be deposited with the Treasurer of the State for the benefit of said Fund and the Board shall direct the distribution thereof.

(b) When the total amount of such payments into the Fund, together with the accumulated interest thereon, equals or exceeds Seven Hundred Fifty Thousand Dollars ($750,000) in excess of liabilities, whether vested or contingent, known to the Board, no further payment shall be required to be paid to said Fund; but whenever thereafter the amount of such Fund shall be reduced below Three Hundred Thousand Dollars ($300,000) in excess of liabilities, whether vested or contingent, known to the Board, by reason of payments from such Fund, the payments to such Fund shall be resumed forthwith, and shall continue until such Fund again amounts to Seven Hundred Fifty Thousand Dollars ($750,000) including accumulated interest thereon, in excess of liabilities, whether vested or contingent, known to the Board.

(c) Unless a claim for fatal benefits is filed with the Board by a beneficiary or beneficiaries within eight (8) months following the date of death of the employee, it shall be presumed for purposes of this section only that no person entitled to compensation under Section 8a of this article survived the deceased employee; provided, however, that the presumption created hereby shall not apply against minor beneficiaries or to beneficiaries of unsound mind for whom no guardian has been appointed.

(d) If the Board enters an initial award ordering payments to the Fund hereunder and it is determined by a subsequent final award of the Board or judgment of a court of competent jurisdiction that a beneficiary under Section 8a of the article is entitled to fatal benefits, the Board shall order reimbursement from the Fund to the association of the amounts paid by it to the Fund in good faith by reason of the initial award of the Board.

[See Compact Edition, Volume 5 for text of 12d to 18]

Injuries Sustained Outside State; Venue

Sec. 19. If an employee, who has been hired or, if a Texas resident, recruited in this State, sustain injury in the course of his employment he shall be entitled to compensation according to the Law of this State even though such injury was received outside of the State, and that such employee, though injured out of the State of Texas, shall be entitled to the same rights and remedies as if injured within the State of Texas, except that in such cases of injury outside of Texas, the suit of either the injured employee or his beneficiaries, or of the Association, to set aside an award of the Industrial Accident Board of Texas, or to enforce it, as mentioned in Article 8307, Sections 5–5a, shall be brought either

a. In the county of Texas where the contract of hiring was made or where the employee was recruited; or

b. In the county of Texas where such employee or his beneficiaries or any of them reside when the suit is brought, or

c. In the county where the employee or the employer resided when the contract of hiring was made or when the employee was recruited, as the one filing such suit may elect.

Providing that such injury shall have occurred within one year from the date such injured employee leaves this State; and provided, further, that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the state where such injury occurred.

[See Compact Edition, Volume 5 for text of 20 to 27]

Subscriber's Filing Fee

Sec. 28. In addition to all other taxes now being paid, each stock company, mutual company, reciprocal, or inter-insurance exchange or Lloyds Association writing Workmen's Compensation insurance in this state, shall pay annually into the General Revenue Fund in the State Treasury an amount equal to forty-five one-hundredths (45/100) of one percent (1%) of gross premiums collected by such company or association during the preceding year under workmen's compensation policies written by such companies or associations covering risks in this state according to the reports made to the Board of Insurance Commissioners as required by law. Said amount shall be collected at the same time and in the same manner as provided by law for the collection of taxes on gross premiums of such workmen's compensation insurance carriers. All self-insurers under any of the Workmen's Compensation Acts of the State of Texas shall report to the State Board of Insurance the total amount of their medical and indemnity costs for the previous year and pay a like amount of tax as provided above on said total amount of medical and indemnity costs. Failure to make any report required by this Section shall be punishable by fine not to exceed One Thousand ($1000) Dollars and the failure to pay any tax within thirty (30) days after same is due under this Section shall be punishable by a penalty of ten percent (10%) of the amount, and shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas and such penalties when collected shall be deposited in the General Revenue Fund in the State Treasury.

Maximum and Minimum Weekly Benefits

Sec. 29.

[See Compact Edition, Volume 1 for text of 29(a) and (b)]

(c) If the annual average of the manufacturing production workers average weekly wage in Texas exceeds by Ten Dollars ($10) the average weekly wage for those workers in 1974 as determined by the Texas Employment Commission and published in its report, "The Average Weekly Wage," the maximum weekly benefit shall be increased by Seven Dollars ($7) and the minimum weekly benefit shall be increased by One Dollar ($1) above the amounts specified in Subsection (b) of this section beginning with the commencement of the state fiscal year following the publication of the report. Thereafter, each cumulative Ten Dollar ($10) increase in the average weekly wage for manufacturing production workers in Texas as annually determined and reported by the Texas Employment Commission shall cumulatively increase the maximum weekly benefit by an additional Seven Dollars ($7) and the minimum weekly benefit by an additional One Dollar ($1) beginning with the commencement of the state fiscal year following the publication of the report.

[Amended by Acts 1977, 65th Leg., p. 594, ch. 210, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 756, ch. 284, § 1, eff. May 27, 1977; Acts 1977, 65th Leg., p. 1124, ch. 420, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1221, ch. 470, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1861, ch. 738, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2004, ch. 801, §§ 1, 2, 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 521, ch. 244, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 730, ch. 323, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1096, ch. 513, § 1, eff. June 11, 1979; Acts 1979, 66th Leg., p. 1457, ch. 639, § 1, eff. June 13, 1979; Acts 1981, 67th Leg., p. 3290, ch. 861, § 1, eff. June 18, 1981.]

Section 2 of the 1981 amendatory act provides:

"The rights, powers, and duties of an employee, a legal beneficiary of an employee, or an insurer with respect to claims for injuries sustained before the effective date of this Act are governed by the law as it exists prior to that effective date and for that purpose the prior law is continued in effect."

Art. 8306b. "Workmen's Compensation" Changed to "Workers' Compensation"

Sec. 1. The term "workmen's compensation" shall hereafter be known as "workers' compensation," and references to "workmen's compensation" in the statutes of this state shall be changed to "workers' compensation" when sections of those laws are being amended for any purpose.

Sec. 2. Forms and printed materials used by any state agency which incorporate the term "workmen's compensation" shall be modified to substitute the term "workers' compensation" after the present supply of forms and materials is exhausted. State agencies, including the State Board of Insurance and the Industrial Accident Board, may promulgate reasonable rules and regulations necessary to carry out the intent of this Act.

[Acts 1977, 65th Leg., p. 154, ch. 77, §§ 1, 2, eff. Aug. 29, 1977.]

PART 2

Art. 8307. Industrial Accident Board

[See Compact Edition, Volume 5 for text of 1]

Application of Sunset Act

Sec. 1a. The Industrial Accident Board is subject to the Texas Sunset Act; [1] and unless continued in existence as provided by that Act the board is abolished, and this article expires effective September 1, 1983.

[1] Article 5429k.

[See Compact Edition, Volume 5 for text of 2 to 4a]

Application of Administrative Procedure and Texas Register Act

Sec. 4b. Sections 1 through 12 of the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) apply to the Industrial Accident Board. However, Section 4(a)(3) and Sections 13 through 20 of the Administrative Procedure and Texas Register Act do not apply, and Section 4(b) of that Act shall not apply to orders and decisions of the Industrial Accident Board.

Determination of Questions; Suit to Set Aside Final Ruling and Decision; Revocation of Association's License

Sec. 5. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall, within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred, or in the county where the employee resided at the time the injury occurred (or, if such employee is deceased, then in the county where the employee resided at the time of his death), to set aside said final ruling and decision, and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. In all cases of occupational diseases, for the purpose of determining venue when an appeal is effected to set aside the final ruling and decision of the Board, suit shall be brought in a court of competent jurisdiction in the said county in which the employee was last exposed to the disease alleged, prior to the manifestation of the disease, or death therefrom, or in the county in which the adverse party resides, or has a permanent place or business, or by agreement of the parties in a court of competent jurisdiction in any county in this state. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law, and the suit of the injured employee or person suing on account of the death of such employee shall be against the Association, if the employer of such

injured or deceased employee at the time of such injury or death was a subscriber as defined in this law. If the final order of the Board is against the Association, then the Association and not the employer shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause, instead of the Board, upon trial de novo, and the burden of proof shall be upon the party claiming compensation. The Industrial Accident Board shall furnish any interested party in said claim pending in court, upon request, free of charge, with a certified copy of the notice of the employer becoming a subscriber, filed with the Board, and the same when properly certified to shall be admissible in evidence in any court in this state upon trial of such claim therein pending, and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery, the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto; and, if the same is against the Association, it shall at once comply with such final ruling and decision; and failing to do so, the Board shall certify the fact to the Commissioner of Insurance, and such certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such Association to do business in Texas.

Notwithstanding any other provision of this law, as amended, no award of the Board, and no judgment of the court, having jurisdiction of a claim against the association for the cost or expense of items of medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances furnished to an employee under circumstances creating a liability therefor on the part of the association under the provisions of this law, shall include in such award or judgment any cost or expense of any such items not actually furnished to and received by the employee prior to the date of said award or judgment. The first such final award or judgment rendered on such claim shall be res judicata of the liability of the association for all such cost or expense which could have been claimed up to the date of said award or judgment and of the issue that the injury of said employee is subject to the provisions of this law with respect to such items, but shall not be res judicata of the obligation of the association to furnish or pay for any such items after the date of said award or judgment. After the first such final award or judgment, the Board shall have continuing jurisdiction in the same case to render successive awards to determine the liability of the association for the cost or expense of any such items actually furnished to and received by said employee not more than six (6) months prior to the date of each such successive award, until the association shall have fully discharged its obligation under this law to furnish all such medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances to which said employee may be entitled; provided, each such successive award of the Board shall be subject to a suit to set aside said award by a court of competent jurisdiction, in the same manner as provided in the case of other awards under this law.

[See Compact Edition, Volume 5 for text of 5a to 6a]

Record of Injuries; Reports

Sec. 7. Every subscriber shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment. After the occurrence of an accident resulting in an injury to an employee, causing his absence from work for more than one (1) day, or after the employee notifies the employer of a definite manifestation of an occupational disease, a written report thereof shall be made within eight (8) days following said absence from work and notice thereof to the employer or notice of manifestation of an occupational disease to the Board on blanks to be procured from the Board for that purpose. Upon the termination of the incapacity of the injured employee, or if such incapacity extends beyond a period of sixty (60) days, the subscriber shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employee, and the character of work in which he was engaged at the time of the injury, and shall state the date and hour of receiving such injury or of the definite manifestation of the occupational disease, and the nature and cause of the injury, and such other information as the Board may require. Any employer wilfully failing or refusing to make any such report within the time herein provided, or wilfully failing or refusing to give said Board any information demanded by said Board relating to any injury to any employee, which information is in the possession of or can be ascertained by the employer by the use of reasonable diligence, shall be liable for and shall pay to the State of Texas a penalty of not more than One Thousand ($1,000.00) Dollars for each and every offense, the same to be recovered in a suit to be instituted and prosecuted in Travis County by the Attorney General or by the district or county attorney, under his direction, in a District Court thereof.

[See Compact Edition, Volume 5 for text of 7a to 9]

Confidentiality of Records; Fraudulent Claims or Claimants

Sec. 9a. (a) Information in a worker's claim file is confidential and may not be disclosed except as provided in this section.

(b) If there is a workers' compensation claim for the named claimant open or pending before the Industrial Accident Board or on appeal to a court of competent jurisdiction from the Board or which is the subject matter of a subsequent suit where the carrier is subrogated to the rights of the named claimant at the time a record search or request for information is presented to the Board, the information shall be furnished as provided in this section. The first, middle, and last name of the claimant, age and social security number, and, if possible, dates of injury and the names of prior employers must be given in the request for information by the requesting party. The Board will furnish the requested information or a record check only to the following:

(1) the claimant;

(2) the attorney for the claimant;

(3) the carrier;

(4) the employer at the time of the current injury;

(5) third-party litigants; or

(6) the State Board of Insurance.

A third-party litigant in a suit arising out of an occurrence with respect to which a workers' compensation claim was filed is entitled to the information without regard to whether or not the compensation claim is still pending.

(c) All information of the Industrial Accident Board concerning any person who has been finally adjudicated to be a fraudulent claimant as provided in this section is not confidential and shall be furnished to any person requesting the information, notwithstanding any other provision of this law.

(d) The Board shall release to any employer with whom a person has made application for employment within the 14 days prior to the request the date of injury and nature of injury to that person if that person has had three or more general injury claims filed in the preceding five years in which weekly compensation payments have been made. The request for information shall give the name, address, and social security number of the person about whom information is sought. The Board shall release this information only if the employer has written authorization from the person about whom information is sought. The Board shall release the information by telephone, but the employer must file the written authorization with the Board within 10 days after the information is released. If the employer requests information about three or more persons at the same time, the Board may refuse to release the information except on written request from the employer and receipt of the written authorization from each person about whom the information is sought. An employer who receives the information but fails to file the authorization within the required period is guilty of a misdemeanor and on conviction shall be fined not more than $1,000. Failure to file each authorization is a separate offense.

(e)(1) The attorney general shall promptly investigate any allegation of fraud on the part of an employer, employee, attorney, person or facility furnishing medical services authorized by Section 7 of Article 8306, Revised Civil Statutes of Texas, 1925, or insurance company or its representative relating to any claim. In order to carry out the requirements of this section, the attorney general is vested with complete power to investigate and prosecute any and all allegations of fraudulent claim practices which may be submitted to the Board or which may be uncovered through the attorney general's own efforts. The attorney general shall cooperate with professional grievance committees, law enforcement officials, the Industrial Accident Board, and other state agencies in the investigation and prosecution of fraudulent practices. It shall be the responsibility of the attorney general to prosecute those cases in which he finds the reasonable probability that acts of fraud exist before all hearings of the Board or on appeal from the determination of such hearings.

(2) In those cases in which a claimant makes a fifth claim for compensation within any five-year period, the Board shall automatically notify the attorney general who shall investigate to determine if the probability of fraud exists in connection with the current claim or any of the prior claims.

(3) Whenever the attorney general believes that any person, facility, or company may be in possession, custody, or control of any documentary material relevant to the subject matter under investigation, an authorized member of the attorney general's staff may execute in writing and serve on the person, facility, or company a civil investigative demand requiring the person, facility, or company to produce the documentary material and permit inspection and copying.

(A) Each demand shall:

(i) make reference to this section and state the general subject matter of the investigation;

(ii) describe the class or classes of documentary material to be produced with reasonable specificity so as to fairly indicate the material demanded;

(iii) prescribe a return date within which the documentary material is to be produced; and

(iv) identify the members of the attorney general's staff to whom the documentary material is to be made available for inspection and copying.

(B) A civil investigative demand may contain a requirement or disclosure of documentary material which would be discoverable under the Texas Rules of Civil Procedure.

(C) Service of any demand may be made by:

(i) delivering a duly executed copy of the demand to the person, facility, or company to be served or to a partner or to any officer or agent authorized by appointment or by law to receive

service of process on behalf of that person, facility, or company;

(ii) delivering a duly executed copy of the demand to the principal place of business in the state of the person, facility, or company to be served;

(iii) mailing by registered mail or certified mail a duly executed copy of the demand addressed in the case of a claimant to his last known address, or in the case of any other person, facility, or company, to the principal place of business in this state, or if the person, facility, or company has no place of business in this state, to the principal office or place of business in any other state.

(D) Documentary material demanded pursuant to this subsection shall be produced for inspection and copying during normal business hours at the principal office or place of business or residence of the person, facility, or company served or at other times and places as may be agreed on by the person served and the attorney general's staff.

(E) No documentary material produced pursuant to a demand under this subsection, unless otherwise ordered by the Industrial Accident Board for good cause shown, shall be produced for inspection or copying by nor shall its contents be disclosed to any person other than the designated members of the attorney general's staff without the consent of the person who produced the material. The attorney general shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person, facility, or company who produced the material or any duly authorized representative of such person, facility, or company. The attorney general may use the documentary material or copies of it as he determines necessary in the prosecution of fraudulent claim practices, including presentation before the Industrial Accident Board and any court.

(F) At any time before the return date specified in the demand or within 10 days after the demand has been served, whichever period is shorter, a petition to extend the return date for or to modify or set aside the demand, stating good cause, may be filed with the Industrial Accident Board.

(G) A person, facility, or company on whom a demand is served under this subsection shall comply with the terms of the demand unless otherwise provided by order of the Industrial Accident Board.

(H) Personal service of a similar investigative demand under this subsection may be made on any person, facility, or company outside of this state if the person, facility, or company has engaged in fraudulent claim practices in this state. Such persons, facilities, or companies shall be deemed to have submitted themselves to the jurisdiction of this state within the meaning of this section.

(4)(A) Any person, facility, or company who, with intent to avoid, evade, or prevent compliance, in whole or in part, with Subdivision (3) of Subsection (e) of this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any means falsifies any documentary material is guilty of a Class A misdemeanor.

(B) If a person, facility, or company fails to comply with a civil investigative demand for documentary material served on him under Subdivision (3) of Subsection (e) of this section, or if satisfactory copying or reproduction of the material cannot be done and the person, facility, or company refuses to surrender the material, the attorney general may file with the Industrial Accident Board a petition for an order of the Board for enforcement of Subdivision (3) of Subsection (e) of this section.

(C) When a petition is filed with the Industrial Accident Board under Subsection (e)(4)(B) of this section, the Industrial Accident Board shall have jurisdiction to hear and determine the matter presented and to enter any order required to carry into effect the provisions of Subdivision (3) of Subsection (e) of this section. Any final order entered is subject to immediate and preferential review by any district court in Travis County. Failure to comply with any final order entered to carry into effect the provisions of Subdivision (3) of Subsection (e) of this section is punishable by contempt.

(5) If the attorney general finds that a reasonable probability of fraud exists, the attorney general shall request a hearing and the Board shall set the matter for hearing. On the setting of this matter, the Board or any member thereof shall, no later than five days following receipt of the request for hearing, notify the person under investigation, as well as the other parties involved in the case, in writing of the allegation against him and of his rights to attend and offer evidence at the hearing. This notice must be mailed by certified mail to the last known address of the person, must state the time and place for the hearing, which shall be no less than 30 nor more than 45 days after the attorney general has filed the request for hearing, and must notify the person of his right to counsel and his right of access to the complete Board files relating to the claim or claims under investigation. Provided, however, that the 45-day limitation may be waived by the Industrial Accident Board upon receipt by the Board of a written request for waiver signed by the person under investigation or his attorney. Any investigation initiated under this section shall be concluded within 60 days unless by a unanimous vote of the Board the time is extended. In those cases in which a claimant has a claim pending before the Board, extension may not exceed an additional 60 days.

(f) In addition to the powers granted under Section 4 of this article, as amended, the Board or any member thereof has the power to compel the attendance of witnesses, take evidence, and require the production of any records in conjunction with this

hearing. The person under investigation has the same power to compel the attendance of witnesses and the production of records and documents.

(g) After this hearing, the Board shall reduce its findings to writing and provide the person under investigation, as well as the other parties involved in the case, with a copy. If the Board determines that the claimant has been fraudulent in any or all of his claims for compensation, the Board shall then classify that claimant as a fraudulent claimant, which designation is final unless appealed by the claimant as provided in this section. If the Board determines that any other person except an employer under investigation has been fraudulent in connection with a claim for compensation, the Board may exercise its authority under Section 4 of this article, as amended, or report its findings to the appropriate professional grievance committee, law enforcement officials, or other state agencies for prosecution, or both. An employer who has been adjudicated to be fraudulent shall be subject to the provisions of Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes), as if he had discriminated against an employee for filing a claim. Actions taken by the Board in accordance with this procedure may be appealed by the aggrieved person by trial de novo to a district court of competent jurisdiction in the county of his residence, whose final judgment shall be determinative of his classification as a fraudulent claimant. Appeal shall be in accordance with Section 5 of this article, as amended.

(h) Pending an investigation and hearing or appeal of allegations of fraud under this section, the Board may not approve a compromise settlement agreement or make a final award in connection with the worker's claims then pending before the Board.

(i) If any worker shall be finally adjudicated to be a fraudulent claimant, the Board may terminate any compensation which the fraudulent claimant is currently drawing and require repayment to the association of any amounts so drawn.

(j) If any worker is finally adjudicated to be a fraudulent claimant, that fact shall automatically be furnished to any employer, any insurance carrier, or any attorney for the claimant as regards all claims then pending before the Board and as regards all future claims which that claimant may thereafter file with the Industrial Accident Board; otherwise, the Board shall process the claim as generally provided under the workers' compensation law.

(k) Nothing in the preceding sections shall diminish the power of the Industrial Accident Board on its own initiative to investigate or punish fraudulent acts.

(*l*) This section does not give authority to withhold information from committees of the legislature to use for legislative purposes.

(m) Any information pertaining to a worker's compensation file which is confidential by virtue of any of the terms of this Act shall retain such confidentiality when released to any investigative, legislative, or law enforcement agency including the attorney general, district attorneys, grand juries, or legislative committees. Any individual who shall publish, disclose, or distribute any such confidential information which is possessed by any investigative, legislative, or law enforcement agency to any other individual, corporation, or association not entitled to have received such information directly from the Industrial Accident Board under the provisions of this law commits an offense, and any person, corporation, or association who receives any such confidential information when such person was not entitled to have received the same from the Industrial Accident Board under the provisions of this law commits an offense. An offense under this subsection is a Class A misdemeanor. Any district court of Travis County shall have jurisdiction to enjoin possession and the use by any individual, corporation, or association of any information made confidential by this Act when such possession or use is not authorized by this Act. This subsection does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has made application for employment, provided such information was lawfully acquired by the employer releasing the same.

(n) Nothing herein prohibits any person from receiving from the Industrial Accident Board all information contained in any record or file of the Industrial Accident Board begun after September 1, 1971, in statistical form and in a manner so as not to disclose the name or identity of any person, except as provided in this section.

Hearings; Investigations; Appearance of Claimants; Pre-hearing Conferences and Officers; Rules and Regulations

Sec. 10. (a) Said Board or any member thereof may hold hearings or take testimony or make investigations at any point within this state, reporting the result thereof, if the same is made by one member, to the Board. The Board shall also employ and use the assistance of a sufficient number of pre-hearing officers for the purpose of adjusting and settling claims for compensation; provided, however, that pre-hearing officers shall not be empowered to take testimony.

Notwithstanding any provision of this Act, no claimant shall be required to appear before the Board or Board Member within a distance greater than one hundred (100) miles from the courthouse of the county of the claimant's residence or within a greater distance than one hundred (100) miles of the courthouse of the county where the injury occurred.

(b) The Board shall examine and review all controverted claims and shall schedule and hold pre-hearing conferences on such claims as the Board may designate. It shall have the power to direct the parties, their attorneys, or authorized agents of the parties to appear before the Board, any member

thereof or a pre-hearing officer for pre-hearing conferences to attempt to adjust and settle the claim amicably and to take such other action other than taking of testimony that may aid in the disposition of the claim. Provided, however, that no matter occurring during, or fact developed in, a pre-hearing conference shall be deemed as admissions or evidence or impeachment against the association, employee or the subscriber in any other proceedings except before the Board.

Provided further that pre-hearing officers shall prepare a report to the Board Members on cases not settled at pre-hearing conference, stating the pre-hearing officer's recommendations for the award, and the basis therefor, with copies of said recommendations furnished to all interested parties and the association shall furnish a copy of the recommendation to the subscriber.

The Board shall provide a reasonable time to all interested parties in each case for filing a formal statement of respective positions, both factual and legal, as well as reply to pre-hearing officer's recommendations, all of which evidence shall be duly considered by the Board Members in making said final award. Unrepresented claimants are exempted from the provision requiring formal statement of respective positions.

The Association and counsel for claimant shall be required to admit, deny, or qualify each point in the pre-hearing officer's recommendations.

The Board shall promulgate procedural rules and regulations not inconsistent with this law to govern such pre-hearing conferences and provided further, such rules and regulations shall not affect nor change any substantive portion of this law.

[See Compact Edition, Volume 5 for text of 11 to 12]

Settlement of Suits to Set Aside Awards

Sec. 12a. On the application of either party to a suit to set aside the award of the board, the court may approve a settlement agreement presented at any time before the jury has returned in the trial of the suit. In approving the settlement agreement, the court may either conduct a hearing on the agreement or approve it without a hearing if the claimant submits a sworn affidavit acknowledging his agreement to settle the cause of action and evidencing his full understanding of all the provisions of the settlement agreement.

[See Compact Edition, Volume 5 for text of 13 and 14]

[Amended by Acts 1975, 64th Leg., p. 1131, ch. 430, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 770, ch. 292, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1113, ch. 412, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1686, ch. 667, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.056, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2005, ch. 801, §§ 3, 5, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 710, ch. 309, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2152, ch. 501, § 2, eff. Aug. 31, 1981.]

Art. 8307a. Suit to Set Aside Decision of Industrial Accident Board; Transfer to County Where Injury Occurred

Any interested party who is not willing and does not consent to abide by the final ruling and decision of the Industrial Accident Board shall, in the manner and within the time provided by Section 5 of Article 8307, Revised Civil Statutes of 1925, file notice with said Board, and bring suit in the county where the injury occurred, or in the county where the employee resided at the time the injury occurred or, if such employee is deceased, then in the county where the employee resided at the time of his death to set aside said final ruling and decision; however, in the event such suit is brought in any county other than the county where the injury occurred, or in the county of the employee's residence at the time of injury or death, the Court in which same is filed shall, upon ascertaining that it does not have jurisdiction to render judgment upon the merits, transfer the case to a proper Court in the county where the injury occurred or in the county where the employee resided at the time of injury or at the time of death. Provided, however, that notice of said transfer shall be given to the parties and said suit when filed in the court to which the transfer is made, shall be considered for all purposes, the same as if originally filed in said court.

[Amended by Acts 1979, 66th Leg., p. 203, ch. 112, § 1, eff. May 9, 1979.]

Art. 8307d. Nonsuit in Appeals from Industrial Accident Board Award

At any time before the jury has retired in the trial of a workmen's compensation case on appeal from an award of the Industrial Accident Board, the plaintiff may take a nonsuit after notice to the other parties to the suit and a hearing held by which time all parties must perfect their cause of action, but he shall not thereby prejudice the right of an adverse party to be heard on his claim for affirmative relief. When the case is tried by the judge of a district or county court, such nonsuit, after notice and hearing, may be taken at any time before the decision is announced.

[Acts 1975, 64th Leg., p. 952, ch. 358, § 1, eff. June 19, 1976.]

PART 3

Art. 8308. Employers' Insurance Association

[See Compact Edition, Volume 5 for text of 1 to 17]

Furnishing Workmen's Compensation Benefits to Additional Employees or Classifications of Employees by Purchasing Appropriate Insurance; Jurisdiction of Claims

Sec. 18. (a) Any employer may assume with respect to any employee or classification of employees not within the coverage of this law, other than any such employee or classification of employees for whom a rule of liability or a method of compensation

has been or may be established by the Congress of the United States, the liability for compensation imposed upon employers by this law with respect to employees within the coverage of this law, and the purchase and acceptance by such employer of valid workmen's compensation insurance applicable to such employee or classification of employees shall constitute as to such employer subscription to this law without any further act on the part of such employer, but only with respect to such employee or such classification of employees as is within the coverage of said workmen's compensation insurance, and such subscription shall take effect from the effective date of such workmen's compensation insurance and shall continue as long only as such employer remains a subscriber, and each such employee shall be held to have waived his right of action at common law or under any statute of this State to recover damages for injuries sustained in the course of his employment if he shall not have given his employer notice that he claimed such right, in accordance with the provisions of Article 8306, Section 3a. It is specifically provided, however, that under no circumstances shall the failure of any employer to assume with respect to any employee or classification of employees the liability for compensation and to purchase workmen's compensation insurance applicable to such employee or classification of employees, as made optional with the employer by this law, be construed as depriving such employer of the common law defenses listed in Section 1 of Article 8306, Revised Civil Statutes of the State of Texas.

(b) A claim for compensation under insurance provided under Subsection (a) of this section is subject to the jurisdiction of the Board as other claims for compensation under this law.

Information to be Furnished when Employer Becomes Subscriber; Failure to Comply; Notice; Penalty

Sec. 18a. Whenever any employer of labor in this State becomes a subscriber to this law, he or the insurance company shall immediately notify the Board of such fact, stating in such notice his name, place of business, and the name of the insurance company carrying his insurance, and the effective date of the policy. No further notice shall be required except as provided in Section 20a hereof. Such subscriber's notice shall be acknowledged by the insurance company. Any employer or association willfully failing or refusing to make any such report shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars for each offense. The Executive Director of the Board shall notify the Board of any willful failure or refusal to comply with this Section and after notice and hearing, the Board shall make a finding and if said finding is against the employer or association assess a penalty not to exceed one thousand dollars. The employer or association may appeal the Board's ruling de novo as provided in Section 5, Article 8307, Revised Civil Statutes of Texas, 1925, as amended. The Board's ruling if adverse to the employer or association and not appealed as provided above shall be enforced as provided in Section 5a, Article 8307, Revised Civil Statutes of Texas, 1925, as amended.

[See Compact Edition, Volume 5 for text of 19 and 20]

Notice of Cancellation or Nonrenewal

Sec. 20a. If the association cancels a policy or does not renew it on its anniversary date, the association shall send notice of the cancellation or nonrenewal to the subscriber by certified mail at least 10 days prior to the effective date of cancellation or nonrenewal and to the board by certified mail or in person on or before the date of cancellation or nonrenewal. Failure of the association to give the notice as required by this section shall extend the policy until the required notice is given to the subscriber and to the Industrial Accident Board.

[See Compact Edition, Volume 5 for text of 21 to 23]

[Amended by Acts 1977, 65th Leg., p. 889, ch. 333, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1861, ch. 738, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1299, ch. 601, §§ 1, 2, eff. June 13, 1979; Acts 1981, 67th Leg., p. 1803, ch. 395, § 1, eff. Aug. 31, 1981.]

PART 4

Art. 8309. Definitions and General Provisions

[See Compact Edition, Volume 5 for text of 1]

Individuals Covered by Subscriber

Sec. 1a. (a) Notwithstanding any other provision of this law, a subscriber may cover in its insurance contract a partner, a sole proprietor, or a corporate executive officer, except an officer of a state educational institution. The insurance contract shall specifically include the partner, sole proprietor, or corporate executive officer; and the elected coverage shall continue while the policy is in effect and while the named individual is endorsed thereon by a subscriber.

(b) Notwithstanding any other provision of this law, a subscriber may cover in its insurance contract a real estate salesman who is compensated solely by commissions. The insurance contract shall specifically include the salesman; and the elected coverage shall continue while the policy is in effect and while the named salesman is endorsed thereon by the subscriber.

[See Compact Edition, Volume 5 for text of 1b]

Insurance Companies May Insure

Sec. 2. Any insurance company, which term shall include mutual and reciprocal companies, lawfully transacting a liability or accident business in this

State, shall have the same right to insure the liability and pay the compensation provided for in Part I of this law,[1] and when such company issues a policy conditioned to pay such compensation, the holder of such policy shall be regarded as a subscriber so far as applicable under this law, and when such company insures such payment of compensation it shall be subject to the provisions of Parts I, II and IV[2] and of Sections 10, 17, 18a, 20a, and 21 of Part III of this law.[3] Such company may have and exercise all of the rights and powers conferred by this law on the association created hereby, but such rights and powers shall not be exercised by a mutual or reciprocal organization unless such organization has at least fifty (50) subscribers who have not less than two thousand (2,000) employees. Nothing contained in this or any other law shall require an insurance company or the association to issue a policy to any applicant applying for coverage under this law, except as provided in Article 5.76 of the Insurance Code of Texas.

[1] Article 8306.
[2] Articles 8306, 8307, and this article.
[3] Article 8308, §§ 10, 17, 18a, 20a, and 21.

[See Compact Edition, Volume 5 for text of 3 to 5]

Additional Interpretation

Sec. 6. As used in this Act and in Articles 8309g and 8309h, Revised Civil Statutes of Texas, 1925, as amended; Chapter 229, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 8309b, Vernon's Texas Civil Statutes); Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 8309d, Vernon's Texas Civil Statutes); Chapter 252, Acts of the 55th Legislature, Regular Session, 1957 (Article 8309f, Vernon's Texas Civil Statutes), and other applicable provisions of the workmen's compensation laws of this state as now or hereafter enacted or amended, wherein the terms medical aid, medical treatment, medical services, surgical treatment, surgical services, medical costs, physician, or other words of import for the limited purpose of this Act and only in this Act shall be construed to include services performed by a doctor of podiatric medicine, acting within the scope of his or her license, except in Section 13 of Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 8309d, Vernon's Texas Civil Statutes); Sections 13 and 14 of Chapter 252, Acts of the 55th Legislature, Regular Session, 1957 (Article 8309f, Vernon's Texas Civil Statutes); and Sections 13 and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended, provided, further, nothing herein shall be construed to alter, modify, or amend the definition of the practice of medicine or who may be permitted by law to practice medicine in this state, or to allow any person not licensed by the Texas State Board of Medical Examiners to use any title, letter, syllable, word, or words that would tend to lead the public to believe such person was a physician or surgeon authorized to practice medicine as defined in Article 4510, Revised Civil Statutes of Texas, 1925, as now or hereafter amended.

[Amended by Acts 1975, 64th Leg., p. 100, ch. 42, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 79, ch. 37, § 1, eff. March 30, 1977; Acts 1979, 66th Leg., p. 1215, ch. 587, § 1, eff. June 13, 1979.]

Section 2 of the 1977 Act provided:

"All laws or parts of laws in conflict with this Act are repealed to the extent of such conflict."

Art. 8309b. Texas A&M University Employees

[See Compact Edition, Volume 5 for text of 1 to 12]

Rules and Regulations; Physicians or Chiropractors for Examinations; Reports of Examinations

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. The institution may obtain and record, on a form and in a manner prescribed by the institution, the medical history of a person to be employed in the service of the institution. The institution may designate a convenient number of regularly licensed practicing physicians, surgeons and chiropractors for the purpose of making physical examinations of persons to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in subsection 2 of Section 2 of this Act, and said physicians, surgeons and chiropractors so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. The institution, in a form and manner prescribed by the institution, shall preserve as a part of the permanent records of the institution all reports of all such examinations and medical histories so filed with it.

Requiring Physical Examination for Certification as Workman

Sec. 14. The institution may require that no person be certified as a workman in the institution under the terms and provisions of this Act until he has submitted himself for a physical examination as provided in Section 13 herein and has been certified by the examining physician, surgeon, or chiropractor, to be physically fit to perform the duties and services to which he is to be assigned.

Certification as Workman of Person having Preexisting Disqualifying Physical Condition; Waiver of Insurance Coverage

Sec. 15. In the discretion of the institution, any person who indicates a preexisting disqualifying physical condition in a medical history provided under Section 13, or any person found to have a preexisting disqualifying medical condition in a physical examination as provided in Section 14 may be certified as a workman on the condition that such person shall execute in writing, prior to his employment, a waiver of coverage under the provisions of this Act for the preexisting disqualifying physical condition. Such waiver shall be valid and binding on the workman so executing it and, in the event of injury or death of the workman suffered in the

course of his employment and attributable to the condition for which coverage was waived, no compensation or death benefits shall be paid to him or his beneficiaries.

[See Compact Edition, Volume 5 for text of 16 to 22]

[Amended by Acts 1977, 65th Leg., p. 1491, ch. 605, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 8309f. Repealed by Acts 1977, 65th Leg., p. 266, ch. 127, § 2, eff. Sept. 1, 1977

See, now, art. 8309g-1.

Art. 8309g. Workmen's Compensation Insurance for Employees of Political Subdivisions

Definitions

Sec. 1. In this article:

(1) "Employee" means a person in the service of the state pursuant to election, appointment, or an express contract of hire, oral or written. The term includes a person who is paid from state funds but whose duties require they work and frequently receive supervision in a political subdivision of the state.

(2) The word "employee" shall not include:

(A) Persons performing personal services for the State of Texas as independent contractors or volunteers.

(B) Members of the state military forces as defined in Section 1, Article 5765, Revised Civil Statutes of Texas, 1925.

(C) Persons who are at the time of injury performing services for the federal government and who are covered by some form of federal workers' compensation, including those working under Comprehensive Employment and Training Act of 1973 programs; [1] prisoners or inmates of a prison or correctional institution; clients or patients of any state institution or agency.

(D) Persons employed by the State Department of Highways and Public Transportation that are covered under Chapter 502, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6674s, Vernon's Texas Civil Statutes).

(E) Persons employed by The University of Texas that are covered by Chapter 310, Acts of the 52nd Legislature, 1951, as amended (Article 8309d, Revised Civil Statutes of Texas).

(F) Persons employed by The Texas A&M University System that are covered by Chapter 229, Acts of the 50th Legislature, 1947, as amended (Article 8309b, Vernon's Texas Civil Statutes).

(3) "Legal beneficiaries," "average weekly wages," and "injury sustained in the course of employment" have the meaning assigned to them in Section 1, Article 8309, Revised Civil Statutes of Texas, 1925, as amended.

(4) "Board" means the Industrial Accident Board.

(5) "Division" means the State Employees Division of the Attorney General's Office.

(6) "Director" means the director of the State Employees Division.

[1] 29 U.S.C.A. § 801 et seq.

[See Compact Edition, Volume 5 for text of 2]

State Employees Division; Director

Sec. 3. The Attorney General shall establish a state employees division within his office to administer this article. He shall appoint a director to act as the chief executive and administrative officer of the division, and shall provide him with office space and sufficient personnel to administer this article. The director shall administer this article with money appropriated by the Legislature. The director, with the approval of the Attorney General, may contract with a company authorized to do business in this state for any or all of the administrative services required by this article. Such contract shall be awarded on the basis of competitive bidding by qualified companies.

[See Compact Edition, Volume 5 for text of 4 and 5]

Rules for Accident Prevention

Sec. 6. The director shall make and enforce reasonable rules for the prevention of accidents and injuries. He shall hold hearings on all proposed rules under this section and afford reasonable opportunity for officers of the departments, boards, commissions, and agencies of the state to testify. The director's responsibility includes reporting to the legislature any agency that fails to meet their obligation regarding the prevention of accidents and injuries to state employees.

[See Compact Edition, Volume 5 for text of 7 to 11]

Effect of Sick Leave and Emergency Leave

Sec. 12. (a) An employee may elect to utilize accrued sick leave before receiving weekly payments of compensation. If the employee elects to utilize sick leave, the employee is not entitled to weekly payments of compensation under this article until he has exhausted his accrued sick leave.

(b) If in accordance with the General Appropriations Act the administrative head or heads of an agency or institution authorize payment for emergency leave to an employee receiving workers' compensation benefits, the payments may not exceed an amount equal to the difference between the basic monthly wage of the employee and the amount of benefits received and may not extend beyond six months from the date on which compensation pay-

ments begin. In authorizing these payments for emergency leave, the administrative head or heads of the agency or institution must review the merits of each case individually. If payment for emergency leave is authorized, the agency or institution shall attach a statement of the reasons for the authorization to its duplicate payroll voucher for the first payroll period affected by the leave.

(c) The director has authority under Section 5 of this article to provide rules for the administration of this section.

[See Compact Edition, Volume 5 for text of 13 and 14]

Adoption of General Worker's Compensation Laws; Employer

Sec. 15. (a) The following laws as amended or as they may hereafter be amended are adopted except to the extent that they are inconsistent with this Act:

(1) Article 8306, except Sections 5 and 28, and Articles 8307, 8307b, and 8309, Revised Civil Statutes of Texas, 1925, as amended;

(2) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8306a, Vernon's Texas Civil Statutes);

(3) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);

(4) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8307a, Vernon's Texas Civil Statutes);

(5) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes);

(6) Chapter 358, Acts of the 64th Legislature, 1975 (Article 8307d, Vernon's Texas Civil Statutes); and

(7) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8309a, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 15(b)]

(c) For purposes of Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes), the individual agency shall be considered the employer.

[See Compact Edition, Volume 5 for text of 16]

Coverage for Out-of-State Employees

Sec. 17. (a) Notwithstanding Section 19, Article 8306, Revised Civil Statutes of Texas, 1925, as amended, an employee who performs services outside this state is entitled to benefits under this article even if the person is not hired in this state, is injured outside this state, or has been outside this state for more than one year. An employee who elects to pursue remedies provided by the state or the District of Columbia in which an injury occurs is not entitled to benefits under this article.

(b) The director may enter into a reciprocal agreement with the appropriate agency of another state or the District of Columbia whereby employees of one state or the District of Columbia performing services in the other state or the District of Columbia shall be considered to be engaged in employment performed entirely within the employing state or the District of Columbia. The director shall enter the agreement on request of an agency of this state that has employees performing services in another state or the District of Columbia.

(c) If the law of a state or the District of Columbia in which an employee performs services requires the employee to be covered under the workers' compensation law of that state or the District of Columbia, the State of Texas shall act as a self-insurer if permitted by the law of that state or the District of Columbia. If the state is not permitted to act as a self-insurer, the director may contract for insurance coverage for that employee in accordance with the law of the state or the District of Columbia in which the employee performs the services.

[Amended by Acts 1975, 64th Leg., p. 1042, ch. 405, §§ 1, 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1144, ch. 433, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1213, ch. 586, §§ 1 to 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 83, ch. 44, § 4, eff. April 15, 1981; Acts 1981, 67th Leg., p. 937, ch. 352, §§ 1, 2, eff. Aug. 31, 1981.]

Section 3 of the 1975 Act provided:

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 8309g–1. Texas Tech University Employees

Eligible employees of Texas Tech University, Pan Tech Farm, Texas Tech University School of Medicine at Lubbock, and other agencies under the direction and control of the board of regents of Texas Tech University are entitled to participate in the workmen's compensation program for state employees provided in Article 8309g, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1977, 65th Leg., p. 266, ch. 127, § 1, eff. Sept. 1, 1977.]

Section 2 of the 1977 Act repealed art. 8309f; § 3 thereof provided: "This Act takes effect on September 1, 1977."

Art. 8309h. Workmen's Compensation Insurance for Employees of Political Subdivisions

Definitions

Sec. 1. The following words and phrases as used in this article shall unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) "Political subdivision" means a county, home-rule city, a city, town, or village organized under the general laws of this state, a special district, a school district, a junior college district, or any other legally constituted political subdivision of the state.

(2) "Employee" means every person in the service of a political subdivision who has been appointed in accordance with the provisions of the article. No person in the service of a political subdivision who is paid on a piecework basis or on a basis other than by the hour, day, week, month, or year shall be considered an employee and entitled to compensation under the terms of the provisions of this article. Provided, however, a political subdivision may cover volunteer firefighters, policemen, emergency medical personnel, and other volunteers that are specifically named who shall be entitled to full medical benefits and the minimum compensation payments provided under the law. A political subdivision may cover an elected official as an employee by a majority vote of the members of the governing body of the political subdivision. Members of a self-insurance fund created hereunder may provide coverage for themselves as well as their staff by a majority vote of such members of the fund. No class of persons who are paid as a result of jury service or an appointment to serve in the conduct of elections may be considered employees under this article unless declared to be employees by a majority vote of the members of the governing body of a political subdivision.

(3) "Board" means the Industrial Accident Board.

[See Compact Edition, Volume 5 for text of 2]

Adoption of General Workers' Compensation Laws

Sec. 3. (a) The following laws as amended or as they may hereafter be amended are adopted except to the extent that they are inconsistent with this article:

(1) Article 8306, except Sections 5 and 28, and Articles 8307, 8307b, and 8309, Revised Civil Statutes of Texas, 1925, as amended;

(2) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8306a, Vernon's Texas Civil Statutes);

(3) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);

(4) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8307a, Vernon's Texas Civil Statutes);

(5) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes), except that if the city provides by Charter or ordinance for ultimate access to the district court for wrongful discharge, Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes) is not applicable;

(6) Chapter 358, Acts of the 64th Legislature, 1975 (Article 8307d, Vernon's Texas Civil Statutes); and

(7) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8309a, Vernon's Texas Civil Statutes).

(b) Provided that whenever in the above adopted laws the words "association," "subscriber," or "employer," or their equivalents appear, they shall be construed to and shall mean "a political subdivision."

Establishment of Joint Fund

Sec. 4. A joint fund, as herein provided for, may be established by the concurrence of any two or more political subdivisions. The fund may be operated under the rules, regulations, and bylaws as established by the political subdivisions which desire to participate therein. Each political subdivision shall be and is hereby empowered to pay into said fund its proportionate part as due and to contract for the fund, by and through its directors, to make the payments due hereunder to the employees of the contracting political subdivision. The joint insurance fund herein provided for shall not be considered insurance for the purpose of any other statute of this state and shall not be subject to the regulations of the State Board of Insurance.

Purpose

Sec. 5. (a) It is the purpose of this article that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein. Provided further, however, that any and all sums for incapacity received in accordance with Chapter 325, Acts of the 50th Legislature, 1947, as amended (Article 1269m, Vernon's Texas Civil Statutes), and any other statutes now in force and effect that provide for payment for incapacity to work because of injury on the job that is also covered by this Act are hereby offset as against the benefits provided under this Act to the extent applicable. Provided that when an employee's wage is offset as prescribed above, both the employer and the employee shall pay into the pension fund on the amount of money by which his wage was offset and provided further that under no circumstances shall an employee's pension benefit be reduced as a result of his injuries or any compensation received under the provision of this Act, unless such reduction is a result of a pension revision passed by majority vote of the affected members of a pension system.

(b) When benefits are offset as in Subsection (a) of Section 5 of this Act, the employer shall not withhold the offset portion of the employees wages until such time as the benefits from this Act are received.

[See Compact Edition, Volume 4 for text of 6 to 8]

CETA Employees

Sec. 9. Notwithstanding any other provision of this law or any applicable workers' compensation

law, an employee hired in accordance with the federal Comprehensive Employment and Training Act of 1973 [1] shall be considered an employee of the federal Comprehensive Employment and Training Act prime sponsor, or its contractor or subcontractor, whichever assumes responsibility for disbursement of wages directly to the employee, and the "borrowed servant doctrine" shall not apply.

[1] 29 U.S.C.A. § 801 et seq.

[Amended by Acts 1975, 64th Leg., p. 787, ch. 302, § 1, eff. May 27, 1975; Acts 1975, 64th Leg., p. 1040, ch. 403, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1041, ch. 404, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1081, ch. 395, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1883, ch. 749, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1542, ch. 664, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 937, ch. 352, § 3, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2311, ch. 569, § 1, eff. Aug. 31, 1981.]

Art. 8309i. Payment of Judgments Against State or Department, Division, or Political Subdivision Thereof

In all cases where the State of Texas or any department, division, or political subdivision of the state fails or refuses to comply within 30 days with a judgment against that entity under Articles 8309g and 8309h, Revised Civil Statutes of Texas, 1925, as amended; Chapter 229, Acts of the 50th Legislature, Regular Session, 1947, as amended (Article 8309b, Vernon's Texas Civil Statutes); Chapter 310, Acts of the 52nd Legislature, Regular Session, 1951, as amended (Article 8309d, Vernon's Texas Civil Statutes); Chapter 252, Acts of the 55th Legislature, Regular Session, 1957 (Article 8309f,[1] Vernon's Texas Civil Statutes); or Chapter 502, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6674s, Vernon's Texas Civil Statutes), and the workmen's compensation claimant secures mandamus that the entity comply with the judgment, the claimant is also entitled to receive an award of:

(1) the sum of 12 percent of the amount of compensation recovered in the judgment, as a penalty; and

(2) a reasonable attorney's fee for the prosecution of the mandamus action.

[Acts 1977, 65th Leg., p. 761, ch. 289, § 1, eff. Aug. 29, 1977.]

[1] Repealed; see, now, art. 8309g–1.

PART 5

Art. 8309–1. Crime Victims Compensation Act

Short Title

Sec. 1. This Act may be cited as the Crime Victims Compensation Act.

Declaration of Purpose

Sec. 2. The legislature recognizes that many innocent persons suffer personal injury or death as a result of criminal acts. Crime victims and persons who intervene in crimes on behalf of peace officers may suffer disabilities, incur financial burdens, or become dependent on public assistance. The legislature finds and determines that there is a need for indemnification of victims of crime and citizens who suffer personal injury or death in the prevention of crime or the apprehension of criminals.

Definitions

Sec. 3. In this Act:

(1) "Board" means the Industrial Accident Board.

(2) "Claimant" means a victim or an authorized person acting on behalf of any victim.

(3) "Collateral source" means a source of benefits or advantages for pecuniary loss awardable other than under this Act which the victim has received, or which is readily available to him or her from:

(A) the offender under an order of restitution to the claimant imposed by a court as a condition of probation;

(B) the United States or a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this Act;

(C) Social Security, Medicare and Medicaid;

(D) state-required temporary nonoccupational disability insurance;

(E) workers' compensation;

(F) wage continuation programs of any employer;

(G) proceeds of a contract of insurance payable to the victim for loss which he or she sustained because of the criminally injurious conduct; or

(H) a contract providing prepaid hospital and other health care services, or benefits for disability.

(4) "Criminally injurious conduct" means conduct that:

(A) occurs or is attempted in this state;

(B) poses a substantial threat of personal injury or death;

(C) is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; and

(D) is not conduct arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water vehicle except when intended to cause personal injury or death in violation of Section 38, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or Article 6701*l*–1 or 6701*l*–2, Revised Civil Statutes of Texas, 1925, as amended.

(5) "Dependent" means:

(A) a surviving spouse;

(B) a person who is a dependent of a deceased victim or intervenor within the meaning of Sec-

tion 152, Internal Revenue Code of 1954, as amended (26 U.S.C. Section 152); or

(C) a posthumous child of the deceased intervenor or victim.

(6) "Financial stress" means financial hardship experienced by a claimant as a result of pecuniary loss from criminally injurious conduct giving rise to a claim under this Act. A claimant suffers financial stress only if he or she cannot maintain his or her customary level of health, safety, and education for himself or herself and his or her dependents without undue financial hardship. In making its finding, the board shall consider all relevant factors, including:

(A) the number of the claimant's dependents;

(B) the usual living expenses of the claimant and his or her family;

(C) the special needs of the claimant and his or her dependents;

(D) the claimant's income and potential earning capacity; and

(E) the claimant's resources.

(7) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred:

(A) regarding personal injury for:

(i) medical, hospital, nursing, or psychiatric care or counseling, and physical therapy;

(ii) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury at a rate not to exceed $150 per week; and

(iii) care of minor children enabling a victim or his or her spouse, but not both of them, to continue gainful employment at a rate not to exceed $30 per child per week up to a maximum of $75 per week for any number of children; and

(B) as a consequence of death for:

(i) funeral and burial expenses;

(ii) loss of support to a dependent or dependents not otherwise compensated for as a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate of not more than a total of $150 per week for all dependents; and

(iii) care of minor children enabling the surviving spouse of a victim to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury, at a rate not to exceed $30 per week per child, up to a maximum of $75 per week for any number of children.

(C) pecuniary loss does not include loss attributable to pain and suffering.

(8) "Intervenor" means a person who goes to the aid of another and is killed or injured in the good faith effort to prevent criminally injurious conduct, to apprehend a person reasonably suspected of having engaged in such conduct, or to aid a police officer. Intervenor does not include a peace officer, fireman, lifeguard, or person whose employment includes the duty to protect the public safety acting within the course and scope of his or her employment.

(9) "Victim" means:

(A) a person who is a Texas resident at the time of the crime and who suffers personal injury or death as a result of criminally injurious conduct;

(B) an intervenor;

(C) a dependent of a deceased victim; and

(D) in the event of a death, a person who legally assumes the obligation or who voluntarily pays the medical or burial expenses incurred as a direct result of the crime.

(10) "Crime of violence" means any offense defined in the Penal Code that results in personal injury to a resident of this state. No act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime of violence for the purposes of this Act, except that a crime of violence includes injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle, or injury or death sustained in an accident caused by a driver in violation of Section 38, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or Article 6701*l*–1 or 6701*l*–2, Revised Civil Statutes of Texas, 1925, as amended.

Application

Sec. 4. (a) An applicant shall apply in writing in a form that conforms substantially to that prescribed by the board.

(b) No claimant may file an application unless the victim reports the crime to the appropriate state or local public safety or law enforcement agency within 72 hours after the crime is committed or within a longer period that is justified by extraordinary circumstances as determined by the board.

(c) A claimant may file an application within 180 days after the date of the crime, except that the board may extend the time for filing for good cause shown by the claimant.

(d) The application shall be verified and shall contain the following:

(1) a description of the date, nature, and circumstances of the criminally injurious conduct;

(2) a complete financial statement, including the cost of medical care or burial expenses and the loss of wages or support the claimant has incurred or will incur and the extent to which the claimant has been indemnified for these expenses from any collateral source;

(3) when appropriate, a statement indicating the extent of any disability resulting from the injury incurred;

(4) an authorization permitting the attorney general to verify the contents of the application; and

(5) other information as the board may require.

Review, Verification, Hearing

Sec. 5. (a) The board shall appoint a clerk to review all applications for assistance made by claimants under Section 4 of this Act in order to ensure that they are complete. If an application is not complete, the clerk shall return it to the claimant with a brief statement of the additional information required. Within 30 days after receiving the returned application, the claimant may either supply the additional information or appeal the action to the board, which shall review the application to determine whether or not it is complete.

(b) Immediately on receipt of the application, the board shall send a copy of the application and all pertinent documents to the attorney general. The attorney general may investigate the application, appear in hearings on the application, and present evidence supporting or opposing approval of the application.

(c) The board shall appoint one of its members to determine whether a hearing is necessary. If the member determines that a hearing is not necessary, he or she may approve the application in accordance with the provisions of Section 6 of this Act. If the member determines that a hearing is necessary or if the attorney general or the claimant requests a hearing, the board shall then consider the application at a hearing at a time and place of its choosing. The board shall notify all interested persons, including the attorney general, not less than 10 days prior to the date of the hearing.

(d) At the hearing the board shall:

(1) review the application for assistance and the report prepared by the attorney general and any other evidence obtained as a result of his or her investigation; and

(2) receive other evidence that the board finds necessary or desirable to evaluate the application properly.

(e) Incident to its review, verification, and hearing duties under this Act, the board shall have the following powers:

(1) to request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to determine whether and the extent to which a claimant qualifies for an award;

(2) the powers given to the board under Section 4, Article 8307, Revised Civil Statutes of Texas, 1925, as amended (Article 8307, Vernon's Texas Civil Statutes), except as modified by this Act; and

(3) if the mental, physical, or emotional condition of a victim is material to a claim, to order the victim to submit to a mental or physical examination by a physician or psychologist and to order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and shall require that person to file with the board a detailed written report of the examination or autopsy. The report shall set out his or her findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. The physician or psychologist shall be compensated from funds appropriated for the administration of this Act.

(f) On request of the person examined, the board shall furnish him or her a copy of the report. If the victim is deceased, the board on request shall furnish the claimant a copy of the report.

Approval or Rejection of Claim

Sec. 6. (a) The board shall award compensation for pecuniary loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements set forth in this Act have been met.

(b) The board shall establish that as a direct result of criminally injurious conduct the victim suffered physical injury or death that resulted in a pecuniary loss which the victim is unable to recoup without suffering financial stress and for which he or she is not compensated from any collateral source.

(c) The board shall deny the application if:

(1) the criminally injurious conduct is not reported or the application is not made in the manner specified in Section 4 of this Act;

(2) the victim or person whose injury or death gives rise to the application knowingly and willingly participated in the criminally injurious conduct;

(3) the claimant will not suffer financial stress as a result of the pecuniary loss arising out of criminally injurious conduct; or

(4) the victim resided in the same household as the offender or his or her accomplice.

(d) The board may deny or reduce an award otherwise payable:

(1) if the victim has not substantially cooperated with appropriate law enforcement agencies;

(2) if the behavior of the victim at the time of the act or omission giving rise to the claim was such that he or she bears a share of the responsibility for the act or omission; or

(3) to the extent that pecuniary loss is recouped from other persons, including collateral sources.

Types of Assistance; Awards

Sec. 7. (a) If an application for compensation is approved under Section 6 of this Act, the board shall determine what type of state assistance will best aid the claimant. The board may take any or all of the following actions:

(1) authorize cash payment or payments to or on behalf of the claimant for pecuniary loss as defined in Subdivision (7), Section 3 of this Act;

(2) refer the claimant to a state agency for vocational or other rehabilitative services; and

(3) provide counseling services for victims or contract with private entities to provide these services.

(b) Awards payable to a victim and all other claimants sustaining pecuniary loss because of injury or death of that victim may not exceed $50,000 in the aggregate.

(c) The board may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of pecuniary loss accrued to the date of the award shall be paid in a lump sum. An award for allowable expense that would accrue after the award is made may not be paid in a lump sum. Except as provided in Subsection (d) of this section, the part of an award that may not be paid in a lump sum shall be paid in installments.

(d) At the instance of the claimant, the board may compute future pecuniary loss to a lump sum but only upon a finding by the board that:

(1) the award in a lump sum will promote the interests of the claimant; or

(2) the present value of all future pecuniary loss does not exceed $1,000.

(e) An award for future pecuniary loss payable in installments may be made only for a period as to which the board can reasonably determine future pecuniary loss.

(f) An award is not subject to execution, attachment, garnishment, or other process, except that an award is not exempt from a claim of a creditor to the extent that he or she provided products, services, or accommodations, the costs of which are included in the award.

(g) An assignment or agreement to assign a right to reparations for loss accruing in the future is unenforceable except:

(1) an assignment of a right to reparations for work loss to secure payment of alimony, maintenance, or child support; or

(2) an assignment of a right to reparations to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

Emergency Award

Sec. 8. If prior to taking action on an application it appears likely that a final award will be made and that the claimant will suffer undue hardship if immediate economic relief is not had, the board or board member may make an emergency award in an amount not to exceed $1,500. The amount paid shall be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

Reconsideration; Judicial Review

Sec. 9. (a) The board on its own motion or on request of the claimant may reconsider a decision making or denying an award or determining its amount. The board shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud.

(b) The right of reconsideration does not affect the finality of a board decision for the purpose of judicial review.

(c) Within 20 days after the rendition of a final ruling and decision by the board, the claimant or the attorney general may file with the board notice of dissatisfaction with the final ruling and decision. The dissatisfied party shall within 20 days after giving the notice bring suit in the district court having jurisdiction in the county where the injury or death occurred or the county where the victim resided at the time the death or injury occurred, and the board shall provide for the suspension of payments to a claimant and may not reconsider an award during the pendency of an appeal of the ruling and decision on that claim. The court shall determine the issues in the cause by trial de novo, and the burden of proof is on the claimant. In computing the 20 days for filing a notice of dissatisfaction or the 20 days to bring suit, if the last day is a legal holiday or Sunday, the last day shall not be counted, and the time shall be extended to include the next business day.

Rules and Regulations; Notice of Provisions of Act

Sec. 10. (a) The board shall promulgate and adopt rules consistent with this Act governing its administration, including rules relating to the method of filing claims and the proof of entitlement to compensation. Sections 1 through 12 of the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), except Subdivision (3) of Subsection (a) and Subsection (b) of Section 4, apply to the board. Sections 13 through 20 of that Act do not apply to the board or its orders and decisions.

(b) The board may appoint hearing officers to conduct hearings or prehearing conferences under this Act when hearings or prehearing conferences are necessary to determine eligibility for compensation.

(c) When hearings or prehearing conferences are conducted, they shall be open to the public unless in a particular case the hearing officer or board determines that the hearing or prehearing conference or a part of it should be held in private because a criminal suspect has not been apprehended or because it is in the interest of the claimant.

(d) The board may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make an emergency award under Section 8 of this Act.

(e) Every hospital licensed under the laws of this state shall display prominently in its emergency room posters giving notification of the existence and general provisions of this Act. The board shall set standards for the location of the display and shall provide posters, application forms, and general information regarding this Act to each hospital and physician licensed to practice in the State of Texas.

(f) Every local law enforcement agency shall inform victims of criminally injurious conduct of the provisions of this Act and provide application forms to victims who desire to seek assistance. The board shall provide application forms and all other documents that local law enforcement agencies may require to comply with this section. The attorney general shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with him or her a description of the procedures adopted by each agency to comply.

Subrogation; Notice of Private Action

Sec. 11. (a) If compensation is awarded, the state is subrogated to all the claimant's rights to receive or recover benefits for pecuniary loss to the extent compensation is awarded from a source which is or if readily available to the claimant would be a collateral source.

(b) Before a claimant may bring an action to recover damages related to criminally injurious conduct for which compensation is claimed or awarded, the claimant must give the board prior written notice of the proposed action. After receiving the notice, the board shall promptly:

(1) join in the action as a party plaintiff to recover reparations awarded;

(2) require the claimant to bring the action in his or her individual name as a trustee in behalf of the state to recover reparations awarded; or

(3) reserve its rights and do neither in the proposed action.

(c) If, as requested by the board under Subsection (b) of this section, the claimant brings the action as trustee and recovers compensation awarded by the board, he or she may deduct from the reparations recovered in behalf of the state the reasonable expenses of the suit, including attorney's fees, expended in pursuing the recovery for the state. The claimant shall justify this deduction in writing to the board on a form provided by the board.

Attorney's Fees

Sec. 12. As part of an order, the board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. Additional attorney's fees may be awarded by a court in the event of review. Attorney's fees may be denied on a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of compensation. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed. Attorney's fees may not be paid to an attorney of a claimant unless an award is made to the claimant.

Annual Report

Sec. 13. The board shall prepare and transmit annually to the governor and the legislature a report of its activities, including a statistical summary of claims and awards made and denied. The report shall be based on the state fiscal year and shall be filed not more than 30 days after the end of each fiscal year.

Fund

Sec. 14. (a) The Compensation to Victims of Crime Fund is created in the State Treasury to be used by the board for the payment of compensation to claimants under this Act and other expenses in administering this Act. The board shall make no payments which exceed the amount of money in the fund. No general revenues may be used for payments under this Act.

(b) A person shall pay $15 as a court cost, in addition to other court costs, on conviction of any felony and shall pay $10 as a court cost, in addition to other court costs, on conviction of a misdemeanor punishable by imprisonment or by a fine of more than $200.

(c) Court costs under this section are collected in the same manner as other fines or costs.

(d) The officer collecting the costs in a municipal court case shall keep separate records of the funds collected as costs under this section and shall deposit the funds in the municipal treasury. The officer collecting the costs in a justice, county, or district court case shall keep separate records of the funds collected as costs under this section and shall deposit the funds in the county treasury.

(e) The custodian of a municipal or county treasury shall keep records of the amount of funds on deposit collected under this section and shall remit to the comptroller of public accounts before the 10th day of each month the funds collected under this section during the preceding month. The city and the county may retain five percent of the funds collected under this section as a collection fee.

(f) The comptroller of public accounts shall deposit the funds received by him or her under this section in the Compensation to Victims of Crime Fund.

(g) If application is made and an award granted for which no funds or insufficient funds are available, the board shall establish a waiting list of qualified claimants, with payment to be made when funds become available.

Effective Date

Sec. 15. Sections 1 through 13 of this Act take effect January 1, 1980. The board may not award reparations for economic loss arising from criminally injurious conduct that occurred before that date. Sections 14 and 15 of this Act take effect September 1, 1979.

Escrow Account

Sec. 16. Every firm, person, corporation, association, or other legal entity contracting with a person or the representative or assignee of any person, accused or convicted of crime in this state, with respect to the reenactment of the crime in a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment, or from the expression of the accused or convicted person's thoughts, feelings, opinions, or emotions regarding the crime shall submit a copy of the contract to the board and pay to the board any money that would otherwise by terms of the contract be owing to the accused or convicted person or his representatives. The board shall deposit the money in an escrow account.

Funds Available to Victim

Sec. 17. Money placed in an escrow account is available to satisfy a judgment against the accused or convicted person in favor of a victim of the crime if the court in which the judgment is taken finds that the judgment is for damages incurred by the victim caused by the commission of the crime.

Maintenance of Escrow Account

Sec. 18. The board shall pay money in an escrow account to the accused person if he is acquitted of the crime. The board shall pay the money in the account to the accused or convicted person if five years elapse from the date when the account was established and the money has not been ordered paid to a victim in satisfaction of a judgment.

[Acts 1979, 66th Leg., p. 402, ch. 189, §§ 1 to 13, eff. Jan. 1, 1980; §§ 14, 15, eff. Sept. 1, 1979; §§ 16 to 18, eff. Aug. 27, 1979.]

TITLE 132

OCCUPATIONAL AND BUSINESS REGULATION

Chapter		Article
6.	Auctioneers	8700
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8.	Coin-Operated Services	8801
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CHAPTER ONE. BARBERS

Art. 8401. Repealed by Acts 1979, 66th Leg., p. 1368, ch. 613, § 8, eff. Sept. 1, 1979

Art. 8402. Registering Name and Location; Jurisdiction of State Board of Barber Examiners and Cosmetology Commission

(a) Every person, firm, or corporation owning, operating or managing a barber shop shall register his full name and the location of said shop with the State Board of Barber Examiners. Each owner, operator or manager of a barber shop that is first opened for business hereafter shall within three days after the opening of such shop submit an application to the barber board for a barber shop permit.

(b) In order that the public may fix responsibility for services, acts, or treatments performed by persons licensed by the State Board of Barber Examiners vis-a-vis those performed by persons licensed by the Texas Cosmetology Commission, to promote the efficient and orderly administration of laws regulating barbers and the practice of barbering and the laws regulating cosmetologists and the practice of cosmetology and to avoid confusion of the public as well as avoiding conflicts of jurisdiction between such board and commission which might impede effective administration or enforcement of the laws under their respective jurisdictions, from and after January 31, 1980:

(1) a person licensed by the barber board may practice barbering only at a location for which the board has issued a barber shop permit, barber school or college permit, or any other permit. If the State Board of Barber Examiners and the Texas Cosmetology Commission license the same facility, the board may not adopt rules restricting or prohibiting the practice by a Class A barber in the facility; and

(2) a person licensed by the cosmetology commission may practice cosmetology only at a location for which the commission has issued a beauty shop license, private beauty culture school license, or any other license. If the State Board of Barber Examiners and the Texas Cosmetology Commission license the same facility, the commission may not adopt rules restricting or prohibiting the practice by a cosmetologist in the facility.

(c) If the State Board of Barber Examiners and the Texas Cosmetology Commission license the same facility, the agencies may not adopt rules requiring:

(1) that the work areas of barbers and cosmetologists practicing in the facility be separated;

(2) that the waiting areas for customers of the barbers and cosmetologists practicing in the facility be separated;

(3) that the facility have separate restrooms for the barbers or cosmetologists practicing in the facility or for the customers of the barbers and cosmetologists; or

(4) that the barbers and cosmetologists practicing in the facility or the customers of the barbers and cosmetologists be treated separately from each other in any similar manner.

(d) There shall at all times be prominently displayed in each shop and salon regulated under this Act, a sign in letters no smaller than one inch in height, the contents of which shall contain the name, mailing address, and telephone number of the regulatory board having jurisdiction over those individuals licensed under this Act and which shall contain a statement informing consumers that complaints against licensees can be directed to the regulatory board.

[Amended by Acts 1975, 64th Leg., p. 2144, ch. 691, § 27, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1363, ch. 613, § 1, eff. Sept. 1, 1979.]

Art. 8407a. Texas Barber Law

[See Compact Edition, Volume 5 for text of 1]

Unlicensed Practice Prohibited

Sec. 2. From and after the effective date of this Act, unless duly licensed and registered in accordance with all laws of this state regulating the practice of barbering, no person shall:

(a) practice, continue to practice, offer, or attempt to practice barbering or any part thereof;

(b) directly or indirectly, employ, use, cause to be used, or make use of any of the following terms or any combinations, variations, or abbreviations thereof, as a professional, business, or commercial identification, title, name, representation, claim, asset, or means of advantage or benefit: "barber,"

"barbering," "barber school," "barber college," "barber shop," "barber salon";

(c) directly or indirectly, employ, use, cause to be used, or make use of any letter, abbreviation, word, symbol, slogan, sign, or any combination or variation thereof, which in any manner whatsoever tends or is likely to create any impression with the public or any member thereof that any person is qualified or authorized to practice barbering or own or manage any barber shop, barber school or college.

Barber Shop Permit; Application; Fees; Display; Transfer; Renewal; Supervision; Recovery Operation

Sec. 3. (a) No person may own, operate, or manage a barber shop without a barber shop permit issued by the board.

(b) Any firm, corporation or person who opens a new barber shop shall within three days submit an application in writing to the board for a temporary barber shop permit together with an inspection fee of $25. The applicant must place in his application the permanent address of his shop including a legal description of the premises to be licensed and such other information as shall be required by the board.

(c) The board shall issue a barber shop permit to an applicant who holds a valid class A barber license and whose shop meets the minimum health standards for barber shops as promulgated by the State Department of Public Health and all rules and regulations of the board.

(d) A barber shop permit must be displayed in a conspicuous place in the barber shop for which the permit is issued.

(e) Permits are not transferable to another person. If the ownership of a barber shop is transferred to another person, the shop may continue in operation if the new owner applies for and obtains a new permit within 30 days after the transfer of ownership.

(f) To continue operating a barber shop, a person must renew the permit issued to his shop by paying a renewal fee of $25. All permits expire on July 1 of odd-numbered years.

(g) No person may operate a barber shop unless the shop is at all times under the sole and exclusive supervision and management of a registered Class A barber, and no person is practicing on the premises by authority of any license, permit or certificate issued by the Texas Cosmetology Commission.

(h) A person operating under a permit who wishes to move his operation to another location approved by the board may do so by notifying the Board of Barber Examiners ten days before he makes the move.

Definitions

Sec. 4. In this Act, unless the context otherwise requires:

(a) "barber" shall mean any person who performs, offers, or attempts to perform any act of barbering, professes to do barbering or to be engaged in the practice thereof, or who directly or indirectly or in any manner whatsoever advertises or holds himself out as a barber or as authorized to practice barbering;

(b) "barbering," "practicing barbering," or the "practice of barbering" shall mean the performing or doing, or offering or attempting to do or perform, any, all or any combination of the following acts, services, works, treatments, or undertakings:

(1) arranging, beautifying, coloring, processing, shaving, styling, or trimming the mustache or beard by any means or method;

(2) arranging, beautifying, bleaching, cleansing, coloring, curling, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, waving, or otherwise treating the hair as primary services, treatments, or undertakings by any means or method, including any bobbing, clipping, cutting, or trimming of the hair as a necessary incident preparatory or ancillary to such primary services;

(3) cutting the hair as a primary service, treatment, or undertaking and not as a necessary incident preparatory or ancillary to those primary services enumerated in Section 4(b)(2), or primarily engaging in the occupation of cutting hair or practicing primarily as a haircutter by cutting hair as a separate and independent service, treatment, or undertaking for which haircut a charge is made, as such, separate and apart from any other service, treatment, or undertaking, directly or indirectly, or in any manner whatsoever;

(4) cleansing, stimulating, or massaging the scalp, face, neck, arms, shoulders, or that part of the body above the shoulders, by means of the hands, devices, apparatuses, or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;

(5) beautifying the face, neck, arms, shoulders, or that part of the body above the shoulders, by the use of cosmetic preparations, antiseptics, tonics, lotions, powders, oils, clays, creams, or appliances;

(6) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person or attaching false nails;

(7) massaging, cleansing, treating, or beautifying the hands of any person;

(8) administering facial treatments;

(9) hair weaving;

(10) shampooing or conditioning hair;

(11) servicing a wig, toupee, or artificial hairpiece on a human head or on a block, subsequent to the initial retail sale by any of the acts, services, works, treatments, or undertakings enumerated in Section 4(b)(2) of this Act;

(12) advertising or holding out to the public by any manner whatsoever that any person is a barber or authorized to practice barbering;

(13) advertising or holding out to the public by any manner whatsoever that any location or place of business is a barber shop, barber school, barber college, or barber salon;

(14) receiving any fee, salary, compensation, or financial benefit, or the promise of any fee, salary, compensation, or financial benefit, for performing, doing, offering, or attempting to perform or do any act, work, service, or thing, which is any part of the practice of barbering as herein defined;

(c) "barber shop" or "barber salon" shall mean any place where barbering is practiced, offered, or attempted to be practiced except when such place is duly licensed as a barber school or college;

(d) "board" shall mean the State Board of Barber Examiners as established and provided for in the Texas Barber Law;

(e) "certificate" shall mean a certificate of registration issued by the board in accordance with the provisions of this Act;

(f) "license" shall mean any license issued by the board in accordance with the provisions of this Act;

(g) "manager" shall mean any person who controls or directs the business affairs of a barber shop or directs the work of a person employed in a barber shop or both;

(h) "permit" shall mean any permit issued by the board in accordance with the provisions of this Act;

(i) "person" shall mean any individual, association, firm, corporation, partnership, or other legal entity.

(j) In addition to the foregoing definitions, the board shall have authority to define by rule any words or terms necessary in the administration or enforcement of this Act.

Registered Assistant Barber Classification Terminated and Considered Class A Registered Barber

Sec. 5. The classification of "registered assistant barber" is hereby terminated. Any person holding a valid certificate as a registered assistant barber, as of the effective date of this Act, shall for all purposes of this Act be considered as a Class A registered barber and on the next renewal of any certificate as a registered assistant barber the board shall issue such assistant barber a certificate as a Class A registered barber on payment of the applicable renewal fee.

Exemptions

Sec. 6. The following persons shall be exempt from the provisions of this Act, provided such persons are not represented, advertised, or held out to the public, directly or indirectly, or in any manner whatsoever, as barbers, journeymen barbers, barber technicians or under any name, title, or designation indicating such person is authorized to practice by authority of any license or permit issued by the board:

(a) physicians, osteopaths, and registered nurses licensed and regulated by the State of Texas;

(b) commissioned or authorized medical or surgical officers of the United States Army, Navy, or Marine Hospital Service;

(c) persons licensed or practicing by authority of the Texas Cosmetology Commission under the provisions of Chapter 1036, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8451a, Vernon's Texas Civil Statutes), so long as such persons practice within the scope of the license or permit duly issued by the Texas Cosmetology Commission.

Qualifications of Applicant for Registration

Sec. 7. The following shall be considered as minimum evidence satisfactory to the board that an applicant is qualified for registration as a Class A registered barber:

(a) being at least 16½ years of age;

(b) successfully passing a written and practical examination demonstrating to the satisfaction of the board the applicant's fitness and competence to practice the art and science of barbering.

Forms for Applications

Sec. 8. All applications for any certificate, license, or permit issued by the board shall be on forms prescribed and furnished by the board, shall contain statements made under oath showing the applicant's education and other information required by the board.

Permit to Operate Barber School or College

Sec. 9. (a) Any person desiring to conduct or operate a barber school or college in this state shall first obtain a permit from the board after demonstrating that said school or college has first met the requirements of this section. Said permit shall be prominently displayed at all times at such school or college. No such school or college shall be approved unless such school or college requires as a prerequisite to graduation a course of instruction of not less than 1,500 hours as determined by the board, to be completed within a period of not less than nine months, for a Class A certificate, and at least 800 hours of such course of instruction shall be in the actual practice of cutting hair as a primary service in accordance with the definition set forth in Section 4(b)(3) of this Act. No certificate or permit shall be issued as provided for herein to an applicant to be a student in such a school or college unless said applicant has completed at least a seventh grade education and such other requirements as shall be specified by the board. Provided, however, that any person licensed as a Class A registered barber or registered assistant barber as of the effective date

of this Act shall be considered qualified to perform any acts or services within the scope of the definition of barbering and shall be entitled to any or all licenses, certificates, or permits which the board is authorized to issue on payment of the required fees but without meeting further educational or experience requirements.

(b) Such schools or colleges shall instruct students in the theory and practice of such subjects as may be necessary and beneficial in the practice of barbering, including the following: scientific fundamentals of barbering; hygienic bacteriology, histology of the hair, skin, muscles, and nerves; structure of the head, neck and face; elementary chemistry relating to sterilization and antiseptics; common disorders of the skin and hair; massaging muscles of the scalp, face, and neck; hair-cutting; shaving, shampooing, and bleaching and dyeing of the hair; manicuring, administering facial treatments, hair weaving, servicing wigs, or any other skills, techniques, services, treatments, or undertakings within the definition of the practice of barbering provided for in this Act.

[See Compact Edition, Volume 5 for text of 9(c) to 9(e)]

(f) No barber school or college which issues "Class A" certificates shall be approved by the Board unless it is under the direct supervision and control of a barber who holds a current registered "Class A" certificate to practice barbering under the Texas Barber Law, and who can show evidence of at least five (5) years experience as a practicing barber. Each school shall have at least one (1) teacher who has a teacher's certificate issued by the Board upon examination and who is capable and qualified to teach the curriculum outlined herein to the students of such school. All such teachers are required to obtain a teacher's certificate from the Board and, in addition to requirements set forth by the Board, must meet the following requirements:

(1) Demonstrate their ability to teach the said curriculum outlined herein through a written and practical test to be given by the Board.

(2) Hold a current certificate as a registered "Class A" barber under this law.

(3) Demonstrate to the Board that such applicant is qualified to teach and instruct, to be determined at the discretion of the Board, and show evidence that the applicant has had at least six (6) months experience as a teacher in an approved school or college in Texas or in another state approved by the Board, or have completed a six-month postgraduate course as a teacher in an approved barber school or college in Texas.

Applicants desiring an examination for a teacher's certificate shall make an application to the Board and accompany same with an examination fee of $35. A new application and fee must be presented for each examination taken by the applicant and fees paid are not refundable. A teacher's certificate shall be issued upon satisfactory completion of the examination and payment of a certificate fee of $35 if the applicant fulfills the requirements during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year or $17.50 if the applicant fulfills the requirements during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year. Teacher's certificates shall be renewed biennially on or before November 1st of odd-numbered years upon the payment of a renewal fee of $35.

[See Compact Edition, Volume 5 for text of 9(g)]

(h) No barber school or college shall be issued a permit to operate under the provisions of this Section until it has first furnished the following evidence to the Board:

(1) A detailed drawing and chart of the proposed physical layout of such school, showing the departments, floor space, equipment, lights and outlets.

(2) Photographs of the proposed site for such school including the interior and exterior of the building, rooms and departments.

(3) A detailed copy of the training program.

(4) A copy of the school catalog and promotional literature.

(5) A copy of the building lease or proposed building lease where the building is not owned by the school or college.

(6) A sworn statement showing the true ownership of the school or college.

(7) A permit fee of $500.

No such school or college shall be operated and no students shall be solicited or enrolled by it until the Board shall determine that the school has been set up and established in accordance with this Section and the proposal submitted to the Board and approved by it prior to the issuance of a permit. Any such school or college must obtain renewal of its certificate by September 1st each year by the payment of an annual renewal fee of $150.

[See Compact Edition, Volume 5 for text of 9(i) to (m)]

(n) Repealed by Acts 1975, 64th Leg., p. 2136, ch. 691, § 10, eff. Sept. 1, 1975.

Application for Examination; Examination Results; Reciprocity

Sec. 10. Each applicant for an examination shall

[See Compact Edition, Volume 5 for text of 10(a) to 10(c)]

(d) Not later than the 30th day after the day on which a person completes an examination administered by the Board, the Board shall send to the person his examination results. If requested in writing by a person who fails the examination, the Board shall send to the person not later that the 30th day after the day on which the request is

received by the Board an analysis of the person's performance on the examination.

(e) On a reciprocal basis with other states or countries, the Board may issue, without examination, a certificate, license, or permit to an applicant who has a corresponding certificate, license, or permit issued by another state or country having standards for the certificate, license, or permit that are at least substantially equivalent to those of this state and who pays the fee prescribed by this Act.

Conduct of Examinations

Sec. 11. (a) The Board shall conduct examination of applicants for certificates of registration to practice as Class A registered barbers and of applicants to enter barber schools to determine their educational fitness, not less than four times each year, at such times and places as the Board may determine and designate. The examination of applicants for certificates of registration as Class A registered barbers shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually taught in schools of barbering approved by the Board.

(b) No examination shall be held at a barber school, college, or shop owned, managed, or operated by a member of the State Board of Barber Examiners.

Certificates to Successful Applicants

Sec. 12. Whenever the provisions of this Act have been complied with, the Board shall issue to any applicant a certificate of registration as a Class A registered barber, where such applicant shall have passed a satisfactory examination making an average grade of not less than seventy-five per cent, and who shall possess the other qualifications required by this Act.

Permit to Practice as Journeyman Barber

Sec. 13. Any person who is at least sixteen and one-half years of age, and who has a diploma showing graduation from a seven-grade grammar school, or its equivalent as determined by an examination conducted by the Board, and either

(a) Has a license or certificate of registration as a practicing barber from another State or country, which has substantially the same requirements for licensing or registering barbers as required by this Act, or

(b) Who can prove by personal affidavit that he has practiced as a barber in another State for at least two years immediately prior to making application in this State, and who possesses the qualifications required by this Act, shall, upon payment of the required fee, be issued a permit to practice as a journeyman barber only until he is called by the Board of Barber Examiners to determine his fitness to receive a certificate of registration to practice barbering. Should such applicant fail to pass the required examination he shall be allowed to practice as a journeyman barber until he is called by the Board for the next term of examination. Should he fail at the examination he must cease to practice barbering in this State.

Assistant Barbers; Barbers' Technicians

Sec. 14. (a) Any assistant barber who is at least sixteen and one-half years of age and who has a diploma showing graduation from a seventh grade grammar school, or an equivalent education as determined by an examination conducted by the Board, and who has a certificate of registration as an assistant barber in a State or country which has substantially the same requirements for registration as an assistant barber as is provided for by this Act, shall upon payment of the required fee be issued a permit to work as an assistant barber until called by the Board of Examiners for examination to determine his fitness to receive a certificate of registration as an assistant barber. Should such person be able to pass the required examination, he will be issued a certificate of registration as a registered assistant barber, and that the time spent in such other State or country as an assistant barber shall be credited upon the period of assistant barber required by this Act as a qualification to take the examination to determine his fitness to receive a certificate of registration as a registered barber.

(b) Any person who has spent at least 30 working days at a licensed barber school or college as a barber's technician including the study of shampooing, shampoos, manipulations, making appointments, preparing patrons, sterilizing tools, and the study of sterilization and the barber laws may be licensed to practice as a barber's technician. Any licensed barber's technician may assist the barber in shampooing and sterilizing in a barber shop and shall work under the personal supervision of a registered Class A barber.

Manicurist License

Sec. 15. (a) A person holding a manicurist license issued by the board may perform for compensation only the practice of barbering defined in Section 4(b)(6) and Section 4(b)(7) of this Act.

(b) An applicant for a manicurist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 150 hours instruction in manicuring.

(c) The application shall be made on a form prescribed by the board and a $5 manicurist administration fee must accompany the application. The application and fee shall be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a manicurist license if such applicant possesses the qualifications enumerated in Section 15(b), satisfactorily completes the examination, pays a $15 license fee, and has not committed an act which constitutes grounds for denial of a license under this Act.

Wig Specialist License

Sec. 16. (a) A person holding a wig specialist license issued by the board may perform for compensation only the practice of barbering defined in Section 4(b)(11) of this Act.

(b) An applicant for a wig specialist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 300 hours of instruction in the care and treatment of wigs.

(c) The application shall be made on a form prescribed by the commission and a $5 administration fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a wig specialist license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a $15 license fee, and has not committed an act which constitutes grounds for revocation of a license under this Act.

(e) Any person who at the time this Act takes effect holds a cosmetology license or manicurist license issued by the cosmetology commission may make application for and upon paying the fee be granted a manicurist license by the barber board without examination.

Wig Instructor License

Sec. 17. (a) A person holding a wig instructor license issued by the board may perform for compensation the practice of barbering as defined in Section 4(b)(11) of this Act and may instruct a person in such practice.

(b) An applicant for a wig instructor license must have a valid wig specialist license and have completed 200 hours of instruction in advanced wig courses and methods of teaching.

(c) The application shall be made on a form prescribed by the board and a $5 administration fee must accompany the application. The application and fee must be filed at least 10 days prior to the date set for the examination.

(d) The applicant is entitled to a wig instructor license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a $35 license fee, and has not committed any act constituting grounds for revocation of a license under this Act.

Wig Salon License

Sec. 18. (a) A person holding a wig salon license issued by the board may maintain an establishment in which only the practice of barbering as defined in Section 4(b)(11) of this Act is performed for compensation.

(b) An applicant for a wig salon license shall submit an application on a form prescribed by the board. The application shall contain proof of the particular requisites for a wig salon as established by the board and shall be verified by the applicant.

(c) The applicant is entitled to a wig salon license if the application shows compliance with the rules and regulations of the board, a $25 license fee is paid, and such applicant has not committed an act which constitutes grounds for revocation of a license under this Act.

Wig School License

Sec. 18.1. (a) A person holding a wig school license issued by the board may maintain an establishment in which only the practice of barbering as defined in Section 4(b)(11) of this Act is taught for compensation.

(b) An applicant for a wig school license shall submit an application on a form prescribed by the board. The application shall contain proof of the particular requisites for a wig school as established by the board and shall be verified by the applicant.

(c) The applicant is entitled to a wig school license if the application shows compliance with the rules and regulations of the board, a $100 license fee is paid, and applicant has not committed an act which constitutes grounds for revocation of a license under this Act.

[See Compact Edition, Volume 5 for text of 19]

Renewal of Certificates; Restoration of Expired Certificates; Fees

Sec. 20. (a) Every registered Class A barber and barber technician who continues in active practice or service shall renew his certificate of registration on or before November 1, 1975, and biennially on or before November 1 of odd-numbered years thereafter. The Board of Barber Examiners shall issue the renewal certificate upon payment of a biennial renewal fee of $35. Every certificate of registration which has not been renewed prior to that date shall expire on November 1 of that year.

(b) A Class A registered barber, whose certificate of registration has expired, may, within 30 days thereafter, and not later, have his certificate of registration restored upon making a satisfactory showing to the Board, supported by his personal affidavit, which in the opinion of the Board, will excuse the applicant for having failed to renew his certificate within the time required by this Act.

(c) Any registered barber who retires from the practice of barbering for not more than five (5) years may renew his certificate of registration by making proper showing to the Board, supported by his personal affidavit, which, in the opinion of the Board, would justify the Board in issuing a certificate to such applicant as upon an original application upon payment of a fee of $35 if the applicant applies during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year or $17.50 if the applicant applies during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year.

(d) Any registered barber who retires from the practice of barbering for more than five (5) years may renew his certificate of registration by making application to the Board and by making proper showing to the Board, supported by his personal affidavit, and by paying an examination fee of $35, passing a satisfactory examination conducted by the Board, and paying a license fee of $25 if the applicant fulfills the requirements during the period from November 1 of an odd-numbered year and extending through October 31 of the following even-numbered year or $12.50 if the applicant fulfills the requirements during the period from November 1 of an even-numbered year and extending through October 31 of the following odd-numbered year.

[See Compact Edition, Volume 5 for text of 20a and 20b]

Refusal, Suspension or Revocation of Certificates; Grounds

Sec. 21. The board shall either refuse to issue or to renew, or shall suspend or revoke any certificate of registration for any one of, or a combination of the following causes:

(A) Gross malpractice;

(B) Continued practice by a person knowingly having an infectious or contagious disease;

(C) Advertising by means of knowingly making false or deceptive statements;

(D) Advertising, practicing, or attempting to practice under another's trade name or another's name;

(E) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;

(F) The commission of any of the offenses described in Section 24 of this Act;

(G) No certificate shall be issued or renewed, unless and until each applicant shall present a health certificate from a regular practicing medical doctor showing that the applicant is free from any kind of infectious or contagious diseases, tuberculosis, communicable diseases, and free from the use of any kind of morphine, cocaine, or other habit-forming drug, or a habitual drunkard and that said applicant shall make affidavit to said medical examiner that all of the said facts are true.

Violation or Noncompliance with Requirement, Hearing; Denial, Revocation or Refusal to Renew Certificate; Appeal

Sec. 22.

[See Compact Edition, Volume 5 for text of 22(a)]

(b) If, after due notice and hearing, the board denies, revokes, or refuses to renew any certificate, license, or permit, the holder thereof shall have the right to appeal from the order of the board. Any appeals filed hereunder shall be filed within 20 days from the date of the order of the board in a district court of the county where the person filing such appeal has his residence, or in any of the district courts of Travis County, Texas. In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act.

[See Compact Edition, Volume 5 for text of 23 to 25]

State Board of Barber Examiners: Appointment; Qualifications; Term; Removal; Vacancy

Sec. 26. (a) The State Board of Barber Examiners is hereby created and shall consist of six members appointed by the governor with the advice and consent of the senate. The board shall be composed of the following: two members shall be Class A barbers actually and actively engaged in the practice of barbering for at least five years prior to being appointed and while serving as members of the board and who are not holders of a barber shop permit issued by the board; one member shall be a barber shop owner holding a permit issued by the board and who is actively and actually engaged in the practice of barbering for at least five years prior to being appointed and while serving as a member of the board; one member shall be a person holding a permit from the board to conduct or operate a barber school or college; and two members shall be representatives of the general public who are not regulated under this Act and who do not have, other than as consumers, any financial interests in barbering. The terms of office shall be for six years with terms for two of the six board members expiring at the same time every two years. All members appointed by the governor to fill vacancies in the board caused by death, resignation, or removal shall serve during the unexpired term of such member's predecessor. Before entering upon the duties of office, each member of the board shall take the constitutional oath of office and file it with the secretary of state. Members of the board may be removed from office for cause in the manner provided by the statutes of this state for public officials who are not subject to impeachment. In case of death, resignation, or removal, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

(b) A person holding office as a member of the State Board of Barber Examiners on the effective date of this Act continues to hold the office for the term for which the member was originally appointed.

(c) The governor shall appoint two public members to fill the offices of the two incumbent members whose terms expire on May 19, 1981. The governor shall appoint a barber shop owner and a barber school owner to fill the offices of the incumbent members whose terms expire on May 19, 1983. The governor shall appoint two Class A barbers to fill the offices of the two incumbent members whose terms expire on May 19, 1985.

(d) The terms of office for the appointees who fill the offices of incumbent members whose terms expire May 19, 1981, May 19, 1983, and May 19, 1985, shall expire on January 31, 1987, January 31, 1989, and January 31, 1991, respectively.

(e) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(f) Each member of the board shall be present for at least one-half of the regularly scheduled board meetings held each year. Failure of a board member to meet this requirement automatically removes the member from the board and creates a vacancy on the board.

Application of Sunset Act

Sec. 26a. The State Board of Barber Examiners is subject to the Texas Sunset Act;[1] and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1991.

[1] Article 5429k.

Officers of Board; Compensation of Members; Compensation and Bond of Secretary

Sec. 27. The State Board of Barber Examiners shall elect one of its members as president, and shall elect a secretary and such other employees, as may be necessary, to carry out the provisions of this Act and House Bill No. 104, Chapter 65, Acts of the Forty-first Legislature, First Called Session, as amended,[1] and provide for the compensation of such secretary and other employees. Said Board shall maintain its office in the State Office Building in the City of Austin, Texas, and shall adopt rules and regulations for the transaction of the business herein provided for, including a common seal for the authentication of its orders, certificates and records. The secretary shall keep a record of all proceedings of the Board and shall be the custodian of all such records and shall receive and receipt for all money collected by the Board. All money so received shall be immediately deposited with the State Treasurer, who shall credit same to a special fund to be known as "State Board of Barber Examiners Fund," which money shall be drawn from said special fund upon claims made therefor by the Board to the Comptroller; and if found correct, to be approved by him and vouchers issued therefor, and countersigned and paid by the State Treasurer, which special fund is hereby appropriated for the purpose of carrying out all the provisions of this Act. Annually at the close of business on August 31st of each year, a complete report of the business transaction by the Board showing all receipts and disbursements shall be made by the Board to the Governor of the State of Texas. The State Auditor shall audit the financial transactions of the Board at least once every two fiscal years.

The secretary shall give a surety bond, payable to the State of Texas in the sum of Five Thousand Dollars ($5,000), conditioned for the faithful performances of his duties as secretary, to be approved by the Board and filed with the State Comptroller. A majority of the Board in meetings duly assembled may perform and exercise all the duties and powers devolving upon the Board.

The compensation of the members of the Board shall be a per diem as set by the General Appropriations Act, and in addition to the per diem provided for herein, they shall be entitled to traveling expenses in accordance with the appropriate provisions of the General Appropriations Act. Each Board member shall make out, under oath, a complete itemized statement of the number of days engaged and the amount of his expenses when presenting same for payment.

[1] This article.

[See Compact Edition, Volume 5 for text of 27a]

Rules and Regulations; Violations

Sec. 28. (a) The State Board of Health shall make, establish and promulgate reasonable sanitary rules and regulations for the conduct of barber shops and barber schools. The State Board of Barber Examiners, by and through the Health Department of the State of Texas, shall have authority, and it is made its duty to enter upon the premises of all barber shops, barber schools or any place where any of its licensees are practicing or performing any service, act or treatment by authority of any license issued by the board and inspect same at any time during business hours. A copy of such sanitary rules and regulations adopted by the Board of Health shall be furnished to the Secretary of the State Board of Barber Examiners who shall in turn forward to each barber, barber school or licensee of the board a copy of such rules and regulations. A copy of the sanitary rules and regulations promulgated and adopted by the State Board of Health shall be posted in barber shops and barber schools in this State. Subject only to the authority of the State Board of Health to make and promulgate reasonable rules and regulations as to sanitation, the State Board of Barber Examiners shall have full authority and power to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provisions of

this Act, and to regulate the practice and teaching of barbering in all of its particulars in keeping with the purposes and intent of this Act or to insure strict compliance with and enforcement of this Act.

(b) If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the board receives the committees' statements.

(c) The violation by any licensee, permittee, or certificate holder of the board of any provisions of this Act or any rule, regulation, or order of the board shall be sufficient reason or ground to cancel, suspend, or revoke any license, certificate, permit, or authority issued under this Act. In addition to any other action, proceeding, or remedy authorized by law, the board shall have the authority to institute any action in its own name to enjoin any violation of any provision of this Act or rule or regulation of the board, and, in order for the board to sustain such action, it shall not be necessary to allege or prove, either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. Either party to such action may appeal to the appellate court having jurisdiction of such cause. The board shall not be required to give any appeal bond in any cause arising under this Act. The attorney general shall represent the board in all actions and proceedings to enforce the provisions of this Act.

[See Compact Edition, Volume 5 for text of 29]

Information About Complaints

Sec. 29A. (a) The State Board of Barber Examiners shall keep an information file about each complaint filed with the board relating to licensees under this Act.

(b) If a written complaint is filed with the State Board of Barber Examiners relating to a licensee under this Act, the board, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.

Restrictions on Board Members and Employees

Sec. 29B. (a) An employee of the State Board of Barber Examiners whose duties include the administration of the board's functions under this Act may not:

(1) have, other than as a consumer, a financial interest in barbering;

(2) be an officer, employee, or paid consultant of a trade association in the barbering industry; or

(3) be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the barbering industry.

(b) A member of the State Board of Barber Examiners may not be:

(1) an officer, employee, or paid consultant of a trade association in the barbering industry;

(2) related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the barbering industry.

(c) An employee who violates this section is subject to dismissal. A board member who violates this section is subject to removal.

Open Meetings Law and Administrative Procedure and Texas Register Act Applicable

Sec. 29C. The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Lobbying by General Counsel or Board Member Prohibited

Sec. 29D. A general counsel employed by the board or a member of the board may not lobby for the board and may not engage in conduct for which the person is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes).

[See Compact Edition, Volume 5 for text of 30]

[Amended by Acts 1975, 64th Leg., p. 2132, ch. 691, §§ 1 to 26, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1834, ch. 735, § 2.016, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1364, ch. 613, §§ 2 to 7, eff. Sept. 1, 1979.]

Sections 48 and 49 of the 1975 amendatory act provided:

"Sec. 48. If any word, clause, sentence, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

"Sec. 49. All laws or parts of laws inconsistent or in conflict with this Act or any part thereof are hereby repealed."

CHAPTER TWO. COSMETOLOGY

Art. 8451a. Cosmetology Regulatory Act

Definitions

Sec. 1. As used in this Act:

(1) "Person" means any individual, association, firm, corporation, partnership, or organization.

(2) "Commission" means the Texas Cosmetology Commission.

(3) "Cosmetology" means the performing or doing, or offering or attempting to do or perform for compensation, any of the following acts, services, works, treatments, or undertakings:

(A) arranging, beautifying, bleaching, tinting, cleansing, coloring, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, waving, or otherwise treating the hair as primary services, treatments, or undertaking by any means or method, including any bobbing, clipping, cutting, or trimming of the hair as a necessary incident preparatory or ancillary to such primary services; cutting the hair as a primary service, treatment, or undertaking and not as a necessary incident preparatory or ancillary to those primary services enumerated in this subdivision, or primarily engaging in the occupation of cutting hair or practicing primarily as a haircutter by cutting hair as a separate and independent service, treatment, or undertaking for which haircut a charge is made, separate and apart from any other service, treatment, or undertaking, directly or indirectly, or in any manner;

(B) cleansing, stimulating, or massaging the scalp, face, neck, or arms by means of the hands, devices, apparatus, or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams; beautifying the face, neck, or arms by use of cosmetic preparations, antiseptics, tonics, lotions, powders, oils, clays, creams, or appliances;

(C) removing superfluous hair from the body by the use of depilatories or mechanical tweezers;

(D) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person; or attaching false nails or massaging, cleansing, treating, or beautifying the hands or feet of any person;

(E) servicing a wig or artificial hairpiece either on a human head or on a block subsequent to the initial retail sale and servicing by any of the practices enumerated in Paragraph (A) of this subdivision;

(F) administering facial treatments;

(G) hair weaving; or

(H) shampooing and conditioning hair.

(4) "Public school" includes a public high school, public junior college, or any other nonprofit tax-exempt institution conducting a cosmetology program.

Texas Cosmetology Commission

Sec. 2. (a) The Texas Cosmetology Commission is created. The commission shall be composed of one member holding a valid beauty shop license who has no direct or indirect affiliation with or interest, financial or otherwise, in a private beauty culture school; one member holding a valid private beauty culture school license who has no direct or indirect affiliation with or interest, financial or otherwise, in a beauty shop; two members holding valid operator licenses who have no direct or indirect affiliation with or interest, financial or otherwise, in a private beauty culture school or beauty shop; and two members of the general public who are not licensees under this Act and who have no direct or indirect affiliation with or interest, financial or otherwise, in any facet of the beauty industry. The associate commissioner for occupational education and technology of the Central Education Agency or his authorized representative shall as part of his duties serve as an ex officio member of the commission with voting privileges. Members shall be appointed without consideration of race, color, religion, sex, or national origin.

(b) To qualify as a member, a person must be a citizen of the United States and a resident of Texas at least 25 years of age, must be actively engaged in the area that the person represents for a period of five years immediately preceding appointment.

(c) The members of the commission shall be appointed by the governor with the advice and consent of the senate. Members of the commission hold office for staggered terms of six years, with two members' terms expiring on December 31 of each odd-numbered year. No person may serve more than two consecutive terms.

(d) Each appointee to the commission shall qualify by taking the constitutional oath of office within 15 days from the date of his appointment. On presentation of the oath, the secretary of state shall issue commissions to appointees as evidence of their authority to act as members of the commission.

(e) Each member of the commission shall be present for at least one-half of the regularly scheduled commission meetings held each year. Failure of a commission member to meet this requirement automatically removes the member from the commission and creates a vacancy on the commission.

(f) In the event of death, resignation, or removal of any member, the vacancy of the unexpired term shall be filled by the governor in the same manner as other appointments.

(g) The Texas Cosmetology Commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by the Act, the commission is abolished and this Act expires effective September 1, 1991.

(h) The commission is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

Commission Organization and Meetings

Sec. 3. (a) The commission shall elect from its members for a term of two years a chairman and

may appoint committees that it considers necessary to carry out its duties.

(b) The commission shall meet at least once each year. The commission may meet at other times at the call of the chairman or as provided by commission rule.

(c) The quorum for any meeting of the commission is four members. No action by the commission or its members has any effect unless a quorum is present.

Powers and Duties of the Commission

Sec. 4. (a) The commission may issue rules consistent with this Act after a public hearing in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes). If the appropriate standing committees of both houses of the legislature acting under Section 5(g), Administrative Procedure and Texas Register Act, transmit to the commission statements opposing adoption of a rule under that section, the rule may not take effect or, if the rule has already taken effect, the rule is repealed effective on the date the commission receives the committees' statements.

(b) The commission shall prescribe the minimum curricula of the subjects and hours of each to be taught by beauty culture schools.

(c) The commission shall prescribe the method and content of the examinations administered under this Act. The examination shall include practical examinations as well as theory tests relating to the subject matter established as curricula by the commission.

(d) The commission shall establish sanitation rules designed to prevent the spread of infectious or contagious diseases.

Compensation

Sec. 5. (a) Members of the commission are entitled to receive $25 a day and reimbursement for actual travel expenses incurred in performing the duties of their office. Per diem compensation may not exceed 30 days in any fiscal year for each member.

(b) The compensation of other employees of the commission is as set by the General Appropriations Act.

Executive Director; Staff

Sec. 6. (a) The commission may employ an executive director who is the executive head of the commission and performs its administrative duties.

(b) The executive director may employ staff members necessary for administering the functions of the commission. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the commission or serve as a member of the commission.

(c) The commission may employ directors at its discretion.

Conflict of Interest

Sec. 7. (a) An employee of the commission whose duties include the administration of the commission's functions under this Act may not:

(1) have, other than as a consumer, a financial interest in the cosmetology industry;

(2) be an officer, employee, or paid consultant of a trade association in the cosmetology industry; or

(3) be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the cosmetology industry.

(b) A member of the commission may not be:

(1) an officer, employee, or paid consultant of a trade association in the cosmetology industry; or

(2) related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the cosmetology industry.

(c) An employee who violates this section is subject to dismissal. A member who violates this section is subject to removal.

Disposition of Funds

Sec. 8. (a) The executive director shall remit, on or before the 10th day of each month, to the state treasurer all fees collected under this Act during the preceding month for deposit in the General Revenue Fund.

(b) On August 31 of each year, the commission shall file with the comptroller its annual report in a form required by the comptroller.

(c) Funds for the administration of this Act are to be provided by the General Appropriations Act.

Prohibited Acts

Sec. 9. (a) A person may not perform or attempt to perform any practice of cosmetology without first obtaining a license or certificate to perform that practice.

(b) A person may not conduct or operate a beauty shop, beauty culture school, specialty shop, or any other place of business in which the practice of cosmetology is taught or practiced without first obtaining a license.

(c) A person may not instruct in the art of cosmetology unless he holds an instructor license from this state and the instruction is done in a private beauty culture school or public school cosmetology program.

Operator License

Sec. 10. (a) A person holding an operator license may perform any practice of cosmetology defined in Subdivision (3), Section 1, of this Act.

(b) An applicant for an operator license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 1,500 hours of instruction in a licensed beauty culture school or 1,000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the commission in a public school vocational program.

(c) The application must be made on a form prescribed by the commission and must be filed at least 10 days before the date set for the examination.

(d) The applicant is entitled to an operator license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a $15 license fee, and has not committed an act that constitutes a ground for denial of a license.

Manicurist License

Sec. 11. (a) A person holding a manicurist license may perform only the practice of cosmetology defined in Paragraph (D), Subdivision (3), Section 1 of this Act.

(b) An applicant for a manicurist license must be at least 16 years of age, have completed the seventh grade or its equivalent, and have completed 150 hours of instruction in manicuring.

(c) The application must be made on a form prescribed by the commission and must be filed at least 10 days before the date set for the examination.

(d) The applicant is entitled to a manicurist license if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a $10 license fee, and has not committed an act that constitutes a ground for denial of a license.

Instructor License

Sec. 12. (a) A person holding an instructor license may perform any practice of cosmetology and may instruct a person in any practice of cosmetology as defined by this Act.

(b) An applicant for an instructor license must be at least 18 years of age, have completed the 12th grade or its equivalent, have a valid operator license, and have completed a six-month course consisting of 750 hours of instruction in cosmetology courses and methods of teaching in a licensed beauty culture school or in a vocational training program of a publicly financed postsecondary institution or at least three years of verifiable experience as an operator under a license from the Texas Cosmetology Commission.

(c) The application must be on a form prescribed by the commission and must be filed at least 10 days before the date set for the examination.

(d) The applicant is entitled to an instructor license if he possesses qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a $35 license fee, and has not committed an act that constitutes a ground for denial of a license.

Specialty Certificate

Sec. 13. (a) A person holding a specialty certificate may perform only the practice of cosmetology as defined in Paragraph (E), (F), (G), or (H) of Subdivision (3) of Section 1 of this Act.

(b) An applicant for a specialty certificate must be at least 16 years of age, have completed the seventh grade or its equivalent, and have the necessary requisites as determined by the commission in the particular specialty in which certification is sought.

(c) The application must be on a form prescribed by the commission and must be filed at least 10 days before the date set for examination.

(d) The applicant is entitled to a specialty certificate if he possesses the qualifications enumerated in Subsection (b) of this section, satisfactorily completes the examination, pays a $15 certificate fee, and has not committed an act that constitutes a ground for denial of a certificate.

(e) Subsection (a) of this section does not apply to an individual who has an instructor license or operator license issued by the commission.

Grandfather Clause

Sec. 14. (a) On the effective date of this Act any person holding a specialty license issued by the commission may, before the expiration date of that license, receive an equivalent certificate by complying with the following guidelines:

(1) sending the renewal portion of the specialty license to the commission along with a valid health certificate; and

(2) paying a one time $15 certification fee.

(b) On the effective date of this Act, any person holding a wig instructor or wig school license may continue to renew that license indefinitely by paying a $35 or $55 fee, respectively, every two years.

Temporary License

Sec. 15. (a) A person holding a temporary license may perform any practice of cosmetology for which he holds a valid license in another state or nation.

(b) A temporary license shall be issued on submission of an application form prescribed by the commission and payment of a $25 temporary license fee if the applicant meets the requirements of Subsection (a) of this section.

(c) A temporary license expires on the 60th day after the date of issue and may not be renewed.

(d) A person is not required to hold a temporary license to engage in the practice of cosmetology for educational or demonstration purposes at seminars, trade shows, or conventions.

Duplicate License or Certificate

Sec. 16. A duplicate license or certificate shall be issued upon application on a form prescribed by the commission and on the payment of a $5 fee.

Reciprocal Certificates or Licenses

Sec. 17. (a) Any person who holds a valid license or certificate from another state or nation that has substantially equivalent standards or work experience may apply for a license or certificate to perform the same practice in this state.

(b) The applicant shall submit an application on a form prescribed by the commission and pay a $25 fee.

(c) A license or certificate granted under this section allows the holder to engage in the practice of cosmetology stated on the front of the license or certificate. The holder of this license or certificate is subject to the renewal procedures and fees provided in this Act for the practice of cosmetology for which he is licensed.

Student Permits

Sec. 18. (a) Any student enrolled in a school of cosmetology in this state shall be required to have a permit stating the student's name and the name of the school he is attending. The permit shall be displayed in a reasonable manner at the school.

(b) A student permit shall be issued on submission of an application form prescribed by the commission and payment of a $10 fee which must accompany the application.

(c) The cost of the permit shall also include the examination and transcript fee and may not be refunded.

Beauty Shop License

Sec. 19. (a) A person holding a beauty shop license may maintain an establishment in which any practice of cosmetology is performed.

(b) An applicant for a beauty shop license must submit an application on a form prescribed by the commission. The application must contain proof of the particular requisites for a beauty shop as established by the commission and must be verified by the applicant.

(c) The applicant is entitled to a beauty shop license if the application shows compliance with the rules of the commission, a $25 license fee is paid, and he has not committed an act that constitutes a ground for denial of a license.

(d) In order that the public may fix responsibility for services, acts, or treatments performed by persons licensed by the State Board of Barber Examiners vis-a-vis those performed by persons licensed by the Texas Cosmetology Commission, to promote the efficient and orderly administration of laws regulating barbers and the practice of barbering and the laws regulating cosmetologists and the practice of cosmetology, and to avoid confusion of the public as well as avoiding conflicts of jurisdiction between such board and commission which might impede effective administration or enforcement of the laws under their respective jurisdictions, from and after January 31, 1980:

(1) a person licensed by the barber board may practice barbering only at a location for which the board has issued a barber shop permit, barber school or college permit, or any other permit. If the State Board of Barber Examiners and the Texas Cosmetology Commission license the same facility, the board may not adopt rules restricting or prohibiting the practice by a Class A barber in the facility; and

(2) a person licensed by the cosmetology commission may practice cosmetology only at a location for which the commission has issued a beauty shop license, private beauty culture school license, or any other license. If the State Board of Barber Examiners and the Texas Cosmetology Commission license the same facility, the commission may not adopt rules restricting or prohibiting the practice by a cosmetologist in the facility.

(e) If the State Board of Barber Examiners and the Texas Cosmetology Commission license the same facility, the agencies may not adopt rules requiring:

(1) that the work areas of barbers and cosmetologists practicing in the facility be separated;

(2) that the waiting areas for customers of the barbers and cosmetologists practicing in the facility be separated;

(3) that the facility have separate restrooms for the barbers or cosmetologists practicing in the facility or for the customers of the barbers and cosmetologists; or

(4) that the barbers and cosmetologists practicing in the facility or the customers of the barbers and cosmetologists be treated separately from each other in any similar manner.

Specialty Shop License

Sec. 20. (a) A person holding a specialty shop license may maintain an establishment in which only the practice of cosmetology as defined in Paragraph (D), (E), (F), or (G) of Subdivision (3) of Section 1 of this Act is performed.

(b) An applicant for a specialty shop license must submit an application on a form prescribed by the commission. The application must contain proof of the particular requisites for a specialty shop as established by the commission and must be verified by the applicant.

(c) The applicant is entitled to a specialty shop license if the application shows compliance with the rules and regulations of the commission, a $25 license fee is paid, and he has not committed an act that constitutes a ground for denial of a license.

(d) Subsection (b) of this section does not apply to a shop operated under a beauty shop license issued by the commission.

Private Beauty Culture School License

Sec. 21. (a) A person holding a private beauty culture school license may maintain an establishment in which any practice of cosmetology is taught.

(b) An applicant for a private beauty culture school license must submit an application on a form prescribed by the commission. Each application must be verified by the applicant and must contain:

(1) a detailed floor plan of the school building divided into three separate areas, one for instruction in theory, one for practice work of senior students, and one for practice work of juniors; and

(2) a statement that the building is fireproof and of permanent type construction, contains a minimum of 3,500 square feet of floor space, with separate restrooms for male and female students, and contains or will contain before classes commence the equipment established by rule of the commission as sufficient to properly instruct a minimum of 50 students.

(c) Each applicant shall furnish a good and sufficient surety bond payable to the State of Texas in the amount of $5,000. The bond must be conditioned to refund any unused portion of the tuition paid if the school closes or ceases operation before the courses of instruction have been completed.

(d) A student is entitled to a pro rata refund of tuition if the student becomes physically unable to complete the courses of instruction.

(e) Each application must be accompanied by payment of a $250 license fee.

(f) The facilities of each applicant shall be inspected. The applicant is entitled to a private beauty culture school license if the inspection shows that this Act and the rules of the commission have been met and the applicant has not committed an act that constitutes a ground for denial of a license.

Private Beauty Culture Schools

Sec. 22. A private beauty culture school shall:

(1) maintain a sanitary establishment;

(2) maintain on its staff and on duty during business hours not less than two full-time instructors licensed under this Act, except that one instructor will be sufficient whenever the student enrollment drops below 15;

(3) maintain a daily record of attendance of students;

(4) establish regular class and instruction hours and grades, and hold examinations before issuing diplomas;

(5) require a school term of not less than nine months and not less than 1,500 hours instruction for a complete course in cosmetology;

(6) require a school term of not less than four weeks and not less than 150 hours instruction for a complete course in manicuring;

(7) require no student to work or be instructed or receive credit for more than eight hours of instruction in any one day or for more than six days in any one calendar week;

(8) maintain a copy of its curriculum in a conspicuous place and verify that this curriculum is being followed as to subject matter being taught; and

(9) submit to the executive director the name of each student within 10 days after enrollment in the school and notify the executive director of the withdrawal or graduation of a student within 10 days of the withdrawal or graduation.

Transfer of Hours of Instruction

Sec. 23. Any student of a private beauty culture school or a vocational cosmetology program in a public school may transfer completed hours of instruction to a private beauty culture school or vocational cosmetology program in a public school in this state. A transcript showing the number and courses of completed hours certified by the school in which the instruction was given must be submitted to the executive director. On evaluation and approval, the executive director shall certify in writing to the student and to the school to which the student desires a transfer that the stated hours and courses have been successfully completed and that the student is not required to repeat the instructions.

Student Work on Patrons

Sec. 24. (a) No school may receive compensation for work done by any student who has not completed 10 percent of the required number of hours for a license as provided by this Act.

(b) Each school shall maintain in a conspicuous place a list of the names and identifying pictures of the students who are enrolled in cosmetology courses.

(c) Any school violating this section is subject to revocation or suspension of its license.

Private Beauty Culture Schools and Beauty Shops

Sec. 25. Private beauty culture schools, beauty shops, or specialty shops may not be conducted in the same quarters or on the same premises unless they are separated by walls of permanent construction with no openings in them.

Employment of Licensees

Sec. 26. (a) A beauty culture school may not employ a person holding an operator, manicurist, or specialty certificate solely to perform the practices of cosmetology for which the person is licensed or employ a person holding an instructor license to perform any acts or practices of cosmetology.

(b) A licensee may not operate a beauty salon unless it is at all times under the direct supervision of a person holding an operator license or instructor license. A licensee or certificate holder may not operate a specialty shop unless it is at all times under the direct supervision of an operator, instructor, or specialty certificate holder.

(c) A person holding a beauty shop or specialty shop license may not employ a person as an operator or specialist who has not first obtained a license or certificate under this Act or who has not first obtained a license or certificate under the law regulating barbers.

Display of License

Sec. 27. Every holder of a license or certificate issued under this Act shall display the license or certificate in his place of business or employment.

Consumer Information

Sec. 28. There shall at all times be prominently displayed in each shop and salon regulated under this Act, a sign in letters no smaller than one inch in height, the contents of which shall contain the name, mailing address, and telephone number of the regulatory board having jurisdiction over those individuals licensed under this Act and which shall contain a statement informing consumers that complaints against licensees can be directed to the regulatory board.

Right of Access

Sec. 29. The commission, an inspector, or any duly authorized representative of the commission may enter the premises of any licensee at any time during normal business hours and in such manner as not to interfere with the conduct or operation of the business or school to determine whether or not the licensee is in compliance with this Act and the rules of the commission.

Examinations

Sec. 30. Examinations shall be conducted beginning the first of each month unless it is a legal holiday, in which case the examination shall begin on the following day. The site of the examinations shall be announced at least six months prior to the administration date. Examinations may not be conducted in the schools of commission members. Not later than the 30th day after the day on which a person completes an examination administered by the commission, the commission shall send to the person his examination results. If requested in writing by a person who fails the examination, the commission shall send to the person not later than the 60th day after the day on which the request is received by the commission an analysis of the person's performance on the examination.

Health Certificate

Sec. 31. (a) Every applicant for an original or renewal operator, instructor license, reciprocal license, or specialty certificate must submit a certificate of health signed by a licensed physician, showing that the applicant is free from any contagious disease as determined by an examination that included a tuberculosis test.

(b) Any physician who signs a health certificate required by Subsection (a) of this section showing the applicant to be free from any contagious disease without having made the physical examination is guilty of a misdemeanor, and on conviction may be fined not less than $50 or more than $200.

Infectious and Contagious Diseases

Sec. 32. (a) A person holding an operator, instructor, or specialty certificate may not perform any practice of cosmetology knowing that he is suffering from an infectious or contagious disease.

(b) A person holding a beauty or specialty shop license or a beauty culture school license may not employ any person to perform any practice or practices of cosmetology knowing that the licensee is suffering from an infectious or contagious disease.

Renewal of Licenses and Certificates

Sec. 33. (a) Except as provided by Subsection (d) of this section, all licenses and certificates issued under this Act, except temporary and private beauty culture school licenses, expire two years from the date of issue.

(b) Applications for renewal of a specialty certificate must be accompanied by a current health certificate.

(c) A renewal license shall be issued on payment of the renewal fee as established by this Act.

(d) All licenses and certificates issued by the commission may be prorated for the number of months the license or certificate will be valid.

(e) A license that has been expired for less than five years may be renewed. A renewal license shall be issued on submission of a completed application form prescribed by the commission and payment of the renewal fee established by this Act for each year the license was expired, plus a $5 delinquency fee.

(f) An applicant for renewal of a license that has been expired for more than five years shall be issued a license on submission of an application, payment of the examination fee, satisfactory completion of the examination, and payment of a $25 reinstatement fee.

Renewal Fees

Sec. 34. Renewal fees under this Act are:

(1) Operator license	$ 15;
(2) Instructor license	$ 35;
(3) Manicurist license	$ 15;
(4) Private beauty school license per year; and	$150
(5) Beauty or specialty shop license	$ 25.

Violation

Sec. 35. (a) If an inspector discovers a violation of this Act or of a rule established by the commission, he shall give written notice of the violation on a form prescribed by the commission to the violator, and if the violation is not corrected in 10 days from the date of notice, the inspector shall file a complaint with the executive director.

(b) If a licensee commits three or more violations of a similar nature within any 12-month period, a suit for injunction and proceedings for suspension or revocation of the license shall be instituted.

Grounds for Denial, Suspension, or Revocation of a Permit

Sec. 36. A license or certificate may be denied, or after a hearing, suspended or revoked if the applicant or licensee has:

(1) secured a license or certificate by fraud or deceit;

(2) violated or conspired to violate this Act or a rule issued under this Act;

(3) knowingly made false or misleading statements in any advertising of the licensee's services;

(4) advertised, practiced, or attempted to practice under the name or trade name of another licensee under this Act; or

(5) engaged in gross malpractice in practicing cosmetology.

Application of the Administrative Procedure and Texas Register Act

Sec. 37. (a) A person whose application for a license, certificate, or permit is denied is entitled to a hearing before the commission in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes), if the person submits to the commission a written request for a hearing.

(b) Proceedings for suspension or revocation of a license or certificate and appeals from these proceedings are governed by the Administrative Procedure and Texas Register Act, as amended.

Injunction

Sec. 38. The commission may sue in district court to enjoin or restrain a person from violating any section of this Act or the commission rules.

Exemptions

Sec. 39. The following are exempt from the provisions of this Act:

(1) service in the case of an emergency;

(2) persons licensed in this state to practice medicine, surgery, dentistry, podiatry, osteopathy, chiropractic, or nurses;

(3) a person engaged in the business of or receiving compensation for makeup applications only;

(4) a person who acts as a barber regulated by the law of this state if the person does not hold himself out as a cosmetologist;

(5) a person volunteering services or an employee performing regular duties at a licensed nursing or convalescent custodial or personal care home when recipients of the services are patients residing in the home; and

(6) a person who owns, operates, or manages a licensed nursing or convalescent custodial or personal care home which allows a person with an operator license to perform services for patients residing in the home on an occasional but not daily basis.

Penalties

Sec. 40. (a) Any person who violates this Act, except Section 31 of this Act, is guilty of a misdemeanor, and on conviction is punishable by a fine of not less than $25 nor more than $200.

(b) A licensee or certificate holder who violates this Act is guilty of a misdemeanor and on conviction is punishable under Subsection (a) of this section and is subject to the revocation or suspension of his license or certificate.

Complaints

Sec. 41. (a) The commission shall keep an information file about each complaint filed with the commission relating to a cosmetologist or cosmetology establishment.

(b) If a written complaint is filed with the commission relating to a cosmetologist or cosmetology establishment, the commission, at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.

[Amended by Acts 1979, 66th Leg., p. 1340, ch. 606, § 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 747, ch. 279, § 1, eff. Aug. 31, 1981.]

Sections 2 and 3 of the 1979 amendatory act provided:

"Sec. 2. A person holding office as a member of the Texas Cosmetology Commission on the effective date of this Act continues to hold office for the term for which the member was originally appointed.

"Sec. 3. Any law, section, or provision relating to creation, powers, duties, or functions of the Texas Cosmetology Commission which is not hereby expressly reenacted is hereby repealed."

CHAPTER THREE. BOXING, SPARRING, WRESTLING, ETC.

Art. 8501–1. Boxing and Wrestling Act

Short Title

Sec. 1. This Act may be cited as the Texas Boxing and Wrestling Act.

Purpose

Sec. 2. It is the legislature's intent to improve the general welfare and safety of the citizens of this state. The legislature finds that the boxing and wrestling industry in this state should be regulated in order to protect the best interest of both contest-

ants and the public, and it is the responsibility of the state to provide for the protection of the contestants and the public through the imposition of certain regulations on the boxing and wrestling industry and to impose a gross receipts tax upon the proceeds obtained from boxing and wrestling performances to finance said regulation. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally construed and applied to promote its underlying policies and purposes.

Definitions

Sec. 3. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

(a) "Commissioner" means the commissioner of the Texas Department of Labor and Standards or his designated representative.

(b) "Department" means the Texas Department of Labor and Standards.

(c) "Person" includes an individual, association, partnership, or corporation.

(d) "Professional boxer or wrestler" means a person to be licensed by the department who competes for a money prize, purse, or compensation in a boxing or wrestling contest, exhibition, or match held within the State of Texas.

(e) "Exhibition" means a demonstration of boxing or wrestling skills.

(f) "Boxing" as used in the Texas Boxing and Wrestling Act includes kickboxing, a form of boxing in which blows are delivered with any part of the arm below the shoulder, including the hand, and any part of the leg below the hip, including the foot.

(g) "Judge" means a person to be licensed by the department who is at ringside during a boxing or wrestling match and who has the responsibility of scoring the performance of the participants in the match.

(h) "Referee" means a person to be licensed by the department who has the general supervision of a boxing and wrestling match or exhibition and is present inside of the ring during the match or exhibition.

(i) "Promoter" means a person to be licensed by the department who arranges, advertises, or conducts a boxing or wrestling contest, match, or exhibition.

Enforcement Responsibility

Sec. 4. The department shall have the sole jurisdiction and authority to enforce the provisions of this Act, and the commissioner shall investigate any allegations of activity which may violate the provisions of this Act.

(a) The commissioner is authorized to enter at reasonable times and without advance notice any place of business or establishment where said alleged illegal activity may occur.

(b) The commissioner is authorized to promulgate rules and regulations and hold administrative hearings in accordance with the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes). The commissioner shall promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act. The commissioner is authorized to promulgate rules and regulations governing professional kickboxing contests or exhibitions, which shall be fought on the basis of the best efforts of the contestants. The commissioner shall have the power and authority to revoke or suspend the license or permit of any judge, boxer, wrestler, manager, referee, timekeeper, second, or promoter for violations of any rule or regulation promulgated pursuant to this Act or for the violation of any provision of this Act, and he may deny an application for a license when the applicant does not possess the requisite qualifications.

(c) The commissioner shall have the power and authority to hold a hearing regarding allegations that any person has violated or failed to comply with the provisions of this Act. In addition to the denial, revocation, or suspension of a license, the commissioner may order the forfeiture of the purse of any boxer, wrestler, or manager in an amount not to exceed $1,000 for the violation of any rule or regulation promulgated pursuant to the Act or for the violation of any provision of this Act, and said money shall be deposited to the credit of the General Revenue Fund of the State of Texas.

(d) In the conduct of any administrative hearing held pursuant to this Act, the commissioner may administer oaths to witnesses, receive evidence, and issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of papers and documents related to matters under investigation. Administrative hearings shall be held in conformity with the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).

Judicial Review

Sec. 5. (a) Any party to the hearing aggrieved by the decision or order of the commissioner may secure judicial review thereof in the following manner:

(1) The petition must be filed in a district court of Travis County, Texas, within 30 days after the decision or order of the commissioner becomes final.

(2) The filing of a petition for review shall not itself stay the effect of the decision or order complained of, but the commissioner or the reviewing court may order a stay upon appropriate terms and if a stay is so granted no supersedeas bond shall be required.

(3) Service of process. The petition for review shall be served on the commissioner and upon all parties of record in any hearing before the commissioner in respect to the matter for which review is sought. After service of such petition upon the commissioner and within the time permitted for filing an answer or as soon thereafter as the record is made available to the commissioner, the commissioner shall certify to the district court in which such petition is filed the record of the proceedings to which the petition refers. The cost of preparing and certifying such record shall be paid to the commissioner by the petitioner and taxed as part of the cost in the case, to be paid as directed by the court upon final determination of said cause.

(4) The review of any decision or order of the commissioner shall be tried by the court without a jury in the same manner as civil actions generally, but no evidence shall be admissible which was not adduced at the hearing on the matter before the commissioner or officially noticed in record of such hearing.

(5) The burden of proof shall be on the plaintiff. The reviewing court may affirm the action complained of or remand the matter to the commissioner for further proceedings.

(6) Appeals from any final judgment may be taken by either party in the manner provided for in civil actions generally, but no appeal bond shall be required of the commissioner.

Penalties

Sec. 6. (a) A person who violates a provision of this Act or any rule or regulation of the department commits a Class A misdemeanor.

(b) Any person who violates any provision of this Act or the rules and regulations of the department may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed $1,000 for each such violation as the court may deem proper.

(c) Whenever it appears that any person has violated or is threatening to violate any of the provisions of this Act or of the rules and regulations of the department, either the attorney general or the department may cause a civil suit to be instituted either for injunctive relief to restrain such person from continuing the violation or threat of violation or for assessment and recovery of the civil penalty or for both. Venue for such suit shall be in the district courts of Travis County, Texas.

Amateur Athletic Events

Sec. 7. (a) The promoting, conducting, or maintaining of boxing and wrestling matches, contests, or exhibitions when conducted by educational institutions, Texas National Guard Units, or amateur athletic organizations duly recognized by the commissioner shall be exempt from the licensing and bonding provisions of this Act provided that none of the participants in such contests or exhibitions receive a money remuneration, purse, or prize for their performance or services therein.

(b) None of the licensing and bonding provisions of this Act shall apply to or be enforced against:

(1) all nonprofit amateur athletic associations chartered under the laws of the State of Texas, including their affiliated membership clubs throughout the state which have been recognized by the commissioner;

(2) any contests, matches, or exhibitions between students of educational institutions which are conducted by a college, school, or university as part of the institution's athletic program;

(3) contests, matches, or exhibitions between members of any troop, battery, company, or units of the Texas National Guard.

(c) When an admission fee is charged by any person conducting or sponsoring an amateur boxing and wrestling contest, match, or exhibition, except those amateur events exempted in Section 7(b) herein, the gross receipts tax hereinafter provided in Section 11 of this Act shall apply and must be paid by the sponsoring person. In addition, amateur boxing or wrestling contests wherein an admission fee is charged shall be conducted under the following conditions:

(1) The commissioner must approve the contest, match, or exhibition at least seven days in advance of the event.

(2) All entries shall be filed with the amateur organization at least three days in advance of the event.

(3) The amateur organization shall determine the amateur standing of all contestants.

(4) The amateur contest, match, or exhibition shall be subject to the supervision of the commissioner, and all profits derived from such contests shall be used in the development of amateur athletics.

(5) Only referees and judges licensed by the commissioner may participate in amateur contests, matches, or exhibitions.

(6) All contestants shall be examined by a licensed physician within a reasonable time prior to the event, and a licensed physician shall be in attendance at the ringside during the entire event.

(7) All professional boxers and wrestlers licensed under this Act are prohibited from participating in any capacity during an amateur contest, match, or exhibition.

Promoters

Sec. 8. (a) No person shall act as a promoter of either boxing or wrestling until he has been licensed pursuant to this Act.

(b) The application for a promoter's license shall be made upon a form furnished by the commissioner and shall be accompanied by an annual license fee

and the license or registration fee shall be $20 for a Boxing Promoter's License and $20 for a Wrestling Promoter's License in a city with a population not exceeding 10,000; $50 in cities with a population of 10,001 to 25,000, inclusive; $100 in cities with a population of 25,001 to 100,000, inclusive; $200 in cities with a population of 100,001 to 250,000, inclusive; and $300 in a city above 250,001 inhabitants. The application for a promoter's license shall be accompanied by a surety bond subject to the approval of the commissioner and conditioned for the payment of the tax hereby imposed. The commissioner shall fix the sum of the surety bond, but the sum may not be less than $300.

(c) The surety bond shall be issued by a company authorized to do business in Texas and shall be in conformity with the Insurance Code.

(d) The surety bond shall be to the state for the use by the state or any political subdivision thereof who establishes liability against a promoter for damages, penalties, taxes, or expenses resulting from promotional activities conducted within the State of Texas.

(e) The bond shall be open to successive claims up to the amount of face value, and a new bond must be filed each year. The bonding company is required to provide written notification to the department at least 30 days prior to the cancellation of the bond.

Other Required Licenses

Sec. 9. (a) No person shall act as a professional boxer or wrestler, manager of a professional boxer or wrestler, referee, judge, second, timekeeper, or matchmaker until he has been licensed pursuant to this Act.

(b) The application for a license shall be made upon a form furnished by the commissioner and shall be accompanied by an annual license fee as follows:

(1) boxer	$10
(2) wrestler	$10
(3) manager	$50
(4) matchmaker	$50
(5) judge	$15
(6) referee	$15
(7) second	$ 5
(8) timekeeper	$ 5

(c) Revenue obtained from license fees shall be deposited to the credit of the General Revenue Fund.

License Qualifications

Sec. 10. (a) The commissioner is authorized to promulgate rules and regulations setting forth reasonable qualifications for applicants seeking licenses as a promoter, manager, matchmaker, professional boxer or wrestler, judge, referee, second, or timekeeper.

(b) The commissioner may after investigation and hearing deny an application for a license when the applicant has failed to meet the established qualifications or has violated any provision of this Act or any rule or regulation issued pursuant to this Act.

Gross Receipts Tax

Sec. 11. (a) Any person who conducts a boxing or wrestling match, contest, or exhibition wherein an admission fee is charged shall furnish to the department within 72 hours after the termination of the event a duly verified report on a form furnished by the department showing the number of tickets sold, prices charged, and amount of gross receipts obtained from the event. A cashier's check or money order made payable to the State of Texas in the amount of three percent of the total gross receipts of the event shall be attached to the verified report.

(b) Any person who charges an admission fee for exhibiting a simultaneous telecast of any live, spontaneous, or current boxing or wrestling match, contest, or exhibition on a closed circuit telecast must possess a promoter's license issued pursuant to this Act and must obtain a permit for each closed circuit telecast shown in Texas. The three percent gross receipts tax described in Section 11(a) herein is applicable to said telecast, and the promoter shall furnish to the department within 72 hours after the event a duly verified report on a form furnished by the department showing the number of tickets sold, prices charged, and amount of gross receipts obtained from the event. A cashier's check or money order made payable to the State of Texas in the amount of three percent of the total gross receipts of the event shall be attached to the verified report.

(c) Revenue obtained by the department from the three percent gross receipts tax shall be deposited to the credit of the General Revenue Fund.

(d) The admissions tax provided in Chapter 21, Title 122A, Taxation–General, Revised Civil Statutes of Texas, 1925, as amended, shall not be applicable to said telecast.

Arrest and Conviction Records

Sec. 12. The Department of Public Safety shall upon request supply to the Texas Department of Labor and Standards any available arrest and conviction records of individuals applying for or holding any license under this Act.

[Amended by Acts 1977, 65th Leg., p. 815, ch. 305, § 1, eff. Aug. 29, 1977.]

Acts 1977, 65th Leg., p. 815, ch. 305, § 1, revised the Texas boxing and wrestling laws, Acts 1933, 43rd Leg., p. 843, ch. 241, classified as arts. 8501–1 to 8501–17c, by enacting the Texas Boxing and Wrestling Act.

Acts 1977, 65th Leg., p. 2136, ch. 853, § 1, amended former subsec. (a) of this article without reference to revision of the Texas Boxing and Wrestling Laws by Acts 1977, 65th Leg., p. 815, ch. 305, § 1.

Arts. 8501-2 to 8501-17c. Deleted

Acts 1977, 65th Leg., p. 815, ch. 305, § 1, revised the Texas boxing and wrestling laws, Acts 1933, 43rd Leg., p. 843, ch. 241, classified as arts. 8501–1 to 8501–17c, by enacting the Texas Boxing and Wrestling Act, art. 8501–1.

See, now, art. 8501–1 and notes thereunder.

CHAPTER SIX. AUCTIONEERS

Art. 8700. Regulation of Auctioneers

Definitions

Sec. 1. For the purpose of this Act:

(1) "Auction" means the sale of any property by competitive bid.

(2) "Person" means an individual.

(3) "Property" means any property, tangible and intangible, real, personal, or mixed.

(4) "Auctioneer" means any person who, as a bid caller, with or without receiving or collecting a fee, commission, or other valuable consideration, sells or offers to sell property at auction.

(5) "Secured party" means a person holding a security interest.

(6) "Commissioner" means the Commissioner of the Texas Department of Labor and Standards.

(7) "Licensee" means any person holding a license under this Act.

(8) "Applicant" means any person applying for a license hereunder.

(9) "Associate auctioneer" means a person who, for compensation, is employed by and under the direct supervision of a licensed auctioneer to sell or offer to sell property at an auction.

Exempt Transactions

Sec. 2. The provisions of this Act shall not apply to the following transactions:

(1) a sale conducted by order of any United States court pursuant to Title II [1] of the United States Code relating to bankruptcy;

(2) a sale conducted by an employee of the United States or the State of Texas or its political subdivisions in the course and scope of his employment;

(3) a sale conducted by a charitable or nonprofit organization, if the auctioneer receives no compensation;

(4) a sale conducted by an individual of his own property if such individual is not engaged in the business of selling such property as an auctioneer on a recurring basis;

(5) a foreclosure sale of realty conducted personally by a trustee under a deed of trust;

(6) a foreclosure sale of personal property conducted personally by the mortgagee or other secured party or an employee or agent of such mortgagee or other secured party acting in the course and scope of his employment if the employee or agent is not engaged otherwise in the auction business and if all property for sale in the auction is subject to a security agreement;

(7) a sale conducted by sealed bid.

(8) An auction conducted in a course of study, approved by the commissioner, for auctioneers and conducted only for student training purposes;

(9) an auction conducted by a posted stockyard or market agency as defined by the Federal Packers and Stockyard Act, 1921, as amended (7 U.S.C. Section 181 et seq.);

(10) an auction of livestock conducted by a nonprofit livestock trade association chartered in this state, if the auction involves only the sale of the trade association's members' livestock; or

(11) an auction conducted by a charitable or nonprofit organization chartered in this state, if the auction involves only the property of the organization's members and the auction is part of a fair that is organized under state, county, or municipal authority.

License Requirements

Sec. 3. (a) Except as exempted under this Act, no person may act as an auctioneer or associate auctioneer in an auction held within this state unless he holds a license issued by the commissioner under this Act.

(b) A person is eligible for an auctioneer's license if he:

(1) is at least 18 years of age;

(2) is a citizen of the United States or a legal alien;

(3) either (i) passes a written or oral examination demonstrating his knowledge of the auction business and of the laws of this state pertaining to the auction business; or (ii) shows proof of his employment by a licensed auctioneer for a period of one year during which the applicant participated in at least five auctions.

(c) A person is eligible for an associate auctioneer's license if he:

(1) is a citizen of the United States or a legal alien; and

(2) is employed under the direct supervision of a licensed auctioneer.

(d) Each person applying for a license must apply to the commissioner on a form provided by the commissioner that establishes the applicant's eligibility for the license. The application must be accompanied by the required bond, the required license fee, and either the limited sales tax permit number issued by the comptroller of public accounts or proof of exemption from the limited sales tax permit requirement.

(e) The commissioner shall prepare license examinations for an auctioneer's license and study and reference materials on which the examinations are based. The examination for auctioneers must be designed to establish the applicant's general knowledge of the auction business, the principles of conducting an auction, and the laws of this state pertaining to auctioneers. The license examination must be offered at least four times a year at locations designated by the commissioner.

(f) A person who establishes his eligibility for an auctioneer's license may apply to the commissioner for a license examination. The application must be accompanied by an examination fee of $25. On receipt of an examination application with the required fee, the commissioner shall furnish the applicant with study materials and references on which the examination will be based and a schedule specifying the dates and places the examination will be offered. The applicant may take the examination at any scheduled offering within 90 days after receipt of the study materials. If an applicant fails the qualifying examination, he may reapply to take the license examination again. However, if the applicant fails the examination twice within a one-year period, he must wait one year to reapply.

(g) If an application for an auctioneer's license from a nonresident of this state is accompanied by a certified copy of an auctioneer's license issued to the applicant by the county, state, or political subdivision of his residence and by proof that the county, state, or political subdivision in which the applicant is licensed has competency standards at least equivalent to those of this state, and if the county, state, or political subdivision extends similar recognition and courtesies to this state, the commissioner shall accept the license as proof of the applicant's professional competence and shall waive the examination and training requirements of Paragraph (3), Subsection (b) of this section. All other application requirements must be complied with by nonresidents, and in addition, a nonresident's application shall be accompanied by a written irrevocable consent of service of process. The consent must provide that actions growing out of any transaction subject to this Act may be commenced against the licensee in the proper court of any county of this state in which the cause of action may arise, or in which the plaintiff may reside, by a service of process upon the commissioner as the licensee's agent and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if due service has been made upon the person according to the laws of this or any other state. The consent of service of process shall be in such form and supported by such additional information as the commissioner may by rule require.

(h) A license issued under this Act must be issued for one year, and it expires on the anniversary of issuance unless it is affected by actions resulting from a hearing conducted according to this Act or unless enjoined by actions of a court of competent jurisdiction. Any license issued under this Act may be renewed within 30 days after the expiration date on written request by the licensee and payment of the required license fee.

(i) A person licensed under this Act on the effective date of this amendment is entitled to be relicensed as an auctioneer under this Act without complying with the examination and training requirements of Paragraph (3) of Subsection (b) of this section.

Fees

Sec. 4. (a) The annual fee for each auctioneer's license issued by the commissioner is $100. The annual fee for each associate auctioneer's license issued by the commissioner is $50. The commissioner shall issue the license upon approval of application and receipt of payment of all license fees.

(b) All fees shall be paid to the state treasury and placed in the General Revenue Fund.

Bond

Sec. 5. (a) Each application for an auctioneer's license must be accompanied by a surety or cash performance bond in the principal amount of $5,000 and shall be in conformity with the Insurance Code.

(b) The bond shall be payable to the state for the use and benefit of any damaged party and conditioned that the licensee will pay any judgment recovered by any consumer, the state, or any political subdivision thereof in any suit for damages, penalties, or expenses, including reasonable attorney's fees resulting from a cause of action involving the licensee's auctioneering activities. The bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond.

Preemption

Sec. 6. No municipality or other political subdivision of this state has authority, after the effective date of this amendment, to levy or collect any license tax or fee, as a regulatory or revenue measure, or to require the licensing in any manner of any auctioneer or associate auctioneer who is licensed and complies with all applicable provisions of this Act.

Denial, Suspension, or Revocation of License

Sec. 7. (a) The commissioner may deny, suspend, or revoke the license of any auctioneer for any of the following causes:

(1) for obtaining a license through false or fraudulent representation;

(2) for making any substantial misrepresentation in an application for an auctioneer's license;

(3) for a continued and flagrant course of misrepresentation or for making false promises through agents, advertising, or otherwise;

(4) for failing to account for or remit, within a reasonable time, any money belonging to others that comes into his possession and for commingling funds of others with his own or failing to keep such funds of others in an escrow or trustee account;

(5) for conviction in a court of competent jurisdiction of this state or any other state of a criminal offense involving moral turpitude or a felony;

(6) for violation of this act or any rule or regulation of the department; or

(7) for any violation of the Business & Commerce Code in the conduct of an auction.

(b) Before denying an application for a license or before suspending or revoking any license, the commissioner shall in all cases set the matter for a hearing and shall, at least 30 days before the date set for the hearing, notify in writing the applicant or licensee of the charges made against him or of the question to be determined, including notice of when and where the hearing will be held.

(c) The applicant or licensee is entitled to an opportunity to be present and to be heard in person or by counsel and to an opportunity to offer evidence by oral testimony, by affidavit, or by deposition.

(d) Written notice may be served by delivery of the notice personally to the applicant or licensee or by mailing the notice by certified mail to the last known mailing address of the applicant or licensee. In the event the applicant or licensee is an associate auctioneer, the commissioner shall also notify the auctioneer employing him or in whose employ he is about to enter by mailing the notice by certified mail to the auctioneer's last known mailing address.

(e) The hearing must be conducted in a manner that will give to the applicant or licensee due process of law and that is consistent with the provisions of the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes).

(f) If, after a hearing, the commissioner determines that a license should be denied, revoked, or suspended, the applicant or licensee has 30 days in which to appeal the commissioner's decision to the district court of Travis County or of the county in which the violation is alleged to have occurred.

Investigation of Complaint; Action

Sec. 8. The commissioner may, upon his own motion, and shall, on the written and verified complaint of any person aggrieved by the actions of an auctioneer in the conduct of an auction, investigate alleged violations of this Act by any licensed or unlicensed auctioneer or any applicant.

Rules and Regulations; Hearing of Testimony

Sec. 9. The commissioner may make reasonable rules and regulations relating to the form and manner of filing applications for licenses, the issuance, denial, suspension, and revocation of licenses, and the conduct of hearings consistent with the provisions of The Administrative Procedures Act. The commissioner or other person authorized by him may administer oaths and hear testimony in matters relating to the duties imposed on the commissioner.

Advertising an Auction

Sec. 10. Any auctioneer who advertises to hold or conduct an auction within this state shall indicate in such advertisement his name and license number.

Penalties

Sec. 11. (a) Whoever acts as an auctioneer as defined in this Act without first obtaining a license commits a Class B misdemeanor.

(b) Whoever violates any other provisions of this Act or any rule or regulation promulgated by the commissioner in the administration of this Act, for the violation of which no other penalty is provided, commits a Class C misdemeanor.

[Acts 1975, 64th Leg., p. 827, ch. 320, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 839, ch. 314, § 1, eff. May 30, 1977.]

Section 12 of the 1975 Act repealed Tax.-Gen. art. 19.01, § (1).

CHAPTER SEVEN. IRRIGATORS

Article
8751. Regulation of Irrigators.

Art. 8751. Regulation of Irrigators

Definitions

Sec. 1. In this Act:

(1) "Person" means a natural person.

(2) "Board" means the Texas Board of Irrigators.

(3) "Executive director" means the executive director of the Texas Department of Water Resources.

(4) "Executive secretary" means the executive secretary of the board.

(5) "Commission" means the Texas Water Commission.

(6) "Irrigation system" means an assembly of component parts permanently installed with and for the controlled distribution and conservation of water for the purpose of irrigating any type of landscape vegetation in any location or for the purpose of dust reduction or erosion control.

(7) "Irrigator" means a person who sells, designs, consults, installs, maintains, alters, repairs, or services an irrigation system including the connection of such system in and to a private or public, raw or potable water supply system or any water supply. The term does not include (a) a person who assists in the installation, maintenance, alteration, repair, or service of an irrigation system under the direct supervision of a licensed irrigator, and (b) an owner of a business that regularly employs a licensed irrigator who directly supervises the business's sale, design, consultation, installation, maintenance, alteration, repair, and service of irrigation systems.

(8) "Licensed irrigator" means an irrigator who is licensed under this Act.

(9) "Installer" means a person who actually connects an irrigation system to a private or public, raw or potable water supply system or any water supply.

(10) "Licensed installer" means an installer who is licensed under this Act.

Exemptions

Sec. 2. This Act does not apply to:

(1) any person licensed by the Texas State Board of Plumbing Examiners;

(2) a registered professional engineer or architect or landscape architect if his or her acts are incidental to the pursuit of his or her profession;

(3) irrigation or yard sprinkler work done by a property owner in a building or on premises owned or occupied by him or her as his or her home;

(4) irrigation or yard sprinkler work done by a maintenance person incidental to and on premises owned by the business in which he or she is regularly employed or engaged and who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(5) irrigation or yard sprinkler work done on the premises or equipment of a railroad by a regular employee of the railroad who does not engage in the occupation of licensed irrigator or in yard sprinkler construction or maintenance for the general public;

(6) irrigation and yard sprinkler work done by a person who is regularly employed by a county, city, town, special district, or political subdivision of the state on public property;

(7) a temporary or portable water device such as a garden hose, hose sprinkler, soaker hose, or agricultural irrigation system;

(8) a portable or solid set or other type of commercial agricultural irrigation system; or

(9) irrigation or yard sprinkler work done by an agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, or grader or cultivator of land on land owned by himself or herself.

Texas Board of Irrigators

Sec. 3. (a) There is created a Texas Board of Irrigators composed of six members, each of whom shall be a citizen of the United States and a resident of this state.

(b) Each member of the board and his or her successor shall be appointed by the governor with the advice and consent of the senate. Two members shall be members of the public not licensed under this Act, and four members shall be licensed irrigators who have been actively engaged in the practice of irrigation of the type licensed under this Act for a period of at least five years. A person is not eligible for appointment to the board if the person has contributed more than $1,000 on behalf of the political candidacy of the governor who makes the appointments under this Act. Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(c) Except for the initial appointees to the board, the members of the board hold office for terms of six years, with the terms of two members expiring on January 31 of each odd-numbered year. In making initial appointments, the governor shall designate two members to serve terms expiring January 31, 1981, two members to serve terms expiring January 31, 1983, and two members to serve terms expiring January 31, 1985.

(d) The board shall select one of its members as chairman. The chairman shall serve for the term provided by the rules of the board and may be removed for cause, but his or her removal does not disqualify him or her from continuing as a member of the board.

(e) Four members of the board constitute a quorum for transaction of business.

(f) The initial board shall hold its first meeting within 30 days after all members have qualified, and the board shall hold at least two regular meetings each year at a time and place designated by the chairman. The board may hold special meetings at times and places considered necessary by a majority of the members of the board.

(g) Each member shall receive as compensation for his or her services $25 a day for each day he or she is actively engaged in official duties in addition to actual travel expenses.

(h) It is a ground for removal of a member from the board that the member does not attend at least one-half of the regularly scheduled meetings held by the board in a calendar year.

Conflict of Interest

Sec. 4. A member of the board may not be an officer, employee, or paid consultant of a trade association in the field of landscape irrigation. No board member may be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the irrigation industry.

Executive Secretary; Staff; Services

Sec. 5. (a) The board may employ an executive secretary to perform the duties and functions provided by this Act and as directed by the board. On approval of the board the executive secretary may contract with the executive director for staff necessary to assist in the administration of this Act. In the event staff is unavailable through contract, the executive secretary with approval of the board and the executive director may employ such staff.

(b) The executive director shall provide necessary services as available to assist the executive secretary and the board in performing their duties and functions under this Act.

(c) The commission shall hear all contested cases as defined in the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Ver-

non's Texas Civil Statutes), arising under this Act. The board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252–17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252–13a, Vernon's Texas Civil Statutes).

(d) A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252–9c, Vernon's Texas Civil Statutes), may not act as the general counsel to the board.

Board Finances

Sec. 6. (a) Money paid to the board under this Act shall be deposited in the State Treasury in a special fund known as the Texas Board of Irrigators Fund.

(b) The Texas Board of Irrigators Fund shall be used to pay expenses under this Act.

(c) Before September 1 of each year, the board shall make a written report to the governor accounting for all receipts and disbursements under this Act.

(d) The state auditor shall audit the financial transactions of the board during each fiscal year.

Rules

Sec. 7. (a) The board shall adopt only those rules consistent with this Act to govern the conduct of its business and proceedings and shall adopt standards governing revocation of certificates of registration and connections to public or private water supplies by a licensed irrigator or a licensed installer.

(b) The board does not have authority to amend or enlarge by rule on any provision of this Act, to change the meaning of this Act by rule in any manner, to adopt a rule that is contrary to the underlying and fundamental purposes of this Act, or to make a rule that is unreasonable, arbitrary, capricious, illegal, or unnecessary.

(c) The board shall adopt no rules which would preclude advertising or competitive bidding.

(d) If the appropriate standing committee of either house of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as added (Article 6252–13a, Vernon's Texas Civil Statutes), transmits to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committee's statements.

Registration Requirement

Sec. 8. (a) No person may act as an irrigator or installer unless he or she has a valid certificate of registration under this Act.

(b) The board shall issue certificates of registration to persons of good moral character who have shown themselves fit, competent, and qualified to act as licensed irrigators or licensed installers by passing a uniform, reasonable examination which will include the principles of cross connections and safety devices to prevent contamination of potable water supplies.

(c) The board shall provide in its rules for the preparation, administration, and grading of examinations to acquire certificates of registration under this Act. The fee for taking the examination is $50 for the irrigator certificate of registration and $35 for the installer certificate of registration.

(d) A person holding a certificate of registration under this Act shall not be required to comply with any other licensing requirements of other state agencies to perform connections to private or public raw or potable water supply systems.

(e) Not later than the 30th day after the day on which a person completes an examination administered by the board, the board shall send to the person his or her examination results. If requested in writing by a person who fails the examination, the board shall send to the person not later than the 30th day after the day on which the request is received by the board an analysis of the person's performance on the examination.

Reciprocity

Sec. 9. (a) The board may certify for registration without examination an applicant who is registered as a licensed irrigator or licensed installer in another state or country that has requirements for registration that are at least substantially equivalent to the requirements of this state and that extends the same privilege of reciprocity to licensed irrigators or licensed installers registered in this state.

(b) The application for registration under this section shall be accompanied by a fee of not to exceed $50 for a licensed irrigator or $35 for a licensed installer as determined by the board.

Renewal

Sec. 10. (a) Certificates of registration expire on August 31 of each year.

(b) The board or the executive secretary shall notify every person registered under this Act of the date of expiration of his or her certificate and the amount of the fee that is required for renewal for one year. The notice shall be mailed at least two months in advance of the date of expiration of the certificate.

(c) A person may renew his or her certificate at any time during the months of July and August of each year by payment of the fee adopted by the board in an amount of not more than $100 for a licensed irrigator or $50 for a licensed installer.

(d) Failure of a registrant to renew his or her certificate by August 31 does not deprive the regis-

trant of the right to renewal, but the fee paid for renewal of a certificate after the August 31 expiration date shall be increased 10 percent for each month or part of a month that renewal payment is delayed. If the registrant fails to renew within 90 days after the date of expiration of the registration certificate, the registrant must reapply for registration and must qualify under Section 8 of this Act to act as a licensed irrigator or licensed installer.

(e) Renewal certificates carry the same registration number as the original certificates.

(f) By rule, the board may adopt a system under which certificates of registration may expire on various dates during the year. Renewals may be made at any time during the two-month period before the designated expiration date, and renewal fees paid after the expiration date shall be increased 10 percent for each month or part of a month that renewal payment is delayed. If a registrant fails to renew within 90 days after the expiration date of the registration, the registrant must reapply for registration and must qualify under Section 8 of this Act to act as a licensed irrigator or a licensed installer. For the year in which the expiration date is changed, registration fees payable on August 31 shall be prorated on a monthly basis so that each registrant will pay only that portion of the registration fee that is allocable to the number of months during which the registration is valid, and on renewal of the registration on the new expiration date, the total of the registration fee is payable.

Revocation

Sec. 11. (a) The commission may revoke a certificate of registration of any registrant whom it finds guilty of:

(1) violations of this Act or rules adopted under this Act;

(2) fraud or deceit in obtaining a certificate of registration; or

(3) gross negligence, incompetency, or misconduct while acting as a licensed irrigator or licensed installer.

(b) The commission shall hear complaints under Subsection (a) of this section subject to standards adopted by the board in its rules.

(c) Any person may file a complaint with the board. The complaint shall be in writing, shall be notarized, and shall set forth the facts alleged. Three copies of the written allegations shall be filed with the executive director. One copy shall be sent by certified mail to the alleged violator.

(d) On receipt of written allegations, the board, if it considers the information sufficient to support further action, shall issue an order referring the complaint to the commission for setting a hearing.

(e) If the executive director determines through investigation that evidence exists of a violation, he may refer such evidence to the board or may proceed directly to the commission to request setting of a hearing.

(f) The commission may compel the attendance of a witness before it as in civil cases in the district court by issuance of a subpoena.

Penalty; Injunction

Sec. 12. (a) A person who represents himself or herself as a licensed irrigator or licensed installer in this state without being licensed or exempted under this Act, who presents or attempts to use as his or her own the certificate of registration or the seal of another person who is a licensed irrigator or licensed installer, who gives false or forged evidence of any kind to the board or to any member of the board in obtaining or assisting in obtaining for another a certificate of registration, or who violates a provision of this Act or a rule adopted under this Act shall be guilty of a Class C misdemeanor. Each day a violation of this subsection occurs constitutes a separate offense.

(b) The board or the executive director may request the attorney general to seek injunctive relief to prevent any of the acts of violation listed in Subsection (a) of this section.

Enforcement of Act

Sec. 13. The executive director with the assistance of the attorney general shall enforce this Act and the rules adopted by the board.

Local Rules and Regulations

Sec. 14. The regulatory authority of any city, town, county, special purpose district, or other political subdivision of the state may require licensed irrigators or licensed installers to comply with any reasonable inspection requirements or ordinances and regulations designed to protect the public water supply and pay any reasonable fees imposed by that local entity relating to work performed by licensed irrigators within its jurisdiction.

Certification of Certain Persons

Sec. 15. A person who holds a license as a landscape irrigator under Chapter 457, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 249c, Vernon's Texas Civil Statutes), on the effective date of this Act is entitled to be certified as a licensed irrigator without meeting the requirements of Section 8 of this Act; however, persons seeking to become licensed installers must comply with Section 8 of this Act.

Sunset Provision

Sec. 16. The board is subject to the Texas Sunset Act,[1] and unless continued in existence as provided by that Act, the board is abolished and this Act expires effective September 1, 1991.

[1] Article 5429k.

[Acts 1979, 66th Leg., p. 430, ch. 197, §§ 1 to 16, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 2392, ch. 600, §§ 1 to 4, eff. June 15, 1981.]

Sections 17 and 18 of the 1979 Act provided:

"Sec. 17. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed; provided, however, that this Act shall

only be construed as repealing or amending any laws affecting or regulating any other profession as necessary to allow a licensed irrigator or a licensed installer under this Act to connect an irrigation system to any public or private raw or potable water supply system.

"Sec. 18. If any article, section, subsection, sentence, clause, or phrase of this Act is for any purpose or reason held to be unconstitutional, such invalid portion shall not affect the validity of the remaining portions of this Act. The legislature hereby declares that it would have passed the valid portions of the Act irrespective of the fact that any one or more portions thereof be declared unconstitutional."

CHAPTER EIGHT. COIN-OPERATED SERVICES

Article

8801. Definitions.
8802. Amount of Tax.
8803. Exemptions From Tax.
8804. Public nuisance.
8805. Injunction; Venue; Payment of Tax as Condition Precedent; Records and Reports.
8806. Attachment of Permit to Machine.
8807. Rules and Regulations; Revocation of Licenses or Permits.
8808. Permits; Collection of Tax; Payment of Expenses.
8809. Existing Laws; Violations Not Authorized.
8810. Records.
8811. Violations of Act; Penalty; Suit to Recover Penalty.
8812. Offenses; Penalty.
8813. Sealing Machine to Prevent Operations; Penalty for Breaking Seal.
8814. Apportionment of Tax; Tax Levy by Counties and Cities.
8815. Sealing of Machines by City or County.
8816. Taxes, Penalties and Interest Under Re-Enacted or Repealed Statutes; Offenses and Penalties Under Prior Laws.
8817. Regulation of Music and Skill or Pleasure Coin-Operated Machines.

Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, transferred this Chapter from Title 122A, Taxation—General, Chapter 13, Tax on Coin-Operated Machines. Section 1 of the 1981 Act enacted Title 2 of the Tax Code.

Art. 8801. Definitions

The following words, terms and phrases as used in this Chapter are defined as follows:

(1) The term "owner" means any person, individual, firm, company, association or corporation owning any "coin-operated machine" in this State.

(2) The term "operator" means any person, firm, company, association or corporation who exhibits, displays or permits to be exhibited or displayed, in a place of business other than his own, any "coin-operated machine" in this State.

(3) The term "coin-operated machine" means every machine or device of any kind or character which is operated by or with coins, or metal slugs, tokens or checks, "music coin-operated machines" and "skill or pleasure coin-operated machines" as those terms are hereinafter defined, shall be included in such terms.

(4) The term "music coin-operated machine" means every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: phonographs, pianos, graphophones, and all other coin-operated machines which dispense or vend music.

(5) The term "skill or pleasure coin-operated machines" means every coin-operated machine of any kind or character whatsoever, when such machine or machines dispense or are used or are capable of being used or operated for amusement or pleasure or when such machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively, as those terms are defined in this Chapter. The following are expressly included within said term: marble machines, marble table machines, marble shooting machines, miniature race track machines, miniature football machines, miniature golf machines, miniature bowling machines, and all other coin-operated machines which dispense or afford skill or pleasure. Provided that every machine or device of any kind or character which dispenses or vends merchandise, commodities or confections or plays music in connection with or in addition to such games or dispensing of skill or pleasure shall be considered as skill or pleasure machines and taxed at the higher rate fixed for such machines.

(6) The term "service coin-operated machines" means every pay toilet, pay telephone and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure.

(7) The term "commission" means the Texas Amusement Machine Commission.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.01 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8802. Amount of Tax

(1) Every "owner", save an owner holding an import license and holding coin-operated machines solely for re-sale, who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any "coin-operated machine" shall pay, and there is hereby levied on each "coin-operated machine", as defined herein in Article 13.01, except as are exempt herein, an annual occupation tax of $15.00, except that the annual tax on each coin-operated machine that is designed exclusively for showing motion pictures is $1,500.00. The tax shall be paid to the commission by cashier's check or money order.

(2) Provided that the first money taken from each coin-operated machine each calendar year shall be paid to the owner to reimburse the payment of that year's annual occupation tax levied above and those levied by any city or county. No owner shall agree or contract or offer to agree to contract to waive this reimbursement either directly or indirectly. No owner shall agree or contract with a bailee or lessee of a coin-operated machine to compensate said bailee

or lessee in excess of fifty percent (50%) of the gross receipts of such machine after the above reimbursement has been made. In addition to all other penalties provided by law the commission shall revoke any license held under Article 13.17 by any person who violates this Subsection.

(3) The commission may provide a duplicate permit if a valid permit has been lost, stolen, or destroyed. The fee for a duplicate permit is $2.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2411, ch. 612, § 1, eff. June 15, 1981; Acts 1981, 67th Leg., p. 2879, ch. 770, § 2, eff. Sept. 1, 1981. Transferred from Title 122A, Taxation—General, art. 13.02 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8803. Exemptions from Tax

Gas meters, pay telephones, pay toilets, food vending machines, confection vending machines, beverage vending machines, merchandise vending machines, and cigarette vending machines which are now subject to an occupation or gross receipts tax, stamp vending machines, and "service coin-operated machines," as that term is defined, are expressly exempt from the tax levied herein, and the other provisions of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.03 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8804. Public Nuisance

Every coin-operated machine subject to the payment of the tax levied herein, and upon which the said tax has not been paid as provided herein, is hereby declared to be a public nuisance, and may be seized and destroyed by the commission, its agents, or any law enforcing agency of this State as in such cases made and provided by law for the seizure and destruction of common nuisances.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.04 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8805. Injunction; Venue; Payment of Tax as Condition Precedent; Records and Reports

(1) Any person who shall invoke the power and remedies of injunction against the commission to restrain or enjoin it from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued, shall file such proceedings in a court of competent jurisdiction in Travis County, Texas, and venue for such injunction is hereby declared to be in Travis County, Texas.

(2) Before any restraining order or injunction shall be granted against the commission to restrain or enjoin the collection of the taxes levied herein the applicant therefor shall pay into the suspense account of the State Treasury all taxes, fees, and assessments then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent, or attorney. Provided that said applicant shall keep for the inspection at all times of the Attorney General and the commission or their authorized representatives, a complete, itemized record maintained in accordance with generally accepted auditing and accounting practices, showing all coin-operated vending machines possessed and in operation during the pendency of such restraining order or injunction. Such record shall show the make and kind of machine, the serial number, the date such machine was put in operation, and the location and serial number of each and every machine possessed or operated within the State. Provided further that said applicant shall make and file with the commission daily, excluding Sundays and legal holidays, a report on a form to be prescribed by the commission, showing the ownership, make and kind, and the serial number of every such machine operated by said applicant within this State. Said report shall also show the county, city, and location within the city and county of each machine and the date such machine was placed in operation. In the event the location or ownership of any machine is changed such information shall be included in said report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing if said applicant fails, at any time before the case shall have been finally disposed of by the court of last resort, to keep the records or make and file the reports required herein or to pay daily, excluding Sundays and legal holidays, into the suspense account of the Treasurer all taxes, fees and assessments due and thereafter becoming due, and such taxes shall be paid before such machines are operated, exhibited or displayed for operation within this State. The commission, or its authorized representatives, may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Chapter or has violated the same. Upon the filing of said affidavit, the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon thereafter as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which applicant resides or any other peace officer in this State. In the event the injunction is finally dissolved or dismissed, all taxes, fees and assessments paid into the suspense account of the Treasurer under the provisions of this Chapter shall be paid to the funds to which such taxes, fees and assessments are allocated. If the final judgment maintains the right of applicant to a permanent injunction to prevent the collection of such taxes the funds so deposited shall be refunded by the Treasurer to said applicant.

(3) No person, firm, association or corporation required to pay the taxes levied herein to the State may receive or take advantage of any benefit of any restraining order or injunction against the commission, to restrain the collection of the tax levied herein except such person, firm, association or corporation as may have applied for said injunction. All other persons not securing an injunction shall pay to the commission all taxes, fees, and assessments due by him under the provisions of this Chapter and said restraining order or injunction shall in no way interfere with or impair the power of the commission to collect and enforce the payment of the taxes, fees, and assessments involved in any litigation from taxpayers not parties to the restraining order or injunction. Provided further, that no court shall entertain or hear any restraining order or injunction nor shall any restraining order or injunction be granted in behalf of any class or group unless and until each and every member of such class and/or group shall have been made a party to the cause of action, and shall have paid or deposited the taxes as hereinbefore provided.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.05 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8806. Attachment of Permit to Machine

Provided further, the permit issued by the commission to evidence the payment of the tax levied herein shall be securely attached to the machine in a manner that will require continued application of steam and water to remove the same.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.06 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8807. Rules and Regulations; Revocation of Licenses or Permits

(1) The commission may make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State or of the United States, for the enforcement of the provisions of this Chapter and the collection of the revenues hereunder.

(2) If any individual, company, corporation or association who owns, operates, exhibits or displays any coin-operated machine in this State, shall violate any provision of this Chapter or any rule and regulation promulgated hereunder, the commission shall investigate the violation, make findings of fact, and may recommend to the Attorney General that a license, permit, or registration certificate be revoked. If the licenses, permits, or registration certificate of any individual, company, corporation, or association owning, operating or displaying coin-operated machines in this State is revoked, such individual, company, corporation, or association shall not operate, display or permit to be operated or displayed such machines until the licenses, permits, or registration certificates are reinstated or until new licenses, permits, or registration certificates are granted.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.07 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8808. Permits; Collection of Tax; Payment of Expenses

The commission shall collect, and issue permits for the payment of the tax levied herein and to employ all the agencies of the law available to him for the enforcement of the provisions of this Chapter. Provided that Twenty-five Thousand Dollars ($25,000) of the funds derived under the provisions of this Chapter shall be deposited annually to the credit of the General Revenue Fund as payment for the services of the commission and other State agencies in the enforcement of this Chapter.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.08 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8809. Existing Laws; Violations Not Authorized

Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, or coin-operated machine, the keeping, exhibition, operation, display or maintenance of which is now illegal or in violation of any Article of the Penal Code of this State or the Constitution of this State.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.09 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8810. Records

Every "owner" of one or more coin-operated machines in this State shall keep for a period of two (2) years for the inspection at all times by the Attorney General and the commission, or their authorized representatives, a complete, itemized record maintained in accordance with accepted auditing and accounting practices of each and every such machine purchased, received, possessed, handled, exhibited or displayed in this State. Such record shall be kept at a permanent address which address shall be designated on the application for permit and shall include the following information: The kind of each such machine, the date acquired or received in Texas, the date placed in operation, the location or locations of each machine including county, city, street and/or rural route number, the date of each and every change in location, the name and complete address

of each and every operator, the full name and address of the owner, or if other than an individual the principal officers or members thereof and their addresses. Such information shall be shown completely and separately for each and every machine.
[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.10 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8811. Violations of Act; Penalty; Suit to Recover Penalty

If any "owner" of a coin-operated machine within this State shall (a) permit any coin-operated machine under his control to be operated, exhibited or displayed within this State without said permit being attached thereto, or (b) if any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a permit issued by the commission showing the payment of the tax due thereon for the current year, or (c) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (d) shall fail to keep such records, or (e) shall refuse or fail to present such records for inspection upon the demand of the commission or its authorized representatives, or (f) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (g) mislead the commission or its authorized representatives in the enforcement of this Chapter, or (h) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or (i) if any person in this State shall fail to comply with the rules and regulations promulgated by the commission, or violate the same, he shall forfeit to the State as a penalty, the sum of not less than Five Dollars ($5) nor more than Five Hundred Dollars ($500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas, or any court having jurisdiction.
[Acts 1959, 56th Leg., 3rd C.S, p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.11 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8812. Offenses; Penalty

(a) If any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a valid permit issued by the commission showing the payment of the tax due thereon for the current year, or

(b) if any person required to keep records of coin-operated machines in this State shall falsify such records or

(c) shall fail to keep such records, or

(d) shall refuse or fail to present such records for inspection upon the demand of the commission or its authorized representatives, or

(e) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or

(f) mislead the commission or its authorized representatives in the enforcement of this Chapter, or

(g) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or

(h) if any person in this State shall fail to comply with the rules and regulations promulgated by the commission, or violate the same, he shall be guilty of a Class C misdemeanor.
[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.12 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8813. Sealing Machine to Prevent Operations; Penalty for Breaking Seal

Provided that the commission or its authorized representatives, may seal any such machine upon which the tax has not been paid in a manner that will prevent further operation. Whoever shall break the seal affixed by said commission or its authorized representatives, or whoever shall exhibit or display any such coin-operated machine after said seal has been broken or shall remove any coin-operated machine from location after the same has been sealed by the commission shall be guilty of a misdemeanor and upon conviction shall be punished as set out in Article 13.12 of this Chapter. The commission shall charge a fee of $25.00 for the release of any coin-operated machine sealed for nonpayment of tax. The fee shall be paid to the commission by cashier's check or money order.
[Acts 1959, 67th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2879, ch. 770, § 3, eff. Sept. 1, 1981. Transferred from Title 122A, Taxation—General, art. 13.13 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8814. Apportionment of Tax; Tax Levy by Counties and Cities

Except as herein provided in this Chapter, one-fourth (¼) of the net revenue derived from this Chapter shall be credited to the Available School Fund of the State of Texas and three-fourths (¾) of the net revenue derived from this Chapter shall be credited to the General Revenue Fund. Provided that all counties and cities within this State may levy an occupation tax on coin-operated machines in this State in an amount not to exceed one-half (½) of the State tax levied herein. Further provided that all political subdivisions of this State shall, for zoning purposes, treat the exhibition of a music and skill or pleasure coin-operated machine as indistin-

guishable from the principal use to which the property where exhibited is devoted. This does not prohibit cities from restricting the exhibition of coin-operated amusement machines within three hundred (300) feet of a church, school, or hospital.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2025, ch. 795, § 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2252, ch. 540, § 8, eff. Sept. 1, 1981. Transferred from Title 122A, Taxation—General, art. 13.14 and amended by Acts 1981, 67th Leg., p. 1779, ch. 389, §§ 33, 34, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., p. 2777, ch. 752, § 9(f), eff. Jan. 1, 1982.]

Art. 8815. Sealing of Machines by City or County

Any city or county levying an occupation tax on coin-operated machines is hereby authorized to seal any such machine on which the tax has not been paid. Any city or county levying an occupation tax on coin-operated machines is hereby authorized to charge a fee not exceeding Five Dollars ($5) for the release of any machine sealed as provided herein for nonpayment of tax. Whoever shall break the seal affixed in the name of any city or county or exhibit, display or remove from location any machine on which the seal has been broken shall be guilty of a Class C misdemeanor.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.15 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8816. Taxes, Penalties and Interest Under Re-Enacted or Repealed Statutes; Offenses and Penalties Under Prior Laws

All occupation taxes, penalties and interest accruing to the State of Texas by virtue of any of the re-enacted or repealed provisions as set out in this Chapter before the effective date of this Chapter shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties, and interest accruing under the provisions of prior or pre-existing laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Chapter are hereby expressly preserved and declared to be legal and valid obligations to the State.

The passage of this Chapter shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975. Transferred from Title 122A, Taxation—General, art. 13.16 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

Art. 8817. Regulation of Music and Skill or Pleasure Coin-Operated Machines

Purpose

Sec. 1. The purpose of this Article is to provide comprehensive regulation of music and skill or pleasure coin-operated machines.

Construction

Sec. 1(a). Notwithstanding any language in this Chapter or any other Chapter to the contrary, the term "music or skill or pleasure coin-operated machine" shall include coin-operated billiard and pool games and shall exclude coin-operated amusement machines designed exclusively for children.

Definitions

Sec. 2. In this Article, unless the context requires a different definition,

(1) "person" includes any natural person, association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them;

(2) "financial interest" includes any legal or equitable interest, and specifically includes the ownership of shares or bonds of a corporation.

Administration

Sec. 3. The commission shall administer this Article. The commission may initiate investigations, hearings, and take other necessary measures to ensure compliance with the provisions of this Article or to determine whether violations may exist. If the commission finds evidence of a violation, it shall notify the Attorney General who may institute a civil action in the name of the commission against a person who violates a provision of this Article. If the commission finds evidence of violation of penal provisions, it shall present it to the District or County Attorney of the county wherein such violation occurred.

Powers of Commission

Sec. 4. In addition to its other authority, the commission may, for the purpose of administering this Article,

(1) prescribe all necessary regulations and rules to ensure that all persons affected by this Article are afforded due process of law;

(2) hold hearings and prescribe rules of procedure and evidence for the conduct of hearings;

(3) issue licenses;

(4) prescribe the procedure for registration of music and skill or pleasure coin-operated machines and the method of securely attaching registration stamps;

(5) disclose confidential information to appropriate officials; and

(6) prescribe the form and content of

(a) license applications;

(b) registration certificates;

(c) tax permits;

(d) reports concerning the location of coin-operated machines; and

(e) reports of the consideration of each party to contracts concerning the placement of coin-operated machines in establishments owned by a person other than the licensee.

Disposition of Fees

Sec. 4A. Fees received by the commission under this article shall be deposited in the State Treasury to the credit of the General Revenue Fund.

Delegation of Authority

Sec. 5. The commission may delegate to an authorized representative any authority given it by this Article, including the conduct of investigations and the holding of hearings.

Agency Cooperation

Sec. 6. All state agencies are directed to cooperate with the commission in its investigatory functions under this Article, and shall provide it access to their relevant records and reports including those declared or designated as confidential by other law.

Confidentiality; Penalty for Disclosure

Sec. 7. (1) All information derived from books, records, reports, and applications required to be made available under this Article to the commission or the Attorney General is confidential unless specifically designated a public record, and may be used only for the purpose of enforcing the provisions of this Article.

(2) Any employee of the commission or Attorney General who discloses confidential information obtained from the administration of this Article to an unauthorized person is guilty of a Class C misdemeanor.

Consumer Information

Sec. 7A. (1) The commission shall prepare information of consumer interest describing the regulatory functions of the commission relating to coin-operated machines and describing the commission procedures by which consumer complaints relating to coin-operated machines are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

(2) Each written contract between a licensed owner and an operator in this state shall contain the name, mailing address, and telephone number of the commission.

License or Registration Certificate Required; Penalty; Exceptions

Sec. 8. (1) No person shall engage in business to manufacture, own, buy, sell, or rent, lease, trade, lend, or furnish to another, or repair, maintain, service, transport within the state, store, or import, a music coin-operated machine or a skill or pleasure coin-operated machine without a license or registration certificate issued under this Article.

(2) A person who knowingly violates this Section is guilty of a Class B misdemeanor.

(3) No license is required for a corporation or association organized and operated exclusively for religious, charitable, educational, or benevolent purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, to own, or lease or rent from another, a music or skill or pleasure coin-operated machine for the corporation's or association's exclusive use and in furtherance of the purposes for which it is established. No tax may be assessed against any of these entities if otherwise prohibited by law.

(4) No license or tax is required for an individual to own a music or skill or pleasure coin-operated machine for personal use and amusement in his private residence.

(5) No license is required for any person subject to regulation by the Railroad Commission of Texas to transport or store in the due course of business a music or skill or pleasure coin-operated machine not owned by him.

(6) A person who knowingly secures or attempts to secure a license under this Article by fraud, misrepresentation or subterfuge is guilty of a third-degree felony.

Nature of License

Sec. 9. (a) A license issued under this Article:

(1) is an annual license which expires on December 31st of each year, unless it expires as provided in subdivision (5) of this Section or is suspended or cancelled earlier;

(2) is effective for a single business entity;

(3) vests no property or right in the licensee except to conduct the licensed business during the period the license is in effect;

(4) is nontransferable, nonassignable, and not subject to execution; and

(5) expires upon the death of an individual licensee, or upon the dissolution of any other licensee.

(b) An application for the renewal of a license must be made to the commission before December 1 of each year.

Temporary Extension of License

Sec. 10. When a license issued under this Article expires because of the death of an individual licensee, or the dissolution of any other licensee, or upon conditions involving receivership or bankruptcy, the commission, except for good cause shown, shall permit the successor in interest to operate the business under the same license through December 31st of the year. The commission shall give this permission in writing upon certification by the County Judge of

the county in which the business is located that the person requesting the extension is the successor in interest. The extended license is subject to suspension or cancellation as is any other license issued under this Article. An original license application is necessary upon expiration of the extension.

Display; Penalty

Sec. 11. (1) A person licensed to do business under this Article shall prominently display his current license certificate at his place of business at all times.

(2) A person who violates this Section is guilty of a Class C misdemeanor.

Application for License

Sec. 12. (1) An application for a license to do business under this Article shall contain a complete statement regarding the ownership of the business to be licensed. This statement of ownership must specify

(a) the nature of the business entity to be licensed;

(b) the name and residence address of every person who has a financial interest in the business, and the nature, type, and extent of that financial interest, except corporate applicants may omit any shareholder holding less than 10% of the corporate shares.

(2) The application shall designate a single individual who is responsible for keeping a record and reporting to the commission the following information regarding each music or skill or pleasure coin-operated machine owned, possessed or controlled by the licensee:

(a) the make, type, and serial number of machine;

(b) the date put in operation;

(c) the dates of the first, and the most recent registration of the machine;

(d) the specific location of each machine;

(e) any change in ownership of a machine.

(3) The application shall be accompanied by a sworn written statement executed by the individual designated to maintain the records and make reports that he is aware of and accepts this responsibility.

(4) The individual designated to maintain the records and to make reports must have the following relationship to the business to be licensed:

(a) the owner of a sole proprietorship;

(b) a partner of the partnership;

(c) an officer of the corporation;

(d) a trustee of the trust;

(e) a receiver of the receivership; or

(f) an officer or principal member of the association, joint venture, organization, or other entity not specified.

(5) The commission may require any other pertinent information to be included in the application.

(6) The application must contain a statement that the information contained in it is true and complete, and this statement shall be made under oath.

(7) The statement of ownership contained in the application becomes a public record upon issuance of a license. Other information in the application is confidential.

(8) The application shall designate an office in this state where the applicant proposes to maintain the records which he is required to maintain by this Article, otherwise by law, or by rule or regulation of the commission.

Fee with Application

Sec. 13. The application must be accompanied by the annual license fee in the form of a cashier's check or money order payable to the commission.

Records and Reports; Offenses; Penalty

Sec. 14. (1) The licensee shall keep records and make reports to the commission of the information specified in Subsection (2) of Section 12 of this Article at intervals specified by the commission, and upon demand by the commission. He shall immediately notify the commission in writing of any change in ownership of the licensed business.

(2) It is an offense for a person to willfully fail or refuse to make reports required by this Section.

(3) It is an offense for a person to willfully withhold or conceal any information required to be reported by this Section from a person who has the duty to make the report.

(4) A person who violates this Section is guilty of a Class B misdemeanor.

Types of Licenses

Sec. 15. (1) A person who wishes to engage in certain business dealing with music coin-operated machines or skill or pleasure coin-operated machines shall apply for a general business license, or an import license, or a repair license, or any combination of these.

(2) A general business licensee may engage in business to manufacture, own, buy, sell, rent, lease, trade, repair, maintain, service, transport or exhibit within the state, and store music and skill or pleasure coin-operated machines.

(3) An import licensee may engage in business to import, transport, own, buy, repair, sell, and deliver, music and skill or pleasure coin-operated machines, for sale and delivery within this State.

(4) A repair licensee may engage in the business of repairing, maintaining, servicing, transporting, or storing music, skill, or pleasure coin-operated machines.

Fees

Sec. 16. (1) The annual license fee for a general business license shall be as follows:

For an applicant with 50 or fewer machines, $200;

For an applicant with 51–200 machines, $400;

For an applicant with over 200 machines, $500.

(2) The annual license fee for an import license is $500.

(3) The annual license fee for a repair license is $50.

(4) The commission may not refund any part of a license fee after the license is issued. In the event a license is not issued, the commission may retain $25 to cover administrative costs, and may refund the balance.

(5) Cities and counties within this state may charge a license fee in an amount not to exceed one-half of the license fee required herein.

(6) A person must renew an unexpired license by paying to the commission before the expiration date of the license the annual license fee. If a person's license has been expired for not more than 90 days, the person must renew the license by paying to the commission a fee that is 1½ times the annual license fee. If a person's license has been expired for more than 90 days but less than two years, the person must renew the license by paying to the commission a fee that is two times the annual license fee. If a person's license has been expired for two years or more, the person may not renew the license. The person must obtain a new license by complying with the requirements and procedures for obtaining an original license.

Exemptions

Sec. 16A. (1) A person who owns or exhibits coin-operated machines is exempt from the licensing and record keeping requirements imposed by this Article if:

(a) he operates or exhibits his machines exclusively on premises occupied by him, and in connection with his business; and

(b) he owns no machine subject to the occupation tax imposed by this chapter located on the business premises of another person; and

(c) he has no financial interest, direct or indirect, in the coin-operated music, skill, or pleasure machine industry, except for the interest he owns in his machines used exclusively on premises occupied by him.

(2) Machines which are exhibited by a nonlicensed owner exempt under this section must be registered with the commission. The owner shall obtain a registration certificate each year. The registration certificate shall show the name and address of the location of each machine and shall certify that the machine has a valid tax stamp affixed to it. The owner shall obtain his registration certificate by filing sworn application.

(3) Each time the location of a machine is changed, the owner of the registration certificate shall notify the commission of the change by filing an amendment to the registration certificate within 10 days of the change.

(4) The fee for registration of machines affected by this section is $50 for the business entity in which the owner's machines are exhibited. The fee shall be paid to the commission by cashier's check or money order.

(5) An application for the renewal of a registration certificate must be made to the commission before December 1 of each year.

(6) A person must renew an unexpired registration for a machine by paying to the commission before the expiration date of the registration the required registration fee. If a person's registration has been expired for not more than 90 days, the person must renew the registration by paying to the commission a fee that is 1½ times the registration fee. If a person's registration has been expired for more than 90 days but less than two years, the person must renew the registration by paying to the commission a fee that is two times the registration fee. If a person's registration has been expired for two years or more, the person may not renew the registration. The person must obtain a new registration by complying with the requirements and procedures for obtaining an original registration.

Removal of Stamp Prohibited; Penalty

Sec. 17. (1) No person other than the commission may intentionally remove a current registration stamp from a music or skill or pleasure coin-operated machine.

(2) A person who violates this Section is guilty of a Class C misdemeanor.

License as Consent to Entry

Sec. 18. Acceptance of a license issued under this Article constitutes consent by the licensee that the commission or any peace officer may freely enter upon the licensed business premises during normal business hours for the purpose of ensuring compliance with this Article.

Grounds for Refusal, Suspension, or Revocation of License

Sec. 19. (1) The commission may not issue a general business or import license for a business under this Article if it finds that the applicant:

(a) has been finally convicted of a felony in a court of competent jurisdiction during the five years preceding the filing of the application; or

(b) has been on probation or parole as a result of a felony conviction during the two years preceding the filing of the application.

(2) The commission may not issue or renew a license for a business under this Article, and shall suspend for any period of time, or cancel a license, if it finds that the applicant or licensee is indebted to the State by judgment for any fees, costs, penalties, or delinquent taxes.

(3) The commission may not issue or renew a license for a business pursuant to the terms of this Article if the applicant does not designate and maintain an office in this state or if the applicant does not permit inspection by the commission of all records which the applicant or licensee is required to maintain.

Grounds for Reprimand of Licensee or Suspension or Revocation of License

Sec. 20. (1) A licensee may be reprimanded or a license issued pursuant to the authority of this Article may be suspended or revoked if:

(a) the licensee has intentionally violated a provision of this Article or a regulation promulgated pursuant to the authority of this Article;

(b) the licensee has intentionally failed to answer a question, or intentionally made a false statement in, or in connection with, his application or renewal;

(c) the licensee extends credit without registering his intent to do so with the consumer credit commission;

(d) the licensee uses coercion to accomplish a purpose or to engage in conduct regulated by the commission;

(e) a contract or agreement between the licensee and a location owner contains a restriction, of any kind and to any degree, on the right of the location owner to purchase, agree to purchase, or use a product, commodity, or service not regulated under the terms of this Article; or

(f) failure to suspend or revoke the license would be contrary to the intent and purpose of this Article.

(2) The commission shall conduct a hearing to ascertain whether a licensee has engaged in conduct which would be grounds for revocation or suspension. The commission shall make findings of fact, and, if the commission determines that grounds for revocation exist, the commission shall file those findings with the Attorney General. The Attorney General upon receipt of the record may institute an action to impose the penalties provided by this Act in Article 13.11 or to revoke or suspend the license. The action shall be instituted in a district court in the county of the licensee's place of business.

Complaints

Sec. 20A. (1) The commission shall maintain an information file about each complaint filed with the commission relating to a licensee.

(2) If a written complaint is filed with the commission relating to a licensee, the commission, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notification would jeopardize an undercover investigation.

Applicant and Licensee Defined

Sec. 21. In Sections 19 and 20 of this Article, unless the context requires a different definition, the words "applicant" and "licensee" include each partner of a partnership; each trustee of a trust; each receiver of a receivership; each officer and director of a corporation; and each shareholder owning not less than 25 percent of the outstanding shares; any individual applicant or licensee; each officer, director, and member of any association or other entity not specified and, when applicable in context, the business entity itself.

Notice and Hearing

Sec. 22. (1) An applicant or licensee is entitled to at least ten days' notice and a hearing in the following instances:

(a) after his original application for a license has been refused;

(b) before his application for a renewal of a license may be refused;

(c) before the commission may file a recommendation of revocation, denial, or other sanction, with the Attorney General.

(2) Notice of hearing for refusal, cancellation, or suspension may be served personally by the commission or its authorized representative or sent by United States certified mail addressed to the applicant or licensee at his last known address. In the event that notice cannot be effected by either of these methods after due diligence, the commission may prescribe any reasonable method of notice calculated to inform a person of average intelligence and prudence in the conduct of his affairs. The commission shall publish notice of a hearing in a newspaper of general circulation in the area in which the licensee conducts his business activities.

Notice of Commission's Order

Sec. 23. (1) Any order refusing an application or renewal application shall state the reasons for refusal, and a copy of the order shall be delivered immediately to the applicant or licensee.

(2) An order recommending cancellation or suspension of a license shall state the reasons for the cancellation or suspension, and a copy of the order shall be delivered immediately to the licensee.

(3) Delivery of the commission's recommendation of refusal, cancellation, or suspension may be given by

(a) personal service upon an individual applicant or licensee;

(b) personal service upon any officer or director or partner or trustee or receiver, as the case may be;

(c) personal service upon the person in charge of the business premises, temporarily or otherwise, of the applicant or licensee;

(d) sending such notice by United States certified mail addressed to the business premises of the applicant or licensee;

(e) posting notice upon the outside door of the business premises of the applicant or licensee.

(4) Notice is complete upon performance of any of the above.

Review of Commission Action

Sec. 24. (1) Appeal by an affected person from all actions of the commission other than a recommendation to the Attorney General for the revocation of a license as provided in Article 13.07(2) and Article 13.17 Section 20(2) of this Act or from denial of requested action shall be to a District Court of the county of the licensee's place of business. The review shall be conducted by the court and shall be confined to the record. If the record is found to be incomplete, the court may order that additional evidence be taken before the commission. The commission may modify its findings and decision or order by reason of the additional evidence and shall file such evidence and any modifications, new findings, decisions, or orders with the court. In cases of alleged irregularities in procedure before the commission, not shown in the record, proof thereon may be taken in the court.

(2) The court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact committed to commission discretion. The court may affirm the decision of the commission in whole or in part; the court shall reverse or remand the case for further proceeding if substantial rights of the appellant have been prejudiced because the commission's findings, inferences, conclusion, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the commission;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Appeals

Sec. 25. Appeal from any final judgment of the District Court may be taken by any party, including the commission, in the manner provided for in civil actions generally; provided that the commission may not appeal a decision on motion of the Attorney General to revoke a license.

Prohibited Financial Relationships; Credit Transactions; Penalty

Sec. 26. (1) It shall be unlawful for a person who has a financial interest in a business required to be licensed by this Article or for any agent on behalf of such person to contract either orally or in writing to convey an interest in real property whether by lease, sub-lease or otherwise if such contract contains a provision or provisions in any way limiting the other party's right to secure music or skill or pleasure coin-operated machines from any source.

(2) It shall be unlawful for a person to secure or attempt to secure a contract of lease or bailment of a music or skill or pleasure coin-operated machine by coercion, threats or intimidation, through the commission of, or threat to commit, any act prohibited by the penal laws of this State or the Consumer Credit Code of this State.

(3) A person who violates Subsection (1) or (2) of this Section shall be guilty of a third-degree felony.

(4) Any person required to be licensed by this Article may make an extension of credit or lend the licensee's credit to a lessee or a bailee of a music or skill or pleasure coin-operated machine, or on behalf of either for business or commercial purposes when the following terms and conditions have been met and the following duties and obligations satisfactorily assumed and discharged.

(a) Before making the first such extension of credit, the licensee under this Article shall first notify the Consumer Credit Commissioner of the State of Texas of the intent of such licensee to make extensions of credit in the conduct of the licensee's business.

(b) The consideration for such extensions of credit shall not be less than one-half percent or exceed interest or its equivalent at the rate of one and one-half percent (1½%) per month, computed according to the United States Rule. Consideration excludes court costs and attorney's fees as determined by the court, but includes the aggregate interest, fees, bonuses, commissions, brokerage, discounts, expenses, and other forms of costs charged, contracted for, or received by a licensee or any other person in connection with investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, and enforcing an extension of credit or forbearance of money, credit, goods, or things in action, or any other service rendered. If in any transaction any consideration in excess of that provided above is charged or received by the licensee directly, or indirectly, except as the result of an accidental and bona fide error corrected upon discovery, the unpaid balance of the indebtedness created by such transaction shall be void, and that portion of any indebtedness so created which has been paid to the licensee, either the principal or its equivalent or interest or its equivalent, or both, shall be repaid by the licensee to the person.

(c) No extension of credit may be made by any person required to be licensed by this Article unless it is evidenced by a written agreement signed by the parties thereto specifying both the amount

of credit extended, the consideration for such extension of credit, and the terms according to which such extension of credit is to be repaid.

(d) Each licensee making extensions of credit authorized by this Section shall keep in this State books and records, which shall be consistent with accepted accounting and auditing practices, relating to all such extensions of credit authorized by this Section sufficient to enable any competent person to determine whether or not such licensee is complying with this Section. Such records shall be preserved for four (4) years from the date of the transaction to which they relate, or two (2) years from the date of the final entry made with regard to such transaction, whichever is later.

(e) At such times as the Consumer Credit Commissioner may deem necessary, or at the request of the commission or the Attorney General, the Consumer Credit Commissioner, or his duly authorized representative, may make an examination of the place of business of each licensee hereunder, and may inquire into and examine the transactions, books, accounts, papers, correspondence, or records of such licensee insofar as they pertain to the extensions of credit regulated by this Section. In the course of such examinations, the Consumer Credit Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes and vaults of such licensee, and shall have the right to make copies of such books, accounts, papers, correspondence and records. The Consumer Credit Commissioner or his duly authorized representative may, during the course of such examination, adminster oaths and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Section to consider, investigate or secure information. Any licensee who shall fail or refuse to let the Consumer Credit Commissioner or his duly authorized representative examine or make copies of of such books or other relative documents shall thereby be deemed in violation of this Section. The information obtained in the course of such examination shall be confidential. Each licensee shall pay to the Consumer Credit Commissioner an amount assessed by the Commissioner to cover the direct and indirect costs of such examination, including a proportionate share of general administrative expenses, which amount shall be retained and held by the Consumer Credit Commissioner, and no part of such fee shall ever be paid into the General Revenue Fund of this State. All expenses incurred by the Consumer Credit Commissioner in conducting such examinations shall be paid only from such fees, and no such expense shall ever be charged against the funds of this State.

(f) The Consumer Credit Commissioner may make regulations necessary for the enforcement of this Section and consistent with all its provisions. Before making a regulation the Consumer Credit Commissioner shall give each licensee at least thirty (30) days' written notice of a public hearing, stating the time and place thereof and the terms or substance of the proposed regulation. At the hearing, any licensee or other person may be heard and may introduce evidence, data, or arguments or place the same on file. The Consumer Credit Commissioner, after consideration of all relevant matters presented, shall adopt and promulgate every regulation in written form, stating the date of adoption and date of promulgation. Each regulation shall be entered in a permanent record book which shall be a public record and be kept in the Consumer Credit Commissioner's office. A copy of every regulation shall be mailed to each licensee, and no regulation shall become effective until the expiration of at least twenty (20) days after such mailing. On the application of any person and payment of the cost thereof, the Consumer Credit Commissioner shall furnish such person a certified copy of any such regulation.

(5) Any person who violates Subsection (4) of this Section is guilty of a Class C misdemeanor.

[Acts 1959, 56th Leg., 3rd C.S., p. 187, ch. 1. Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2879, ch. 770, §§ 4 to 7, eff. Sept. 1, 1981. Transferred from Title 122A, Taxation—General, art. 13.17 by Acts 1981, 67th Leg., p. 1779, ch. 389, § 33, eff. Jan. 1, 1982.]

CHAPTER TWENTY. MISCELLANEOUS

Article

9001a. Tourist Trade Centers; Exemption from Saturday-Sunday Law.
9009. Secondhand Metal Dealers; Records and Reports of Purchases and Sales of Copper, Brass and Bronze Materials.
9009a. Crafted Precious Metals; Dealer Purchase and Disposition.
9020. Regulation of Invention Development Services Act.
9018. Artists' Consignment Act.
9019. Interception of Communications; Civil Remedies and Criminal Penalties.

Art. 9001a. Tourist Trade Centers; Exemption from Saturday-Sunday Law

Definitions

Sec. 1. As used in this Act:

(1) "Tourist trade center" shall mean a specific contiguous area of not more than one-fourth square miles. Merchants within such area shall primarily offer for sale goods that are generally of interest to tourists. Seventy-five percent of all real property within such area shall be publicly owned.

(2) "Tourist trade center merchant" shall mean a merchant who employs no more than 10 persons and who primarily offers for sale goods that are of general interest to tourists and sells more than 75 percent of these goods to tourists and whose gross sales of all products for the preceding one-week period are not more than $10,000.

(3) "Saturday-Sunday Law" is Chapter 15, Acts of the 57th Legislature, 1st Called Session, 1961 (Article 9001, Vernon's Texas Civil Statutes).

Sec. 2. The governing body of an incorporated city or town, by ordinance, may designate two tourist trade centers within such city. A tourist trade center merchant, exclusively within a tourist trade center, shall be exempt from the provisions of the Saturday-Sunday Law.

Sec. 3. Any person may apply to any court of competent jurisdiction for and may obtain an injunction restraining anyone using the provision of this Act to claim an exemption from the Saturday-Sunday Law, when such person claiming the exemption is not a tourist trade center merchant within a tourist trade center. Such person bringing the action may recover reasonable attorney's fees, costs of court, and actual damages, if any.

Sec. 4. It is the intent of the legislature that this Act would not have been enacted if it in any way affects the constitutionality of the Saturday-Sunday Law and if any portion or provision of this Act is held or found to be unconstitutional, this Act shall be void and such shall not in any manner affect the Saturday-Sunday Law.

[Acts 1979, 66th Leg., p. 1142, ch. 548, §§ 1 to 4, eff. Aug. 27, 1979.]

Art. 9007. Sale of Merchandise Made by Convicts or Prisoners Prohibited; Exceptions

[See Compact Edition, Volume 5 for text of 1]

Sec. 1(a). The Texas Department of Corrections is hereby authorized to contract with other states, the federal government, foreign governments, or an agency of any of them for the manufacturing and selling of items produced by prison industries for the above mentioned governments. The Texas Department of Corrections is also authorized to contract with private schools and visually handicapped persons in the State of Texas for the purpose of manufacturing braille textbooks and other instructional aids for the education of blind or visually handicapped persons.

[See Compact Edition, Volume 5 for text of 2]

[Amended by Acts 1977, 65th Leg., p. 1420, ch. 577, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1618, ch. 633, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 17, ch. 9, § 1, eff. March 7, 1979.]

Art. 9008. Repealed by Acts 1975, 64th Leg., p. 2305, ch. 719, art. I, § 1, eff. Jan. 1, 1976

Art. 9009. Secondhand Metal Dealers; Records and Reports of Purchases and Sales of Copper, Brass and Bronze Materials

[See Compact Edition, Volume 5 for text of 1]

Duty to Maintain Record; Exhibition; Form and Contents

Sec. 2. (a) Every secondhand metal dealer in this state shall keep a written record of all sales to and purchases from any individual of copper or brass material in excess of 50 pounds made in the course of his business. The record shall be exhibited on demand to any peace officer of this state or the United States. The record shall be in the English language in written form and shall include:

(1) the place and date of each sale to or purchase from an individual of copper or brass material in excess of 50 pounds made in the conduct of his business;

(2) the name and address of each individual from whom copper or brass material in excess of 50 pounds is purchased or obtained, and the license number of any motor vehicle used in transporting such copper or brass material to the secondhand metal dealer's place of business;

(3) a description of the article or articles of copper or brass material sold or purchased and the quantity thereof.

(b) Every secondhand metal dealer in this state shall keep a written record of all purchases from any individual of any bronze cemetery vase or receptacle, any bronze cemetery memorial, or any bronze statuary made in the course of his business. The record shall be exhibited on demand to any peace officer of this state or the United States. The record shall be in the English language in written form and shall include:

(1) the place and date of each purchase from an individual of any bronze cemetery vase or receptacle, any bronze cemetery memorial, or any bronze statuary made in the course of his business;

(2) the name and address of each individual from whom any bronze cemetery vase or receptacle, any bronze cemetery memorial, or any bronze statuary is purchased or obtained, and the license number of any motor vehicle used in transporting the bronze pieces to the secondhand metal dealer's place of business;

(3) a description of the bronze cemetery vase or receptacle, bronze cemetery memorial, or bronze statuary purchased and the weight of it.

Preservation of Records

Sec. 3. Every secondhand metal dealer shall preserve the records required by Section 2 of this Act for a period of at least two years.

Reports; Mailing

Sec. 4. Every secondhand metal dealer shall, within seven days after the purchase or other acquisition of any material required to be recorded under Section 2 of this Act, mail to or file with the Department of Public Safety a report containing the information required to be recorded in Section 2 of this Act.

[See Compact Edition, Volume 5 for text of 5 and 6]

[Amended by Acts 1975, 64th Leg., p. 380, ch. 169, §§ 1 to 3, eff. Sept. 1, 1975.]

Art. 9009a. Crafted Precious Metals; Dealer Purchase and Disposition

Definitions

Sec. 1. In this Act:

(1) "Crafted precious metals" includes jewelry, silverware, art objects, or any other thing or object made, in whole or in part, from gold, silver, platinum, palladium, iridium, rhodium, osmium, ruthenium, or their alloys, excluding coins and commemorative medallions.

(2) "Dealer" means a person who engages in the business of purchasing and selling crafted precious metals.

(3) "Department" means the Department of Public Safety of the State of Texas.

(4) "Person" means an individual, association, corporation, or any other legal entity.

(5) "Temporary location" means a place where business is conducted for a period shorter than 90 days.

Purchases from Minor

Sec. 2. (a) A dealer may not purchase crafted precious metals from a person under 18 years of age unless the seller delivers to the dealer before the purchase a written statement from a parent or legal guardian of the seller consenting to the transaction. The dealer shall preserve the statement with the records required to be kept under this Act. The dealer may destroy the statement one year from date of purchase or until the item is sold, whichever occurs later.

(b) A person who fails to obtain or keep a statement as required by this section commits a Class B misdemeanor.

Retention of Item

Sec. 3. (a) A dealer may not melt, alter, deface, or dispose of an item before the fourth day after the day on which the item was purchased if the item:

(1) is a crafted precious metal, and

(2) was purchased by the dealer in the course of business, and if purchased from other than a manufacturer of or a regular dealer in crafted precious metals.

(b) A dealer shall hold an item that is subject to Subsection (a) of this section for the period prescribed by that subsection:

(1) in the municipality in which the item was purchased; or

(2) in the county in which the item was purchased if it was not purchased inside the boundaries of a municipality.

(c) A person who melts, alters, defaces, or disposes of a crafted precious metal in violation of this section or who fails to hold an item as required by this section commits a Class B misdemeanor.

Records

Sec. 4. (a) Each dealer shall keep at the dealer's place of business a well-bound book in which the dealer shall enter for each transaction in which the dealer purchases an item made of crafted precious metals, if it was purchased by the dealer in the course of business and if purchased from other than a manufacturer of or a regular dealer in crafted precious metals:

(1) a description of each item purchased and the serial number of the item, if available;

(2) the name and address of the seller;

(3) the driver's license number of the seller or information from some other method of identification.

(b) Each dealer shall preserve the records required by this section for one year from date of purchase or until the item is sold, whichever occurs later.

(c) A person who fails to keep a record as required by this section commits a Class B misdemeanor.

Inspection

Sec. 5. (a) The purchased property must be made available by the dealer for inspection by any police officer during regular business hours while the property is in the dealer's possession. The investigating officer may inspect and copy any records required to be kept by this Act without obtaining a court order.

(b) Information obtained under this section is confidential except for use in a criminal investigation or prosecution or a civil court proceeding.

Purchases at Temporary Locations

Sec. 6. (a) A dealer who conducts business from a temporary location may not engage in business of buying precious metal or used items made of precious metal unless the person has filed a registration statement with the department within a 12-month period at least 30 days preceding the date on which each purchase is made and the person has filed, within the same period, a copy of the registration statement with the local law enforcement agency of the municipality in which the temporary location is situated or, if the temporary location is not situated in a municipality, with the local law enforcement agency of the county in which the temporary location is situated. A registration statement must set forth:

(1) the name and address of the person;

(2) the location where business is to be conducted; and

(3) other relevant information required by the department.

(b) If the dealer is an association or corporation, the statement must set forth the name and address of each member of the association or each officer and director of the corporation, respectively.

(c) A dealer who conducts business from a temporary location and who does not maintain a permanent location in the municipality in which the temporary location is located or, if the temporary location is not in a municipality, in the county in which the temporary location is located, shall be required to have delivered by person or by receipted United States mail within 48 hours after terminating business at the temporary location:

(1) the records of purchases made at the temporary location to the department; and

(2) a copy of those records to the law enforcement agency of the municipality or county, as the case may be.

(d) A dealer who fails to file a registration statement in violation of this section and who fails to deliver the records as required by Section 4 of this Act commits a Class B misdemeanor.

Purchase of Melted Items

Sec. 7. (a) A dealer, in the course of business, may not purchase an object that is formed as the result of the melting of crafted precious metal unless the object is purchased from a manufacturer of or a regular dealer in crafted precious metal.

(b) A person who purchases an object in violation of this section commits a Class B misdemeanor.

Necessity of Compliance with Other Law or Ordinance

Sec. 8. Nothing in this Act excuses noncompliance with another state law or city ordinance covering the reporting, holding, or releasing of crafted precious metal.

Effect of Act upon Enactment, Amendment, or Enforcement of Local Ordinance

Sec. 9. This Act does not prohibit enactment, amendment, or enforcement by any city of any local ordinance relating to a dealer and does not supersede any city ordinance except to the extent that an ordinance does not require any reporting for transactions involving crafted precious metal.

Application of Act

Sec. 10. This Act applies only to the crafted precious metals that have been sold or used primarily for personal, family, or household purposes. This Act does not apply to any person whose purchases and sales of precious metals and products made thereof are merely incidental to its business of extracting, recovering, or salvaging precious metals from industrial by-products and industrial waste products nor does this Act apply to dental, pharmaceutical, or medical applications of crafted precious metals.

[Acts 1981, 67th Leg., p. 2147, ch. 500, §§ 1 to 10, eff. Sept. 1, 1981.]

Art. 9014. Repealed by Acts 1979, 66th Leg., p. 417, ch. 191, § 2, eff. Sept. 1, 1979

See, now, Penal Code, § 31.11.

Art. 9015. Repealed by Acts 1977, 65th Leg., p. 2690, ch. 871, art. 1, § 2(a)(4), eff. Sept. 1, 1977

Acts 1977, 65th Leg., ch. 871, repealing this article, enacts the Natural Resources Code.

For disposition of the subject matter of the repealed article, see Disposition Table following the Natural Resources Code.

Art. 9017. Repealed by Acts 1975, 64th Leg., p. 2305, ch. 719, art. II, § 1, eff. Jan. 1, 1976

Art. 9018. Artists' Consignment Act

Sec. 1. This Act may be cited as the Artists' Consignment Act.

Sec. 2. In this Act:

(1) "Art" means a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macrame, quilt, or other commonly recognized art form.

(2) "Artist" means the creator of a work of art or, if he is deceased, his estate.

(3) "Art dealer" means a person engaged in the business of selling works of art.

(4) "Creditor" has the meaning given that term by Section 1.201, Business & Commerce Code.

(5) "Person" means an individual, partnership, corporation, or association.

Sec. 3. A work of art delivered to an art dealer for the purpose of exhibition or sale, and the proceeds from the sale of the work by the dealer, whether to the dealer on his own account or to a third person, are not subject to the claims, liens, or security interests of the creditors of the art dealer, notwithstanding any provision of the Business & Commerce Code.

[Acts 1977, 65th Leg., p. 1530, ch. 623, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 9019. Interception of Communications; Civil Remedies and Criminal Penalties

Sec. 1. In this Act:

(a) "Communication" means speech uttered by any person and any information including speech transmitted in whole or in part with the aid of wire or cable.

(b) "Interception" means the aural acquisition of the contents of any communication through the use of an electronic, mechanical, or other device without the consent of a party to the communication. Interception does not include the ordinary use of:

(1) a telephone or telegraph instrument, facility, or equipment;

(2) a hearing aid designed to correct subnormal hearing to not better than normal;

(3) a radio, television, or other wireless receiver; or

(4) a cable system that relays public wireless broadcasts from a common antenna to one or more receivers.

Sec. 2. (a) A party to a communication may bring a civil action in a court of competent jurisdiction against any person, including a corporation or association, who:

(1) intercepts, attempts to intercept, or employs or obtains the services of another person to intercept or attempt to intercept the communication;

(2) uses or divulges information that he knows, or reasonably should have known, was obtained by intercepting the communication; or

(3) in his capacity as a landlord, building operator, telephone company or other communication common carrier through its agents or employees aids or knowingly permits the actual or attempted interception.

(b) In a suit filed under this section, a person who establishes a cause of action is entitled to:

(1) an injunction prohibiting further interceptions, attempted interceptions, or divulgence or use of information obtained by interception;

(2) statutory damages of $1,000;

(3) all actual damages in excess of $1,000;

(4) Any punitive damages the court or jury may award; and

(5) reasonable attorney's fees and costs.

(c) It shall not be unlawful for an operator of a switchboard or an officer, employee, or agent of any telephone company or other communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the telephone company or other communication common carrier, provided that said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks. In any civil action under this article, it shall be the burden of any defendant relying upon this defense to establish by a preponderance of the evidence that every such interception, disclosure, or use was a necessary incident to the rendition of service.

(d) It is further provided that no cause of action will arise under this section with respect to surveillance authorized under the provisions of Title 18, United States Code, Section 2516, as amended.

Sec. 3. A landlord, building operator, employee of a telephone company or other communication common carrrier, or any other person who knowingly aids or permits the actual or attempted interception of communications, as defined in this Act, shall on first conviction be guilty of a Class A misdemeanor, and on second or subsequent conviction be guilty of a third-degree felony, except that no criminal liability shall arise under the provisions of this Act with respect to surveillance authorized under state or federal law.

[Acts 1977, 65th Leg., p. 1863, ch. 740, eff. June 16, 1977.]

Art. 9020. Regulation of Invention Development Services Act

Short Title

Sec. 1. This Act may be cited as the Regulation of Invention Development Services Act.

Definitions

Sec. 2. In this Act:

(1) "Invention development services" means any act done by or for an invention developer for the procurement or attempted procurement by the invention developer of a licensee or buyer of an intellectual property right in an invention. The term includes the evaluation, perfecting, marketing, brokering, or promoting of an invention, a patent search, and preparation or prosecution of a patent application by a person not registered to practice before the U. S. Patent and Trademark Office.

(2) "Invention" means a discovery, process, machine, design, formulation, product, concept, or idea, or any combination of these, whether patentable or not.

Customer

Sec. 3. For the purposes of this Act, a customer is:

(1) an individual who enters into a contract with an invention developer for invention development services; or

(2) a firm, partnership, corporation, or other entity that enters into a contract with an invention developer for invention development services and that is not purchasing those services as an adjunct to the traditional commercial enterprises in which it engages as a business.

Invention Developer

Sec. 4. For the purposes of this Act, an invention developer is an individual, firm, partnership, or corporation, or an agent, employee, officer, partner, or independent contractor of one of those entities, that offers to perform or performs invention development services for a customer and that is not:

(1) a department or agency of federal, state, or local government;

(2) a nonprofit, charitable, scientific, or educational organization, qualified under the Texas Non-Profit Corporation Act (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes) or described by Section 170(b)(1)(a) of the Internal Revenue Code of 1954, as amended; [1]

(3) an attorney acting within the scope of the attorney's professional license;

(4) a person registered before the U. S. Patent and Trademark Office acting within the scope of that person's professional license; or

(5) a person, firm, corporation, association, or other entity that does not charge a fee, including reimbursement for expenditures made or costs incurred by the entity, for invention development services other than payment made from a portion of the income received by a customer by virtue of acts performed by the entity.

[1] 26 U.S.C.A. § 170(b)(1)(a).

Contracting Requirements

Sec. 5. (a) Each contract for invention development services by which an invention developer undertakes invention development services for a customer is subject to this Act. The contract must be in writing and the invention developer shall give a copy of the contract to the customer at the time the customer signs the contract.

(b) If it is the invention developer's normal practice to seek more than one contract in connection with an invention or if the invention developer normally seeks to perform services in connection with an invention in more than one phase with the performance of each phase covered in one or more subsequent contracts, the invention developer shall give to the customer at the time the customer signs the first contract:

(1) a written statement describing that practice; and

(2) a written summary of the developer's normal terms, if any, of subsequent contracts, including the approximate amount of the developer's normal fees or other consideration, if any, that may be required from the customer.

(c) For the purposes of this section, delivery of a promissory note, check, bill of exchange, or negotiable instrument of any kind to the invention developer or to a third party for the benefit of the invention developer irrespective of the date or dates appearing in that instrument is payment.

(d) Notwithstanding any contractual provision to the contrary, payment for invention development services may not be required, made, or received before the fourth working day after the day on which the customer receives a copy of the contract for invention development services signed by the invention developer and the customer.

(e) Until the payment for invention development services is made, the parties to a contract for invention development services have the option to terminate the contract. The customer may exercise the option by refraining from making payment to the invention developer. The invention developer may exercise the option to terminate by giving to the customer a written notice of its exercise of the option. The written notice becomes effective on its receipt by the customer.

Standard Provisions for Cover Notice

Sec. 6. (a) A contract for invention development services must have a conspicuous and legible cover sheet attached. The cover sheet must set forth:

(1) the name, home address, office address, and local office address of the invention developer; and

(2) the following notice printed in bold-faced type of not less than 10-point size:

THIS CONTRACT BETWEEN YOU AND AN INVENTION DEVELOPER IS REGULATED BY THE STATE OF TEXAS' REGULATION OF INVENTION DEVELOPMENT SERVICES ACT. YOU ARE NOT PERMITTED OR REQUIRED TO MAKE ANY PAYMENTS UNDER THIS CONTRACT UNTIL FOUR (4) WORKING DAYS AFTER YOU SIGN THIS CONTRACT AND RECEIVE A COMPLETED COPY OF IT.

IF YOU ASSIGN EVEN A PARTIAL INTEREST IN THE INVENTION TO THE INVENTION DEVELOPER, THE INVENTION DEVELOPER MAY HAVE THE RIGHT TO SELL OR DISPOSE OF THE INVENTION WITHOUT YOUR CONSENT AND MAY NOT HAVE TO SHARE THE PROFITS WITH YOU.

THE TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER SINCE (year) IS (number). THE TOTAL NUMBER OF CUSTOMERS KNOWN BY THIS INVENTION DEVELOPER TO HAVE RECEIVED, BY VIRTUE OF THIS INVENTION DEVELOPER'S PERFORMANCE, AN AMOUNT OF MONEY IN EXCESS OF THE AMOUNT PAID BY THE CUSTOMER TO THIS INVENTION DEVELOPER IS (number).

YOU ARE ENCOURAGED TO CONSULT WITH A QUALIFIED ATTORNEY BEFORE SIGNING THIS CONTRACT. BY PROCEEDING WITHOUT THE ADVICE OF A QUALIFIED ATTORNEY, YOU COULD LOSE ANY RIGHTS YOU MIGHT HAVE IN YOU IDEA OR INVENTION.

(b) The invention developer shall complete the cover sheet with the proper information to be provided in the blanks. In the first blank the invention developer shall enter the year that the invention developer began business or the effective date of this Act. The numbers entered in the last two blanks of the cover notice may be rounded to the nearest 100 and need not include those who have contracted with the invention developer during the three calendar months immediately preceding the date of the contract. If the number to be inserted in the third blank is zero, it must be so stated.

(c) The cover notice may not contain anything in addition to the information required by Subsection (a) of this section.

Reports to Customer Required

Sec. 7. For each contract for invention development services, the invention developer, at least once each calendar quarter during the term of the contract, shall deliver to the customer at the address specified in the contract a written report that identifies the contract and that sets forth:

(1) a full, clear, and concise description of the services performed to the date of the report and of the services to be performed;

(2) the name and address of each person, firm, or corporation to whom the subject matter of the contract has been disclosed, the reason for each disclosure, the nature of the disclosure, and copies of all responses received as a result of those disclosures.

Mandatory Contract Terms

Sec. 8. (a) A contract for invention development services shall set forth in bold-faced type of not less than 10-point size:

(1) the terms and conditions of payment and contract termination rights required by Section 5 of this Act;

(2) a full, clear, and concise description of the specific acts or services that the invention developer undertakes to perform for the customer;

(3) a statement as to whether the invention developer undertakes to construct, sell, or distribute one or more prototypes, models, or devices embodying the customer's invention;

(4) the full name and principal place of business of the invention developer;

(5) the name and principal place of business of any parent, subsidiary, or affiliated company that may engage in performing any of the invention development services;

(6) a statement of estimated or projected customer earnings and a description of the data on which the estimation or projection is based if the invention developer makes an oral or written representation of estimated or projected customer earnings;

(7) the name and address of the custodian of all records and correspondence pertaining to the invention development services for which the contract is made;

(8) a statement that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for that customer until the second anniversary of the date of the expiration of the contract for invention development services and that on seven days' written notice the invention developer will make the invention development services records and correspondence available to the customer or the customer's representative for review and copying at the customer's reasonable expense on the invention developer's premises during normal business hours; and

(9) a statement setting forth a time schedule for performance of the invention development services, including an estimated date by which performance of the invention development services is expected to be completed.

(b) To the extent that the description of specific acts or services required by Subsection (a)(2) of this section gives the invention developer discretion in determining which acts or services will be performed, the invention developer is a fiduciary.

Remedies

Sec. 9. (a) A contract for invention development services that does not substantially comply with this Act is voidable at the option of the customer. A contract for invention development services entered into in reliance on any false, fraudulent, or misleading information, representation, notice, or advertisement of the invention developer is voidable at the option of the customer. Any waiver by the customer of any provision of this Act is contrary to public policy and is void.

(b) A customer who has been injured by a violation of this Act by an invention developer, by a false or fraudulent statement, representation, or omission of material fact by an invention developer, or by failure of an invention developer to make all disclosures required by this Act may recover in a civil action against the invention developer:

(1) court costs;

(2) attorney's fees; and

(3) the amount of actual damages, if any, sustained by the customer or $1,000, whichever is greater.

(c) Alternatively, any violation of this Act by an invention developer, or omission of material fact by an invention developer, or failure of an invention developer to make all disclosures required by this Act constitutes a deceptive trade practice under Chapter 17 of the Business & Commerce Code. Remedies available under Subsection (b) of this section are mutually exclusive to those provided under this Subsection (c) in conformance with Section 17.43 of the Business & Commerce Code, as amended.

(d) For the purpose of this section, substantial violation of any provision of this Act by an invention developer or execution by the customer of a contract for invention development services in reliance on a false or fraudulent statement, representation, or material omission establishes a rebuttable presumption of injury.

Enforcement; Civil Penalty; Restraint of Violations

Sec. 10. The attorney general shall enforce this Act. The attorney general may recover a civil penalty not to exceed $2,000 for each violation of this Act and may seek equitable relief to restrain a violation of this Act.

Financial Requirements

Sec. 11. (a) Except as provided by Subsection (c) of this section, each invention developer rendering or offering to render invention development services in this state shall maintain a bond issued by a surety company authorized to do business in this state. The principal sum of the bond must be at least five percent of the invention developer's gross income from the invention development business in this state during the invention developer's last fiscal year or $25,000, whichever is greater. The invention developer shall file a copy of the bond with the secretary of state before the day on which the invention developer begins business in this state. Before the 91st day after the last day of the invention developer's fiscal year, the invention developer shall change the amount of the bond if necessary to conform with the requirements of this section.

(b) The bond required by Subsection (a) of this section must be in favor of the State of Texas for the benefit of any person who, after entering into a contract for invention development services with an invention developer, is damaged by fraud, dishonesty, or failure to provide the services of the invention developer in performance of the contract. Any person claiming against the bond may maintain an action at law against the invention developer and the surety. The aggregate liability of the surety to all persons for all breaches of conditions of the bond required by this subsection is limited to the amount of the bond.

(c) Instead of furnishing the bond required by Subsection (a) of this section, the invention developer may deposit with the secretary of state a cash deposit equal to the amount of the bond required by this section. The cash deposit may be satisfied by:

(1) certificates of deposit payable to the secretary of state issued by banks doing business in this state and insured by the Federal Deposit Insurance Corporation;

(2) investment certificates of share accounts assigned to the secretary of state and issued by a savings and loan association doing business in this state and insured by the Federal Savings and Loan Insurance Corporation;

(3) bearer bonds issued by the United States government or by this state; or

(4) cash deposited with the secretary of state.

Effect on Other Laws

Sec. 12. This Act does not annul or limit any obligation, right, or remedy that is applicable or available under the law of this state.

[Acts 1981, 67th Leg., p. 260, ch. 108, eff. May 7, 1981.]

TITLE 133

SAFETY

Article
9207. Incidents Relating to Hazardous Materials; Liability of Persons Giving Assistance.

Art. 9205. Regulation and Offenses as to Fireworks

[See Compact Edition, Volume 5 for text of 1]

Possession for Sale; Permissible Fireworks

Sec. 2. (a) It shall be unlawful for any individual, firm, partnership, corporation or association to possess for sale within the state, sell or offer for sale, at retail, or use, within the State of Texas, any fireworks other than the permissible fireworks herein enumerated.

Permissible fireworks, as that term is used in this Act, shall be understood to mean ICC Class C Common Fireworks only and shall include only those fireworks enumerated as ICC Class C Common Fireworks in the regulations of the Interstate Commerce Commission, as said regulations are presently constructed, for the transportation of explosives and other dangerous articles and, except as provided by Subsection (b) of this section, shall include and be limited to the following:

(1) Roman Candles, total pyrotechnic composition not to exceed twenty grams each in weight. (10 ball);

(2) Helicopter Type Rockets, total pyrotechnic composition not to exceed twenty grams each in weight;

(3) Cylindrical Fountains, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside tube diameter shall not exceed ¾ inch;

(4) Cone Fountains, total pyrotechnic composition not to exceed fifty grams each in weight;

(5) Wheels, total pyrotechnic composition not to exceed sixty grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of driver tubes shall not be over ½ inch;

(6) Illuminating Torches and Colored Fire in any Form, total pyrotechnic composition not to exceed one hundred grams each in weight;

(7) Sparklers and Dipped Sticks, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate shall not exceed five grams;

(8) Mines and Shells, of which the mortar is an integral part, except those designed to produce an audible effect, total pyrotechnic composition not to exceed forty grams each in weight;

(9) Firecrackers and Salutes, with casings, the external dimensions of which do not exceed one and one-half inches in length or one quarter inch in diameter, total pyrotechnic composition not to exceed two grains each in weight;

(10) Whistles without Report, total pyrotechnic composition not to exceed forty grams each in weight.

(11) Railway fuses, other fireworks used by railroads or other transportation agencies for signal purposes or illumination, truck flares, hand ship distress signals and illuminating torches. Total pyrotechnic composition of illuminating torches not to exceed one hundred grams each in weight;

(12) Items composed of combination of two or more articles or devices of the above enumerated approved items.

(b) Sky rockets with sticks that meet the following specifications are permissible fireworks:

(1) total propellant charge alone may not be less than four grams nor more than twenty grams each in weight;

(2) casing size may not be less than ⅝ inch for the outside diameter and may not be less than 2⅞ inches in length;

(3) overall sky rocket length, including the stick, may not be less than 15 inches; and

(4) rocket stick must be securely fastened to the casing.

(c) Bottle rockets with sticks or sky rockets with sticks that do not meet the specifications of Subsection (b) of this section are not permissible fireworks.

[See Compact Edition, Volume 5 for text of 3]

Sec. 3A. Repealed by Acts 1981, 67th Leg., p. 290, ch. 114, § 3, eff. Aug. 31, 1981.

[See Compact Edition, Volume 5 for text of 4]

License Fees

Sec. 5.

[See Compact Edition, Volume 5 for text of 5A to 5C]

D. An annual license fee of $10 will be charged all retailers who possess and sell fireworks enumerated in Section 2, for which an annual retailer's

license shall be issued effective until midnight of the following 31st day of January. No person, firm or corporation shall offer fireworks for sale to individuals at retail before the 24th day of June and after the 4th day of July, or the 20th day of December of each year and after midnight of the 1st day of January of the following year.

[See Compact Edition, Volume 3 for text of 5E to 5G]

H. A license fee of $17.50 for each public display shall be paid at the time of obtaining the permit, as hereafter provided, being payable to and in the manner provided in Section 5A.

[See Compact Edition, Volume 5 for text of 5I to 5K]

L. An annual license fee of $200 will be charged all persons securing a general license under Section 10, for which a general license shall be issued effective until midnight of the following 31st day of January. Provided that a person holding a general license shall not be required to obtain a permit for each public display of fireworks which is conducted at a single location for which an original permit has been obtained. Nothing herein shall limit the authority of the State Fire Marshal or his authorized representatives to inspect the single location or to require such fire protection measures as may be appropriate.

[See Compact Edition, Volume 5 for text of 6 to 15]

[Amended by Acts 1977, 65th Leg., p. 559, ch. 195, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1246, ch. 482, § 1, eff. June 15, 1977; Acts 1981, 67th Leg., p. 289, ch. 114, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2672, ch. 724, § 1, eff. Aug. 31, 1981.]

Art. 9206. Repealed by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4)

Acts 1975, 64th Leg., p. 1405, ch. 545, repealing this article, enacts the Parks and Wildlife Code.

Acts 1975, 64th Leg., p. 1286, ch. 481, amended subsecs. (3) and (9) and added subsecs. (14) to (16) of § 2a and § 5 of this article, without reference to repeal of this article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4).

Acts 1977, 65th Leg., p. 1258, ch. 484, § 6(1), repealed the above provisions of this article, as amended by Acts 1975, 64th Leg., p. 1286, ch. 481, and, in § 1 thereof incorporated said 1975 amendments into the Parks and Wildlife Code by amending Parks & Wildlife Code, §§ 31.003(3) and (7), 31.036, and 31.042(b) and adding §§ 31.003(11) to (13) and 31.045 to 31.055.

Acts 1977, 65th Leg., p. 1973, ch. 788, which amended § 5(k) of this article, as amended by Acts 1975, 64th Leg., p. 1286, ch. 481, § 2, was repealed by § 6(7) of Acts 1977, 65th Leg., p. 1259, ch. 484. See, now, Parks & Wildlife Code, § 31.048.

Acts 1975, 64th Leg., p. 108, ch. 48, § 1 amended § 24 of this article by adding a new subsec. (g), without reference to repeal of this article. As so added, subsec. (g) reads:

"(g) A person who intentionally or knowingly violates or fails to comply with the provisions of Subsection (a), Section 21 of this Act is guilty of a misdemeanor and on conviction is punishable by confinement in jail for a term not to exceed one year, or by a fine not to exceed $2,000, or by both."

Art. 9207. Incidents Relating to Hazardous Materials; Liability of Persons Giving Assistance

Definitions

Sec. 1. In this Act:

(1) "Hazardous material" means:

(A) a substance classified as a hazardous material under state or federal law or under a rule adopted pursuant to state or federal law; or

(B) a chemical, petroleum product, gas, or other substance that, if discharged or released, will or is likely to create an imminent danger to individuals, property, or the environment.

(2) "Gross negligence" means reckless, wilful, or wanton misconduct.

(3) "Person" means an individual, association, corporation, or other private legal entity.

Liability of Person Giving Assistance

Sec. 2. (a) A person is immune from civil liability for any act or omission that occurs in giving care, assistance, or advice with respect to the prevention or management of an incident related to the storage or transportation by any means of a hazardous material, which incident creates or might create a danger to individuals, property, or the environment as a result of the spillage, seepage, or other release of a hazardous material or as a result of fire or explosion involving a hazardous material.

(b) This section does not apply to a person giving care, assistance, or advice for or in expectation of compensation from or on behalf of the recipient of the care, assistance, or advice in excess of reimbursement for expenses incurred. This section shall not preclude liability for damages as a result of gross negligence or intentional misconduct on the part of a person.

(c) This section only applies when an incident or accident has already occurred and there is a danger or a threat of danger to individuals, property, or the environment.

[Acts 1981, 67th Leg., p. 2693, ch. 731, eff. June 16, 1981.]

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